

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

ILLINOIS EPA’S COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS

The Illinois Environmental Protection Agency (Illinois EPA), by its attorney, offers the following comments and recommendations for revisions to Title 35 of the Administrative Code. The Illinois EPA reserves the right to offer additional comments and recommendations on Illinois Environmental Regulatory Group’s (IERG) after the second public hearing. At this time, the Illinois EPA requests that the Illinois Pollution Control Board (Board) consider these comments and additional proposed amendments as part of this rulemaking proposal and offers as follows:

**Proposed Revisions to 35 Ill. Adm. Code Part 203,
Major Stationary Sources Construction and Modification**

IERG’S Rationale/Support for Filing Proposed Amendments to Part 203

In IERG’s Pre-Filed Answers to the Board’s Pre-Filed Questions, IERG provided some examples in existing Part 203 that *conflict* with the federal nonattainment new source review (NA NSR). IERG’s Pre-Filed Answers at page 2 (*emphasis added*). As previously articulated by the Illinois EPA in its Initial Comments and Recommendations for Additional Revisions, existing Part 203 in conjunction with the requirements of 40 CFR Part 51, Appendix S, satisfies the NA NSR requirements of the Clean Air Act (CAA) and 40 CFR 51.165. In many instances, existing Part 203 is more stringent than the applicable requirements. While existing Part 203

may be more stringent than 40 CFR 51.165, in certain instances, this does not mean that the existing rules conflict with the corresponding federal requirements.¹ Implementation of these more stringent rules has been recognized by the United States Environmental Protection Agency (USEPA) as satisfying the requirements of the CAA and 40 CFR 51.165. *See*, 84 Fed. Reg. 2063 (February 6, 2019). Rather, IERG has proposed revisions to existing Part 203 to update Part 203 to include, among other items, options or features provided by 2002 New Source Review (NSR) Reform and 2020 Project Emissions Accounting.

As one example of existing Part 203 *conflicting* with the blueprint,² IERG states:

Current 203.208 does not explicitly impose any recordkeeping or other requirements relating to enforceability of major modification applicability determinations. The proposed rule requires monitoring, recordkeeping, and reporting to validate the preconstruction projections and expressly provides that the project is a major modification if the post-project monitoring data show the project caused significant emissions increases.

IERG's Pre-Filed Answers at page 2. IERG is correct, existing 203.308 does not explicitly impose any monitoring, recordkeeping or reporting requirements addressing major modification applicability determinations. However, such requirements are implicit in that the permitting of most projects requires limits on potential to emit be made practically enforceable which necessarily includes appropriate monitoring, recordkeeping and reporting to ensure a project is not major. One of the consequences of 2002 NSR Reform is, for changes to existing emission units, such emissions would no longer be limited in terms of an enforceable permit restriction or limit. Given this change, NSR Reform requires sources to track and potentially report post-change emissions for modifications to existing emissions units that had a "reasonable possibility"

¹ Nor does it mean that there is a "disconnect" between existing Part 203 and the current federal rules as asserted by IERG in its Pre-Filed Answers to the Board's Pre-Filed Questions at page 4.

² "Blueprint" commonly refers to the state implementation plan requirements for NA NSR under 40 CFR 51.165.

of triggering major NSR review. As such, these provisions do not conflict; rather any differences between pre- and post-reform reflect the need for monitoring, recordkeeping or reporting under NSR Reform as it no longer required enforceable restrictions on emissions.

Section 203.100 Transition

The Illinois EPA generally agrees with the approach offered by IERG for purposes of transitioning between existing Part 203 and proposed Part 203;³ however, revision to IERG's proposed language is necessary to make clear that permits historically issued by the Illinois EPA pursuant to existing Part 203, Subparts A through H, continue to be in effect. The Illinois EPA would propose the following changes to Section 203.100(c) as originally offered by IERG:

- (c) On the effective date of the full approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan, Subparts A through H of this Part will sunset and no longer apply the permitting and operation of projects that began construction before this date shall continue to be in accordance with Subparts A through H of this Part.

In addition, the Illinois EPA would delete the following revision proposed by IERG in subsection (d) of Section 203.100.

- ~~(d) — Permits under this Part shall be issued pursuant to the provisions of this Part in effect at the time of permit issuance.~~

As offered by IERG, proposed subsection (d) could be interpreted to authorize applicants to request the relaxation of permits historically issued by the Illinois EPA under existing Part 203. This is because existing Part 203 may be more stringent than the applicable requirements of 40 CFR 51.165. IERG's proposed revisions would generally relax the stringency of how emissions could be calculated for purposes of applicability for proposed major modifications in

³ As will be discussed later in these comments, the Illinois EPA opposes IERG's proposal "that the effective date of proposed Subpart I is not dependent on approval of proposed Section 203.1340(c)(3) by USEPA as a revision to the Illinois SIP." SOR at page 16. As discussed elsewhere in this filing, the Illinois EPA would propose the deletion of proposed Section 203.100(b). See, Illinois EPA's discussion of proposed Section 203.1340(c)(3).

nonattainment areas. Such revision, as proposed, would potentially decrease the number of construction projects at existing major sources that meet the definition of a major modification and thereby trigger the applicable requirements of NA NSR. However, these revisions as suggested by the Illinois EPA, would ensure that any existing permits would continue to be subject to existing Part 203, Subparts A through H. Such an approach would eliminate any incentive for applicants to unnecessarily revise (or relax) permits historically issued under existing Part 203.

Section 203.1100 – Commence

The CAA provides that no new major stationary source or major modification may be constructed without a permit that requires compliance with applicable NA NSR requirements. 42 USC § 7502. As proposed, this Section provides a definition for “Commence” as applied to the construction of a major stationary source or major modification. “Commence” would mean that the owner or operator has all necessary preconstruction approvals or permits and further, that the owner or operator either has begun, or caused to begin, a continuous program of actual on-site construction or entered into binding agreements or contractual obligations to undertake a program of actual construction, which cannot be canceled or modified without substantial loss. *See*, proposed Section 203.1100(a) and (b). Both subsections (a) and (b) would provide that construction must be completed within a reasonable time. In proposing its definition of “commence,” IERG chose to not include the language of existing Section 203.113(c).⁴ IERG argued that such language does not appear in the blueprint and that the definition of

⁴ However, IERG’s decision to not include the additional explanation offered by existing Section 203.113(c) in its proposed definition of “Commence” would not affect the basic definition of “Commence.” *See*, R85-20, Board Order, dated November 25, 1984, at page 5 and 13. <https://pcb.illinois.gov/documents/dsweb/Get/Document-26305>

“Commence” was included in the proposal “solely for the purpose of proposed Section 203.1430 concerning relaxation of a source-specific limitation.” IERG’s Statement of Reasons (SOR) page 20. While IERG may not have included the definition of “Commence” for purposes of proposed Section 203.1500, Stack Height, “Commence” also appears in proposed Section 203.1500(d).⁵ IERG offered no explanation for its use in proposed Section 203.1500(d).

Section 203.1230 – Major Stationary Source

Section 203.1230(a)(2)

In the Board’s Pre-Filed Questions to IERG, the Board inquired whether Illinois has received a NOx waiver from USEPA and if so, would a waiver be affected by the proposed rules. Board’s Pre-Filed Question No. 5. In IERG’s Pre-Filed Answers, IERG responded that there are currently no NOx waivers in effect and further stated:

The effect of a NOx waiver would be no different under the proposed revisions as under the currently effective NA NSR rules in Part 203. *The currently effective portion of Section 203.206(b)(3) regarding the effects of a NOx waiver is proposed to be recodified to proposed Section 203.1450(a).*

IERG’s Pre-Filed Answers at page 8 (*emphasis added*). This statement is not correct. Existing Section 203.206(b)(3) has been proposed for recodification to Section 203.1230(a)(2). Rather, proposed Section 203.1450(a) originated from the language of the blueprint at 40 CFR 51.165(a)(8).

⁵ Proposed Section 203.1500(d) would provide as follows:

Subsection (a) shall not apply with respect to coal-fired steam electric generating units subject to the provisions of Section 118 of the CAA (42 USC 7418), which *commenced* operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(*Emphasis added*).

Section 203.1230(a)(5)

In IERG's Pre-Filed Answers, IERG acknowledged that proposed Section 203.1230(a)(5)(A) does not explicitly address moderate nonattainment areas for CO and indicated it would be agreeable to revising proposed Section 203.1230(a)(5)(A) as follows:

- 5) For an area designated nonattainment for CO, a major stationary source is a stationary source which emits or has the potential to emit:
 - A) 100 tpy or more of CO in an area classified as moderate nonattainment area, except as provided in subsection (a)(5)(B);
 - B) 50 tpy or more in an area classified as serious nonattainment for CO where stationary sources significantly contribute to ambient CO levels, as determined under rules issued by the USEPA, pursuant to the CAA.

IERG's Pre-Filed Answers at page 9. To ensure consistency in interpretation, the Illinois EPA recommends that proposed Section 203.1230(a)(5)(A) be written similar to other requirements in proposed Section 203.1230. In lieu of the above language, the Illinois EPA suggests the following language:

- 5) For an area designated nonattainment for CO, a major stationary source is a stationary source which emits or has the potential to emit:
 - A) 100 tpy or more of ~~CO~~ in an area classified as moderate nonattainment for CO area, except as provided in subsection (a)(5)(B);

Section 203.1260 – Net Emissions Increase

IERG provides a definition for "Net emissions increase" in proposed Section 203.1260. Subsection (a) would provide that "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount that the sum of the emissions increase from a particular physical change or change in the method of operation at a stationary source and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable exceed zero.

Subsection (b) would identify those steps to determine the availability of an increase or decrease in emissions.

Section 203.1260(b)(2)(A)

In Section 203.1260(b)(2)(A), IERG proposed the following language:

- b) The following steps determine whether the increase or decrease in emissions is available:

- 2) An increase or decrease in actual emissions is creditable:

- A) Only if there is not in effect for the source at the time the particular change occurs, a permit *issued under this Part* which relied on the same increase or decrease in actual emissions; and

(Emphasis added). With the exception of the phrase “issued under this Part,” the proposed language mirrors existing Section 203.208(b)(1). While the proposal refers to a “permit issued under this Part,” the blueprint makes refers to “regulations approved pursuant to this section.”⁶ 40 CFR 51.165(a)(1)(vi)(C)(2). This change of wording is appropriate since the language in the blueprint refers to the blueprint rule, itself, not to the provisions of a state’s SIP.

