

ILLINOIS POLLUTION CONTROL BOARD

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IN THE MATTER OF:)

STATE OF ILLINOIS
Pollution Control Board

WATER POLLUTION: PROPOSED)

No. R15-24

AMENDMENTS TO 35 ILL. ADM. CODE)

(Rulemaking-Water)

PART 309)

REPORT OF THE PROCEEDINGS had in
an open session at the hearing on a motion of the
above-entitled cause before the HONORABLE JASON JAMES,
Hearing Officer, Illinois Pollution Control Board,
100 West Randolph Street, Suite 11-500, Chicago,
Illinois, on September 24, 2015, scheduled to begin at
11:00 a.m., commencing at 11:06 a.m.

1 APPEARANCES:

2 ILLINOIS POLLUTION CONTROL BOARD

3 MR. JASON JAMES, Hearing Officer
4 MS. CARRIE ZALEWSKI, Board Member
5 MS. JENNIFER BURKE, Board Member
6 MR. ANAND RAO, Board Member

7 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

8 BY: MS. SARA TERRANOVA (VIA VIDEOCONFERENCE)
9 BY: MR. DARRIN LeCRONE (VIA VIDEOCONFERENCE)

10 ALSO PRESENT:

11 MS. REBECCA A. BURLINGHAM
12 Office of the Attorney General
13 State of Illinois

14
15 REPORTED BY: MARY T. MURPHY McGUIRK, CSR
16 Certificate No. 84-4160.

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1 HEARING OFFICER JAMES: Good morning. Welcome
2 to the Illinois Pollution Control Board hearing. I
3 am Jason James, and I am the hearing officer for
4 this rulemaking proceeding entitled Water
5 Pollution: Proposed Amendments to 35 Ill. Adm.
6 Code Part 309. The board docket for the rulemaking
7 is R15-24.

8 Today's hearing is a videoconference
9 between the Board's offices in Chicago and
10 Springfield. Here in Chicago, we have two board
11 members, Member Jennifer Burke to my left, and
12 Member Carrie Zalewski to my right. Also present
13 from the Board is Mr. Anand Rao of the technical
14 staff and other board staff.

15 In Springfield, we have representatives
16 from the Illinois Environmental Protection Agency.
17 Could you introduce yourself for the record,
18 please.

19 MS. TERRANOVA: I'm Sara Terranova, divisional
20 legal counsel.

21 MR. LeCRONE: And Darrin LeCrone, divisional
22 water pollution control permit section.

23 HEARING OFFICER JAMES: Okay. As background,
24 the Illinois Environmental Protection Agency filed

1 the rulemaking proposal with the Board on June 1st,
2 2015. The Board accepted the proposal for hearing
3 on June 4th. The first hearing was conducted on
4 August 25th, 2015, in Springfield, where the Agency
5 responded to questions from the Board and other
6 parties.

7 A hearing officer order dated June 29th
8 scheduled this hearing, which is the second in this
9 rulemaking. This order also set a deadline of
10 September 10th to pre-file testimony for this
11 hearing. The Board received no pre-filed testimony
12 for today's hearing.

13 I entered another hearing officer order on
14 September 17th, 2015, posing questions by the Board
15 and staff for IEPA's witnesses, which will be
16 discussed today.

17 I'd like to note for the record that there
18 are sheets on which anyone can indicate they'd like
19 to testify or offer comment today. Please note
20 that the testimony and comment sheets are separate.
21 We have nobody signed up on the sheets here in
22 Chicago.

23 Is there anybody signed up on the sheets
24 in Springfield?

1 MS. TERRANOVA: No.

2 HEARING OFFICER JAMES: Okay. This proceeding
3 is governed by the Board's procedural rules. All
4 information that's relevant and not repetitious or
5 privileged will be admitted into the record.
6 Please note that any questions posed today by the
7 board members or staff are intended solely to
8 assist in developing a clear and complete record
9 for the Board's decision and do not reflect any
10 prejudice or bias on the proposal.

