**Section 104.216 Agency Investigation and Recommendation**

a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance.* [415 ILCS 5/37(a)]

b) *The Agency shall make a recommendation to the Board as to the disposition of the petition.* [415 ILCS 5/37(a)] Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code 101.304(c), on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:

1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;

2) The location of the nearest air monitoring station maintained by the Agency where applicable;

3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;

4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;

5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;

6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;

7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with those federal laws and regulations;

8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;

9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond under Section 104.246;

10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;

11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and

12) An affidavit verifying any facts outside the record referenced in the recommendation.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)