

ORIGINAL

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).)

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R13-20

OCT 28 2013

STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Daniel Robertson, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 160 North LaSalle Street, Chicago, Illinois, on the 16th day of October, 2013, commencing at the hour of 11:00 a.m.

A P P E A R A N C E S

MR. DANIEL ROBERTSON, Hearing Officer
MS. ALISA LIU
MS. CARRIE ZALEWSKI
MR. ANAND RAO
MR. JERRY O'LEARY
MS. JENNIFER BURKE
MS. DEANNA GLOSSER

1 MR. ROBERTSON: Good morning,
2 everybody. My name is Daniel Robertson and I have
3 been appointed by the Board to serve as Hearing
4 Officer in this proceeding entitled In The Matter
5 of: Procedural Rules for Alternative Thermal
6 Effluent Limitations Under Section 316(a) of the
7 Clean Water Act: Proposed New 35 Ill. Adm. Code
8 Part 106, Subpart K and Amended Section
9 304.141(c).

10 This proceeding is listed as
11 R13-20 in the Board's docket. With me today we
12 have the presiding Board Member Jennifer Burke and
13 to her left is also joined by members of the
14 Board's Technical Unit Anand Rao and Alisa Liu.
15 On my right, we have the Board's Chairman Deanna
16 Glosser and next to her we have Board Members
17 Jerry O'Leary and Carrie Zalewski.

18 I'm just going to get a couple
19 procedural issues out of the way first. This
20 rulemaking was filed pursuant to Section's 1326
21 and 28 of the Environmental Protection Act. At
22 the request of the Agency, the Board submitted the
23 proposal to first notice without commenting on the
24 substantive merits of the proposed amendments.
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1 The Board scheduled two hearings
2 in this proceeding. The first took place on
3 August 27th in Springfield and the transcript of
4 that hearing has been made available on the
5 Board's website since September 13th. Today marks
6 the second hearing taking place here in Chicago.
7 Any pre-filed testimony for today's hearing was
8 due on October 11th and no pre-filed testimony was
9 received.

10 However, on October 11th, the
11 Agency did file its response to Board staff
12 questions for section hearing and CARE comments.
13 CARE is the acronym for Citizens Against Ruining
14 the Environment who filed a public comment on
15 September 5th. This is the only public comment
16 received by the Board today.

17 The Agency's response addressed
18 the public comments as well as Board Hearing
19 Officer questions sent on September 12th and
20 copies of the September 12th Hearing Officer order
21 and the Agency's response are available on the
22 desk to our right in the back. Also on that back
23 table are copies of two letters.

24 The first is a communication
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1 between the Board and the Department of Commerce
2 and Economic Opportunity, abbreviated DCEO,
3 regarding the Board's request for an Economic
4 Impact Study and the DCEO's response. There are
5 also copies of two letters from the Joint
6 Committee on Administrative Rules, abbreviated
7 JCAR, J-C-A-R, regarding JCAR's request for
8 analysis of economic and budgetary effects. Both
9 of these letters were addressed at the first
10 hearing, but I'll again address these items later
11 today.

12 Similar to the first hearing, we
13 will start today with introductions and opening
14 statements first from the Agency and then from
15 anyone else wishing to do the same. We will then
16 move onto any Agency testimony and questions on
17 the testimony and at that time we will also take
18 any questions on the Agency's response filing from
19 October 11th. We will then move onto any
20 testimony from any other persons in attendance.
21 And I again note that any questions asked by a
22 Board member or staff either through the Hearing
23 Officer or at the hearing today is intended to
24 help build a complete record for the Board's
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1 decision and not to express any preconceived
2 notion or bias.

3 I will also ask that if you wish
4 to ask a question, please state your name and whom
5 you represent before beginning your questions. At
6 this point, would any members of the Board like to
7 make any opening statements? Seeing none, would
8 the Agency like to please introduce itself and its
9 witness for the record.

10 MS. OLSON: Hi. My name is Joanne
11 Olson. I'm assistant counsel at Illinois EPA.

12 MR. TWAIT: Scott Twait from
13 Illinois EPA.

14 MR. ROBERTSON: Thank you. It's my
15 understanding that the Agency does not intend to
16 offer testimony, but is willing to take questions?

17 MS. OLSON: That's correct.

18 MR. ROBERTSON: And before we get to
19 any questions, do you have any opening statements
20 that you'd like to make?

21 MS. OLSON: We'd like to thank the
22 Board for holding this hearing, but other than
23 that, no.

24 MR. ROBERTSON: Thank you. And
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1 would anyone else at this time like to introduce
2 themselves or make any opening statements?

3 MR. BIELAWSKI: I'm Al Bielawski
4 with Sidley Austin and I represent Exelon
5 Generation in this matter. No opening statement.
6 Good morning.

7 MR. ROBERTSON: Thank you.

8 MR. HARLEY: Mr. Hearing Officer, my
9 name is Keith Harley, Chicago Legal Clinic. I'm
10 here today on behalf of Citizens Against Ruining
11 the Environment. I'm joined by Philip Micha, a
12 law clerk who is working with me on this case.
13 Micha is M-I-C-H-A.

14 MR. ROBERTSON: Anybody else?
15 Seeing none, we'll move onto any questions on the
16 Agency's responses at this time. Could the court
17 reporter please swear in the Agency witness?

18 WHEREUPON:

19 SCOTT TWAIT
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 MR. ROBERTSON: Thank you. So we'll
23 start with any members of the public have any
24 questions regarding the Agency responses filed on
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1 October 11th or does anyone have any other general
2 questions for the Agency?

3 MR. HARLEY: Mr. Hearing Officer, is
4 this the opportunity for us to raise questions or
5 is this for general members of the public?

6 MR. ROBERTSON: Both. If you'd like
7 to raise questions. Do you mean specifically for
8 the Agency?

9 MR. HARLEY: Mr. Hearing Officer, if
10 I may approach?

11 MR. ROBERTSON: Thank you.

12 MR. HARLEY: We had our first
13 opportunity to review the Agency's response
14 yesterday so we did not have an opportunity to
15 pre-file our questions before today. However, we
16 do have written questions that we would like to
17 pose to the Agency witness today.

18 MR. ROBERTSON: Is it my
19 understanding you'd like to enter these as a
20 hearing exhibit?

21 MR. HARLEY: Yes, please.

22 MR. ROBERTSON: Does anybody have
23 any objections to entering this document as an
24 exhibit to today's hearing? Seeing none, at this
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1 point, I'm entering the document entitled
2 Questions for the Illinois Environmental
3 Protection Agency by Keith Harley, Attorney for
4 Citizens Against Ruining the Environment, October
5 16th, 2003, In The Matter of Procedural Rules For
6 Alternative Thermal Effluent Limitations Under
7 Section 316(a) of the Clean Water Act: Proposed
8 New 35 Ill. Adm. Code Part 106, Subpart K and
9 Amended Section 304.141(c) R2013-20 as Exhibit 3.

10 (Document marked as IPCB Exhibit
11 No. 3 for identification.)

12 MR. ROBERTSON: Would you like to
13 proceed with your questions?

14 MR. HARLEY: Thank you, Mr. Hearing
15 Officer. Before proceeding with the questions, I
16 did have an opportunity to talk to Illinois EPA's
17 counsel before the hearing commenced.

18 MR. O'LEARY: Can you speak up,
19 Mr. Harley?

20 MR. HARLEY: I apologize. I did
21 have an opportunity to speak with Illinois EPA's
22 counsel before the hearing commenced. We
23 understand that this is the first opportunity that
24 the Illinois EPA and its witness have had to
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1 review these questions. It may not be possible
2 for them to fully respond to all of these
3 questions. Therefore, Mr. Hearing Officer, at the
4 conclusion of these questions, we will request
5 your insight and decision about how it is that any
6 additional material that they would like to
7 include in the record in response to these
8 questions should be introduced into these
9 proceedings.

10 Mr. Hearing Officer, with that
11 understanding in mind, to begin my questions.
12 Question number one. From the Illinois EPA's
13 perspective, is relief pursuant to 316(a) a
14 variance?

15 MR. TWAIT: Under the federal term,
16 they consider it a variance.

17 MR. HARLEY: Does Illinois EPA feel
18 it is bound by the federal determination that
19 316(a) relief is a variance?

20 MR. TWAIT: I don't quite know.
21 Could you ask it again?

22 MR. HARLEY: Does Illinois EPA
23 believe that it is bound by the federal
24 determination that 316(a) relief is a variance?
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1 MR. TWAIT: I'm not sure how to
2 answer that question.

3 MS. OLSON: Can you explain what you
4 mean by bound?

5 MR. HARLEY: Does Illinois EPA
6 accept as the federal regulations put forward that
7 316(a) relief is a variance?

8 MS. OLSON: Can you explain what you
9 mean by accept? Are you talking acceptance under
10 the federal law?

11 MR. HARLEY: Accept for purposes of
12 these proceedings.

13 MS. OLSON: I don't understand what
14 you mean. Under the definition in the federal
15 regulations, the variance is defined to include
16 316(a) relief. So I'm not sure what you mean by
17 accept. The law says that it is a variance as
18 under the Clean Water Act.

19 MR. HARLEY: Okay. I will accept
20 that as an answer. Thank you. Question two.
21 Does Illinois EPA acknowledge that Illinois has
22 the authority to develop an approach to variances
23 that is not identical in substance with federal
24 requirements?

1 MR. TWAIT: I think that's a legal
2 question. We're going to have to answer that
3 afterwards.

4 MR. HARLEY: Question three. Does
5 Illinois EPA acknowledge that Illinois has the
6 authority to develop variance standards that are
7 more stringent than federal requirements?

8 MR. TWAIT: Yes.

9 MR. HARLEY: Question four. In the
10 context of this rulemaking, why does Illinois EPA
11 assert that it can dispense with some Illinois
12 statutory mandates regarding the issuance of
13 variances?

14 MR. TWAIT: I think we're going to
15 have to answer that one after the hearing.

16 MR. HARLEY: Related question also
17 part of question four. Does Illinois EPA
18 similarly assert that the Illinois Pollution
19 Control Board is not bound by existing statutory
20 mandates regarding the issuance of variances in
21 developing regulations in this matter?

22 MR. TWAIT: I think that's another
23 legal question that we're going to have to answer
24 afterwards.

1 MR. HARLEY: Question five. In its
2 response to Board staff question one, the Illinois
3 EPA asserts that the 1977 federal rules have been
4 substantially changed since US EPA issued its 1977
5 Interagency 316(a) Technical Guidance Manual.
6 This Guidance Manual has been entered as an
7 exhibit in this proceeding. When were the 1977
8 federal regulations substantially changed?

9 MR. TWAIT: I do not know the date.

10 MR. HARLEY: Do you know roughly
11 when those regulations were changed?

12 MR. TWAIT: No.

13 MR. HARLEY: Do you know if the
14 regulations were changed prior to 2008?

15 MR. TWAIT: I believe they were.

16 MR. HARLEY: May I approach?

17 MR. ROBERTSON: Yes.

18 MR. HARLEY: Mr. Hearing Officer, I
19 have a document that I would like to enter as an
20 exhibit.

21 MR. ROBERTSON: Are there any
22 objections to entering this exhibit?

23 MR. BIELAWSKI: For the record, I
24 believe that this document is already in the
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1 record as an exhibit to the original filing, is
2 that correct?

3 MS. OLSON: It's attached to the
4 statement of reasons. Let me get you the
5 attachment letter.

6 MR. ROBERTSON: I believe it's
7 Attachment C.

8 MS. OLSON: Yes. Sounds right.
9 Yes, it is.

10 MR. HARLEY: Mr. Hearing Officer, in
11 light of the fact that this is already attached to
12 the Agency's statement of reasons, we would
13 withdraw our request for this to be admitted as a
14 hearing exhibit and merely use it as a basis for
15 asking our subsequent questions.

16 MR. ROBERTSON: Thank you.

17 MR. HARLEY: Move to question six.
18 Mr. Twait, I'd like to call your attention before
19 proceeding to question six to page two of this
20 document, which was attached to the Agency's
21 statement of reasons. It indicates in 1977 EPA
22 released draft Clean Water Act Section 316(a)
23 Guidance entitled Interagency 316(a) Technical
24 Guidance Manual and Guide for Thermal Effects
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1 Sections of Nuclear Facilities Environmental
2 Impact Statements. This guidance provides
3 valuable technical information while conducting
4 316(a) demonstrations useful to both facilities
5 and permitting authorities.

6 Mr. Twait, do you agree with
7 that statement?

8 MR. TWAIT: Sure.

9 MR. HARLEY: Since US EPA in 2008
10 asserted the 1977 Technical Guidance is still
11 relevant to issuing a variance, why does Illinois
12 EPA discount the applicability of this guidance in
13 its response to Board staff question one?

14 MR. TWAIT: I don't believe the
15 Agency has discounted the applicability of this
16 guidance. The Board's question is if we wanted to
17 include any additional language derived from the
18 1977 manual.

19 MR. HARLEY: And your answer does
20 not change even though US EPA as recently as 2008
21 has underscored the importance of the 1977
22 technical guidance?

23 MR. TWAIT: Correct.

24 MR. HARLEY: Question seven. Why
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1 wouldn't Illinois EPA consultation with -- and I
2 use an acronym in this question. USFWS, which is
3 United States Fish and Wildlife Service. Why
4 wouldn't Illinois EPA consultation with US Fish
5 and Wildlife Service produce better informed
6 Agency decision-making?