11 We'll begin by having the Agency's witness
12 sworn in and allow him to give testimony if he
13 wishes to. After that, we will turn to questions
14 regarding the witness's testimony. Anyone may ask
15 questions of IEPA's witness and any members of the
16 public present will be given first opportunity to
17 pose questions. The Board or staff or anyone else
18 present will then ask follow-up questions, if they
19 wish to.

20 After the testimony and questions for the
21 Agency's witness, we will allow anyone else to
22 testify or comment as time allows and the Board may
23 receive public comments on the proposal. For the
24 conclusion of today's hearing, there will be an

1 opportunity for anyone to offer testimony on the
2 Board's request that the Department of Commerce and
3 Economic Opportunity, or DCEO, perform an economic
4 impact study on this proposal.

5 For the court reporter transcribing
6 today's proceeding, please speak clearly and avoid
7 speaking at the same time as another person so we
8 can help produce a clear transcript. Also, because
9 today's hearing is a videoconference, we'll just
10 ask especially that everybody speak clearly so that
11 it comes out completely, easily for everyone to
12 understand.

13 Are there any questions about the order of
14 proceeding today?

15 MS. TERRANOVA: No.

16 HEARING OFFICER JAMES: Okay. Hearing no
17 questions, we'll move ahead.

18 Does the Agency or any board member have
19 an opening statement?

20 MS. TERRANOVA: The Agency has no opening
21 statement.

22 HEARING OFFICER JAMES: Okay. Ms. Terranova,
23 please introduce yourself and -- well, I guess
24 you've already introduced yourself for the record.

1 So we can go ahead and swear in the witness and
2 begin.

3 And with that, would the court reporter
4 please swear in the witness?

5 (The witness was duly sworn.)

6 HEARING OFFICER JAMES: Okay. First, we'll
7 begin with responses to the questions that the
8 Board pre-filed on September 17th.

9 MS. TERRANOVA: How --

10 HEARING OFFICER JAMES: Sorry. Go ahead.

11 MS. TERRANOVA: How would you like
12 us to proceed? We have prepared a written
13 response. Should Darin just read them into the
14 record?

15 HEARING OFFICER JAMES: Yes. Yes. That
16 would be -- that would be easiest, I believe.
17 I can go ahead, if it makes most sense, and read
18 the questions for the record. And then --

19 MS. TERRANOVA: Sure.

20 HEARING OFFICER JAMES: -- you can respond
21 with what you have.

22 MR. LeCRONE: Okay.

23 MS. TERRANOVA: Thank you.

24 HEARING OFFICER JAMES: All right.

1 DARIN LeCRONE,

2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 EXAMINATION

5 BY HEARING OFFICER JAMES:

6 Q. So on the 17th, we filed these questions. The
7 first question we filed is numbered 17. And it says,
8 "The Agency in its August 25th, 2015, response to the
9 Board's pre-filed questions proposed a change to Section
10 309.104 (A) 1(b). The proposed language says,
11 'A permittee has submitted a timely application for a
12 new permit when the permittee submits requests for a
13 waiver in writing to the Agency and the Agency grants
14 the written waiver. Exhibit 2 at page 1.'

15 This appears to say that an application is
16 timely submitted when the Agency grants a waiver, but
17 does not actually require a complete application.
18 Should this provision require that to timely -- to
19 submit a timely application under Section
20 309.104 (A) 1(b), the applicant must submit a waiver
21 request, the Agency must grant a waiver, and the
22 applicant must submit an application within the time
23 frame listed in the waiver request?"

24 A. And our response to that is yes,

1 in order to timely submit an application under
2 Section 309.104(A)1(b), the Agency must grant a waiver
3 and the applicant must submit an application within the
4 time frame listed in the waiver request.

5 **Q. All right. We'll move on to question numbered**
6 **18 in the Board's pre-filed questions. That question**
7 **reads, "The Agency stated that unforeseeable**
8 **circumstances can cause a permittee to submit a renewal**
9 **application after the standard 180-day deadline.**
10 **Exhibit No. 2 at pages 1 and 2. Should the rule specify**
11 **that the Agency will only grant waivers in unforeseeable**
12 **circumstances?"**

13 A. The Agency's intent was to provide a process
14 by which a permittee may submit a renewal application
15 past the normal 180-day deadline if circumstances occur
16 preventing the permittee from filing the application
17 within 180 days of expiration. "Justifiable causes" may
18 have been a better description of the Agency's intent
19 than "unforeseeable circumstances."

