

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Mr. Don A. Brown, Clerk of the Board Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 (VIA ELECTRONIC MAIL)	Mr. Daniel Pauley Hearing Officer Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 (VIA ELECTRONIC MAIL)
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(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, **ENTRY OF APPEARANCE OF TREJAHN HUNTER and FIRST NOTICE COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are hereby served upon you.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: June 17, 2024

By: /s/ Melissa S. Brown

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CERTIFICATE OF SERVICE

I, Melissa S. Brown, the undersigned, hereby certify that I have served the attached **ENTRY OF APPEARANCE OF TREJAHN HUNTER and FIRST NOTICE COMMENT OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** on June 17, 2024, to the following:

Don A. Brown
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That my email address is Melissa.Brown@heplerbroom.com

That the number of pages in the email transmission is 8.

That the email transmission took place before 5:00 p.m. on the date of June 17, 2024.

Date: June 17, 2024

/s/ Melissa S. Brown
Melissa S. Brown

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PART 232: TOXIC AIR CONTAMINANTS)

ENTRY OF APPEARANCE OF TREJAHN HUNTER

NOW COMES Trejahn Hunter and hereby enters his appearance as an attorney in this matter on behalf of the ILLINOIS ENVIRONMENTAL REGULATORY GROUP.

Respectfully Submitted,

By: /s/ Trejahn Hunter

Dated: June 17, 2024

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**FIRST NOTICE COMMENT OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, hereby submits its First Notice Comment pursuant to the Illinois Pollution Control Board’s (“Board”) April 18, 2024 Order and 48 Ill. Register 6554-6555 (May 3, 2024). The Board’s April 18, 2024 Order proposed for First Notice the proposed amendments to 35 Ill. Adm. Code Parts 201, 202, 203, 204, and 232.

On August 16, 2021, IERG filed a proposal for rulemaking to amend the Board’s Nonattainment New Source Review (“NA NSR”) rules at 35 Ill. Adm. Code Part 203. IERG’s Proposal also proposes to amend portions of the Board’s Prevention of Significant Deterioration (“PSD”) rules at Part 204 and Toxic Air Contaminants rules at Part 232, as well as the permit provisions at Part 201 and provisions governing alternative control strategies at Part 202. IERG is proposing to revise the Board’s rules to be up-to-date with the language in the federal New Source Review (“NSR”) regulations. The NA NSR rules in Part 203 of the Board’s regulations have not been updated since 1998. The federal NA NSR rules have been updated numerous times since then, resulting in differences between Part 203 and the federal rules. This implicates many federal regulatory changes, including various developments with ozone and PM_{2.5} nonattainment requirements. Aligning the language in Part 203 to more closely track the federal NA NSR

language, as well as with the PSD regulations at Part 204 where appropriate, is beneficial to Illinois EPA, the Board, regulated industries, and third parties.

As noted by the Board, there were a limited number of proposed amendments wherein the participants, namely IERG and the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), were not in agreement.¹ In the First Notice Opinion, the Board laid out its analysis of these disputed issues and stated that the Board agreed with the Agency’s position on each of the issues. First Notice Opinion and Order, PCB R 22-17 at 9-17 (April 18, 2024). While IERG is disappointed with the Board’s decisions on these issues, in the interest of efficiency in moving forward with the much-needed update of the outdated NA NSR rules, IERG requests that the Board move to Second Notice as proposed.

In the First Notice Opinion, the Board agreed that “an update is now prudent.” First Notice Opinion and Order, PCB R 22-17 at 7 (April 18, 2024). The need for an update to the NA NSR regulation is even more prudent now given the recently revised PM_{2.5} National Ambient Air Quality Standards (“NAAQS”). On March 6, 2024, the United States Environmental Protection Agency’s (“USEPA”) final rule reconsidering the particulate matter (“PM”) NAAQS was published in the Federal Register. *Reconsideration of the NAAQS for Particulate Matter*, 89 Fed. Reg. 16202 (March 6, 2024).² The final rule revised the PM_{2.5} primary annual NAAQS from 12 µg/m³ to 9 µg/m³. The final rule became effective on May 6, 2024. It is expected that, when USEPA makes its attainment and nonattainment designations for this revised standard, at least two areas in Illinois will be designated as nonattainment for the revised PM_{2.5} NAAQS (Chicago and

¹ The disputed issues include the proposed amendments in proposed Sections 203.100, 203.1340, 203.1450, 203.1600, 203.1810, and 203.2280, 203.2290, and 203.2330.

² A copy of the Federal Register is publicly available at <https://www.federalregister.gov/documents/2024/03/06/2024-02637/reconsideration-of-the-national-ambient-air-quality-standards-for-particulate-matter>.

