

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: Mr. Don A. Brown, Clerk of the Board Illinois Pollution Control Board 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 (VIA ELECTRONIC MAIL)	Mr. Daniel Pauley Hearing Officer Illinois Pollution Control Board 100 West Randolph Road, Suite 11-500 Chicago, Illinois 60601 (VIA ELECTRONIC MAIL)
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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, **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S MOTION FOR LEAVE TO FILE, INSTANTER, ITS RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENATIONS AND ILLINOIS EPA'S SUPPLEMENT** copies of which are hereby served upon you.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: October 31, 2022

By: /s/ Melissa S. Brown

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**IERG’S MOTION FOR LEAVE TO FILE, INSTANTER, ITS RESPONSE TO ILLINOIS
EPA’S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS AND
ILLINOIS EPA’S SUPPLEMENT**

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, hereby requests leave to file a response to the Illinois Environmental Protection Agency’s (“Illinois EPA”) Second Set of Answers, Comments, and Recommendations for Additional Revisions and Illinois EPA’s Supplement to its Second Set of Answers, Comments, and Recommendations for Additional Revisions. In support of its Motion for Leave, IERG states as follows:

1. On August 11, 2022, the Illinois Pollution Control Board (“Board”) entered an Order encouraging IERG, Illinois EPA, the Attorney General’s Office, and others to provide comments on the inclusion of provisions based on the Project Emissions Accounting Rule in IERG’s Proposal. Order, PCB R 22-17 (Aug. 11, 2022). In the Order, the Board also set the final pre-First Notice comment deadline as September 12, 2022. *Id.*

2. On September 12, 2022, IERG, the Illinois Attorney General’s Office, and Illinois EPA filed comments in this proceeding. Particularly, Illinois EPA filed its Second Set of Answers, Comments and Recommendations for Additional Revisions.

3. On October 20, 2022, Illinois EPA filed a Motion for Leave to File Illinois EPA's Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions, which attached its Supplement ("Supplement").

4. Illinois EPA's September 12 filing included both comments and recommendations as to IERG's Proposal, as well as responses to Board questions asked at the second hearing in this matter on April 7, 2022. Illinois EPA's Supplement included additional comments and discussion on the proposed transition provisions in IERG's Proposal.

5. IERG requests leave of the Board to file a response to Illinois EPA's Second Set of Answers, Comments, and Recommendations and Illinois EPA's Supplement. IERG's response is attached hereto as Exhibit 1. The opportunity for IERG to provide a response to Illinois EPA's arguments will help clarify the outstanding issues in this matter. Additionally, Illinois EPA's filings include at least one new argument that IERG has not yet had the chance to respond to.

6. IERG respectfully submits that the filing of the attached response will not prejudice any participant in this rulemaking and is not filed for the purposes of undue delay.

WHEREFORE, for the above and foregoing reasons, IERG hereby respectfully requests that the Board grant IERG's Motion for Leave to File, Instantly, Its Response to Illinois EPA's Second Set of Answers, Comments, and Recommendations and Supplement, and accept the attached Response as filed on this date.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: October 31, 2022

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

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EXHIBIT 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENTS TO 35 ILL. ADM. CODE)	R22-17
PART 203: MAJOR STATIONARY SOURCES)	(Rulemaking – Air)
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PART 232: TOXIC AIR CONTAMINANTS)	

IERG’S RESPONSE TO ILLINOIS EPA’S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, hereby submits its Response to the Illinois Environmental Protection Agency’s (“Illinois EPA”) Second Set of Answers, Comments, and Recommendations for Additional Revisions and Illinois EPA’s Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions.

