

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 23-18(A)
AMENDMENTS TO 35 ILL. ADM. CODE)	(Rulemaking – Air)
PARTS 201, 202, AND 212)	

NOTICE OF FILING

TO: Mr. Don A. Brown, Clerk of the Board Illinois Pollution Control Board 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601	Timothy Fox Chloe Salk Hearing Officers Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605
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(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **AMERICAN PETROLEUM INSTITUTE'S RESPONSE TO MOTION FOR ADDITIONAL HEARING**, copies of which, are hereby served upon you.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE,

By: /s/ Alec Messina
One of its Attorneys

Dated: November 9, 2023

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following: That I have served the attached **RESPONSE TO MOTION FOR ADDITIONAL HEARING**, via electronic mail upon:

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That my email address is Alec.Messina@heplerbroom.com

That the number of pages in the email transmission is 6.

That the email transmission took place before 5:00 p.m. on November 9, 2023.

Date: November 9, 2023

/s/ Alec Messina
Alec Messina

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IN THE MATTER OF:)	
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AMENDMENTS TO 35 ILL. ADM. CODE)	R 23-18(A)
PARTS 201, 202, AND 212)	(Rulemaking – Air)

API’S RESPONSE TO MOTION FOR ADDITIONAL HEARING

NOW COMES Petitioner, the AMERICAN PETROLEUM INSTITUTE (“API”), by and through its undersigned attorney, pursuant to 35 Ill. Adm. Code 101.500, hereby submits to the Illinois Pollution Control Board (“Board”) its Response to Motion for Additional Hearing. In support of this filing, API states as follows:

1. Two hearings were held in the main rulemaking, PCB R 23-18.
2. In the Second Hearing in PCB R 23-18, participants the Illinois Environmental Regulatory Group (“IERG”), API, and Dynegy/Midwest Generation provided testimony in support of their proposed alternative emission limitations (“AEL”). Second Hearing Transcript, PCB R 23-18 (Feb. 16, 2023).
3. The Illinois Environmental Protection Agency (“Illinois EPA”) did not pre-file any questions or ask any questions of the witnesses at the Second Hearing in PCB R 23-18. *Id.*
4. The First Hearing in this sub-docket was held on September 27, 2023.
5. At the First Hearing, each of the rulemaking proponents produced witnesses, which were questioned by the Board and the Attorney General’s Office (“AGO”).
6. Illinois EPA did not pre-file any questions or ask any questions of the witnesses at the First Hearing in this sub-docket.
7. On October 23, 2023, Illinois EPA filed a comment in this sub-docket.

8. In its filing, Illinois EPA included numerous comments as to each of the five regulatory proposals and requested that the Board solicit additional information from each of the rulemaking proponents.

9. On October 26, 2023, the AGO filed a Motion for Additional Hearing, requesting that a third hearing be scheduled in this matter allowing participants the opportunity to question the rulemaking proponents about any responses and/or additional information proponents may file in response to Illinois EPA's comment.

10. In response to the AGO's Motion, API objects to the request to schedule an additional hearing in this rulemaking.

11. As explained in its October 26, 2023 filing, the AGO's request for an additional hearing is predicated on Illinois EPA's October 23, 2023 comment. Illinois EPA's October 23, 2023 comment is the Illinois EPA's first participation in this sub-docket. Rulemaking proponents filed their rulemaking proposals in this sub-docket on August 7, 2023. Illinois EPA has had ample time to make an initial assessment of the information included in the proposals and convey its position as to what additional information is needed. Illinois EPA had the opportunity to question proponents' witnesses at the First Hearing about the alleged deficiencies and chose not to do so.

12. Additionally, Illinois EPA offers its positions in a written comment, instead of testifying and questioning witnesses at hearing, taking away the opportunity for the rulemaking proponents, the Board, and other participants to question Illinois EPA at hearing on its positions.

13. Therefore, API objects to and opposes the October 26, 2023 Motion for an Additional Hearing.

14. In the event that the Board grants the request for an additional hearing, API requests that the hearing be scheduled as expeditiously as possible, consistent with the Board's initial

decision to expedite the rulemaking. Opinion and Order of the Board, PCB R 23-18(A), at 4 (July 6, 2023). API also urges the Board to request that Illinois EPA produce a witness or witnesses at such hearing in order to provide participants the opportunity to question Illinois EPA on its positions provided in its comment.

WHEREFORE, for the above and foregoing reasons, the American Petroleum Institute hereby respectfully submits its Response to Motion for Additional Hearing, requesting that the Board enter an Order denying the Motion for an Additional Hearing. In the alternative, if the Board grants the request for an additional hearing, API requests that the hearing be scheduled as quickly as possible and urges the Board to request that Illinois EPA produce a witness or witnesses at such hearing.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE,

Dated: November 9, 2023

By: /s/ Alec Messina
One of Its Attorneys

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