

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|----------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | R24-17 |
| PROPOSED CLEAN CAR AND TRUCK |) | (Rulemaking – Air) |
| STANDARDS: PROPOSED 35 ILL. ADM. |) | |
| CODE 242 |) | |

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

ATTACHED SERVICE LIST

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 QUESTIONS FOR RULE PROPONENTS, 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: October 28, 2024

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
QUESTIONS FOR RULE PROPONENTS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, and under the Hearing Officer’s Order, dated August 13, 2024, submits the following questions for the Sierra Club, National Resources Defense Council, Environmental Defense Fund, Respiratory Health Association, Chicago Environmental Justice Network, and Center for Neighborhood Technology (“Rule Proponents”):

GENERAL AND TECHNICAL
QUESTIONS

Environmental Benefit of Proposal Relative to Existing Requirements

1. Please provide more specific information regarding how the Rule Proponents’ proposed low emission vehicle (“LEV”) regulation compares to the United States Environmental Protection Agency’s (“USEPA”) emissions standards for criteria pollutants and greenhouse gases for light-duty vehicles and Class 2b and 3 (“medium-duty”) vehicles for model years 2027 and later, 89 Fed. Reg. 27842 (April 18, 2024). Please discuss similarities and differences.
2. What are the estimated emissions reductions by pollutant in the years 2028 to 2034 under the Advanced Clean Cars II (“ACC II”) LEV standards under the proposed language?
3. Have the Rule Proponents estimated the cost of implementation per expected ton of annual controlled NOx emissions under the proposed Low NOx rule? If so, how does such cost compare to the cost per ton of each of the following:
 - a. Federal standards set to take effect in 2027,
 - b. Implementation of the zero-emission vehicle (“ZEV”) sales requirement under the proposed Advanced Clean Truck (“ACT”) standards,
 - c. Federal standards in combination with the proposed ACT ZEV sales requirements?

Charging Infrastructure

4. Based on current annual vehicle sales in Illinois and using Table 1 on page 34 and Table A1 on page 98 of the Rule Proponents' Initial Filing, how many ZEVs would need to be sold starting in 2028 to comply with the proposed rule's first annual ZEV sales requirements?
 - a) Please include responses for light duty vehicles (ACC II).
 - b) Please include responses for medium- and heavy-duty vehicles (ACT).
5. Using the data provided in Table 4 on page 93 and Table 3 on page 122 of the Rule Proponents' Initial Filing, please provide an estimate of the number, location distribution, and capacity of charging stations needed throughout Illinois to reliably support the number of ZEVs noted in your responses to Question 4 above.
6. The California requirements for ZEV sales began with more gradual increases in the years before MY 2028, i.e., a requirement of 35% for 2026, 43% for 2027, and 51% for 2028, giving the state time to develop the required charging infrastructure. Given that this rulemaking proposal, if adopted, would go into effect with MY 2029 vehicles and would begin at a 59% sales requirement for light duty ZEVs, did Rule Proponents take into account the shorter lead time in its feasibility analysis?

Economic Impact

7. If the Board adopts the proposed rule, what is the anticipated effect on State revenues, specifically the motor fuel tax and sales tax on sales of motor fuel?
8. If the Board adopts the proposed rule, what is the anticipated effect on local governments that receive funding from the State from the sales tax on sales of motor fuel?
9. If the Board adopts the proposed rule, please identify any anticipated new revenue sources that may offset any loss in sales taxes and motor fuel taxes to ensure the State's capital improvements plan remains on target.
10. Have the Rule Proponents identified and considered the effect the rule proposal may have upon all potentially affected individuals, entities, and sources including:
 - a) Consumers?
 - b) Vehicle manufacturers?
 - c) Dealers?
 - d) Rental and leasing businesses?
 - e) Parts manufacturers, and other supporting services to parts and vehicle manufacturing?
 - f) Trucking and other transportation businesses?

If so, please describe the analysis that was undertaken and the results of the analysis, including the economic costs of the proposal for each of these groups. If not, please indicate whether Rule Proponents will be conducting such analysis.

