

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 ILL. ADM. CODE 204, ) R19-1  
PREVENTION OF SIGNIFICANT ) (Rulemaking – Air)  
DETERIORATION, AMENDMENTS TO 35 )  
ILL. ADM. CODE PARTS 101, 105, 203, 211, )  
and 215. )

**NOTICE OF FILING**

TO: Don Brown Tetyana Rabczak  
Clerk of the Board Hearing Officer  
Illinois Pollution Control Board Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500 100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601 Chicago, Illinois 60601  
(VIA ELECTRONIC MAIL) (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 the **PRE-FILED QUESTIONS OF ILLINOIS EPA WITNESSES**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: February 15, 2019

By:           /s/ N. LaDonna Driver            
One of Its Attorneys

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**PRE-FILED QUESTIONS OF ILLINOIS EPA WITNESSES**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the Illinois Pollution Control Board’s (“Board”) Hearing Officer Order of December 12, 2018, submits the following Pre-Filed Questions of Illinois Environmental Protection Agency (“Agency”) Witnesses in response to the Agency’s Post Hearing Comments (“Comments”) filed on January 24, 2019.

**Question 1:** At page 6 of its Comments in response to Question 2.d-2, the Agency states that “it should be understood that one consequence of a state PSD program is that the Board rulemaking will likely be required in the future to revise the State program. When such changes are *warranted*, the Illinois EPA will *appropriately* initiate a needed rulemaking proceeding.” (Emphasis added.) Please provide further information on what specific criteria the Agency will apply when determining when changes to the rules “are warranted” and with what frequency it will conduct reviews.

**Question 2:** At page 14 of its Comments in response to IERG’s Question 6 asking about a separate rulemaking to amend 35 Ill. Adm. Code Part 252, the Agency states that it “intends to propose Agency regulations addressing a state-based PSD program. While a specific

schedule has not yet been developed, the Illinois EPA tentatively plans to have revisions to Part 252 finalized shortly after the completion of this Board rulemaking.”

IERG notes that proposed new Section 105.612, The Agency Record, includes references in proposed new subsection 105.612(b)(v) to 35 Ill. Adm. Code 252.208 and 252.210 which do not currently exist in Part 252. Would it be advisable for the Agency to time the adoption of those particular new Sections in parallel with this proceeding so that the references in new subsection 105.612(b)(v) will be accurate immediately upon promulgation?

**Question 3:** At page 19 of its Comments in response to Board Question 2.b, the Agency addresses newly proposed Section 204.1310 and states:

- To address an administrative action by the Agency that is to accompany the processing of PSD permit applications pursuant to Section 165(d)(1) of the CAA and 40 CFR 51.166(p), the Illinois EPA is proposing language in Section 204.1310 requiring the Agency to provide to the USEPA a copy of each application for a PSD permit that it receives. Such a requirement is not present in 40 CFR 52.21.

IERG notes that 40 CFR 51.166(p) is entitled “**Sources impacting Federal Class I areas – additional requirements**”. Given that 40 CFR 51.166(p) is applicable only to sources impacting Federal Class I areas, should proposed new Section 204.1310 also be applicable only to permit applications for sources impacting Federal Class I areas?

**Question 4:** At pages 33-34 of its Comments in response to Board Question 5 wherein the Board asks “what types of benchmarks are used as ‘reference levels’ if pollutants being assessed do not have air quality standards,” the Agency states “[f]or human health impacts, benchmarks can include USEPA's Acute Exposure Guideline Levels, the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimal Risk Levels, and alternatively, occupational exposure standards.” The Agency also notes that “[f]or ecological impacts,

benchmarks are screening concentration values for air, surface water, soil, sediment, and vegetation obtained from USEPA publications or reference documents, and/or from the peer-reviewed literature.” Please provide further information as to the circumstances in which, and the process(es) by which, those reference levels would be evaluated and applied in the PSD permitting context.

**Question 5:** At pages 46-48 of its Comments in response to Board Question 15, the Agency provides a detailed assessment of the standard of review and established precedent applied by the USEPA’s Environmental Appeals Board (“EAB”) when it reviews PSD permit appeals. Is it the Agency’s intent that the Board apply the same standard of review and adherence to precedent as the EAB applies in reviewing PSD permit appeals?

**Question 6:** Also at pages 46-48 of its Comments in response to Board Questions 15, the Agency addresses the Board’s question about the meaning of “technical decisions contained therein reflect considered judgment by the Agency” as set forth in proposed new Section 105.614, which reads in part as follows:

Except as provided in subsections (a) and (b), the Board will conduct a public hearing, in accordance with 35 III. Adm. Code 101, Subpart F, upon an appropriately filed petition for review under this Subpart. *The hearing and decision of the Board will be based exclusively on the Agency record at the time the permit or decision was issued, unless the parties agree to supplement the Agency record.* Any PSD permit issued by the Agency shall be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency. [415 ILCS/40.3(d)(1)]

IERG notes that the Illinois Environmental Protection Act (“Act”), Section 40.3(d)(1) provides as follows:

(d)(1) In reviewing the denial or any condition of a PSD permit issued by the Agency pursuant to rules adopted under subsection (c) of Section 9.1 of this Act, the decision of the Board shall be based exclusively on the record before the Agency unless the parties agree to supplement the record.

The final sentence in proposed Section 105.614 (“Any PSD permit issued by the Agency shall be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency”) is in addition to Section 40.3(d)(1) of the Act. Please provide further information regarding the type of technical decisions that would be subject to the Agency’s considered judgement under this provision; including but not limited to, the following:

- Single stationary source
- Potential to emit
- Legally and practicably enforceable limits
- Assessment of fugitive emissions
- RMRR exclusion
- Replacement unit
- Baseline actual emissions and projected actual emissions
- Net emissions increase calculation
- Physical change and BACT applicability
- Determining BACT
- Air quality impacts demonstration and the preconstruction ambient air quality analysis
- Additional impacts analysis

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: February 15, 2019

By:           /s/ N. LaDonna Driver            
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, N. LaDonna Driver, the undersigned, on oath state the following:

That I have served the attached **PRE-FILED QUESTIONS OF ILLINOIS EPA WITNESSES**, via electronic mail upon:

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Electronic Filing: Received, Clerk's Office 2/15/2019

That my email address is [LaDonna.Driver@heplerbroom.com](mailto:LaDonna.Driver@heplerbroom.com)

That the number of pages in the email transmission is 7.

That the email transmission took place before 5:00 p.m. on the date of February 15, 2019.

Dated: February 15, 2019

By:           /s/ N. LaDonna Driver            
One of Its Attorneys