It should also be clearly understood that increases and decreases in actual emissions that are only used for netting are creditable in future permitting as long as they are contemporaneous if they are only used for netting, i.e., if no NA NSR permit relied upon the increase or decrease in emissions. However, if a NA NSR permit relied upon or “addressed” an emission decrease or

⁶ 40 CFR 51.165(a)(1)(vi)(C)(2) provides as follows:

- (C) An increase or decrease in actual emissions is creditable only if:

- (2) The reviewing authority has not relied on it in issuing a permit for the source under *regulations approved pursuant to this section*, which permit is in effect when the increase in actual emission from the particular change occurs; and

(Emphasis added).

emission increase, that decrease or increase can no longer be considered in future netting analyses.⁷ This has been addressed by USEPA in guidance.⁸

There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases “in issuing a PSD permit.” For example, when a source nets out of review, no PSD permit is issued. As such, the reviewing authority has not relied on any creditable emissions increases or decreases in issuing a permit, so the emissions increases and decreases are still available for future applications.

Rather we view each of the contemporaneous and otherwise creditable emissions increases and decreases considered by the source in netting out of review as still being fully available, and must therefore be included in the next netting transaction at the source.

Use of Netting Credits, John Calcagni, Director, Air Quality Management Division, USEPA, to Bruce P. Miller, Chief, Air Programs, Region IV, December 29, 1989.⁹

Section 203.1260(b)(3)(D)

IERG proposed as follows in Section 203.1260(b)(3)(D):

- b) The following steps determine whether the increase or decrease in emissions is available.

- 3) A decrease in actual emissions is creditable to the extent that:

⁷ Most importantly, the increases in emissions from the major project addressed by the NA NSR permit do not need to be included in future netting analyses even if that major project would still be contemporaneous with a subsequent project.

⁸ While this guidance was made in the context of PSD permitting, the same circumstances apply for purposes of NA NSR permitting. *See also*, 40 CFR 51.166(b)(3)(iii)(b), 35 Ill. Adm. Code 204.550(b)(3).

⁹ Note that this USEPA guidance does not indicate that emission reductions that have been used as emission offsets in a NA NSR permitting transaction are still creditable for use as contemporaneous emission decreases for netting in a subsequent permitting transaction. Such reductions would not be credible for future netting because they have been relied upon by the NA NSR permit. Moreover, this guidance does not suggest that emission decreases use for netting would still be considered “surplus” and be potentially available for use as offsets.

- D) The Agency has not relied on it in issuing any permit under 35 Ill. Adm. Code 201.142 or 201.143 or this Part or 35 Ill. Adm. Code Part 204 and has not relied on it for demonstrating attainment or reasonable further progress.

Reference should also be made to 40 CFR 52.21 in proposed Section 203.1260(b)(3)(D) to address any Prevention of Significant Deterioration (PSD) permit historically issued by the Illinois EPA as a delegated permitting authority. This change is necessary because permits historically issued pursuant to 40 CFR 52.21 could be relevant for proposed Section 203.1260(b)(3)(D).

While IERG has included the references requested by USEPA to proposed 35 Ill. Adm. Code 201.142 and 201.143 and Part 204 in proposed Section 203.1260(b)(3)(D), with the exception of the reference to 40 CFR 52.21, IERG concludes in its Technical Support Document (TSD) that the inclusion of these proposed references are “immaterial.” TSD at page 30. Based on discussions between the Illinois EPA and the USEPA concerning the inclusion of similar language in the blueprint and statements made by USEPA during its review of the definition of “Net Emissions Increase” in other SIP submittals, the Illinois EPA cannot agree with IERG’s characterization that the requested language is “immaterial.” *See*, 80 Fed. Reg. 14044, 14055 (March 18, 2015); *see also*, 82 Fed. Reg. 25213, 25217 (June 1, 2017). The Illinois EPA requests that the Board decline to characterize the inclusion of such references in the definition of “Net Emissions Increase” as “immaterial.”

Section 203.1310 - Project¹⁰

While IERG offers a brief discussion of those activities that constitute a single project in its TSD, no mention is made of the role that technical and economic dependency plays in such decision. TSD at page 19. When determining the applicability of NA NSR, a collection of activities that is technically and economically related or interdependent are routinely addressed as a single project. 83 Fed. Reg. 57324 (November 15, 2018). IERG accurately states that “[w]hen determining the applicability of NA NSR, a source owner is not allowed to split a project into multiple, nominally separate changes, each with its own analysis of emissions increase, possibly circumventing NA NSR permitting for the project as a whole.” TSD at page 19. However, just as problematic is a source owner that would inappropriately combine separate projects to show a net zero to avoid aggregation of emissions under the *de minimis rule*. 42 USC § 7511a(c)(6).¹¹

IERG offers the 2009 Aggregation and Project Netting rulemaking as one example of an instance where existing Part 203 has yet to be updated to incorporate some of USEPA’s more recent amendments to 40 CFR 51.165. IERG asserts that this rulemaking “clarified ‘three aspects of the NSR program - aggregation, debottlenecking¹² and project netting – that pertain to how to determine what emissions increases and decreases to consider in determining major NSR

¹⁰ USEPA’s recent statements on project aggregation discuss why it is so important to accurately define the scope of the “project” under review. 83 Fed. Reg. 57324, 57325-57326 (November 15, 2018).

¹¹ The *de minimis rule* refers to the applicability provisions for projects at major stationary sources in serious or severe ozone nonattainment areas.

¹² Project emissions include the debottlenecking of any up-stream or down-stream equipment, or any increased utilization of support facilities. Modifications may involve emission increases at units that are not physically altered themselves but are debottlenecked or otherwise affected by a physical change or change in the method of operation of an emission unit. For instance, units that are upstream or downstream of the unit(s) that is being physically or operationally modified may have increases in emissions due to the changes at the modified units.

applicability for modified sources.” SOR at page 11, citing PSD and NSR: Aggregation and Project Netting, 74 Fed. Reg. 2376 (January 15, 2009). However, this final action did not address debottlenecking and project netting. The very next sentence in the preamble to this final rulemaking stated as follows:

This final action addresses only aggregation.

This action retains the current rule text for aggregation and interprets that rule text to mean that sources and permitting authorities should combine emissions when activities are “substantially related.” It also adopts a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur three or more years apart.

With respect to the other two components of the originally proposed rule, the EPA is taking no action on the proposed rule for project netting and, by way of a separate document published in the “Proposed Rules” section of this Federal Register, is withdrawing the proposed revisions for debottlenecking.

74 Fed. Reg. 2376 (January 15, 2009).¹³ While this 2009 final action only addressed aggregation, project aggregation was again addressed by USEPA in November 2018. 83 Fed. Reg. 5734 (November 15, 2018).¹⁴ In August 2019, USEPA proposed to replace and withdraw the Project Netting Proposal. 84 Fed. Reg. 39244 (August 9, 2019).

¹³ When determining whether certain activities should be considered a single project, the “2009 NSR Aggregation Action called for sources and reviewing authorities to aggregate emissions from nominally - separate activities when they are ‘substantially related.’” 83 Fed. Reg. 57326 (November 15, 2018). To be substantially related, the ‘interrelationship and interdependence of the activities [is expected], such that substantially related activities are likely to be jointly planned (*i.e.*, part of the same capital improvement project or engineering study), and occur close in time and at components that are functionally interconnected.” 74 Fed. Reg. 2378 (January 15, 2009).

¹⁴ This most recent project aggregation action adds “[t]o be ‘substantially related,’ there should be an apparent interconnection – either technically or economically – between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however, its benefit is significantly reduced without the other activity.” 83 Fed. Reg. 57327 (November 15, 2018).

Section 203.1340 – Regulated NSR Pollutant

Section 203.1340(c)(3)

For purposes of NA NSR, regulated NSR pollutants include only the criteria pollutants for which an area is designated nonattainment and any pollutants that are regulated as precursors to that criteria pollutant.¹⁵ For PM_{2.5}, USEPA has historically regulated up to four pollutants as precursors to PM_{2.5}: SO₂, NO_x, VOC (or VOM), and ammonia. As VOM and ammonia may be regulated as precursors to PM_{2.5}, the proposed definition of “Regulated NSR pollutant” specifically addresses VOM and ammonia in Section 203.1340(c)(3)(A).

“Regulated NSR pollutant” means the following:

- c) Any pollutant that is identified under this Section as a constituent or precursor of a general pollutant listed under subsection (a) or (b), provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for purposes of NSR are the following:

- 3) Except as provided in subsection (c)(3)(A), VOM and ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area beginning 24 months after the date of designation of the area as nonattainment for PM_{2.5}.
 - A) If the following conditions relating to a demonstration of insignificant contribution for a particular precursor in a particular PM_{2.5} nonattainment area are met, the precursor or precursors addressed by the NNSR precursor demonstration (VOM, ammonia or both) shall not be regulated as a precursor to PM_{2.5} in such area: The Agency submits a SIP for USEPA review which contains the state’s preconstruction review provision for PM_{2.5} consistent with 40 CFR 51.165 and a complete NNSR precursor demonstration consistent with 40 CFR 51.1006(a)(3); and such SIP is determined to be complete by the USEPA or deemed to be complete by operation of law in accordance with subsection 110(k)(1)(B) of the CAA (42 USC 7410) by the date 24 months after the date of designations.

¹⁵ The definition of regulated pollutants under the PSD rules is broader than that for NA NSR. For purposes of PSD, regulated pollutants also include other pollutants for which USEPA has adopted emissions standards, such as hydrogen sulfide and greenhouse gases.

- B) If the USEPA subsequently disapproves the state's preconstruction review provisions for PM_{2.5} and the NA NSR precursor demonstration, the precursor or precursors addressed by the NA NSR precursor demonstration shall be regulated as a precursor to PM_{2.5} in such area as of the date 24 months from the date of designation, or the effective date of the disapproval, whichever date is later.