I. Introduction

On August 11, 2022, the Illinois Pollution Control Board (“Board”) entered an Order encouraging IERG, Illinois EPA, the Attorney General’s Office, and others to provide comments on the inclusion of provisions based on the Project Emissions Accounting Rule in IERG’s Proposal. Order, PCB R 23-17 (Aug. 11, 2022). On September 12, 2022, IERG, the Illinois Attorney General’s Office, and Illinois EPA filed comments in this proceeding. Particularly, Illinois EPA filed its Second Set of Answers, Comments and Recommendations for Additional Revisions (hereinafter “Illinois EPA’s Filing”). On October 20, 2022, Illinois EPA filed a Motion for Leave to File Illinois EPA’s Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions, which attached its Supplement (“Supplement”).

IERG is hereby providing its response to several of the issues addressed in Illinois EPA's Filing and Supplement.

II. Illinois EPA's Response to Board Questions

In Illinois EPA's Filing, Illinois EPA provided responses to several outstanding questions posed by the Board on April 4, 2022 for the April 7, 2022 hearing in this matter. First, several of the issues addressed in the Board's April 4, 2022 questions are addressed in detail in IERG's Second Post-Hearing Comment filed on April 4, 2022. For example, as to Board Question Nos. 1 and 2, IERG addresses the treatment of permits historically issued by Illinois EPA under existing Part 203 on pages 6-7 in its Second Post-Hearing Comment. As to Board Question No. 3 concerning the proposed definition of "net emissions increase," IERG addressed and conveyed its agreement with Illinois EPA's proposed revision to add a reference to 40 CFR 52.21. IERG's Second Post-Hearing Comment, PCB R 22-17 at 13-14. IERG requests that the Board take into consideration IERG's position on these issues as addressed in its Second Post-Hearing Comment.

Lastly, as to the remaining outstanding Board questions addressed by Illinois EPA in its Filing, Illinois EPA conveyed that no rule language changes are necessary, that its explanations were offered for clarification, and in certain instances requested that Illinois EPA's interpretations of these issues be memorialized in the Board's Opinion and Order. *See* Illinois EPA's Filing at 5-6 (responding to Board Question Nos. 3-1, 4, 5, and 6). IERG urges the Board to also take into consideration IERG's position on these issues, especially in those instances where IERG disagrees with Illinois EPA's clarifying explanations, as discussed in IERG's Second Post-Hearing Comment.

III. Illinois EPA's Comment in Response to the Board's August 11, 2022 Order

In Illinois EPA's Filing, Illinois EPA conveyed its position as to the inclusion of the Project Emissions Accounting Rule language, as directed by the Board in its August 11, 2022 Order. In sum, Illinois EPA stated that, because the Project Emissions Accounting language proposed by IERG is consistent with the federal blueprint language, it would be appropriate to include the Project Emissions Accounting language in revised Part 203. Illinois EPA's Filing at 6. Illinois EPA also offered explanation as to why the Project Emissions Accounting language should be included in Part 204 if it is ultimately included in revised Part 203. Illinois EPA's Filing at 8-10. IERG agrees with Illinois EPA's discussion and urges the Board to move forward with IERG's Proposal, which includes adding Project Emissions Accounting language into Parts 203 and 204.

IV. Illinois EPA's Responses to IERG's Second Post-Hearing Comment

A. Regulated NSR Pollutant

Section 203.1340 of IERG's Proposal provides the definition of "Regulated NSR Pollutant." *See* Proposed 35 Ill. Adm. Code 203.1340. Section 203.1340(c)(3) explains when volatile organic material ("VOM") and ammonia become precursors to PM_{2.5} in any PM_{2.5} nonattainment area. *See id.* Specifically, proposed Section 203.1340(c)(3) provides:

Section 203.1340 Regulated NSR Pollutant

"Regulated NSR pollutant" means the following:

- c) Any pollutant that is identified under this Section as a constituent or precursor of a general pollutant listed under subsection (a) or (b), provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for purposes of NSR are the following:

