BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	**R22-17**
AMENDMENTS TO 35 ILL. ADM. CODE	)	
PART 203: MAJOR STATIONARY SOURCES	)	
CONSTRUCTION AND MODIFICATION,	)	
35 ILL. ADM. CODE PART 204: PREVENTION	)	
OF SIGNIFICANT DETERIORATION, AND	)	
PART 232: TOXIC AIR CONTAMINANTS	)	

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the **MOTION FOR LEAVE TO FILE INSTANTER THE ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT and ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT** a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Sally A. Carter
Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: December 13, 2022

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	**R22-17**
AMENDMENTS TO 35 ILL. ADM. CODE	)	
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MOTION FOR LEAVE TO FILE INTANTER THE ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorneys, pursuant to 35 Ill. Adm. Code 102.402 and 101.500 and moves the Illinois Pollution Control Board ("Board") for leave to file the Illinois EPA's Reply to Illinois Environmental Regulatory Group's (IERG) Response to Illinois EPA's Second Set of Answers, Comments and Recommendations for Additional Revisions and Supplement in the above-captioned matter.

1. On August 16, 2021, Illinois Environmental Regulatory Group (IERG) filed a proposal with the Board to revise Part 203, 35 Ill. Adm. Code Part 203, Major Stationary Source Construction and Modification that is applicable to the proposed construction of a major stationary source or major modification at an existing stationary source of air pollutants generally regulated under the Clean Air Act (CAA), except to the extent that Prevention of Significant Deterioration (PSD) is or could be appliable for such proposed project. In this rulemaking proposal, IERG also proposed amendments to 35 Ill. Adm. Code 204, Prevention of Significant Deterioration and 35 Ill. Adm. Code 232, Toxic Air Contaminants.

2. On September 9, 2021, the Board accepted IERG's regulatory proposal for hearing. Two public hearings have been held by the Board. The first hearing was held on February 17, 2022, and the second hearing was held on April 7, 2022. During the second hearing, the Board set a May 16, 2022, deadline for filing post-hearing comments on IERG's regulatory proposal. On May 6, 2022, the Illinois Attorney General's Office (IAGO) filed a Motion to Stay (IAGO's Motion) this rulemaking pending review of the United States Environmental Protection Agency's (USEPA) Project Emissions Accounting Rule by both the USEPA and the United States Court of Appeals for the D.C. Circuit (DC Circuit).

3. On August 11, 2022, the Board set the pre-first notice final comment deadline for September 12, 2022, and specifically requested comment on whether the Project Emissions Accounting Rule should remain in proposed Sections 203.1410 and 204.800. On September 12, 2022, the Illinois EPA filed its Second Set of Answers, Comments and Recommendations for Additional Revisions with the Board. In this filing, the Illinois EPA notified the Board that it would require additional time for further consultation with the USEPA over the substance of IERG's proposed 35 Ill. Adm. Code 203.100. After completing these discussions, the Illinois EPA indicated it would seek leave of the Board to more fully comment on IERG's proposed 35 Ill. Adm. Code 203.100.

4. On October 20, 2022, the Illinois EPA filed its Motion for Leave to File Illinois EPA's Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions and Illinois EPA's Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions.

5. On October 31, 2022, IERG filed its Motion for Leave to File, Instanter, Its Response to Illinois EPA's Second Set of Answers, Comments and Recommendations and

Illinois EPA's Supplement and on November 14, 2022, IERG filed its Updated Proposed Rule Language for Parts 201, 202, 203, 204 and 232.

6. Since that time, the Illinois EPA has continued to discuss the substance of IERG's proposal with the USEPA. These discussions have shaped the Illinois EPA's filings in this proceeding.

7. Based on the foregoing, the Illinois EPA formally requests leave to file the Illinois EPA's Reply to IERG Response to Illinois EPA's Second Set of Answers, Comments and Recommendations for Additional Revisions and Supplement

WHEREFORE, the Illinois EPA respectfully requests that the Board grant this Motion for Leave to File Instanter the Illinois EPA's Reply to IERG's Response to Illinois EPA's Second Set of Answers, Comments and Recommendations for Additional Revisions and Supplement.

Respectfully submitted by,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Sally A. Carter
Assistant Counsel

Dated: December 13, 2022
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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(217)782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT

The Illinois Environmental Protection Agency (Illinois EPA), by its attorney, offers the following Reply to Illinois Environmental Regulatory Group's (IERG) Response to Illinois EPA's Second Set of Answers, Comments and Recommendations for Additional Revisions and Supplement filed with the Illinois Pollution Control Board (Board) on October 31, 2022 (IERG's Response) and IERG's Updated Proposed Rule Language for Parts 201, 202, 203, 204 and 232 on November 14, 2022 (IERG's Updated Proposed Language).

