

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
)	R 23-18
AMENDMENTS TO 35 ILL. ADM. CODE)	(Rulemaking – Air)
PARTS 201, 202, AND 212)	

NOTICE OF FILING

TO: Mr. Don A. Brown,	Timothy Fox
Clerk of the Board	Chloe Salk
Illinois Pollution Control Board	Hearing Officers
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Suite 11-500	60 East Van Buren Street, Suite 630
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(VIA ELECTRONIC 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, **POST-HEARING COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Melissa S. Brown

Dated: March 7, 2023

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**POST-HEARING COMMENT
OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES, the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the February 21, 2023 Hearing Officer Order, submits the following Post-Hearing Comment for the Illinois Pollution Control Board’s (“Board”) consideration in this rulemaking.

I. IERG does not support Illinois EPA’s proposal.

The Illinois Environmental Protection Agency’s (“Illinois EPA’s”) proposed revisions to 35 Ill. Adm. Code Parts 201, 202, and 212 would seek to remove provisions that allow Illinois EPA to grant advance authorization to sources to continue operating with excess emissions during a malfunction or to violate emissions limitations or standards during startup. IERG is opposed to Illinois EPA’s proposed revisions and its approach in addressing startup, malfunction, and breakdown (“SMB”) by removing such provisions without adding alternative language in its place to address compliance during SMB events. If Illinois EPA’s proposal is adopted without any alternative standards during SMB, entities will be left with inevitable noncompliance during periods of SMB.

When adopting the general standards and SMB provisions in 1972, the Board recognized that sources may be unable to comply with applicable emission limitations or standards during startup. The original SMB provisions in Part 201 were a foundational part of the development of the general numeric standards adopted by the Board in PCB R 71-23. *See* Opinion and Order of the Board, PCB R 71-23, at

9 (April 13, 1972) (“We cannot resolve the myriad of individual variations in a single rule. The Agency’s admirable proposal, which we have adopted, places case-by-case discretion in the Agency under its permit powers, providing that if special conditions warrant permission to operate during a malfunction, or if irreducible startup emissions will somewhat exceed the general standards, EPA may grant permission for such emissions upon application and proof.”). The SMB provisions adopted in PCB R 71-23 have not been substantively amended since their adoption. Testimony of Rory Davis, Illinois EPA, Transcript of January 19, 2023 Hearing, PCB R 23-18, at 13:6-15 (Jan. 19, 2023). Despite tremendous advances in pollution control technologies and air quality, there remains periods of time during SMB conditions where compliance with generally applicable regulatory standards is infeasible.

Removal of the SMB regulatory provisions and removal of the SMB permit conditions in existing permits and the ability to include SMB provisions in future permits will have a detrimental effect on a source’s ability to comply during periods of SMB. Industry has relied upon its understanding of the SMB provisions and permit conditions, as well as Illinois EPA’s decision to not enforce against SMB exceedances. Illinois EPA’s proposal drastically changes the status quo relating to SMB in Illinois. If Illinois EPA’s proposal is adopted without any alternative standards during SMB, entities will be left with inevitable noncompliance during periods of SMB. This leaves facilities in the unfortunate circumstance of either having to choose to not operate in order to remain in compliance or be noncompliant and rely on Illinois EPA’s use of enforcement discretion. IERG is opposed to any statutory or regulatory change in this rulemaking that would solely rely on the State’s use of enforcement discretion as a replacement for the SMB regulatory provisions and permit conditions. This is not to say that IERG does not support enforcement discretion in the general sense. Illinois EPA necessarily requires flexibility to oversee compliance as it deems appropriate and to allow sources to

correct minor compliance issues. However, as David Wall explained in the second hearing, solely relying on enforcement discretion for startup events in particular is not the best path forward:

And further, I would say that enforcement discretion, in my opinion, is not the best remedy for cases such as boiler startup or FCC startup, as I've testified to, where there is a known compliance issue beforehand, rather than something unexpected where enforcement discretion can be taken into account after the fact.

Testimony of David Wall, Second Hearing Transcript, PCB R 23-18 at 28:16-23 (Feb. 16, 2023).

Where those situations can be reasonably predicted and identified, IERG prefers that the State formally articulate what its expectations are and attempt to identify a path forward to make compliance possible.