7 MR. TWAIT: I think the Agency when
8 we need additional expertise I think we'll seek
9 out these consultations, but I don't think that
10 they would be wise to make them mandatory.

11 MR. HARLEY: Can you explain why
12 that would not be a wise decision for the Agency?

13 MR. TWAIT: I think it's been
14 problematic with a mandatory consultation such as
15 this and the government was shutdown and we
16 couldn't talk with them. If it is required, then
17 we just have to wait. Sometimes they're not --
18 I'll just leave it at that.

19 MR. HARLEY: Question eight. Why
20 wouldn't Illinois EPA consultation with -- and,
21 again, I use an acronym IDNR, which is Illinois
22 Department of Natural Resources. Why wouldn't
23 Illinois EPA consultation with Illinois Department
24 of Natural Resources produce better informed
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1 Agency decision-making?

2 MR. TWAIT: I think for the same
3 reasons in the previous answer. The Agency has
4 consulted with IDNR on temperature issues and I
5 just believe that making it mandatory is
6 problematic. The Agency has proposed language to
7 include a notification of a 316 variance with IDNR
8 to -- during the initiation of proceeding in
9 Section 106.1125 so that they'll get a copy of the
10 study plan.

11 MR. HARLEY: That notice would be
12 provided at the point of initiation of a Pollution
13 Control Board proceeding, is that correct?

14 MR. TWAIT: Yes.

15 MR. HARLEY: Why would it not be
16 better for IDNR to be involved as a consulting
17 party in the development of the consulting plan by
18 Illinois EPA?

19 MR. TWAIT: I think there are some
20 instances where we have consulted with them in the
21 early stages.

22 MR. HARLEY: Have you found that
23 consultation to be helpful?

24 MR. TWAIT: Yes, but I don't know
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1 that it is always necessary depending on the
2 receiving stream or the receiving body.

3 MR. HARLEY: What characteristics of
4 the receiving body of water would make it less
5 important to consult with IDNR?

6 MR. TWAIT: With, say, a lake we
7 know what fish would be in a lake and the Agency
8 has some expertise in the -- for biologists to
9 keep us informed on what species to expect in a
10 lake or sometimes a species there are in a river
11 system.

12 MR. HARLEY: Under the
13 circumstances, what harm would there be in
14 confirming the Agency's conclusions with the
15 Illinois Department of Natural Resources?

16 MR. TWAIT: I think it's just
17 problematic being mandatory. If the Agency and
18 IDNR don't agree on something, who has the final
19 say? In the way it's written here, the Agency has
20 the final say and the IDNR could have their option
21 to have the ability to make a comment if they
22 don't agree with you.

23 MR. HARLEY: But isn't it precisely
24 the situation where if there is a disagreement
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1 between Illinois EPA and IDNR that you would want
2 IDNR to be involved in the development of the
3 study plan?

4 MR. TWAIT: If there is still a
5 disagreement, then I think it's problematic in who
6 makes the final decision.

7 MR. ROBERTSON: Mr. Harley, if you
8 don't mind, can the Board ask a quick follow-up
9 question?

10 MS. GLOSSER: I have a question
11 about the notification that you said that you
12 would send to DNR. Do you have an agreement with
13 DNR that makes this notification compliant with
14 the Illinois Endangered Species Protection Act
15 consultation requirement or is that done in
16 another way?

17 MR. TWAIT: With an existing
18 discharger, it wouldn't go through
19 anti-degradation. So it wouldn't necessarily be
20 in that context, but I think when it came to the
21 Pollution Control Board I think -- yeah, I don't
22 know the mechanism. We'll have to answer that I
23 think -- I think it would be best if we answer
24 that one afterwards.

1 MS. GLOSSER: Okay. Thank you.

2 MR. ROBERTSON: Thank you.

3 MR. HARLEY: Moving to question
4 nine. In the absence of consultation with IDNR
5 and/or US Fish and Wildlife Service, how will
6 Illinois EPA gain independent, expert knowledge
7 about potential adverse impacts of a variance on
8 state or federal endangered species?

9 Before answering that, I do want
10 to clarify that in subsequent questions we've used
11 the term variance to mean both a variance and also
12 an alternative effluent limitation.

13 MR. TWAIT: I think the Agency --
14 well, we've submitted language to have IDNR
15 included with the application to the Board and I
16 know in several other places we've consulted with
17 IDNR and US Fish and Wildlife Service. I think it
18 would be -- it would be something that we would
19 continue to do to consult IDNR.

20 MR. HARLEY: But you would not be
21 required to do so?

22 MR. TWAIT: If it were up to me, it
23 would be yes.

24 MR. HARLEY: Thank you. I believe
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1 that we can quickly answer the next two questions.
2 Question ten. In the absence of consultation with
3 IDNR and/or US Fish and Wildlife Service, how will
4 Illinois EPA gain independent, expert knowledge
5 about potential adverse impacts of a variance on
6 critical habitat for state or federal endangered
7 species?

8 MR. TWAIT: I think it's the same
9 answer.

10 MR. HARLEY: And question 11 for the
11 record. In the absence of consultation with IDNR
12 and/or US Fish and Wildlife Service, how will
13 Illinois EPA gain independent, expert knowledge
14 about potential adverse impacts of a variance on
15 zones of passage for state or federal endangered
16 species?

17 MR. TWAIT: I think it's the same
18 answer.

19 MR. HARLEY: Thank you, Mr. Twait.
20 Question 12. How will Illinois EPA evaluate the
21 relationship between thermal discharges and the
22 growth of nuisance organisms?

23 MR. TWAIT: Could you clarify your
24 question?

1 MR. HARLEY: Yes. In the 1977
2 guidance, one of the factors which is specifically
3 listed -- cited to in our first notice comments is
4 a factor related to thermal discharges and their
5 impacts on nuisance organisms. This is one of the
6 factors which Illinois EPA believes is not
7 necessary for it to consider in addition to the
8 requirements in 40 CFR and I was just wondering
9 how then the Agency would address this issue in
10 the context of making a decision about whether to
11 issue an alternative thermal effluent standard?

12 MR. TWAIT: Well, just to be clear.
13 I don't think the Agency said the document
14 couldn't be considered. We were asked if we
15 wanted to include any language from that document
16 and we're still citing to that document. So I
17 think the study plan would just have to look at
18 the parameters that are in the 1977 document to
19 develop their study plan.

20 MR. HARLEY: And would that study
21 plan necessarily include an analysis of the
22 relationship between thermal discharges and the
23 growth of nuisance organisms in your view?

24 MR. TWAIT: I don't know that it
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1 will absolutely include it. It could include it
2 depending on what the Agency's views are and
3 whether or not we ask that it be included.

4 MR. HARLEY: Would you require an
5 applicant for an alternative thermal effluent
6 standard to address this factor in its application
7 materials?

8 MS. OLSON: I think he just answered
9 that question.

10 MR. HARLEY: I don't believe that he
11 did. He talked about -- Mr. Hearing Officer, he
12 talked about the Illinois EPA's deliberative
13 process. He did not answer the question related
14 to what would be required of an applicant for an
15 alternative thermal effluent standard.

16 MR. TWAIT: I think that would be a
17 site specific determination made by the Agency at
18 the time.

19 MR. HARLEY: Question 13. Who at
20 the Illinois EPA will review variance applications
21 and what expertise will they have?

22 MR. TWAIT: Are you talking about
23 the 316(a) applications?

24 MR. HARLEY: Yes, I am.
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1 MR. TWAIT: I think that the Agency
2 will pull in some biologists and some engineers to
3 look at the application.

4 MR. HARLEY: But, at this point,
5 you're not certain exactly who those -- what kind
6 of expert -- Strike that.

7 At this point, you're not
8 certain what specific expertise will be drawn upon
9 in reviewing these applications?

10 MR. TWAIT: I think it's a case by
11 case, but I would expect that I will be one of the
12 people reviewing it and I know we'll have a
13 biologist and a permit engineer.

14 MR. HARLEY: Question 14. Calling
15 your attention to Illinois EPA's response to CARE
16 comment six on the bottom of page five. Does
17 Illinois EPA acknowledge that NPDES permits that
18 are issued with a 316(a) variance must include a
19 fact sheet that complies with 40 CFR Section 124.8
20 including an explanation of why the permitting
21 Agency believes that 316(a) variance is justified?

22 MR. TWAIT: I don't know that I can
23 answer that question. I do know that all NPDES
24 permits have to have a fact sheet, but I don't
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1 know what they have to comply with.

2 MR. HARLEY: Is that a question that
3 the Agency would be able to respond to subsequent
4 to today's hearing?

5 MR. TWAIT: Yes.

6 MR. HARLEY: Thank you. Calling
7 your attention to question 15. Calling your
8 attention to Illinois EPA's response to CARE
9 comment six on the bottom of page five. Did
10 Illinois EPA mean to state that a fact sheet is
11 issued when a draft permit is issued, not when a
12 permit is issued?

13 MR. TWAIT: I believe we meant when
14 a draft permit isn't issued. When it goes to
15 public notice, it includes a fact sheet. When a
16 permit becomes final, I'm not sure if the fact
17 sheet is included with the final permit.

18 MR. HARLEY: Thank you for that
19 clarification. Question 16. Calling your
20 attention to Illinois EPA's response to CARE
21 comment six on the bottom of page five. In the
22 context of a fact sheet, does Illinois EPA expect
23 to summarize the Board opinion granting a
24 variance?

1 MR. TWAIT: I don't know the answer
2 to that. At a minimum, the Agency would make a
3 reference to the Board's opinion, but I don't know
4 that the Agency would summarize it.

5 MR. HARLEY: The second part of
6 question 16. Is it Illinois EPA's expectation
7 that a member of the public will be required to
8 read a Board opinion in order to understand the
9 basis for a previously issued thermal variance?

10 MR. TWAIT: I don't know the answer
11 to that. If we're to summarize it in a fact
12 sheet, I think it would be there. It would have
13 to be a really brief response or a brief
14 summarization or a very long fact sheet. I'm not
15 sure which the Agency will do.

16 MR. HARLEY: Question 17. Calling
17 your attention to Illinois EPA's response to CARE
18 comment six on the bottom of page five. Does
19 Illinois EPA acknowledge that a NPDES permit
20 containing a 316(a) variance must comply with
21 public notice requirements in 40 CFR 124.10(d)1
22 and 124.57?

23 MR. TWAIT: I don't know the answer
24 to that.

1 MR. HARLEY: Is that something that
2 you would be willing to address subsequent to
3 today's hearing?

4 MR. TWAIT: We can do that.

5 MR. HARLEY: Thank you, Mr. Twait.
6 Question 18. When a permittee that was issued a
7 316(a) variance applies for renewal, what is the
8 extent of documentation that must be submitted
9 under proposed rule 106.1180(b) regarding, quote,
10 the discharger's actual operation experience
11 during the previous permit term, unquote?

12 MS. OLSON: Can you explain where
13 you got the quoted language in question 18?

14 MR. TWAIT: Here it is.

15 MS. OLSON: We've got it.
16 Nevermind.

17 MR. TWAIT: I think what we're
18 trying to get to is are they operating similarly
19 to what -- how they operated to or were expecting
20 to operate when they proposed the 316(a) to the
21 Pollution Control Board. And I don't know what
22 documentation we would request.

23 MR. HARLEY: Your explanation that
24 one thing you would consider would be whether or
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1 not a facility is operating similarly now to how
2 it operated previously. To your knowledge, is
3 that requirement found anywhere in the proposed
4 rules?

5 MR. TWAIT: Yes. Under Section
6 106.1180, Subsection D, it says "If the nature of
7 the thermal discharge has changed materially or
8 the alternative thermal effluent limitation
9 granted by the Board has caused appreciable harm
10 to a balanced, indigenous population of shellfish,
11 fish, and wildlife in and on the body of water
12 into which the discharge is made, the Agency may
13 not include the thermal relief granted by the
14 Board in the permittee's renewed NPDES permit.
15 The permittee must file a new petition and make
16 the required demonstration pursuant to this
17 Subpart before the alternative thermal effluent
18 limitation may be included in the permittee's
19 renewed NPDES permit."

20 MR. HARLEY: What kind of
21 documentation would an applicant be required to
22 submit that would demonstrate that it is not
23 causing that type of damage to a balanced
24 indigenous population in the context of a renewal?
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1 MR. TWAIT: I think that any
2 intervening studies that they've done have to show
3 that there has not been depreciable harm.

4 MR. HARLEY: Does the proposed rule
5 require the submission of those studies?

6 MR. TWAIT: Yes. Under 106.1180(b)
7 "Any application for renewal should include
8 sufficient information for the Agency to compare
9 the nature of the permittee's thermal discharge
10 and the balanced, indigenous population of
11 shellfish, fish, and wildlife."

12 MR. HARLEY: Thank you. Question
13 19. In the context of a variance renewal, why
14 wouldn't review by the IPCB produce better
15 informed decision-making? In the context of this
16 question, variance renewal would also apply to the
17 renewal of an alternative thermal effluent
18 standard and, of course, the acronym IPCB refers
19 to the Illinois Pollution Control Board.

