

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R22-17
AMENDMENTS TO 35 ILL. ADM. CODE)	
PART 203: MAJOR STATIONARY SOURCES)	
CONSTRUCTION AND MODIFICATION,)	
35 ILL. ADM. CODE PART 204: PREVENTION)	
OF SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

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 **ILLINOIS EPA'S INITIAL COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS** 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: January 18, 2022

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:)	
)	R22-17
AMENDMENTS TO 35 ILL. ADM. CODE)	
PART 203: MAJOR STATIONARY SOURCES)	
CONSTRUCTION AND MODIFICATION,)	
35 ILL. ADM. CODE PART 204: PREVENTION))	
OF SIGNIFICANT DETERIORATION, AND)	
PART 232: TOXIC AIR CONTAMINANTS)	

ILLINOIS EPA'S INITIAL COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS

The Illinois Environmental Protection Agency (Illinois EPA), by its attorney, offers the following initial comments and recommendations for additional revisions to Title 35 of the Administrative Code. Additional comments on Illinois Environmental Regulatory Group's (IERG) proposal will be offered by the Illinois EPA after the first public hearing. At this time, the Illinois EPA requests that the Board consider the Illinois EPA's comment addressing IERG's rationale for filing this rulemaking. Further, the Illinois EPA recommends that the Board consider these additional amendments at part of this rulemaking proposal and offers as follows:

On August 16, 2021, IERG filed a proposal with the Board to revise Part 203, 35 Ill. Adm. Code Part 203, Major Stationary Source Construction and Modification that is applicable to the proposed construction of a major stationary source or major modification at an existing stationary source of air pollutants generally regulated under the Clean Air Act (CAA), except to the extent that Prevention of Significant Deterioration (PSD) is or could be applicable for such proposed project. In this rulemaking proposal, IERG also proposed amendments to 35 Ill. Adm. Code 204, Prevention of Significant Deterioration and 35 Ill. Adm. Code 232, Toxic Air Contaminants.

IERG'S Rationale/Support for Filing Proposed Amendments to Part 203

In IERG's rulemaking proposal, IERG repeatedly asserted it was "proposing to amend the Board's NA NSR rules at 35 Ill. Adm. Code 203 to make them *consistent* and up-to-date with the underlying federal regulations." (*emphasis added*). See, IERG's Motion to Waive Requirements to Submit 200 Signatures; *see also*, IERG's Statement of Reasons (IERG's SOR), pages 2, 3, 15, 41.¹ IERG tied its proposal to legislation mandating that the Board adopt regulations establishing a PSD and NA NSR program meeting the respective requirements of Sections 165 and 173 of the federal CAA. See, Public Act 99-0463 amending 415 ILCS 5/9.1(c). IERG states that the recent revisions to Section 9.1(c) of the Act must be read in conjunction with "the stated purpose and intent of Section 9.1(a) of the Act that the Board avoid the existence of duplicative, overlapping or conflicting State and federal regulatory systems." IERG's SOR at pages 3, 14, 15. IERG further argues that "[s]ubsections 9.1(a) and (c) of the Act direct the Board to adopt regulations establishing permit programs for PSD and NA NSR permit *consistent with* the respective requirements of Sections 165 and 173 of the CAA . . ." IERG's SOR at page 14 (*emphasis added*). According to IERG, its proposal "intends to make the Board's NA NSR regulations in Part 203 *consistent* and up-to-date with the CAA and federal NA NSR regulations." IERG's SOR at page 15. (*emphasis added*). Similar statements were made by IERG in its Prefiled Testimony.

The Illinois EPA believes that IERG's proposed revisions to Part 203 would be acceptable, with some notable exceptions that will be addressed by the Illinois EPA in comments to be filed at a later date. However, the Illinois EPA disagrees with any suggestion by IERG that

¹ IERG recognized that Section 9.1(c) of the Act provides that "the Board adopt regulations establishing in Illinois a NA NSR permit program that *meets* the requirements of Section 173 of the CAA." IERG's SOR at page 40 (*emphasis added*); *see also*, IERG's SOR at page 2.

existing Part 203 is inconsistent with or conflicts with the CAA. Such statements suggest that the Illinois EPA has issued construction permits for projects in nonattainment areas in Illinois that potentially conflict with the CAA. IERG's statements further suggest that United States Environmental Protection Agency's (USEPA) review and oversight of existing Part 203 has been inadequate. Neither are true.

Prior to this legislative mandate, the Board possessed the authority to adopt regulations meeting the requirements of Section 165 of the CAA but it had not been required by state law. In lieu of the Board adopting regulations establishing a PSD program for Illinois, the Illinois EPA fulfilled this obligation by implementing the PSD program on behalf of USEPA pursuant to a delegation agreement with USEPA. Public Act 99-0463 not only mandated state regulations establishing a PSD program in Illinois but other requirements pertinent to a state PSD program as well. This legislation provided that the issuance or denial of any PSD permit or any conditions imposed in such permit would be reviewable by the Board; mandated that the Illinois EPA to adopt requirements, as necessary, to implement public participation procedures that must accompany the processing of applications for PSD permits; provided that any complete application submitted to the Illinois EPA for a PSD permit shall be granted or denied by the Illinois EPA not later than one year after the filing of such completed application; and established a review process for PSD permits. This legislation focused on the establishment of a state PSD program and, in furtherance of such objective, the language of Section 9.1(c) of the Act was revised to mandate regulations for a PSD program in the state. Section 9.1(c) was revised to mandate the adoption of regulations by the Board for both a PSD program and NA NSR program rather than to merely authorize the adoption of such regulations by the Board for both programs. Given the Board had earlier adopted NA NSR regulations at 35 Ill. Adm. Code

Part 203 utilizing its discretionary authority, there was little practical effect to this legislative revision of Section 9.1(c) for purposes of NA NSR.

Despite the clear impetus behind PA 99-0463, the establishment of a state PSD program, IERG relies upon PA 99-0463 to support its proposed “amendments to Illinois’ NA NSR program to make the program consistent with the CAA and implementing federal regulations.” IERG’s SOR at page 3. Further, that “changes to Section 9.1(c) per PA 99-0463 must be read consistently with the stated purpose and intent of Section 9.1(a) of the Act that the Board avoid the existence of duplicative, overlapping or conflicting State and federal regulatory systems” IERG’s SOR at pages 3, 14, 15, 40. By such statements, IERG suggests that Section 203, as it exists today, is duplicative, overlapping or conflicting with the federal regulatory system. However, existing Section 203 is none of these things.

While Illinois’ current regulations are not up-to-date with all the provisions of 40 CFR 51.165, existing Part 203 in conjunction with the requirements of 40 CFR Part 51, Appendix S, satisfies the nonattainment new source review requirements of the CAA and 40 CFR 51.165.^{2,3} In many instances, existing Part 203 is more stringent than the applicable requirements. For

² USEPA has approved the following revisions to Illinois’ NA NSR program:

- 45 FR 11470 (February 21, 1980)
- 46 FR 44172 (September 3, 1981)
- 50 FR 38803 (September 25, 1985)
- 51 FR 10837 (March 31, 1986)
- 57 FR 59928 (December 17, 1992)
- 60 FR 49778 (September 27, 1995)
- 68 FR 25504 (May 13, 2003)
- 84 FR 2063 (February 6, 2019)

³ To the extent that USEPA has or would designate new nonattainment areas, 40 CFR 52.24(k) provides that the requirements of 40 CFR Part 51, Appendix S apply to permits to construct and operate in newly designated nonattainment areas during the SIP development period, i.e., the time between the effective date of the designations and the date EPA approves the nonattainment NSR program meeting Part D is approved.

instance, any revision to Part 203 to memorialize 2002 NSR Reform⁴ or 2020 Project Emissions Accounting,⁵ would potentially decrease the number of construction projects at existing major

⁴In 2002, USEPA made changes to 40 CFR 51.165 that affected how emissions increases from existing emission units could be determined for projects at existing major sources when evaluating whether major NSR requirements are triggered.

1. New Approach for Historic Pre-Project Emissions of Existing Emission Units

Before the changes to 40 CFR 51.165 in 2002, the approach to pre-project emissions was encompassed in the definition of “actual emissions.” The change in emissions from existing units from a project was generally determined by comparing the new level of annual emissions (12-months) with the average emissions in the two-years immediately prior to the project, even if emissions from this period were lower than other historic levels. Sources were allowed to present a demonstration to the permitting authority that another period of time is “more representative of normal operations” and the permitting authority had the discretion to approve the use of this alternative period of time.

In 2002, USEPA created a new definition, “baseline actual emissions” for use in determining emission increases at existing emission units. For existing emission units, sources could use annual emissions as determined from emissions in any consecutive 24-months during a 5 or 10-year period prior to the change as the pre-project emissions. For projects involving electric utility steam generating units, sources could use annual emissions from 24 consecutive months during the 5-year period prior to the change; for other projects, sources could use annual emissions from 24 consecutive months in the 10 year prior to the change.

2. New Approach for Post-Project Emissions of Existing Emission Units

Before the changes to 40 CFR 51.165 in 2002, when evaluating whether a proposed project would be a major modification, post-project emissions of emission units, both new and existing, were generally required to be their permitted or potential emissions (or if greater, what was actually emitted). With the changes to 40 CFR 51.165, post-project emissions of existing units, could be based on what was actually emitted in any 12-month period in the 5 or 10-years following the project. For projects involving increases in an emissions unit’s design capacity or its potential to emit and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major source, applicability of Na NSR could be triggered by what was actually emitted in any 12 months in the 10 years following the project. For other projects, applicability could be triggered by emission in any 12 months in the 5 years following the project.

When evaluating proposed projects, prior to construction, sources were required to determine the maximum emissions during any 12-month period, as applicable, during the 5 or 10 years after the project was completed considering “all relevant information.” In addition, 40 CFR 51.165(a)(2)(ii)(B) provides that “Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.”

sources that would meet the definition of a major modification and thereby trigger the applicable requirements of NaNSR. While existing Part 203 may be more stringent than 40 CFR 51.165, in many instances, this does not mean that the existing rules conflict with the corresponding federal requirements. Rather, implementation of more stringent rules has been recognized by USEPA as satisfying the requirements of the CAA and 40 CFR 51.165.

