ILLINOIS POLLUTION CONTROL BOARD
March 5, 2020

IN THE MATTER OF:	)	
	)	
PROPOSED NEW 35 ILL. ADM. CODE 204, PREVENTION OF SIGNIFICANT DETERIORATION, AMENDMENTS TO 35 ILL. ADM. CODE PARTS 101, 105, 203, 211, AND 215	)	R19-1 (Rulemaking – Air)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by C.M. Santos)

On July 2, 2018, the Illinois Environmental Protection Agency (IEPA) proposed that the Board adopt a new Part 204 of its air pollution rules creating a state Prevention of Significant Deterioration (PSD) permitting program. IEPA intends that its proposal will allow it to assume responsibility for PSD permitting from the United States Environmental Protection Agency (USEPA) and also allow the Board to assume responsibility for appeals of PSD permits issued by IEPA. IEPA also proposed to amend existing Parts 101 and 105 of the Board's procedural rules to accommodate PSD permit appeals, and amend existing Parts 203, 211, and 215 of its air pollution rules to conform with the new Part 204. IEPA states that its proposal meets requirements to establish such a program under Section 9.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/9.1(c) (2018); *see* Public Act 99-463, eff. Jan. 1, 2016)).

After conducting two public hearings, receiving comments, and considering the entire record, the Board proposes to adopt a new Part 204 and to amend Parts 101, 105, 203, 211, and 215 of its air pollution rules. The proposed rules appear in the addendum to this opinion and order. Publishing the proposed rules in the *Illinois Register* begins a public comment period of at least 45 days. *See* ILCS 100/5-40(b) (2018). At pages 160-61 of this opinion, the Board provides information on submitting public comments and specifically requests comment on four issues.

GUIDE TO TODAY'S OPINION AND ORDER

The Board's opinion begins with a table of abbreviations and acronyms (pages 2-3) before summarizing the procedural history of this rulemaking (pages 3-4). It then summarizes the background of the PSD permit program and the process IEPA followed to develop its proposal (pages 4-30).

Next, the opinion briefly addresses general corrections, clarifications, and other non-substantive changes that the Board proposes (pages 30-31). The Board then decides the contested issues that remain among the participants (pages 31-44). For the balance of the Board's first-notice rule language – whether based on undisputed aspects of IEPA's proposal or

the participants' resolution of disputed aspects of IEPA's proposal – the Board provides a section-by-section summary of the supporting record (pages 44-157).

The Board then addresses the economic reasonableness and technical feasibility of its first-notice proposal (pages 157-60). Next, the Board provides information on filing public comments and specifically seeks comment on four issues (pages 160-61). After concluding to add a new Part 204 and amend Parts 101, 105, 203, 211, and 215 of its rules, the Board directs the Clerk to submit its proposal for first-notice publication in the *Illinois Register* (page 162). Finally, the Board sets forth the proposed rules in the addendum following its opinion and order.

ABBREVIATIONS AND ACRONYMS IN OPINION

AQRV	Air Quality Related Value
ASTDR	Agency for Toxic Substances and Disease Registry
BACT	Best Available Control Technology
CAA	Clean Air Act
CAAPP	Clean Air Act Permit Program
CARE	Citizens Against Ruining the Environment
DCEO	Department of Commerce and Economic Opportunity
EAB	Environmental Appeals Board
EJ	Environmental Justice
EJA	Environmental Justice Act
EO	Executive Order
FLM	Federal Land Manager
GHG	Greenhouse Gas
HAP	Hazardous Air Pollutant
IEPA	Illinois Environmental Protection Agency
IERG	Illinois Environmental Regulatory Group
LAER	Lowest Achievable Emission Rate
MSSCM	Major Stationary Sources Construction and Modification
MSW	Municipal Solid Waste
NAAQS	National Ambient Air Quality Standards
NaNSR	Nonattainment New Source Review
NPDES	National Pollutant Discharge Elimination System
NESHAP	National Emission Standards for Hazardous Air Pollutants
NMOC	Nonmethane Organic Compounds
NOx	Nitrogen Oxides
NSPS	New Source Performance Standard
NSR	New Source Review
OFSM	Office of the State Fire Marshal
OGC	USEPA's Office of General Counsel
PAL	Plantwide Applicability Limitation
PEMS	Predictive Emissions Monitoring System
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit

RACT	Reasonably Available Control Technology
RBLC	RACT/BACT/LAER Clearinghouse
RSC	Reduced Sulfur Compounds
SIC	Standard Industrial Classification
SIL	Significant Impact Level
SIP	State Implementation Plan
SMC	Significant Monitoring Concentrations
SR	Statement of Reasons
TPY	Tons Per Year
TSD	Technical Support Document
USEPA	United States Environmental Protection Agency
VOC	Volatile Organic Compound
VOM	Volatile Organic Material

PROCEDURAL HISTORY

On July 2, 2018, IEPA filed its rulemaking proposal, including its Statement of Reasons (SR), Technical Support Document (TSD), proposed new Part 204 (Prop. 204), and a "redlined" version of proposed Part 204 comparing it to the PSD program at 40 C.F.R. § 52.21 (Comp. 204). IEPA also filed its proposed conforming revisions to Parts 101 (Prop. 101), 105 (Prop. 105), 203 (Prop. 203), 211 (Prop. 211), and 215 (Prop. 215). On August 23, 2018, the Board accepted IEPA's rulemaking proposal for hearing.

In a letter dated September 11, 2018, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of IEPA's proposal. *See* 415 ILCS 5/27(b) (2018). The Board did not receive a response from the DCEO.

On November 8, 2018, IEPA pre-filed testimony by Jason Schnepp, an Environmental Protection Specialist in the Bureau of Air's Construction Permit Unit (Schnepp Test.), and Christopher Romaine, Manager of the Construction Permit Unit (Romaine Test.).

On November 19, 2018, the Board received pre-filed questions from Citizens Against Ruining the Environment (CARE) (CARE Questions) and the Illinois Environmental Regulatory Group (IERG) (IERG Questions). Also, the Board's hearing officer issued an order with questions for IEPA (Board Questions).

The first hearing took place on November 27, 2018, and the Board received the transcript (Tr. 1) on December 4, 2018. On December 17, 2018, IEPA filed a motion to correct the transcript listing requested corrections. The hearing officer granted the unopposed motion on January 11, 2019. On January 24, 2019, IEPA filed post-hearing comments (PC 1).

On February 15, 2019, CARE (CARE Questions 2) and IERG (IERG Questions 2) pre-filed questions for IEPA's witnesses for the second hearing.

The second hearing took place on February 26, 2019, and the Board received the transcript (Tr. 2) on March 5, 2019. On March 14, 2019, IEPA filed a motion to correct the transcript listing requested corrections. The hearing officer granted the unopposed motion on May 9, 2019.

On April 4, 2019, IEPA filed post-hearing comments (PC 2), attached to which were three exhibits: IEPA's "Environmental Justice (EJ) Policy (IEPA Exh. A), IEPA's "Environmental Justice Public Participation Policy" (IEPA Exh. B), and IEPA's Grievance Procedure (IEPA Exh. C). CARE filed post-hearing comments on April 5, 2019 (PC 3) and reply comments on April 19, 2019 (PC 4).

On May 2, 2019, IEPA filed a motion for leave to reply to CARE and its reply (PC 5). On May 9, 2019, the hearing officer granted IEPA's motion.

CARE filed a motion on February 26, 2019, to admit into the record three exhibits that had not been filed electronically at least 24 hours before the scheduled start of the videoconference hearing. *See* 35 Ill. Adm. Code 102.424(h); Tr.2 at 10-12. In a May 9, 2019 order, the hearing officer construed the motion as a public comment and admitted the exhibits (CARE Exh. 1-3). *See* 35 Ill. Adm. Code 102.424(h).

On November 7, 2019, IEPA filed a motion to amend proposed Section 204.490 of its proposal (IEPA Mot.). *See infra* at 85-89 (discussing Section 204.490).

On January 13, 2010, IEPA filed a second motion to amend its proposal (IEPA Mot. 2) requesting that the Board revise four sections of proposed new Part 204. *See infra* at 89-90 (discussing Section 204.510), 106-09 (Section 204.800), 109-10 Section 204.810), 111-14 (Section 204.860); *see also* 84 Fed. Reg. 70092-70109 (Dec. 20, 2019) (Error Corrections to New Source Review Regulations).

BACKGROUND OF THE PSD PERMIT PROGRAM

New Source Review

New Source Review (NSR) requires USEPA to designate geographic areas within states, based on existing air quality, on a pollutant-by-pollutant basis, as being in attainment or nonattainment with the National Ambient Air Quality Standards (NAAQS) or as unclassifiable. SR at 4-5, citing 42 U.S.C § 7407(d). USEPA sets NAAQS for certain pollutants at levels that protect public health and welfare. *Id*. at 5 n. 8, citing 42 U.S.C. § 7409(b). USEPA has established NAAQS for six criteria pollutants—ozone (O_3), carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter ($PM_{2.5}$ and PM_{10}), lead (Pb), and nitrogen dioxide (NO_2)—and for the precursors of ozone and $PM_{2.5}$. SR at 6 n.10.

In areas designated nonattainment, "states must develop a State Implementation Plan (SIP) to reduce emissions to come into attainment as quickly as possible consistent with the CAA and implementing regulations." SR at 5, citing 74 Fed. Reg. 58688, 58689 (Nov. 13,

2000). In areas designated attainment or unclassifiable, the general goal is to prevent significant deterioration of air quality. SR at 5, citing 74 Fed. Reg. 58689 (Nov. 13, 2000).

NSR involves two distinct programs for permitting construction of large stationary sources of air pollution and major modifications of existing sources. SR at 5. First, Part D of Title I of the CAA establishes the nonattainment NSR (NaNSR) program for areas designated nonattainment for a particular criteria pollutant. *Id*. at 6, citing 42 U.S.C. §§ 7501-09. IEPA administers an NaNSR program through Part 203 of the Board's air pollution rules. SR at 6, citing 35 Ill. Adm. Code 203; *see* PC 2 at 4 (¶2c). Part 203 specifies which projects are major and the requirements applicable to them. SR at 6. IEPA reports that Part 203 satisfies Illinois' obligation to receive SIP approval for an NaNSR program. *Id*. n.11 (citations omitted).

Second, Part C of the CAA establishes the PSD program, which may apply to areas designated as attainment or unclassifiable for criteria and non-criteria pollutants. SR at 7; *see* Schnepp Test. at 2, 3. When applicable, PSD requires sources to obtain construction permits and comply with other PSD requirements. *Id*., citing 42 U.S.C. § 7475(a). Mr. Schnepp testified that proposed projects in a nonattainment area may be subject to both the NaNSR and PSD permit programs, "depending on the pollutants that would be emitted from the new major stationary sources or major modifications of major stationary sources." Schnepp Test. at 3.

PSD

Federal Program and Relationship to IEPA Proposal

USEPA has adopted two sets of regulations addressing PSD. Programs adopted under state law and submitted to USEPA for SIP approval are governed by 40 C.F.R. § 51.166. SR at 7; *see* PC 1 at 18-20 (¶2b); Tr.1 at 50. IEPA reports that 46 states have SIP-approved PSD program, although some are divided into areas in which program status varies. PC 1 at 13 (¶3); Tr.1 at 41.