In Section 203.100, IERG proposed that the effective date of proposed Subpart I, General Provisions, is not dependent on approval of this Section 203.1340(c)(3) by USEPA as a revision to the Illinois SIP. *See*, proposed 35 Ill. Adm. Code 203.100. *See also*, SOR at pages 16, 23, 27. *See also*, TSD at pages 9 - 11.

Proposed Section 203.1340(c)(3) is not consistent with 40 CFR 51.165,¹⁶ but rather is based on the language 40 CFR 51.165, Appendix S. Based on the Illinois EPA's discussions with USEPA which have been conveyed to IERG, proposed Section 203.1340(c)(3) would likely not be approvable as a revision to Illinois' SIP. Presumably, for this reason, IERG stated that "[t]hese provisions are not intended to be submitted to USEPA for approval as part of the generally applicable SIP." Instead, they are intended to be submitted to USEPA as part of a SIP

¹⁶ The definition of "Regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxvii)(C)(2) provides as follows:

Regulated NSR pollutant, for purposes of this section, means the following:

(C) Any pollutant that is identified under this paragraph (a)(1)(xxvii)(C) as a constituent or precursor of a general pollutant listed under paragraph (a)(1)(xxvii)(A) or (B) of this section, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(2) Sulfur dioxide, Nitrogen oxides, *Volatile organic compounds and Ammonia are precursors to PM_{2.5} in any PM_{2.5} nonattainment area.*

(Emphasis added).

submittal that would occur in the future if a particular area in Illinois is designated nonattainment for PM_{2.5}. See, TSD at page 10 (“these provisions are intended for submission only in conjunction with the Part D SIP submittal for such area.”).

As proposed, Section 203.1340(c)(3) would appear to provide a “transitional period” for the regulation of VOM and ammonia as precursors to PM_{2.5} following the designation of an area as nonattainment for PM_{2.5}. However, this is not necessary given 40 CFR 52.24(k) and 40 CFR Part 51, Appendix S would already appropriately provide for a transition period if an area is designated nonattainment for PM_{2.5}. Section 52.24(k) provides that the requirements of Appendix S apply to permits to construct and operate in newly designated nonattainment areas during the SIP development period, i.e., the time between the effective date of the designations and the date USEPA approves the NA NSR program meeting Part D is approved.¹⁷ “Regulated NSR pollutant,” 40 CFR Part 51, Appendix S, A.31(ii)(b)(4) further addresses the regulation of VOM and ammonia as potential precursors to PM_{2.5} immediately following the designation of PM_{2.5} nonattainment area in a state.

For any area that is designated nonattainment for PM_{2.5} after April 15, 2015, and was not already designated nonattainment for PM_{2.5} on or immediately prior to such date, Volatile organic compounds and Ammonia shall be regulated as precursors to PM_{2.5} under this Ruling beginning 24 months from the date of designation as nonattainment for PM_{2.5} with respect to any permit issued for PM_{2.5} unless the following conditions are met: the state submits a SIP for the Administrator’s review which contains the state’s preconstruction review provisions for PM_{2.5} consistent with §51.165 and a complete NNSR precursor demonstration consistent with §51.1006(a)(3); and such SIP is determined to be complete by the Administrator or deemed to be complete by operation of law in accordance with section 110(k)(1)(B) of the Act by the date 24 months from the date of designation. If

¹⁷ IERG appropriately cited to the federal requirements of 40 CFR 52.24(k) and 40 CFR Part 51, Appendix S when responding to a question asking under what authority applicable NA NSR regulations are implemented in Illinois. See, IERG’s Pre-Filed Answers at pages 4 – 5. IERG also cited to Sections 9.1(a), (c) and (d), and 39(a) and (f) of the Act in support. Given Section 9.1(a) is a legislative finding, Section 9.1(a) does not provide authority to implement applicable federal NA NSR regulations. Consistent with the Illinois EPA’s position in the recent Part 204 rulemaking, the Illinois EPA will propose any changes to Part 203 in the future that are necessary for the State to maintain its USEPA-approved state NA NSR program.

these conditions are met, the precursor(s) addressed by the NNSR precursor demonstration (Volatile organic compounds, Ammonia, or both) shall not be regulated as a precursor to PM_{2.5} in such area. If the Administrator subsequently disapproves the state's preconstruction review provisions for PM_{2.5} and the NNSR precursor demonstration, the precursor(s) addressed by the NNSR precursor demonstration shall be regulated as a precursor to PM_{2.5} under this Ruling in such area as of the date 24 months from the date of designation or the effective date of the disapproval, whichever is later.

As such, transitional provisions are not necessary in Illinois' rules.

It is also relevant that any consideration of what may or may not be approvable by USEPA as part of Illinois' SIP differs from whether something is consistent with the enabling state legislation. IERG's proposed approach would cause a conflict with the statutory definition of "nonattainment new source review (NA NSR) permit" in Section 3.298 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/3.298 (2020). The legislature defined such a permit as follows:

"Nonattainment New Source Review (NA NSR) permit" or "NA NSR permit" means a permit or a portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 173 of the Clean Air Act and 40 CFR 51.165.

(emphasis added). This definition of "NA NSR permit" provides that a state NA NSR permit may only be issued once the state NA NSR permit program has been approved as part of Illinois' SIP.¹⁸ See, 42 U.S.C. §§ 7407(a), 7410(a)(1) & (2), (l), 7502(c)(5) & (6). This definition comports with the mandate of the CAA that requires states to develop and submit for USEPA approval SIPs. The CAA's NA NSR requirements are among the requirements that must be addressed in a state SIP. 42 U.S.C. § 7410(a)(2)(C) & (I).

¹⁸ The practical effect of Illinois' definition of "NA NSR permit" is that the proposed revisions to Part 203 would not replace existing Part 203 until these new rules have been SIP-approved by the USEPA. In the interim, NA NSR permitting in Illinois would continue to be administered by the Illinois EPA pursuant to existing Part 203 as it has been historically done.

However, IERG's proposal suggests that a NA NSR permit could be issued consistent the requirements of proposed Section 203.1340(c)(3) and such permit would meet Illinois' definition of a NA NSR permit. This is not the case. If any part of a construction permit would be issued pursuant to a provision in Part 203, such as proposed Section 203.1340(c)(3), that had not been approved by USEPA, the permit would not meet the definition of a NA NSR permit in Illinois.

Absent Section 203.1340(c)(3), there would be no need for certain language as offered by IERG in proposed Section 203.100 or in Section 203.1000.^{19, 20} In lieu of such language, the Illinois EPA would recommend the following revisions to IERG's proposal:

Section 203.100 – Effective Dates²¹

- a) ~~Except as provided in subsection (b) below,~~ Subparts I through R of this Part do not apply until the effective date of approval of all of those Subparts by the United States Environmental Protection Agency (USEPA) as a revision to the Illinois State Implementation Plan.
- b) ~~The effective date of Subpart I of this Part is not dependent on approval of Section 203.1340(c)(3) by USEPA as a revision to the Illinois SIP.~~

¹⁹ Reference is made to proposed Section 203.1340(c)(3)(A) in proposed Section 203.1450, Control of Ozone, PM₁₀, and PM_{2.5}.

The control requirements of this Part which are applicable to major stationary sources and major modifications of PM_{2.5} shall also apply to major stationary sources and major modifications of PM_{2.5} precursors which are regulated NSR pollutants in a PM_{2.5} nonattainment area. The Agency shall exempt new major stationary sources and major modifications of a particular precursor from the requirements of this Part for PM_{2.5} if the precursors is not a regulated NSR pollutant as provided by *Section 203.1340(c)(3)(A)*.

(emphasis added). Based on the language as proposed by the Illinois EPA, the reference to proposed Section 203.1340(c)(3)(A) in proposed Section 203.1450 would still be appropriate. *See also*, SOR at page 23.

²⁰ See, the related discussion of the Illinois EPA's concerns regarding proposed Section 203.1340(a) that would set 70 tpy as the significance level for ammonia as it is a precursor to PM_{2.5}.²⁰

²¹ While the Illinois EPA previously discussed IERG's proposed transitional language of Section 203.100, Effective Dates, the Illinois EPA is including all of its suggested language for proposed Section 203.100 in one place to aide the reader.

e)b) On the effective date of the full approval of Subparts I through R of this Part by the USEPA as part of Illinois' State Implementation Plan, Subparts A through H of this Part will sunset and no longer apply the permitting and operation of projects that began construction before this date shall continue to be in accordance with Subparts B through H of this Part.

d) ~~Permits under this Part shall be issued pursuant to the provisions of this Part in effect at the time of permit issuance.~~

Section 203.1000 – Incorporation by Reference

The Illinois EPA would propose the removal of the reference to 40 CFR 51.1006(a)(3) in proposed Section 203.1000, Incorporations by Reference. This incorporation would no longer be necessary given the Illinois EPA's proposed deletion of this reference to 40 CFR 51.1006(a)(3) in proposed Section 203.1340(c)(3).

Section 203.1340(d)

For purposes of whether direct PM_{2.5} emissions or PM₁₀ emissions were to be based on condensable particulate matter prior to January 1, 2011, IERG proposed as follows in its definition of "Regulated NSR Pollutant":

Direct PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for direct PM_{2.5} emissions and PM₁₀ emissions in NA NSR permits. Compliance with emissions limitations for direct PM_{2.5} emissions and PM₁₀ emissions issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable SIP. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Part unless the applicable SIP required condensable particulate matter to be included.

While the proposed language generally follows the language of 40 CFR 51.165(a)(1)(xxxvii)(D), the blueprint merely informs states what should be addressed by their SIPs. As proposed by IERG, Section 203.1340(d) would make it difficult for both the regulated community and members of the public to know whether direct PM_{2.5} emissions or PM₁₀

emissions were to be based on condensables prior to January 1, 2011. For this to be answered, additional information would be required, i.e., whether prior to January 1, 2011, the SIP required condensable particulate to be included with emission limitations for direct PM_{2.5} and PM₁₀ emissions. Rather than making referencing to the undefined phrase, the “applicable SIP,” the definition of “Regulated NSR Pollutant” should be clear to the Board, the regulated community and the public without the need for additional information and extensive research.

