

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R22-17
PART 203: MAJOR STATIONARY SOURCES) (Rulemaking – Air)
CONSTRUCTION AND MODIFICATION,)
35 ILL. ADM. CODE PART 204: PREVENTION)
OF SIGNIFICANT DETERIORATION, AND)
PART 232: TOXIC AIR CONTAMINANTS)

NOTICE OF FILING

TO: Don A. Brown Mr. Daniel Pauley
Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street 100 W. Randolph Street
Suite 11-500 Suite 11-500
Chicago, Illinois 60601 Chicago, Illinois 60601
Don.Brown@illinois.gov Daniel.Pauley@illinois.gov

(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, **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE ATTORNEY GENERAL OFFICE'S MOTION TO STAY**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: May 20, 2022

By: /s/ Melissa S. Brown
One of Its Attorneys

N. LaDonna Driver
Melissa S. Brown
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
LaDonna.Driver@heplerbroom.com
Melissa.Brown@heplerbroom.com
(217) 528-3674

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
AMENDMENTS TO 35 ILL. ADM. CODE)	R22-17
PART 203: MAJOR STATIONARY SOURCES)	(Rulemaking – Air)
CONSTRUCTION AND MODIFICATION,)	
35 ILL. ADM. CODE PART 204: PREVENTION)	
OF SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP’S RESPONSE TO THE ATTORNEY GENERAL OFFICE’S MOTION TO STAY

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, pursuant to 35 Ill. Adm. Code 101.500(d), hereby submits its Response to the Attorney General Office’s Motion to Stay. In support of its Response, IERG states as follows:

On May 6, 2022, the Illinois Attorney General’s Office (“AGO”) filed a Motion to Stay. *See* Motion to Stay, PCB R 22-17 (Ill.Pol.Control.Bd. May 6, 2022) (hereinafter “Motion”). In its Motion, the AGO requests that the Illinois Pollution Control Board (“Board”) stay the rulemaking in this matter until February 28, 2023. Motion at 1-2, 10. The basis for the AGO’s request is the United States Environmental Protection Agency’s (“USEPA”) plan to initiate a rulemaking to consider revisions to the Project Emissions Accounting Rule (hereinafter “PEA Rule”). *See, generally* Motion. However, for the reasons stated herein and in prior filings in this matter, the Board should adopt IERG’s Proposal, including the proposed amendments that relate to the PEA Rule.

I. The Board Should Deny the AGO’s Motion to Stay and Move to First Notice with IERG’s Proposal

IERG submitted its Proposal to amend the Board’s Nonattainment New Source Review (“NA NSR”) regulations to be up-to-date and consistent with the Clean Air Act and

implementing federal regulations. The Board's NA NSR regulations, located at 35 Ill. Adm. Code Part 203, were last amended in 1998. There have been several updates to the federal regulations that have not been incorporated into Part 203. Revising Part 203 to be consistent with the language in the federal NA NSR regulations is beneficial to the Illinois Environmental Protection Agency ("Illinois EPA"), the Board, regulated industries, and third parties. Also, because Illinois EPA and sources often rely upon USEPA guidance when interpreting and implementing federally derived programs, updating Part 203 will bolster consistency in the application of USEPA's guidance documents. In addition to mirroring the federal language, IERG's proposed revisions to Part 203 also track, when possible, the language and regulatory structure in the Board's recently adopted Prevention of Significant Deterioration ("PSD") regulations at 35 Ill. Adm. Code Part 204. Consistency in the language and regulatory scheme between the Board's NA NSR regulations and PSD regulations is valuable especially because regulated entities in nonattainment areas will likely be required to go through both a PSD analysis and NA NSR analysis when proposing a project that would trigger NSR review.

Given the numerous benefits of updating the Board's NA NSR regulations, this rulemaking should not be stayed as requested by the AGO. Amendments to Illinois' NA NSR regulations are long overdue and would be beneficial to all parties involved. The AGO's Motion to Stay should be denied and the Board should move to First Notice with IERG's Proposal.

