

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PERMIT BY RULE FOR) **R17-009**
BOILERS:) **(Rulemaking - Air)**
AMENDMENTS TO: 35 ILL. ADM.)
CODE PARTS 201 and 211)

NOTICE

TO:

John Therriault, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the Post-Hearing Comments of the Illinois Environmental Protection Agency a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Rachel L. Doctors
Assistant Counsel

DATED: November 7, 2016
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

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**POST-HEARING COMMENTS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorney, hereby submits its post-hearing comments in the above rulemaking proceeding with regard to the October 26, 2016, hearing.

Questions from the Pollution Control Board:

At hearing, representatives of the Pollution Control Board (“Board”) asked the Agency to identify the portions of 40 CFR 63.11237 and 63.7575, cited in Section 201.600(c), that contain the 48-hour limit for use of diesel fuel as a backup fuel. (Transcript of October 26, 2016, Hearing (“Transcript”) at p. 28, 29). The limit is set forth in both regulations. The definition at 40 CFR 63.11237 reads:

“*Gas-fired boiler* includes any boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply interruption, startups, or for periodic testing, maintenance, or operator training on liquid fuel. Periodic testing, maintenance, or operator training on liquid fuel shall not exceed a combined total of 48 hours during any calendar year.”

The definition at 40 CFR 63.7575 reads:

“*Unit designed to burn gas 1 subcategory* includes any boiler or process heater that burns only natural gas, refinery gas, and/or other gas 1 fuels. Gaseous fuel boilers

and process heaters that burn liquid fuel for periodic testing of liquid fuel, maintenance, or operator training, not to exceed a combined total of 48 hours during any calendar year, are included in this definition. Gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply interruptions of any duration are also included in this definition.”

Therefore, as Mr. Davis noted at the hearing: “These regulatory provisions include the limitations on the fuel type, the emissions control requirements and the limitations on the capacity of the unit. As such, the PBR proposal does not increase or decrease the applicable requirements for this type of emission unit. It merely changes how the owner or operator obtains authority to construct the emission unit.”

(Transcript at p. 14)

Questions from the Illinois Environmental Regulatory Group:

At hearing, representatives of the Illinois Environmental Regulatory Group (“IERG”) asked that the Agency clarify whether it intends for Section 201.600(a)(2) to require the owner or operator to demonstrate that the unit meets the specified NO_x emission limit. (Transcript at p. 39, 40) The Agency’s intent is that the boiler be designed by the manufacturer to meet the 0.05 lb/mmBtu standard for NO_x. Hence, the Agency is recommending that the proposed Section 201.600(a)(2) be amended as follows:

“Greater than 50 mmBtu/hr and less than or equal to 100 mmBtu/hr and is equipped with low-NO_x burners designed by the manufacturer to meet a NO_x emission limit of not greater than 0.05 lb/mmBtu.”

Questions from the Illinois Attorney General:

At hearing, representatives of the Illinois Attorney General's Office ("IAGO") asked how long normal startup lasts for a unit of this size (referencing boilers eligible for a PBR). (Transcript at p. 27, 28). Startup times can vary depending on the size and make of the boiler; typically startups can run from minutes to an hour to work out any connection problems. In response to the IAGO question regarding the amount of time necessary to change from natural gas to diesel fuel for firing of a PBR boiler, this time could vary greatly. There are boilers that would require parts to be swapped out before being ready for use of diesel fuel, and there are boilers for which this equipment is integrated such that the fuel switch can be made very quickly. It is conceivable that a boiler design could manage this switchover very quickly or at the touch of a button. None of these designs is prohibited by the proposed amendments, and the Agency believes that this variation is irrelevant given the restrictions on use of diesel fuel as a backup fuel that are included in the proposed amendments, as discussed above and set forth in Section 201.620.

The IAGO representative also asked whether the Agency would consider proposing a definition for what constitutes a startup period. (Transcript at p. 28)

The Agency does not believe adding such a definition is necessary. The two National Emission Standards for Hazardous Air Pollutants ("NESHAPs") under 40 CFR 63, referenced in the rule, also have definitions for "start-up" which limit the start-up period to "ending 4 hours after when the boiler supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, whichever is earlier." The Agency believes that an additional definition could create

inconsistency between Federal and State rules. The boilers in question are subject to the applicable NESHAPs and those requirements will be reflected in the operating permit for the boiler.

The IAGO representative also asked whether the regulation at 40 CFR 63.11237 allows for unlimited use of diesel fuel during startup. (Transcript at p. 27, 28) Use of diesel fuel for startup is limited by the definition of startup above, and, as discussed above, unlimited use of diesel fuel is only allowed during natural gas curtailments and gas supply interruptions.

The IAGO representative also asked about the impact on the PBR rule if a court of law ever holds that Section 39.12 of the Act does not authorize the Board to adopt a PBR for boilers that burn diesel as a backup fuel. (Transcript at p. 31, 32) The Agency would like to provide greater detail about Section 39.12 of the Act. Subsection (a) broadly authorizes the Board to “adopt rules providing for permits by rule for classes of facilities or equipment, provided that the permits by rule are consistent with federal and State laws and regulations.” Subsection (b) sets forth the minimum requirements for such Board rules. Subsection (c) mandates that the Agency identify types of permits for which permits by rule would be appropriate, and provides: “The types of permits *may* include, but *shall not be limited to*, permits for... certain package boilers... using only natural gas or refinery gas.” [Emphasis added.]

