

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 22-17
AMENDMENTS TO 35 ILL. ADM. CODE)
PART 203: MAJOR STATIONARY) (Rulemaking - Air)
SOURCES CONSTRUCTION AND)
MODIFICATION, 35 ILL. ADM. CODE)
PART 204: PREVENTION OF)
SIGNIFICANT DETERIORATION, AND)
PART 232: TOXIC AIR CONTAMINANTS)

NOTICE OF FILING

To: Persons on Service List
(Via Electronic Filing)

PLEASE TAKEN NOTICE that I have filed today with Clerk of the Illinois Pollution Control Board by electronic filing the following The Illinois Attorney General Office's Pre-First Notice Comment, a true and correct copy of which is attached hereto and hereby served upon you.

KWAME RAOUL
Attorney General
State of Illinois

/s/ Jason E. James
Jason E. James, AAG

Dated: September 12, 2022

Jason E. James
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
201 W. Pointe Dr., Suite 7
Belleville, IL 62226
(872) 276-3583
Primary e-mail address: jason.james@ilag.gov

SERVICE LIST

Charles Gunnarson
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 Grand Avenue East
P.O. Box 19276
Springfield, IL 62794
Charles.Gunnarson@illinois.gov

Illinois Regulatory Group
N. LaDonna Driver
Melissa S. Brown
HEPLERBROOM, LLC
4043 Acer Grove Drive
Springfield, IL 62711
ldriver@heplerbroom.com
Melissa.brown@heplerbroom.com

Daryl Grable
Greater Chicago Legal Clinic
211 West Wacker Drive, Suite 750
Chicago, IL 60606
dgrable@clclaw.org

Renee Snow
Illinois Department of Natural Resources
One Natural Resources
Springfield, IL 62702-1271
Renee.Snow@illinois.gov

Deborah Williams
City of Springfield
Regulator Director
800 E. Monroe
Office of Public Utilities
Springfield, IL 62757
deborah.williams@cwlp.com

Daniel Pauley
Illinois Pollution Control Board
Hearing Officer
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
Daniel.Pauley@illinois.gov

CERTIFICATE OF SERVICE

I, Jason E. James, an Assistant Attorney General, do certify that on this 12th day of September, 2022, I caused to be served the foregoing Illinois Attorney General Office's Pre-First Notice Comment and Notice of Filing on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

/s/ Jason E. James

Jason E. James
Assistant Attorney General
Illinois Attorney General's Office
201 W. Pointe Dr., Suite 7
Belleville, IL 62226
(872) 276-3583
Jason.James@ilag.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 22-17
AMENDMENTS TO 35 ILL. ADM. CODE)	
PART 203: MAJOR STATIONARY)	(Rulemaking - Air)
SOURCES CONSTRUCTION AND)	
MODIFICATION, 35 ILL. ADM. CODE)	
PART 204: PREVENTION OF)	
SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

THE ILLINOIS ATTORNEY GENERAL OFFICE’S PRE-FIRST NOTICE COMMENT

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois’ (“People”), submit this comment to the Illinois Pollution Control Board (“Board”) regarding this rulemaking proceeding, R22-17. In a Board Order dated August 11, 2022, the Board requested comment on “inclusion of the Project Emissions Accounting Rule language,” in particular seeking to “hear whether the Project Emissions Accounting Rule should remain in the proposed Sections 203.1410 and 204.800, and what are the implications of moving forward with the [Illinois Environmental Regulatory Group’s] proposal without it.” R22-17, Board Order (Aug. 11, 2022).

For reasons more fully detailed below and in the People’s prior filings, the Board should not proceed to first notice on a proposed regulation that would incorporate the federal Project Emissions Accounting Rule into Illinois regulations. Because the U.S. Environmental Protection Agency (“USEPA”) is likely to adopt revisions to that rule in the near future, moving forward with the Project Emissions Accounting Rule provisions may result in Illinois air regulations that are less stringent than Federal regulations.

Furthermore, the Board should wait until more information is available about USEPA’s forthcoming rulemaking so that the Board may adopt changes that result from the Federal rulemaking into the Illinois regulations. In the event that the Board moves forward with the

proposal without the Project Emissions Accounting Rule provisions, an entirely new rulemaking may be necessary to ensure Illinois' air regulations are, at least, consistent with Federal regulations. Staying this matter in its entirety would prevent duplicative efforts from the Board.

