BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	**)**	
	)	
CLEAN-UP	**)**	**R09-19**
AMENDMENTS TO 35 ILL.	**)**	**(Rulemaking - Air)**
ADM. CODE PART 243	**)**	
	)	

NOTICE

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
69 West Washington St., Suite 1800
Chicago, IL 60602

Dave Kolaz
Alec Davis
Illinois Environmental Regulatory Group
215 E. Adams St.
Springfield, IL 62701

Virginia Yang, Deputy Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

Katherine D. Hodge
Monica T. Rios
Hodge Dwyer & Driver
3150 Roland Ave.
Springfield, IL 62705

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the POST-HEARING COMMENTS of the Illinois Environmental Protection Agency a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Charles E. Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: June 8, 2009

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN-UP	)	**R09-19**
AMENDMENTS TO 35 ILL.	)	**Rulemaking - Air**
ADM. CODE PART 243	)	
	)	

POST-HEARING COMMENTS

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, and hereby submits its post-hearing comments to the second hearing in the above rulemaking proceeding. The Illinois EPA has reviewed the transcript of the April 28, 2009, hearing and responds to the information presented as follows:

The Illinois EPA proposed the 243 clean-up rulemaking so as to update certain standards that were changed by federal law. These standards included PM 2.5, lead, and 8-hour ozone. In addition, the 1-hour ozone standard was revoked and several non-substantive changes were made to the rule as part of the "clean up." The rulemaking was always intended to be of limited scope. At no time did the Agency claim that the purpose of the rulemaking was to make all of the standards in Part 243 identical to the federal Code of Federal Regulations. In the Statement of Reasons the Agency stated:

> This proposed rulemaking simply updates the existing regulation and is a result of new National Ambient Air Quality Standards ("NAAQS") adopted by the United States Environmental Protection Agency ("U.S. EPA"). Originally, the Subpart at issue was adopted to satisfy Clean Air Act ("CAA") requirements. Recent changes by the U.S. EPA require amendments to the Illinois rules to reflect the new NAAQS for both ozone and particulate matter.

Statement of Reasons at 1. The Agency further stated, "[i]t incorporates new U.S. EPA air quality standards and has no real impact upon sources as it is currently federal law. These standards are well known to industry and have been thoroughly discussed by the U.S. EPA." Id.

at 4. This statement indicates that the Agency did not intend there to be any substantive effect to sources by proposing this rulemaking. The Illinois Environmental Regulatory Group's ("IERG") characterization of the rule would have a substantive effect; that of relieving one of their members from liability by the Illinois EPA. Moreover, the changes Illinois EPA proposes all strengthen existing standards. IERG's proposal would have the affect of weakening existing standards. In addition, there would probably be far greater participation by stakeholders if they knew the scope of the changes IERG is suggesting. In fact, considering that one of IERGs proposals would reverse a policy the State has held for 30 years, greater outreach may even have been necessary.

The Illinois EPA's intent to keep the changes minimal was further supported by the pre-filed testimony of Robert Kaleel, wherein he stated, "[t]he purpose of my testimony is to explain the purpose of this proposal, which will amend 35 Ill. Adm. Code Part 243 ("Part 243") to update Illinois' air quality standards to reflect several revisions of the National Ambient Air Quality Standards ("NAAQS") promulgated by the U. S. Environmental Protection Agency ("U.S. EPA")…Specifically, the amendments reflect revised NAAQS for ozone, particulate matter, and lead." Kaleel prefiled testimony, pages 1 and 2.

At the hearing on March 10, 2009, Mr. Kaleel clearly and repeatedly stated that the Agency intended no changes for the SO_2, CO, and NO_2 related sections of Part 243. In response to questioning from IERG's attorney, Mr. Kaleel repeated for each pollutant that the Illinois EPA did not intend to seek changes for such pollutants (*See* Transcript of March 10 hearing, PP. 23, 24, and 25.)

Despite this, in their prefiled testimony IERG states that the Agency wishes to make Part 243 the same as the federal Code of Federal Regulations. Prefiled testimony of Kolaz, 2. IERG speaks of confusion if the Illinois EPA does not change the monitoring system for SO_2 from running to block averaging; but the Illinois EPA's position, that running averaging is required, has not changed in 30 years as Mr. Kolaz admits. (*See* Transcript of April 28, 2009, hearing at 37.) Therefore, it is a change in policy that would cause confusion. Mr. Kolaz states that this policy is by mere happenstance, but to make no amendments to a standard for over thirty years while changing other standards in that same Part, evidences some intent. Id. at 34. Actions have meaning, and the Illinois EPAs consistent action with regard to the SO2 standard has been to leave it the same. This must be recognized as having value.

The debate about running versus block averaging for SO_2 monitoring dates back to the early 1970's, when the SO_2 rules were first promulgated. At that time, the federal reference method for monitoring ambient SO2 concentrations did not allow for continuous measurements, so the convention was to report only block averages. By the late 1970's however, new monitoring technology allowed for continuous measurements and the determination of running averages. The use of running averages has been IEPA's interpretation of the SO2 NAAQS ever since.

