

BEFORE THE ENVIRONMENTAL PROTECTION APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

RECEIVED
U.S. EPA

2007 NOV 20 PM 2:55

-----X
In re: : ENVIR. APPEALS BOARD
: :
District of Columbia : NPDES 05-02, 07-10,
Water & Sewer Authority : 07-11, 07-12
: :
NPDES Permit No. DC0021199 :
-----X

Washington, D.C.

Wednesday, November 5, 2007

The above-entitled matter came on
for ORAL ARGUMENT at approximately 1:34 p.m.
at the Environmental Protection Agency, EPA
East Building, 1201 Constitution Avenue, NW,
Washington, D.C.

BEFORE:

KATHIE A. STEIN
EDWARD E. REICH
ANNA L. WOLGAST
Presiding Judges

2	4
<p>1 APPEARANCES:</p> <p>2 On behalf of D.C. Water and Sewer Authority:</p> <p>3 DAVID E. EVANS, ESQUIRE</p> <p>4</p> <p>5 On behalf of Chesapeake Bay Foundation:</p> <p>6 JON A. MUELLER, ESQUIRE</p> <p>7 On behalf of Friends of the Earth/Sierra Club:</p> <p>8 JENNIFER CHAVEZ, ESQUIRE</p> <p>9</p> <p>10 On behalf of Environmental Protection Agency:</p> <p>11 DEANE BARTLETT, ESQUIRE</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 The Chesapeake Bay Foundation shall</p> <p>2 proceed second; it has been allocated 15</p> <p>3 minutes for argument, and may reserve up to</p> <p>4 five minutes of its time for rebuttal. Earth</p> <p>5 Justice, representing the Sierra Club and</p> <p>6 Friends of the Earth, shall proceed third,</p> <p>7 and similarly may reserve up to five minutes</p> <p>8 of its 15-minute allotment for rebuttal; and</p> <p>9 EPA, the permit issuer, has 30 minutes for</p> <p>10 argument and shall go last.</p> <p>11 This is an important and a complex</p> <p>12 matter, and the Board will be most interested</p> <p>13 in asking you questions that focus on a</p> <p>14 couple of different areas: one, the</p> <p>15 compliance schedule issues to the</p> <p>16 anti-backsliding issues, and to some extent,</p> <p>17 the water quality standard issues in the</p> <p>18 FOE/Sierra Club's brief.</p> <p>19 While you're free to use your time</p> <p>20 as you see fit, these are the areas where I</p> <p>21 believe the Board would benefit most from</p> <p>22 your arguments. You should assume that the</p>
3	5
<p>1 PROCEEDINGS</p> <p>2 CLERK: The Environmental Appeals</p> <p>3 Board of the United States Environmental</p> <p>4 Protection Agency is now in session for oral</p> <p>5 argument. In re: District of Columbia Water</p> <p>6 and Sewer Authority, Docket No. DC0021199</p> <p>7 NPDES appeal numbers 05-02, 07-10, 07-11, and</p> <p>8 07-12. Honorable Judges Anna Wolgast, Kathie</p> <p>9 Stein, and Ed Reich presiding.</p> <p>10 Please be seated.</p> <p>11 JUDGE STEIN: Good morning,</p> <p>12 everyone. We're hearing argument this</p> <p>13 morning, or actually this afternoon, in four</p> <p>14 different appeals, and we have three</p> <p>15 different Petitioners, as I understand it.</p> <p>16 The Board has issued an order allocating a</p> <p>17 total of 90 minutes for oral argument.</p> <p>18 Washington Area Sewer Authority, or</p> <p>19 WASA, the permittee, shall proceed first, and</p> <p>20 shall have 30 minutes for argument, of which</p> <p>21 they may reserve up to five minutes for</p> <p>22 rebuttal.</p>	<p>1 Board has read and is familiar with your</p> <p>2 briefs, understanding of course that this is</p> <p>3 a complicated matter, and any clarity you can</p> <p>4 bring to the issues would be most</p> <p>5 appreciated.</p> <p>6 If the parties could please</p> <p>7 identify themselves for the record, and let</p> <p>8 me know whether or not you'll be reserving</p> <p>9 any time for rebuttal, beginning with counsel</p> <p>10 for WASA.</p> <p>11 MR. EVANS: Good afternoon. If it</p> <p>12 please the Board, my name is David Evans. I</p> <p>13 represent the District of Columbia Water and</p> <p>14 Sewer Authority in these appeals. I'd like</p> <p>15 to reserve five minutes of my time for</p> <p>16 rebuttal.</p> <p>17 These are consolidated appeals of</p> <p>18 amendments to the NPDES permit for the Blue</p> <p>19 Plains Advanced Wastewater Treatment Plant,</p> <p>20 and the combined and separate sanitary sewer</p> <p>21 systems that serve Blue Plains. The relevant</p> <p>22 facts related to Blue Plains and history of</p>

<p style="text-align: right;">6</p> <p>1 the plant and the permit amendments are set 2 forth in quite some detail in the briefs, so 3 I won't take the time to repeat those here. 4 However, of course, if the Board has any 5 questions about the Blue Plains plant or its 6 history, I'll be happy to answer those. 7 I'd like to address the issues in 8 the order listed by the Board, and then move 9 onto WASA's appeal of the effluent limitation 10 for total nitrogen. 11 Turning first to the compliance 12 schedule issues. There are two compliance 13 schedules at issue here. The first is the 14 compliance schedule for the Long Term Control 15 Plan derived performance standards for the 16 District's combined sewer system. And the 17 second is the compliance schedule for the 18 effluent limitation for total nitrogen. 19 Both involve the same basic 20 question; namely, does the compliance 21 schedule provision in the District of 22 Columbia's Water Quality Standards Regulation</p>	<p style="text-align: right;">8</p> <p>1 and therefore intended that that compliance 2 schedule be included in the permit. 3 JUDGE STEIN: But as to Appeal No. 4 05-02, am I correct in understanding that 5 they did not say anything in their 6 certification about the compliance schedule? 7 MR. EVANS: I don't believe they 8 did, Your Honor. 9 JUDGE REICH: What significance do 10 you think that has, since they expressly 11 included it relative to the nitrogen limit? 12 MR. EVANS: I think there were a 13 different set of circumstances -- when the 14 limit was established for the Long Term 15 Control Plan performance standards, that was 16 part of a package that included not only the 17 permit amendment, also a consent decree that 18 included a compliance schedule in it. 19 So the District of Columbia 20 government was fully aware of the fact that a 21 compliance schedule had been established in 22 the consent decree, and so I think it could</p>
<p style="text-align: right;">7</p> <p>1 impose upon the Region a non-discretionary 2 duty to include schedules in the permit when 3 establishing effluent limitations in the Long 4 Term Control Plan performance standards and 5 the effluent limitation for total nitrogen. 6 WASA submits that it does, and that EPA 7 committed error when it refused to include 8 compliance schedules in the permit in 9 establishing these limitations. 10 JUDGE STEIN: Mr. Evans, in the 11 certification the District of Columbia 12 provided with respect to the compliance 13 schedule for the Long Term Control Plan, did 14 they include anything in their certification 15 pertaining to the compliance schedule issue? 16 MR. EVANS: Yes, Your Honor. They 17 said that a compliance schedule should be 18 included for the total effluent limitation 19 for nitrogen; they did not specify where that 20 compliance schedule should go, but I think it 21 should be assumed that the District was fully 22 aware of the mandate of its own regulation,</p>	<p style="text-align: right;">9</p> <p>1 be safely assumed that the District felt that 2 there was no need to mention a compliance 3 schedule in the certification because it had 4 already had been addressed as part of the 5 consent decree. 6 JUDGE REICH: But if their 7 requirements were that it had to be included 8 in the permit, and they knew it wasn't in the 9 permit, why would they not have mentioned 10 that? I mean, your answer seems to suggest 11 that they thought it was acceptable to put it 12 in the consent decree, which seems 13 inconsistent with the argument that that 14 provision is mandatory? 15 MR. EVANS: Your Honor, I think we 16 have to look at the language of the 17 regulation, which is mandatory. It says, "A 18 compliance schedule shall be included in the 19 permit." If you take that regulation at face 20 value, it would seem that the District need 21 not specify exactly where the schedule ought 22 to go. And even if they had intended that</p>

10	<p>1 the schedule go in a consent decree, we don't</p> <p>2 believe that they could have specified</p> <p>3 otherwise. The regulation is mandatory.</p> <p>4 I think it's well-established in</p> <p>5 the law that certifications, permits or other</p> <p>6 forms of individual authorizations cannot be</p> <p>7 used to modify a rule. We have a rule here</p> <p>8 that was adopted following notice and the</p> <p>9 opportunity for comment. The formal</p> <p>10 certification did not go through any public</p> <p>11 comment period.</p> <p>12 So to interpret D.C.'s water</p> <p>13 quality certification in the case of the</p> <p>14 total nitrogen effluent limitation as</p> <p>15 effectively having superseded the clear</p> <p>16 mandate of its own regulation, would in</p> <p>17 effect allow the District to have modified a</p> <p>18 rule that had been through full public</p> <p>19 comment review.</p> <p>20 JUDGE STEIN: Go ahead.</p> <p>21 JUDGE REICH: I was trying to</p> <p>22 understand your earlier statement that the</p>	12	<p>1 inconsistent with putting a compliance</p> <p>2 schedule in the consent decree and also</p> <p>3 putting it in the permit. Had EPA wanted to,</p> <p>4 they could've put the compliance schedule in</p> <p>5 the consent decree, which they did,</p> <p>6 commensurate with the Phase I CSO permit, and</p> <p>7 at the time -- and this is exactly what WASA</p> <p>8 asked the Region to do -- ask EPA -- okay, we</p> <p>9 have a compliance schedule in the consent</p> <p>10 decree, we also want to have a compliance in</p> <p>11 the permit as well, and we believe that the</p> <p>12 Region is obligated to put that schedule in</p> <p>13 the permit by virtue of a mandate of the</p> <p>14 District of Columbia regulation.</p> <p>15 JUDGE STEIN: How does the D.C.</p> <p>16 regulation interface with 122.47 40 CFR,</p> <p>17 which is the schedules of compliance -- in</p> <p>18 the federal permitting regulation? Why is it</p> <p>19 that EPA needs to adhere to the schedule of</p> <p>20 compliance specified in the D.C. reg rather</p> <p>21 than what's in the federal regulation?</p> <p>22 MR. EVANS: I think we looked at</p>
11	<p>1 reason they would not have raised the issue</p> <p>2 in the 05-02 context was because they were</p> <p>3 aware there was this schedule in the consent</p> <p>4 decree -- if they felt that was inconsistent</p> <p>5 with the requirement of their own law and</p> <p>6 that their own law required it to be in the</p> <p>7 permit, I would've thought that they would</p> <p>8 mention that.</p> <p>9 MR. EVANS: Again, Your Honor, I</p> <p>10 don't know why they did or did not mention</p> <p>11 it. I can only assume that the fact that</p> <p>12 there had been an agreement on a consent</p> <p>13 decree at the time the amendment went forward</p> <p>14 and the certification was issued, the</p> <p>15 District of Columbia government knew full</p> <p>16 well that there would be a compliance</p> <p>17 schedule in the decree.</p> <p>18 I should add that WASA, of course,</p> <p>19 in its comments on the amendment requested</p> <p>20 that in addition to putting the schedule in</p> <p>21 the decree, they also put the schedule in the</p> <p>22 permit, and I might add there's nothing</p>	13	<p>1 the holding in the Star-Kist Caribe case for</p> <p>2 that. That -- of course, as the Board knows,</p> <p>3 that decision was first decided by the</p> <p>4 administrator in 1990. That decision</p> <p>5 contains a comprehensive analysis and</p> <p>6 discussion of the relationship between the</p> <p>7 states and EPA in the establishment of</p> <p>8 compliance schedules.</p> <p>9 It's true that the facts of that</p> <p>10 case revolved around an instance where the</p> <p>11 state's water quality standard regulation did</p> <p>12 not provide for a compliance schedule, but I</p> <p>13 think it's safe to say that a fair reading of</p> <p>14 both the 1990 decision by the administrator</p> <p>15 as well as this Board's decision in 1992 in</p> <p>16 the same case on a request for modification</p> <p>17 from EPA also endorsed, in essence, the</p> <p>18 comprehensive analysis and conclusions that</p> <p>19 were reached by the administrator as to the</p> <p>20 relationship between the states and EPA when</p> <p>21 establishing compliance schedule.</p> <p>22 In essence, I think the holding of</p>

14	<p>1 those cases in essence is that we first look</p> <p>2 to whether or not there is authorization in</p> <p>3 the state water quality standard regulation</p> <p>4 for including a compliance schedule. If that</p> <p>5 authorization in essence confers upon EPA</p> <p>6 discretionary authority, then EPA uses its</p> <p>7 own regulations, 40 CFR 122, for purposes of</p> <p>8 determining whether to put the schedule in</p> <p>9 the permit, and if so, what that schedule</p> <p>10 should be.</p> <p>11 In this particular case, we have a</p> <p>12 water quality standard regulation which not</p> <p>13 only authorizes a compliance schedule in the</p> <p>14 permit, but mandates that the schedule be</p> <p>15 included in the permit. And I think if you</p> <p>16 look to the holdings in the two Star-Kist</p> <p>17 Caribe decisions, they effectively stand for</p> <p>18 the proposition within this particular</p> <p>19 case -- where we have a water quality</p> <p>20 standards regulation that mandates that the</p> <p>21 schedule go in the permit -- then that</p> <p>22 mandate overrides and supersedes the</p>	16
15	<p>1 discretionary authority that EPA has under</p> <p>2 its own regulations.</p> <p>3 JUDGE REICH: Is there any case law</p> <p>4 or guidance or anything else other than the</p> <p>5 plain language of the regulation that</p> <p>6 addresses the issue of whether this is</p> <p>7 mandatory or discretionary?</p> <p>8 MR. EVANS: I'm not aware of any</p> <p>9 other than case law, which generally holds</p> <p>10 that you first give plain reading to the --</p> <p>11 JUDGE REICH: Right.</p> <p>12 MR. EVANS: Language of the rule or</p> <p>13 statute.</p> <p>14 JUDGE REICH: Right.</p> <p>15 MR. EVANS: Probably the most</p> <p>16 notable and recent example of that is the</p> <p>17 recent TMDL decision by the D.C. Circuit,</p> <p>18 where the D.C. Circuit held that daily means</p> <p>19 daily. We think the word shall means shall.</p> <p>20 JUDGE REICH: It is nothing</p> <p>21 specific to 1105.9?</p> <p>22 MR. EVANS: No, Your Honor, I'm not</p>	17
	<p>1 aware of anything.</p> <p>2 JUDGE REICH: Okay.</p> <p>3 JUDGE STEIN: Is it your reading of</p> <p>4 D.C. regulations that whatever compliance</p> <p>5 schedule is in the consent decree would need</p> <p>6 to be identical to what would be put in the</p> <p>7 permit? Or is there some room to have</p> <p>8 perhaps a more general schedule in the permit</p> <p>9 and a more specific schedule in the consent</p> <p>10 decree?</p> <p>11 MR. EVANS: Your Honor, I think in</p> <p>12 instances where -- such as this where you</p> <p>13 have a schedule both in the consent decree</p> <p>14 and the permit, it would -- probably the more</p> <p>15 appropriate way to go about dealing with that</p> <p>16 would be to have a more detailed schedule in</p> <p>17 the consent decree, and have a more general</p> <p>18 schedule with probably an end date, and some</p> <p>19 interim milestones and reporting requirements</p> <p>20 in the permit itself.</p> <p>21 And I do think that having a</p> <p>22 consent decree in place in this particular</p>	
	<p>1 instance certainly I think would limit the</p> <p>2 extent to which you could have a schedule in</p> <p>3 the permit that would be at variance or at</p> <p>4 odds with that judicial consent decree</p> <p>5 schedule. And if -- obviously, to the extent</p> <p>6 you did, then it would require some</p> <p>7 modification to the consent decree.</p> <p>8 Certainly I don't think that would be</p> <p>9 appropriate in this particular case.</p> <p>10 JUDGE STEIN: So how does this work</p> <p>11 in real world terms? You come across a</p> <p>12 circumstance, there needs to be a change</p> <p>13 to a provision in the consent decree, you</p> <p>14 would need to both modify the consent decree</p> <p>15 and modify the permit?</p> <p>16 MR. EVANS: To the extent that they</p> <p>17 involved the same interim milestones or</p> <p>18 deadlines, but to the extent that you have a</p> <p>19 consent decree with a more detailed schedule</p> <p>20 in it, more detailed interim milestones, and</p> <p>21 a permit that has a more general schedule in</p> <p>22 it, to the extent that you're only involved</p>	

18	<p>1 with modifications of the interim milestones 2 that are not present in the permit, 3 obviously, you'd just be dealing with the 4 consent decree.</p> <p>5 JUDGE WOLGAST: And again, looking 6 from a practical standpoint, what is WASA's 7 potential liability whether there is a 8 compliance schedule in the permit or not?</p> <p>9 MR. EVANS: Your Honor, WASA 10 maintained its position on the compliance 11 schedule for the Long Term Control Plan for 12 two reasons. One, of course, it places great 13 value on its compliance status, and the 14 reality is that without a compliance schedule 15 in the permit, it is in ongoing 16 non-compliance with its permit. So this is a 17 question -- it really goes to maintaining 18 WASA's compliance status with its permit.</p> <p>19 Secondly, Section 13 of the consent 20 decree -- while it does dissolve all claims 21 against WASA at the time the consent decree 22 was entered, there's an express reservation</p>	20	<p>1 on the final language in the permit. In 2 fact, in WASA's view, the Friends of the 3 Earth and Sierra Club had more than adequate 4 opportunity to have a fair opportunity to 5 comment on that particular condition, and 6 should've been well aware that the sentence 7 would be deleted with the final amendment.</p> <p>8 Now, if you look at the history of 9 this amendment, it goes back several years, 10 it's been a very contentious amendment. 11 There've been different versions of this 12 particular condition in prior amendments to 13 this permit, and in each of those cases, this 14 permit condition was vigorously contested by 15 WASA and by Friends of the Earth and the 16 Sierra Club, with WASA arguing that the 17 condition should be taken out altogether; 18 Friends of the Earth arguing on various 19 occasions that the condition should be made 20 more expansive, should apply not only to the 21 period of implementation of the Long Term 22 Control Plan, but also the period following</p>
19	<p>1 of rights in that consent decree where the 2 Justice Department and EPA reserve the right 3 to proceed against WASA for an enforcement 4 action for any future violations that would 5 occur. Certainly, we believe that exposes 6 WASA -- it leaves WASA exposed to future 7 enforcement actions for non-compliance with 8 the permit and the consent decree.</p> <p>9 I'd like to move to the petition 10 provided by the Friends of the Earth and the 11 Sierra Club having to do with a challenge to 12 the Region's decision to delete the second 13 sentence in part 3(e)(1) of the permit. That 14 sentence prohibited any CSO discharge in 15 excess of any limitation necessary to achieve 16 compliance with water quality standards, 17 pending operation of the selected controls in 18 WASA's Long Term Control Plan.</p> <p>19 Friends of the Earth and the Sierra 20 Club first claimed that the Region's action 21 was erroneous because they were denied a fair 22 and legally sufficient opportunity to comment</p>	21	<p>1 the Long Term Control Plan implementation.</p> <p>2 Again, Friends of the Earth and the 3 Sierra Club actively participated in these 4 amendment processes; they knew the positions 5 that were being advanced by WASA. So they 6 were full aware of the possibility that as a 7 result of WASA's comments, EPA could 8 ultimately decide to delete the prohibition 9 altogether and then -- that's exactly what 10 they did.</p> <p>11 So we believe that there's no merit 12 to the Sierra Club's and Friends of the 13 Earth's position that they did not have fair 14 notice and a fair opportunity to comment on 15 the deleted language.</p> <p>16 JUDGE WOLGAST: But in none of 17 these other -- as I understand it, in none of 18 these other iterations had the Region 19 proposed to delete the language that's found 20 in 3(e)(1).</p> <p>21 MR. EVANS: That's right, they had 22 never proposed to completely delete it, they</p>

<p style="text-align: right;">22</p> <p>1 had proposed to change it in several 2 fashions, have it apply at various times or 3 another. In each one of these successive 4 amendments -- and the fact this went up on 5 appeal to this Board a couple of times -- and 6 in each of these instance, WASA consistently 7 maintained that the prohibition should come 8 out altogether. And so certainly, the 9 Friends of the Earth and Sierra Club are well 10 aware of the fact that -- in response to 11 WASA's specific comment, that the Region 12 could decide to delete that provision. 13 JUDGE STEIN: But do you look at 14 WASA's comments, or do you look at what the 15 agency is proposing as a mechanism for 16 determining whether or not they had a fair 17 opportunity to comment? I mean surely, it's 18 not someone's job to scour everybody else's 19 comments to see what they're proposing as a 20 mechanism for determining what the agency's 21 asking, is there? 22 MR. EVANS: Your Honor, I might</p>	<p style="text-align: right;">24</p> <p>1 comments that were submitted on the last 2 round in which the language was deleted, but 3 the comments that were submitted on previous 4 rounds. 5 Certainly -- and the case law holds 6 that basically when you -- in analyzing these 7 types of issues, you look at whether or 8 not -- were the issues on the table, and was 9 the final result a logical outgrowth of the 10 comments that were submitted? We believe 11 that the only way that you conclude in this 12 particular case that this condition ought to 13 be remanded because Friends of the Earth and 14 Sierra Club didn't have an adequate 15 opportunity to comment, would be if you 16 concluded that EPA could never change a 17 permit condition from the proposal. 18 And of course, the courts have 19 consistently held that EPA, as long as 20 the changes they make to conditions are 21 responsive comments -- as long as under the 22 facts and circumstance of the case, if the</p>
<p style="text-align: right;">23</p> <p>1 agree that that would've been the case had 2 this amendment come up one time, had this 3 been the first opportunity for all of the 4 parties to have participated in commenting on 5 this particular amendment. 6 There possibly could be some 7 plausible argument in that instance. 8 But in this particular instance, 9 and we believe that when the Board is called 10 upon to decide issues about having -- about 11 fair opportunity and notice to comment, and 12 having a meaningful say in the outcome of an 13 administrative process, you look at the 14 circumstances of each individual case. 15 When you look at the circumstance 16 of this case and the history of this 17 amendment, and the comments back and forth, 18 it's difficult to imagine that the Friends of 19 the Earth and Sierra Club weren't well aware 20 of the fact that when all was said and done, 21 there was a distinct possibility that the 22 language could be deleted, not because of the</p>	<p style="text-align: right;">25</p> <p>1 issues were on the table so that all parties 2 had fair notice of the issues and the 3 possible outcome, we believe that they had a 4 fair -- fair opportunity to comment. 5 JUDGE STEIN: Shouldn't we just 6 exclusively be looking to the provision of 7 Part 124 that talks about whether there's a 8 substantial new question that's raised, 9 rather than the logical outgrowth cases? I 10 mean, it strikes me that in this case, we 11 have a regulation that specifically applies 12 to this kind of permit proceeding. Why isn't 13 that the test that we should be looking at? 14 MR. EVANS: I think under either 15 test, the Sierra Club's and Friends of the 16 Earth's petition fails here. I mean, the 17 reality is -- and another point that we made 18 in our petition is that -- and one of the 19 other issues before the Board is whether or 20 not they were prejudiced in any way by the 21 outcome of this process. 22 Certainly -- and we can't -- we</p>

26	<p>1 cannot see in their petition or in any of the</p> <p>2 briefs that they've failed any instance or</p> <p>3 example of how they would've filed comments</p> <p>4 that would've been any different from the</p> <p>5 comments that they would've filed had EPA</p> <p>6 specifically proposed to delete the provision</p> <p>7 in its entirety.</p> <p>8 JUDGE STEIN: Could you walk</p> <p>9 us -- moving to the merits of this challenge</p> <p>10 as opposed to the procedural piece, could you</p> <p>11 walk us through the relationship between the</p> <p>12 Phase I and the Phase II permit? I mean,</p> <p>13 frankly, there've been so many different</p> <p>14 iterations of this that it's a little</p> <p>15 difficult to track what's in and what's out,</p> <p>16 but I'm most interested in the differences</p> <p>17 between the 1997 permit and the current</p> <p>18 permit, and how these pieces fit together,</p> <p>19 and why you believe that the current permit</p> <p>20 is not less stringent?</p> <p>21 MR. EVANS: Your Honor, the process</p> <p>22 here, the Phase I, Phase II CSO permit</p>	28	<p>1 MR. EVANS: And the Long Term</p> <p>2 Control Planning process, which is the water</p> <p>3 quality planning element of the CSO control</p> <p>4 policy, was designed to lead to a plan that</p> <p>5 would, either through one or two approaches,</p> <p>6 provide for compliance with water quality</p> <p>7 standards.</p> <p>8 JUDGE REICH: Both narrative and --</p> <p>9 MR. EVANS: Both narrative and</p> <p>10 numeric. And that Phase I permit again had</p> <p>11 both water quality-based and technology-based</p> <p>12 requirements -- the technology-based</p> <p>13 requirements were the so-called Nine Minimum</p> <p>14 Controls. These controls in essence called</p> <p>15 for maximizing the operation and maintenance</p> <p>16 of the system, recognizing that until the</p> <p>17 Long Term Control Plan is completed, it's not</p> <p>18 possible or it's not feasible or prudent to</p> <p>19 put in place large-scale capital projects.</p> <p>20 So the Phase I permit that was</p> <p>21 issued in 1997 had the Nine Minimum Controls</p> <p>22 in it, technology-based requirement, it also</p>
27	<p>1 provisions are set forth in some detail in</p> <p>2 the CSO policy, but to summarize, the process</p> <p>3 is basically this: CSO communities like WASA</p> <p>4 receive a Phase I permit at the outset of</p> <p>5 their programs; that Phase I permit has both</p> <p>6 technology-based requirements and water</p> <p>7 quality requirements in it. Keeping in mind,</p> <p>8 the Phase I permits are issued at the outset</p> <p>9 of the Long Term Control Plan process, at the</p> <p>10 outset of the process of actually developing</p> <p>11 your CSO control program.</p> <p>12 JUDGE REICH: Can I go back one</p> <p>13 step before you get into that, just for my</p> <p>14 understanding? Prior to beginning to</p> <p>15 implement the CSO policy, did D.C. have water</p> <p>16 quality standards, and what was the nature of</p> <p>17 those standards: were they narrative</p> <p>18 standards, numerical standards?</p> <p>19 MR. EVANS: Both narrative and</p> <p>20 numerical that were adopted in the '80s and</p> <p>21 the '90s.</p> <p>22 JUDGE REICH: Okay --</p>	29	<p>1 had a water quality-based requirement</p> <p>2 pursuant to the permit, and that was the</p> <p>3 discharge prohibition. And that discharge</p> <p>4 prohibition basically said that WASA could</p> <p>5 not have any discharges from the combined</p> <p>6 system -- CSO discharge -- combined system</p> <p>7 that would cause or contribute to a violation</p> <p>8 of the water quality standards in excess of</p> <p>9 any limitation necessary to meet the water</p> <p>10 quality standards. So the original</p> <p>11 prohibition was in there.</p> <p>12 WASA never objected to that,</p> <p>13 because that is clearly provided for in the</p> <p>14 CSO policy as a -- the water quality-based</p> <p>15 element of the plan, the program. At the</p> <p>16 same time, there was a schedule established</p> <p>17 for completing the Long Term Control Plan, a</p> <p>18 massive undertaking -- it took several years</p> <p>19 to complete -- and this Long Term Control</p> <p>20 Plan, which was designed to identify the</p> <p>21 upgrades and improvements that needed to be</p> <p>22 made in order to ultimately bring the system</p>

30	32
<p>1 into compliance with water quality standards. 2 That Long Term Control Plan was completed and 3 submitted to EPA and ultimately accepted by 4 EPA and the District of Columbia government 5 in 2003. 6 Once they accepted that, then we 7 went about the process of establishing 8 performance standards for that system. And 9 those performance standards reflected a 10 determination that EPA and the District of 11 Columbia government had made that once 12 implemented, these controls, if they were 13 functioning as they were designed and set 14 forth in the Long Term Control Plan, would 15 provide for compliance with water quality 16 standards. 17 I might add, the CSO policy 18 provides for two separate ways of making the 19 demonstration required in the policy -- you'd 20 either use the presumption approach, which in 21 essence is an approach which calls for so 22 many overflows per year, or a percent removal</p>	<p>1 standards, then you have to submit a plan for 2 enhancing your system to do whatever else 3 needs to be done to come into compliance. 4 And it's that point that's the heart of the 5 dispute over this water quality standards 6 prohibition, because -- and our view, it's 7 fundamentally inconsistent with the policy to 8 retain that water quality standards 9 prohibition language in the policy, because 10 in essence, it would be fundamentally 11 inconsistent with the policy. 12 The policy in essence provides that 13 once you complete that Long Term Control Plan 14 in the demonstration approach, you go ahead 15 and do your monitoring, your obligation at 16 that point is to upgrade your program. 17 You're not -- the policy doesn't intend for 18 discharge to be deemed to be a non-compliance 19 with a permit. If you retain that water 20 quality standards prohibition in the permit, 21 if WASA were to go out and do its 22 post-construction monitoring program, and if</p>
31	33
<p>1 requirement, or you can use a demonstration 2 approach, where in essence you attempt to 3 demonstrate to EPA in the state that in fact 4 once you implement these controls, you'll be 5 in compliance with water quality standards. 6 WASA chose the demonstration 7 approach. Ultimately, the District of 8 Columbia EPA accepted that. Of course, under 9 the demonstration approach, under the policy, 10 it's clear that you have to include a 11 post-construction monitoring program in the 12 permit, which in essence says that once you 13 complete implementing all of these controls, 14 you then go and monitor for water quality 15 compliance, and if in fact you can 16 demonstrate compliance at that point, then 17 you're deemed to be in compliance with 18 standards and you've completed your 19 obligation. 20 If on the other hand that 21 post-construction monitoring says that you're 22 not in compliance with water quality</p>	<p>1 in fact that monitoring showed non-compliance 2 with water quality standards, WASA would be 3 in non-compliance with its permit. That's 4 not the way the policy works. 5 JUDGE REICH: And why does that not 6 violate the anti-backsliding provision for 7 the period of time prior to the time you come 8 into compliance with performance standards in 9 the long term compliance plan? 10 MR. EVANS: First off, the 11 performance standards take effect 12 immediately. We have -- as a -- as the 13 permit is currently written. 14 JUDGE WOLGAST: But the performance 15 standards themselves as you describe are in 16 part at least large capital improvement 17 projects that -- even though they may be on 18 the books -- 19 MR. EVANS: That's right. 20 JUDGE WOLGAST: They don't exist in 21 reality for some time -- some time being up 22 to at least 20 years.</p>

34

1 MR. EVANS: That's correct, Your
 2 Honor. And that's consistent with the
 3 policy. The way the policy is
 4 structured -- what the policy in essence says
 5 is that we understand that communities like
 6 WASA, the District of Columbia, are being
 7 called upon to undertake massive expenditures
 8 to install these systems, and -- and we've
 9 set forth a process.

