

ORIGINAL

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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

PROCEDURAL RULES FOR ALTERNATIVE)

THERMAL EFFLUENT LIMITATIONS)

UNDER SECTION 316(a) OF THE)

CLEAN WATER ACT: PROPOSED NEW)

35 ILL. ADM. CODE PART 106,)

SUBPART K AND AMENDED SECTION)

304.141(c).)

DOCKET R13-20
(Rulemaking-Water)

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STATE OF ILLINOIS
Pollution Control Board

Hearing held, pursuant to notice, on Tuesday,
August 27, 2013, at the hour of 11:00 a.m. at 1021
N. Grand Avenue East, Springfield, Illinois, before
DANIEL L. ROBERTSON, duly appointed Hearing Officer.

L.A. REPORTING SERVICE
(312) 419-9292

REPORTER: LAUREL A. PATKES, CSR #084-001340

1 BOARD MEMBERS:

2 JENNIFER A. BURKE
3 JEROME D. O'LEARY
4 DEANNA GLOSSER
5 CARRIE ZALEWSKI

6 APPEARANCES:

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14

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18

19 appearing on behalf of Illinois
20 Environmental Regulatory Group;

21

22 SIDLEY AUSTIN LLP, by
23 ALAN BIELAWSKI
24 One South Dearborn
Chicago, Illinois 60603.

25

26 appearing on behalf of Exelon.

27

28 IEPA STAFF:

29

30 ROY SMOGER
31 Surface Water Section

32

33 SCOTT TWAIT
34 Water Quality Standards Section.

35

36 SANJAY SOFAT
37 Division Manager
38 Water Pollution Control

39

40

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1 PROCEEDINGS

2 HEARING OFFICER ROBERTSON: Good

3 morning everybody. My name is Daniel Robertson, and
4 I have been appointed by the Board to serve as
5 hearing officer in this proceeding entitled In the
6 Matter of Procedural Rules For Alternative Thermal
7 Effluent Limitations under Section 316(a) of the
8 Clean Water Act: Proposed new 35 Illinois
9 Administrative Code Part 106(k) and amended
10 Section 304.141(c).

11 This proceeding is listed as
12 R13-20 in the Board's docket.

13 With me today is the Presiding
14 Board Member Jennifer Burke.

15 We are also joined by Member
16 Carrie Zalewski to her left, and to my right, Member
17 Deanna Glosser and Member Jerry O'Leary.

18 This rulemaking was filed
19 pursuant to Sections 13, 26 and 28 of the
20 Environmental Protection Act.

21 At the request of the Agency,
22 the Board submitted the proposal for first notice
23 without commenting on the substance and merits of
24 the proposed amendments.

1 The Board has scheduled two
2 hearings in this proceeding, the first taking place
3 today, August 27, 2013 in Springfield, and the
4 second will take place on October 16, 2013 in
5 Chicago.

6 The purpose of today's hearing
7 is to hear testimony from the Illinois Environmental
8 Protection Agency.

9 The Board did not receive any
10 prefiled testimony from any party before the
11 August 16th deadline.

12 On August 15, 2013, the Board
13 submitted questions to the Agency through a hearing
14 officer order. Copies of this order have been made
15 available on the table in the back by the TV if
16 anyone would like a copy. It is also available on
17 the Board's website.

18 Please note that any question
19 asked by a board member or staff either through that
20 order or today is intended to help complete the
21 record for the Board's decision and not to express
22 any preconceived notion or bias.

23 Also on the back table are
24 copies of some other letters that I'll address

1 later. The first is a communication between the
2 Board and the Department of Commerce and Economic
3 Opportunity, abbreviated DCEO, regarding the Board's
4 request on economic impact study as well as the
5 DCEO's response.

6 And next to that are two
7 letters from the Joint Committee on Administrative
8 Rules, abbreviated JCAR, regarding JCAR's request
9 for an analysis of economic and budgetary effects.
10 As mentioned, I'll address both those items later in
11 the hearing.

12 If anybody wishes to ask a
13 question, I ask that you please put your hand up and
14 wait for me to acknowledge you. Once acknowledged,
15 please state your name and who you represent before
16 beginning your questions.