A. Illinois' Air Pollution Regulations Must be as Stringent as Federal Regulations

IERG agrees that Illinois' NA NSR regulations must be as stringent as the federal NA NSR regulations currently in effect. The AGO argues that, if the Board adopts IERG's Proposal and USEPA ultimately revises the federal rules, and in particular the PEA Rule, to be more stringent, then the Illinois regulations would be less stringent than the corresponding federal

regulations. Motion at 5-6. As explained throughout this proceeding, it is IERG's intent that its proposal bring the NA NSR regulations up-to-date with the federal regulations. IERG does not anticipate that there would be a time when the Board could adopt revisions to the NA NSR regulations that are consistent with then-current federal requirements without adopting rule provisions that are subject to a legal challenge or when USEPA is considering adopting amendments to the federal NSR rules, as the NSR regulations are frequently updated and subject to litigation. However, after the Proposal is adopted, it should be relatively straightforward to keep both the NA NSR regulations and PSD regulations up-to-date with the federal regulations. As related to the PEA Rule, even if USEPA ultimately adopts amendments, there are only four provisions in IERG's Proposal that would potentially be affected by such amendments:

Section 203.1410 Applicability

* * *

c) The requirements of this Part will be applied in accordance with subsections (c)(1) through (c)(6).

* * *

5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the **difference for all** emissions units, using the method specified in subsections (c)(3) and (c)(4) as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 203.1370).

6) **The "sum of the difference" as used in subsections (c)(3) through (c)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.**

Section 204.800 Applicability

* * *

- d) The requirements of the program will be applied in accordance with the principles set out in this subsection (d).

* * *

- 5) Hybrid Test for Projects That Involve Multiple Types of Emissions Unit or Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the ~~emissions increases for each~~ difference for all emissions units, using the method specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).
- 6) The “sum of the difference” as used in subsections (d)(3) through (d)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

Proposed 35 Ill. Adm. Code 203.1410(c)(5)-(6) (language related to PEA Rule shown in bold); proposed 35 Ill. Adm. Code 204.800(d)(5)-(6) (language related to PEA Rule shown in strike-through and underline); *see also* “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting,” 85 Fed. Reg. 74890 (Nov. 24, 2020).

Keeping the Board’s NSR rules up-to-date is consistent with Illinois EPA’s position in the PSD rulemaking. *See* Illinois EPA’s Post-Hearing Comments, PCB R 19-1, at 23 (Apr. 4, 2019) (“ . . . it is only appropriate for the Illinois EPA to state that it will propose any changes to Part 204 that are necessary for the State of Illinois to maintain its USEPA-approved state PSD program.”). Therefore, the Board should deny the AGO’s Motion and move forward to First Notice with IERG’s Proposal.

B. Board Precedent Adopting Stay in PCB R 14-10 is Not Analogous to the Circumstances Here

The AGO argues that the Board has previously granted a stay in a rulemaking proceeding in light of federal litigation involving related rules and pending legislative proposals. Motion at 6. The rulemaking that the AGO uses as an example is the prior coal combustion residuals (“CCR”) rulemaking at PCB R 14-10. *Id.* In PCB R 14-10, Illinois EPA initially moved for a 90-day stay of the rulemaking proceeding in January 2015 because USEPA had finalized a set of comprehensive CCR regulations in December 2014. Illinois EPA Motion for 90-Day Stay, PCB R 14-10, 1-2 (Ill.Pol.Control.Bd. Jan. 20, 2015). Illinois EPA noted that the federal regulations were similar but not identical to Illinois EPA’s CCR proposal, and thus Illinois EPA needed to evaluate whether any changes to Illinois EPA’s proposal was necessary. *Id.* at 2; Board Order, PCB R 14-10, at 1-2 (Ill.Pol.Control.Bd. May 7, 2015) (granting 90-day stay). Illinois EPA then requested to extend the stay indefinitely due to legal challenges of the adopted federal CCR rules, noting that “[t]he scope of these legal challenges is presently unclear, but could *significantly impact the extent* to which the Illinois EPA’s proposed rules should be revised in order to be consistent, or avoid conflicting, with applicable federal law.” Motion to Extend Stay, PCB R 14-10, at 2-3 (Ill.Pol.Control.Bd. Aug. 5, 2015) (emphasis added). Illinois EPA also referenced pending federal proposed legislation as a reason for extending the stay. *Id.* at 3-4. In particular, two federal bills had been proposed and the scope and content of the bills were similar to, but not identical, to USEPA’s CCR rules and Illinois EPA’s proposed rules. *Id.* The Board granted a 120-day stay of the rulemaking proceeding, which was extended several times. Board Order, PCB R 14-10 (Ill.Pol.Control.Bd. Nov. 5, 2015); Board Order, PCB R 14-10 (Ill.Pol.Control.Bd. Mar. 17, 2016); Board Order, PCB R 14-10 (Ill.Pol.Control.Bd. May 19, 2016). On September 19, 2019, the Board dismissed the rulemaking proceeding in PCB R 14-10