10 You develop your Long Term Control
 11 Plan, your Long Term Control Plan is
 12 approved, we impose an obligation to
 13 implement that Long Term Control Plan. Once
 14 you complete that Long Term Control Plan, you
 15 go ahead and you monitor for compliance. If
 16 you cannot show compliance with the water
 17 quality standards, you upgrade your system.

18 The policy is structured, very
 19 carefully structured in a way so as to avoid
 20 putting communities like WASA and the
 21 District of Columbia into non-compliance with
 22 their permit as long as they're doing what

35

1 the policy has told them to do, and they're
 2 complying with the provisions of their permit
 3 and the policy.

4 What the Friends of the Earth and
 5 Sierra Club are contending is that
 6 notwithstanding all of that, notwithstanding
 7 what the policy says, we think WASA should be
 8 held continually liable for any events of
 9 non-compliance with the water quality
 10 standards while it's undertaking this
 11 multimillion dollar Combined Sewer Overflow
 12 control program. The other point we make in
 13 our petition is that if you look at the
 14 policy, the policy clearly identifies the
 15 conditions that go in Phase I permits,
 16 identifies the conditions that go in Phase II
 17 permits.

18 The Phase I conditions clearly
 19 provide for narrative water quality standards
 20 compliance condition while you're developing
 21 your Long Term Control Plan. Once that Long
 22 Term Control Plan has been developed and

36

1 approved and incorporated into the permit, it
 2 does -- has no mention whatsoever of a
 3 narrative water quality standards compliance
 4 condition. What it says is that the water
 5 quality-based provisions of that permit
 6 should be -- under the demonstration
 7 approach, should be performance standards
 8 derived from the Long Term Control Plan.

9 JUDGE STEIN: Yeah, I have a
 10 question about that. Because as I read the
 11 CSO policy in the middle column of the
 12 Federal Register at 18696, it said your
 13 Phase II permit should include the
 14 technology-based controls, narrative
 15 requirements, as well as water quality
 16 effluent limitations. So why would you not
 17 continue to retain this language in the form
 18 of some kind of a narrative limitation that
 19 was in the prior permit?

20 MR. EVANS: If you read the Phase I
 21 and the Phase II provisions together, we
 22 think that there was a clear -- I mean, it

37

1 was -- it's clear to us that there was
 2 obvious omission of that express provision
 3 for a narrative water quality standards
 4 compliance obligation in the Phase II
 5 permit -- it was not -- it was clearly not
 6 included in the Phase II conditions. By the
 7 same token, there's no mention of a narrative
 8 discharge prohibition in the Phase II
 9 permits, but a clear reference to Long Term
 10 Control Plan-derived performance standards.

11 If you --

12 JUDGE STEIN: Are you suggesting
 13 that the provision that was in your prior
 14 permit was a compliance obligation
 15 specifically required by the Phase I
 16 permitting process?

17 MR. EVANS: That's right, Your
 18 Honor.

19 JUDGE STEIN: Is that cited in your
 20 briefs?

21 MR. EVANS: Yes. I believe it is.

22 JUDGE WOLGAST: Going back to sort

38	40
<p>1 of -- what's the fundamental legal authority 2 for WASA to in essence be out of compliance 3 with water quality standards for an extended 4 period of time?</p> <p>5 MR. EVANS: The policy itself, 6 which of course as this Board knows has been 7 incorporated into the Clean Water Act at 8 Section 402(q). If you look at the structure 9 of the policy, it set up a special 10 programming process for combined sewer 11 systems.</p> <p>12 In essence, what it said is that 13 we're going to -- we have a set of 14 technology-based and water quality-based 15 requirements that we're going to impose on 16 CSO communities. If they follow that 17 process -- if they follow that process and do 18 what is required of them in the Long Term 19 Control Plan, we're not going to hold them 20 liable and subject to non-compliance and 21 enforcement action as long as they do what 22 the policy calls for them to do under both</p>	<p>1 the deletion of the narrative discharge 2 prohibition is inconsistent with the CSO 3 policy; they've said they weren't given fair 4 notice, they said it violates 5 anti-backsliding.</p> <p>6 So we believe that they have 7 effectively conceded that the deletion of the 8 narrative discharge prohibition is consistent 9 with the CSO policy, which again is 10 incorporated into Section 402(q) of the Clean 11 Water Act. We don't believe that you can 12 persuasively argue that the deletion is -- or 13 at least acknowledge the deletion is 14 consistent with Section 402(q) of the Clean 15 Water Act, while at the same time asserting 16 that it violates the anti-backsliding 17 provisions of Section 402(o).</p> <p>18 And if nothing else, you've got to 19 read those two together. So again, without 20 having asserted that it's inconsistent with 21 the policy, they must've acknowledged it's 22 consistent with the policy -- to accept their</p>
39	41
<p>1 the technology-based requirements and the 2 water quality-based requirements.</p> <p>3 JUDGE REICH: Can I go back to my 4 question in the sense that if we had the same 5 circumstances we have today, but there were 6 no formal EPA CSO policy -- it was just 7 something that was done ad hoc in this case, 8 would the permit violate the anti-backsliding 9 provision in that case?</p> <p>10 MR. EVANS: If --</p> <p>11 JUDGE REICH: I'm trying to ask in 12 essence whether you are saying the CSO policy 13 provides an exception to the anti-backsliding 14 requirement, or would you say the 15 anti-backsliding requirement still would not 16 be applicable even if there were no CSO 17 policy?</p> <p>18 MR. EVANS: Let me address the 19 policy first. And the point I want to make 20 here is that we think it's appropriate to 21 note that the Friends of the Earth and Sierra 22 Club have not alleged in their petitions that</p>	<p>1 argument would in essence would be to read a 2 conflict between 402(q) and Section 402(o). 3 Now, if there were no policy today --</p> <p>4 JUDGE REICH: Uh-huh.</p> <p>5 MR. EVANS: And the permit was 6 written the way it's written, I don't think 7 there would be an anti-backsliding problem, 8 because I don't think it would be 9 anti-backsliding, because there's only 10 backsliding if in fact the new effluent 11 limitation is less stringent than the 12 effluent limitation that it replaced in the 13 previous permit.</p> <p>14 Here we have numeric sites -- we 15 have numeric Long Term Control Plan-derived 16 performance standards which impose rigorous 17 numeric criteria on the combined system, 18 which by their very nature are not present in 19 a narrative prohibition.</p> <p>20 So we believe our position is that 21 the Long Term Control Plan-derived specific 22 performance standards are more stringent,</p>

42	<p>1 certainly equally stringent to the discharge 2 prohibition. So if the condition is not less 3 stringent, there's no backsliding, we don't 4 think anti-backsliding even comes into play. 5 JUDGE STEIN: But the -- 6 CLERK: Go ahead. 7 JUDGE REICH: Uh-huh. 8 JUDGE STEIN: Provisions are 9 different. I mean, you clearly have a 10 difference between what existed before and 11 what EPA is proposing to do now. Isn't it 12 conceivable that it may be more stringent in 13 some areas, but less stringent in other 14 areas? 15 MR. EVANS: No, Your Honor -- they 16 may be different, but they're different for a 17 specific purpose, and consistent with the CSO 18 policy. But they cover the same subject 19 matter. The narrative discharge prohibition 20 basically is designed to hold WASA or any 21 other CSO community liable for water quality 22 standards violations that may be caused by</p>	44	<p>1 at bottom to be saying that the CSO policy 2 sets up a scheme that is inherently 3 inconsistent with the anti-backsliding 4 provision of the Act, in the sense that the 5 original plan with the 3(e)(1) language, it 6 may have been less specific, but it did 7 prohibit discharges in amounts that exceeded 8 water quality standards. 9 Now we have more specific 10 provisions, but we also all acknowledge there 11 is a delta in which there will be discharges 12 that exceed water quality standards, and 13 that's what I'm trying to -- I think you hear 14 some frustration of how these things fit 15 together with the anti-backsliding provision 16 of the Act. 17 MR. EVANS: Well, the fundamental 18 question is whether or not the limitation is 19 less stringent, and we believe to look at 20 whether or not the limitation was less 21 stringent, we have to look to what -- what do 22 those effluent limitations -- what do those</p>
43	<p>1 its combined system. 2 The Long Term Control Plan-derived 3 performance standards are designed to -- are 4 in essence a translation of the elements of 5 the Long Term Control Plan for which WASA 6 would be held liable -- and they're all based 7 upon compliance with water quality standards, 8 WASA would be liable if it fails to comply 9 with those performance standards. 10 Both -- at the heart of it, both of 11 them are the water quality-based effluent 12 limitations for a combined system under the 13 CSO policy. Under Phase I permit, that water 14 quality-based effluent limitation is a 15 narrative discharge prohibition; under the 16 Phase II permit, it's the performance 17 standards derived from the Long Term Control 18 Plan. Yes, they're very different, but they 19 do the same thing, or they're intended to do 20 the same thing. 21 JUDGE WOLGAST: Well, I understand 22 your argument, but I basically understand you</p>	45	<p>1 permit conditions require WASA to do. 2 JUDGE WOLGAST: So you're saying 3 that because the provisions themselves that 4 are on the books eventually will get to the 5 same place, those specific provisions or 6 limitations don't constitute 7 anti-backsliding, even if in between, we know 8 on the ground there's going to be discharges 9 that violate water quality standards? 10 MR. EVANS: That's correct, Your 11 Honor. Take, for example, if EPA were to 12 enforce against WASA, or the citizens' group 13 were to enforce against WASA for 14 non-compliance with water quality standards 15 under the narrative discharge prohibition, 16 and let's say that enforcement action was 17 began while the narrative discharge 18 prohibition was still in the permit and yet 19 we had an approved Long Term Control Plan 20 with the performance standards, and you had 21 an EPA determination that once this plan was 22 implemented, it would provide for compliance</p>

<p style="text-align: right;">46</p> <p>1 with water quality standards, we believe that 2 in that enforcement action, the injunctive 3 relief that the court would enter against 4 WASA would be to implement the Long Term 5 Control Plan and achieve compliance with the 6 Long Term Control Plan compliance standard. 7 So ordering compliance with a 8 narrative discharge prohibition and ordering 9 compliance with the Long Term Control Plan 10 performance standards is the same thing -- 11 JUDGE WOLGAST: But if that's the 12 case, then why is it so important to have the 13 compliance schedule in the permit itself, if 14 that's -- if an enforcement action on this 15 permit would end up at the same place, 16 compliance with the Long Term Control Plan? 17 MR. EVANS: Because of the penalty 18 issue, Your Honor. WASA remains exposed to 19 potential penalties for non-compliance 20 because of the exclusions built into the 21 consent decree, and also because -- again, 22 WASA places great value on its compliance</p>	<p style="text-align: right;">48</p> <p>1 So yes, you may -- you have a -- 2 JUDGE REICH: But neither of those 3 goes to the question of meeting the current 4 water quality standards. 5 MR. EVANS: Unquestionably, whether 6 you've got a narrative discharge prohibition 7 or a Long Term Control Plan-derived 8 performance standards, the reality is, until 9 these massive -- and right now the total cost 10 of this is over \$2 billion -- until these 11 massive controls are installed, and the 12 reality is you can't snap your fingers and 13 install them -- and whether you got one 14 condition or another, you're still going to 15 have a period in which the combined system 16 will violate water quality standards during 17 periods of rainfall -- 18 JUDGE REICH: But doesn't including 19 it in a schedule sanction it in a way that 20 responding to that a consent decree does not? 21 I mean, putting it in the permit in essence 22 legitimatizes it, that's the reason that you</p>
<p style="text-align: right;">47</p> <p>1 status. 2 JUDGE REICH: Would there be any 3 difference in the analysis if we agreed with 4 you that there should be a compliance 5 schedule in the permit itself? If the permit 6 contained a compliance schedule, doesn't that 7 in essence show that the effluent limitations 8 aren't going to be met for some substantial 9 period of the time, and doesn't it aggravate 10 the problem that Judge Wolgast was talking 11 about about a period in which as a practical 12 matter, the discharge limits have been 13 relaxed? 14 MR. EVANS: No, Your Honor. Keep 15 in mind that -- during the period of 16 implementation, whether you put the schedule 17 in the permit or not, during the period of 18 implementation, you have the Nine Minimum 19 Control obligations that WASA has to comply 20 with. You also of course have the obligation 21 to design and construct and then to begin 22 operating that system.</p>	<p style="text-align: right;">49</p> <p>1 want it there, so you're not exposed to 2 penalties. So it seems to suggest that it 3 reinforces the idea that there will be this 4 gap. 5 MR. EVANS: First, Your Honor, I 6 don't believe that has to be the result. As 7 I said before, one possible approach that 8 states could take -- EPA or states could take 9 to this issue would be at the time that 10 narrative discharge prohibition is still in 11 effect under the Phase I permit, you can 12 negotiate and enter a consent decree at that 13 point in time, because there is 14 non-compliance. Then once that Phase II 15 permit is issued, that includes the 16 scheduling of the Phase II permit with a Long 17 Term Control Plan-derived performance 18 standard. 19 So you have both a consent decree 20 and you have a permit with a compliance 21 schedule in it. I don't believe it sanctions 22 non-compliance. Keeping in mind that these</p>

<p style="text-align: right;">50</p> <p>1 communities aren't getting a free ride here. 2 WASA, unlike any other community in the 3 Metropolitan District area, and WASA's 4 ratepayers, the District ratepayers are 5 spending over \$2 billion to control this 6 problem, and that's essentially what the 7 policy and Congress in adopting the policy in 8 the Clean Water Act recognizes. 9 If we're going to ask communities, 10 and not all communities -- a relatively small 11 percentage of communities in the United 12 States have combined systems -- if we're 13 going to ask this small subset of 14 municipalities in this country to bear the 15 extraordinary burden -- and there's no grant 16 funding available to speak of for these 17 programs -- if we're going to ask them to 18 bear this extraordinary burden of these 19 combined systems, we're going to mandate 20 these controls -- the least we can do is not 21 hold them in non-compliance while they're 22 doing what they're supposed to be doing and</p>	<p style="text-align: right;">52</p> <p>1 the facts and fine points of the rules and 2 the regulations and the statute, I think it's 3 very important for this Board to be aware of 4 the bigger picture, and the reason why they 5 Chesapeake Bay Foundation is involved in this 6 challenge, and why we believe that a 7 compliance schedule is required in the 8 permit. And that is that the Chesapeake Bay 9 is impaired. 10 And D.C., EPA and all of the states 11 in the Bay region, signed an agreement that 12 said they were going to get the Bay off the 13 303(d) list by 2010. Well, it's 2007, right 14 on the cusp of 2008, and we still have one of 15 the largest -- the largest pointsource in the 16 Bay region that hasn't complied, or even 17 begun to come into compliance with a standard 18 that will help the Bay get off that list. 19 And so we believe that a compliance 20 schedule has to be in the permit. 21 Now, a couple of the -- points you 22 raised with Mr. Evans, and you asked about</p>
<p style="text-align: right;">51</p> <p>1 we've asked them to do under the CSO control 2 policy. 3 That's the fundamental rationale 4 for the way the policy is structured, it is a 5 question of question of fundamental fairness 6 and Congress endorsed that approach to 7 combined systems when it incorporated the 8 policy into the Clean Water Act. 9 JUDGE STEIN: I believe your time 10 has been up for several minutes. So we 11 appreciate your answering our questions, and 12 if we could move on to Mr. Mueller. 13 Will you be reserving any of your 14 time for rebuttal? 15 MR. MUELLER: Yes, I am. Five 16 minutes, please. 17 JUDGE STEIN: Okay. 18 MR. MUELLER: Good afternoon. Good 19 to see you a couple of you again, it's been a 20 few years. A pleasure to be here. I 21 represent the Chesapeake Bay Foundation. And 22 I think while we all seem to get caught up in</p>	<p style="text-align: right;">53</p> <p>1 what's the language in D.C. law, and how does 2 the interplay with the Clean Water Act and 3 the certification from EPA -- and I wanted to 4 kind of jump to that if we could. First, the 5 D.C. law that we believe is governing -- if I 6 can get this to come over here -- 7 JUDGE STEIN: We can see it up 8 here. 9 MR. MUELLER: Okay, great. They're 10 in the center of the page. D.C. statute 11 says, "When the director requires a new water 12 quality standard based effluent 13 limitation," -- which is what we have 14 here -- "in a discharge permit, the permittee 15 shall have no more than three years to 16 achieve compliance with the limitation unless 17 the permittee can demonstrate that a longer 18 compliance period is warranted." And the 19 last sentence says, "The compliance schedule 20 shall be included in the permit." 21 There is unequivocal language that 22 D.C. law requires a compliance schedule in</p>

<p style="text-align: right;">54</p> <p>1 the permit. Now, the question has been 2 raised, well, did EPA waive that in its 3 certification letter? And as Mr. Evans 4 pointed out, that certification letter is not 5 entirely clear on that point. It says in 6 paragraph 2, "DDOE concurs with EPA that EPA 7 should establish a schedule for compliance 8 with a nitrogen limit." 9 It doesn't say where. 10 And I believe it's important to 11 recognize, again, the bigger picture here in 12 the circumstances behind the certification 13 letter, which was -- on August 18, 2006, EPA 14 submitted a fact sheet about the proposed 15 permit that said there will be a compliance 16 schedule, there is an interim compliance 17 schedule in the proposed permit, and there 18 will be a compliance schedule in the final 19 permit when it's issued -- it comes up for 20 re-issuance again in 2008. 21 So EPA's on record saying in August 22 that they're going to have a compliance</p>	<p style="text-align: right;">56</p> <p>1 out to the Bay. So they've got to figure out 2 how they're going to cut their load in half, 3 that's not significant -- insignificant, 4 that's a long way to go. 5 And to issue a permit that has no 6 schedule, doesn't meet the requirements of 7 the Clean Water Act, let alone D.C. Code, 8 because the Act says that -- and we agree 9 that it's discretionary with the 10 administrator whether to have a compliance 11 schedule in the permit or not -- but we 12 believe that that discretion is tempered when 13 the Act requires that there are assurances 14 that the water quality standards which this 15 permit is based upon will be met. And when 16 you just issue a bare permit or just a number 17 and no schedule on how you're going to get 18 there for the largest plant in the Bay 19 watershed, indeed the world, we think there 20 is -- that is an abuse of discretion. 21 JUDGE STEIN: Are you proposing 22 simply taking the existing consent decree and</p>
<p style="text-align: right;">55</p> <p>1 schedule in the permit. Then in December, 2 after they've received comments on that first 3 permit, EPA turns around and says, well, we 4 believe there should be a compliance 5 schedule, but we think that it should be in 6 some kind of other enforceable document. And 7 we think that enforceable document may be a 8 consent decree. Now -- 9 JUDGE STEIN: Do you know why they 10 changed their mind? 11 MR. MUELLER: I -- 12 JUDGE STEIN: I'll ask them that 13 question, too. 14 MR. MUELLER: Wasn't part of that 15 conversation, so I can't really answer it. 16 But the thing I think is frustrating for us 17 is that -- and I understand it's probably 18 true for WASA, is that you've got a new 19 permit limit that basically cuts their load 20 in half. They're down to 4.689 million 21 pounds of nitrogen a day. That's a 150 dump 22 truck loads of nitrogen a day in the Potomac</p>	<p style="text-align: right;">57</p> <p>1 plugging it into the permit, or you're 2 talking about the nitrogen limit here -- 3 MR. MUELLER: Exactly 4 JUDGE STEIN: A new schedule has to 5 be developed. 6 MR. MUELLER: Exactly. All we're 7 focusing on is -- our objection is to the 8 total nitrogen limit, failure to have a 9 compliance schedule. We agree with the 10 limit, we agree with the total load, we agree 11 with the concentration limits. And all we're 12 talking about is the timeline for compliance. 13 JUDGE STEIN: But for the provision 14 in the District of Columbia regulations that 15 you put up on the screen, would it be 16 mandatory to put the compliance schedule on 17 the permit? 18 MR. MUELLER: We think so under the 19 facts that I just gave to you, which is -- we 20 agree it's discretionary, but that discretion 21 is tempered by the fact that the 22 administrator must make certain that there</p>

<p style="text-align: right;">58</p> <p>1 are assurances, reasonable assurances that 2 that is water quality standards, and we 3 believe that the permit limit meets that 4 water quality standard, because that's what 5 the Chesapeake Bay Program -- EPA's office, 6 Bay program and the states agreed was the 7 right number for Blue Plains. And so we 8 believe that's going to help drive down the 9 nitrogen pollution to the Bay.</p> <p>10 And we believe therefore that the 11 administrator must look at this. I mean, 12 it's the biggest one in the watershed. We've 13 got to figure out how that one's going to 14 come into compliance. If we don't give them 15 a schedule, all the other little ones 16 throughout the Bay region are going to say, 17 wait a minute, you cut D.C. a break, why 18 aren't you giving us a break? Why can't we 19 slide from the date that we have to meet 20 that?</p> <p>21 JUDGE STEIN: If EPA were to enter 22 into a consent decree with WASA, a judicially</p>	<p style="text-align: right;">60</p> <p>1 huge. And we believe that given the deadline 2 for compliance, 2010 deadline, and the amount 3 of work that needs to be done, we think there 4 absolutely has to be a compliance schedule in 5 the permit.</p> <p>6 The other issue is, we all know, 7 sadly, that oftentimes consent decrees are 8 written and things change and deals are made 9 after the fact, the dates on the consent 10 decree slide, sometimes the region doesn't 11 enforce it or the state doesn't enforce it, 12 and then citizens have to come in and do the 13 job.</p> <p>14 JUDGE REICH: Can I make sure I 15 understand what you're saying? I understand 16 you to be saying that you think that even if 17 it's a question of discretion, EPA would be 18 required by the facts to put a compliance 19 schedule in the permit, but what is your 20 interpretation of 1105.9? Do you think EPA 21 has discretion, or do you think that EPA has 22 no discretion under that provision?</p>
<p style="text-align: right;">59</p> <p>1 enforceable consent decree that had a 2 schedule, why would that not be satisfactory 3 to the Bay Foundation?</p> <p>4 MR. MUELLER: Because it basically 5 cuts out public process. You all have been 6 there before. I mean, we know the process. 7 Citizens submit comments on a consent decree, 8 DoJ reads them, maybe they respond to them, 9 maybe they don't. The judge may never even 10 know exactly -- the full extent of what the 11 comment is, and the law is pretty clear that 12 when a court is reviewing a consent decree, 13 it basically has to make sure that there was 14 a meeting of mind between the parties and 15 there's not some complete failure to comply 16 with the law.</p> <p>17 Now, we'd have a real hard argument 18 trying to get that changed at -- before our 19 District Court. Plus, if we were to appeal 20 it, trying to get an appellate court to 21 believe that a lower court made a decision 22 issuing a consent decree, that hurdle is</p>	<p style="text-align: right;">61</p> <p>1 MR. MUELLER: Again, as Mr. Evans 2 pointed out, we think this court has dealt 3 with that issue in the Star-Kist Caribe case, 4 in which it said EPA can impose its own 5 deadlines when a state has already done so. 6 Here, D.C. has already imposed those 7 deadlines, and in fact gives them the ability 8 to have some wiggle room on that three-year 9 time period if they can show a reasonable 10 reason for extending that compliance period. 11 So we think EPA is bound by D.C. law.</p> <p>12 JUDGE REICH: Okay.</p> <p>13 JUDGE WOLGAST: Does the Bay 14 Foundation have a position on whether the 15 D.C. reg applies to any compliance schedule 16 for CSOs in the Long Term Control Plan?</p> <p>17 MR. MUELLER: We haven't noted an 18 objection or addressed that issue at all, 19 Your Honor. So in closing, I think -- again, 20 it's important to look at the totality of the 21 circumstance, the discharge that we have, the 22 volume that we're talking about, the Bay</p>

62	<p>1 agreement that all these parties have signed 2 onto basically is being cast aside, and the 3 deadlines set in there that they all agreed 4 to seem to be getting pushed farther and 5 farther back.</p> <p>6 In fact, the plan that we've seen 7 submitted by WASA suggests that they won't 8 even come into compliance until six or seven 9 years after EPA approves their plan. So if 10 that is 2008, we're now -- you know, 11 2014-2015, and in some places we've seen 12 references that suggest it might be out as 13 far as 10 years. So again, we feel like that 14 the public needs to have some input on their 15 compliance schedule. The only way to have 16 that input is if it's in a permit, and we 17 need to have the ability to enforce those 18 permit terms. And we can't do that if it's 19 in a consent decree.</p> <p>20 Thank you.</p> <p>21 JUDGE STEIN: If there were to be a 22 consent decree between EPA and WASA as to the</p>	64	<p>1 knowledge?</p> <p>2 MR. MUELLER: Not that I'm aware 3 of. I mean, I know there are negotiations 4 going on about that. We know that WASA has 5 submitted a plan; it's a very barebones 6 schedule about when they're going to do 7 design and when they're going to build 8 certain portions of the total nitrogen wet 9 weather program. But again, all we have are 10 kind of beginning and ending dates, and we 11 have no way of really drilling down to see if 12 those dates are reasonable ones.</p> <p>13 JUDGE STEIN: Okay, thank you.</p> <p>14 MR. MUELLER: Thank you.</p> <p>15 MS. CHAVEZ: Good afternoon, Board. 16 My name is Jennifer Chavez. I'm here on 17 behalf of Friends of the Earth and Sierra 18 Club. And we would like to reserve five 19 minutes for rebuttal. As you know, Friends 20 of the Earth and Sierra Club are challenging 21 the deletion of the water quality 22 standards-based limitation in the prior</p>
63	<p>1 nitrogen compliance schedule, is there any 2 ability of citizens to enforce that under the 3 citizen suit provision?</p> <p>4 MR. MUELLER: Well, it's -- there 5 is some question about that, and in fact, I'm 6 only aware of one case out of the First 7 Circuit that suggests that. If there is a 8 consent decree -- and this was a RCRA 9 case -- if there is a consent decree out 10 there that has set time limits for a 11 defendant to do something and they fail to do 12 it and EPA hasn't enforced those provisions, 13 if the citizens can come back in and show 14 that there is some harm, then -- because it 15 was a RCRA case, then they were allowed to 16 try to enforce that consent decree, but that 17 is a very rare factual scenario and a very 18 difficult hurdle.</p> <p>19 Not certain whether it would apply 20 here in the D.C. Circuit as well.</p> <p>21 JUDGE STEIN: EPA hasn't proposed a 22 compliance schedule at this point to your</p>	65	<p>1 permit without notice for two reasons. 2 First, the deletion of the language without 3 notice violated the notice and comment 4 requirements.</p> <p>5 Secondly, it violated the Act's 6 anti-backsliding provision. It did so both 7 with respect to the proposed permit which 8 proposed to phase out that requirement 9 decades in the future, but now also with 10 respect to the time, the intervening time 11 between now and then. And those two effects 12 differ. They're not the same, and that is 13 what brings us back to the problem with the 14 lack of notice.</p> <p>15 Friends of the Earth and Sierra 16 Club certainly were aware that this provision 17 generally was on the table -- it's on the 18 table every time that the permit is proposed, 19 but EPA never once proposed to delete the 20 language. And as Your Honor pointed out, 21 we're not required to sift through comments 22 or attempt to divine EPA's thoughts.</p>

