

JUN 21 2004

IN THE MATTER OF:)
)
AMENDMENTS TO THE BOARD'S)
PROCEDURAL RULES TO ACCOMMODATE)
NEW STATUTORY PROVISIONS:)
35 ILL. ADM. CODE 101-130)

R04-24 **STATE OF ILLINOIS**
Pollution Control Board
(Procedural Rulemaking)

NOTICE OF FILING

TO: Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

Richard McGill, Esq.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board an original and nine copies of the **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

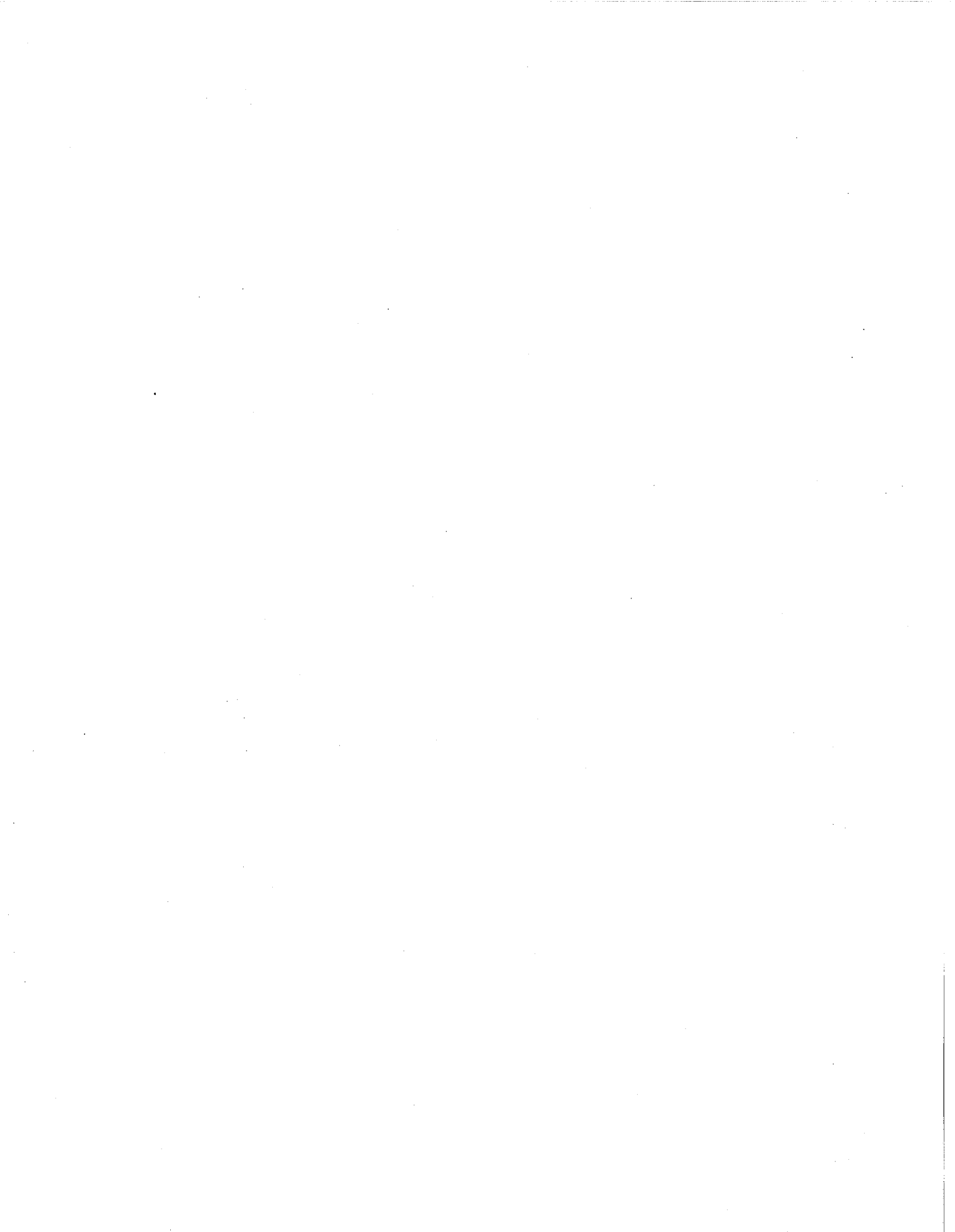
Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: Robert A. Messina
Robert A. Messina

Dated: June 18, 2004

Robert A. Messina
General Counsel
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4942



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO THE BOARD'S) R04-24
PROCEDURAL RULES TO ACCOMMODATE) (Procedural Rulemaking)
NEW STATUTORY PROVISIONS:)
35 ILL. ADM. CODE 101-130)

**COMMENTS OF THE ILLINOIS
ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by one of its attorneys, Robert A. Messina, and submits the following comments in the above-referenced matter to the Illinois Pollution Control Board ("Board"), stating as follows:

IERG supports the Board's proposed amendments in R04-24, and thanks the Board for the opportunity to submit these comments today. IERG only wishes to address one topic raised by the Illinois Environmental Protection Agency ("Illinois EPA") in the comments it filed on June 15, 2004, regarding the procedure for incorporations by reference.

In its comments, the Illinois EPA suggests that the new procedure may raise approval issues with the United States Environmental Protection Agency ("U.S. EPA"). As Illinois EPA correctly points out, federal regulations require that a State hold a public hearing on the contents of a State Implementation Plan ("SIP") or SIP revision prior to seeking approval by U.S. EPA. If an incorporation by reference in a SIP revision were to be updated using the new procedure included in the Board's proposal, the Illinois EPA suggests, that revision may be unapprovable. The Illinois EPA therefore suggests changes to the Board's language.

