

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AIR QUALITY STANDARDS CLEAN-UP:) R09-19
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking – Air)
PARTS 217, 223, AND 243)

NOTICE OF FILING

TO: Mr. John C. Therriault	Mr. Timothy J. Fox
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street	100 W. Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA U.S. 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 the **FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

By: /s/Alec M. Davis
Alec M. Davis

Dated: January 3, 2011

Alec M. Davis
General Counsel
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
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CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached

FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL

REGULATORY GROUP, upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on January 3, 2011, and upon:

Mr. Timothy J. Fox
Hearing Officer
Illinois Pollution Control Board
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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on January 3, 2011.

/s/Alec M. Davis
Alec M. Davis

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AIR QUALITY STANDARDS CLEAN-UP:) R09-19
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**FIRST NOTICE COMMENTS OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and submits its First Notice Comments in the above-captioned matter to the Illinois Pollution Control Board (“Board”), stating as follows:

I. INTRODUCTION

The Illinois Environmental Regulatory Group would like to thank the Board for the opportunity to submit these comments in regard to the First Notice Publication of the Board’s proposed amendments to its air pollution regulations pursuant to the Air Quality Standards Clean-Up rulemaking. IERG has been an active participant in this rulemaking, having questioned witnesses and provided testimony at hearing, and by submitting post-hearing comments.

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) has proposed to amend the air quality standards for particulate matter, ozone, and lead codified at 35 Ill. Admin. Code Part 243 (“Part 243”) to “...reflect current national ambient air quality standards established by the U.S. EPA under the federal Clean Air Act.” Statement of Reasons, *In the Matter of: Air Quality Standards Clean-Up: Amendments to 35 Ill. Adm. Code Parts 217, 223, and 243*, R09-19 at 4 (Ill.Pol.Control.Bd. Dec. 1, 2008) (hereafter cited as “Statement of

Reasons,” rulemaking hereafter cited as “R09-19”). From the time that the federal National Ambient Air Quality Standards (“NAAQS”) were first adopted on April 30, 1971, the Illinois EPA and the Board have expressed the intent to adopt Illinois standards that are substantively identical to the NAAQS. In the Board’s opinion in *In the Matter of Proposed Air Quality Standards* (R72-7), adopted on July 10, 1975, the Board discussed the need for statewide ambient air quality standards, and among other things, concluded the following:

...uniformity between state and federal standards is obviously desirable unless there is solid ground for disagreement, especially since we have already devised a plan for achieving federal standards.

In light of the above considerations, the PCB today is proposing adoption of the federal standards.

“Proposed Air Quality Standards,” Board Newsletter #47, cited in *In the Matter of Proposed Air Quality Standards*, R72-7 at 4-5 (Ill.Pol.Control.Bd. July 10, 1975).

The Board then proceeded to adopt the federal NAAQS.

In proposing the amendments in the current matter for first notice, the Board continues the policy of maintaining uniformity between state and federal standards, unambiguously stating that the intent is to update Part 243 to reflect federal air quality standards. Opinion and Order of the Board, R09-19 at 1 (Ill.Pol.Control.Bd. Nov. 4, 2010) (hereafter cited as “First Notice Opinion and Order”). IERG’s testimony and comments in this proceeding are entirely intended to promote the purpose of maintaining that uniformity and to avoid any possibility of interpreting the state standards in a manner different than the federal standards. Neither the Agency nor IERG have presented or have attempted to present testimony for the purpose of establishing a “solid ground for disagreement” between the state and federal standards, nor is IERG aware of any other Board rulemaking having done so. Consequently, IERG submits that the language of the Board’s air quality standards should be unambiguous regarding their interpretation. Any

interpretation of the Board's air quality standards in a manner that reaches a different conclusion from that derived from the federal standard on which it is based would be contrary to the clear intent of the record on which the State standards were established. IERG's comments are based on this fundamental proposition regarding the relationship between the state and federal air quality standards and the need to eliminate the possibility of interpretations of the State standards that would differ from those of the federal standards.

