

**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 on Monday, June 17, 2024, I caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing, First Notice Comment of the Illinois Attorney General, 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  
Jason E. James  
Environmental Bureau  
Illinois Attorney General's Office  
201 W. Pointe Dr., Suite 7  
Belleville, IL 62226  
(872) 276-3583  
Primary e-mail address: [jason.james@ilag.gov](mailto:jason.james@ilag.gov)

**SERVICE LIST**

*Via Electronic Filing and Email*

Don Brown  
Clerk of the Board  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
Chicago, IL 60605  
[Don.brown@illinois.gov](mailto:Don.brown@illinois.gov)

*Via Email*

N. LaDonna Driver  
Melissa S. Brown  
HEPLERBROOM LLC  
4340 Acer Grove Drive  
Springfield, IL 62711  
[ldriver@heplerbroom.com](mailto:ldriver@heplerbroom.com)  
[Melissa.brown@heplerbroom.com](mailto:Melissa.brown@heplerbroom.com)

*Via Email*

Daniel Pauley  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
Chicago, IL 60605  
[Daniel.Pauley@illinois.gov](mailto:Daniel.Pauley@illinois.gov)

*Via Email*

Renee Snow  
General Counsel  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271  
[Renee.Snow@illinois.gov](mailto:Renee.Snow@illinois.gov)

*Via Email*

Deborah Williams  
City of Springfield  
Regulatory Affairs Director  
800 E. Monroe  
Office of Public Utilities  
Springfield, IL 62757  
[deborah.williams@cwlp.com](mailto:deborah.williams@cwlp.com)

*Via Email*

Sally A. Carter  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
Springfield, IL 62794  
[Sally.Carter@illinois.gov](mailto:Sally.Carter@illinois.gov)

**CERTIFICATE OF SERVICE**

I, Jason E. James, an Assistant Attorney General, do certify that on this 17th day of June, 2024, I caused to be served the foregoing Notice of Filing and First Notice Comment of the Illinois Attorney General 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

Jason E. James  
Assistant Attorney General  
Illinois Attorney General's Office  
201 W. Pointe Dr., Suite 7  
Belleville, IL 62226  
(872) 276-3583  
[Jason.James@ilag.gov](mailto:Jason.James@ilag.gov)

**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	)	

**FIRST NOTICE COMMENT OF THE ILLINOIS ATTORNEY GENERAL’S OFFICE**

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois (“People”), provide the following comments in response to the Illinois Pollution Control Board’s (“Board”) first-notice publication of air pollution regulations proposed by the Illinois Environmental Regulatory Group (“IERG”).

The U.S. Environmental Protection Agency (“USEPA” or the “Agency”) recently published a proposal to strengthen the Project Emissions Accounting Rule (“PEA Rule”). As the People have argued in previous filings, the Board should not adopt IERG’s proposal while USEPA is preparing to promulgate what the Agency argues will be more stringent regulations because the Clean Air Act prohibits states from adopting air pollution regulations that are less stringent than federal regulations.

As explained below, the People urge the Board to pause this rulemaking until USEPA finalizes the revised PEA Rule or decides not to revise the existing rule. At that point, IERG must provide evidence on the record and respond to questions from interested parties at a Board hearing concerning whether and in what way their proposed regulations conflict with federal regulations.

## I. USEPA's Proposed PEA Rule Revisions

Over three years ago, USEPA publicly declared its intention to strengthen the PEA Rule. In January 2021, President Biden directed USEPA to review and address environmental regulations adopted in the four years prior that conflict with his policy to reduce air pollution.<sup>1</sup> Soon thereafter, USEPA reviewed the PEA Rule and initiated a new rulemaking to address concerns that the PEA Rule would lead to increased air pollution.<sup>2</sup> This new rulemaking is reaching completion: USEPA recently proposed a revised PEA Rule that, the Agency argues, would “improve compliance with, and enforcement of, the major [New Source Review (“NSR”) air pollution] applicability regulations.”<sup>3</sup>

According to USEPA, the PEA Rule defines the process of determining whether NSR preconstruction air permitting regulations apply to a modification at an existing facility. In general, NSR requirements apply to a modification of a major existing facility when the project would result in both a significant emissions increase and a significant net emissions increase.<sup>4</sup> The proposed revised PEA Rule would make three major changes to this process.

First, the revised PEA Rule would clarify the definition of the term “project” in order to precisely determine which parts of a modification should or should not be considered for emissions accounting purposes.<sup>5</sup> This clearer definition responds to concerns that the existing rule encourages “under- or over-aggregating activities; namely that sources undergoing modifications may

<sup>1</sup> Executive Order 13990 (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>. See People’s Motion to Stay at 3, R22-17 (May 6, 2022).

<sup>2</sup> USEPA’s Unopposed Motion for Abeyance, *New Jersey v. U.S. Env’t Prot. Agency*, No. 21-1033 (D.C. Cir., Jan. 19, 2021), cited by People’s Motion to Stay at 3-4 and Exhibit C, R22-17 (May 6, 2022).

<sup>3</sup> 89 Fed. Reg. 36,870 at 36,885 (May 3, 2024).

<sup>4</sup> For additional background, see 89 Fed. Reg. at 36,872-877; Board Order on First Notice at 3, R22-17 (Apr. 18, 2024).

