

**In The Matter Of:**

*Department of Natural Resources & Environmental Control v.  
Proposed Regulatory Amendment to 7 DE Admin. Code 1150*

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*Public Hearing  
May 23, 2019*

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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL  
OF THE STATE OF DELAWARE

RE: Public Hearing Regarding )  
Proposed Regulatory Amendments to )  
7 DE Admin. Code 1150, the Outer )  
Continental Shelf Air Regulations. )

.. . . . .

DNREC Richardson & Robbins Building  
89 Kings Highway  
Dover, Delaware 19901

Wednesday, May 23, 2019  
6:07 p.m.

.. . . . .

BEFORE: Lisa Vest, Hearing Officer

ALSO PRESENT:  
Mark Prettyman, Environmental Scientist  
DNREC Division of Air Quality

-- Transcript of Proceedings --

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17  
18  
19  
20  
21  
22  
23  
24

TABLE OF CONTENTS

	Page
Introduction by Ms. Vest . . . . .	3
Introduction by the Division, Mr. Prettyman . . . . .	3
Introduction of Exhibits . . . . .	8
Conclusory Remarks by Ms. Vest. . . . .	11
Certificate of Reporter . . . . .	12



1 MS. VEST: The time is approximately  
2 6:07 on Wednesday, May 22, 2019. And we are going  
3 to go ahead and start these proceedings.

4 The record should reflect that we  
5 waited a few minutes beyond the 6:00 p.m. start time  
6 in case there were any members of the public that  
7 were traveling here.

8 And the record should also reflect  
9 that currently there is no one here other than staff  
10 and the court reporter.

11 So we are going to go ahead and  
12 begin.

13 This is the public hearing to receive  
14 comment regarding the Department's proposed  
15 amendments to 7 Delaware Admin Code 1150, which is  
16 the Outer Continental Shelf Air Regulations.

17 I'm going to go ahead and turn the  
18 floor over to Mark Prettyman, who is the responsible  
19 staff member concerning these regs.

20 After Mark's remarks for the record,  
21 we will then see if anyone from the public has shown  
22 up to offer comment. So Mark.

23 MR. PRETTYMAN: Thank you. Good  
24 evening. My name is Mark Prettyman, and I am an



1 Environmental Scientist with the Airshed Planning  
2 and Inventory Group for the Division of Air Quality  
3 in the Delaware Department of Natural Resources and  
4 Environmental Control.

5 It is our responsibility to identify,  
6 develop, and implement strategies to control air  
7 emissions in a way that continuously improves the  
8 ambient air quality of the state and protects public  
9 health, safety, and welfare.

10 Part of this responsibility is  
11 developing and amending regulations that will reduce  
12 the risks to public health caused by the emissions  
13 of pollutants from sources in Delaware.

14 The purpose of tonight's public  
15 hearing is to receive comments on the proposed  
16 amendments to 7 Delaware Admin Code 1150, the Outer  
17 Continental Shelf Air Regulations, which the  
18 Division of Air Quality is proposing to amend.

19 During my discussion, I plan to  
20 explain why the Department is proposing to amend  
21 this regulation, and I will then identify a series  
22 of documents to enter them into the official record  
23 of this hearing.

24 These are documents which serve as a



1 basis for the amendments to the regulation and  
2 demonstrate that the Department has adequately  
3 fulfilled each of the required steps in Delaware Law  
4 for developing and adopting regulations.

5 The foundation of all of our  
6 regulatory efforts stems from a legislative  
7 directive. The Delaware General Assembly requires  
8 the Department to develop, utilize, and control the  
9 air resources of the state. These requirements are  
10 spelled out in Chapter 60 of Title 7 of the Delaware  
11 Code.

12 Among these requirements is one to  
13 provide a program for the control of pollution of  
14 the air resources of the state to protect the public  
15 health, safety, and welfare.

16 To aid the Department's obligation in  
17 fulfilling the General Assembly's directive to  
18 protect public health, safety, and welfare, the  
19 Department has adopted many regulations into Chapter  
20 7 of Delaware's Administrative Code. 7 Delaware  
21 Admin Code 1150, or simply Regulation 1150, is one  
22 of these regulations which the Department has  
23 adopted to help achieve its goal.

24 Today's hearing is not meant to



1 reopen the basis for Regulation 1150, but instead to  
2 discuss the amendments which the Department is  
3 proposing for the regulation. Regulation 1150  
4 incorporates, by reference, the provisions of 40 CFR  
5 Part 55, which are the federal Outer Continental  
6 Shelf Air Regulations.

