

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:

AMENDMENTS TO 35 ILL. ADM. CODE
PARTS 201, 202, AND 212

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) R23-018(A)
) (Rulemaking – Air)
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NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **EAST DUBUQUE NITROGEN FERTILIZERS, LLC'S SUPPLEMENTAL COMMENT IN RESPONSE TO PRE-FILED QUESTIONS** and a **CERTIFICATE OF SERVICE**, which are attached and copies of which are herewith served upon you.

Dated: April 12, 2024

Respectfully submitted,

/s/ John M. Heyde
East Dubuque Nitrogen Fertilizers, LLC
By One of Its Attorneys

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**EAST DUBUQUE NITROGEN FERTILIZERS, LLC’S
SUPPLEMENTAL COMMENT IN RESPONSE TO PRE-FILED QUESTIONS**

East Dubuque Nitrogen Fertilizers, LLC (“EDNF”) respectfully submits this supplemental comment in response to pre-filed questions filed on April 8, 2024 in advance of the Board’s April 15, 2024 public hearing.

On March 15, 2024, EDNF filed a supplemental response to a comment that the Illinois Environmental Protection Agency (“Illinois EPA”) had filed on October 23, 2023. EDNF’s March 15 response described how EDNF had responded to requests for information that Illinois EPA had made in its October 23, 2023 comment. On April 8, 2024, the Attorney General’s Office submitted two pre-filed questions based on EDNF’s March 15 comment. In addition, a hearing officer order the same day included one question to all rule proponents from the Illinois Pollution Control Board (the “Board”). This comment responds to the Attorney General’s Office questions and the Board question.

The questions, and EDNF’s responses, are as follows:

Attorney General’s Office Questions

1. *EDNF states that using Method 5 emission testing to confirm that opacity readings during startup and shutdown events are not caused by particulate matter is not feasible*

because those events happen intermittently and on short notice (EDNF Supplemental Response at 6, R23-18(A), March 15, 2024). Please provide more detail on why the intermittent and unpredictable nature of startup and shutdown events made this testing impractical, including, for example, the estimated costs of completing such testing and/or the length of time it would take to complete.

Method 5 testing for particulate matter typically is conducted by independent contractors pursuant to a testing plan that is submitted to and approved by regulators before the test is performed. However, shutdown events at nitric acid production plants such as EDNF's are not planned in advance, and they are typically less than three hours in duration. (See proposed 35 Ill. Adm. Code 217.381(e)(2).) Even if a test plan were prepared in advance of a shutdown, it is impractical to deploy a contractor to the site, set up to conduct a test, and conduct the test before the shutdown is complete. Following a shutdown, startups occur as quickly as possible, so for the same reason, it is not practical to attempt to deploy a contractor for a Method 5 test while one of the nitric acid production processes is in the process of a startup. Nor is there any basis to do so: no one has stated the nitric acid production creates particulate-based opacity, multiple sources indicate that the opacity during startup and shutdown comes from the nitrogen dioxide gas itself, and the U.S. Environmental Protection Agency ("EPA") has stated clearly that it used an opacity limit in its 1970s-era regulation of nitric acid production facilities solely as a proxy for NOx control. (See EDNF Suppl. Resp. to IEPA Comment, R23-18(A), March 15, 2024, at 6.)

2. *EDNF states that it instead performed a literature review to evaluate whether particulate matter is included in opacity readings during startup and shutdown events at nitric acid production units (EDNF Supplemental Response at 6). EDNF reports that the review found no literature indicating or suggesting that opacity readings from nitric acid production units is connected to particulate matter (EDNF Supplemental Response at 6-7). For purposes of a complete record, please describe the method by which the literature review was carried out, and provide copies of the articles reviewed for this purpose.*

EDNF searched the U.S. EPA electronic docket for the "Subpart Ga" New Source Performance Standard ("NSPS") rule (Docket ID No. EPA-HQ-OAR-2010-0750). EDNF also reviewed the Federal Register notices associated with U.S. EPA's original, 1970s-era NSPS

covering nitric acid production plans, known as Subpart G, and EDNF reviewed “AP-42,” U.S. EPA’s compilation of emission factors for various industries, including nitric acid production, as well as the supporting documents. Beyond U.S. EPA sources, EDNF, conducted searches for published literature in Pubmed and Google Scholar.