11. On March 20, 2024, USEPA finalized new pollution standards for passenger cars, light-duty trucks, and medium-duty vehicles. 89 Fed. Reg. 27842 (Mar. 20, 2024). USEPA's new pollution standards were hailed by environmental and public health organizations, as well as business and labor leaders. See <https://www.epa.gov/newsreleases/what-they-are-saying-strongest-ever-pollution-standards-cars-will-reduce-pollution>. In adopting the new pollution standards, USEPA rejected more stringent standards, stating:

EPA has assessed the appropriateness and feasibility of [its final] standards taking into consideration the potential benefits to public health and welfare, existing market trends for PEV adoption, and constraints which could shape technology adoption in the future, including: cost to manufacturers and consumers; refresh and redesign cycles for manufacturers; availability of raw materials, batteries, and other necessary supply chain elements; adequate electricity supply and distribution; and barriers to consumer acceptance such as adequate charging infrastructure and a wide range of vehicle model choices that meet a diverse set of customer needs.

89 Fed. Reg. 28095. Do Rule Proponents agree that USEPA's final decision to adopt these vehicle pollution standards had a rational basis in the record before it? If not, why not?

12. Did Rule Proponents submit comments to USEPA in its rulemaking concerning the economic reasonableness and technical feasibility of vehicle pollution standards? If so, please provide those comments. If not, why not?

Miscellaneous

13. Have the Rule Proponents reached out to the Midcontinent Independent System Operator ("MISO") and/or PJM Interconnection to obtain an assessment of any grid reliability impacts and concerns if the Board adopts the proposed rule? If so, can the Rule Proponents enter communications with MISO and/or PJM into the record for this rulemaking proceeding?
14. The Statement of Reasons, at page 39, states, in part, that Illinois' overall 2023 electric vehicle market share was 7.8%. What is Illinois' market share of new registered electric vehicles thus far for quarters 1 and 2 in 2024?

QUESTIONS SPECIFIC TO THE PROPOSED RULE

**PART 242
ILLINOIS CLEAN CAR AND TRUCK STANDARDS**

SUBPART A: GENERAL

Section 242.101 Purpose and Applicability

15. Rule Proponents indicate that the proposed clean vehicle standards “will apply . . . to *new* on-road vehicles delivered for sale in Illinois by manufacturers beginning with vehicle MY 2028.” (Statement of Reasons at 63). In the discussion of “Purpose and Effect” of the proposal in the Statement of Reasons, the Rule Proponents discuss only the purpose and effect of the three California clean vehicle standards (Advanced Clean Cars II, Advanced Clean Trucks, and Heavy-Duty Low NOx Omnibus). (Statement of Reasons at p. 33). The rule proposal stresses that these clean vehicle standards apply to vehicle manufacturers, not consumers. (Statement of Reasons at 11; Joint Testimony of Kathy Harris and Muhammed Patel at 1). In the discussion of “Affected Sources and Facilities” in the Statement of Reasons, only vehicle manufacturers are identified. (Statement of Reasons at 63).

Based on the Agency’s review of California’s regulations, the three clean vehicle standards at issue apply to vehicle manufacturers only, with a few specific provisions applicable to vehicle dealerships. The Agency has not identified in the California regulations that Rule Proponents seek to be incorporated by reference any provisions that extend applicability to others.

The proposed Section 242.101, however, proposes applicability language that appears to extend beyond that of California’s clean vehicle standards. Subsection (a) indicates that Part 242 establishes emission standards and requirements for “new motor vehicles and new motor vehicle engines.” “New motor vehicle” is defined in terms of a vehicle’s odometer reading and whether title has ever been transferred to the ultimate purchaser. Subsection (b) indicates that proposed Part 242 applies to specified vehicles “offered for sale or lease, or sold, or leased, for registration in Illinois.” On its face, it is not restricted to vehicles produced and offered for sale or lease by manufacturers in Illinois, and in fact it does not reference manufacturers. On its face, the Part would apply to all vehicles offered for sale/lease, or sold/leased, for registration in Illinois, including by vehicle dealerships or even individuals. This Section also does not indicate that proposed Part 242 applies only to model year 2028 and later vehicles.