7 The federal regulation applies to all  
8 sources of air emissions from within the Outer  
9 Continental Shelf. For Delaware, the Outer  
10 Continental Shelf is the area which is within  
11 25 miles of Delaware's coastal boundaries along the  
12 Atlantic Ocean.

13 This means that air emissions from  
14 within the Outer Continental Shelf are regulated in  
15 the same manner as if the source was located on  
16 Delaware's land.

17 Delaware's 2010 adoption by reference  
18 of the federal regulation, and EPA's subsequent  
19 delegation of responsibility to Delaware, allows the  
20 Department to implement and enforce the Outer  
21 Continental Shelf Requirements.

22 In practice, Regulation 1150 allows  
23 the Department to issue air quality permits for any  
24 source located on the Outer Continental Shelf,



1 thereby effectively regulating air pollutants  
2 emitted in the Outer Continental Shelf consistent  
3 with state and federal laws and regulations.

4 In October of 2016, the EPA  
5 promulgated a final rule which amended the federal  
6 Outer Continental Shelf Air Regulations. The final  
7 rule removes the mandatory requirement to provide  
8 public notice of a draft air permit through  
9 publication in a newspaper, and instead requires  
10 electronic notice for EPA actions (and actions by  
11 permitting authorities implementing the federal  
12 permitting rules) and allows for electronic notice  
13 as an option for actions by permitting authorities  
14 implementing EPA-approved programs.

15 Requirements applying to Outer  
16 Continental Shelf sources located within 25 miles of  
17 states' seaward boundaries must also be periodically  
18 updated by the EPA in order to remain consistent  
19 with the requirements of coastal states. This is  
20 known as a consistency update.

21 On December 3, 2018, EPA published a  
22 Notice of Proposed Rulemaking for such a consistency  
23 update, to incorporate various Delaware air  
24 pollution control requirements into 40 CFR Part 55,





1 specifically those amendments which were made since  
2 Regulation 1150 was initially adopted.

3 The EPA finalized this consistency  
4 update on April 4, 2019, after no adverse comments  
5 were received, with an effective date of May 6, 2019  
6 for the final rule.

7 The initial adoption of Regulation  
8 1150 incorporated the 2009 edition of 40 CFR 55 by  
9 reference, as that was the most recent version of  
10 the federal regulation at the time.

11 The proposed amendments to Regulation  
12 1150 would incorporate the 2018 edition of 40 CFR  
13 Part 55 by reference, as well as the April 2019  
14 Federal Register notice approving the consistency  
15 update related to Delaware's air regulations, in  
16 order to capture these latest amendments to the  
17 federal regulation as part of the amendments.

18 No other amendments to Regulation  
19 1150 are being proposed, besides updating the  
20 incorporation by reference of 40 CFR 55.

21 At this point I would like to enter  
22 the following exhibits into the record:

23 Exhibit 1: The July 1, 2018 edition  
24 of 40 CFR 55, "Outer Continental Shelf Air



1 Regulations."

2                   Exhibit 2: The Department's Start  
3 Action Notice Number 2018-11.

4                   Exhibit 3: The Regulatory  
5 Flexibility Act Compliance Analysis on the Proposed  
6 Amendments to 7 Delaware Admin Code 1150, Outer  
7 Continental Shelf Air Regulations.

8                   Exhibit 4: The final EPA rule, dated  
9 October 18, 2016 (Volume 81, Federal Register Page  
10 71613), amending 40 CFR 55, Outer Continental Shelf  
11 Air Regulations.

12                   Exhibit 5: The final EPA rule dated  
13 April 4, 2019 (Volume 84, Federal Register Page  
14 13132), for the consistency update to incorporate  
15 the latest versions of Delaware's regulations into  
16 40 CFR 55.

17                   Exhibit 6: The hearing notice and  
18 proposed amendments to 7 Delaware Admin Code 1150,  
19 which appeared in the Delaware Register of  
20 Regulations, issue date May 2019, Volume 22, Issue  
21 11, Pages 928 and 929.

22                   Exhibit 7: The affidavits and public  
23 hearing notices as they appeared in the April 21,  
24 2019 editions of the Delaware State News and The



1 News Journal, which advertised today's public  
2 hearing.

3 Exhibit 8: The Delaware Department  
4 of Natural Resources and Environmental Control,  
5 Office of Environmental Protection, E Newsletter,  
6 dated April 30, 2019 that advertised today's public  
7 hearing.