- 3) Except as provided in subsection (c)(3)(A), VOM and ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area beginning 24 months after the date of designation of the area as nonattainment for PM_{2.5}.
 - A) If the following conditions relating to a demonstration of insignificant contribution for a particular precursor in a particular PM_{2.5} nonattainment area are met, the precursor or precursors addressed by the NA NSR precursor demonstration (VOM, ammonia, or both) shall not be regulated as a precursor to PM_{2.5} in such area: The Agency submits a SIP for USEPA review which contains the state's preconstruction review provisions for PM_{2.5} consistent with 40 CFR 51.165 and a complete NA NSR precursor demonstration consistent with 40 CFR 51.1006(a)(3); and such SIP is determined to be complete by the USEPA or deemed to be complete by operation of law in accordance with subsection 110(k)(1)(B) of the CAA (42 USC 7410) by the date 24 months after the date of designations.
 - B) If the USEPA subsequently disapproves the state's preconstruction review provisions for PM_{2.5} and the NA NSR precursor demonstration, the precursor or precursors addressed by the NA NSR precursor demonstration shall be regulated as a precursor to PM_{2.5} in such area as of the date 24 months from the date of designation, or the effective date of the disapproval, whichever date is later.

Illinois EPA conveyed that it does not oppose a provision addressing VOM and ammonia as precursors to PM_{2.5} in a PM_{2.5} nonattainment area, stating that the language must be included in revised Part 203 because it is an element of the blueprint rule. Illinois EPA's Filing at 12-13. However, Illinois EPA opposed the language in proposed Section 203.1340(c)(3) that provides a transition provision for VOM and ammonia as PM_{2.5} precursors. IERG continues to disagree with Illinois EPA on this issue. The language proposed by IERG in Section 203.1340(c)(3)(A)-(B) provides regulated entities and other affected entities a roadmap as to how VOM and ammonia will be handled as precursors for PM_{2.5} if an area is designated nonattainment for

PM_{2.5}. The language proposed by IERG is based on the requirements and language in Appendix S. 40 CFR 51 Appendix S, par. II.A.31.ii.b.4. The Appendix S language differs from the language in the blueprint rule, which simply states that VOM and ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area. 40 CFR 51.165(a)(1)(xxxvii)(C)(2) (“Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area.”).

Illinois EPA argues that, because the Appendix S transition provisions are not included in the blueprint rule, such language should not be included in the amendments to Part 203 adopted by the Board. Illinois EPA’s Filing at 13-14. Illinois EPA instead proposes to insert language similar to the language in the blueprint rule, which states that VOM and ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area. *Id.* Illinois EPA contends that the transition provisions in Appendix S are not appropriate in state NA NSR rules and would not be approved by USEPA as a revision to Illinois’ State Implementation Plan (“SIP”). *Id.*

IERG acknowledges that proposed Section 203.1340(c)(3) would not be approvable as a SIP revision at this time, as explained further below and in the TSD, which is why IERG proposed Section 203.100(b) in the Effective Dates section. *See* proposed 35 Ill. Adm. Code 203.100(b) (“The effective date of Subpart I of this Part is not dependent on approval of Section 203.1340(c)(3) by USEPA as a revision to the Illinois SIP.”). Contrary to what Illinois EPA supposes on pages 13 and 14 of its Filing, the proposed transition provisions in Section 203.1340(c)(3) would not affect approvability of the remainder of IERG’s Proposal as revisions to Illinois SIP. This is because the proposed transition provisions are taken from Appendix S, which would apply pursuant to 40 CFR 52.24(k), and SIP approval of those provisions is understood to occur in a later process, as discussed below.

