

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) AS 24-5  
PETITION OF RAIN CII CARBON LLC ) (Adjusted Standard – Air)  
FOR ADJUSTED STANDARD FROM )  
35 Ill. Adm. Code §§ 201.149, 212.123, )  
and 212.322, 215.301 )

**NOTICE**

TO: Don Brown David M. Loring  
Clerk Alexander J. Garel-Frantzen  
Illinois Pollution Control Board ArentFox Schiff LLP  
James R. Thompson Center 233 S. Wacker Drive Suite 7100  
100 West Randolph St., Suite 11-500 Chicago, IL 60606  
Chicago, IL 60601-3218

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR STAY OF PROCEEDING, OR IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE RECOMMENDATION of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Gina Roccaforte  
Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

DATED: September 5, 2023

1021 North Grand Avenue East  
P. O. Box 19276  
Springfield, IL 62794-9276  
217/782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) AS 24-5  
PETITION OF RAIN CII CARBON LLC ) (Adjusted Standard – Air)  
FOR ADJUSTED STANDARD FROM )  
35 Ill. Adm. Code §§ 201.149, 212.123, )  
and 212.322, 215.301 )

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S MOTION FOR STAY OF PROCEEDING, OR IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE RECOMMENDATION**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorneys, and pursuant to 35 Ill. Adm. Code 101.514 and 101.522, respectfully submits this Motion for Stay of Proceeding, or in the Alternative, Motion for Extension of Time to File Recommendation (“Motion”). The Illinois EPA requests that the Illinois Pollution Control Board (“Board”) enter an order staying this proceeding for 90 days while the Board considers the substantively similar rulemaking proposal filed in R23-18(A). If the Board is not inclined to issue a stay, the Agency requests that it grant a 90-day extension of time to file the Illinois EPA’s Recommendation. In support of its Motion, the Illinois EPA states as follows:

**Background and Status Report**

1. On July 20, 2023, the Board adopted amendments to 35 Ill. Adm. Code 201, 202, and 212, to remove provisions that allowed sources to request, and the Illinois EPA to grant, advance permission to continue operating during a malfunction or to violate emission limitations during startup. *See*, R23-18, *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*, Board Order (July 20, 2023). The repealed provisions provided certain sources with a possible affirmative defense regarding emission exceedances during periods of malfunction or startup should enforcement be pursued. R23-18, Board Order (July 20, 2023).

2. Based upon testimony and comment from participants in the R23-18 rulemaking, the Board also opened a sub-docket, R23-18(A), to explore alternate emissions standards during startup, shutdown, and malfunction (“SSM”) periods. R23-18, Board Order (April 6, 2023). Consistent with its grant of expedited review, the Board directed anyone who wished to file a rulemaking proposal for alternative standards during SSM in the R23-18(A) sub-docket to do so by August 7, 2023. R23-18(A), Board Order (July 6, 2023).

3. On August 7, 2023, Rain CII Carbon LLC (“Rain Carbon”) filed a proposal to amend 35 Ill. Adm. Code 212.124, 212.322, and 215.302 to establish alternative opacity, particulate matter (“PM”), and volatile organic material (“VOM”) standards during limited periods of start-up, malfunctions, or breakdowns (“SMB”) at Rain Carbon’s coke calcining facility (“Facility”). R23-18(A), *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 212 and 215*; Statement of Reasons at 1, 4-7. Four other rulemaking proposals were also filed on August 7: one by the Illinois Environmental Regulatory Group, one by East Dubuque Nitrogen Fertilizers LLC (“EDNF”), one jointly by Dynegy Midwest Generation, LLC, Illinois Power Generating Company, and Kincaid Generation, LLC (collectively, “Dynegy”) and Midwest Generation LLC (“MWG”), and one by the American Petroleum Institute. R23-18(A), Board Order (August 17, 2023).