20 **Q. All right. We'll move to question No. 19.**
21 **"The Agency stated that the rule allows waiver requests**
22 **at any time before the permit expires and that the**
23 **permittee will be notified of a waiver denial within**
24 **21 days of the waiver request. Exhibit No. 2 at page 1.**

1 How will the Agency treat a waiver request made less
2 than 21 days before the permit's expiration date?"

3 The question continues here, but does it
4 make most sense to you to respond to that question and
5 read the rest? Or should I go ahead and read the rest
6 of the question?

7 A. My response is kind of written in the entirety
8 of the question, so go ahead and read the rest of the
9 question would probably be better.

10 Q. Sure. Okay.

11 The question continues. "For example, if
12 a permittee requested a waiver on the permit's
13 expiration date and the Agency denied it, would the
14 permit then expire and not be administratively
15 continued? Would the Agency consider the facility to be
16 operating without a permit during this period after the
17 permit's expiration date, but before the Agency denies
18 the waiver request?

19 "Alternatively, is the 180 days prior to
20 expiration the key date for when a waiver request must
21 be filed with the Agency? With the possibility of
22 obtaining a waiver within the 180 days prior to permit
23 expiration, what, if any, consequences flow from the
24 180 days prior to expiration date passing without a

1 **renewal application filed? Will waiver requests filed**
2 **within the 180 days prior to permit expiration be**
3 **held to a different standard than those filed more than**
4 **180 days prior to permit expiration?"**

5 A. If the permittee requested a waiver within
6 180 days of permit expiration and the Agency denied it,
7 then the permittee would be discharging without a permit
8 after the expiration date. To obtain administrative
9 continuance the permittee must file a timely
10 application. This circumstance exists now and would not
11 change with this proposed rulemaking. All waiver
12 requests, regardless of when filed, would be required to
13 provide justifiable causes for the requested delay in
14 filing the application. The Agency does not wish to
15 encourage the late filing for renewal applications and
16 is only seeking to allow a process to address the
17 limited number of instances where a permittee had
18 justifiable causes for not meeting the otherwise
19 applicable 180-day deadline.

20 In order to address the Board's concerns
21 concerning waiver requests within 21 days of the
22 expiration date, the Agency would propose requiring that
23 a permittee file a waiver request at least 60 days prior
24 to the expiration date of the permit. This time frame

1 would allow the Agency to process such a waiver request,
2 and if denied, allow the permittee time to file an
3 appeal with the Board. It should be noted that a
4 permittee may file an application at any time regardless
5 of the status of a waiver request.

6 And in order to address the concerns
7 expressed in comments No. 17 and 19, the Agency
8 proposes some revisions to the language of
9 Section 309.104(A)1(b).

10 I don't know how the best way to read this
11 in...

12 **Q. Yes. I guess if you would just read the rule**
13 **as you suggest to revise it, that might be the most**
14 **straightforward.**

15 A. Okay. There's no revision to Part (A)1(a).
16 This is only -- the proposed revision is to (A)1(b), and
17 that would begin with "The permittee submits a request
18 for a waiver in writing to the Agency and the Agency
19 grants a written waiver request -- or written waiver to
20 submit the application less than 180 days prior to the
21 expiration date of the existing permit and the applicant
22 submits an application within the time frame listed in
23 the waiver request. Such a waiver request must include
24 the permittee's justifiable causes for not meeting the

1 180-day time frame. A waiver of the 180-day submittal
2 requirement must be filed a minimum of 60 days prior to
3 expiration of the permit and shall include the date by
4 which the permittee will submit the application."

5 Then we're also proposing a (c) and (d).
6 So (A)1(c) would be "The Agency shall not grant a waiver
7 for applications to be submitted later than the
8 expiration date of the existing permit."

9 (A)1(d) would read, "Any Agency decision
10 to deny a waiver request must be made within 21 days of
11 receipt of the waiver request." And that's it.