because the Illinois General Assembly adopted legislation governing coal combustion waste in Illinois, which directed the Board to adopt rules pursuant to the new statutory authority. Board Order, PCB R 14-10, at 1-2 (Ill.Pol.Control.Bd. Sept. 19, 2019).

In PCB R 14-10, the federal rulemaking, federal litigation, and federal legislative proposals that were the bases for the stays had a very broad potential effect on Illinois EPA's CCR proposal. The federal rules and pending litigation and legislative proposals did not relate to a few discrete provisions of Illinois EPA's proposal. Here, however, the pending federal litigation and potential rulemaking, if ultimately resulting in changes to the PEA Rule, would only potentially affect four distinct provisions in IERG's Proposal, as discussed in more detail below. Therefore, the scope of the potential changes, if changes are ultimately adopted on the federal level, are small and targeted and should not be the reason to stay IERG's Proposal in its entirety. Moreover, in PCB R 14-10, the stays were requested by Illinois EPA, the proponent of the rulemaking proposal. In PCB R 14-10, the proponent was asking for time to evaluate potential impacts on its own proposal. Here, IERG, as the proponent, has already evaluated any potential concerns regarding the pending litigation and planned rulemaking and has determined that they should not be a cause for delay in moving forward with IERG's Proposal. The stays granted in PCB R 14-10 should not be used as precedent to grant a stay in this proceeding.

Furthermore, as previously discussed in IERG's responses to the Board's initial pre-filed questions, there is also a history of Illinois EPA proposing, and the Board adopting, regulatory provisions that were based on federal rules being challenged or being reconsidered by USEPA at the time of adoption. IERG's Pre-Filed Answers to Board's Pre-Filed Questions, PCB R 22-17 at 6 (Ill.Pol.Control.Bd. Feb. 15, 2022). For example, in the PSD Rulemaking at R 19-1, Illinois EPA proposed and the Board adopted provisions relating to enforceability of the actual-to-

projected-actual emissions increase test at 35 Ill. Adm. Code 204.1400. The corresponding provisions of the federal blueprint rule at 40 CFR § 51.166(r)(6) were at that time subject to a challenge being held in abeyance. *New Jersey v. EPA*, 989 F.3d 1038 (D.C. Cir. 2021).

Ultimately, the Court ruled that the petitioner failed to show that USEPA's action was arbitrary or capricious, and denied the petition challenging the provisions at issue. *See id.*

