

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
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, IL 60605

David M. Loring
Alexander J. Garel-Frantzen
ArentFox Schiff LLP
233 S. Wacker Drive Suite 7100
Chicago, IL 60606

Carol Webb
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, IL 60605

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 STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING 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: April 10, 2024

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorneys, and pursuant to the Hearing Officer’s Order dated January 4, 2024, and 35 Ill. Adm. Code 101.514, hereby submits its Status Report, and respectfully submits this Motion to Extend Stay of Proceeding (“Motion”). The Illinois EPA requests that the Hearing Officer enter an order extending the stay in this proceeding for an additional 150 days while the Board continues to consider the substantively similar rulemaking proposal filed in R23-18(A), *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*. In support of its Motion, the Illinois EPA states as follows:

Status Report

On September 5, 2023, the Illinois EPA filed a Motion for Stay of Proceeding, or in the Alternative, Motion for Extension of Time to File Recommendation, while the Board considers Rain CII Carbon LLC’s (“Rain Carbon”) substantially similar rulemaking proposal filed in R23-18(A). On October 5, 2023, the Board granted the Illinois EPA’s Motion for Stay of Proceeding for 90 days, until December 27, 2023. On December 13, 2023, the Illinois EPA filed with the Hearing Officer its Status Report and Motion to Extend Stay of Proceeding (“Motion to Extend Stay”) for an additional 120 days, until April 25, 2024. On December 26, 2023, Rain Carbon filed a response stating that it does not object to the Illinois EPA’s Motion to Extend Stay. On

January 4, 2024, the Hearing Officer granted the Illinois EPA's Motion to Extend Stay until April 25, 2024.

The R23-18(A) rulemaking is currently moving forward. On September 1, 2023, the proposed rule was published in the Illinois Register, 47 Ill. Reg. 12810, 12824, 12836, and 12842. On September 27, 2023, a public hearing was held in Springfield. On October 23, 2023, the Illinois EPA filed comments requesting that the Board solicit additional information from all rule proponents and review such information, allowing the Illinois EPA to review as well, before adopting any amendments to the rule such that the air quality implications or impact of each proposal can be determined, and the appropriate review and consideration of the proposals may occur. *See R23-18(A), Illinois Environmental Protection Agency's Comments, P.C. #5, October 23, 2023 ("Illinois EPA's Comments")*. On October 26, 2023, a Motion for Additional Hearing on behalf of the Illinois Attorney General's Office for the People of the State of Illinois was filed with the Board.

On November 1, 2023, a second public hearing was held in Chicago. The Hearing Officer set a deadline of December 1, 2023, for rule proponents to file initial responses to the Illinois EPA's information requests and indicated that a status conference with all participants would also be conducted. Transcript November 1, 2023, Public Hearing at 16, lines 20-21. On November 16, 2023, the Board granted the Attorney General's Office's motion for an additional hearing and directed the Hearing Officer to expeditiously schedule a third hearing after the proponents' submission of the requested additional information.

On December 1, 2023, rule proponents in R23-18(A) filed responses to Illinois EPA's Comments, and Rain Carbon stated that since September, Rain Carbon and Illinois EPA have been engaged in a series of productive technical discussions regarding Rain Carbon's proposed

AELs for PM, VOM, and opacity and to address the Illinois EPA Comments regarding the TSD and modeling demonstration. *See*, R23-18(A), *Rain CII Carbon LLC's Initial Response to Illinois EPA's Comments*, P.C, #11, December 1, 2023. Rain Carbon also stated that it has made substantial progress in developing a revised model to address the Agency's concerns regarding the modeling of worst-case emissions for PM during SMB. *Id.* In addition, Rain Carbon is in the process of developing revised AELs for PM and VOM based on a review of historic SMB operational data at the Facility and further evaluation of the emission test data provided as part of the TSD. *Id.*

Rain Carbon indicated that it believes that it is prudent to allow additional time for Rain Carbon and Illinois EPA to conclude its discussions in order to resolve and finalize revisions to the proposed AELs and associated modeling in support thereof. *Id.* Based on the progress made to-date, Rain Carbon anticipates that it will be in a position to submit revised modeling and revised AELs to the Board that will address Illinois EPA's questions and concerns raised in the Illinois EPA Comments by the end of January 2024. *Id.*