20 MS. OLSON: Can I ask you to
21 clarify? Is this question only for 316(a) relief
22 or are you talking about any variance granted by
23 the Board?

24 MR. HARLEY: Only for 316(a).
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1 MS. OLSON: Thank you.

2 MR. TWAIT: This renewal would only
3 be for 316(a) that has not changed materially and
4 hasn't caused depreciable harm to the balanced
5 indigenous population of shellfish, fish and
6 wildlife.

7 MS. LIU: I have a follow-up
8 question. Good morning, Mr. Twait. When an
9 Agency does a permit renewal for NPDES permits, do
10 they require something similar from the discharger
11 to show that things are going all right before
12 they do a renewal? Is that just a standard
13 renewal process?

14 MR. TWAIT: No, not for the most
15 part. The Agency does have waters that are
16 impaired, but for the most part the permit just
17 ensures that the permittee will meet water quality
18 standards at the edge of the mixing zone or end of
19 the pipe.

20 MS. LIU: So this would be an extra
21 step in the permit renewal process?

22 MR. TWAIT: Yes, for only 316(a)
23 relief.

24 MS. LIU: Thank you.
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1 MR. HARLEY: Question 20. Calling
2 your attention to the Agency's response to CARE
3 comment two page two. Is it Illinois EPA's view
4 that if a variance applicant cannot demonstrate
5 that its proposed variance will assure the
6 protection and propagation of the BIP, an acronym
7 standing for Balanced Indigenous Population,
8 Illinois EPA has the authority to impose variance
9 conditions that it believes will assure the
10 protection and propagation of the BIP?

11 MR. TWAIT: The Agency does not have
12 that authority. The Board has that authority.

13 MR. HARLEY: Would the Agency have a
14 basis to recommend variance conditions to the
15 Board that it believes will assure the protection
16 and propagation of a balanced indigenous
17 population?

18 MR. TWAIT: In our recommendation
19 and response located at Section 106.1145.

20 MR. HARLEY: To complete your
21 answer, you do believe you have the authority to
22 incorporate that into your proposal to the
23 Pollution Control Board?

24 MR. TWAIT: We could make a
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1 recommendation, yes.

2 MR. RAO: Mr. Harley, may I ask a
3 follow-up question?

4 MR. HARLEY: Sure.

5 MR. RAO: We had a question related
6 to the conditions that may be imposed as part of
7 the alternative thermal effluent limit granted by
8 the Board. In the Agency's response to CARE
9 comment two, the Agency states, quote, whether
10 this alternative thermal effluent limitation will
11 culminate in additional thermal controls is a
12 site-specific determination, unquote. Under
13 Section 104.428(a) of the Board's procedural
14 rules, the Board, quote, may impose such
15 conditions as may be necessary to accomplish the
16 purposes of the Act, unquote.

17 In light of the Agency's
18 response, should the Board include similar
19 language under the proposed opinion and order
20 section which is Section 106.1170 of the proposed
21 rule? If you want, you can take a look at this
22 and get back to us in your comments.

23 MR. TWAIT: We'll have to do that.

24 MR. RAO: Thank you.
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1 MR. HARLEY: The second part of
2 question 20. Does Illinois EPA acknowledge that
3 if this scenario were true, that it could also
4 simply reject the variance application and is not
5 required to issue an alternative thermal effluent
6 limitation and I think the issue in this context
7 means to make a recommendation for an alternative
8 thermal effluent limitation.

9 MS. OLSON: Can you clarify your
10 question? Are you asking if we can recommend
11 against 316 relief?

12 MR. HARLEY: Yes.

13 MR. TWAIT: Yes, we could recommend
14 against 316(a) relief.

15 MR. HARLEY: Question 21. Does
16 Illinois EPA acknowledge that Clean Water Act
17 316(a) authorizes, but does not command Illinois
18 EPA to grant a thermal discharger an alternative
19 thermal effluent limitation once protection and
20 propagation of the BIP has been satisfied?

21 MR. TWAIT: The Board is the Agency
22 to authorize.

23 MR. HARLEY: That's a fair response.

24 Let me clarify the question. Instead of "but does
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1 not command Illinois EPA to grant a thermal
2 discharger," may I amend the question, "but does
3 not command Illinois EPA to recommend a thermal
4 discharger an alternative thermal effluent
5 limitation?

6 MR. TWAIT: Yes. I believe that's
7 accurate.

8 MR. HARLEY: I don't believe we need
9 to ask the second part of that question. Question
10 22. What is Illinois EPA's interpretation of the
11 relationship between provisional variances from
12 thermal effluent standards in an NPDES permit or
13 in a provisional variance proceeding and an
14 alternative thermal effluent limit granted as a
15 result of this proposed rule?

16 MR. TWAIT: I think the Agency will
17 have to respond to that.

18 MR. HARLEY: Question 23. In
19 Illinois EPA's response to Board staff questions
20 for first hearing at the beginning of page 12,
21 Illinois EPA states that an alternative thermal
22 effluent limit could take various forms including,
23 quote, additional excursion hours only with the
24 discharge otherwise complying with a maximum
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1 temperature and mixing zone rules, unquote.

2 In Illinois EPA's view, would an
3 alternative thermal effluent limitation in the
4 form of granting additional excursion hours be the
5 same as the relief that Illinois EPA previously
6 granted in the form of provisional variances that
7 granted additional excursion hours?

8 MR. BIELAWSKI: Can I raise a
9 question? I don't know what is meant by "be the
10 same" in this context.

11 MR. HARLEY: Be the same in effect.
12 Be the same in practical effect.

13 MR. TWAIT: I think it would depend
14 on the relief that was sought.

15 MR. HARLEY: Can you explain in
16 terms of the different kinds of relief that might
17 be sought and how that would effect the answer to
18 your question?

19 MR. BIELAWSKI: It's still not clear
20 to me whether he means to be the same in effect.
21 Are we talking about a period of time? Are we
22 talking about the effect on the balanced
23 indigenous population? It is a very unclear
24 question.

1 MS. OLSON: I think you might need
2 to provide some facts behind these questions for
3 us to be able to answer like, for example, what is
4 the relief in the 316(a) demonstration that was
5 granted for how many hours, for how many years,
6 how long was the provisional variance, what was
7 the temperature, what was the stream flow? There
8 are too many facts, for him to be able to provide
9 an answer to that question, that are missing.

10 MR. HARLEY: Mr. Hearing Officer, I
11 accept that objection and I think that if we would
12 like to get an Agency response to this question it
13 would be fair for us to be more clear in the way
14 we asked this question. Therefore, I'll withdraw
15 the question as it's been asked here and if we
16 decide to pursue it we'll submit it separately to
17 the Board.

18 MR. ROBERTSON: Thank you.

19 MR. BIELAWSKI: Thank you.

20 MR. HARLEY: Question 24. Does
21 Illinois EPA plan to discontinue using provisional
22 variances to grant relief from thermal limits in
23 NPDES permits, which it should say, if this
24 proposed rule is implemented? And in light of US
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1 EPA's letter from Tinka Hyde to Marie Willhite,
2 dated February 25th, 2013 -- and, Mr. Hearing
3 Officer, if I may approach?

4 MR. ROBERTSON: Yes. Is it my
5 understanding you want to enter this as a hearing
6 exhibit?

7 MR. HARLEY: Yes, Mr. Hearing
8 Officer. On the off chance that it is not already
9 part of the record.

10 (Document marked as IPCB Exhibit
11 No. 4 for identification.)

12 MR. ROBERTSON: Are there any
13 objections to entering this exhibit?

14 MS. OLSON: None from the Agency.

15 MR. BIELAWSKI: None.

16 MR. ROBERTSON: At this time, I am
17 entering as Exhibit 4 a letter dated February
18 25th, 2013, from the United States Environmental
19 Protection Agency from Tinka Hyde to Maria
20 Willhite spelled W-I-L-L-H-I-T-E.

21 MR. HARLEY: Mr. Twait, before you
22 proceed with your answer to question 24, are you
23 familiar with this letter?

24 MR. TWAIT: I have not read the
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1 letter, but I was aware of it.

2 MR. HARLEY: Question 24. Does
3 Illinois EPA plan to discontinue using provisional
4 variances to grant relief from thermal limits in
5 NPDES permits if this proposed rule is
6 implemented?

7 MS. OLSON: I'd like to raise the
8 same concern for this question. We have no idea
9 what relief is being sought in the provisional
10 variance. We have no idea of the facts behind the
11 request and we have no idea whether a provisional
12 variance will even be requested. So I think that
13 any answer from the Agency on this point would
14 largely be based on speculation.

15 MR. HARLEY: I'm asking this not
16 from any case specific point of view, but as a
17 general policy letter.

18 MS. OLSON: And my response to you
19 is it would be a site by site, case by case
20 specific answer and unless we have the site by
21 site and case by case facts, we would be unable to
22 tell you whether or not we would grant a
23 provisional variance.

24 MR. TWAIT: I think regardless my
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1 answer will have to be that I'm not the person
2 making this decision.

3 MR. HARLEY: So as of today we don't
4 know what the effect of this proposed rule will be
5 on future provisional variances either as a policy
6 matter or on a case by case matter, is that
7 correct?

8 MS. OLSON: I believe that is
9 correct. We cannot say today whether or not we're
10 going to grant a provisional variance that is
11 requested five years from now. That is something
12 that we just can't speculate to.

13 MR. HARLEY: Mr. Hearing Officer,
14 that concludes our questions. I want to thank the
15 Board for giving us the opportunity to ask these
16 questions. This is the best we could do on 24
17 hours notice and, Mr. Twait, thank you so much for
18 answering these questions under a tough set of
19 circumstances.

20 MR. ROBERTSON: Thank you,
21 Mr. Harley. I will also just for the benefit of
22 the transcript want to make clear that the
23 document that was being referred to starting with
24 question five, which is Attachment C to the
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1 Agency's initial filing, is a US EPA memorandum
2 dated 28 October 2008 and the subject was
3 Implementation of Clean Water Act Section 316(a)
4 Thermal Variances in NPDES Permits Review of
5 Existing Requirements. Thank you. I think we
6 just have one follow-up question.

7 MS. GLOSSER: I have one follow-up
8 question related to some of the questions
9 Mr. Harley asked about the Fish and Wildlife
10 Service and balanced indigenous population.

11 Does the Agency have or is it up
12 to the applicant to work with Fish and Wildlife
13 Service when they know that suddenly endangered,
14 for example, mussels species might be present in
15 the area of the district?

16 MR. TWAIT: I know of one facility
17 that has consulted with Fish and Wildlife Service
18 over endangered mussels. You know, if they know
19 that they are there, then they would be
20 well-advised to consult with them.

21 MS. GLOSSER: But it would be the
22 applicant's responsibility to consult with Fish
23 and Wildlife Service rather than the Agency's?

24 MR. TWAIT: Yes.
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1 MS. GLOSSER: And what would be the
2 source of information for the applicant to know
3 whether or not federal or state listed species
4 would be present?

5 MR. TWAIT: I would hope that the
6 Agency could bring it up during the early
7 screening period.

8 MS. GLOSSER: You mean the EPA would
9 bring it up?

10 MR. TWAIT: Yes, if we knew of
11 endangered mussels or fish.

12 MS. GLOSSER: Thank you.

13 MS. ZALEWSKI: I have a question.
14 Is the language "representative important
15 species," is that meant to capture this type? I
16 just want to make sure I'm looking at the correct
17 language on 106.1120. Is that what you're
18 thinking?

19 MR. TWAIT: Did you say
20 representative important species?

21 MS. ZALEWSKI: Is that what you were
22 envisioning in teasing this information out?

23 MR. TWAIT: No, the representative
24 important species might be fish that you would
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1 expect sporting fish and it could be endangered
2 species -- yeah, I think -- now that I think about
3 it, yes.

4 MR. BIELAWSKI: As a representative
5 of a potential applicant, can I ask a question
6 about that? When selecting your representative
7 important species, does the applicant have an
8 obligation to provide the Agency with information
9 regarding the biotic community in the receiving
10 stream?

11 MR. TWAIT: Yes, I believe they do.

12 MR. BIELAWSKI: And that would
13 presumably identify all the species including
14 those that might be endangered?

15 MR. TWAIT: Yes.

16 MR. BIELAWSKI: And from that list,
17 the Agency selects the representative important
18 species to be studied in more detail, is that
19 correct?

20 MR. TWAIT: I think the Agency will
21 work with the applicant to select something?

22 MR. BIELAWSKI: Okay. Can I ask a
23 few more questions?

24 MR. ROBERTSON: Please go ahead.
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1 MR. BIELAWSKI: Staying on that
2 theme. 316(a) does not absolve an applicant from
3 complying with the requirements of the Endangered
4 Species Act, does it?

5 MR. TWAIT: I don't believe so.

6 MR. BIELAWSKI: So as someone
7 mentioned, an applicant would be well-advised to
8 consult with Agency's responsible for the
9 endangered species -- protecting the endangered
10 species and conducting a 316(a) demonstration
11 requesting alternate limits?

12 MR. TWAIT: Yes.

13 MR. BIELAWSKI: With regard to the
14 term "variance," does the act, the Clean Water Act
15 316(a) language, mention the word "variance"?