66	<p>1 If this is such an important</p> <p>2 provision, then certainly EPA was required to</p> <p>3 give notice of its intention or if -- even of</p> <p>4 the fact that it was considering the</p> <p>5 possibility of deleting the water quality</p> <p>6 standards limitation.</p> <p>7 Now, WASA has suggested that our</p> <p>8 position means that EPA could never change a</p> <p>9 permit between the proposed permit and the</p> <p>10 final permit; this is a fallacy. Of course,</p> <p>11 the -- that is the entire purpose of the</p> <p>12 committing -- commenting procedure, is to</p> <p>13 allow the public to potentially influence the</p> <p>14 final permit. But there are also</p> <p>15 proceedings, procedures, as Your Honor</p> <p>16 pointed out in 40 CFR 124 that provide that</p> <p>17 if a substantial question is raised during</p> <p>18 the comment period, then EPA should propose a</p> <p>19 new draft permit and reopen the comment</p> <p>20 period.</p> <p>21 There's absolutely no reason why</p> <p>22 EPA would not do this. It would simply</p>	68	<p>1 a chance to raise the challenge before a</p> <p>2 court or an appeals board, but if they</p> <p>3 haven't done so in public comment, for one</p> <p>4 thing, they could be -- that it could be</p> <p>5 decided that they did not properly or did not</p> <p>6 adequately raise the comment in the</p> <p>7 administrative proceedings, and therefore</p> <p>8 they're precluded somehow from raising it</p> <p>9 later.</p> <p>10 More fundamentally, the citizens</p> <p>11 have a right to comment -- have notice of a</p> <p>12 proposed action and to comment on it, and</p> <p>13 then to attempt to influence that decision.</p> <p>14 It could have been that -- it could have been</p> <p>15 the case that the public could've persuaded</p> <p>16 EPA that its action that it took in the final</p> <p>17 permit was a violation of water -- I'm sorry,</p> <p>18 of the anti-backsliding provision, and of the</p> <p>19 other requirements in the Act, and it</p> <p>20 could've been that we wouldn't have to appeal</p> <p>21 the language. So the notice and comment</p> <p>22 requirements of themselves exist for a</p>
67	<p>1 involve an additional period of time. It</p> <p>2 would have allowed Friends of the Earth and</p> <p>3 Sierra Club and other members of this -- the</p> <p>4 public who are essentially lulled by the</p> <p>5 proposed permit to come in and direct their</p> <p>6 comments specifically to the effect of</p> <p>7 deleting this language entirely immediately,</p> <p>8 as opposed to what they did direct their</p> <p>9 comments to. And the Petitioners directed</p> <p>10 their comments in the only rational way that</p> <p>11 they could be expected to, they directed</p> <p>12 their comments to what EPA proposed.</p> <p>13 JUDGE STEIN: Given that you have</p> <p>14 an opportunity to argue to this Board that</p> <p>15 the particular language that they deleted on</p> <p>16 the merits should not have been deleted, how</p> <p>17 is it that you've been prejudiced by their</p> <p>18 failure to provide notice and comment?</p> <p>19 MS. CHAVEZ: Well, Your Honor, I</p> <p>20 would submit that that opportunity exists</p> <p>21 with any permitting process or any regulatory</p> <p>22 process. Of course, the citizens always have</p>	69	<p>1 reason, and those reasons were evaded when</p> <p>2 EPA issued the final permit without notice.</p> <p>3 JUDGE WOLGAST: What's the</p> <p>4 practical effect of the deletion of the</p> <p>5 language?</p> <p>6 MS. CHAVEZ: The limitation itself</p> <p>7 is more stringent than the limitation in the</p> <p>8 final permit. So the effect is that now we</p> <p>9 have a limitation that, true, is more</p> <p>10 specific, but only more specific with respect</p> <p>11 to the Long Term Control Plan controls that</p> <p>12 are addressed in the LTCP and in EPA's</p> <p>13 underlying enforcement action. That</p> <p>14 enforcement action covers a certain type and</p> <p>15 class of violations, but there could be other</p> <p>16 violations of water quality standards that</p> <p>17 are not contemplated by the Long Term Control</p> <p>18 Plan and that are not addressed by EPA's</p> <p>19 enforcement action, and indeed there are</p> <p>20 other types.</p> <p>21 The prior water quality standards</p> <p>22 limitation would provide protection in the</p>

70	<p>1 permit against those other kinds of water 2 quality violations, but in the final permit, 3 there is no protection now against anything 4 other than simply failure to implement the 5 Long Term Control Plan performance standards. 6 JUDGE WOLGAST: Could you give us 7 an example of something that would not be 8 covered -- 9 MS. CHAVEZ: Well -- 10 JUDGE WOLGAST: Of the Long Term 11 Control Plan? 12 MS. CHAVEZ: One fairly simple 13 example would be a leakage in the system that 14 causes violations of water quality standards. 15 Without the water quality standards 16 limitation in the permit, WASA's simply 17 required to march on with its performance 18 standards under the Long Term Control Plan. 19 But those have nothing to do with other kinds 20 of water quality standards violations like 21 the leakage or -- anything else that you 22 could imagine that has nothing to do with the</p>	72	<p>1 And those narrative water quality 2 standards require that the District waters be 3 free from substances that cause objectionable 4 deposits, objectionable odor, color, taste or 5 turbidity, cause injury to humans, plants and 6 animals. No one would question that the 7 discharge of raw sewage into a waterway 8 causes all of these things. 9 Likewise, Section 1104.3 explicitly 10 calls for Class A waters, of which these are, 11 to be free of discharges of untreated sewage 12 and litter, and there's no question that CSOs 13 violate that water quality standard. 14 The Long Term Control Plan itself, 15 on its face, concedes that all water quality 16 standards under all weather conditions will 17 not be met, because there will continue to be 18 some overflow events -- four per year -- per 19 average year in the Potomac for -- in Rock 20 Creek and two in the Anacostia. Now, some 21 subsequent changes and adjustments may have 22 changed that, but they've minimized sewer</p>
71	<p>1 Long Term Control Plan. 2 JUDGE STEIN: How many different 3 water quality standards does the District 4 have? I mean, are they just reflected in one 5 provision, are they reflected in several 6 provisions? I think it would be helpful to 7 the Board to try to get a more specific 8 handle on the question that Judge Wolgast is 9 asking, because we've had a little bit of 10 difficulty sort of getting our arms around 11 sort of what's in and what's out, and if you 12 could point us to that, that would be most 13 helpful. 14 MS. CHAVEZ: Sure. I don't have 15 all of the section numbers before me, but the 16 District water quality standards contain 17 several numeric limitations that would be 18 relevant to CSO, such as bacterial limits and 19 numeric limits for turbidity and clarity and 20 so forth. The narrative water quality 21 standards are mainly contained in -- I'm 22 sorry, 21 DCMR sections 1104.1 and 1104.3.</p>	73	<p>1 overflows; they haven't in any way eliminated 2 the possibility -- and circumstances can 3 change. No one knows what water -- what 4 stormwater events are going to happen 10 or 5 20 years from now. The Long Term Control 6 Plan was only designed to meet an average 7 year -- you know, a one-year storm, which as 8 we all know is not going to include all 9 circumstances. 10 JUDGE STEIN: If the narrative 11 language stays out of the permit, and if 12 there is some kind of spill or situation 13 where the bacterial limits are exceeded, does 14 a citizens group have the ability to enforce 15 that in the absence of this language in the 16 permit? 17 MS. CHAVEZ: Well, assuming that 18 that violation is not something that's 19 covered by EPA's existing enforcement action, 20 which was what produced the LTCP -- 21 JUDGE STEIN: Right. 22 MS. CHAVEZ: Assuming it was</p>

<p style="text-align: right;">74</p> <p>1 something not covered by that, then the 2 citizens would -- well, presumably there 3 would be an enforcement of permit 4 limitations. I hesitate to give a direct 5 answer to whether a citizen can enforce the 6 water quality standards directly, but the way 7 the Clean Water Act is structured is to 8 ensure that applicable water quality 9 standards are incorporated into a permit so 10 that they can be enforced against individual 11 dischargers.</p> <p>12 JUDGE STEIN: So you would be 13 enforcing, at least theoretically, the 14 substantive bacterial or other limits rather 15 than relying on this generic provision?</p> <p>16 MS. CHAVEZ: Well, we would be --</p> <p>17 JUDGE STEIN: I'm really trying to 18 understand the practical consequence of 19 taking that generic provision out of the 20 permit. What it does? Is it 21 anti-backsliding, is it not? So if you could 22 speak to that.</p>	<p style="text-align: right;">76</p> <p>1 anti-backsliding provision. I'm not sure 2 what the answer to that is except that there 3 are certain provisions in the 1997 permit 4 that existed in the permit and they were not 5 contested, and so we have looked to those as 6 the last permit that was not either 7 withdrawn, remanded, or so -- and so forth. 8 But whether you read the last permit to be 9 1997 or the 2003 permit, both scenarios 10 violate the anti-backsliding provision.</p> <p>11 JUDGE WOLGAST: Could you speak to 12 WASA's argument anti-backsliding that -- and 13 if I mischaracterized it, Mr. Evans is going 14 to correct me, so -- but as I understand it, 15 in essence, WASA is saying that the only way 16 to read the CSO policy as it's been 17 incorporated into the Act is to look at the 18 limitations of the previous permit, whether 19 that's 1997 or the 2003 amendment -- and look 20 at the limitations that will ultimately come 21 into effect under the Long Term Control Plan, 22 and compare those to determine if there is or</p>
<p style="text-align: right;">75</p> <p>1 MS. CHAVEZ: Well, in the prior 2 permit, there was a direct prohibition in the 3 permit against dischargers that cause 4 exceedences of water quality standards. 5 Without that, the WASA could comply with all 6 of the performance standards in the LTCP and 7 still cause some other kind of violation, and 8 there would be no prohibition in the permit 9 to protect against that kind of violation.</p> <p>10 JUDGE WOLGAST: Let me ask you, 11 what is our baseline for looking at the 12 statutory prohibition against 13 anti-backsliding? When it talks about the 14 previous permit; in this case, what previous 15 permit should we be looking to? Is that the 16 1997 permit, or is it some other iteration?</p> <p>17 MS. CHAVEZ: Well, we laid out the 18 language in both the '97 permit and the 2003 19 permit, and acknowledged that the prior 20 permit could be read as being either of 21 those, and under either of those scenarios, 22 we contend that it does violate the</p>	<p style="text-align: right;">77</p> <p>1 is not anti-backsliding.</p> <p>2 MS. CHAVEZ: First of all, I would 3 say that the plain languages of the Act is 4 the bedrock requirement, and that that is 5 what we would go to. So whether the 6 limitation is less stringent is the basic 7 touchstone. Now, likewise, with respect to 8 the CSO policy and how to read that in the 9 interplay between the CSO policy and the 10 anti-backsliding provision, again, the 11 statute itself provides that -- let me just 12 go to my notes. Section 402 simply states 13 that permits for combined sewers shall 14 conform to the CSO policy.</p> <p>15 This is a minimum requirement, not 16 a ceiling. Nothing in here suggests that 17 somehow this trumps the anti-backsliding 18 provisions. Nothing in it suggests that the 19 CSO policy can somehow authorize violations 20 of water quality standards. The CSO policy 21 itself likewise, as Your Honor pointed out, 22 calls for water quality-based affluent limits</p>

<p style="text-align: right;">78</p> <p>1 requiring at a minimum compliance with -- and 2 so on. So this is on its face a minimum 3 requirement. It doesn't prohibit other water 4 quality standards-based requirements from 5 being in the permit, and it certainly doesn't 6 call for them to be replaced by the Long Term 7 Control Plan.</p> <p>8 JUDGE WOLGAST: And yet the CSO 9 policy does obviously contemplate that in 10 certain instances, there will be compliance 11 over time, so that there will be some delta 12 of time before whatever capital improvements 13 come about in complying sewer situations?</p> <p>14 MS. CHAVEZ: I agree. However, the 15 CSO policy and the EPA's enforcement action 16 are remediations to address violations of 17 this very language in the permit. The fact 18 that we've got a Long Term Control Plan to 19 start to address that violation doesn't mean 20 that we then withdraw the language from the 21 permit. So there's nothing inconsistent with 22 maintaining the basic requirement in the</p>	<p style="text-align: right;">80</p> <p>1 JUDGE WOLGAST: I guess I 2 understand you to be saying that in essence, 3 in this situation where there is a Long Term 4 Control Plan, there's going to be some 5 extended period of time before water quality 6 standards are met; that the way to marry 7 these provisions is that WASA should be 8 considered to be in violation for whatever 9 period of time it takes for all of the 10 provisions of the Long Term Control Plan to 11 be implemented. Is that correct?</p> <p>12 MS. CHAVEZ: That is correct. And 13 WASA can be in violation of permit 14 requirements and in violation of water 15 quality standards as it is right now, but not 16 be subject to double liability, that its 17 liability has already been addressed in the 18 enforcement action. And so the purpose of 19 maintaining the language there is not to come 20 back and hit them over and over, but that 21 protection needs to be maintained in the 22 permit.</p>
<p style="text-align: right;">79</p> <p>1 permit while the permittee is coming into 2 compliance.</p> <p>3 Now, WASA has suggested that it 4 will be unfairly exposed to liability. As an 5 initial matter, WASA's exposure isn't a valid 6 reason to weaken the permit requirements, and 7 secondly, as long as EPA has an enforcement 8 action on the books and is diligently 9 prosecuting that enforcement action, then any 10 violations that would fall within that 11 enforcement action would be directly related 12 to that case, and so citizens could intervene 13 or could participate in that enforcement 14 action, but there wouldn't be some kind of 15 double liability.</p> <p>16 On the other hand, the citizens are 17 not somehow tied -- their hands are not tied 18 from enforcing other water quality violations 19 simply because EPA is pursuing an enforcement 20 action that covers a certain class or a 21 certain type of violations. So I hope that 22 answered your question.</p>	<p style="text-align: right;">81</p> <p>1 JUDGE STEIN: Mr. Evans indicated 2 that there was language required for Phase I 3 permits that basically related to this 4 discharge prohibition that was in at least 5 the '97 permit, and that requirement for that 6 specific compliance obligation or discharge 7 prohibition is absent from a discussion of 8 the CSO policy with regard to Phase II 9 permits. At least that's how I understood 10 it. Can you speak to that? Do you agree 11 with his statement? Do you disagree with it?</p> <p>12 MS. CHAVEZ: I can speak to it, and 13 I disagree with it. I believe that what 14 Mr. Evans is referring to is in Section 4(b) 15 of the CSO policy. Section 4(b)(1) relates 16 to Phase I permits, and Section 4(b)(2) 17 relates to Phase II permits. And there's 18 nothing in these two provisions that is 19 mutually exclusive. They set minimum 20 requirements.</p> <p>21 So for Phase I, the minimum 22 requirement is to have compliance with</p>

<p style="text-align: right;">82</p> <p>1 applicable water quality standards expressed 2 in the form of a narrative limitation. Under 3 Phase II, the requirement is -- this is on 4 its face, requiring at a minimum compliance 5 with the numeric performance standards for 6 the selected CSO controls.</p> <p>7 So there's no conflict between 8 those two provisions. They can exist happily 9 next to one another, but they are both 10 minimums; neither -- it would take much more 11 explicit language than this for EPA's CSO 12 policy to somehow suggest that you gut the 13 existing narrative requirement in the permit 14 and replace it with the Long Term Control 15 Plans; nothing suggests that at all.</p> <p>16 And it's just not enough to connect 17 numerous dots and say this must be what the 18 control -- what the CSO policy must've 19 intended. That's not what the CSO policy 20 says.</p> <p>21 If there are no further questions, 22 I'll reserve the remainder of my time.</p>	<p style="text-align: right;">84</p> <p>1 and that that's not been taken away from us 2 by either the District's water quality 3 standard implementing regulation or the 4 Star-Kist decision. I suppose I should just 5 clarify that the District's 6 certification -- well, I'll get to that on 7 the TN limit.</p> <p>8 JUDGE REICH: Before you do that, 9 when I looked at the December 16, 2004 fact 10 sheet, and looked at what it said about 11 compliance schedules, it says the 1994 CSO 12 policy provides implementation schedules for 13 compliance deadlines which if passed may not 14 generally be included in permits, that the 15 Phase II permit reflecting the requirements 16 of the LTCP will be accompanied by a separate 17 and forceful mechanism in the case of a major 18 facility, or judicial order contained in 19 compliance dates on the fastest practicable 20 schedule.</p> <p>21 Reading that in isolation, it 22 seemed to be saying that you really had no</p>
<p style="text-align: right;">83</p> <p>1 JUDGE STEIN: Thank you. 2 EPA?</p> <p>3 MS. BARTLETT: Good afternoon, Your 4 Honors. My name is Deane Bartlett, and I'm 5 representing the Region this afternoon. And 6 I feel like I should immediately launch into 7 answers to all of the questions that you've 8 already posed, because I'm sure you want to 9 know what the Region has to say about them.</p> <p>10 Let me just start by saying that 11 the burden here is on the Petitioners, and we 12 don't think any one of them have met their 13 burdens to show that there has been any sort 14 of clearly erroneous finding of fact or 15 conclusion of law in the agency's permitting 16 decisions. Our decisions are rational and 17 they're supported by the record.</p> <p>18 With respect to the decision not to 19 include a compliance schedule for the Long 20 Term Control Plan in the permit, we made that 21 decision first of all because we believe we 22 have the discretion to make that decision,</p>	<p style="text-align: right;">85</p> <p>1 choice, because under the Clean Water Act, 2 you could not include a schedule in the 3 permit. When I looked at your response to 4 the petition in 05-02, it clearly talked 5 about this being a proper exercise of 6 discretion in choosing not to put the 7 compliance schedule in the permit and putting 8 it in the consent decree instead.</p> <p>9 Am I misunderstanding what this 10 said in the fact sheet, or did your thinking 11 evolve as to whether or not you had a legal 12 basis for putting it in the permit between 13 the time the fact sheet was issued and the 14 time the permit was issued or the response to 15 the petition was submitted?</p> <p>16 MS. BARTLETT: I don't think we've 17 really changed our mind. I still think that 18 we believe that what we've done is consistent 19 with the Clean Water Act including the CSO 20 policy and 402(q). And that certainly at the 21 very least, the CSO policy expresses a clear 22 preference under these facts for any schedule</p>

86	<p>1 of compliance to be placed into a companion 2 enforcement action.</p> <p>3 JUDGE REICH: Do you think in terms 4 of the requirements for the LTCP, the 5 compliance deadlines have passed, and if they 6 haven't passed, is this discussion in the 7 fact sheet kind of irrelevant? I'm 8 struggling with that.</p> <p>9 MS. BARTLETT: You mean the -- for 10 the water quality standards, because I'm not 11 sure that I'm --</p> <p>12 JUDGE STEIN: Referring to the 13 challenge in 05 --</p> <p>14 JUDGE REICH: In the 05-02.</p> <p>15 MS. BARTLETT: 05-02? I'm sorry.</p> <p>16 JUDGE STEIN: Appeal No. 05-02 --</p> <p>17 MS. BARTLETT: The Appeal No. --</p> <p>18 JUDGE REICH: Right.</p> <p>19 MS. BARTLETT: Yes, but you're 20 talking about the water quality standards, 21 that the deadlines have passed for them to 22 comply with the applicable water quality</p>	88	<p>1 needs to address that here, because the fact 2 of the matter is, there was an ongoing 3 enforcement action.</p> <p>4 In the year 2000, EPA filed an 5 enforcement action against WASA for violating 6 its water quality standards.</p> <p>7 JUDGE WOLGAST: But just again to 8 understand your answer to Judge Reich's 9 question, could you have put the compliance 10 schedule in the permit?</p> <p>11 MS. BARTLETT: Under these facts, I 12 think our position is no, we could not.</p> <p>13 JUDGE WOLGAST: Because?</p> <p>14 MS. BARTLETT: Because -- well, 15 because of the existing enforcement action 16 and because of the clearly stated preference 17 in the CSO policy for placing under these 18 facts a compliance schedule for the Long Term 19 Control Plan in a judicial order.</p> <p>20 JUDGE WOLGAST: I don't understand 21 that, though. Are you saying that it 22 couldn't be both in the enforcement consent</p>
87	<p>1 standards?</p> <p>2 JUDGE REICH: Such that under your 3 reading of the policy as set forth in the 4 fact sheet, you would not have been able to 5 include a compliance schedule.</p> <p>6 MS. BARTLETT: I'm not sure that 7 we've reached that conclusion, because I 8 don't know, frankly, whether all of these 9 standards would have been pre-July 1, 1977.</p> <p>10 I think just in general, the way 11 the CSO policy reads that in the case of a 12 major permittee that cannot be in compliance 13 with its Long Term Control Plan immediately 14 upon the effective date of the permit, that 15 the preference is for any schedule to be in a 16 companion enforcement action. And it's --</p> <p>17 JUDGE WOLGAST: But does that 18 contemplate that it could -- that it could be 19 in the permit, or in a judicial or some other 20 enforceable document?</p> <p>21 MS. BARTLETT: That may be the 22 case, but I don't think the Board really</p>	89	<p>1 decree and in the permit?</p> <p>2 MS. BARTLETT: I suppose it's 3 possible, but I certainly feel like our 4 decision was rational under the 5 circumstances, and that it would be awfully 6 difficult to have it in both places and to 7 manage it in both places.</p> <p>8 I believe the Board raised that 9 question earlier and posed it to Mr. Evans, 10 having to have -- especially in this case 11 where you've got a schedule that spans 20 12 years.</p> <p>13 And if there needs to be some 14 change made, having to effect that in both 15 the consent decree and the permit would be 16 administratively difficult and confusing 17 potentially to the public in terms of what's 18 applicable when.</p> <p>19 JUDGE WOLGAST: That argument 20 actually just goes to the Long Term Control 21 Plan and to CSO. Does that mean, as to 22 nitrogen, there is no compliance schedule?</p>

90	<p>1 MS. BARTLETT: That is true.</p> <p>2 Asking the question, I thought you were</p> <p>3 referring to the LTCP compliance schedule.</p> <p>4 With respect --</p> <p>5 JUDGE WOLGAST: Yes. Yes, I was,</p> <p>6 and I understand your answer.</p> <p>7 MS. BARTLETT: Okay.</p> <p>8 JUDGE WOLGAST: But I was saying</p> <p>9 the same rationale wouldn't apply to</p> <p>10 nitrogen.</p> <p>11 MS. BARTLETT: Not necessarily,</p> <p>12 except that in these facts, EPA made the</p> <p>13 decision that it made sense to put the</p> <p>14 compliance schedule for nitrogen in the</p> <p>15 existing consent decree, because, getting</p> <p>16 beyond whether or not we have the discretion</p> <p>17 to do that -- because the plan that's been</p> <p>18 proposed by WASA to achieve the nitrogen</p> <p>19 limit involves -- the only way they can do</p> <p>20 what they are proposing is to have the</p> <p>21 long-term consent decree modified, because it</p> <p>22 will involve a change to one of the</p>	92	<p>1 D.C. regulations we have here, which says</p> <p>2 that a compliance schedule shall be in the</p> <p>3 permit.</p> <p>4 Now, I understand there may be</p> <p>5 circumstances where you are prohibited by law</p> <p>6 from putting it in the permit for giving more</p> <p>7 time, but I don't understand how that</p> <p>8 preference allows you to ignore the D.C.</p> <p>9 regulations.</p> <p>10 So perhaps you could address that.</p> <p>11 MS. BARTLETT: First of all, we</p> <p>12 don't think that the D.C. regulations can be</p> <p>13 read to alter the Clean Water Act and the</p> <p>14 regulations at 122.47 that gives EPA the</p> <p>15 discretion as to whether or not to place a</p> <p>16 compliance schedule in a permit.</p> <p>17 We think to read it that way --</p> <p>18 JUDGE REICH: Are you saying a</p> <p>19 state has no authority to adopt a mandatory</p> <p>20 compliance schedule provision?</p> <p>21 MS. BARTLETT: I don't think that</p> <p>22 they can override the Agency's discretion,</p>
91	<p>1 components of the Long Term Control Plan.</p> <p>2 JUDGE STEIN: I -- I'm sorry.</p> <p>3 JUDGE WOLGAST: I was just going to</p> <p>4 say, my basic sort of question -- concern is,</p> <p>5 just that at this time, though, today as you</p> <p>6 ask us to approve the permit, you have no</p> <p>7 analogue to the Long Term Control Plan.</p> <p>8 You have no enforceable document</p> <p>9 with which there is a compliance schedule for</p> <p>10 nitrogen. You have an aspiration to have</p> <p>11 such a enforceable compliance schedule.</p> <p>12 MS. BARTLETT: We do -- we do, and</p> <p>13 we have ongoing discussions with WASA with</p> <p>14 respect to that.</p> <p>15 JUDGE STEIN: I'm having a lot of</p> <p>16 difficulty with EPA's argument in this area.</p> <p>17 Going back to where you started -- where you</p> <p>18 were suggesting that the CSO policy expressed</p> <p>19 a preference, I don't understand how that</p> <p>20 preference for something being in a judicial</p> <p>21 decree translates into an inability to put it</p> <p>22 in a permit, particularly in the face of the</p>	93	<p>1 and that to read it that way would take away</p> <p>2 the Agency's enforcement discretion as well</p> <p>3 as its permitting discretion.</p> <p>4 JUDGE STEIN: Didn't EPA have a</p> <p>5 choice as to whether or not to approve these</p> <p>6 regulations?</p> <p>7 MS. BARTLETT: We did. We did,</p> <p>8 Your Honor, and frankly, I can't account for</p> <p>9 what happened in terms of the regulations</p> <p>10 being approved, except that I don't think we</p> <p>11 interpreted them as being as stringent as to</p> <p>12 limit our discretion, and neither does the</p> <p>13 District. The District was very clear --</p> <p>14 JUDGE REICH: Do you know what --</p> <p>15 MS. BARTLETT: In its</p> <p>16 certification.</p> <p>17 JUDGE REICH: What EPA's experience</p> <p>18 has been in approving regulations in other</p> <p>19 states? Do you feel confident in saying that</p> <p>20 EPA has never approved regulations in other</p> <p>21 states that contain mandatory compliance</p> <p>22 schedule provisions?</p>

