

ILLINOIS POLLUTION CONTROL BOARD
January 27, 2022

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R 22-17
PART 203: MAJOR STATIONARY) (Rulemaking - Air)
SOURCES CONSTRUCTION AND)
MODIFICATION, 35 ILL. ADM. CODE)
PART 204: PREVENTION OF)
SIGNIFICANT DETERIORATION, AND)
PART 232: TOXIC AIR CONTAMINANTS)

NOTICE OF HEARING

On August 16, 2021, the Illinois Environmental Regulatory Group (IERG) proposed updates to Board rules with the intention of updating the rules to make them consistent and current with the Clean Air Act and federal Non-Attainment New Source Review program.

The Board and Staff have reviewed the proposed rules, supporting documents, and IERG's testimony filed January 6, 2022, and submit with this order questions to the IERG, included as Attachment A. Anyone may file a comment, and anyone may respond to the attached questions, as well as any other pre-filed questions in the record. As stated in the December 9, 2021 hearing officer order, parties may pre-file answers to the questions to help the hearing's efficiency.

All filings in this proceeding will be available on the Board's website at <https://pcb.illinois.gov/> in the rulemaking docket R22-17. Unless the Board, hearing officer, Clerk, or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the Clerk's Office On-Line (COOL). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.



Daniel Pauley, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-6931
daniel.pauley@illinois.gov

Attachment A
R22-17: IERG's Non-Attainment New Source Review Amendments
Questions for IERG's Witnesses

Questions for Mr. Alec Davis

1. On page 3, you state, “The changes to Section 9.1(c) of the Act per Public Act 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.” Please specifically identify the provisions of the Act and the Board regulations that are duplicative, overlapping or conflicting with the federal regulatory system.
2. On page 4, you state since the most recent amendments to Part 203 in 1998, significant amendments to the federal NA NSR requirements have been made and IERG’s Proposal addresses those amendments to make the Board’s NA NSR rules consistent with the CAA and underlying United States Environmental Protection Agency (“USEPA”) regulations.
 - a. Please comment on whether IERG’s proposal includes the recent USEPA amendments to the federal NA NSR rules published in 85 Fed. Reg. 74,890 (Nov. 24, 2020).
 - b. If so, please identify the specific provisions of the proposed rules that rely on 2020 federal amendments.
 - c. Because the 2020 federal amendments have been challenged before the U.S. Court of Appeals for the District of Columbia. New Jersey, No. 21-1033 (D.C. Cir. Jan. 22, 2021) and held in abeyance by the Court at the request of USEPA, please comment on whether any revisions based on the 2020 amendments should be considered only after the resolution of the challenges before the Court.

Questions on TSD (for Mr. Colin Campbell)

3. On page 5, the TSD states, “Because the proposed revisions to Part 203 are substantially identical to the currently applicable federal regulation, no substantive or quantifiable technical or economic impacts will result from the adoption of revisions to Part 203.”
 - a. Please clarify whether the currently applicable NA NSR federal regulations are being implemented under the Illinois SIP.
 - b. If so, comment under what authority they are being implemented.
 - c. If they are not being implemented, please explain why implementation of the current federal regulations will have no substantive or quantifiable technical or economic impacts on the regulated community.

4. On page 8, the Footnotes 4 through 7 list the various revisions to the federal NA NSR regulations since the most recent amendments to Part 203 in 1998.
 - a. Please comment on whether any of the revisions listed in the footnotes are currently being reviewed in the federal courts.
 - b. If so, please identify the specific federal rules that are being reviewed and comment on the status of the pending appeals.
 - c. Please delineate the proposed revisions to Parts 203 and 204 that are based on the federal rules being reviewed by the courts and comment on whether these provisions should be tabled for later adoption upon resolution of the court review and USEPA response.
5. On page 9, the TSD states, “Section 182(f) of the CAA allows the USEPA to waive the NA NSR requirements for NO_x for sources located in ozone nonattainment areas upon determination that the net air quality benefit is greater in the absence of NO_x reductions from the sources in the area (“NO_x waiver”).” Please comment on whether Illinois has received a “NO_x waiver” from USEPA. If so, would a waiver be affected by the proposed rules.
6. On page 9, the TSD notes that unlike SO₂ and NO_x, emissions of VOM and ammonia are regulated as PM_{2.5} precursors only in PM_{2.5} nonattainment areas after a two-year transition period. Please comment on why VOM and ammonia are not regulated outside of a nonattainment area where construction or modification of a major stationary source outside a nonattainment area would cause or contribute to a NAAQS violation.
7. The TSD on page 9 states that currently there are no PM_{2.5} nonattainment areas in Illinois. Please comment on whether IERG is aware of any recent modeling performed by IEPA that indicates any potential areas of concern with respect to nonattainment of PM_{2.5}.
8. Table on page 12 lists the thresholds for the major stationary sources in nonattainment areas with higher classifications. Please clarify why thresholds are not specified for CO and PM₁₀/ PM_{2.5} for areas classified as marginal/moderate, severe, and extreme NAA.
9. Regarding “potential to emit”, TSD on pages 12-13 states,