This debate about averaging has spawned much litigation. But, as the courts have stated, both forms of averaging are allowed. *NRDC v. Thomas*, 845 F.2d 1088, 1091 (DC Cir. 1988). Eventually, in 1986, USEPA produced a guidance memo declaring that it wished states to use block averaging. *"Block Averages in Implementing SO_2 NAAQS", quoted in Thomas*, 845 F.2d at 1097. The memo, however, specifically stated that states were free to develop more stringent standards under Section 116 of the CAA. Id. Moreover, the USEPA stated in a separate Federal

Register posting that the intent of this memo was "to confirm the status quo after PPG industries, under which an attainment demonstration may rely on block averages." 54 Fed. Reg. 23479, 23480 (June 1, 1989). Running averaging were not, therefore, proscribed.

The guidance in the memo was finally put into a rulemaking memo in 61 Fed. Reg. 25566 (May 22, 1996). In that Federal Register, the USEPA stated that it intended block averaging by its actions and were making it so by regulation. 61 Fed. Reg. at 25576. States are still free, however, to use running averaging under Section 116 of the CAA. Running averaging has not proscribed.

Section 116 of the CAA allows Illinois, like all states, the freedom to enact regulations more stringent than federal ones. It has long been agreed that running averaging is slightly more stringent than block averaging. *PPG Industries v. Costle*, 659 F.2d 1239, 1250 (DC Cir. 1981). Accordingly, the Illinois EPA is free to use running averaging for the monitoring of SO_2. In fact Illinois EPA has never wavered from its use of running averaging despite the ongoing debate at the federal level. Thus, there has never been any confusion in Illinois about what monitoring method is to be used for SO_2 or what would cause a violation of the SO_2 standard in Illinois. Indeed, prior to 2007, the state had been in compliance with the SO_2 NAAQS for many years.

What has changed is that a member of IERG located in Peoria, Aventine Renewable Energy ("Aventine"), has violated the SO_2 standard and is in talks with the Illinois EPA. Aventine's situation is such that if the Board were to force the Illinois EPA to use block averaging Aventine would be considered in compliance.

In 2007, two exceedances of the 24-hour SO2 NAAQS were recorded at Illinois EPA's monitoring station in Pekin. Using running averages, these two exceedances constitute a

violation of the NAAQS, but using block averages, they do not. The Illinois EPA has subsequently identified a company in Pekin, Aventine, as the primary contributing source to the violation. The Illinois EPA is in discussions with Aventine, a member of IERG, to reduce their SO2 emissions. By forcing the Illinois EPA to change its longstanding interpretation of the SO2 NAAQS from running to block averages, the Board would remove the company's obligation to reduce its emissions.

Accordingly, the change to the SO_2 standard suggested by IERG is not warranted. It would also have the effect of relaxing the SO_2 standard for all sources in Illinois. Thus all sources in Illinois could increase their emissions of SO_2 leading to an unnecessary increase in pollution.

IERG further suggests revising the State's air quality standards for SO_2, CO, and NO_2 to remove numerical values expressed as micrograms (or milligrams) per cubic meter, which in the case of CO and NO_2 would make the standards different from the federal standards. We note that IERGs recommendation for CO and NO_2 in this regard is inconsistent from its position regarding SO_2. For SO_2, IERG requests that Illinois standards be identical to the federal standard. For CO and NO_2, IERG is recommending that Illinois not follow the federal standard, by removing the numerical standards, expressed as micrograms (or milligrams) per cubic meter for these pollutants. The Illinois EPA urges the Board to retain the numerical values using both units, micrograms (or milligrams) per cubic meter and parts per million, for So_2, CO, and NO_2. Both units are used routinely. Typically parts per million are used when reporting monitoring data, as IERG has pointed out, but micrograms per cubic meter are routinely used for modeling SO_2, CO, and NO_2. Federally approved air quality models are designed to calculate micrograms per cubic meter, and such models are required for modeling for permits under the Prevention of

Significant Deterioration (PSD) program, as well as performing attainment demonstrations for these pollutants.

For these reasons, the Board should reject the suggestions by IERG and adopt the proposal of the Illinois EPA. This rulemaking was intended to be a simple updating of Part 243 to account for new USEPA NAAQS standards. It was not intended to encompass substantive changes that are discretionary for states to impose. Again, Illinois has every right to use running averages and has never swayed from the use of such. To force Illinois to use block averages would relax the SO_2 standard and increase SO_2 emissions throughout Illinois, not just from one of IERG's members. Furthermore, the Illinois EPA urges the Board to retain the numerical values for SO_2, NO_2 and CO using both units, micrograms (or milligrams) per cubic meter and parts per million, as both units are used routinely.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
/s/ Charles E. Matoesian
Charles E. Matoesian
Assistant Counsel

DATED: June 8, 2009
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached POST-HEARING COMMENTS, upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Virginia Yang, Deputy Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

Dave Kolaz, Alec Davis
Illinois Environmental Regulatory Group
215 E. Adams St.
Springfield, IL 62701

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
69 West Washington St., Suite 1800
Chicago, IL 60602

Katherine D. Hodge, Monica T. Rios
Hodge Dwyer & Driver
3150 Roland Ave.
Springfield, IL 62705

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

/s/Charles E.Matoesian

Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

Dated: June 8, 2009

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544