8 Exhibit 9: The public hearing notice  
9 for today's public hearing on the State of Delaware  
10 public meeting calendar.

11 Exhibit 10: A marked-up version of 7  
12 Delaware Admin Code 1150 notating the proposed  
13 amendments to the regulatory language.

14 This completes the Department's  
15 presentation on the proposed amendments to  
16 Delaware's Outer Continental Shelf Air Regulations.  
17 Thank you.

18 MS. VEST: Thank you, Mark.

19 Let the record reflect that Exhibits  
20 1 through 10, as identified by the Department, are  
21 hereby entered into the formal hearing record.

22 Are there any additional comments  
23 that the Department wishes to make at this time?

24 MR. PRETTYMAN: No, thank you.



1 MS. VEST: Okay. Again, the record  
2 should reflect that we have entered the exhibits of  
3 the Department into the hearing record, and the  
4 Department has given its presentation, and still  
5 there are no members of the public here.

6 The record should also note that  
7 pursuant to current Delaware law, the record will  
8 remain open for 15 additional days from the date of  
9 this hearing.

10 Should any comment be received by the  
11 Department during that time, it will carry the same  
12 weight as if it had been entered into the record  
13 verbally this evening.

14 The record will formally close with  
15 regard to public comment at close of business on  
16 June 6, 2019.

17 All business having been conducted  
18 and concluded and no members of the public being  
19 present to offer comment, we are going to conclude  
20 the hearing at this time. Thank you.

21 (Concluded at 6:17 p.m.)  
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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 23rd day of May 2019.



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Lorena J. Hartnett  
Registered Professional Reporter

<b>A</b>	<b>Air (21)</b> 3:16 4:2,6,8,17,18 5:9,14 6:6,8,13,23 7:1, 6,8,23 8:15,24 9:7,11 10:16	3:1 <b>April (5)</b> 8:4,13 9:13,23 10:6 <b>area (1)</b> 6:10 <b>Assembly (1)</b> 5:7 <b>Assembly's (1)</b> 5:17 <b>Atlantic (1)</b> 6:12 <b>authorities (2)</b> 7:11,13	3:6 <b>caused (1)</b> 4:12 <b>CFR (8)</b> 6:4 7:24 8:8,12,20, 24 9:10,16 <b>Chapter (2)</b> 5:10,19 <b>close (2)</b> 11:14,15 <b>coastal (2)</b> 6:11 7:19 <b>Code (8)</b> 3:15 4:16 5:11,20, 21 9:6,18 10:12
<b>achieve (1)</b> 5:23 <b>Act (1)</b> 9:5 <b>Action (1)</b> 9:3 <b>actions (3)</b> 7:10,10,13 <b>additional (2)</b> 10:22 11:8 <b>adequately (1)</b> 5:2 <b>Admin (6)</b> 3:15 4:16 5:21 9:6, 18 10:12 <b>Administrative (1)</b> 5:20 <b>adopted (3)</b> 5:19,23 8:2 <b>adopting (1)</b> 5:4 <b>adoption (2)</b> 6:17 8:7 <b>adverse (1)</b> 8:4 <b>advertised (2)</b> 10:1,6 <b>affidavits (1)</b> 9:22 <b>After (2)</b> 3:20 8:4 <b>Again (1)</b> 11:1 <b>ahead (3)</b> 3:3,11,17 <b>aid (1)</b> 5:16	<b>Airshed (1)</b> 4:1 <b>allows (3)</b> 6:19,22 7:12 <b>along (1)</b> 6:11 <b>also (3)</b> 3:8 7:17 11:6 <b>ambient (1)</b> 4:8 <b>amend (2)</b> 4:18,20 <b>amended (1)</b> 7:5 <b>amending (2)</b> 4:11 9:10 <b>amendments (13)</b> 3:15 4:16 5:1 6:2 8:1,11,16,17,18 9:6, 18 10:13,15 <b>Among (1)</b> 5:12 <b>Analysis (1)</b> 9:5 <b>anyone (1)</b> 3:21 <b>appeared (2)</b> 9:19,23 <b>applies (1)</b> 6:7 <b>applying (1)</b> 7:15 <b>approving (1)</b> 8:14 <b>approximately (1)</b>	<b>B</b> <b>basis (2)</b> 5:1 6:1 <b>begin (1)</b> 3:12 <b>being (2)</b> 8:19 11:18 <b>besides (1)</b> 8:19 <b>beyond (1)</b> 3:5 <b>boundaries (2)</b> 6:11 7:17 <b>business (2)</b> 11:15,17	<b>comment (5)</b> 3:14,22 11:10,15,19 <b>comments (3)</b> 4:15 8:4 10:22 <b>completes (1)</b> 10:14 <b>Compliance (1)</b> 9:5 <b>concerning (1)</b> 3:19 <b>conclude (1)</b> 11:19 <b>concluded (2)</b> 11:18,21 <b>conducted (1)</b> 11:17 <b>consistency (5)</b> 7:20,22 8:3,14 9:14 <b>consistent (2)</b> 7:2,18 <b>Continental (15)</b> 3:16 4:17 6:5,9,10, 14,21,24 7:2,6,16 8:24 9:7,10 10:16 <b>continuously (1)</b>
		<b>C</b> <b>calendar (1)</b> 10:10 <b>capture (1)</b> 8:16 <b>carry (1)</b> 11:11 <b>case (1)</b>	