Section 203.1340 – Regulated NSR Pollutant

In IERG's Response, IERG offers additional argument in support of the language it previously offered for inclusion in 35 Ill. Adm. Code 203.1340(c) and continues to justify its proposal as a much needed "roadmap as to how VOM and ammonia will be handled as precursors for $PM_{2.5}$" in any future $PM_{2.5}$ nonattainment areas. IERG's Response at pages 8 - 9. IERG's proposal is much more than a roadmap for the handling of $PM_{2.5}$ precursors in the future given that the effect of IERG's proposal would be to ensure that the provisions of Appendix S would apply for emissions of VOM and ammonia in any future $PM_{2.5}$ nonattainment areas. IERG similarly acknowledged as follows in its recent Response:

> That is the benefit of the Appendix S precursor demonstration process which would be preserved under IERG's proposed transition provisions – Illinois EPA is given an opportunity to evaluate the relevant data at the time and make a decision on whether a demonstration of insignificant contribution is appropriate.

IERG Response at page 11. It is noteworthy that IERG does not propose provisions by which Part 203 would be able to be approved by the United States Environmental Protection Agency (USEPA) as applied to emissions of VOM and ammonia in future $PM_{2.5}$ nonattainment areas. That is, as 35 Ill. Adm. Code 203.1340(c)(3), as proposed, would not be approved by USEPA, Part 203 would not provide that VOM and ammonia are regulated NSR pollutants in $PM_{2.5}$ nonattainment areas. Accordingly, for purposes of NA NSR for $PM_{2.5}$, emissions of VOM and ammonia would continue to be governed by Appendix S even after the conclusion of any transition period.[1] As currently proposed by IERG, further rulemaking, pursuant to the Act, would be necessary to address emissions of VOM and ammonia in any future $PM_{2.5}$ nonattainment areas. Until such time that this rulemaking would be approved by USEPA, VOM and ammonia would continue to be governed by Appendix S.

Again, the Illinois EPA does not oppose proposed 35 Ill. Adm. Code 203.1340(c)(3) as this provision would include language from 40 CFR 51.165(a)(1)(xxxvii)(C)(*2*) that provides that VOM (or volatile organic compounds) and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.[2] This is an element of the blueprint rule. This language must be included in

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[1] 35 Ill. Adm. Code 203.1340(c)(3), as proposed by IERG, would ensure that Illinois' SIP does not include NA NSR requirements for $PM_{2.5}$ such that 40 CFR Part 51, Appendix S would apply in the future. *See, Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements*, 81 FR 58010, 58122, footnote 236 (August 24, 2016). ("The applicable NNSR requirements would be either the NNSR requirements for $PM_{2.5}$ in the state's existing approved SIP or the requirements found at 40 CFR part 51 Appendix S, when a state's approved SIP does not currently include NNSR requirements for $PM_{2.5}$."); *see also*, 81 FR 58010, 58122 (Aug. 24, 2016) ("where the state has a previously approved NNSR program for $PM_{2.5}$, the existing requirements for controlling precursors would continue to apply until the new SIP revisions required by this rule, including new precursor control requirements are approved.").

[2] 40 CFR 50.165(a)(1)(xxxvii)(C)(*2*) provides that:

revised Part 203, if the revised rule is to be approvable by USEPA, because this language is in the blueprint rule. Accordingly, the Illinois EPA renews its request that Section 203.1340(c)(3) follow the blueprint at 40 CFR 51.165(a)(1)(xxxvii)(C) and read as follows:

Section 203.1340 Regulated NSR Pollutant

"Regulated NSR pollutant" means the following:

***

c) Any pollutant that is identified under this Section as a constituent or precursor of a general pollutant listed under subsection (a) or (b), provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for purposes of NSR are the following:

1) Except as provided in Section 203.1450, VOM and NOx are precursors to ozone in all ozone nonattainment areas.

2) SO_2 and NOx, are precursors to $PM_{2.5}$ for a stationary source located in a $PM_{2.5}$ nonattainment area or, for purposes of Subpart R, a stationary source which would cause or contribute to a violation of a $PM_{2.5}$ NAAQS.

