

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the **MOTION TO AMEND RULEMAKING PROPOSAL** a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: *Sally A. Carter*
Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: November 7, 2019

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE 204) **R19-01**
PREVENTION OF SIGNIFICANT) **(Rulemaking – Air)**
DETERIORATION, AMENDMENTS TO 35)
ILL. ADM. CODE PARTS 101, 105, 203, 211)
AND 215)

MOTION TO AMEND RULEMAKING PROPOSAL

NOW COMES the Proponent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by its attorneys, and pursuant to 35 Ill. Adm. Code 101.500 and 102.402, moves that the Illinois Pollution Control Board (“Board”) amend proposed new Part 204 to revise Section 204.490 to Subpart B. In support of its Motion, the Illinois EPA states as follows:

On July 2, 2018, the Illinois EPA filed a proposal with the Board to add a new Part 204, 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration (“PSD”) that would be applicable to the proposed construction of a major stationary source or a major modification at an existing stationary source of air pollutants generally regulated under the Clean Air Act (“CAA”), except to the extent that nonattainment new source review (“NaNSR”) is or could be applicable for such proposed project. In this rulemaking proposal, the Illinois EPA proposed amendments to 35 Ill. Adm. Code 101, General Rules, 35 Ill. Adm. Code 105, Appeals of Final Decisions of State Agencies, 35 Ill. Adm. Code 203, Major Stationary Source Construction and Modification, 35 Ill. Adm. Code 211, Definitions and General Provisions, and 35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations. This rulemaking is intended to meet certain obligations of the State of Illinois under the Illinois Environmental Protection Act (“Act”) requiring the Board to adopt regulations establishing a PSD permit program meeting the requirements of Section 165 of the CAA, 42 U.S.C. §7475. 415 ILCS 5/9.1(c). The Board held

hearings on this proposal on November 27, 2018, in Chicago, and on February 26, 2019, in Springfield.

The Illinois EPA recently noted an issue in its proposed definition of “Major Modification” in Section 204.490. The proposed definition currently provides that “major modification” means a physical change or change in the method of operation of a major stationary source but that a physical change or change in the method of operation shall not include the use of an alternative fuel or raw material that: 1) the source was historically capable of accommodating unless prohibited by a permit condition established after January 6, 1975 pursuant to 40 CFR 52.21 or Part 204; or 2) the source is approved to use under any permit issued under 40 CFR 52.21 or Part 204. *See*, proposed 204.490(c)(5). The proposed definition also provides that a physical change or change in the method of operation shall not include an increase in the hours of operation or production rate unless prohibited by any enforceable permit condition established pursuant to 40 CFR 52.21 or Part 204. *See*, proposed 204.490(c)(6).

The language originally proposed by the Illinois EPA in Sections 204.490(c)(5) and (6) failed to address that, in addition to major PSD permitting, federally enforceable permit conditions could be established by minor source construction permits in Illinois pursuant to 35 Ill. Adm. Code 201.142 or 201.143. In fact, Illinois’ NaNSR regulations (otherwise known as Major Stationary Sources Construction and Modification or MSSCAM) provide for federally enforceable construction permit conditions to be established by means of either minor or major source permitting. *See*, 35 Ill. Adm. Code 203.207(c)(5) and (6).¹

¹ 35 Ill. Adm. Code 203.207, Major Modification of a Source, provides in relevant part:

c) A physical change or change in the method of operation shall not include:

* * *

5) Use of an alternative fuel or raw material by a stationary source which:

Moreover, USEPA, Region V has approved language in PSD state implementation plan (“SIP”) submittals consistent with this approach. Most recently, the State of Michigan provided that both a minor and major source construction permit could establish federally enforceable permit conditions authorizing the use of an alternative fuel or raw material or expressly prohibiting an increase in operating hours or production rate and thus, not meeting the definition of “major modification.” Michigan did this by providing that relevant permits could have been issued “under PSD regulations or R 336.1201(1)(a).”² Michigan Air Pollution Control Rules, Part 18, Prevention of Significant Deterioration of Air Quality, Rule 336.2801.³ The USEPA approved this language without any specific discussion in the Federal Register. 73 Fed. Reg. 53366 (September 16, 2008); 75 Fed. Reg. 14352 (March 25, 2010); 75 Fed. Reg. 59801 (September 27, 2010).

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- A) Was capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition established after December 21, 1976, pursuant to 40 CFR 52.21, the Part, or 35 Ill. Adm. Code 201.142 or 201.143, or
- B) Is approved for use under any permit issued pursuant to this Part or 35 Ill. Adm. Code 201.142 or 201.143.
- 6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21, the Part or 35 Ill. Adm. Code 201.142 or 201.143.

