

STATE OF MAINE

BOARD OF ENVIRONMENTAL PROTECTION

Public Hearing

on

Chapter 90: Products Containing Perfluoroalkyl and  
Polyfluoroalkyl Substances

PUBLIC HEARING reported by Robin J. Dostie, a  
Notary Public and court reporter in and for the State  
of Maine, on January 16, 2025, held at the Deering  
State Office Building, 90 Blossom Lane, Augusta,  
Maine commencing at 10:01 a.m.

BEP MEMBERS IN ATTENDANCE:

SUSAN LESSARD, BEP Chair  
ROBERT DUCHESNE, BEP Member  
STEVEN PELLETIER, BEP Member  
ROBERT SANFORD, BEP Member  
BARBARA VICKERY, BEP Member  
ROBERT MARVINNEY, BEP Member

OTHER PERSONS IN ATTENDANCE:

JACK DAFOE, Assistant Attorney General  
MELANIE LOYZIM, DEP Commissioner  
BILL HINKEL, BEP Executive Analyst  
RUTH ANN BURKE, BEP Administrative Assistant

DEP STAFF IN ATTENDANCE:

KERRI FARRIS, Safer Chemicals Program  
MARK MARGERAM, Rulemaking Coordinator

1 PROCEEDINGS

2 MS. LESSARD: We will now open the hearing  
3 on Chapter 90. Additional details regarding this  
4 hearing were provided at the outset of this Board's  
5 proceeding. I note that all Board members are  
6 present and participating in this matter today.

7 At this time, I will administer an  
8 affirmation to those persons planning to testify on  
9 this proposed rule. Those who wish to testify should  
10 now stand or otherwise make your presence known. I  
11 knew there would be more.

12 Do you solemnly, sincerely and truly declare  
13 and affirm that the evidence you offer the Board is  
14 the truth, the whole truth, and nothing but the  
15 truth?

16 (Participants affirm.)

17 MS. LESSARD: Thank you very much. We will  
18 proceed with a presentation from Department staff.  
19 Welcome.

20 KERRI FARRIS: Good morning, Chair Lessard  
21 and Members of the Board. I am Kerri Malinowski  
22 Farris. I manage the Safer Chemicals Program at the  
23 Department. With me this morning is Mark Margerum.  
24 He is our Rulemaking Coordinator within the  
25 Commissioner's office. Thank you for holding this

1 hearing this morning.

2 Draft rule Chapter 90 proposes to implement  
3 the regulation of intentionally added PFAS in  
4 products as established by the Legislature at 38  
5 M.R.S. Session 1614. This section of law creates  
6 specific product category sales prohibition and  
7 establishes a reporting requirement for prohibited  
8 product categories that have received a currently  
9 unavoidable use determination through routine  
10 technical rulemaking.

11 The statutory sales prohibitions are  
12 scheduled in three year intervals up to 2032 when the  
13 scope of the prohibited product prohibition broadened  
14 to any product with intentionally added PFAS with  
15 some exceptions which are captured in a 2040 sales  
16 prohibition and with the Legislature's most recent  
17 amendment now includes a prohibited product  
18 fluorinated container even if the prohibitive product  
19 itself does not contain intentionally PFAS. The  
20 draft rule establishes criteria for currently  
21 unavoidable use proposals for those products  
22 prohibited for sale for which there is a specific  
23 need for the use of PFAS such as health, safety, or  
24 the functioning of society would be negatively  
25 impacted by the product's unavailability and no

1 cost-effective alternatives that meet performance  
2 standards are available.

3           Currently, unavoidable use determinations  
4 will be made through routine technical rulemaking  
5 with you and are valid for a limited amount of time.  
6 For manufacturers of prohibited products which have  
7 been determined to have a currently unavoidable use,  
8 the law requires submission of a report to the  
9 Department for their use of PFAS in those products.  
10 This rule mirrors reporting requirements established  
11 in statute and proposes a reporting fee to cover the  
12 program's administrative costs.

13           Thank you for holding this public hearing  
14 for draft rule Chapter 90. We're happy to answer any  
15 questions you might have.

16           MS. LESSARD: Does anyone have any questions  
17 for staff before we begin? Mr. Duchesne.

18           MR. DUCHESNE: Thank you. So I -- as is my  
19 habit, I've read the statute after reading the rule  
20 to see how closely they all adhere and much of what's  
21 in the rule is defined in statute. So I'm assuming  
22 the testimony and comments that could follow would be  
23 most helpful to the Department if it goes into where  
24 the Department may have misinterpreted or added  
25 additional language that is not in statute and that's

1 the kind of thing that really helps the Department  
2 focus.

3 KERRI FARRIS: Absolutely.

4 MR. DUCHESNE: Yup.

5 KERRI FARRIS: Thank you.

6 MS. LESSARD: Any other questions or  
7 comments? Thank you both.

8 KERRI FARRIS: Thank you.

9 MS. LESSARD: We have eight people who  
10 signed up. We have some in support of, some in  
11 opposition to and some neither for nor against. So  
12 I'm going to go -- I'm not going to go all, all, all.  
13 I'm going to start with one and go this way. So we  
14 will start with Sarah Woodbury from Defend Our  
15 Health.

16 SARAH WOODBURY: So Representative Gramlich  
17 needs to leave, so I'm going to give her my slot if  
18 we could switch places. Would that be okay?

19 MS. LESSARD: That's perfectly fine.

20 SARAH WOODBURY: Okay.

21 LORI GRAMLICH: I have written testimony.  
22 I'm very conditioned in the Legislature, so I don't  
23 know if anybody wants that, but I do have copy. And  
24 before I start, I just want to say I'm really  
25 impressed how you have people stand up and affirm

1 that they're going to tell the truth. I want to  
2 implement that in the Legislature.

3 MR. DUCHESNE: That takes half the fun out  
4 of it.

5 LORI GRAMLICH: Or puts more fun in it.

6 So good morning, Chair Lessard and Members  
7 of the BEP. I am Lori Gramlich and I am currently  
8 Assistant House Majority Leader and State  
9 Representative serving the lovely seaside community  
10 of Old Orchard Beach. I really appreciate the  
11 opportunity to comment on the proposed Chapter 90  
12 rule containing PFAS.

13 During my time in the Legislature, I've  
14 worked to address the increasingly alarming concerns  
15 around PFAS contamination and the way these chemicals  
16 affect our land and our health. I have personally  
17 sponsored several proposals to protect Mainers from  
18 the health risks posed by PFAS exposure, including LD  
19 1503 in the 130th Legislature, which phase out  
20 avoidable use of intentionally added PFAS.

21 As a side note, I will tell you I just  
22 recently got back from a trip out to Iowa where I  
23 gave a PFAS panel to a group of farmers, many of whom  
24 from both the Canadian providences and the central  
25 plain states too were unfamiliar with PFAS, and it

1 was really -- it was really eye opening to have that  
2 opportunity. Additionally, I will say that Maine has  
3 been a real leader in advancing the work that we've  
4 done around PFAS and that was evident by what I was  
5 exposed to out in Iowa.

6 As House Chair of the Environment and  
7 Natural Resources Committee during the 131st  
8 Legislature, I worked closely with my colleagues and  
9 stakeholders on LD 1537, which I was co-sponsor of  
10 with Senator Henry Ingwersen, and that bill amended  
11 the critically important law 1503 from 130th to allow  
12 for greater success in its implementation.

13 I'm deeply grateful to the Department staff,  
14 environmental, and public health advocates and  
15 industry stakeholders who have informed the work we  
16 are providing feedback on today. The draft rule is  
17 well done. And while I have feedback to draw to your  
18 attention today, I am pleased to support it overall  
19 and offer the following suggestions to further  
20 strengthen it before final adoption by the  
21 Department.

22 First, I ask that the Department increase  
23 the specificity of the definitions in the proposed  
24 rule. For example, "commercially available  
25 analytical method" testing does not need to be done

1 by a third-party lab. Industry should be allowed to  
2 test their own -- should not be allowed to test their  
3 own materials. This is vague language about not  
4 altering third-party lab protocols. The definition  
5 should also more specific. In theory, a lab could  
6 use any test methodology that they want for a  
7 third-party. "Chemically formulated" is defined as a  
8 process that chemically changes the substance  
9 extracted from naturally occurring plant, animal or  
10 mineral sources. What about instances where it does  
11 not chemically change the natural substance but is  
12 still added to the substance? Cosolvent: It is not  
13 clear it me why "in small amounts" is in the  
14 definition. Cosolvents can be used in a wide range  
15 of concentrations.

16           Secondly, I believe additional language is  
17 needed in Section 9 to accomplish the following: To  
18 require manufacturers to clearly articulate the  
19 characteristics in question are necessary for the  
20 relevant product's function in health, safety or the  
21 functioning of society and provide specific criteria  
22 to guide industry when comparing the known risks of  
23 PFAS with any such risks posed by alternative  
24 materials.

25           Finally, I respectfully urge you to ensure



1 that this draft rule is not weakened in any way  
2 before adoption. Current law is a result of  
3 extensive work between the Legislature, the Executive  
4 Branch and various advocacy groups to compromise and  
5 we did a lot of compromise to get this particular  
6 portion of the statute that is being impacted. It  
7 allows a number of exemptions requested by industry  
8 and aligns our timeline with that of other states  
9 providing uniformity. Where delays or exceptions may  
10 have been helpful or necessary, we have already made  
11 them. Now is the time to move forward. Quite  
12 frankly, the genie is out of the bottle, we cannot  
13 put it back.

14 I am so proud of the nation-leading work we  
15 have done here in Maine. As I mentioned, we have  
16 been a true leader with this particular policy  
17 initiative, not only to recognize the threat of PFAS  
18 chemicals that pose but that also we've been able to  
19 take thoughtful and meaningful action. The bottom  
20 line is that we need to ensure these rules serve to  
21 further strengthen our protections against  
22 unnecessary PFAS contamination and exposure.

23 I will also alert you to not written in my  
24 testimony there was an article that just came out by  
25 the Portland Press Herald that talks about the number

1 of farms that are being impacted, somewhere in the  
2 neighborhood of 600, and they've only -- the  
3 Department has only gotten halfway through their  
4 testing and the article references the vast array of  
5 materials and products that PFAS is found in. So  
6 I'll alert that to you when you have nothing else to  
7 do to take a look at that as well.

8 I am happy to try to answer any questions,  
9 but I am fairly certain there is somebody coming  
10 behind me that will be able to elaborate on some of  
11 the questions you may have.

12 MS. LESSARD: Any questions for --  
13 Mrs. Vickery.

14 MS. VICKERY: Thank you. It's very helpful  
15 to hear directly from somebody involved in drafting  
16 the statute. I found the first bullet point, the --  
17 the concerns about the -- the definitions of  
18 commercially valuable analytical method. As I read  
19 what your testimony is it's about here is what it  
20 shouldn't be?

21 LORI GRAMLICH: Mmm Hmm.

22 MS. VICKERY: So what should it be?

23 LORI GRAMLICH: As I said, I think there are  
24 going to be people that can really kind of tease that  
25 out a little bit in a more deliberate way that --

1 MS. VICKERY: Okay.

2 LORI GRAMLICH: I'm not a scientist. When I  
3 was with the farmers out in Iowa, I was very clear to  
4 let them know I am not a scientist, nor am I a  
5 farmer, but I am a public health advocate, so I'm --  
6 I'm conversant in the risks relative to this with  
7 public health.

8 MS. VICKERY: Thank you.

9 LORI GRAMLICH: Thank you.

10 MS. LESSARD: Any other? Thank you very  
11 much. Christopher Correnti.

12 CHRISTOPHER CORRENTI: Good morning, Chair  
13 Lessard and Members of the Board. I am Christopher  
14 Correnti and I'm President, CEO and general counsel  
15 for a company called AGC America. I appreciate the  
16 opportunity to be able to testify this morning on the  
17 proposed Chapter 90 regulations as they relate to  
18 products containing PFAS.

19 For those of you who may not know who AGC  
20 is, we are an international company and we have in  
21 the U.S. multiple different manufacturing businesses  
22 including chemicals, life sciences, electronic  
23 materials, automotive glass, manufacturing and  
24 fabrication, we have a coding equipment business and  
25 we have several different R&D facilities. All of the

1 businesses are related to manufacturing of products.

2           So why are we here talking about PFAS and  
3 products in Maine? We're here because all of our  
4 businesses manufacture products that use equipment or  
5 the products that they are selling, especially with  
6 our chemicals business, have products in them that  
7 use something called fluoropolymers. If you're not  
8 familiar with fluoropolymers, they are included as a  
9 PFAS under the definition -- the broad definition  
10 that is used for PFAS under the Maine law. So it is  
11 a major concern for not only our chemicals business,  
12 who is actually dealing with these materials and  
13 selling products that have fluoropolymers in them,  
14 all of our businesses and, therefore, the products  
15 they make that go into cars or go into making our  
16 life sciences products they all are using  
17 fluoropolymers, so this law and the regulation  
18 certainly is very important to us and it's something  
19 that we're very concerned in terms of making sure  
20 there is consistency and clarity as regulations are  
21 being developed.

22           We are submitting written comments so I  
23 won't go into detail on what our written comments are  
24 going to be. I do want to say that I want to thank  
25 and certainly recognize the Department for taking on

1 this battle, trying to get the regulations put  
2 together. Very complex law, very complex subject and  
3 very difficult to put together implementing  
4 regulations that are going to make sense and are  
5 going to work for not only the citizens of Maine but  
6 also for industry and those of us who are selling  
7 products into Maine. So thanks for all of the  
8 efforts. I know it's been a long process and  
9 certainly a difficult process.

10           There is a number of the -- most of the  
11 regulations we -- that are drafted we don't have a  
12 real major issue with, but there are some areas that  
13 we think need further refining so that's really what  
14 I'm going to focus my testimony on today. Our  
15 comments go into much more detail on where some of  
16 those refinements need to be made, but to save time I  
17 only want to focus really on three critical issues  
18 for -- for us and what we think should be addressed  
19 in the regulations. The first relates to  
20 fluoropolymer. We are asking the Board and the  
21 Department to consider either giving a broad  
22 exemption to fluoropolymers under the regulations and  
23 the law or to give a categorical currently  
24 unavailable use for fluoropolymers under the  
25 regulations.

1           So why are we asking for that? You may know  
2 there is some 14,000 or so chemicals that are  
3 considered PFAS, okay, so it's a very, very large  
4 dynamic body of chemicals. Many of them are similar,  
5 many of them perform different functions.  
6 Fluoropolymers are unique. They have a particular  
7 combination of bonds that make the products that use  
8 fluoropolymers make them able to withstand  
9 significant temperatures. They're highly durable.  
10 They can go into environments that most other  
11 materials cannot survive in or certainly won't  
12 survive as long in. So fluoropolymers were  
13 developed, I don't know, a couple of decades ago or  
14 so initially. They've been improved over time, but  
15 they go into applications that need something that's  
16 going to last. So the best example of that is  
17 insulating wiring that goes into cars or boats or  
18 airplanes. That wiring needs to last and shouldn't  
19 be affected by cold temperature, other harsh  
20 conditions, all right. So that's why fluoropolymers  
21 are used where you need reliability, you want safety,  
22 and you certainly want the public health to be  
23 protected and that's why they have become used in so  
24 many different areas. I think people don't really  
25 appreciate what does or does not have a fluoropolymer

1 it, but laptops, cell phones, medical devices  
2 certainly, stents and pacemakers, they all have  
3 fluoropolymer material either insulating their wiring  
4 or helping protect the components.

5           They are also incredibly difficult to  
6 replace. They are -- it took years of study to  
7 develop fluoropolymers. All of us in this industry  
8 have looked at ways can we, you know, find another  
9 material that works as well. I can tell you none of  
10 us have been able to find any material that works  
11 nearly as well as fluoropolymers and our customers  
12 would tell you the same thing. They pay a higher  
13 prices for those products from us, but it's worth it  
14 because their products these go into last. They  
15 don't degrade. They don't have shortages in wire  
16 because the covering is not able to withstand  
17 conditions that they're sitting in. So it is truly a  
18 material that is essential, but it's also material  
19 that's incredibly hard to replace and I don't --  
20 maybe some day someone will invent something that  
21 might replace fluoropolymers, but today it does not  
22 exist.