A prehearing teleconference was scheduled for December 6, 2023, to discuss procedural matters regarding the third hearing. *See*, R23-18(A), Hearing Officer Order, November 16, 2023. However, on December 5, 2023, the Hearing Officer rescheduled this prehearing conference to February 7, 2024, because some of the participants indicated in their comments that they will provide information requested by the Illinois EPA by the end of January. *See*, R23-18(A), Hearing Officer Order, December 5, 2023.

A prehearing teleconference was held on February 7, 2024, and the rule proponents informed the Hearing Officer on the status of each proponent's submissions in relation to the Agency's information requests, and another prehearing teleconference was scheduled for

February 28, 2024. On February 28, 2024, a prehearing teleconference was held to discuss procedural matters including a date for the third hearing, but due to date conflicts, the Hearing Officer indicated that a Hearing Officer Order would be issued setting forth the third hearing date.

On March 6, 2024, the Hearing Officer issued an Order scheduling the third hearing for April 15, 2024, in Chicago, and setting dates prior to the hearing for responses to Illinois EPA's request for information, pre-filed testimony, and pre-filed questions based on such information and testimony. *See*, R23-18(A), Hearing Officer Order, March 6, 2024. On March 15, 2024, Rain Carbon filed with the Board additional information including an updated modeling analysis. *See*, R23-18(A), *Rain CII Carbon LLC's Supplemental Response to Illinois EPA Comments*, P.C. #14, March 15, 2024. On April 2, 2024, the Illinois EPA filed its Testimony of Rory Davis and stated that it does not object to adoption of the rule proposal as set forth in Rain Carbon's March 15, 2024, filing with the Board. *See*, R23-18(A), *Illinois EPA's Testimony of Rory Davis*, April 2, 2024. On April 8, 2024, Rain Carbon filed a supplemental response and several participants pre-filed questions in the rulemaking docket. *See*, R23-18(A), *Rain CII Carbon LLC's Second Supplemental Response to Illinois EPA Comments*, P.C. #17, April 8, 2024.

Motion to Extend Stay of Proceeding

Section 101.514 provides, in part, "If the motion to stay is granted, at the close of the stay, the parties must file a status report in compliance with Subpart C. Additional requests for stay of the proceedings must be directed to the hearing officer." 35 Ill. Adm. Code 101.514(b).

The Hearing Officer should continue to stay this proceeding while the Board considers Rain Carbon's rulemaking proposal and the additional information Rain Carbon may provide. 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 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.

As stated in the Illinois EPA's previous motions, simultaneously participating in both an expedited rulemaking and Rain Carbon's adjusted standard proceeding will force the Agency, Board, Rain Carbon, and potentially other participants to expend significant resources in proceedings that seek similar relief. Conversely, issuing an additional 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).

Again, 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 an extension of the stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to continue to "hold" this proceeding while the rulemaking moves forward, to be resumed later if necessary.

Under the Illinois Administrative Procedure Act, no rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking commenced. 5 ILCS 100/5-40(e). To the extent the Board intends to adopt a rule in R23-18(A) prior to September 1, 2024 (one year since first notice began), the parties will know by that date whether this adjusted standard proceeding is still necessary. Extending the stay 150 days should provide Petitioner time after that date but before the end of the stay to withdraw its Petition if desired.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully submits this Status Report and respectfully requests that the Hearing Officer grant this Motion to Extend Stay of Proceedings for 150 days up to and including September 23, 2024 (or a later date if deemed more appropriate by the Hearing Officer).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: April 10, 2024

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CERTIFICATE OF SERVICE

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

I have electronically served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING upon the following persons:

Don Brown
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My e-mail address is gina.roccaforte@illinois.gov.

The number of pages in the e-mail transmission is 8.

The e-mail transmission took place before 5:00 p.m. on April 10, 2024.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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

Dated: April 10, 2024

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