IERG would also ask the Board to revisit the issue of whether to amend the State standards not explicitly proposed by the Agency, as recommended by IERG. Post-Hearing Comments of the Illinois Environmental Regulatory Group, R09-19 (Ill.Pol.Control.Bd. Jun. 8, 2009). To the extent that the Board declined to propose IERG's recommendations, based upon a finding that IERG has not provided technical support, or shown the economic or environmental impact of the recommendation, IERG contends that the rationale in support is identical to that provided by the Agency, and cited approvingly by the Board:

[t]he amendments to Part 243 do not impose new requirements, they merely update the State's regulations to reflect current federal law and standards. The Illinois EPA therefore believes that an analysis of technical feasibility and economic reasonableness is not appropriate. These standards are well known to industry and have been thoroughly discussed by the U.S. EPA.

First Notice Opinion and Order at 25 (citing Statement of Reasons at 4). IERG does not intend, through its recommended revisions, to make any substantive changes to the state air quality standards, other than to update them to reflect current federal law and standards.

Following are IERG's comments regarding specific elements of the Board's proposed amendments to Part 243 as published in the Illinois Register. 34 Ill. Reg. 17537 (Nov. 19, 2010).

II. PM₁₀ AND PM_{2.5} (SECTION 243.120)

IERG concurs with the Board's proposed revisions to Section 243.120 contained in its Opinion and Order which will eliminate any ambiguity in the interpretation of this standard. The state and federal air quality standard will yield the same conclusion when applied to air quality data collected in Illinois. IERG notes that the Illinois Register publication of the Board's proposed revisions contains changes that extend beyond punctuation, spelling, and grammar corrections. IERG does not support such changes to the Board's proposed rule. IERG notes that the Agency has submitted "errata" corrections regarding the First Notice and is proposing changes that would essentially revert the First Notice publication to that proposed by the Board for Section 243.120. First Errata Sheet of the Illinois Environmental Protection Agency, R09-19, 2-3 (Ill.Pol.Control.Bd. Dec. 28, 2010). IERG supports the substantive elements of the Agency's suggestions with the exception that the phrase, "or an equivalent method designated in 40 CFR 53" that the Agency proposes to add to 243.120 (b) and (d) should read: "or an equivalent method designated pursuant to 40 CFR 53". Furthermore, these phrases should only occur after the words, "Appendix J" in the Board's original proposal for 243,120 (b) and after the words, "Appendix L" in the Board's original proposal for 243.120 (d).

III. 8-HOUR OZONE (SECTION 243.125)

IERG concurs with the Board's proposed revisions to Section 243.125, which will eliminate any ambiguity in the interpretation of this standard. The state and federal air quality standard will yield the same conclusion when applied to air quality data collected in Illinois. Again, the Illinois Register publication contains changes from the Board's proposal that extend beyond punctuation, spelling, and grammar corrections. Again, IERG does not support such

changes to the Board's proposed rule. IERG notes that the Agency has submitted "errata" corrections regarding the First Notice and is proposing changes that would essentially revert the First Notice publication to that proposed by the Board for Section 243.125. IERG supports the substantive elements of the Agency's suggestions with one exception. IERG suggests that the first sentence of Section 243.125 (b) should be replaced with the sentence, "Ozone shall be measured by a reference method based on 40 CFR Part 50, appendix D and designated in accordance with 40 CFR Part 53 or an equivalent method designated in accordance with 40 CFR Part 53". The language in this sentence that pertains to the reference and equivalent methods for measuring ozone are substantively the same as the language contained in the federal ozone standard which states, "...measured by a reference method based on Appendix D to this part and designated in accordance with part 53 of this chapter or an equivalent method designated in accordance with part 53 of this chapter." 40 CFR 50.15(a). This will avoid possible confusion especially regarding the reference in the proposed rule to, "...an equivalent method as described in 40 CFR Part 50, Section 50.1..." which is a reference to definitions and is not used in the federal standard or any other of the Board's air quality standard that describes the concept of reference and equivalent measurement methods.

IV. LEAD (SECTION 243.126)

IERG had recommended some changes to the Agency's proposed revisions to the State's lead standard. In its Opinion and Order, the Board did not accept IERG's recommended changes stating, "IERG does not support these suggested changes with technical support, evidence or arguments identifying affected sources, or projected economic or environmental impact." First Notice Opinion and Order at 24. As stated generally above, IERG's changes were made in light of the form and substance of the federal standard, which the Agency had stated it was emulating,

and were intended for the sole purpose of clarifying this provision without adding significant substantive revision. Further, the federal standards are familiar to industry, and have been thoroughly discussed by the U.S. EPA. The federal National Ambient Air Quality Standard (NAAQS) for lead is as follows:

§50.16 National Primary and secondary air quality standards for lead.

