

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
NATIONAL AMBIENT AIR QUALITY)	R19-6
STANDARDS, USEPA AMENDMENTS)	(Identical-in-Substance
(January 1, 2018 through June 30, 2018))	Rulemaking – Air)

NOTICE

To: Michael J. McCambridge
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the ILLNOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS REGARDING THE ILLINOIS POLLUTION CONTROL BOARD’S IDENTICAL IN SUBSTANCE RULEMAKING, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: January 7, 2019

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS REGARDING
THE ILLINOIS POLLUTION CONTROL BOARD’S IDENTICAL IN SUBSTANCE
RULEMAKING**

The Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”) submits these comments for the above-titled matter to the Illinois Pollution Control Board (“Board”). The Board invited public comment on its proposed amendments in this rulemaking. The Illinois EPA’s comments are as follows:

Section 243.126

1. The Board proposes to amend Section 243.126 to reflect the USEPA’s revocation of the 1978 lead NAAQS for the Chicago and Granite City areas effective March 28, 2019, and indicates that the amendment is needed as the USEPA redesignated the Chicago and Granite City areas as attainment for the 2008 lead NAAQS effective March 28, 2018, and the USEPA approved SIP revisions providing for maintenance and/or attainment for the 2008 lead NAAQS. The Board’s proposed revisions, however, are based on misunderstandings/misstatements of federal requirements. The provisions in 40 CFR 50.12(b) provide:

(b) The standards set forth in this section [regarding the 1978 lead NAAQS] will remain applicable to all areas notwithstanding the promulgation of lead national ambient air quality standards (NAAQS) in §50.16 [regarding the 2008 lead NAAQS]. The lead NAAQS set forth in this section will no longer apply to an area one year after the effective date of the designation of that area, pursuant to section 107 of the Clean Air Act, for the lead NAAQS set forth in §50.16; except that for areas designated nonattainment for the lead NAAQS set forth in this section as of the effective date of §50.16, the lead NAAQS set forth in this section will apply until that area submits, pursuant to section 191 of the Clean Air Act, and EPA approves, an implementation plan providing for attainment and/or maintenance of the lead NAAQS set forth in §50.16.

The Board indicates that, pursuant to the above, the 1978 lead NAAQS is revoked one year after the effective date of “two events”: the redesignation of an area as attainment for the 2008 lead NAAQS, and USEPA’s approval of a Maintenance Plan for that area. [November 1, 2018, Board Order at 2 and 5]. This is not accurate. The above provision clearly provides that the 1978 lead NAAQS standard no longer applies/is revoked “one year after the effective date of the designation of that area” for the 2008 lead NAAQS, except for “areas designated nonattainment”

for the 1978 lead NAAQS as of the effective date of the 2008 lead NAAQS. No area in Illinois was designated nonattainment for the 1978 lead NAAQS as of the effective date of the 2008 lead NAAQS. In fact, there have never been designated nonattainment areas in Illinois under the 1978 primary or secondary NAAQS for lead. Thus, the “except for” language in the above is never implicated. The 1978 lead NAAQS was therefore revoked one year after the effective date of designations under the 2008 lead standard. A small portion of the Chicago area was designated a nonattainment area for the 2008 lead NAAQS effective December 31, 2011, and the Granite City area was designated a nonattainment area for the 2008 lead NAAQS effective December 31, 2010 [76 Fed. Reg. 72097 (November 22, 2011) and 75 Fed. Reg. 71033 (November 22, 2010)]. All other areas of the State were designated unclassifiable/attainment effective December 31, 2011 [76 Fed. Reg. 72097 (November 22, 2011)]. The 1978 standard was therefore revoked in Illinois as of December 31, 2012, at the latest.

Further, even if the “except for” language in 40 CFR 50.12(b) were implicated, the Board is misinterpreting it. In instances when an area was designated nonattainment for the 1978 lead standard as of the effective date of the 2008 lead standard, the 1978 lead standard only continues to apply “until that area submits, pursuant to section 191 of the Clean Air Act, and EPA approves, an implementation plan providing for attainment and/or maintenance” of the 2008 standard. Section 191 of the CAA implicates neither redesignation requests nor Maintenance Plans; it regards SIP submittals that demonstrate attainment. Specifically, Section 191 requires that states with a lead nonattainment area submit to USEPA a SIP satisfying CAA requirements within 18 months of being designated as nonattainment. 42 U.S.C. § 7514. Section 192 requires that the SIP provide for attainment of the lead NAAQS as expeditiously as practicable but no later than five years from the date of the nonattainment designation. 42 U.S.C. § 7514a. Under 40 CFR 50.12(b) then, the 1978 lead NAAQS would be revoked when the state submits and USEPA approves the state’s SIP submittal providing for attainment for the 2008 lead NAAQS (i.e., the State’s attainment plan, any rule changes needed for attainment, etc.), not when the state actually attains the standard or is redesignated, and not when its Maintenance Plan is approved. These are different stages in the air quality planning process and are performed under different provisions of the CAA.

The Illinois EPA recommends that the Board repeal Section 243.126(a)(1) and (2) as it no longer applies in Illinois. The Agency also recommends that the Board retain the heading from subsection (a) and indicate that the subsection has been repealed to avoid the confusion that can be caused by renumbering.

2. Should the Board disregard the Illinois EPA’s recommendation to repeal Section 243.126(a)(1) and (2), the Agency recommends adding clarifying language to the Board note in Section 243.126(a). It is recommended that the Board’s note read as follows:

BOARD NOTE: USEPA designated Granite City as nonattainment with respect to the 2008 primary and secondary NAAQS for lead in 2010 and an area of Chicago as nonattainment with the 2008 primary and secondary NAAQS for lead in 2011. USEPA designated all other areas of Illinois as unclassifiable/attainment for the 2008 primary and secondary NAAQS for lead in 2011. Therefore, the 1978 standard no longer applied one year after said designations, per 40 CFR 50.12(b).

Addendum

3. The Illinois EPA would like to note that there appears to be an error in the addendum. The entire last sentence in Table 1 references hazardous waste operating requirements and does not apply to this rulemaking.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Assistant Counsel

DATED: January 7, 2019
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached ILLNOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS REGARDING THE ILLINOIS POLLUTION CONTROL BOARD’S IDENTICAL IN SUBSTANCE RULEMAKING upon the person to whom it is directed, by the following means:

By emailing the comments, numbering 5 pages, from annet.godiksen@illinois.gov, on January 7, 2019, by 4:30 PM to the following persons:

To: Michael J. McCambridge Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Suite 11-500 Chicago, Illinois 60601-3218 Michael.McCambridge@illinois.gov	Division Chief of Environmental Enforcement Office of the Illinois Attorney General 100 West Randolph Street Suite 1200 Chicago Illinois 60601 enviro@atg.state.il.us
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: January 7, 2019

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