

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
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601-3218
Michael.McCambridge@illinois.gov

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Jonathon C. Eastvold
Joint Committee on Administrative Rules
Wm.G Stratton Office Building
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S POST-HEARING 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 25, 2019

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NATIONAL AMBIENT AIR QUALITY) R19-6
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S POST-HEARING
COMMENTS REGARDING THE ILLINOIS POLLUTION CONTROL BOARD’S
IDENTICAL IN SUBSTANCE RULEMAKING**

The Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”) submits these post-hearing comments for the above-titled matter to the Illinois Pollution Control Board (“Board”). The Illinois EPA responds to comments made by the Illinois Environmental Council (“IEC”) during the January 10, 2019, hearing and in post-hearing comments dated January 10, 2019. The Illinois EPA’s comments are as follows.

During the January 10, 2019, hearing and in their post-hearing comments, the IEC urged the Board to adopt certain amendments in this rulemaking, namely amendments that would require ambient air monitoring for lead and amendments that would require the Illinois EPA to implement a new *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts*. The Agency does not address the substance of these requests, as both of these amendments are outside of the scope of an identical in substance rulemaking and therefore should not be adopted by the Board as part of this rulemaking.

The scope of an identical in substance rulemaking is strictly limited under the Act, which provides that an identical in substance regulation “means State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.” It further provides that “the Board shall adopt the verbatim text of such USEPA regulations,” with certain limited exceptions. 415 ILCS 5/7.2(a). The IEC cites to Section 7.2(a)(6) of the Act as authorizing the Board to expand the scope of an identical in substance rulemaking to include more stringent requirements. IEC Comments at 4. This is a misreading of the Act. Section 7.2(a)(6) provides, “Whenever appropriate, the Board regulations shall reflect any consist, more stringent regulations *adopted pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act*” (“Illinois APA”). 415 ILCS 5/7.2(a)(6) (emphasis added). This provision recognizes that, to adopt more stringent regulations, the Board would need to comply with the more onerous general rulemaking requirements set forth in Title VII of the Act and Section 5-35 of the Illinois APA, requirements that are inapplicable to identical in substance rulemakings under Section 10(H) of the Act. *See* 415 ILCS 5/10(H). Indeed, Section 10(H) explicitly provides that the Board may adopt air quality standards more stringent than the federal National Ambient Air Quality Standards (“NAAQS”), but only in compliance with the rulemaking requirements in Title VII and the

Illinois APA. *Id.* Should the Board do so, it can then reflect those amendments in its identical in substance regulations.

The IEC does not claim, nor could it claim, that its proposed amendments are identical in substance to a federal NAAQS. These amendments are therefore outside of the scope of this rulemaking and should be disregarded by the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Assistant Counsel

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S POST-HEARING 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 4 pages, from annet.godiksen@illinois.gov, on January 25, 2019, by 4:30 PM to the following persons:

To: Michael J. McCambridge
Hearing Officer
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