These changes, however, are unnecessary. Reading a little further past the provision which the Illinois EPA cites, the Board will note two relevant provisions. Proposed Section 102.211(e) states: "[i]f an objection to the proposed amendment is filed during the public comment period . . . then the proposed amendment cannot be adopted pursuant to this Section." Proposed 35 Ill. Admin. Code § 102.211(e). Also, proposed Section 102.211(f) states that

"[n]othing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures." Proposed 35 Ill. Admin. Code § 102.211(f).

In other words, in those instances where the Illinois EPA seeks to propose to the Board an updated incorporation by reference, which must be approved by the U.S. EPA after a public hearing is held by the State, then the Illinois EPA can simply proceed under "other lawful rulemaking procedures" as permitted by proposed subsection (f). In those instances where a similar proposal is made by someone other than the Illinois EPA, and Illinois EPA believes that a public hearing must be held to satisfy applicable federal requirements, then the Illinois EPA can simply object to the rulemaking proceeding under this expedited procedure, pursuant to proposed subsection (e). Clearly, the concerns of the Illinois EPA can be easily addressed through the provisions of proposed Section 102.211 as it exists in R04-24.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

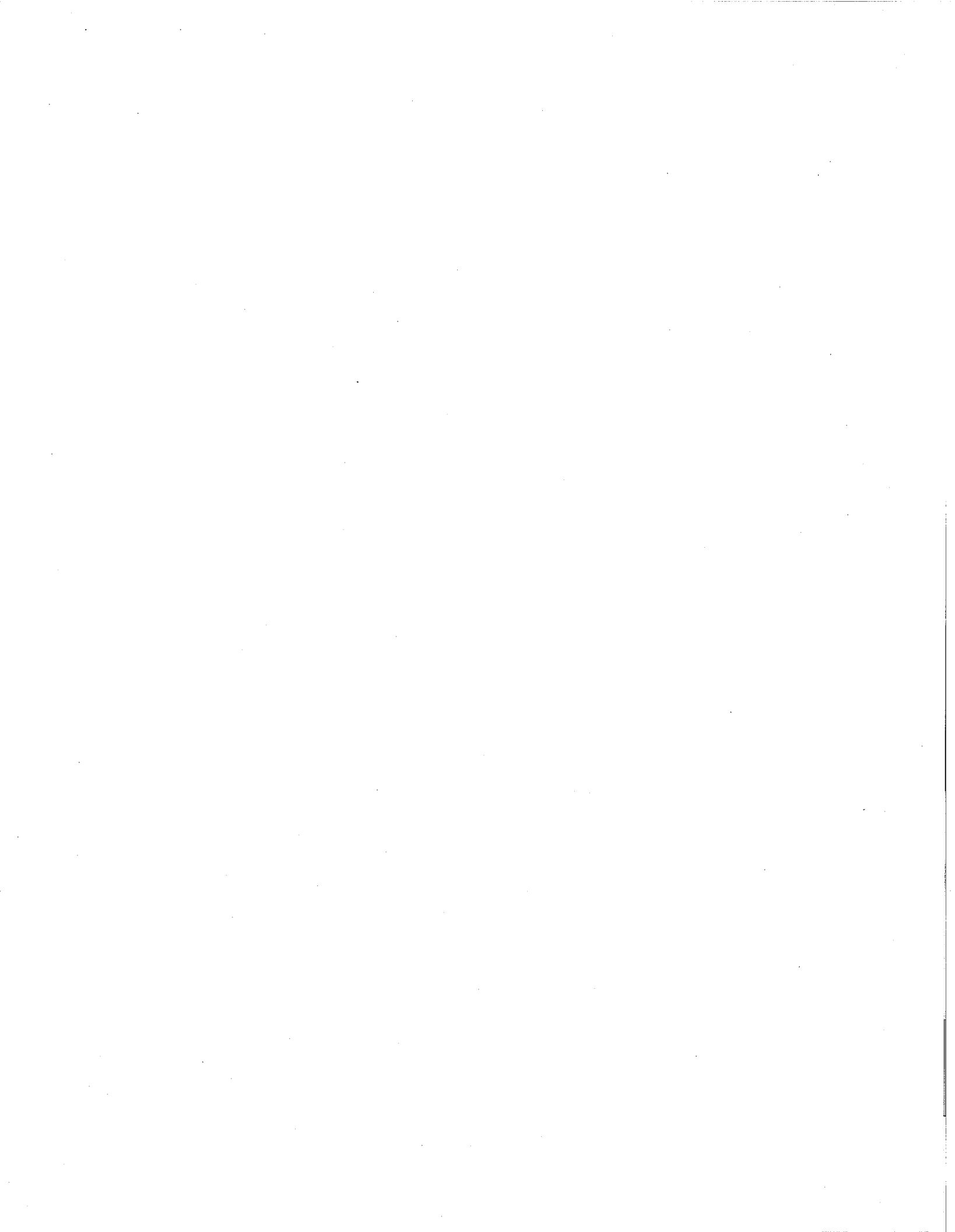
By: 

Robert A. Messina

Dated: June 18, 2004

Robert A. Messina
General Counsel
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4942

IERG:001/Fil/Bd procedural rule comments



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served one copy of the COMMENTS
OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

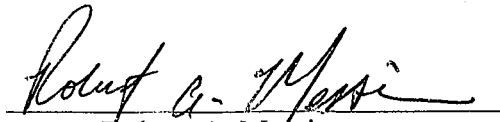
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by placing said documents in the United States Mail in Springfield, Illinois on June 18,
2004.


Robert A. Messina