- (a) The national primary and secondary ambient air quality standards for lead (Pb) and its compounds are 0.15 micrograms per cubic meter, arithmetic mean concentration over a 3-month period, measured in the ambient air as Pb either by:
 - (1) A reference method based on Appendix G of this part and designated in accordance with part 53 of this chapter or;
 - (2) An equivalent method designated in accordance with part 53 of this chapter.
- (b) The national primary and secondary ambient air quality standards for Pb are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R of this part, is less than or equal to 0.15 micrograms per cubic meter.

73 Fed. Reg. 67052 (Nov. 12, 2008).

The Board's proposed lead rule presented in the Illinois Register for First Notice is as follows:

Section 243.126 Lead

- a) Standard. The primary and secondary ambient air quality standards for lead are 0.15 and its compounds are 1.5 micrograms per cubic meter, maximum rolling three month average measured and determined over a three-year period arithmetic mean average over a calendar quarter.
- b) Measurement Method. For determining conformance with the ambient air quality standards for lead and its compounds, lead and its compounds shall be measured by the atomic absorption spectrometry or equivalent method as described in 40 CFR 50, appendices G and Q, incorporated by reference in Section 243.108 of this Part. The primary and secondary ambient air quality standards shall be determined in accordance with 40 CFR 50, appendix R, incorporated by reference in Section 243.108 of this Part. App. G (1982).

34 Ill. Reg. at 17545.

The Board's rule as proposed differs from the federal NAAQS in ways which could lead to unnecessary confusion. To illustrate the various ways a reader could be unnecessarily confused, IERG has identified a number of possible issues.¹

¹ The Board's proposed rule in Section 243.126 (a) strikes out the phrase "and its compounds" but in Section 243.126 (b) specifies that compliance with the standard be determined by a measurement method for "lead and its compounds". The Board's primary and secondary standard in Section 243.126 (a) should list "lead and its compounds" as does the U.S. EPA rule listed above to avoid confusion and because there is no obvious reason to differ.

The Agency has presented suggested corrections to this standard as part of its errata referred to earlier. In Section 243.126 (a) the Agency proposes to add the phrase "...measured as elemental lead..." after the word lead. However, in Section 243.126 (b) where the measurement method is described, the Agency does not suggest changing the phrase "lead and its compounds" as the pollutants being measured.

IERG suggests that the language used in the federal rule be used to describe the pollutants that are the subject of the standard by stating in Section 243.126 (a) that the primary and secondary air quality standards are for "lead and its compounds". The Agency's phrase "measured as elemental lead" should be added to Section 243.126 (b) to better describe the measurement method. This is consistent with the description that the USEPA provides in 40 CFR 50, Appendix R where it states in part that, "The NAAQS indicator for lead is defined as: lead and its compounds, measured as elemental lead....". IERG's specific suggestion in this regard is that the phrase "as elemental lead" be inserted in the first sentence of Section 243.126(b).

The Board's proposed rule does not include a description of when the standard is met, though it does include a reference to an appendix in the federal rule (Appendix R) which presents the protocol for interpreting compliance with the standard. The Board's rule states in Section 243.126(b) states that, "The primary and secondary ambient air quality standards shall be determined in accordance with Appendix R of Part 50 as incorporated by reference in Section 243.108 of this Part." It is not clear what is to be determined. The federal rule includes a brief description of the criteria for determining compliance with the standard and also includes a reference to Appendix R. The federal rule states that the "... national primary and secondary ambient air quality standards for

An alternative approach that would track the federal rule more closely and provide less opportunity for confusion is to make the following changes to the Board's proposed rule in Section 243.126. IERG's additions are shown as *bold italics* and deletions as ~~double-strike through~~.

Pb are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R of this part, is less than or equal to 0.15 micrograms per cubic meter." This is helpful to the reader of the standard by providing a sense of the mechanism for determining compliance and referring the reader to the appropriate appendix for the details.