23           So we're asking the Department to take that  
24 into consideration and asking the Board to take that  
25 into consideration to say these materials are unique

1 and they should get some different treatment under  
2 the regulations than all of the other PFAS materials  
3 that are certainly included in the definition of PFAS  
4 under the law and the regulations.

5           The second topic we want to talk about is on  
6 consistency. So I think there are a number of  
7 exemptions in the regulations and in the law. I  
8 think those were, as you've already heard, were  
9 highly debated and there was a lot of discussion that  
10 went into how to draw up those those exemptions. I  
11 think there probably was not a full appreciation of  
12 all of the areas in some of the exemptions that might  
13 be in products that are not in the exemptions and so  
14 what we're asking the Board and the Department to  
15 look at is create consistency. So a great example is  
16 if you look at the exemption for motor vehicles or  
17 motor vehicle equipment, all right, that includes, of  
18 course, all cars and ATVs and farm equipment, but it  
19 doesn't include locomotives or rail cars that might  
20 have the same materials, the same wiring, the same  
21 gaskets that contain fluoropolymer materials.  
22 Snowmobiles would not be exempt under that regulation  
23 yet they use some of those same fluoropolymer  
24 materials. And maybe even more important, equipment  
25 used on manufacturing floors for non-exempt products,



1 such as fork lifts, which have gaskets that are made  
2 of fluoropolymer material, they're not exempt. So we  
3 understand it's probably very difficult to fully  
4 appreciate the breadth of the exceptions and what is  
5 or is not included, so we're just asking let's look  
6 at and again. Our comments will detail a number of  
7 those circumstances where maybe exemptions need to be  
8 broadened or maybe there is another category they can  
9 fall under to ensure consistency on how the same  
10 products are being dealt with in different  
11 applications.

12           The third thing that we would like to talk  
13 about briefly is the currently unavoidable use  
14 process. So we know the law has a five year period  
15 for that process and only the Legislature can change  
16 that five year period, which we would hope they will  
17 look at in the future. One of the issues for  
18 companies like us is five years is not long enough to  
19 look at developing alternate products, okay, it just  
20 doesn't happen that quickly and for us for  
21 fluoropolymers that is not a quick process. Five  
22 years is nowhere near the time that we could be able  
23 to possibly find some alternative to fluoropolymer  
24 material that we're using today. So, again, I  
25 appreciate the Board and the Department can't change

1 the five year process, but I hope we can look at  
2 maybe how that rule is interpreted and hope the  
3 Legislature certainly reconsiders that in the future.

4 In particular, the information that has to  
5 be submitted every five years is a key area we want  
6 to focus on. The current regulation in law says you  
7 have to provide a whole series of information in  
8 order to get a currently unavoidable use  
9 determination, okay, but then you have to do the same  
10 thing five years later even if nothing has changed  
11 and, of course, talk about what has changed or is  
12 there new information. So and I think secondly to --  
13 for companies to say I only have a five year  
14 guarantee of selling products in Maine is not a very  
15 practical approach. It's certainly not a business  
16 model that companies can really, really find is going  
17 to allow them to make new investments or to continue  
18 to sell products in certain areas if that, in fact,  
19 is only a five year guarantee. So we would ask for  
20 maybe a process that could look at that five year  
21 period but say for renewals can you not require all  
22 of the same information but new information or and  
23 say that unless there is new information that says  
24 the exemption shouldn't be reconsidered or should be  
25 reconsidered the renewal is granted and you don't

1 have to have this period where you don't really know  
2 whether you're going to be able to continue to sell  
3 products in Maine or not. So I think the consistency  
4 for the public, for manufacturers, and certainly for  
5 products that are sold and used in Maine that's an  
6 important aspect and if there is a way to affect that  
7 process we think it could be a good improvement to  
8 the regulations.

9           So I appreciate your time this morning.  
10 We're happy to continue to work with the Board and  
11 the Department certainly on continuing to get the  
12 regulations to a final approved state. And I would  
13 be happy to answer any questions you have. Thank  
14 you.

15           MS. LESSARD: Mr. Duchesne.

16           MR. DUCHESNE: Thank you very much, Madam  
17 Chair. Fluoropolymer, that's probably a -- has at  
18 least one of fully fluorinated carbon atom --

19           CHRISTOPHER CORRENTI: Correct.

20           MR. DUCHESNE: So under the definitions in  
21 the Legislature statute we'd have to follow that. I  
22 have a little bit of deja vu about this because it's  
23 the kind of thing that I think the Legislature and  
24 Board went through 10, 15 years ago on decabrominated  
25 flame retardants --

1 CHRISTOPHER CORRENTI: Mmm Hmm.

2 MR. DUCHESNE: -- there was a whole  
3 classification of chemical similar -- with the  
4 similar problems that they were good in wiring  
5 harnesses and hard to replace. And so there had to  
6 be a lot of fudging during the course of that over  
7 several years where the Legislature had to change or  
8 create the exemptions, the Board was given some  
9 latitude. I'm trying to figure out what that process  
10 is going to be if we follow your recommendations. So  
11 you suggest that this is going to come back to the  
12 Legislature for some refinement?

13 CHRISTOPHER CORRENTI: Well, I think a  
14 couple of the requirement, for example, the five  
15 years is in the statute. I understand this Board --

16 MR. DUCHESNE: Mmm Hmm.

17 CHRISTOPHER CORRENTI: -- and this  
18 Department can't change the five year period, but is  
19 there a way to interpret the regulation -- the law to  
20 allow for some modification of the process. I think  
21 that's what we're asking the Board and the Department  
22 to look at because we think there is. But that could  
23 require the Legislature to come back --

24 MR. DUCHESNE: Mmm Hmm.

25 CHRISTOPHER CORRENTI: -- which I know is

1 not everyone's desire for the Legislature to have to  
2 revisit this again.

3 MR. DUCHESNE: Oh, I have no problem with  
4 that.

5 CHRISTOPHER CORRENTI: So I think there is  
6 some refinement the Legislature should do. There are  
7 examples of -- in other states where there have been  
8 other PFAS laws enacted that I think address some of  
9 the -- maybe the gaps that resulted from the  
10 amendments that were made last year, but I think the  
11 Legislature has -- should do some additional  
12 refinement, but certainly I think the Department and  
13 the Board have some leeway within the language of the  
14 statute to address some of the concerns that we've  
15 raised already.

16 MR. DUCHESNE: Mmm Hmm. All right. And  
17 will you be submitting any comments suggesting what  
18 specific leeway recommendations you'd make?

19 CHRISTOPHER CORRENTI: Yes.

20 MR. DUCHESNE: Okay.

21 CHRISTOPHER CORRENTI: Yes. We will have  
22 that in detail, yes.

23 MR. DUCHESNE: Okay. Thank you.

24 MS. LESSARD: Mr. Sanford.

25 MR. SANFORD: Following up along the lines

1 of what Mr. Duchesne has said, it's got to be --  
2 we -- we cannot find ourselves in a situation where  
3 we're saying the Legislature should do this or should  
4 do that, so I think there really needs a bifurcation  
5 between where you make the strategy approach that you  
6 would be doing with the Legislature and more  
7 specifically what you think that the Environmental  
8 Board and the DEP can do without violating or flying  
9 against that five years that's in there. Like where  
10 do you think that there is leeway that doesn't  
11 violate the intention and spirit?

12 CHRISTOPHER CORRENTI: Sure. And we will  
13 try -- we are trying to do that in the comments that  
14 we're going to submit, so --

15 MR. SANFORD: Okay.

16 CHRISTOPHER CORRENTI: -- because we  
17 approach that -- that line the Department and the  
18 Board has to draw.

19 MS. LESSARD: Anything else? Thank you very  
20 much.

21 CHRISTOPHER CORRENTI: Thank you.

22 MS. LESSARD: John Keene.

23 JOHN KEENE: Good morning, Members of the  
24 Board. My name is John Keene with the Association of  
25 Home Appliance Manufacturers, also known as AHAM,

1 based in Washington, D.C. This is in particular  
2 regard to the cookware bans in the PFAS law. We  
3 represent the major affordable small care appliances  
4 specifically to this cookware issue. We represent  
5 all powered, like plugged in appliances, your  
6 skillets, air fryers, your panini presses.

7 Under the proposed rule cookware is defined  
8 as -- it shouldn't be broad to be any houseware  
9 intended to be in direct contact with food or  
10 beverages. As currently written there are some  
11 serious concerns on what a product would be  
12 incorporated, i.e., a refrigerator is -- has kind of  
13 a food or beverage. We -- what we wanted to assure  
14 manufacturers are clear of responsibilities of this  
15 law and the appliance supply is not threatened here  
16 in Maine. So we have five kind of individual  
17 requests for the cookware issue in this law.

18 So the first we would request that this ban  
19 focuses on heated surfaces during cooking that come  
20 into contact directly with food or beverages, so the  
21 food contacts part of the product. So the proposed  
22 language is very expansive and our interpretation is  
23 that it would include internal components, which do  
24 not have contact with food. And, in fact, the use of  
25 PFAS as discussed earlier may be needed for product

1 safety for the internal parts of the appliance.  
2 Appliances are very complex products. Obviously many  
3 internal components, wiring, circuit boards, internal  
4 components, unlike other products in the ban, e-wax,  
5 dental floss, cosmetics, so these much more complex  
6 products require special consideration. So because  
7 of the inclusion of internal components manufacturers  
8 may have to find substitutes that may or may not  
9 exist with the same level of product safety which  
10 could lead to manufacturers having to determine if  
11 they can still provide appliances here in Maine  
12 potentially.

13 As you may already know, Minnesota became  
14 the first state to enact a PFAS supporter ban two  
15 years ago. In their guidance documents they took --  
16 they articulated that cookware only applies to the  
17 food contact surface and that's what we encourage you  
18 all to do as well here in Maine. More importantly,  
19 when we refer to cooking we refer to the process of  
20 being heated, so I think let's focus on heated  
21 products in the kitchen. Ultimately, we request that  
22 you would clarify the restriction is on direct food  
23 contact, provides heat that would not include  
24 internal components.

25 So secondly, the product scope is entirely



1 too broad. Under the law it says included but not  
2 limited to, so the language in the law creates  
3 unbounded uncertainties and what products would be  
4 banned and what cookware products are being banned.  
5 With the upcoming 2026 deadline on this, time is of  
6 the essence. Manufacturers have to redesign, retool  
7 or clear out the inventory if the ban goes into  
8 effect as currently written. So the pulls could  
9 include many appliances such as refrigerators,  
10 dishwashers, I guess, if it has food contact, forcing  
11 manufacturers to decide if they can comply or have to  
12 make other changes to their products.

13 As I mentioned earlier, in Minnesota also in  
14 their guidance stated that their ban was just the  
15 products listed in their ban, so it was the pots and  
16 pans, skillets, baking molds, so we encourage you all  
17 to do the same thing here in Maine just so we know  
18 what products are being banned and it would be just  
19 for food contact as well. They also in their  
20 guidance stated that pocket makers were excluded  
21 because it did not fit within their definition of  
22 cookware, so I encourage you to do that as well.

23 Thirdly, I also encourage you all to look at  
24 replacement and spare parts for products that are  
25 already in the market. So appliances have spare

1 parts, we encourage you to allow that people can buy  
2 replacement parts for appliances and ensure that they  
3 can still be used if this law moves forward.

4           Fourthly, we looked -- we asked that -- so  
5 the current law looks at date of sale would be the --  
6 January 1 would be the prohibition. We would  
7 encourage you to look at date of manufacture. The  
8 issue around date of sale is that it requires months  
9 in advance to get products into stores so that could  
10 be a month away from now to get products into stores  
11 changed and updated to the guidance. Date of  
12 manufacture is a set date, they know it, they can --  
13 they are bound by, they can ensure that from January  
14 1 on all products will be in compliance.

15           So I guess fifth and, I guess, the last one  
16 is, of course, currently the unavoidable use process.  
17 We appreciate that you will have that here in Maine.  
18 Other states do not have that, but one concern we  
19 have with that is -- is the timing. Obviously,  
20 January 1 is obviously a year away, but for  
21 manufacturers it's very, very quick. So we -- we  
22 would encourage you -- the current process would be  
23 a -- this summer would be the submission process and  
24 then the fall and winter would be you get -- you get  
25 your answer, rejection or acceptance. For our

1 manufacturers it's a very tight time frame to know if  
2 it will be accepted or rejected, so one proposal we  
3 have is potentially like providing interim  
4 exemptions, so if the summer we file exemptions for  
5 whatever we file exemptions for, provide that  
6 exemption, allow the Department to go through all of  
7 the requests and then come fall when the requests  
8 come in they make the determination. If they accept  
9 it it would continue, but if they reject it you  
10 should provide those rejections a little extra time  
11 to comply with the January 1 timeline.

12           So with that, I want to work with you all on  
13 this cookware issue. Manufacturers want to comply.  
14 It's not a new issue for them, but any uncertainties  
15 around the law can potentially affect product  
16 availability and that may not be what you all  
17 intended here in Maine. So I want to work with you  
18 all on this and I would be happy to answer any  
19 questions you have on this, so thank you for your  
20 time.

21           MS. LESSARD: Thank you, sir. Any  
22 questions? Seeing none, thank you. Sarah Woodbury.

23           SARAH WOODBURY: Good morning, Chair Lessard  
24 and Members of the Board of Environmental Protection.  
25 My name is Sarah Woodbury. I am the Vice President

1 of Policy and Advocacy for Defend Our Health. Defend  
2 Our Health is a Maine-based non-profit that works to  
3 make sure everyone has equal access to safe food,  
4 safe drinking water, healthy homes and toxic-free  
5 climate-friendly products. We have been working on  
6 the issue of PFAS contamination since the initial  
7 discovery of the first contaminated farm by Fred  
8 Stone back in 2017. We thank you for the opportunity  
9 to provide comments on the draft rule for Chapter 90,  
10 Products Containing Perfluoroalkyl and  
11 Polyfluoroalkyl Substances.

12 MR. HINKEL: Excuse me. I just want to  
13 remind everybody, we do have a transcriptionist here  
14 today and if --

15 SARAH WOODBURY: Sorry, I talk really fast.  
16 I'll try to slow down.

17 MR. HINKEL: Okay.

18 SARAH WOODBURY: I always have this. It's  
19 a -- my bad habit.

20 So I -- we will submit more in-depth written  
21 comments by January 28, but we did want to take a  
22 moment to make a couple of comments on the draft  
23 rule. The PFAS products law passed -- that was  
24 passed last session was the result of weeks, if not  
25 months, of hard work and compromise between the

1 Department, legislators, industry, and advocates like  
2 me. No one is a hundred percent happy with it, which  
3 means the Department is probably doing something  
4 right and we just want to say that we appreciate the  
5 work that the Department has done to draft this  
6 language. Overall, we think this is a really good  
7 rule and we would urge the Board to avoid any  
8 attempts to weaken the reporting requirements that  
9 are laid out by the Department for industry to obtain  
10 a currently unavoidable use designation.

11 I will point out that Minnesota has a law  
12 that is much stronger than ours in terms of reporting  
13 that most industry will be required to provide a lot  
14 of this information to Minnesota before they even  
15 have to report it to us, so they should for the most  
16 part already have it in place because Minnesota's law  
17 has a much more strict and in-depth reporting  
18 requirement than Maine's does.

19 We do have a couple of concerns from some of  
20 the language in the draft. I'm not going to hit  
21 everything because, like I said, we will submit more  
22 in-depth comments.