For purposes of existing Part 203, the SIP did not require the inclusion of condensable particulate matter in emission limitations for PM_{2.5} or PM₁₀ prior to January 2011. In January 2011, the Illinois EPA was obligated to address condensable particulate matter in NA NSR permitting by means of 40 CFR 51.165, Appendix S. Since that time, the Illinois EPA has included condensable particulate matter in emission limitations in NA NSR permitting for PM_{2.5} or PM₁₀. Given Part 203, prior to January 2011, did not require the inclusion of condensable particulate matter in emission limitations in NA NSR permitting for direct PM_{2.5} or PM₁₀, the Illinois EPA would propose that the reference to the “applicable SIP” be removed from Section 203.1340(d) and that it read as follows:

Direct PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for direct PM_{2.5} emissions and PM₁₀ emissions in NA NSR permits. Compliance with emissions limitations for direct PM_{2.5} emissions and PM₁₀ emissions issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. ~~or the applicable SIP.~~ Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Part. ~~unless the applicable SIP required condensable particulate matter to be included.~~

Such an approach would not alter the substance of IERG's proposal but rather would clearly define what constitutes direct PM_{2.5} emissions and PM₁₀ emissions prior to January 1, 2011, for purposes of "regulated NSR pollutant."²²

Section 203.1370 Significant

Section 203.1370(a)

The definition of "significant" is a critical element when determining whether a proposed project at an existing major stationary source is a major modification for a pollutant.²³ For ammonia, proposed Section 203.1370(a) would set 70 tpy as the significance level for ammonia as it is a precursor to PM_{2.5}.²⁴ IERG justifies this proposed significance level for ammonia in two paragraphs in its TSD. TSD at pages 20-21; *see also*, SOR at pages 23-24. First, IERG cites to Ohio's SIP wherein USEPA approved a NA NSR rule that omitted ammonia as a regulated precursor to PM_{2.5}. IERG also makes reference to Utah's SIP in which USEPA approved a 70 tpy threshold for specific PM_{2.5} nonattainment areas in that state. TSD at page 20. In its second paragraph, IERG relied upon information contained in the 2017 National Emissions Inventory Database to support its conclusion that increased ammonia emissions from major stationary sources of ammonia in Illinois should not be anticipated to interfere with attainment of the PM_{2.5} NAAQS. TSD at page 21. Relying on this database, IERG identified four sources in Illinois that reported actual emissions of ammonia above the 100 tpy major stationary source threshold. For

²² Absent the acronym, "SIP", in Section 203.1340(d), proposed Section 203.1010, Abbreviations and Acronyms, may no longer need to include the reference to "SIP."

²³ *See*, discussion of Proposed Revision to 35 Ill. Adm. Code Part 204; *see also*, discussion of Section 203.1410, Applicability.

²⁴ *See*, the related discussion of the Illinois EPA's concerns regarding proposed Section 203.1340(c)(3). These provisions would address a "transitional period" for the regulation of VOM and ammonia as precursors to PM_{2.5} following the designation of an area as nonattainment for PM_{2.5}.

these sources, IERG asserts that ammonia emissions are largely due to the use of selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) for control of NO_x emissions and, consequently, these sources should not be anticipated to interfere with attainment of the PM_{2.5} NAAQS in Illinois if, in the future, area(s) in Illinois are designated nonattainment for PM_{2.5}.

The provisions of USEPA's rules that is relevant for the establishment of a significant emission rate for ammonia is Section 51.1006(a), which provides the applicable requirements for an optional PM_{2.5} precursor demonstration. 40 CFR 51.1006(a). Subsection (a) provides as follows:

A state may elect to submit to the EPA one or more precursor demonstrations for a *specific nonattainment area*. The analyses conducted in support of any precursor demonstration must be based on precursors emissions attributed to sources and activities *in the nonattainment area*.

40 CFR 51.1006(a). (*Emphasis added*). Additional requirements follow in subsections (a)(1) and (a)(2) for what must be included in a comprehensive PM_{2.5} precursor demonstration or a major stationary source PM_{2.5} precursor demonstration, respectively. In both instances, the USEPA may approve the demonstration for purposes of the concentration-based contribution analyses "[i]f the contribution of the precursor to PM_{2.5} levels in the area is not significant, *based on the facts and circumstances of the area*." 40 CFR 51.1006(a)(1)(i) and (a)(2)(i) (*emphasis added*). Information adequate to support either of these demonstrations has not been offered by IERG. Further hampering such a fact specific PM_{2.5} precursor demonstration is that there are currently no PM_{2.5} nonattainment areas in Illinois.

As explained by USEPA in its proposed approval of Ohio's SIP omitting ammonia as a regulated precursor to PM_{2.5}, Ohio's analysis was based on the facts and circumstances of the Cleveland nonattainment area:

In particular, EPA's regulations provide that a state choosing to submit an NNSR precursor demonstration should evaluate the sensitivity of PM_{2.5} levels in the nonattainment area to an increase in emissions of the precursor. If the state demonstrates that the estimated air quality changes determined through such an analysis are not significant, *based on the facts and circumstances of the area*, the state may use this information to identify new major stationary sources and major modifications of a precursor that will not be considered to contribute significantly to PM_{2.5} levels that exceed the standards in the nonattainment area under CAA section 189(e). *Id.* 51.1006(a)(3)(i). If EPA approves the state's NNSR precursor demonstration for a nonattainment area, major sources of the relevant precursor can be exempted from the NNSR major source permitting requirements for PM_{2.5} with respect to that precursor. *Id.* 51.1006(a)(3)(ii).

83 Fed. Reg. 13457, 13458 (March 29, 2018) (*emphasis added*). In approving the approach taken in Ohio, USEPA relied upon a comprehensive, fact specific analysis demonstrating that increases in ammonia emissions would not significantly contribute to the formation of PM_{2.5} in the Cleveland area.^{25, 26} A similar analysis was not provided by IERG with its regulatory proposal.²⁷ Rather IERG merely cited the previous SIP approvals in Ohio and Utah as "support"

²⁵ 83 Fed. Reg. 33844 (July 18, 2018). ("The revisions also incorporate the findings of a comprehensive precursor demonstration performed by OEPA, which determined that volatile organic compounds (VOC) and ammonia (NH₃) are an insignificant source of PM_{2.5} for the purpose of new source review in nonattainment areas in Ohio."). Details of the specific modeling analysis for the Cleveland area were set forth in this proposed SIP approval. 83 Fed. Reg. 13457, 13458 (March 29, 2018) ("OEPA provided a modeling analysis for both VOC and NH₃ intended to show that increases in emissions of these precursors that may result from new or modified sources would not make a significant contribution to PM_{2.5} concentrations in the area.").

²⁶ See also, *Fine Particulate Matter (PM_{2.5}) Precursor Demonstration Guidance*, Scott Mathias, Acting Director, Air Quality Policy Division, Richard Wayland, Director, Air Quality Assessment Division, to Regional Air Division Directors, Regions 1-10, May 30, 2019.

²⁷ Recognizing that there are currently no PM_{2.5} nonattainment areas in Illinois, IERG did "not recommend that a modeling analysis be performed in order to determine the relative contributions of ammonia or other precursors to a *hypothetical* PM_{2.5} nonattainment area in Illinois." IERG's Pre-Filed Answers at page 12 (*emphasis added*). IERG is correct; any comprehensive PM_{2.5} precursor demonstration or major stationary source PM_{2.5} precursor demonstration undertaken at this time would be for a hypothetical nonattainment area not yet in existence. Nor is there a guarantee that such nonattainment area might exist in the future.

for a 70 tpy significance level for ammonia as a precursor to PM_{2.5} for revised Part 203 as it would apply for nonattainment areas that do not yet exist in Illinois.

Turning to the 2017 National Emissions Inventory Database, the Illinois EPA found that based upon a review of recently submitted Annual Emission Reports for 2020, there are currently three sources in Illinois with reported actual emissions of ammonia above the major stationary source threshold of 100 tpy. For two sources, ammonia emissions were not due to the use of SCR or SNCR. Rather, ammonia emissions were either due to the production of fertilizer or other process related emissions. Of the one other source with reported actual ammonia emissions above 100 tpy, the emissions were due to the use of emissions control technology for NO_x.²⁸ In the event an area was designated nonattainment for PM_{2.5}, this information would not serve as a PM_{2.5} precursor demonstration for ammonia for submittal to the USEPA. The analysis conducted in support of any precursor demonstration must be based on the precursor emissions attributed to sources and activities in the nonattainment area. Given PM_{2.5} nonattainment areas currently do not exist in Illinois, it is uncertain which sources, if any, would need to be addressed in such a demonstration.²⁹

²⁸ In IERG's Pre-Filed Answers to the Board's Pre-Filed Questions, IERG informed the Board that based on the 2017 emission inventory data, there are "seven facilities in Illinois with reported actual ammonia emissions above 70 tpy and a total of eight facilities with reported actual emissions above 40 tpy." IERG's Pre-Filed Answers at page 13 (*emphasis added*). Based upon a review of recently submitted Annual Emission Reports for 2020, there are currently four sources in Illinois with reported actual emissions of ammonia above 70 tpy and five sources in Illinois with reported actual emissions of ammonia above 40 tpy. For these two additional sources of ammonia in Illinois, both were due to the use of emission control technology for NO_x, SCR or SNCR.

²⁹ Setting a significance level for ammonia without a designated nonattainment area in Illinois would be both premature and arbitrary. As illustrated by the circumstances in other states, the time to set a significance level is typically after an area is designated nonattainment for PM_{2.5} and an analysis has been performed based on the particular facts and circumstances of the area. For instance, the approach taken in Ohio took place only after the designation of a PM_{2.5} area in the State by USEPA. 83 Fed. Reg. 33844 (July 18, 2018). While the approach in Cleveland was used to justify a statewide significance level, the facts and circumstances of the Cleveland nonattainment area served as the basis to set and justify a statewide significance level for Ohio, the relevant rules effectively only applied for the Cleveland area.