94	<p>1 MS. BARTLETT: I'm not familiar</p> <p>2 with every other state's water quality</p> <p>3 standards, but I would be very surprised,</p> <p>4 frankly. And I think what happened in this</p> <p>5 instance is that when EPA, when it was</p> <p>6 reviewing the regulations, was focusing more</p> <p>7 on the substantive water quality standards</p> <p>8 regulations.</p> <p>9 JUDGE REICH: How do you relate</p> <p>10 giving priority to EPA regulations over state</p> <p>11 regulations with the discussion in Starkist</p> <p>12 that does seem to suggest that compliance</p> <p>13 schedule is an area where EPA should be</p> <p>14 looking to the states, not the other way</p> <p>15 around?</p> <p>16 MS. BARTLETT: Well --</p> <p>17 JUDGE REICH: I mean, I understand</p> <p>18 the specific holding, and Star-Kist does</p> <p>19 comply, but I think some of the language</p> <p>20 seems to suggest that.</p> <p>21 MS. BARTLETT: Well, I think the</p> <p>22 overall thrust of the decision in Star-Kist</p>	96	<p>1 language means a compliance schedule needs to</p> <p>2 be in the permit, how would EPA go about</p> <p>3 putting a schedule in the permit? Have you</p> <p>4 thought that through?</p> <p>5 MS. BARTLETT: What we would do for</p> <p>6 the Long Term Control Plan or for the total</p> <p>7 nitrogen?</p> <p>8 JUDGE STEIN: Both.</p> <p>9 MS. BARTLETT: I don't know what we</p> <p>10 would do. I would be speculating. You know,</p> <p>11 certainly if the Board directs the Agency to</p> <p>12 do so, we'll figure out how to do so, and</p> <p>13 we'll figure out what is an appropriate time</p> <p>14 frame for a schedule in a permit.</p> <p>15 JUDGE REICH: If we interpret --</p> <p>16 MS. BARTLETT: It might not be the</p> <p>17 same.</p> <p>18 JUDGE REICH: If we interpreted</p> <p>19 that provision as mandatory, and therefore it</p> <p>20 appeared from your perspective that it was</p> <p>21 approved incorrectly, does that enable the</p> <p>22 Agency to just ignore it, or does the Agency</p>
95	<p>1 was looking at the question of whether, when</p> <p>2 EPA is the permitting authority, it can issue</p> <p>3 a permit that's less stringent than state</p> <p>4 law. And I think it made a statement about</p> <p>5 what EPA may do when state law allows it.</p> <p>6 I don't think it decided what EPA</p> <p>7 must do if there's a state law provision that</p> <p>8 allows a compliance schedule.</p> <p>9 JUDGE STEIN: But doesn't the D.C.</p> <p>10 law do more than just allow a compliance</p> <p>11 schedule? Doesn't it specify that it shall</p> <p>12 be in the permit? I mean, that's the -- I</p> <p>13 mean, I think in Star-Kist, the Board was</p> <p>14 grappling with a circumstance just different</p> <p>15 from this circumstance in that there wasn't</p> <p>16 the authority, as I understand it, for a</p> <p>17 compliance schedule.</p> <p>18 Here there is the authority, but</p> <p>19 the regulation goes beyond that, and it seems</p> <p>20 on its face to require at least some form of</p> <p>21 a compliance schedule in the permit. I mean,</p> <p>22 if this Board were to determine that the</p>	97	<p>1 have to honor it as long as it's still an</p> <p>2 approved regulation?</p> <p>3 MS. BARTLETT: I think what we're</p> <p>4 doing is reading it the way that we think it</p> <p>5 makes sense in accordance with the law, and</p> <p>6 in accordance with the District's</p> <p>7 interpretation of its own regulation.</p> <p>8 JUDGE REICH: Where is the</p> <p>9 District's interpretation clearly</p> <p>10 articulated?</p> <p>11 MS. BARTLETT: It's articulated in</p> <p>12 the 401 certification that it provided.</p> <p>13 JUDGE REICH: Do you think that's</p> <p>14 the clearest statement of the District's</p> <p>15 interpretation of that provision?</p> <p>16 MS. BARTLETT: That's the clearest</p> <p>17 one we've been able to find.</p> <p>18 JUDGE REICH: Okay.</p> <p>19 MS. BARTLETT: If there were</p> <p>20 something else, we would have presented it to</p> <p>21 the Board.</p> <p>22 JUDGE STEIN: Given that at the</p>

98	100
<p>1 time the District certified EPA had proposed 2 to put a compliance schedule in a permit, at 3 least according to the fact sheet, how is it 4 that we're supposed to read the District 5 certification as endorsing the notion that it 6 can be in a consent decree? I mean, it 7 strikes me that there's at least -- in the 8 minimum, there's some ambiguity on that 9 point.</p> <p>10 MS. BARTLETT: Actually, no. If 11 you're talking about the 401 certification 12 for the nitrogen limit.</p> <p>13 JUDGE REICH: Uh-huh.</p> <p>14 MS. BARTLETT: Which originally we 15 did propose giving -- including a schedule in 16 the permit that would allow WASA to come up 17 with a plan. But in the subsequent proposal, 18 we indicated very clearly that we were not 19 going to include a compliance schedule in the 20 permit, and that we were going to include it 21 in a separate enforceable action, ideally in 22 the -- in a modification to the LTCP consent</p>	<p>1 with that limit, and that D.C. has made a 2 condition of its certification that there be 3 a compliance schedule, which is part of their 4 certification, how is it that the Board could 5 approve the issuance of this permit without, 6 at a minimum, there being a compliance 7 schedule either in the consent decree or in 8 the permit?</p> <p>9 MS. BARTLETT: Well, I think that 10 the certification doesn't include that as a 11 condition. It's not a condition. It's a 12 consideration, which is very different 13 than -- you know, when we get a 401 14 certification that says this permit will meet 15 applicable water quality standards, with the 16 exception of this condition and that 17 condition.</p> <p>18 So what the District stated in its 19 401 certification was very different. It 20 didn't withhold it, it didn't say "only if." 21 So it's not a condition.</p> <p>22 JUDGE STEIN: In the 2005 EPA</p>
99	101
<p>1 decree.</p> <p>2 JUDGE REICH: What was the date of 3 that proposal?</p> <p>4 MS. BARTLETT: The date of that 5 proposal was -- it was in December 2006, and 6 the certification, which is Exhibit 5 to the 7 Agency's response, or the Region's response, 8 clearly states that the December 7, 2006 9 modified permit; in other words, what we had 10 given them as our second proposal, is in 11 compliance.</p> <p>12 And further, just to clarify, I 13 don't think there's any ambiguity about the 14 District's position here, because the 15 certification clearly states that DDOE 16 concurs with EPA that EPA should establish a 17 schedule for compliance with the nitrogen 18 limit, and what EPA had proposed was to put 19 it in a separate document and not put it in 20 the permit.</p> <p>21 JUDGE STEIN: Given that it seems 22 undisputed that WASA cannot currently comply</p>	<p>1 budget, I believe one or more of the parties 2 pointed us to a budget amendment or 3 discussion about whether or not compliance 4 schedules -- I believe for long-term control 5 plans should be in permits, and I believe I 6 saw language that talked about putting them 7 in a permit, but there was also some 8 additional language that said that it didn't 9 preclude you having it elsewhere.</p> <p>10 How is it that that language 11 squares with your view that the CSO policy 12 expresses a strong preference for these kinds 13 of compliance schedules being in consent 14 decrees?</p> <p>15 MS. BARTLETT: I think it squares, 16 because the -- and I'm not recalling the 17 exact language, but it says in certain 18 circumstances, it may be appropriate. And 19 when you look at the CSO policy and you 20 analyze what it says and line it up with the 21 facts of this particular case, the preference 22 is that the compliance schedule be in a</p>

102	<p>1 separate enforcement document.</p> <p>2 JUDGE STEIN: What was the broader</p> <p>3 context of that budget language? And is this</p> <p>4 an issue that is bigger than this case? I</p> <p>5 mean, are there issues nationwide about</p> <p>6 whether or not these kinds of compliance</p> <p>7 schedules should be in permits versus consent</p> <p>8 decrees?</p> <p>9 MS. BARTLETT: There may be, but I</p> <p>10 don't know that that issue is before the</p> <p>11 Board.</p> <p>12 JUDGE STEIN: I'm trying to</p> <p>13 understand the context of an amendment that's</p> <p>14 been cited to us by more than one party as</p> <p>15 bearing on how we should address this issue.</p> <p>16 I'm trying to understand the context of that</p> <p>17 budget amendment, to the extent that you know</p> <p>18 it.</p> <p>19 MS. BARTLETT: I wasn't involved in</p> <p>20 the budget amendment, so I can't really</p> <p>21 address that. I can say that the issue of</p> <p>22 compliance schedules is coming up here and</p>	104	<p>1 excess of any limitation necessary to comply</p> <p>2 with D.C. water quality standards.</p> <p>3 JUDGE WOLGAST: Could you explain</p> <p>4 what -- because I've read this seemingly</p> <p>5 stated differently by the Region in different</p> <p>6 iterations. What does that sentence mean to</p> <p>7 you?</p> <p>8 MS. BARTLETT: Frankly, I'm not</p> <p>9 sure what that sentence means. It almost</p> <p>10 smacks of a duty to comply with water quality</p> <p>11 standards regulations rather than a specific</p> <p>12 QBEL (?), which is --</p> <p>13 JUDGE WOLGAST: And frankly, with</p> <p>14 that statement, that it's a -- basically for</p> <p>15 shorthand a backstop of the prohibition</p> <p>16 against any discharges that would exceed</p> <p>17 water quality standards is what I interpreted</p> <p>18 from your brief at page 43 and 44. So I just</p> <p>19 wanted to understand if that in fact was your</p> <p>20 position.</p> <p>21 MS. BARTLETT: Yes. Once WASA</p> <p>22 completed its Long Term Control Plan using</p>
103	<p>1 there, as the Board is probably aware. Not</p> <p>2 so much in situations -- I don't think like</p> <p>3 this one -- where you have a pre-existing</p> <p>4 companion enforcement action, a discharge as</p> <p>5 big as WASA, and a Long Term Control Plan</p> <p>6 schedule that spans 20 years.</p> <p>7 JUDGE STEIN: Unless there are</p> <p>8 other questions on the compliance schedule</p> <p>9 issue, I was going to suggest we move to the</p> <p>10 some of the other issues.</p> <p>11 If you could address both the</p> <p>12 anti-backsliding and also the water quality</p> <p>13 standards issue.</p> <p>14 MS. BARTLETT: With respect to</p> <p>15 anti-backsliding, our position is</p> <p>16 fundamentally that the current provision is</p> <p>17 no less stringent than the pre-existing</p> <p>18 provision, which we believe to have been the</p> <p>19 provision that was in the 1997 permit,</p> <p>20 because that was the last fully effective</p> <p>21 permit provision. And that included a</p> <p>22 general prohibition against discharges in</p>	105	<p>1 the demonstration approach which I believe</p> <p>2 Mr. Evans explained, and what their</p> <p>3 obligation is using the demonstration</p> <p>4 approach is to demonstrate that the selective</p> <p>5 Long Term Control Plan controls are adequate</p> <p>6 to meet the water quality standards of the</p> <p>7 District.</p> <p>8 So what happened is WASA completed</p> <p>9 its Long Term Control Plan. EPA and the</p> <p>10 District reviewed it to see if they had</p> <p>11 indeed made that demonstration. And the</p> <p>12 record includes our review and the District's</p> <p>13 review.</p> <p>14 Having made that conclusion, we</p> <p>15 then went on to the Phase II permitting</p> <p>16 provisions, which as pointed out earlier,</p> <p>17 indicate that the Agency is supposed to</p> <p>18 include water quality-based effluent limits</p> <p>19 under 40 CFR 122.44(d)(1) and 122.44(k),</p> <p>20 requiring at a minimum -- and then it</p> <p>21 enumerates what those water qualities</p> <p>22 standard-based limitations would be -- and</p>

106	<p>1 the applicable provision for when a permittee 2 has used the demonstration approach is IV, 3 which says performance standards and 4 requirements that are consistent with Section 5 2(c)(4)(b), that's the demonstration approach 6 of the policy.</p> <p>7 JUDGE WOLGAST: Before you --</p> <p>8 MS. BARTLETT: So we put the 9 performance standards in the in the permit.</p> <p>10 JUDGE STEIN: Just above that point 11 C, in the middle column at 18696, there's a 12 reference to -- there's an A and B, 13 "Requirements to implement technology-based 14 controls including the nine minimum 15 controls," and then there's a B for a 16 narrative requirements. Why wouldn't this 17 duty to comply provision or whatever you call 18 it come under the narrative requirements?</p> <p>19 MS. BARTLETT: The narrative 20 requirements -- it says narrative 21 requirements which ensure that the selected 22 CSO controls are implemented operated and</p>	108	<p>1 MS. BARTLETT: I think the 2 difference that we're -- what's confusing 3 here is, in part whether the performance 4 standards that -- of the Long Term Control 5 Plan that are set forth in the permit as 6 QBELs cover both the narrative water quality 7 standards and numeric water quality standards 8 of the District. And they do. And I think 9 one of the things that's at issue here, and I 10 think the Board has asked the question, what 11 if that second sentence in our two-sentence 12 proposal isn't there? What do you lose?</p> <p>13 And I don't think the Petitioners 14 have identified anything that we do lose. 15 Water quality, there's an immediate 16 requirement -- those water quality 17 standard-based effluent limits are 18 immediately affected. Is WASA out of 19 compliance? Absolutely. WASA has a consent 20 decree that requires it to take about \$1.2 21 billion worth of steps over the next 20 years 22 to get into compliance. In the meantime,</p>
107	<p>1 maintained as described in the long-term CSO 2 control plan. There is such a provision in 3 the permit. That exists. That is covered.</p> <p>4 JUDGE STEIN: But you're saying 5 that this particular provision that you have 6 now proposed or decided to take out is a 7 narrative requirement, but it's not a 8 narrative requirement pertaining to CSO 9 controls?</p> <p>10 MS. BARTLETT: It is, but what B 11 addresses, I think, is a requirement to 12 ensure that the selected CSO controls are 13 implemented, operated, and maintained as 14 described in the long-term CSO control plan. 15 So that's kind of a separate provision, and 16 that is the permit. That's under Part 3 17 section C(2)(a), which says that the 18 permittee shall implement and effectively 19 operate and maintain the CSO controls 20 identified in the Long Term Control Plans. 21 So that's already in the permit. 22 JUDGE STEIN: Was it --</p>	109	<p>1 some -- I'm sorry.</p> <p>2 JUDGE STEIN: Okay.</p> <p>3 MS. BARTLETT: Some of the things 4 that were raised by Petitioners Friend of the 5 Earth in their brief were it's -- WASA is 6 excused. WASA isn't excused. WASA has been 7 sued and WASA has a consent decree that they 8 have to comply with. And here's one place 9 where we disagree with WASA. We think that 10 they need to be in compliance. The consent 11 decree allows them to take the steps, but 12 they were found in violation of the water 13 quality standards. Now, the other --</p> <p>14 JUDGE WOLGAST: Could I just 15 interrupt you for one second here?</p> <p>16 MS. BARTLETT: Sure.</p> <p>17 JUDGE WOLGAST: What would you 18 point us to as the most explicit answer to 19 Sierra Club's argument that you lose some of 20 the numeric or narrative standards that 21 otherwise would've been swept into the 22 general prohibition? What would you point us</p>

110	112
<p>1 to?</p> <p>2 MS. BARTLETT: I'd point you to</p> <p>3 several exhibits to the government decree,</p> <p>4 specifically Exhibit 6. Do you want me to</p> <p>5 say what they are or do you just --</p> <p>6 JUDGE WOLGAST: That would be</p> <p>7 helpful.</p> <p>8 MS. BARTLETT: Exhibit 6, which is</p> <p>9 a November 3, 2004 memorandum from James</p> <p>10 Collier, Chief, Bureau of Environmental</p> <p>11 Quality and Environmental Health</p> <p>12 Administration, District Department of</p> <p>13 Health, to Doreen E. Thompson, Esquire,</p> <p>14 interim senior deputy director, Rika Ray (?)</p> <p>15 CSO LTCP. And one of the things -- the</p> <p>16 primary focus of that memorandum is whether</p> <p>17 the Long Term Control Plan -- selected</p> <p>18 controls once implemented, the discharges</p> <p>19 that will remain, whether they will meet</p> <p>20 District water quality standards.</p> <p>21 JUDGE WOLGAST: But --</p> <p>22 MS. BARTLETT: There's --</p>	<p>1 been able to identify anything that's not</p> <p>2 covered by that. One of the things that they</p> <p>3 mentioned in their briefs was there's nothing</p> <p>4 to require -- and in their argument, what if</p> <p>5 there's a leak.</p> <p>6 Well, if there's a leak in a</p> <p>7 system, then that may indicate that there's a</p> <p>8 problem with operation and maintenance, the</p> <p>9 general operation and maintenance of the</p> <p>10 system, and there's a provision in the permit</p> <p>11 that the general permit provision for CSOs</p> <p>12 and everything that requires WASA to properly</p> <p>13 operate and maintain its system in addition</p> <p>14 to the general O&M provision -- there's also</p> <p>15 a provision under the nine minimum controls,</p> <p>16 the technology-based CSO controls, that</p> <p>17 specifically relates to operation and</p> <p>18 maintenance of the CSO portions.</p> <p>19 So that's already covered. So I</p> <p>20 guess we have a hard time seeing, and don't</p> <p>21 believe that the Petitioner have identified</p> <p>22 anything that's not covered by that</p>
111	113
<p>1 JUDGE WOLGAST: But I guess what</p> <p>2 I'm looking for is where in the permit or</p> <p>3 where is there an enforceable mechanism like</p> <p>4 sentence 2 that clearly sweeps in everything</p> <p>5 that would otherwise have been included in</p> <p>6 the general prohibition?</p> <p>7 MS. BARTLETT: I guess our position</p> <p>8 is that there's nothing that's not included,</p> <p>9 and that the Petitioners haven't really been</p> <p>10 able to identify anything that's not</p> <p>11 included. And if you read Exhibit 6,</p> <p>12 Exhibit 7, and Exhibit 8, then you can see</p> <p>13 what all has been considered and encompassed</p> <p>14 in terms of water quality standards</p> <p>15 compliance to be included and covered by the</p> <p>16 Long Term Control Plan selected controls.</p> <p>17 The two things --</p> <p>18 JUDGE WOLGAST: What's the</p> <p>19 range -- oh, I'm sorry, go ahead.</p> <p>20 MS. BARTLETT: I just want to point</p> <p>21 out that I don't think that in reality,</p> <p>22 Friends of the Earth and Sierra Club have</p>	<p>1 provision.</p> <p>2 JUDGE WOLGAST: What was the</p> <p>3 rationale for deleting the general</p> <p>4 prohibition?</p> <p>5 MS. BARTLETT: That it was</p> <p>6 duplicative, that the specific performance</p> <p>7 standards are much more specific and much</p> <p>8 more clearly articulate exactly what it is</p> <p>9 the permittee has to do in order to comply</p> <p>10 with water quality standards. So there's</p> <p>11 more certainty on the part of the permittee.</p> <p>12 There's also more certainty on the part of</p> <p>13 the agency should we find ourselves in the</p> <p>14 position of needing to enforce those</p> <p>15 provisions somewhere down the line.</p> <p>16 JUDGE STEIN: If it's duplicative,</p> <p>17 why not just put it in the permit? I mean,</p> <p>18 at one point EPA had proposed it in the</p> <p>19 permit. If it's simply something additional,</p> <p>20 why take it out? I mean, maybe the</p> <p>21 difficulty we're having is that through most</p> <p>22 of the iterations of this permit, some form</p>

114	116
<p>1 of this provision was there, and all of a 2 sudden, suddenly, in the last iteration, it's 3 gone. I understand that you're trying to 4 point us to a roadmap that shows that 5 everything else is really there, but if it's 6 really just additional, why not just put it 7 in? What's the downside?</p> <p>8 MS. BARTLETT: Because potentially 9 it could create confusion about what the 10 permittee's obligations exactly are. And 11 clearly, our brief and the history, the 12 evolution of this permit, reflects that we 13 have -- that the agency has struggled with 14 what is the right water quality 15 standard-based effluent limit provision for 16 CSOs.</p> <p>17 And ultimately, we concluded that 18 the performance standards provide for or 19 certainly can provide for compliance with the 20 District's water quality standards, they're 21 intended to, and they cover everything that 22 was included in that prior provision, except</p>	<p>1 Judge Stein's question, in your response, you 2 indicate even if this limit is less stringent 3 than the previous one, which had -- has not 4 meets the exception for backsliding under 5 Section 303(d)(4)(a) and I know that the 6 Friends of the Earth basically argued that 7 that provision wasn't applicable here, are 8 you still maintaining that that provision is 9 applicable, or are you conceding that that 10 provision is not applicable?</p> <p>11 MS. BARTLETT: Upon reflection, I'm 12 not sure, depending upon how you read that 13 provision, if it's read to require that the 14 previous provision was based upon TMDL or a 15 waste-load allocation. The previous 16 provision was not. So in that case, I think 17 we have to concede that that would not apply.</p> <p>18 JUDGE REICH: Okay, thank you.</p> <p>19 JUDGE STEIN: I presume that EPA is 20 issuing several Phase II permits around the 21 country, or has been in the process, and that 22 some of those Phase I permits may have</p>
115	117
<p>1 much more specifically.</p> <p>2 JUDGE STEIN: So your 3 anti-backsliding defense or whatever you want 4 to call it, or defense to claim that there's 5 anti-backsliding, is exclusively that the two 6 provisions are as stringent as one another 7 and therefore, there's no anti-backsliding? 8 Is that the sole basis of your defense, or 9 you're arguing there's some kind of an 10 exception to anti-backsliding?</p> <p>11 MS. BARTLETT: I think the only 12 exception -- that's primarily our argument. 13 I think the only exception there might be 14 would be related to new information because 15 of the new information on the Long Term 16 Control Plan. But I think since the 17 requirement that was in the permit previously 18 was to comply with -- not to discharge in a 19 way that would violate District water quality 20 standards, that the new provision is no less 21 stringent.</p> <p>22 JUDGE REICH: In that context of</p>	<p>1 included this sort of duty-to-comply language 2 as a shorthand for expressing what was there. 3 Has EPA made a policy decision that that kind 4 of language goes out in the Phase II permits? 5 And I guess I'm just trying to understand 6 this case in the broader context, because it 7 seems to me that this anti-backsliding issue, 8 to the extent that these generic kinds of 9 provisions are coming out in more than just 10 one permit, could represent perhaps 11 potentially a bigger issue, and I'm wondering 12 if you could shed any light on that question.</p> <p>13 MS. BARTLETT: Unfortunately I 14 can't. I can only shed light on -- it's just 15 been confirmed that I really can't answer 16 that outside of the context of this 17 particular permitting decision that was made 18 by Region 3. You know if that's something --</p> <p>19 JUDGE STEIN: You can't answer it 20 because you don't know or because they --</p> <p>21 MS. BARTLETT: Because I don't 22 know. Because I don't know, not because I'm</p>

118	120
<p>1 keeping a secret, but obviously if that were 2 something that the Board wanted to see some 3 additional discussion of, we could certainly 4 provide a supplemental brief. 5 JUDGE STEIN: Okay. 6 JUDGE WOLGAST: Just to understand, 7 is it your position that the agency within 8 the context of the anti-backsliding question 9 has discretion to set any schedule -- and 10 basically, I'm assuming that in essence 11 you're stating that same argument that WASA 12 had. You look to the limitation as it 13 existed in the '97 permit, you look to the 14 specifics of the Long Term Control Plan as 15 long as those both get to -- complies with 16 water quality standards, it doesn't matter 17 how long. So if you all had come up with a 18 schedule that was 50 years, in your opinion 19 that wouldn't have been a backsliding 20 problem. 21 MS. BARTLETT: I think we defer 22 with WASA on that because I don't -- the</p>	<p>1 provisions for how they're going to achieve 2 compliance. 3 JUDGE WOLGAST: If the compliance 4 schedule were included in the permit itself, 5 as well as in -- say, let's just say 6 hypothetically -- as well as in the consent 7 decree, what would be their compliance 8 status. Would they be in violation? 9 MS. BARTLETT: I think then they 10 could certainly argue that they have the 11 permit as a shield, and I assume that's one 12 of the reasons why they would like to have 13 the compliance schedule in the permit. 14 JUDGE WOLGAST: And I guess that's 15 a question that I'm confused about as to the 16 CSO policy, when it seems to contemplate that 17 the agency has discretion to include such 18 less schedule, a long-term schedule, either 19 in the permit or in the judicial consent 20 decree or in some other enforceable 21 agreement, and the idea that however EPA 22 exercise that discretion would have the</p>
119	121
<p>1 Region is not taking the position that WASA 2 doesn't have to be in compliance now, but 3 they don't have to be in compliance until the 4 Long Term Control Plan has been fully 5 implemented. We've got an enforcement action 6 out there. 7 JUDGE WOLGAST: But again, just 8 looking at the anti-backsliding aspect, so do 9 you only look to the terms of the '97 permit 10 and the terms of the Long Term Control Plan 11 to deduce whether or not this last iteration 12 is less stringent than the '97 terms? 13 MS. BARTLETT: I think based on the 14 plain language of 402(o), yes. 15 JUDGE WOLGAST: But -- and then you 16 were going on to say -- and I understand you 17 then agree with Sierra Club that the 18 compliance status of the District is that 19 they are in violation? 20 MS. BARTLETT: Yes, but they have a 21 consent decree right now that covers their 22 non-compliance and contains specific</p>	<p>1 consequence of making the permittee in or out 2 of violative status seems pretty significant. 3 MS. BARTLETT: I guess that's true, 4 although if you're looking at it from the 5 standpoint of are they vulnerable to some 6 sort of citizen suit, I think they are 7 covered under either one of those -- any of 8 those scenarios. 9 JUDGE WOLGAST: However under this 10 scenario, we heard WASA say that they could 11 still be sued, they could still be subject to 12 penalties even if the injunctive relief from 13 such an action may well end up being the same 14 terms as the technology improvements included 15 in the Long Term Control plan. Why isn't 16 that right? 17 MS. BARTLETT: Well, I'm not sure. 18 I mean, I'm not sure exactly where WASA was 19 going with that argument, but frankly, I 20 don't see them as being vulnerable, as being 21 sued. Given the provision that we currently 22 have in the permit, I think their objection</p>

122	<p>1 was primarily under the more general 2 language.</p> <p>3 Certainly, EPA is not going to take 4 an enforcement action against them. We've 5 already done that. We've got them under a 6 consent decree, and they're going to be 7 doing -- you know, we would move to enforce a 8 consent decree if we needed to, and I don't 9 think there's a basis to suggest that the 10 agency is not diligently prosecuting.</p> <p>11 JUDGE STEIN: I had a question, 12 just a final question about this water 13 quality-based effluent limits. In the 14 Region's response to comments, in their '07 15 Exhibit 4, pages 10 to 11, EPA states, "EPA 16 has concluded that implementation of a Long 17 Term Control Plan will not preclude 18 compliance with water quality standards. 19 Therefore, use of the Long Term Control Plan 20 performance standards as water quality-based 21 effluent limits does not violate 122.4(d), 22 which precludes the issuance of a permit that</p>	124	<p>1 JUDGE STEIN: If you could provide 2 that --</p> <p>3 MS. BARTLETT: Or if we did not, 4 then --</p> <p>5 JUDGE STEIN: Do you concede that 6 the particular language that I've quoted is 7 problematic in light of 122.4(d)?</p> <p>8 MS. BARTLETT: It may be. It may 9 be, Your Honor, but on the other hand, I 10 think the CSO policy is pretty clear on what 11 the water quality standard-based effluent 12 limitations should be.</p> <p>13 JUDGE STEIN: No further questions. 14 We appreciate your patience and answering all 15 of our many questions.</p> <p>16 And if we could go to the rebuttals 17 now, that would be great.</p> <p>18 MR. EVANS: If I can move directly 19 to a couple of the last items that we were 20 covering with EPA. First, with respect to 21 the question whether this narrative 22 prohibition is duplicative of the Long Term</p>
123	<p>1 can't ensure compliance with water quality 2 standards of all effective states."</p> <p>3 How does the Region's language of 4 not precluding compliance with water quality 5 standards meet the requirements of 122.4(d), 6 which requires EPA to ensure that the limits 7 shall ensure compliance with water quality 8 standards?</p> <p>9 I'm taking issue with that language 10 in part because that's an issue that has so 11 much different but related issue cropped up 12 in an earlier appeal to the Board, I think 13 the DCMS4 case. So I wanted you to explain 14 how that language meets 122.4(d), or to point 15 me to where in the record EPA has made a 16 finding or determination that would meet 17 122.4(d).</p> <p>18 MS. BARTLETT: I believe we covered 19 that in exhibit -- I believe we did address 20 it in the record, Your Honor, but I'm not 21 able to pinpoint where that is. I can 22 certainly get back to you on that.</p>	125	<p>1 Control Plans-derived specific performance 2 standards, it is not duplicative, but in 3 fact, one of the principal reasons why WASA 4 objected to it was because it was 5 fundamentally inconsistent with the CSO 6 policy.</p> <p>7 If you look at the CSO policy in 8 its entirety and you look at the scheme 9 that's set out in that policy with respect to 10 how communities like WASA go about bringing 11 themselves into compliance with water quality 12 standards using the demonstration approach, 13 in essence as you submit your Long Term 14 Control Plan, EPA and the state make a 15 determination whether that Long Term Control 16 Plan, at least under the demonstration 17 approach, will comply with water quality 18 standards.</p> <p>19 But because a demonstration 20 approach is based upon modeling, and you 21 haven't installed the system yet, there is 22 also a express provision in CSO policy which</p>