For states without a SIP-approved PSD program, regulations at 40 C.F.R. § 52.21 govern the federal PSD program. SR at 7-8; *see* PC 1 at 18 (¶2b); Tr.1 at 51. Illinois implements the PSD program on behalf of USEPA under a delegation agreement incorporated into Illinois' SIP. TSD at 4; SR at 4, n.2, citing 40 C.F.R. § 52.738(b); *see* PC 1, Exh. B (sample PSD permits). IEPA reports that, in three other states, PSD permitting is also "currently implemented for the entire state under delegated PSD programs." PC 1 at 14 (¶4); Tr.1 at 42. Three other states implement PSD through a combination of a delegated program and a SIP-approved program. *Id*.

The Board asked IEPA what the main differences relevant to this proposal are between 40 C.F.R. § 51.166 and 40 C.F.R. § 52.21. Board Questions at 1 (¶2b). Based on the separate functions described above, IEPA states that there is a significant difference between the two authorities regarding the administrative tribunal hearing appeals of permitting determinations. PC 1 at 18 (¶2b) (citations omitted); *see* Tr.1 at 51. A determination by IEPA under 40 C.F.R. § 52.21 is subject to review by EAB under 40 C.F.R. § 124.19. *Id*. Once Illinois has a SIP-approved PSD program, IEPA determinations under that program would be reviewed by the

Board under Section 40.3 of the Act and 35 Ill. Adm. Code 101 and 105. PC 1 at 19 (¶2b) (citations omitted); *see* Tr.1 at 52.

The Board asked IEPA to clarify why it based its proposal on 40 C.F.R. § 52.21. Board Questions at 1 (¶2). IEPA first responded by stressing that while 40 C.F.R. §§ 51.166 and 52.21 play different roles, they address the same substantive program. PC 1 at 16 (¶2); *see* Tr.1 at 47. IEPA stressed that, while it based its proposal largely on 40 C.F.R. § 52.21, it ensured that the proposal met requirements for submitting a SIP to USEPA under 40 C.F.R. § 51.166. PC 1 at 16 (¶2), citing SR at 29-30; *see* Tr.1 at 47.

The Board asked whether it is "IEPA's interpretation of Section 9.1(c) of the Act that the Board rules must be modeled on 40 CFR 52.21, rather than incorporated by reference." Board Questions at 1 (¶2a). IEPA responded that, while Section 9.1(c) refers to incorporation by reference, "it is not possible to simply incorporate 40 CFR 52.21 to serve as a state PSD program." PC 1 at 17 (¶2a); *see* Tr.1 at 48. First, IEPA argues that the statutory definition of "PSD permit" refers to a permit issued by an approved program implementing authorities including 40 C.F.R. § 51.166. PC 1 at 17 (¶2a), citing 415 ILCS 5/3.363 (2018); *see* PC 2 at 1-2 (¶1b). Second, IEPA argues that USEPA did not draft 40 C.F.R. § 52.21 so that it could readily be incorporated. IEPA cited the definition of "subject to regulation," which refers to action by USEPA and includes a cross reference to the CFR. PC 1 at 17 (¶2a), citing 40 C.F.R. § 52.21(b)(49); *see* Tr.1 at 48-49; PC 2 at 1-2 (¶1b). Third, USEPA has not revised 40 C.F.R. § 52.21 "to respond to certain federal court decisions that are relevant to implementation of the PSD program." PC 1 at 17-18 (¶2a), citing 40 C.F.R. § 52.21(b)(4) (defining "potential to emit"); *see* Tr.1 at 49. Fourth, 40 C.F.R. § 52.21 relies on definitions in 40 C.F.R. § 51.100. PC 1 at 18 (¶2a). IEPA concludes that the Board must adopt a detailed rule based on 40 C.F.R. § 52.21, including revisions necessary for USEPA approval as a state PSD permit program. *Id*. IEPA argues that a comprehensive single rule simplifies implementation and enforcement for itself, the Board and the Office of the Attorney General. *Id*.; *see* Tr.1 at 49-50.

The Board asked IEPA whether basing its proposal on 40 C.F.R. § 52.21 rather than 40 C.F.R. § 51.166 would affect USEPA's approval of Illinois' SIP. Board Questions at 1 (¶2c). IEPA stressed that it ensured that the proposal met requirements for submitting a SIP to USEPA under 40 C.F.R. § 51.166. PC 1 at 20 (¶2c), citing SR at 29-30; *see* Tr.1 at 54. IEPA added that it consulted with USEPA on approval of its proposed Part 204. IEPA argued that, "[t]o the extent that changes are made to proposed Part 204 or accompanying regulations in this rulemaking process, these changes would affect USEPA's approval of Part 204." PC 1 at 20 (¶2c); Tr.1 at 54.

IEPA intends that Part 204 will supplant the federal program once it is adopted by the Board and approved by USEPA. TSD at 4; SR at 4 n.2. Part 204 would then "be directly enforceable by Illinois EPA and other parties under the authority of both state and federal law." TSD at 4. IEPA states that "[p]roposed Part 204 would be one in a series of permit programs to track emissions, to ensure that sources are meeting their regulatory obligations, and to maintain permits." SR at 7.

The Board asked IEPA to "provide examples of other permit program that apply to sources subject to the proposed PSD program." Board Questions at 2 (¶4a). IEPA responded Illinois has only two basic types of permits for stationary sources of emissions. First, construction permits authorize the construction of new stationary sources and projects involving emission units at existing sources and also address the initial period of operation. PC 1 at 31 (¶4a-1). Second, "operating permits address the ongoing operation of stationary sources." *Id.*; *see* Tr.1 at 70-71 (Schnepp testimony).

IEPA elaborated that it issues operating permits for stationary sources, including sources subject to the PSD program, through the Clean Air Act Permit Program (CAAPP) under Section 39.5 of the Act. Emission limits and requirements contained in CAAPP permits are carried over from a PSD construction permit. PC 1 at 31 (¶4a-1); Tr.1 at 71. "Unlike construction permits, CAAPP permits have fixed terms and must be periodically renewed." *Id*.

IEPA explained that, "[w]hile it is convenient to refer to the PSD program and PSD permits for proposed projects, it is important to understand that PSD permitting in Illinois takes place in the context of the general construction permit program for sources of emissions." PC 1 at 31 (¶4a-1); Tr.1 at 72. IEPA states that it does not process stand-alone applications for PSD permits. Instead, "for a proposed new stationary source or major modification that is subject to PSD, the permit applicant must submit a construction permit application in which the applicable requirements of the PSD program are met along with other air pollution control requirements that apply to the project." *Id*. While "the entire construction permit may loosely be referred to as a PSD permit," the permit is also likely to address aspects of the project outside of the PSD permit program. *Id*. This may include requirements for which PSD does not apply, including Part 203, Illinois' permit program for NaNSR. *Id*.

The Board asked IEPA to clarify whether other permit programs "have any overlapping requirements that apply to PSD sources" and, if so, whether IEPA intends to eliminate duplicative requirements. Board Questions at 2 (¶4b). IEPA responded that its existing construction permit programs do not have duplicate requirements that would allow issuance of a PSD permit to substitute for another. PC 1 at 32 (¶4b); Tr.1 at 75-76. IEPA states that it coordinates these permit programs with a single construction permit application. PC 1 at 32 (¶4b), citing 35 Ill. Adm. Code 201.142; *see* Tr.1 at 76. IEPA adds that the CAAPP and construction permit programs also do not have duplicative requirements. PC 1 at 32 (¶4b); *see* Tr.1 at 76. IEPA states that CAAPP addresses ongoing operation and not the proposed construction or modification of stationary sources. *Id*.

IERG noted IEPA's position that "Board rulemaking will likely be required in the future to revise the State program. When such changes are *warranted*, the Illinois EPA will *appropriately* initiate a needed rulemaking proceeding." IERG Questions 2 at 1 (¶1) (emphasis in original), citing PC 1 at 6 (¶2d-1). IERG asked IEPA how frequently it would review the rules and what criteria it will apply to determine when change is warranted. IERG Questions 2 at 1 (¶1). IEPA responded that, if USEPA revises the PSD program to make changes already reflected in its proposal to the Board, then it would not need to initiate a rulemaking. PC 2 at 23 (¶¶1-i, 1-ii); *see* Tr.2 at 73-74. IEPA notes that its proposal reflects recent court decisions that USEPA has not yet reflected in the federal rules. *Id*. IEPA indicated that it would not be

necessary to update Part 204 regarding permitting of greenhouse gases (GHGs) and how the term "federally enforceable" is construed in the context of the definition of "potential to emit." *Id*.

However, IEPA "would necessarily have to conduct reviews as to the adequacy of the state PSD permitting program whenever changes were made to 40 CFR 51.166 and/or 52.21." PC 2 at 23 (¶1-ii); Tr.2 at 74. IEPA argues that, while the Board considers these proposed rules, "it is only appropriate for the Illinois EPA to state that it will propose any changes to Part 204 that are necessary for the State of Illinois to maintain its USEPA-approved state PSD program." *Id*. IEPA adds that any entity that believes it is appropriate to revise the program may initiate a rulemaking. PC at 23-24 (¶¶1-i, 1-ii); Tr.2 at 74-75.

Applicability

Constructing a new major stationary source or a major modification at an existing major stationary source generally requires a PSD permit. SR at 9; *see* Schnepp Test. at 2-3. "Under the PSD program, a stationary source consists of all of the stationary pollutant-emitting activities that are under common control, are located on contiguous or adjacent properties, and belong to the same industrial grouping." TSD at 8; Schnepp Test. at 3. Grouping is based on the federal Standard Industrial Classification Manual, "which classifies establishments based on their primary economic activity." TSD at 8; *see* SR at 9, n.16, citing 42 U.S.C. §§ 7411(a)(3), 7661(2).

"Determining whether a proposed or existing stationary source is major is based on its emissions of any pollutant regulated under the CAA, with the exception of hazardous air pollutants and greenhouse gases." SR at 9, citing 42 U.S.C. §§ 7470-7479.
The PSD program lists 28 categories of sources for which the major source threshold is 100 tons per year (tpy) for a regulated NSR pollutant. SR at 9; TSD at 9, 10; *see* TSD at 23, n.34. "For sources in these listed source categories, fugitive emissions always count towards the 100 tpy threshold." SR at 9. The PSD program defines "fugitive emissions" as those that "could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening." SR at 10; TSD at 11; *see* Prop. 204 at 16. IEPA asserts that this definition does not refer broadly to emissions that are not captured. SR at 10. As examples of fugitive emissions, IEPA lists roadways and quarry operations. *Id*.; *see* TSD at 11, n.12.

"If a source is not in one of the listed source categories, an emission threshold of 250 tpy applies." SR at 9, citing 42 U.S.C. §§ 7475(a), 7479(1), 7479(2)(C), 7411(a)(4); *see* TSD at 9. For these sources, fugitive emissions count toward the threshold "if the source is in a source category that, as of August 7, 1980, was being regulated under Section 111 or 112 of the Clean Air Act." SR at 9-10; TSD at 11; *see* TSD at 23, n.34. These categories include automobile and light-duty truck surface coating operations and glass manufacturing plants. SR at 10; TSD at 11. Fugitive emissions also count if the source is in a category that was regulated under a National Emission Standard for Hazardous Air Pollutants (NESHAP) as of August 7, 1980. IEPA names "machine shops that process beryllium or beryllium oxides" as an example. TSD at 11; *see* TSD at 23, n.34.

