

ILLINOIS POLLUTION CONTROL BOARD  
November 16, 2023

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE	)	R23-18(A)
201, 202, AND 212	)	(Rulemaking - Air)

ORDER OF THE BOARD (by M. Gibson)

On October 26, 2023, the Illinois Attorney General's Office (AG, AG's Office, or the People) filed a motion requesting a third hearing in this sub-docket. On October 27, 2023, the Sierra Club filed a response supporting the AG's motion. On November 9, 2023, the Illinois Environmental Regulatory Group (IERG) and American Petroleum Institute (API) filed responses objecting to the AG's motion. For the reasons stated below, the Board grants the AG's motion for a third hearing.

On October 26, 2023, the AG's Office filed a motion requesting an additional hearing (Mot.). The AG filed this motion in response to the October 23, 2023 Illinois Environmental Protection Agency (IEPA) comment requesting more information from each of the participants that filed proposals in this sub-docket. Mot. at 1. IEPA requested "significant additional data" that it needs to evaluate the environmental impacts of the proposals and to submit a State Implementation Plan (SIP) that the United States Environmental Protection Agency may approve. *Id.* at 2. The AG's Office agrees that this information is necessary to "understand the proposals' air quality impacts and to develop a full record on which each of the five proposals can be sufficiently evaluated. *Id.* Additionally, the AG's Office notes that several proposals would affect environmental justice areas and "a complete record is necessary to ensure that the Proponents' proposals do not further burden these areas with disproportionate environmental harms." *Id.*

The AG's Office brings its request for a third hearing under Section 102.412(b) of the Board's regulations, which states:

- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments under Section 102.208, is necessary. 35 Ill. Adm. Code 102.412(b).

The AG's Office also states that "the Board or the hearing officer will schedule an additional hearing or hearings if it finds that additional hearing will aid the Board on its decision on the

proposal.” Mot. at 3, *citing* Procedural Rules Revisions, 35 Ill. Adm. Code 101, 102, 106 (Subparts D, E, and F), R88-5(B), slip op. at 6 (May 10, 1990).

The AG’s Office claims that it will suffer material prejudice without a third hearing. Mot. at 3. The AG argues that it needs to be able to evaluate the requested information, specifically whether it sufficiently outlines the proposals’ environmental impact, and that it needs the opportunity to ask questions about the information to the proposals’ proponents. *Id.* The AG contends that it has “exercised due diligence in this rulemaking, attending every hearing in both this rulemaking and the underlying R23-18 rulemaking. The People have also filed several comments and posed many questions at previous hearings.” *Id.* at 4. The AG also alleges that it needs a third hearing to ask questions about the information that IEPA has requested and that “[o]nly oral questioning can allow the People and other participants to inquire about gaps or inconsistencies that may be present in the additional information.” *Id.* at 4-5. Lastly, the AG argues that prior Board decisions support its request for a third hearing. *Id.* at 5, *citing* Revisions to Radium Water Quality Standards: Proposed New 35 Ill. Adm. Code 302.307 and Amendments to 35 Ill. Adm. Code 302.207 and 302.525, R04-21, Hearing Officer Order (Jul. 14, 2004).

On October 27, 2023, Sierra Club filed a response supporting the AG’s request for a third hearing (Sierra Resp.). Sierra Club supports the AG’s request because interested parties have not had the opportunity to review or ask questions about the information that IEPA requested. Sierra Resp. at 2.

On November 9, 2023, IERG and API filed responses objecting to the AG’s request (IERG Resp.) (API Resp.). API alleges that IEPA had “ample time to make an initial assessment of the information included in the proposals and convey its position as to what information is needed. Illinois EPA had the opportunity to question proponents’ witnesses at the First Hearing about the alleged deficiencies and chose not to.” API Resp. at 2. IERG’s response echoes API’s response and alleges that, if IEPA had engaged in sufficient stakeholder outreach before filing its proposal in the main docket, the requests in IEPA’s comment could have been raised and addressed much earlier. IERG Resp. at 2.

While IEPA did not participate in the first hearing for this sub-docket and requested information after the conclusion of the first hearing, the AG’s Office is the participant requesting the third hearing and it has consistently participated in the sub-docket. The Board agrees that the AG’s Office will suffer material prejudice without a third hearing and it needs a third hearing to ask follow-up questions about the information that IEPA requested. Therefore, the Board grants the AG Office’s motion requesting a third hearing and directs the hearing officer to expeditiously schedule a third hearing in this sub-docket after the proponents have submitted the information requested by IEPA.


## **ORDER**

1. The Board grants the AG’s Office’s motion requesting a third hearing in this sub-docket.

2. The Board directs the hearing officer to expeditiously schedule a third hearing after the proponents' submission of the information requested by IEPA in accordance with the rulemaking provisions of the Environmental Protection Act and the Board's procedural rules (415 ILCS 5/27, 28 (2022); 35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 16, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk  
Illinois Pollution Control Board