Furthermore, IERG does not agree with Illinois EPA's position that that the SMB provisions only provide an affirmative defense to violations of generally applicable standards during SMB events. *See, e.g.*, Testimony of Rory Davis, First Hearing Transcript, PCB R 23-18, 20:2-10, 66:1-8, and 105:5-11 (Jan. 19, 2023). Illinois EPA has historically used the SMB provision in Section 201.149 as a basis to include broad SMB conditions in air construction and operating permits. IERG provided several examples of such conditions in its February 6, 2023 Pre-Filed Testimony. The permit language, on its face, authorizes the permittee to operate the affected emission unit in violation of the applicable emission standard during SMB events. *See, e.g.*, IERG's Pre-filed Testimony, PCB R 23-18 at 8-9 (Feb. 6, 2023). It has been the regulated community's long-standing understanding that having such an authorization in a permit means that a facility is authorized to exceed the applicable limitation during SMB events and that Illinois EPA will not initiate an enforcement action for such exceedances. In the 2015 SSM State Implementation Plan ("SIP") Call, the United States Environmental Protection Agency ("USEPA") even characterized Illinois EPA's SMB provisions as creating exemptions:

The EPA agrees that together Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit.35 § 201.262, and Ill. Admin. Code tit. 35 § 201.265148 can be read to create exemptions by authorizing a state official to determine in the permitting process that the excess emissions during startup and malfunction will not be considered violations of the applicable emission limitations. The language of the SIP on its face appears to permit the

state official to grant advance permission to “continue to operate during a malfunction or breakdown” or “to violate the standards or limitations * * * during startup” (Ill. Admin. Code tit. 35 § 201.261(a)).

78 Fed. Reg. 12514-15 (Feb. 22, 2013). Some permits include language that states that the authorization does not shield a permittee from enforcement for any violation of an applicable emission standard that occurs during SMB, but only constitutes a prima facie defense to such enforcement action. However, it has been the regulatory community’s understanding that the “violation” reference in these conditions, as well as in Section 201.149, means violation of the applicable standard or limitation, i.e., an exceedance of the standard or limitation, and not a violation of the regulation containing the standard or limitation. *See, e.g.*, 35 Ill. Adm. Code 201.149 (“ . . . would cause a violation of the standards or limitations set forth in Subchapter C of this Chapter. . .”). This understanding is consistent with Illinois EPA’s historic practice of not enforcing against facilities for violations of these standards during SMB events.

IERG is opposed to Illinois EPA’s proposed revisions and its approach in addressing SMB by removing such provisions without adding alternative language in its place to address compliance during SMB events. As explained below and in more detail in Pre-filed Testimony, only removing the SMB provisions, without adding any alternative provisions, will leave facilities with inevitable noncompliance. Illinois EPA’s proposal should not be adopted.

II. If Illinois EPA’s proposal is adopted, IERG’s proposed alternative SMB standards should also be adopted.

If the Board adopts Illinois EPA’s proposal, IERG strongly urges the Board to also adopt IERG’s proposed revisions to Part 216. Illinois EPA’s proposal, on its own, leaves facilities with inevitable noncompliance during SMB periods. IERG’s proposal provides a viable path for compliance during SMB events for facilities with FCCUs, boilers, or process heaters.

IERG has the authority to propose amendments to a proposal filed by Illinois EPA under the Fast Track rulemaking proceedings under 415 ILCS 5/28.5. The Board is authorized to revise Illinois EPA’s

proposal after the end of the hearing and comment period. Revisions to Illinois EPA's Fast Track proposals have been proposed in prior Fast Track proceedings. *See, e.g.*, IERG's Prefiled Testimony of Sidney M. Marder, In the Matter of: Proposed New 35 Ill. Adm. Code 217, Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211, PCB R 1-17, at 11-12 (Dec. 8, 2000); Post-Hearing Comments of IERG, PCB R 1-17 (Jan. 10, 2001); Final Opinion and Order, PCB R 1-17, at 17-22 (Feb. 15, 2001). Section 28.5 of the Act provides authority for IERG's proposal to amend Part 216.