23 First off for -- as was mentioned, the PFAS  
24 definition -- and this is not a concern of ours. We  
25 love the PFAS definition. The PFAS definition in

1 this law is not unique to Maine. Twenty-eight other  
2 states, including Minnesota, use the same definition  
3 of PFAS which includes the fluoropolymers that were  
4 mentioned. The Department of Defense uses the same  
5 definition of PFAS in a couple of their laws, so this  
6 is not a new thing for industry and it is a thing  
7 that all of the other states that have some sort of  
8 PFAS ban coming are utilizing the same law, so Maine  
9 is not unique. And so we would urge you as you're  
10 looking at the fluoropolymer issue to know that  
11 they're not only going to have to comply here,  
12 they're going to have to comply a lot of other places  
13 and that, you know, from the AGC's gentleman, most of  
14 the things that he mentioned are exempt under the law  
15 anyway.

16           So our issues are, as mentioned by  
17 Representative Gramlich, the draft rule defines  
18 commercially available analytical method as does not  
19 need to be performed by a third-party. The  
20 definition of commercially available analytical  
21 method is defined in the statute. It's an EPA  
22 approved analytical method. There are a couple of  
23 different ones. Our concern with that definition is  
24 not the -- the use of the EPA currently available  
25 analytical method, it's the not requiring industry to

1 perform their tests at a third-party lab. We  
2 disagree and we think that industry should not be  
3 allowed to test their own materials. There is a  
4 massive history that's shown us that the information  
5 that comes from industry when it comes from PFAS --  
6 around PFAS that has not always been in the public's  
7 best interest. So we urge, urge, urge that avail --  
8 allowed to be kind of test internally to be stricken.  
9 They should absolutely should be required to use a  
10 third-party to prove that the information is correct  
11 and valid.

12           As the -- in terms of the -- the draft rule  
13 also defines chemically formulated as a process that  
14 chemically changes a substance extracted from a  
15 naturally occurring plant, animal or minerals. This  
16 does not take into account where PFAS doesn't  
17 chemically change a natural substance. For example,  
18 if you add PFAS to cotton it doesn't change the -- to  
19 make it stain resistant, it doesn't change the  
20 chemical composition of cotton. So that definition  
21 is -- doesn't take into account that sort of thing,  
22 so we think that -- and we will provide alternative  
23 language in our draft, but that language should not  
24 be in there.

25           I will skip this one because Representative

1 Gramlich mentioned it.

2           And for the other definition that we're  
3 concerned about, semiconductor. Semiconductors are  
4 exempt under the law and the current part of the --  
5 and this also speaks back to some of what other folks  
6 have already spoken -- a lot of the stuff they  
7 mentioned is going to be exempt under this law  
8 because of semiconductor. Part of the definition  
9 states that intended to perform electronic or other  
10 related functions, this is incredibly broad. Given  
11 that this will be an exemption in the law, it should  
12 be strengthened. The primary purpose of  
13 semiconductor devices is according to -- it's like  
14 basic definition, control the flow of electric  
15 current via amplification of signals switching or  
16 energy conversion, we believe that this should be  
17 added to the definition to avoid an unnecessarily  
18 broad definition, especially considering this is an  
19 exemption under the law.

20           And then, let's see here. When it comes to  
21 currently unavoidable use under Section A(3)(b), the  
22 draft states "The required specific characteristics  
23 or combination of characteristics that necessitate  
24 the use of PFAS chemicals" they should have to  
25 provide clear information as to why this



1 characteristic is necessary for the function of the  
2 health, safety, or function of society. Or more  
3 clearly stated, why the absence of this  
4 characteristic will negatively affect the health,  
5 safety, or functioning of society, which is the  
6 definition under the law of why the use of the PFAS  
7 is necessary.

8           And finally, under Section A(4)(e), "A  
9 comparison of the known risks to human health and the  
10 environment between PFAS and the materials identified  
11 in Subsection A." For this section and for some of  
12 the other assessments in this section what is the  
13 criteria for completing such an assessment? There  
14 needs to be criteria laid out so that industry cannot  
15 cherry pick studies that show that -- show what they  
16 want basically. I needed to edit that sentence  
17 before I printed it and I did not. So we just want  
18 to make sure there is some criteria in place so that  
19 they have to, you know, so that when they're looking  
20 at known risks of health and environment that there  
21 is actual, you know, clarity around what types of  
22 studies, peer review, all of that type of stuff so  
23 that when they're presenting the information for the  
24 currently unavoidable use designation they, you know,  
25 there is -- there is not an ability to cherry pick

1 things that will kind of prove what they want.

2 And so once again, we'll provide much more  
3 detailed comments on January 28. And we just want to  
4 once again say we are generally broadly in support of  
5 this. We appreciate the Department. They have  
6 strengthened from the previous rule for the law that  
7 was 1503 before it was amended, some of the  
8 requirements for the currently unavoidable use  
9 designation reporting and we greatly, greatly  
10 appreciate that. So overall, we're in support, we  
11 just have a couple of definitions that we think need  
12 to be clarified or strengthened that are not in  
13 statute to be clear, so.

14 MS. LESSARD: Thank you. Mr. Sanford.

15 MR. SANFORD: Towards that end with the same  
16 thing that Mr. Duchesne was saying, if you can make  
17 it clear --

18 SARAH WOODBURY: Yes.

19 MR. SANFORD: -- on those what is for us --

20 SARAH WOODBURY: Yes, we will --

21 MR. SANFORD: -- within the context --

22 SARAH WOODBURY: -- make sure that's very  
23 clear what the language we think should work, so  
24 we'll do that.

25 MR. SANFORD: Okay.

1 MS. LESSARD: Any other questions for this  
2 witness? Thank you very much.

3 SARAH WOODBURY: Great. Thank you very much  
4 for your time and thanks again to the Department.

5 MS. LESSARD: Ben Gilman.

6 BEN GILMAN: Good morning, Chair Lessard,  
7 Members of the Board. My name is Ben Gilman. I'm an  
8 attorney with Drummond Woodsum in Augusta. I'm also  
9 a resident of Gorham. And I'm here on behalf of  
10 Emerson Electric. Emerson Electric headquartered in  
11 St. Louis, Missouri is a global leader in automation  
12 with extensive operations across the United States,  
13 including over 29,000 employees and 15 manufacturing  
14 sites. The company is dedicated to producing  
15 industrial automation monitoring and control  
16 equipment and professional tools and equipment  
17 products that are safe for both end users and the  
18 environment and the goals aligned with the State of  
19 Maine's Department of Environmental Protection.

20 We first would like to start by thanking the  
21 Maine DEP staff for a well-executed stakeholder  
22 process and their work with the regulating community  
23 regarding the Chapter 90 rulemaking. We'd also like  
24 to thank them for their work on the previous  
25 unavoidable use rulemaking process that paused due to

1 changes in the law by the Legislature.

2           We come before the BEP today to advocate for  
3 one change in the current proposed rule. The current  
4 proposed rule only allows for a company to apply for  
5 a currently unavoidable use determination 36 months  
6 before the product ban goes into effect. Emerson  
7 would like to see a change that would allow companies  
8 to apply for a CUU before 36 months. Under the  
9 current proposed rule for products to be banned in  
10 2032, 2029 would be the earliest that a company could  
11 apply for a CUU. Emerson would like to know before  
12 2029 if their product will receive a CUU or if it  
13 would be subject to a ban. This is necessary for  
14 long-term investment decisions and certainty within  
15 their industry. Thirty-six months may seem like  
16 plenty of time for a determination, but in certain  
17 manufacturing industries many decisions are made many  
18 years prior to that. Not every manufacturing  
19 industry will seek CUUs prior to 2029, but those that  
20 would like the determination should be allowed.  
21 Essentially, we're here today asking to be regulated  
22 earlier.

23           Emerson will be submitting written comments  
24 by the January 28 deadline with more detail as to why  
25 more time is needed for CUU applications, but I

1 wanted to speak today to highlight the importance  
2 this issue is to Emerson Electric.

3 Thank you for your time and happy to answer  
4 any questions you may have.

5 MS. LESSARD: Mr. Duchesne.

6 MR. DUCHESNE: Thank you. Is Emerson  
7 getting regulated faster in Minnesota?

8 BEN GILMAN: I can't speak to that. I can  
9 find out. I know that they're active in, you know,  
10 all 50 states across the country. They're worldwide  
11 actually. They have employees across the world, so  
12 they're used to being regulated in many  
13 jurisdictions, so I'm sure they're working on that.

14 MR. DUCHESNE: Mmm Hmm. Yeah, I mean, just  
15 curious, I mean, Minnesota did it, Maine is in the  
16 process and other states are. There is going to be  
17 eventually some kind of timetable that's pretty  
18 common.

19 BEN GILMAN: Yup, but they -- they would  
20 just like the ability to apply for a CUU earlier than  
21 the 36 months than the proposed rule, which the law  
22 is silent on, so the Board does have the ability to  
23 move that timeline up.

24 MR. DUCHESNE: Okay. Thanks.

25 BEN GILMAN: And the Department.

1 MS. LESSARD: Mrs. Vickery.

2 MS. VICKERY: Do you have a suggested  
3 alternative to the 36 months?

4 BEN GILMAN: We would like to see the  
5 ability once the rule goes into effect I think  
6 Emerson would be prepared to apply for a CUU soon  
7 thereafter, you know, as soon as possible. I think  
8 the Department is probably timing, you know, for  
9 staffing and things of that nature, but as soon as  
10 possible that the Department employees feel like they  
11 could handle that we would like to do that.

12 MS. VICKERY: Thank you.

13 MS. LESSARD: Mr. Pelletier.

14 MR. PELLETIER: There was some concern  
15 mentioned earlier about the five years. Five years.

16 BEN GILMAN: Well, we don't have any concern  
17 with that.

18 MR. PELLETIER: Thank you.

19 MS. LESSARD: Any other questions for this  
20 witness? Thank very much -- oh, I'm sorry.  
21 Commissioner.

22 MS. LOYZIM: Thank you, Madam Chair. I just  
23 might suggest it would be helpful if the  
24 recommendation is for there to be no time frame or  
25 the submission of the CUU request. If you could

1 address how the information you would submit well in  
2 advance of the prohibition date would meet the term  
3 currently.

4 BEN GILMAN: Yup. Okay. We'll -- we'll put  
5 that in our written comments.

6 MS. LOYZIM: Thank you.

7 BEN GILMAN: Yup.

8 MS. LESSARD: Anything else? Thank you very  
9 much.

10 BEN GILMAN: Thank you.

11 MS. LESSARD: Jay West.

12 JAY WEST: Hello. Chair Lessard, Members of  
13 the Board and Commissioner Loyzim, my name is Jay  
14 West and I'm the Executive Director of the  
15 Performance Fluoropolymer Partnership, a specialty  
16 trade association managed under the American  
17 Chemistry Council. The American Chemistry Council is  
18 headquartered in Washington, D.C.

19 You have already heard from Mr. Correnti  
20 about fluoropolymers, so I can just say that they're  
21 stable, large molecule PFAS that possess a unique  
22 combination of attributes. Thank you for the  
23 opportunity to testify here and thank you to the  
24 staff at the Department of Environmental Protection  
25 for their work to implement the statutory amendments

1 passed last year.

2           We believe there are provisions in the  
3 proposed regulation that require further and more  
4 detailed clarification and consideration. I will  
5 briefly cover just a few of those here today, but we  
6 will submit much more detailed written comments by  
7 the January 28 deadline. And to the comments made by  
8 Board Member Sanford, we will be very cognizant of  
9 what has -- what can be done by the Department and  
10 the Board versus what would have to be a legislative  
11 fix.

12           So I'd like to start by echoing  
13 Mr. Correnti's comments about fluoropolymers. These  
14 are large, highly stable molecules that meet criteria  
15 for identifying polymers of low concern for  
16 environmental health and for the environment. They  
17 are insoluble in water and they don't break into  
18 smaller pieces in the environment, therefore, there  
19 are not concerns associated with fluoropolymers in  
20 terms of mobility in the environment. Because they  
21 don't break apart into smaller pieces they're also  
22 not bioavailable and they're not bioaccumulative.  
23 I've seen some videos where it basically shows  
24 fluoropolymers bouncing off of cells. So for these  
25 reasons we would echo the need for a broader CUU



1 exemption for fluoropolymer products up front so that  
2 the Department can focus resources on the small  
3 molecule, water solulable, highly mobile PFAS that  
4 are the ones at issue when we're talking about things  
5 like drinking water contamination and biosolids  
6 contamination. There is a way to prioritize here  
7 within the allowable framework.

8           The second thing that I'd like to say is  
9 that the assertion of proprietary information to  
10 support a CUU proposal cannot be an automatic basis  
11 for deeming incomplete or rejecting a CUU proposal.  
12 If you look at the interpretive note that is in  
13 Section 9(e)(iii) the Department recommends that a  
14 manufacturer avoid inclusion of any proprietary  
15 information in their proposal. However, it is  
16 reasonably foreseeable to evaluate a PFAS containing  
17 product and potential alternatives during the  
18 rulemaking process. The Department will have to  
19 consider information about product formulations and  
20 other things like manufacturing processes and the  
21 design of manufacturing processes that will be  
22 proprietary information. There are examples of  
23 regulatory processes, subject to public comment, that  
24 have procedures for allowing the consideration of  
25 proprietary information and we urge the Department to

1 develop similar procedures for implementation under  
2 this statute.

3 I am also going to make comments about  
4 concerns of the definition of commercially available  
5 analytical method. That seems to be a common theme  
6 from everybody today. We believe it is too generic  
7 and it lacks any quality control or performance  
8 expectations. And while we appreciate that the  
9 Department has attempted to define it because it was  
10 left undefined by the Legislature, the phrase within  
11 the definition any test methodology is in our minds  
12 too generic. There is nothing in there that  
13 contemplates expectation for the use of methods that  
14 are sufficiently characterized have undergone any  
15 kind of performance evaluation to know whether the  
16 data they produce are reliable, are they repeatable  
17 and are they fit for this regulatory purpose. We  
18 think to create an even playing field the Department  
19 should elaborate baseline criteria for performance  
20 standards for any test methodology and baseline  
21 qualifications of any lab generating data that is  
22 submitted to the program.

23 Fourth, the Department should not use total  
24 organic fluorine, or TOF, as a proxy or surrogate for  
25 the amount or type of PFAS in a product. We know

1 that it's included in the statutory language, but  
2 without careful review of a TOF protocol those data  
3 should not be used to make conclusive statements  
4 about the amount or specific type of any PFAS or  
5 group of PFAS in a product. It should only be used  
6 as a screening method as the U.S. EPA recommends.  
7 Also, the Department should require under regulation  
8 the submission of the TOF protocol used to generate  
9 the data in the submission to account for the  
10 extraction of inorganic fluorine according to  
11 standardized methods. One should not assume that all  
12 commercially available laboratory methods for total  
13 organic fluorine actually take that step when they  
14 prepare the sample. So we think there is an ability  
15 for the protocol to be provided to the Department so  
16 the Department understands what are these data and  
17 how are they generated.

18           And finally, I'll just say that there is a  
19 need for several clarifications around the CUU and  
20 notification processes and we have a lot of comments  
21 and develop with specific language suggestions for  
22 the Department. We are going to offer these comments  
23 in the spirit of getting further clarity to help  
24 manufacturers develop effective compliance plans and  
25 to do it right the first time by better understanding

1 the intention and interpretation of the Department  
2 and what the Department needs. For example, the  
3 Department proposes that notification is include,  
4 quote, "the general type of the product." Well, how  
5 is general type of product materially different than  
6 the GPC brick category or the harmonized tariff  
7 system descriptor in code that already have to be  
8 provided and what more is the Department looking for  
9 with what appears to be a much more generic and --  
10 and not standardized approach to describing the  
11 product. Another example is the use of the novel  
12 term complex product that appears in the proposed  
13 regulation. What is a complex product? When do I  
14 know that my product is complex and when do I get to  
15 consider the considerations that are made for complex  
16 products? No -- no light on that at all in the draft  
17 regulations or in the statute, so we can't go back to  
18 the Legislature to look for interpretation there. So  
19 those are just two examples of things that seem  
20 small, but when you take the sum of all of these  
21 small things and try to develop a compliance plan  
22 many, many questions pop up and it gets -- one can  
23 get very lost.