- a) Please identify the specific provision(s) in California’s regulations that subsections (a) and (b) are based upon. If subsection (a) or (b) is not identical to California’s regulations, please identify the origin of the provision and describe its purpose and effect.

- b) Please identify the portions of the rule proposal, if any, that discuss the applicability language in this Section, including a description of the universe of persons and vehicles intended to be subject to Part 242 under this Section. If not in the rule proposal, please provide this information.
 - c) Is it the Rule Proponents' intent that the proposed Part 242 apply only to model year 2028 and later vehicles? If not, please identify the categories of vehicles intended to be subject to Part 242 under this Section.
16. Section 242.101(b) references Section 242.101(e); however, there is no subsection (e). Is reference to another Section intended? If so, which one?
17. Subsection (d) indicates that proposed Part 242 applies to "motor vehicles of the United States and its agencies; and to motor vehicles of the State of Illinois and its agencies and political subdivisions."
- a) Please identify the specific provision(s) in California's regulations that subsection (d) is based upon. If subsection (d) is not identical to California's regulations, please identify the origin of this provision and describe its purpose and effect.
 - b) Given the broad applicability language in subsection (b) and the broad prohibition in Section 242.104, why is subsection (d) necessary? In other words, what is the anticipated impact of subsection (d) that is not effectuated by other provisions in the proposal?

Section 242.102 Definitions

18. The Agency cannot locate in California's regulations several of the definitions proposed in this Section and are unclear of those definitions' origins. To clarify for participants, please identify the specific provision(s) in California's regulations that each definition is based upon. If there are any terms or definitions that do not appear in California's regulations or that are not identical to California's regulations, please identify those terms/definitions and identify their origin, as well as their purpose and effect.
19. This Section does not indicate that the definitions in California's regulations apply to Part 242, even though California's 13 California Code of Regulations ("CCR") Sec. 1900, titled "Definitions," is incorporated by reference in proposed Section 242.103, and proposed Section 242.110 requires compliance with Sec. 1900 (among other provisions). Other provisions in California's regulations that are incorporated by reference also contain definitions. Please clarify whether the definitions in 13 CCR Sec. 1900 and other California regulations being incorporated by reference apply to Part 242. If they do, please clarify how the definitions set forth in proposed Section 242.102 should be reconciled with those in California's regulations, particularly any proposed definitions that differ from California's regulations.

Section 242.104 Prohibition

20. As noted in the Agency's questions regarding Section 242.101, the Agency cannot locate in the rule proposal discussion of the proposed provisions in this Section and in Subpart A in general. This Section purports to make it unlawful for "any person to sell or register, offer for sale or lease, deliver, import, purchase, or lease a new motor vehicle" unless the vehicle has been certified to California's emission standards and meets other applicable requirements. "Person" is defined as "any individual or entity."

On its face, this Section applies to any individual person or business entity who sells, purchases, leases, delivers, or registers with the Secretary of State a non-compliant vehicle (subject to applicable exemptions). This Section would arguably make it unlawful for individuals and entities to purchase or lease non-compliant vehicles both inside and outside of Illinois, even in other states where the sale/lease of such vehicles is lawful, and it would prohibit such individuals and entities from then registering the vehicles in Illinois. It also restricts vehicle dealerships, vehicle importers, and potentially others including entities that transport/deliver vehicles.

