

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 22-17
AMENDMENTS TO 35 ILL. ADM. CODE)	
PART 203: MAJOR STATIONARY)	(Rulemaking - Air)
SOURCES CONSTRUCTION AND)	
MODIFICATION, 35 ILL. ADM. CODE)	
PART 204: PREVENTION OF)	
SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

NOTICE OF FILING

To: Persons on Attached Service List

PLEASE TAKE NOTICE THAT I have caused to be filed today with the Clerk of the Illinois Pollution Control Board by electronic filing The People of the State of Illinois' Renewed Motion to Stay, a true and correct copy of which is attached hereto and hereby served upon you.

KWAME RAOUL
Attorney General
State of Illinois

/s/ Jason E. James
Jason E. James, AAG

Dated: May 15, 2023

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CERTIFICATE OF SERVICE

I, Jason E. James, an Assistant Attorney General, do certify that on this 15th day of May, 2023, I caused to be served the foregoing Notice of Filing and the People of the State of Illinois' Renewed Motion to Stay on the parties named on the attached Service List via electronic filing and/or email, as indicated on such Service List.

/s/ Jason E. James

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**THE PEOPLE’S MOTION FOR PERMISSION
TO FILE REPLY BRIEF IN SUPPORT OF ITS MOTION TO STAY**

The People of the State of Illinois (“People”) move the Board for permission to file a reply brief in support of its Motion to Stay pursuant to 35 Ill. Adm. Code 101.500(e). In support thereof, the People state as follows:

1. On April 17, 2023, the People filed a Motion to Stay this rulemaking proceeding. The People seek permission to file a reply to prevent material prejudice by addressing renewed arguments presented by the Illinois Environmental Regulatory Group’s (“IERG”) response, filed on May 1, 2023. IERG’s response sought to persuade the Board to adopt air regulations that are based in part on the federal “Project Emissions Accounting Rule”, 85 Fed. Reg. 74,890 (Nov. 24, 2020).

2. Under Board rules, the movant will not have the right to reply, “except as the Board or the hearing officer permits to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). Accordingly, the People should be permitted to reply to IERG’s arguments to prevent material prejudice from leaving these renewed arguments unaddressed by the moving party.

3. As explained more fully in the People’s attached reply brief in support of their motion, IERG has misstated the status of the U.S. Environmental Protection Agency’s forthcoming

regulatory revisions and misconstrued how the Clean Air Act imposes requirements on Illinois' environmental regulations.

WHEREFORE the People of the State of Illinois respectfully request that the Board or this proceeding's hearing officer grant them leave to file a reply brief in support of its Motion to Stay and such other relief as the Board deems proper.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General of the State of Illinois

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THE ILLINOIS ATTORNEY GENERAL'S OFFICE'S
REPLY IN SUPPORT OF ITS MOTION TO STAY

The People of the State of Illinois (“People”) renewed its request that the Illinois Pollution Control Board (“Board”) stay this rulemaking until the U.S. Environmental Protection Agency (“USEPA”) further advances its already-initiated rulemaking concerning the Project Emissions Accounting Rule (“PEA Rule”). In response, the Illinois Environmental Regulatory Group (“IERG”) set forth two arguments, neither of which supports a contrary result. Accordingly, the Board should grant the People’s Renewed Motion to Stay.

IERG incorporated its past filings before the Board in “an effort to avoid duplicity [sic.]” R22-17, IERG’s Reply at 1 (May 1, 2023). In addition, IERG responded to two arguments put forward by the People’s Renewed Motion to Stay: (1) USEPA’s Regulatory Agenda and court filings show no intention to revise the PEA Rule; and (2) USEPA endorsed the PEA Rule when it approved Texas’ State Implementation Plan (“SIP”) revisions. However, these arguments are faulty and should not persuade the Board to deny the People’s renewed motion.

A. USEPA Is Actively Considering Revisions to the PEA Rule

IERG argues that the Board should ignore USEPA’s Regulatory Agenda when considering whether to expend state resources to adopt IERG’s proposed regulations. For IERG, USEPA’s announcement that it “is considering revisions to [the PEA Rule]” should be afforded

no weight by the Board. (See USEPA's Semiannual Regulatory Agenda (Fall 2022), available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2060-AV62>; IERG's Response at 1-2.) This position is faulty because the Board should take imminent regulations into account when deciding whether it is worth the Board's limited resources to advance proposed regulations that are discretionary—not legally mandated by any state or federal requirement.

In addition, for IERG, only a final action revising the PEA Rule merits the Board's consideration. IERG argues that "if USEPA initiates a rulemaking and proposes revisions to the PEA Rule," that too should be afforded no weight by the Board. (IERG's Response at 2.) However, as the Board is aware, administrative law generally precludes an agency from committing to regulatory changes before formally proposing a rule and receiving public comment. (See R22-17, People's 2022 Reply at 3 (June 3, 2022) (citing the Administrative Procedure Act (5 U.S.C. § 706)).) The act of proposing a rule clearly indicates an intention to change the regulations—and this too the Board should take into account when using its discretion to advance a new state regulation.

Further, IERG erroneously frames the issue in arguing that the Board must move to First Notice unless prohibited by a federal regulation. Rather, in this rulemaking, the Board must weigh the likelihood that IERG's proposed rules will soon come into conflict with revised federal CAA regulations. If USEPA rescinds the current PEA Rule, then Illinois governmental agencies would be legally required to bear a heavy regulatory burden merely to undo IERG's proposal. IERG has not provided any compelling reason why the Board must expend limited government resources in a rush to adopt this proposal.

B. *Illinois Is Not Required to Adopt the PEA Rule into State Air Regulations*

IERG misconstrues arguments in the People's Motion concerning CAA requirements for Illinois' SIP. IERG argues— without citing any federal statute or regulation—that “the PEA Rule is a current federal requirement.” (IERG's Response at 3.) However, as the People have previously stated, Illinois is not required to adopt the PEA Rule. Rather, the CAA requires Illinois to adopt air regulations *at least as stringent* as federal regulations. (See R22-17, People's 2022 Motion to Stay at 5-6 (May 6, 2022).)

It is precisely this federal statutory requirement—state air regulations must be at least as stringent as federal air regulations—that USEPA relied on when approving revisions to Texas' SIP. (See People's Renewed Motion to Stay at 4.) IERG conflates this statutory requirement with the PEA Rule when arguing the PEA Rule is a federal requirement. Because existing state air regulations are more stringent than the PEA Rule, *id.*, federal law in no way requires the Board to adopt the proposal's PEA Rule provisions.

C. *Conclusion*

The Board has the discretion to adopt new air regulations, but no federal or state law requires it to immediately adopt IERG's proposal. IERG's response to the People's renewed motion attempts to muddy the waters. First, IERG argues that the Board must not consider anything short of a final rule from USEPA when deciding whether to expend state resources and immediately adopt the proposal. Second, IERG tries to frame the PEA Rule as a federal requirement, even though Illinois' current air regulations are more stringent than the PEA Rule.

IERG's response does not support moving its proposal to First Notice. Therefore, the People request that the Board stay this proceeding in its entirety until August 28, 2023, or, in the alternative, stay further proceedings on those provisions of the proposed regulations that the

Board deems related to the PEA Rule until that same date. In addition, the People would welcome the opportunity to provide the Board with status updates on USEPA's rulemaking every 90 days or at any interval the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General of the State of Illinois

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