IERG asked IEPA whether PSD applicability under proposed Part 204 would differ from applicability under the federal rules. IERG Questions at 1 (¶1). IEPA responded that applicability "would not differ." PC 1 at 12 (¶1-a); *see* Tr.1 at 36. IEPA added that revisions to the federal applicability requirements "would potentially result in differences in applicability between 40 C.F.R. 52.21 and Part 204." *Id*. If those revisions occur, IERG asked IEPA whether it would consider updating Part 204 to reflect the revisions. Tr.1 at 36. IEPA stated that any revision of 40 C.F.R. §§ 51.166 and 52.21 would "necessarily" require it to review the adequacy of the state PSD program. PC 2 at 23 (¶1-i). IEPA added that, if it did not propose changes based on that review, other persons could propose changes to the Board. *Id*.

IEPA stresses that the criterion for a major stationary source under PSD differs from the criterion under the Title V operating permit program, the CAAPP in Illinois. TSD at 9, n.11, citing 415 ILCS 5/39.5 (2018). "For emissions of a regulated NSR pollutant, the major source threshold of the Title V program is 100 tpy for all categories of sources." *Id*. Although PSD major sources are also major sources for CAAPP, not every CAAPP major source is major for PSD. *Id*. IEPA responded that "part of adopting a state PSD program necessarily means that rulemaking will likely be required in the future to make changes in Part 204. When such changes are warranted, the Illinois EPA will appropriately initiate the needed rulemaking proceeding." PC 1 at 12 (¶1-b).

Mr. Romaine testified that the PSD program provides an incentive to design and construct new sources and modify existing sources so they are not major and are not subject to the substantive requirements of the program. Romaine Test. at 3. He reports that this incentive "may result in the selection or design of emission units with lower emissions, the use of more efficient emission control equipment or, for a proposed modification, actions elsewhere at the source to create accompanying decreases in emissions." *Id*. As a result, the potential application of PSD requirements may "indirectly lower emissions of certain proposed new sources and modifications so that they are not major." *Id*. If a proposed source or modification is major and subject to PSD for one pollutant, the incentive may still result in lower emission of other pollutants to which PSD applies. *Id*.

Pollutants Addressed by PSD Program

PSD addresses pollutants referred to as "regulated NSR pollutants," which include most pollutants for which there are NAAQS. TSD at 6; Schnepp Test. at 2. They also include volatile organic material (VOM) and nitrogen oxides (NO_x), "which are regulated because they are precursors to pollutants for which there are NAAQS. TSD at 6; *see id*. at 7 (listing "NAAQS Pollutants and Precursor Pollutants").

"Regulated NSR pollutants" include pollutants regulated under a New Source Performance Standard (NSPS) "and other pollutants for which USEPA has adopted regulations under the Clean Air Act that restrict the emissions of that pollutant." TSD at 7, citing 40 C.F.R. Part 60; Schnepp Test. at 2; *see* TSD at 8 (listing "Other Regulated NSR Pollutants"). IEPA notes that USEPA has adopted standards under NSPS that regulate pollutants as emitted by particular types of emission units. TSD at 7, n.7. IEPA cites as an example the NSPS applicable to municipal solid waste (MSW) landfill emissions, measured as nonmethane organic

compounds (NMOC). *Id*. The PSD program does not generally address NMOC as an NSR pollutant and does not directly address NMOC emissions from sources other than MSW landfills. *Id*.

A hazardous air pollutant (HAP) listed in or under Section 112 of the CAA is not a regulated NSR pollutants. TSD at 7; Schnepp Test. at 2. IEPA states that Section 112(b)(6) provides that "PSD shall not apply to pollutants that are listed under Section 112." TSD at 7. "When quantifying emissions of regulated NSR pollutants that include more than one compound, emissions of a HAP are included if the regulated pollutant is a constituent NAAQS pollutant or a precursor pollutant, but they are not included if the regulated NSR pollutant is one of the "other regulated NSR pollutants." *Id*. As an example, IEPA cites "reduced sulfur compounds" (RSC), which is regulated by PSD because specified units are subject to emission standards for RSC under NSPS for petroleum refineries at 40 C.F.R. Part 60, Subpart J. The regulatory definition of RSC includes hydrogen sulfide (H_2S), carbonyl sulfide (COS), and carbon disulfide (CS_2), the last two of which are listed HAPs and also qualify as VOM. *Id*., n. 9, citing 40 C.F.R. § 60.101(l). Under PSD or NaNSR, VOM emissions of a unit that emits COS or CS_2 include emissions of these compounds because PSD and NaNSR regulate VOM as a "precursor pollutant." TSD at 7, n.9. "However, neither of these compounds is included when determining RSC emissions. This is because RSC is regulated under PSD only as it is an "other pollutant." *Id*.

Nonattainment Areas

If a stationary source is located in a nonattainment area for a pollutant, then that pollutant and its precursors continue to be regulated as NSR pollutants under the PSD program. TSD at 12. "Emissions of the pollutant or its precursors may trigger the need for a PSD permit as they are still relevant for determining whether a source is a major stationary source." *Id*.

Mr. Romaine testified that, for proposed new sources or modifications in nonattainment areas, PSD requirements do not apply for a regulated NSR pollutant to the extent that they are supplanted by the NaNSR program. Romaine Test. at 4; *see* TSD at 12. In an ozone nonattainment area, for example, NaNSR applies to VOM emissions rather than PSD because VOM "is only regulated under NSR as it is a precursor to the formation of ozone in the atmosphere." Romaine Test. at 4.

IEPA adds that, because each regulated NSR pollutant requires a separate determination of applicability of PSD and NaNSR permitting requirements, both requirements can apply to a single project and even to a single pollutant. TSD at 12. As an example, IEPA states that "NO_x is regulated under NSR as it is a precursor to NO_2, $PM_{2.5}$ and ozone in the atmosphere." *Id*. In an ozone nonattainment area, a project "could be subject to NaNSR for NO_x as NO_x is a precursor to ozone and subject to PSD as NO_x is a precursor for NO_2 and $PM_{2.5}$." *Id*.; *see* Schnepp Test. at 3.

Determining Potential to Emit (PTE)

The PTE of a stationary source or emissions unit "is generally defined as its capacity to emit a pollutant under its physical and operational design." TSD at 10. Emissions from mobile sources are not included in calculating PTE. Schnepp Test. at 5. Fugitive emissions would not be included except in specified categories. *Id*.; *see* TSD at 11. Limitations on the capacity to emit a pollutant "are treated as part of its design if the limitation or the effect it would have on emissions is or will be federally enforceable or enforceable by a state or local air pollution control agency." *Id*. To limit PTE, it must also be enforceable as a practical matter: "amenable to assessment of compliance on an ongoing basis, being accompanied by requirements for testing, monitoring, inspections, and recordkeeping, as appropriate." *Id*.

New Major Sources

PSD review generally applies to regulated NSR pollutants from proposed new major stationary sources for which PTE is above the major stationary source threshold and for which the PTE would be significant. TSD at 12; *see* Romaine Test. at 4. "[O]nce a proposed major new source qualifies as a major source for one regulated NSR pollutant, other than greenhouse gases, PSD is generally applicable for all other regulated NSR pollutant for which the potential emissions are significant." *Id*.; *see* Schnepp Test. at 5-6; Romaine Test. at 4. Emissions are considered significant for a pollutant if they are equal to or greater than amount specified in the PSD rule for a pollutant. TSD at 13 (listing significant emissions rates).

If proposed physical changes at an existing non-major stationary source would themselves constitute a major stationary source, construction of a new major stationary source occurs. TSD at 14. As a result of those changes, "future projects at the source will be evaluated against the PSD significant emission rates." *Id*. IEPA provides an exception: an existing source in a nonattainment area and a pollutant regulated under NSR only for its contribution to air quality for the pollutant for which the area is nonattainment. *Id*. As an example, in an area designated nonattainment for ozone, "a proposed project would never be subject to PSD for VOM emissions." *Id*.; *see* Romaine Test. at 4.

Major Modifications of Existing Major Sources

For a proposed project at an existing major source to constitute a major modification, the project must first include "a new emissions unit or a physical change or an operational change (or a change in the method of operation) of an existing emission unit or a major stationary source so as to constitute a modification." SR at 10, citing 40 C.F.R. § 51.166(b)(2)(i); *see* TSD at 14. Under the PSD rule, certain changes such as routine maintenance, repair, and replacement activities are not considered a physical change or change in the method of operation. TSD at 15; *see id*., n.21; Schnepp Test. at 6. "Permissible increases in the utilization or hours of operation of emissions are not considered changes in the method of operation or operational changes under the PSD rule." TSD at 15. If fugitive emissions are not considered in determining applicability "and the project would not be a major modification for a pollutant considering only non-fugitive emissions, then PSD review is not applicable for that pollutant." *Id*.

To determine applicability of PSD, "a collection of activities that is technically and economically related or interdependent are addressed as a single project." TSD at 15. IEPA

states that sources are not allowed to divide projects into nominally separate changes with separate analyses of emissions increases. *Id*. IEPA reports that permitting authorities evaluate nominally separate changes to determine whether they should be aggregated and considered part of a single project. *Id*., n.22.

Whether a proposed project is a major modification generally depends on whether it "will cause a significant emissions increase for a regulated pollutant and also a significant net increase for the same pollutant." SR at 10, citing 40 C.F.R. § 51.166(b)(2)(ii); *see* TSD at 14.

A project's change in emissions "is the sum of the increases and decreases in actual emissions from existing emissions units as a result of the project and the increases in potential emissions from new units installed as part of the project." SR at 10; *see* TSD at 16; Schnepp Test. at 7. Units upstream or downstream of the modified unit or units may have increased emissions as a result of changes to a modified unit. SR at 10, n.18; *see* Schnepp Test. at 7. A new emissions unit is or will be newly-constructed and has existed less than two years from the day it first operated. TSD at 16. For a new emissions unit, the emissions change is measured by the "actual-to-potential" test as "the difference between its PTE following completion of the project and its baseline actual emissions. *Id*. Because the baseline actual emissions from a new unit are zero, the increase is initially the new unit's PTE. *Id*.; *see* Schnepp Test. at 7. If a new unit is affected by a project during its first two years of operation, then baseline actual emissions are equal to the unit's PTE. TSD at 16. To have representative data until the unit has operated for two years, changes are evaluated on the basis of PTE. A later project will only increase emissions from the new unit if it increases the unit's PTE. *Id*.

An emissions unit is an existing emissions unit if it is not a new emissions unit. TSD at 16. The emissions increase from an existing unit is measured by the "actual-to-projected-actual" test as the difference between projected actual emissions and baseline actual emissions. *Id*. The baseline actual emissions are generally actual average annual emissions during a recent 24-month period selected by a source. *Id*. Baseline actual emission must be adjusted downward "to exclude noncompliant emissions that occurred while the emissions unit was operating above any emissions limit that was legally enforceable during the baseline period" and also to exclude emissions exceeding a limit with which the unit must currently comply. *Id*. at 16-17; *see* Schnepp Test. at 7. "For projects involving more than one existing emissions unit, the same baseline period must be used for all such units in the actual-to-projected-actual calculations for a particular pollutant." TSD at 17. Sources may use different periods for different pollutants. *Id*. For electric utility steam generating units, provisions for determining baseline actual emissions differ from other emissions units. *Id*. at 17, n.23.