Alternative standards for SMB periods are necessary here, especially as to carbon monoxide ("CO") emissions for boilers, process heaters, and fluid catalytic cracking units ("FCCUs"). As explained more below and in Pre-Filed Testimony, it is technically infeasible for boilers, process heaters, and FCCUs to achieve compliance with Illinois' CO standards during periods of SMB, in particular during startup. Additionally, as for Illinois' CO standard for FCCUs, there is no comparable limit in other states. The American Petroleum Institute ("API") explained as follows:

Illinois is unique in its approach by prescribing a specific CO emission limitation of 200 ppm when compared to other states. Most states simply require use of combustion of CO for catalytic cracker during normal operations without the addition of a numeric concentration limit. South Coast Air Quality District has a 500 ppm limitation but allows a specific startup duration (hours allowed) and limits the annual number of startups from FCCUs. Similar to SCAQD, Bay Area Air Quality Management District has a 350 ppm standard with a startup exemption. Generally, states have consistently incorporated by reference both Part 60 NSPS and Part 63 NESHAP standards. In some cases, they have state standards that are exempted when a unit is subject to a federal NSPS and/or NESHAP (e.g., Indiana). Illinois' limitation of 200 ppm is a unique problem with respect to FCCU startup and shutdown events when compared to other states.

Pre-filed Testimony of John Derek Reese, API, PCB R 23-18 at 15 (Feb. 6, 2023); *see also* Testimony of John Derek Reese, Second Hearing Transcript, PCB R 23-18 at 31:9-24 and 32:1-9 (Feb. 16, 2023); *see also* Testimony of David Wall, IERG, Second Hearing Transcript, PCB R 23-18 at 29:17-24 (Feb. 16, 2023). As discussed above, other states have promulgated workable standards for SMB periods,

which have been approved by USEPA. The same can be accomplished here through IERG's proposed revisions.

Illinois EPA's proposal provides no viable path for operating in compliance during SMB events. If Illinois EPA's proposal is adopted, IERG urges the Board to also adopt IERG's proposed revisions to Part 216 as discussed in David Wall's pre-filed testimony. *See* Pre-filed Testimony of David Wall, PCB R 23-18, at 23-60 (Feb. 6, 2023). As explained in detail in IERG's pre-filed testimony, IERG's proposed amendments to Part 216 satisfy USEPA's criteria for alternative emission standards for periods of SSM. In providing additional explanation and clarification to USEPA's recommended criteria for development of alternative emission standards, USEPA emphasized that "alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown." 80 Fed. Reg. 33840, 33913 (June 12, 2015). IERG's proposed revisions to Part 216 are narrowly tailored and meet all seven of USEPA's recommended criteria.

A. Section 216.121 – Fuel Combustion Emission Sources

IERG is proposing to amend Section 216.121, which governs CO emissions from fuel combustion emission sources. Section 216.121 prohibits causing or allowing the emission of CO into the atmosphere from any fuel combustion emission source with actual heat input greater than 2.9 MW (10 mmbtu/hr) to exceed 200 ppm, corrected to 50 percent excess air. 35 Ill. Adm. Code 216.121. The CO standard in Section 216.121 for fuel combustion emission sources is technically infeasible to achieve for numerous entities in Illinois during periods of SMB. CO emissions can be minimized when boilers operate at sufficiently high combustion temperature and with sufficient time and turbulence (mixing) in the firebox to allow for more complete combustion to occur. These factors are not

technically feasible to achieve during startup conditions. IERG is not aware of any technical means to control the excess CO emissions during these startup periods, other than to follow standard startup procedures to achieve normal operating conditions as quickly as possible while minimizing potential damage to the combustion device (i.e., minimizing the duration of startup while maintaining safe operation). In this proceeding, Illinois EPA has not rebutted this fact or offered any potential options as to how compliance can be achieved during startup.

The alternative standards that IERG is proposing to incorporate into Section 216.121 are from the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters under 40 CFR 63, Subpart DDDDD (“Boiler MACT”). Specifically, IERG is incorporating work practice standards, monitoring, and recordkeeping requirements from the Boiler MACT applicable to periods of startup and shutdown. Under Boiler MACT, during startup and shutdown, the boiler or process heater must: (i) operate all continuous monitoring systems (“CMS”) at all times; (ii) collect monitoring data; and (iii) keep records during periods of startup or shutdown.¹ IERG’s proposed revision to Section 216.121 is narrowly tailored because it is limited to boilers and process heaters with actual heat input greater than 2.9 MW (10 mmbtu/hr). As discussed in detail in IERG’s Prefiled Testimony, IERG’s proposed alternative standard meets each of the seven criteria recommended by USEPA.