This approach to post-project emissions of existing units was encompassed in the definition of "projected actual emissions," 40 CFR 51.165(a)(1)(xxviii). This approach to the applicability of NaNSR was labeled the "actual-to-projected-actual applicability test," as distinguished from the historical "actual-to-potential test," which continues to apply to projects that only involve new emission units.

⁵ Determining whether a proposed project at an existing major stationary source is a major modification can be a multi-step process. As a preliminary matter, the project must include a new emissions unit and/or a physical change or a change in the method of operation of an existing emission unit so as to constitute a modification. 40 CFR 51.165(a)(1)(v)(A). Then, a major modification is generally based on whether the proposed project will cause a significant emissions increase for a regulated pollutant and also a significant net emissions increase for the same pollutant. 40 CFR 51.165(a)(1)(v)(A)(1) and (2). If the proposed project does not result in a significant emissions increase, an evaluation of the significant net emissions increase is not needed.

If the increase in emissions for a particular pollutant equals or exceeds the significant emission rate set for that pollutant, then the applicability analysis for a project may be extended to include creditable changes in actual emissions resulting from other contemporaneous projects to consider the net change in emissions of the source. 40 CFR 51.165(a)(1)(vi). This consideration of contemporaneous changes in emissions is commonly referred to as a "netting" exercise.

The changes to 40 CFR 51.165 in 2002 provided that that the change in emissions for a project that only involved existing emission units could be determined as the sum of the differences between projected actual emissions and baseline actual emissions. However, for projects that involved both existing units and new units, the change in emissions must be determined as the sum of the increases in emissions from existing emissions units and the potential emissions from new units installed as part of the project. Subsequently, USEPA made further changes to its approach to applicability of NA NSR that are commonly referred to as Project Emissions Accounting. First as policy and then by rulemaking in 2020, Project Emissions Accounting provides that the "differences in emissions" from the various emission units involved in a project should always be summed. In other words, even if a project involves installation of new emission unit(s) increases and decreases in emissions from both existing units due to a proposed project may be considered in Step 1 when determining whether the proposed project would result in a significant emissions increase. Decreases in emissions at existing units that would be a result of a project do not have to be addressed with a broader netting analysis for other contemporaneous changes in emissions.

With respect to existing Part 203, the Illinois EPA demonstrated to USEPA that it already complied with Sections 172(c)(5) and 182(a)(2) of the CAA, 42 USC 7502(c)(5), 7511a(a)(2)(C), which require states that have areas that have been designated nonattainment for the ozone National Ambient Air Quality Standards (NAAQS) to submit plans containing certain required elements, including permit programs for the construction and operation of new or modified stationary sources in the nonattainment area. See, 84 Fed. Reg. 2063 (February 6, 2019). In USEPA's review of this submittal, USEPA found as follows:

Illinois' SIP-approved NNSR program at 35 IAC 203 contains the minimum required NNSR elements as specified in 40 CFR 51.165 for Illinois' ozone nonattainment areas. We are approving Illinois' certification that 35 IAC 203 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4) and 182(b)(5) under the 2008 ozone standard for the Illinois portion of the Chicago Ozone Nonattainment Area. While some of Illinois' regulations are worded or organized differently than the Federal counterparts, EPA finds that these differences do not affect the relative stringency of such provisions.

84 Fed. Reg. 2063, 2065 (February 6, 2019). At this time, the Illinois EPA requests that the Board consider the Illinois EPA's comment addressing IERG's rationale for filing this rulemaking and decline to characterize existing Part 203 as inconsistent with or conflicting with the CAA or 40 CFR 51.165 in any subsequent statements by the Board in this rulemaking.

Additional Proposed Amendments by the Illinois EPA to this Rulemaking Proposal

On April 28, 2021, the USEPA published its proposed approval of revisions to the Illinois State Implementation Plan (SIP) that were previously submitted by the Illinois EPA on September 22, 2020. These revisions requested approval to implement new preconstruction permitting regulations at 35 Ill. Adm. Code 204 for certain new or modified sources of air pollution in attainment and unclassifiable areas under the PSD program. 86 Fed. Reg. 22372. (Exhibit A). Shortly after its initial submittal to USEPA, the Illinois EPA became aware of a handful of inadvertent omissions or typographical errors in Part 204. In a follow-up letter to

USEPA dated November 5, 2020, the Illinois EPA informed the USEPA that it intended to implement these provisions consistent with the federal rule language at 40 CFR part 51 until a rulemaking could take place to correct these omissions or typographical errors. In the USEPA's proposed approval, USEPA grouped these omissions or typographical errors stating as follows:

- (1) **Section 204.490(c)(3)** - "42 U.S.C. 7435" means "42 U.S.C. 7425";
- (2) **Section 204.620(c)(4)** - The reference to 35 Ill. Adm. Code 204.620(c)(2) and (c)(3) refers to 35 Ill. Adm. Code 204.620(c)(1) and (2), consistent with 40 CFR 51.166(y)(2)(iv);
- (3) **Section 204.930(c)(4)** - The phrase "this Section" means "this Part," consistent with 40 CFR 51.166(g)(3)(iv);
- (4) **Section 204.1500(b)** - The phrase "with the consent of the Governor" means "with the consent of the Governor(s) of other affected State(s)," consistent with 40 CFR 51.166(s)(2); and
- (5) **Section 204.420(a)(2)(A)** - "40 CFR 52" means "40 CFR 51 and 52" consistent with 40 CFR 51.100(ii)(2)(i).

86 FR 22372, 22380 (April 28, 2021). While a rulemaking would ultimately be necessary to correct these omissions or typographical errors, the USEPA proposed to "approve each of the provisions that IEPA has identified as containing inadvertent omissions or typographical errors because IEPA will implement those provisions consistent with the corresponding federal language." *Id.* While IERG has identified two of the necessary revisions to Part 204 as identified by USEPA in its proposed approval of Part 204, IERG has not proposed to revise the remainder of these omissions or typographical errors in its regulatory proposal with the Board. The Illinois EPA will address each of these omissions or typographical errors one at a time.

1. **Section 204.490(c)(3)**. IERG's regulatory proposal would correct the typographical error in 35 Ill. Adm. Code 204.490(c)(3) by making reference to 42 U.S.C. 7425 rather than 42 U.S.C. 7435.
2. **Section 204.620**. Subsection 204.620(c)(4) should refer to Subsections 204.620(c)(1) and (2) – not Subsections 204.620(c)(2) and (c)(3) – in order to be consistent with 40 C.F.R.

51.166(y)(2)(iv). Note that existing subsections (c)(1) and (c)(2) correctly refer to subsection (c)(3).

3. **Section 204.930(c)(4)**. IERG's regulatory proposal would replace the phrase "this Section" with "this Part" to be consistent with 40 CFR 51.166(g)(3)(iv),
4. **Section 204.1500**. Subsection 204.1500(b) states, in part, "The Agency shall, *with the consent of the Governor*, determine that the source or modification may employ a system of innovative control technology if ..." [Emphasis added]. To be consistent with 40 C.F.R. 51.166(s)(2), the phrase "with the consent of the Governor" should be replaced with the phrase "with consent of the Governor(s) of other affected State(s)."
5. **Section 204.420**. Subsection 204.420(a)(2)(A) refers to 40 C.F.R. Part 52 but omits 40 C.F.R. Part 51 as required by 40 C.F.R. 51.100(ii)(2)(i). The definition of "Good Engineering Practice" in Section 204.420(a)(2)(A) is to meant to include those stacks in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals required under 40 CFR Part 51 and Part 52.

In its proposed approval of Part 204, the USEPA also noted that 35 Ill. Adm. Code 204.330 did not include the following phrase as provided by 40 C.F.R. 51.166(b)(22):
"Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information." USEPA further stated that:

EPA proposes to find that this omission does not impact the relative stringency of IEPA's regulation with respect to 40 CFR 51.166. On November 5, 2020, IEPA confirmed EPA's interpretation that 35 Ill. Adm. Code 204.330 does not foreclose IEPA from requesting additional information from the applicant should it determine, after initially deeming the application "complete," that additional information was necessary to process the application.

86 Fed. Reg. 22380 (April 28, 2021). This interpretation was based on the definition of "Complete" at 35 Ill. Adm. Code 204.330 that had been defined to mean "in reference to an application for a permit, that the application contains all of the information necessary for processing the application." In the event an application was found to be "complete," but the Illinois EPA were to later find that additional information was necessary to process the application, the Illinois EPA would not be foreclosed from requesting or accepting additional

information from the applicant. This would be the case because the application would then not meet the definition of “complete.” In light of this interpretation, the USEPA did not request that the Illinois EPA include this second sentence in the definition of “Complete” at 40 CFR 51.166(b)(22) in 35 Ill. Adm. Code 204.330. However, in order to avoid any confusion on the matter, the Illinois EPA recommends that the second sentence of 40 CFR 51.166(b)(22) be inserted in 35 Ill. Adm. Code 204.330.

While not noted in the USEPA’s proposed PSD SIP approval, there is an extra parenthesis after “Standard Industrial Classification Manual” in Subsection 204.290(a).

In addition to the above revisions, the Illinois EPA recently observed that the following provisions in Title 35 refer to permits issued pursuant to 35 Ill. Adm. Code Parts 201 or 203 but fail to make appropriate reference to permits issued pursuant to 35 Ill. Adm. Code Part 204. These revisions to the following regulations would update these provisions so that they would continue to address either of these programs, Parts 201 or 203, as appropriate, and Part 204.

Amend Section 201.169 by amending subsection (a)(3) to read as follows:

Section 201.169 Special Provisions for Certain Operating Permits

- a) Applicability:
- 1) Operating permits issued pursuant to Section 39 of the Act for sources of air pollution that are not subject to the requirements of Section 39.5 of the Act and are not required to have a federally enforceable State operating permit are subject to the provisions of this Section.
 - 2) This Section only applies to sources that meet the requirements of subsection (a)(1) above and whose permit has not expired pursuant to a renewal request under subsection (b)(2) of this Section. If this Section no longer applies to a source and its permit has not expired pursuant to a renewal request under subsection (b)(2) of this Section, the terms and conditions of the permit shall remain in effect until the permit is superseded by a new or revised permit or is withdrawn.
 - 3) Nothing in this Subpart shall be construed as exempting persons with permits issued pursuant to this Section from the requirements of Section

201.142 of this Part requiring a construction permit or from review under Part 203 or Part 204 procedures for new and modified emission units.