- a) Please identify the specific provision(s) in California's regulations that this Section is based upon, including the specific provision(s) in California's regulations that restrict individuals and entities other than vehicle manufacturers from selling, purchasing, leasing, delivering, importing, or registering a non-compliant vehicle. Please clarify whether such regulations fall under a waiver that USEPA has issued to California or that is currently under consideration by USEPA. If any portion of this Section is not identical to California's regulations, please identify the language and its origin and describe its purpose and effect.
- b) Please identify the portions of the rule proposal, if any, that discuss the provisions in this Section and that identify the categories of entities and individuals impacted. If the rule proposal does not contain it, please provide this information.
- c) Has any outreach been conducted to individuals and entities that would be subject to this Section? If so, please describe the outreach and the information that was obtained.
- d) Similarly, has any analysis been undertaken of the impact that this provision could have on individuals and other entities? If so, please describe the analysis and the results.
- e) Please comment on whether the Board may legally prohibit actions taken by Illinois citizens and entities in other states (such as purchasing a vehicle), particularly other states where such actions are lawful. Please explain the reasoning and identify any applicable legal authority.
- f) Please also comment on whether the Board may legally prohibit Illinois citizens and entities from registering in Illinois certain vehicles, whether purchased inside or

outside of Illinois. Please explain the reasoning and identify any applicable legal authority.

- g) The Agency cannot identify any provisions in the proposed rule that establish recordkeeping or reporting obligations for individuals and business entities purchasing or leasing vehicles and other entities such as vehicle dealerships, importers, and vehicle delivery services that would be subject to this Section. How do Rule Proponents anticipate that the Illinois EPA will learn that a transaction subject to this Section took place and then determine compliance, such that the Illinois EPA could practically enforce this Section against persons subject to it?

Section 242.105 Exemptions

- 21. The Agency cannot locate in California's regulations several of the exemptions proposed in this Section, and cannot locate any discussion of the exemptions in the rule proposal. Many appear unrelated to California's clean vehicle standards applicable to manufacturers who offer model year 2028 and later vehicles for sale or lease, set forth in the proposed rule in Subparts B, C, D, and E. In other words, they do not appear to create exemptions to California's regulations. They instead appear related to the provisions in Subpart A of the proposed rule applicable to individuals and others purchasing/leasing/selling/delivering/importing vehicles (*see* Sections 242.101 and 242.104).
 - a) Please identify the specific provision(s) in California's regulations that each exemption in this Section is based upon. Please also clarify whether such regulations fall under a waiver that USEPA has issued to California or that is currently under consideration by USEPA. If there are any exemptions that do not appear in California's regulations or that are not identical to California's regulations, please identify each such exemption, describe its origin, and explain the purpose and effect of the exemption.
 - b) Please identify the portions of the rule proposal, if any, that discuss the exemptions in this Section.
 - c) Please clarify which exemptions, if any, regard the three California clean vehicle standards, addressed in Subparts B, C, D, and E of the proposed rule.
 - d) The Agency has not identified any provisions in the proposed rule that establish recordkeeping or reporting obligations for individuals and business entities purchasing or leasing vehicles and entities such as vehicle dealerships and importers who want to claim that a transaction falls under one of these exemptions. How do Rule Proponents anticipate that the Illinois EPA will ascertain that a transaction took place and assess whether it falls under one of these exemptions, such that the Illinois EPA could practically enforce these provisions?
- 22. In subsection (d), what does "off-highway" mean?

23. In subsection (j), what does “rental agency” mean?
24. Please identify the proposed rule provision(s) that, absent the exemption in subsection (j), would impact “rental agencies” in Illinois with regard to vehicle rental transactions.

Section 242.106 Enforcement

25. This Section is titled “Enforcement”, however, in the Table of Contents it is titled “Civil Penalties”. Which title is accurate?
26. Subsection (a) provides as follows: “A person who violates any provision of this Part shall be subject to civil penalties in accordance with Section 42 of the Environmental Protection Act (415 ILCS 5/42).” However, the California regulations incorporated by reference include their own enforcement processes. For example, 13 CCR 1962.4(m) provides for an enforcement process involving an Executive Officer imposing civil penalties set by the California Health and Safety Code. How do the Rule Proponents intend for subsection (a) to be harmonized with conflicting enforcement provisions in California regulations incorporated by reference?
27. Subsection (c) provides as follows: “Each instance or day of violation of any provision of this Part shall be considered a separate violation.” Please explain how this provision is consistent with Section 42(a) of the Act.