Metro-East areas). The existing Part 203 regulations do not address PM_{2.5}. The federal blueprint rule and Appendix S were revised in 2008 to address PM_{2.5} and its precursors and the federal rules have been revised multiple times since then to address PM_{2.5}.³ However, as noted above, Part 203 has not been amended since 1998. As NAAQS continue to be reconsidered and revised, it is imperative for the regulated community, regulators, and other affected parties to look to one set of comprehensive regulations addressing NA NSR requirements. Part 203 should therefore be amended to be up-to-date with the federal NA NSR regulations. Once Part 203 is comprehensively updated, as proposed at First Notice, subsequent rulemakings to update Part 203 to keep up-to-date with future changes in the federal rules will be easier and more efficient.

Moreover, the Board in its First Notice Opinion solicited comments regarding whether the Board should move forward to Second Notice as it relates to Project Emissions Accounting (“PEA”). First Notice Opinion, PCB R 22-17 at 7 (April 18, 2024). The Board referenced USEPA’s pre-publication proposed amendments to the PEA rules. *Id.* (citing to USEPA’s February 22, 2024 posting). Since the Board’s First Notice Opinion, USEPA has published in the Federal Register its proposed amendments to the PEA Rules. *PSD and NNSR: Regulations Related to Project Emissions Accounting*, 89 Fed. Reg. 36870 (May 3, 2024).⁴ USEPA proposes to amend the PEA provisions in the PSD and NA NSR rules to require that decreases accounted for in Step 1 of the significant emissions increase calculation be enforceable.

Notwithstanding the recently proposed PEA rule, IERG urges the Board to move this rulemaking to Second Notice. USEPA’s proposed PEA revisions are only at the proposal stage –

³ *Implementation of the NSR Program for Particulate Matter Less than 2.5 Micrometers*, 73 Fed. Reg. 2831 (May 16, 2008), publicly available at <https://www.govinfo.gov/content/pkg/FR-2008-05-16/pdf/E8-10768.pdf>; *see, e.g., Fine “Particulate Matter NAAQS: SIP Requirements*, 81 Fed. Reg. 58010 (Oct. 24, 2016), publicly available at <https://www.federalregister.gov/documents/2016/08/24/2016-18768/fine-particulate-matter-national-ambient-air-quality-standards-state-implementation-plan>.

⁴ Publicly available at <https://www.govinfo.gov/content/pkg/FR-2024-05-03/pdf/2024-04029.pdf>.

comments are still being received on the proposal and hearings may be held if they are requested.⁵ It is undetermined at this point whether any changes to the codified federal rules will be finalized and, if so, how the proposed revisions may be changed as a result of comments received prior to the rule being finalized and the timing of when the rulemaking will be finalized. Proposed Section 203.1410(c) describes the procedures for calculating whether a significant emissions increase and significant net emissions increase will occur, and incorporates language based on the PEA Rule adopted by USEPA in November 2020.⁶ Revisions are also proposed consistent with the 2020 PEA Rule to PSD regulations in Part 204 (see proposed Section 204.800(d)). Proposed Sections 203.1410(c)(5)-(6) and 204.800(d)(5)-(6) are consistent with the currently effective federal provisions at 40 CFR §§ 51.165(a)(2)(ii)(F)-(G) and 52.21(a)(2)(iv)(f)-(g), respectively, including the revisions to those rules concerning PEA that were promulgated on November 24, 2020, and became effective on December 24, 2020.

If the Board were to delay further rulemaking until the recently proposed PEA rulemaking was finalized, sources would have to continue to wait for a comprehensive set of NA NSR requirements in Illinois' regulations. Regulated entities would be required to continue to look at multiple sets of rules to determine applicability and substantive requirements. Adopting the proposed amendments would provide much needed insight and certainty for regulated entities and clarity for all parties involved. And, as noted above, a comprehensive update to Part 203 now will make any future rulemakings based on federal changes easier and more efficient. If USEPA's

⁵ See *id.* (comments due by July 2, 2024).

⁶ See *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting*, 85 Fed. Reg. 74890 (Nov. 24, 2020), publicly available at <https://www.federalregister.gov/documents/2020/11/24/2020-23784/prevention-of-significant-deterioration-psd-and-nonattainment-new-source-review-nnsr-project>.

recently proposed PEA Rule is finalized as proposed, Illinois EPA could propose that the Board quickly open up Parts 203 and 204 to revise the PEA provisions accordingly.

Given the numerous benefits of updating the Board's NA NSR regulations, the Board should move to Second Notice. Amendments to Illinois' NA NSR regulations are long overdue and would be beneficial to all parties involved. IERG asks that the Board move forward with the proposed amendments, so that the Board, Illinois EPA, the regulated community and other parties may have a current, cohesive set of NA NSR requirements.

For the above and foregoing reasons, IERG respectfully requests that the Board move the proposed amendments to Second Notice. IERG appreciates the opportunity to submit this Comment for the Illinois Pollution Control Board's consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: June 17, 2024

By: /s/ Melissa S. Brown
One of Its Attorneys

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