Projected actual emissions generally are the maximum amount in tpy that an existing emissions unit projects to emit a regulated NSR pollutant "in any calendar year in either the five- or ten-year period after the unit resumes regular operations following completion of the project." TSD at 17; *see* Schnepp Test. at 7. If a source projects emissions, the defined period is ten years "if the project involves increasing the emissions unit's design capacity or its PTE for that regulated NSR pollutant and if full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source." TSD at 17. Sources must project

based on relevant information including "expected business activity and historical operating data." *Id*. As an alternative to projecting actual emissions, the source may elect to use PTE. *Id*.

If an existing emissions unit's projected actual emissions of a regulated NSR pollutant exceed its baseline actual emissions, it may be necessary "to assess the extent to which this emissions increase should be considered in determining whether a proposed project is a major modification." TSD at 17. "NSR will not apply unless EPA finds that there is a causal link between the proposed change and any post-change increase in emissions." *Id*. at 17-18, citing 57 Fed. Reg. 32326 (July 21, 1992). To establish the extent to which an emissions increase should not be attributed to the project, the source excludes "the portion of the unit's emissions following the project that the unit could have accommodated during the baseline period and that are also unrelated to the particular project." TSD at 18; *see* Schnepp Test. at 7. IEPA characterizes this adjustment as the "demand growth exclusion." TSD at 18.; *see id*. at n.26 (providing example).

If an installed emissions unit qualifies as a replacement unit, PSD rules would address it as an existing unit. TSD at 18. The source compares "the baseline actual emissions of the existing unit and the projected actual emissions" of the replacement. *Id*. A unit qualifies as a replacement unit if it meets specific criteria:

> 1) [t]he unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) or it completely takes the place of an existing emissions unit; 2) [t]he unit is identical to or functionally equivalent to the replaced emissions unit; 3) [t]he unit that its replaced will permanently cease operation, either being rendered inoperable through physical means or through enforceable permit terms; and 4) [t]he replacement does not alter the basic design parameter(s) of the process unit of which it is a part. *Id*. at 18-19.

IEPA proposed to define "process unit" to mean "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. A process unit may contain more than one emissions unit." Prop. 204 at 25; *see* TSD at 19, n.27, citing 40 C.F.R. § 60.481. IEPA stressed that, "[w]hen a proposed emission unit would take the place [of] an existing unit that is part of a collection of units and/or equipment that operates together in an integrated manner, the proposed project must be evaluated relative to its impact on the collection of units and/or equipment." TSD at 19, n.27. As an example, "the overall capacity of the 'process unit' could be unaffected if the process unit is constrained by the capacity of its other existing units and/or equipment." *Id*.

To combine increases in emissions from units involved in or affected by a project to determine whether they are significant, "[t]he actual-to-projected-actual calculation is performed for each existing emission unit and the actual-to-potential calculation is performed for each new emissions unit." TSD at 19. The federal PSD program now provides that "the total emissions increase from a proposed project is the sum of the differences in emissions." *Id*., n.28 (noting previous handling of changes); *see* Schnepp Test. at 7.

Total increased emissions from a project are compared against significant emissions rates under the PSD rules. Schnepp Test. at 7. "If the calculated net increase equals or exceeds the

applicable significance emission rate, then PSD permitting has been triggered." SR at 12; *see id*. at 12-13, n.23 (Table 1: Pollutant Significant Emissions Increase Rates for Major Modifications in 40 CFR Part 52.21(b)(23)); *see* Schnepp Test. at 7-8.

Records and Reporting

Existing emissions units affected by a proposed project evaluate changes in emissions with the actual-to-projected-actual applicability test. If the source relies on projected actual emissions of the unit instead of its PTE, certain recordkeeping and reporting requirements related to applicability of the PSD program may apply. TSD at 19-20; *see* SR at 13, citing 40 C.F.R. §§ 51.166(r)(6-7), 52.21(r)(6-7). The requirements apply on a pollutant-specific basis if the projected emissions increase meets one of two criteria. The first is that "the projected emissions increase from the project is 50 percent or more of the relevant significant emissions rate." TSD at 20; *see* Schnepp Test. at 9. If the first criterion is not met, the second "is that the projected emissions increase is 50 percent or more of the relevant significant emissions rate when any emissions excluded due to the demand growth exclusion are added to the projected emissions increase." TSD at 20; *see* Schnepp Test. at 9.

If an emissions increase meets either criterion for a pollutant, then for that pollutant the source before beginning construction of the project

> must document and maintain a record of a description of the project; a list of emissions units whose emissions may be affected by the project; the applicability analysis including the baseline actual emissions, the projected actual emissions, the amount of the projected actual emissions rate excluded from the emissions increase calculation, and an explanation for why such amount was excluded; and any netting analysis, if applicable. TSD at 20.

"If an existing emissions unit affected by the project is an electric utility steam generating unit, the source must also send a copy of these records to the permitting authority before beginning actual construction." *Id*., n.29.

If the emissions increase meets the first criterion for a pollutant, "then the source must keep records of the emissions of that pollutant from all emissions units identified in the preconstruction applicability analysis and must maintain records for the annual emission on a calendar year basis." TSD at 20. Sources must perform this recordkeeping for at least five years after completing the project "unless the project increases the design capacity or PTE of the emissions unit," in which case the source must keep these records for ten years. *Id*. Sources must report to the permitting authority "if the actual emissions from the project in a calendar year exceed the baseline actual emissions by a significant amount." *Id*. "If an existing emissions unit affected by the project is an electric utility steam generating unit, then the source must submit a report to the permitting authority within 60 days after the end of each calendar year presenting the unit's annual emissions during the calendar year." *Id*., n.30.

Net Emissions Increase

If a proposed project causes a significant increase in emissions of a regulated NSR pollutant, "then PSD applicability depends on whether the project will also result in a significant net emissions increase for that pollutant." TSD at 20; *see* SR at 11, citing 40 C.F.R. § 51.166(b)(3). To show that a significant net increase will not occur, permit applicants perform a "netting" analysis. TSD at 20. A netting analysis considers "the combination of significant emissions increases from the proposed project and any other increases and decreases in emissions of that regulated NSR pollutant at the source that are both contemporaneous with the project and creditable." *Id*.; *see* SR at 11; Schnepp Test. at 8. While a proposed modification may be significant by itself, it may not be subject to PSD by taking into account other emissions decreases during the contemporaneous timeframe." SR at 11. If the emission increase from a proposed modification is significant for a pollutant and the net increase from the modification is significant, then the proposed modification requires a PSD permit. *Id*.; *see* Schnepp Test. at 8.

For determining the net emissions increase from a proposed modification, the contemporaneous period begins five years before construction on the modification begins and ends on the date that the increase in emissions from the particular modification occurs, "which is generally when a new or modified emissions unit becomes operational. TSD at 21; *see id*. at 22 (Example for the Contemporaneous Period for a Proposed Project); SR at 11-12. "[A]n emissions unit that takes the place of an existing unit and that requires shakedown is considered to become operational only after a reasonable shakedown period not to exceed 180 days." TSD at 21; *see id*., n.31

If a source is performing a netting analysis for a pollutant, creditable emissions increases and decreases in the contemporaneous period "must be identified and taken into account." SR at 12; *see* TSD at 22, 23. "An increase or decrease in emissions generally is not creditable if the permitting authority has relied on it in issuing a PSD permit for the source" but "only if the PSD permit is in effect when the increase in actual emissions from a particular change occurs." TSD at 22; *see id*., n.32 (providing example). An emissions decrease resulting from shutting down a unit "is not creditable if the unit would be replaced by a unit that is being addressed as a 'replacement unit' in the evaluation for the change in emissions from a proposed project." *Id*. at 22.

A contemporaneous emissions increase from a unit "is creditable to the extent that the new level of actual emissions from the unit exceeds its baseline actual emissions." TSD at 23. Contemporaneous decreases generally are creditable "only to the extent that the unit's baseline actual emissions or its old level of allowable emissions, whichever is lower, exceeds its new level of actual emissions." *Id*. These decreases are also creditable "only to the extent that it will be enforceable as a practical matter on the date that the source begins actual construction of the project for which a netting analysis is being performed." *Id*. Provisions for determining a net increase in emissions from a project differ in some respects from provisions for determining the increase in emissions. *See id*.

Plantwide Applicability Limitation (PAL)

The federal PSD program allows an existing major stationary source to obtain a PAL for a pollutant as an alternative to the major modification applicability criteria. SR at 14; TSD at 24;

Schnepp Test. at 8. "A PAL restricts all emissions of a particular NSR pollutant from a subject source." TSD at 24; *see* Schnepp Test. at 8. "This alternative provides an entirely different set of applicability criteria." SR at 14, citing 40 C.F.R. §§ 51.166(w)(1), 52.21(aa)(1); *see* TSD at 24. "[I]f the source's actual emissions of the pollutant with a proposed project will remain below the applicable PAL, the project is not a major modification for that pollutant even if the increases in emissions of the pollutant due to the project would be significant." TSD at 24; *see* Schnepp Test. at 9.

To obtain a PAL, a source must submit an application that contains specified information, including classification of each emission unit as small, significant, or major. TSD at 24; *see id*., n.36 (classification thresholds). Setting a PAL begins with baseline actual emissions for all units at the source that can emit the pollutant. *Id*. at 24. "To set the value of a PAL, the significant emission rate for the pollutant is added to the baseline actual emissions." *Id*. at 25.

Permitting authorities establish PALs in a PAL permit with a 10-year term. TSD at 24. If a source renews a PAL permit, the level of a renewed PAL is generally set in the same manner. However, "the permitting authority has discretion to set the value of the new PAL at a level that it determines to be more representative of the source's baseline actual emissions" or that it determines on various grounds to be more appropriate. *Id*. at 25; *see id*., n.40 (providing three exceptions resulting in a downward adjustment). A source may also increase a PAL by making the required demonstration in an application for a modification. *Id*. at 25; *see id*., n.41 (providing three exceptions to provision dealing with PAL increases).

BACT

"[A] central provision of PSD is the requirement that subject sources be equipped with Best Available Control Technology (BACT) for all PSD pollutants emitted in major or significant amounts." SR at 8, citing 40 C.F.R. § 52.21(j); *see id*. at 14, citing 42 U.S.C. § 7475(a)(4).

BACT Defined. "BACT is an emissions limit or limits for a pollutant for an emissions unit or group of related units established by the permitting authority based on its determination of the maximum degree of reduction in emissions of that pollutant that is achievable through application of production processes or available methods, systems, and techniques." TSD at 26; *see* SR at 14-15, citing 42 U.S.C. § 7479(3); Romaine Test. at 2, 5. While commonly referred to as technology that controls or reduces emissions, "BACT constitutes the substantive emission limit(s) or requirement(s) that are set as BACT for subject emissions units." TSD at 26-27; *see* Romaine Test. at 4, 5.

IERG asked IEPA whether the "analysis and control requirements under the proposed Part 204 regulations differ from the corresponding requirements under 40 C.F.R. 52.21." IERG Questions at 1 (¶2); Tr.1 at 37. Mr. Romaine responded that the requirements would generally not differ from one another. Tr.1 at 37. He elaborated that the proposed definition of "BACT" is "superficially more stringent" than its federal equivalent. *Id*.

BACT Applicability. Applicability of the BACT requirement varies. For proposed new major sources, "BACT is required for each pollutant for which PSD applies, with BACT determined for each of the stationary emission units and pollutant-emitting activities at the proposed new source that would emit that pollutant." Romaine Test. at 5; *see* TSD at 26. "This includes the fugitive emissions of a pollutant from emissions units if the source is subject to PSD for the pollutant." TSD at 26. If the source is subject to PSD for GHGs, it "also includes emissions units that emit GHGs." *Id*.; *see* SR at 13, n.23.