Illinois does not currently have any areas designated as nonattainment for PM_{2.5}. The proposed transition provisions will provide for an orderly transition period for regulation of VOM and ammonia as precursors in a particular PM_{2.5} nonattainment area following its redesignation, via the Appendix S process. Specifically, per the federal rules, for the first 24 months following an area's redesignation to nonattainment for PM_{2.5}, VOM and ammonia are not regulated as PM_{2.5} precursors. If Illinois EPA submits to USEPA, within 24 months following redesignation, a complete demonstration of insignificant contribution for a particular precursor (or precursors), that precursor will continue to not be regulated as a PM_{2.5} precursor until and unless USEPA disapproves the submittal. If Illinois EPA does not submit a complete demonstration of insignificant contribution within 24 months following redesignation, then the affected precursor will be regulated as a PM_{2.5} precursor on such date. The procedure described in the preceding three sentences is precisely the same under the status quo (if no revisions are made to the current part 203) and under IERG's Proposal.

The federal rule approach allows time for Illinois EPA to evaluate whether a demonstration of insignificant contribution is advisable under a particular nonattainment designation, and prepare and submit such a demonstration if Illinois EPA chooses to do so. As explained in the TSD at pages 9-11, IERG envisions that the proposed provisions for the precursor transition period would be included as part of the Part D SIP submittal that is due no later than 18 months after the effective date of the nonattainment designation for the area. This is the point in time at which the proposed precursor transition period provisions would be considered as a SIP revision. As explained by USEPA:

While the final rule contains no general grandfathering provision, this final rule does provide a phase-in process for states relying on Appendix S for purposes of issuing NNSR permits for PM_{2.5}. Appendix S will require the immediate regulation of SO₂ and NO_x as PM_{2.5} precursors, the regulation of VOC and

ammonia as PM_{2.5} precursors will only be required under certain conditions and on a delayed timetable. *See* Appendix S, revised section II.A.31.(ii)(b)(2)–(5). The precursor provisions in Appendix S should alleviate some of the commenter’s concerns that the regulation of additional precursors will be required immediately upon the effective date of this final rule. Instead, the phase-in schedule for the regulation of VOC and ammonia will permit states the opportunity allowed by CAA section 189(e) to demonstrate that a particular precursor need not be subjected to control in a particular nonattainment area. Accordingly under the interim NNSR requirements in Appendix S, a state will not be required to begin immediate regulation of precursors for which sources will likely be exempted from the regulations upon review of a state’s NNSR SIP submission. 81 FR 58010 at 58122 (Aug. 24, 2016).

On pages 16 and 17 of its Filing, Illinois EPA appears to question whether it would have sufficient time to evaluate, prepare and submit a demonstration of insignificant contribution 24 months following a nonattainment designation¹. This consideration may be appropriate if and when a redesignation to nonattainment happens, but the totality of those future circumstances cannot be known at this time. That is the benefit of the Appendix S precursor demonstration process which would be preserved under IERG’s proposed transition provisions – Illinois EPA is given an opportunity to evaluate the relevant data at the time and make a decision on whether a demonstration of insignificant contribution is appropriate. As noted above, under IERG’s proposed transition provisions, consistent with Appendix S, if Illinois EPA elects not to submit precursor demonstrations, VOM and ammonia would become regulated PM_{2.5} precursors in a

¹ IERG recognizes the resource limitations facing Illinois EPA and shares its concerns regarding whether it is reasonable to expect that, should USEPA redesignate an area in Illinois to nonattainment with respect to PM_{2.5}, the agency will be able to develop all of the appropriate technical analyses and proposed rule revisions along the aggressive timelines established in the federal rules. This concern is a significant factor underlying the rationale for IERG’s proposed approach. Under this approach, Illinois EPA’s failure to develop and submit a precursor demonstration would have no effect on the status quo: VOM and ammonia would become regulated PM_{2.5} precursors beginning 24 months after redesignation. Each of the two available alternatives is less advantageous. If the term “regulated NSR pollutant” is defined in Part 203 to include VOM and ammonia as PM_{2.5} precursors, and Illinois EPA timely submits a precursor demonstration but fails to undertake rulemaking to reflect this demonstration, VOM and ammonia would be treated as PM_{2.5} precursors notwithstanding the absence of any technical basis for this treatment. Or, if Part 203 is silent regarding whether and when VOM and ammonia will become regulated as PM_{2.5} precursors, then the transition provisions under Appendix S will govern this transition, but the regulated community will not be able to discern this fact from reviewing Part 203.

particular PM_{2.5} nonattainment area on the date 24 months after its redesignation; no further action is required by Illinois EPA or USEPA.

