**Section 106.1160 Burden of Proof**

a) The burden of proof is on the petitioner.

b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge, together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.

1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:

A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or

B) That despite the occurrence of such previous harm, the desired alternative thermal effluent limitation (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

2) In determining whether prior appreciable harm has occurred, the Board will consider the length of time during which the petitioner has been discharging and the nature of the discharge.

(Source: Amended at 41 Ill. Reg. 10104, effective July 5, 2017)