For proposed modifications subject to PSD, "the BACT requirement applies to each proposed new emissions unit that would emit the pollutant." Romaine Test. at 5; *see* TSD at 26. The requirement also applies "to each existing emissions unit at which a net increase in emissions of that pollutant would occur as a result of a physical change or change in the method of operation in the unit." *Id*. To determine whether such a change would take place, exclusions in the definition of "major modification" are relevant. *Id*. One exclusion provides that "an increase in operation of an emissions unit, by itself, is not considered a change in method of operation of the unit if it is capable of accommodating the increase in operation and the increase is not restricted by an enforceable limitation." TSD at 26, n.42; *see* Romaine Test. at 5.

Role of the PSD Permit Applicant. Applications for PSD permits must include information needed to determine that BACT would be applied. TSD at 27. Permitting authorities typically require that applicants "include detailed demonstrations in their applications showing that BACT is appropriately proposed for a project." *Id*. This may include "a review of possible emission control technologies and information on the technical feasibility, achievable emission reductions, energy impacts, and economic impacts and other costs of those possible technologies." *Id*.; *see* Romaine Test. at 10. "Permitting authorities then review this information, conduct their own investigations and evaluations, and make the actual top-down determination of BACT." Romaine Test. at 10.

BACT Determinations. "BACT determinations are made on a case-by-case basis and, as appropriate, take into account energy, environmental, and economic impacts and other costs." TSD at 27; *see* SR at 14-15, citing 42 U.S.C. § 7479(3). While BACT generally is a numeric emission limit, the permitting authority may determine that the limits of measurement technology make numerical limits infeasible. *Id*. In that case, "the permitting authority may instead establish non-numerical BACT requirement(s), such as design, work practice or operational requirement(s)." TSD at 27; SR at 16. BACT limits are set in PSD permits "and must be at least as stringent as the standard(s) applicable to such emissions unit(s) under any applicable federal NSPS or NESHAP." TSD at 27. BACT determinations are subject to public review and comment before the permitting authority takes final action on a PSD application. *Id*.

USEPA has consistently interpreted BACT to include two fundamental requirements. SR at 15 (citation omitted). First, BACT analysis must consider "the most stringent control option that is available and technically feasible." *Id*. Second, requiring a lesser degree of emissions reduction "must be justified by an objective analysis of' 'energy, environmental, and economic impacts.'" *Id*.

BACT determinations may consider the RACT [Reasonably Available Control Technology]/BACT/LAER [Lowest Achievable Emission Rate] Clearinghouse (RBLC), "a national compendium of control technology determinations maintained by USEPA." SR at 15. Determinations may also consider technical literature and information on similar projects. *Id*.

To make BACT determinations, permitting authorities follow a five-step "top down process" recommended in USEPA's *New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting*, Draft, October 1990 (NSR Manual). TSD at 27; SR at 16; Romaine Test. at 6. While USEPA rules do not require this process, "many permitting authorities have found it to be an effective approach for making BACT determinations." TSD at 27; SR at 16; *see* SR at 11, n.19; 16, n.27. The process ensures "consideration of the most effective control technologies and the most stringent emission limits or requirements that are achievable. If a less stringent limit or requirement is proposed or set as BACT, the adverse impacts that are the basis for the decision are clearly set forth." Romaine Test. at 9; *see* TSD at 27-28.

Step 1. The first step of the BACT determination identifies all potential options for controlling emissions of the target pollutant. TSD at 28; Romaine Test. at 6, 7; SR at 16, n.28. These options include add-on control devices, alternative fuels or raw materials, and alternative methods or processes that reduce formation or level of emissions. *Id*. The requirement to consider alternatives "does not extend to consideration of alternatives that would redefine the basic business purpose or fundamental scope or design of the project that is proposed by the applicant." Romaine Test. at 7.

Technologies can be identified "based on their use on emissions units in the same source category or based on their use on other units in other source categories with similar emission characteristics and exhaust gas streams." Romaine Test. at 7; TSD at 28. Sources for identifying available technologies include RBLC, "permits for existing sources, relevant USEPA air pollution control rules and rulemakings, technical journals and published research papers." *Id*.

Step 2. The second step reviews the available emission control technologies for their technical feasibility. TSD at 28; Romaine Test. at 7; *see* SR at 16, n.28. The permitting facility determines whether the technology has successfully operated at a similar facility and whether "it would function effectively to reduce emissions of the subject unit(s)." Romaine Test. at 7; *see* SR at 16, n.28; TSD at 28. This determination may compare "factors such as the units' sizes, functions, raw materials and products, and exhaust gas stream comparisons." TSD at 28. However, if the applicant seeks to show that a technology would not be technically feasible because of these differences, then "the applicant must fully explain and support its position." TSD at 28, n.44. Technical challenges "that could be overcome with additional capital or operating costs are not an appropriate basis on which to show that a technology is not technically feasible." *Id*. However, if a technology is not technically feasible, it does not receive further consideration. Romaine Test. at 7; TSD at 28; *see* SR at 16, n.28 (citing NSR Manual).

Step 3. In the third step, technically feasible options identified in Step 2 "are ranked in order of control effectiveness, with the most effective control option at the top of the ranking." TSD at 28; *see* Romaine Test. at 7; SR at 16, n.28, citing NSR Manual at B.22 – B.25.

Effectiveness may be stated as control efficiency for the pollutant, the emission rate that would be achieved, or both. TSD at 29; Romaine Test. at 8. The ranked effectiveness includes "data for the annual emissions of the pollutant that would accompany use of the various control options." TSD at 29; *see* Romaine Test. at 8.

If any of the ranked options can be implemented with a range of effectiveness, "different values of control effectiveness must be selected and ranked separately as distinct control options." TSD at 29; *see id*., n.45 (providing examples); Romaine Test. at 7. Also, if two or more technologies can be combined for greater effectiveness, "these combinations of control technology should also be addressed as separate control options." TSD at 29; *see id*., n.46 (providing examples); Romaine Test. at 7-8. If the top-ranked control is not chosen as BACT, the ranking should list baseline emissions at the bottom. "For this purpose, the baseline emissions are a realistic scenario for the greatest emissions of the unit or units in the absence of any control." TSD at 29.

Step 4. If an applicant proposes the top-ranked option from Step 3 as the technical basis for BACT, then "Step 4 may be skipped . . .or greatly simplified." TSD at 29; *see* Romaine Test. at 8.

In the fourth step, control options ranked in Step 3 may undergo additional analysis if the top-ranked option is not selected as the technical basis of the limit or requirement constituting BACT. TSD at 29; *see* SR at 16, n.28; Romaine Test. at 8. At this step, the analysis may reject control options because of "adverse energy impacts, environmental impacts, and economic impacts." *Id*. If "the top control technology is shown to be inappropriate due to excessive energy, environmental or economic impacts, the next most stringent alternative becomes the new control candidate and is similarly evaluated until a technology is determined to be appropriate." SR at 16, n.28, citing NSR Manual at B.26 – B.50; *see* Romaine Test. at 8.

Energy impacts assessed in a BACT analysis "involve the amount of fuel or electricity that control technologies consume." TSD at 29; *see* Romaine Test. at 8. "For electrical generating units, reductions in the net power output due to the electricity used by control devices may also be considered." TSD at 29.

Environmental impacts involve effects associated with generating solid waste or wastewater, "particularly as those impacts cannot be fully expressed as costs associated with the use of a technology." SR at 29-30; *see id*. at 30, n.47 (providing examples); Romaine Test. at 8. BACT analysis may also consider beneficial environmental impacts "as particular control technologies reduce emissions of pollutant(s) other than the pollutant for which BACT is required." SR at 30; *see* Romaine Test. at 8.

Cost impacts are those costs incurred by a source to "procure, install, maintain, and operate the control option." TSD at 30; *see* Romaine Test. at 8. USEPA recommends costing methodologies to determine the direct costs of control devices. *Id*.; *see id*., n.48 (providing Web address of cost manual); *see* Romaine Test. at 8. It may be relevant to consider cost savings, "such as the value of recovered or retained product." *Id*. at 30; *see* Romaine Test. at 8.

USEPA methodology states the costs of an option on an annualized basis and then calculates cost effectiveness. TSD at 30; *see* SR at 16, n.28; Romaine Test. at 9. "Cost-effectiveness is the cost of the reduction in emissions of the target pollutant that would no longer be emitted, in dollars per ton or pound of avoided emissions." TSD at 30; *see* Romaine Test. at 9. The analysis may consider both average cost effectiveness and incremental cost effectiveness. *Id*.; *see id*., n.49 (providing examples); Romaine Test. at 9. Since cost-effectiveness does not consider energy impacts, environmental impacts, and cost impacts, it is not the entire basis for selecting a control option. *Id*. at 30. "Although information for cost-effectiveness is often useful, there generally are not set values of cost-effectiveness below which a control option will always be selected as BACT and above which a control option will never be selected." *Id*.; Romaine Test. at 9.

Step 5. Based on the control option selected in Step 4, the fifth step selects the numeric emission limit or other requirement representing BACT. TSD at 30; SR at 17, n.28; Romaine Test. at 6, 9. The emission limit must be stringent enough to represent the maximum reduction in emissions achievable with the control option, it "must not be so stringent that it is not achievable on an ongoing basis for the life of the emissions unit provided that the unit and its control are properly maintained and operated." TSD at 31, n.50.; *see* Romaine Test. at 9. Setting these limits reflects the reasoned judgment of the permitting authority. TSD at 31; Romaine Test. at 9.

"BACT limits must be enforceable as a practical matter." TSD at 31. While permitting authorities generally set BACT as numeric emission limits, technological or economic limitations on measurement methodologies may make a numeric limit infeasible. In that case, "the permitting authority may instead establish a non-numeric requirement (*e.g.*, equipment design, work practice or operation requirements)." *Id*.; SR at 17, n.28, citing NSR Manual at B.53.

Relationship of BACT and Air Quality Requirements of PSD. Under the PSD program, the BACT requirement is independent of the requirement that "an applicant for a PSD permit demonstrate that a proposed source or project will not cause violations of air quality standards or PSD increments or have unacceptable impacts related to its emissions." TSD at 31; *see* Romaine Test. at 5. A permitting authority may need to impose additional requirements in a PSD permit to address these other requirements of the program. TSD at 31; *see id*., n.51 (providing example).

Air Quality Determination

Standards set through a BACT analysis limit the emission of pollutants to address the presence of contaminants in the ambient air. SR at 17. "Ambient air quality considers the emissions from a particular source after they have dispersed from the source following release from a stack or other emission point, in combination with pollutants emitted from other nearby sources and background pollutant levels. *Id*.

USEPA has established ambient air quality standards defining levels at which adverse impacts to human health and welfare may occur. SR at 17. USEPA compiles information on

potential impacts in a "criteria" document, and pollutants for which there are air quality standards are known as criteria pollutants. *Id*. at 17-18.

An air quality analysis assesses "future ambient concentrations of a pollutant in an area as a result of a proposed project" and then compares those concentrations to the air quality standard. SR at 18; *see* Tr.2 at 86. The analysis combines monitoring data and modeling as appropriate. SR at 18. Monitoring routinely samples levels of pollutants, providing valuable data on actual air quality considering factors such as weather and operating sources. *Id*. IEPA operates a statewide network of ambient air monitoring stations. SR at 18.