16 MR. TWAIT: Yes, I believe it does.

17 MR. BIELAWSKI: Take another look,
18 please.

19 MR. TWAIT: No, I don't think it
20 does.

21 MR. BIELAWSKI: So when the feds --
22 this calls for some speculation. Hopefully,
23 nobody will object. When the federal agency
24 refers to relief of the alternate effluent limits
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1 allowed by Section 316(a), when they refer to that
2 as being a 316(a) variance, is that term
3 "variance" the same as the term used in the
4 Illinois Environmental Protection Act?

5 MR. TWAIT: No.

6 MR. BIELAWSKI: Would it be fair to
7 say it's shorthand for relief from generally
8 applicable limits in the form of alternate
9 effluent limits allowed by 316(a)?

10 MR. TWAIT: I would think that's
11 fair to say.

12 MR. BIELAWSKI: With regard to the
13 guidance, the 1977 Guidance Manual, are you aware
14 that that guidance manual is still to this day in
15 draft form?

16 MR. TWAIT: Yes.

17 MR. BIELAWSKI: Does that suggest
18 anything to you with regard to whether that ought
19 to be made -- that draft guidance ought to be made
20 part of Illinois regulations?

21 MR. TWAIT: I'm not sure why it
22 didn't get finalized.

23 MR. BIELAWSKI: But given that it's
24 not finalized, do you think it's appropriate to
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1 put draft guidance -- to put draft guidance into
2 Illinois regulations?

3 MR. TWAIT: I think in our response
4 we said considering the draft age and the draft
5 nature of the '77 document, we didn't believe
6 inclusion was appropriate.

7 MR. BIELAWSKI: Okay. Thank you.
8 Not unless to the extent it's reuseable, it will
9 be used by the Agency in reviewing 316(a)
10 applications and demonstrations, is that correct?

11 MR. TWAIT: Yes.

12 MR. BIELAWSKI: With regard to
13 nuisance organisms, can nuisance organisms that
14 develop effect a balanced indigenous population in
15 a receiving stream?

16 MR. TWAIT: I would believe they
17 could.

18 MR. BIELAWSKI: So when an applicant
19 studies the effects of its thermal discharges on
20 the balanced indigenous population, would an
21 applicant generally be required to consider the
22 growth of nuisance organisms as a result of
23 thermal discharges?

24 MR. TWAIT: I believe so. If you
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1 had a large portion of nuisance organisms, I'm
2 sure that would effect the balanced indigenous
3 populations.

4 MR. BIELAWSKI: Returning now to the
5 endangered species issue now for a moment.
6 Insofar as IDNR and US Fish and Wildlife are
7 notified of the request for 316(a) relief, would
8 it be in your view -- would that present them with
9 an opportunity to raise any issues that they might
10 have with regard to that relief on endangered
11 species?

12 MR. TWAIT: Yes.

13 MR. HARLEY: I'm going to object to
14 that question because I don't believe there's
15 anything either in the proposed rule or in the
16 Agency's response to comments which suggest that
17 US Fish and Wildlife Service would be notified.

18 MS. OLSON: In our response, we
19 indicated that we propose that the applicant
20 notify DNR upon filing with the Board. We did not
21 include US Fish and Wildlife.

22 MR. BIELAWSKI: Understood. I'll
23 revert back to my earlier point being that it
24 would be in the applicant's interest to address
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1 endangered species issues that come within the
2 province of US Fish and Wildlife in obtaining
3 316(a) relief, is that correct?

4 MR. TWAIT: Yes, I believe so.

5 MR. BIELAWSKI: That's all I have.
6 Thank you.

7 MR. ROBERTSON: Thank you. Before
8 we get to Board questions, does anyone else have
9 any questions for the Agency at this stage?
10 Seeing none, I'll go to the Board's technical
11 unit.

12 MS. LIU: Good morning Mr. Twait.
13 Just for the record. In case we don't already
14 have it, could you please state your title with
15 the Agency.

16 MR. TWAIT: I'm an environmental
17 protection engineer.

18 MS. LIU: The Bureau of?

19 MR. TWAIT: Bureau of Water. Water
20 Quality Standards Section.

21 MS. LIU: Thank you. My first
22 question. In response to question two of the
23 September 12th, 2013, Hearing Officer order, the
24 Agency stated that the Board should determine on a
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1 case by case basis the alternative thermal
2 effluent limitation along with any mixing zone or
3 compliance point. Would you please comment on
4 whether there would be a situation where an
5 alternative thermal effluent limitation would be
6 granted without a mixing zone.

7 MR. TWAIT: Without a mixing zone or
8 without a mixing zone relief? The Agency has
9 proposed language to indicate what relief the
10 applicant is looking for. It's possible that they
11 have a current mixing zone and the additional
12 relief might be only on excursion hours. It's
13 possible that they might want a larger mixing zone
14 than what 302.102 gives them or it's possible that
15 they just want a higher temperature at the edge of
16 the mixing zone.

17 MS. LIU: So that assumes that they
18 already have a mixing zone?

19 MR. TWAIT: Yes, that assumes they
20 have a mixing zone and I think it's best that they
21 specify in their relief request exactly what
22 they're asking for whether it's -- whether or not
23 the mixing zone is included in there for relief.

24 MS. LIU: For a new discharger that
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1 doesn't already have an existing mixing zone,
2 would there ever be a situation where you would
3 have an alternative thermal effluent limitation
4 without the mixing zone?

5 MR. TWAIT: I don't know if the --
6 if there will be a new power plant built that
7 needs 316(a) relief. I think the technology or
8 the -- I think the next facility will probably be
9 a closed-cycle cooling facility.

10 MS. LIU: My second question goes to
11 kind of what you said already, but just in case
12 you wanted to add to it I'll ask the question.
13 Again in response to question number two of the
14 September 12th, 2013, Hearing Officer order, the
15 Agency proposed additional language as Section
16 106.1130(g) for the contents of the petition that
17 would add a requirement that the petitioner
18 include, quote, a statement of the requested
19 relief including:.. any relief from the mixing
20 zone regulations in 302.102 if applicable.

21 Would you please comment on
22 whether the Agency believes there are any specific
23 requirements under 302.102 that a petitioner must
24 seek relief from when filing a petition for an
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1 alternative thermal effluent limitation?

2 MR. TWAIT: I don't think that there
3 is any one example that would be in all 316(a)
4 relief.

5 MS. LIU: Thank you.

6 MR. RAO: A couple more questions
7 for you, Mr. Twait. In the Agency's statement of
8 reasons, the Agency states that proposed Section
9 106.1135, petition notice requirements, was
10 modeled after Section 104.408(b) of the Board's
11 procedural rules. Section 104.408(b) requires, as
12 part of the notice requirements, that the notice
13 include "a general description of the petitioner's
14 activity that is the subject of the adjusted
15 standard proceeding. Should the Board include
16 similar language in Section 106.1135(b)?

17 MR. TWAIT: I believe so.

18 MS. OLSON: Can you repeat the
19 phrase?

20 MR. RAO: Basically you're not
21 asking for a general description of the
22 petitioner's activity to be provided in the
23 proposed language and we were wondering if there
24 is a specific reason for not asking for the
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1 information or should that be included as part of
2 it?

3 MR. TWAIT: I don't think there was
4 a reason for not putting it in.

5 MR. RAO: Okay. Thank you. Last
6 question we have is in the Agency's response to
7 Board question number 3A. The Agency states that
8 it plans to consult with US EPA regarding US EPA's
9 interpretation of Section 316(c). Does the Agency
10 have a timeframe that it expects to receive a
11 response from US EPA?

12 MR. TWAIT: We haven't been able to
13 talk to US EPA so I think once they get back to
14 work we'll be giving them a call.

15 MR. RAO: Hopefully tonight. Thank
16 you.

17 MR. ROBERTSON: Thank you. At this
18 time, do any Board members have any additional
19 questions for the Agency or members of the Board
20 staff?

21 MS. LIU: I don't want to beat a
22 dead horse.

23 MR. TWAIT: It's okay.

24 MS. LIU: For a discharger who
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1 already has a mixing zone and now they're applying
2 for an alternative thermal effluent limitation
3 because there is some sort of a change, they want
4 a larger mixing zone or something along those
5 lines, would they need to go back and through all
6 those points that are required in a mixing zone
7 under the mixing zone provisions and show all of
8 those things again going back to the beginning
9 or --

10 MR. TWAIT: If they wanted relief
11 from let's say 25 acres -- 16 acres -- if they
12 wanted any particular relief they would just have
13 to specify what relief it was.

14 MR. RAO: It's not like they have to
15 make a demonstration that they qualify for a
16 mixing zone one more time is what we're asking?

17 MR. TWAIT: I think they would.
18 Especially if they're asking for something --
19 relief.

20 MR. RAO: If you need more time to
21 look at this and get back to us, that's fine.

22 MR. BIELAWSKI: Can I ask a question
23 that might clarify the mixing zone issue?

24 Mr. Twait, is -- if an applicant were to ask for
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1 increased temperatures at -- that would be
2 measured at the edge of the mixing zone, would
3 another way of obtaining that same relief be to
4 expand the mixing zone to a larger area which
5 would allow for additional cooling in the mixing
6 zone to get to the temperature that otherwise
7 would apply?

8 MR. TWAIT: Yes. And part of the
9 316(a) demonstration you have to show the
10 protection and propagation of a balanced
11 indigenous community and those would be the same
12 goals as an expanded mixing zone.

13 MR. BIELAWSKI: So, in other words,
14 is it fair to say that to demonstrate protection
15 of the balanced indigenous population, that would
16 exist within the entire receiving stream including
17 the impact of the mixing zone?

18 MR. TWAIT: I believe so.

19 MR. BIELAWSKI: Thank you.

20 MR. HARLEY: May I ask a follow up?
21 Has Illinois EPA's approach to mixing zones been
22 reviewed and approved by US EPA?

23 MR. TWAIT: They've approved our
24 mixing zone rules, yes.

1 MR. RAO: I think what we were
2 asking was -- based on your clarification
3 question. If they ask for a larger site on the
4 mixing zone, would that be considered as part of
5 the relief or should they also make a
6 demonstration under 302.102 that starting from
7 scratch like whether they qualify for a mixing
8 zone in the first place? That was the question
9 whether they have to go through that process or is
10 it just they are asking for a change in the mixing
11 zone?

12 MR. TWAIT: We think they'd only
13 have to do 316(a) relief and demonstrate that they
14 have a balance and indigenous -- a balanced,
15 indigenous community.

16 MR. HARLEY: A follow-up question.
17 Has US EPA reviewed and given you any indication
18 whether or not that approach to mixing zones is
19 acceptable?

20 MR. TWAIT: We haven't asked.

21 MR. RAO: One final question. If
22 the Board receives a petition for alternative
23 thermal limitation and grants it, will the
24 granting have to be approved by US EPA in some
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1 form once it is incorporated into a permit?

2 MR. TWAIT: Since it is a permit
3 action, they review it as part of the permit and
4 we have a provision 106.1175. We've got a
5 provision as to what we do if they object to
6 issuance of the permit. It's under post-hearing
7 procedures Subpart B.

8 MR. RAO: Did you say 115?

9 MR. TWAIT: 1175.

10 MR. RAO: Thank you very much.

11 MR. ROBERTSON: Does anybody else
12 have any additional questions for the Agency at
13 this stage? Seeing none, is there anyone else who
14 would like to testify on any matter in this
15 proceeding? Seeing none, the Board does have a
16 couple additional items to address.

17 Firstly, on July 18th, the Board
18 requested that DCEO conduct an Economic Impact
19 Study for this rulemaking. On August 7th, DCEO
20 responded stating that they are unable to
21 undertake such a study. Does anyone have any
22 comments on the Board's letter or DCEO's response?
23 Seeing none, we next have the two letters dated
24 August 9th and 14th from JCAR requesting a Board
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1 analysis of economic and budgetary effects of this
2 rulemaking.

3 As stated at the first hearing,
4 the Board does intend to submit this analysis at
5 second notice. Does anybody have any comments on
6 these letters? Seeing no comments -- as also
7 discussed at the first hearing on July 24th, JCAR
8 submitted its first notice version as a proposal
9 for use in creating second notice changes. A copy
10 of this first notice version is available on the
11 Board's website. Does anyone have any comments on
12 the JCAR first notice version document at this
13 stage?

14 Seeing none, I also wanted to
15 note at that first hearing in response to a
16 comment the Agency entered as Agency Exhibit 2 a
17 document entitled Interagency 316(a) Technical
18 Guidance Manual and Guide for Thermal Effects
19 Sections of Nuclear Facilities Environmental
20 Impact Statements. This exhibit has been made
21 available on the Board's website. Around page 84
22 of that exhibit it begins what appears to be a new
23 document entitled Guidance for Evaluating the
24 Adverse Impact of Cooling Water Intake Structures
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1 on the Aquatic Environment Section 316(b) PL
2 92-500. I raise this to ensure that everyone is
3 aware of this second document. I have a copy of
4 the exhibit, too, if you need to see it. I just
5 want to make sure that no one has any comments at
6 this stage under Agency Exhibit 2.

7 MR. BIELAWSKI: For the record, I
8 would suggest that 316(b) issues are not germane
9 to this rulemaking and I don't know if there is a
10 way of removing them from this record or just
11 indicating that they really aren't relevant. I
12 don't believe we --

13 MS. OLSON: I was given the guidance
14 in a PDF and I printed it out shortly before the
15 hearing and I just assumed it was the guidance. I
16 apologize for the error and if there is no
17 objection I don't mind removing it from -- I'm not
18 sure if we can remove it from the record, but, if
19 possible, we have no objection to that.