Additionally, when the prior CCR rulemaking at PCB R 14-10 was dismissed by the Board, it was replaced with a new CCR rulemaking proceeding at PCB R 20-19. *See In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, PCB R 20-19 (Ill.Pol.Control.Bd. Mar. 30, 2020). The Board adopted the new CCR rules at 35 Ill. Adm. Code Part 845 on April 15, 2021. Board Order, PCB R 20-19 (Ill.Pol.Control.Bd. Apr. 15, 2021). In PCB R 20-19, the Board adopted CCR regulations that were based on federal CCR rules being challenged at the time of adoption. Throughout the rulemaking in PCB R 20-19, Illinois EPA maintained that the proposed rules were based upon or consistent with the federal CCR rules at 40 CFR Part 257. *See, e.g.*, Statement of Reasons, PCB R 20-19 at 10 (Ill.Pol.Control.Bd. Mar. 30, 2020) (“The third purpose and effect of this proposed rule is to adopt the federal CCR rules in Illinois and obtain federal approval of Illinois’ CCR surface impoundment program.”). However, 40 CFR Part 257 was subject to several pending revisions during the Board rulemaking. *See id.* at 8-9 (“USEPA has three pending regulatory proposals to amend the federal CCR rule that have not yet been finalized.”); *see* 85 Fed. Reg. 53516 (Aug. 28, 2020); *see also* 85 Fed. Reg. 72506 (Nov. 12, 2020). 40 CFR Part 257 was also subject to one appeal during the Board rulemaking. *See Labadie Environmental Organization v. EPA*, Case No. 20-1467 (D.C. Cir. Filed Nov. 24, 2020).

Moreover, in the Board rulemaking adopting the 2015 ozone National Ambient Air Quality Standards (“NAAQS”), PCB R 16-2, the 2015 ozone NAAQS was the subject of numerous federal appeals. *See National Ambient Air Quality Standards, USEPA Amendments (January 1, 2015 through June 30, 2015)*, PCB R 16-2 (Ill.Pol.Control.Bd. Mar. 3, 2016); *see Murray Energy Corp. v. EPA, et al.*, 936 F.3d 597 (D.C. Cir. 2019). Case No. 15-1385 (Aug. 23, 2019) (consolidated cases). Ultimately, the petitions to challenge the standard were granted in part, vacated in part, and remanded. *See id.* Therefore, there are at least several instances where the Board has adopted rules that were based on federal rules being challenged at the time of adoption. As discussed above, the federal NSR rules are often subject to reconsideration and/or legal challenges. This should not prevent the Board from moving forward with IERG’s Proposal for a comprehensive update to the Board’s NA NSR rules that is beneficial for all parties involved.

C. The Board Should Immediately Move Forward with IERG’s Proposal

USEPA has indicated that it “plans to initiate. . . a rulemaking process to *consider* revisions to the EPA’s New Source Review regulations” that would address the issues raised in the challenge to the PEA Rule. USEPA Response to Mot. For Reconsideration, Docket No. EPA-HQ-OAR-2018-0048 (Oct. 12, 2021) (emphasis added). The AGO argues that IERG’s emphasis on the fact that USEPA plans to only *consider* revisions is unconvincing. Motion at 7. However, in support of its argument, the AGO provides:

USEPA has detailed its reasons for opening a new rulemaking. Showing that USEPA recognizes serious flaws in the Project Emissions Accounting Rule, the agency stated that:

The EPA agrees, however, that the [environmental advocates’] petition for reconsideration identifies potential concerns that warrant future consideration by the EPA. Therefore, the agency plans to initiate, at its own discretion, a rulemaking process to consider revisions to the EPA’s New Source Review

regulations that would address the issues raised in the submitted petition and comments on the Project Emissions Accounting Rule.

Motion at 7 (citing USEPA Response to Mot. For Reconsideration, Docket No. EPA-HQ-OAR-2018-0048, (Oct. 12, 2021)).

The above quoted language does not offer any support for the AGO's assumption that USEPA will indeed promulgate revisions to the Project Emissions Accounting Rule. On the contrary, the above quoted language makes clear that the planned rulemaking is "to *consider*" revisions to address the issues in the petitions, which USEPA also characterizes as "*potential concerns*." *See id.* This language does not provide any further insight as to what USEPA will ultimately decide to do, or not do, with the PEA Rule. And, it is unclear when USEPA will ultimately make its decision, as the rulemaking could be a long process. In USEPA's Unopposed Motion to Govern, it requested the case be held in abeyance until February 28, 2023, but also noted that "EPA anticipates that it will request extending the abeyance at that point so that it can complete the rulemaking process." Motion, Exhibit C, EPA's Unopposed Motion to Govern, *New Jersey, et al. v. USEPA, et al.*, No. 21-1033 (Feb. 10, 2022). Amendments to Illinois' NA NSR regulations are long overdue and would be beneficial to all parties involved. The Board should deny the AGO's Motion and move to First Notice.