126	128
<p>1 says that when you use demonstration approach 2 and you incorporate the results of that 3 demonstration approach in the permit, you 4 also have to include a provision requiring 5 post-construction monitoring. In other 6 words, you go out to determine whether or not 7 in fact, based upon actual mainstream data, 8 whether or not the original demonstration has 9 proven to be correct.</p> <p>10 The problem with this narrative 11 discharge prohibition is that even with the 12 consent decree -- the consent decree simply 13 has a schedule for the implementation of a 14 Long Term Control Plan. In essence, once 15 that Long Term Control Plan has been 16 implemented and the system has been placed in 17 operation, the shield -- the protections 18 afforded by the consent decree go away.</p> <p>19 So with that narrative discharge 20 prohibition in there, if WASA's 21 post-construction monitoring program shows 22 that they are out of compliance with water</p>	<p>1 years, and yet having invested that money 2 face the prospect of being yet sued again.</p> <p>3 Even though they did everything the 4 policy asked them to do, yet they're still 5 being held for non-compliance. It is a 6 critical issue for CSO communities.</p> <p>7 And to suggest that these 8 communities should be held liable because 9 their demonstration -- because their 10 post-construction monitoring demonstration 11 doesn't show compliance with standards, is 12 fundamentally inconsistent with the policy, 13 because the policy said so and expressed 14 process for what you do at the point at which 15 non-compliance are shown.</p> <p>16 It doesn't say that -- the policy 17 doesn't say the community is in 18 non-compliance with its obligation. What it 19 says is that if the demonstration doesn't 20 show compliance to water quality standards, 21 the community must then submit a revised Long 22 Term Control Plan explaining what additional</p>
127	129
<p>1 quality standards, contrary to the 2 demonstration that was made at the time the 3 plan was developed and approved by EPA and 4 the state, then WASA and any other CSO 5 community can be sued for violation of the 6 water quality standards. That's not the way 7 the policy is intended to work, and that's 8 what this issue really comes down to.</p> <p>9 So it is not duplicative; it is 10 imposing a compliance obligation, a liability 11 on WASA and every other community. And I 12 might add, although it doesn't appear at this 13 point that EPA has made any larger policy 14 decisions with respect to how to deal with 15 this issue, in other CSO permits, it is an 16 issue of national importance.</p> <p>17 That's why NACWA -- where the 18 partnerships submitted, for instance, the 19 court briefs in this case, because you've got 20 hundreds of other CSO communities out there 21 who have been called upon to invest literally 22 billions of dollars over the next 20-25</p>	<p>1 measures it's going to take to bring itself 2 into compliance. That's how the policy is 3 supposed to work, and that's why this 4 provision -- this prohibition is 5 fundamentally inconsistent with it.</p> <p>6 In addition to being fundamentally 7 inconsistent with the overall scope, intent, 8 purpose, direction of the policy, we believe 9 it is fundamentally inconsistent with the 10 clear language of the policy itself. Now, if 11 you look at the language of the policy and 12 this is -- the provision is dealing with a 13 Phase II permit and relevant language says, 14 permit shall include a water quality-based 15 effluent limitations, and so forth requiring 16 at a minimum -- well, Friends of the Earth 17 and the Sierra Club are picking up on the 18 language "at a minimum."</p> <p>19 Well, if you take that literally, 20 then in essence, in order to accept their 21 position on this, you have to do one of two 22 things. Either you have to assume, and in</p>

130	<p>1 essence it would constitute a collateral 2 attack on the Long Term Control Plan, that it 3 doesn't provide for compliance with water 4 quality standards, or at least the evidence 5 currently available, and the resulting 6 performance standards don't provide for 7 compliance with water quality standards. 8 And if in fact that's their 9 position, then we would respectfully submit 10 that if they didn't think that the plan met 11 the requirements of the CSO policy, didn't 12 contain a demonstration water standards 13 quality compliance, they had an opportunity 14 back then when EPA approved it to have 15 challenged that. They never challenged the 16 determination. We would submit they are 17 precluded from collaterally attacking the 18 Long Term Control Plan at this late date. 19 If they think that plan was 20 inadequate to provide for compliance with 21 water quality standards, they should've 22 attacked it then. They didn't. We think</p>	132	<p>1 language is not less stringent? 2 MR. EVANS: I don't think you can 3 refer to -- I think you need to look at 4 the -- you need to look at the entirety of 5 the records, specifically the exhibits to 6 EPA's response, which include -- I think one 7 of them is Exhibit 8, the EPA memorandum. 8 But there are two memoranda in there of 9 particular relevance. One is the EPA 10 memoranda. The other is the memoranda from 11 the District of Columbia which contain an 12 analysis of the Long Term Control Plan, 13 ultimately leading to a conclusion that the 14 Long Term Control Plan will provide for 15 compliance with water quality standards. 16 Because the two agencies with 17 responsibility for making their determination 18 have concluded that this Long Term Control 19 Plan will provide for compliance with water 20 quality standards, then in essence, it is a 21 part and parcel of the same thing as the 22 discharge prohibition. This Board, in my</p>
131	<p>1 they are precluded from collaterally 2 attacking it now. 3 So we think that this Board should 4 approach this issue on the presumption that 5 this plan provides for compliance with water 6 quality standards. And if it provides for 7 compliance with water quality standards, then 8 to retain the narrative discharge prohibition 9 in addition to the requirement for the Long 10 Term Control Plan performance standards in 11 essence will be reading that requirement of 12 that, why have it? Why have numeric Long 13 Term Control Plan drive performance 14 standards, if in fact you are going to 15 include a narrative prohibition in it? 16 It serves no purpose. 17 JUDGE STEIN: Are you aware of 18 anywhere in the record where there is an 19 analysis of the effect of removing this 20 provision? Any kind of analysis EPA might 21 have done that was put into the record that 22 would explain why the deletion of the</p>	133	<p>1 view, would have to, in essence, discount or 2 not take into consideration the findings that 3 have already been made by the two agencies 4 charged with responsibility for making their 5 determination. 6 Again, the Petitioners had an 7 opportunity to challenge that determination 8 if they wanted to. They haven't. We think 9 that what they are doing now is really 10 nothing more than a collateral attack on a 11 decision that was made several years ago. 12 JUDGE WOLGAST: Could you very 13 briefly address Sierra Club's argument 14 that -- I understand your point about what 15 may happen at the end of the day, but that in 16 the interim, there are potential violations 17 that would have been included in the 3(e)1 18 general prohibition language that are not 19 picked up by either the Long Term Control 20 Plan or the enforcement case? 21 MR. EVANS: Yes, Your Honor. We 22 frankly can't think of any circumstance under</p>

<p style="text-align: right;">134</p> <p>1 which a discharge could occur that either 2 would not violate the Long Term Control Plan 3 performance standards or would not violate 4 the technology-based requirements and also 5 the water quality-based requirements of the 6 permit. We have the nine minimum controls 7 requirements. One of those is a prohibition 8 on dry weather discharges. So if there is a 9 leak or a spill that is unrelated to a wet 10 weather event, that's absolutely prohibited, 11 that would be a violation of a permit. 12 If on the other hand, WASA didn't 13 properly operate and maintain its system, the 14 combined system in some way, this is while 15 the Long Term Control Plan is being 16 implemented, then there are any number of 17 those nine minimum control obligations that 18 could be violated depending upon the facts of 19 that particular case. 20 If there is a release from the 21 system at a point other than the permitted 22 outfalls under the permit, the combined</p>	<p style="text-align: right;">136</p> <p>1 Those are in EPA's permitting 2 manual, Chapter 8, in the CFR 122.47, and 3 also in the permitting approach that D.C. 4 signed along with EPA and all the other Bay 5 states, to our petition in which they said 6 that we petitioned EPA asking them to require 7 merit limits in all significant discharge 8 permits, and that there be compliance 9 schedules. 10 And in response, we got back this 11 permitting approach, which basically says or 12 it says in fact, "generally these compliance 13 schedules should require the facility to come 14 into compliance with the nutrient base 15 requirements of the permit or order as soon 16 as possible in keeping with the 2010 deadline 17 and objective with the Chesapeake 2000 18 agreement". 19 So clearly, D.C. and EPA all 20 realized when they signed that document in 21 December of 2004 that any permits that they 22 were going to issue after that fact should</p>
<p style="text-align: right;">135</p> <p>1 system has outfalls that are specifically 2 identified in the permit. 3 If WASA were to release flow from 4 some location other than those permitted 5 outfalls, that would be a violation of the 6 permit. So in sum and substance, it is 7 difficult for us to imagine any circumstance 8 under which WASA would have a discharge other 9 than a normal CSO discharge associated with 10 the normal functioning of the system and it 11 not be a violation of the permit. 12 JUDGE STEIN: Thank you very much. 13 MR. EVANS: Thank you. 14 MR. MUELLER: <i>Just a couple of</i> 15 <i>points on rebuttal. First, I think again, it</i> 16 <i>is important to remember that in about three</i> 17 <i>different places, EPA has said that there are</i> 18 <i>certain situations in which their compliance</i> 19 <i>schedule and -- compliance schedules need to</i> 20 <i>be in permits. There need to be assurances</i> 21 <i>that the standards that are set in the permit</i> 22 <i>are going to be obtained.</i></p>	<p style="text-align: right;">137</p> <p>1 have compliance schedules and permits that 2 assure compliance with that 2010 deadline. 3 One of the other things I struggled 4 a bit with was the statement that -- I 5 believe one of the questions to EPA was, 6 "Well, why do you think you should do this in 7 a consent decree and not in the permit?" 8 And Ms. Bartlett's statement was, 9 "Well, under the facts of this case, it was 10 rational to make that decision." Well, we 11 challenge that in the sense that there is no 12 enforcement action ongoing with respect to 13 the total nitrogen limit. 14 There is for the Long Term Control 15 Plan, and we perfectly understand the 16 Agency's position on that. But with respect 17 to the total nitrogen, there is no violation 18 until the permit is issued or is final. 19 So we don't really understand 20 why -- and the rationale was, well, the Long 21 Term Control Plan consent decree has to be 22 modified to now add the total nitrogen plan.</p>

<p style="text-align: right;">138</p> <p>1 Well, we understand all that, but 2 don't really see the significance of why you 3 need to have the compliance schedule in the 4 consent decree. What does EPA lose by not 5 having it in the permit? And I have not 6 heard any reason articulated by the Agency 7 why it loses any authority whether it is in 8 the consent decree, or it is in the permit. 9 And in fact, there is no guarantee that a 10 consent decree is going to be entered with 11 respect to total nitrogen, and that's one of 12 our biggest worries, is that this proceeding 13 will go by the Board's. 14 If the Board decides that it is not 15 going to require a compliance schedule in the 16 permit and the parties are left to their own 17 devices, that there may never be a consent 18 decree that addresses this particular issue. 19 And then we've got long protracted litigation 20 fighting over whether WASA can meet the new 21 limit, and when it gets to meet that limit, 22 and again, the objectives of the Chesapeake</p>	<p style="text-align: right;">140</p> <p>1 specify where by the fact that there were 2 some statement in the December 2006 fact 3 sheet that let D.C. know that this was going 4 to be in a consent decree". 5 Well in fact, what that statement 6 says is, in the fact sheet on page 5, is one 7 means of achieving an enforceable standard is 8 through modification to the consent decree 9 between EPA, and it cites the ongoing Long 10 Term Control Plan case. 11 That's one means of achieving. It 12 is clear that there are other means out 13 there. It doesn't say we are going to put it 14 in the consent decree. So there is no 15 inference that can be drawn from D.C.'s 16 statement that we think you should have a 17 compliance schedule and EPA should set it for 18 total nitrogen. 19 So again, I don't think it is 20 rational to assume that WASA is going to meet 21 that limit within the deadline set by the 22 Chesapeake 2000 agreement if there is no</p>
<p style="text-align: right;">139</p> <p>1 2000 agreement are not met. 2 The other issue that I was 3 concerned with was the statement that EPA did 4 not have to honor D.C.'s more strict 5 requirement of either a three-year compliance 6 schedule and having compliance schedule in 7 the permit. And the Clean Water Act 8 absolutely suggests or states it requires 9 that states have the ability to enact more 10 stringent limits, and clearly, D.C.'s law is 11 more stringent than the five year of the life 12 of the permit requirement in the Act. 13 They require three years to 14 compliance unless you can show a reason not 15 to meet that deadline, and then require a 16 compliance schedule in the permit. That is 17 more strict than EPA's regulations and the 18 Act, and it is entirely permitted by the Act. 19 The other point was that there was 20 something that could be read in D.C.'s 21 certification statement of "we agree that EPA 22 should set a compliance schedule, but doesn't</p>	<p style="text-align: right;">141</p> <p>1 compliance schedule in the permit. And we'd 2 urge the Board to so order EPA to do so. 3 Thank you. 4 MS. CHAVEZ: Thank you for giving 5 me a few extra moments. First of all, I'd 6 like to point out, going back to the notice 7 and comment issue, that all of these 8 questions about the water quality standards 9 provision, most of which EPA did not address 10 below, shows very graphically why we needed 11 notice and comment on this issue. 12 If -- and indeed, we agree with 13 Mr. Evans that this is an issue of national 14 importance, not only to sewer systems around 15 the country, but to citizens around the 16 country who are looking at their systems and 17 looking at the permits that cover those 18 systems and who are assured right now within 19 the permits that they have protection against 20 violations of water quality standards, it 21 would be certainly a major change in that 22 circumstance for EPA to adopt some kind of</p>

142	<p>1 policy, or even to set the precedent with</p> <p>2 this permit that somehow it is permissible</p> <p>3 simply to gut those underlying requirements</p> <p>4 with respect to the question of what is lost</p> <p>5 if that language is deleted.</p> <p>6 Deletion plainly does impair our</p> <p>7 ability to remedy water quality violations</p> <p>8 that are not addressed by an EPA enforcement</p> <p>9 action, or if the action is not being</p> <p>10 prosecuted diligently, and there is no way</p> <p>11 that counsel here today can guarantee that in</p> <p>12 two decades, EPA will decide simply not to</p> <p>13 enforce some provision of even the consent</p> <p>14 decree. So that is one tool in our</p> <p>15 enforcement toolbox that is gone forever if</p> <p>16 this language is deleted.</p> <p>17 The leak example is not the end of</p> <p>18 the story. The narrative standards prohibit</p> <p>19 all of the things that I read to you earlier</p> <p>20 under the D.C. Code, all of which are</p> <p>21 expected to continue after the Long Term</p> <p>22 Control Plan is implemented. Presently in</p>	144	<p>1 violations is not -- it is far from the</p> <p>2 finding that the Long Term Control Plan will</p> <p>3 ensure achievement of compliance. If it</p> <p>4 purports to be a finding that the Long Term</p> <p>5 Control Plan will ensure compliance with</p> <p>6 water quality standards under all conditions,</p> <p>7 under all wet weather conditions, that would</p> <p>8 be an unbelievable claim, because the Long</p> <p>9 Term Control Plan on its face acknowledges</p> <p>10 that discharges of raw sewage into the rivers</p> <p>11 will continue even after the Long Term</p> <p>12 Control Plan is implemented perfectly.</p> <p>13 And I would encourage the Board</p> <p>14 absolutely to take a look at Exhibits 6</p> <p>15 through 8, where first the District and then</p> <p>16 EPA adopts the District's findings of</p> <p>17 compliance. Those findings are based on the</p> <p>18 preposterous notion that sewage overflows are</p> <p>19 in effect treated if they pass through some</p> <p>20 baffles or netting systems or wire grates,</p> <p>21 trash skimmers. The common understanding of</p> <p>22 sewage treatment requires more than the</p>
143	<p>1 the District, there are over 3.5 billion</p> <p>2 gallons overflowing into the rivers every</p> <p>3 year, and the District had a leak in its</p> <p>4 system just last week or a couple of weeks</p> <p>5 ago, as we read in the papers.</p> <p>6 So we don't want to get caught in a</p> <p>7 gotcha situation by giving one example, but</p> <p>8 this is the reason why we needed notice and</p> <p>9 comment, so that we could consider all of the</p> <p>10 relevant factors and direct our comments</p> <p>11 accordingly.</p> <p>12 With respect to EPA's findings of</p> <p>13 compliance, first of all, EPA never proposed</p> <p>14 in its proposed permit to make a finding that</p> <p>15 the new limit is as stringent as the prior</p> <p>16 limit. At best, at most, the final permit,</p> <p>17 not the proposed permit, but the final permit</p> <p>18 only says the EPA finds that the Long Term</p> <p>19 Control Plan will not preclude water quality</p> <p>20 standards violations.</p> <p>21 It is unclear what this means, and</p> <p>22 this finding that it will not preclude</p>	145	<p>1 sewage simply flows through a few pieces of</p> <p>2 wire.</p> <p>3 So the fact that EPA is now relying</p> <p>4 on this so-called finding that it made</p> <p>5 several years ago that was never subjected to</p> <p>6 public comment is another example of why this</p> <p>7 should have been included in the proposed</p> <p>8 permit and part of the record of the permit</p> <p>9 that the citizens were allowed to review and</p> <p>10 comment on.</p> <p>11 JUDGE STEIN: You have nothing</p> <p>12 further? Thank you. I want to thank and</p> <p>13 commend everybody for the caliber of their</p> <p>14 arguments this afternoon. As I said at the</p> <p>15 outset, it is a complicated case, it is an</p> <p>16 important case, and we appreciate you bearing</p> <p>17 with us as we work our way through these</p> <p>18 issues. And with this, I think the Board</p> <p>19 will conclude the hearing.</p> <p>20 (Whereupon, at 4:00 p.m., the</p> <p>21 HEARING was adjourned.)</p> <p>22 * * * * *</p>

A	Act 38:7	67:1 101:8	adopts	58:6 62:3
ability 61:7	40:11, 15	113:19	144:16	agreement
62:17 63:2	44:4, 16	114:6	advanced	11:12
73:14	50:8 51:8	118:3	5:19 21:5	52:11 62:1
139:9	53:2 56:7	128:22	affluent	120:21
142:7	56:8, 13	address 6:7	77:22	136:18
able 87:4	68:19 74:7	39:18	afforded	139:1
97:17	76:17 77:3	78:16, 19	126:18	140:22
111:10	85:1, 19	88:1 92:10	afternoon	ahead 10:20
112:1	92:13	102:15, 21	3:13 5:11	32:14
123:21	139:7, 12	103:11	51:18	34:15 42:6
above-en...	139:18, 18	123:19	64:15 83:3	111:19
1:11	action 19:4	133:13	83:5	alleged
absence	19:20	141:9	145:14	39:22
73:15	38:21	addressed	agencies	allocated
absent 81:7	45:16 46:2	9:4 61:18	132:16	4:2
absolutely	46:14	69:12, 18	133:3	allocating
60:4 66:21	68:12, 16	80:17	agency 1:1	3:16
108:19	69:13, 14	142:8	1:13 2:9	allocation
134:10	69:19	addresses	3:4 22:15	116:15
139:8	73:19	15:6	96:11, 22	allotment
144:14	78:15 79:8	107:11	96:22	4:8
abuse 56:20	79:9, 11, 14	138:18	105:17	allow 10:17
accept 40:22	79:20	adequate	113:13	66:13
129:20	80:18 86:2	20:3 24:14	114:13	95:10
acceptable	87:16 88:3	105:5	118:7	98:16
9:11	88:5, 15	adequately	120:17	allowed
accepted	98:21	68:6	122:10	63:15 67:2
30:3, 6	103:4	adhere 12:19	138:6	145:9
31:8	119:5	adjourned	agency's	allows 92:8
accompanied	121:13	145:21	22:20	95:5, 8
84:16	122:4	adjustments	83:15	109:11
account 93:8	137:12	72:21	92:22 93:2	alter 92:13
achieve	142:9, 9	Administ...	99:7	altogether
19:15 46:5	actions 19:7	110:12	137:16	20:17 21:9
53:16	actively	administ...	aggravate	22:8
90:18	21:3	23:13 68:7	47:9	ambiguity
120:1	actual 126:7	administ...	ago 133:11	98:8 99:13
achievement	Act's 65:5	89:16	143:5	amendment
144:3	ad 39:7	administ...	145:5	8:17 11:13
achieving	add 11:18, 22	13:4, 14, 19	agree 23:1	11:19 20:7
140:7, 11	30:17	56:10	56:8 57:9	20:9, 10
acknowledge	127:12	57:22	57:10, 10	21:4 23:2
40:13	137:22	58:11	57:20	23:5, 17
44:10	addition	adopt 92:19	78:14	76:19
acknowledge...	11:20	141:22	81:10	101:2
40:21	112:13	adopted 10:8	119:17	102:13, 17
75:19	129:6	27:20	139:21	102:20
acknowledge...	131:9	adopting	141:12	amendments
144:9	additional	50:7	agreed 47:3	5:18 6:1

20:12 22:4	6:9 8:3	28:5	arguments	attempt 31:2
amount 60:2	22:5 59:19	appropriate	4:22	65:22
amounts 44:7	68:20	16:15 17:9	145:14	68:13
Anacostia	86:16,17	39:20	arms 71:10	August 54:13
72:20	123:12	96:13	articulate	54:21
analogue	appeals 1:1	101:18	113:8	authority
91:7	3:2,14	approve 91:6	articulated	1:5 2:2
analysis	5:14,17	93:5 100:5	97:10,11	3:6,18
13:5,18	68:2	approved	138:6	5:14 14:6
47:3	appear	34:12 36:1	aside 62:2	15:1 38:1
131:19,20	127:12	45:19	asked 12:8	92:19 95:2
132:12	APPEARANCES	93:10,20	51:1 52:22	95:16,18
analyze	2:1	96:21 97:2	108:10	138:7
101:20	appeared	127:3	128:4	authoriz...
analyzing	96:20	130:14	asking 4:13	14:2,5
24:6	appellate	approves	22:21 71:9	authoriz...
animals 72:6	59:20	62:9	90:2 136:6	10:6
Anna 1:19	applicable	approving	aspect 119:8	authorize
3:8	39:16 74:8	93:18	aspiration	77:19
answer 6:6	82:1 86:22	approxim...	91:10	authorizes
9:10 55:15	89:18	1:12	asserted	14:13
74:5 76:2	100:15	area 3:18	40:20	available
88:8 90:6	106:1	50:3 91:16	asserting	50:16
109:18	116:7,9,10	94:13	40:15	130:5
117:15,19	applies	areas 4:14	associated	Avenue 1:14
answered	25:11	4:20 42:13	135:9	average
79:22	61:15	42:14	assume 4:22	72:19 73:6
answering	apply 20:20	argue 40:12	11:11	avoid 34:19
51:11	22:2 63:19	67:14	120:11	aware 7:22
124:14	90:9	120:10	129:22	8:20 11:3
answers 83:7	116:17	argued 116:6	140:20	15:8 16:1
anti-bac...	appreciate	arguing	assumed 7:21	20:6 21:6
4:16 33:6	51:11	20:16,18	9:1	22:10
39:8,13,15	124:14	115:9	assuming	23:19 52:3
40:5,16	145:16	argument	73:17,22	63:6 64:2
41:7,9	appreciated	1:12 3:5	118:10	65:16
42:4 44:3	5:5	3:12,17,20	assurances	103:1
44:15 45:7	approach	4:3,10	56:13 58:1	131:17
65:6 68:18	30:20,21	9:13 23:7	58:1	awfully 89:5
74:21	31:2,7,9	41:1 43:22	135:20	
75:13 76:1	32:14 36:7	59:17	assure 137:2	
76:10,12	49:7 51:6	76:12	assured	B
77:1,10,17	105:1,4	89:19	141:18	B 106:12,15
103:12,15	106:2,5	91:16	attack 130:2	107:10
115:3,5,7	125:12,17	109:19	133:10	back 20:9
115:10	125:20	112:4	attacked	23:17
117:7	126:1,3	115:12	130:22	27:12
118:8	131:4	118:11	attacking	37:22 39:3
119:8	136:3,11	121:19	130:17	62:5 63:13
appeal 3:7	approaches	133:13	131:2	65:13
				80:20

91:17	115:11	bearing	138:12	114:11
123:22	116:11	102:15	billion	118:4
130:14	117:13, 21	145:16	48:10 50:5	briefly
136:10	118:21	bedrock 77:4	108:21	133:13
141:6	119:13, 20	began 45:17	143:1	briefs 5:2
backsliding	120:9	beginning	billions	6:2 26:2
41:10 42:3	121:3, 17	5:9 27:14	127:22	37:20
116:4	123:18	64:10	bit 71:9	112:3
118:19	124:3, 8	begun 52:17	137:4	127:19
backstop	Bartlett's	behalf 2:2, 4	Blue 5:18, 21	bring 5:4
104:15	137:8	2:7, 9	5:22 6:5	29:22
bacterial	base 136:14	64:17	58:7	129:1
71:18	based 43:6	believe 4:21	board 1:1	bringing
73:13	53:12	8:7 10:2	3:3, 16	125:10
74:14	56:15	12:11 19:5	4:12, 21	brings 65:13
baffles	116:14	21:11 23:9	5:1, 12 6:4	broader
144:20	119:13	24:10 25:3	6:8 13:2	102:2
bare 56:16	125:20	26:19	22:5 23:9	117:6
barebones	126:7	37:21 40:6	25:19 38:6	budget 101:1
64:5	144:17	40:11	52:3 64:15	101:2
Bartlett	baseline	41:20	67:14 68:2	102:3, 17
2:10 83:3	75:11	44:19 46:1	71:7 87:22	102:20
83:4 85:16	basic 6:19	49:6, 21	89:8 95:13	build 64:7
86:9, 15, 17	77:6 78:22	51:9 52:6	95:22	Building
86:19 87:6	91:4	52:19 53:5	96:11	1:14
87:21	basically	54:10 55:4	97:21	built 46:20
88:11, 14	24:6 27:3	56:12 58:3	100:4	burden 50:15
89:2 90:1	29:4 42:20	58:8, 10	102:11	50:18
90:7, 11	43:22	59:21 60:1	103:1	83:11
91:12	55:19 59:4	81:13	108:10	burdens
92:11, 21	59:13 62:2	83:21	118:2	83:13
93:7, 15	81:3	85:18 89:8	123:12	Bureau
94:1, 16, 21	104:14	101:1, 4, 5	131:3	110:10
96:5, 9, 16	116:6	103:18	132:22	
97:3, 11, 16	118:10	105:1	138:14	C
97:19	136:11	112:21	141:2	C 3:1 106:11
98:10, 14	basis 85:12	123:18, 19	144:13	caliber
99:4 100:9	115:8	129:8	145:18	145:13
101:15	122:9	137:5	Board's	call 78:6
102:9, 19	Bay 2:4 4:1	benefit 4:21	13:15	106:17
103:14	51:21 52:5	best 143:16	138:13	115:4
104:8, 21	52:8, 11, 12	beyond 90:16	books 33:18	called 23:9
106:8, 19	52:16, 18	95:19	45:4 79:8	28:14 34:7
107:10	56:1, 18	big 103:5	bottom 44:1	127:21
108:1	58:5, 6, 9	bigger 52:4	bound 61:11	calls 30:21
109:3, 16	58:16 59:3	54:11	break 58:17	38:22
110:2, 8, 22	61:13, 22	102:4	58:18	72:10
111:7, 20	136:4	117:11	brief 4:18	77:22
113:5	bear 50:14	biggest	104:18	capital
114:8	50:18	58:12	109:5	28:19