20 MR. ROBERTSON: Is there any
21 objection to removing this second document from
22 the Agency, Exhibit 2? Okay. Seeing none, the
23 Board will grant Agency Exhibit 2 removing the
24 second portion of the exhibit, which was
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1 inadvertently added at first hearing. At this
2 point does, anyone have any other questions on
3 anything in this proceeding?

4 MR. BIELAWSKI: I have a procedural
5 question. The Agency response to Mr. Harley's
6 questions indicated that they would be providing
7 responses later. Is there going to be an order
8 establishing a timeline for those responses and
9 then presumably an opportunity for others to
10 comment based on the entire record before we move
11 on?

12 MS. OLSON: The Agency would not
13 mind filing our responses before any comment
14 period giving you guys an opportunity to then
15 comment on our responses.

16 MR. ROBERTSON: Okay. And the Board
17 does intend to set deadlines today for any
18 post-hearing filings that we will discuss shortly.

19 MR. BIELAWSKI: Thank you.

20 MR. ROBERTSON: Is there any
21 additional questions? Seeing none, at this stage,
22 I would like to go off the record in order to
23 discuss the deadlines for post-hearing filings.

24 Thank you.

1 (Whereupon, a discussion was had
2 off the record.)

3 MR. ROBERTSON: We're back on the
4 record now. As mentioned, we went off briefly to
5 discuss the filing period. So, as agreed to, the
6 Agency will file its responses to questions from
7 today's hearing on I believe it's Wednesday,
8 November 13th and following that the deadline for
9 public comments and any Agency post-hearing briefs
10 will be Wednesday, December 11th. Did anyone have
11 any additional questions? Seeing none, I would
12 like to thank all of you for your time in
13 attending this hearing today and, with that, we
14 are adjourned. Thank you.

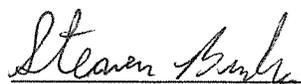
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this 28th day of
15 October, A.D., 2013.

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A	
A.D 60:15	46:24 55:16
a.m 1:13	addressed 4:17 5:9
abbreviated 5:2 5:6	adjourned 59:14
ability 18:21	adjusted 50:14
able 25:3 36:3,8 51:12	Adm 1:4 3:7 9:8
absence 20:4 21:2,11	Administrative 5:6
absolutely 23:1	admitted 14:13
absolve 43:2	adverse 20:7 21:5,14 56:24
accept 11:6,9,11 11:17,19 36:11	aforesaid 60:8
acceptable 54:19	age 45:4
acceptance 11:9	agency 3:22 4:11 5:14,16 6:8,15 7:17,24 8:2,8,17 9:3 15:15 16:6,7 16:12 17:1,3,6 18:7,17,19 20:13 22:9,13 23:17 24:1,21 25:3 26:2,4,15 28:12 29:8 30:9,15 31:11 31:13 32:9 33:21 34:16 36:12 37:14,19 38:13 40:11 41:6 42:8,17 42:20 43:23 45:9 47:9,15 47:24 48:8 49:15,22 50:8 51:7,9,19 55:12 56:16,16 57:6,22,23 58:5,12 59:6,9
accomplish 32:15	Agency's 4:17 4:21 5:18 7:16 8:13 14:12,20 18:14 23:2 31:2 32:8,17 40:1,23 43:8 46:16 50:7 51:6
accurate 34:7	agree 15:6 18:18 18:22
acknowledge 11:21 12:5 24:17 26:19 33:2,16	agreed 59:5
acres 52:11,11	
acronym 4:13 16:2,21 29:18 31:6	
act 1:4 3:7,21 9:7 11:18 14:22 19:14 32:16 33:16 40:3 43:4,14 43:14 44:4	
action 55:3	
activity 50:14,22	
actual 27:10	
add 49:12,17	
added 58:1	
addition 22:7	
additional 10:6 15:17 16:8 32:11 34:23 35:4,7 48:11 49:15 51:18 53:5 55:12,16 58:21 59:11	
address 5:10 22:9 23:6 27:2	
agreement 19:12	AI 7:3
ahead 42:24	Alisa 2:2 3:14
allow 53:5	allowed 44:1,9
alternate 43:11 43:24 44:8	alternative 1:2 3:5 9:6 20:12 22:11 23:5,15 28:8,17 29:17 32:7,10 33:5,7 33:18 34:4,14 34:21 35:3 48:1,5 49:3 50:1 52:2 54:22
amend 34:2	Amended 1:5 3:8 9:9
amendments 3:24	analysis 5:8 22:21 56:1,4
Anand 2:3 3:14	and/or 20:5 21:3 21:12
answer 11:2,20 12:2,15,23 15:19 17:3 19:22,23 21:1 21:9,18 23:13 24:23 26:1,10 26:23 31:21 35:17 36:3,9 37:22 38:13,20 39:1	answered 23:8
answered 23:8	answering 20:9 39:18
answering 20:9 39:18	anti-degradati... 19:19
anybody 7:14 8:22 55:11 56:5	apologize 9:20 57:16
appears 56:22 60:10	applicant 23:5 23:14 28:21 31:4 40:12 41:2 42:5,7,21 43:2,7 45:18 45:21 46:19 48:10 52:24
applicability 15:12,15	applicant's 40:22 46:24
applicable 44:8 49:20	application 20:15 23:6 24:3 29:7 33:4
applicant 23:5 23:14 28:21 31:4 40:12 41:2 42:5,7,21 43:2,7 45:18 45:21 46:19 48:10 52:24	applications 23:20,23 24:9 45:10
applicant's 40:22 46:24	applies 27:7
application 20:15 23:6 24:3 29:7 33:4	apply 29:16 53:7
applications 23:20,23 24:9 45:10	applying 52:1
applies 27:7	appointed 3:3
apply 29:16 53:7	appreciable 28:9
applying 52:1	approach 8:10 11:22 13:16 37:3 53:21 54:18
appointed 3:3	appropriate 44:24 45:6
appreciable 28:9	approved 53:22 53:23 54:24
approach 8:10 11:22 13:16 37:3 53:21 54:18	Aquatic 57:1
appropriate 44:24 45:6	area 40:15 53:4
approved 53:22 53:23 54:24	asked 5:21 22:14 36:14,15 40:9 54:20
Aquatic 57:1	asking 14:15 33:10 38:15 48:22 50:21,24 52:16,18 54:2 54:10
area 40:15 53:4	assert 12:11,18
asked 5:21 22:14 36:14,15 40:9 54:20	asserted 15:10
asking 14:15 33:10 38:15 48:22 50:21,24 52:16,18 54:2 54:10	asserts 13:3
assert 12:11,18	assistant 6:11
asserted 15:10	
asserts 13:3	
assistant 6:11	
	B
	B 55:7
	back 4:22,22 32:22 46:23 51:13 52:5,8 52:21 59:3
	balance 54:14
	balanced 28:10 28:23 29:10 30:4 31:7,16 35:22 40:10 45:14,20 46:2 53:10,15 54:14
	based 38:14 54:2 58:10
	Basically 50:20
	basis 14:14 26:9 31:14 48:1
	beat 51:21
	beginning 6:5

34:20 52:8	29:19,23 31:12	case 7:12 24:10	command 33:17	consider 10:16
begins 56:22	31:15,23 32:8	24:11 38:16,19	34:1,3	22:7 27:24
behalf 7:10	32:14,18 33:21	38:19,21,21	commenced	45:21
believe 10:23	34:19 36:17	39:6,6 47:13	9:17,22	considered
13:15,24 14:6	39:15 46:20	48:1,1 49:11	commencing	22:14 54:4
15:14 17:5	47:8,24 50:15	cause 1:8	1:13	considering 45:4
20:24 23:10	51:7,18,19	caused 28:9 30:4	comment 4:14	consult 18:5
25:13 31:21	54:22 55:15,17	causing 28:23	4:15 18:21	20:19 40:20,22
34:6,8 39:8	55:24 56:4	certain 24:5,8	24:16 25:9,21	43:8 51:8
42:11 43:5,16	57:23 58:16	Certified 60:5	26:18 31:3	consultation
45:5,16,24	Board's 3:11,14	certify 60:6	32:9 48:3	16:1,4,14,20
46:14 47:4	3:15 4:5 5:3,24	CFR 22:8 24:19	49:21 56:16	16:23 17:23
50:17 53:18	15:16 26:3	26:21	58:10,13,15	19:15 20:4
57:12 59:7	32:13 47:10	Chairman 3:15	commenting	21:2,11
believes 22:6	50:10 55:22	chance 37:8	3:23	consultations
24:21 31:9,15	56:11,21	change 15:20	comments 4:12	16:9
49:22	body 18:2,4	52:3 54:10	4:18 22:3	consulted 17:4
benefit 39:21	28:11	changed 13:4,8	32:22 46:16	17:20 20:16
best 19:23 39:16	bottom 24:16	13:11,14 28:7	55:22 56:5,6	40:17
48:20	25:9,21 26:18	30:3	56:11 57:5	consulting 17:16
better 16:5,24	bound 10:18,23	changes 56:9	59:9	17:17
17:16 29:14	11:4 12:19	characteristics	Commerce 5:1	containing
bias 6:2	Brickey 1:10	18:3	Committee 5:6	26:20
Bielawski 7:3,3	60:5,20	Chicago 1:12	communication	contents 49:16
13:23 35:8,19	brief 26:13,13	4:6 7:9 60:22	4:24	context 12:10
36:19 37:15	briefly 59:4	circumstances	community 42:9	19:20 22:10
42:4,12,16,22	briefs 59:9	18:13 39:19	53:11 54:15	25:22 28:24
43:1,6,13,17	bring 41:6,9	cited 22:3	compare 29:8	29:13,15 33:6
43:21 44:6,12	budgetary 5:8	citing 22:16	complete 5:24	35:10
44:17,23 45:7	56:1	Citizens 4:13	31:20 60:9	continue 20:19
45:12,18 46:4	build 5:24	7:10 9:4	compliance 48:3	Control 1:1,10
46:22 47:5	built 49:6	clarification	compliant 19:13	12:19 17:13
52:22 53:13,19	Bureau 47:18,19	25:19 54:2	complies 24:19	19:21 27:21
57:7 58:4,19	Burke 2:4 3:12	clarify 20:10	comply 25:1	29:19 31:23
biologist 24:13		21:23 29:21	26:20	controls 32:11
biologists 18:8	C	33:9,24 52:23	complying 34:24	Cook 60:3,14
24:2	C 2:1 14:7 39:24	Clean 1:3 3:7	43:3	cooling 49:9
biotic 42:9	call 14:18 51:14	9:7 11:18	concern 38:8	53:5 56:24
BIP 31:6,10	called 1:9 7:20	14:22 33:16	concludes 39:14	copies 4:20,23
33:20	Calling 24:14	40:3 43:14	conclusion 10:4	5:5
Board 1:1,10 3:3	25:6,7,19	clear 22:12	conclusions	copy 17:9 56:9
3:12,16,22 4:1	26:16 31:1	35:19 36:13	18:14	57:3
4:11,16,18 5:1	calls 43:22	39:22	conditions 31:9	correct 6:17
5:22 6:6,22	capture 41:15	clerk 7:12	31:14 32:6,15	14:2 15:23
12:19 13:2	CARE 4:12,13	Clinic 7:9	conduct 55:18	17:13 39:7,9
15:13 17:13	24:15 25:8,20	closed-cycle	conducting 15:3	41:16 42:19
19:8,21 20:15	26:17 31:2	49:9	43:10	45:10 47:3
25:23 26:8	32:8	Code 1:4 3:7 9:8	confirming	60:9
27:21 28:9,14	Carrie 2:3 3:17	come 47:1	18:14	counsel 6:11