24           So in our comments that we're planning for  
25 the 28th, we're planning to address these and we hope

1 that we will be offering what are viewed as  
2 constructive ways forward. So thank you very much.  
3 I appreciate being here before you today and I am  
4 prepared to take any questions.

5 MS. LESSARD: Mr. Sanford.

6 MR. SANFORD: Thank you. Are you aware of  
7 or find acceptable any laboratory certification  
8 processes such as those of ASTM or chain of custody,  
9 evidentiary analysis laboratories used in -- in the  
10 judicial or prosecutorial situations?

11 JAY WEST: Maybe not to that extent because  
12 I'm not a lawyer and I don't do litigation, but what  
13 I can tell you is that ISO, the International  
14 Standards Organization, does have a standard that I  
15 cannot name right now that is a baseline for  
16 laboratory certification.

17 MR. SANFORD: Right. In the 14,000? The  
18 ISO 14,000 --

19 JAY WEST: No, it's not in that one. I  
20 think it's in a different series.

21 MR. SANFORD: Okay.

22 JAY WEST: But it is about the basic  
23 qualifications of a laboratory to be considered a  
24 reliable laboratory in the sense of fluora and we  
25 don't have anything like that or anything like that

1 contemplated it appears in the proposed regulations.  
2 In terms of our -- in terms of methods, there will  
3 soon be published by ASTM, which is another consensus  
4 standard body --

5 MR. SANFORD: Right.

6 JAY WEST: -- a guidance document on how to  
7 use and not use existing analytical methods for the  
8 detection of PFAS in different media. That work was  
9 initiated by the need to look at PFAS in products.  
10 Most protocols have been focused on water or on soil  
11 or sludge, those sorts of things, and so there is --  
12 have been a two, maybe three year process to develop  
13 a guidance document that says if your problem looks  
14 like this use these, use these with caution and do  
15 not use these. So we think that that will be very  
16 helpful either to the Department in possibly  
17 elucidating something more about data quality and  
18 laboratory method appropriateness, in an interpretive  
19 note, in the regulation itself or perhaps in a  
20 guidance document. So the short answer is that, yes,  
21 there are standards out there and there are guidance  
22 that is coming from third-party standard setting  
23 organizations that can help inform this particular  
24 element.

25 MR. SANFORD: Thank you.

1 JAY WEST: Mmm Hmm. Thank you.

2 MS. LESSARD: Any other questions from any  
3 Board members or the Commissioner? Thank you very  
4 much. Dana Colihan.

5 DANA COLIHAN: Good morning, Chair Lessard  
6 and Members of the Board of Environmental Protection.  
7 My name is Dana Colihan. I am the Co-Executive  
8 Director of Slingshot and I live in Portland, Maine.  
9 We are testifying in support of the draft Chapter 90  
10 rules and we urge the DEP to avoid weakening any of  
11 the requirements.

12 Whether your community is facing polluted  
13 water from sludge spreading, an HBLS spill or a  
14 leaking landfill, communities deserve to know the  
15 facts, make their voices heard and create the change  
16 that they want to see. Slingshot is an environmental  
17 health and justice organization working alongside  
18 communities most impacted by environmental health  
19 threats to take aim at polluters and build community  
20 power.

21 We're currently facing, as we all know, one  
22 of the largest contamination crises of our lifetime  
23 with communities around the country discovering daily  
24 that their water is polluted with polyfluoralkyl  
25 substances. We co-facilitate the National PFAS and

1 Foundation Coalition, which is composed of 42  
2 community groups from around the country, including  
3 Maine, that are directly impacted by PFAS. The  
4 coalition is fighting for a world where people are  
5 not exposed to any PFAS, where there is justice for  
6 the victims of PFAS exposure and where laws and  
7 regulations prevent contamination disasters like this  
8 from happening again and from this work we've  
9 witnessed firsthand the harm that PFAS has on our  
10 bodies, our families and the environment.

11           We need to do everything in our power to  
12 stop PFAS exposures and turn off the tap of  
13 contamination. We shouldn't have PFAS in our  
14 products, we shouldn't have PFAS in our water and we  
15 shouldn't have PFAS in our bodies. In many ways  
16 Maine has been a leader and taking steps to tackle a  
17 PFAS contamination crisis maintaining strong  
18 requirements for currently unavoidable uses is  
19 critical to ensuring that we do everything in our  
20 power to prevent exposure to PFAS. As we know, for  
21 years companies like 3M and Dupont knew about the  
22 serious dangers of these chemicals but covered up the  
23 health impacts and the public regulators, even their  
24 own employees, and we're now collectively paying the  
25 price. We need to ensure that industry doesn't shirk



1 responsibility or weaken these rules because there is  
2 a real human cost to negligence. It's time to put  
3 people over profit and stop preventable exposure and  
4 this is why we're asking the BEP to ensure  
5 strengthening or tightening the language in a few key  
6 areas as we've hear earlier today.

7           The first place being in the currently  
8 unavoidable section A(3)(b) beyond just asking  
9 industry for characteristics for the use of PFAS, we  
10 need to require that industry provide clear  
11 information as to why the characteristic is necessary  
12 for product's functions and health safety or the  
13 functioning of society.

14           Under Section A(4)(e), we need clear  
15 criteria laid out for completing such an assessment  
16 as to comparing the known risks to human health and  
17 the environment between PFAS and the materials  
18 identified in Subsection A. And we need tighter and  
19 clearer definitions for certain terms like  
20 commercially available analytical methods. Industry  
21 should not be allowed to test their own materials.  
22 They should be required to use a third-party  
23 laboratory. Chemically formulated and co-solvent,  
24 I won't go into that because we've heard more about  
25 that already.

1           And I also just want to add it is critical  
2 that we maintain a strong definition of PFAS because  
3 excluding certain PFAS like fluoropolymers or  
4 fluorinated gases can result in increased  
5 proliferation of PFAS. Fluoropolymers can be thought  
6 of as plasticized PFAS and are used in many consumer  
7 products like non-stick cookware appliances. These  
8 chemicals can degrade over time polluting the ground  
9 water and drinking water and ultimately be found in  
10 humans.

11           Fluorinated gases are just as problematic as  
12 our PFAS. These gases are used in refrigerator and  
13 heat pumps and electronics. They travel on air  
14 currents and degrade into potent water contaminants  
15 called TFAs. The level of TFAs in water have  
16 actually increased over the last 20 years due in part  
17 to the proliferations of fluorinated gases.

18           At the end of the day, we really appreciate  
19 all of the hard work that has gone into drafting  
20 these rules. We're in support of the draft and we  
21 really urge the BEP to avoid weakening any of the  
22 requirements especially required to the currently  
23 unavoidable use. Thank you for taking action to  
24 protect Mainers and the environment.

25           MS. LESSARD: Any questions? Mr. Sanford.

1           MR. SANFORD: A fair number of federal  
2 processes use internal industry certification and  
3 affidavits and such but they use an accreditation for  
4 laboratories. Do you think any such approach as that  
5 could work in conjunction with third-party labs or do  
6 you think it just has to be third-party labs?

7           DANA COLIHAN: Can you say the first part of  
8 that again?

9           MR. SANFORD: A number of federal processes  
10 require --

11          DANA COLIHAN: Yup.

12          MR. SANFORD: -- industry to self-certify --

13          DANA COLIHAN: Mmm Hmm.

14          ME. SANFORD: -- but they have accredited  
15 processes similar -- and we know that there are  
16 problems with that, but what I'm asking is do you see  
17 anything in between just going with an external or a  
18 third-party lab such as having an accredited lab such  
19 as by the American Chemical Society or the ASTM or  
20 something like that where -- where if they'e  
21 certified it's a rebuttable presumption, let's say,  
22 but they get inspected periodically?

23          DANA COLIHAN: Yeah. I think my preference  
24 would be kind of just still doing strict third-party  
25 labs versus having that form that accreditation.

1 MR. SANFORD: Thank you.

2 DANA COLIHAN: Yeah.

3 MS. LESSARD: Any other questions? Thank  
4 you very much.

5 AUDIENCE MEMBER: Thank you.

6 MS. LESSARD: We have Ashley from the Maine  
7 Chamber. I am not going to try your last name.  
8 There is too many consonants running together.

9 AUDIENCE MEMBER: Ashley Luszczki, Maine  
10 State Chamber of Commerce. Chair Lessard, Members of  
11 the Board of Environmental Protection, Commissioner  
12 Loyzim, I'm pleased to be here with you today to  
13 speak on the Chapter 90, Products Containing  
14 Perfluoroalkyl and Polyfluoroalkyl Substances rule.

15 The Maine State Chamber of Commerce is  
16 Maine's largest business association representing a  
17 diverse network of over 5,000 businesses which  
18 includes researchers and developers, manufacturers,  
19 retailers and distributors, among several other  
20 focuses. The Chamber has been actively involved in  
21 the legislative and regulatory process related to  
22 PFAS advocating for balanced solutions that protect  
23 public health and the environment while supporting  
24 Maine businesses viability as well as compliance  
25 efforts. Unfortunately, as Maine's initial

1 legislative and regulatory responses to PFAS created  
2 uncertainty and challenge for the business community,  
3 Maine quickly became a cautionary tale to other  
4 states. I've heard this in speaking with  
5 counterparts located in other areas of the country as  
6 well as the business community.

7           Last year, we spent significant time working  
8 with Commissioner Loyzim, DEP staff and other  
9 stakeholders on amendment to Maine's PFAS and  
10 products law that was ultimately adopted by the  
11 Legislature. We want to express our sincere  
12 appreciation for all of the work that was done on  
13 this. It was a very complex and also important  
14 issue, so we really do appreciate that. You know, I  
15 remember at the last BEP hearing there was a question  
16 about how long this hearing would go and I think the  
17 open chairs behind me are a great example of how that  
18 collaborative process played out, so thank you all  
19 for that. I will just say, you know, through that  
20 effort we definitely have been able to balance health  
21 and environmental concerns while providing greater  
22 clarity and predictability.

23           While this rules follows much of the  
24 framework passed by the Legislature, we do believe  
25 there are areas where changes and greater clarity are

1 required and I'm not going to get into all of those  
2 today. I will provide them in our written comments,  
3 but a few areas I want to touch on today are around  
4 the fees associated with the notification process as  
5 well as currently unavoidable use Section 9.

6 Before jumping into that though, I'd be  
7 remiss if I didn't thank the Department for taking  
8 into consideration our request for the definition of  
9 semiconductor to be greater aligned with how the  
10 industry defines semiconductors, so thank you for  
11 that.

12 As mentioned, the fee amount accompanying  
13 notifications for each product where currently  
14 unavoidable use should be considered was amended from  
15 the concept draft and while we appreciate this  
16 initial change, our membership does continue to feel  
17 that a fee for each product notification could impose  
18 a huge financial burden on businesses that have  
19 multiple products and so we believe a better approach  
20 would be to determine a limit imposed on the total  
21 amount of fees which can be assessed per business.

22 As far as the currently unavoidable use  
23 process, the rule states that any CUU proposal will  
24 not be considered if submitted more than 36 months in  
25 advance of the applicable sales prohibition.

1 Following the submission, the Department will  
2 initiate rulemaking to designate CUUs. These steps  
3 take time and we believe it would be in the best  
4 interest of both the stakeholders and the Department  
5 for a longer runway for submitting and accepting  
6 these proposals. We heard about this earlier and we  
7 would just reinforce we feel the same way. We feel  
8 this will provide for greater time for planning for  
9 investments, manufacturing, and will also help  
10 prevent the potential for costly economic disruptions  
11 such as last minute product recalls.

12 We would ask the Board to consider amending  
13 this section of the rule and allow for CUU proposals  
14 to be submitted as soon as feasibly possible for the  
15 Department. Certainly, we will look into the --  
16 currently and recognizing the -- the time frame and  
17 how, you know, what that really looks like from a  
18 practical standpoint and we'll try to address that in  
19 our comments. Additionally, we would ask that the  
20 CUU renewal process be streamlined in a way that  
21 would be limited to just requiring new information to  
22 be submitted for renewal rather than resubmitting the  
23 same information required of the applicant in the  
24 initial proposal.

25 Thank you again for the opportunity to speak

1 today. Again, I'll be providing more in our written  
2 comments, but those are the most significant points  
3 we'd like to focus on today. Happy to answer any  
4 questions.

5 MS. LESSARD: Thank you very much. Any  
6 questions? Mr. Duchesne.

7 MR. DUCHESNE: Thank you. On the fees, I  
8 realize that the fees are intended to offset the  
9 Department expenses and so they have to align with  
10 whatever timetable the Department is on. We have a  
11 request to regulate faster, some request to regulate  
12 slower, but at the same time the fees need to come in  
13 at the same time the staff needs to spend the money.  
14 Do you have any recommendations on how to align that  
15 or are we going to have to guess?

16 ASHLEY LUSZCZKI: Let me give that some  
17 additional thought, if I may.

18 MR. DUCHESNE: Okay.

19 MS. LESSARD: Mr. Sanford.

20 MR. SANFORD: And if you didn't have to  
21 file -- if you limited the renewals to filing of new  
22 information, would you see a problem with including  
23 affidavits of compliance such that the previous  
24 information or compliance has been maintained?

25 ASHLEY LUSZCZKI: I'd -- I'd have to check



1 with our membership, Mr. Sanford.

2 MR. SANFORD: Okay. Or perhaps something  
3 along that effect could be even filed --

4 ASHLEY LUSZCZKI: Understood.

5 MR. SANFORD: -- like the presumption is and  
6 this is what you do to demonstrate that you're in  
7 compliance with that presumption, let's say.

8 ASHLEY LUSZCZKI: Sure.

9 MR. SANFORD: Yup.

10 AUDIENCE MEMBER: Okay.

11 MS. LESSARD: Any other questions? Thank  
12 you very much.

13 That was the last name for anyone who signed  
14 up. Has anyone come in during this process who now  
15 wishes for an opportunity to speak?

16 Seeing none, written comments on the  
17 proposed amendments to Chapter 90 must be submitted  
18 no later than 11:59 p.m. on January 28, 2025. This  
19 concludes today's hearing on Chapter 19. I want to  
20 thank you all for your time attention and  
21 participation in this effort.

22

23 (Hearing concluded at 11:12 a.m.)

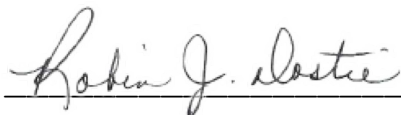
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## C E R T I F I C A T E

I, Robin J. Dostie, a Court Reporter and  
Notary Public within and for the State of Maine, do  
hereby certify that the foregoing is a true and  
accurate transcript of the proceedings as taken by me  
by means of stenograph,

and I have signed:

A handwritten signature in cursive script, reading "Robin J. Dostie", is written over a horizontal line.

Court Reporter/Notary Public

My Commission Expires: February 6, 2026.