4. On August 17, 2023, the Board combined these proposals into a single proposal amending 35 Ill. Adm. Code 212, 215, 216, and 217 to establish alternative standards during periods of startup, shutdown, breakdown, and malfunction. R23-18(A), Board Order (August 17, 2023). The Board submitted the combined proposal for first-notice publication in the Illinois Register and scheduled public hearings. *Id.* and R23-18(A), Hearing Officer Order (August 17, 2023).

5. In addition, on August 14, 2023, Rain Carbon petitioned the Board for an adjusted standard under Section 28.1 of the Environmental Protection Act, 415 ILCS 5/28.1, during periods of startup, malfunction, or breakdown regarding the opacity, PM, and VOM standards applicable to Rain Carbon's kilns at its Facility. *See*, AS 2024-5, *In the Matter of: Petition of Rain CII Carbon LLC for Adjusted Standard from 35 Ill. Adm. Code §§ 201.149, 212.123, and 212.322, 215.301* ("Petition"). On August 14, 2023, ExxonMobil Oil Corporation, Marathon Petroleum Company, LLC, Dynegy, EDNF, and MWG also filed Petitions for Adjusted Standard with the Board that mirror rulemaking proposals in R23-18(A). *See*, AS 24-1, *In the Matter of: Petition of ExxonMobil Oil Corporation for Adjusted Standard from 35 Ill. Adm. Code 216.361, 35 Ill. Adm. Code 216.103, and 35 Ill. Adm. Code 216.104*; AS 2024-2, *In the Matter of: Petition of East Dubuque Nitrogen Fertilizers, LLC for Adjusted Standard*; AS 24-3, *In the Matter of: Petition of Marathon Petroleum Company, LLC for an Adjusted Standard from 35 Ill. Adm. Code Part 201 and Section 216.361*; AS 24-4, *In the Matter of: Petition of Dynegy for an Adjusted Standard from 35 Ill. Admin. Code Parts 201 and 212*; and AS 24-6, *In the Matter of: Petition of Midwest Generation, LLC for an Adjusted Standard From 35 Ill. Admin. Code Parts 201 and 212*.

6. In its Petition, Rain Carbon states, in part, "While Rain Carbon believes that its proposed [regulatory] amendments are the appropriate mechanism to obtain relief – and will ultimately be approved by this Board – the seriousness of the relief required by Rain Carbon mandates that it avail itself of all available remedies. Section 28.1(f) of the Act, 415 ILCS 5/28.1(f), and 35 Ill. Adm. Code § 104.412(b) direct a party to submit a petition seeking an adjusted standard within 20 days of the effective date of R23-18 (to avail oneself of the full

protections afforded by the adjusted standard). Section 28.1(f) provides that any person who files a timely petition for an adjusted standard following any rulemaking implementing Clean Air Act (“CAA”) provisions will be exempt as to that source from the new provisions while the petition is pending before the Board. The statute further clarifies that in situations where the new regulation replaces a previously adopted regulation (such as in R23-18), the previously adopted regulation will apply during the stay of the new rule.” Petition at Section A.1.

7. Rain Carbon also states, “The revisions to Section 201.149 and the repeal of related SMB provisions in Part 201 took effect on July 25, 2023; thus, the 20-day period under Section 28.1(f) concludes on August 14, 2023. Because it is not possible for the Board to act upon the rulemaking proposals in R23-18(A) in advance of the statutory deadline under Section 28.1(f), Rain Carbon has no choice but to file this Petition for an Adjusted Standard . . . as a protective measure while the proposed rulemaking is concurrently under consideration by the Board.” *Id.* Moreover, Rain Carbon asserts, “To be clear, Rain Carbon is not intending to use this Petition to disrupt the Board’s expedited consideration of the proposed rulemakings filed in R28-18(A). Rain Carbon will not require an adjusted standard if the Board . . . grants Rain Carbon’s rulemaking proposal in full. Accordingly, this Petition is being filed at this juncture to ensure that Rain Carbon has preserved and exhausted its administrative and adjudicatory remedies available to seek relief during SMB.” Petition at Section A.3.