17 The Board will also allow time
18 at the end of the day for any person who did not
19 prefile testimony to have an opportunity to testify
20 if they so wish to.

21 So just to lay out the
22 procedure, we'll basically start with opening
23 statements from, introductions and opening
24 statements from the Agency; then any introductions

1 and opening statements from any other parties that
2 may wish to give such.

3 We will then move on to the
4 Agency's testimony, questions of the Agency's
5 testimony, and then we'll follow that up with any
6 other testimony that people may have.

7 So at this point, would the
8 Agency like to introduce itself and its witnesses
9 for the record?

10 MS. OLSON: Yes. Thank you.

11 Good morning. My name is
12 Joanne Olson, and I'm assistant counsel here at
13 Illinois EPA.

14 I have a few brief remarks
15 about this rulemaking.

16 Illinois EPA's proposal
17 contains procedural rules for thermal relief under
18 Section 304.141(c) of the Board's rules in
19 Section 316(a) of the Clean Water Act.

20 Under Section 316(a), a
21 thermal variance can be granted when a permittee
22 demonstrates that the otherwise applicable thermal
23 effluent limit is more stringent than necessary to
24 assure the protection and propagation of the

1 waterbody's balanced, indigenous population of
2 shellfish, fish and wildlife.

3 Section 304.141(c) of the
4 Board's rules provides that the thermal standards in
5 Subtitle C apply to a discharge unless, after public
6 notice and opportunity for public hearing, the Board
7 has determined that different standards apply in
8 accordance with Section 316(a) of the Clean Water
9 Act and applicable federal regulations.

10 The Board currently does not
11 have specific procedural rules covering proceedings
12 under Section 304.141(c) and Section 316(a) relief.

13 The Board's current regulatory
14 relief mechanisms include adjusted standards and
15 variances and site specific rulemakings. These do
16 not match the type of relief given under Section
17 316(a) and applicable federal rules.

18 In particular, a variance
19 provides temporary relief and requires the permittee
20 to come into compliance by the end of the variance
21 period.

22 Section 316(a) relief does not
23 require the permittee to return to compliance after
24 the variance period is over but instead requires the

1 permittee to renew the thermal relief with each
2 permit cycle.

3 An adjusted standard, unlike
4 316(a) relief, is intended to be permanent relief.

5 In addition to these
6 inconsistencies, the burdens of proof to obtain a
7 variance or an adjusted standard are different from
8 what is needed to obtain a Section 316(a)
9 alternative thermal effluent demonstration.

10 In a prior case before the
11 Board, Exelon Generation petitioned for alternative
12 thermal standards for its Quad Cities Nuclear
13 Generation Station. The Agency and the petitioner
14 filed a joint motion requesting the Board use
15 portions of existing procedural rules in Part 106.

16 The Board found this mix of
17 procedural rules to be insufficient to address the
18 procedural issues that might arise in a Section
19 316(a) proceeding. The Board stated it would
20 entertain a proposal to add a new subpart to Part
21 106 for Section 316(a) thermal relief.

22 In response, the Agency has
23 proposed these rules which are based on the federal
24 procedure for Section 316(a) relief found in 40 CFR

1 Sections 125.70 through 125.73.

2 The Agency's proposal
3 integrates existing board procedures found in
4 Part 106 and 104 with the requirements and the
5 burdens of proof contained in the federal rules.

6 Today the Agency thanks the
7 Board for holding this hearing and will be happy to
8 answer any questions from the Board or the
9 participants or members from the public.

10 Present today to answer these
11 questions is a panel of technical experts, and at
12 this time, I'd like the panel to introduce
13 themselves.

14 MR. SMOGER: My name is Roy Smoger,
15 and I'm with the Surface Water Section. I'm a
16 biologist with the Surface Water Section in the
17 Illinois EPA Bureau of Water.

18 MR. TWAIT: My name is Scott Twait.
19 I work for the Agency in the Water Quality Standards
20 Section.

21 MR. SOFAT: I'm Sanjay Sofat. I'm
22 the Division Manager of Water Pollution Control at
23 Illinois EPA. My responsibilities include
24 management of operations related to state and

1 national pollution discharge elimination permits,
2 NPDES (and that stands for National Pollutant
3 Discharge Elimination System) permits, surface water
4 monitoring, development and implementation of water
5 quality standards, and compliance and inspection of
6 industrial and wastewater resources.