12 HEARING OFFICER JAMES: Okay. That takes care
13 of the Agency's responses to the Board's pre-filed
14 questions.

15 Could I also ask that you submit the
16 written responses to the Board's clerk and in COOL
17 so that can put that up in the docket?

18 MS. TERRANOVA: Yes. I'll take care of that.

19 HEARING OFFICER JAMES: Okay. Great. Then we
20 will ask if there are questions for the Agency from
21 any members of the public either in Springfield or
22 in Chicago.

23 I don't see any here in Chicago. Are
24 there any in Springfield?

1 MS. TERRANOVA: There are not.

2 HEARING OFFICER JAMES: Okay. Then if the
3 Board has any follow-up questions or new questions,
4 they can ask them now.

5 Okay. There aren't any.

6 And I guess just for the sake of
7 completeness, I'll ask again if anybody else at
8 all, Board, staff, anyone present has questions.
9 And if there aren't any additional questions, we
10 can ask if anyone wants to testify or comment.

11 I don't see anybody here in Chicago, and
12 it appears there are none in Springfield either.

13 So if no one objects, that will be the end
14 of the testimony portion for today, and we'll move
15 to closing matters.

16 The first closing matter is the economic
17 impact study. Since 1998, Section 27(B) of the
18 Environmental Protection Act has required the Board
19 to request that the department now known as the
20 Department of Commerce and Economic Opportunity
21 conduct an economic impact study of proposed rules
22 before the Board adopts them. The Board then must
23 make either the economic impact study or the
24 department's explanation for not conducting one

1 available to the public at least 20 days before a
2 public hearing.

3 In a letter dated June 30th, 2015, the
4 Board's chairman, Dr. Deanna Glosser, requested
5 that the department conduct an economic impact
6 study of this proposal. The Board did
7 specifically request a response no later than
8 August 3rd, 2015. The Board did not receive any
9 response from DCEO to this request.

10 Would anyone like to testify regarding the
11 request from the Board to DCEO?

12 Seeing nobody, we can move on after a
13 couple more quick announcements. The Board expects
14 to receive a transcript of this hearing on or
15 before October 1st. Very soon after the Board
16 receives the transcript, it will be available on
17 the Board's website at www.ipcb.state.il.us under
18 this docket number, R15-24.

19 The Board will accept post-hearing
20 comments until October 15th, two weeks after we
21 expect to post the transcript. Anyone may file
22 written public comments in this rulemaking with the
23 clerk of the Board. Comments may be filed
24 electronically through the Board's clerk office

1 online or COOL. Any questions about electronic
2 filing or COOL should be directed to the clerk's
3 office.

4 Filings with the Board, whether paper or
5 electronic, must also be served on the hearing
6 officer and those persons on the service list.
7 Before filing, please check with the Board's clerk
8 to make sure that you have the most recent version
9 of the service list.

10 If anyone has any questions about the
11 procedural aspects of this rulemaking, my contact
12 information is posted on the Board's web page.