(emphasis added).

² Michigan took the same approach in its definition of “major modification” for purposes of nonattainment new source review. Michigan Air Pollution Control Rules, Part 19, New Source Review for Major Sources Impacting Nonattainment Areas. *See*, Rule 336.2901.

³ Rule 336.2801(1) provides that “a person shall not install, construct . . . or modify any process or process equipment, including control equipment pertaining thereto, which may emit any of the following, unless a permit to install that authorizes such action is issued by the department. (a) Any air pollutant regulated by title I of the clean air act and its associated rules . . . “ Rule 336.2801(1)(a) makes no distinction between major or minor source construction permits.

Other states have addressed the matter in a similar fashion. For instance, Wisconsin's Prevention of Significant Deterioration regulations expressly recognized that a permit could have been issued "pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I." Wis. Adm. Code § NR 405.02(21)(b)(5)(a) and (6). *See also*, Wis. Adm. Code § NR 405.02(21)(b)(5)(b) ("under any permit issued under this chapter or ch. NR 406, 407 or 408, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I."). Notably for purposes of this discussion, Wisconsin's PSD regulations not only refer to "this chapter", i.e., Wisconsin's Prevention of Significant Deterioration program, "ch. NR 408" addressing "Construction Permits for Direct Major Sources in Nonattainment Areas" but also refer to "ch. NR 406" pertaining to [minor source] "Construction permits." This approach, as well, was approved by USEPA without any specific discussion. 64 Fed. Reg. 28745 (May 27, 1999).

The Illinois EPA engaged in a preliminary discussion on these proposed revisions to Section 204.490 with USEPA, Region 5 and provided the Illinois EPA with preliminary feedback in this discussion.

Recognizing that either minor or major source construction permits could establish federally enforceable permit conditions relevant to the definition of "major modification" and, further, to maintain consistency with 35 Ill. Adm. Code 203.207, the Illinois EPA is now proposing to amend the rulemaking proposal as set forth in this Motion.⁴ Accordingly, the

⁴By this Motion to Amend Rulemaking Proposal, the Illinois EPA is not suggesting that federally enforceable permit conditions could be established by means of the Registration of Smaller Source ("ROSS") program, 35 Ill. Adm. Code 201.175, or a Permit by Rule ("PBR"), currently set forth in 35 Ill. Adm. Code, Subparts M and N.

Illinois EPA recommends the acceptance by the Board of the following amendments to the rulemaking proposal:

Amend proposed new Section 204.490 by amending subsections (5) and (6) to read as follows:

Section 204.490 Major Modification

- a) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in Section 204.670) of a regulated NSR pollutant (as defined in Section 204.610) other than GHGs (as defined in Section 204.430); and a significant net emissions increase of that pollutant from the major stationary source.
- b) Any significant emissions increase (as defined in Section 204.670) from any emissions units or net emissions increase (as defined in Section 204.550) at a major stationary source that is significant for VOM or NO_x shall be considered significant for ozone.
- c) A physical change or change in the method of operation shall not include:
 - 1) Routine maintenance, repair and replacement;
 - 2) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791);
 - 3) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA (42 U.S.C. 7425);
 - 4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - 5) Use of an alternative fuel or raw material by a stationary source which:
 - A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21, ~~or this Part~~, or 35 Ill. Adm. Code 201.142 or 201.143; or
 - B) The source is approved to use under any permit issued under 40 CFR 52.21, ~~or this Part~~, or 35 Ill. Adm. Code 201.142 or 201.143;

- 6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21, ~~or this Part,~~ or 35 Ill. Adm. Code 201.142 or 201.143;
 - 7) Any change in ownership at a stationary source;
 - 8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
 - A) The Illinois' SIP, and
 - B) Other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated; or
 - 9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.
- d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Subpart K for a PAL for that pollutant. Instead, the definition at Section 204.1720 shall apply.

WHEREFORE, for the reasons set forth above, the Illinois EPA moves that the Board amend proposed new Section 204.490 as set forth herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Sally O Carter
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Division of Legal Counsel

DATED: November 7, 2019

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**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)
)

SS

CERTIFICATE OF SERVICE

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

I have electronically served the attached **MOTION TO AMEND RULEMAKING PROPOSAL** upon the persons on the attached Service List.

My e-mail address is sally.carter@illinois.gov.

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00 p.m. on November 7, 2019.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
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Dated: November 7, 2019

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Electronic Filing: Received, Clerk's Office 11/07/2019
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