In addition to being legally enforceable, in order to be considered enforceable for purposes of limiting PTE, a permit condition or other limitation or requirement must be enforceable as a practical matter. This means that the limitation must be amenable to assessment of compliance on an ongoing basis, and be accompanied by requirements for testing, monitoring, inspections, and recordkeeping, as appropriate.

- a. Please explain the rationale for adding the concept of “practical enforceability” to the definition of “Potential to emit”.
 - b. Comment on whether under the existing definition of “potential to emit” under Section 203.128 testing, monitoring, inspections, and recordkeeping information were being utilized for purposes of enforcing any PTE based limitations.
10. On page 17, TSD notes that the term “installation” is added to the currently codified definition of the term “major stationary source.” Please comment on the implications of this change on the universe of regulated sources.
11. Regarding the definition of “Major modification” on page 19, the TSD states that a new term “project” is added to address applicability for physical changes or changes in the method of operation of stationary sources. Please clarify why the term “project” is not used in the proposed definition of “Major modification” under Section 203.1220.
12. Also, on the same page, TSD states, “revised definition splits the applicability analysis into two tests, i.e. the project will result in both a significant emissions increase and a significant net emissions increase, except that this two-step analysis does not apply with respect to VOM and NO_x emissions for sources located in ozone nonattainment areas classified as serious, severe, or extreme. Please clarify how these two steps work given that the definition of “significant emissions increase” states that “significant” is as defined in the definition of the term “Significant” under Section 203.1370, which refers to a “net emissions increase”.
13. On page 19, TSD states, “When determining the applicability of NA NSR, a source owner is not allowed to split a project into multiple, nominally separate changes, each with its own analysis of emissions increase, possibly circumventing NA NSR permitting for the project as a whole.” Please comment on whether this intent is reflected in the proposed definition of “Project” under Section 203.1310.
14. On page 20, the TSD states that the proposed 70 tons per year (tpy) threshold for PM_{2.5} nonattainment areas is “consistent with the approach used in Ohio where USEPA approved a statewide NA NSR rule entirely omitting ammonia from the list of regulated PM_{2.5} precursors based on a modeling analysis showing that ammonia increases do not contribute significantly to PM_{2.5} formation in the Cleveland area.”
 - a. Please comment on whether, like Ohio, a modeling analysis should be conducted in Illinois to determine impact of PM_{2.5} in potential nonattainment areas to establish an ammonia threshold.

- b. Explain why the proposed ammonia threshold of 70 tpy based on Ohio's approach is appropriate for Illinois. Are there any reasons for not using a lower threshold for ammonia in the range of 40 tpy?
15. On Page 21, TSD states, "there are only four facilities in Illinois with reported actual ammonia emissions above the major stationary threshold of 100 tpy". Please comment on whether the number of facilities would change if the ammonia threshold is lowered to 70 or 40 tpy.
16. On pages 21 and 22, the TSD explains how the increase in emissions for a new unit is determined under the revised NA NSR rule. Please comment on whether this revised method differs significantly from how increase in emissions is determined under the current rule. If so, explain the difference with examples.
17. On page 28, TSD states, "Consistent with the federal blueprint rule at 40 CFR § 51.165(a)(1)(x)(B) as revised by USEPA in 2005, the de minimis rule provisions are proposed to be incorporated in the definition of the term "significant." Please clarify whether the current rules under Parts 203 and 204 incorporate the de minimis rule provisions. If not, comment on whether the proposed rules by incorporating the de minimis rule would be less stringent than the current rules.