The concerns expressed by Illinois EPA on page 15 of its comment appear to reflect a misunderstanding on the part of the Illinois EPA regarding both the applicable provisions of Appendix S and the transition provisions proposed by IERG. First, in footnote 14, Illinois EPA states as follows:

The situation for VOM and ammonia would be different if Appendix S simply provided that these pollutants would be regulated as precursors to PM_{2.5} beginning 24 months after the designation of an area as nonattainment for PM_{2.5} unless certain submittals were made before the end of the 24-month period, with the further proviso that the 24-month period would be extended until USEPA took final action on any such submittals.

However, the situation would not be different; this is precisely what Appendix S provides.

Second, Illinois EPA states as follows:

Appendix S does not require that these actions, i.e., the timely submittal to USEPA of a state's NA NSR program for the area and an appropriately completed NA NSR precursor demonstration, occur. IERG erroneously assumes that these actions would occur within 24 months, until these actions would actually occur, stationary sources in the area cannot be assured that those actions will occur. As such, until the specified actions actually occur, stationary sources in the area cannot be assured that those actions will occur.

To the contrary, IERG has assumed nothing. IERG's Proposal includes contingent provisions substantially identical to those set forth in Appendix S: Beginning on the date 24 months following redesignation, VOM and ammonia become regulated as precursors if the state has not made timely submittals, and they do not become regulated if the state has made timely submittals. It is true that, under the federal rules that would apply under the status quo and under IERG's Proposal, at least for projects planned near the end of the 24-month transition period, owners and operators cannot be assured whether VOM and ammonia will be regulated as precursors at the time of permit issuance. However, the minor cost of this uncertainty is greatly

outweighed by the cost of having to provide offsets for increased emissions of VOM and ammonia because these pollutants are unnecessarily regulated as precursors following a nonattainment designation, as would occur under Illinois EPA's proposed language. Further, if Section 203.1340(c)(3) does not set forth the transition provisions from Appendix S, sources may not be aware of the timing aspects regarding regulation of VOM and ammonia as PM_{2.5} precursors. This could lead to confusion and improper use of resources for regulated entities and Illinois EPA. Including the transition provisions from Appendix S promotes clarity on applicable regulatory provisions.

IERG maintains its disagreement with Illinois EPA on this issue and urges the Board to keep the language proposed by IERG in Section 203.1340(c)(3) provided above. However, if the Board decides to not adopt Section 203.1340(c)(3) as proposed by IERG, IERG in the alternative proposes that the Board omit Section 203.1340(c)(3) in its entirety and insert the following Board Note under proposed Section 203.1340(c), addressing the potential for, and timing of, VOM and ammonia as PM_{2.5} precursors in PM_{2.5} nonattainment areas:

BOARD NOTE: VOM and ammonia may be regulated as precursors to PM_{2.5} in PM_{2.5} nonattainment areas. The timing of VOM and ammonia as precursors to PM_{2.5} in a PM_{2.5} nonattainment area is contained in the Emission Offset Interpretative Ruling at 40 CFR 51 Appendix S, par. II.A.31.ii.b.4.

The Board has used the option of inserting a Board Note in prior rulemakings to offer additional clarity to the rules being proposed.² A Board Note would offer the needed clarity for sources looking to determine the timing of when VOM and ammonia may become PM_{2.5} precursors.