I. The Proposed Regulations Should Not Be Adopted Before USEPA's Forthcoming Action.

As detailed in the People's prior filings in this rulemaking, the Project Emissions Accounting Rule is a Federal regulation adopted under the prior presidential administration that changed whether a proposed modification of a source of air emissions must undergo the New Source Review permitting process. *See* R22-17, People's Motion to Stay at 2 (May 6, 2022). According to the Illinois Environmental Protection Agency ("IEPA"), implementing this Federal regulation in Illinois air regulations "would potentially decrease the number of construction projects at existing major sources [of air pollution] that meet the definition of major modification and thereby trigger the applicable requirements of NaNSR [Non-Attainment New Source Review]." R22-17, IEPA's Initial Comments at 4-5 (Jan. 18, 2022).

USEPA has commenced a new rulemaking that could result in removing or altering the Project Emissions Accounting Rule from Federal regulations. In response to an executive order issued by President Biden, USEPA has initiated a new rulemaking to consider revisions to the Project Emissions Accounting Rule. *USEPA Semiannual Regulatory Agenda*, Spring 2022, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=2060-AV62>. USEPA anticipated publishing a Notice of Proposed Rulemaking ("NOPR") in February 2023. When USEPA publishes its NOPR for addressing the Project Emissions Accounting Rule, it will likely make more information available about whether it is considering to simply restore air regulations as they existed before the Project Emissions Accounting Rule, modify the applicable regulations in some new way, or take another action altogether.

In light of the Biden administration's steps in reversing environmentally damaging "rollback" rules promulgated by the prior administration,¹ the Board should not move ahead with implementing the Project Emissions Accounting Rule in Illinois air regulations. Illinois air regulations must be at least as strict as Federal air regulations. 42 U.S.C. § 7416. As such, if the Board adopted the potentially less strict regulations, it would be required to conduct another rulemaking to revoke them.

Furthermore, USEPA's NOPR may indicate an intention to adopt additional changes to Federal air regulations. The Board should stay action in this rulemaking docket to ascertain whether other changes to Illinois air regulations will be necessary to comply with any new changes USEPA intends to make beyond removing the Project Emissions Accounting Rule.

II. The Board Should Not Proceed to First Notice with the Project Emissions Accounting Rule.

The Board should not move to First Notice with proposed regulations that contain aspects of the Project Emissions Accounting Rule in Sections 203.1410 and 204.800. Rushing forward with these regulations while USEPA is actively considering changes is potentially counter-productive, as the Board may have to manage a new rulemaking to reverse them. Taking a small pause at this point will conserve valuable state resources.

The Board also sought comment on "the implications of moving forward with the IERG's proposal without" provisions based on the Project Emissions Accounting Rule. *Id.* The People have not commented on provisions of IERG's proposal other than those that incorporate the Project

¹ See R22-17, Illinois Attorney General's Motion to Stay at fn. 3 (May 6, 2022). The Washington Post analysis cited in the People's Motion to Stay now identifies 26 air pollution policies advanced by the prior administration that have been overturned by the Biden USEPA. 29 other rollback rules have been targeted for being overturned, including the Project Emissions Accounting Rule. "Tracking Biden's Environmental Actions," *The Washington Post*, <https://www.washingtonpost.com/graphics/2021/climate-environment/biden-climate-environment-actions/>, last updated August 29, 2022.

Emissions Accounting Rule. However, USEPA's forthcoming rule addressing the Project Emissions Accounting Rule may have a broad impact on air regulations in general. For that reason, not only should the Board stay any action toward adopting the Project Emissions Accounting Rule provisions, but also the remainder of IERG's proposal. When USEPA issues its NOPR in February 2023, that filing will contain further information on the scope and nature of the new rulemaking proposal. At that point, the Board will be able to identify whether other proposed provisions beyond Sections 203.1410 and 204.800 are based on those likely to be modified by USEPA.

III. Conclusion

USEPA intends to publish its NOPR concerning the Project Emissions Accounting Rule by the end of February 2023. The People reiterate the request that the Board stay action in this rulemaking, including not advancing any portion of this proposal to First Notice. By pausing this rulemaking for less than six months, the Board will have a much better understanding of whether parts of the proposal will run afoul of Federal air regulations, and whether additional revisions are justified outside of Sections 203.1410 and 204.800.

If the Board chooses to move some parts of the proposal to First Notice, it should at minimum stay action on those portions of the proposal that directly relate to the Project Emissions Accounting Rule. The Board should also keep that portion of the rulemaking open in case USEPA

adopts changes beyond simply reverting the Project Emissions Accounting Rule to its pre-rollback state.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by KWAME RAOUL
Attorney General of the State of Illinois

By: /s/ Jason E. James
Jason E. James
Assistant Attorney General
Illinois Attorney General's Office
201 W. Pointe Dr., Suite 7
Belleville, IL 62226
(872) 276-3583
jason.james@ilag.gov