

ILLINOIS POLLUTION CONTROL BOARD  
November 19, 2018

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 ILL. ADM. CODE 204, ) R19-1  
PREVENTION OF SIGNIFICANT ) (Rulemaking - Air)  
DETERIORATION, AMENDMENTS TO 35 )  
ILL. ADM. CODE PARTS 101, 105, 203, 211, )  
and 215. )

**HEARING OFFICER ORDER**

On July 2, 2018, the Illinois Environmental Protection Agency (IEPA or Agency) filed a proposal to amend the Board's air pollution regulations. The proposal seeks to establish a state Prevention of Significant Deterioration (PSD) permitting program in Illinois and the procedures for that program. On August 23, 2018, the Board accepted IEPA's proposal for public comment without sending it to first notice. The hearing officer scheduled first hearing in this proceeding for November 27, 2018 and directed interested persons to file their prefilled testimony by November 12, 2018. The hearing officer also set November 19, 2018 as the deadline for pre-filed questions.

The Board and Staff have reviewed the proposed rules and IEPA's testimony filed on November 8, 2018, and submit with this order their questions to IEPA, included as Attachment A. Anyone may file a comment, and anyone may respond to the questions attached, as well as any other pre-filed questions in the record. Because the hearings in this proceeding are held by videoconference, to afford all participants equal access, all answers, if pre-filed, and any document to be offered as a hearing exhibit must be filed at least 24 hours before the scheduled start of the hearing. 35 Ill. Adm. Code 102.424(h). All filings in this proceeding will be available on the Board's website at <https://pcb.illinois.gov> in the rulemaking docket [R19-1](#). Unless the Board, hearing officer, Clerk, or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the [Clerk's Office On-Line \(COOL\)](#). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.



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**ATTACHMENT A**  
**R19-1**  
**PROPOSED NEW 35 ILL. ADM. CODE 204, PREVENTION OF SIGNIFICANT**  
**DETERIORATION, AMENDMENTS TO 35 ILL. ADM. CODE PARTS 101, 105, 203,**  
**211, and 215**

**General Questions**

1. Please explain if IEPA hosted a stakeholder process in developing the proposed rule. If so, please provide the list of stakeholders that participated in that process.
2. IEPA indicates that 40 CFR 51.166 addresses regulations governing state PSD programs established pursuant to state law and submitted to USEPA for approval and incorporation into SIP while 40 CFR 52.21 governs federal PSD programs and applies in those states without a SIP-approved PSD program. SR at 7-8. The Board notes that Section 9.1(c) of the Environmental Protection Act (Act) directs the Board to incorporate 40 CFR 52.21 by reference in its regulations to establish a PSD program. 415 ILCS 5/9.1(c).

IEPA's proposal for a state PSD program, however, is based on 40 CFR 52.21, and not 40 CFR 51.166. SR at 28. For the clarity of the record, please explain why.

Please also explain:

- a. Is it IEPA's interpretation of Section 9.1(c) of the Act that the Board rules must be modeled on 40 CFR 52.21, rather than incorporate it by reference?
  - b. What are the main differences between 40 CFR 51.166 and 40 CFR 52.21 relevant to this proposal?
  - c. Will modeling Board rules on 40 CFR 52.21, instead of 40 CFR 51.166, impact USEPA's approval of the Illinois SIP?
3. Section 9.1(c) of the Act (415 ILCS 5/9.1(c)) provides that "the Board may adopt more stringent or additional provisions to the extent it deems it appropriate" and "[n]othing in [Section 9.1(c)] shall be construed to limit . . . the authority of the Board to adopt elements of a PSD permit program that are more stringent than those contained in 40 CFR 52.21."
    - a. Please identify all provisions in IEPA's proposal that are additional to or more stringent than those contained in 40 CFR 52.21.
    - b. Please address whether IEPA considered additional or more stringent measures for its proposal as it relates to the Greenhouse Gases (GHGs). If so, please describe them, and explain why they were or were not included in IEPA's proposal.