Amend Section 201.175 by amending subsections (g)(2)(A), (g)(2)(A)(ii), and (g)(2)(B)(iii) to read as follows:

Section 201.175 Registration of Smaller Sources (ROSS)

- g) Changes requiring a new or modified construction or operating permit, or compliance with conditions in an existing permit issued pursuant to Section 201.169:

- 2) If the source no longer meets the criteria in subsection (a), as determined by subsection (b)(2), as applicable:
- A) The owner or operator of a source that did not have a permit under Section 201.169 prior to registration must apply and comply with the applicable requirements of the Act and 35 Ill. Adm. Code Parts 201, ~~and 203,~~ and 204 as follows:
- i) If the source is eligible for a permit under Section 201.169, the owner or operator must apply for a permit within 90 days of the source's annual fee payment date.
 - ii) If the source is not eligible under Section 201.169, the owner or operator must apply for a permit as provided for under the Act and 35 Ill. Adm. Code Parts 201, ~~and 203,~~ and 204.
 - iii) If the source was not constructed or operated at the time of initial registration and has actual emissions in excess of the eligibility levels during the first or second year of operations as determined in subsection (b)(2), the owner or operator must apply for an operating permit and pay construction permit application fees.
- B) The owner or operator of a source that had a permit under Section 201.169 prior to registration:
- i) If the source is in compliance with the terms and conditions of the permit, the owner or operator shall notify the Agency

no later than the source's annual fee payment date of the calendar year following the change in status from a ROSS eligible source to a permitted source.

- ii) If the source is not in compliance with the terms and conditions of the permit, but is still eligible for a permit pursuant to Section 201.169, the owner or operator must apply for a new or revised permit within 90 days of the source's annual fee payment date.
- iii) If the source is not eligible for a permit pursuant to Section 201.169, the owner or operator must comply with the applicable permitting requirements under the Act and 35 Ill. Adm. Code Parts 201,~~and~~ 203, ~~and~~ 204.

Amend Section 202.306 by amending subsection (d) to read as follows:

Section 202.306 Standards for Issuance

The Agency shall issue a permit containing an ACS if, and only if, the permit applicant demonstrates that:

- d) The ACS complies with any applicable requirements contained in 35 Ill. Adm. Code 203, 204, 230 or 231.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: January 18, 2022

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

**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

EXHIBIT

A

comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, North Atlantic—
Appalachian Region.

[FR Doc. 2021-08736 Filed 4-27-21; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0501, EPA-R05-OAR-2020-0502, EPA-R05-OAR-2020-0503; FRL-10022-89-Region 5]

Air Plan Approval; Illinois; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Illinois State Implementation Plan (SIP) that were submitted by the Illinois Environmental Protection Agency (IEPA) on September 22, 2020. These revisions implement new preconstruction permitting regulations for certain new or modified sources of air pollution in attainment and unclassifiable areas under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act (CAA). Currently, the PSD program in Illinois is operated under a Federal Implementation Plan (FIP).

DATES: Comments must be received on or before May 28, 2021.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA-R05-OAR-2020-0501, EPA-R05-OAR-2020-0502, or EPA-R05-OAR-2020-0503 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (312) 353-0987, ogulei.david@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background for Proposed Action
- II. Analysis of IEPA's Submittal
 - A. Procedural Requirements
 - B. 35 Ill. Adm. Code Part 204
 - 1. Equipment Replacement Provision (ERP)
 - 2. Clean Units and Pollution Control Projects (CU/PCP)
 - 3. Greenhouse Gas (GHG) Emissions
 - 4. Fugitive Emissions
 - 5. Definitions of "Best available control technology," "Allowable Emissions," "Federally Enforceable" and "Control Technology Review"
 - 6. Significant Monitoring Concentrations (SMC)
 - 7. Major Source Threshold for Municipal Incinerators
 - 8. Major Source Threshold for Ozone Depleting Substances (ODS)
 - 9. Baseline Actual Emissions
 - 10. Net Emissions Increase When an Existing Emissions Unit Is Being Replaced
 - 11. Potential To Emit
 - 12. Hazardous Air Pollutants (HAPs)
 - 13. Nonroad Engines
 - 14. Baseline Concentration
 - 15. Major Emissions Unit
 - 16. Recent EPA Rulemaking Activity
 - 17. Other Substantive Differences Compared to 40 CFR 51.166

- C. Amendments to 35 Ill. Adm. Code Part 252 (Public Participation)
- D. Amendments to 35 Ill. Adm. Code Part 211 (Definitions and General Provisions)
- E. Amendments to 35 Ill. Adm. Code Part 203 (Major Stationary Source Construction and Modification)
- F. Personnel, Funding, and Authority
- III. What action is EPA taking?
 - A. Scope of Proposed Action
 - B. Rules Proposed for Approval and Incorporation by Reference Into the SIP
 - C. Transfer of Authority for Existing EPA-Issued PSD Permits
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background for Proposed Action

Section 110(a)(2)(C) of the CAA requires that each SIP include a program to provide for the regulation of the construction and modification of stationary sources within the areas covered by the SIP. We refer to these as the New Source Review (NSR) provisions. They consist primarily of: (1) A permit program as required by part C of subsection I of the CAA, PSD, as necessary to assure that national ambient air quality standards (NAAQS) are achieved; (2) a permit program as required by part D of subsection I of the CAA, Plan Requirements for Nonattainment Areas, as necessary to assure that NAAQS are attained and maintained in "nonattainment areas" (known as "nonattainment NSR"); and (3) a permit program for minor sources and minor modifications of major sources as required by section 110(a)(2)(C) of the CAA. Specific plan requirements for an approvable PSD SIP are provided in sections 160-169 of the CAA and the implementing regulations at 40 CFR 51.166. The requirements applicable to SIP requirements for nonattainment areas are provided in sections 171-193 of the CAA and the implementing regulations at 40 CFR 51.165 and part 51, appendix S. The Federal PSD requirements at 40 CFR 52.21 apply through FIPs in states without a SIP-approved PSD program.

The PSD program applies to new major sources or major modifications at existing stationary sources for pollutants where the area the source is located has been designated as "attainment" or "unclassifiable" with respect to the NAAQS under section 107(d) of the CAA. Under section 160 of the CAA, the purposes of the PSD program are to: (1) Protect public health and welfare; (2) preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value; (3) ensure that economic growth will

occur in a manner consistent with the preservation of existing clean air resources; (4) assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) assure that any decision to permit increased air pollution in any area to which the PSD program applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.

Before a PSD permit can be issued, the stationary source must demonstrate that the new major source or major modification will be equipped with the Best Available Control Technology (BACT) for all pollutants regulated under the PSD program that are emitted in significant amounts, and that increased emissions from the project will not result in a violation of the NAAQS or applicable ambient air quality increments. See CAA section 165.

Because Illinois does not currently have a SIP-approved PSD program, PSD permits in Illinois have been issued under a FIP incorporating 40 CFR 52.21. Prior to April 7, 1980, EPA was solely responsible for, and operated, the PSD permitting program in Illinois. However, since April 7, 1980, IEPA has issued PSD permits under a delegation agreement with EPA that authorizes IEPA to implement the FIP. See 46 FR 9580 (January 29, 1981) (1980 Delegation Agreement). Under a November 16, 1981 amendment to the 1980 Delegation Agreement,¹ IEPA also has the authority to amend or revise any PSD permit issued by EPA under the FIP. Thus, all PSD permits issued in Illinois are currently considered Federal permits; and PSD permits issued after April 7, 1980 are enforceable by Illinois and EPA since they were issued under both Illinois and EPA authority.

On September 22, 2020, IEPA submitted to EPA a request to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois. Specifically, IEPA requested that EPA incorporate into the SIP the following: (1) New regulations at Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Part 204, Prevention of Significant Deterioration; (2) amendments to 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program; (3) amendments to 35 Ill. Adm. Code Part

203, Major Stationary Source Construction and Modification; and (4) amendments to 35 Ill. Adm. Code Part 211, Definitions and General Provisions. With the exceptions set forth below, IEPA's PSD regulations at 35 Ill. Adm. Code Part 204 and 35 Ill. Adm. Code Part 252 largely mirror the Federal regulations at 40 CFR 52.21 and 40 CFR part 124, respectively. The amendments to 35 Ill. Adm. Code Parts 203 and 211 would update these rules to refer to permitting pursuant to 35 Ill. Adm. Code Part 204, as well as to 40 CFR 52.21. These amendments to 35 Ill. Adm. Code Parts 203 and 211 involve regulations that EPA has previously approved into the Illinois SIP for purposes of other provisions of the CAA (excluding the PSD program). See 40 CFR 52.720(c).

IEPA's September 2020 submittal also addressed Illinois' Infrastructure SIP requirements under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) of the CAA for all of the following NAAQS: 2008 lead, 2010 nitrogen dioxide (NO₂), 1997 ozone, 2008 ozone, 2015 ozone, 1997 particulate matter with aerodynamic diameter less than 2.5 microns (PM_{2.5}), 2006 PM_{2.5}, 2012 PM_{2.5}, and 2010 sulfur dioxide (SO₂). This action does not address the infrastructure SIP portion of IEPA's submittal. EPA plans to address those requirements in a separate action.

On November 5, 2020, IEPA submitted additional information clarifying how it intends to implement specific provisions identified by EPA, and how it plans to correct any typographical errors or omissions that EPA identified in its October 22, 2020 review of IEPA's September 2020 submittal.²

Section 110(k)(3) of the CAA states that the Administrator "shall approve" a submittal from a state if it "meets all applicable requirements" of the CAA. EPA has reviewed 35 Ill. Adm. Code Part 204 and relevant amendments to 35 Ill. Adm. Code Parts 203, 211, and 252, and is proposing to determine that these regulations and amendments meet the requirements of sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. In this action, EPA is proposing to approve these regulations and amendments into the Illinois SIP and to codify this approval in the Federal regulations at 40 CFR 52.720. Upon EPA's approval, PSD permits issued by IEPA will be issued under state authority and will no longer be considered Federal actions. EPA is also

proposing to transfer to IEPA responsibility for administering existing PSD permits that EPA issued to sources in Illinois pursuant to the FIP, and for processing any PSD permit actions related to such permits.