Because monitors cannot be operated at every possible point in an area and monitoring cannot assess the impact of a project that has not been built, air quality analyses also employ modeling. SR at 19. "Modeling uses mathematical equations to predict ambient concentrations based on the rates of emissions and other data including the heights of stacks, the velocity and temperature of exhaust gases, and weather data (*e.g.*. speed and wind direction)." *Id*. IEPA reports that modeling techniques are "well developed for essentially stable pollutants like particulate matter, SO_2, and CO." *Id*. Modeling techniques for ozone, a reactive pollutant, "are more complex and have generally been developed for analysis of ozone air quality over entire urban areas." *Id*. IEPA states that analyses do not employ these techniques for a source or project with small potential emissions of ozone precursors. *Id*.; *see id*., n.30 (alternative techniques).

"All PSD permits require an air quality analysis of the ambient impacts associated with the emissions of subject pollutants from a proposed project." SR at 20; *see id*. at 18, n.29, citing 42 U.S.C. § 7474(e), 40 C.F.R. § 52.21(k). The analysis assesses future ambient concentrations of a pollutant in an area resulting from a proposed project and compares those concentrations "to the air quality standard or other reference level." SR at 18; Tr.2 at 86. The analysis assures that "new emissions emitted from a proposed major stationary source or major modification will not cause or contribute to a violation of any applicable NAAQS or PSD increment." SR at 20; *see id*., n.32 (NAAQS table). The air quality analysis also must include an additional impact analysis. *See infra* at 24.

The Board asked IEPA to "explain what types of benchmarks are used as 'reference levels' if pollutants being assessed do not have air quality standards." Board Questions at 2 (¶5). IEPA responded that, "[f]or human health impacts, benchmarks can include USEPA's Acute Exposure Guideline Levels, the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimal Risk Levels, and alternatively, occupational exposure standards." PC 1 at 34 (¶5); Tr.1 at 77-78 (Sprague testimony). For ecological impacts, benchmarks include "screening concentration values for air, surface water, soil, sediment, and vegetation obtained from USEPA publications or reference documents, and/or from the peer-reviewed literature." *Id*.

Citing IEPA's response, IERG asked IEPA to "provide further information as to the circumstances in which, and the process(es) by which, those reference levels would be evaluated and applied in the PSD permitting context." IERG Questions 2 at 3 (¶4).

IEPA responded that PSD permitting generally evaluates reference levels "when conducting air quality impact analyses for certain regulated NSR pollutants for which NAAQS are not available to identify unacceptable ambient concentrations." PC 2 at 27 (¶4); Tr.2 at 81-82, 87 (Sprague testimony). Those pollutants include "reduced sulfur compounds (including hydrogen sulfide), fluorides and sulfuric acid mist." PC 2 at 28; Tr.2 at 82. Additional impact analyses must evaluate reference levels for concentrations and depositional loading of pollutants "as potential impacts of emission on vegetation and soils must specifically be addressed." *Id*. Evaluating reference levels involves reviewing public documents "to identify available benchmarks that are appropriate for the specific pollutant and type of impact." PC 2 at 28; Tr.2 at 83-85 (providing example of hydrogen sulfide (H_2S)). IEPA voiced a preference for benchmarks based on "newer work by more authoritative sources" and "more conservative values." PC 2 at 28; Tr.2 at 88. If a proposed project's projected impacts exceed the identified reference level, then "further analysis or evaluation would be conducted to determine if the predicted impacts are truly excessive." PC 2 at 28; Tr.2 at 83.

NAAQS Analysis

An initial screening analysis "evaluates the impacts of the emission increase from the proposed new source or the increase or net increase in emissions from a modification." SR at 21. No further analysis is required "[i]f predicted concentrations are found to be de minimus." *Id*.; *see* Romaine Test. at 11. If the analysis shows impacts that exceed that level, "then further analysis must be performed for that pollutant and, as applicable, relevant averaging time." SR at 21; *see* Romaine Test. at 11. This "cumulative analysis" follows USEPA modeling guidelines. Romaine Test. at 11. "If the total predicted concentration will exceed the NAAQS at a particular receptor and time, then a violation is predicted. The requested PSD permit can be issued only if the applicant demonstrates that the contribution of the proposed project to the predicted violation will not exceed the SIL." *Id*.

"Significant impact levels" (SILs) "distinguish impacts that are and are not de minimus." SR at 21.; *see* Romaine Test. at 11. "USEPA has adopted SILs for NO_x, SO_2, PM_{10} and CO." SR at 21., n.35, citing 40 C.F.R. § 51, Appendix S, Section III; *see* Romaine Test. at 11. For other pollutants, USEPA has recommended SILs while recognizing that "permitting authorities have the discretion to use other values of SILs as appropriate for particular circumstances." SR at 21; *id*., n.36; *see* Romaine Test. at 11.

PSD Increment

Increment Defined. "The PSD increments are the permissible levels of increased concentrations of pollutants in the air under the PSD program, as evaluated from the baseline ambient concentrations of the pollutant." SR at 32; *see* TSD at 21; Romaine Test. at 12. Because the increment limits increases from the baseline, it may "act to restrict the air quality in attainment or unclassifiable areas to levels below the applicable NAAQS." TSD at 21. Generally, "if the baseline concentration in an area for a pollutant is 'low,' the PSD increment will be constraining. Conversely, if the baseline concentration is 'high,' *i.e.*, near the NAAQS, the NAAQS will be constraining." *Id*., n.38.

The PSD program establishes different increments for areas based on their classification. TSD at 32, *see id*. at 33; SR at 22 (table of increments); *see also* Romaine Test. at 12. Class I increments are the most restrictive, and Class II increments "allow for moderate increases in the concentrations of pollutants." TSD at 32; *see* Romaine Test. at 13. All areas in Illinois are now designated as Class II. *Id*., n.54; Romaine Test. at 13.

Baseline Concentrations and Dates. A baseline concentration is established separately for each pollutant and averaging period. SR at 23. Baseline areas are defined in the way that USEPA makes attainment designations for relevant NAAQS. *Id*. Since these are generally made by county, baseline concentrations in Illinois are also defined by county. *Id*. Generally, a baseline concentration represents "the ambient concentration of a pollutant that exists in a baseline area as of the date that the first complete application for a PSD project in that area is submitted subject to adjustment for changes in concentration due to changes in emissions at major sources." *Id*.

Two dates are involved in setting baseline concentrations. "[T]he major source baseline date is the date after which changes in emission of PSD major sources may affect the amount of increment that is available." SR at 23. The different dates result from how effects of changes in emissions are determined. "For major PSD sources, the effects of changes in emissions on the available increment may be determined by modeling." *Id*., n.39. Major source baseline dates are established by regulation for each pollutant and averaging time, "tied to the date that the particular increment is adopted." SR at 23.

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

Significant Impact Levels. PSD permit applications must show that emissions from construction or operation of the proposed project "will not cause, or contribute to, air pollution in excess of any NAAQS or PSD increment." TSD at 34. Permitting authorities consider this requirement met when "an applicant demonstrates that the increased emissions from the proposed new or modified source will not have a significant or meaningful impact on ambient air quality." *Id*. SILs are values considered to represent meaningful air quality impacts. *Id*.; *see* Romaine Test. at 11.

Required PSD Increment Analysis. This analysis typically evaluates "the amount of the increment that would be consumed by the proposed new source or major modification and any previous consumption and expansion of increment to show that the increment would not be exceeded." TSD at 35. If proposed impacts are significant, "this involves preparing an

inventory of activities within the area that occurred after the baseline date that did or will increase actual emissions, as well as any activities that decreased actual emissions." *Id*.

The PSD increment analysis is similar to the NAAQS analysis with two main differences. "First, the inventory of emissions units and emissions is smaller because it includes only increment-affecting emissions changes, not all emissions." TSD at 36; Romaine Test. at 13. Second, the analysis does not add predicted changes in ambient concentrations to ambient background concentrations. "This is because the PSD increments restrict changes in pollutant concentrations in an area, not the maximum concentration of pollutants like the NAAQS." *Id*.

Additional Impact Analysis

All PSD projects require analyzing additional impact. The permit applicant's analysis typically employs "peer-reviewed literature, USEPA-provided ecological screening levels, and miscellaneous resources published by the U.S. Department of Agriculture and U.S. Fish and Wildlife Service." TSD at 37. In Illinois, it also includes information from the Illinois Department of Natural Resources. Romaine Test. at 14.

The analysis first "assesses the impact on soils and vegetation in the vicinity of the proposed project caused by any increase in emissions of any subject pollutant from the proposed project under review." SR at 24; *see* TSD at 37; Romaine Test. at 14.

The analysis also considers "the impacts on air quality due to the growth in emissions that would be associated with a proposed project." SR at 24, citing 40 C.F.R. § 51.166(o), 52.21(o); *see* TSD at 37; Romaine Test. at 14. It assesses "projected residential, commercial, and industrial growth that will occur as a result of the PSD project and, if there would be such growth, an estimate of the emissions and air quality impacts associated with this growth." SR at 24-25; *see* TSD at 37; Romaine Test. at 14.

Proposed PSD projects in Illinois require various federal and state consultations that are not required by the CAA. SR at 24, n.40. Consultations under the federal and state endangered species acts "analyze whether a proposed project would show expected impacts on any identified threatened or endangered species." *Id.* Under the National Historic Preservation Act, consultation assesses possible impacts "on historic properties eligible for inclusion in the National Register of Historic Places" under the National Historic Preservation Act. *Id*. "A letter summarizing the assessment is then provided to the State Historic Preservation Officer for consultation and concurrence with the determination." *Id*. IEPA states that, if Illinois has a SIP-approved program, "necessary consultations would only include the Illinois Endangered Species Protection Act and the Illinois Historic Preservation Act." *Id*.

Class I Area Impact Analysis

Under the CAA, within areas designated attainment or unclassifiable for the NAAQS, specified areas designated Class I are considered "to deserve the highest level of air quality protection." SR at 25, citing 42 U.S.C. § 7470(2). Congress has designated 158 Class I areas such as parks and wilderness areas having special natural value. SR at 25-26, citing 42 U.S.C. §

7472. In addition to Class I PSD increments, which allow very little deterioration of air quality, the sites obligate the permitting authority and Federal Land Manager (FLM) to define specific Air Quality Related Values (AQRVs) and establish "criteria to determine whether emissions from major new and modified sources will cause an adverse impact on the AQRV." SR at 26, citing 42 U.S.C. § 7475; *see* TSD at 37; Romaine Test. at 14. "In this regard, the U.S. Department of Agriculture is responsible for management of national wilderness areas; the U.S. Department of the Interior is responsible for management of national parks." Romain Test. at 14; *see* TSD at 37, n. 63.

To determine whether a proposed major project may affect a Class I area, guidance now provides that an initial screening based on the ratio of increased emission and distance from the nearest Class I area "may be used for projects that are more than 50 kilometers from any Class I area." Romaine Test. at 14; *see* TSD at 37; *id*., n. 65 (applying ratio to hypothetical project). "When a project is closer to a Class I area than 50 kilometers or the initial screening approach shows that a proposed project may affect a Class I area, more refined screening and analysis techniques must be used." Romaine Test. at 14-15; *see* TSD at 37-38. A permitting authority considers the FLM's analysis showing that the proposed project would affect AQRVs such as visibility in the Class I area. Romaine Test. at 15.