7 On behalf of the Agency, I
8 would like to thank the Board and Board Members for
9 expediting this rulemaking. It will be really
10 helpful for us to meet our obligations under the
11 Act, the Clean Water Act.

12 MR. LeCRONE: And I am Darin
13 LeCrone. I'm the manager of the Industrial Unit in
14 the Division of Water Pollution Control Permit
15 Section at IEPA.

16 HEARING OFFICER ROBERTSON: Thank
17 you.

18 At this stage, do any of our
19 board members, would any of you like to make an
20 opening statement?

21 Seeing none, would anybody
22 else like to introduce themselves for the record?

23 MR. DAVIS: I'll go ahead. My name
24 is Alec Davis. I represent the Illinois

1 Environmental Regulatory Group, or IERG.

2 On behalf of IERG, I'd like to
3 thank the Board for inviting us this opportunity to
4 participate today.

5 HEARING OFFICER ROBERTSON: Anybody
6 else?

7 And would anyone else like to
8 make any opening statements before we head on to the
9 Agency's testimony?

10 Seeing none, we'll move on to
11 the testimony.

12 Would the court reporter
13 please swear in the Agency's witnesses?

14 (Whereupon the witnesses were
15 sworn by the reporter.)

16 HEARING OFFICER ROBERTSON: Thank
17 you.

18 You may proceed.

19 MS. OLSON: The Board presented
20 questions for the Illinois EPA to answer a few weeks
21 ago, and we have put together a written response
22 which I distributed earlier today, and we'd like to
23 move it into the record as Exhibit 1.

24 HEARING OFFICER ROBERTSON: Are

1 there any objections to accepting the Agency's
2 response as Exhibit 1?

3 MR. DAVIS: No.

4 HEARING OFFICER ROBERTSON: Seeing
5 none, I'm entering the document entitled Illinois
6 EPA's Response to Board Staff Questions for First
7 Hearing as Agency Exhibit 1 to this proceeding.

8 (Whereupon Agency Exhibit 1 was
9 admitted into evidence at this
10 time.)

11 HEARING OFFICER ROBERTSON: It's my
12 understanding that the Agency is willing to take any
13 questions on these answers at this stage?

14 MS. OLSON: That's correct. We are
15 happy to take follow-up questions or talk about
16 specific responses if anyone else is interested.

17 HEARING OFFICER ROBERTSON: I don't
18 know if everyone has a copy but would anyone like to
19 take a moment to review these questions?

20 Okay. Maybe a ten-minute
21 recess. Does that work?

22 MR. BIELAWSKI: I'm Alan Bielawski.
23 Another question with regard to these answers.

24 Will you be appearing at the

1 second board hearing? Will the same group be
2 appearing in the event we need to ask any questions
3 with regard to your answers?

4 MS. OLSON: This same panel will
5 not be appearing. One witness and myself will be at
6 the second hearing.

7 HEARING OFFICER ROBERTSON: Okay.
8 So at this stage, we'll take a ten-minute recess for
9 people to review the Agency's answers.

10 Thank you.

11 (Recess taken.)

12 HEARING OFFICER ROBERTSON: It's
13 been about ten minutes.

14 Do people need additional
15 time?

16 Okay. So at this stage, we
17 are going back on the record. It's 11:25.

18 So do any members of the
19 public have any questions for the Agency based on
20 their answers?

21 Okay. Seeing none, do any
22 board members have any questions?

23 BOARD MEMBER GLOSSER: I do. I
24 have two questions.

1 I know 316(a) rules are new
2 for Illinois, but I was wondering, does the Agency
3 have sample detailed plans of studies that have been
4 done elsewhere to know what kinds of results we
5 might expect to see? Has it been done in other
6 states?

7 MR. SOFAT: In other states, yes,
8 it has been done in other states, but I don't think
9 we have access to that.

10 Would the Board be interested
11 in seeing those?

12 BOARD MEMBER GLOSSER: If you have
13 an example of what's been done, what might come out
14 of these studies, I would be interested in seeing
15 that.