DATED: February 6, 2026

< Dates >	2032 3:12,	38:5, 43:14
February 6,	36:10	able 9:18,
2026 58:17	2040 3:15	10:10, 11:16,
February 6,	28th 44:25	14:8, 15:10,
2026. 58:15	29 35:13	15:16, 17:22,
January 1		19:2, 53:20
26:6, 26:13,		absence 33:3
26:20, 27:11	< 3 >	Absolutely 5:3,
January 16,	36 36:5, 36:8,	31:9
2025, 1:15	37:21, 38:3,	accept 27:8
January 28	54:24	acceptable 45:7
36:24, 40:7	38 3:4	acceptance
January 28,	3M 48:21	26:25
28:21		accepted 27:2
January 28,		accepting 55:5
2025. 57:18	< 4 >	access 28:3
January 28.	42 48:1	accompanying
34:3		54:12
		accomplish 8:17
< 0 >	< 5 >	according
000 14:2,	5 52:17	32:13, 43:10
35:13, 45:18,	50 37:10	account 31:16,
52:17	59 57:18	31:21, 43:9
01 1:17		accreditation
	< 6 >	51:3, 51:25
	600 10:2	accredited
< 1 >		51:14, 51:18
10 1:17, 19:24	< 9 >	accurate 58:5
11 57:18, 57:23	9 8:17, 54:5	across 35:12,
12 57:23	9(e)(iii 41:13	37:10, 37:11
130th 6:19,	90 1:8, 1:16,	action 9:19,
7:11	2:3, 3:2,	50:23
131st 7:7	4:14, 6:11,	active 37:9
14 14:2, 45:18	11:17, 28:9,	actively 52:20
14,000 45:17	35:23, 47:9,	actual 33:21
15 19:24, 35:13	52:13, 57:17	actually 12:12,
1503 6:19,		37:11, 43:13,
7:11, 34:7		50:16
1537 7:9		add 31:18, 50:1
1614 3:5	< A >	added 3:3,
19 57:19	A(3) (b 32:21,	3:14, 4:24,
	49:8	6:20, 8:12,
	A(4) (e 33:8,	32:17
< 2 >	49:14	Additional 2:3,
20 50:16	A. 33:11, 49:18	4:25, 8:16,
2017 28:8	a.m. 1:17,	21:11, 56:17
2026 25:5	57:23	Additionally
2029 36:10,	ability 33:25,	7:2, 55:19
36:12, 36:19	37:20, 37:22,	address 6:14,
		21:8, 21:14,

39:1, 44:25, 55:18	26:1, 27:6, 36:7, 55:13	animal 8:9, 31:15
addressed 13:18	allowable 41:7	ANN 1:31
adhere 4:20	allowed 8:1, 8:2, 31:3,	answer 4:14, 10:8, 19:13,
administer 2:7	31:8, 36:20, 49:21	26:25, 27:18, 37:3, 46:20,
Administrative 1:31, 4:12	allowing 41:24	56:3
adopted 53:10	allows 9:7, 36:4	anybody 5:23
adoption 7:20, 9:2	alongside 47:17	anyway 30:15
advance 26:9, 39:2, 54:25	already 9:10, 16:8, 21:15,	apart 40:21
advancing 7:3	24:13, 25:25, 29:16, 32:6,	appears 44:9, 44:12, 46:1
Advocacy 9:4, 28:1	39:19, 44:7, 49:25	Appliance 22:25, 23:15, 24:1
advocate 11:5, 36:2	altering 8:4	Appliances 23:3, 23:5, 24:2, 24:11,
advocates 7:14, 29:1	alternate 17:19	25:9, 25:25, 26:2, 50:7
advocating 52:22	alternative 8:23, 17:23, 31:22, 38:3	applicable 54:25
affect 6:16, 19:6, 27:15, 33:4	alternatives 4:1, 41:17	applicant 55:23
affected 14:19	amended 7:10, 34:7, 54:14	applications 14:15, 17:11, 36:25
affidavits 51:3, 56:23	amending 55:12	applies 24:16
affirm 2:13, 5:25	amendment 3:17, 53:9	apply 36:4, 36:8, 36:11, 37:20, 38:6
affirm. 2:16	amendments 21:10, 39:25, 57:17	appreciate 6:10, 11:15, 14:25, 17:4, 17:25, 19:9, 26:17, 29:4, 34:5, 34:10, 42:8, 45:3, 50:18, 53:14, 54:15
affirmation 2:8	America 11:15	appreciation 16:11, 53:12
affordable 23:3	American 39:16, 39:17, 51:19	approach 18:15, 22:5, 22:17, 44:10, 51:4, 54:19
AGC 11:15, 11:19, 30:13	among 52:19	appropriateness 46:18
ago 14:13, 19:24, 24:15	amount 4:5, 42:25, 43:4, 54:12, 54:21	approved 19:12, 30:22
AHAM 22:25	amounts 8:13	
aim 47:19	amplification 32:15	
air 23:6, 50:13	analysis 45:9	
airplanes 14:18	Analyst 1:30	
alarming 6:14	analytical 7:25, 10:18, 30:18, 30:20, 30:22, 30:25, 42:5, 46:7, 49:20	
alert 9:23, 10:6		
align 56:9, 56:14		
aligned 35:18, 54:9		
aligns 9:8		
allow 7:11, 18:17, 20:20,		

area 18:5	35:8	42:20, 45:15
areas 13:12,	attributes	basic 32:14,
14:24, 16:12,	39:22	45:22
18:18, 49:6,	Atvs 16:18	basically
53:5, 53:25,	AUDIENCE 52:5,	33:16, 40:23
54:3	52:9, 57:10	basis 41:10
around 6:15,	Augusta 1:16,	battle 13:1
7:4, 26:8,	35:8	Beach 6:10
27:15, 31:6,	automatic 41:10	became 24:13,
33:21, 43:19,	automation	53:3
47:23, 48:2,	35:11, 35:15	become 14:23
54:3	automotive	begin 4:17
array 10:4	11:23	behalf 35:9
article 9:24,	avail 31:7	behind 10:10,
10:4	availability	53:17
articulate 8:18	27:16	believe 8:16,
articulated	available 4:2,	32:16, 40:2,
24:16	7:24, 30:18,	42:6, 53:24,
ASHLEY 52:6,	30:20, 30:24,	54:19, 55:3
52:9, 56:16,	42:4, 43:12,	BEN 35:5, 35:6,
56:25, 57:4,	49:20	35:7, 37:8,
57:8	avoid 29:7,	37:19, 37:25,
aspect 19:6	32:17, 41:14,	38:4, 38:16,
assertion 41:9	47:10, 50:21	39:4, 39:7,
assessed 54:21	avoidable 6:20	39:10
assessment	aware 45:6	BEP 1:19, 1:20,
33:13, 49:15	away 26:10,	1:21, 1:22,
assessments	26:20	1:23, 1:24,
33:12		1:25, 1:30,
Assistant 1:28,	< B >	1:31, 6:7,
1:31, 6:8	back 6:22,	36:2, 49:4,
associated	9:13, 20:11,	50:21, 53:15
40:19, 54:4	20:23, 28:8,	best 14:16,
Association	32:5, 44:17	31:7, 55:3
22:24, 39:16,	bad 28:19	better 43:25,
52:16	baking 25:16	54:19
assume 43:11	balance 53:20	beverage 23:13
assuming 4:21	balanced 52:22	beverages
assure 23:13	ban 23:18,	23:10, 23:20
ASTM 45:8,	24:4, 24:14,	beyond 49:8
46:3, 51:19	25:7, 25:14,	bifurcation
atom 19:18	25:15, 30:8,	22:4
attempted 42:9	36:6, 36:13	BILL 1:30, 7:10
attempts 29:8	banned 25:4,	bioaccumulative
ATTENDANCE	25:18, 36:9	40:22
1:19, 1:27,	bans 23:2	bioavailable
1:33	BARBARA 1:24	40:22
attention 7:18,	based 23:1	biosolids 41:5
57:20	baseline 42:19,	bit 10:25,
Attorney 1:28,		19:22

Blossom 1:16	54:21	Chair 1:20,
Board 1:4, 2:4,	businesses	2:20, 6:6,
2:5, 2:13,	11:21, 12:1,	7:6, 11:12,
2:21, 11:13,	12:4, 12:14,	19:17, 27:23,
13:20, 15:24,	52:17, 52:24,	35:6, 38:22,
16:14, 17:25,	54:18	39:12, 47:5,
19:10, 19:24,	buy 26:1	52:10
20:8, 20:15,		chairs 53:17
20:21, 21:13,	< C >	challenge 53:2
22:8, 22:18,	C. 23:1, 39:18	Chamber 52:7,
22:24, 27:24,	called 11:15,	52:10, 52:15,
29:7, 35:7,	12:7, 50:15	52:20
37:22, 39:13,	Canadian 6:24	change 8:11,
40:8, 40:10,	captured 3:15	17:15, 17:25,
47:3, 47:6,	carbon 19:18	20:7, 20:18,
52:11, 55:12	care 23:3	31:17, 31:18,
boards 24:3	careful 43:2	31:19, 36:3,
boats 14:17	cars 12:15,	36:7, 47:15,
bodies 48:10,	14:17, 16:18,	54:16
48:15	16:19	changed 18:10,
body 14:4, 46:4	categorical	18:11, 26:11
bonds 14:7	13:23	changes 8:8,
bottle 9:12	categories 3:8	25:12, 31:14,
bottom 9:19	category 3:6,	36:1, 53:25
bouncing 40:24	17:8, 44:6	Chapter 1:8,
bound 26:13	caution 46:14	2:3, 3:2,
Branch 9:4	cautionary 53:3	4:14, 6:11,
breadth 17:4	cell 15:1	11:17, 28:9,
break 40:17,	cells 40:24	35:23, 47:9,
40:21	central 6:24	52:13, 57:17,
brick 44:6	CEO 11:14	57:19
briefly 17:13,	certain 10:9,	characteristic
40:5	18:18, 36:16,	33:1, 33:4,
broad 12:9,	49:19, 50:3	49:11
13:21, 23:8,	Certainly	characteristics
25:1, 32:10,	12:18, 12:25,	8:19, 32:22,
32:18	13:9, 14:11,	32:23, 49:9
broadened 3:13,	14:22, 15:2,	characterized
17:8	16:3, 18:3,	42:14
broader 40:25	18:15, 19:4,	check 56:25
broadly 34:4	19:11, 21:12,	Chemical 20:3,
build 47:19	55:15	31:20, 51:19
Building 1:16	certainty 36:14	Chemically 8:7,
bullet 10:16	certification	8:8, 8:11,
burden 54:18	45:7, 45:16,	31:13, 31:14,
BURKE 1:31	51:2	31:17, 49:23
business 11:24,	certified 51:21	Chemicals 1:34,
12:6, 12:11,	certify 58:4	2:22, 6:15,
18:15, 52:16,	chain 45:8	9:18, 11:22,
53:2, 53:6,		12:6, 12:11,

14:2, 14:4, 32:24, 48:22, 50:8	48:4	38:21, 39:13, 47:3, 52:11, 53:8
Chemistry 39:17	code 44:7	Committee 7:7
cherry 33:15, 33:25	coding 11:24	common 37:18, 42:5
CHRISTOPHER	cognizant 40:8	communities
11:11, 11:12, 11:13, 19:19, 20:1, 20:13, 20:17, 20:25, 21:5, 21:19, 21:21, 22:12, 22:16, 22:21	cold 14:19	47:14, 47:18, 47:23
circuit 24:3	COLIHAN 47:4, 47:5, 47:7, 51:7, 51:11, 51:13, 51:23, 52:2	community 6:9, 35:22, 47:12, 47:19, 48:2, 53:2, 53:6
circumstances	collaborative	companies
17:7	53:18	17:18, 18:13, 18:16, 36:7, 48:21
citizens 13:5	colleagues 7:8	company 11:15, 11:20, 35:14, 36:4, 36:10
clarification	collectively	comparing 8:22, 49:16
40:4	48:24	comparison 33:9
clarifications	combination	completing
43:19	14:7, 32:23, 39:22	33:13, 49:15
clarified 34:12	comes 31:5, 32:20	complex 13:2, 24:2, 24:5, 44:12, 44:13, 44:14, 44:15, 53:13
clarify 24:22	coming 10:9, 30:8, 46:22	compliance
clarity 12:20, 33:21, 43:23, 53:22, 53:25	commencing 1:17	26:14, 43:24, 44:21, 52:24, 56:23, 56:24, 57:7
classification	comment 6:11, 41:23	comply 25:11, 27:11, 27:13, 30:11, 30:12
20:3	comments 4:22, 5:7, 12:22, 12:23, 13:15, 17:6, 21:17, 22:13, 28:9, 28:21, 28:22, 29:22, 34:3, 36:23, 39:5, 40:6, 40:7, 40:13, 42:3, 43:20, 43:22, 44:24, 54:2, 55:19, 56:2, 57:16	components
clear 8:13, 11:3, 23:14, 25:7, 32:25, 34:13, 34:17, 34:23, 49:10, 49:14	Commerce 52:10, 52:15	15:4, 23:23, 24:3, 24:4, 24:7, 24:24
clearer 49:19	commercially	composed 48:1
clearly 8:18, 33:3	7:24, 10:18, 30:18, 30:20, 42:4, 43:12, 49:20	composition
climate-friendl y 28:5	Commission	31:20
closely 4:20, 7:8	58:15	compromise 9:4, 9:5, 28:25
Co-executive	Commissioner	concentrations
47:7	1:29, 2:25,	8:15
co-facilitate		concept 54:15
47:25		
co-solvent		
49:23		
co-sponsor 7:9		
Coalition 48:1,		

concern 12:11, 26:18, 29:24, 30:23, 38:14, 38:16, 40:15	container 3:18	40:13
concerned	Containing 1:8, 6:12, 11:18, 28:10, 41:16, 52:13	cosmetics 24:5
12:19, 32:3	contaminants	Cosolvent 8:12
concerns 6:14, 10:17, 21:14, 23:11, 29:19, 40:19, 42:4, 53:21	50:14	Cosolvents 8:14
concluded 57:23	contaminated	cost 49:2
concludes 57:19	28:7	cost-effective
conclusive 43:3	contamination	4:1
conditioned	6:15, 9:22, 28:6, 41:5, 41:6, 47:22, 48:7, 48:13, 48:17	costly 55:10
5:22	contemplated	costs 4:12
conditions	46:1	cotton 31:18, 31:20
14:20, 15:17	contemplates	Council 39:17
conjunction	42:13	counsel 11:14
51:5	context 34:21	counterparts
consensus 46:3	continue 18:17, 19:2, 19:10, 27:9, 54:16	53:5
consider 13:21, 41:19, 44:15, 55:12	continuing	country 37:10, 47:23, 48:2, 53:5
consideration	19:11	couple 14:13, 20:14, 28:22, 29:19, 30:5, 30:22, 34:11
15:24, 15:25, 24:6, 40:4, 41:24, 54:8	control 32:14, 35:15, 42:7	course 16:18, 18:11, 20:6, 26:16
considerations	conversant 11:6	Court 1:14, 58:2, 58:13
44:15	conversion	cover 4:11, 40:5
considered	32:16	covered 48:22
14:3, 45:23, 54:14, 54:24	cooking 23:19, 24:19	covering 15:16
considering	cookware 23:2, 23:4, 23:7, 23:17, 24:16, 25:4, 25:22, 27:13, 50:7	create 16:15, 20:8, 42:18, 47:15
32:18	Coordinator	created 53:1
consistency	1:35, 2:24	creates 3:5, 25:2
12:20, 16:6, 16:15, 17:9, 19:3	copy 5:23	crises 47:22
consonants 52:8	Correct 19:19, 31:10	crisis 48:17
constructive	Correnti 11:11, 11:12, 11:14, 19:19, 20:1, 20:13, 20:17, 20:25, 21:5, 21:19, 21:21, 22:12, 22:16, 22:21, 39:19,	criteria 3:20, 8:21, 33:13, 33:14, 33:18, 40:14, 42:19, 49:15
45:2		critical 13:17, 48:19, 50:1
consumer 50:6		critically 7:11
contact 23:9, 23:20, 23:24, 24:17, 24:23, 25:10, 25:19		curious 37:15
contacts 23:21		Current 9:2, 18:6, 26:5,
contain 3:19, 16:21		



26:22, 32:4,  
32:15, 36:3,  
36:9  
Currently 3:8,  
3:20, 4:3,  
4:7, 6:7,  
13:23, 17:13,  
18:8, 23:10,  
25:8, 26:16,  
29:10, 30:24,  
32:21, 33:24,  
34:8, 36:5,  
39:3, 47:21,  
48:18, 49:7,  
50:22, 54:5,  
54:13, 54:22,  
55:16  
currents 50:14  
custody 45:8  
customers 15:11  
CUU 36:8,  
36:11, 36:12,  
36:25, 37:20,  
38:6, 38:25,  
40:25, 41:10,  
41:11, 43:19,  
54:23, 55:13,  
55:20  
Cuus 36:19,  
55:2  
  
