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JUN 21 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO THE BOARD'S	)	R04-24
PROCEDURAL RULES TO ACCOMMODATE	)	(Procedural Rulemaking)
NEW STATUTORY PROVISIONS:	)	
35 ILL. ADM. CODE 101-130	)	

*PCH*

**NOTICE OF FILING**

TO: Dorothy M. Gunn, Clerk	Richard McGill, Esq.
Illinois Pollution Control Board	Hearing Officer
James R. Thompson Center	Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500	James R. Thompson Center
Chicago, Illinois 60601	100 W. Randolph Street
<b>(VIA FIRST CLASS MAIL)</b>	Suite 11-500
	Chicago, Illinois 60601
	<b>(VIA FIRST CLASS MAIL)</b>

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board an original and nine copies of the **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: *Robert A. Messina*  
Robert A. Messina

Dated: June 18, 2004

Robert A. Messina  
General Counsel  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, Illinois 62703  
(217) 523-4942

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has served one copy of the COMMENTS  
OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

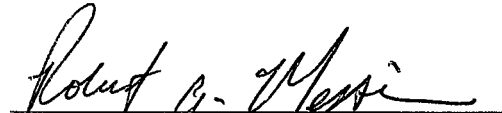
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, Illinois 60601

Richard McGill, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

LaDonna Driver  
Hodge Dwyer Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, Illinois 62705-5776

Rachel L. Doctors, Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

by placing said documents in the United States Mail in Springfield, Illinois on June 18,  
2004.

  
Robert A. Messina

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R04-24  
(Procedural Rulemaking)

STATE OF ILLINOIS  
Pollution Control Board

**COMMENTS OF THE ILLINOIS  
ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by one of its attorneys, Robert A. Messina, and submits the following comments in the above-referenced matter to the Illinois Pollution Control Board ("Board"), stating as follows:

IERG supports the Board's proposed amendments in R04-24, and thanks the Board for the opportunity to submit these comments today. IERG only wishes to address one topic raised by the Illinois Environmental Protection Agency ("Illinois EPA") in the comments it filed on June 15, 2004, regarding the procedure for incorporations by reference.

In its comments, the Illinois EPA suggests that the new procedure may raise approval issues with the United States Environmental Protection Agency ("U.S. EPA"). As Illinois EPA correctly points out, federal regulations require that a State hold a public hearing on the contents of a State Implementation Plan ("SIP") or SIP revision prior to seeking approval by U.S. EPA. If an incorporation by reference in a SIP revision were to be updated using the new procedure included in the Board's proposal, the Illinois EPA suggests, that revision may be unapprovable. The Illinois EPA therefore suggests changes to the Board's language.

These changes, however, are unnecessary. Reading a little further past the provision which the Illinois EPA cites, the Board will note two relevant provisions. Proposed Section 102.211(e) states: "[i]f an objection to the proposed amendment is filed during the public comment period . . . then the proposed amendment cannot be adopted pursuant to this Section." Proposed 35 Ill. Admin. Code § 102.211(e). Also, proposed Section 102.211(f) states that

“[n]othing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures.” Proposed 35 Ill. Admin. Code § 102.211(f).

In other words, in those instances where the Illinois EPA seeks to propose to the Board an updated incorporation by reference, which must be approved by the U.S. EPA after a public hearing is held by the State, then the Illinois EPA can simply proceed under “other lawful rulemaking procedures” as permitted by proposed subsection (f). In those instances where a similar proposal is made by someone other than the Illinois EPA, and Illinois EPA believes that a public hearing must be held to satisfy applicable federal requirements, then the Illinois EPA can simply object to the rulemaking proceeding under this expedited procedure, pursuant to proposed subsection (e). Clearly, the concerns of the Illinois EPA can be easily addressed through the provisions of proposed Section 102.211 as it exists in R04-24.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: 

Robert A. Messina

Dated: June 18, 2004

Robert A. Messina  
General Counsel  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, Illinois 62703  
(217) 523-4942

IERG:001/Fil/Bd procedural rule comments