In approving state NSR rules into SIPs, EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. If EPA's proposed approval of IEPA's PSD rules is finalized, EPA would retain appropriate oversight to ensure that permits issued by IEPA are consistent with the requirements of the CAA, Federal regulations, and the SIP.

EPA's authority to oversee NSR permit program implementation is set forth in sections 113 and 167 of the CAA. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not "conform to the requirements of" the PSD program. Section 113(a)(1) of the CAA provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan. Likewise, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a state "is not acting in compliance with" any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them.

Upon final approval of the submitted PSD program, IEPA would be obligated under 40 CFR 51.166(a)(4) to review the continued adequacy of its approved SIP "on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated."

II. Analysis of IEPA's Submittal

A. Procedural Requirements

Under 40 CFR 51.102, EPA has established procedural requirements for states seeking to submit regulations as SIP provisions. These include provisions for public notice, the opportunity to submit written comments and the opportunity to request a public hearing. Illinois EPA's

¹ A copy of this amendment is available in the docket for this action.

² A copy of IEPA's submittal is available in the docket for this action.

efforts to fulfill these requirements are documented below.

IEPA filed a regulatory proposal with the Illinois Pollution Control Board (IPCB) for a new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 on July 2, 2018. The IPCB held public hearings on these proposed regulations on November 27, 2018 and February 26, 2019.

IEPA published a Notice of Proposed Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 21, 2019. See 43 Ill. Reg. 7028. IEPA issued a Notice of Hearing on April 10, 2020, in which it committed to hold a public hearing on May 18, 2020, if a timely request for a public hearing was requested prior to the end of the comment period. IEPA did not receive such a request for a public hearing prior to the end of the public comment period, nor were public comments made during the public comment period. IEPA published a Notice of Adopted Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 26, 2020, with an effective date of June 10, 2020. See 44 Ill. Reg. 10873.

On March 20, 2020, the IPCB published a Notice of Proposed Amendments, including new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211, in the *Illinois Register*. See 44 Ill. Reg. 4109. On August 27, 2020, the IPCB adopted the final 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 and published them in the *Illinois Register* on September 18, 2020, with an effective date of September 4, 2020. While 35 Ill. Adm. Code Part 204 and the amendments to 35 Ill. Adm. Code Parts 203 and 211 have an effective date of September 4, 2020, those regulations would not take effect in practice until EPA has approved them into the Illinois SIP. This is because Illinois law requires that a state PSD permit may only be issued once the state PSD permit program has been approved as part of the Illinois SIP. See 415 ILCS 5/3.363 (definition of "PSD permit").

The Federal regulations at 40 CFR 51.103 and 40 CFR part 51, appendix V, set forth the minimum criteria that any SIP submission must meet before EPA is required to act on such submission. These criteria include, among other things: (1) Evidence that the state has adopted the proposed regulations in the state code or body of regulations, including the date of adoption or final issuance as well as the effective date of the regulations, if different from the adoption/issuance date, and (2) evidence that the state followed all of the procedural requirements of the

state's laws and constitution in conducting and completing the adoption/issuance of the regulations. Additionally, to be considered complete, each SIP submission must contain certain administrative materials and technical support documentation.

EPA proposes to find that IEPA has satisfied the procedural requirements for a SIP submittal as set forth in 40 CFR 51.102, 51.103 and 40 CFR part 51, appendix V.

B. 35 Ill. Adm. Code Part 204

IEPA's PSD regulation at 35 Ill. Adm. Code Part 204 is intended to mirror the requirements of 40 CFR 52.21, which currently applies in Illinois via a FIP. However, to be approvable into the SIP, IEPA's regulation must meet the requirements of 40 CFR 51.166. Thus, EPA has evaluated IEPA's PSD regulation against the requirements of 40 CFR 51.166.

Under 40 CFR 51.166(a)(7)(iv), each SIP shall use the specific provisions of 40 CFR 51.166(a)(7)(iv)(a) through (f). EPA will approve deviations from these provisions only if the State specifically demonstrates that the submitted provisions are more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166(a)(7)(iv)(a) through (f). Additionally, 40 CFR 51.166(b) requires that all SIPs shall use the definitions in 40 CFR 51.166(b) for the purposes of 40 CFR 51.166 and that deviations from the wording of those definitions will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions in 40 CFR 51.166(b).

EPA proposes to find that IEPA's PSD regulation is more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166. While IEPA has submitted provisions that differ in some respects from the provisions in 40 CFR 51.166, we are proposing to find that those differences do not render IEPA's regulation less stringent than the corresponding Federal language at 40 CFR 51.166. We evaluate the substantive differences between 35 Ill. Adm. Code Part 204 and 40 CFR 51.166 in this section.

1. Equipment Replacement Provision (ERP)

In 2003, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed indefinitely the effective date of the NSR ERP, which amended the Routine Maintenance, Repair, and Replacement Exclusion from the NSR

requirements in a 2003 final rule. *State of New York v. EPA*, No. 03–1380 (Dec. 24, 2003). The stay of the relevant paragraphs was subsequently noted in the affected regulations, including 40 CFR 51.165 (permit requirements for nonattainment areas under subpart D), 51.166 (PSD plan requirements for attainment areas under subpart C), and 52.21 (PSD Federal rules). For example, in 40 CFR 51.166(b)(2)(iii)(a), EPA added a note explaining that, as of December 24, 2003, the second sentence of 40 CFR 51.166(b)(2)(iii)(a) is stayed indefinitely by court order and that the stayed provisions would become effective immediately if the court terminates the stay.

In a 2006 decision, the court vacated the ERP, concluding that the provision was "contrary to the plain language of section 111(a)(4) of the [CAA]." *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006) (*New York II*). Despite the vacatur, the affected provisions and the notes pertaining to the original stay of the ERP have remained in 40 CFR 51.165, 51.166, and 52.21.

On December 20, 2019, EPA published a proposed rule to revise 40 CFR 51.165, 51.166, and 52.21 by making the following types of changes: Correcting typographical and grammatical errors, removing court-vacated rule language, removing or updating outdated or incorrect cross references, conforming certain provisions to changes contained in the 1990 CAA Amendments, and removing certain outdated exemptions. See 84 FR 70092 (2019 Proposed Error Corrections Rule). In this rule, EPA proposed to remove the vacated ERP provisions, consistent with *New York II*, as well as the notes describing the indefinite stay of the various affected provisions. However, EPA noted that there were two components of the ERP rule that are used in conjunction with the definition of "replacement unit," which were not part of the *New York II* decision; and that the definition of "replacement unit" cross-referenced or referred to those terms within the ERP. Consequently, in the 2019 Proposed Error Correction Rule, EPA proposed to "add back" the criteria to determine "basic design parameters" and portions of the definition of "process unit" not affected by the vacatur into the definition of "replacement unit" in each of the three affected regulations, including 40 CFR 51.166.

EPA has not yet completed the "Error Corrections" rulemaking described above. The Administrator signed a final version of this rule on January 4, 2021, but this rule was not published in the *Federal Register* (January 4, 2021

unpublished final error corrections rule).³ It is currently undergoing review in accordance with the *Regulatory Freeze Pending Review* memorandum that White House Chief of Staff Ronald Klain issued on January 20, 2021.⁴ In response to comments on EPA's proposal to retain provisions of the ERP rule incorporated in the "replacement unit" provisions, the January 4, 2021 unpublished final error corrections rule contains a decision to remove the "process unit" and "basic design parameters" provisions. EPA noted, however, in this version that EPA and stakeholders could continue to look to the vacated definitions from the ERP rule to guide their understanding of the definition of "replacement unit."

IEPA's rule omits most of the vacated ERP provisions, consistent with *New York II*. However, in order to clarify the term "replacement unit," as defined at 40 CFR 51.166(b)(32), it includes a definition for "basic design parameters" for purposes of 40 CFR 51.166(b)(32)(iii). This definition is consistent with the definition of "basic design parameters" that was part of the vacated ERP provisions and adds clarity to the State's rule. See 35 Ill. Adm. Code 204.620 (Replacement Unit) and 204.620(c) (Basic Design Parameters).

In addition, since the term "process unit" is cross-referenced in the definition of "basic design parameters," IEPA has submitted a definition for "process unit" that is consistent with the vacated ERP provisions found at 40 CFR 51.166(b)(53) and 51.166(y). See 35 Ill. Adm. Code 204.580 (Process Unit). IEPA defines "process unit" in 35 Ill. Adm. Code 204.580 as any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. Under IEPA's definition, a process unit may contain more than one emissions unit.

IEPA has also omitted the sentence in 40 CFR 51.166(b)(2)(iii)(a), which states that routine maintenance, repair and replacement shall include, but not be limited to, any activities that meet the requirements of the equipment replacement provisions contained in 40 CFR 51.166(y). See 35 Ill. Adm. Code 204.490(c)(1).

If EPA ultimately publishes a final rule, like the January 4, 2021 unpublished final error corrections rule, that removes "basic design parameters"

and "process unit" definitions from EPA's regulation, this would not preclude states from electing to include these definitions in their PSD regulations. The January 4, 2021 unpublished final error corrections rule specifies that "EPA and stakeholders may continue to look at the vacated definitions from the ERP rule to guide their understanding of the definition of 'replacement unit.'" ⁵ In response to stakeholder concerns raised during the 2019 Proposed Error Corrections Rule comment period, the January 4, 2021 unpublished final error corrections rule makes clear that EPA will evaluate whether further rulemaking is warranted to restore the definitions of "basic design parameters" and "process unit" in a manner that is responsive to stakeholder concerns. States may, therefore, include the definitions of "basic design parameters" and "process unit" in their PSD program regulations at their discretion, but EPA reserves the right to re-evaluate inclusion of these same definitions in the Federal regulations after affording adequate stakeholder input.