16 MR. SOFAT: We'll look into that,
17 and we'll see if we can find a study out there.

18 BOARD MEMBER GLOSSER: And then the
19 second question is related.

20 As this process goes into
21 place, would you expect the Agency to have an
22 outline for what you might see as an ideal plan of
23 study that you would be able to provide to the
24 applicant as guidance in their development of the

1 plan?

2 MR. SOFAT: I think our plan at
3 this point is not to create something what we
4 consider as the best out there because it does
5 depend on the site specific facts and situations.

6 However, I think we might have
7 examples that other states have accepted as adequate
8 316(a) demonstration, so that's what we'll be
9 sharing rather than...because we don't want to have
10 our own sort of subset of rules or even examples
11 that might conflict with the 316(a) rule that the
12 Board is going to be adopting.

13 But we will look into some
14 examples that we have so that we can share with the
15 regular community.

16 BOARD MEMBER GLOSSER: Thank you.

17 HEARING OFFICER ROBERTSON: Does
18 anybody else have any follow-up questions?

19 Okay.

20 MR. BIELAWSKI: I guess I have a
21 question. This is Alan Bielawski for Exelon.

22 Would you be guided at all by
23 the draft USEPA guidance on 316(a) studies in
24 reviewing 316(a) studies provided to you?

1 MR. TWAIT: Yes, that would be one
2 of the things that we can look at for guidance.

3 MR. BIELAWSKI: And perhaps we can
4 share that guidance with the Board.

5 MS. OLSON: If the Board would like
6 a copy of the guidance, I can enter it into the
7 record today.

8 HEARING OFFICER ROBERTSON: Does
9 anybody have any objections?

10 MS. OLSON: I have the draft 1977
11 guidance. I'll enter it or move to enter it as
12 Exhibit 2. I'm sorry. It's a lengthy document and
13 I do not have copies, but I believe you can get it
14 on the Internet.

15 HEARING OFFICER ROBERTSON: Are
16 there any objections to entering the Agency
17 Exhibit 2?

18 MS. ZEMAN: Do you mind reading for
19 the record the entire name of the document so that
20 maybe we can get it on line?

21 HEARING OFFICER ROBERTSON: Yes, I
22 will.

23 THE REPORTER: Can I have your
24 name?

1 MS. ZEMAN: Oh, I'm sorry. My name
2 is Christine Zeman (Z-e-m-a-n).

3 HEARING OFFICER ROBERTSON: So this
4 is a document dated May 1, 1977 entitled Interagency
5 316(a) Technical Guidance Manual and Guide for
6 Thermal Effects Sections of Nuclear Facilities
7 Environmental Impact Statements. It says prepared
8 by the U.S. Environmental Protection Agency, Office
9 of Water Enforcement Permits Division, Industrial
10 Permits Branch, Washington, D.C.

11 So are there any objections to
12 entering this into the record?

13 Seeing none, I will enter this
14 as Agency Exhibit 2 to this proceeding.

15 (Whereupon Agency Exhibit 2 was
16 admitted into evidence at this
17 time.)

18 HEARING OFFICER ROBERTSON: Were
19 there any additional follow-up questions for the
20 Agency?

21 MR. DAVIS: I have some questions,
22 but I wouldn't classify them as follow-ups.

23 HEARING OFFICER ROBERTSON: Okay.
24 Sure. Go ahead.

1 MR. DAVIS: All right.

2 My first question is based on
3 something that's in actually the Agency's statement
4 of reasons. I don't know if people have that handy
5 but I can read the relevant provisions here.

6 On page 11 regarding the
7 affected facilities in outreach, the Agency's
8 statement of reasons states both that, and this is a
9 quote, this proposal would impact any facility with
10 a thermal effluent limit that seeks to demonstrate
11 such limit is more stringent than necessary to
12 protect a balanced, indigenous population of fish,
13 shellfish and wildlife.

14 Second statement being, in
15 general, the affected industry is the steam electric
16 generating industry, whether nuclear or coal-fired.
17 The universal sources that may seek to avail
18 themselves of these procedures is estimated to be
19 approximately 25 power plants.