For these reasons, the Illinois EPA opposes a 70 tpy significance level for ammonia as a precursor to PM_{2.5}. This value lacks adequate justification and support. Moreover, in the event, a PM_{2.5} nonattainment area were designated in Illinois in the future, a significance level of 70 tpy could unnecessarily bind the State of Illinois, either if the required precursor demonstration indicated that a more stringent significance level were necessary, *i.e.*, 50 tpy, or if ammonia did not need to be regulated as a precursor for PM_{2.5}.

Given no PM_{2.5} nonattainment areas currently exist in the State, the Illinois EPA would recommend not setting a significance level for ammonia at this time. If the Board decides to set a significance level for ammonia, absent detailed justification and support, the Illinois EPA would suggest the significance level for ammonia be set at 40 tpy to be consistent with the most conservative of other established significance levels.³⁰

Clarification to IERG's TSD

Material in the TSD regarding significant emissions rates warrants response by the Illinois EPA. The TSD contains a table reflecting the significant emission rates for different pollutants as proposed by revised 35 Ill. Adm. Code 203. TSD at pages 19-20. The information in this table is inaccurate and incomplete as it addresses the significant emissions rate for NO_x and VOM in serious or severe ozone nonattainment areas. *See*, Section 203.1370(c). The table in the TSD states that for NO_x and VOM “the rate is 25 tpy in areas classified as serious or severe nonattainment for ozone.” TSD at page 20. However, proposed Section 203.1370(c)

See also, 85 Fed. Reg. 36161 (June 15, 2020) (Designation of Alleghany County, Pennsylvania as moderate nonattainment for 2012 annual PM_{2.5} standard and subsequent approval of a significance level for all precursors to PM_{2.5}). *See also*, 86 Fed. Reg. 29591 (May 12, 2021) (Similar approach to Pennsylvania's SIP for PM_{2.5}).

³⁰ *See*, 83 Fed. Reg. 28568 (June 18, 2018) (Approving a significant level for ammonia at 40 tpy in Knox County, Tennessee).

would provide that for serious or severe ozone nonattainment areas an increase in emissions of VOM or NO_x is significant if the net emissions increase of such air pollutant from a stationary source *exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. (emphasis added)*. Consequently, for a proposed project in a serious or severe ozone nonattainment area, the significant emission rate for VOM or NO_x is a rate *greater than 25 tpy*. Then it is not just the net increase in emissions from the proposed project that must be considered but also other net increases in emissions from the source during a five consecutive calendar year period that includes the calendar year in which the increase from the proposed project would occur.

A similar discussion is offered elsewhere in the TSD but the TSD then states that the applicability provisions for projects at major stationary sources in serious or severe ozone nonattainment areas or the *de minimis rule* differs from the otherwise applicable major modification applicability procedure in two respects:

(1) the threshold for triggering the requirement for a *netting analysis* is any increase rather than a larger threshold such as 25 tpy or 40 tpy, and (2) the contemporaneous period for the *netting analysis* is shorter.

TSD, page 29. The Illinois EPA is particularly concerned with the characterization of the *de minimis rule* as a “netting analysis.” Rather, if there would be any net increase in emissions of VOM or NO_x from a proposed project at a major source in a serious or severe ozone nonattainment area, the determination whether the proposed project is significant must consider any other net increases in NO_x or VOM emissions, as applicable, from the stationary source during the five consecutive calendar year period that includes the calendar year when the increase would occur. If together these increases would exceed 25 tpy, the increase in emissions

would be “significant” as defined in proposed Section 203.1370. Such an approach to applicability differs from “netting” where netting is only needed if the emissions increase from a proposed project is significant by itself. In the “netting analysis” the emissions increase for the project may be summed with all other contemporaneous³¹ increases and decreases at the source to show that the “net increase” in emissions is not significant. USEPA refers to this second step as a “netting exercise.” *New Source Review Workshop Manual (Draft 1990), NSR Manual at A.35.*

Section 203.1410 – Applicability³²

³¹ The five-year period for aggregation of emissions increases in serious and severe ozone nonattainment areas is also different than the contemporaneous period for netting analyses. For netting, the contemporaneous period extends back five years from the date that a timely and complete change is submitted for the proposed project and forward to the date that the increase from the project would occur. The period for aggregation, which is calendar years, extends back four calendar years from the year in which the increase from the project would occur (one year plus four years is five years).

³² In the Board’s Pre-Filed Questions to IERG, the Board questioned whether IERG’s proposed methodology to determine an emission increase for a new unit significantly differs from how such an emission increase is currently determined under existing Part 203. Board’s Pre-Filed Question No. 16. In IERG’s Pre-Filed Answers, IERG responded:

Under Section 203.104(c) and 203.208 of the current rules, the increase in emissions from construction of a new emissions unit is generally based on its potentially to emit. *This outcome is not readily apparent from the rule language, but rather is based on long-standing policy regarding the meaning of the defined terms major modification, net emissions increase, and actual emissions. Under this interpretative policy, the new emissions unit is deemed not to have begun normal operations and the emissions increase is the amount by which its post-change potential to emit exceeds its pre-change actual emission rate of zero.*

IERG’s Pre-Filed Answers at page 13 (*emphasis added*). Under existing Section 203.104(c) and 203.208, the increase in emissions from the construction of a new emissions unit is based on its potential to emit. Such determination is based on the language of existing Section 203.208 and Section 203.104(c) and not simply interpretative policy. Existing Section 203.208, Net Emission Determination, provides that a “net emissions increase is the amount by which the sum of any increase in *actual emissions* from a particular physical change or change in method of operation at a source, and any other increases and decreases in actual emission at the source that are contemporaneous with the particular change and are otherwise creditable, *exceeds zero.*” (*emphasis added*). Meanwhile Section 203.104, the definition of *actual emissions*, provides in subsection (c) that “[f]or any emissions unit which has not begun normal operations on the particular date, the Agency shall presume that the potential to emit of the emissions unit is equivalent to the actual emissions on that date.” (*emphasis added*). Subsection (c) governs for the construction of a new emissions unit since a proposed new emissions unit has not begun operation, much less begun normal operation.

USEPA recently made changes to its approach to the applicability of NA NSR that are commonly referred to as Project Emissions Accounting. First as policy in 2018 and then by rulemaking in 2020, emissions decreases as well as emissions increases from a modification are to be considered in Step 1 of the applicability analysis so long as the emissions increase and decrease are part of a single project.^{33, 34} Prior to these changes, only emissions increases were to be considered in Step 1 of the applicability analysis. Consistent with USEPA's recent approach to the applicability of NA NSR, IERG provides that the "differences in emissions" from the various emission units involved in a project should always be summed. As proposed, Section 203.1410(c)(5) and (6) would read as follows:

- c) The requirements of this Part will be applied in accordance with subsections (c)(1) through (c)(6).

- 5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increase for each emissions units, using

³³ Letter from E. Scott Pruitt, to Regional Administrators, "Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program," March 13, 2018.

³⁴ While USEPA on October 12, 2021, denied a petition for reconsideration and request for administrative stay of its November 24, 2020 Project Emissions Accounting rule, this denial was based on a finding by USEPA that the petitioners did not meet the requirements of Section 307(d)(7)(B) of the CAA for reconsideration. This was because the petitioners did not raise their specific concerns during the proposed comment period. However, USEPA went on to state as follows:

However, while the EPA is not required by CAA section 307(d)(7)(B) to grant this petition for reconsideration, the EPA agrees that the petition raises concerns that warrant further consideration by the EPA in a separate rulemaking effort. The EPA, therefore, plans to initiate, at its own discretion, a rulemaking process to consider revisions to the NSR regulations to address the concerns raised by the petition for reconsideration. The EPA also plans to consider its withdrawal or revision of the March 2018 Memorandum [as] necessary.

Response Letter to Petition for Reconsideration Received on Project Emissions Accounting, dated October 12, 2021.

the method specified in subsections (a)(3) and (a)(4) as applicable with respect to each emissions units, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 203.1370).

- 6) The “sum of the difference” as used in subsections (c)(3) through (c)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

While IERG does not use the phrase “Project Emissions Accounting” in its accompanying submittal to the Board, the concept of “Project Emissions Accounting” appears to be addressed by IERG on page 25 of its SOR and of its TSD.³⁵ The Illinois EPA provides this comment to make clear what is being offered by IERG in its proposed revisions to Part 203. Increases and decreases in emissions from affected emissions units due to a proposed project may be considered in Step 1 when determining whether the proposed project would result in a significant emissions increase. Decreases in emissions at affected emissions units that would be a result of a project do not have to be addressed with a broader netting analyses for other contemporaneous changes in emissions. *See also, USEPA’s Project Emissions Accounting Under New Source Review Preconstruction Permitting Program*, dated March 13, 2018.

Section 203.1810 - Emission Offsets

If a proposed unit or source is subject to NA NSR, the following requirements of NA NSR would apply to the proposed project. These include the requirement that the new major source and/or significant modification at the existing major stationary source meet an emission limitation that constitutes Lowest Achievable Emission Rate (LAER) for all NA NSR pollutants

³⁵ IERG states in its SOR that major modifications are discussed in Section II of the accompanying TSD. *See, SOR, page 25.* Major modifications are discussed in Section III of TSD.

emitted in significant amounts, that the SIP is adequately implemented,³⁶ offsets sufficient for reasonable further progress have been secured, state-wide source compliance and the completion of an alternative analysis. In addition, the permitting authority is required to ensure that the public has an opportunity to comment on the proposed NA NSR determination during public notice and comment.³⁷ *See*, Section 173 of the CAA.

Section 203.1810(f)(2)(B)

Regarding emission offsets, the owner or operator of a proposed major new source or major modification subject to NA NSR must secure emission offsets, i.e., reductions in emissions of the pollutant(s) for which NA NSR applies. In addition to meeting other criteria for emission offsets, emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may generally be credited for offsets if they meet certain requirements including that such reductions are surplus, permanent, quantifiable and federally enforceable. 40 CFR 51.165(a)(3)(ii)(C).

To fulfill this requirement, IERG proposed in Section 203.1810(c)(1) that “[a]ll emissions reductions relied upon as emissions offsets shall be federally enforceable.”