**Statement of Reasons**

4. “Proposed Part 204 would be one in a series of permit programs intended to track emissions, to ensure that sources are meeting their regulatory obligations, and to maintain permits.” SOR at 7.
  - a. Please provide examples of other permit programs that apply to sources subject to the proposed PSD permit programs.
  - b. Clarify whether the other existing programs have any overlapping requirements that apply to PSD sources. If so, comment on whether the Agency is planning to eliminate any duplicative requirements under various permit programs.
5. At page 18, the Agency states an air quality analysis involves “assessing future ambient concentrations of a pollutant in an area as a result of a proposed project and comparing those concentrations to the air quality standard or other reference level.” Please explain what types of benchmarks are used as “reference levels” if pollutants being assessed do not have air quality standards.

**Part 101**

6. In Section 101.202 IEPA proposes deleting the definition of “Participant in a CAAPP Comment Process”. Please comment whether IEPA has also proposed deleting all references to that term in other parts of the Board’s rules, if any.
7. In Section 101.201, IEPA adds a definition for both “Agency Record” and “OSFM record.”
  - a. Please explain why IEPA believes these definitions are necessary.
  - b. Please also comment on whether IEPA contacted OSFM for its position on adding this definition and if so, please provide OSFM’s position.
  - c. Further, please comment how these proposed definitions are related to the PSD requirements.
8. Please confirm that Section 101.302(e)(3) includes the Agency’s PSD permit decisions under new proposed Part 204, as required by 415 ILCS 5/40.3(c).
9. In Section 101.610, IEPA proposes amending “any required record or recommendation” to “any required Agency record, OSFM record, local siting authority record or recommendation.” Please explain why IEPA believes this revision is necessary.

**Part 105**

10. In the table of contents, IEPA added “The” before Agency. Please comment why.
11. In Sections 105.116, and 105.118, IEPA proposes to change “State Agency” to “Agency” or “OSFM”. Please explain why this change is necessary.
12. In Sections 105.212(a) and (b), 105.410(a), 105.412, and 105.612, IEPA proposes adding “Agency” before record. A similar change is proposed in Section 105.508(b), where “OSFM” is added before record. Please comment why IEPA proposes these amendments.
13. IEPA’s amendments to Section 105.608(a)(4) require a petition to include “[t]he issues proposed for review, citing to a specific permit term or condition where applicable and to the Agency record where those issues were raised with reasonable specificity during the public comment period.” They also require attaching the cited public comment to the petition. Please explain:
  - a. Does the proposed language limit the statutory language of 415 ILCS 5/40.3(a)(2)(ii) that only requires “citing to the record where those issues were raised”?
  - b. What does IEPA consider to be a “reasonable specificity”? Please provide examples.
  - c. Is it possible that some part of the Agency record related to a PSD permit could be beyond public comment period? Are there instances when a document in the record was not produced during a public comment period? Would the issues raised in a permit application itself or during correspondence with the Agency be considered “during the public comment period”?
  - d. If a petitioner does not have a copy of the record when filing a petition, would a failure to attach a cited public comment to the petition preclude the petitioner from filing a petition?
  - e. Would the following revision of Section 105.608 be acceptable to IEPA:

**“Section 105.608 Petition Content Requirements**

- a) All petitions under Section 105.604 must comply with 35 Ill. Adm. Code 101.Subpart C.
- a b) A ~~For~~ petitions under Section 105.604(a) or (c) ~~of this Subpart, must~~ contain within the body of the petition all pertinent information in support of each issue raised for review ~~shall be contained within the body of the petition.~~ The Board will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. ~~In addition~~

~~to the requirements of 35 Ill. Adm. Code 101.Subpart C, the~~ The petition must include:

- 1) The Agency's final decision or issued PSD permit;
  - 2) A statement as to how the petitioner participated in the Agency public comment process;
  - 3) *All such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected;*
  - 4) *The issues proposed for review, citing to a specific permit term or condition, where applicable, and to the Agency record where those issues were raised with reasonable specificity during the public comment period, citing to any relevant document and page numbers in public comments submitted to the Agency record and attaching this public comment a copy of the cited document to the petition, if available. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must explain why such issues were not required to be raised during the Agency public comment process; and*
  - 5) *An explanation why the Agency's previous response, if any, to the issues proposed for review, if any, was:*
    - A) *Clearly erroneous; or*
    - B) *An exercise of discretion or an important policy consideration that the Board should, in its discretion, review. [415 ILCS 5/40.3(a)(2)]*
- b c) ~~A For~~ A For petitions under Section 105.604(b) of this Subpart, in addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, must also include the date that a complete permit application for a PSD permit was submitted to the Agency and an explanation as to why the submittal made on such date made the application complete.
- e d) ~~A For~~ A For petitions under Section 105.604(a) or (c) of this Subpart, the ~~petition~~ may include a request to stay the effectiveness of any final Agency action on a PSD permit application until final action is taken by the Board under Section 40.3 of the Act. Any stay request must include a clear delineation of all the contested

conditions of the PSD permit. To the extent that a stay of any or all of the uncontested conditions of the permit is sought, any stay request must indicate how these uncontested conditions would be affected by the Board's review of the contested conditions.

d e) ~~For petitions under Section 105.604(e) of this Subpart, any A~~ stay request filed by a person other than permit applicant must also demonstrate:

- 1) *That an immediate stay is required in order to preserve the status quo without endangering the public;*
- 2) *That it is not contrary to public policy; and*
- 3) *That there is a reasonable likelihood of success on the merits. [415 ILCS 5/40.3(d)(3)]*

14. In Section 105.610(b), please comment if it is appropriate to delete the sentence starting “The party requesting the stay has the burden...” because this requirement is already included in section 105.608(e) immediately above.

15. In Section 105.614 please explain what you mean by “technical decisions contained therein reflect considered judgment by the Agency”. Please provide examples. Please explain the Board’s authority on such a standard of review; please cite to provisions of the Act, case law, or Board regulations or practice that supports such standard.

16. In Section 105.614(a), please comment on why IEPA states that the Board will not hold a hearing if summary judgement is granted, considering that granting summary judgment, by definition, means that no hearing will be held? Please explain why this explanation is necessary here, while it is not included in any other relevant part of the Code addressing hearings.

## **Part 204**

### **SUBPART A: GENERAL PROVISIONS**

17. Section 204.100 lists federal provisions incorporated by reference. Please clarify whether all federal regulations incorporated by reference are cited in the proposed rule text.

- a. If so, please point to the proposed rule language for each of them that incorporates the provision. Please add language in the rule text to indicate that the cited federal rules are incorporated by reference in Section 204.100, to reflect incorporation. For example:

The applicable standards as set forth in 40 CFR Parts 60, 61, 62 and 63, incorporated by reference at Section 204.100. Proposed Section 204.230 (a).

- b. Please include citations to the federal rules proposed to be incorporated by reference in appropriate sections of the proposed rules.
18. Subsections “hh”, “ii” and “xx” are indicated as “reserved”. Please explain why this is necessary, considering that it is not the Board’s practice to reserve numbering in this manner.
19. In Section 204.110 the List of Abbreviations includes “Illinois EPA”. Please comment on whether it is appropriate to replace it here, and through the rest of Part 204 with “Agency” to be consistent with the rest of the language of the Board rules when referring to IEPA.

### SUBPART B: DEFINITIONS

20. In Section 204.220, please explain whether the definition of “Adverse impact on visibility” is modeled on any act or regulation. Please also comment whether “Federal Class I area” needs to be defined or include a citation to a specific federal regulation that address Federal Class I areas.
21. In Section 204.230(c) please explain what you mean by “including those with a future compliance date.”
22. In Section 204.250(b)(2), please clarify whether the phrase “constructed in the state” refers to construction in Illinois. If not please explain how this provision would apply to any construction in another state.
23. In Section 204.290, please comment on whether the publication, “Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)”, must be incorporated by reference in Section 204.100. If so, please provide a copy for incorporation.
24. In Section 204.300, please clarify what constitutes a “significant reduction” when it comes to the application of clean coal technology. Please provide examples. Would it be possible to specify a percent reduction in air emissions to quantify as “significant reductions”?
25. In Section 204.550(e)(2), the term “enforceable” is used without any qualifier like “legally” or “practicably”, as used in Section 204.560. Please explain the proposed intent of the different types of enforcement, i.e. “legally enforceable” or “practicably enforceable” or just “enforceable”, in Sections 204.550(e)(2) and 204.560.