4:7 <b>Control (6)</b> 4:4,6 5:8,13 7:24 10:4 <b>court (1)</b> 3:10 <b>current (1)</b> 11:7 <b>currently (1)</b> 3:9	4:6 5:8 <b>developing (2)</b> 4:11 5:4 <b>directive (2)</b> 5:7,17 <b>discuss (1)</b> 6:2 <b>discussion (1)</b> 4:19 <b>Division (2)</b> 4:2,18 <b>documents (2)</b> 4:22,24 <b>draft (1)</b> 7:8 <b>During (2)</b> 4:19 11:11	<b>enter (2)</b> 4:22 8:21 <b>entered (3)</b> 10:21 11:2,12 <b>Environmental (4)</b> 4:1,4 10:4,5 <b>EPA (7)</b> 7:4,10,18,21 8:3 9:8,12 <b>EPA-approved (1)</b> 7:14 <b>EPA's (1)</b> 6:18 <b>evening (2)</b> 3:24 11:13 <b>Exhibit (10)</b> 8:23 9:2,4,8,12,17, 22 10:3,8,11 <b>exhibits (3)</b> 8:22 10:19 11:2 <b>explain (1)</b> 4:20	<b>formal (1)</b> 10:21 <b>formally (1)</b> 11:14 <b>foundation (1)</b> 5:5 <b>fulfilled (1)</b> 5:3 <b>fulfilling (1)</b> 5:17	
<b>D</b>			<b>G</b>	
<b>date (3)</b> 8:5 9:20 11:8 <b>dated (3)</b> 9:8,12 10:6 <b>days (1)</b> 11:8 <b>December (1)</b> 7:21 <b>Delaware (19)</b> 3:15 4:3,13,16 5:3, 7,10,20 6:9,19 7:23 9:6,18,19,24 10:3,9, 12 11:7 <b>Delaware's (7)</b> 5:20 6:11,16,17 8:15 9:15 10:16 <b>delegation (1)</b> 6:19 <b>demonstrate (1)</b> 5:2 <b>Department (15)</b> 4:3,20 5:2,8,19,22 6:2,20,23 10:3,20,23 11:3,4,11 <b>Department's (4)</b> 3:14 5:16 9:2 10:14 <b>develop (2)</b>	<b>E</b>	<b>each (1)</b> 5:3 <b>edition (3)</b> 8:8,12,23 <b>editions (1)</b> 9:24 <b>effective (1)</b> 8:5 <b>effectively (1)</b> 7:1 <b>efforts (1)</b> 5:6 <b>electronic (2)</b> 7:10,12 <b>emissions (4)</b> 4:7,12 6:8,13 <b>emitted (1)</b> 7:2 <b>enforce (1)</b> 6:20	<b>enter (2)</b> 4:22 8:21 <b>entered (3)</b> 10:21 11:2,12 <b>Environmental (4)</b> 4:1,4 10:4,5 <b>EPA (7)</b> 7:4,10,18,21 8:3 9:8,12 <b>EPA-approved (1)</b> 7:14 <b>EPA's (1)</b> 6:18 <b>evening (2)</b> 3:24 11:13 <b>Exhibit (10)</b> 8:23 9:2,4,8,12,17, 22 10:3,8,11 <b>exhibits (3)</b> 8:22 10:19 11:2 <b>explain (1)</b> 4:20	<b>formal (1)</b> 10:21 <b>formally (1)</b> 11:14 <b>foundation (1)</b> 5:5 <b>fulfilled (1)</b> 5:3 <b>fulfilling (1)</b> 5:17
		<b>F</b>	<b>General (2)</b> 5:7,17 <b>given (1)</b> 11:4 <b>goal (1)</b> 5:23 <b>going (4)</b> 3:2,11,17 11:19 <b>Good (1)</b> 3:23 <b>Group (1)</b> 4:2	
		<b>federal (11)</b> 6:5,7,18 7:3,5,11 8:10,14,17 9:9,13 <b>few (1)</b> 3:5 <b>final (5)</b> 7:5,6 8:6 9:8,12 <b>finalized (1)</b> 8:3 <b>Flexibility (1)</b> 9:5 <b>floor (1)</b> 3:18 <b>following (1)</b> 8:22	<b>H</b>	
			<b>health (4)</b> 4:9,12 5:15,18 <b>hearing (14)</b> 3:13 4:15,23 5:24 9:17,23 10:2,7,8,9,21 11:3,9,20 <b>help (1)</b> 5:23 <b>hereby (1)</b> 10:21	