< D >  
DAFOE 1:28  
daily 47:23  
DANA 47:4,  
47:5, 47:7,  
51:7, 51:11,  
51:13, 51:23,  
52:2  
dangers 48:22  
data 42:16,  
42:21, 43:2,  
43:9, 43:16,  
46:17  
Date 26:5,  
26:7, 26:8,  
26:11, 26:12,  
39:2  
DATED 58:17

day 15:20,  
50:18  
deadline 25:5,  
36:24, 40:7  
dealing 12:12  
dealt 17:10  
debated 16:9  
decabrominated  
19:24  
decades 14:13  
decide 25:11  
decisions  
36:14, 36:17  
declare 2:12  
dedicated 35:14  
deeming 41:11  
deeply 7:13  
Deering 1:15  
Defend 5:14,  
28:1  
Defense 30:4  
define 42:9  
defined 4:21,  
8:7, 23:7,  
30:21  
defines 30:17,  
31:13, 54:10  
definitely  
53:20  
definition 8:4,  
8:14, 12:9,  
16:3, 25:21,  
29:24, 29:25,  
30:2, 30:5,  
30:20, 30:23,  
31:20, 32:2,  
32:8, 32:14,  
32:17, 32:18,  
33:6, 42:4,  
42:11, 50:2,  
54:8  
definitions  
7:23, 10:17,  
19:20, 34:11,  
49:19  
degrade 15:15,  
50:8, 50:14  
deja 19:22  
delays 9:9  
deliberate

10:25  
 demonstrate  
     57:6  
 dental 24:5  
 DEP 1:29, 1:33,  
     22:8, 35:21,  
     47:10, 53:8  
 describing  
     44:10  
 descriptor 44:7  
 deserve 47:14  
 design 41:21  
 designate 55:2  
 designation  
     29:10, 33:24,  
     34:9  
 desire 21:1  
 detail 12:23,  
     13:15, 17:6,  
     21:22, 36:24  
 detailed 34:3,  
     40:4, 40:6  
 details 2:3  
 detection 46:8  
 determination  
     3:9, 18:9,  
     27:8, 36:5,  
     36:16, 36:20  
 determinations  
     4:3  
 determine  
     24:10, 54:20  
 determined 4:7  
 develop 15:7,  
     42:1, 43:21,  
     43:24, 44:21,  
     46:12  
 developed  
     12:21, 14:13  
 developers  
     52:18  
 developing  
     17:19  
 devices 15:1,  
     32:13  
 different  
     11:21, 11:25,  
     14:5, 14:24,  
     16:1, 17:10,  
     30:23, 44:5,

45:20, 46:8	drinking 28:4,	elaborate
difficult 13:3,	41:5, 50:9	10:10, 42:19
13:9, 15:5,	Drummond 35:8	Electric 32:14,
17:3	DUCHESNE 1:21,	35:10, 37:2
direct 23:9,	4:17, 4:18,	electronic
24:22	5:4, 6:3,	11:22, 32:9
directly 10:15,	19:15, 19:16,	electronics
23:20, 48:3	19:20, 20:2,	50:13
Director 39:14,	20:16, 20:24,	element 46:24
47:8	21:3, 21:16,	elucidating
disagree 31:2	21:20, 21:23,	46:17
disasters 48:7	22:1, 34:16,	Emerson 35:10,
discovering	37:5, 37:6,	36:6, 36:11,
47:23	37:14, 37:24,	36:23, 37:2,
discovery 28:7	56:6, 56:7,	37:6, 38:6
discussed 23:25	56:18	employees
discussion 16:9	due 35:25,	35:13, 37:11,
dishwashers	50:16	38:10, 48:24
25:10	Dupont 48:21	enact 24:14
disruptions	durable 14:9	enacted 21:8
55:10	During 6:13,	encourage
distributors	7:7, 20:6,	24:17, 25:16,
52:19	23:19, 41:17,	25:22, 25:23,
diverse 52:17	57:14	26:1, 26:7,
document 46:6,	dynamic 14:4	26:22
46:13, 46:20		end 34:15,
documents 24:15		35:17, 50:18
doing 22:6,	< E >	energy 32:16
29:3, 51:24	e-wax 24:4	enough 17:18
done 7:4, 7:17,	e. 23:12	ensure 8:25,
7:25, 9:15,	earlier 23:25,	9:20, 17:9,
29:5, 40:9,	25:13, 36:22,	26:2, 26:13,
53:12	37:20, 38:15,	48:25, 49:4
Dostie 1:13,	49:6, 55:6	ensuring 48:19
58:2	earliest 36:10	entirely 24:25
down 28:16	echo 40:25	Environment
Draft 3:2,	echoing 40:12	7:6, 33:10,
3:20, 4:14,	economic 55:10	33:20, 35:18,
7:16, 9:1,	edit 33:16	40:16, 40:18,
28:9, 28:22,	effect 25:8,	40:20, 48:10,
29:5, 29:20,	36:6, 38:5,	49:17, 50:24,
30:17, 31:12,	57:3	52:23
31:23, 32:22,	effective 43:24	Environmental
44:16, 47:9,	effort 53:20,	1:4, 7:14,
50:20, 54:15	57:21	22:7, 27:24,
drafted 13:11	efforts 13:8,	35:19, 39:24,
drafting 10:15,	52:25	40:16, 47:6,
50:19	eight 5:9	47:16, 47:18,
draw 7:17,	either 13:21,	52:11, 53:21
16:10, 22:18	15:3, 46:16	environments

14:10	exempt 16:22,	23:24
EPA 30:21,	17:2, 30:14,	facts 47:15
30:24, 43:6	32:4, 32:7	fair 51:1
equal 28:3	exemption	fairly 10:9
equipment	13:22, 16:16,	fall 17:9,
11:24, 12:4,	18:24, 27:6,	26:24, 27:7
16:17, 16:18,	32:11, 32:19,	familiar 12:8
16:24, 35:16	41:1	families 48:10
especially	exemptions 9:7,	far 54:22
12:5, 32:18,	16:7, 16:10,	farm 16:18,
50:22	16:12, 16:13,	28:7
essence 25:6	17:7, 20:8,	farmer 11:5
essential 15:18	27:4, 27:5	farmers 6:23,
Essentially	exist 15:22,	11:3
36:21	24:9	farms 10:1
established	existing 46:7	FARRIS 1:34,
3:4, 4:10	expansive 23:22	2:20, 2:22,
establishes	expectation	5:3, 5:5, 5:8
3:7, 3:20	42:13	fast 28:15
evaluate 41:16	expectations	faster 37:7,
evaluation	42:8	56:11
42:15	expenses 56:9	feasibly 55:14
eventually	Expires 58:15	federal 51:1,
37:17	exposed 7:5,	51:9
everybody	48:5	fee 4:11,
28:13, 42:6	exposure 6:18,	54:12, 54:17
everyone 21:1,	9:22, 48:6,	feedback 7:16,
28:3	48:20, 49:3	7:17
everything	exposures 48:12	feel 38:10,
29:21, 48:11,	express 53:11	54:16, 55:7
48:19	extensive 9:3,	fees 54:4,
evidence 2:13	35:12	54:21, 56:7,
evident 7:4	extent 45:11	56:8, 56:12
evidentiary	external 51:17	few 40:5, 49:5,
45:9	extra 27:10	54:3
example 7:24,	extracted 8:9,	field 42:18
14:16, 16:15,	31:14	fifth 26:15
20:14, 31:17,	extraction	fighting 48:4
44:2, 44:11,	43:10	figure 20:9
53:17	eye 7:1	file 27:4,
examples 21:7,		27:5, 56:21
41:22, 44:19		filed 57:3
exceptions	< F >	filing 56:21
3:15, 9:9,	fabrication	final 7:20,
17:4	11:24	19:12
excluded 25:20	facilities	Finally 8:25,
excluding 50:3	11:25	33:8, 43:18
Excuse 28:12	facing 47:12,	financial 54:18
Executive 1:30,	47:21	find 15:8,
9:3, 39:14	fact 18:18,	15:10, 17:23,

18:16, 22:2, 24:8, 37:9, 45:7	40:24, 50:3, 50:5	fully 17:3, 19:18
fine 5:19	flying 22:8	fun 6:3, 6:5
First 7:22, 10:16, 13:19, 23:18, 24:14, 28:7, 29:23, 35:20, 43:25, 49:7, 51:7	focus 5:2, 13:14, 13:17, 18:6, 24:20, 41:2, 56:3	function 8:20, 33:1, 33:2
firsthand 48:9	focused 46:10	functioning 3:24, 8:21, 33:5, 49:13
fit 25:21, 42:17	focuses 23:19, 52:20	functions 14:5, 32:10, 49:12
Five 17:14, 17:16, 17:18, 17:21, 18:1, 18:5, 18:10, 18:13, 18:19, 18:20, 20:14, 20:18, 22:9, 23:16, 38:15	folks 32:5	future 17:17, 18:3
fix 40:11	follow 4:22, 19:21, 20:10	< G >
flame 19:25	Following 7:19, 8:17, 21:25, 55:1	gaps 21:9
floors 16:25	follows 53:23	gases 50:4, 50:11, 50:12, 50:17
floss 24:5	food 23:9, 23:13, 23:20, 23:21, 23:24, 24:17, 24:22, 25:10, 25:19, 28:3	gaskets 16:21, 17:1
flow 32:14	forcing 25:10	gave 6:23
fluora 45:24	foregoing 58:4	General 1:28, 11:14, 44:4, 44:5
Fluorinated 3:18, 19:18, 50:4, 50:11, 50:17	foreseeable 41:16	generally 34:4
fluorine 42:24, 43:10, 43:13	fork 17:1	generate 43:8
Fluoropolymer 13:20, 14:25, 15:3, 16:21, 16:23, 17:2, 17:23, 19:17, 30:10, 39:15, 41:1	form 51:25	generated 43:17
Fluoropolymers 12:7, 12:8, 12:13, 12:17, 13:22, 13:24, 14:6, 14:8, 14:12, 14:20, 15:7, 15:11, 15:21, 17:21, 30:3, 39:20, 40:13, 40:19,	formulated 8:7, 31:13, 49:23	generating 42:21
	formulations 41:19	generic 42:6, 42:12, 44:9
	forward 9:11, 26:3, 45:2	genie 9:12
	found 10:5, 10:16, 50:9	gentleman 30:13
	Foundation 48:1	gets 44:22
	Fourth 42:23	getting 37:7, 43:23
	Fourthly 26:4	GILMAN 35:5, 35:6, 35:7, 37:8, 37:19, 37:25, 38:4, 38:16, 39:4, 39:7, 39:10
	frame 27:1, 38:24, 55:16	give 5:17, 13:23, 56:16
	framework 41:7, 53:24	Given 20:8, 32:10
	frankly 9:12	giving 13:21
	Fred 28:7	glass 11:23
	front 41:1	global 35:11
	fryers 23:6	
	fudging 20:6	
	full 16:11	

goals 35:18  
 Gorham 35:9  
 gotten 10:3  
 GPC 44:6  
 Gramlich 5:16,  
   5:21, 6:5,  
   6:7, 10:21,  
   10:23, 11:2,  
   11:9, 30:17,  
   32:1  
 granted 18:25  
 grateful 7:13  
 Great 16:15,  
   35:3, 53:17  
 greater 7:12,  
   53:21, 53:25,  
   54:9, 55:8  
 greatly 34:9  
 ground 50:8  
 group 6:23,  
   43:5  
 groups 9:4,  
   48:2  
 guarantee  
   18:14, 18:19  
 guess 25:10,  
   26:15, 56:15  
 guidance 24:15,  
   25:14, 25:20,  
   26:11, 46:6,  
   46:13, 46:20,  
   46:21  
 guide 8:22

< H >  
 habit 4:19,  
   28:19  
 half 6:3  
 halfway 10:3  
 handle 38:11  
 happen 17:20  
 happening 48:8  
 Happy 4:14,  
   10:8, 19:10,  
   19:13, 27:18,  
   29:2, 37:3,  
   56:3  
 hard 15:19,  
   20:5, 28:25,

50:19  
 harm 48:9  
 harmonized 44:6  
 harnesses 20:5  
 harsh 14:19  
 HBLS 47:13  
 headquartered  
   35:10, 39:18  
 Health 3:23,  
   5:15, 6:16,  
   6:18, 7:14,  
   8:20, 11:5,  
   11:7, 14:22,  
   28:1, 28:2,  
   33:2, 33:4,  
   33:9, 33:20,  
   40:16, 47:17,  
   47:18, 48:23,  
   49:12, 49:16,  
   52:23, 53:20  
 healthy 28:4  
 hear 10:15,  
   49:6  
 heard 16:8,  
   39:19, 47:15,  
   49:24, 53:4,  
   55:6  
 Hearing 1:6,  
   1:13, 2:2,  
   2:4, 3:1,  
   4:13, 53:15,  
   53:16, 57:19,  
   57:23  
 heat 24:23,  
   50:13  
 heated 23:19,  
   24:20  
 held 1:15  
 Hello 39:12  
 help 43:23,  
   46:23, 55:9  
 helpful 4:23,  
   9:10, 10:14,  
   38:23, 46:16  
 helping 15:4  
 helps 5:1  
 Henry 7:10  
 Herald 9:25  
 hereby 58:4  
 higher 15:12

highlight 37:1  
 highly 14:9,  
   16:9, 40:14,  
   41:3  
 HINKEL 1:30,  
   28:12, 28:17  
 history 31:4  
 hit 29:20  
 Hmm 10:21,  
   20:1, 20:16,  
   20:24, 21:16,  
   37:14, 47:1,  
   51:13  
 holding 2:25,  
   4:13  
 Home 22:25  
 homes 28:4  
 hope 17:16,  
   18:1, 18:2,  
   44:25  
 House 6:8, 7:6  
 houseware 23:8  
 huge 54:18  
 human 33:9,  
   49:2, 49:16  
 humans 50:10  
 hundred 29:2

< I >  
 identified  
   33:10, 49:18  
 identifying  
   40:15  
 impacted 3:25,  
   9:6, 10:1,  
   47:18, 48:3  
 impacts 48:23  
 implement 3:2,  
   6:2, 39:25  
 implementation  
   7:12, 42:1  
 implementing  
   13:3  
 importance 37:1  
 important 7:11,  
   12:18, 16:24,  
   19:6, 53:13  
 importantly  
   24:18

impose 54:17	33:14, 36:15,	International
imposed 54:20	36:19, 48:25,	11:20, 45:13
impressed 5:25	49:9, 49:10,	interpret 20:19
improved 14:14	49:20, 51:2,	interpretation
improvement	51:12, 54:10	23:22, 44:1,
19:7	inform 46:23	44:18
in-depth 28:20,	information	interpreted
29:17, 29:22	18:4, 18:7,	18:2
in. 10:5,	18:12, 18:22,	interpretive
14:12, 15:17	18:23, 29:14,	41:12, 46:18
include 16:19,	31:4, 31:10,	intervals 3:12
23:23, 24:23,	32:25, 33:23,	invent 15:20
25:9, 44:3	39:1, 41:9,	inventory 25:7
included 12:8,	41:15, 41:19,	investment
16:3, 17:5,	41:22, 41:25,	36:14
25:1, 43:1	49:11, 55:21,	investments
includes 3:17,	55:23, 56:22,	18:17, 55:9
16:17, 30:3,	56:24	involved 10:15,
52:18	informed 7:15	52:20
including 6:18,	Ingwersen 7:10	Iowa 6:22, 7:5,
11:22, 30:2,	initial 28:6,	11:3
35:13, 48:2,	52:25, 54:16,	ISO 45:13,
56:22	55:24	45:18
inclusion 24:7,	initially 14:14	issue 13:12,
41:14	initiate 55:2	23:4, 23:17,
incomplete	initiated 46:9	26:8, 27:13,
41:11	initiative 9:17	27:14, 28:6,
incorporated	inorganic 43:10	30:10, 37:2,
23:12	insoluble	41:4, 53:14
increase 7:22	40:17	issues 13:17,
increased 50:4,	inspected 51:22	17:17, 30:16
50:16	instances 8:10	itself 3:19,
increasingly	insulating	46:19
6:14	14:17, 15:3	
incredibly	intended 23:9,	< J >
15:5, 15:19,	27:17, 32:9,	J. 1:13, 58:2
32:10	56:8	JACK 1:28
individual	intention	JAY 39:11,
23:16	22:11, 44:1	39:12, 39:13,
industrial	intentionally	45:11, 45:19,
35:15	3:3, 3:14,	45:22, 46:6,
industries	3:19, 6:20	47:1
36:17	interest 31:7,	John 22:22,
Industry 7:15,	55:4	22:23, 22:24
8:1, 8:22,	interim 27:3	judicial 45:10
9:7, 13:6,	internal 23:23,	jumping 54:6
15:7, 29:1,	24:1, 24:3,	jurisdictions
29:9, 29:13,	24:7, 24:24,	37:13
30:6, 30:25,	51:2	justice 47:17,
31:2, 31:5,	internally 31:8	

