

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 <b>(VIA ELECTRONIC MAIL)</b>	Mr. Daniel Pauley Hearing Officer Illinois Pollution Control Board 100 West Randolph Road, Suite 11-500 Chicago, Illinois 60601 <b>(VIA ELECTRONIC MAIL)</b>
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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, **COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP - REQUEST TO MOVE FIRST NOTICE** copies of which are hereby served upon you.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: March 31, 2023

By: /s/ Melissa S. Brown

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**COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP – REQUEST TO MOVE TO FIRST NOTICE**

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, hereby files a comment requesting that the Illinois Pollution Control Board (“Board”) move this rulemaking to First Notice. In support of its Comment, IERG states as follows:

On August 16, 2021, IERG filed its proposal to amend the Board’s Nonattainment New Source Review (“NA NSR”) rules to be up-to-date with the federal NA NSR rules. Hearings in this proceeding were held on February 17 and April 7, 2022. Several entities – the Illinois Manufacturers’ Association, the Illinois Chamber of Commerce, and the Chemical Industry Council of Illinois – have filed comments in support of IERG’s rulemaking proposal. The Illinois Environmental Protection Agency (“Illinois EPA”) filed two Sets of Answers, Comments, and Recommendations and a Supplement, which IERG responded to and Illinois EPA has replied to (assuming the three outstanding Motions for Leave are granted). On November 14, 2022, IERG filed updated rule language for the Board’s consideration. IERG believes the outstanding issues in this pre-First Notice period have been fully briefed by IERG and Illinois EPA. Additionally, as discussed more below, the Motion to Stay filed by the Attorney General’s Office (“AGO”) has also been fully briefed and the time period for the stay

requested by the AGO has elapsed. IERG therefore requests that the Board move IERG's proposal to First Notice.

On May 6, 2022, the AGO filed a Motion to Stay this proceeding or, in the alternative, stay the proceedings as to the provisions related to the Project Emissions Accounting ("PEA") Rule. The basis for the AGO's Motion to Stay was USEPA's statement that it planned to initiate a rulemaking to consider revisions to USEPA's PEA Rule that would address the issues raised in the challenge to the PEA Rule pending in the D.C. Circuit. *See, generally* AGO's Motion to Stay, PCB R 22-17 (May 6, 2022). IERG responded to the AGO's Motion to Stay on May 20, 2022, opposing the request for a stay. On August 11, 2022, the Board entered an order stating that the Board will rule on the Motion to Stay after Pre-First Notice comments are submitted and when deciding to proceed to First Notice. Board Order, PCB 22-17 (Aug. 11, 2022).

To date, the Board has not issued a First Notice Opinion and Order in this proceeding. The AGO, in its Motion to Stay, requested a stay of this proceeding until February 28, 2023, which is the date that the D.C. Circuit gave to USEPA to advance its rulemaking on the PEA Rule. AGO's Motion to Stay, PCB 22-17 at 1-2; *New Jersey, et al. v. USEPA, et al.*, No. 21-1033 (D.C. Cir. Mar. 3, 2022). On February 28, 2023, USEPA filed an Unopposed Motion to Govern in the D.C. Circuit case, requesting that the case be held in abeyance until August 28, 2023 as USEPA works on a proposal rule. *New Jersey, et al. v. USEPA, et al.*, No. 21-1033 (D.C. Cir. Feb. 28, 2023). USEPA also stated that it "anticipates that it will request extending the abeyance at that point so that it can complete the rulemaking process." *Id.* To date, USEPA has not announced, or published in the Federal Register, a proposed rule addressing the PEA Rule. There has been no indication as to when USEPA may initiate the rule or when it will ultimately make a decision, as the rulemaking could be a long process. Given the uncertainty as

to when USEPA will initiate the rulemaking, as well as what USEPA will ultimately decide to do in the rulemaking if one is initiated, there is no benefit to staying this proceeding. IERG strongly requests that the Board move to First Notice.

Additionally, in the meantime, USEPA continues to propose approval of PEA provisions in other states' State Implementation Plans ("SIPs"). On March 6, 2023, USEPA's proposed rule to approve revisions to Texas' SIP was published in the Federal Register. *Air Plan Approval; Texas; New Source Review Updates for Project Emissions Accounting*, 88 Fed. Reg. 13752 (Mar. 6, 2023).<sup>1</sup> USEPA is proposing to approve a revision to the Texas SIP that includes updates to Texas' NA NSR and Prevention of Significant Deterioration ("PSD") permitting rules to incorporate the federal PEA Rule. *Id.* In its evaluation, USEPA explained that the submitted revisions "are necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases." *Id.* at 13753-13754. USEPA found that "the submitted revisions are consistent with the [Clean Air Act] and the EPA's regulations, policy and guidance for permitting SIP requirements." *Id.* at 13754.<sup>2</sup> In the Federal Register, USEPA made no mention of an upcoming proposed rule addressing the federal PEA Rule. USEPA also did not express any hesitancy in proposing to adopt Texas' revisions incorporating the PEA Rule. Therefore, there is no need to stay this rulemaking or the portions of IERG's proposal relating to the PEA Rule.

For the above and foregoing reasons, IERG respectfully requests that the Board move IERG's proposal to First Notice. IERG appreciates the opportunity to submit this comment.

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<sup>1</sup> The Federal Register is publicly available at <https://www.govinfo.gov/content/pkg/FR-2023-03-06/pdf/2023-04488.pdf>.

<sup>2</sup> Note that USEPA also found that approval of Texas' revision would not have any adverse impacts related to environmental justice. *Id.* at 13754 ("Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.").

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: March 31, 2023

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

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**CERTIFICATE OF SERVICE**

I, Melissa S. Brown, the undersigned, hereby certify that I have served the attached **COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP - REQUEST TO MOVE FIRST NOTICE** on March 31, 2023, to the following:

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That my email address is [Melissa.Brown@heplerbroom.com](mailto:Melissa.Brown@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 the date of March 31, 2023.

Date: March 31, 2023

/s/ Melissa S. Brown  
Melissa S. Brown