Additionally, IERG does not believe that either of its proposals – either including proposed Section 203.1340(c)(3) or removing Section 203.1340(c)(3) and inserting a Board Note – would cause approvability issues as suggested by Illinois EPA. As discussed previously, the

² See, e.g., Board Note to 35 Ill. Adm. Code 201.146(hhh)(5).

approvability of proposed Section 203.1340(c)(3) is addressed through the transition provisions in proposed Section 203.100. IERG does not intend for proposed Section 203.1340(c)(3) to be submitted for approval as part of Illinois' SIP until a Part D SIP submittal that is due no later than 18 months after the effective date of the nonattainment designation for the area. Therefore, there would be nothing for USEPA to disapprove concerning this issue at this time. Similarly, there would be nothing for USEPA to disapprove as to IERG's alternative proposal of removing proposed Section 203.1340(c)(3) and inserting a Board Note. The Board Note would address the potential for VOM and ammonia to be PM_{2.5} precursors and direct the reader to Appendix S.

B. PM_{2.5} Interprecursor Trading

Illinois EPA continues to contend that proposed Section 203.1810(h), concerning interprecursor trading ("IPT") of emissions offsets for PM_{2.5}, should be removed in its entirety. Illinois EPA's Filing at 19-22. Illinois EPA argues that the D.C. Circuit's holding in *Sierra Club, et al. v. Environmental Protection Agency*, 985 F.3 1055 (D.C. Cir. 2021) suggests that the court would not find authority for IPT for PM_{2.5}. Illinois EPA Filing at 20-21. IERG addressed this argument at length in its Second Post-Hearing Comment and will therefore not repeat its argument in full. However, IERG would like to emphasize that, as acknowledged by Illinois EPA, the D.C. Circuit's opinion and holding did not address PM_{2.5} IPT, but instead was limited to IPT for ozone. *See* Illinois EPA's Filing at 21. Because the D.C. Circuit did not rule on, or even address PM_{2.5} IPT in its opinion, the authority for PM_{2.5} IPT remains in the blueprint rule.

Additionally, there is a key distinction between the statutory provisions for ozone and PM_{2.5} offsets. The ozone provisions of the CAA that are the focus of the D.C. Circuit's opinion specifically list VOC and specifically address offsetting the VOC amount where VOC is the primary precursor at issue. *See Sierra Club, et al. v. Environmental Protection Agency, et al.*,

985 F. 3d 1055, 1059 (D.C. Cir. 2021) (“Subpart 2 extends the permit requirements to ozone and its precursors . . . As for VOC offsets, Subpart 2 provides that ‘[f]or purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least various default ratios, depending on the level of nonattainment.”). That is not the case for the offset provision applicable to PM_{2.5}, which is the general offset provision in Subpart 1 of the CAA, because a more specific offset provision does not exist for PM_{2.5}. The applicable PM_{2.5} offset provision does not specifically address PM_{2.5} and offsetting the PM_{2.5} amount where direct PM_{2.5} is the primary pollutant at issue like the CAA ozone offset provision does. Therefore, because the ozone offset provision that is the focus of the D.C. Circuit’s opinion significantly differs from the PM_{2.5} offset provision, the D.C. Circuit’s finding as to the ozone provision should not be applied to PM_{2.5} offset issues as suggested by Illinois EPA.

C. Clean Air Act Language in Plantwide Applicability Limits Provisions

In Illinois EPA’s Filing, Illinois EPA continues to recommend revising the language of proposed Sections 203.2280, 203.2290, and 203.2330 to more closely align with the blueprint rule language. Illinois EPA’s Filing at 23-24. Specifically, Illinois EPA’s recommendation concerns IERG omitting the following phrase in the blueprint rule as it relates to the applicable significant level: “or in the CAA, whichever is lower.” As explained in IERG’s Second Post-Hearing Comment, IERG omitted this phrase from the proposed provisions because there are no significant levels in the Clean Air Act. Illinois EPA now raises the argument, for the first time, that if the Clean Air Act is revised to establish significant levels in the future, the language in revised Part 203 could result in Part 203 being less stringent than the blueprint rule. *Id.* at 23. While IERG believes the likelihood of Congress revising the Clean Air Act to include significant

levels is unlikely, IERG no longer opposes the inclusion of subject language in Sections 203.2280, 203.2290, and 203.2330. However, IERG urges the Board to include the following Board Note under these provisions clarifying that, at the time of adoption of the amendments to these sections, there are no significant levels provided for in the Clean Air Act:

BOARD NOTE: At the time the Board adopted the amendments to this provision, the Clean Air Act did not provide significant levels.

