

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: docket as PC in R19-1.
Date: Tuesday, May 12, 2020 2:39:44 PM

Good afternoon, Mr. Clerk:

Please docket this e-mail exchange as a public comment in R19-1.

Thank you.

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From: McGill, Richard
Sent: Tuesday, May 12, 2020 2:37 PM
To: 'JonathanE@ilga.gov' <JonathanE@ilga.gov>
Subject: RE: Parts 203/204/211

Good afternoon, Jonathan:

I hope you and your family are healthy and staying safe.

Below are our responses to your most recent queries on Parts 203, 204, and 211. For convenience, your queries are repeated (bold font), each of which is followed by our response.

If you have any other questions, please let me know. Thank you and take care.

Best regards,

Richard

Part 203:

Vicki says that changing “shall” to “must” doesn’t really work in this rulemaking (e.g., 203.207(a) and (b)) and recommends “will” as an alternative.

The Illinois Environmental Protection Agency (IEPA or Agency) filed a public comment on May 4, 2020 (PC 8) concerning the first-notice rules as published in the *Illinois Register* (44 Ill. Reg. 4316 (Part 101), 4347 (Part 105), 4367 (Part 203), 4375

(Part 204), 4463 (Part 211), and 4487 (Part 215) (Mar. 20, 2020)). Here's a link to IEPA's public comment in the Clerk's Office On-Line (COOL):

<https://pcb.illinois.gov/documents/dsweb/Get/Document-102181>.

In its public comment, IEPA states:

The First Notice Version of Part 204 makes changes to the Agency's proposal. Many of these revisions appear to be grammatical in nature, mainly focusing on the selective removal or insertion of a comma, replacing "shall" with the term "must", and replacing "such" with a variety of words. To the casual observer, these changes might appear as largely inconsequential or a streamlining tool. Unfortunately, in many instances, these changes substantively alter the proposal in a way that is contradictory to the federal PSD rules as it currently exists in 40 CFR 52.21. In doing so, these changes may threaten approval of Part 204 as part of Illinois' SIP.

Perhaps it bears repeating a point made implicit in the Agency's initial proposal: the General Assembly intends for the Part 204 rules to mirror, not merely approximate, the federal PSD rules. In this regard, the Board must adopt regulations establishing a PSD program meeting the requirements of Section 165 of the CAA. This necessarily includes not only the federal implementing rules but a forty-year accumulation of case authorities and interpretative guidance that are instructive to the meaning of the federal PSD rules. Consistent with the General Assembly's mandate, the Agency proposed rules for a state PSD program modeled after both the federal PSD regulations of 40 CFR 52.21 and key elements of the program's regulatory development. If the text of the proposed rules deviates from this framework, it could presumptively result in a determination that these state rules are less stringent than the federal rules. To this end, it is important that any such departure from the federal rules be a product of careful deliberation and not a misplaced comma or clause. PC 8 at 9.

IEPA adds:

The Agency's proposal is not only based as closely as possible on the language of 40 CFR 52.21 but also on meeting the requirements for SIP approval in 40 CFR 51.166. The Agency provided this proposal to USEPA, Region 5 for preliminary review and comment, engaging in extensive dialogue with staff prior to filing this regulatory proposal with the Board. Given the highly nuanced aspects of the program, the perfunctory nature of many of the proposed changes compared to the language of the federal PSD rules will likely be disconcerting to the Agency's federal counterparts and could imperil USEPA's approval of Part 204. PC 8 at 10.

The balance of IEPA's 62-page public comment specifies its concerns with the *Illinois*

Register first-notice rules' deviations from IEPA's proposal, including changes in language, punctuation, and formatting. These concerns extend to the *Illinois Register* first-notice versions of both new Part 204 and amended Part 203. See PC 8 at 10-62.

The Illinois Environmental Regulatory Group (IERG), filed a public comment on May 4, 2020 (PC 9) concerning the first-notice rules published in the *Illinois Register*.

Here's a link to IERG's public comment in COOL:

<https://pcb.illinois.gov/documents/dsweb/Get/Document-102180>.