33:16	63:19 64:8	130:15,15	circumst...	clear 10:15
78:12	69:14 76:3	challenging	17:12	31:10
carefully	78:10	64:20	23:15	36:22 37:1
34:19	79:20,21	chance 68:1	24:22	37:9 54:5
Caribe 13:1	101:17	change 17:12	61:21	59:11
14:17 61:3	135:18	22:1 24:16	95:14,15	85:21
case 10:13	certainly	60:8 66:8	133:22	93:13
13:1,10,16	17:1,8	73:3 89:14	135:7	124:10
14:11,19	19:5 22:8	90:22	141:22	129:10
15:3,9	24:5 25:22	141:21	circumst...	140:12
17:9 23:1	42:1 65:16	changed	8:13 23:14	clearest
23:14,16	66:2 78:5	55:10	39:5 54:12	97:14,16
24:5,12,22	85:20 89:3	59:18	73:2,9	clearly
25:10 39:7	96:11	72:22	89:5 92:5	29:13
39:9 46:12	114:19	85:17	101:18	35:14,18
61:3 63:6	118:3	changes	cited 37:19	37:5 42:9
63:9,15	120:10	24:20	102:14	83:14 85:4
68:15	122:3	72:21	cites 140:9	88:16 97:9
75:14	123:22	Chapter	citizen 63:3	98:18 99:8
79:12	141:21	136:2	74:5 121:6	99:15
84:17	certainty	charged	citizens	111:4
87:11,22	113:11,12	133:4	45:12 59:7	113:8
89:10	certific...	Chavez 2:8	60:12 63:2	114:11
101:21	7:11,14	64:15,16	63:13	136:19
102:4	8:6 9:3	67:19 69:6	67:22	139:10
116:16	10:10,13	70:9,12	68:10	CLERK 3:2
117:6	11:14 53:3	71:14	73:14 74:2	42:6
123:13	54:3,4,12	73:17,22	79:12,16	closing
127:19	84:6 93:16	74:16 75:1	141:15	61:19
133:20	97:12 98:5	75:17 77:2	145:9	Club 2:7 4:5
134:19	98:11 99:6	78:14	claim 115:4	19:11,20
137:9	99:15	80:12	144:8	20:3,16
140:10	100:2,4,10	81:12	claimed	21:3 22:9
145:15,16	100:14,19	141:4	19:20	23:19
cases 14:1	139:21	Chesapeake	claims 18:20	24:14 35:5
20:13 25:9	certific...	2:4 4:1	clarify 84:5	39:22
cast 62:2	10:5	51:21 52:5	99:12	64:18,20
caught 51:22	certified	52:8 58:5	clarity 5:3	65:16 67:3
143:6	98:1	136:17	71:19	111:22
cause 29:7	CFR 12:16	138:22	class 69:15	119:17
72:3,5	14:7 66:16	140:22	72:10	129:17
75:3,7	105:19	Chief 110:10	79:20	Club's 4:18
caused 42:22	136:2	choice 85:1	Clean 38:7	21:12
causes 70:14	challenge	93:5	40:10,14	25:15
72:8	19:11 26:9	choosing	50:8 51:8	109:19
ceiling	52:6 68:1	85:6	53:2 56:7	133:13
77:16	86:13	chose 31:6	74:7 85:1	Code 56:7
center 53:10	133:7	Circuit	85:19	142:20
certain	137:11	15:17,18	92:13	collateral
57:22	challenged	63:7,20	139:7	130:1

133:10	117:9	128:17,21	46:13,16	127:10
collater...	commend	companion	46:22 47:4	128:11,20
130:17	145:13	86:1 87:16	47:6 49:20	129:2
131:1	commensu...	103:4	52:7,17,19	130:3,7,13
Collier	12:6	compare	53:16,18	130:20
110:10	comment 10:9	76:22	53:19,22	131:5,7
color 72:4	10:11,19	complete	54:7,15,16	132:15,19
Columbia 1:4	19:22 20:5	29:19	54:18,22	135:18,19
3:5 5:13	21:14	31:13	55:4 56:10	136:8,12
7:11 8:19	22:11,17	32:13	57:9,12,16	136:14
11:15	23:11	34:14	58:14 60:2	137:1,2
12:14 30:4	24:15 25:4	59:15	60:4,18	138:3,15
30:11 31:8	59:11 65:3	completed	61:10,15	139:5,6,14
34:6,21	66:18,19	28:17 30:2	62:8,15	139:16,22
57:14	67:18 68:3	31:18	63:1,22	140:17
132:11	68:6,11,12	104:22	78:1,10	141:1
Columbia's	68:21	105:8	79:2 81:6	143:13
6:22	141:7,11	completely	81:22 82:4	144:3,5,17
column 36:11	143:9	21:22	83:19	complicated
106:11	145:6,10	completing	84:11,13	5:3 145:15
combined	commenting	29:17	84:19 85:7	complied
5:20 6:16	23:4 66:12	complex 4:11	86:1,5	52:16
29:5,6	comments	compliance	87:5,12	complies
35:11	11:19 21:7	4:15 6:11	88:9,18	118:15
38:10	22:14,19	6:12,14,17	89:22 90:3	comply 43:8
41:17 43:1	23:17 24:1	6:20 7:8	90:14 91:9	47:19
43:12	24:3,10,21	7:12,15,17	91:11 92:2	59:15 75:5
48:15	26:3,5	7:20 8:1,6	92:16,20	86:22
50:12,19	55:2 59:7	8:18,21	93:21	94:19
51:7 77:13	65:21 67:6	9:2,18	94:12 95:8	99:22
134:14,22	67:9,10,12	11:16 12:1	95:10,17	104:1,10
come 17:11	122:14	12:4,9,10	95:21 96:1	106:17
22:7 23:2	143:10	12:17,20	98:2,19	109:8
32:3 33:7	committed	13:8,12,21	99:11,17	113:9
52:17 53:6	7:7	14:4,13	100:3,6	115:18
58:14	committing	16:4 18:8	101:3,13	125:17
60:12 62:8	66:12	18:10,13	101:22	complying
63:13 67:5	common	18:14,18	102:6,22	35:2 78:13
76:20	144:21	19:16 28:6	103:8	components
78:13	communities	30:1,15	108:19,22	91:1
80:19	27:3 34:5	31:5,15,16	109:10	comprehe...
98:16	34:20	31:17,22	111:15	13:5,18
106:18	38:16 50:1	32:3 33:8	114:19	concede
118:17	50:9,10,11	33:9 34:15	119:2,3,18	116:17
136:13	125:10	34:16	120:2,3,7	124:5
comes 42:4	127:20	35:20 36:3	120:13	conceded
54:19	128:6,8	37:4,14	122:18	40:7
127:8	community	38:2 43:7	123:1,4,7	concedes
coming 79:1	42:21 50:2	45:22 46:5	125:11	72:15
102:22	127:5,11	46:6,7,9	126:22	conceding

116:9	confusing	121:1	20:14 76:5	88:19
conceivable	89:16	consider	context 11:2	89:20 91:1
42:12	108:2	143:9	102:3,13	91:7 96:6
concentr...	confusion	consider...	102:16	101:4
57:11	114:9	100:12	115:22	103:5
concern 91:4	Congress	133:2	117:6,16	104:22
concerned	50:7 51:6	considered	118:8	105:5,9
139:3	connect	80:8	continually	107:2,14
conclude	82:16	111:13	35:8	107:20
24:11	consent 8:17	considering	continue	108:4
145:19	8:22 9:5	66:4	36:17	110:17
concluded	9:12 10:1	consistent	72:17	111:16
24:16	11:3,12	34:2 40:8	142:21	115:16
114:17	12:2,5,9	40:14,22	144:11	118:14
122:16	16:5,9,13	42:17	contrary	119:4,10
132:18	16:17,22	85:18	127:1	121:15
conclusion	17:4,7,13	106:4	contribute	122:17,19
83:15 87:7	17:14,19	consiste...	29:7	125:1,14
105:14	18:4,19,21	22:6 24:19	control 6:14	125:15
132:13	19:1,8	consolid...	7:4,13	126:14,15
conclusions	46:21	5:17	8:15 18:11	128:22
13:18	48:20	constitute	19:18	130:2,18
concurs 54:6	49:12,19	45:6 130:1	20:22 21:1	131:10,13
99:16	55:8 56:22	Constitu...	27:9,11	132:12,14
condition	58:22 59:1	1:14	28:2,3,17	132:18
20:5,12,14	59:7,12,22	construct	29:17,19	133:19
20:17,19	60:7,9	47:21	30:2,14	134:2,15
24:12,17	62:19,22	contain	32:13	134:17
35:20 36:4	63:8,9,16	71:16	34:10,11	137:14,21
42:2 48:14	85:8 88:22	93:21	34:13,14	140:10
100:2,11	89:15	130:12	35:12,21	142:22
100:11,16	90:15,21	132:11	35:22 36:8	143:19
100:17,21	98:6,22	contained	37:10	144:2,5,9
conditions	100:7	47:6 71:21	38:19	144:12
24:20	101:13	84:18	41:15,21	controls
35:15,16	102:7	contains	43:2,5,17	19:17
35:18 37:6	108:19	13:5	45:19 46:5	28:14,14
45:1 72:16	109:7,10	119:22	46:6,9,16	28:21
144:6,7	119:21	contemplate	47:19 48:7	30:12 31:4
confers 14:5	120:6,19	78:9 87:18	49:17 50:5	31:13
confident	122:6,8	120:16	51:1 61:16	36:14
93:19	126:12,12	contempl...	69:11,17	48:11
confirmed	126:18	69:17	70:5,11,18	50:20
117:15	137:7,21	contend	71:1 72:14	69:11 82:6
conflict	138:4,8,10	75:22	73:5 76:21	105:5
41:2 82:7	138:17	contending	78:7,18	106:14,15
conform	140:4,8,14	35:5	80:4,10	106:22
77:14	142:13	contentious	82:14,18	107:9,12
confused	consequence	20:10	83:20	107:19
120:15	74:18	contested	87:13	110:18

112:15,16	covering	127:20	136:16	127:14
134:6	124:20	128:6	137:2	decree 8:17
conversa...	covers 69:14	130:11	139:15	8:22 9:5
55:15	79:20	135:9	140:21	9:12 10:1
correct 8:4	119:21	CSOs 61:16	deadlines	11:4,13,17
34:1 45:10	create 114:9	72:12	17:18 61:5	11:21 12:2
76:14	Creek 72:20	112:11	61:7 62:3	12:5,10
80:11,12	criteria	114:16	84:13 86:5	16:5,10,13
126:9	41:17	current	86:21	16:17,22
cost 48:9	critical	26:17,19	deal 127:14	17:4,7,13
could've	128:6	48:3	dealing	17:14,19
12:4 68:15	cropped	103:16	16:15 18:3	18:4,20,21
68:20	123:11	currently	129:12	19:1,8
counsel 5:9	CSO 12:6	33:13	deals 60:8	46:21
142:11	19:14	99:22	dealt 61:2	48:20
country	26:22 27:2	121:21	Deane 2:10	49:12,19
50:14	27:3,11,15	130:5	83:4	55:8 56:22
116:21	28:3 29:6	cusp 52:14	decades 65:9	58:22 59:1
141:15,16	29:14	cut 56:2	142:12	59:7,12,22
couple 4:14	30:17	58:17	December	60:10
22:5 51:19	36:11	cuts 55:19	55:1 84:9	62:19,22
52:21	38:16 39:6	59:5	99:5,8	63:8,9,16
124:19	39:12,16	C(2) (a)	136:21	85:8 89:1
135:14	40:2,9	107:17	140:2	89:15
143:4	42:17,21		decide 21:8	90:15,21
course 5:2	43:13 44:1	D	22:12	91:21 98:6
6:4 11:18	51:1 71:18	D3 :1	23:10	99:1 100:7
13:2 18:12	76:16 77:8	daily 15:18	142:12	108:20
24:18 31:8	77:9,14,19	15:19	decided 13:3	109:7,11
38:6 47:20	77:20 78:8	data 126:7	68:5 95:6	110:3
66:10	78:15 81:8	date 16:18	107:6	119:21
67:22	81:15 82:6	58:19	decides	120:7,20
court 46:3	82:11,18	87:14 99:2	138:14	122:6,8
59:12,19	82:19	99:4	decision	126:12,12
59:20,21	84:11	130:18	13:3,4,14	126:18
61:2 68:2	85:19,21	dates 60:9	13:15	137:7,21
127:19	87:11	64:10,12	15:17	138:4,8,10
courts 24:18	88:17	84:19	19:12	138:18
cover 42:18	89:21	David 2:3	59:21	140:4,8,14
108:6	91:18	5:12	68:13	142:14
114:21	101:11,19	day 55:21,22	83:18,21	decrees 60:7
141:17	106:22	133:15	83:22 84:4	101:14
covered 70:8	107:1,8,12	DCMR 71:22	89:4 90:13	102:8
73:19 74:1	107:14,19	DCMS4 123:13	94:22	deduce
107:3	110:15	DC0021199	117:3,17	119:11
111:15	112:16,18	1:6 3:6	133:11	deemed 31:17
112:2,19	120:16	DDOE 54:6	137:10	32:18
112:22	124:10	99:15	decisions	defendant
121:7	125:5,7,22	deadline	14:17	63:11
123:18	127:4,15	60:1,2	83:16,16	defense

115:3,4,8	110:14	different	32:18 37:8	118:3
defer 118:21	derived 6:15	3:14,15	40:1,8	discussions
delete 19:12	36:8 43:17	4:14 8:13	42:1,19	91:13
21:8,19,22	describe	20:11 26:4	43:15	dispute 32:5
22:12 26:6	33:15	26:13 42:9	45:15,17	dissolve
65:19	described	42:16,16	46:8 47:12	18:20
deleted 20:7	107:1,14	43:18 71:2	48:6 49:10	distinct
21:15	design 47:21	95:14	53:14	23:21
23:22 24:2	64:7	100:12,19	61:21 72:7	District 1:4
67:15,16	designed	104:5	81:4,6	3:5 5:13
142:5,16	28:4 29:20	123:11	103:4	6:21 7:11
deleting	30:13	135:17	115:18	7:21 8:19
66:5 67:7	42:20 43:3	differently	126:11,19	9:1,20
113:3	73:6	104:5	131:8	10:17
deletion	detail 6:2	difficult	132:22	11:15
40:1,7,12	27:1	23:18	134:1	12:14 30:4
40:13	detailed	26:15	135:8,9	30:10 31:7
64:21 65:2	16:16	63:18 89:6	136:7	34:6,21
69:4	17:19,20	89:16	dischargers	50:3,4
131:22	determin...	135:7	74:11 75:3	57:14
142:6	30:10	difficulty	discharges	59:19 71:3
delta 44:11	45:21	71:10	29:5 44:7	71:16 72:2
78:11	123:16	91:16	44:11 45:8	93:13,13
demonstrate	125:15	113:21	72:11	98:1,4
31:3,16	130:16	diligently	103:22	100:18
53:17	132:17	79:8	104:16	105:7,10
105:4	133:5,7	122:10	110:18	108:8
demonstr...	determine	142:10	134:8	110:12,20
30:19 31:1	76:22	direct 67:5	144:10	115:19
31:6,9	95:22	67:8 74:4	discount	119:18
32:14 36:6	126:6	75:2	133:1	132:11
105:1,3,11	determining	143:10	discretion	143:1,3
106:2,5	14:8 22:16	directed	56:12,20	144:15
125:12,16	22:20	67:9,11	57:20	District's
125:19	develop	direction	60:17,21	6:16 84:2
126:1,3,8	34:10	129:8	60:22	84:5 97:6
127:2	developed	directly	83:22 85:6	97:9,14
128:9,10	35:22 57:5	74:6 79:11	90:16	99:14
128:19	127:3	124:18	92:15,22	105:12
130:12	developing	director	93:2,3,12	114:20
denied 19:21	27:10	53:11	118:9	144:16
Department	35:20	110:14	120:17,22	divine 65:22
19:2	devices	directs	discreti...	Docket 3:6
110:12	138:17	96:11	14:6 15:1	document
depending	differ 65:12	disagree	15:7 56:9	55:6,7
116:12	difference	81:11,13	57:20	87:20 91:8
134:18	42:10 47:3	109:9	discussion	99:19
deposits	108:2	discharge	13:6 81:7	102:1
72:4	differences	19:14 29:3	86:6 94:11	136:20
deputy	26:16	29:3,6	101:3	doing 34:22

50:22,22	E	7:18 10:14	55:6,7	139:18
97:4 122:7	E1:18 2:3	36:16	59:1 87:20	entirety
133:9	3:1,1	41:10,12	91:8,11	26:7 125:8
DoJ 59:8	110:13	43:11,14	98:21	132:4
dollar 35:11	earlier	44:22 47:7	111:3	enumerates
dollars	10:22 89:9	53:12	120:20	105:21
127:22	105:16	105:18	140:7	Environm...
Doreen	123:12	108:17	enforced	1:1,1,13
110:13	142:19	114:15	63:12	2:9 3:2,3
dots 82:17	Earth 4:4,6	122:13,21	74:10	110:10,11
double 79:15	19:10,19	124:11	enforcement	EPA 1:13 4:9
80:16	20:3,15,18	129:15	19:3,7	7:6 12:3,8
downside	21:2 22:9	either 25:14	38:21	12:19 13:7
114:7	23:19	28:5 30:20	45:16 46:2	13:17,20
draft 66:19	24:13 35:4	75:20,21	46:14	14:5,6
drawn 140:15	39:21	76:6 84:2	69:13,14	15:1 19:2
drilling	64:17,20	100:7	69:19	21:7 24:16
64:11	65:15 67:2	120:18	73:19 74:3	24:19 26:5
drive 58:8	109:5	121:7	78:15 79:7	30:3,4,10
131:13	111:22	129:22	79:9,11,13	31:3,8
dry 134:8	116:6	133:19	79:19	39:6 42:11
dump 55:21	129:16	134:1	80:18 86:2	45:11,21
duplicative	Earth's	139:5	87:16 88:3	49:8 52:10
113:6,16	21:13	element 28:3	88:5,15,22	53:3 54:2
124:22	25:16	29:15	93:2 102:1	54:6,6,13
125:2	Earth/Si...	elements	103:4	55:3 58:21
127:9	2:7	43:4	119:5	60:17,20
duty 7:2	East 1:14	eliminated	122:4	60:21 61:4
104:10	Ed 3:9	73:1	133:20	61:11 62:9
106:17	EDWARD 1:18	else's 22:18	137:12	62:22
duty-to-...	effect 10:17	enable 96:21	142:8,15	63:12,21
117:1	33:11	enact 139:9	enforcing	65:19 66:2
D.C 1:2,8,15	49:11 67:6	encompassed	74:13	66:8,18,22
2:2 10:12	69:4,8	111:13	79:18	67:12
12:15,20	76:21	encourage	enhancing	68:16 69:2
15:17,18	89:14	144:13	32:2	79:7,19
16:4 27:15	131:19	endorsed	ensure 74:8	83:2 88:4
52:10 53:1	144:19	13:17 51:6	106:21	90:12
53:5,10,22	effective	endorsing	107:12	92:14 93:4
56:7 58:17	87:14	98:5	123:1,6,7	93:20 94:5
61:6,11,15	103:20	enforce	144:3,5	94:10,13
63:20 92:1	123:2	45:12,13	enter 46:3	95:2,5,6
92:8,12	effectively	60:11,11	49:12	96:2 98:1
95:9 100:1	10:15	62:17 63:2	58:21	99:16,16
104:2	14:17 40:7	63:16	entered	99:18
136:3,19	107:18	73:14 74:5	18:22	100:22
139:4,10	effects	113:14	138:10	105:9
139:20	65:11	122:7	entire 66:11	113:18
140:3,15	effluent 6:9	142:13	entirely	116:19
142:20	6:18 7:3,5	enforceable	54:5 67:7	117:3

120:21	34:4 38:2	45:10	115:10,12	104:3
122:3,15	38:12	46:17	115:13	123:13
122:15	39:12 41:1	47:14 48:5	116:4	131:22
123:6,15	43:4 47:7	49:5 52:22	excess 19:15	explained
124:20	48:21	54:3 61:1	29:8 104:1	105:2
125:14	76:15 80:2	76:13 81:1	exclusions	explaining
127:3,13	118:10	81:14 89:9	46:20	128:22
130:14	125:13	105:2	exclusive	explicit
131:20	126:14	124:18	81:19	82:11
132:7,9	129:20	132:2	exclusively	109:18
135:17	130:1	133:21	25:6 115:5	explicitly
136:4,6,19	131:11	135:13	excused	72:9
137:5	132:20	141:13	109:6,6	exposed 19:6
138:4	133:1	event 134:10	exercise	46:18 49:1
139:3,21	essentially	events 35:8	85:5	79:4
140:9,17	50:6 67:4	72:18 73:4	120:22	exposes 19:5
141:2,9,22	establish	eventually	exhibit 99:6	exposure
142:8,12	54:7 99:16	45:4	110:4,8	79:5
143:13,18	established	everybody	111:11,12	express
144:16	8:14,21	22:18	111:12	18:22 37:2
145:3	29:16	145:13	122:15	125:22
EPA's 54:21	establis...	evidence	123:19	expressed
58:5 65:22	7:3,9	130:4	132:7	82:1 91:18
69:12,18	13:21 30:7	evolution	exhibits	128:13
73:19	establis...	114:12	110:3	expresses
78:15	13:7	evolve 85:11	132:5	85:21
82:11	evaded 69:1	exact 101:17	144:14	101:12
91:16	Evans 2:3	exactly 9:21	exist 33:20	expressing
93:17	5:11,12	12:7 21:9	68:22 82:8	117:2
132:6	7:10,16	57:3,6	existed	expressly
136:1	8:7,12	59:10	42:10 76:4	8:10
139:17	9:15 11:9	113:8	118:13	extended
143:12	12:22 15:8	114:10	existing	38:3 80:5
equally 42:1	15:12,15	121:18	56:22	extending
erroneous	15:22	example	73:19	61:10
19:21	16:11	15:16 26:3	82:13	extent 4:16
83:14	17:16 18:9	45:11 70:7	88:15	17:2,5,16
error 7:7	21:21	70:13	90:15	17:18,22
especially	22:22	142:17	exists 67:20	59:10
89:10	25:14	143:7	107:3	102:17
Esquire 2:3	26:21	145:6	expansive	117:8
2:5,8,10	27:19 28:1	exceed 44:12	20:20	extra 141:5
110:13	28:9 33:10	104:16	expected	extraord...
essence	33:19 34:1	exceeded	67:11	50:15,18
13:17,22	36:20	44:7 73:13	142:21	
14:1,5	37:17,21	exceedences	expendit...	F
28:14	38:5 39:10	75:4	34:7	face 9:19
30:21 31:2	39:18 41:5	exception	experience	72:15 78:2
31:12	42:15	39:13	93:17	82:4 91:22
32:10,12	44:17	100:16	explain	95:20

128:2	67:18 70:4	113:13	10:8 20:22	116:6
144:9	fair 13:13	finding	forceful	129:16
facility	19:21 20:4	83:14	84:17	frustrating
84:18	21:13,14	123:16	forever	55:16
136:13	22:16	143:14,22	142:15	frustration
fact 8:20	23:11 25:2	144:2,4	form 36:17	44:14
11:11 20:2	25:4,4	145:4	82:2 95:20	full 10:18
22:4,10	40:3	findings	113:22	11:15 21:6
23:20 31:3	fairly 70:12	133:2	formal 10:9	59:10
31:15 33:1	fairness	143:12	39:6	fully 7:21
41:10	51:5	144:16,17	forms 10:6	8:20
54:14	fall 79:10	finds 143:18	forth 6:2	103:20
57:21 60:9	fallacy	fine 52:1	23:17 27:1	119:4
61:7 62:6	66:10	fingers	30:14 34:9	functioning
63:5 66:4	familiar 5:1	48:12	71:20 76:7	30:13
78:17	94:1	first 3:19	87:3 108:5	135:10
83:14 84:9	far 62:13	6:11,13	129:15	fundamental
85:10,13	144:1	13:3 14:1	forward	38:1 44:17
86:7 87:4	farther 62:4	15:10	11:13	51:3,5
88:1 98:3	62:5	19:20 23:3	found 21:19	fundamen...
104:19	fashions	33:10	109:12	32:7,10
125:3	22:2	39:19 49:5	Foundation	68:10
126:7	fastest	53:4 55:2	2:4 4:1	103:16
130:8	84:19	63:6 65:2	51:21 52:5	125:5
131:14	feasible	77:2 83:21	59:3 61:14	128:12
136:12,22	28:18	92:11	four 3:13	129:5,6,9
138:9	federal	124:20	72:18	funding
140:1,2,5	12:18,21	135:15	frame 96:14	50:16
140:6	36:12	141:5	frankly	further
145:3	feel 62:13	143:13	26:13 87:8	82:21
factors	83:6 89:3	144:15	93:8 94:4	99:12
143:10	93:19	fit 4:20	104:8,13	124:13
facts 5:22	felt 9:1	26:18	121:19	145:12
13:9 24:22	11:4	44:14	133:22	future 19:4
52:1 57:19	fighting	five 3:21	free 4:19	19:6 65:9
60:18	138:20	4:4,7 5:15	50:1 72:3	
85:22	figure 56:1	51:15	72:11	G
88:11,18	58:13	64:18	Friend 109:4	G 3:1
90:12	96:12,13	139:11	Friends 2:7	gallons
101:21	filed 26:3,5	flow 135:3	4:6 19:10	143:2
134:18	88:4	flows 145:1	19:19 20:2	gap 49:4
137:9	final 20:1,7	focus 4:13	20:15,18	general 16:8
factual	24:9 54:18	110:16	21:2,12	16:17
63:17	66:10,14	focusing	22:9 23:18	17:21
fail 63:11	68:16 69:2	57:7 94:6	24:13	87:10
failed 26:2	69:8 70:2	FOE/Sierra	25:15 35:4	103:22
fails 25:16	122:12	4:18	39:21	109:22
43:8	137:18	follow 38:16	64:17,19	111:6
failure 57:8	143:16,17	38:17	65:15 67:2	112:9,11
59:15	find 97:17	following	111:22	112:14

113:3	117:4	ground 45:8	58:8	127:20
122:1	going 37:22	group 45:12	helpful 71:6	hurdle 59:22
133:18	38:13,15	73:14	71:13	63:18
generally	38:19 45:8	guarantee	110:7	hypothet...
15:9 65:17	47:8 48:14	138:9	hesitate	120:6
84:14	50:9,13,17	142:11	74:4	
136:12	50:19	guess 80:1	history 5:22	I
generic	52:12	111:1,7	6:6 20:8	idea 49:3
74:15,19	54:22 56:2	112:20	23:16	120:21
117:8	56:17 58:8	117:5	114:11	ideally
getting 50:1	58:13,16	120:14	hit 80:20	98:21
62:4 71:10	64:4,6,7	121:3	hoc 39:7	identical
90:15	73:4,8	guidance	hold 38:19	16:6
give 15:10	76:13 80:4	15:4	42:20	identified
58:14 66:3	91:3,17	gut 82:12	50:21	107:20
70:6 74:4	98:19,20	142:3	holding 13:1	108:14
given 40:3	103:9		13:22	112:21
60:1 67:13	119:16	H	94:18	135:2
97:22	120:1	half 55:20	holdings	identifies
99:10,21	121:19	56:2	14:16	35:14,16
121:21	122:3,6	hand 31:20	holds 15:9	identify 5:7
gives 61:7	129:1	79:16	24:5	29:20
92:14	131:14	124:9	honor 7:16	111:10
giving 58:18	135:22	134:12	8:8 9:15	112:1
92:6 94:10	136:22	handle 71:8	11:9 15:22	ignore 92:8
98:15	138:10,15	hands 79:17	16:11 18:9	96:22
141:4	140:3,13	happen 73:4	22:22	II 26:12,22
143:7	140:20	133:15	26:21 34:2	35:16
go 4:10 7:20	141:6	happened	37:18	36:13,21
9:22 10:1	Good 3:11	93:9 94:4	42:15	37:4,6,8
10:10,20	5:11 51:18	105:8	45:11	43:16
14:21	51:18	happily 82:8	46:18	49:14,16
16:15	64:15 83:3	happy 6:6	47:14 49:5	81:8,17
27:12	gotcha 143:7	hard 59:17	61:19	82:3 84:15
31:14	governing	112:20	65:20	105:15
32:14,21	53:5	harm 63:14	66:15	116:20
34:15	government	Health	67:19	117:4
35:15,16	8:20 11:15	110:11,13	77:21 93:8	129:13
39:3 42:6	30:4,11	hear 44:13	97:1	imagine
56:4 77:5	110:3	heard 121:10	123:20	23:18
77:12 96:2	grant 50:15	138:6	124:9	70:22
111:19	graphically	hearing 3:12	133:21	135:7
124:16	141:10	145:19,21	139:4	immediate
125:10	grappling	heart 32:4	Honorable	108:15
126:6,18	95:14	43:10	3:8	immediately
138:13	grates	held 15:18	Honors 83:4	33:12 67:7
goes 18:17	144:20	24:19 35:8	hope 79:21	83:6 87:13
20:9 48:3	great 18:12	43:6 128:5	huge 60:1	108:18
89:20	46:22 53:9	128:8	humans 72:5	impair 142:6
95:19	124:17	help 52:18	hundreds	impaired