3) <u>VOM and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.</u>

The Illinois EPA continues to oppose the inclusion of any language in proposed 35 Ill. Adm. Code 203.1340(c)(3) that would provide a transition period for VOM and ammonia before these pollutants would be considered precursors to $PM_{2.5}$ in any area in Illinois that would be designated nonattainment for $PM_{2.5}$ in the future. Most critically, the blueprint rule does not provide for any such transition period. As most recently acknowledged by IERG:

Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.

Proposed 35 Ill. Adm. Code 203.1340(c)(2) would address sulfur dioxide and nitrogen oxides, providing that they are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area. Proposed 35 Ill. Adm. Code 203.1340(c)(3) would address VOM and ammonia as they are precursors to $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas. However, IERG would not have proposed Section 203.1340(c)(3) be included in any SIP submittal to USEPA.

> The language proposed by IERG is based on the requirements and language in Appendix S. 40 CFR Appendix S, par. II.A.31.ii.b.4. *The Appendix S language differs from the language in the blueprint rule, which simply states that VOM and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.* 40 CFR 51.165(a)(1)(xxxvii)(C)(2) ("Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursor to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.").

IERG's Response at page 9. (*emphasis added*).

In this regard, it is noteworthy that IERG interprets Appendix S as offering regulated sources in Illinois the benefit of a 24-month grace period prior to VOM and ammonia being regulated as precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area *regardless* of whether the Illinois EPA submits the requisite precursor demonstration to USEPA. *See,* IERG's Response at page 10. ("If Illinois EPA does not submit a complete demonstration of insignificant contribution within 24 months following redesignation, then the affected precursor will be regulated as a $PM_{2.5}$ precursor on such date."); *see also*, IERG's Response at pages 11 - 12.[3] ("if Illinois EPA elects not to submit precursor demonstrations, VOM and ammonia would become regulated $PM_{2.5}$ precursors in a particular $PM_{2.5}$ nonattainment area on the date 24 months after its redesignation; no further action is required by Illinois EPA or USEPA."). IERG's position is not only contrary to the definition of "Regulated NSR Pollutant" in the blueprint at 40 CFR 51.165(a)(1)(xxxvii)(C) providing that VOM and ammonia are to be regulated as precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area but is also not supported by Appendix S. Appendix S provides that VOM and ammonia would not be considered precursors to $PM_{2.5}$ in a newly designated $PM_{2.5}$ nonattainment area if certain actions would occur within 24 months of an area being designated nonattainment. Despite IERG's assumption that no action would be required

[3] See also, IERG's Response at page 11, footnote 1, stating that "[u]nder this approach, Illinois EPA's failure to develop and submit a precursor demonstration would have no effect on the status quo: VOM and ammonia would become regulated $PM_{2.5}$ precursors beginning 24 months after redesignation."

by the Illinois EPA or USEPA, Appendix S offers no support for such assertion. If certain actions failed to occur, *i.e.*, the submittal of a complete NA NSR precursor demonstration by the state authority to USEPA, regulated sources would not enjoy the benefit of a 24-mohth grace period prior to VOM and ammonia being regulated as precursors to $PM_{2.5}$ in a new $PM_{2.5}$ nonattainment area.

The Federal Register most recently quoted by IERG supports the Illinois EPA's position:

> While the final rule contains no general grandfathering provision, this final rule does provide a phase-in process for states relying on Appendix S for purposes of issuing NNSR permits for $PM_{2.5}$. Appendix S will require the immediate regulation of SO_2 and NOx as $PM_{2.5}$ precursors, the regulation of VOC and ammonia as $PM_{2.5}$ precursors will only be required under certain conditions and on a delayed timetable. *See* Appendix S, revised section II.A.31.(ii)(*b*)(*2*)-(*5*). The precursors provision in Appendix S should alleviate some of the commenter's concerns that the regulation of additional precursors will be required immediately upon the effective date of this final rule. Indeed, the phase-in schedule for the regulation of VOC and ammonia will permit states the opportunity allowed by CAA section 189(e) to demonstrate that a particular precursor need not be subject to control in a particular nonattainment area. *Accordingly, a state will not be required to begin immediate regulation of precursors for which sources will likely be exempted from the regulations upon review of a state's NNSR SIP submission.* 81 FR 58010 at 58122 (Aug. 24, 2016).

IERG's Response at page 11 (*emphasis added*). Sources would likely only be exempted from the regulation of $PM_{2.5}$ precursors if a precursor demonstration is made by the state authority in the first instance. If the state authority chooses not to submit a precursor demonstration, then regulated sources should not enjoy the benefit of a 24-month grace period prior to VOM and ammonia being regulated as precursors to $PM_{2.5}$ in a new $PM_{2.5}$ nonattainment area because there is no possibility that they would likely be exempted from future regulation.