<b>I</b>	<b>K</b>	3:20 <b>May (3)</b>	9:3,17 10:8 <b>notices (1)</b>
<b>identified (1)</b> 10:20	<b>known (1)</b> 7:20	3:2 8:5 9:20 <b>means (1)</b>	9:23 <b>Number (1)</b>
<b>identify (2)</b> 4:5,21	<b>L</b>	6:13 <b>meant (1)</b>	<b>O</b>
<b>implement (2)</b> 4:6 6:20	<b>land (1)</b> 6:16	5:24 <b>meeting (1)</b>	<b>obligation (1)</b> 5:16
<b>implementing (2)</b> 7:11,14	<b>language (1)</b> 10:13	10:10 <b>member (1)</b>	<b>Ocean (1)</b> 6:12
<b>improves (1)</b> 4:7	<b>latest (2)</b> 8:16 9:15	3:19 <b>members (3)</b>	<b>October (2)</b> 7:4 9:9
<b>incorporate (3)</b> 7:23 8:12 9:14	<b>Law (2)</b> 5:3 11:7	3:6 11:5,18 <b>miles (2)</b>	<b>offer (2)</b> 3:22 11:19
<b>incorporated (1)</b> 8:8	<b>laws (1)</b> 7:3	6:11 7:16 <b>minutes (1)</b>	<b>Office (1)</b> 10:5
<b>incorporates (1)</b> 6:4	<b>legislative (1)</b> 5:6	3:5 <b>most (1)</b>	<b>official (1)</b> 4:22
<b>incorporation (1)</b> 8:20	<b>located (3)</b> 6:15,24 7:16	8:9 <b>must (1)</b>	<b>one (3)</b> 3:9 5:12,21
<b>initial (1)</b> 8:7	<b>M</b>	<b>N</b>	<b>open (1)</b> 11:8
<b>initially (1)</b> 8:2	<b>made (1)</b> 8:1	<b>name (1)</b> 3:24	<b>option (1)</b> 7:13
<b>instead (2)</b> 6:1 7:9	<b>make (1)</b> 10:23	<b>Natural (2)</b> 4:3 10:4	<b>order (2)</b> 7:18 8:16
<b>Inventory (1)</b> 4:2	<b>mandatory (1)</b> 7:7	<b>News (2)</b> 9:24 10:1	<b>other (2)</b> 3:9 8:18
<b>issue (3)</b> 6:23 9:20,20	<b>manner (1)</b> 6:15	<b>Newsletter (1)</b> 10:5	<b>out (1)</b> 5:10
<b>J</b>	<b>many (1)</b> 5:19	<b>newspaper (1)</b> 7:9	<b>Outer (15)</b> 3:16 4:16 6:5,8,9, 14,20,24 7:2,6,15 8:24 9:6,10 10:16
<b>Journal (1)</b> 10:1	<b>Mark (4)</b> 3:18,22,24 10:18	<b>notating (1)</b> 10:12	<b>over (1)</b> 3:18
<b>July (1)</b> 8:23	<b>marked-up (1)</b> 10:11	<b>note (1)</b> 11:6	
<b>June (1)</b> 11:16	<b>Mark's (1)</b>	<b>notice (8)</b> 7:8,10,12,22 8:14	