The Board's proposed rule in Section 243.126 (b) states that "... lead and its compounds shall be measured by the atomic absorption spectrometry or equivalent method as described in 40 CFR 50 ~~Appendices App-G (1982) and Q...~~" However, appendix Q does not describe the atomic absorption spectrometry method but describes the X-ray fluorescence method. Furthermore, the Agency in its errata referred to previously suggests adding the phrase, "...collected by the reference method specified in 40 CFR Part 58 Appendix B." to Section 243.126(b). This reference is apparently intended to refer to Part 50, appendix B since Part 58 appendix B is reserved. A reference to 40 CFR Part 50, appendix B would appropriately describe the sample collection method for samples collected pursuant to the reference method described in 40 CFR 50, appendix G but not to appendix Q. The sample collection method for the reference method described in appendix Q is described in 40 CFR 50, appendix O. Appendix Q describes a method that may be used to show a violation of the standard but may not be used to show compliance. Furthermore, this method can only be used in special circumstances which are described in 40 CFR 58, appendix C and also in 40 CFR 50, appendix R. Only the method described in 40 CFR 50, appendix G may be used to show compliance to the Board's proposed standard but both the method in 40 CFR 50, appendices G and Q may be used to show a violation of the standard. The U.S. EPA NAAQS for lead only refers to 40 CFR appendix G. Its reference to 40 CFR 50, appendix R is the means it uses to allow the use of the method in 40 CFR 50, appendix Q in certain specified situations. IERG's proposed language for Section 243.126(b) is intended to mirror the federal standard.

Section 243.126 Lead

- a) Standard. The primary and secondary ambient air quality standards for lead *and its compounds (Pb)* are 0.15 and its compounds are 1-5 micrograms per cubic meter, maximum rolling three calendar month arithmetic mean concentration ~~average~~ measured and determined over a three-year period ~~arithmetic mean average over a calendar quarter~~.
- b) Measurement Method. For determining conformance with the ambient air quality standards for lead and its compounds, lead and its compounds shall be measured *as elemental lead by a reference method based on 40 CFR 50, appendix G and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53* ~~by the atomic absorption spectrometry or equivalent method as described in 40 CFR 50, appendices G and Q, incorporated by reference in Section 243.108 of this Part.~~ Compliance with the ~~The~~ primary and secondary ambient air quality standards shall be determined in accordance with 40 CFR 50, appendix R, incorporated by reference in Section 243.108 of this Part. ~~App. G (1982).~~

IERG believes that the changes it proposes above will correct and clarify the Board's proposed lead standard and make it substantively the same as the federal standard in accordance with the stated intent.

V. SULFUR OXIDES (SECTION 243.122)

The Board's air quality standard for sulfur oxides is not being interpreted by the Agency in a manner that results in the same compliance conclusion when the U.S. EPA standard is applied to the same data set. This finding of fact was clearly described in the Board's Opinion and Order and is not the subject of debate. First Notice Opinion and Order at 17, 18, and 22. IERG has argued that this air quality standards clean-up proceeding should include language to clarify this rule. As stated in the Board's Opinion and Order and stated previously in these comments, the current sulfur oxides standards in Section 243.122 were adopted by the Board on

July 10, 1975, and according to the Board, the standards were "...identical to the federal standards." Board Opinion, *In the Matter of Proposed Air Quality Standards*, R72-7 at 14. Given this fact and the Board and Agency's continuing assertion that the Board rules are intended to be the same as the federal rules on which they were based, it should not be possible for the Agency to use these rules to purposely arrive at a different result than that derived from application of the federal standard. The fact that the Agency has chosen to use the ambiguous language of the rule to produce a result never intended by the formal rulemaking does not justify such actions. IERG agrees with the Board's statement that states are allowed to have a more stringent air quality standard, but IERG contends that such a substantive change to a standard should be promulgated by the Board through proper rulemaking procedures. IERG is unaware of any rulemaking to adopt a state standard in Illinois that differs from the federal standard. The fact that both the Board and the Agency admit that the rule is being interpreted by the Agency in a manner that is more stringent than the federal standard should be sufficient to justify the necessary changes that U.S. EPA made long ago to preclude such interpretation and conform with the intent of the Board when the sulfur oxides standards were adopted.