EPA proposes to find that IEPA's definitions of "replacement unit," "basic design parameters," and "process unit," as described above, serve to clarify IEPA's rules and are, therefore, approvable. EPA has previously approved SIPs that have addressed the vacated ERP provisions in a manner comparable to IEPA's rule. See, for example, 80 FR 67331 (November 2, 2015) (Arizona), 77 FR 65119 (October 25, 2012) (Texas), and 73 FR 51606, 75 FR 71022 (Georgia). Thus, IEPA's rule is consistent with recent EPA regulatory activity related to these definitions.

2. Clean Units and Pollution Control Projects (CU/PCP)

In 2007, EPA removed CU/PCP provisions from 40 CFR 51.165, 51.166, and 52.21, which were vacated by the D.C. Circuit in a June 24, 2005, decision, *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005) (*New York I*). See 72 FR 32526 (June 13, 2007). EPA's action was intended to eliminate the relevant provisions from all of 40 CFR 51.165, 51.166, and 52.21, but EPA only stated that it was removing them from 40 CFR 51.165.

Consistent with *New York I* and EPA's intent in the 2007 action, as corrected in the January 4, 2021 unpublished final error corrections rule, IEPA's definition of "Net Emissions Increase" at 35 Ill. Adm. Code 204.550 does not include

the language of 40 CFR 51.166(b)(3)(iii)(c) providing that an increase or decrease in actual emission is creditable only if the increase or decrease in emissions did not occur at a Clean Unit. Section 35 Ill. Adm. Code 204.550 is otherwise substantively identical to 40 CFR 51.166(b)(3)(iii)(c). EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language.⁶

3. Greenhouse Gas (GHG) Emissions

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. See *Utility Air Regulatory Group v. Environmental Protection Agency*, 573 U.S. 302 (2014). The Supreme Court ruled that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit. The Court also held that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. The D.C. Circuit Court of Appeals issued an Amended Judgment in *Coalition for Responsible Regulation Inc. v. Environmental Protection Agency*, Nos. 09-1322, 10-073, 10-1092, and 10-1167 (D.C. Cir. April 10, 2015). The Amended Judgment vacated the provisions that would require a stationary source to obtain a PSD permit solely because the source emits or has the potential to emit GHGs above the applicable major source or significant emission threshold. In addition, the D.C. Circuit directed EPA to consider whether additional changes to these regulations were necessary considering the Supreme Court's decision and, if so, to make such changes.

In 2015, EPA amended the PSD regulations at 40 CFR 51.166 and 52.21 to remove portions of those regulations concerning GHGs that were initially promulgated in 2010 but vacated by the D.C. Circuit on April 10, 2015. See 80 FR 50199 (August 19, 2015).

In 2016, EPA took additional action to implement the Court decision by proposing to revise the Federal provisions for plantwide applicability limitations (PALs) at 40 CFR 51.166(w) and 52.21(aa) to remove the ability for a source that is only "major" for GHGs to obtain a GHG PAL. 81 FR 68110

³ Available at https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.

⁴ <https://www.epa.gov/nsr/final-error-corrections-rule>; 86 FR 7424 (Jan. 28, 2021).

⁵ Page 13, available at https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.

⁶ On January 4, 2021, the Administrator signed a final rule that would revise 40 CFR 51.166(b)(3)(iii)(c) and 52.21(b)(3)(iii)(b) to remove the remaining vacated CU/PCP provisions as IEPA has done.

(October 3, 2016). EPA proposed this change because a source must be an existing major source to be eligible for a PAL permit and, as discussed above, a source is not subject to PSD permitting requirements based solely on its GHG emissions. EPA also proposed to alter these PAL provisions such that an existing "anyway source" could still obtain a GHG PAL, but only to relieve the source from the requirement to address BACT for GHGs when the source triggers PSD permitting for another NSR pollutant.⁷

IEPA has submitted provisions for GHGs that are consistent with these recent Federal court decisions and EPA's regulatory activity as discussed above. See 35 Ill. Adm. Code 204.430 (GHGs), 204.490 (Major Modification), 204.510 (Major Stationary Source), 204.660 (Significant), 204.700 (Subject to Regulation) and 204.1600 through 204.1910 (PALs). Although EPA has not yet completed the changes to its regulations proposed in 2016, EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language currently in effect.

4. Fugitive Emissions

As part of its reconsideration of the 2008 fugitive emissions rule,⁸ on March 3, 2011, EPA stayed the fugitive emissions language in 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(d) and reverted the regulatory text back to the language that existed prior to the stayed text. 76 FR 17548 (March 30, 2011). However, EPA has not removed the implicated text in 40 CFR 51.166(b)(2)(v), which continues to provide that fugitive emissions will only be counted in determining if a proposed physical change or change in the method of operation would result in a major modification for designated source categories listed in 40 CFR 51.166(b)(1)(iii). Likewise, EPA has not removed the text at 40 CFR 51.166(b)(3)(iii)(d), which provides that fugitive emissions will only be counted in determining if a proposed physical or operational change would result in a major modification for sources in designated categories or sources. Instead, EPA added a note at the end of 40 CFR 51.166 stating that 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(d) are stayed indefinitely. See also 76 FR 17553 (March 30, 2011).

Given that the above provisions are currently stayed, IEPA has not included the language of 40 CFR 51.166(b)(2)(v)

in its definition of "major modification" at 35 Ill. Adm. Code 204.490. IEPA is also not including 40 CFR 51.166(b)(3)(iii)(d). See 35 Ill. Adm. Code 204.550. IEPA would retain the provision in 40 CFR 51.166(b)(1)(iii) which provides that the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of 40 CFR 51.166 whether a source is a major stationary source, unless the source belongs to one of the source categories in 40 CFR 51.166(b)(1)(iii). See 35 Ill. Adm. Code 204.510(c).

EPA is proposing to find that IEPA's omission of 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(d) would appropriately reflect the manner in which 40 CFR 51.166 currently addresses fugitive emissions when determining whether a proposed project at a major stationary source would be a major modification. However, should the stayed provisions be repealed or become effective as a result of EPA's ongoing reconsideration of the 2008 fugitive emissions rule, IEPA may need to revise its SIP consistent with any EPA action revising the regulations.

5. Definitions of "Best Available Control Technology," "Allowable Emissions," "Federally Enforceable," and "Control Technology Review"

The Federal PSD regulations at 40 CFR 51.166 contain definitions for the terms "Best available control technology," "Allowable emissions," "Federally enforceable," and "Control technology review" at 40 CFR 51.166(b)(12), (b)(16), (b)(17), and (j), respectively. As relevant here, these definitions provide that in no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. See 40 CFR 51.166(b)(12). Similarly, for purposes of the "control technology review" required by 40 CFR 51.166(j)(1), a major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61. Finally, the terms "allowable emissions" and "Federally enforceable" are defined to encompass applicable standards as set forth in 40 CFR parts 60 and 61. See 51.166(b)(16)(i) and 51.166(b)(17). Emission standards established under 40 CFR part 60 conform to the statutory requirements of section 111 of the CAA while the standards at 40 CFR part 61 conform to the pre-1990 CAA requirements at section 112 of the CAA.

In 1978, EPA promulgated new regulations at 40 CFR part 62 relating to the approval and promulgation of State and Federal plans under sections 111(d) and 129 of the CAA. See 43 FR 51393 (November 3, 1978). These regulations, known as emission guidelines for various source categories, are implemented via an approved State plan or a Federal plan for each separate source category.

Similarly, following the 1990 CAA Amendments, EPA began promulgating additional emissions standards under section 112 of the CAA, and codified them at 40 CFR part 63. In some provisions, the CAA itself indicates that all emissions standards adopted under sections 111 and 112 of the CAA must be included in the associated definition. See, e.g., section 169(3) of the CAA (providing that application of BACT must not result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of the CAA).

In order to encompass all potentially applicable standards, IEPA's definitions of "Allowable emissions" (35 Ill. Adm. Code 204.230), "Best available control technology" (35 Ill. Adm. Code 204.280), "Federally enforceable" (35 Ill. Adm. Code 204.400), and "Control technology review" (35 Ill. Adm. Code 204.1100) would encompass applicable standards set forth in 40 CFR parts 62 and 63, in addition to those found at 40 CFR parts 60 and 61. IEPA's inclusion of 40 CFR part 62, in addition to 40 CFR parts 60, 61 and 63, in the definitions of "Allowable emissions," "Best available control technology," "Federally enforceable," and "Control technology review" is acceptable because the respective State definitions would be at least as stringent as the corresponding Federal language.

While the January 4, 2021 unpublished final error corrections rule added 40 CFR part 63 to the definition of "best available control technology," but not "federally enforceable" and "allowable emissions," EPA believes the revisions in this SIP are appropriate. Also in that rulemaking, EPA opted not to add a reference to part 62 in any of the relevant definitions in the NSR regulations. Given stakeholder feedback received on the 2019 Proposed Error Corrections Rule,⁹ EPA opted to forgo revisions similar to those in this SIP in order to provide for adequate public comment for such a revision to the Federal regulations. EPA did, however, add a reference to part 63 in the definition of "best available control

⁷ An "anyway source" in this context is a facility or emission source that is otherwise required to obtain a PSD permit based on its emissions of one or more regulated NSR pollutants other than GHG.

⁸ See 73 FR 77881 (December 19, 2008).

⁹ See 84 FR 70092 (December 20, 2019).

technology" in the January 4, 2021 unpublished final error corrections rule on the grounds that "the statute expressly requires the inclusion of emissions standards under CAA section 112 in that definition (which includes emissions limitations contained in both 40 CFR parts 61 and 63)." Stakeholders have an opportunity to submit comments on this change to IEPA's regulations. Should EPA make an analogous revision to the Federal regulations, it will similarly allow for adequate stakeholder input on the addition of parts 62 and 63 to several definitions in its PSD regulations.

6. Significant Monitoring Concentrations (SMC)

IEPA is excluding the exemption from preconstruction monitoring for fluorides, total reduced sulfur, hydrogen sulfide, and reduced sulfur compounds as set forth in 40 CFR 51.166(i)(5)(i)(h) through (k). The preconstruction monitoring obligation for these pollutants is not mandatory but based on the judgment of the reviewing authority. See 40 CFR 51.166(m)(1)(ii). Exercising the discretion afforded to the reviewing authority to determine whether preconstruction monitoring is necessary for these pollutants, IEPA has elected not to apply this requirement to these pollutants. Thus, an exemption from preconstruction monitoring for these pollutants is not necessary.