26. In Section 204.560, would it be acceptable if the phrase “by a state or local air pollution control agency” is replaced by the “Agency”?
27. In Section 204.570, please add a citation for the italicized text. Please also remove italics from the portion of the text that is added by IEPA and is not based on a statutory authority.
28. The definition of “Major Modification” under Section 204.490 applies to significant emissions increase of a “Regulated NSR Pollutant (as defined in Section 204.610) other than GHGs (as defined in Section 204.430)”. Please clarify whether the definition of “Regulated NSR Pollutant” under Section 204.610 includes GHGs. If so, under what subsection are they covered in Section 204.210?
29. In Section 204.660, please explain why for some pollutants rates are listed in tpy and for others in megagrams per year. Comment on whether all rates can be listed in tpy.

#### SUBPART E: STACK HEIGHTS

30. Please clarify whether subsection 204.1000(a) requires that the degree of emission limitation must not be affected by stack height of any source exceeding good engineering practice under Section 204.420. If so, please provide amended rule language under Section 204.1000 to reflect the proposed intent.

#### SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MODIFICATIONS

31. Please comment on whether the term “significant amounts” in Section 204.1100(b) need to be followed by the phrase “as defined in Section 204.660”.
32. In Section 204.1110(a), please explain what “air quality control region” means. Comment on whether that term needs to be defined under Subpart B of Part 204.
33. In subsection 204.1110(b), does “maximum allowable increase” refer to the levels set forth at Sections 204.900 or 204.1200? If so, would it be appropriate to include a cross-reference to those sections in subsection (b)?

#### SUBPART H: OBLIGATIONS OF IEPA

34. Section 204.1330 requires IEPA to issue or deny a permit within one year after receipt of a “complete application.”
  - a. Please clarify whether IEPA will issue a notification to the applicant indicating the date on which IEPA determined the application to be complete.



- b. Please comment on whether Section 204.1300 should require a complete application notification that starts the one-year clock?
  - c. Also comment on whether the applicant has any recourse if the Agency does not take any action within a year after the receipt of the complete application.
35. Section 204.1340(d) requires IEPA to post a notice of the rescission determination on a public web site identified by IEPA within 60 days of the rescission. Please clarify what criteria will the Agency use to identify the website to post the rescission notice.

#### SUBPART J: INNOVATIVE CONTROL TECHNOLOGY

36. Section 204.1500(b)(4) requires IEPA to ensure that the source or modification would not before the date specified by IEPA cause or contribute to a violation of an applicable NAAQS. Please comment on whether IEPA needs to ensure that the source or modification does not also cause or contribute to a violation of any maximum allowable increase.

#### SUBPART K: PLANTWIDE APPLICABILITY LIMITATION (PAL)

37. In Section 204.1630, please explain what the Agency means by emission limitations enforceable as a “practical matter”.
38. According to Section 204.1790, the owner or operator of a major stationary source requests a PAL. Please explain the following:
- a. Proposed Section 204.1800(a)(5) provides that each PAL regulates emissions of only one pollutant. Does the owner or operator specify the NSR pollutant that is the subject of the PAL application, or does the application need to address all potential NSR pollutants? Does an application for a PAL under proposed Section 204.1800(a) require producing the calculations of baseline actual emissions for all NSR pollutants, including GHG? *See* Proposed 35 Ill. Adm. Code 204.1790(b).
  - b. Proposed Section 204.1800(a) provides that IEPA “is allowed to establish a PAL”.
    - i. Does that mean that IEPA exercises discretion on whether to grant a PAL application at a major stationary source?
    - ii. Does the PAL application limit or narrow the scope of IEPA’s review of eligible PAL pollutants? If so, what criteria does IEPA use in evaluating a PAL permit application and subject PAL pollutants?
    - iii. Should criteria be included in the proposed amendments?
  - c. Under proposed Section 204.670, is a GHG PAL applied only in the event of a “significant emissions increase” of GHG emissions?