9:17,22 County 60:3,14 couple 3:18 50:6 55:16 course 29:18 court 1:24 2:24 3:24 4:24 5:24 6:24 7:16,24 8:24 9:24 10:24 11:24 12:24 13:24 14:24 15:24 16:24 17:24 18:24 19:24 20:24 21:24 22:24 23:24 24:24 25:24 26:24 27:24 28:24 29:24 30:24 31:24 32:24 33:24 34:24 35:24 36:24 37:24 38:24 39:24 40:24 41:24 42:24 43:24 44:24 45:24 46:24 47:24 48:24 49:24 50:24 51:24 52:24 53:24 54:24 55:24 56:24 57:24 58:24 59:24 60:24 creating 56:9 critical 21:6 CSR 1:10 60:20 60:23 culminate 32:11 current 48:11	40:2 55:23 day 1:12 44:14 60:14 DCEO 5:2 55:18 55:19 DCEO's 5:4 55:22 dead 51:22 deadline 59:8 deadlines 58:17 58:23 Deanna 2:5 3:15 December 59:10 decide 36:16 decision 6:1 10:5 16:12 19:6 22:10 39:2 decision-maki... 16:6 17:1 29:15 defined 11:15 definition 11:14 deliberative 23:12 demonstrate 28:22 31:4 53:14 54:13 demonstration 28:16 36:4 43:10 52:15 53:9 54:6 demonstrations 15:4 45:10 Department 5:1 16:22,23 18:15 depend 35:13 depending 18:1 23:2 deposeth 7:21 depreciable 29:3 30:4 derived 15:17 description 50:13,21 desk 4:22 detail 42:18 determination 10:18,24 23:17	32:12 determine 47:24 develop 11:22 12:6 22:19 45:14 developing 12:21 development 17:17 19:2 different 35:16 direction 60:12 disagreement 18:24 19:5 discharge 28:7 28:12 29:9 34:24 discharger 19:18 30:10 33:18 34:2,4 48:24 51:24 discharger's 27:10 discharges 21:21 22:4,22 45:19,23 discontinue 36:21 38:3 discount 15:12 discounted 15:15 discuss 58:18,23 59:5 discussed 56:7 discussion 59:1 dispense 12:11 district 40:15 DNR 19:12,13 46:20 docket 3:11 document 8:23 9:1,10 13:19 13:24 14:20 22:13,15,16,18 37:10 39:23 45:5 56:12,17 56:23 57:3,21 documentation 27:8,22 28:21 draft 14:22	25:11,14 44:15 44:19 45:1,1,4 45:4 drawn 24:8 due 4:8 duly 7:20	56:16 entering 8:23 9:1 13:22 37:13,17 entire 53:16 58:10 entitled 1:8 3:4 9:1 14:23 56:17,23 Environment 4:14 7:11 9:4 57:1 environmental 3:21 9:2 15:1 37:18 44:4 47:16 56:19 envisioning 41:22 EPA 6:11,13 9:24 10:17,22 11:5,21 12:5 12:10,17 13:3 13:4 14:21 15:9,12,20 16:1,4,20,23 17:18 19:1 20:6 21:4,13 21:20 22:6 23:20 24:17 25:10,22 26:19 31:8 33:2,16 33:18 34:1,3 34:21 35:5 36:21 38:3 40:1 41:8 51:8 51:11,13 53:22 54:17,24 EPA's 9:16,21 10:12 23:12 24:15 25:8,20 26:6,17 31:3 34:10,19 35:2 37:1 51:8 53:21 error 57:16 Especially 52:18 establishing 58:8 evaluate 21:20
<hr/> D <hr/> D 28:6 damage 28:23 Daniel 1:8 2:2 3:2 date 13:9 dated 37:2,17			<hr/> E <hr/> E 2:1,1 earlier 46:23 early 17:21 41:6 economic 5:2,3 5:8 55:18 56:1 edge 30:18 48:15 53:2 effect 35:11,12 35:17,20,22 39:4 45:14 46:2 effects 5:8 14:24 45:19 56:1,18 effluent 1:3 3:6 9:6 20:12 22:11 23:5,15 28:8,17 29:17 32:7,10 33:5,8 33:19 34:4,12 34:14,22 35:3 43:24 44:9 48:2,5 49:3 50:1 52:2 eight 16:19 either 5:22 39:5 46:15 endangered 19:14 20:8 21:6,15 40:13 40:18 41:11 42:1,14 43:3,9 43:9 46:5,10 47:1 engineer 24:13 47:17 engineers 24:2 ensure 57:2 ensures 30:17 enter 8:19 13:19 37:5 entered 13:6	

Evaluating 56:23	40:16 49:8,9	40:9,12,17,22	12:14,23 30:11	25:18 26:5,16
everybody 3:2	fact 14:11 24:19	41:11,24 42:1	39:10 46:13	27:1,5,23
exactly 24:5	24:24 25:10,15	46:6,17,21	52:8 58:7	28:20 29:4,12
48:21	25:16,22 26:11	47:2	Good 3:1 7:6	29:24 31:1,13
example 36:3	26:14	five 13:1 24:16	30:8 47:12	31:20 32:2,4
40:14 50:3	factor 22:4 23:6	25:9,21 26:18	government	33:1,12,15,23
excursion 34:23	factors 22:2,6	39:11,24	16:15	34:8,18 35:11
35:4,7 48:12	facts 36:2,8	flow 36:7	grant 33:18 34:1	35:15 36:10,20
Exelon 7:4	38:10,21	follow 53:20	36:22 38:4,22	37:7,21 38:2
exhibit 8:20,24	fair 33:23 36:13	follow-up 19:8	39:10 57:23	38:15 39:3,13
9:9,10 13:7,20	44:6,11 53:14	30:7 32:3 40:6	granted 28:9,13	39:21 40:9
13:22 14:1,14	familiar 37:23	40:7 54:16	29:22 32:7	46:13 53:20
37:6,10,13,17	February 37:2	following 59:8	34:14 35:6,7	54:16
56:16,20,22	37:17	follows 7:21	36:5 48:6	Harley's 58:5
57:4,6,22,23	federal 10:15,18	foregoing 60:8	granting 25:23	harm 18:13 28:9
57:24	10:23 11:6,10	form 35:4,6 44:8	35:4 54:24	29:3 30:4
exist 53:16	11:14,23 12:7	44:15 55:1	grants 54:23	hearing 1:8 2:2
existing 12:19	13:3,8 20:8	forms 34:22	growth 21:22	3:3 4:4,6,7,12
19:17 40:5	21:6,15 41:3	forward 11:6	22:23 45:22	4:18,20 5:10
49:1	43:23	found 17:22	guidance 13:5,6	5:12,22,23
expand 53:4	feds 43:21	28:3	14:23,24 15:2	6:22 7:8 8:3,9
expanded 53:12	feel 10:17	four 12:9,17	15:10,12,16,22	8:20,24 9:14
expect 18:9	file 4:11 28:15	fully 10:2	22:2 44:13,13	9:17,22 10:3
24:11 25:22	59:6	future 39:5	44:14,19 45:1	10:10 12:15
42:1	filed 3:20 4:14		45:1 56:18,23	13:18 14:10,14
expectation 26:6	7:24	G	57:13,15	23:11 25:4
expecting 27:19	filing 5:18 14:1	gain 20:6 21:4	Guide 14:24	27:3 34:20
expects 51:10	40:1 46:20	21:13	56:18	36:10 37:2,5,7
experience	49:24 58:13	general 8:1,5	guys 58:14	39:13 47:23
27:10	59:5	38:17 50:13,21		49:14 56:3,7
expert 20:6 21:4	filings 58:18,23	generally 44:7	H	56:15 57:15
21:13 24:6	final 18:18,20	45:21	habitat 21:6	58:1 59:7,13
expertise 16:8	19:6 25:16,17	Generation 7:5	Harley 7:8,9 8:3	hearings 4:1
18:8 23:21	54:21	germane 57:8	8:9,12,21 9:3	held 1:7
24:8	finalized 44:22	given 44:23	9:14,19,20	help 5:24
explain 11:3,8	44:24	54:17 57:13	10:17,22 11:5	helpful 17:23
16:11 27:12	fine 52:21	gives 48:14	11:11,19 12:4	Hi 6:10
35:15	first 3:19,23 4:2	giving 39:15	12:9,16 13:1	higher 48:15
explanation	4:24 5:9,12,14	51:14 58:14	13:10,13,16,18	holding 6:22
24:20 27:23	7:20 8:12 9:23	Glosser 2:5 3:16	14:10,17 15:9	hope 41:5
express 6:1	22:3 34:20	19:10 20:1	15:19,24 16:11	Hopefully 43:22
extent 27:8 45:8	47:21 54:8	40:7,21 41:1,8	16:19 17:11,15	51:15
extra 30:20	56:3,7,8,10,12	41:12	17:22 18:3,12	horse 51:22
	56:15 58:1	go 19:18 42:24	18:23 19:7	hour 1:13
F	Firstly 55:17	47:10 52:5	20:3,20,24	hours 34:23
facilities 15:1,4	fish 16:3,4 18:7	54:9 58:22	21:10,19 22:1	35:4,7 36:5
56:19	20:5,17 21:3	goals 53:12	22:20 23:4,10	39:17 48:12
facility 28:1	21:12 28:11	goes 25:14 49:10	23:19,24 24:4	Hyde 37:1,19
	29:11 30:5	going 3:18 12:2	24:14 25:2,6	

<p style="text-align: center;">I</p> <p>idea 38:8,10,11 identical 11:23 identification 9:11 37:11 identify 42:13 IDNR 16:21 17:4,7,16 18:5 18:18,20 19:1 19:2 20:4,14 20:17,19 21:3 21:11 46:6 Ill 1:4 3:7 9:8 Illinois 1:1,9,11 1:12 6:11,13 9:2,16,21,24 10:12,17,22 11:5,21,21 12:5,5,10,11 12:17,18 13:2 15:11 16:1,4 16:20,21,23,23 17:18 18:15 19:1,14 20:6 21:4,13,20 22:6 23:12,20 24:15,17 25:8 25:10,20,22 26:6,17,19 29:19 31:3,8 33:2,16,17 34:1,3,10,19 34:21 35:2,5 36:21 38:3 44:4,20 45:2 53:21 60:1,14 60:22 impact 5:4 15:2 53:17 55:18 56:20,24 impacts 20:7 21:5,14 22:5 impaired 30:16 Implementation 40:3 implemented 36:24 38:6 importance 15:21</p>	<p>important 18:5 41:14,20,24 42:7,17 impose 31:8 32:14 imposed 32:6 inadvertently 58:1 include 10:7 11:15 15:17 17:7 22:15,21 23:1,1 24:18 28:13 29:7 32:18 46:21 49:18 50:13,15 included 20:15 23:3 25:17 28:18 48:23 51:1 includes 25:15 including 24:20 34:22 42:13 49:19 53:16 inclusion 45:6 incorporate 31:22 incorporated 55:1 increased 53:1 independent 20:6 21:4,13 indicate 48:9 indicated 46:19 58:6 indicates 14:21 indicating 57:11 indication 54:17 indigenous 28:10,24 29:10 30:5 31:7,16 35:23 40:10 45:14,20 46:2 53:11,15 54:14 54:15 information 15:3 29:8 41:2 41:22 42:8 51:1 informed 16:5</p>	<p>16:24 18:9 29:15 initial 40:1 initiation 17:8 17:12 insight 10:5 Insofar 46:6 instances 17:20 Intake 56:24 intend 6:15 56:4 58:17 intended 5:23 Interagency 13:5 14:23 56:17 interest 46:24 interpretation 34:10 51:9 intervening 29:2 introduce 6:8 7:1 introduced 10:8 introductions 5:13 involved 17:16 19:2 IPCB 9:10 29:14 29:18 37:10 issuance 12:12 12:20 55:6 issue 22:9,11 33:5,6 46:5 52:23 issued 13:4 24:18 25:11,11 25:12,14 26:9 27:6 issues 3:19 17:4 46:9 47:1 57:8 issuing 15:11 items 5:10 55:16</p> <hr/> <p style="text-align: center;">J</p> <p>J-C-A-R 5:7 JCAR 5:7 55:24 56:7,12 JCAR's 5:7 Jennifer 2:4 3:12</p>	<p>Jerry 2:4 3:17 Joanne 6:10 joined 3:13 7:11 Joint 5:5 July 55:17 56:7 justified 24:21</p> <hr/> <p style="text-align: center;">K</p> <p>K 1:5 3:8 9:8 keep 18:9 Keith 7:9 9:3 kind 24:5 28:20 49:11 kinds 35:16 knew 41:10 know 10:20 13:9 13:10,13 17:24 18:7 19:22 20:16 22:24 24:12,22,23 25:1 26:1,3,10 26:23 27:21 35:9 39:4 40:13,16,18,18 41:2 49:5 57:9 knowledge 20:6 21:4,13 28:2</p> <hr/> <p style="text-align: center;">L</p> <p>L.A 1:24 2:24 3:24 4:24 5:24 6:24 7:24 8:24 9:24 10:24 11:24 12:24 13:24 14:24 15:24 16:24 17:24 18:24 19:24 20:24 21:24 22:24 23:24 24:24 25:24 26:24 27:24 28:24 29:24 30:24 31:24 32:24 33:24 34:24 35:24 36:24 37:24 38:24 39:24 40:24 41:24 42:24 43:24 44:24</p>	<p>45:24 46:24 47:24 48:24 49:24 50:24 51:24 52:24 53:24 54:24 55:24 56:24 57:24 58:24 59:24 60:24 lake 18:6,7,10 language 15:17 17:6 20:14 22:15 27:13 32:19 41:14,17 43:15 48:9 49:15 50:16,23 large 46:1 largely 38:14 larger 48:13 52:4 53:4 54:3 LaSalle 1:11 law 7:12 11:10 11:17 leave 16:18 left 3:13 legal 7:9 12:1,23 let's 52:11 letter 14:5 37:1 37:17,23 38:1 38:17 55:22 letters 4:23 5:5,9 55:23 56:6 light 14:11 32:17 36:24 limit 32:7 34:14 34:22 limitation 20:12 28:8,18 32:10 33:6,8,19 34:5 35:3 48:2,5 49:3 50:1 52:2 54:23 Limitations 1:3 3:6 9:6 limits 36:22 38:4 43:11,24 44:8 44:9 lines 52:5 list 42:16 listed 3:10 22:3</p>
--	---	--	---	---

