

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R 23-18(A)
AMENDMENTS TO	)	
35 Ill. Adm. Code Parts 212 and 215	)	(Rulemaking – Air)
	)	
	)	

**NOTICE OF FILING**

**To:** Attached Service List

**PLEASE TAKE NOTICE** that on this day, the 5th day of June, 2024, I caused to be filed with the Clerk of the Illinois Pollution Control Board **RAIN CII CARBON LLC’S MOTION FOR LEAVE TO FILE ADDITIONAL PUBLIC COMMENT**, a copy of which is herewith served upon you.

/s/ Alexander Garel-Frantzen

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**RAIN CII CARBON LLC’S MOTION FOR LEAVE  
TO FILE ADDITIONAL PUBLIC COMMENT**

Rain CII Carbon LLC (“Rain Carbon”), by and through its attorneys, ArentFox Schiff LLP, moves the Illinois Pollution Control Board (the “Board”) for leave to file the additional public comment attached hereto as Attachment 1.<sup>1</sup>

1. On May 20, 2024, Rain Carbon filed its Post-Hearing Comment, P.C. #20. On May 22, 2024, the Illinois Attorney General’s Office (“Illinois AG”) filed its Post-Hearing Comments, P.C. #21, in opposition to Rain Carbon’s Revised Proposed AEL for PM (the “Illinois AG Comments”).

2. As set forth in the April 22, 2024, Hearing Officer Order, the pre-second notice public comment period concluded on May 22, 2024.

3. Under the Board’s procedural rules, “[c]omments that are not timely filed . . . will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.” 35 Ill. Adm. Code § 102.108(d). The Board has considered untimely filed comments to prevent material prejudice in a number of rulemakings. *See, e.g., In the Matter of: Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101*

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<sup>1</sup> Capitalized terms have the same meaning as set forth in Rain Carbon’s Post-Hearing Comment, P.C. #20, unless otherwise indicated herein.

*through 840.144*, IPCB No. R09-21, 2009 WL 6512183, at \*1-2 (Nov. 13, 2009) (granting Ameren’s motion for leave to file additional public comment after close of pre-first notice public comment period in response to public comment in opposition to Ameren’s proposed site-specific rule); *In the Matter of: Clean-Up Part III Amendments to 35 Ill. Adm. Code Parts 211, 218, and 219*, IPCB No. R04-12 (consol.), 2005 IL 1017452, at \*4-5 (Apr. 21, 2005) (“*Clean-Up Part III Opinion*”) (accepting public comment filed 1.5 months late by company previously unaware of the rulemaking). In addition, “when rulemaking, the Board acts in a quasi-legislative capacity, and therefore generally allows items into the record more liberally than it does in adjudicatory proceedings.” *Clean-Up Part III Opinion*, at \*5.

4. The Illinois AG Comments misconstrue and mischaracterize several aspects of Rain Carbon’s Revised Proposed AEL for PM and allege that Rain Carbon has not met its burden of proof in this proceeding. *See* Illinois AG Comments, at pp. 5-6 (May 22, 2024). The Illinois AG raised similar concerns in its Questions for Participants at Third Hearing (April 8, 2024). Rain Carbon believed it had fully responded to those concerns at the Third Hearing. While the Illinois AG had the opportunity during the Third Hearing to raise the issues it now presents in its Comments, it instead elected to wait until post-hearing to deny Rain Carbon the opportunity to respond.

5. Rain Carbon seeks leave to file the attached additional public comment with the Board for consideration prior to second notice in order to prevent the material prejudice that would result if the Illinois AG Comments were allowed to stand—uncontested—with such allegations and misrepresentations.

WHEREFORE, Rain Carbon respectfully requests that the Illinois Pollution Control Board grant Rain Carbon leave to file its Additional Public Comment and accept and consider the same in this matter.

Respectfully submitted,  
Rain CII Carbon LLC

By: /s/ David M. Loring  
David M. Loring

Dated: June 5, 2024

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## **ATTACHMENT 1**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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	)	R 23-18(A)
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**RAIN CII CARBON LLC'S  
ADDITIONAL PUBLIC COMMENT**

Rain CII Carbon LLC (“Rain Carbon”), by and through its attorneys, ArentFox Schiff LLP, respectfully submits this Additional Public Comment to address some of the assertions set forth in the Post-Hearing Comments of the Illinois Attorney General, P.C. #21 (May 22, 2024) (the “Illinois AG Comments”).<sup>1</sup> In the Illinois AG Comments, the Illinois Attorney General’s Office (“Illinois AG”) opposes Rain Carbon’s Revised Proposed AEL for PM, which establishes an annual limit of 300 hours per kiln that each kiln may, during SMB events, exceed the PM standard for process emission units under 35 Ill. Adm. Code § 212.322.

