

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
) R2023-018(A)  
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
100 West Randolph Street,	Illinois Pollution Control Board
Suite 11-500	60 East Van Buren Street, Suite 630
Chicago, Illinois 60601	Chicago, Illinois 60605

**(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 **FIRST POST-HEARING COMMENT** on behalf 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: October 18, 2023

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R2023-018(A)

**CERTIFICATE OF SERVICE**

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

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That my email address is [Melissa.Brown@heplerbroom.com](mailto:Melissa.Brown@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 October 18, 2023.

Date: October 18, 2023

/s/ Melissa S. Brown  
Melissa S. Brown

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

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

The ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, hereby submits to the Illinois Pollution Control Board (“Board”) its First Post-Hearing Comment in this sub-docket rulemaking.

**Proposed Revisions to Rule Language**

On September 20, 2023, the Hearing Officer entered an Order in this sub-docket, which included the Board’s pre-filed questions to the participants of the proceeding. In the first pre-filed question, the Board asked participants whether they had any concerns regarding the non-substantive revisions to the proposed amendments shown in Attachment A to the pre-filed questions. Attachment, Hearing Officer Order, PCB R 23-18(A) at 1 (Sept. 20, 2023). In relation to IERG’s proposal, the Board proposed revisions to 35 Ill. Adm. Code 216.103, 216.104, and 216.121. IERG has no concerns regarding the Board’s proposed revisions to Section 216.103 or Section 216.121.

As to the Board’s proposed revisions to Section 216.104, as discussed in IERG’s response to the questions of the Attorney General’s Office at the First Hearing, IERG’s proposal was intended to reference the current version of 40 CFR Part 63, Subpart DDDDD, which includes the October 6, 2022 amendments to Subpart DDDDD. Testimony of David Wall, First Hearing

Transcript, PCB R 23-18(A), at 61:15-17 (Sept. 27, 2023).<sup>1</sup> Therefore, IERG does not agree with the Board's proposed revision unless additional revisions are made to clarify that the October 6, 2022 amendments to Subpart DDDDD are included. IERG proposes to add the following language to the version of Section 216.104 that was attached to the September 20, 2023 Hearing Officer Order:

**Section 216.104 Incorporations by Reference**

The following materials are incorporated by reference: non-dispersive infrared method, 40 CFR 60, Appendix A, Method 10 (1982); 40 C.F.R. Part 63, Subpart A (2022); 40 C.F.R. Part 63, Subpart UUU (2022); 40 C.F.R. 63, Subpart DDDDD (2022) (including amendments published in 87 Fed. Reg. 60,816 (Oct. 6, 2022)). This Section incorporates no later editions or amendments.

In the event that the 2023 edition of the Code of Federal Regulations is published before this rulemaking is finalized, IERG's proposed revision above would become moot. If that were to occur, IERG would propose to amend the year parenthetical for 40.C.F.R. 63, Subpart DDDDD from 2022 to 2023.

Furthermore, at the First Hearing in this matter, the Board requested that IERG respond to the Joint Committee on Administrative Rules' ("JCAR") questions filed with the Board on September 7, 2023. Transcript of First Hearing, PCB R 23-18(A) at 63:2-5 (Sept. 27, 2023); *see* Public Comment #2, PCB R 23-18(A) (Sept. 7, 2023). IERG does not object to JCAR's proposed changes to 35 Ill. Adm. Code 216.104 or 216.121.

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<sup>1</sup> The transcript of the First Hearing erroneously references "Mr. Higgins" each time that IERG's witness, Mr. David Wall, is testifying. IERG is therefore simultaneously filing a Motion for Correction of the Transcript to rectify this issue.

**Follow-up on Prior Testimony**

At the First Hearing in this sub-docket, the Board noted that IERG's responses to the Board's previously asked questions in PCB R 23-18 will be used in the Board's evaluation in this sub-docket rulemaking. First Hearing Transcript, PCB R 23-18(A), 62:19-23 (Sep. 27, 2023). IERG is therefore providing herein developments related to IERG's prior testimony.

At the Second Hearing in PCB R 23-18, the Board asked IERG whether any sources covered under IERG's proposals are in or near environmental justice areas. Second Hearing Transcript, PCB R 23-18 at 43:24 – 44:1-3 (Feb. 16, 2023). IERG's witness, Kelly Thompspon, testified that, depending on which environmental justice map is used, at least one IERG member facility covered under IERG's proposals is located in an environmental justice area. Testimony of Kelly Thompspon, Second Hearing Transcript, PCB R 23-18 at 44:6-10 (Feb. 16, 2023). However, the IERG member that IERG was referencing during the Second Hearing in PCB R 23-18 is currently no longer located in an environmental justice area based on the Illinois Environmental Protection Agency's EJ Start mapping tool. Though, as IERG's witness, David Wall, testified at the First Hearing in this sub-docket, given the number of potentially impacted sources under IERG's proposal, there are likely numerous potentially impacted boilers and process heaters located in environmental justice areas. Testimony of David Wall, First Hearing Transcript, PCB R 23-18(A) at 60:12-18 (Sep. 27, 2023). Regardless, per Mr. Wall's testimony, IERG's proposal will not result in any increase in emissions from the regulated combustion sources and, therefore, there is no potential for adverse impact to environmental justice areas. *Id.* at 59:1-11. Under IERG's proposal, regulated sources will continue to operate as they have always operated with no increase in emissions. *Id.* It is not technically feasible to control carbon monoxide emissions from fuel combustion emission sources during startup or shutdown events. *Id.* at 60:2-5.

Additionally, at the Second Hearing in PCB R 23-18, the Board asked IERG to provide a list of affected permitted sources and their locations. Second Hearing Transcript, PCB R 23-18 at 42:24 – 43:1-4 (Feb. 16, 2023). In response, IERG’s witness, Kelly Thompson, responded that IERG had not compiled a list of members that have startup, malfunction, and breakdown (“SMB”) provisions in their permits. Testimony of Kelly Thompson, Second Hearing Transcript, PCB R 23-18 at 43:5-7 (Feb. 16, 2023). As to the issue of facilities potentially impacted by IERG’s proposal in this sub-docket, IERG attached to its Pre-filed Testimony in this sub-docket a spreadsheet of fuel combustion emission sources in the State that could potentially be impacted by IERG’s proposal. *See* Exhibit A, Pre-Filed Testimony of David Wall, PCB R 23-18(A) (Aug. 28, 2023).

WHEREFORE, for the above and foregoing reasons, the Illinois Environmental Regulatory Group hereby respectfully submits its First Post-Hearing Comment for the Illinois Pollution Control Board’s consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: October 18, 2023

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

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