

ILLINOIS POLLUTION CONTROL BOARD
March 20, 1980

IN THE MATTER OF:)
AMENDMENTS TO THE) R80-2
PROCEDURAL RULES)

PROPOSED OPINION OF THE BOARD (by Mr. Dumelle):

This proceeding was initiated on January 30, 1980 when the Board received a letter from the Chairman of the Environmental Law Committee of the Chicago Bar Association asking that Procedural Rule 311 (Continuances) be amended. On February 21, 1980 the Board adopted a Proposed Order on its own motion. The Proposed Order was published in Environmental Register 212 dated March 3, 1980. This Proposed Opinion supports the Board's Proposed Order.

RULE 311

This rule was first adopted by the Board on October 8, 1970 (In the Matter of: Procedural Rules, R70-4, 1 PCB 43-51). At that time continuances were granted by the Hearing Officers upon a showing of necessity and were not limited in their duration. Rule 311 was amended by the Board on February 14, 1974 to provide that continuances in excess of 45 days would require Board action (see In Matter of: Adoption of Revised Procedural Rules of the Pollution Control Board, R73-14, 14 PCB 155-158, October 10, 1974). Rule 311 was amended to its present form on December 16, 1976 (In the Matter of: Procedural Rules Revisions, R75-1, 24 PCB 481-489). At that time the Board limited the Hearing Officers' authority to 45 days per continuance and a total of 90 days. Continuances in variances and permit appeals were prohibited unless the statutory deadline for Board action was extended by the petitioner. (see In the Matter of: Procedural Rule Revisions, R75-1, May 12, 1977, 25 PCB 529, 533).

NEED FOR THIS RULEMAKING

In a fact sheet attached to the January 30, 1980 Chicago Bar Association letter, the 45 and 90 day limitations in Rules 311(a) and (b) were considered unrealistic. The Board agrees that it is practically impossible to proceed to a hearing in an enforcement case, even with a settlement, within 90 days of the date a complaint is filed. The Board has recognized this difficulty by granting almost every motion for a continuance which has been filed in enforcement cases.

EFFECT OF THIS RULEMAKING

Granting additional authority to the Hearing Officers will place the responsibility to conduct an orderly proceeding where it belongs. The Hearing Officers already have the authority to rule on motions to amend complaints. It follows that they should be able to rule on continuances to avoid undue surprise and coordinate discovery.

Proposed Rule 311(b) concerns those permit appeals and variances in which hearings are scheduled. With the exception of NPDES permit appeals, to which the 90 day statutory decision period does not apply, no continuances are to be granted until a written waiver extending the decision date has been filed with the Clerk of the Board.

From time to time the Board has issued orders which have directed parties to proceed to a hearing or face dismissal. These orders are usually in cases which have no recorded activity for several months. Proposed Rule 311(c) will simply codify this existing Board practice.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Proposed Opinion was adopted on the 20th day of March, 1980 by a vote of 4-0.



Christian L. Moffett, Clerk
Illinois Pollution Control Board