The Illinois AG Comments are belied by the Board’s administrative record (which demonstrates that Rain Carbon’s Revised Proposed AEL for PM is supported), consistent with the requirements of the Illinois Environmental Protection Act, and the product of extensive collaborative discussion between Rain Carbon and the Illinois EPA. Thus, Rain Carbon respectfully submits that the Board adopt the Revised Proposed AEL for PM (as well as the Revised Proposed AELs for opacity and VOM) for second notice publication.

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<sup>1</sup> Capitalized terms have the same meaning as set forth in Rain Carbon’s Post-Hearing Comment, P.C. #20, unless otherwise indicated herein.



**I. Additional Comment**

First, Rain Carbon already addressed the thrust of the Illinois AG Comments at the Third Hearing. The Illinois AG states that it filed P.C. #21 to “seek[] to clarify the assumptions Rain Carbon makes in support of” the Revised Proposed AEL for PM. (Illinois AG Comments at p. 5). In large part, the Illinois AG contends that the Revised Proposed AEL for PM is unsupported because it disagrees with Rain Carbon’s approach to deriving its 300 hour per kiln per year proposed limit. But disagreement is not enough, and, tellingly, the Illinois AG never contends – because it is unable to – that Rain Carbon’s Revised Proposed AEL for PM is not protective of the environment or will interfere with the applicable NAAQS.

Further, the Illinois AG already asked Rain Carbon about this precise topic as part of its pre-filed questions for the Third Hearing. (*See* Illinois Attorney General’s Questions for Participants at Third Hearing, at p. 2, Rain Carbon Question #3 (Apr. 8, 2024) (“Illinois AG’s Questions for Participants”). At hearing, Rain Carbon, through Mr. Bryan Higgins of Trinity Consultants, answered the Illinois AG’s question regarding the Revised Proposed AEL for PM and explained why Rain Carbon’s approach to deriving the limit was appropriate. (*See* Transcript of Third Hearing, at 31:19-32:8 (Apr. 15, 2024)). The Illinois AG asked *one* follow-up question, which Mr. Higgins answered at hearing to the satisfaction of the Illinois AG. (*Id.* at 32:9-33:3). In its public comment, the Illinois AG ignores Rain Carbon’s testimony at the Third Hearing under the guise of seeking clarity and has, in essence, refiled its Question #3 as unsupported assertions. In doing so, the Illinois AG misrepresents the data used by Rain Carbon to carefully develop an appropriate AEL for PM. (*See, e.g.,* Rain Carbon’s Supplemental Response to Illinois EPA Comments, P.C. #14, at pp. 5-8 (Mar. 15, 2024)).

Rain Carbon's Revised Proposed AEL for PM is *not* set based purely on historic data – nor should it be – as the Illinois AG Comments suggests. The Illinois AG fails to cite any legal authority that requires that emission limits mirror historic operations, because no such mandate exists. Instead, Rain Carbon followed Illinois EPA's "recommend[ation]" that "Rain Carbon use[] prior operating records to *support* developing" its proposed AEL. (Illinois Environmental Protection Agency's Testimony of Rory Davis at p. 10 (Apr. 2, 2024) (emphasis added)). Illinois EPA's recommendation implicitly recognized that while historic operating records can provide a starting point, they do not reflect all potential future operating scenarios that are authorized under Rain Carbon's existing Operating Permit.

More specifically, Rain Carbon responds directly to several incorrect assertions made by the Illinois AG:

1. The Illinois AG incorrectly asserts that the "company treats 35% of the last ten years of operations as outlier data" and "boosts its proposed AEL by estimating how many additional SMB hours the kilns would have if they operated year-round" to "justify a more lenient AEL." (Illinois AG Comments at p. 5). Both assertions are false. Rain Carbon is authorized under its Operating Permit to operate 8760/hours per year. Years with less than 50% operation do not reflect the total number of SMB hours that could occur when the Facility is operating all year. Relying on SMB hours from partial operating years would not create a "more lenient AEL," but, rather, would create an AEL that imposes an unnecessary, arbitrary, synthetic operational limit on the Facility that would serve only to prevent the Facility from operating throughout a calendar year. In essence, the Illinois AG is asserting that Rain Carbon's Revised Proposed AEL for PM should not allow the Facility to operate full-out, even though it is permitted by law to do so. The Illinois AG lacks any legal

authority to mandate such a limitation, and, notably, the Illinois EPA – in agreeing with Rain Carbon’s approach to proposing a 300 hour/kiln/year AEL – did not find any basis to recommend a further restriction on operations.