In its public comment, IERG states:

IERG noticed numerous changes by the Board to the Agency's proposed rule language that may be initially perceived as being subtle grammar and punctuation revisions. However, IERG cautions the Board against making these seemingly insignificant changes. Revisions that reword language or revise punctuation within a provision may change the substantive meaning of such provision. IERG is concerned about how these differences may impact federal review in the SIP approval process. PC 9 at 4.

The Board plans to address, in its second-notice opinion, the above issues raised by IEPA and IERG.

Part 204:

1) 204.100(hh), (ii), (xx): What are these subsections being reserved for? Wouldn't it work better just to add them when there is something to add?

Page 67 of the first-notice opinion noted that "[t]he Board questioned why IEPA's proposal included subsections (hh), (ii), and (xx) as 'Reserved' without incorporating materials. Board Questions at 6 (¶18); see Prop. 204 at 5-6. IEPA responded that USEPA reserved corresponding 40 C.F.R. Parts 83, 84, and 99. If USEPA promulgates regulations in those Parts, the Board could incorporate them 'without changing the corresponding numbering of this Section.' PC 1 at 50."

2) 204.220: Would it be possible to add a definition of "Federal Class I area"?

At page 69 of the first-notice opinion, the Board asked IEPA "whether it is necessary to define the term 'Federal Class I area' or cite a specific federal regulation that addresses those areas. Board Questions at 6 (¶20). IEPA responded that a separate definition of the term is not necessary because proposed Section 204.920 identifies these areas. PC 1 at 50 (¶20); Tr.1 at 94; see *infra* at 114-16. IEPA stated that this language mirrors 40 C.F.R. § 52.21(e)(1) 'and is consistent with the approach to identification of federal Class I areas in 40 CFR 52.21.' PC 1 at 51 (¶20); Tr.1 at 94-95."

3) 204.230(a): Delete "(incorporated by reference in Section 204.100)" and other similar statements; these cross-references to Sec. 204.100

aren't necessary.

For two reasons, we think the rules should retain the cross-references. First, each cross-reference informs the reader, who might not otherwise be aware, that the identified material has, in fact, been incorporated by reference. Second, each cross-reference, by noting Section 204.100, helps to inform the reader that the identified material incorporated by reference is of the date specified, excluding any earlier or later versions.

4) 204.470: What does “in current practice” mean? Current as of when?

Without having researched potential guidance or case law construing the language in the corresponding USEPA regulations (40 C.F.R. § 52.21(b)(1), (v)), we point out that the proposed defined term at 204.470 is used only in proposed 204.1500, which refers to an IEPA determination on a request to approve a system of innovative control technology.

5) 204.510(c): "for any of the purposes" --> What purposes?

The Board plans to address this issue in its second-notice opinion. In the meantime, we refer you to IEPA's most recent public comment, PC 8 at 33 (“After further review, the Agency understands that the reference to ‘of this Section’ in the federal PSD rules refers to the entirety of 40 CFR 52.21, as it is a section in the Code of Federal Regulations. The corresponding reference in Section 204.510 should be Part 204. The Agency recommends that the phrase ‘of this Part’ be included in subsection (c) for consistency with the federal PSD rules.”).

6) 204.510(c)(20): Chemical process plant or chemical processing plant? Same question re: 204.860(a)(2)(T).

The term “chemical process plants” appears in Section 169(1) of the Clean Air Act (42 U.S.C. § 7479(1)). In 204.510(c)(20) and 204.860(a)(2)(T), “Chemical process plants” and “chemical processing plant” are, respectively, taken verbatim from the federal rule text at 40 C.F.R. § 52.21(b)(1)(iii)(t) and 40 C.F.R. § 52.21(i)(1)(vii)(t).

7) 204.500(a) and 204.520(a)(1): Why are these different dates?

Page 23 of the first-notice opinion stated:

Two dates are involved in setting baseline concentrations. The different dates result from how effects of changes in emissions are determined. “[T]he *major source baseline date* [Section 204.500] is the date after which changes in emission of PSD major sources may affect the amount of increment that is available.” [IEPA Statement of Reasons (SR)] at 23 [emphasis added]. Major source baseline dates are established by regulation for each pollutant and averaging time, “tied to the date that the particular increment is adopted.” *Id.* “For major PSD sources, the

effects of changes in emissions on the available increment may be determined by modeling.” *Id.*, n.39.