In addition, in Section 203.1810(f), IERG proposed as follows:

³⁶ *See*, Section 173(a)(4) (“the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part;”); *see also*, TSD at page 7. (“require that the facility undertake the proposed construction or modification in a manner that is consistent with existing regulations”).

³⁷ The TSD neglects to mention that the owner or operator would be required to demonstrate that all major stationary sources which he or she owns or operates in Illinois are in compliance or on a plan to achieve state-wide compliance with all applicable state and federal air pollution control requirements. TSD at page 7. *See also*, proposed Section 203.1820, Compliance by Existing Sources. In addition, proposed Section 203.1830, Analysis of Alternatives, would require that the owner or operator must demonstrate that the benefits of the new major stationary source or major modification significantly outweigh the environmental and social costs imposed as a result of the proposed project.

- (f) Emissions reductions from shutdowns or curtailments shall be credited as follows:
- 1) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production operating hours shall be credited for offsets if they meet the following requirements:
 - A) *Such reductions are surplus, permanent and quantifiable; and*
 - B) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this Subpart, the Agency shall consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions for such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
 - 2) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (f)(1)(B) shall be credited only if:
 - A) The shutdown or curtailment occurred on or after the date the application for a construction permit is filed; or
 - B) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of *subsection (f)(1)(A)*.

(Emphasis added). See also, TSD at page 33. In proposed Section 203.1810(f)(1)(A) and the accompanying reference to subsection (f)(1)(A) in Section 203.1810(f)(2)(B), the proposed language might suggest that any emission reductions achieved by the shutdown or curtailment need not be “federally enforceable” as that criterion is not included. However, 40 CFR 51.165(a)(3)(ii)(C)(1)(i) and (a)(3)(ii)(C)(2)(ii) clearly provides that such reductions must be “federally enforceable.” While proposed Section 203.1810(c)(1) would include the requirement that any offset be federally enforceable, such an approach deviates from the blueprint and would create ambiguity that can be avoided by restating this requirement in Section 203.1810(f). After

consulting with USEPA, the Illinois EPA would offer the following language for Section 203.1810(f)(1)(A):

- (f) Emissions reductions from shutdowns or curtailments shall be credited as follows:
 - 1) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production operating hours shall be credited for offsets if they meet the following requirements:
 - A) Such reductions are surplus, permanent, ~~and~~ quantifiable and federally enforceable; and

Section 203.1810(g)(3)

Proposed Section 203.1810(g)(3) would address the requirement that emission reductions must be surplus, meaning that such emission reductions are not otherwise required by another applicable requirement. As proposed, Section 203.1810(g)(3) would state as follows:

- (g) The determination of emissions reductions for offsets must be made as follows:
 - (3) Emissions reductions otherwise required by the CAA (42 USC 7401 et seq.) shall not be creditable as emissions offsets. Emissions reduction which are not otherwise required by the CAA shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of this Section.

The language tendered by IERG, without support, deviates from the following language of Section 173(c)(2) of the CAA.

- (2) Emission reductions otherwise required by this Act shall not be creditable as emissions reductions *for purposes of any such offset requirement*. *Incidental emission* reductions which are not otherwise required by this Act shall be creditable as emissions reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

(Emphasis added).

The Illinois EPA has no reason to second-guess the statutory language of the CAA and recommends that the Board utilize the language in Section 173(c)(2), that had previously been memorialized by the Board as follows in 35 Ill. Adm. Code 203.303.

- f) Emissions reductions otherwise required by the CAA (42 USC 7401 et seq.) shall not be creditable as emissions offsets *for purposes of any such offset requirement. Incidental Emissions* reductions which are not otherwise required by the CAA shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of this Section.

(Emphasis added).

Such approach would be consistent with the CAA and also consistent with SIPs historically approved by USEPA. *See*, Section 35 Ill. Adm. Code 203.303(f); *see also*, Wis. Admin. Code NR § 408.06(9).

Section 203.1810(h)

Proposed Section 203.1810(h)³⁸ would allow for interprecursor trading (IPT)³⁹ when meeting emission offset requirements for emissions of PM_{2.5} and PM_{2.5} precursors even though there are not currently any PM_{2.5} nonattainment areas in Illinois. In its SOR, IERG argues that the inclusion of such provisions is appropriate as authority for IPT remains in 40 CFR 51.165. In support, IERG cites to the D.C. Circuit Court decision in *Sierra Club, et al. v Environmental Protection Agency* and USEPA's recent revisions to 40 CFR 51.165 that no longer authorize IPT for ozone but continue to provide authorization for IPT for PM_{2.5}. SOR at page 31, *citing* 985 F.3d 1055 (D.C. Cir. 2021). SOR at page 31. However, a closer reading of the D.C. Circuit's

³⁸ *See*, TSD at pages 32-33.

³⁹ Interprecursor trading involves meeting a requirement for reductions in emissions of one pollutant with reduction in emissions of another pollutant so as to provide a comparable benefit for air quality. While PM_{2.5} can be emitted directly into the atmosphere ("primary PM_{2.5}" or "direct PM_{2.5}"), PM_{2.5} can also form in the atmosphere from emissions of precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds and ammonia as they react in the atmosphere to become PM_{2.5}. ("secondary PM_{2.5}"). *See*, USEPA, *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter* (EPA-452/R-12-005, December 2012), p. 2-1. For instance, if a major stationary source is subject to NA NSR for PM_{2.5} and if IPT is allowed to provide emission offsets, the source may be able to use reductions of SO₂, NO_x, VOM or ammonia emissions to offset the PM_{2.5} emissions increase as these pollutants also contribute to the formation of PM_{2.5} in the atmosphere.

2021 decision suggests that this court would not find authority for IPT for PM_{2.5} under the Clean Air Act if this question were ever before it.

The case before the D.C. Circuit did not directly address PM_{2.5} but rather concerned the implementation of the NAAQS for ozone. *Sierra Club, et al. v Environmental Protection Agency*, No. 15-1465 (D.C. Cir. January 29, 2021), slip op. at page 4. As an initial matter, the court offered the following statutory history of the CAA, Part D, Subparts 1 and 2:

In 1990, Congress amended the Clean Air Act, finding that the statute had failed to produce the anticipated reductions of ozone and certain other pollutants. Accordingly, it “abandoned the discretion-filled approach of two decades prior in favor of more comprehensive regulation of six pollutants,” including ozone, “that Congress found to be particularly injurious to public health.” *South Coast I*, 472 F.3d at 997. Congress first redesignated the existing approach as Subpart 1, and that approach “continued to apply as a default matter to pollutants not specifically addressed in the amended portions of the Act.” *NRDC I*, 777 F. 3d at 460. Congress then added Subpart 2, which focuses on ozone and its precursors. *See* 42 USC §§7511-7511f.

Id. The court generally focused its discussion on the more specific statute, Part D, Subpart 2, relevant to ozone rather than the general offset provision set forth in Part D, Subpart 1.^{40, 41}

However, in response to certain arguments made by USEPA, the court briefly considered and discussed the discretionary provisions in Part D, Subpart 1, where the requirements for nonattainment areas are generally addressed. The argument focused on the general offset

⁴⁰ Such an approach is consistent with the “basic principle of statutory construction that a specific statute . . . controls over a general provision . . . particularly when the two are interrelated and closely positioned.” *Id.* at page 11, *citing Adirondack Medical Center v. Sebelius*, 740 F.3d 692, 698 (D.C. Cir. 2014) (alterations in original) (quoting *HCS-Laundry v. United States*, 450 U.S. 1, 6 (1981)).

⁴¹ While the D.C. Circuit Court addressed ozone, not PM_{2.5}, the court’s discussion of the general offset provision in Section 173(c) would apply to PM_{2.5} given a more specific offset provision does not exist for PM_{2.5}. Part D, Subpart 4, exists for particulate matter in nonattainment areas, but Subpart 4 does not contain any requirements specific to offsets. Given this is the case, the general provisions in Part D, Subpart 1, are the applicable offset requirements for particulate matter.

provision, Section 173(c)(1) of the CAA, and the accompanying definition of “air pollutant” in Section 302(g) of the CAA. The relevant language of Section 173(c)(1) is as follows:

The owner or operator of a new or modified major stationary source may comply with an offset requirement in effect under this part for increased *emissions* of *any air pollutant* only by obtaining emission reductions of *such air pollutant* from the same source or other sources in the same nonattainment area Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the *total tonnage* of increased emissions of *the air pollutant* from the new or modified source shall be offset by an equal or greater reduction, as applicable in the actual emissions of *such air pollutant* from the same or other sources in the area. 42 USC 7503(c)(1) (*emphasis added*).

The CAA provides the following definition of “air pollutant” in Section 302(g):

Includes any precursors to the formation of any air pollutant, to the extent [EPA] has identified *such* precursor or precursors for the particular purpose for which the term ‘air pollutant’ is used.

42 USC § 7602(g) (*emphasis added*). Utilizing these sections, USEPA argued that these provisions, together, gave it “broad discretion to define ‘air pollutant’ for the purposes of offsets” and, as such, USEPA determined that ozone, not VOCs or NO_x, was the ‘air pollutant’ that should govern the nature of the emission offsets required in areas that were nonattainment for ozone. *Sierra Club, et al. v Environmental Protection Agency*, No. 15-1465 (D.C. Cir. January 29, 2021), slip op. at page 11. The D.C. Circuit disagreed finding such arguments disregarded the principle that the more specific statute controls over the general and further, this argument ignored the use of the word ‘such’ in the statute. *Id.* The court went on to state as follows:

Moreover, EPA’s interpretation of “such air pollutant” as referring to ozone conflicts with the plain text of the general offset provision and the ozone-specific offset provisions. Those provisions all relate to “emissions” of “such air pollutant,” *see id.* §§ 7503(c)(1), 7511a(a)(4), but as EPA recognizes, “ozone is not emitted directly into air,” *Maryland v. EPA*, 958 F.3d 1185, 1190 (D.C. Cir. 2020); *see* National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. at 65,299 (“Ozone is formed near the earth’s surface due to chemical interactions involving solar radiation and precursor pollutants including volatile organic compounds (VOCs) and NO_x.”). Given that there are no emissions of ozone in the same way that there are emissions of VOCs or NO_x, it makes no sense to read those provisions as referring to ozone.