<b>P</b>	<b>program (1)</b> 5:13	<b>R</b>	5:6 9:4 10:13
			<b>related (1)</b>
<b>Page (2)</b>	<b>programs (1)</b>	<b>receive (2)</b>	8:15
9:9,13	7:14	3:13 4:15	<b>remain (2)</b>
<b>Pages (1)</b>	<b>promulgated (1)</b>	<b>received (2)</b>	7:18 11:8
9:21	7:5	8:5 11:10	<b>remarks (1)</b>
<b>Part (5)</b>	<b>proposed (9)</b>	<b>recent (1)</b>	3:20
4:10 6:5 7:24 8:13,	3:14 4:15 7:22 8:11,	8:9	<b>removes (1)</b>
17	19 9:5,18 10:12,15	<b>record (13)</b>	7:7
<b>periodically (1)</b>	<b>proposing (3)</b>	3:4,8,20 4:22 8:22	<b>reopen (1)</b>
7:17	4:18,20 6:3	10:19,21 11:1,3,6,7,	6:1
<b>permit (1)</b>	<b>protect (2)</b>	12,14	<b>reporter (1)</b>
7:8	5:14,18	<b>reduce (1)</b>	3:10
<b>permits (1)</b>	<b>Protection (1)</b>	4:11	<b>required (1)</b>
6:23	10:5	<b>reference (5)</b>	5:3
<b>permitting (3)</b>	<b>protects (1)</b>	6:4,17 8:9,13,20	<b>requirement (1)</b>
7:11,12,13	4:8	<b>reflect (4)</b>	7:7
<b>plan (1)</b>	<b>provide (2)</b>	3:4,8 10:19 11:2	<b>requirements (6)</b>
4:19	5:13 7:7	<b>regard (1)</b>	5:9,12 6:21 7:15,19,
<b>Planning (1)</b>	<b>provisions (1)</b>	11:15	24
4:1	6:4	<b>regarding (1)</b>	<b>requires (2)</b>
<b>pm (2)</b>	<b>public (18)</b>	3:14	5:7 7:9
3:5 11:21	3:6,13,21 4:8,12,14	<b>Register (4)</b>	<b>Resources (4)</b>
<b>point (1)</b>	5:14,18 7:8 9:22 10:1,	8:14 9:9,13,19	4:3 5:9,14 10:4
8:21	6,8,9,10 11:5,15,18	<b>regs (1)</b>	<b>responsibility (3)</b>
<b>pollutants (2)</b>	<b>publication (1)</b>	3:19	4:5,10 6:19
4:13 7:1	7:9	<b>regulated (1)</b>	<b>responsible (1)</b>
<b>pollution (2)</b>	<b>published (1)</b>	6:14	3:18
5:13 7:24	7:21	<b>regulating (1)</b>	<b>risks (1)</b>
<b>practice (1)</b>	<b>purpose (1)</b>	7:1	4:12
6:22	4:14	<b>regulation (15)</b>	<b>rule (5)</b>
<b>present (1)</b>	<b>pursuant (1)</b>	4:21 5:1,21 6:1,3,3,	7:5,7 8:6 9:8,12
11:19	11:7	7,18,22 8:2,7,10,11,	<b>Rulemaking (1)</b>
<b>presentation (2)</b>	<b>Q</b>	17,18	7:22
10:15 11:4	<b>Quality (4)</b>	<b>Regulations (16)</b>	<b>rules (1)</b>
<b>Prettyman (4)</b>	4:2,8,18 6:23	3:16 4:11,17 5:4,19,	7:12
3:18,23,24 10:24		22 6:6 7:3,6 8:15 9:1,	<b>S</b>
<b>proceedings (1)</b>		7,11,15,20 10:16	
3:3		<b>regulatory (3)</b>	<b>safety (3)</b>