B. Section 216.361 – Petroleum and Petrochemical Processes

IERG is also proposing to amend Section 216.361 of the Board’s rules, which governs CO emissions from petroleum and petrochemical processes. Section 216.361(a) prohibits causing or allowing the emission of a CO waste gas stream into the atmosphere unless such waste gas stream is

¹ IERG is also proposing to amend Sections 216.103 and 216.104, which contain the definitions and incorporations by reference for Part 216. In conjunction with IERG’s proposed amendments to Section 216.121, IERG is proposing to include the definitions of “startup” and “shutdown” from Boiler MACT in Section 216.103. Additionally, IERG is proposing to incorporate by reference Boiler MACT, 40 CFR 63, Subpart DDDDD, into Section 216.104.

burned in a direct flame afterburner or CO boiler so that the resulting concentration of CO in such waste gas stream is less than or equal to 200 ppm corrected to 50% excess air. 35 Ill. Adm. Code 216.361(a). The CO standard in Section 216.361(a) for petroleum and petrochemical processes is technically infeasible to achieve for refineries in Illinois during periods of SMB, particularly during startup. For a FCCU to operate properly and safely, it first must be brought up to the proper operating temperature, which is done through the combustion of torch oil. When combusting torch oil and bringing the unit up to temperature, elevated CO emissions occur. Depending on how long the FCCU had been shut down prior to the startup (i.e., how much it has cooled off), the startup can take hours or even days to safely reach the proper operating temperature. Additionally, the FCCUs in Illinois use CO boilers to control CO. Typically, the FCCUs will startup in full burn mode and the source will bypass the CO boiler during startup. This is because of safety and reliability concerns – starting up a FCCU in full burn mode through CO boilers is generally not safe or reliable. *See, e.g.*, Testimony of John Derek Reese, API, Second Hearing Transcript, PCB R 23-18 at 39:14-24 and 40:1-14 (Feb. 16, 2023) (“The contention is that you say there is no SMB, I know the process safety risk, the primary focus during a cat cracker, and there’s lots of instance where this has been raised, that you must combust the hydrocarbons. You cannot allow the accumulation of uncombusted hydrocarbon to be in the reactor train and find its way down to the CO border [sic – boiler], which would be a source for emission, right?”).

The alternative standards proposed by IERG to be incorporated into Section 216.361 are from the NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units at 40 CFR 63, Subpart UUU (“Refinery MACT”). IERG is incorporating alternative standards and work practice standards, monitoring, and recordkeeping requirements from the Refinery MACT applicable to periods of startup, shutdown, and hot standby. Specifically, the alternate standard for periods of startup, shutdown, and hot standby during SSM events is maintaining the oxygen

concentration in the exhaust gas from your catalyst regenerator at or above 1 volume percent (dry basis) or 1 volume percent (wet basis with no moisture correction).² IERG's proposed alternative standard for Section 216.361 is narrowly tailored as it only applies to FCCUs and there are only four petroleum refineries in Illinois. Most or all of the FCCUs at the refineries in Illinois are controlled by CO boilers during steady-state operation. IERG has demonstrated in its Pre-filed Testimony that achieving compliance with the Section 216.361 CO standard is technically infeasible for FCCUs, especially during startup. In this proceeding, Illinois EPA has not rebutted this fact or offered any potential options as to how compliance can be achieved during startup.

Additionally, IERG's proposal does not have any adverse impact on air quality relative to air emissions today:

So back to my point, emissions, following what we do today, which is consistent with the federal MACT standard alternatives, would not be changed. If you remove the SMB provisions and don't have numerical alternative that we propose, then we are stuck, right? How do I start up my cat cracker knowing that I can't meet a limit? That's a problem.

Testimony of John Derek Reese, API, Second Hearing Transcript, PCB R 23-18 at 40:7-14 (Feb. 16, 2023). Refineries are stuck and left with no viable path to achievable compliance with Section 216.361 during periods of SMB if Illinois EPA's proposal is adopted without any alternative provisions.

III. IERG's alternative SMB proposals should be adopted in this rulemaking.

If the Board adopts Illinois EPA's proposal, IERG strongly urges the Board to simultaneously adopt IERG's proposed revisions to Part 216. Illinois EPA testified at the first hearing that entities impacted by Illinois EPA's proposal have the option of pursuing regulatory relief from the generally applicable standards at issue during SMB events. Specifically, Illinois EPA proposed utilizing the

² IERG is also proposing to amend Sections 216.103 and 216.104, which contain the definitions and incorporations by reference for Part 216. In conjunction with IERG's proposed amendments to Section 216.361, IERG is proposing to include the definitions of "catalytic cracking unit," "hot standby," "startup," and "shutdown" from Refinery MACT in Section 216.103. Additionally, IERG is proposing to incorporate by reference Refinery MACT, 40 CFR 63, Subpart UUU, into Section 216.104.