For Class I areas, assessing the impact of emissions must address visibility. "For this purpose, visibility means the presence of material in the atmosphere that obscures or scatters the passage of light and interferes with the human perception of scenery or vistas." SR at 26. While it is affected by natural atmospheric and meteorological conditions, visibility is also affected by anthropogenic emissions. *Id*.

Public Participation

The PSD program requires that, before issuing a PSD permit, the permitting authority "must provide the public with adequate opportunity for involvement" through procedure for public notice and comment. SR at 27; *see* Romaine Test. at 15. If IEPA makes a preliminary determination that a permit application meets applicable requirements, it provides public notice of its proposed action and draft permit conditions. SR at 27, citing 35 Ill. Adm. Code 252 (Public Participation in the Air Pollution Control Permit Program). IEPA must "provide at least a 30-day public comment period on the draft permit and, if requested by the public, an opportunity for public hearing on the proposed action." SR at 27, citing 35 Ill. Adm. Code 252.201(e), 252.205; *see* Romaine Test. at 15. If IEPA receives public comments, it may issue a final decision only "after due consideration of all comments received." SR at 27; *see* Romaine Test. at 15. IEPA typically addresses comments in a "Responsiveness Summary," which "necessarily includes a response to all significant comments." *Id*.

IEPA reports that it is revising its public participation rules "to accommodate a SIP-approved PSD program in Illinois." SR at 28; *see* 43 Ill. Reg. 7028 (June 21, 2019) (first-notice proposal).

SIP Approval

Illinois must submit its proposed PSD program to USEPA for approval as a SIP revision. TSD at 39. The CAA bars USEPA from "approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA." *Id*. IEPA states that its proposal generally mirrors the existing federal rules at 40 C.F.R. § 52.21. *Id*. at 4, 39. Where it differs from the federal rules, IEPA argues that it accurately reflects "relevant judicial decisions and USEPA's response to those decisions." *Id*. at 39. IEPA concludes that its proposed PSD program is "likely approvable" as a SIP revision under Section 110(l) of the CAA. TSD at 4.

Greenhouse Gases

IEPA's proposal includes changes to the federal rules to address recent court decisions. In 2010, USEPA issued rules regarding permitting of GHGs under the PSD and Title V permit program. SR at 30, citing 75 Fed. Reg. 31514 (June 3, 2010). In Utility Air Regulatory Group v. EPA, 134 S.Ct. 2427 (2014), the Supreme Court ruled that USEPA "may not consider GHG as a pollutant for purposes of determining whether a source is required to obtain a PSD permit or a Title V permit." However, the Supreme Court held that permits required based on emissions of other pollutants could continue to address GHG emissions. SR at 30. The D.C. Circuit Court of Appeals vacated PSD 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." *Id*. at 31, citing Coalition for Responsible Regulation v. EPA, Nos. 09-1322, 10-073, 10-1092, 10-1167 (D.C. Cir., Apr. 10, 2015). Following the direction of the Court of Appeals, USEPA amended the PSD regulations by "removing provisions requiring 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 thresholds or there is a significant emissions increase of GHGs from a modification." SR at 31, citing 80 Fed. Reg. 50199 (Aug. 19, 2015), 81 Fed. Reg. 68110 (Oct. 3, 2016). IEPA states that its proposed rules are "consistent with these recent federal decisions and USEPA's regulatory activity." SR at 31; *see* PC 1 at 30 (¶3b); Tr.1 at 67-68.

Section 9.1 of the Act

Public Act 99-463, effective January 1, 2016 (P.A. 99-463), amended Section 9.1(c) of the Act by requiring the Board to adopt rules establishing a PSD permit program meeting the requirements of Section 165 of the CAA (42 U.S.C. § 7475). SR at 2, 28, 97. Before this statutory amendment, the Board had authority to adopt these rules but had not been required to do so. *Id*. at 2, 28.

Section 9.1(c) provides that the Board's PSD permit regulations must be consistent with the requirements of 40 C.F.R. § 52.21, with specified exceptions: public participation at 40 C.F.R. § 52.21(q), environmental impact statements at 40 C.F.R. § 52.21(s), disputed permits or redesignations at 40 C.F.R. § 52.21(t), and delegation of authority at 40 C.F.R. § 52.21(u) 415 ILCS 5/9.1(c) (2018); *see* CARE Questions 2 at 2 (¶2d); PC 2 at 4 (¶2d), citing SR at 28-30; Tr.2 at 22-23. Section 9.1(c) authorizes the Board to adopt a PSD program that is more stringent than the federal program. 415 ILCS 5/9.1(c) (2018); *see* SR at 29; PC 2 at 1 (¶1a), 3 (¶2a). IEPA

concludes that its proposal, if adopted by the Board, satisfies Section 9.1 of the Act. PC 2 at 4-5 (¶2e); Tr.2 at 23-24; *see* CARE Questions 2 at 2 (¶2e)

> P.A. 99-463 also enacted a new definition providing that "PSD permit" means
>
> a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporate into the Illinois State Implementation Plan to implement the requirements of Section 165 of the Clean Air Act and 40 CFR 51.166. 415 ILCS 5/3.363 (2018); *see* P.A. 99-463, eff. Jan. 1, 2016.

IEPA states that "40 CFR 51.166 sets forth in detail those requirements that must be included in any PSD program submitted to USEPA for SIP approval." SR at 29. IEPA argues that the practical effect of this definition is that "proposed Part 204 will not replace 40 CFR 52.21 in Illinois until these rules have been SIP-approved by the USEPA." SR at 29, n.47. Until USEPA approves them, IEPA will continue to administer PSD permitting in Illinois through its delegation agreement. *Id*.; *see* SR at 28, 97, citing 46 Fed. Reg. 9580 (Jan. 29, 1981).

The Board asked IEPA to identify all provisions in its proposal that "are additional to or more stringent than those contained in 40 CFR 52.21." Board Questions at 1 (¶3a). IEPA responded that its Statement of Reasons explained language in proposed Part 204 did not mirror 40 C.F.R. § 52.21. PC 1 at 20 (¶3a-1), citing SR at 28-85; *see* PC 1 at 8 (¶2f-2); Tr.2 at 55. IEPA summarized and accounted for these differences. First, certain provisions of proposed Part 204 are not based not on 40 C.F.R. § 52.21 but on 40 C.F.R. § 51.166. PC 1 at 21 (¶3a-1); *see infra* at 127-29 (summarizing Section 204.1300). Second, "[c]ertain provisions in proposed Part 204 recognize that USEPA has not updated 40 CFR 52.21 to keep it current." PC 1 at 21 (¶3a-1); *see infra* at 76-77 (summarizing Section 204.280), 119-21 (summarizing Section 204.1100). Third, IEPA states that "[c]ertain provision in 40 CFR 52.21 are not proposed to be included in Part 204 because they will not be relevant to the actual implementation of Part 204." PC 1 at 21-22 (¶3a-1). Although these provisions remain in the federal rules, IEPA argues that they address past implementation of the PSD permitting program. *Id*., citing 40 C.F.R. §§ 52.21(i), 52.21(b)(2); *see infra* at 85-89 (summarizing Section 204.490), 111-14 (summarizing Section 204.860). Fourth, IEPA states that "[s]ome of the provisions in 40 CFR 52.21 that are not proposed to be included in Part 204 have been stayed." PC 1 at 22 (¶3a-1); *see infra* at 85-89 (summarizing Section 204.490). Finally, IEPA states that certain provisions in 40 CFR 52.21 are not proposed to be included in Part 204 because a federal court has found them to be contrary to the requirements of the Clean Air Act." PC 1 at 22-23 (¶3a-1); *see infra* at 111-14 (summarizing Section 204.860).

IEPA concludes that its proposal is "superficially more stringent" than the federal rules "because it does not include provisions of 40 CFR 52.21 that are obsolete, duplicative or extraneous." PC 1 at 28-29 (¶3a-5); *see* Tr.1 at 59-60. IEPA argues that these differences will not result in a state program more stringent than the federal program. Its proposed state program

"would reflect the actual requirements of the federal PSD program as it was being implemented when the proposal was submitted." PC 1 at 28-29 (¶3a-5).

CARE asked IEPA to "identify all provisions of the proposal that are less stringent or complete omissions than those contained in 40 CFR 52.21." Tr.1 at 56. IEPA argues that it has accounted for instances in which its proposed Part does not mirror the federal rules and that these differences do not affect the stringency of its proposal. *See* PC 1 at 20-23 (¶3a-1), citing SR at 28-85; *see also* PC 1 at 8 (¶2f-2). IEPA further argues that it proposed "omissions" as described by CARE's questions because federal provisions were "obsolete, duplicative or extraneous, inconsistent with the federal Clean Air Act, or a drafting artifact specific to nonattainment areas." PC 1 at 27 (¶3a-3). IEPA concluded that "these 'omissions' would not result in Part 204 being materially less stringent than 40 CFR 52.21 as it currently applies in Illinois." *Id*. at 24 (¶3a-2), 27 (¶3a-3).

EPA traces its authority to propose this language to Section 9.1(c) of the Act, which requires rules "modeled on 40 CFR 52.21." PC 2 at 1-2 (¶1b); Tr.2 at 14; *see* CARE Questions 2 at 1(¶1b); PC 1 at 27 (¶3a-3). IEPA also cited the statutory definition of "PSD permit," which refers to a permit issued under a program incorporated into Illinois' SIP under 40 C.F.R. § 51.166. PC 2 at 1-2 (¶1b); Tr.2 at 14. IEPA argues that implementing Section 9.1(c) by incorporating 40 C.F.R. § 52.21 by reference "would be challenging." *Id*. IEPA states that it was not developed to be incorporated and that it would need detailed revisions to meet requirements for an approved PSD permitting program. PC 2 at 1-2 (¶1b); Tr.2 at 14-15.

IEPA summarized elements of its proposal that could be characterized as "omissions" of provision in 40 C.F.R. § 52.21. PC 1 at 24-27 (¶3a-2). First, IEPA's proposal does not include a provision based on 40 C.F.R. §52.21(o)(3) providing the Administrator with authority to require visibility monitoring in any federal Class I area. IEPA argues that there is no Class I area in or near Illinois and that this provision is not required for SIP approval under 40 C.F.R. § 51.166. PC 1 at 24 (¶3a-2); *see infra* at 69 (summarizing Section 204.220). Second, IEPA's proposal does not include provisions addressing "very clean coal-fired electric utility steam generating units" because "there are no existing utility units in Illinois to which these provisions could apply" and "it is not possible for such a unit to now be present in Illinois." PC 1 at 24 (¶3a-2); *see infra* at 85-89 (summarizing Section 204.490). Third, IEPA also proposed a definition of "regulated NSR pollutant" that differs from the federal rule to address the treatment of certain listed hazardous air pollutants. PC 1 at 25 (¶3a-2); *see infra* at 97-99 (summarizing Section 204.610).

Fourth, IEPA omitted duplicative language from the federal definition of "secondary emissions." PC 1 at 25 (¶3a-2); *see infra* at 102-03 (summarizing Section 204.650). Fifth, IEPA proposed only the exemptions from PSD permitting "that will be relevant for the implementation of PSD permitting in the future." PC 1 at 25 (¶3a-2), citing SR at 70-73; *see infra* at 111-14 (summarizing Section 204.860). Sixth, IEPA excludes nonmethane hydrocarbons from required air quality analyses. IEPA argues that, because there is no longer a NAAQS for nonmethane hydrocarbons, "it is not necessary to explicitly exclude" it from this requirement. PC 1 at 25-26 (¶3a-2); *see infra* at 122-24 (summarizing Section 204.1130). Seventh, IEPA proposed not to

include specific air quality monitoring provisions applicable to certain periods which have passed. PC 1 at 26 (¶3a-2); *see infra* at 122-24 (summarizing Section 204.1130).