39. Section 204.1820(a) provides that “the plan shall provide...”. Please clarify whether the “plan” refers to the SIP. If not, please explain the proposed intent.
40. In Section 204.1830, would it be acceptable to IEPA if the proposed subsection (a) is made the preamble and subsections (a)(1) through (a)(10) are renumbered as (a) through (j) since there is no subsection (b), as proposed?
41. In Section 204.1840(a), please clarify whether all PAL permits will have a 10-year effective period, or the 10-year period is the maximum duration. Comment on why 10 years was chosen as the effective PAL period rather than a period such as 5 years that follows the permit cycle.
42. Please clarify whether the reopening of the PAL permit under Section 204.1840(b)(1) is instigated always by IPEA or whether the permittee may request that IEPA reopen the permit.
43. In Section 204.1870(a)(1), please clarify whether a “complete application” for requesting an increase in PAL must meet only the requirements of this section or other permit application requirements of Sections 204.1790 and 1830 apply. Also, comment on whether an approval of PAL increase during the effective period could be treated as a renewal to extend the effective period.
44. If PAL is rendered invalid under Section 204.1880(a)(4), please clarify whether the source will be subject to enforcement or whether the Agency will establish allowable emission limitations in revised permit under Section 204.1850.

### **Simplifying and Clarifying Language**

45. In Section 101.202, in the definition of "OSFM record", please comment on whether "eligibility and deductible decision" should be replaced by "eligibility and deductibility of the decision".
46. Please comment whether the following changes would be acceptable to clarify the proposed language:
- (a) Replace “pursuant to” with “under” where appropriate – e.g. in section 101.202 definition of “CAAPP permit”; definition of “PSD permit”;
  - (b) Replacing capital letters with lower case letters in section 101.308(a) in “variances”, “permit appeals” and “pollution control facility sitting review”;
  - (c) Remove “of this Part” or “of this Subpart” where unnecessary – e.g. Sections 105.602(b); 105.606(a); 105.608(a);

- (d) Remove “the requirements of” where unnecessary – e.g. Sections 204.240(b)(3); 204.800(a), (b); 204.850;
- (e) Replace “shall” with “must” when the rule language relates to an obligation of a person other than the Agency or the Board - e.g. Sections 105.608(a); 204.240(a)(1), (2), and (4);
- (f) Replace “shall” with “will” when the rule language relates to an obligation of the Agency or the Board – e.g. Sections 204.210(b); 204.240(a); 204.350(b)(2)(C);
- (g) Remove “shall” when unnecessary – e.g. Section 204.260(b)(1) before “mean”;
- (h) Replace “shall be” with “is”, “do” or “does” where appropriate – e.g. Section 204.380(a) before “prescribed”; Sections 204.850 and 204.860(a) before “not apply”;
- (i) Replace “shall” with “will” where appropriate – e.g. Section 204.1860(b) before “continue to be effective”; Section 204.1870(a)(4) before “be effective”;
- (j) Remove italics from text that is not taken directly from the Act – e.g. in Section 105.604(a) remove italics on “under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204,”; in Section 105.604(b) remove italics from “by the Board” at the end of the sentence; in Section 105.604(c) remove italics from “for a PSD permit” after “comment process” and from “that was made available during the Agency public comment process” at the end of the sentence;
- (k) In Section 105.604(c) add “a” after “the person may still petition for” and add “proposed” after “reflect changes from the”;

47. Would the following proposed revisions be acceptable?

- a. In Section 105.606(a):

Except as provided in subsection (b), ~~if a person who may petition the Board under Section 105.604 of this Subpart withes to appeal for review of the Agency's final decision to the Board under this Subpart, the person~~ must file the petition with the Clerk within 35 days after the date of the Agency's final permit action.

- b. In Section 105.606(b):

A ~~If the~~ permit applicant who wishes to appeal the Agency's failure to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, ~~the person~~ must file a petition for review with the Clerk before the Agency denies or issues the final permit.

- c. In Section 204.120 Severability

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, it will not affect the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, ~~shall is not be affected thereby.~~

d. In Section 204.200 Definitions

Unless otherwise specified in this Part, ~~the definitions of the~~ terms used in this Part ~~shall be the same~~ have the same meaning as those the terms used in ~~the Board Rules and Regulations at~~ 35 Ill. Adm. Code Part 211.