48:5	large 14:3, 39:21, 40:14	12:16
< K >	largest 47:22, 52:16	lifetime 47:22
Keene 22:22, 22:23, 22:24	Last 14:16, 14:18, 15:14,	lifts 17:1
KERRI 1:34, 2:20, 2:21,	21:10, 26:15,	light 44:16
5:3, 5:5, 5:8	28:24, 40:1,	limit 54:20
key 18:5, 49:5	50:16, 52:7,	limited 4:5, 25:2, 55:21,
kind 5:1, 10:24, 19:23,	53:7, 53:15,	56:21
23:12, 23:16,	55:11, 57:13	line 9:20, 22:17
31:8, 34:1,	later 18:10, 57:18	lines 21:25
37:17, 42:15,	latitude 20:9	listed 25:15
51:24	laws 21:8, 30:5, 48:6	litigation 45:12
kitchen 24:21	lawyer 45:12	little 10:25, 19:22, 27:10
known 2:10, 8:22, 22:25,	LD 6:18, 7:9	live 47:8
33:9, 33:20,	lead 24:10	located 53:5
49:16	Leader 6:8, 7:3, 9:16,	locomotives 16:19
< L >	35:11, 48:16	long 13:8, 14:12, 17:18,
lab 8:1, 8:4, 8:5, 31:1,	leaking 47:14	53:16
42:21, 51:18	least 19:18	long-term 36:14
laboratories	leave 5:17	longer 55:5
45:9, 51:4	leeway 21:13, 21:18, 22:10	look 10:7, 16:15, 16:16,
laboratory	left 42:10	17:5, 17:17,
43:12, 45:7,	legislative	17:19, 18:1,
45:16, 45:23,	40:10, 52:21,	18:20, 20:22,
45:24, 46:18,	53:1	25:23, 26:7,
49:23	legislators	41:12, 44:18,
labs 51:5, 51:6, 51:25	29:1	46:9, 55:15
lacks 42:7	Legislature	looked 15:8, 26:4
laid 29:9, 33:14, 49:15	3:4, 3:16, 5:22, 6:2,	looking 30:10, 33:19, 44:8
land 6:16	6:13, 6:19,	looks 26:5, 46:13, 55:17
landfill 47:14	7:8, 9:3,	LORI 5:21, 6:5, 6:7, 10:21,
Lane 1:16	17:15, 18:3,	10:23, 11:2, 11:9
language 4:25, 8:3, 8:16,	19:21, 19:23,	lost 44:23
21:13, 23:22,	20:7, 20:12,	lot 9:5, 16:9, 20:6, 29:13,
25:2, 29:6,	20:23, 21:1,	30:12, 32:6, 43:20
29:20, 31:23,	21:6, 21:11,	Louis 35:11
34:23, 43:1,	22:3, 22:6,	love 29:25
43:21, 49:5	36:1, 42:10,	
laptops 15:1	44:18, 53:11, 53:24	
	level 24:9, 50:15	
	life 11:22,	

lovely 6:9	Margerum 2:23	10:18, 30:18,
low 40:15	Mark 1:35, 2:23	30:21, 30:22,
Loyzim 1:29,	market 25:25	30:25, 42:5,
38:22, 39:6,	MARVINNEY 1:25	43:6, 46:18
39:13, 52:12,	massive 31:4	methodology
53:8	material 15:3,	8:6, 42:11,
LUSZCZKI 52:9,	15:9, 15:10,	42:20
56:16, 56:25,	15:18, 17:2,	methods 42:13,
57:4, 57:8	17:24	43:11, 43:12,
	materially 44:5	46:2, 46:7,
	materials 8:3,	49:20
	8:24, 10:5,	minds 42:11
< M >	11:23, 12:12,	mineral 8:10
Madam 19:16,	14:11, 15:25,	minerals 31:15
38:22	16:2, 16:20,	Minnesota
Maine-based	16:21, 16:24,	24:13, 25:13,
28:2	31:3, 33:10,	29:11, 29:14,
Mainers 6:17,	49:17, 49:21	29:16, 30:2,
50:24		37:7, 37:15
maintain 50:2	matter 2:6	minute 55:11
maintained	mean 37:14,	mirrors 4:10
56:24	37:15	misinterpreted
maintaining	meaningful 9:19	4:24
48:17	means 29:3,	Missouri 35:11
major 12:11,	58:6	Mmm 10:21,
13:12, 23:3	media 46:8	20:1, 20:16,
Majority 6:8	medical 15:1	20:24, 21:16,
makers 25:20	meet 4:1, 39:2,	37:14, 47:1,
Malinowski 2:21	40:14	51:13
manage 2:22	MELANIE 1:29	mobile 41:3
managed 39:16	MEMBER 1:21,	mobility 40:20
manufacture	1:22, 1:23,	model 18:16
12:4, 26:7,	1:24, 1:25,	modification
26:12	40:8, 52:5,	20:20
manufacturer	52:9, 57:10	molds 25:16
41:14	Members 1:19,	molecule 39:21,
Manufacturers	2:5, 2:21,	41:3
4:6, 8:18,	6:6, 11:13,	molecules 40:14
19:4, 22:25,	22:23, 27:24,	moment 28:22
23:14, 24:7,	35:7, 39:12,	money 56:13
24:10, 25:6,	47:3, 47:6,	monitoring
25:11, 26:21,	52:10	35:15
27:1, 27:13,	membership	month 26:10
43:24, 52:18	54:16, 57:1	months 26:8,
manufacturing	mentioned 9:15,	28:25, 36:5,
11:21, 11:23,	25:13, 29:23,	36:8, 36:15,
12:1, 16:25,	30:4, 30:14,	37:21, 38:3,
35:13, 36:17,	30:16, 32:1,	54:24
36:18, 41:20,	32:7, 38:15,	morning 2:20,
41:21, 55:9	54:12	2:23, 3:1,
MARGERAM 1:35	method 7:25,	



6:6, 11:12, 11:16, 19:9, 22:23, 27:23, 35:6, 47:5 motor 16:16, 16:17 move 9:11, 37:23 moves 26:3 multiple 11:21, 54:19	33:14, 44:2, 56:13 negatively 3:24, 33:4 negligence 49:2 neighborhood 10:2 neither 5:11 network 52:17 new 18:12, 18:17, 18:22, 18:23, 27:14, 30:6, 55:21, 56:21 non-exempt 16:25 non-profit 28:2 non-stick 50:7 none 15:9, 27:22, 57:16 nor 5:11, 11:4 Notary 1:14, 58:3 note 2:5, 6:21, 41:12, 46:19 nothing 2:14, 10:6, 18:10, 42:12 notification 43:20, 44:3, 54:4, 54:17 notifications 54:13 novel 44:11 nowhere 17:22 number 9:7, 9:25, 13:10, 16:6, 17:6, 51:1, 51:9	Office 1:16, 2:25 offset 56:8 Okay 5:18, 5:20, 11:1, 14:3, 17:19, 18:9, 21:20, 21:23, 22:15, 28:17, 34:25, 37:24, 39:4, 45:21, 56:18, 57:2, 57:10 Old 6:10 once 34:2, 34:4, 38:5 One 5:13, 17:17, 19:18, 26:15, 26:18, 27:2, 29:2, 31:25, 36:3, 43:11, 44:22, 45:19, 47:21 ones 30:23, 41:4 open 2:2, 53:17 opening 7:1 operations 35:12 opportunity 6:11, 7:2, 11:16, 28:8, 39:23, 55:25, 57:15 opposition 5:11 Orchard 6:10 order 18:8 organic 42:24, 43:13 Organization 45:14, 47:17 organizations 46:23 otherwise 2:10 ourselves 22:2 outset 2:4 Overall 7:18, 29:6, 34:10 own 8:2, 8:3, 31:3, 48:24, 49:21
< N > name 22:24, 27:25, 35:7, 39:13, 45:15, 47:7, 52:7, 57:13 nation-leading 9:14 National 47:25 Natural 7:7, 8:11, 31:17 naturally 8:9, 31:15 nature 38:9 near 17:22 nearly 15:11 necessary 8:19, 9:10, 33:1, 33:7, 36:13, 49:11 necessitate 32:23 need 3:23, 7:25, 9:20, 13:13, 13:16, 14:15, 14:21, 17:7, 30:19, 34:11, 40:25, 43:19, 46:9, 48:11, 48:25, 49:10, 49:14, 49:18, 56:12 needed 8:17, 23:25, 33:16, 36:25 needs 5:17, 14:18, 22:4,	< O > obtain 29:9 Obviously 24:2, 26:19, 26:20 occurring 8:9, 31:15 offer 2:13, 7:19, 43:22 offering 45:1	

< P >	4:1, 39:15,	polluting 50:8
p.m. 57:18	42:7, 42:15,	polyfluoralkyl
pacemakers 15:2	42:19	47:24
panel 6:23	performed 30:19	Polyfluoroalkyl
panini 23:6	perhaps 46:19,	1:10, 28:11,
pans 25:16	57:2	52:14
Part 23:21,	period 17:14,	polymers 40:15
29:16, 32:4,	17:16, 18:21,	pop 44:22
32:8, 50:16,	19:1, 20:18	portion 9:6
51:7	periodically	Portland 9:25,
Participants	51:22	47:8
2:16	personally 6:16	pose 9:18
participating	PERSONS 1:27,	posed 6:18,
2:6	2:8	8:23
participation	phase 6:19	possess 39:21
57:21	phones 15:1	possible 38:7,
particular 9:5,	phrase 42:10	38:10, 55:14
9:16, 14:6,	pick 33:15,	possibly 17:23,
18:4, 23:1,	33:25	46:16
46:23	pieces 40:18,	potent 50:14
Partnership	40:21	potential
39:15	place 29:16,	41:17, 55:10
parts 24:1,	33:18, 49:7	potentially
25:24, 26:1,	places 5:18,	24:12, 27:3,
26:2	30:12	27:15
passed 28:23,	plain 6:25	pots 25:15
28:24, 40:1,	plan 44:21	power 47:20,
53:24	planning 2:8,	48:11, 48:20
paused 35:25	44:24, 44:25,	powered 23:5
pay 15:12	55:8	practical
paying 48:24	plans 43:24	18:15, 55:18
peer 33:22	plant 8:9,	predictability
PELLETIER 1:22,	31:15	53:22
38:13, 38:14,	plasticized	preference
38:18	50:6	51:23
people 5:9,	played 53:18	prepare 43:14
5:25, 10:24,	playing 42:18	prepared 38:6,
14:24, 26:1,	pleased 7:18,	45:4
48:4, 49:3	52:12	presence 2:10
per 54:21	plenty 36:16	present 2:6
percent 29:2	plugged 23:5	presentation
perfectly 5:19	pocket 25:20	2:18
Perfluoroalkyl	point 10:16,	presenting
1:8, 28:10,	29:11	33:23
52:14	points 56:2	President
perform 14:5,	Policy 9:16,	11:14, 27:25
31:1, 32:9	28:1	Press 9:25
Performance	polluted 47:12,	presses 23:6
	47:24	presumption
	polluters 47:19	51:21, 57:5,

57:7	producing 35:14	37:21, 40:3,
pretty 37:17	product 3:6,	44:12, 46:1,
prevent 48:7,	3:8, 3:13,	57:17
48:20, 55:10	3:14, 3:17,	proposes 3:2,
preventable	3:18, 3:25,	4:11, 44:3
49:3	8:20, 23:11,	proprietary
previous 34:6,	23:21, 23:25,	41:9, 41:14,
35:24, 56:23	24:9, 24:25,	41:22, 41:25
price 48:25	27:15, 36:6,	prosecutorial
prices 15:13	36:12, 41:17,	45:10
primarily 32:12	41:19, 42:25,	protect 6:17,
printed 33:17	43:5, 44:5,	15:4, 50:24,
prior 36:18,	44:11, 44:12,	52:22
36:19	44:13, 44:14,	protected 14:23
prioritize 41:6	49:12, 54:13,	Protection 1:4,
probably 16:11,	54:17, 55:11	27:24, 35:19,
17:3, 19:17,	product. 44:4	39:24, 47:6,
29:3, 38:8	professional	52:11
problem 21:3,	35:16	protections
46:13, 56:22	profit 49:3	9:21
problematic	Program 1:34,	protocol 43:2,
50:11	2:22, 4:12,	43:8, 43:15
problems 20:4,	42:22	protocols 8:4,
51:16	prohibited 3:7,	46:10
procedures	3:13, 3:17,	proud 9:14
41:24, 42:1	3:22, 4:6	prove 31:10,
proceed 2:18	prohibition	34:1
proceeding 2:5	3:6, 3:13,	provide 8:21,
PROCEEDINGS	3:16, 26:6,	18:7, 24:11,
2:1, 58:5	39:2, 54:25	27:5, 27:10,
process 8:8,	prohibitions	28:9, 29:13,
13:8, 13:9,	3:11	31:22, 32:25,
17:14, 17:15,	prohibitive	34:2, 49:10,
17:21, 18:1,	3:18	54:2, 55:8
18:20, 19:7,	proliferation	provided 2:4,
20:9, 20:20,	50:5	43:15, 44:8
24:19, 26:16,	proliferations	providences
26:22, 26:23,	50:17	6:24
31:13, 35:22,	proposal 27:2,	provides 24:23
35:25, 37:16,	41:10, 41:11,	providing 7:16,
41:18, 46:12,	41:15, 54:23,	9:9, 27:3,
52:21, 53:18,	55:24	53:21, 56:1
54:4, 54:23,	proposals 3:21,	provisions 40:2
55:20, 57:14	6:17, 55:6,	proxy 42:24
processes	55:13	Public 1:6,
41:20, 41:21,	proposed 2:9,	1:13, 1:14,
41:23, 43:20,	6:11, 7:23,	4:13, 7:14,
45:8, 51:2,	11:17, 23:7,	11:5, 11:7,
51:9, 51:15	23:21, 36:3,	14:22, 19:4,
produce 42:16	36:4, 36:9,	31:6, 41:23,

48:23, 52:23,  
58:3, 58:13  
published 46:3  
pulls 25:8  
pumps 50:13  
purpose 32:12,  
42:17  
put 9:13, 13:1,  
13:3, 39:4,  
49:2  
puts 6:5

# < Q >

qualifications  
42:21, 45:23  
quality 42:7,  
46:17  
question 8:19,  
53:15  
questions 4:15,  
4:16, 5:6,  
10:8, 10:11,  
10:12, 19:13,  
27:19, 27:22,  
35:1, 37:4,  
38:19, 44:22,  
45:4, 47:2,  
50:25, 52:3,  
56:4, 56:6,  
57:11  
quick 17:21,  
26:21  
quickly 17:20,  
53:3  
Quite 9:11  
quote 44:4