Questions on Rule language

18. The term "Actual construction" is defined in the current rules at Section 203.103. However, IERG's proposal under Subpart I does not include a definition of that term even though that term is used in proposed Section 203.1080. Please comment on whether a definition of "Actual construction" should be added under Subpart I. If not please explain the rationale for not including the definition.
19. Under the proposed definition of "Actual emissions" at Section 203.1040, please comment on whether there is any alternative for the Agency to consider in the absence of reliable actual emissions data like the provision in the current rules under Section 203.104(b).
20. Please comment on whether the subsections under the definition of "Good engineering practice" (Section 203.1200) should be renumbered as follows to be consistent with the definition of the same term in Section 204.420:

Section 203.1200 Good Engineering Practice

- a) "Good engineering practice," with respect to stack height, means the greater of:
- a1) 65 meters, measured from the ground-level elevation at the base of the stack;

b2) The following:

4A) For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits required under 40 CFR Part 52:

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

2B) For all other stacks:

$$H_g = H + 1.5L$$

where:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), provided that the USEPA or the Agency may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

b3) The height demonstrated by a fluid model or a field study approved by the USEPA or the Agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

eb) For purposes of this definition, “stack” means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

21. Under proposed Section 203.1220(a), please comment on whether the phrase “(as defined in Section 203.1370)” should be added next to “a significant net emissions increase” to avoid any confusion as follows:

a) Except as provided in subsections (d) through (f) below, “major modification” means any physical change, or change in the method of operation of a major

stationary source that would result in: a significant emissions increase (as defined in Section 203.1380) of a regulated NSR pollutant (as defined in Section 203.1340); and a significant net emissions increase (as defined in Section 203.1370) of that regulated NSR pollutant for which the source is a major stationary source.

22. Also, in Section 203.1220(b), comment on whether “net emissions increase (as defined in Section 203.1260)” be revised to “significant net emissions increase (as defined in Section 203.1370~~1260~~)’.
23. Several provisions of the proposed rule include the phrase “enforceable as a practical matter”. See Sections 203.1260(b)(3)(A), 203.1350(d), 203.2130, 203.2200, 203.2310(a)(1) and 203.2350(b)(2)(B). Please explain what that phrase means in the context of its use in the proposed provisions and provide a definition of the phrase.
24. Section 203.2320 specifies that the Agency must address all material comments before taking final action on the permit. Please clarify what “material comments” mean. Comment on whether this section should require the Agency to address all public comments.
25. In Section 203.2350(b)(2), would it be acceptable revise the proposed language as follow:
 - 2) The Agency ~~shall have discretion to~~ may reopen the PAL permit for the following:
26. Section 203.2350(b)(2)(A) specifies that the Agency may reopen a PAL permit to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date. Please comment on whether the Agency must wait until the Board rules are amended to reflect the new federal requirements before reopening PAL permits.
27. Section 203.2360(b) specifies that “[t]he Agency may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation. Please clarify whether CEMS, CERMS, PEMS, or CPMS is required for compliance demonstration and any other monitoring system (source testing, emissions factors, etc.) approved by the Agency would be considered as an alternative system. If so, under what circumstances would the Agency specify an alternative monitoring system? Instead of the proposed language, would it be acceptable to provide a cross reference to the monitoring requirements under Section 203.2390?

28. Under Section 203.2410, please clarify the meaning of the terms “prompt” and “promptly” with respect to submission of the deviation report. Comment on whether a time limitation can be specified for filing the deviation report.
29. In Section 203.2520, please clarify whether the phrase “fulfillment for the requirements” means “comply with the requirements”. If not, please explain the proposed intent. If so, would it be acceptable if this section is reworded as follows:
- ~~In the absence of fulfillment of the requirements of both subsections (a) and (b) by~~ If the owner or operator of the proposed major stationary source or major modification ~~does not comply with the requirements of both subsections (a) and (b)~~, the Agency ~~shall~~ must deny the proposed construction.
30. Section 203.2530(c) requires the Agency to follow the public participation procedures of either Section 203.1610 or Section 204.1320. While both provisions require the Agency to provide a notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing under the Agency's public participation procedures specified in 35 Ill Adm Code 252, Section 203.1610 includes additional requirements. Considering this, please comment on whether it would be acceptable to delete the reference to Part 204 provision as follows:
- c) In issuing a permit under this Subpart, the Agency ~~shall~~ must comply with ~~follow~~ the public participation procedures of Section 203.1610 ~~or Section 204.1320 of 35 Ill. Adm. Code Part 204.~~
31. In Section 232.120, please comment on whether the cross-reference to Section 203.120 in the definition of “fugitive emissions” must be changed 35 Ill Adm Code 203.1190 instead of 35 Ill Adm Code Part 203.