Section 242.108 Effective Date

28. This Section indicates, “this Part becomes effective when filed.” Does “filed” mean when the adopted rule is filed with the Secretary of State?

SUBPART B: LOW EMISSION VEHICLE REGULATION

Section 242.112 Certification Testing

29. Subsection (d) (which should be subsection (a)) requires that “[a]ssembly-line quality audit emission testing and reporting shall be performed” but does not elaborate regarding what such testing and reporting must entail. Also, the phrase “assembly-line quality audit emission testing” does not appear in California’s regulations.
- a) If this provision is intended to require compliance with California regulations that set forth assembly-line quality audit emission testing and reporting requirements, please identify those specific regulations.
- b) Otherwise, please clarify what such testing and reporting must entail.

30. Subsection (e) (which should be subsection (b)) requires that manufacturers “comply with all applicable California Assembly Line and In-Use requirements.” Please specify the California regulations that manufacturers must comply with under this subsection.
31. Subsection (f) (which should be subsection (c)) requires that the Agency accept the results of “quality audit testing and inspection testing determinations and findings made by CARB to demonstrate compliance.” The phrases “quality audit testing” and “inspection testing” do not appear in California’s regulations. Please specify the California regulations that regard the determinations and findings being referenced in this subsection.
32. Subsection (g) (which should be subsection (d)) indicates that [r]emedial action plans . . . are required.” The phrase “remedial action plan” does not appear in California’s regulations. Please identify the California regulations governing remedial action plans as that phrase is used in this subsection.
33. If subsection (g) regards the plans addressed in Section 2109 of California’s regulations, please explain what is meant by the statement, “Remedial action plans are required.” Section 2109 regards plans to bring noncompliant vehicles into compliance, including vehicle recall provisions, but such plans do not appear to be required absent circumstances that indicate noncompliance.
34. Subsection (g) provides, “If the State of California requires a remedial action plan based upon full calendar or partial calendar quarter testing pursuant to [Section 2109], such plan will apply to all vehicles . . . intended for sale in Illinois. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in Illinois.”
 - a) Section 2109 does not discuss “full calendar or partial calendar quarter testing.” Please identify the provision(s) in California’s regulations that regard the testing referenced in this Section.
 - b) Please identify the provision(s) in California regulations, if any, that indicate that remedial action plans do not apply to vehicles previously sold to ultimate purchasers. If not based in California’s regulations, please explain the purpose and effect of this provision.

Section 242.113 Reporting Requirements

35. Subsection (c) requires manufacturers to submit, upon request by the Agency, “reports on all assembly-line emission testing and functional test results collected during compliance with this Subpart B and [13 CCR 2062].” California regulation Section 2062 does not reference reports or “functional tests.” Please explain what the reports required by this Section must contain, and what is meant by “functional test.”

Section 242.114 Inspection and Access to Records

36. Please specify the California regulations, if any, that the provisions in subsections (a) and (b) are based upon.
37. In subsection (a), both the Agency and the Illinois Secretary of State are authorized to “conduct inspections and surveillance of 2028 and subsequent model year motor vehicles for the purposes of determining compliance with and enforcing this Subpart B.”
- a) Please explain the basis for Rule Proponents’ position that the Illinois Secretary of State is an appropriate entity to determine compliance with and enforce this regulation if adopted by the Board. Please include in the discussion any statutory authority the Illinois Secretary of State possesses to enforce Board regulations.
- b) The proposed rule does not require that any information be reported to the Illinois Secretary of State. How do Rule Proponents anticipate that the Illinois Secretary of State will have sufficient information to determine compliance with Subpart B?
38. Subsection (c) requires that “[a]ny person subject to this Subpart B must, upon oral or written request by [the Agency] furnish or permit access to all records relating to those vehicles subject to regulation.” Subsection (d) requires that “[a]ny person subject to this Subpart B” must retain records for a certain amount of time. It is unclear to the Agency who is considered a “person subject to this Subpart B,” particularly as most of the provisions in Subpart B specifically reference only vehicle manufacturers, while Section 242.114(c) and (d) use the broader term “any person.” This Section allows inspections to take place at car dealerships, but otherwise does not appear to place any affirmative requirements on dealerships or any other entity. Please clarify what categories of persons are intended to be “subject to this Subpart B.”
39. In subsection (d), what is meant by “all relevant records”?