13 Are there any other matters that need to
14 be addressed at this time?

15 MS. TERRANOVA: No.

16 HEARING OFFICER JAMES: Okay. I'd like to
17 thank everyone for participating today. And the
18 hearing is adjourned.

19 (The proceedings adjourned at 11:24 a.m.)
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<p style="text-align: center;">A</p> <p>A)1(a) 12:15 A)1(b) 12:16 A)1(c) 13:6 A)1(d) 13:9 a.m 1:17,17 16:19 above-entitled 1:13 accept 15:19 accepted 4:2 Act 14:18 additional 14:9 address 11:16,20 12:6 addressed 16:14 adjourned 16:18 16:19 Adm 1:7 3:5 administrative 11:8 administratively 10:14 admitted 5:5 adopts 14:22 aforsaid 17:7 Agency 2:6 3:16,24 4:4 6:18,20 8:8,13 8:13,16,21 9:2,7 9:11,21 10:1,13 10:15,17,21 11:6 11:14,22 12:1,7 12:18,18 13:6,9 13:20 Agency's 5:11,21 9:13,18 13:13 ahead 6:17 7:1,10 7:17 10:5,8 allow 5:12,21 11:16 12:1,2 allows 5:22 9:21 Alternatively 10:19 Amendments 1:7 3:5 Anand 2:4 3:13 announcements 15:13</p>	<p>anybody 4:23 14:7 14:11 appeal 12:3 APPEARANCES 2:1 appears 8:15 14:12 17:9 applicable 11:19 applicant 8:20,22 9:3 12:21 application 8:11,15 8:17,19,22 9:1,3,9 9:14,16 11:1,10 11:14 12:4,20,22 13:4 applications 11:15 13:7 aspects 16:11 assist 5:8 Attorney 2:9 August 4:4 8:8 15:8 available 15:1,16 avoid 6:6</p> <p style="text-align: center;">B</p> <p>background 3:23 believe 7:16 best 12:10 better 9:18 10:9 bias 5:10 board 1:1,14 2:2,3 2:3,4 3:2,6,10,13 3:14 4:1,2,5,11,14 5:7,17,22 6:18 7:8 12:3 14:3,8,18,22 14:22 15:6,8,11 15:13,15,19,23 16:4 Board's 3:9 5:3,9 6:2 8:9 9:6 11:20 13:13,16 15:4,17 15:24 16:7,12 Burke 2:3 3:11 BURLINGHAM 2:9</p>	<p style="text-align: center;">C</p> <p>c 13:5 17:3 called 8:2 care 13:12,18 Carrie 2:3 3:12 cause 1:13 9:8 causes 9:17 11:13 11:18 12:24 Certificate 2:15 17:21 Certified 17:4,20 certify 17:6 chairman 15:4 change 8:9 11:11 check 16:7 Chicago 1:15 3:9 3:10 4:22 13:22 13:23 14:11 17:13 circumstance 11:10 circumstances 9:8 9:12,15,19 clear 5:8 6:8 clearly 6:6,10 clerk 13:16 15:23 15:24 16:7 clerk's 16:2 closing 14:15,16 Code 1:7 3:6 comes 6:11 commencing 1:17 comment 4:19,20 5:22 14:10 comments 5:23 12:7 15:20,22,23 Commerce 6:2 14:20 complete 5:8 8:17 17:8 completely 6:11 completeness 14:7 concerning 11:21 concerns 11:20 12:6 conclusion 5:24 conduct 14:21 15:5</p>	<p>conducted 4:3 conducting 14:24 consequences 10:23 consider 10:15 contact 16:11 continuance 11:9 continued 10:15 continues 10:3,11 control 1:1,14 2:2 3:2,22 COOL 13:16 16:1 16:2 correct 17:8 counsel 3:20 COUNTY 17:3 couple 15:13 court 6:5 7:3 CSR 2:15 17:21</p> <p style="text-align: center;">D</p> <p>d 13:5 Darin 7:13 8:1 Darrin 2:7 3:21 date 10:2,13,17,20 10:24 11:8,22,24 12:21 13:3,8 dated 4:7 15:3 day 17:13 days 9:17,24 10:2 10:19,22,24 11:2 11:4,6,21,23 12:20 13:2,10 15:1 DCEO 6:3 15:9,11 deadline 4:9 9:9,15 11:19 Deanna 15:4 decision 5:9 13:9 delay 11:13 denial 9:23 denied 10:13 11:6 12:2 denies 10:17 deny 13:10</p>	<p>department 6:2 14:19,20 15:5 department's 14:24 description 9:18 developing 5:8 different 11:3 directed 16:2 direction 17:11 discharging 11:7 discussed 4:16 divisional 3:19,21 docket 3:6 13:17 15:18 Dr 15:4 duly 7:5 8:2</p> <p style="text-align: center;">E</p> <p>easiest 7:16 easily 6:11 economic 6:3,3 14:16,20,21,23 15:5 either 13:21 14:12 14:23 electronic 16:1,5 electronically 15:24 encourage 11:15 entered 4:13 entirety 10:7 entitled 3:4 Environmental 2:6 3:16,24 14:18 especially 6:10 everybody 6:10 EXAMINATION 8:4 examined 8:3 example 10:11 Exhibit 8:14 9:10 9:24 existing 12:21 13:8 exists 11:10 expect 15:21 expects 15:13</p>