However, since the time of the Board's hearings in this matter, the U.S. EPA has promulgated a new sulfur dioxide NAAQS wherein it is revoking both the 24-hour and the annual standards. 75 Fed. Reg. 35520 (Jun. 22, 2010). Consequently, while IERG believes that the current state standard should be clarified as long as it remains "on-the-books", the developments at the federal level and the acknowledged regulatory history of the State's current rule reduce the potential impact of any interpretation of the current state rule that results in a more stringent conclusion than that which would be reached from the revoked federal rule.

VI. NITROGEN DIOXIDE (SECTION 243.124)

IERG contends that the Board rule for nitrogen dioxide is past due for updating. As stated in the Board's First Notice Opinion and Order and elsewhere in these comments, the state rule is intended to be substantively the same as the federal rule. Furthermore, it is reasonable to conclude that any clarifications made by the U.S. EPA to facilitate interpretation of its rule would be made by the Board to continue to maintain the parity on which the rule was originally promulgated. That has not been done, and has resulted in confusion in the regulated community. IERG submits that it is not sufficient for the Board and the Agency to argue that it is proper and acceptable for the State to have a more stringent rule when the rule was adopted on the basis of being the same as the federal rule. IERG is unaware of any justification having been provided in the Board's prior rulemakings for this pollutant that would argue for a more stringent interpretation. Furthermore, as stated by IERG in its testimony, the Agency is following the U.S. EPA's air quality standard for nitrogen dioxide in all of its data collection and reporting. It is *not* using the Board's rule. Pre-Filed Testimony of David J. Kolaz on Behalf of the Illinois Environmental Regulatory Group, R09-19, 4 - 5 (Ill.Pol.Control.Bd. Apr. 14, 2009). IERG's suggestion to codify changes to the Board's rule to reflect the U.S. EPA clarifications would simply formalize the practice the Agency is currently following.

Since the time of the Board hearing in this matter, the U.S. EPA has promulgated a new nitrogen dioxide standard while retaining the current annual standard. 75 Fed. Reg. 6474 (Feb. 9, 2010). IERG anticipates that at some point the Agency will propose adoption of the federal standard and this matter can be addressed at that time. Given the Agency's current practice, it is fair to say that it is implementing the federal NAAQS in full in areas where the state rule is silent

or unclear. IERG suggests that this rulemaking be used to clarify the state's rule for the annual standard as it proposed in its previous comments.

VII. CARBON MONOXIDE (SECTION 243.123)

IERG believes that the Board's rule for this pollutant should be clarified to maintain compatibility with the federal standard which it is intended to represent. The U.S. EPA last made changes to its carbon monoxide NAAQS in 1985, choosing to express the standard in parts per million and parenthetically in milligrams per cubic meter. 50 Fed. Reg. 37501 (Sept. 13, 1985). This is the reverse of the way it is currently expressed in the state standard. At that time, the U.S. EPA also updated the standard to include data completeness and handling criteria. U.S. EPA uses a running non-overlapping approach to interpreting compliance with the 8-hour standard. IERG also suggests that the rounding convention and data completeness and data handling components of the U.S. EPA rule be incorporated. Lastly, IERG believes that the state rule should also specify that the 8-hour standard is determined using non-overlapping (block) averages.

VIII. CONCLUSION

IERG supports the efforts of the Agency and the Board to "clean-up" the Illinois air quality standards. This effort, however, should be extended beyond the Agency's proposal to include clarifications to Illinois' sulfur oxides, nitrogen dioxide, and carbon monoxide standards. This will afford the public and regulated community a much clearer understanding of the State's air quality standards and properly reflect the original intent of the state standards, which is to be substantively the same as the federal standards. IERG believes the standards will then more accurately reflect the methods and techniques that the Agency uses to interpret the standards, with two exceptions. Unlike its current practice of interpreting the sulfur oxides and carbon

monoxide standard on a running average basis, the Agency will need to follow the block averaging approach used by the U.S. EPA. Although the U.S. EPA has revoked its sulfur dioxide standards in favor of a new 1-hour standard, there is still value to clarifying this standard as long as it is a state rule.

IERG offers these comments to facilitate achieving the intent of the proposed rulemaking – to provide conformity between Illinois' and the U.S. EPA's standards – as stated by the Board at the time the State's standards were initially adopted. IERG appreciates the opportunity to comment. We will be pleased to answer any questions that may arise.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: January 3, 2011

By: /s/Alec M. Davis
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