SUBPART C: ZERO EMISSION VEHICLE REGULATION

Section 242.121 ZEV Standard

40. Reference is made to CCR, Title 13, Section 1692.6; should it be Section 1962.6?

Section 242.122 Annual ZEV Requirements

41. Some other states have adopted the California ZEV requirements through model year 2032. Are Rule Proponents amenable to such a modification to the proposed rule?

Section 242.123 ZEV Credit Generation

42. Some other states have provided for an initial or one-time credit allotment to manufacturer’s accounts for the first model year in addition to the voluntary early

action/early compliance credits. Did the Rule Proponents consider such an allotment for the proposed rule? If yes, why was it not included in the proposed rule? If not, why not?

SUBPART D: HEAVY-DUTY LOW NOX REGULATION

Section 242.130 Requirement

43. Reference is made to CCR, Title 13, Section 2167.7; should this be Section 2169.7?

Section 242.131 Recalls

44. Section 242.131(c) references Section 242.133(a); however, there is no Section 242.133(a). Is reference to another Section intended? Also, please clarify what “order of enforcement action” means.

Section 242.132 Inspections and Information Requests

45. Please identify the California regulations, if any, that subsection (a) is based upon.

SUBPART E: ADVANCED CLEAN TRUCKS REGULATION

Section 242.145 Enforcement

46. Rule Proponents indicate in their proposed rule under subsection (a) that any manufacturer that certifies certain on-road vehicles “for sale in Illinois is subject, by Illinois, to the enforcement provisions set forth in California Code of Regulations, Title 13, Section 1963.5.”

a) Section 1963.5(a)(1) and (2) of California’s regulations reference an “Executive Officer.” What is the Illinois equivalent of an Executive Officer?

b) Section 1963.5(a)(4) regards civil penalties under California law for failure to retire an appropriate amount of ZEV or NLEV credits. Proposed Section 242.145(b), however, contains similar civil penalty language but governed by Illinois law. Please comment as to whether subsection (a) should be revised to clarify that the provisions of 13 CCR 1963.5(a)(4) are inapplicable, as civil penalties are governed by the Illinois Environmental Protection Act.

47. Rule Proponents indicate in their rule proposal under subsection (b) that any manufacturer that fails to retire an appropriate amount of ZEV or NLEV credits as specified in Section 1963.3(c) and does not make up deficits within the specified time allowed by Section 1963.3(b) shall be subject to civil penalties contemplated by Illinois statutes and regulations applicable to a manufacturer who does not comply with emission standards or the test procedures adopted by the Board such as those in this Part 242. What is meant by civil penalties “contemplated” by Illinois statutes and regulations?

48. Subsection (b) provides as follows: “For the purposes of 415 ILCS § 5/42, the number of noncompliant, violating vehicles shall be equal to one half of the manufacturer's outstanding deficit.” Please explain how this provision is intended to be applied in the context of Section 42(a) of the Act.
49. Section 42 of the Act provides that civil penalties should be set on a case-by-case basis, taking into account specified factors. *See* 415 ILCS 5/42(h). Do Rule Proponents intend that decisionmakers should set civil penalties against manufacturers on a case-by-case basis? Is this approach consistent with California’s program?
50. Why is an “Enforcement” provision included in Subpart E, but not in Subpart B, C, or D?

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: October 28, 2024

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CERTIFICATE OF SERVICE

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

I have served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
QUESTIONS FOR RULE PROPONENTS by e-mail upon the following persons at the e-mail
address of such persons:

Don Brown
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
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ATTACHED SERVICE LIST

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

The number of pages in the e-mail transmission is 15.

The e-mail transmission took place before 4:30 p.m. on October 28, 2024.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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

Dated: October 28, 2024

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