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expiration 9:17 10:2,13,17,20,23 10:24 11:2,4,6,8 11:22,24 12:21 13:3,8 expire 10:14 expires 9:22 explanation 14:24 expressed 12:7	hand 17:12 hearing 1:12,14 2:2 3:1,2,3,8,23 4:2,3 4:7,8,11,12,13 5:2 5:24 6:9,16,16,22 7:6,10,15,20,24 8:5 13:12,19 14:2 15:2,14 16:5,16 16:18 17:7,9 held 11:3 help 6:8 hereunto 17:12 HONORABLE 1:13	K 17:3 key 10:20 kind 10:7 know 12:10 known 14:19	notes 17:10 notified 9:23 number 11:17 15:18 numbered 8:7 9:5	perform 6:3 period 10:16 permit 3:22 8:12 9:22 10:14,16,22 11:2,4,6,7,24 12:21 13:3,8 permit's 10:2,12,17 permittee 8:11,12 9:8,14,16,23 10:12 11:5,7,9,17 11:23 12:2,4,17 13:4 permittee's 12:24 person 6:7 personal 17:11 persons 16:6 please 3:18 4:19 5:6 6:6,23 7:4 16:7 pollution 1:1,6,14 2:2 3:2,5,22 portion 14:14 pose 5:17 posed 5:6 posing 4:14 possibility 10:21 post 15:21 post-hearing 15:19 posted 16:12 pre-file 4:10 pre-filed 4:11 7:8 8:9 9:6 13:13 prejudgment 5:10 prepared 7:12 present 2:8 3:12 5:16,18 14:8 preventing 9:16 prior 10:19,22,24 11:2,4,23 12:20 13:2 privileged 5:5 probably 10:9 procedural 5:3 16:11 proceed 7:12
F facility 10:15 file 11:9,23 12:2,4 15:21 filed 3:24 8:6,7 10:21 11:1,1,3,12 13:2 15:23 filing 9:16 11:14,15 16:2,7 Filings 16:4 first 4:3 5:16 7:6 8:2,7 14:16 flow 10:23 follow-up 5:18 14:3 follows 8:3 foregoing 17:7 frame 8:23 9:4 11:24 12:22 13:1	I IEPA's 4:15 5:15 Ill 1:7 3:5 Illinois 1:1,14,16 2:2,6,10 3:2,16,24 17:1,5,13 impact 6:4 14:17 14:21,23 15:5 include 12:23 13:3 indicate 4:18 information 5:4 16:12 instances 11:17 intended 5:7 intent 9:13,18 introduce 3:17 6:23 introduced 6:24	L language 8:10 12:8 late 11:15 LeCRONE 2:7 3:21,21 7:22 8:1 left 3:11 legal 3:20 letter 15:3 limited 11:17 list 16:6,9 listed 8:23 9:4 12:22	O O 17:3,3 objects 14:13 obtain 11:8 obtaining 10:22 occur 9:15 October 15:15,20 offer 4:19 6:1 office 2:9 15:24 16:3 officer 1:14 2:2 3:1 3:3,23 4:7,13 5:2 6:16,22 7:6,10,15 7:20,24 8:5 13:12 13:19 14:2 16:6 16:16 offices 3:9 Okay 3:23 5:2 6:16 6:22 7:6,22 10:10 12:15 13:12,19 14:2,5 16:16 online 16:1 open 1:12 opening 6:19,20 operating 10:16 opportunity 5:16 6:1,3 14:20 order 4:7,9,13 6:13 9:1 11:20 12:6	M Mary 2:15 17:4,19 matter 1:4 14:16 matters 14:15 16:13 McGUIRK 2:15 17:4,19 meeting 11:18 12:24 member 2:3,3,4 3:11,12 6:18 members 3:11 5:7 5:15 13:21 minimum 13:2 morning 3:1 motion 1:12 move 6:17 9:5,20 14:14 15:12 Murphy 2:15 17:4 17:19
G General 2:9 give 5:12 given 5:16 Glosser 15:4 go 7:1,10,17 10:5,8 Good 3:1 governed 5:3 grant 8:21 9:2,11 13:6 grants 8:13,16 12:19 Great 13:19 guess 6:23 12:12 14:6	J James 1:13 2:2 3:1 3:3,23 5:2 6:16,22 7:6,10,15,20,24 8:5 13:12,19 14:2 16:16 Jason 1:13 2:2 3:3 Jennifer 2:3 3:11 June 4:1,3,7 15:3 justifiable 9:17 11:13,18 12:24	M Mary 2:15 17:4,19 matter 1:4 14:16 matters 14:15 16:13 McGUIRK 2:15 17:4,19 meeting 11:18 12:24 member 2:3,3,4 3:11,12 6:18 members 3:11 5:7 5:15 13:21 minimum 13:2 morning 3:1 motion 1:12 move 6:17 9:5,20 14:14 15:12 Murphy 2:15 17:4 17:19	P page 8:14 9:24 16:12 pages 9:10 paper 16:4 Part 1:8 3:6 12:15 participating 16:17 parties 4:6 passing 10:24	K
H	K	N need 16:13 new 8:12 14:3 normal 9:15 note 4:17,19 5:6 noted 12:3		

