

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)
--	---

(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 RESPONSE TO ILLINOIS AGO’S RENEWED MOTION TO STAY** copies of which are hereby served upon you.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: May 1, 2023

By: /s/ Melissa S. Brown

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

IERG’S RESPONSE TO ILLINOIS AGO’S RENEWED MOTION TO STAY

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, hereby files its Response to the Illinois Attorney General’s Office’s (“AGO”) Renewed Motion to Stay. This Response is filed within 14 days of service of the Renewed Motion to Stay pursuant to 35 Ill. Adm. Code 101.500(d). In support of its Response, IERG states as follows:

On March 31, 2023, IERG filed a Comment in this proceeding requesting that the Illinois Pollution Control Board (“Board”) move IERG’s rulemaking proposal to First Notice. In that Comment, IERG again opposed the AGO’s initial Motion to Stay filed on May 6, 2022. On April 14, 2023, the AGO filed a Renewed Motion to Stay, requesting that this proceeding be stayed until August 28, 2023.

In an effort to avoid duplicity, IERG hereby incorporates by reference its May 20, 2022 Response to the AGO’s initial Motion to Stay and IERG’s March 31, 2023 Comment, in response to the AGO’s Renewed Motion to Stay. IERG opposes the AGO’s Renewed Motion to Stay for the reasons discussed in IERG’s prior filings, including that, to date, USEPA has not announced, or published in the Federal Register, a proposed rule addressing the Project Emissions Accounting (“PEA”) Rule. Furthermore, in its Renewed Motion to Stay, the AGO places too much weight on USEPA’s Regulatory Agenda. First, simply because a potential

rulemaking is placed on the Regulatory Agenda does not mean that such rulemaking is going to occur or must occur.¹ Second, the AGO's statement that "USEPA has again announced its intention to revise the PEA Rule this year" is not true. *See* Renewed Motion to Stay at 4. Per the narrative in USEPA's Regulatory Agenda cited by the AGO, USEPA is only "considering revisions" to the existing New Source Review ("NSR") rules. It is possible that, after USEPA has completed its review and consideration, that USEPA can conclude that no revisions to the existing rules are necessary.² Third, even if USEPA initiates a rulemaking and proposes revisions to the PEA Rule, there has been no concrete indication as to when USEPA may initiate the rule or when it will ultimately make a decision. As evidenced by the citations in the AGO's own Motion, USEPA has already pushed back the timeframe for when it plans to advance a rulemaking. Projected timeframes for initiating rulemakings have been extended by USEPA in many instances before.³ USEPA's Regulatory Agenda cannot be relied upon as support for when, or if, USEPA will initiate a rulemaking to address the PEA Rule.

Lastly, the AGO argues that IERG places too much significance on USEPA's proposal to approve Texas' State Implementation Plan ("SIP") revisions that includes the PEA Rule. The AGO argues that USEPA has a non-discretionary statutory duty to approve SIP provisions that meet federal requirements. *Renewed Motion to Stay* at 4. The AGO's argument highlights the

¹ In November 2019, USEPA concluded that it was no longer reconsidering the final rule titled "Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping." *See* Letter from Admin. Andrew Wheeler, USEPA, to Hon. Gurbir Grewal, New Jersey AGO, dated November 5, 2019, publicly available on USEPA's website at: https://www.epa.gov/sites/default/files/2019-11/documents/reasonable_possibility.pdf. USEPA's statement that it was going to convene a proceeding for reconsideration of the final rule was included in USEPA's Fall Regulatory Agendas for Fall 2009 through Fall 2016. *See, e.g.*, Fall 2009 Regulatory Agenda (<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=2060-AP71>) and Fall 2016 Regulatory Agenda (<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=2060-AP71>). Despite this, USEPA did not initiate a rulemaking to reconsider the final rule.

² *See* prior footnote.

³ For example, *see* Footnote 1.

fact that the PEA Rule is a current federal requirement. As previously explained, there is no reason to delay in incorporating a federal requirement that is currently in effect when there is no pending rulemaking to revise that federal requirement. Additional delay in adopting the updated rules undermines the regulated community's ability to benefit from, and Illinois EPA's authority to implement some of, the federal requirements that have not yet been incorporated into the Board's rules. For example, it is IERG's understanding that Illinois EPA cannot issue a NA NSR plantwide applicability limit ("PAL") permit until such provisions are incorporated into the Board's regulations. Additionally, delay in adopting the updated rules undermines the ability of Illinois EPA to implement a number of provisions that will be more stringent than the existing rules. *See* IERG's Pre-Filed Answers to IPCB's Pre-Filed Questions, PCB R 22-17 at 2 (Feb. 15, 2022).

Lastly, IERG addressed USEPA's proposed approval of Texas' SIP revisions solely to demonstrate that USEPA is continuing to propose approval of the PEA Rule in SIP submissions and, in such approval, USEPA does not mention or refer to an upcoming potential rulemaking to revise the PEA Rule. The AGO's discussion on Texas' "track record" on environmental regulations is wholly irrelevant to this rulemaking proceeding to consider proposed revisions to Illinois' regulations.

Given the uncertainty as to if or when USEPA may initiate a 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 requests that the Board deny the AGO's Renewed Motion to Stay and move IERG's proposal to First Notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: May 1, 2023

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 **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO ILLINOIS AGO'S RENEWED MOTION TO STAY** on May 1, 2023, 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

That my email address is 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 May 1, 2023.

Date: May 1, 2023

/s/ Melissa S. Brown
Melissa S. Brown