In the event the Board were to not include IERG's proposed Section 203.1340(c)(3), IERG requested the inclusion of the following note at the end of proposed Section 203.1340(c) in lieu of Section 203.1340(c)(3):

> BOARD NOTE: VOM and ammonia *may be* regulated as precursors to $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas. The timing of VOM and ammonia as precursors to $PM_{2.5}$ in a $PM_{2.5}$ nonattainment area is contained in the Emission Offset Interpretative Ruling at 40 CFR 51 Appendix S, par. II.A.31.ii.b.4.

IERG's Response at page 13 (*emphasis added*). If the Board were to include this note instead of language modeled after 40 CFR 51.165(a)(1)(xxxvii)(C)(*2*) in the definition of "Regulated NSR pollutant" (i.e., providing that VOM and ammonia *are* precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area), such note would conflict with the blueprint. In the course of the Illinois EPA's review, the Illinois EPA discussed with USEPA this alternative note as recently offered by IERG. To the extent that the definition of "Regulated NSR pollutant" would conflict with the language of the blueprint and, to the extent that regulatory agencies and regulated sources, alike, would be expected to abide by the terms of any such note, proposed Section 203.1340 may not be approvable by the USEPA as a revision to Illinois' SIP. Accordingly, the Illinois EPA renews its request that Section 203.1340(c)(3) follow the blueprint at 40 CFR 51.165(a)(1)(xxxvii)(C).

$PM_{2.5}$ Interprecursor Trading

The Illinois EPA continues to oppose the inclusion of any provisions in revised Part 203 that would allow for interprecursor trading (IPT) for emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors. As previously explained by the Illinois EPA, while 40 CFR 51.165(a)(11) provides for the submittal of a plan that may authorize the offset requirements for emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors be satisfied by IPT, the blueprint clearly does not mandate the inclusion of IPT in any SIP submittal. Recent statements made in IERG's Response do not persuade the Illinois EPA that its interpretation of the D.C. Circuit Court of Appeals decision vacating a portion of 40 CFR 51.165 was in error. *Sierra Club, et al. v. Environmental Protection Agency,* 985 F.3d 1055 (D.C. Cir. 2021). As previously discussed in the Illinois EPA's Comments and Recommendations for Additional Revisions (Illinois EPA's Comments)

and in the Illinois EPA's Second Set of Answers, Comments and Recommendations for Additional Revisions (Illinois EPA's Second Comments), a close reading of the D.C. Circuit's 2021 decision suggests that this court would not find authority for IPT for $PM_{2.5}$ under the Clean Air Act if this question were before it. *See*, Illinois EPA's Comments at pages 31 – 35; Illinois EPA's Second Comments at pages 19 – 23.

Most recently, IERG seeks to distinguish the D.C. Circuit Court's opinion by making note that the offset provision applicable to $PM_{2.5}$ is the general offset provision in Part D, Subpart 1 of the Clean Air Act while the more specific offset provision in Part D, Subpart 2 of the Clean Air Act is applicable to ozone. *See*, IERG's Response at page 15. Based on this recognition, IERG concluded:

> The applicable $PM_{2.5}$ offset provision does not specifically address $PM_{2.5}$ and offsetting the $PM_{2.5}$ amount where direct $PM_{2.5}$ is the primary pollutant at issue like the CAA ozone offset provision does. Therefore, because the ozone offset provision that is the focus of the D.C. Circuit's opinion significantly differs from the $PM_{2.5}$ offset provision, the D.C. Circuit's *finding as to the ozone provision* should not be applied to $PM_{2.5}$ offset issues as suggested by Illinois EPA.

IERG's Response at page 15 (*emphasis added*). IERG's response offers little new in substance. The Illinois EPA has not requested that the Board apply the D.C. Circuit's finding as to the ozone provision in Part D, Subpart 2 of the Clean Air Act to $PM_{2.5}$. In fact, the Illinois EPA has repeatedly recognized that the general offset provision in Part D, Subpart 1, is the only applicable offset requirements for particulate matter. See, Illinois EPA's Comments at page 32 and Illinois EPA's Second Comments at page 20. It is in this context, alone, that the Illinois EPA has requested that the Board make note of the D.C. Circuit's statements concerning the general offset provision in Part D, Subpart 1. As previously discussed by the Illinois EPA:

> . . . [T] he D.C. Circuit briefly considered and discussed the discretionary provisions in Part D, Subpart 1, specifically the following language of Section 173(c)(1):

> The owner or operator of a new or modified major stationary source may comply with an offset requirement in effect under this part for increased *emissions* of *any air pollutant* only by obtaining emission reductions of *such air pollutant* from the same source or other sources in the same nonattainment area . . . .