proceeding 3:4 5:2 6:6,14	receipt 13:11	revision 12:15,16	14:12	6:1 14:14
proceedings 1:11 16:19 17:6,9	receive 5:23 15:8 15:14	revisions 12:8	SS 17:2	thank 7:23 16:17
process 9:13 11:16 12:1	received 4:11	right 3:12 7:24 9:5 9:20	staff 3:14,14 4:15 5:7,17 14:8	they'd 4:18
produce 6:8	receives 15:16	rule 9:10,21 12:12	standard 9:9 11:3	time 5:22 6:7 8:22 9:4,22 11:24 12:2 12:4,22 13:1 16:14
proposal 4:1,2 5:10 5:23 6:4 15:6	record 3:17 4:17 5:5,8 6:24 7:14,18	rulemaking 3:4,6 4:1,9 11:11 15:22 16:11	State 2:10 17:1,5	timely 8:11,16,18 8:19 9:1 11:9
propose 11:22	reflect 5:9	Rulemaking-Wa... 1:7	stated 9:7,21	today 4:16,19 5:6 6:14 14:14 16:17
proposed 1:6 3:5 8:9,10 11:11 12:16 14:21	regarding 5:14 15:10	rules 5:3 14:21	statement 6:19,21	today's 3:8 4:12 5:24 6:6,9
proposes 12:8	regardless 11:12 12:4	<hr/> S <hr/>	status 12:5	transcribed 17:10
proposing 13:5	relevant 5:4	sake 14:6	stenographic 17:10	transcribing 6:5
Protection 2:6 3:16 3:24 14:18	renewal 9:8,14 11:1,15	Sara 2:6 3:19	straightforward 12:14	transcript 6:8 15:14,16,21 17:8
provide 9:13 11:13	repetitious 5:4	says 8:7,10	Street 1:15	treat 10:1
provision 8:18	REPORT 1:11	scheduled 1:16 4:8	study 6:4 14:17,21 14:23 15:6	true 17:8
public 5:16,23 13:21 15:1,2,22	reported 2:15 17:6	second 4:8	submit 8:19,20,22 9:1,3,8,14 12:20 13:4,15	turn 5:13
put 13:17	reporter 6:5 7:3 17:5,20	section 3:22 8:9,19 9:2 12:9 14:17	submits 8:12 12:17 12:22	two 3:10 15:20
<hr/> Q <hr/>	representatives 3:15	see 13:23 14:11	submittal 13:1	<hr/> U <hr/>
question 8:7 9:5,6 9:20 10:3,4,6,8,9 10:11	request 6:2 8:21,23 9:4,24 10:1,18,20 11:23 12:1,5,17 12:19,23,23 13:10 13:11 14:19 15:7 15:9,11	Seeing 15:12	submitted 8:11,16 13:7	understand 6:12
questions 4:5,14 5:6,13,15,17,18 5:20 6:13,17 7:7 7:18 8:6,9 9:6 13:14,20 14:3,3,8 14:9 16:1,10	requested 10:12 11:5,13 15:4	sense 7:17 10:4	suggest 12:13	unforeseeable 9:7 9:11,19
quick 15:13	requests 8:12 9:21 11:1,12,21	separate 4:20	Suite 1:15	<hr/> V <hr/>
<hr/> R <hr/>	require 8:17,18	September 1:16 4:10,14 7:8 17:13	sure 7:19 10:10 16:8	version 16:8
R15-24 1:6 3:7 15:18	required 11:12 14:18	served 16:5	swear 7:1,4	videoconference 2:6,7 3:8 6:9
Randolph 1:15	requirement 13:2	service 16:6,9	sworn 5:12 7:5 8:3	<hr/> W <hr/>
Rao 2:4 3:13	requiring 11:22	session 1:12	<hr/> T <hr/>	waiver 8:13,14,16 8:20,21,23 9:2,4 9:21,23,24 10:1 10:12,18,20,22 11:1,5,11,21,23 12:1,5,18,19,19 12:23,23 13:1,6 13:10,11
read 7:13,17 10:5,5 10:8 12:10,12 13:9	respond 7:20 10:4	set 4:9 17:12	T 2:15 17:4,19	wants 14:10
reads 9:7	responded 4:5	sheets 4:18,20,21 4:23	take 13:18	water 1:6 3:4,22
REBECCA 2:9	response 7:13 8:8 8:24 10:7 15:7,9	shorthand 17:5,6 17:20	taken 17:10	way 12:10
	responses 7:7 13:13 13:16	signed 4:21,23	takes 13:12	we'll 5:11 6:9,17
	rest 10:5,5,8	solely 5:7	technical 3:13	
	revise 12:13	soon 15:15	Terranova 2:6 3:19 3:19 5:1 6:15,20 6:22 7:9,11,19,23 13:18 14:1 16:15	
		Sorry 7:10	testified 8:3	
		speak 6:6,10	testify 4:19 5:22 14:10 15:10	
		speaking 6:7	testimony 4:10,11 4:20 5:12,14,20	
		specifically 15:7		
		specify 9:10		
		Springfield 3:10,15 4:4,24 13:21,24		