20 My question, is the Agency's
21 intent that the proposal only apply to the steam
22 electric generating industry or could any facility
23 with a thermal effluent limit potentially utilize
24 the Subpart (k) process to seek an alternative

1 limitation?

2 MR. SOFAT: As stated in the first
3 sentence, it ples to any facility with a thermal
4 effluent limit.

5 MR. DAVIS: Thank you.

6 My second question deals with
7 the Agency's proposed Part 106, specifically
8 Section 106.1165 which is titled Evidentiary
9 Matters.

10 Subsection (b) of that section
11 states, "In determining whether or not the
12 protection and propagation of the affected species
13 will be assured, the Board may consider any
14 information contained or referenced in any
15 applicable thermal water quality criteria and
16 thermal water quality information published by the
17 USEPA under Section 304(a) of the Clean Water Act or
18 any other information the Board deems relevant.

19 Regarding that last portion,
20 the "any other information the Board deems
21 relevant," does the Agency intend for the Board to
22 be empowered to consider information that is not in
23 the record for the proceeding?

24 MR. SOFAT: Can you repeat your

1 question, please?

2 MR. DAVIS: Sure.

3 The final clause of that
4 subsection states that the Board consider any other
5 information the Board deems relevant, and my
6 question was whether or not the Board could consider
7 information that's not in the record.

8 MR. SOFAT: Our intent is that that
9 information is part of the record.

10 MR. DAVIS: Would the Agency be
11 amenable to amending the proposal to read "any other
12 information in the record that the Board deems
13 relevant"?

14 MR. SOFAT: I think the downside of
15 doing that is if the Board on its own finds
16 information that they believe is relevant to the
17 proceeding, then we don't want to bind the Board by
18 saying that you cannot because it was never given to
19 the Board by any of the participants.

20 So if the Board finds
21 information out that they believe is relevant, they
22 could put that in the record.

23 MR. DAVIS: Is there a procedure
24 for doing that such that a petitioner would have an

1 opportunity to address whatever contents that
2 information would be?

3 MR. SOFAT: And again, I think I'm
4 trying to speak on behalf of the Board, but I'm sure
5 that that information will be made available on the
6 website as part of the proceeding that here is the
7 information that we are considering.

8 MR. DAVIS: So it would be in the
9 record?

10 MR. SOFAT: Eventually it will
11 become part of the record, but it will not be -- the
12 record starts with the Agency filing something with
13 the Board, petitioners filing with the Board, and
14 the record can grow over time depending upon who's
15 involved.

16 However, I mean, the record in
17 the traditional sense is the one that, you know, we
18 are used to, the Agency and the petitioner.
19 However, what the Board looks at nobody knows. I
20 mean, they have the authority to review, and I'm not
21 sure what they consider to make that decision.

22 And that's something we want
23 to -- that's what we were trying to get I think
24 here. If the Board finds any other information

1 relevant, then they could consider that.

2 MR. BIELAWSKI: I think the point
3 is that the Board or the applicant for example would
4 want to have an opportunity to present evidence or
5 argument on whatever evidence is being used on which
6 to base a determination so that they ought to have
7 an opportunity to know what the Board is relying
8 upon so it can comment on that information.

9 I don't have a suggestion
10 right now in terms of how to draft that, but the
11 concept is, for example, a court can take judicial
12 notice of information that's not necessarily in the
13 record, but it informs the parties of that
14 information, and the parties then have an
15 opportunity to comment on that, and that's what I
16 think we're looking for in this case.

17 MS. OLSON: Can I ask a few
18 follow-up questions on this line?

19 HEARING OFFICER ROBERTSON: Sure.

20 MS. OLSON: Sanjay, can you tell us
21 where that requirement in proposed 106.1165(b) comes
22 from?

23 MR. SOFAT: I believe it's out of
24 the federal regulations 40 CFR 125.73(b).

1 MS. OLSON: And can you explain our
2 process in drafting these rules considering the
3 federal language?

4 MR. SOFAT: We drafted these regs
5 pretty much modeled based on USEPA's federal
6 regulations, and they are sitting in I believe
7 40 CFR 125.7273.