42 USC 7503(c)(1) (*emphasis added*). In addition, the CAA provides the following definition of "air pollutant" in Section 302(g):

> Includes any precursors to the formation of any air pollutant, to the extent [EPA] has identified *such* precursor or precursors for the particular purpose for which the term 'air pollutant' is used.

42 USC § 7602(g) (*emphasis added*). In the case before the D.C. Circuit, USEPA argued that these provisions, together, gave it "broad discretion to define 'air pollutant' for the purposes of offsets" and, that ozone, not VOCs or NOx, was the 'air pollutant' that should govern the nature of the emission offsets required in areas that were nonattainment for ozone. *Sierra Club, et al. v. Environmental Protection Agency,* 985 F.3d 1055, 1061 (D.C. Cir. 2021). However, the D.C. Circuit disagreed finding that this argument ignored that Section 173(c)(1) related to emission reductions of "such air pollutant." *Id.* Of significance to the court was that ozone is not directly emitted into the air but rather is formed due to the chemical interaction of the sun and its precursors, volatile organic compounds and NOx. The court concluded that "[g]iven that there are no emissions of ozone in the same way that there are emissions of VOCs or NOx, it makes no sense to read those provisions as referring to ozone." *Id.*

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While $PM_{2.5}$ differs from ozone in that it can be directly emitted into the atmosphere, $PM_{2.5}$ is similar to ozone in that $PM_{2.5}$ is also formed in the atmosphere. As previously explained by the Illinois EPA in the Illinois EPA's Comments, $PM_{2.5}$ can be emitted directly into the atmosphere ("primary $PM_{2.5}$" or "direct $PM_{2.5}$") but $PM_{2.5}$ can also form in the atmosphere from emissions of precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds and ammonia as they react in the atmosphere to become $PM_{2.5}$ ("secondary $PM_{2.5}$"). *See,* USEPA, *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter* (EPA-452/R-12-005, December 2012), p. 2-1.

Given this same circumstance is present for secondary $PM_{2.5}$ as for ozone, i.e., that secondary $PM_{2.5}$ is formed due to chemical reactions involving other pollutants, the portion of the D.C. Circuit decision interpreting "emissions" of "such air pollutant" is transferrable to secondary $PM_{2.5}$. Just as this language in Section 173(c)(1) of the Clean Air Act does not support interpreting "emissions" of "such air pollutant" to refer collectively to emissions of ozone, volatile organic compounds and NOx, it similarly does not support interpreting "emissions" of "such air pollutant," to refer collectively to emissions of direct $PM_{2.5}$, nitrogen oxides, sulfur oxides, volatile organic compounds and ammonia.

> Accordingly, the decision of the D.C. Circuit is transferable to secondary $PM_{2.5}$ as it finds that Section 173(c)(1) of the CAA does not authorize the use of interprecursor trading. As such, the Illinois EPA opposes revisions to Part 203 that would allow for the use of IPT for emission offsets for $PM_{2.5}$ as proposed by Section 203.1810(h).

IERG's Second Comments at pages 20 – 22.

Subpart Q – Plantwide Applicability Limits
Section 203.2280 – Significant Emissions Unit
Section 203.2290 – Small Emissions Unit
Section 203.2330 – Setting the 10-Year Actuals PAL Level

In IERG's Response, IERG no longer opposed the inclusion of the phrase "or in the [Clean Air] Act, whichever is lower" in proposed Sections 203.2280, 203.2290 and 203.2330. IERG's Response at page 15. As previously explained by the Illinois EPA, such approach would more closely align the language of these proposed sections with the language of the blueprint. Illinois EPA's Second Comments at pages 23 – 24. While no longer opposing the inclusion of such phrase, IERG went on to request that the Board include the following Board Note after each section to minimize any confusion a source would purportedly have when reading these provisions.

> BOARD NOTE: At the time the Board adopted the amendments to this provision, the Clean Air Act did not provide significant levels.

IERG's Response at page 16.