adjusted standard or site-specific rulemaking provisions. Testimony of Rory Davis, First Hearing Transcript, PCB R 23-18 at 136:22-24 and 137:1-5. This is a very frustrating position for Illinois EPA to take, for several reasons. In the years leading up to this proceeding, Illinois EPA has had more than enough time to work with affected sources and USEPA to determine alternate regulatory provisions, and has not done so. What is even more concerning is that Illinois EPA apparently made little attempt to discover the impacts of their current proposal prior to filing their proposal with the Board. *See, e.g.*, Testimony of Rory Davis, First Hearing Transcript, PCB R 23-18 at 34:9-16 (Jan. 19, 2023) (“... I certainly don’t recall that we had any kind of formal or informal – informal outreach that was conducted.”); *Id.* at 35:1-8 (“No, we did not conduct specific information requests. The expectation of U.S. EPA is for states to remove the relevant portions of concern from their pertinent regulations, which is what the Illinois EPA has done in this proposal. In addressing this limited action, information requests were not deemed necessary or relevant by the Bureau of Air.”). Yet, as shown in the Pre-filed Testimony of IERG’s Executive Director, IERG initiated discussions with Illinois EPA on this issue as early as 2016. Pre-filed Testimony of Kelly Thompson, PCB R 23-18 at 13 (Feb. 6, 2023). IERG remained in contact with Illinois EPA thereafter on this issue and, especially after the January 2022 Finding of Substantial Inadequacy, attempted to contact Illinois EPA on several occasions to start a dialogue. *Id.* at 13-14. Also, as demonstrated by the exhibits provided by Illinois EPA at the first hearing, there were additional inquiries made by industry in an attempt to start a dialogue on these issues. *See* First Hearing Exhibit 1, PCB R 23-18 (Jan. 19, 2023). The opportunity to collaborate and create a workable proposal was there, but not pursued by Illinois EPA.

Rather, Illinois EPA has chosen to use a Fast-Track proceeding to simply make the SIP call issue go away. Illinois EPA circulated its proposed revisions to stakeholders, for the first time, on November 17, 2022. Illinois EPA gave no indication to stakeholders prior to that date as to which path Illinois

EPA was considering taking. Illinois EPA gave stakeholders until December 6, 2022 to submit any comments – a total of 19 days, which included the Thanksgiving holiday. IERG submitted its comment within this very short timeframe on the December 6, 2022 deadline. Comment of the IERG, PCB R 23-18, Exhibit 1 (Dec. 30, 2022). Given that Illinois EPA filed its proposal the very next day, on December 7, 2022, it is not apparent that Illinois EPA sufficiently considered the stakeholder comments submitted. Nevertheless, IERG has endeavored to work within the time constraints of this Fast-Track proceeding by providing alternate provisions that directly utilize USEPA's own regulations, thus enhancing ultimate approvability by USEPA. Illinois EPA still will not engage in any discussion of that here. To suggest that such should happen in yet another regulatory proceeding or proceedings, is not appropriate, if for no other reason than the proper and efficient administration of resources.

If Illinois EPA's proposal is adopted in this rulemaking, the entities that have an issue with compliance during SMB events will be immediately in noncompliance during the first SMB event that occurs after the Board's adoption of Illinois EPA's proposal, and will be in noncompliance when an SMB event occurs thereafter. Adjusted standard and site-specific rule proceedings typically take several months to complete, sometimes longer. Illinois EPA's suggestion that regulated sources engage the Board in additional regulatory relief proceedings after the compliance issue has been created is quite an interesting approach for programmatic compliance. If the Board is inclined to adopt Illinois EPA's proposal, IERG urges the Board to simultaneously adopt IERG's proposed revisions to Part 216 so that impacted facilities with FCCUs, boilers, or process heaters can maintain continuous compliance, including during SMB events.

Additionally, at the first hearing, Illinois EPA testified about its conversations over several years with USEPA about approvability of alternative emission limitations as a SIP revision and correction of the deficiency identified in the SIP Call. *See, e.g.,* Testimony of Rory Davis, First Hearing Transcript,

PCB R 23-18 at 25:3-9 (Jan. 19, 2023) (“The agency discussed the uncertainty around state’s options in addressing the SIP call, and the need for additional guidance from U.S. EPA. The agency asked questions of U.S. EPA and requested guidance, particularly about how to establish any potential alternative limits, and the types of limits that would be approvable.”). Based on Illinois EPA’s testimony, Illinois EPA apparently made no effort in those years to put any ideas in front of USEPA for evaluation. *See* Testimony of Rory Davis, First Hearing Transcript, PCB R 23-18 at 77:8-24 and 78:1-22 (Jan. 19, 2023).