8 We also looked at the Board's
9 procedure rules that we believed would be relevant
10 for this rulemaking.

11 So that's pretty much the
12 extent of how we develop this rulemaking.

13 MS. OLSON: And given the fact that
14 Part 106 is a blend of Board procedures and federal
15 regulations, do you think it's possible that an
16 additional subsection could be added to this section
17 clarifying that information the Board considers
18 should be made available to the parties.

19 Let me rephrase.

20 That if the Board considers
21 information it deems relevant, it will notify the
22 parties or make such information a part of the
23 record?

24 MR. SOFAT: Yes, we can do that. I

1 will qualify that though. I believe that's
2 something that the Board needs to react to, not the
3 Agency, the information that the Board considers,
4 how they intend to make that available to the rest
5 of the parties.

6 From the Agency perspective, I
7 think that would be fine.

8 MR. BIELAWSKI: I'd also add we
9 should also look at the Administrative Procedures
10 Act because that might, in fact, dictate the basis
11 on which the Board has to decide the issues so it
12 might all be answered with that.

13 MR. DAVIS: Thank you.

14 My next question deals with
15 the proposed amendments to Part 304.

16 Section 304.141(c) is proposed
17 to read, "The standards of this chapter shall apply
18 to thermal dischargers unless, after public notice
19 and opportunity for public hearing in accordance
20 with Section 316 of the Clean Water Act, applicable
21 federal regulations and procedures in 35 Ill.
22 Administrative Code 106(k), the Agency and the Board
23 have determined that different standards apply to a
24 particular thermal discharge.

1 My question is whether the
2 Agency intends for itself to play a role in
3 determining that a different standard applies?

4 MR. SOFAT: I believe if you look
5 at -- the reference to Agency is relevant, and if
6 you look at 106.1180, when renewal of the relief has
7 been requested, the Agency does play a role
8 affirming under certain circumstances.

9 MR. DAVIS: Okay. Thank. That's
10 all I've got.

11 HEARING OFFICER ROBERTSON: Do any
12 members of the public have any follow-up questions
13 based on the questions presented by Mr. Davis?

14 Seeing none, do any board
15 members have any follow-up questions?

16 Seeing none, thank you
17 Mr. Davis.

18 Does anybody else at this time
19 have any questions they would like to ask of the
20 Agency?

21 Seeing no more questions, I
22 guess I'll ask would anyone else at this stage -- I
23 note for the record there are a few other persons
24 present at the hearing outside of those who have

1 introduced themselves. Would anyone else like to
2 testify on any matter in this proceeding at this
3 stage?

4 Seeing none, the Board has a
5 few items it would like to address.

6 On July 24th, JCAR submitted
7 its First Notice Version of the proposal for use in
8 creating second notice changes. A copy of this
9 First Notice Version is available on the Board's
10 website.

11 The First Notice Version
12 includes 77 insertions and 85 deletions from the
13 amended portions of the Illinois Administrative
14 Code.

15 Does anybody have any comments
16 on the JCAR First Notice Version document at this
17 time?

18 MS. OLSON: I would like to take a
19 minute to briefly look over that if that's okay.

20 HEARING OFFICER ROBERTSON: Okay.
21 Sure. We'll just take a quick five-minute recess.

22 (Recess taken.)

23 HEARING OFFICER ROBERTSON: We are
24 back on the record now.

1 As we were discussing, the
2 July 24, 2013 JCAR First Notice Version document is
3 available on the Board's website, and I'd ask if
4 anybody has any comments on this document at this
5 time?

6 MS. OLSON: The Agency has three
7 comments.

8 The first change that we would
9 like to comment on is in Section 106.1110. It's in
10 the definitions.

11 JCAR has proposed changing
12 some of the language which we took directly from the
13 federal rule, and for those reasons, we would
14 suggest that that change not be made.