Furthermore, it is important to note that the AGO exaggerates USEPA's concerns regarding the PEA Rule. In its Motion, the AGO quoted to the above excerpt in support of its statement that "USEPA recognizes *serious flaws* in the Project Emissions Accounting Rule." Motion at 7 (emphasis added). However, the above quoted language does not use strong language as "serious flaws" or anything similar; instead, USEPA merely states that the petition has identified "potential concerns." USEPA Response to Mot. For Reconsideration, Docket No. EPA-HQ-OAR-2018-0048, (Oct. 12, 2021).

Additionally, the AGO is incorrect in its position that IERG's entire Proposal should be stayed because there is "disagreement as to how extensively the Project Emissions Accounting Rule informs the specific provisions in IERG's proposal." Motion at 8. The proposed amendments to Part 203 and Part 204 based on the PEA Rule are targeted amendments that can be easily identified. The proposed amendments based on the PEA Rule are as follows:

Section 203.1410 Applicability

* * *

c) The requirements of this Part will be applied in accordance with subsections (c)(1) through (c)(6).

* * *

5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the **difference for all** emissions units, using the method specified in subsections (c)(3) and (c)(4) as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 203.1370).

6) The "sum of the difference" as used in subsections (c)(3) through (c)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

Section 204.800 Applicability

* * *

d) The requirements of the program will be applied in accordance with the principles set out in this subsection (d).

* * *

5) Hybrid Test for Projects That Involve Multiple Types of Emissions Unit or Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the ~~emissions increases for each~~ difference for all

emissions units, using the method specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

- 6) The “sum of the difference” as used in subsections (d)(3) through (d)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

As for Section 204.800(d), the proposed amendments shown in strike through and underline indicate the proposed changes based on the PEA Rule. However, as to the proposed amendments to Part 203, the entirety of Section 203.1410 is proposed new language and thus shown in underline in IERG’s Proposal. Therefore, the portions of proposed Section 203.1410(c) that are based on the PEA Rule are also bolded for purposes of this Motion (and mirror the underlined proposed amendments to Section 204.800(d)).

The AGO is also incorrect in its assertion that Illinois EPA disagrees with IERG on which proposed amendments in IERG’s Proposal are related to the PEA Rule. *See* Motion at 8. In support of this assertion, the AGO cites to Pages 42-44 of Illinois EPA’s March 21, 2022 Comment and page 25 of IERG’s Second Post-Hearing Comment. However, neither of the cited filings indicate any disagreement between Illinois EPA and IERG about which proposed amendments are based on the PEA Rule.

On pages 42-44 of Illinois EPA’s March 21, 2022 Comment, Illinois EPA only offers explanation as to the practical impact of how the proposed revisions to Part 204 based on the PEA Rule will work. Illinois EPA March 21, 2022 Comment at 42-44. Illinois EPA does not assert any disagreement about what proposed amendments are related to the PEA Rule. On the contrary, Illinois EPA quotes the exact proposed amendments to Part 204 that IERG is pointing to in this Response. Additionally, while not referenced in the AGO’s Motion, pages 26-27 of

Illinois EPA's March 21, 2022 Comment discusses the proposed amendments to Part 203 that are related to the PEA Rule. Illinois EPA March 21, 2022 Comment at 26-27. Again, Illinois EPA asserts no disagreement about what proposed amendments are related to the PEA Rule, instead quoting the exact proposed amendments to Part 203 that IERG is pointing to in this Response. *See id.*

Lastly, on page 25 of IERG's Second Post-Hearing Comment, IERG does not assert any disagreement with Illinois EPA as to which proposed amendments are based on the PEA Rule.