As Rain Carbon’s comprehensive modeling demonstrated, the Revised Proposed AEL for PM will not interfere with the NAAQS in accordance with Section 110(l) of the Clean Air Act. The Illinois AG agrees, as it neither takes issue with Rain Carbon’s modeling nor disputes that the Revised Proposed AEL for PM is protective of ambient air quality. Therefore, no further limit on the proposed 300 hours/year/kiln is required or appropriate.

2. The Illinois AG characterizes Rain Carbon’s use of “Start-up Remainder Hours” and “Malfunction Remainder Hours” as an improper extrapolation of historic data to “treat each SMB event as a worst-case scenario” to substantiate a more lenient Revised Proposed AEL. (Illinois AG Comments at pp. 5-6). That is a gross mischaracterization of Rain Carbon’s evaluation of historic operating data. As a threshold matter, Illinois EPA directed sources to evaluate “worst-case” emissions in modeling the impact of any proposed AEL on ambient air quality (Illinois EPA’s Comments at p. 9). To characterize Rain Carbon’s evaluation of historic operating data in terms of how many possible SMB hours could occur (*i.e.*, “worst case”) is not impermissible. To the contrary, it ensures that Rain Carbon established an AEL that served two purposes: (1) setting a limit based on historic data and prospective, lawful operating conditions; and (2) ensuring, through modeling, that such limit would not interfere with or have more than a de minimis impact upon ambient air quality.

The Illinois AG’s concerns are baseless. Not once does the Illinois AG dispute that Rain Carbon has demonstrated (through comprehensive modeling reviewed and approved by Illinois EPA) that the Revised Proposed AEL for PM is protective of ambient air quality.

The Illinois AG's comments are intended to impose a more stringent arbitrary limit on Rain Carbon's operations without demonstrating the need for such further limitation.

Lastly, the Illinois AG Comments ignore Rain Carbon's extensive engagement with the Illinois EPA concerning the Revised Proposed AEL for PM since last fall. (*See* Rain Carbon's Post-Hearing Comment, P.C. #20, at pp. 2-3 (May 20, 2024)). Illinois EPA did not raise any concerns about the Revised Proposed AEL for PM and has expressed its support for the adoption of the AEL. Moreover, it is noteworthy that the Illinois AG did not ask the Agency a single question about its support for Rain Carbon's Revised Proposed AELs at the Third Hearing. (*See generally* Illinois AG's Questions for the Illinois Environmental Protection Agency (Apr. 8, 2024); Transcript of Third Hearing, at 9:13-14:16 (Apr. 15, 2024)). Instead, it lodged unfounded criticisms and misrepresentations concerning the Revised Proposed AEL for PM via the Illinois AG Comments.

Contrary to the Illinois AG's assertions, Rain Carbon's Revised Proposed AEL for PM is supported by the record and should be adopted for second notice as proposed.

## **II. Conclusion**

For the reasons stated in this Additional Public Comment, in prior submissions of Rain Carbon, and in testimony by Mr. Ross Gares, Director of Calcining Operations for Rain Carbon, and Mr. Bryan Higgins of Trinity Consultants, Rain Carbon respectfully submits that the Board adopt the Revised Proposed AEL for PM (as well as for opacity and VOM) for second notice publication.

Respectfully submitted,  
Rain CII Carbon LLC

By: /s/ David M. Loring  
David M. Loring

Dated: June 5, 2024

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 5th day of June, 2024, I have electronically served a true and correct copy of **Rain CII Carbon LLC's Motion for Leave to File Additional Public Comment**, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the persons identified on the attached Service List.

My e-mail address is [Alex.Garel-Frantzen@afslaw.com](mailto:Alex.Garel-Frantzen@afslaw.com).

The number of pages in the e-mail transmission is 14.

The e-mail transmission took place before 5:00 p.m.

/s/ Alexander J. Garel-Frantzen

Alexander J. Garel-Frantzen

Dated: June 5, 2024

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