4:9 5:15,18	<b>steps (1)</b>	<b>V</b>	9:21
<b>same (2)</b>	5:3		<b>1150 (14)</b>
6:15 11:11	<b>still (1)</b>	<b>various (1)</b> 7:23	3:15 4:16 5:21,21
<b>Scientist (1)</b>	11:4		6:1,3,22 8:2,8,12,19
4:1	<b>strategies (1)</b>		9:6,18 10:12
<b>seaward (1)</b>	4:6		<b>13132 (1)</b>
7:17	<b>subsequent (1)</b>	11:13	9:14
<b>series (1)</b>	6:18	<b>version (2)</b>	<b>15 (1)</b>
4:21	<b>T</b>	8:9 10:11	11:8
<b>serve (1)</b>		9:15	<b>18 (1)</b>
4:24	<b>there (4)</b> 3:6,9 10:22 11:5	<b>versions (1)</b>	9:9
<b>Shelf (15)</b>		<b>VEST (3)</b>	<b>2</b>
3:16 4:17 6:6,9,10, 14,21,24 7:2,6,16		3:1 10:18 11:1	
8:24 9:7,10 10:16		<b>Volume (3)</b>	<b>2 (1)</b>
<b>shown (1)</b>	<b>thereby (1)</b>	9:9,13,20	9:2
3:21	7:1	<b>W</b>	<b>2009 (1)</b>
<b>simply (1)</b>	<b>they (1)</b>		8:8
5:21	9:23	<b>waited (1)</b>	<b>2010 (1)</b>
<b>source (2)</b>	<b>Title (1)</b>	3:5	6:17
6:15,24	5:10	<b>way (1)</b>	<b>2016 (2)</b>
<b>sources (3)</b>	<b>Today's (4)</b>	4:7	7:4 9:9
4:13 6:8 7:16	5:24 10:1,6,9	<b>Wednesday (1)</b>	<b>2018 (3)</b>
<b>specifically (1)</b>	<b>tonight's (1)</b>	3:2	7:21 8:12,23
8:1	4:14	<b>weight (1)</b>	<b>2018-11 (1)</b>
<b>spelled (1)</b>	<b>traveling (1)</b>	11:12	9:3
5:10	3:7	<b>welfare (3)</b>	<b>2019 (9)</b>
<b>staff (2)</b>	<b>turn (1)</b>	4:9 5:15,18	3:2 8:4,5,13 9:13, 20,24 10:6 11:16
3:9,19	3:17	<b>wishes (1)</b>	<b>21 (1)</b>
<b>start (3)</b>	<b>U</b>	10:23	9:23
3:3,5 9:2		<b>up (1)</b>	<b>22 (2)</b>
<b>state (6)</b>	3:22	<b>within (4)</b>	3:2 9:20
4:8 5:9,14 7:3 9:24	<b>update (5)</b>	6:8,10,14 7:16	<b>25 (2)</b>
10:9	7:20,23 8:4,15 9:14	<b>1</b>	6:11 7:16
<b>states (1)</b>	<b>updated (1)</b>		<b>1 (3)</b>
7:19	7:18	8:23,23 10:20	<b>3</b>
<b>states' (1)</b>	<b>updating (1)</b>	<b>10 (2)</b>	
7:17	8:19	10:11,20	<b>3 (2)</b>
<b>stems (1)</b>	<b>utilize (1)</b>	<b>11 (1)</b>	7:21 9:4
5:6	5:8		

<p><b>30 (1)</b> 10:6</p>	<p><b>8</b></p>		
<p><b>4</b></p>	<p><b>8 (1)</b> 10:3</p>		
<p><b>4 (3)</b> 8:4 9:8,13</p>	<p><b>81 (1)</b> 9:9</p>		
<p><b>40 (8)</b> 6:4 7:24 8:8,12,20, 24 9:10,16</p>	<p><b>84 (1)</b> 9:13</p>		
<p><b>5</b></p>	<p><b>9</b></p>		
<p><b>5 (1)</b> 9:12</p> <p><b>55 (8)</b> 6:5 7:24 8:8,13,20, 24 9:10,16</p>	<p><b>9 (1)</b> 10:8</p> <p><b>928 (1)</b> 9:21</p> <p><b>929 (1)</b> 9:21</p>		
<p><b>6</b></p>			
<p><b>6 (3)</b> 8:5 9:17 11:16</p> <p><b>6:00 (1)</b> 3:5</p> <p><b>6:07 (1)</b> 3:2</p> <p><b>6:17 (1)</b> 11:21</p> <p><b>60 (1)</b> 5:10</p>			
<p><b>7</b></p>			
<p><b>7 (9)</b> 3:15 4:16 5:10,20, 20 9:6,18,22 10:11</p> <p><b>71613 (1)</b> 9:10</p>			