15 The definition is the balanced
16 indigenous community, and it reads as follows:
17 Balanced indigenous community is synonymous with the
18 term balanced indigenous population in the Clean
19 Water Act and means a biotic community typically
20 characterized by diversity, the capacity to sustain
21 itself through cyclic seasonal changes, presence of
22 necessary food chains, and we had put "by a lack of"
23 and they struck the word "by." We're trying to stay
24 as close -- our proposal was to try to stay as close

1 to the federal language as possible so we would
2 suggest or request that that change not be made.

3 The second example of a change
4 that deviates from the federal language is found in
5 Section 106.1160, burden of proof. In Subsection
6 (d)(1)(a), JCAR proposes changing the phrase "and
7 the additive effect of other thermal sources to a
8 balanced indigenous community to the additive effect
9 of other sources on a balanced indigenous community.
10 For the same reasons that we are tracking the
11 federal language, we would also suggest that change
12 not be made.

13 The final suggestion or
14 comment the Board has on JCAR's changes is in
15 Section 304.141. The Agency drafted this language
16 to include Section 316(a) of the Clean Water Act and
17 applicable federal regulations as one set of
18 standards that the relief would be granted according
19 to, and the second set of standards would be the
20 procedural rules in 106, so therefore, they did not
21 offset by commas the same way that JCAR would have
22 liked, and for those reasons, that would be the only
23 reason we would suggest not making that change and
24 keeping it to say Section 316(a) of the Clean Water

1 Act and applicable federal regulations, and
2 procedures in 106.

3 HEARING OFFICER ROBERTSON: Thank
4 you.

5 Does anybody else have any
6 comments on the JCAR First Notice Version of the
7 document at this stage?

8 Seeing none, we next have two
9 letters dated August 9 and 14, 2013 from JCAR
10 requesting a Board analysis of economic and
11 budgetary effects of this rulemaking.

12 As I mentioned, there are
13 copies at the back of the room.

14 Does anybody have any comments
15 on these letters at this time?

16 MS. OLSON: Will the Board be
17 submitting to JCAR an analysis of the economic and
18 budgetary impacts of this rule?

19 HEARING OFFICER ROBERTSON: Yes.

20 MS. OLSON: Will it be a part of
21 the record?

22 HEARING OFFICER ROBERTSON: Yes.
23 It will be submitted with the second notice
24 document.

1 Seeing no other questions, the
2 Board had requested by letter dated July 18, 2013
3 that the DCEO conduct an economic impact study for
4 this rulemaking.

5 On August 7, 2013, the DCEO
6 responded stating that they are unable to undertake
7 such a study. As I mentioned earlier, both of these
8 letters are again in the back of the room.

9 Does anyone have any comments
10 on the Board's letter or the DCEO's response?

11 Seeing no comments at this
12 stage, is there anyone else who would like to offer
13 either testimony or have any questions on any matter
14 in this proceeding?

15 MS. OLSON: I'd like to make a
16 statement.

17 HEARING OFFICER ROBERTSON: Go
18 ahead.

19 MS. OLSON: The Illinois EPA did
20 not file testimony beforehand for this proceeding,
21 and we don't plan on filing anything for the next
22 hearing. However, if anybody has any questions that
23 they would like to be addressed at the next hearing,
24 we'd be happy to answer them, and we would

1 appreciate it if you could file them or get them to
2 us so we could have the appropriate members of our
3 panel available.

4 HEARING OFFICER ROBERTSON: Thank
5 you.

6 Did any members of the Board
7 have any final questions based on anything we have
8 heard today?

9 Seeing none, would the Agency
10 like to make any additional final statements?

11 MS. OLSON: No.

12 HEARING OFFICER ROBERTSON: Thank
13 you.

14 So pursuant to the Board's
15 August 15, 2013 hearing officer order, the next
16 hearing in this matter is scheduled for Wednesday,
17 October 16, 2013 at 11 a.m. in Room N-502 of the
18 Michael A. Bilandic Building located at 160 North
19 LaSalle Street in Chicago.

20 The Board has set a prefiled
21 testimony deadline of October 11th, and the mailbox
22 rule does not apply to that deadline meaning the
23 Board must have any filings in its possession by
24 that date.

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF SANGAMON)

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CERTIFICATE

I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

Dated August 30, 2013.

Laurel A. Patkes
Certified Shorthand Reporter

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