Nothing in Section 39.12 limits the Board’s authority to promulgate a PBR for any type of unit, as long as the PBR is consistent with federal and State laws and regulations. Certainly subsection (c) does not restrict the Board; it does not even impact the Board and, therefore, it cannot reasonably be construed as restricting the Board’s

authority in any way. Subsection (c) impacts the Agency only, requiring that it identify potential PBRs. Further, the General Assembly was emphatic in this subsection that the types of units listed, including boilers that burn only natural gas, were *examples* of units for which a PBR may be appropriate and shall not be construed as exhaustive or exclusive.

If, however, a court were to invalidate part of the Board's rulemaking, that portion would no longer be effective, as with any invalidated rule. The Agency would then have the option of proposing amendments consistent with the court's decision and the Board would have the option of adopting such amendments.

As discussed in the Agency's proposal and at hearing, the Agency currently permits boilers that burn backup fuels consistent with federal and State law. The only change being proposed by the Agency is administrative. The conditions that the new or modified boiler would be subject to under a permit by rule are the same or more stringent than those conditions that would be contained in a conventional permit.

The IAGO representative also asked whether the Agency would consider a cross-reference to the sulfur content limitation for diesel fuel. ("Transcript at p. 38) At the hearing, the Agency indicated that a cross-reference was not necessary, and would now like to clarify its answer. The proposed rule at Section 201.620(a)(1) already contains a cross-reference to the applicable requirements for sulfur content of fuel in 35 Ill. Adm. Code, Part 214 (Sulfur Limitations), Subparts B (New Fuel Combustion Emission Sources) and D (Existing Liquid or Mixed Fuel Combustion Emission Sources). Subpart B addresses requirements for fuels at new sources and Subpart D addresses requirements for fuels at existing sources.

Question from Joint Committee on Administrative Rules:

The Joint Committee on Administrative Rules directed questions to the Board concerning this rule as noted in an email dated and posted on November 2, 2016. Specifically, question #4 asked about the relationship between the three CFR citations in Section 201.605(b). As a preliminary matter, in the answer from the Board, it was noted that 40 CFR 60.41(c) does not exist. The reference in Section 201.605(b) is correct – 40 CFR 60.41c indeed exists in 40 CFR 60 Subpart Dc – Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units; it sets forth definitions for that Subpart.

Regarding the relationship between the three CFR citations and the use of “and” and “or” in Section 201.605(b), 40 CFR 60.41c is part of a New Source Performance Standard for boilers, which would regulate all the boilers that would be eligible for a PBR based on the date of construction. The two citations to 40 CFR 63 reference two NESHAPs. One of the NESHAPs is for boilers at a major source of hazardous air pollutants (“HAPs”) and the other is for boilers at a non-major source of HAPs, also known as an “area source.” One of these NESHAPS would impact any given boiler eligible for PBR based on the categorization of the source at which the boiler will be installed. All three citations are for the definitions Section of the applicable Subpart.

To be clear, Section 201.165(b) requires that a source indicate whether the boiler would be a temporary boiler under the definition in 40 CFR 60.41c and under the definition in either 40 CFR 63.7575 or 40 CFR 63.11237, as applicable.

Corrections to the Transcript:

The Agency notes that the following corrections should be made to the transcript:

1. Page 19, line 12: "sources" should be "source's."
2. Page 20, line 6: "degreed construction" should be "reconstruction."
3. Page 21, line 13, "modification is required for a modification" should be "notification is required for a modification."
4. Page 23, line 1: "N201" should be "Subpart N in 201."
5. Page 26, line 22: "electrical supplying" should be "electrical suppliers."
6. Page 27, line 18: "lightening" should be "lightning."
7. Page 29, beginning on line 15 with the words "Question 20," it was Mr. Davis speaking, not Mr. Bloomberg. Mr. Davis continued speaking until Hearing Officer James spoke at Page 30, line 22.
8. Page 31, from line 3 through line 10, it was once again Mr. Davis speaking, not Mr. Bloomberg.
9. Page 35, from line 17 through line 19, it was Mr. Bloomberg speaking, not Mr. Davis.

WHEREFORE, for the reasons stated above the Illinois EPA respectfully submits the above comments.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Rachel L. Doctors
Assistant Counsel

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attach Post-Hearing Comments of the Illinois Environmental Protection Agency upon the following person by emailing it to the email address indicated below:

Jason James
Illinois Pollution Control Board
Jason.James@illinois.gov

I affirm that my e-mail address is rachel.doctors@illinois.gov; the number of pages in the e-mail transmission is 7; and the e-mail transmission took place today before 5:00 p.m.

I also affirm that I am mailing the attached Post-Hearing Comments of the Illinois Environmental Protection Agency by first-class mail from Springfield, Illinois, with sufficient postage affixed to the following persons:

SEE ATTACHED SERVICE LIST

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Rachel L. Doctors
Assistant Counsel

DATED: November 7, 2016

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