EPA proposes to find that IEPA's omission of the SMCs in 40 CFR 51.166(i)(5)(i)(h) through (k) is consistent with the discretion afforded to the reviewing authority under 40 CFR 51.166(i)(5) and 51.166(m)(1)(ii), and is therefore approvable.

7. Major Source Threshold for Municipal Incinerators

The 1990 CAA Amendments amended the definition of "major emitting facility" at section 169(1) by striking out the words "two hundred and" as those words appeared in the phrase "municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day." This amendment had the effect of lowering (from 250 tons of refuse per day to 50 tons of refuse per day) the charging capacity threshold for a municipal incinerator, thereby providing that such a source would qualify as a major emitting facility if it also has the potential to emit at least 100 tons per year of any regulated NSR pollutant.

IEPA's regulation incorporates this change at 35 Ill. Adm. Code 204.510(a)(1)(I) and (c)(8). This approach is consistent with EPA's NSR Error Corrections rulemaking that would

make similar changes to 40 CFR 51.165, 51.166, 52.21, and appendix S to 40 CFR part 51 by lowering the charging capacity threshold for a municipal incinerator from 250 tons of refuse per day to 50 tons of refuse per day. This proposed change remains in the January 4, 2021 version of the error corrections rule that has been signed by the Administrator.¹⁰

8. Major Source Threshold for Ozone Depleting Substances (ODS)

Given ODS are regulated by title VI of the CAA, ODS are "subject to regulation" for purposes of PSD applicability. See 42 U.S.C. 7671a (listing those ozone depleting substances subject to regulation).

IEPA has submitted a Significant Emissions Rate (SER) for ODS of 100 tons per year (tpy). This SER is consistent with EPA precedent and guidance.¹¹ For example, EPA proposed a 100 tpy SER for ODS in 1996. 61 FR 38250, 38307 (July 23, 1996). Since then, EPA has supported not requiring PSD permitting for ODS emissions increases less than 100 tpy. For example, EPA approved a 100 tpy SER for the State of Washington's PSD program, WAC 170-400-720/173-400-720(4)(b)(iii)(B). See 80 FR 23725 (April 29, 2015).¹²

ODS sources comprise widely available commercial and household activities such as refrigeration, air conditioning, and fire suppression equipment. 61 FR 38307. Requiring PSD permitting for any potential incidental ODS losses from such activities may substantially constrain IEPA's resources with little or no environmental benefit. It would also pose a significant cost burden to facility owners and operators who must prepare a complex PSD

application for any potential incidental releases of ODS from routine activities.

For the above reasons, EPA is proposing to approve IEPA's SER for ODS of 100 tpy.

9. Baseline Actual Emissions

Under 40 CFR 51.166(b)(47) and 52.21(b)(48), an existing emissions unit, other than an existing electric generating unit, may select any 24-month period during a 10-year look back period immediately preceding the change to calculate its "baseline actual emissions" for each contemporaneous event. The baseline actual emissions for each emissions unit must be adjusted to reflect the "current" emission limits that apply to each emission unit. In its 2002 rulemaking, EPA stated that the term "currently," as used at 40 CFR 52.21(b)(48)(ii)(c) and 51.166(b)(47)(ii)(c) "in the context of contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change." 67 FR 80186, 80197 (December 31, 2002). Consistent with this 2002 EPA interpretation, IEPA has proposed to clarify the meaning of the term "currently" in the context of its definition of "baseline actual emissions." Specifically, 35 Ill. Adm. Code 204.240(b)(3) provides that "'Currently' in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change."

EPA proposes to find that IEPA's language at 35 Ill. Adm. Code 204.240(b)(3) is approvable because it serves to clarify the meaning of a term that is not currently defined in the Federal regulations, and is consistent with EPA's interpretation of that term as used at 40 CFR 51.166(b)(47)(ii)(c).

10. Net Emissions Increase When an Existing Emissions Unit Is Being Replaced

The Federal regulations at 40 CFR 51.166 use the term "replacement unit" on three separate occasions: At § 51.166(b)(3)(vii) (any "replacement unit" that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days); at § 51.166(b)(7)(ii) (a "replacement unit," as defined in 40 CFR 51.166(b)(32), is an existing emissions unit); and at § 51.166(b)(32) ("replacement unit" means an emissions unit for which all the criteria listed in 40 CFR 51.166(b)(32)(i) through (iv) are met).

¹⁰ See January 4, 2021 unpublished final error corrections rule at https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.

¹¹ See Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Gustave Von Bodungen, Assistant Secretary, State of Louisiana, dated February 24, 1998; and Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director, Environmental Technology American Standard, dated March 19, 1998.

¹² EPA has approved at least four other PSD SIPs with ODS SERs, including SIPs for Clark County, Nevada (see Section 12.2.2(uu)(1) (100 tpy ODS threshold, last approved at 79 FR 62350 (10/17/2014)), 40 CFR 52.1470; Indiana (see 326 Ind. Admin. Code 2-2-1(wv)(1)(V) (100 tpy ODS threshold, last approved at 76 FR 59899 (9/28/2011)), 40 CFR 52.770; Kentucky (see 401 KAR 51:001, sec. 1(218)(a) (100 tpy ODS threshold, last approved at 79 FR 65143 (11/3/2014)), 40 CFR 52.920; and Tennessee (see Rule 1200-03-09-.01(4)(b)(24)(i)(XIV) (40 tpy ODS threshold, last approved at 83 FR 48248 (9/24/2018)), 40 CFR 52.2220).

In its regulations, IEPA has replaced the term "replacement unit" as set forth in 40 CFR 51.166(b)(3)(vii) with the phrase "[a]ny emissions unit that replaces an existing emissions unit." See Ill. Adm. Code 204.550. Specifically, IEPA has replaced the pertinent language in 40 CFR 51.166(b)(3)(vii) with language that would require that any emissions unit that replaces an existing emissions unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days. IEPA explains that its language should be interpreted consistent with similar language that EPA has previously approved in other SIPs, including language approved into the Arizona SIP at A.A.C. R18-2-101(87)(g) (providing that any emissions unit that replaces an existing emissions unit and that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.). See 80 FR 67319, 67334 (November 2, 2015).¹³

Paragraph 40 CFR 51.166(b)(3)(vii) addresses when an emissions increase occurs in the specific situation where an existing emissions unit is being replaced. Thus, the term "replacement unit" as used in 40 CFR 51.166(b)(3)(vii) is used in the context of determining when an emissions increase occurs when an emissions unit replaces an existing emissions unit, considering a "reasonable shakedown period." Under 40 CFR 51.166(b)(7)(ii) and (32), any new emissions unit that meets certain criteria is considered an existing emissions unit when calculating the emissions increase from a project, allowing the use of projected actual emissions in lieu of the unit's potential to emit.

IEPA's language makes a reasonable distinction between the various uses of the term "replacement unit" by clarifying that the context of 40 CFR 51.166(b)(3)(vii) differs from the context of 40 CFR 51.166(b)(7)(ii) and (32). Specifically, IEPA's language would clarify that, for purposes of determining when a unit that requires shakedown becomes operational, as provided by 40 CFR 51.166(b)(3)(vii), the determination of the appropriate shakedown period need not be limited to those circumstances where the emissions unit meets the criteria for a "replacement unit" under 40 CFR 51.166(b)(7)(ii) and

(32). EPA proposes to find that IEPA's language is approvable.

11. Potential To Emit

In the definition of "potential to emit" at 40 CFR 51.166(b)(4), the second sentence requires that any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. IEPA has proposed to replace the phrase "federally enforceable" as used in 40 CFR 51.166(b)(4) with "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency." See 35 Ill. Adm. Code 204.560. IEPA's definition is consistent with past court decisions and EPA guidance¹⁴ that establish that the term "potential to emit" must encompass all legally enforceable emission limitations that restrict a source's emissions. *National Mining Association v. EPA*, 313 U.S. App. DC 363, 59 F.3d 1351 (DC Cir. 1995); *Chemical Manufacturers Association, et al. v. EPA*, No. 89-1514 (DC Cir. September 15, 1995). EPA proposes to approve IEPA's version of this provision.

12. Hazardous Air Pollutants (HAPs)

Section 112(b)(6) of the CAA expressly prohibits the application of PSD permitting requirements to pollutants listed under section 112 of the CAA. See 42 U.S.C. 7412(b)(6). Consistent with this statutory prohibition, 40 CFR 51.166(b)(49)(v) provides that the term "regulated NSR pollutant" shall not include HAPs either listed in section 112 of the CAA, or added to the list pursuant to section 112(b)(2) of the CAA, and which have not been delisted pursuant to section 112(b)(3) of the CAA, unless the listed HAP is also regulated as a constituent or precursor of a criteria pollutant listed under section 108 of the CAA.

To ensure the prohibition in 40 CFR 51.166(b)(49)(v) encompasses all substances listed in section 112 of the CAA, IEPA has proposed in its PSD regulation that the prohibition in 40 CFR 51.166(b)(49)(v) shall also apply to HAPs added to the list pursuant to section 112(b)(3) of the CAA and hazardous substances listed under

section 112(r)(3) for purposes of risk management planning and otherwise not delisted pursuant to section 112(r) of the CAA, unless such pollutant is otherwise addressed as a regulated NSR pollutant. See 35 Ill. Adm. Code 204.610(e). HAP compounds would continue to be addressed when they are a component of another pollutant that is a regulated NSR pollutant, e.g., volatile organic compounds or particulate matter. However, they would not be regulated individually as HAPs.

EPA proposes to approve IEPA's proposed revision to the regulatory language in 40 CFR 51.166(b)(49)(v) because it is consistent with our interpretation of section 112(b)(6) of the CAA. Indeed, EPA has approved similar changes in other PSD SIPs. See, e.g., 73 FR 23957 (May 1, 2008) (Alabama PSD and Nonattainment NSR).

13. Nonroad Engines

Under 40 CFR 51.166(b)(5), a "stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Section 302(z) of the CAA defines "stationary source" to exclude those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA. 42 U.S.C. 7602(z). Consistent with this statutory exception, IEPA has expressly excluded from the definition of "stationary source" in 40 CFR 51.166(b)(5) those "emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA." See 35 Ill. Adm. Code 204.690. IEPA's exclusion of "nonroad engines" from the definition of "stationary source" is approvable.