IERG's discussion on the PEA Rule on page 25 is as follows:

In its Comment, Illinois EPA offers additional explanation as to the effect of the proposed revisions to Part 204 to include Project Emissions Accounting. Illinois EPA's Comment at 42-44. Notably, Illinois EPA does not offer a recommendation as to these proposed revisions. *See id.* Also notably, Illinois EPA states that "IERG's proposed revisions to Part 204 would likely be acceptable as a revisions [sic] to Illinois' SIP. . . ." Illinois EPA's Comment at 44. Therefore, the proposed revisions to Part 204 should remain.

IERG's Second Post-Hearing Comment at 25. As seen from the above, IERG does not assert any disagreement with Illinois EPA. Although not referenced in the AGO's Motion, IERG also does not disagree with Illinois EPA in the discussion of the PEA Rule as it relates to the proposed amendments to Part 203 on pages 15-16 of IERG's Second Post-Hearing Comment. *See IERG's Second Post-Hearing Comment at 15-16.*

Therefore, the AGO is incorrect in its assertion that IERG and Illinois EPA are in disagreement as to how extensively the PEA Rule informs the specific provisions in IERG's proposal. The proposed amendments to Part 203 and Part 204 based on the PEA Rule are targeted amendments that can be easily identified. As such, this should not be a reason to stay IERG's Proposal and the AGO's Motion should be denied.

D. State Resources Should be Expended to Update the NA NSR Rules with Amendments Beneficial to All Affected Entities

The AGO states that, if the rulemaking proceeds, valuable State resources will be diverted when the “likely event” of USEPA revising the PEA Rule occurs. Motion at 9. As explained above, there is no support for the AGO’s statement that USEPA promulgating revisions to the PEA Rule is a “likely event.” Furthermore, this argument does not support a stay of the entirety of IERG’s Proposal. Part 203 has not been updated since 1998. Numerous amendments to the federal rules have been promulgated that have not been incorporated into Part 203, including, for example, requirements for PM_{2.5} nonattainment areas and provisions governing Plantwide Applicability Limits (“PALs”). Adopting a comprehensive update to the Board’s NA NSR rules now would add provisions, such as PALs, as well as consistency in language and organization, that are beneficial to all parties. Additionally, updating Part 203 to include provisions regarding PM_{2.5} nonattainment areas now provides much needed insight and certainty so that regulated entities, for future planning purposes, and the State are aware of the requirements that will be expected when an area or areas are designated nonattainment for PM_{2.5} in the future. The State has avoided expending resources each time the federal NA NSR rules were amended and Part 203 was not updated. And, the State is currently saving significant resources because IERG drafted the Proposal here and is the Proponent of this rulemaking.

Adopting a comprehensive update to the Board’s NA NSR rules now is an efficient use of the State’s resources and should not be delayed due to the potential for revisions to a few targeted provisions. Updating Part 203 so affected entities need only look at one place to determine NA NSR applicability and obligations is long overdue and will benefit Illinois EPA, the Board, regulated entities, and interested third parties. The AGO’s Motion should be denied and the Board should move forward to First Notice with IERG’s Proposal.

II. In the Alternative, if the Board is Inclined to Grant the AGO's Motion to Stay, the Stay Should be Limited to the Proposed Amendments Based on the PEA Rule

As explained above, USEPA's planned rulemaking to consider revisions to the PEA Rule should not inhibit the Board moving forward with adopting IERG's Proposal. However, in the event that the Board is inclined to grant the AGO's Motion, the stay should be limited to only those proposed amendments that are based on the PEA Rule. The AGO notes this alternative approach in Footnote 4 of its Motion. Motion at 8, Fn. 4.

The proposed amendments based on the PEA Rule are as follows (bolded in Section 203.1410 and underlined in Section 204.800):

Section 203.1410 Applicability

* * *

c) The requirements of this Part will be applied in accordance with subsections (c)(1) through (c)(6).