<sup>5</sup> USEPA, Fact Sheet on Proposal, available at [https://www.epa.gov/system/files/documents/2024-05/pear\\_proposal\\_fact\\_sheet.pdf](https://www.epa.gov/system/files/documents/2024-05/pear_proposal_fact_sheet.pdf) (last accessed June 7, 2024).

inconsistently use the flexibility of imprecise regulatory provisions to systematically avoid major source NSR.”<sup>6</sup>

Second, USEPA’s proposal would strengthen monitoring, recordkeeping, and reporting provisions to improve compliance and enforcement measures.<sup>7</sup> Among other things, the Agency argues that these improvements would require sources that take credit for an emissions decrease in a project to maintain and report records showing that those decreases are actually being achieved.<sup>8</sup> In other words, the Agency argues that the existing rule allows “sources accounting for a decrease associated with a project in Step 1 in the NSR applicability process [to] evade all recordkeeping requirements ... There is therefore no way under the currently [sic] regulatory scheme which allows for PEA, for the public or for permitting authorities to ensure that decreases that were used by a source to forgo permitting requirements are actually occurring.”<sup>9</sup>

Last, USEPA’s proposal would require emissions decreases that facilities claim in the NSR accounting process to be enforceable.<sup>10</sup> The Agency argues that this revision is necessary “as a safeguard to ensure that emissions decreases that are accounted for in the NSR applicability process will occur and be maintained.”<sup>11</sup> “Furthermore, this regulatory change is intended to address “concerns that PEA will allow sources to include decreases in the project-related NSR applicability analysis without any assurance that those decreases will actually occur.”<sup>12</sup>

<sup>6</sup> 89 Fed. Reg. at 36,878.

<sup>7</sup> USEPA, Fact Sheet on Proposal, available at [https://www.epa.gov/system/files/documents/2024-05/pear\\_proposal-fact-sheet.pdf](https://www.epa.gov/system/files/documents/2024-05/pear_proposal-fact-sheet.pdf) (last accessed June 7, 2024).

<sup>8</sup> 89 Fed. Reg. at 36,881.

<sup>9</sup> *Id.* at 36,887.

<sup>10</sup> USEPA, Fact Sheet on Proposal, *supra* at fn. 7.

<sup>11</sup> 89 Fed. Reg. at 36,880.

<sup>12</sup> *Id.* at 36,886.

Overall, USEPA states that its proposed revisions are intended to “improve implementation and strengthen enforceability of the NSR program provisions”<sup>13</sup> compared to the existing rule adopted under the prior presidential administration. Furthermore, USEPA expects that “the overall impacts of the proposed changes to the major NSR program applicability regulations will provide clarity and will also improve practicable enforceability and public transparency of the NSR program applicability requirements.”<sup>14</sup>

## II. The Board Must Ensure IERG’s Proposal Does Not Conflict with Federal Rules

IERG intends its proposed amendments “to make [Illinois’ NSR] program consistent with the [Clean Air Act] and implementing federal regulations.”<sup>15</sup> However, USEPA is working to adopt regulations that the Agency argues are more stringent than existing regulations.<sup>16</sup> Therefore, IERG’s proposed amendments may make Illinois’ program *inconsistent* with federal regulations and federal law.

As the People have previously argued, the Clean Air Act requires that the Board’s air pollution regulations be *at least as stringent* as applicable Federal regulations.<sup>17</sup> While the Board acknowledged that Illinois’ NSR regulations have not been amended since 1998,<sup>18</sup> amending these regulations just before USEPA strengthens them would not be an effective use of the Board’s limited resources. IERG has not put forward any compelling reason for the Board to move to Second Notice in this rulemaking before carefully examining whether and how USEPA’s revisions relate to IERG’s proposal.

<sup>13</sup> 89 Fed. Reg. at 36,872.

<sup>14</sup> 89 Fed. Reg. at 36,886, 36,872.

<sup>15</sup> IERG’s Statement of Reasons at 3, R22-17 (Aug. 16, 2021).

<sup>16</sup> 89 Fed. Reg. at 36,872.

<sup>17</sup> 42 U.S.C. § 7416, *see also* People’s Motion to Stay at 6.

<sup>18</sup> Board’s First Notice Order at 7, R22-17 (Apr. 18, 2024).

### III. Conclusion

The People agree that “the Board can address any changes at the federal level before determining whether to proceed to second notice.”<sup>19</sup> In addition to asking IERG and other rulemaking participants “to comment on any implications” of USEPA’s proposal,<sup>20</sup> the Board should pause this rulemaking until USEPA finalizes its proposal. At that point, IERG should provide evidence on the record comparing its proposal to the new PEA Rule and then respond to questions from the People and other rulemaking participants at hearing.

USEPA is accepting public comment on its proposed PEA Rule revisions through July 2, 2024. Additionally, the U.S. Court of Appeals for the D.C. Circuit has stayed the litigation challenge to the existing PEA Rule until December 2024.<sup>21</sup> The People request that the Board pause this rulemaking until USEPA either adopts a final revised PEA Rule or elects not to revise the PEA Rule. At that point, the Board should conduct a hearing where IERG offers evidence showing whether its proposal is less stringent than federal regulations and where rulemaking participants may question the rulemaking proponent. Alternatively, the Board should set such a hearing to examine USEPA’s proposed rule relative to IERG’s proposal.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL,

By: /s/ Jason E. James  
Jason E. James  
Assistant Attorney General  
Illinois Attorney General’s Office  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0660  
[jason.james@ilag.gov](mailto:jason.james@ilag.gov)

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 7.

<sup>21</sup> See Mar. 14, 2024 Clerk’s Order in *New Jersey v. EPA*, No. 21-1033 (D.C. Cir.).