Id. While this discussion was in the context of offsets in ozone nonattainment areas, the same circumstances are present for PM_{2.5}.⁴² Similar to ozone, secondary PM_{2.5} forms when pollutants other than PM_{2.5}, i.e., nitrogen oxides, sulfur oxides, volatile organic compounds and/or ammonia, react in the atmosphere. However, the fact that PM_{2.5} is formed due to chemical reactions involving other pollutants does not support interpreting “emissions” of “such air pollutant,” to refer collectively to emissions of direct PM_{2.5}, nitrogen oxides, sulfur oxides, volatile organic compounds and ammonia.⁴³

Accordingly, the decision of the D.C. Circuit is transferable to PM_{2.5} as it finds that Section 173(c)(1) of the CAA does not authorize the use of interprecursor trading. As such and given that there are no PM_{2.5} nonattainment areas in the State, the Illinois EPA opposes revisions to Part 203 that would allow for the use of IPT for emission offsets for PM_{2.5} as proposed by Section 203.1810(h). The Illinois EPA requests that this section not be included in the revised rules.

As such, there would also be no need to include an abbreviation for IPT in Section 203.1010, Abbreviations and Acronyms. Nor would any reference to IPT be necessary in Section

⁴² This discussion does not apply to those direct emissions of PM_{2.5} from a source.

⁴³ The D.C. Circuit also found that USEPA’s interpretation conflicted with the tonnage requirement in Section 173(c)(1) of the CAA, stating:

EPA’s interpretation also conflicts with the general offset provision’s tonnage requirements. Although that provision requires that the tonnage to be reduced be ‘greater or equal’ to the increased tonnage of an air pollutant, *see* 42 U.S.C. § 7503(c)(1), if emissions reductions of VOCs and NOx were traded, the increased tonnage of emissions of one air pollutant – either VOCs or NOx – could be less than the tonnage of the reduced emissions of the same pollutant.

Sierra Club, et al. v Environmental Protection Agency, No. 15-1465 (D.C. Cir. January 29, 2021), slip op. at page 12.

203.1600 Construction Permit. Instead, the Illinois EPA would suggest that Section 203.1600(a) as proposed should instead be as follows:

The Agency shall only issue a construction permit for a new major stationary source or a major modification that is subject to the requirements of this Part, other than this Subpart or Subpart R, if the Agency determines all applicable requirements of this Part, other than this Subpart and Subpart R, are satisfied. ~~This includes the requirements in Section 203.1810(h) if IPT would be relied upon for all or a portion of the emissions offsets that must be provided for such source or modification.~~

Finally, the Illinois EPA would recommend that the Board not include a reference to IPT in Section 203.1810(e)(1):

~~Except as provided in subsection (h), which addresses interprecursor trading for PM_{2.5}, e~~
Emission reductions must be for the pollutant for which emission offsets are required, e.g., reductions in CO emissions cannot be used as emission offset for increases in emissions of SO₂ reductions.

Subpart Q – Plantwide Applicability Limits (PALs)
Section 203.2280 - Significant Emissions Unit
Section 203.2290 - Small Emissions Unit
Section 203.2330 - Setting the 10-Year Actuals PAL Level

In each of these proposed definitions for PALs, reference is made to “the significant level” or “the significant level for that PAL pollutant” as defined in proposed Section 203.1370.⁴⁴ This approach differs from the approach taken in the blueprint (and similar

⁴⁴ Proposed Section 203.2280 would provide as follows:

“Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level (as defined in Section 203.1370) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Section 203.2190.

Meanwhile, the language of 40 CFR 51.165(f)(2)(xi) states:

“Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level (as defined in paragraph (a)(1)(x) of this section *or in the Act, whichever is lower*) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (f)(2)(iv) of this section.

provisions in 35 Ill. Adm. Code Part 204). The blueprint rule also includes “or in the [Clean Air] Act, whichever is lower.” The Illinois EPA would generally prefer consistency between proposed Part 203 and 35 Ill. Adm. Code Part 204,⁴⁵ unless a substantive reason exists for a difference between the requirements of these two major source construction permitting programs. The USEPA would also prefer consistency between the blueprint and state regulations. To the extent that IERG has offered language in proposed Subpart Q differing from the blueprint, justification and support by the proponent would be necessary before the Illinois EPA could include such language in any SIP submittal to USEPA.

Section 203.2360 - Expiration of a PAL

In the Board’s Pre-Filed Questions to IERG, the Board questioned whether CEMS, CERMS, PEMS or CPMS is required to demonstrate compliance with the allowable emission limitation following expiration of a PAL and whether any other monitoring system approved by the Illinois EPA would be considered an alternative system. The Board further asked under what circumstance might the Illinois EPA specify an alternative monitoring system and, instead of the proposed language, would it be acceptable to provide a cross reference to the monitoring requirements under proposed Section 203.2390. Board’s Pre-Filed Question No. 27. In IERG’s Pre-Filed Answers, IERG responded:

The proposed phrasing in Section 203.2360(b), relating to demonstration of compliance with emission limitations established following expiration of a PAL permit, is consistent with that in the federal NA NSR blueprint rule at 40 CFR §51.165(f)(9)(ii) and in the corresponding provisions of the PSD rules at 35 Ill. Adm. Code 204.1850(b). IERG would consider it acceptable to provide a cross reference to proposed Section 203.2390 instead of the proposed language, but would suggest that a corresponding change also be made to 35 Ill. Adm. Code 204.1850(b) (in order to cross-reference Section 204.1880).

(emphasis added). Compare as well proposed Section 203.2290 to 40 CFR 51.165(f)(2)(iii) and proposed Section 203.2330 to 40 CFR 51.165(f)(6).

⁴⁵ Compare proposed Section 203.2280 to 35 Ill. Adm. Code 204.1770, proposed Section 203.2290 to 35 Ill. Adm. Code 204.1780 and proposed Section 203.2330 to 35 Ill. Adm. Code 204.1820.

IERG's Pre-Filed Answers at page 18.

A cross reference to Section 203.2390 in proposed Section 203.2360(b) in lieu of the language proposed in Section 203.2360(b) would fail to include all the monitoring systems identified in Section 203.2360(b). As proposed, Section 203.2360(b) would provide that the Agency may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS. Proposed Section 203.2390 makes no reference to CERMS and any reference to this provision would necessarily fail to include CERMS. Moreover, such an approach would differ from that taken in the blueprint at 40 CFR 51.165(f)(9) (and similar provisions in 35 Ill. Adm. Code Part 204). As previously discussed, the Illinois EPA would prefer consistency between both the blueprint and state regulations and proposed Part 203 and 35 Ill. Adm. Code Part 204, unless a substantive reason exists for a difference.

Clarification to IERG's TSD

IERG states in its TSD that "[I]f a PAL permit expires, the permitting authority must establish new emission caps or other emission limits for all emissions units at the source . . ." TSD, page 16, footnote 17. As a point of clarification, 40 CFR 51.165(f)(9)(i) provides that the source shall comply with existing emission limits but does not discuss the establishment of new emission caps by the permitting authority. The blueprint indicates that the source is to comply with the equivalence of the emission cap that existed in the now-expired PAL permit until the permitting authority issues a revised permit establishing new emission limits.

As a second point of clarification, IERG stated as follows in a footnote accompanying IERG's discussion of a PAL renewal:

There are two more exceptions resulting in adjustment of the new PAL: (1) if the source's PTE has declined below the current PAL level, the new PAL must be adjusted downward so that it does not exceed the source's PTE; and (2) if the new value for the

PAL would exceed the current PAL, the new PAL must be set at the value of the current PAL, unless the PAL major modification procedures are satisfied.

TSD at page 16, footnote 18. The accompanying footnote memorializes two of the three exceptions resulting in a *downward* adjustment of a PAL during a renewal. While the first point in footnote 18 requires no clarification, the Illinois EPA would offer for the second point: if the new value for the PAL would exceed the current PAL, and the source did not timely comply with the provisions for a modification or increase in a PAL, any new PAL must be set at the value of the current PAL.

**Subpart R – Requirements for Major Stationary Sources
in Attainment and Unclassifiable Areas**

IERG proposed the inclusion of Subpart R, Requirements for Major Stationary Sources in Attainment and Unclassifiable Areas in Part 203.⁴⁶ Subpart R would authorize the Illinois EPA to issue PSD permits to new major sources or major modifications in an attainment or unclassifiable area that would cause or contribute to a violation of any NAAQS. For such PSD permit to be issued, the proposed source would first have to obtain sufficient emission reductions from existing sources such that the net effect of the proposed project would be no significant impact. While discussing the substantive requirements for such proposed sources, IERG states:

⁴⁶ IERG states that:

For a facility that is a major stationary source both under the NA NSR program and under the PSD program, the requirements of the new Subpart R apply in addition to, rather than in lieu of the requirements of Part 204.

TSD at page 35. As a point of clarification, there would be instances where a proposed new major stationary source or major modification would be subject to both the NA NSR program and the PSD program but would not be subject to Subpart R. Subpart R would only be applicable in those instances that the proposed new major stationary source or major modification would be located in an attainment or unclassifiable area and would cause or contribute to a violation of any NAAQS. The Illinois EPA has historically issued construction permits to proposed new major stationary sources or major modifications that were subject to both substantive programs but would not cause or contribute to a violation of any NAAQS in an attainment or unclassifiable area.

For a major stationary source or major modification which would locate in an attainment or unclassifiable area and would cause or contribute to a violation of any NAAQS, one substantive requirement must be met in order to obtain a NA NSR permit: the owner or operator of the proposed major stationary source or major modification must reduce the impact of the proposed emissions increase on air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient impact where it would otherwise cause or contribute to a violation of a NAAQS.