The Illinois EPA opposes the inclusion of such a note in proposed Sections 203.2280, 203.2290 and 203.2330 as it offers nothing substantively but would, in fact, create additional confusion for the reader. Such a note would never be relevant for the reader except at the time these amendments were adopted by the Board. And, at that time, such note would mean little because the state NA NSR program would not yet be effective as it would not yet be approved as

part of Illinois' SIP.[4] Unfortunately, the inclusion of any time-specific note would likely lull the reader into thinking, at the time of permitting, that they did not need to confirm whether there are significant levels in the Clean Air Act that are more stringent than those under the state SIP.

Section 203.100 – Effective Dates (Transition)

Proposed Revisions to Sections 203.100

IERG's agrees that the transition provision should address the following scenario as explained in Illinois EPA's Supplement to its Second Set of Answers, Comments and Recommendations for Additional Revisions (Illinois EPA's Supplement to Second Comments):

> Authority would only exist to issue permits pursuant to revised Part 203 once USEPA approves revised Part 203. When a permit is issued pursuant to existing Part 203, the project, if constructed, would be required to comply with the requirements of the permit even if revied Part 203 was SIP-approved in the interval before construction began. If a source were to decide during this period that it did not want to proceed under a permit issued permit issued pursuant to existing Part 203, the source could reapply for a new permit under new Part 203, but only if construction had not commenced pursuant to the previously issued Part 203 permit.

See, IERG's Response at page 16 citing Illinois EPA's Supplement to Second Comments at page 4.[5] While IERG offered revised language for inclusion in proposed Section 203.100(c) to purportedly accommodate this situation, IERG did not successfully address this scenario.[6]

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[4] See, definition of "nonattainment new source "NA NSR permit" in Section 3.298 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/3.298 (2020). The practical effect of Illinois' definition of "NA NSR permit" is that the proposed revisions to Part 203 would not replace existing Part 203 until these new rules have been SIP-approved by the USEPA. In the interim, NA NSR permitting in Illinois would continue to be administered by the Illinois EPA pursuant to existing Part 203 as it has historically been done.

[5] In Illinois EPA's Supplement to Second Comments, the Illinois EPA details five scenarios that would be covered by the language offered by the Illinois EPA for inclusion in proposed Section 203.100. Illinois EPA's Supplement to Second Comments at pages 3 - 4. The scenario initially referenced by IERG in its Response was the fourth scenario highlighted by the Illinois EPA in its Supplement to Second Comments.

[6] In IERG's Response, Sections 203.100(a) and (b) would remain the same as originally proposed by IERG. IERG's Response at pages 17 - 18. As previously discussed by the Illinois EPA in Illinois EPA's Comments and in Illinois EPA's Supplement to Second Comments, the Illinois EPA opposes IERG's proposed Sections 203.100(a) and (b).

According to IERG, proposed Section 203.100(c) would provide that Subparts A through H would no longer apply after the effective date of SIP approval of Subparts I through R except as provided by Sections 203.100(c)(1) and (2). IERG's Response at pages 17 - 18. According to IERG, proposed Section 203.100(c)(1) would address:

> The permitting of Projects that were properly permitted under existing Part 203 and on which *actual construction began* prior to the approval of Subparts I – R as part of Illinois's SIP, will continue to be subject to existing Part 203 (Subparts A – H) even after Subparts I – R are approved as part of the Illinois SIP.

IERG's Response at page 18 (*emphasis added*). Meanwhile, IERG's proposed Section 203.100(c)(2) would address "Illinois EPA's concern regarding sources who, prior to the approval of Subparts I – R as part of Illinois' SIP, failed to obtain the required permit under existing Part 203." IERG's Response at page 19. As such, neither subsection (c)(1) or (c)(2) would address the scenario that IERG recognized should be addressed by Section 203.100 – if a permit were issued pursuant to existing Part 203, any construction of the project would necessarily be required to comply with the issued permit even if revised Part 203 was SIP-approved prior to initiating construction. Nor would IERG's proposed Section 203.100(d) address this scenario as it pertains to the "permitting of Projects on which *actual construction begins after the effective date of approval* of Subparts I – R as part of Illinois' SIP shall be in accordance with Subparts I – R." (*emphasis added*).