Including a Board Note under these provisions would eliminate the confusion an affected source would have in reading these provisions.

V. Illinois EPA's Supplement

In its Supplement, Illinois EPA offers additional comments and discussions on the proposed transition provisions contained in proposed Section 203.100. Specifically, Illinois EPA proposes to revise proposed Section 203.100 to provide that, on the effective date that new Part 203 (Subparts I-R) is approved as part of Illinois' SIP, the permitting and operation of projects that began construction or may begin construction before that date shall continue to be in accordance with old Part 203 (Subparts A-H). Illinois EPA offers a new rationale for its proposed approach to the transition provisions. Illinois EPA explains that its proposed transition language would allow for the following scenario:

Authority would only exist to issue permits pursuant to revised Part 203 once USEPA approves revised Part 203. When a permit is issued pursuant to existing Part 203, the project, if constructed, would be required to comply with the requirements of the permit even if revised Part 203 was SIP-approved in the interval before construction began. If a source were to decide during this period that it did not want to proceed under a permit issued pursuant to existing Part 203, the source could reapply for a new permit under new Part 203, but only if construction had not commenced pursuant to the previously issued Part 203 permit.

Illinois EPA's Supplement at 4. IERG agrees that the transition provisions should allow for such a scenario. IERG therefore proposes to revise Section 203.100, as originally

proposed by IERG and as modified by IERG in its Second Post-Hearing Comment, as follows:

Section 203.100 Effective Dates

- a) Except as provided in subsection (b) below, Subparts I through R of this Part do not apply until the effective date of approval of all of those Subparts by the United States Environmental Protection Agency (USEPA) as a revision to the Illinois State Implementation Plan.
- b) The effective date of Subpart I of this Part is not dependent on approval of Section 203.1340(c)(3) by USEPA as a revision to the Illinois SIP.
- c) On the effective date of approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan, Subparts A through H of this Part will ~~sunset~~ no longer apply except as follows:
 - 1) ~~Projects permitted under construction permits issued under Subparts A through H of this Part before the date of USEPA's approval of Subparts I through R of this Part as part of Illinois' SIP, shall continue to be subject to Subparts A through H of this Part. On the effective date of the approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan, the permitting of Projects on which actual construction began before this date shall continue to be in accordance with Subparts A through H of this Part.~~
 - 2) Projects on which actual construction began before the effective date of USEPA's approval of Subparts I through R of this Part as part of Illinois' State Implementation Plan, which Projects failed to properly obtain a permit under Subparts A through H of this Part, shall be permitted in accordance with Subparts A through H of this Part.
- d) The permitting of Projects on which actual construction begins after the effective date of the approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan shall be in accordance with Subparts I through R of this Part.

Proposed Sections 203.100(a) and (b) remain the same as originally proposed by IERG. Illinois EPA continues to argue that subsection (b), and the reference to subsection (b) within subsection (a), should be removed based on Illinois EPA's proposed revisions to Section

203.1340(c)(3). However, as explained in detail above, IERG maintains its disagreement with Illinois EPA on proposed Section 203.1340(c)(3). Therefore, IERG urges the Board to adopt Sections 203.100(a) and (b) as originally proposed by IERG.