52:9	91:21	incorporate	intended 8:1	isolation
implement	inadequate	126:2	9:22 43:19	84:21
27:15 31:4	130:20	incorpor...	82:19	issuance
34:13 46:4	include 7:2	36:1 38:7	114:21	100:5
70:4	7:7,14	40:10 51:7	127:7	122:22
106:13	31:10	74:9 76:17	intent 129:7	issue 6:13
107:18	36:13 73:8	incorrectly	intention	7:15 11:1
implemen...	83:19 85:2	96:21	66:3	15:6 46:18
20:21 21:1	87:5 98:19	indicate	interested	49:9 56:5
47:16,18	98:20	105:17	4:12 26:16	56:16 60:6
84:12	100:10	112:7	interface	61:3,18
122:16	105:18	116:2	12:16	95:2 102:4
126:13	120:17	indicated	interim	102:10,15
implemented	126:4	81:1 98:18	16:19	102:21
30:12	129:14	individual	17:17,20	103:9,13
45:22	131:15	10:6 23:14	18:1 54:16	108:9
80:11	132:6	74:10	110:14	117:7,11
106:22	included	inference	133:16	123:9,10
107:13	7:18 8:2	140:15	interplay	123:11
110:18	8:11,16,18	influence	53:2 77:9	127:8,15
119:5	9:7,18	66:13	interpret	127:16
126:16	14:15 37:6	68:13	10:12	128:6
134:16	53:20	information	96:15	131:4
142:22	84:14	115:14,15	interpre...	136:22
144:12	103:21	inherently	60:20 97:7	138:18
implemen...	111:5,8,11	44:2	97:9,15	139:2
31:13 84:3	111:15	initial 79:5	interpreted	141:7,11
importance	114:22	injunctive	93:11	141:13
127:16	117:1	46:2	96:18	issued 3:16
141:14	120:4	121:12	104:17	11:14 27:8
important	121:14	injury 72:5	interrupt	28:21
4:11 46:12	133:17	input 62:14	109:15	49:15
52:3 54:10	145:7	62:16	intervene	54:19 69:2
61:20 66:1	includes	insignif...	79:12	85:13,14
135:16	49:15	56:3	intervening	137:18
145:16	105:12	install 34:8	65:10	issuer 4:9
impose 7:1	including	48:13	invest	issues 4:15
34:12	14:4 48:18	installed	127:21	4:16,17
38:15	85:19	48:11	invested	5:4 6:7,12
41:16 61:4	98:15	125:21	128:1	23:10 24:7
imposed 61:6	106:14	instance	involve 6:19	24:8 25:1
imposing	inconsis...	13:10 17:1	67:1 90:22	25:2,19
127:10	9:13 11:4	22:6 23:7	involved	102:5
improvement	12:1 32:7	23:8 26:2	17:17,22	103:10
33:16	32:11 40:2	94:5	52:5	145:18
improvem...	40:20 44:3	127:18	102:19	issuing
29:21	78:21	instances	involves	59:22
78:12	125:5	16:12	90:19	116:20
121:14	128:12	78:10	irrelevant	items 124:19
inability	129:5,7,9	intend 32:17	86:7	iteration

114:2	71:2,8	3:8	102:10,17	largest
119:11	73:10,21	judicial	116:5	52:15,15
iterations	74:12,17	17:4 84:18	117:18,20	56:18
21:18	75:10	87:19	117:22,22	large-scale
26:14	76:11 78:8	88:19	122:7	28:19
104:6	80:1 81:1	91:20	140:3	late 130:18
113:22	83:1 84:8	120:19	knowledge	launch 83:6
IV 106:2	86:3,12,14	judicially	64:1	law 10:5
	86:16,18	58:22	knows 13:2	11:5,6
	87:2,17	jump 53:4	38:6 73:3	15:3,9
J	88:7,8,13	Justice 4:5		24:5 53:1
James 110:9	88:20	19:2	L	53:5,22
Jennifer 2:8	89:19 90:5		L1 :19	59:11,16
64:16	90:8 91:2	K	lack 65:14	61:11
job 22:18	91:3,15	Kathie 1:18	laid 75:17	83:15 92:5
60:13	92:18 93:4	3:8	language	95:4,5,7
JON 2:5	93:14,17	Keep 47:14	9:16 15:5	95:10 97:5
judge 3:11	94:9,17	keeping 27:7	15:12 20:1	139:10
7:10 8:3,9	95:9 96:8	49:22	21:15,19	lead 28:4
9:6 10:20	96:15,18	118:1	23:22 24:2	leading
10:21	97:8,13,18	136:16	32:9 36:17	132:13
12:15 15:3	97:22	kind 25:12	44:5 53:1	leak 112:5,6
15:11,14	98:13 99:2	36:18 53:4	53:21 65:2	134:9
15:20 16:2	99:21	55:6 64:10	65:20 67:7	142:17
16:3 17:10	100:22	73:12 75:7	67:15	143:3
18:5 21:16	102:2,12	75:9 79:14	68:21 69:5	leakage
22:13 25:5	103:7	86:7	73:11,15	70:13,21
26:8 27:12	104:3,13	107:15	75:18	leaves 19:6
27:22 28:8	106:7,10	115:9	78:17,20	left 138:16
33:5,14,20	107:4,22	117:3	80:19 81:2	legal 38:1
36:9 37:12	109:2,14	131:20	82:11	85:11
37:19,22	109:17	141:22	94:19 96:1	legally
39:3,11	110:6,21	kinds 70:1	101:6,8,10	19:22
41:4 42:5	111:1,18	70:19	101:17	legitima...
42:7,8	113:2,16	101:12	102:3	48:22
43:21 45:2	115:2,22	102:6	117:1,4	letter 54:3
46:11 47:2	116:1,18	117:8	119:14	54:4,13
47:10 48:2	116:19	knew 9:8	122:2	let's 45:16
48:18 51:9	117:19	11:15 21:4	123:3,9,14	120:5
51:17 53:7	118:5,6	know 5:8	124:6	liability
55:9,12	119:7,15	11:10 45:7	129:10,11	18:7 79:4
56:21 57:4	120:3,14	55:9 59:6	129:13,18	79:15
57:13	121:9	59:10 60:6	132:1	80:16,17
58:21 59:9	122:11	62:10 64:3	133:18	127:10
60:14	124:1,5,13	64:4,19	142:5,16	liable 35:8
61:12,13	131:17	73:7,8	languages	38:20
62:21	133:12	83:9 87:8	77:3	42:21 43:6
63:21	135:12	93:14 96:9	large 33:16	43:8 128:8
64:13	145:11	96:10	larger	life 139:11
67:13 69:3	Judges 1:19	100:13	127:13	light 117:12
70:6,10				

117:14	71:18,19	46:6,9,16	107:1,14	107:19
124:7	73:13	48:7 49:16	120:18	112:13
likewise	74:14	56:4 61:16	look 9:16	134:13
72:9 77:7	77:22	69:11,17	14:1,16	maintained
77:21	105:18	70:5,10,18	20:8 22:13	18:10 22:7
limit 8:11	108:17	71:1 72:14	22:14	80:21
8:14 17:1	122:13,21	73:5 76:21	23:13,15	107:1,13
54:8 55:19	123:6	78:6,18	24:7 35:13	maintaining
57:2,8,10	136:7	79:7 80:3	38:8 44:19	18:17
58:3 84:7	139:10	80:10	44:21	78:22
90:19	line 101:20	82:14	58:11	80:19
93:12	113:15	83:19	61:20	116:8
98:12	list 52:13	87:13	76:17,19	maintenance
99:18	52:18	88:18	101:19	28:15
100:1	listed 6:8	89:20 91:1	118:12,13	112:8,9,18
114:15	literally	91:7 96:6	119:9	major 84:17
116:2	127:21	97:1 103:5	125:7,8	87:12
137:13	129:19	104:22	129:11	141:21
138:21,21	litigation	105:5,9	132:3,4	making 30:18
140:21	138:19	107:20	144:14	121:1
143:15,16	litter 72:12	108:4	looked 12:22	132:17
limitation	little 26:14	110:17	76:5 84:9	133:4
6:9,18 7:5	58:15 71:9	111:16	84:10 85:3	manage 89:7
7:18 10:14	load 55:19	115:15	looking 18:5	mandate 7:22
19:15 29:9	56:2 57:10	118:14,15	25:6,13	10:16
36:18	loads 55:22	118:17	75:11,15	12:13
41:11,12	location	119:4,10	94:14 95:1	14:22
43:14	135:4	121:15	111:2	50:19
44:18,20	logical 24:9	122:16,19	119:8	mandates
53:13,16	25:9	124:22	121:4	14:14,20
64:22 66:6	long 6:14	125:13,15	141:16,17	mandatory
69:6,7,9	7:3,13	126:14,15	lose 108:12	9:14,17
69:22	8:14 18:11	128:21	108:14	10:3 15:7
70:16 77:6	19:18	130:2,18	109:19	57:16
82:2 104:1	20:21 21:1	131:9,12	138:4	92:19
118:12	24:19,21	132:12,14	loses 138:7	93:21
limitations	27:9 28:1	132:18	lost 142:4	96:19
7:3,9	28:17	133:19	lot 91:15	manual 136:2
36:16	29:17,19	134:2,15	lower 59:21	march 70:17
43:12	30:2,14	137:14,20	LTCP 69:12	marry 80:6
44:22 45:6	32:13 33:9	138:19	73:20 75:6	massive
47:7 71:17	34:10,11	140:9	84:16 86:4	29:18 34:7
74:4 76:18	34:13,14	142:21	90:3 98:22	48:9,11
76:20	34:22	143:18	110:15	matter 1:11
105:22	35:21,21	144:2,4,8	lulled 67:4	4:12 5:3
124:12	36:8 37:9	144:11		42:19
129:15	38:18,21	longer 53:17	M	47:12 79:5
limits 47:12	41:15,21	long-term	mainstream	88:2
57:11	43:2,5,17	90:21	126:7	118:16
63:10	45:19 46:4	101:4	maintain	maximizing

28:15	132:10	82:10	57:3, 6, 18	nature 27:16
mean 9:10	memorandum	minute 58:17	59:4 61:1	41:18
22:17	110:9, 16	minutes 3:17	61:17 63:4	necessarily
25:10, 16	132:7	3:20, 21	64:2, 14	90:11
26:12	mention 9:2	4:3, 4, 7, 9	135:14	necessary
36:22 42:9	11:8, 10	5:15 51:10	multimil...	19:15 29:9
48:21	36:2 37:7	51:16	35:11	104:1
58:11 59:6	mentioned	64:19	municipa...	need 9:2, 20
64:3 71:4	9:9 112:3	mischara...	50:14	16:5 17:14
78:19 86:9	merit 21:11	76:13	must've	62:17
89:21	136:7	misunder...	40:21	109:10
94:17	merits 26:9	85:9	82:18	132:3, 4
95:12, 13	67:16	modeling	mutually	135:19, 20
95:21 98:6	met 47:8	125:20	81:19	138:3
102:5	56:15	modifica...		needed 29:21
104:6	72:17 80:6	13:16 17:7	N	122:8
113:17, 20	83:12	98:22	N3:1	141:10
121:18	130:10	140:8	NACWA 127:17	143:8
meaningful	139:1	modifica...	name 5:12	needing
23:12	Metropol...	18:1	64:16 83:4	113:14
means 15:18	50:3	modified	narrative	needs 12:19
15:19 66:8	middle 36:11	10:17	27:17, 19	17:12 32:3
96:1 104:9	106:11	90:21 99:9	28:8, 9	60:3 62:14
140:7, 11	milestones	137:22	35:19 36:3	80:21 88:1
140:12	16:19	modify 10:7	36:14, 18	89:13 96:1
143:21	17:17, 20	17:14, 15	37:3, 7	negotiate
measures	18:1	moments	40:1, 8	49:12
129:1	million	141:5	41:19	negotiat...
mechanism	55:20	money 128:1	42:19	64:3
22:15, 20	mind 27:7	monitor	43:15	neither 48:2
84:17	47:15	31:14	45:15, 17	82:10
111:3	49:22	34:15	46:8 48:6	93:12
meet 29:9	55:10	monitoring	49:10	netting
56:6 58:19	59:14	31:11, 21	71:20 72:1	144:20
73:6	85:17	32:15, 22	73:10 82:2	never 21:22
100:14	minimized	33:1 126:5	82:13	24:16
105:6	72:22	126:21	106:16, 18	29:12 59:9
110:19	minimum	128:10	106:19, 20	65:19 66:8
123:5, 16	28:13, 21	morning 3:11	107:7, 8	93:20
138:20, 21	47:18	3:13	108:6	130:15
139:15	77:15 78:1	move 6:8	109:20	138:17
140:20	78:2 81:19	19:9 51:12	124:21	143:13
meeting 48:3	81:21 82:4	103:9	126:10, 19	145:5
59:14	98:8 100:6	122:7	131:8, 15	new 25:8
meets 58:3	105:20	124:18	142:18	41:10
116:4	106:14	moving 26:9	national	53:11
123:14	112:15	Mueller 2:5	127:16	55:18 57:4
members 67:3	129:16, 18	51:12, 15	141:13	66:19
memoranda	134:6, 17	51:18 53:9	nationwide	115:14, 15
132:8, 10	minimums	55:11, 14	102:5	115:20

143:15	65:3,3,14	12:12	110:18	ordering
nine 28:13	66:3 67:18	obligation	126:14	46:7,8
28:21	68:11,21	31:19	ones 58:15	original
47:18	69:2 141:6	32:15	64:12	29:10 44:5
106:14	141:11	34:12 37:4	one's 58:13	126:8
112:15	143:8	37:14	one-year	originally
134:6,17	notion 98:5	47:20 81:6	73:7	98:14
nitrogen	144:18	105:3	ongoing	ought 9:21
6:10,18	notwiths...	127:10	18:15 88:2	24:12
7:5,19	35:6,6	128:18	91:13	outcome
8:11 10:14	November 1:9	obligations	137:12	23:12 25:3
54:8 55:21	110:9	47:19	140:9	25:21
55:22 57:2	NPDES 1:4,6	114:10	operate	outfalls
57:8 58:9	3:7 5:18	134:17	107:19	134:22
63:1 64:8	number 56:16	obtained	112:13	135:1,5
89:22	58:7	135:22	134:13	outgrowth
90:10,14	134:16	obvious 37:2	operated	24:9 25:9
90:18	numbers 3:7	obviously	106:22	outset 27:4
91:10 96:7	71:15	17:5 18:3	107:13	27:8,10
98:12	numeric	78:9 118:1	operating	145:15
99:17	28:10	occasions	47:22	outside
137:13,17	41:14,15	20:19	operation	117:16
137:22	41:17	occur 19:5	19:17	overall
138:11	71:17,19	134:1	28:15	94:22
140:18	82:5 108:7	odds 17:4	112:8,9,17	129:7
non-comp...	109:20	odor 72:4	126:17	overflow
18:16 19:7	131:12	office 58:5	opinion	35:11
32:18 33:1	numerical	oftentimes	118:18	72:18
33:3 34:21	27:18,20	60:7	opportunity	overflowing
35:9 38:20	numerous	oh 111:19	10:9 19:22	143:2
45:14	82:17	okay 12:8	20:4,4	overflows
46:19	nutrient	16:2 27:22	21:14	30:22 73:1
49:14,22	136:14	51:17 53:9	22:17 23:3	144:18
50:21	NW 1:14	61:12	23:11	override
119:22		64:13 90:7	24:15 25:4	92:22
128:5,15	O	97:18	67:14,20	overrides
128:18	O 3:1	109:2	130:13	14:22
non-disc...	objected	116:18	133:7	O&M 112:14
7:1	29:12	118:5	opposed	
normal 135:9	125:4	omission	26:10 67:8	P
135:10	objection	37:2	oral 1:12	P 3:1
notable	57:7 61:18	once 30:6,11	3:4,17	package 8:16
15:16	121:22	31:4,12	order 3:16	page 53:10
note 39:21	objectio...	32:13	6:8 29:22	104:18
noted 61:17	72:3,4	34:13	84:18	140:6
notes 77:12	objective	35:21	88:19	pages 122:15
notice 10:8	136:17	45:21	113:9	papers 143:5
21:14	objectives	49:14	129:20	paragraph
23:11 25:2	138:22	65:19	136:15	54:6
40:4 65:1	obligated	104:21	141:2	parcel

132:21	pending	9:9,19	73:11,16	136:15
part 8:16	19:17	11:7,22	74:3,9,20	137:7,18
9:4 19:13	percent	12:3,6,11	75:2,3,8	138:5,8,16
25:7 33:16	30:22	12:13 14:9	75:14,15	139:7,12
55:14	percentage	14:14,15	75:16,18	139:16
100:3	50:11	14:21 16:7	75:19,20	141:1
107:16	perfectly	16:8,14,20	76:3,4,6,8	142:2
108:3	137:15	17:3,15,21	76:9,18	143:14,16
113:11,12	144:12	18:2,8,15	78:5,17,21	143:17,17
123:10	performance	18:16,18	79:1,6	145:8,8
132:21	6:15 7:4	19:8,13	80:13,22	permits 10:5
145:8	8:15 30:8	20:1,13,14	81:5 82:13	27:8 35:15
participate	30:9 33:8	24:17	83:20	35:17 37:9
79:13	33:11,14	25:12	84:15 85:3	77:13 81:3
particip...	36:7 37:10	26:12,17	85:7,12,14	81:9,16,17
21:3 23:4	41:16,22	26:18,19	87:14,19	84:14
particular	43:3,9,16	26:22 27:4	88:10 89:1	101:5
14:11,18	45:20	27:5 28:10	89:15 91:6	102:7
16:22 17:9	46:10 48:8	28:20 29:2	91:22 92:3	116:20,22
20:5,12	49:17 70:5	31:12	92:6,16	117:4
23:5,8	70:17 75:6	32:19,20	95:3,12,21	127:15
24:12	82:5 106:3	33:3,13	96:2,3,14	135:20
67:15	106:9	34:22 35:2	98:2,16,20	136:8,21
101:21	108:3	36:1,5,13	99:9,20	137:1
107:5	113:6	36:19 37:5	100:5,8,14	141:17,19
117:17	114:18	37:14 39:8	101:7	permitted
124:6	122:20	41:5,13	103:19,21	134:21
132:9	125:1	43:13,16	106:9	135:4
134:19	130:6	45:1,18	107:3,16	139:18
138:18	131:10,13	46:13,15	107:21	permittee
particul...	134:3	47:5,5,17	108:5	3:19 53:14
91:22	period 10:11	48:21	111:2	53:17 79:1
parties 5:6	20:21,22	49:11,15	112:10,11	87:12
23:4 25:1	33:7 38:4	49:16,20	113:17,19	106:1
59:14 62:1	47:9,11,15	52:8,20	113:22	107:18
101:1	47:17	53:14,20	114:12	113:9,11
138:16	48:15	54:1,15,17	115:17	121:1
partners...	53:18 61:9	54:19 55:1	117:10	permittee's
127:18	61:10	55:3,19	118:13	114:10
party 102:14	66:18,20	56:5,11,15	119:9	permitting
pass 144:19	67:1 80:5	56:16 57:1	120:4,11	12:18
passed 84:13	80:9	57:17 58:3	120:13,19	37:16
86:5,6,21	periods	60:5,19	121:22	67:21
patience	48:17	62:16,18	122:22	83:15 93:3
124:14	permissible	65:1,7,18	126:3	95:2
penalties	142:2	66:9,9,10	129:13,14	105:15
46:19 49:2	permit 1:6	66:14,19	134:6,11	117:17
121:12	4:9 5:18	67:5 68:17	134:22	136:1,3,11
penalty	6:1 7:2,8	69:2,8	135:2,6,11	perspective
46:17	8:2,17 9:8	70:1,2,16	135:21	96:20

persuaded 68:15	54:11	70:5,11,18	plant 5:19 6:1,5	pointsource 52:15
persuasi... 40:12	piece 26:10	71:1 72:14	56:18	policy 27:2
pertaining 7:15 107:8	pieces 26:18 145:1	73:6 76:21	plants 72:5	27:15 28:4
petition 19:9 25:16	pinpoint 123:21	78:7,18	Plan-der... 37:10	29:14
25:18 26:1	place 16:22	80:4,10	41:15,21	30:17,19
35:13 85:4	28:19 45:5	83:20	43:2 48:7	31:9 32:7
85:15	46:15	87:13	49:17	32:9,11,12
136:5	92:15	88:19	plausible 23:7	32:17 33:4
petitioned 136:6	109:8	89:21	play 42:4	34:3,3,4
Petitioner 112:21	placed 86:1 126:16	90:17 91:1	please 3:10 5:6,12	34:18 35:1
Petitioners 3:15 67:9	places 18:12 46:22	91:7 96:6	51:16	35:3,7,14
83:11	62:11 89:6	98:17	pleasure 51:20	35:14
108:13	89:7	103:5	plugging 57:1	36:11 38:5
109:4	135:17	104:22	Plus 59:19	38:9,22
111:9	placing 88:17	105:5,9	point 25:17 31:16 32:4	39:6,12,17
133:6	plain 15:5 15:10 77:3	107:2,14	32:16	39:19 40:3
petitions 39:22	119:14	108:5	35:12	40:9,21,22
phase 12:6	plainly 142:6	110:17	39:19	41:3 42:18
26:12,12	Plains 5:19 5:21,22	111:16	49:13 54:5	43:13 44:1
26:22,22	6:5 58:7	115:16	63:22	50:7,7
27:4,5,8	plan 6:15 7:4,13	118:14	71:12 98:9	51:2,4,8
28:10,20	8:15 18:11	119:4,10	106:10	76:16 77:8
35:15,16	19:18	121:15	109:18,22	77:9,14,19
35:18	20:22 21:1	122:17,19	110:2	77:20 78:9
36:13,20	27:9 28:4	125:14,16	111:20	78:15 81:8
36:21 37:4	28:17	126:14,15	113:18	81:15
37:6,8,15	29:15,17	127:3	114:4	82:12,18
43:13,16	29:20 30:2	128:22	123:14	82:19
49:11,14	30:14 32:1	130:2,10	127:13	84:12
49:16 65:8	32:13 33:9	130:18,19	128:14	85:20,21
81:2,8,16	34:11,11	131:5,10	133:14	87:3,11
81:17,21	34:13,14	131:13	134:21	88:17
82:3 84:15	35:21,22	132:12,14	139:19	91:18
105:15	36:8 38:19	132:19	141:6	101:11,19
116:20,22	43:5,18	133:20	pointed 54:4 61:2 65:20	106:6
117:4	44:5 45:19	134:2,15	66:16	106:6
129:13	45:21 46:5	137:15,21	77:21	117:3
picked 133:19	46:6,9,16	137:22	101:2	120:16
picking 129:17	61:16 62:6	140:10	105:16	124:10
picture 52:4	62:9 64:5	142:22	points 52:1 52:21	125:6,7,9
	69:11,18	143:19	135:15	125:22
		144:2,5,9		127:7,13
		144:12		128:4,12
		planning 28:2,3		128:13,16
		plans 82:15		129:2,8,10
		101:5		129:11
		107:20		130:11
		Plans-de... 125:1		142:1
				pollution 58:9

portions	84:19	75:14,14	25:12	75:8,12
64:8	practical	76:18	138:12	81:4,7
112:18	18:6 47:11	116:3,14	proceedings	103:22
posed 83:8	69:4 74:18	116:15	66:15 68:7	104:15
89:9	precedent	previously	process	109:22
position	142:1	115:17	23:13	111:6
18:10	preclude	pre-exis...	25:21	113:4
21:13	101:9	103:3,17	26:21 27:2	124:22
41:20	122:17	pre-July	27:9,10	126:11,20
61:14 66:8	143:19,22	87:9	28:2 30:7	129:4
88:12	precluded	primarily	34:9 37:16	131:8,15
99:14	68:8	115:12	38:10,17	132:22
103:15	130:17	122:1	38:17 59:5	133:18
104:20	131:1	primary	59:6 67:21	134:7
111:7	precludes	110:16	67:22	projects
113:14	122:22	principal	116:21	28:19
118:7	precluding	125:3	128:14	33:17
119:1	123:4	prior 20:12	processes	proper 85:5
129:21	preference	27:14 33:7	21:4	properly
130:9	85:22	36:19	produced	68:5
137:16	87:15	37:13	73:20	112:12
positions	88:16	64:22	program	134:13
21:4	91:19,20	69:21 75:1	27:11	proposal
possibility	92:8	75:19	29:15	24:17
21:6 23:21	101:12,21	114:22	31:11	98:17 99:3
66:5 73:2	prejudiced	143:15	32:16,22	99:5,10
possible	25:20	priority	35:12 58:5	108:12
25:3 28:18	67:17	94:10	58:6 64:9	propose
49:7 89:3	preposte...	probably	126:21	66:18
136:16	144:18	15:15	programming	98:15
possibly	present 18:2	16:14,18	38:10	proposed
23:6	41:18	55:17	programs	21:19,22
post-con...	presented	103:1	27:5 50:17	22:1 26:6
31:11,21	97:20	problem 41:7	prohibit	54:14,17
32:22	Presently	47:10 50:6	44:7 78:3	63:21 65:7
126:5,21	142:22	65:13	142:18	65:8,18,19
128:10	presiding	112:8	prohibited	66:9 67:5
potential	1:19 3:9	118:20	19:14 92:5	67:12
18:7 46:19	presumably	126:10	134:10	68:12
133:16	74:2	problematic	prohibition	90:18 98:1
potentially	presume	124:7	21:8 22:7	99:18
66:13	116:19	procedural	29:3,4,11	107:6
89:17	presumption	26:10	32:6,9,20	113:18
114:8	30:20	procedure	37:8 40:2	143:13,14
117:11	131:4	66:12	40:8 41:19	143:17
Potomac	pretty 59:11	procedures	42:2,19	145:7
55:22	121:2	66:15	43:15	proposing
72:19	124:10	proceed 3:19	45:15,18	22:15,19
pounds 55:21	previous	4:2,6 19:3	46:8 48:6	42:11
practicable	24:3 41:13	proceeding	49:10 75:2	56:21