41:3	mandatory	48:11,13,16,18	56:10,12	Olson 6:10,11
Liu 2:2 3:14	16:10,14 17:5	48:20,23 49:1	notification 17:7	6:17,21 11:3,8
30:7,20,24	18:17	49:4,19 52:1,4	19:11,13	11:13 14:3,8
47:12,18,21	manual 13:5,6	52:6,7,16,23	notified 46:7,17	23:8 27:12,15
48:17,24 49:10	14:24 15:18	53:2,4,5,12,17	notify 46:20	29:20 30:1
50:5 51:21,24	44:13,14 56:18	53:21,24 54:4	notion 6:2	33:9 36:1
LLC 1:24 2:24	Maria 37:19	54:7,10,18	November 59:8	37:14 38:7,18
3:24 4:24 5:24	Marie 37:1	modeled 50:10	NPDES 24:17	39:8 46:18
6:24 7:24 8:24	marked 9:10	moment 46:5	24:23 26:19	50:18 57:13
9:24 10:24	37:10	Monroe 60:21	28:14,19 30:9	58:12
11:24 12:24	marks 4:5	morning 3:1 7:6	34:12 36:23	once 33:19
13:24 14:24	material 10:6	30:8 47:12	38:5 40:4	51:13 55:1
15:24 16:24	materially 28:7	move 5:16,19	Nuclear 15:1	opening 5:13 6:7
17:24 18:24	30:3	7:15 14:17	56:19	6:19 7:2,5
19:24 20:24	materials 23:7	58:10	nuisance 21:22	operate 27:20
21:24 22:24	matter 1:2 3:4	Moving 20:3	22:5,23 45:13	operated 27:19
23:24 24:24	7:5 9:5 12:21	mussels 40:14	45:13,22 46:1	28:2
25:24 26:24	39:6,6 55:14	40:18 41:11	number 10:12	operating 27:18
27:24 28:24	maximum 34:24		49:13 51:7	28:1
29:24 30:24	mean 8:7 11:4,9	N		operation 27:10
31:24 32:24	11:14,16 20:11	N 2:1	O	opinion 25:23
33:24 34:24	25:10 41:8	name 3:2 6:4,10	O'Leary 2:4	26:3,8 32:19
35:24 36:24	means 33:7	7:9	3:17 9:18	opportunity 5:2
37:24 38:24	35:20	Natural 16:22	object 43:23	8:4,13,14 9:16
39:24 40:24	meant 25:13	16:24 18:15	46:13 55:5	9:21,23 39:15
41:24 42:24	35:9 41:15	nature 28:6 29:9	objection 36:11	46:9 58:9,14
43:24 44:24	measured 53:2	45:5	57:17,19,21	option 18:20
45:24 46:24	mechanism	necessarily	objections 8:23	order 4:20 26:8
47:24 48:24	19:22	19:19 22:21	13:22 37:13	32:19 47:23
49:24 50:24	meet 30:17	necessary 18:1	obligation 42:8	49:14 58:7,22
51:24 52:24	member 3:12	22:7 32:15	obtaining 47:2	organisms 21:22
53:24 54:24	5:22 26:7	need 16:8 34:8	53:3	22:5,23 45:13
55:24 56:24	members 3:13	36:1 52:5,20	October 1:12	45:13,22 46:1
57:24 58:24	3:16 6:6 7:23	57:4	4:8,10 5:19 8:1	original 14:1
59:24 60:24	8:5 51:18,19	needs 49:7	9:4 40:2	ought 44:18,19
located 31:19	memorandum	Nevermind	offer 6:16	
long 26:14 36:6	40:1	27:16	Officer 1:8 2:2	P
look 22:17 24:3	mention 43:15	new 1:4 3:7 9:8	3:4 4:19,20	P 2:1,1
32:21 43:17	mentioned 43:7	28:15 48:24	5:23 7:8 8:3,9	page 14:19
52:21	59:4	49:6 56:22	9:15 10:3,10	24:16 25:9,21
looking 41:16	merely 14:14	nine 20:4	13:18 14:10	26:18 31:3
48:10	merits 3:24	North 1:11	23:11 36:10	34:20 56:21
M	Micha 7:11,13	note 5:21 56:15	37:3,8 39:13	parameters
M-I-C-H-A 7:13	mind 10:11 19:8	notes 60:11	47:23 49:14	22:18
making 17:5	57:17 58:13	notice 3:23	official 60:13	part 1:4 3:8 9:8
22:10 39:2	minimum 26:2	17:11 22:3	okay 11:19 20:1	12:17 26:5
mandates 12:12	missing 36:9	25:15 26:21	42:22 45:7	30:15,16 32:6
12:20	mixing 30:18	39:17 50:9,12	51:5,23 57:22	33:1 34:9 37:9
	35:1 48:2,6,7,8	50:12 56:5,8,9	58:16	44:20 50:12

51:1 53:8 54:4 55:3 particular 52:12 party 17:17 passage 21:15 PDF 57:14 people 24:12 period 35:21 41:7 58:14 59:5 permit 24:13 25:11,12,14,16 25:17 26:19 27:11 28:14,19 30:9,16,21 34:12 55:1,2,3 55:6 permittee's 28:14 permits 24:17 24:24 30:9 36:23 38:5 40:4 permittee 27:6 28:15 30:17 permittee's 28:18 29:9 permitting 15:5 24:20 person 39:1 personal 60:11 persons 5:20 perspective 10:13 petition 28:15 49:16,24 50:9 54:22 petitioner 49:17 49:23 petitioner's 50:13,22 Philip 7:11 Phone 60:22 phrase 50:19 pipe 30:19 place 4:2,6 54:8 places 20:16 plan 17:10,17 19:3 22:17,19 22:21 36:21	38:3 plans 51:8 plant 49:6 please 6:4,8 7:17 8:21 42:24 43:18 47:14 48:3 49:21 point 6:6 9:1 17:12 24:4,7 38:13,16 46:23 48:3 58:2 points 52:6 policy 38:17 39:5 Pollution 1:1,9 12:18 17:12 19:21 27:21 29:19 31:23 population 28:10,24 29:10 30:5 31:7,17 35:23 40:10 45:14,20 53:15 populations 46:3 portion 46:1 57:24 pose 8:17 possible 10:1 48:10,13,14 57:19 post-hearing 55:6 58:18,23 59:9 potential 20:7 21:5,14 42:5 power 49:6 practical 35:12 pre-file 8:15 pre-filed 4:7,8 precisely 18:23 preconceived 6:1 present 40:14 41:4 46:8 presiding 3:12 presumably 42:13 58:9 previous 17:3	27:11 previously 26:9 28:2 35:5 printed 57:14 prior 13:14 probably 49:8 problematic 16:14 17:6 18:17 19:5 procedural 1:2 3:5,19 9:5 32:13 50:11 58:4 procedures 55:7 proceed 9:13 37:22 proceeding 3:4 3:10 4:2 9:15 13:7 14:19 17:8,13 34:13 50:15 55:15 58:3 proceedings 1:7 10:9 11:12 60:7,9 process 23:13 30:13,21 54:9 produce 16:5,24 29:14 propagation 31:6,10,16 33:20 53:10 proposal 3:23 31:22 56:8 propose 46:19 proposed 1:4 3:7,24 9:7 17:6 27:9,20 28:3 29:4 31:5 32:19,20 34:15 36:24 38:5 39:4 46:15 48:9 49:15 50:8,23 protecting 43:9 protection 3:21 9:3 19:14 31:6 31:10,15 33:19 37:19 44:4	47:17 53:10,14 provide 36:2,8 42:8 provided 17:12 50:22 provides 15:2 providing 58:6 province 47:2 provision 55:4,5 provisional 34:11,13 35:6 36:6,21 38:3,9 38:11,23 39:5 39:10 provisions 52:7 public 4:14,15 4:18 7:23 8:5 25:15 26:7,21 59:9 pull 24:2 purposes 11:11 32:16 pursuant 3:20 10:13 28:16 pursue 36:16 put 11:6 45:1,1 putting 51:4	34:2,9,9,18 35:9,18,24 36:9,12,14,15 36:20 37:22 38:2,8 39:24 40:6,8 41:13 42:5 46:14 47:22,22 49:10 49:12,13 51:6 51:7 52:22 54:3,8,16,21 58:5 questions 4:12 4:19 5:16,18 5:21 6:5,16,19 7:15,24 8:2,4,7 8:15,16 9:2,13 9:15 10:1,3,4,8 10:11 14:15 20:10 21:1 34:19 36:2 39:14,16,18 40:8 42:23 47:8,9 50:6 51:19 55:12 58:2,6,21 59:6 59:11 quick 19:8 quickly 21:1 quite 10:20 quote 27:9 32:9 32:14 34:23 49:18 quoted 27:13
Q				
qualify 52:15 54:7 quality 30:17 47:20 question 6:4 10:12 11:2,20 12:2,4,9,16,17 12:23 13:1,2 14:17,19 15:13 15:16,24 16:2 16:19 19:9,10 20:3 21:2,10 21:20,24 23:9 23:13,19 24:14 24:23 25:2,7 25:19 26:6,16 27:6,13 29:12 29:16,21 30:8 31:1 32:3,5 33:2,10,15,24				
R				
R 2:1 R13-20 1:3 3:11 R2013-20 9:9 raise 8:4,7 35:8 38:7 46:9 57:2 Rao 2:3 3:14 32:2,5,24 50:6 50:20 51:5,15 52:14,20 54:1 54:21 55:8,10 read 26:8 37:24 really 26:13 57:11				

reason 50:24 51:4	relevant 15:11 57:11	42:24 43:24 44:24 45:24	25:8,20 26:13 26:17 31:2,19	39:4 46:15
reasons 14:4,12 14:21 17:3 50:8	relief 10:13,19 10:24 11:7,16	46:24 47:24 48:24 49:24	32:8,18 33:23 34:19 36:12	rulemaking 3:20 12:10 55:19
receive 51:10	28:13 29:21 30:23 33:11,14	50:24 51:24 52:24 53:24	38:18 45:3 46:16,18 47:22	56:2 57:9
received 4:9,16	35:5,14,16 36:4,22 38:4,9	54:24 55:24 56:24 57:24	49:13 51:6,11 55:22 56:15	rules 1:2 3:5 5:6 9:5 13:3 28:4
receives 54:22	43:24 44:7 46:7,10 47:3	58:24 59:24 60:24	58:5	32:14 35:1 50:11 53:24
receiving 18:2,2 18:4 42:9 45:15 53:16	48:8,9,12,21 48:23 49:7,19	represent 6:5 7:4	responses 7:16 7:24 58:7,8,13 58:15 59:6	<hr/> S <hr/>
recommend 31:14 33:10,13 34:3	49:19,24 50:4 52:10,12,13,19	representative 41:14,20,23 42:4,6,17	responsibility 40:22	S 2:1
recommendati... 31:18 32:1 33:7	53:3 54:5,13	42:4,6,17	responsible 43:8	saith 7:21
record 5:24 6:9 10:7 13:23 14:1 21:11 37:9 47:13 57:7,10,18 58:10,22 59:2 59:4	remove 57:18 removing 57:10 57:17,21,23	request 3:22 5:3 5:7 10:4 14:13 27:22 38:11 46:7 48:21	result 34:15 45:22	satisfied 33:20
refer 44:1	renewal 27:7 28:24 29:7,13 29:16,17 30:2 30:9,12,13,21	requested 38:12 39:11 49:18 55:18	Returning 46:4 reuseable 45:8	says 11:17 28:6
reference 26:3	renewed 28:14 28:19	39:11 49:18 55:18	revert 46:23	scenario 33:3
referred 39:23	repeat 50:18	requesting 43:11 55:24	review 8:13 10:1 23:20 29:14 40:4 55:3	scheduled 4:1
refers 29:18 43:24	REPORT 1:7	43:11 55:24	reviewed 53:22 54:17	Scott 6:12 7:19
regard 43:13 44:12,18 45:12 46:10	reported 60:6 reporter 7:17 60:6	require 23:4 29:5 30:10	right 8:13 10:1 23:20 29:14 40:4 55:3	scratch 54:7
regarding 5:3,7 7:24 12:12,20 27:9 42:9 51:8	REPORTERS 1:24 2:24 3:24 4:24 5:24 6:24 7:24 8:24 9:24	20:21 23:14 26:7 28:16,21 33:5 45:21 52:6	reviewing 24:9 24:12 45:9	screening 41:7
regardless 38:24	10:24 11:24 12:24 13:24 14:24 15:24 16:24 17:24 18:24 19:24 20:24 21:24 22:24 23:24 24:24 25:24 26:24 27:24 28:24 29:24 30:24 31:24 32:24 33:24 34:24 35:24 36:24 37:24 38:24 39:24 40:24 41:24	26:7 28:16,21 33:5 45:21 52:6	river 18:10	second 4:6 26:5 33:1 34:9 49:10 56:5,9 57:3,21,24
regulations 11:6 11:15 12:21 13:8,11,14 44:20 45:2 49:20		33:5 45:21 52:6	right 3:15 4:22 14:8 30:11	section 1:3,5 3:6 3:8 4:12 9:7,9 14:22 17:9 24:19 28:5 31:19 32:13,20 32:20 40:3 44:1 47:20 49:15 50:8,10 50:11,16 51:9 57:1
reject 33:4		requirement 19:15 28:3 49:17	Robertson 1:9 2:2 3:1,2 6:14 6:18,24 7:7,14 7:22 8:6,11,18 8:22 9:12 13:17,21 14:6 14:16 19:7 20:2 36:18 37:4,12,16 39:20 42:24 47:7 51:17 55:11 57:20 58:16,20 59:3	Section's 3:20
related 12:16 22:4 23:13 32:5 40:8		requirements 11:24 12:7 22:8 26:21 40:5 43:3 49:23 50:9,12	roughly 13:10	Sections 15:1 56:19
relationship 21:21 22:22 34:11		requires 50:11	rule 27:9 29:4 32:21 34:15 36:24 38:5	see 57:4
released 14:22		Resources 16:22 16:24 18:15	rule 27:9 29:4 32:21 34:15 36:24 38:5	Seeing 6:7 7:15 8:24 47:10 55:13,15,23 56:6,14 57:22 58:21 59:11