While IERG argues in IERG's Response that "and operation" should be removed from Section 203.100(b) as proposed by the Illinois EPA, the Illinois EPA opposes any deletion of this phrase from its proposed language. IERG argues that this deletion is appropriate because projects do not operate rather equipment that is constructed or modified during a project operates and Subpart F covers the operation of projects. IERG's Response at page 18. IERG is correct; Subpart F, Operation of a Major Stationary Source or Major Modification, covers the operation

of projects.[7] This is the very reason that the Illinois EPA proposed the inclusion of the phrase "and operation" in Section 203.100(b). The Illinois EPA's proposed language would ensure that the permitting and operation of projects that began construction or may begin construction before the date of full approval of Subparts I through R of this Part would continue to be in accordance with existing Subparts A through H which necessarily includes the operating requirements of existing Subpart F.[8]

The Illinois EPA agrees that it would be better if Section 203.100(b) more closely utilized the defined phrase "begin actual construction" or similarly "began actual construction" rather than "begin construction" or "began construction." The following language, highlighting revisions to the Illinois EPA's previously proposed language, would be acceptable to the Illinois EPA:

Section 203.100 Effective Dates

a) Subparts I through R of this Part do not apply until the effective date of the full approval of all of those Subparts by the United States Environmental Protection Agency (USEPA) as a revision to the Illinois State Implementation Plan.

b) On the effective date of the full approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan, the permitting and operation of projects that began actual construction or may begin actual construction before this date shall continue to be in accordance with Subparts A through H of this Part.

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[7] Existing Subpart F includes Section 203.601, Lowest Achievable Emission Rate Compliance Requirements, and Section 203.602, Emission Offset Maintenance Requirement.

[8] The Illinois EPA continues to oppose IERG's proposed removal in Section 203.100(b) of "the full" approval of Subparts I through R of this Part. As previously explained by the Illinois EPA, IERG's proposed language suggests that an NA NSR permit could be issued consistent with provisions of Part 203 that had not yet been SIP approved and, yet such permit would meet Illinois' definition of an NA NSR permit. This is not the case. If any part of a construction permit would be issued pursuant to a provision in Part 203 that had not been approved by the USEPA, this permit would not meet the definition of a NA NSR permit in Illinois. As such, the Illinois EPA opposes IERG's proposed removal of "the full" approval of Subparts I through R of this Part in Section 203.100(b). *See,* Illinois EPA's Supplement to Second Comments at pages 5 – 6.

Finally, the Illinois EPA opposes IERG's proposed removal of the phrase "or may begin construction" from Section 203.100(b) as proposed by the Illinois EPA. IERG states it is not clear what the Illinois EPA is attempting to address by its inclusion of this phrase. IERG's Response at page 18. The phrase "or may begin construction" addresses the following scenario that IERG recognized as appropriate for inclusion in Section 203.100. If the Permittee possessed a valid and effective Part 203 permit but construction did not commence prior to SIP – approval of revised Part 203, after SIP-approval of revised Part 203, any construction of the project would necessarily need to be consistent with the terms of the issued permit, i.e., existing Part 203 (unless the Permittee were to subsequently obtain a permit for the project pursuant to revised Part 203). As such, the Illinois EPA opposes IERG's suggested removal of "or may begin construction" from Section 203.100(b) as proposed by the Illinois EPA. The Illinois EPA renews its request that the Board include the language of Section 203.100 as proposed above by the Illinois EPA.

IERG's Updated Proposed Rule Language for Parts 201, 202, 203, 204 and 232

In conjunction with the Illinois EPA's Second Comments, the Illinois EPA offered the Board a redline of Part 203, excluding proposed 203.100, and a redline of Part 204 to identify those revisions to existing Parts 203 and 204 that would be acceptable to the Illinois EPA. In response to this filing, IERG filed updated proposed rule language for Parts 203 and 204 that would be acceptable to IERG. In addition, IERG filed updated proposed rule language for Parts 201 and 202. While no additional amendments to Part 232 had been proposed by any party to this proceeding since IERG's initial filing, IERG also included its previously proposed revisions to Part 232. *See*, IERG's Updated Proposed Language. The Illinois EPA does not object to the proposed rule language for Parts 201, 202, 204 and 232 as recently tendered in IERG's Updated

Proposed Language. However, the Illinois EPA objects to rule language offered in IERG's Updated Proposed Language for Part 203 that differs from rule language proposed by the Illinois EPA in Exhibit A to the Illinois EPA's Second Comments (Exhibit A).[9] The Illinois EPA renews its request that any revisions to Part 203 adopted by the Board be consistent with Exhibit A, including Section 203.100 as just addressed, and following two revisions recently proposed by IERG.[10]

IERG adjusted its definition of Good Engineering Practice in IERG's Updated Proposed Language by including a reference to preconstruction approvals or permits required under 40 CFR Part 51 in addition to Part 52. IERG would now have proposed Section 203.1200 read as follows:

Section 203.1200 Good Engineering Practice

a) "Good engineering practice," with respect to stack height, means the greater of:

1) 65 meters, measured from the ground-level elevation at the base of the stack;

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[9] IERG originally proposed the use of italic type in proposed Section 203.1280, Nonattainment New Source Review (NA NSR) Permit. The Illinois EPA inadvertently neglected to include the statutory language of Section 3.298 of the Illinois Environmental Protection Act, 415 ILCS 5/3.298, in proposed Section 203.1280 in italic type in Exhibit A. Consistent with the *Style Manual*, the Illinois EPA agrees that the relevant statutory language in proposed Section 203.1280 should appear in italic type. *See, Style Manual, Illinois Administrative Code and Illinois Register*, June 2004, at page 10.

[10] For the Board's ease of reference, IERG's proposed revisions to the following sections in existing Part 203 would not be acceptable to the Illinois EPA:

Section 203.100 – Effective Dates
Section 203.1000 – Incorporations by Reference
Section 203.1010 – Abbreviations and Acronyms
Section 203.1340 – Regulated NSR Pollutant
Section 203.1450 – Control of Ozone, PM_{10} and $PM_{2.5}$
Section 203.1600 – Construction Permit
Section 203.1810 – Emission Offset
Section 203.2280 – Significant Emissions Unit
Section 203.2290 – Small Emissions Unit
Section 203.2330 – Setting the 10-Year Actuals PAL Level

2) The following:

A) For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits required under 40 CFR Parts 51 and 52:

Hg = 2.5H,

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

***

Such change would be consistent with the Illinois EPA's proposed revision to the same definition of Good Engineering Practice in Part 204. See, proposed revision to 35 Ill. Adm. Code 204.420 in Illinois EPA's Initial Comments and Recommendations for Additional Revisions, dated January 18, 2022, at pages 8-9. For stacks in existence on January 12, 1979, an owner or operator could have obtained any necessary preconstruction approvals or permits required under 40 CFR Part 51 and 52. As such, the Illinois EPA agrees with IERG that additional reference to 40 CFR Part 51 should be made in proposed 203.1200.

IERG also adjusted its definition of Replacement Unit in IERG's Updated Proposed Language by referring to subsections (c)(1) and (c)(2) in subsection (c)(4) rather than subsections (c)(2) and (c)(3) as it had originally proposed. IERG would now have proposed Section 203.1350(c)(4) read as follows:

Section 203.1350 Replacement Unit

"Replacement unit" means an emissions unit for which all the criteria listed in subsections (a) through (d) are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

***

c) The replacement does not alter the basic design parameter or parameters of the process unit. Basic design parameters of a process unit shall be determined as follows:

***

4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter or parameters specified in subsections (c)(2) and (c)(3).

***

Such change would be consistent with the Illinois EPA's proposed revision to the same definition of Replacement Unit in Part 204. *See*, proposed revision to 35 Ill. Adm. Code 204.620 in Illinois EPA's Initial Comments and Recommendations for Additional Revisions, dated January 18, 2022, at pages 8-9. The Illinois EPA agrees that these references should be corrected in proposed 203.1350(c)(4) - Subsection 203.1350(c)(4) should refer to Subsections 203.1350(c)(1) and (2) rather than Subsections 203.1350(c)(2) and (3).[11]

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Sally Carter

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Dated: December 13, 2022

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[11] While the NSR regulations no longer contain a definition of "basic design parameters" to be used when identifying whether a unit is a "replacement unit," USEPA most recently stated that both regulators and regulated sources may continue to look to these definitions to guide their understanding of the definition of "replacement unit." 86 FR 37918, 37921 (July 19, 2021).

STATE OF ILLINOIS)
) **SS**
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following: I have electronically served the attached **MOTION FOR LEAVE TO FILE INSTANTER THE ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT and ILLINOIS EPA'S REPLY TO IERG'S RESPONSE TO ILLINOIS EPA'S SECOND SET OF ANSWERS, COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS AND SUPPLEMENT,** on December 13, 2022, to the following:

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I have electronically served and deposited said document in the United States Mail, proper postage prepaid, in Springfield, and upon:

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My e-mail address is sally.carter@illinois.gov.

The number of pages in the e-mail transmission is 23.

The e-mail transmission and depositing said document in the United States Mail took place before 5:00 p.m. on December 13, 2022.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Sally A. Carter

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Dated: December 13, 2022

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