The *minor source baseline date* [Section 204.520] “is the date after which changes in emissions at minor sources also affect the amount of increment that is available.” SR at 23 [emphasis added]. Because of the number of minor sources that may affect air quality in a baseline area, “the effect of changes in emissions of other sources cannot necessarily be readily determined by modeling.” *Id.* “The minor source baseline date is the date of submittal of the first complete PSD permit application for a project within a particular baseline area after the trigger date.” *Id.* This first application would be based on monitored air quality in an area, and “[t]his concentration would then be adjusted using modeling to account for the effect of changes in emissions at major sources.” *Id.* “After the minor source baseline date, emission increases and decreases at all sources act to consume and expand the available increment.” *Id.* at 24.

8) 204.930(a) and 204.1910: Please provide a specific date instead of “the initial effective date of this Part”.

The Board granted the Agency’s motion for expedited consideration of this rulemaking. The Board therefore has a heightened interest in its final rules’ taking effect sooner rather than later. Currently, we cannot accurately estimate the date on which the Board will file its final rules with the Secretary of State (SOS). And, consistent with expedition, we are not inclined to simply choose a later effective date with ample margin for error. However, during the second-notice period, the Board expects it will be able to, with JCAR’s agreement, provide a specific effective date that closely approximates the filing of final rules with SOS.

9) 204.1400(a): “subsection (f)(2)”: Should this be “subsection (g)(2)”?

In its most recent public comment (PC 8), IEPA states:

The relevant provisions of the federal PSD rules have been and continue to be the subject of judicial review. Any deviation from this language as would occur by the reformatting of this subsection in the First Notice Version would create ambiguity and potential confusion. Inconsistent with the federal PSD rules, the First Notice Version changed the first paragraph from an introductory paragraph to a subsection (a). Such an approach is inconsistent with the federal PSD rules as the remaining subsections of 204.1400 were meant to be subordinate to the introductory paragraph. As a consequence, the First Notice Version renumbers the remainder of the subsections in Section 204.1400 and, in certain instances, changes the references to the various subsections or neglects to appropriately change the references throughout Section

204.1400. Essentially each cross-reference in the First Notice Version is incorrect. Rather than attempting to correct each reference in Section 204.1400 in the First Notice Version, the Agency recommends that the formatting of Section 204.1400 be made consistent with the federal PSD rules. PC 8 at 51-52 (footnote omitted).

The Board plans to address this issue in its second-notice opinion.

10) 204.1400(g)(2): “subsections (b) through (e)”: Are these still the right subsections to cite?

Please see our response to your query on No. 9 above.

Part 211:

1) 211.7150(b), last sentence: Could you please change “Where” to “When” and “such compounds” to “those compounds”?

Please see our response to your query on Part 203 above.

2) 211.7150(d): Could you please change “such determination” to “the determination”?

Please see our response to your query on Part 203 above.

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From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Friday, April 10, 2020 3:31 PM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] Parts 203/204/211

Part 203: Vicki says that changing “shall” to “must” doesn’t really work in this rulemaking (e.g., 203.207(a) and (b)) and recommends “will” as an alternative.

Part 204:

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- 2) 204.220: Would it be possible to add a definition of "Federal Class I area"?
- 3) 204.230(a): Delete "(incorporated by reference in Section 204.100)" and other similar statements; these cross-references to Sec. 204.100 aren't necessary.
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- 5) 204.510(c): "for any of the purposes" --> What purposes?
- 6) 204.510(c)(20): Chemical process plant or chemical processing plant? Same question re: 204.860(a)(2)(T).
- 7) 204.500(a) and 204.520(a)(1): Why are these different dates?
- 8) 204.930(a) and 204.1910: Please provide a specific date instead of "the initial effective date of this Part".
- 9) 204.1400(a): "subsection (f)(2)": Should this be "subsection (g)(2)"?
- 10) 204.1400(g)(2): "subsections (b) through (e)": Are these still the right subsections to cite?

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1. 211.7150(b), last sentence: Could you please change "Where" to "When" and "such compounds" to "those compounds"?
2. 211.7150(d): Could you please change "such determination" to "the determination"?

Thanks so much.

Sincerely,

Jonathan Eastvold

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