7:6 9:5,20 14:14	180-day 9:9,15		
we're 13:5	11:19 13:1,1		
web 16:12	19 9:20 12:7		
website 15:17	1998 14:17		
weeks 15:20	1st 4:1 15:15		
Welcome 3:1			
West 1:15	<u>2</u>		
WHEREOF 17:12	2 8:14 9:10,10,24		
wish 5:19 11:14	20 15:1		
wishes 5:13	2015 1:16 4:2,4,14		
witness 5:11,15,21	8:8 15:3,8 17:13		
7:1,4,5 8:2 17:12	21 9:24 10:2 11:21		
witness's 5:14	13:10		
witnesses 4:15	24 1:16		
writing 8:13 12:18	25th 4:4 8:8		
written 7:12 8:14	27(B) 14:17		
10:7 12:19,19	28th 17:13		
13:16 15:22	29th 4:7		
www.ipcb.state.il...			
15:17	<u>3</u>		
<u>X</u>	309 1:8 3:6		
<u>Y</u>	309.104(A)1(b)		
<u>Z</u>	8:10,20 9:2 12:9		
Zalewski 2:3 3:12	30th 15:3		
<u>0</u>	35 1:7 3:5		
<u>1</u>	3rd 15:8		
1 9:10,24	<u>4</u>		
1.' 8:14	4th 4:3		
100 1:15	<u>5</u>		
10th 4:10	<u>6</u>		
11-500 1:15	60 11:23 13:2		
11:00 1:17	<u>7</u>		
11:06 1:17	<u>8</u>		
11:24 16:19	84-4160 2:15 17:21		
15th 15:20			
17 8:7 12:7			
17th 4:14 7:8 8:6			
18 9:6			
180 9:17 10:19,22			
10:24 11:2,4,6			
12:20			