September 4:5 4:15,19,20 47:23 49:14	41:3,15,20,24 42:2,7,13,18 43:4,9,10 46:5 46:11 47:1	34:21 37:18 50:8 51:7	summarization 26:14	11:20 14:16 20:1,2,24
serve 3:3	specific 23:17 24:8 38:16,20 49:22 50:24	stating 55:20	summarize 25:23 26:4,11	21:19 25:6,18 27:5 29:12
Service 16:3,5 20:5,17 21:3 21:12 40:10,13 40:17,23 46:17	specifically 8:7 22:2	statutory 12:12 12:19	sure 11:1,16 15:8 25:16 26:15 32:4 41:16 44:21 46:2 57:5,18	30:1,24 32:24 36:18,19 39:14 39:17,20 40:5 41:12 45:7 47:6,7,21 50:5 51:5,15,17 53:19 55:10 58:19,24 59:12 59:14
set 39:18 58:17	specify 48:21 52:13	Staying 43:1	swear 7:17	sworn 7:21
seven 15:24	speculate 39:12	stenographic 60:10	sworn 7:21	system 18:11
sheet 24:19,24 25:10,15,17,22 26:12,14	speculation 38:14 43:22	step 30:21	<hr/> T <hr/>	table 4:23
shellfish 28:10 29:11 30:5	spelled 37:20	Steven 1:10 60:5 60:20	take 5:17 6:16 32:21 34:22 43:17	take 5:17 6:16 32:21 34:22 43:17
shorthand 44:7 60:5,7	speculating 39:12	stream 18:2 36:7 42:10 45:15 53:16	taken 1:10 60:11	talk 9:16 16:16 51:13
shortly 57:14 58:18	Springfield 4:3	Street 1:11 60:21	talked 23:11,12	talking 11:9 23:22 29:22 35:21,22
show 29:2 30:11 52:7 53:9	SS 60:2	Strike 24:6	talks 23:11,12	teasing 41:22
shutdown 16:15	staff 4:11 5:22 13:2 15:13 34:19 51:20	stringent 12:7	talks 23:11,12	technical 3:14 13:5 14:23 15:3,10,22 47:10 56:17
Sidley 7:4	stage 47:9 55:13 56:13 57:6 58:21	Structures 56:24	talks 23:11,12	technology 49:7
signature 60:13	stages 17:21	studied 42:18	talks 23:11,12	tell 38:22
similar 5:12 30:10 32:18 50:16	standard 22:11 23:6,15 29:18 30:12 50:15	studies 29:2,5 45:19	talks 23:11,12	temperature 17:4 35:1 36:7 48:15 53:6
similarly 12:18 27:18 28:1	standards 12:6 30:18 34:12 47:20	study 5:4 17:10 19:3 22:17,19 22:20 55:19,21	talks 23:11,12	temperatures 53:1
simply 33:4	standards 12:6 30:18 34:12 47:20	subject 40:2 50:14	talks 23:11,12	ten 21:2
site 23:17 38:19 38:19,20,21 54:3	standing 31:7	submission 29:5	talks 23:11,12	term 10:15 20:11 27:11 43:14 44:2,3
site-specific 32:12	start 5:13 7:23	submit 28:22 36:16 56:4	talks 23:11,12	terms 35:16
situation 18:24 48:4 49:2	starting 39:23 54:6	submitted 3:22 20:14 27:8 56:8	talks 23:11,12	testify 55:14
six 14:17,19 24:16 25:9,21 26:18	state 1:11 6:4 20:8 21:6,15 25:10 41:3 47:14 60:1	Subpart 1:5 3:8 9:8 28:17 55:7	talks 23:11,12	testimony 4:7,8 5:16,17,20 6:16
sort 52:3	standards 12:6 30:18 34:12 47:20	Subsection 28:6	talks 23:11,12	thank 6:14,21 6:24 7:7,22 8:11 9:14
sought 35:14,17 38:9	stated 47:24 56:3	subsequent 14:15 20:10 25:3 27:2	talks 23:11,12	
Sounds 14:8	statement 7:5 14:4,12,21 15:7 49:18 50:7	substance 11:23	talks 23:11,12	
source 41:2	statements 5:14 6:7,19 7:2 15:2 56:20	substantially 13:4,8	talks 23:11,12	
speak 9:18,21	states 16:3 32:9	substantive 3:24	talks 23:11,12	
species 18:9,10 19:14 20:8 21:7,16 40:14		suddenly 40:13	talks 23:11,12	
		sufficient 29:8	talks 23:11,12	
		suggest 44:17 46:16 57:8	talks 23:11,12	
		Suite 60:21	talks 23:11,12	

51:3,13 52:17 54:1,12 thinking 41:18 three 12:4 time 5:17 7:1,16 23:18 35:21 37:16 51:18 52:16,20 59:12 timeframe 51:10 timeline 58:8 Tinka 37:1,19 title 47:14 today 3:11 4:5 4:16 5:11,13 5:23 7:10 8:15 8:17 39:3,9 58:17 59:13 today's 4:7 8:24 25:4 27:3 59:7 tonight 51:15 tough 39:18 transcribed 60:11 transcript 4:3 39:22 60:9 trial 60:7,10 true 33:3 60:8 trying 27:18 Twait 6:12,12 7:19 10:15,20 11:1 12:1,8,14 12:22 13:9,12 13:15 14:18 15:6,8,14,23 16:7,13 17:2 17:14,19,24 18:6,16 19:4 19:17 20:13,22 21:8,17,19,23 22:12,24 23:16 23:22 24:1,10 24:22 25:5,13 26:1,10,23 27:4,5,14,17 28:5 29:1,6 30:2,8,14,22 31:11,18,24 32:23 33:13,21 34:6,16 35:13	37:21,24 38:24 39:17 40:16,24 41:5,10,19,23 42:11,15,20 43:5,12,16,19 44:5,10,16,21 45:3,11,16,24 46:12 47:4,12 47:16,19 48:7 48:19 49:5 50:2,7,17 51:3 51:12,23 52:10 52:17,24 53:8 53:18,23 54:12 54:20 55:2,9 two 4:1,23 5:5 11:20 14:19 21:1 31:3,3 32:9 47:22 49:13 55:23 type 28:23 41:15	11:7,15,17 12:6 15:11 17:7 20:7,11 20:11 21:5,14 23:20 24:18,21 25:24 26:9,20 27:7 29:13,16 29:22 31:4,5,8 31:14 33:4 34:13 36:6 38:10,12,23 39:10 43:14,15 44:2,3 variances 11:22 12:13,20 34:11 35:6 36:22 38:4 39:5 40:4 various 34:22 version 56:8,10 56:12 view 22:23 31:3 35:2 38:16 46:8 views 23:2	16:8 19:22 24:12 32:23 36:16 51:14 we're 12:2,14,23 22:16 26:11 27:17 39:9 52:16 59:3 we've 20:10,14 20:16 27:15 55:4 website 4:5 56:11,21 Wednesday 59:7 59:10 well-advised 40:20 43:7 went 59:4 West 60:21 wildlife 16:3,5 20:5,17 21:3 21:12 28:11 29:11 30:6 40:9,12,17,23 46:6,17,21 47:2 Willhite 37:1,20 willing 6:16 27:2 wise 16:10,12 wish 6:3 wishing 5:15 withdraw 14:13 36:14 witness 6:9 7:17 7:20 8:17 9:24 60:13 wondering 22:8 50:23 word 43:15 words 53:13 work 40:12 42:21 51:14 working 7:12 wouldn't 16:1,4 16:20,22 19:18 19:19 29:14 written 8:16 18:19	<hr/> Y <hr/> yeah 19:21 42:2 years 36:5 39:11 yesterday 8:14 <hr/> Z <hr/> Zalewski 2:3 3:17 41:13,21 zone 30:18 35:1 48:2,6,7,8,11 48:13,16,18,20 48:23 49:1,4 49:20 52:1,4,6 52:7,16,23 53:2,4,6,12,17 53:24 54:4,8 54:11 zones 21:15 53:21 54:18 <hr/> 0 <hr/> 084-004675 60:23 <hr/> 1 <hr/> 104.408(b) 50:10,11 104.428(a) 32:13 106 1:4 3:8 9:8 106.1120 41:17 106.1125 17:9 106.1130(g) 49:16 106.1135 50:9 106.1135(b) 50:16 106.1145 31:19 106.1170 32:20 106.1175 55:4 106.1180 28:6 106.1180(b) 27:9 29:6 11 21:10 11:00 1:13 115 55:8 1175 55:9 11th 4:8,10 5:19 8:1 59:10 12 21:20 34:20 124.10(d)1
<hr/> U <hr/> unable 38:21 55:20 unclear 35:23 underscored 15:21 understand 9:23 11:13 26:8 understanding 6:15 8:19 10:11 37:5 Understood 46:22 undertake 55:21 unit 3:14 47:11 United 16:3 37:18 unquote 27:11 32:12,16 35:1 use 14:14 16:2 16:21 56:9 useful 15:4 USFWS 16:2	<hr/> V <hr/> valuable 15:3 variance 10:14 10:16,19,24	<hr/> W <hr/> W-I-L-L-H-I-... 37:20 wait 16:17 want 19:1 20:9 32:21 37:5 39:14,22 41:16 48:13,15 51:21 52:3 57:5 wanted 15:16 22:15 49:12 52:10,12 56:14 water 1:4 3:7 9:7 11:18 14:22 18:4 28:11 30:17 33:16 40:3 43:14 47:19,19 56:24 waters 30:15 way 3:19 18:19 19:16 36:13 53:3 57:10 we'll 7:15,22	<hr/> X <hr/>	

26:21	304.141(c) 1:5	35 1:4 3:7 9:8	84 56:21
124.57 26:22	3:9 9:9	3A 51:7	
124.8 24:19	312 1:24 2:24		<hr/> 9 <hr/>
12th 4:19,20	3:24 4:24 5:24	<hr/> 4 <hr/>	
47:23 49:14	6:24 7:24 8:24	4 37:11,17	
13 23:19	9:24 10:24	40 22:8 24:19	
1326 3:20	11:24 12:24	26:21	
13th 4:5 59:8	13:24 14:24	419-9292 1:24	
14 24:14	15:24 16:24	2:24 3:24 4:24	
14th 55:24	17:24 18:24	5:24 6:24 7:24	
15 25:7	19:24 20:24	8:24 9:24	
16 25:19 26:6	21:24 22:24	10:24 11:24	
52:11	23:24 24:24	12:24 13:24	
160 1:11	25:24 26:24	14:24 15:24	
16th 1:12 9:5	27:24 28:24	16:24 17:24	
17 26:16	29:24 30:24	18:24 19:24	
18 27:6,13	31:24 32:24	20:24 21:24	
18th 55:17	33:24 34:24	22:24 23:24	
19 29:13	35:24 36:24	24:24 25:24	
1977 13:3,4,7	37:24 38:24	26:24 27:24	
14:21 15:10,18	39:24 40:24	28:24 29:24	
15:21 22:1,18	41:24 42:24	30:24 31:24	
44:13	43:24 44:24	32:24 33:24	
<hr/> 2 <hr/>	45:24 46:24	34:24 35:24	
2 56:16 57:6,22	47:24 48:24	36:24 37:24	
57:23	49:24 50:24	38:24 39:24	
20 31:1 33:2	51:24 52:24	40:24 41:24	
2003 9:5	53:24 54:24	42:24 43:24	
2007 60:21	55:24 56:24	44:24 45:24	
2008 13:14 15:9	57:24 58:24	46:24 47:24	
15:20 40:2	59:24 60:22,24	48:24 49:24	
2013 1:13 37:2	316 17:7 33:11	50:24 51:24	
37:18 47:23	316(a) 1:3 3:6	52:24 53:24	
49:14 60:15	9:7 10:13,19	54:24 55:24	
21 33:15	10:24 11:7,16	56:24 57:24	
22 34:10	13:5 14:22,23	58:24 59:24	
23 34:18	15:4 23:23	60:22,24	
24 36:20 37:22	24:18,21 26:20	<hr/> 5 <hr/>	
38:2 39:16	27:7,20 29:21	5th 4:15	
24th 56:7	29:24 30:3,22	<hr/> 6 <hr/>	
25 52:11	33:14,17 36:4	60603 60:22	
25th 37:2,18	40:3 43:2,10	<hr/> 7 <hr/>	
27th 4:3	43:15 44:1,2,9	77 45:5	
28 3:21 40:2	45:9 46:7 47:3	7th 55:19	
<hr/> 3 <hr/>	49:7 50:3 53:9	<hr/> 8 <hr/>	
3 9:9,11	54:13 56:17	8 60:21	
302.102 48:14	316(b) 57:8		
49:20,23 54:6	316(b)PL 57:1		
	316(c) 51:9		