90:20	26:6 33:6	120:1	QBEL 104:12	111:14
proposition	37:2, 13	prudent	QBELs 108:6	113:10
14:18	39:9 44:4	28:18	qualities	114:14, 20
prosecuted	44:15	public 10:10	105:21	115:19
142:10	57:13	10:18 59:5	quality 4:17	118:16
prosecuting	60:22 63:3	62:14	6:22 10:13	122:18
79:9	65:6, 16	66:13 67:4	13:11 14:3	123:1, 4, 7
122:10	66:2 68:18	68:3, 15	14:12, 19	124:11
prospect	71:5 74:15	89:17	19:16 27:7	125:11, 17
128:2	74:19 76:1	145:6	27:16 28:3	127:1, 6
protect 75:9	76:10	purports	28:6 29:8	128:20
protection	77:10	144:4	29:10 30:1	130:4, 7, 13
1:1, 1, 13	92:20 95:7	purpose	30:15 31:5	130:21
2:9 3:4	96:19	42:17	31:14, 22	131:6, 7
69:22 70:3	97:15	66:11	32:5, 8, 20	132:15, 20
80:21	103:16, 18	80:18	33:2 34:17	141:8, 20
141:19	103:19, 21	129:8	35:9, 19	142:7
protections	106:1, 17	131:16	36:3, 15	143:19
126:17	107:2, 5, 15	purposes	37:3 38:3	144:6
protracted	112:10, 11	14:7	42:21 43:7	quality-...
138:19	112:14, 15	pursuant	44:8, 12	28:11 29:1
proven 126:9	113:1	29:2	45:9, 14	29:14 36:5
provide	114:1, 15	pursuing	46:1 48:4	38:14 39:2
13:12 28:6	114:22	79:19	48:16	43:11, 14
30:15	115:20	pushed 62:4	53:12	77:22
35:19	116:7, 8, 10	put 9:11	56:14 58:2	105:18
45:22	116:13, 14	11:21 12:4	58:4 64:21	122:13, 20
66:16	116:16	12:12 14:8	66:5 69:16	129:14
67:18	121:21	16:6 28:19	69:21 70:2	134:5
69:22	125:22	47:16	70:14, 15	question
114:18, 19	126:4	57:15, 16	70:20 71:3	6:20 18:17
118:4	129:4, 12	60:18 85:6	71:16, 20	25:8 36:10
124:1	131:20	88:9 90:13	72:1, 13, 15	39:4 44:18
130:3, 6, 20	141:9	91:21 98:2	74:6, 8	48:3 51:5
132:14, 19	142:13	99:18, 19	75:4 77:20	51:5 54:1
provided	provisions	106:8	78:4 79:18	55:13
7:12 19:10	27:1 35:2	113:17	80:5, 15	60:17 63:5
29:13	36:5, 21	114:6	82:1 84:2	66:17 71:8
97:12	40:17 42:8	131:21	86:10, 20	72:6, 12
provides	44:10 45:3	140:13	86:22 88:6	79:22 88:9
30:18	45:5 63:12	putting	94:2, 7	89:9 90:2
32:12	71:6 76:3	11:20 12:1	100:15	91:4 95:1
39:13	77:18 80:7	12:3 34:20	103:12	108:10
77:11	80:10	48:21 85:7	104:2, 10	116:1
84:12	81:18 82:8	85:12 92:6	104:17	117:12
131:5, 6	93:22	96:3 101:6	105:6	118:8
provision	105:16	p.m 1:12	108:6, 7, 15	120:15
6:21 9:14	113:15	145:20	108:16	122:11, 12
17:13	115:6		109:13	124:21
22:12 25:6	117:9		110:11, 20	142:4
		Q		

questions	139:20	125:3	regard 81:8	47:2 48:2
4:13 6:5	142:19	rebuttal	region 7:1	48:18
51:11	143:5	3:22 4:4,8	12:8,12	60:14
82:21 83:7	reading	5:9,16	21:18	61:12 84:8
103:8	13:13	51:14	22:11	86:3,14,18
124:13,15	15:10 16:3	64:19	52:11,16	87:2 92:18
137:5	84:21 87:3	135:15	58:16	93:14,17
141:8	97:4	rebuttals	60:10 83:5	94:9,17
quite 6:2	131:11	124:16	83:9 104:5	96:15,18
quoted 124:6	reads 59:8	recalling	117:18	97:8,13,18
	87:11	101:16	119:1	98:13 99:2
	real 17:11	receive 27:4	Region's	115:22
R	59:17	received	19:12,20	116:18
R3:1	reality	55:2	99:7	Reich's 88:8
rainfall	18:14	recognize	122:14	reinforces
48:17	25:17	54:11	123:3	49:3
raise 68:1,6	33:21 48:8	recognizes	Register	relate 94:9
raised 11:1	48:12	50:8	36:12	related 5:22
25:8 52:22	111:21	recognizing	regulation	79:11 81:3
54:2 66:17	realized	28:16	6:22 7:22	115:14
89:8 109:4	136:20	record 5:7	9:17,19	123:11
raising 68:8	really 18:17	54:21	10:3,16	relates
range 111:19	55:15	83:17	12:14,16	81:15,17
rare 63:17	64:11	105:12	12:18,21	112:17
ratepayers	74:17	123:15,20	13:11 14:3	relation...
50:4,4	84:22	131:18,21	14:12,20	13:6,20
rational	85:17	145:8	15:5 25:11	26:11
67:10	87:22	records	84:3 95:19	relative
83:16 89:4	102:20	132:5	97:2,7	8:11
137:10	111:9	refer 132:3	regulations	relatively
140:20	114:5,6	reference	14:7 15:2	50:10
rationale	117:15	37:9	16:4 52:2	relaxed
51:3 90:9	127:8	106:12	57:14 92:1	47:13
113:3	133:9	references	92:9,12,14	release
137:20	137:19	62:12	93:6,9,18	134:20
raw 72:7	138:2	referring	93:20 94:6	135:3
144:10	reason 11:1	81:14	94:8,10,11	relevance
Ray 110:14	48:22 52:4	86:12 90:3	104:11	132:9
RCRA 63:8,15	61:10	reflected	139:17	relevant
reached	66:21 69:1	30:9 71:4	regulatory	5:21 71:18
13:19 87:7	79:6 138:6	71:5	67:21	129:13
read 5:1	139:14	reflecting	Reich 1:18	143:10
36:10,20	143:8	84:15	3:9 8:9	relief 46:3
40:19 41:1	reasonable	reflection	9:6 10:21	121:12
75:20 76:8	58:1 61:9	116:11	15:3,11,14	relying
76:16 77:8	64:12	reflects	15:20 16:2	74:15
92:13,17	reasons	114:12	27:12,22	145:3
93:1 98:4	18:12 65:1	refused 7:7	28:8 33:5	remain
104:4	69:1	reg 12:20	39:3,11	110:19
111:11	120:12	61:15	41:4 42:7	remainder
116:12,13				

82:22	65:8 77:4	5:8 51:13	revolved	5:20
remains	77:15 78:3	respect 7:12	13:10	satisfac...
46:18	78:22 81:5	65:7,10	re-issuance	59:2
remanded	81:22 82:3	69:10 77:7	54:20	saw 101:6
24:13 76:7	82:13	83:18 90:4	ride 50:1	saying 39:12
remediat...	107:7,8,11	91:14	right 15:11	44:1 45:2
78:16	108:16	103:14	15:14 19:2	54:21
remedy 142:7	115:17	124:20	21:21	60:15,16
remember	131:9,11	125:9	33:19	76:15 80:2
135:16	139:5,12	127:14	37:17 48:9	83:10
removal	requirem...	137:12,16	52:13 58:7	84:22
30:22	9:7 16:19	138:11	68:11	88:21 90:8
removing	27:6,7	142:4	73:21	92:18
131:19	28:12,13	143:12	80:15	93:19
reopen 66:19	36:15	respectf...	86:18	107:4
repeat 6:3	38:15 39:1	130:9	114:14	says 9:17
replace	39:2 56:6	respond 59:8	119:21	31:12,21
82:14	65:4 68:19	responding	121:16	34:4 35:7
replaced	68:22 78:4	48:20	141:18	36:4 53:11
41:12 78:6	79:6 80:14	response	rights 19:1	53:19 54:5
reporting	81:20	22:10 85:3	rigorous	55:3 56:8
16:19	84:15 86:4	85:14 99:7	41:16	82:20
represent	106:4,13	99:7 116:1	Rika 110:14	84:11 92:1
5:13 51:21	106:16,18	122:14	rivers 143:2	100:14
117:10	106:20,21	132:6	144:10	101:17,20
represen...	123:5	136:10	roadmap	106:3,20
4:5 83:5	130:11	responsi...	114:4	107:17
request	134:4,5,7	132:17	Rock 72:19	126:1
13:16	136:15	133:4	room 16:7	128:19
requested	142:3	responsive	61:8	129:13
11:19	requires	24:21	round 24:2	136:11,12
require 17:6	53:11,22	result 21:7	rounds 24:4	140:6
45:1 72:2	56:13	24:9 49:6	rule 10:7,7	143:18
95:20	108:20	resulting	10:18	scenario
112:4	112:12	130:5	15:12	63:17
116:13	123:6	results	rules 52:1	121:10
136:6,13	139:8	126:2	S	scenarios
138:15	144:22	retain 32:8	s 3:1 10:12	75:21 76:9
139:13,15	requiring	32:19	139:4,10	121:8
required	78:1 82:4	36:17	139:20	schedule
11:6 30:19	105:20	131:8	140:15	4:15 6:12
37:15	126:4	review 10:19	sadly 60:7	6:14,17,21
38:18 52:7	129:15	105:12,13	safe 13:13	7:13,15,17
60:18	reservation	145:9	safely 9:1	7:20 8:2,6
65:21 66:2	18:22	reviewed	sanction	8:18,21
70:17 81:2	reserve 3:21	105:10	48:19	9:3,18,21
requirement	4:3,7 5:15	reviewing	sanctions	10:1 11:3
11:5 28:22	19:2 64:18	59:12 94:6	49:21	11:17,20
29:1 31:1	82:22	revised	sanitary	11:21 12:2
39:14,15	reserving	128:21		12:4,9,12

13:12,21	138:3,15	118:2	140:17,21	22:9 23:19
14:4,8,9	139:6,6,16	121:20	142:1	24:14
14:13,14	139:22	138:2	sets 44:2	25:15 35:5
14:21 16:5	140:17	seeing	seven 62:8	39:21
16:8,9,13	141:1	112:20	sewage 72:7	64:17,20
16:16,18	schedules	seemingly	72:11	65:15 67:3
17:2,5,19	6:13 7:2,8	104:4	144:10,18	109:19
17:21 18:8	12:17 13:8	seen 62:6,11	144:22	111:22
18:11,14	84:11,12	selected	145:1	119:17
29:16	101:4,13	19:17 82:6	sewer 1:5	129:17
46:13 47:5	102:7,22	106:21	2:2 3:6,18	133:13
47:6,16	135:19	107:12	5:14,20	sift 65:21
48:19	136:9,13	110:17	6:16 35:11	signed 52:11
49:21 52:7	137:1	111:16	38:10	62:1 136:4
52:20	scheduling	selective	72:22	136:20
53:19,22	49:16	105:4	78:13	signific...
54:7,16,17	scheme 44:2	senior	141:14	8:9 138:2
54:18 55:1	125:8	110:14	sewers 77:13	significant
55:5 56:6	scope 129:7	sense 39:4	shed 117:12	56:3 121:2
56:11,17	scour 22:18	44:4 90:13	117:14	136:7
57:4,9,16	screen 57:15	97:5	sheet 54:14	similarly
58:15 59:2	seated 3:10	137:11	84:10	4:7
60:4,19	second 4:2	sentence	85:10,13	simple 70:12
61:15	6:17 19:12	19:13,14	86:7 87:4	simply 56:22
62:15 63:1	99:10	20:6 53:19	98:3 140:3	66:22 70:4
63:22 64:6	108:11	104:6,9	140:6	70:16
83:19	109:15	108:11	shield	77:12
84:20 85:2	secondly	111:4	120:11	79:19
85:7,22	18:19 65:5	separate	126:17	113:19
87:5,15	79:7	5:20 30:18	shorthand	126:12
88:10,18	secret 118:1	84:16	104:15	142:3,12
89:11,22	section	98:21	117:2	145:1
90:3,14	18:19 38:8	99:19	should've	sites 41:14
91:9,11	40:10,14	102:1	20:6	situation
92:2,16,20	40:17 41:2	107:15	130:21	73:12 80:3
93:22	71:15 72:9	serve 5:21	show 34:16	143:7
94:13 95:8	77:12	serves	47:7 61:9	situations
95:11,17	81:14,15	131:16	63:13	78:13
95:21 96:1	81:16	session 3:4	83:13	103:2
96:3,14	106:4	set 6:1 8:13	128:11,20	135:18
98:2,15,19	107:17	27:1 30:13	139:14	six 62:8
99:17	116:5	34:9 38:9	showed 33:1	skimmers
100:3,7	sections	38:13 62:3	shown 128:15	144:21
101:22	71:22	63:10	shows 114:4	slide 58:19
103:6,8	see 4:20	81:19 87:3	126:21	60:10
118:9,18	22:19 26:1	108:5	141:10	smacks
120:4,13	51:19 53:7	118:9	Sierra 4:5	104:10
120:18,18	64:11	125:9	19:11,19	small 50:10
126:13	105:10	135:21	20:3,16	50:13
135:19	111:12	139:22	21:3,12	snap 48:12

sole 115:8	9:21 95:11	71:3,16,21	Starkist	121:2
someone's	140:1	72:2,16	94:11	statute
22:18	speculating	74:6,9	start 78:19	15:13 52:2
soon 136:15	96:10	75:4,6	83:10	53:10
sorry 68:17	spending	77:20 80:6	started	77:11
71:22	50:5	80:15 82:1	91:17	statutory
86:15 91:2	spill 73:12	82:5 86:10	Star-Kist	75:12
109:1	134:9	86:20 87:1	13:1 14:16	stays 73:11
111:19	squares	87:9 88:6	61:3 84:4	Stein 1:18
sort 37:22	101:11,15	94:3,7	94:18,22	3:9,11
71:10,11	stand 14:17	100:15	95:13	7:10 8:3
83:13 91:4	standard	103:13	state 14:3	10:20
117:1	4:17 13:11	104:2,11	31:3 60:11	12:15 16:3
121:6	14:3,12	104:17	61:5 92:19	17:10
so-called	46:6 49:18	105:6	94:10 95:3	22:13 25:5
28:13	52:17	106:3,9	95:5,7	26:8 36:9
145:4	53:12 58:4	108:4,7,7	125:14	37:12,19
spans 89:11	72:13 84:3	109:13,20	127:4	42:5,8
103:6	140:7	110:20	stated 88:16	51:9,17
speak 50:16	standards	111:14	100:18	53:7 55:9
74:22	6:15,22	113:7,10	104:5	55:12
76:11	7:4 8:15	114:18,20	statement	56:21 57:4
81:10,12	14:20	115:20	10:22	57:13
special 38:9	19:16	118:16	81:11 95:4	58:21
specific	27:16,17	122:18,20	97:14	62:21
15:21 16:9	27:18,18	123:2,5,8	104:14	63:21
22:11	28:7 29:8	125:2,12	137:4,8	64:13
41:21	29:10 30:1	125:18	139:3,21	67:13 71:2
42:17 44:6	30:8,9,16	127:1,6	140:2,5,16	73:10,21
44:9 45:5	31:5,18	128:11,20	states 1:1	74:12,17
69:10,10	32:1,5,8	130:4,6,7	3:3 13:7	81:1 83:1
71:7 81:6	32:20 33:2	130:12,21	13:20 49:8	86:12,16
94:18	33:8,11,15	131:6,7,10	49:8 50:12	91:2,15
104:11	34:17	131:14	52:10 58:6	93:4 95:9
113:6,7	35:10,19	132:15,20	77:12	96:8 97:22
119:22	36:3,7	134:3	93:19,21	99:21
125:1	37:3,10	135:21	94:14 99:8	100:22
specific...	38:3 41:16	141:8,20	99:15	102:2,12
25:11 26:6	41:22	142:18	122:15	103:7
37:15 67:6	42:22 43:3	143:20	123:2	106:10
110:4	43:7,9,17	144:6	136:5	107:4,22
112:17	44:8,12	standard...	139:8,9	109:2
115:1	45:9,14,20	64:22 78:4	state's	113:16
132:5	46:1,10	standard...	13:11 94:2	115:2
135:1	48:4,8,16	105:22	stating	116:19
specifics	56:14 58:2	108:17	118:11	117:19
118:14	66:6 69:16	114:15	status 18:13	118:5
specified	69:21 70:5	124:11	18:18 47:1	122:11
10:2 12:20	70:14,15	standpoint	119:18	124:1,5,13
specify 7:19	70:18,20	18:6 121:5	120:8	131:17

135:12	59:7 67:20	82:15	135:1,10	tempered
145:11	125:13	139:8	143:4	56:12
Stein's	128:21	suit 63:3	systems 5:21	57:21
116:1	130:9,16	121:6	34:8 38:11	term 6:14
step 27:13	submits 7:6	sum 135:6	50:12,19	7:4,13
steps 108:21	submitted	summarize	51:7	8:14 18:11
109:11	24:1,3,10	27:2	141:14,16	19:18
storm 73:7	30:3 54:14	superseded	141:18	20:21 21:1
stormwater	62:7 64:5	10:15	144:20	27:9 28:1
73:4	85:15	supersedes		28:17
story 142:18	127:18	14:22	T	29:17,19
strict 139:4	subsequent	suppleme...	table 24:8	30:2,14
139:17	72:21	118:4	25:1 65:17	32:13 33:9
strikes	98:17	supported	65:18	34:10,11
25:10 98:7	subset 50:13	83:17	take 6:3	34:13,14
stringent	substance	suppose 84:4	9:19 33:11	35:21,22
26:20	135:6	89:2	45:11 49:8	36:8 37:9
41:11,22	substances	supposed	49:8 82:10	38:18
42:1,3,12	72:3	50:22 98:4	93:1 107:6	41:15,21
42:13	substantial	105:17	108:20	43:2,5,17
44:19,21	25:8 47:8	129:3	109:11	45:19 46:4
69:7 77:6	66:17	sure 59:13	113:20	46:6,9,16
93:11 95:3	substantive	60:14	122:3	48:7 49:17
103:17	74:14 94:7	71:14 76:1	129:1,19	61:16
115:6,21	successive	83:8 86:11	133:2	69:11,17
116:2	22:3	87:6 104:9	144:14	70:5,10,18
119:12	sudden 114:2	109:16	taken 20:17	71:1 72:14
132:1	suddenly	116:12	84:1	73:5 76:21
139:10,11	114:2	121:17,18	takes 80:9	78:6,18
143:15	sued 109:7	surely 22:17	talked 85:4	80:3,10
strong	121:11,21	surprised	101:6	82:14
101:12	127:5	94:3	talking	83:20
structure	128:2	sweeps 111:4	47:10 57:2	87:13
38:8	sufficient	swept 109:21	57:12	88:18
structured	19:22	system 6:16	61:22	89:20 91:1
34:4,18,19	suggest 9:10	28:16 29:6	86:20	91:7 96:6
51:4 74:7	49:2 62:12	29:6,22	98:11	103:5
struggled	82:12	30:8 32:2	talks 25:7	104:22
114:13	94:12,20	34:17	75:13	105:5,9
137:3	103:9	41:17 43:1	taste 72:4	107:20
struggling	122:9	43:12	technology	108:4
86:8	128:7	47:22	121:14	110:17
subject	suggested	48:15	technolo...	111:16
38:20	66:7 79:3	70:13	27:6 28:11	115:15
42:18	suggesting	112:7,10	28:12,22	118:14
80:16	37:12	112:13	36:14	119:4,10
121:11	91:18	125:21	38:14 39:1	121:15
subjected	suggests	126:16	106:13	122:17,19
145:5	62:7 63:7	134:13,14	112:16	124:22
submit 32:1	77:16,18	134:21	134:4	125:13,15

126:14, 15	12:22	131:3	TMDL 15:17	117:5
128:22	13:13, 22	132:2, 3, 6	116:14	turbidity
130:2, 18	14:15	133:8, 22	TN 84:7	71:19 72:5
131:10, 13	15:19	135:15	today 39:5	Turning 6:11
132:12, 14	16:11, 21	137:6	41:3 91:5	turns 55:3
132:18	17:1, 8	140:16, 19	142:11	two 6:12
133:19	25:14 35:7	145:18	token 37:7	14:16
134:2, 15	36:22	thinking	told 35:1	18:12 28:5
137:14, 21	39:20 41:6	85:10	tool 142:14	30:18
140:10	41:8 42:4	third 4:6	toolbox	40:19 65:1
142:21	44:13	Thompson	142:15	65:11
143:18	51:22 52:2	110:13	total 3:17	72:20
144:2, 4, 9	55:5, 7, 16	thought 9:11	6:10, 18	81:18 82:8
144:11	56:19	11:7 90:2	7:5, 18	111:17
terms 17:11	57:18 60:3	96:4	10:14 48:9	115:5
62:18 86:3	60:16, 20	thoughts	57:8, 10	129:21
89:17 93:9	60:21 61:2	65:22	64:8 96:6	132:8, 16
111:14	61:11, 19	three 3:14	137:13, 17	133:3
119:9, 10	71:6 83:12	53:15	137:22	142:12
119:12	85:16, 17	135:16	138:11	two-sent...
121:14	86:3 87:10	139:13	140:18	108:11
test 25:13	87:22	three-year	totality	type 69:14
25:15	88:12	61:8 139:5	61:20	79:21
thank 62:20	92:12, 17	thrust 94:22	touchstone	types 24:7
64:13, 14	92:21	tied 79:17	77:7	69:20
83:1	93:10 94:4	79:17	track 26:15	
116:18	94:19, 21	time 4:4, 19	translates	U
135:12, 13	95:4, 6, 13	5:9, 15 6:3	91:21	Uh-huh 41:4
141:3, 4	97:3, 4, 13	11:13 12:7	translation	42:7 98:13
145:12, 12	99:13	18:21 23:2	43:4	ultimately
theoreti...	100:9	29:16 33:7	trash 144:21	21:8 29:22
74:13	101:15	33:7, 21, 21	treated	30:3 31:7
thing 43:19	103:2	38:4 40:15	144:19	76:20
43:20	107:11	47:9 49:9	treatment	114:17
46:10	108:1, 8, 10	49:13 51:9	5:19	132:13
55:16 68:4	108:13	51:14 61:9	144:22	unbeliev...
132:21	109:9	63:10	truck 55:22	144:8
things 44:14	111:21	65:10, 10	true 13:9	unclear
60:8 72:8	115:11, 13	65:18 67:1	55:18 69:9	143:21
108:9	115:16	78:11, 12	90:1 121:3	underlying
109:3	116:16	80:5, 9	trumps 77:17	69:13
110:15	118:21	82:22	try 63:16	142:3
111:17	119:13	85:13, 14	71:7	understand
112:2	120:9	91:5 92:7	trying 10:21	3:15 10:22
129:22	121:6, 22	96:13 98:1	39:11	21:17 34:5
137:3	122:9	112:20	44:13	43:21, 22
142:19	123:12	127:2	59:18, 20	55:17
think 7:20	124:10	timeline	74:17	60:15, 15
8:10, 12, 22	130:10, 19	57:12	102:12, 16	74:18
9:15 10:4	130:22	times 22:2, 5	114:3	76:14 80:2

88:8,20	126:1	19:4 42:22	42:20 43:5	116:15
90:6 91:19	uses 14:6	69:15,16	43:8 45:1	water 1:5
92:4,7	-----	70:2,14,20	45:12,13	2:2 3:5
94:17	V	77:19	46:4,18,22	4:17 5:13
95:16	valid 79:5	78:16	47:19 50:2	6:22 10:12
102:13,16	value 9:20	79:10,18	55:18	13:11 14:3
104:19	18:13	79:21	58:22 62:7	14:12,19
114:3	46:22	133:16	62:22 64:4	19:16 27:6
117:5	variance	141:20	66:7 75:5	27:15 28:2
118:6	17:3	142:7	76:15 79:3	28:6,11
119:16	various	143:20	80:7,13	29:1,8,9
133:14	20:18 22:2	144:1	88:5 90:18	29:14 30:1
137:15,19	versions	violative	91:13	30:15 31:5
138:1	20:11	121:2	98:16	31:14,22
understa...	versus 102:7	virtue 12:13	99:22	32:5,8,19
5:2 8:4	view 20:2	volume 61:22	103:5	33:2 34:16
27:14	32:6	vulnerable	104:21	35:9,19
144:21	101:11	121:5,20	105:8	36:3,4,15
understood	133:1	-----	108:18,19	37:3 38:3
81:9	vigorously	W	109:5,6,6	38:7,14
undertake	20:14	wait 58:17	109:7,9	39:2 40:11
34:7	violate 33:6	waive 54:2	112:12	40:15
undertaking	39:8 45:9	walk 26:8,11	118:11,22	42:21 43:7
29:18	48:16	want 12:10	119:1	43:11,13
35:10	72:13	39:19 49:1	121:10,18	44:8,12
undisputed	75:22	83:8 110:4	125:3,10	45:9,14
99:22	76:10	111:20	127:4,11	46:1 48:4
unequivocal	115:19	115:3	134:12	48:16 50:8
53:21	122:21	143:6	135:3,8	51:8 53:2
unfairly	134:2,3	145:12	138:20	53:11 56:7
79:4	violated	wanted 12:3	140:20	56:14 58:2
Unfortun...	65:3,5	53:3	WASA's 6:9	58:4 64:21
117:13	134:18	104:19	18:6,18	66:5 68:17
United 1:1	violates	118:2	19:18 20:2	69:16,21
3:3 50:11	40:4,16	123:13	21:7 22:11	70:1,14,15
Unquesti...	violating	133:8	22:14 50:3	70:20 71:3
48:5	88:5	warranted	70:16	71:16,20
unrelated	violation	53:18	76:12 79:5	72:1,13,15
134:9	29:7 68:17	WASA 3:19	126:20	73:3 74:6
untreated	73:18 75:7	5:10 7:6	Washington	74:7,8
72:11	75:9 78:19	11:18 12:7	1:2,8,15	75:4 77:20
upgrade	80:8,13,14	18:9,21	3:18	77:22 78:3
32:16	109:12	19:3,6,6	wasn't 9:8	79:18 80:5
34:17	119:19	20:15,16	55:14	80:14 82:1
upgrades	120:8	21:5 22:6	95:15	84:2 85:1
29:21	127:5	27:3 29:4	102:19	85:19
urge 141:2	134:11	29:12 31:6	116:7	86:10,20
use 4:19	135:5,11	32:21 33:2	Wastewater	86:22 88:6
30:20 31:1	137:17	34:6,20	5:19	92:13 94:2
122:19	violations	35:7 38:2	waste-load	94:7

100:15	74:6 76:15	122:4,5	world 17:11	05-02 1:4
103:12	80:6 87:10	138:19	56:19	3:7 8:4
104:2,10	90:19	whatsoever	worries	11:2 85:4
104:17	92:17 93:1	36:2	138:12	86:14,15
105:6,18	94:14 97:4	wiggle 61:8	worth 108:21	86:16
105:21	115:19	wire 144:20	wouldn't	07 122:14
108:6,7,15	127:6	145:2	68:20	07-10 1:4
108:16	134:14	withdraw	79:14 90:9	3:7
109:12	142:10	78:20	106:16	07-11 1:5
110:20	145:17	withdrawn	118:19	3:7
111:14	ways 30:18	76:7	would've	07-12 1:5
113:10	weaken 79:6	withhold	11:7 23:1	3:8
114:14,20	weather 64:9	100:20	26:3,4,5	
115:19	72:16	Wolgast 1:19	109:21	1
118:16	134:8,10	3:8 18:5	written	187:9
122:12,18	144:7	21:16	33:13 41:6	1:34 1:12
122:20	Wednesday	33:14,20	41:6 60:8	10 62:13
123:1,4,7	1:9	37:22		73:4
124:11	week 143:4	43:21 45:2	X	122:15
125:11,17	weeks 143:4	46:11	x 1:3,6	11 122:15
126:22	well-est...	47:10	Y	1104.1 71:22
127:6	10:4	61:13 69:3	Yeah 36:9	1104.3 71:22
128:20	went 11:13	70:6,10	year 30:22	72:9
129:14	22:4 30:7	71:8 75:10	72:18,19	1105.9 15:21
130:3,7,12	105:15	76:11 78:8	73:7 88:4	60:20
130:21	weren't	80:1 87:17	139:11	1201 1:14
131:5,7	23:19 40:3	88:7,13,20	143:3	122 14:7
132:15,19	wet 64:8	89:19 90:5	years 20:9	122.4(d)
134:5	134:9	90:8 91:3	29:18	122:21
139:7	144:7	104:3,13	33:22	123:5,14
141:8,20	we'll 96:12	106:7	51:20	123:17
142:7	96:13	109:14,17	53:15 62:9	124:7
143:19	we're 3:12	110:6,21	62:13 73:5	122.44(d...)
144:6	38:13,15	111:1,18	89:12	105:19
waters 72:2	38:19 50:9	113:2	103:6	122.44(k)
72:10	50:12,17	118:6	108:21	105:19
watershed	50:19 57:6	119:7,15	118:18	122.47 12:16
56:19	57:11	120:3,14	128:1	92:14
58:12	61:22	121:9	133:11	136:2
waterway	62:10	133:12	139:13	124 25:7
72:7	65:21 97:3	wondering	145:5	66:16
way 16:15	98:4 108:2	117:11		13 18:19
24:11	113:21	word 15:19	\$	15 4:2
25:20 33:4	we've 34:8	words 99:9	\$1.2 108:20	15-minute
34:3,19	51:1 58:12	126:6	\$2 48:10	4:8
41:6 48:19	62:6,11	work 17:10	50:5	150 55:21
51:4 56:4	71:9 78:18	60:3 127:7		16 84:9
62:15	85:16,18	129:3	0	18 54:13
64:11	87:7 97:17	145:17	05 86:13	18696 36:12
67:10 73:1	119:5	works 33:4		106:11

1977 87:9	3 (e) (1)	8 111:12		
1990 13:4, 14	19:13	132:7		
1992 13:15	21:20 44:5	136:2		
1994 84:11	3 (e) 1 133:17	144:15		
1997 26:17	3.5 143:1	80s 27:20		
28:21	30 3:20 4:9			
75:16 76:3	303 (d) 52:13	9		
76:9, 19	303 (d) (4...	90 3:17		
103:19	116:5	90s 27:21		
2	4	97 75:18		
2 54:6 111:4	4 122:15	81:5		
2 (c) (4) (b)	4 (b) 81:14	118:13		
106:5	4 (b) (1)	119:9, 12		
20 33:22	81:15			
73:5 89:11	4 (b) (2)			
103:6	81:16			
108:21	4.689 55:20			
20-25 127:22	4:00 145:20			
2000 88:4	40 12:16			
136:17	14:7 66:16			
139:1	105:19			
140:22	401 97:12			
2003 30:5	98:11			
75:18 76:9	100:13, 19			
76:19	402 77:12			
2004 84:9	402 (o) 40:17			
110:9	41:2			
136:21	119:14			
2005 100:22	402 (q) 38:8			
2006 54:13	40:10, 14			
99:5, 8	41:2 85:20			
140:2	43 104:18			
2007 1:9	44 104:18			
52:13				
2008 52:14	5			
54:20	51:9 99:6			
62:10	140:6			
2010 52:13	50 118:18			
60:2				
136:16	6			
137:2	6 110:4, 8			
2014-2015	111:11			
62:11	144:14			
21 71:22				
	7			
3	7 99:8			
3 107:16	111:12			
110:9				
117:18	8			