EDNF has already cited and attached the relevant (“on point”) materials that it discovered in its literature search, all of which came from U.S. EPA or its contractors. These include:

- Pacific Env’tl Serv., Inc., *Background Report, AP-42 Section 5.9, Nitric Acid*, prepared for U.S. Environmental Protection Agency (Jan. 1996) at 25 (attached as Exhibit 4 to EDNF’s March 15, 2024 supplemental response) (“[n]o data on emissions of . . . particulate matter were found nor expected in the nitric acid process”)
- U.S. EPA proposed Subpart Ga rule, 76 Fed. Reg. 63,878, 63, 885 (Oct. 14, 2011) (attached as Exhibit 4 to EDNF’s rulemaking petition, Aug. 7, 2023) (use of NO_x CEMS made an opacity limit unnecessary)
- U.S. EPA final Subpart Ga rule, 77 Fed. Reg. 48,433, 48,435 (Aug. 14, 2012) (attached as Exhibit 3 to EDNF’s rulemaking petition, Aug. 7, 2023) (opacity included in original nitric acid NSPS solely as a surrogate indicator for NO_x)
- U.S. EPA, *Alternative Control Techniques Document – Nitric and Adipic Acid Manufacturing Plants*, EPA-450/3-91-026 (Dec. 1991) at p. 4-5 (attached as Exhibit 2 to EDNF’s rulemaking petition, Aug. 7, 2023) (“A reddish-brown plume reveals the presence of NO₂. Plume opacity is directly related to NO₂ concentration and stack diameter.”)

Board Question

1. *On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit issued an order concerning USEPA’s 2015 SSM SIP Call. The Board directs IEPA and the participants to comment on any implications of that court order on the Board rules adopted in the main docket as well the proposed rules in Subdocket A.*

EDNF urges the Board to continue with this subdocket, bring EDNF’s proposed rule revisions to second notice, and ultimately adopt EDNF’s proposal. The Board already has finalized the change to Illinois’ rules for startup, shutdown, and malfunction in Docket R23-18. EDNF’s proposed rule, to which Illinois EPA has no objections, is a well-crafted clarification and adjustment to the emission limits applicable to EDNF’s operations that will allow the

company to start up and shut down its operations in compliance with Illinois law. The D.C. Circuit opinion does not repeal the rule change that the Board adopted in Docket R23-18.

Dated: April 12, 2024

Respectfully submitted,

/s/ John M. Heyde
East Dubuque Nitrogen Fertilizers, LLC
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CERTIFICATE OF SERVICE

I, the undersigned, on affirmation, state that I have served the attached **East Dubuque Nitrogen Fertilizers, LLC's Supplemental Comment in Response to Pre-Filed Questions** by email on the following:

<p>Illinois Pollution Control Board Don Brown - Clerk of the Board don.brown@illinois.gov 100 W. Randolph St., Suite 11-500 Chicago, IL 60601</p> <p>Timothy Fox – Hearing Officer Tim.Fox@illinois.gov Chloe Salk – Hearing Officer Chloe.Salk@illinois.gov 60 E. Van Buren St., Suite 630 Chicago, IL 60605</p>	<p>Office of the Attorney General Jason E. James - Assistant Attorney General Jason.James@ilag.gov 201 West Point Drive, Suite 7 Belleville, IL 62226</p> <p>Molly Kordas - Assistant Attorney General Molly.Kordas@ilag.gov Ann Marie A. Hanohano - Assistant Attorney General annmarie.hanohano@ilag.gov 69 West Washington Street, Suite 1800 Chicago, IL 60602</p>
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I further state that my email address is as stated in the signature block below, that the number of pages in this email transmission is seven, and that the email transmission took place before 5 p.m. on April 12, 2024.

Dated: April 12, 2024

Respectfully submitted,

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