14. Baseline Concentration

The Federal regulations at 40 CFR 51.166(b)(13) define "baseline concentration" as that ambient concentration level that exists in the baseline area "at the time of the applicable minor source baseline date."¹⁵ The "minor source baseline date" is defined at 40 CFR 51.166(b)(14)(ii). A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include the items in 40 CFR 51.166(b)(13)(i)(a) and (b). Under 40 CFR 51.166(b)(13)(ii), the following will

¹³ EPA notes that to be grammatically consistent with these previous approvals, IEPA's language should more appropriately be read as: "Any emissions unit that replaces an existing emissions unit and that requires shakedown . . ." However, we do not believe such grammatical inconsistency renders this provision ambiguous or unclear.

¹⁴ See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Addressees, Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit, January 22, 1996.

¹⁵ The baseline concentration is relevant when determining the amount of allowable PSD increment that is available for a project.

not be included in the baseline concentration and will affect the applicable maximum allowable increase(s): "actual emissions" from any major stationary source on which construction commenced after the major source baseline date (as defined at 40 CFR 51.166(b)(14)(i)); and actual emissions increases and decreases at any stationary source occurring after the minor source baseline date. See 40 CFR 51.166(b)(13)(ii)(a) and (b).

IEPA has proposed to revise the language in 40 CFR 51.166(b)(13)(i)(a) to specify that for a major stationary source in existence on the major source baseline date, "actual emissions" means increases or decreases in actual emissions resulting from construction commencing after the major source baseline date. See 35 Ill. Adm. Code 204.260(b)(1). IEPA's language would serve to clarify that, for major modifications occurring after the major source baseline date, emissions increases or decreases would consume or expand, respectively, the allowable PSD increment.

IEPA's interpretation of "actual emissions" in the context of 40 CFR 51.166(b)(13)(i)(a) is consistent with current EPA precedent and guidance. See, e.g., *In re Northern Michigan University Ripley Heating Plant*, 14 E.A.D. 314 (the legislative history suggests that Congress intended its definition of "baseline concentration" to be interpreted in such a way that changes in emissions would be the focus of the increment calculus for replaced (and by implication, modified) sources). Therefore, IEPA's regulatory language is approvable.

15. Major Emissions Unit

IEPA has not included in its PSD regulation the portion of the definition of "major emissions unit" for PALs as set forth in 40 CFR 51.166(w)(2)(iv)(b) because this provision solely deals with nonattainment areas. See 35 Ill. Adm. Code 204.1680. At the time EPA initially promulgated PALs, EPA included one set of regulatory language for both PSD and nonattainment area permitting. 67 FR 80186 (December 31, 2002). EPA utilized the same PAL language for both regulatory programs. However, EPA has since promulgated distinct sets of regulations for PSD and nonattainment areas at 40 CFR 51.166 or 52.21 (for PSD) and 40 CFR 51.165 (for nonattainment areas). The provision at 40 CFR 51.166(w)(2)(iv)(b) applies to nonattainment pollutants in nonattainment areas and is appropriately addressed in regulations developed under 40 CFR 51.165 (*i.e.*, Illinois' regulations at 35 Ill. Adm. Code

203). EPA, therefore, proposes to approve IEPA's exclusion of 40 CFR 51.166(w)(2)(iv)(b) from its PSD regulations. IEPA's exclusion is consistent with 40 CFR 51.166(i)(2), which provides that the SIP may provide that the substantive requirements of PSD do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the CAA. IEPA has included this provision at 35 Ill. Adm. Code 204.860(b).

16. Recent EPA Rulemaking Activity

On November 24, 2020, EPA issued a Project Emissions Accounting final rule that clarified that both emissions increases and decreases from a major modification at an existing stationary source can be considered during the first step of the two-step NSR applicability test (termed "project emissions accounting"). 85 FR 74890. Specifically, as relevant here, EPA revised 40 CFR 51.166(a)(7)(iv)(f) and 40 CFR 52.21(a)(2)(iv)(f), which had stated that a significant emissions increase of a regulated NSR pollutant is projected to occur if the "sum of the emissions increases for each emissions unit" for each type of emissions unit equals or exceeds the significant emissions rate for that pollutant. The final rule replaces the phrase "sum of the emissions increases for each emissions unit" in these provisions with the phrase "sum of the difference" "shall include both increases and decreases in emissions." EPA concluded that the revisions to 40 CFR 51.166(a)(iv)(f) do not constitute minimum program elements that must be included in a PSD program for such program to be approvable into the SIP. 85 FR 74904. Thus, IEPA's rule is approvable without this language.

17. Other Substantive Differences Compared to 40 CFR 51.166

IEPA's regulation omits the clause "except the activities of any vessel" from the definition of "Building, Structure, Facility or Installation" at 40 CFR 51.166(b)(6)(i). See 35 Ill. Adm. Code 204.290. In 1984, the D.C. Circuit vacated this exemption and directed EPA to perform additional review consistent with its opinion. *Natural Resources Defense Council, Inc. v. EPA*,

725 F.2d 761, 771 (D.C. Cir. 1984). While EPA has not removed the vacated language from the definition of "Building, Structure, Facility or Installation," the vacatur leaves no legally effective regulation that would exempt the activities of any vessel from consideration for PSD permitting purposes.¹⁶ IEPA's omission of the phrase "except the activities of any vessel" from the definition of "Building, Structure, Facility or Installation" at 40 CFR 51.166(b)(6)(i) is consistent with EPA's interpretation of the D.C. Circuit's vacatur.

IEPA has proposed to omit 40 CFR 51.166(b)(2)(iii)(k), which would exempt "[t]he reactivation of a very clean coal-fired electric utility steam generating unit" from the definition of a "physical change or change in the method of operation." IEPA has also omitted the corresponding definition of "Reactivation of a very clean coal-fired electric utility steam generating unit" at 40 CFR 51.166(b)(37). IEPA states that there are no existing utility units in Illinois to which these provisions could apply. Notwithstanding whether subject sources currently exist in Illinois, IEPA's omission of 40 CFR 51.166(b)(2)(iii)(k) and 40 CFR 51.166(b)(37) would mean that such sources would no longer be exempt from PSD program requirements. EPA proposes to find that IEPA's language is approvable.

IEPA has omitted the transitional requirement from 40 CFR 51.166(w)(15)(ii), which would have given IEPA authority to supersede any PAL which was established by the Administrator prior to the date of approval of the SIP with a PAL that complies with the requirements of 40 CFR 51.166(w)(1) through (15). Given that EPA has not issued a PAL in Illinois, this language would be unnecessary.

IEPA's regulation does not include a reference to 40 CFR 51.166(s) in the "source obligation" requirement in 40 CFR 51.166(r)(2). The provision at 40 CFR 51.166(r)(2) requires that if a source relaxes a prior enforceable limitation that allowed the source to be regulated as a "minor" rather than a major stationary source, such source would become subject to the permit requirements for a major stationary source at 40 CFR 51.166(j) through (s) as if it were a new source. However, 40 CFR 51.166(s) contains discretionary provisions concerning the application of

¹⁶ See Letter from Charles J. Sheehan, Regional Counsel, EPA Region 6, to Mr. Michael Cathey, Managing Director, El Paso Energy Bridge Gulf of Mexico, October 28, 2003.

innovative control technology; thus, 40 CFR 51.166(s) should not have been included in the reference to mandatory permit elements. This revision is consistent with the January 4, 2021 unpublished final error corrections rule which corrected the source obligation requirement at 40 CFR 51.166(r)(2) by removing the reference to paragraph (s) and replacing it with a reference to paragraph (r).

IEPA's regulation does not include the second sentence in the definition of "Complete" at 40 CFR 51.166(b)(22), which provides that "Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information." See 35 Ill. Adm. Code 204.330. EPA proposes to find that this omission does not impact the relative stringency of IEPA's regulation with respect to 40 CFR 51.166. On November 5, 2020, IEPA confirmed EPA's interpretation that 35 Ill. Adm. Code 204.330 does not foreclose IEPA from requesting additional information from the applicant should it determine, after initially deeming the application "complete," that additional information was necessary to process the application.

IEPA's November 5, 2020, clarification letter identified various typographical errors or inadvertent omissions in IEPA's regulation. IEPA stated that until it undertakes rulemaking to correct those errors or omissions, it intends to implement those provisions consistent with the corresponding Federal rule language at 40 CFR part 51. IEPA identified the following provisions, along with how it interprets those provisions: (1) In 35 Ill. Adm. Code 204.490(c)(3), "42 U.S.C. 7435" means "42 U.S.C. 7425"; (2) in 35 Ill. Adm. Code 204.620(c)(4), the reference to 35 Ill. Adm. Code 204.620(c)(2) and (c)(3) refers to 35 Ill. Adm. Code 204.620(c)(1) and (2), consistent with 40 CFR 51.166(y)(2)(iv); (3) in 35 Ill. Adm. Code 204.930(c)(4), the phrase "this Section" means "this Part," consistent with 40 CFR 51.166(g)(3)(iv); (4) in 35 Ill. Adm. Code 204.1500(b), the phrase "with the consent of the Governor" means "with the consent of the Governor(s) of other affected State(s)," consistent with 40 CFR 51.166(s)(2); and (5) in 35 Ill. Adm. Code 204.420(a)(2)(A), "40 CFR 52" means "40 CFR 51 and 52," consistent with 40 CFR 51.100(ii)(2)(i). EPA proposes to approve each of the provisions that IEPA has identified as containing typographical errors or inadvertent omissions because IEPA will implement those provisions

consistent with the corresponding Federal language. In addition, many of the typographical errors and omissions do not impact the relative stringency of IEPA's regulation compared to 40 CFR 51.166.