* * *

5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the **difference for all emissions units, using the method specified in subsections (c)(3) and (c)(4) as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 203.1370).**

6) The "sum of the difference" as used in subsections (c)(3) through (c)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

Section 204.800 Applicability

* * *

d) The requirements of the program will be applied in accordance with the principles set out in this subsection (d).

* * *

- 5) Hybrid Test for Projects That Involve Multiple Types of Emissions Unit or Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the ~~emissions increases for each~~ difference for all emissions units, using the method specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).
- 6) The “sum of the difference” as used in subsections (d)(3) through (d)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

As discussed above, the AGO is incorrect in its position that there is “disagreement as to how extensively the Project Emissions Accounting Rule informs the specific provisions in IERG’s proposal.” Motion at 8. The proposed amendments to Part 203 and Part 204 based on the PEA Rule are targeted amendments that can be easily identified, as seen above. Therefore, if the Board is inclined to grant the AGO’s Motion, the stay should be limited to the specific proposed amendments based on the PEA Rule.

If the above targeted proposed amendments are stayed, IERG proposes to replace the proposed amendments in Section 203.1410(c)(5) with the following alternative language:

Hybrid Test for Projects That Involve Multiple Types of Emissions Unit or Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each ~~difference for all~~ emissions units, using the method specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

The above language is consistent with the federal NA NSR language in 40 CFR 51.165(a)(2)(ii)(F) prior to the adoption of the PEA Rule. If a stay of the proposed amendments at issue is granted, IERG believes the above alternative language should be adopted as to Section

203.1410(c)(5). The proposed alternative language is consistent with the prior federal language. Additionally, it would also be consistent with IERG's approach to make the language consistent with the PSD rules in Part 204 currently in effect. *See* 35 Ill. Adm. Code 204.800(d)(5).

As previously explained, there are numerous benefits of updating the Board's NA NSR regulations to be consistent and up-to-date with the federal NA NSR regulations and Part 204. Given these benefits, this rulemaking should not be stayed and the AGO's Motion should be denied. However, if the Board is inclined to grant a stay, the stay should be limited to the targeted proposed amendments based on the PEA Rule so that affected entities can still reap the benefits of a comprehensive update to the Board's NA NSR rules.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully requests the Illinois Pollution Control Board enter an Order denying the Attorney General Office's Motion to Stay, or in the alternative, enter an Order granting a targeted stay of the proposed amendments identified in this Response, and granting any further relief the Board deems just and proper.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: May 20, 2022

By: /s/ Melissa S. Brown
 One of Its Attorneys

N. LaDonna Driver
Melissa S. Brown
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
LaDonna.Driver@heplerbroom.com
Melissa.Brown@heplerbroom.com
(217) 528-3674

CERTIFICATE OF SERVICE

I, Melissa S. Brown, the undersigned, hereby certify that I have served the attached **THE ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE ATTORNEY GENERAL OFFICE'S MOTION TO STAY** on May 20, 2022, to the following:

Don A. Brown
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Mr. Daniel Pauley
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601
Daniel.Pauley@illinois.gov

Sally Carter
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
Sally.Carter@illinois.gov

Renee Snow
General Counsel
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, Illinois 62702-1271
renee.snow@illinois.gov

Kathryn A. Parmenter
Assistant Attorney General
Jason James
Assistant Attorney General
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
Kathryn.Pamenter@ilag.gov
Jason.James@ilag.gov

Deborah Williams
Regulatory Affairs Director
City of Springfield
800 East Monroe
Office of Public Utilities
Springfield, IL 62757
deborah.williams@cwlp.com

Daryl Grable
Greater Chicago Legal Clinic, Inc
211 West Wacker Drive, Suite 750
Chicago, IL 60606
dgrable@clclaw.org

That my email address is: Melissa.Brown@heplerbroom.com.

That the number of pages in the email transmission is 19 total pages.

That the email transmissions, depositing said documents in the United States Mail, and depositing said documents in a UPS drop box, as noted above, took place before 5:00 p.m. on the date of May 20, 2022.

/s/ Melissa S. Brown

Date: May 20, 2022