

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
NATIONAL AMBIENT AIR QUALITY)	R13-11
STANDARDS, USEPA REGULATIONS)	(Identical-in-Substance Rulemaking – Air)
(through December 31, 2012))	

NOTICE OF FILING

TO: Mr. John T. Therriault	Michael J. McCambridge
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street	100 W. Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA U.S. 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 the **FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

By: /s/ Alec M. Davis
Alec M. Davis

Dated: July 15, 2013

Alec M. Davis
General Counsel
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, Illinois 62701
(217) 522-5512

CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached **FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

via electronic mail on July 15, 2013; and upon:

Charles E. Matoesian
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Michael J. McCambridge
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on July 15, 2013.

/s/ Alec M. Davis

Alec M. Davis

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NATIONAL AMBIENT AIR QUALITY) R13-11
STANDARDS, USEPA REGULATIONS) (Identical-in-Substance Rulemaking – Air)
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**FIRST NOTICE COMMENTS OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”),
by and through its attorney, Alec M. Davis, and submits its First Notice Comments in the above-
captioned matter to the Illinois Pollution Control Board (“Board”) for its consideration.

I. INTRODUCTION

The Illinois Environmental Regulatory Group would like to thank the Board for the
opportunity to submit these comments in regard to the First Notice Publication of the Board’s
proposed amendments to its air pollution regulations pursuant to Sections 10(H) and 7.2(b) of the
Illinois Environmental Protection Act. 415 ILCS 5/10(H) and 5/7.2(b). IERG was involved in
the adoption of Public Act 97-945 which created the identical-in-substance mandate, and is an
active participant in this rulemaking, having provided testimony at the Board’s June 26, 2013
hearing.

The Board has proposed to update the ambient air quality standards contained in 35 Ill.
Admin. Code Part 243, by “replac[ing] all existing Illinois ambient air quality standards with
standards derived directly from the federal NAAQS codified in 40 C.F.R. 50.” Opinion and
Order of the Board, *In the Matter of: National Ambient Air Quality Standards, USEPA
Regulations (through December 31, 2012)*, R13-11 at 1 (Ill.Pol.Control.Bd. May 16, 2013)
(hereafter cited as “Opinion and Order”).

IERG supports the Board's efforts in this matter, and, as indicated in its testimony before the Board, agrees with many of the Board's decisions in adopting a framework to ease incorporation of future amendments to the federal standards. IERG's comments are intended to clarify a single issue that was discussed at hearing, dealing with when the 1979 primary and secondary ozone standards should be sunset.

II. COMMENTS

Testifying on behalf of IERG, David Kolaz indicated that "the sunset of the 1979 standard is actually triggered by the area designation for the 1997 eight-hour ozone standard and not the 2008 eight-hour ozone standard as the Board describes." Pre-Filed Testimony of David Kolaz, *In the Matter of: National Ambient Air Quality Standards, USEPA Regulations (through December 31, 2012)*, R13-11 at 3 (Ill.Pol.Control.Bd. June 19, 2013). The assertion that the 1997 standard should be the basis for triggering the sunset of the 1979 standard was confirmed at hearing. Hearing Transcript, *In the Matter of: National Ambient Air Quality Standards, USEPA Regulations (through December 31, 2012)*, R13-11 at 8 (Ill.Pol.Control.Bd. July 1, 2013).

The regulatory basis for Mr. Kolaz's assertion is not complicated, but was not clearly articulated in IERG's prior filings. The Board properly identifies 40 C.F.R. §50.9(b) (all references are to the 2012 Code of Federal Regulations) as specifying when the 1-hour (1979) standard will no longer apply to an area (Opinion and Order at 50), but misinterpreted the reference to "the 8-hour ozone NAAQS" contained in the federal regulation to refer to the 2008 8-hour standard (codified in 40 C.F.R. §50.15), rather than the 1997 8-hour standard (codified in 40 C.F.R. §50.10) and specifically identified in the preceding sentence in §50.9(b). Further removing any potential for ambiguity in the interpretation of the regulation's meaning is the fact

that the following clause in §50.9(b) was adopted on April 30, 2004(69 Fed. Reg. 23996) at which time, the 1997 standard was the only 8-hour ozone standard:

The 1-hour NAAQS set forth in paragraph (a) of this section will no longer apply to an area one year after the effective date of the designation of that area for the 8-hour ozone NAAQS pursuant to section 107 of the Clean Air Act.

As Illinois' designations pursuant to the 1997 8-hour ozone standard were made effective on June 15, 2004 (69 Fed. Reg. 23858, April 30, 2004), the 1979 1-hour standard could appropriately be sunset at any time 1 year after that date, and IERG would encourage the Board to amend its First Notice proposal to do so.

IERG thanks the Board for its hard work on this rulemaking, and appreciates its consideration of these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: July 15, 2013

By: /s/ Alec M. Davis
Alec M. Davis

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General Counsel
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