As confirmed by Illinois EPA in response to a follow-up question by IERG, in its discussions with Illinois EPA, USEPA did not state that adopting alternative emission limitations would not be approvable. *Id.* at 47:7-10-12 (“Correct. The U.S. EPA did not state that alternative emission limits were prohibited.”). Indeed, USEPA provided extensive guidance on the development of alternative emission limitations in the 2015 SIP Call. 80 Fed. Reg. 33840, 33913-33914 (June 12, 2015). As demonstrated in IERG’s Pre-filed Testimony, IERG’s proposed alternative emission limitations in Sections 216.121 and 216.361 are taken directly from USEPA’s own regulations and they meet each of the seven criteria identified by USEPA.

As far as IERG is aware (and Illinois EPA certainly has not indicated otherwise), USEPA has not yet considered the types of narrowly-tailored alternative emission limitations as those proposed by IERG, in response to the 2015 SIP Call. That Illinois EPA did not engage USEPA in discussions along those lines should not be allowed to result in putting regulated sources in jeopardy of noncompliance.

Moreover, the fact that Illinois EPA has not pursued discussion of specific alternative standards with USEPA in no way prohibits the Board from adopting IERG’s proposed revisions in this proceeding. In fact, there appears to be no risk that doing so would jeopardize efforts to address the SIP call by the deadline. Inclusion of IERG’s proposed revisions, along with Illinois EPA’s proposal, will

not make the SIP submittal to address the 2015 SIP Call incomplete. As Illinois EPA explained and as demonstrated by USEPA's approval of other state SIP submittals, removing the SMB provisions will very likely address the deficiencies identified in the 2015 SIP Call. Including IERG's proposed revisions to Part 216 will not make that SIP submission incomplete. Illinois EPA acknowledged at the first hearing that the sanctions clock at issue will be stopped by a complete SIP submission, not an approvable submission. Testimony of Rory Davis, First Hearing Transcript, PCB R 23-18 at 58:12-23. The SIP submission will be complete if it includes both Illinois EPA's proposal and IERG's proposed revisions to Part 216.

As IERG has repeatedly maintained, the narrow alternate provisions proposed by IERG are directly from USEPA's own rules and satisfy the criteria for alternate standards. Even if it were to take some additional time to work through approval of the alternate standards, that does not mean those alternate standards should not be promulgated here. Furthermore, Illinois EPA explained that if entities were to pursue an adjusted standard or site-specific rule, the adjusted standards and site-specific rules would still need to be approved by USEPA. Illinois EPA's Responses to Questions Received at Hearing, PCB R 23-18 at Question 13 (Jan. 30, 2023). Therefore, Illinois EPA would not be saving any time as to the approval process by not submitting the alternative standards along with Illinois EPA's proposed revisions for approval as SIP revisions.

IV. Conclusion

All IERG members take very seriously their environmental regulatory and permit compliance obligations. Many members have gone so far as to adopt corporate policies at the executive and board levels to direct staff that oversee their facilities to operate in compliance with all laws, regulations, permits, and orders. The employees do not have discretion to knowingly disregard applicable emission

standards, and in the case of impossible compliance scenarios as described herein, employees are left with no feasible alternative.

IERG is opposed to Illinois EPA's proposed revisions and its approach in addressing SMB by removing such provisions without adding alternative language in its place to address compliance during SMB events. Removing the SMB provisions, without adding any alternative provisions, will leave facilities with inevitable noncompliance. Illinois EPA's proposal should not be adopted. However, if the Board adopts Illinois EPA's proposal, IERG urges the Board to also adopt IERG's proposed revisions to Part 216. IERG's proposal provides a viable path for compliance for facilities with FCCUs, boilers, or process heaters that will be impacted by Illinois EPA's proposal.

IERG would like to thank the Board for the opportunity to submit this comment.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: March 7, 2023

By: /s/ Melissa S. Brown

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following: That I have served the attached **POST-HEARING COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** via electronic mail upon:

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Date: March 7, 2023

/s/ Melissa S. Brown
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