# < R >

R&D 11:25  
rail 16:19  
raised 21:15  
range 8:14  
rather 55:22  
read 4:19,  
10:18  
reading 4:19  
real 7:3,  
13:12, 49:2

realize 56:8  
really 5:1,  
5:24, 6:10,  
7:1, 10:24,  
13:13, 13:17,  
14:24, 18:16,  
19:1, 22:4,  
28:15, 29:6,  
50:18, 50:21,  
53:14, 55:17  
reasonably  
41:16  
reasons 40:25  
rebuttable  
51:21  
recalls 55:11  
receive 36:12  
received 3:8  
recent 3:16  
recently 6:22  
recognize 9:17,  
12:25  
recognizing  
55:16  
recommendation  
38:24  
recommendations  
20:10, 21:18,  
56:14  
recommends  
41:13, 43:6  
reconsidered  
18:24, 18:25  
reconsiders  
18:3  
redesign 25:6  
refer 24:19  
references 10:4  
refinement  
20:12, 21:6,  
21:12  
refinements  
13:16  
refining 13:13  
refrigerator  
23:12, 50:12  
refrigerators  
25:9  
regard 23:2  
regarding 2:3,

35:23  
regulate 56:11  
regulated  
36:21, 37:7,  
37:12  
regulating  
35:22  
regulation 3:3,  
12:17, 16:22,  
18:6, 20:19,  
40:3, 43:7,  
44:13, 46:19  
regulations  
11:17, 12:20,  
13:1, 13:4,  
13:11, 13:19,  
13:22, 13:25,  
16:2, 16:4,  
16:7, 19:8,  
19:12, 44:17,  
46:1, 48:7  
regulators  
48:23  
regulatory  
41:23, 42:17,  
52:21, 53:1  
reinforce 55:7  
reject 27:9  
rejected 27:2  
rejecting 41:11  
rejection 26:25  
rejections  
27:10  
relate 11:17  
related 12:1,  
32:10, 52:21  
relates 13:19  
relative 11:6  
relevant 8:20  
reliability  
14:21  
reliable 42:16,  
45:24  
remember 53:15  
remind 28:13  
remiss 54:7  
renewal 18:25,  
55:20, 55:22  
renewals 18:21,  
56:21

repeatable 42:16	30:25, 55:21	52:14, 54:23, 55:13
replace 15:6, 15:19, 15:21, 20:5	researchers 52:18	Rulemaking 1:35, 2:24, 3:10, 4:4, 35:23, 35:25, 41:18, 55:2
replacement 25:24, 26:2	resident 35:9	rules 9:20, 47:10, 49:1, 50:20, 53:23
report 4:8, 29:15	resistant 31:19	running 52:8
reported 1:13	Resources 7:7, 41:2	runway 55:5
Reporter 1:14, 58:2	respectfully 8:25	RUTH 1:31
Reporter/notary 58:13	responses 53:1	
reporting 3:7, 4:10, 4:11, 29:8, 29:12, 29:17, 34:9	responsibilitie s 23:14	
represent 23:3, 23:4	responsibility 49:1	< S > S. 3:5, 11:21, 43:6
Representative 5:16, 6:9, 30:17, 31:25	restriction 24:22	safe 28:3, 28:4, 35:17
representing 52:16	resubmitting 55:22	Safer 1:34, 2:22
request 23:18, 24:21, 38:25, 54:8, 56:11	result 9:2, 28:24, 50:4	safety 3:23, 8:20, 14:21, 24:1, 24:9, 33:2, 33:5, 49:12
requested 9:7	resulted 21:9	sale 3:22, 26:5, 26:8
requests 23:17, 27:7	retailers 52:19	sales 3:6, 3:11, 3:15, 54:25
require 8:18, 18:21, 20:23, 24:6, 40:3, 43:7, 49:10, 51:10	retardants 19:25	sample 43:14
required 29:13, 31:9, 32:22, 49:22, 50:22, 54:1, 55:23	retool 25:6	SANFORD 1:23, 21:24, 21:25, 22:15, 34:14, 34:15, 34:19, 34:21, 34:25, 40:8, 45:5, 45:6, 45:17, 45:21, 46:5, 46:25, 50:25, 51:1, 51:9, 51:12, 51:14, 52:1, 56:19, 56:20, 57:1, 57:2, 57:5, 57:9
requirement 3:7, 20:14, 29:18	review 33:22, 43:2	SARAH 5:14, 5:16, 5:20,
requirements 4:10, 29:8, 34:8, 47:11, 48:18, 50:22	revisit 21:2	
requires 4:8, 26:8	risks 6:18, 8:22, 8:23, 11:6, 33:9, 33:20, 49:16	
requiring	ROBERT 1:21, 1:23, 1:25	
	Robin 1:13, 58:2	
	routine 3:9, 4:4	
	rule 2:9, 3:2, 3:20, 4:10, 4:14, 4:19, 4:21, 6:12, 7:16, 7:24, 9:1, 18:2, 23:7, 28:9, 28:23, 29:7, 30:17, 31:12, 34:6, 36:3, 36:4, 36:9, 37:21, 38:5,	

27:22, 27:23,	sense 13:4,	47:16
27:25, 28:15,	45:24	slot 5:17
28:18, 34:18,	sentence 33:16	slow 28:16
34:20, 34:22,	series 18:7,	slower 56:12
35:3	45:20	sludge 46:11,
save 13:16	serious 23:11,	47:13
saying 22:3,	48:22	small 8:13,
34:16	serve 9:20	23:3, 41:2,
says 18:6,	serving 6:9	44:20, 44:21
18:23, 25:1,	Session 3:5,	smaller 40:18,
46:13	28:24	40:21
scheduled 3:12	set 26:12	Snowmobiles
sciences 11:22,	setting 46:22	16:22
12:16	several 6:17,	Society 3:24,
scientist 11:2,	11:25, 20:7,	8:21, 33:2,
11:4	43:19, 52:19	33:5, 49:13,
scope 3:13,	shirk 48:25	51:19
24:25	short 46:20	soil 46:10
screening 43:6	shortages 15:15	sold 19:5
seaside 6:9	shouldn't	solemnly 2:12
second 16:5,	10:20, 14:18,	solulable 41:3
41:8	18:24, 23:8,	solutions 52:22
Secondly 8:16,	48:13, 48:14,	somebody 10:9,
18:12, 24:25	48:15	10:15
Section 3:5,	show 33:15	someone 15:20
8:17, 32:21,	shown 31:4	somewhere 10:1
33:8, 33:11,	shows 40:23	soon 38:6,
33:12, 41:13,	side 6:21	38:7, 38:9,
49:8, 49:14,	signals 32:15	46:3, 55:14
54:5, 55:13	signed 5:10,	Sorry 28:15,
Seeing 27:22,	57:13, 58:8	38:20
57:16	significant	sort 30:7,
seek 36:19	14:9, 53:7,	31:21
seem 36:15,	56:2	sorts 46:11
44:19	silent 37:22	sources 8:10
seems 42:5	similar 14:4,	spare 25:24,
seen 40:23	20:3, 20:4,	25:25
self-certify	42:1, 51:15	speaking 53:4
51:12	sincere 53:11	speaks 32:5
sell 18:18,	sincerely 2:12	special 24:6
19:2	sir 27:21	specialty 39:15
selling 12:5,	sites 35:14	specific 3:6,
12:13, 13:6,	sitting 15:17	3:22, 8:5,
18:14	situation 22:2	8:21, 21:18,
semiconductor	situations	32:22, 43:4,
32:3, 32:8,	45:10	43:21
32:13, 54:9	skillets 23:6,	specifically
Semiconductors	25:16	22:7, 23:4
32:3, 54:10	skip 31:25	specificity
Senator 7:10	Slingshot 47:8,	7:23

spend 56:13	32:22, 35:12,	submit 22:14,
spent 53:7	37:10, 37:16,	28:20, 29:21,
spill 47:13	53:4, 54:23	39:1, 40:6
spirit 22:11,	statute 4:11,	submitted 18:5,
43:23	4:19, 4:21,	42:22, 54:24,
spoken 32:6	4:25, 9:6,	55:14, 55:22,
sponsored 6:17	10:16, 19:21,	57:17
spreading 47:13	20:15, 21:14,	submitting
St. 35:11	30:21, 34:13,	12:22, 21:17,
stable 39:21,	42:2, 44:17	36:23, 55:5
40:14	statutory 3:11,	Subsection
STAFF 1:33,	39:25, 43:1	33:11, 49:18
2:18, 4:17,	stenograph 58:6	substance 8:8,
7:13, 35:21,	stents 15:2	8:11, 8:12,
39:24, 53:8,	step 43:13	31:14, 31:17
56:13	steps 48:16,	Substances
staffing 38:9	55:2	1:10, 28:11,
stain 31:19	STEVEN 1:22	47:25, 52:14
stakeholder	Stone 28:8	substitutes
35:21	stop 48:12,	24:8
stakeholders	49:3	success 7:12
7:9, 7:15,	stores 26:9,	sufficiently
53:9, 55:4	26:10	42:14
stand 2:10,	strategy 22:5	suggest 20:11,
5:25	streamlined	38:23
standard 45:14,	55:20	suggested 38:2
46:4, 46:22	strengthen	suggesting
standardized	7:20, 9:21	21:17
43:11, 44:10	strengthened	suggestions
Standards 4:2,	32:12, 34:6,	7:19, 43:21
42:20, 45:14,	34:12	sum 44:20
46:21	strengthening	summer 26:23,
standpoint	49:5	27:4
55:18	stricken 31:8	supply 23:15
start 5:13,	strict 29:17,	support 5:10,
5:14, 5:24,	51:24	7:18, 34:4,
35:20, 40:12	strong 48:17,	34:10, 41:10,
State 1:1,	50:2	47:9, 50:20
1:14, 1:16,	stronger 29:12	supporter 24:14
6:8, 19:12,	studies 33:15,	supporting
24:14, 35:18,	33:22	52:23
52:10, 52:15,	study 15:6	surface 24:17
58:3	stuff 32:6,	surfaces 23:19
stated 25:14,	33:22	surrogate 42:24
25:20, 33:3	subject 13:2,	survive 14:11,
statements 43:3	36:13, 41:23	14:12
States 6:25,	submission 4:8,	SUSAN 1:20
9:8, 21:7,	26:23, 38:25,	switch 5:18
26:18, 30:2,	43:8, 43:9,	switching 32:15
30:7, 32:9,	55:1	system 44:7

< T >	46:22, 49:22, 51:5, 51:6, 51:18, 51:24	t 28:13
tackle 48:16	Thirdly 25:23	travel 50:13
tale 53:3	Thirty-six	treatment 16:1
talks 9:25	36:15	trip 6:22
tap 48:12	though 54:6	true 9:16, 58:4
tariff 44:6	thoughtful 9:19	truly 2:12, 15:17
tease 10:24	threat 9:17	truth 2:14, 2:15, 6:1
technical 3:10, 4:4	threatened	try 10:8, 22:13, 28:16, 44:21, 52:7, 55:18
temperature	23:15	trying 13:1, 20:9, 22:13
14:19	threats 47:19	turn 48:12
temperatures	three 3:12, 13:17, 46:12	Twenty-eight 30:1
14:9	tight 27:1	two 24:14, 44:19, 46:12
term 39:2, 44:12	tightening 49:5	type 33:22, 42:25, 43:4, 44:4, 44:5
terms 12:19, 29:12, 31:12, 40:20, 46:2, 49:19	tighter 49:18	types 33:21
test 8:2, 8:6, 31:3, 31:8, 42:11, 42:20, 49:21	timeline 9:8, 27:11, 37:23	
testify 2:8, 2:9, 11:16, 39:23	timetable	
testifying 47:9	37:17, 56:10	
testimony 4:22, 5:21, 9:24, 10:19, 13:14	timing 26:19, 38:8	
testing 7:25, 10:4	today 2:6, 7:16, 7:18, 13:14, 15:21, 17:24, 28:14, 36:2, 36:21, 37:1, 40:5, 42:6, 45:3, 49:6, 52:12, 54:2, 54:3, 56:1, 56:3, 57:19	
tests 31:1	TOF 42:24, 43:2, 43:8	
Tfas 50:15	together 13:2, 13:3, 52:8	
thanking 35:20	took 15:6, 24:15	
Thanks 13:7, 35:4, 37:24	tools 35:16	
theme 42:5	topic 16:5	
theory 8:5	total 42:23, 43:12, 54:20	
thereafter 38:7	touch 54:3	
they'e 51:20	Towards 34:15	
They've 10:2, 14:14	toxic-free 28:4	
third 17:12	trade 39:16	
third-party	transcript 58:5	
8:1, 8:4, 8:7, 30:19, 31:1, 31:10,	transcriptionis	



undefined 42:10	Vice 27:25	wide 8:14
undergone 42:14	VICKERY 1:24,	winter 26:24
understand	10:13, 10:14,	wire 15:15
17:3, 20:15	10:22, 11:1,	wiring 14:17,
understanding	11:8, 38:1,	14:18, 15:3,
43:25	38:2, 38:12	16:20, 20:4,
understands	victims 48:6	24:3
43:16	videos 40:23	wish 2:9
Understood 57:4	viewed 45:1	wishes 57:15
unfamiliar 6:25	violate 22:11	within 2:24,
Unfortunately	violating 22:8	21:13, 25:21,
52:25	voices 47:15	34:21, 36:14,
uniformity 9:9	vu 19:22	41:7, 42:10,
unique 14:6,		58:3
15:25, 30:1,	< W >	without 22:8,
30:9, 39:21	wanted 23:13,	43:2
United 35:12	37:1	withstand 14:8,
unless 18:23	wants 5:23	15:16
unlike 24:4	Washington	witness 35:2,
unnecessarily	23:1, 39:18	38:20
32:17	water 28:4,	witnessed 48:9
unnecessary	40:17, 41:3,	WOODBURY 5:14,
9:22	41:5, 46:10,	5:16, 5:20,
upcoming 25:5	47:13, 47:24,	27:22, 27:23,
updated 26:11	48:14, 50:9,	27:25, 28:15,
urge 8:25,	50:14, 50:15	28:18, 34:18,
29:7, 30:9,	ways 15:8,	34:20, 34:22,
31:7, 41:25,	45:2, 48:15	35:3
47:10, 50:21	weaken 29:8,	Woodsum 35:8
users 35:17	49:1	work 7:3, 7:15,
uses 30:4,	weakened 9:1	9:3, 9:14,
48:18	weakening	13:5, 19:10,
using 12:16,	47:10, 50:21	27:12, 27:17,
17:24	weeks 28:24	28:25, 29:5,
utilizing 30:8	Welcome 2:19	34:23, 35:22,
	well-executed	35:24, 39:25,
< V >	35:21	46:8, 48:8,
vague 8:3	WEST 39:11,	50:19, 51:5,
valid 4:5,	39:12, 39:14,	53:12
31:11	45:11, 45:19,	worked 6:14,
valuable 10:18	45:22, 46:6,	7:8
various 9:4	47:1	working 28:5,
vast 10:4	whatever 27:5,	37:13, 47:17,
vehicle 16:17	56:10	53:7
vehicles 16:16	Whether 19:2,	works 15:9,
versus 40:10,	42:15, 47:12	15:10, 28:2
51:25	whole 2:14,	world 37:11,
via 32:15	18:7, 20:2	48:4
viability 52:24	whom 6:23	worldwide 37:10
		worth 15:13

written 5:21,  
 9:23, 12:22,  
 12:23, 23:10,  
 25:8, 28:20,  
 36:23, 39:5,  
 40:6, 54:2,  
 56:1, 57:16

< Y >

year 3:12,  
 17:14, 17:16,  
 18:1, 18:13,  
 18:19, 18:20,  
 20:18, 21:10,  
 26:20, 40:1,  
 46:12, 53:7

years 15:6,  
 17:18, 17:22,  
 18:5, 18:10,  
 19:24, 20:7,  
 20:15, 22:9,  
 24:15, 36:18,  
 38:15, 48:21,  
 50:16

Yup 5:4, 37:19,  
 39:4, 39:7,  
 51:11, 57:9



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