8. Unless otherwise ordered by the Hearing Officer or the Board, the Illinois EPA is required to file its Recommendation within 45 days after the filing of Rain Carbon’s Petition, *i.e.*, September 28, 2023, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. 35 Ill. Adm. Code 104.416(a). Rain Carbon has requested a hearing on the Petition. Petition at Section K.

Request for Stay

9. The Board should stay this proceeding while the Board considers Rain Carbon's rulemaking proposal. As explained above, Rain Carbon's proposed rule amendments substantively mirror its requested adjusted standard; both regard changes to/relief from the same Board regulations. Rain Carbon itself explained that filing its Petition was primarily intended to preserve its arguments regarding a stay under the Section 28.1(f) of the Act, and that it did not intend to disrupt the R23-18(A) rulemaking by doing so. It acknowledged that both a rule and an adjusted standard are not necessary, and that the rulemaking is the more appropriate mechanism/forum for relief. Petition at A.1-A.3.

10. Simultaneously participating in both an expedited rulemaking and Rain Carbon's adjusted standard proceeding, both of which entail public hearing, will force the Agency, Board, Rain Carbon, and potentially other participants to expend significant resources in proceedings that seek similar relief. Conversely, issuing a stay here will conserve resources and allow participants to focus on Rain Carbon's rulemaking proposal first, and this proceeding second (and only if still necessary).

11. The Illinois EPA is not opining as to whether Rain Carbon is entitled to a stay under Section 28.1(f) of the Act, but acknowledges Rain Carbon's stated position in this regard and clarifies that this request for stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to "hold" this proceeding while the rulemaking moves forward, to be resumed at a later date if necessary.

Request for Extension of Time to File Recommendation

12. In the alternative, if the Board does not grant a stay, the Illinois EPA respectfully requests an extension of time of 90 days, up to and including December 27, 2023, to file the Agency Recommendation.

13. Rain Carbon submitted an approximately 300-page Petition. The Illinois EPA is currently reviewing it but anticipates that it will need additional time to both review and develop recommendations. The Illinois EPA must address and respond to the Petition with respect to each issue raised by the requirements of Section 104.406(a) through (j). 35 Ill. Adm. Code 104.416(b). As such, Section 104.406(i) requires that the Agency Recommendation indicate whether the Board may grant the proposed adjusted standard consistent with federal law. 35 Ill. Adm. Code 104.406(i). Doing so here will entail consultation with USEPA to ascertain whether the requested adjusted standard is federally approvable, *i.e.*, meets Clean Air Act requirements. Such consultation is likely not possible within the given time frame for the Illinois EPA to respond to the Petition.

14. Along with Rain Carbon's Petition, five other Petitions for Adjusted Standard were filed with the Board on the same day. Given the number of petitions received, the time it will take the Illinois EPA to review and consult with USEPA on each, and the Agency's limited resources, more time is necessary.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully requests that the Board grant this Motion for Stay of Proceedings for 90 days up to and including December 4, 2023 (or a later date if deemed more appropriate by the Board), or in the alternative, grant this Motion for Extension of Time to File Recommendation for 90 days, up to and including December 27, 2023.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Gina Roccaforte  
Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

DATED: September 5, 2023

1021 North Grand Avenue East  
P. O. Box 19276  
Springfield, IL 62794-9276  
217/782-5544



**CERTIFICATE OF SERVICE**

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

I have electronically served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR STAY OF PROCEEDING, OR IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE RECOMMENDATION upon the following persons:

Don Brown  
Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601-3218  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)

David M. Loring  
Alexander J. Garell-Frantzen  
ArentFox Schiff LLP  
233 S. Wacker Drive Suite 7100  
Chicago, IL 60606  
Chicago, IL 60603  
[David.Loring@afslaw.com](mailto:David.Loring@afslaw.com)  
[Alex.Garell-Frantzen@afslaw.com](mailto:Alex.Garell-Frantzen@afslaw.com)

My e-mail address is [gina.roccaforte@illinois.gov](mailto:gina.roccaforte@illinois.gov).

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00 p.m. on September 5, 2023.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

/s/ Gina Roccaforte  
Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

Dated: September 5, 2023

1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-5544