The first sentence in Section 203.100(c) remains the same as proposed by IERG in its Second Post-Hearing Comment, except that IERG revises the language “will sunset” at the end of the sentence. IERG acknowledges Illinois EPA’s concern explained in its Supplement about “sunsetting” Subparts A – H. Therefore, IERG proposes to modify that sentence to remove the “sunset” language and instead state that Subparts A – H will no longer apply after the effective date of SIP approval of Subparts I – R, except in a select few scenarios.

The first scenario is addressed in proposed Section 203.100(c)(1). The permitting of Projects that were properly permitted under existing Part 203 and on which actual construction began prior to the approval of Subparts I – R as part of Illinois’s SIP, will continue to be subject to existing Part 203 (Subparts A – H) even after Subparts I – R are approved as part of the Illinois SIP. The language in Section 203.100(c)(1) is Illinois EPA’s proposed language, except as follows: (i) IERG removed “and operation” because Projects do not “operate,” instead the equipment that is constructed or modified during a Project operates. Additionally, operation of Projects is covered under Subpart F. (ii) IERG revised “Projects that began construction” to “Projects on which actual construction began” to be more consistent with the defined phrase “begin actual construction.” (iii) IERG removed “full” from in front of “approval” consistent with IERG’s position as to Section 203.1430(c)(3) as explained above. (iv) IERG also removed the clause “or may begin construction” from Illinois EPA’s proposed language. IERG is unsure of what situation Illinois EPA is attempting to address by including this clause. IERG is concerned that this clause may create confusion and proposes to remove it.

The second scenario is addressed in proposed Section 203.100(c)(2). This is new language proposed by IERG, though it is styled similarly to Illinois EPA's language (with IERG's proposed edits) in proposed Section 203.100(c)(1). The provision is intended to address Illinois EPA's concern regarding sources who, prior to the approval of Subparts I – R as part of Illinois' SIP, failed to obtain the required permit under existing Part 203. If a Project was required to obtain a construction permit under existing Part 203, but failed to do so, that Project should be permitted pursuant to Subparts A – H even after Subparts I – R are approved as part of Illinois' SIP.

Lastly, IERG proposes to add a new subsection (d) in order to explicitly address when new Part 203 (Subparts I – R) will apply. The permitting of Projects on which actual construction begins after the effective date of approval of Subparts I - R as part of Illinois' SIP shall be in accordance with Subparts I - R. In addition to adding clarity as to when Subparts I – R apply, this provision addresses IERG's intent that any future Project will utilize Subparts I - R even when the new Project involves equipment that was the subject of a historical NA NSR applicability determination.

VI. Illinois EPA's Redline

Illinois EPA attached to its Filing redline versions of proposed rule language for Parts 203 and 204, updated with Illinois EPA's recommendation revisions. While IERG agrees with the majority of the revisions, there are several as to which IERG maintains its disagreement with Illinois EPA. For ease of the Board's consideration in moving to First Notice, IERG commits to providing its own redline versions of the Parts at issue within 14 days of this filing.

VII. Conclusion

Given the numerous benefits of updating the Board's NA NSR regulations, the Board should move to First Notice with IERG's Proposal. IERG asks that the Board move forward with the proposed rules, so that the Board, the Illinois EPA, the regulated community and other parties may have a current, cohesive set of requirements in Part 203.

WHEREFORE, for the above and foregoing reasons, the Illinois Environmental Regulatory Group hereby respectfully submits IERG's Response to Illinois EPA's Second Set of Answers, Comments, and Recommendations for Additional Revisions and Supplement.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: October 31, 2022

By: /s/ Melissa S. Brown
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CERTIFICATE OF SERVICE

I, Melissa S. Brown, the undersigned, hereby certify that I have served the attached **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S MOTION FOR LEAVE TO FILE, INSTANTER, ITS RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENATIONS AND ILLINOIS EPA'S SUPPLEMENT** on October 31, 2022, to the following:

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That the email transmission took place before 5:00 p.m. on the date of October 31, 2022.

Date: October 31, 2022

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