C. Amendments to 35 Ill. Adm. Code Part 252 (Public Participation)

On September 22, 2020, EPA submitted a request to incorporate certain amendments to 35 Ill. Adm. Code Part 252 into the Illinois SIP. The amendments to 35 Ill. Adm. Code Part 252 are intended to accommodate IEPA's new PSD program at 35 Ill. Adm. Code Part 204, in compliance with 40 CFR 51.166(q). IEPA specified in 35 Ill. Adm. Code 204.1320 that the public participation procedures at 35 Ill. Adm. Code Part 252 must be followed. EPA has previously approved the procedures at 35 Ill. Adm. Code Part 252 for IEPA's minor new source review and nonattainment new source review permitting programs. See 50 FR 38803 (September 25, 1985).

On March 3, 2021, IEPA submitted a request to withdraw a portion of the submitted amendments, 35 Ill. Adm. Code 252.301, from approval into the PSD SIP. This provision applies to EPA's review of title V permits issued by IEPA. Since this provision is not a required element under 40 CFR 51.166, EPA is proposing to grant IEPA's request.

IEPA's public participation requirements for the PSD program are based on the Federal requirements contained in 40 CFR 51.166(q) and 40 CFR part 124. Under 35 Ill. Adm. Code Part 252, as amended, IEPA must, among other things, provide an opportunity for public comment and hearing, make relevant information regarding a PSD permit application and IEPA's preliminary determination on an application available to the public, send a copy of the notice of public comment to the applicant, EPA, and other identified entities, consider all timely public comments in issuing a final determination, and provide notice of the final determination to specified entities.

EPA is proposing to find that IEPA's amendments to 35 Ill. Adm. Code Part 252 meet the CAA requirements for public participation for the PSD program as set forth in 40 CFR 51.161 and 51.166(q), and would be substantially identical to the public participation requirements in 40 CFR part 124 that are pertinent to the currently-applicable FIP incorporating 40 CFR 52.21. EPA therefore proposes to approve the amendments as a revision to the Illinois SIP. EPA is not including in its proposed approval 35 Ill. Adm.

Code 252.301 because IEPA withdrew this provision from its submittal, and it is not a required element of a PSD SIP, as discussed above.

D. Amendments to 35 Ill. Adm. Code Part 211 (Definitions and General Provisions)

IEPA has amended 35 Ill. Adm. Code Part 211 to update certain provisions in this regulation such that they refer to permits issued under 40 CFR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 211.7150(b) and (d).

The amendments to 35 Ill. Adm. Code 211.7150(b) and (d), as described above, are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation; but permits previously issued under 40 CFR 52.21 will continue to be effective unless rescinded or otherwise rendered invalid.

On November 5, 2020, IEPA clarified that the provision in 35 Ill. Adm. Code 204.200 that refers to the definitions in 35 Ill. Adm. Code Part 211 for those terms that are not specifically defined in 35 Ill. Adm. Code Part 204 applies to those terms in 35 Ill. Adm. Code Part 211 that EPA has previously approved into the Illinois SIP. EPA's proposed approval of 35 Ill. Adm. Code Parts 204 and 211 does not apply to any terms and definitions in 35 Ill. Adm. Code Part 211 that EPA has not previously approved into the Illinois SIP.

E. Amendments to 35 Ill. Adm. Code Part 203 (Major Stationary Source Construction and Modification)

IEPA has amended 35 Ill. Adm. Code Part 203, which contains Illinois' nonattainment NSR rules. The amendments update the provisions in this regulation that refer to permits issued under 40 CFR 52.21 to refer to permits issued under 40 CFR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f).

The amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f) as described above are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation but permits previously issued

under 40 CFR 52.21 will continue to be effective unless legally rescinded or otherwise rendered invalid.

F. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires states to have adequate personnel, funding, and authority under state law to carry out a SIP. IEPA has authority under state law to issue PSD permits. Specifically, sections 9.1(d)(1) and (2) of the Illinois Environmental Policy Act (Illinois Act), 415 ILCS 5/9.1(d)(1) and (2), specify that no person shall violate any provisions of sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, or the implementing Federal regulations; or construct, install, modify, or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, except in compliance with the requirements of such sections and Federal regulations adopted pursuant thereto. The Illinois Act further specifies that no such action shall be undertaken without a permit granted by IEPA whenever a permit is required pursuant to the Illinois Act or the implementing state regulations, or section 111, 112, 165, or 173 of the CAA or implementing Federal regulations, or in violation of any conditions imposed by such permit. Consistent with the Illinois Act, 35 Ill. Adm. Code 204.820 and 204.850 would require that a source may construct or operate any source or modification subject to PSD permitting only after obtaining an approval to construct or PSD permit. IEPA would have the ability to rescind such PSD permit under 35 Ill. Adm. Code 204.1340.

With respect to personnel and funding, as already discussed, IEPA has been issuing PSD permits under a delegation agreement with EPA since 1980. The staff of engineers and air quality modelers who supported IEPA in its issuance of PSD permits under a delegation agreement with EPA will continue to support IEPA's issuance of PSD permits under a SIP-approved PSD program. IEPA explained in its submittal that it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. EPA therefore proposes to find that IEPA has adequate personnel, funding, and authority to implement the PSD program in Illinois.

III. What action is EPA taking?

A. Scope of Proposed Action

EPA is proposing to approve revisions to the Illinois SIP that IEPA submitted on September 22, 2020. These revisions implement the PSD preconstruction permitting regulations for certain new or modified sources in attainment and unclassifiable areas. Currently, the PSD program in Illinois is operated under the FIP incorporating 40 CFR 52.21. EPA is proposing to approve IEPA's PSD regulations contained in 35 Ill. Adm. Code Parts 204 and 252 to apply statewide, except in Indian reservations. EPA is excluding from the scope of this proposed approval of IEPA's PSD program all Indian reservations in the State, and any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. For the facilities in these geographic areas, the PSD FIP incorporating 40 CFR 52.21 will continue to apply and EPA will retain responsibility for issuing permits affecting such sources.

B. Rules Proposed for Approval and Incorporation by Reference Into the SIP

EPA proposes to approve into the Illinois SIP at 40 CFR 52.720, the following regulations: 35 Ill. Adm. Code 203.207 "Major Modification of a Source," 35 Ill. Adm. Code Part 204 "Prevention of Significant Deterioration," and 35 Ill. Adm. Code 211.7150 "Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)", effective September 4, 2020; and 35 Ill. Adm. Code Part 252 "Public Participation in the Air Pollution Control Program," except 35 Ill. Adm. Code 252.301, effective June 10, 2020.

C. Transfer of Authority for Existing EPA-Issued PSD Permits

In a letter dated September 30, 2020, IEPA requested approval to exercise its authority to fully administer the PSD program with respect to those sources under IEPA's permitting jurisdiction that have existing PSD permits issued by EPA. This would include authority to conduct general administration of these existing permits, authority to process and issue any subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since April 7, 1980, IEPA has had full delegation to implement the PSD permitting program under the FIP. 46 FR 9580 (January 29, 1981). Thus, PSD permits issued by IEPA on or after April 7, 1980 were issued under both state and EPA authority.

Prior to delegation of the PSD permitting program to IEPA on April 7, 1980, EPA issued several PSD permits for sources in Illinois.¹⁷ In an April 14, 1982 amendment to the terms of the 1980 delegation agreement, EPA delegated to IEPA the authority to amend or to revise any permits that had been previously issued by EPA. For those permits issued solely by EPA prior to delegation (on or before April 7, 1980), IEPA has demonstrated adequate authority to enforce and modify these permits.

Concurrent with our approval of IEPA's PSD program into the SIP, we are proposing to transfer to IEPA authority to modify, amend or revise, and enforce PSD permits that EPA previously issued to sources under IEPA's permitting jurisdiction.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Illinois PSD regulations discussed in section III.B of this preamble. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

¹⁷ EPA issued at least 18 such permits; however, some of the affected facilities may no longer exist. The full listing of these facilities is available in the docket for this action.

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.
(FR Doc. 2021-08820 Filed 4-27-21; 8:45 am)

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21-156; RM-11901; DA 21-437; FR ID 22304]

Television Broadcasting Services Boise, Idaho

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Sinclair Boise Licensee, LLC (Petitioner), the licensee of KBOI-TV (NBC), channel 9, Boise, Idaho. The Petitioner requests the substitution of channel 20 for channel 9 at Boise, Idaho in the DTV Table of Allotments.

DATES: Comments must be filed on or before May 28, 2021 and reply comments on or before June 14, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter, PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418-1647; or Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers. Petitioner further states that KBOI-TV has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other stations, and that its channel substitution proposal will result in more effective building penetration for indoor antenna reception. In its Amended Engineering Exhibit, the Petitioner demonstrated that while the noise limited contour of the proposed channel 20 facility does not completely encompass the licensed channel 9 contour, only 180 persons in two small loss areas are predicted to lose service from KBOI-TV. The Commission, however, considers such a loss to be *de minimis*.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 21-156; RM-11901; DA 21-437, adopted April 16, 2021, and released April 16, 2021.

The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—Radio Broadcast Service

- 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.622 [Amended]

- 2. In § 73.622 in paragraph (i), amend the Post-Transition Table of DTV Allotments under Idaho by revising the entry for Boise to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *
(i) * * *

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)
)

SS

CERTIFICATE OF SERVICE

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

I have electronically served the attached **ILLINOIS EPA'S INITIAL COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL REVISIONS**, on January 18, 2022, to the following:

Don Brown – Clerk
Illinois Pollution Control Board
100 W. Randolph St, Suite 11-500
Chicago, IL 60601-3218
Don.Brown@illinois.gov

Daniel Pauley
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601
Daniel.Pauley@illinois.gov

N. LaDonna Driver
Melissa Brown
HeplerBroom LLC
4340 Acer Grove Dr.
Springfield, IL 62711
LaDonna.Driver@heplerbroom.com
Melissa.Brown@heplerbroom.com

Kathryn A Pamenter
Jason James
Assistant Attorneys General
Office of the Attorney General
100 West Randolph Street, Suite 120
Chicago, IL 60601
Kathryn.Pamenter@ilag.gov
Jason.James@ilag.gov

I have electronically served and deposited said document in the United States Mail, proper postage prepaid, in Springfield, and upon:

Renee Snow
General Counsel
Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
renee.snow@illinois.gov

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

The number of pages in the e-mail transmission is 27.

The e-mail transmission and depositing said document in the United States Mail took place before 5:00 p.m. on January 18, 2022.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Dated: January 18, 2022

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