TSD at page 35. To the extent that this statement conveys the *additional* substantive requirement that must be met for a proposed source to be located in an attainment or unclassifiable area that would cause or contribute to a NAAQS violation, this statement is accurate. Subpart R would not affect the applicability of the PSD regulations in Part 204 to new major sources or major modifications in an attainment or unclassifiable area that would cause or contribute to a violation of any NAAQS. *See*, proposed 35 Ill. Adm. Code 203.2500(c). For any new major stationary source or major modification located in an attainment or unclassifiable area, the following would still apply: Best Available Control Technology (BACT)⁴⁷ for all PSD pollutants emitted in significant amounts, an air quality analysis, and an additional impact analysis. The public must also be afforded an opportunity for public comment prior to issuance of any final permit. *See*, proposed 35 Ill. Adm. Code 203.2530(c); *see also*, TSD at page 7.

Section 203.2530 – Construction Permit

Section 203.2530(c)

In the Board's Pre-Filed Questions to IERG, the Board questioned the public participation requirements of proposed Section 203.2530(c) requiring the Illinois EPA to follow the public participation requirements of either Section 203.1610 or Section 204.1320. Given

⁴⁷ IERG states: "As to new major stationary sources or major modification located in attainment or unclassifiable areas which would cause or contribute to a violation of any NAAQS, LAER is not applicable." SOR, page 43. While such sources would not be subject to LAER, they would be subject to BACT.

proposed Section 203.1610 includes additional requirements not specified in Section 204.1320, the Board questioned whether it would be acceptable to delete the reference to Section 204.1320 in proposed Section 203.2530(c). Board's Pre-Filed Question No. 30. In IERG's Pre-Filed Answers, IERG responded, in part:

As noted above, the public participation procedures under Parts 203 and 204 are not identical. Therefore, IERG believes the reference to Section 204.1320 in Section 203.2530(c) should remain. Section 203.2530(c) provides public participation requirements with respect to new major stationary sources or major modifications located in attainment or unclassifiable areas which would cause or contribute to a violation of any NAAQS. IERG's intent was to provide Illinois EPA the flexibility of using the public participation procedures under Part 204 for these projects. It is possible that a new major stationary source or major modification in an attainment or unclassifiable area may need both a PSD permit and a NA NSR permit under proposed Part 203, Subpart R. In that situation, Illinois EPA may decide to address the Part 203, Subpart R requirements in the PSD construction permit. Therefore, Illinois EPA should have the flexibility to use the PSD public participation requirement for that permit.

IERG's Pre-Filed Answers at pages 20 - 21. The Illinois EPA agrees that proposed Section 203.2530(c) identifies the applicable public participation requirements for new major stationary sources or major modifications located in an attainment or unclassifiable area that would cause or contribute to a NAAQS violation. It is possible that a new major stationary source or major modification in an attainment or unclassifiable area that would cause or contribute to a NAAQS violation may need both a PSD permit under Part 204 and proposed Part 203, Subpart R and a NA NSR permit under Part 203. In this instance, the Illinois EPA would comply with the applicable public participation procedures of proposed Section 203.1610. It is also possible that a new major stationary source or major modification in an attainment or unclassifiable area that would cause or contribute to a NAAQS violation may only require a PSD permit under Part 204 and proposed Part 203, Subpart R. In that instance, the Illinois EPA would comply with the applicable public participation procedures of Section 204.1320. In order to more clearly address

these obligations, the Illinois EPA would propose the following language for inclusion in proposed Section 203.2530(c):

In issuing a permit under this Subpart, the Agency shall follow the public participation procedures of Section 203.1610 or Section 204.1320 of 35 Ill. Adm. Code Part 204., as applicable.

Additional Items in 35 Ill. Adm. Code Part 203

In addition, the following proposed sections should be revised to be consistent with the approach recently taken by the Joint Committee on Administrative Rules (JCAR) in 35 Ill. Adm. Code 204. Rather than utilizing a parenthetical “s” or “(s)” to denote the possibility of plural usage, JCAR preferred to refer to both the singular and plural versions of a word joined by the conjunction “or.” Consistent with such approach in 35 Ill. Adm. Code 204, the Illinois EPA proposes as follows:

Section 203.2390 Monitoring Requirements

- h) Notwithstanding the requirements in subsections (c) through (g) of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter~~(s)~~ or parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the Agency shall, at the time of permit issuance:
- 1) Establish default value~~(s)~~ or values for determining compliance with the PAL based on the highest potential emissions reasonably estimated such operating point~~(s)~~ or operating points; or
 - 2) Determine that operation of the emission unit during operating conditions when there is no correlation between monitored parameter or parameters and the PAL pollutant emissions is a violation of the PAL.

In addition, the *Style Manual*, provides that “a reference to a subsection of a different section of the same Part shall include the word ‘Section’ followed by the complete Section number and subsection label(s) within parenthesis.” *Style Manual, Illinois Administrative Code*

and *Illinois Register*, June 2004, at page 12. Consistent with the *Style Manual*, the Illinois EPA offers the following revisions to Section 203.2520.

Section 203.2520 Requirements

In the absence of fulfillment of the requirements of both subsections (a) and (b) by the owner or operator of the proposed major stationary source or major modification, the Agency shall deny the proposed construction.

- a) The owner or operator shall reduce the impact of its emissions on air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact when the major stationary source or major modification would otherwise cause or contribute to a violation of a NAAQS; and
- b) The owner or operator shall comply with the requirements of ~~subsections (c) and (e)~~ of Section 203.1410(c) and (e); Sections 203.1420; Section 203.1430; ~~subsection (a)~~ of Section 203.1440(a); Section 203.1460; and Section 203.1500.

**Proposed Revision to 35 Ill. Adm. Code Part 204,
Prevention of Significant Deterioration**

Consistent with the approach taken by IERG in its proposed revisions to Part 203, IERG has proposed the inclusion of additional language in existing Part 204 clarifying how emissions increases from existing emission units could be determined for projects at existing major sources when evaluating whether major PSD requirements are triggered. Determining whether a proposed project at an existing major stationary source is a major modification can be a multi-step process. As a preliminary matter, the project must include a physical change or a change in the method of operation of an existing major stationary source so as to constitute a modification. 42 USC § 7411(a)(4). Then, a major modification is generally based on whether the proposed project will cause both a significant emissions increase and a significant net emissions increase for a regulated pollutant. 40 CFR 51.166(b)(2)(i).

If the increase in emissions for a particular pollutant equals or exceeds the significant emission rate set for that pollutant, then the applicability analysis for a project may be extended

to include creditable changes in actual emissions resulting from other contemporaneous projects to consider the net change in emissions of the source with the project. 40 CFR 51.166(b)(3). This further consideration of contemporaneous changes in emissions is commonly referred to by USEPA as a “netting” exercise. In PSD, netting is used if a proposed modification is significant by itself but would not be subject to PSD taking into account other contemporaneous emission decreases and increases. *NSR Manual* at A.35. Under PSD, a PSD permit is required for a proposed modification if for a subject pollutant the emissions increase from the modification, itself, and the net emission increase from the modification are both significant.

The Illinois EPA’s July 2018 proposal to the Board for a state PSD program at 35 Ill. Adm. Code Part 204 reflected the above approach. This necessarily relied on statements made by the USEPA immediately prior to the Illinois EPA’s filing of its Part 204 regulatory proposal to the Board. On March 13, 2018, the USEPA Administrator found that the relevant provisions of 40 CFR 52.21(a)(2)(iv) and 40 CFR 51.166 provide that the “differences in emissions” from the various emission units involved in a project should always be summed. (Scott Pruitt, Administrator of USEPA, Memorandum, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” March 13, 2018.)⁴⁸ While this interpretation was further memorialized by the USEPA in revisions to its major New Source Review applicability revisions effective December 2020,⁴⁹ USEPA concluded in its review of Illinois’ proposed

⁴⁸ Prior to March 13, 2018, the handling of the changes in emissions from a proposed project under the federal PSD rule depended on the types of emissions units involved in a project. If the project only involved existing units, differences in emissions were summed. However, if the project involved both existing and new units (or only new units), only the increases in emissions were to be summed without any consideration of decreases in emissions that would occur in the project.

⁴⁹ 85 Fed. Reg. 74890, 74904 (USEPA promulgated “revisions to its major NSR applicability regulations to clarify when the requirement to obtain a major NSR permit applies to a source proposing to undertake a physical change or a change in the method of operation . . . under the major NSR preconstruction permitting programs.”).

revision to Illinois' state implementation plan (SIP) for PSD that these "revisions to 40 CFR 51.166(a)(iv)(f)⁵⁰ do not constitute minimum program elements that must be included in [Illinois'] PSD program for such program to be approvable into the SIP." 86 Fed. Reg. 22379 (April 28, 2021) (discussing approval of Illinois' SIP for purposes of Project Emissions Accounting).

IERG has proposed the following revisions to the applicability provisions at proposed Section 204.800(d):

- (d) The requirements of the program will be applied in accordance with the principles set out in this subsection (d).

- 5) Hybrid Test for Projects that Involve Multiple Types of Emissions Unit or Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the ~~emissions increase for each~~ difference for all emissions units, using the methods specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceed the significant amount for that pollutant (as defined in Section 204.660).
- 6) The "sum of the difference" as used in subsection (d)(3) through (d)(5) shall include both increases and decreases in emissions calculated in accordance with those subsections.

While IERG's proposed revisions to Part 204 would likely be acceptable as a revisions to Illinois' SIP, the effect of these proposed revisions should be clearly understood by the Board. Increases and decreases in emissions from affected emissions units due to a proposed project may be considered in Step 1 when determining whether the proposed project would result in a significant emissions increase. Decreases in emissions at affected emissions units that would be

⁵⁰ In the Federal Register, USEPA inadvertently cited 40 CFR 51.166(a)(iv)(f). 86 Fed. Reg. 22379 (April 28, 2021). The citation should have been to 40 CFR 51.166(a)(7)(iv)(f).

a result of a project do not have to be addressed with a broader netting analyses for other contemporaneous changes in emissions. *See also*, Illinois EPA's Initial Comments and Recommendations for Additional Revisions discussing Project Emissions Accounting.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

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Dated: March 21, 2022

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached **ILLINOIS EPA'S INITIAL COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS**, on March 21, 2022, to the following:

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The number of pages in the e-mail transmission is 49.

The e-mail transmission and depositing said document in the United States Mail took place before 5:00 p.m. on March 21, 2022.

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