Eighth, IEPA is not proposing a provision related to air quality that is not necessary because it applies to applications filed more than 30 years ago. PC 1 at 26 (¶3a-2); *see infra* at 122-24 (summarizing Section 204.1130). Ninth, IEPA did not include in its proposed definition of "major emissions units" language for PALs specific to nonattainment areas. "This is because Part 204 deals solely with attainment areas." PC 1 at 26-27 (¶3a-2); *see infra* at 138 (summarizing Section 204.1680). Tenth, IEPA proposed to exclude transitional language referring to PALS established before March 3, 2003. Because no PAL has been established in Illinois, "this language would be superfluous." PC 1 at 27 (¶3a-2); *see infra* at 156 (summarizing Section 204.1910). Eleventh, IEPA did not propose a definition of "pollution prevention" because "the term is no longer used in 40 CFR 52.21." PC 1 at 27 (¶3a-2). Finally, IEPA did not include in its proposal the elements of the federal rules excluded by Section 9.1(c) of the Act. PC 1 at 27 (¶3a-2); *see* 415 ILCS 5/9.1(c) (2018).

DEVELOPING IEPA'S PROPOSAL

While preparing its proposal, IEPA "met with representatives from sources potentially impacted by Part 204." SR at 102; PC 1 at 15 (¶1a); Tr.1 at 44. Because its proposal distinguishes administrative review by the Board and administrative actions taken by IEPA and the Office of the State Fire Marshal (OSFM), IEPA provided drafts of proposed Parts 101 and 105 to OSFM. *Id*. Counsel for IEPA and the OSFM later discussed the drafts. *Id*.

On October 2, 2017, IEPA posted its draft proposal online, provided the proposal to individuals and to representative of the Illinois Environmental Regulatory Group; Sierra Club, Environmental Law & Policy Center, and Trinity Consultants. SR at 102; PC 1 at 15, 16 (¶¶1a, 1c); Tr.1 at 45. IEPA prepared a "plain language fact sheet that accompanied these notifications." PC 1 at 16 (¶1c). IEPA also provided the proposal to USEPA Region 5 for its review and comment. SR at 102; PC 1 at 15, 16 (¶¶1a, 1c); Tr.1 at 45. In January 2018, IEPA provided USEPA a revised proposal for additional review and comment. SR at 102; PC 1 at 15 (¶1a); Tr.1 at 45; *see* Tr.1 at 65; PC 1 at 29 (¶3a-6), Exh. A.

IEPA reports that it received several comments and reviewed and considered all of them. SR at 102. As appropriate, IEPA's proposal "incorporates suggestions set forth in those comments." *Id*. IEPA argues that it submitted its proposal to the Board only "after interested parties have had an opportunity to review the proposal and discuss any issues" with IEPA. *Id*. at 103.

CARE asked IEPA why it had not consulted with the Illinois Environmental Justice Commission. Tr.1 at 45. IEPA responded that it had consulted with the Commission on October 4, 2017. PC 1 at 15-16 (¶1b). During that meeting, IEPA informed participants that proposed rules had been posted online with the comment period ending on November 1, 2017. *Id*. IEPA also provided the participants with background on the PSD program in Illinois, and recent statutory changes requiring the Board to adopt a state PSD program. *Id*. IEPA also fielded questions from the participants. *Id*.

Although not a part of its proposal to the Board, IEPA is amending its public participation rules at 35 Ill. Adm. Code 252 to accommodate implementation of the PSD program. SR at 3; *see* 43 Ill. Reg. 7028 (June 21, 2019).

GENERAL CLARIFICATIONS AND CORRECTIONS

The Board revised IEPA's proposal in a number of ways that occur throughout it.

As one example, the proposal refers to provisions "of this part", "of this section", and "of this Subpart". The Board believes that many of these references are unnecessary and has struck them where they do not clarify the rules. *See* Board Questions at 9 (¶46c); PC 1 at 73 (¶46c).

Where the rules state a deadline as a number of days "of" or "following" a date or event, the Board has clarified the deadline by referring instead to a number of days "after" that occurrence.

Where the rules refer to requirements "pursuant to" a provision, the Board has simplified the rules by referring to the requirements "under" a provision. *See* Board Questions at 9 (¶46a); PC 1 at 72 (¶46a).

IEPA's proposal included lists "including, but not limited to" various items. The most commonly understood meaning of "include" is a term of enlargement and not limitation. Paxson v. Bd. of Educ. of Sch. Dist. No. 87, 276 Ill. App. 3d 912, 920 (1st Dist. 1995). The word "including" indicates that items listed in a regulation "are not meant to be exclusive." *See* Gem Electronics of Monmouth v. Dept. of Revenue, 286 Ill. App. 3d 660, 666 (4th Dist. 1997). The Board has concluded that the phrase "but not limited to" is unnecessary in its regulations. *E.g.*, Amendments to 35 Ill. Adm. Code Subtitle D: Mine Related Water Pollution, R 18-24, slip op. at 3 (Mar. 28, 2019). To clarify and simplify the rules, the Board has struck the phrase "but not limited to."

Where the proposed rule text was italicized but not directly taken from the Act, the Board removed the italicization.

The Board re-organized sections and restructured sentences into the active voice to clarify requirements.

While the list above is non-exhaustive, it illustrates the Board's revisions. The Board considers these revisions to be non-substantive but believes that they clarify and simplify its rules.

In addition, the Board asked IEPA to comment on whether it would be acceptable to replace "shall" with "will" when the proposal refers to an obligation of IEPA or the Board. As examples for this replacement, the Board suggested Sections 204.210(b), 204.240(a), and 204.350(b)(2)(C). Board Questions at 10 (¶46f). IEPA responded that this replacement "would be inconsistent with the use of the term 'shall' in 40 CFR 52.21 and 51.166. PC 1 at 73 (¶46f).

For each of the three provisions suggested by the Board, IEPA states that the corresponding federal rule uses the term "shall." *Id*., citing 40 C.F.R. §§ 51.100(hh)(2)(ii)(C), 51.166(b)(21)(ii), 51.166(b)(47)(i), 52.21(b)(2)(ii), 52.21(b)(48)(i).

DISPUTED ISSUES

The Board commends the participants' willingness to respond to one another, to IEPA, and to the Board during the rulemaking process. In numerous cases, the record shows that comments and questions led to agreed language revising IEPA's original proposal. For a limited number of provisions, however, the record shows that the participants have not agreed to revisions. In the following two subsections, the Board addresses these disputed provisions in numerical order by section.

Section 105.608(a)(5): Environmental Justice (EJ)

Participants dispute whether the Board has the authority to review environmental justice claims raised by a third-party in an appeal of an IEPA decision on a PSD permit.

In the following subsections, the Board first reviews relevant provisions of the federal PSD permitting rules and the Act and IEPA's proposed Section 105.608, Petition Content Requirements. The Board then briefly summarizes IEPA's EJ policies and procedures. The Board then briefly reviews the authority the Environmental Appeals Board (EAB), Executive Order 12898, and the Illinois Environmental Justice Act before concluding that EJ is an "important policy consideration" that it may review in a PSD permit appeal. The Board then examines EAB caselaw as a framework for the Board to consider the issue. Finally, while participants have considered whether the definition of "BACT" introduces EJ into review of a PSD permit, the Board is not persuaded by the arguments and authorities that it does so.

While the Board concludes that EJ is an important policy consideration, a PSD permit appeal raising an EJ claim must include an independent statutory or regulatory ground for appeal. Under current law, the Board cannot reverse the issuance of a PSD permit based solely on EJ considerations when an applicant complies with all applicable statutory and regulatory permit requirements.

Federal Regulations for Petition Contents: 40 C.F.R. § 124.19

Section 124.19(a)(4)(i) of USEPA's rules governing appeals of permits including PSD permits provides in pertinent part that, among other required contents,

> [t]he petition must demonstrate that each challenge to the permit decision is based on:
>
> (A) A finding of fact or conclusion of law that is clearly erroneous, or
>
> (B) An exercise of discretion or an important policy consideration that the Environmental Appeals Board should, in its discretion, review. 40 C.F.R. § 124.19(a)(4); *see* Prop. 105 at 12.

In its preamble to adopting Part 124, USEPA stated that

> [a] number of commenters objected to the substantial showing required to justify an appeal to the Administrator. We agree with those commenters who stated that the Administrator has a broad power to review decisions under these programs. However, EPA's intent in promulgating these regulations is that (1) this power of review should be only sparingly exercised; (2) most permit conditions should be finally determined at the Regional level; and (3) review by the Administrator should be confined to cases which are important for the program as a whole, or are especially important in their own right. The proposed threshold showing is intended to further that purpose and has been retained. 45 Fed. Reg. 33290, 33412 (May 19, 1980); *see* Envotech, L.P Milan, Michigan, 6 E.A.D. 260, slip op. at 4 (Feb. 15, 1996); Chemical Waste Management of Indiana, 6 E.A.D. 66, 76 (June 29, 1995).

The requirements of 40 C.F.R. § 124.19 provide the basis for Section 40.3(a)(2) of the Act. SR at 89; *see* 40 C.F.R. § 124.19(a)(4)(B); 415 ILCS 5/40.3(a)(2) (2018).

Third-Party Appeals of PSD Permits

The General Assembly has expressly authorized third-party appeals of final IEPA determinations under the PSD permit program. 415 ILCS 5/40.3(a)(2) (2018); *see also* Prop. 105 at 11. Section 40.3(a)(2) of the Act provides in pertinent part that

> [a]ny person who participated in the public comment process and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may . . . petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the public comment process, the person may still petition for a hearing, but only upon issues where the final permit conditions reflect changes from the proposed draft permit. 415 ILCS 5/40.3(a)(2) (2018).

Statutory Petition Content Requirements

The Act prescribes the contents of petitions for review of PSD permits:

> [t]he petition shall: (i) include such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected; (ii) state the issues proposed for review, citing to the record where those issues were raised or explaining why such issues were not required to be raised during the public comment process; and (iii) explain why the Agency's previous response, if any, to those issues is (A) clearly erroneous or (B) an exercise of discretion or an important policy consideration that the Board should, in its discretion, review. 415 ILCS 5/40.3(a)(2) (2018).

Section 40.3(a)(2) is reflected in IEPA's proposed Section 105.608(a), Petition Content Requirements. *See* 415 ILCS 5/40.3(a)(2); Prop. 105 at 12. With IEPA's concurrence, the Board proposed to reorganize Section 105.608. Below, the Board submits this language to first-notice publication as subsection (b).

IEPA's Proposed Petition Content Requirements

In Section 105.608(a), IEPA proposed five subsections listing information that must be contained in a petition for review of a PSD permit. Prop. 105 at 12. In subsection (a)(5), IEPA proposed that a petition must include "*[a]n explanation why the Agency's previous response to the issues, if any, proposed for review was: (A) [c]learly erroneous; or (B) [a]n exercise of discretion or an important policy consideration that the Board should, in its discretion, review.* [415 ILCS 5/40.3(a)(2)]." Prop. 105 at 12.

IEPA based this proposed requirement on Section 40.3(a)(2)(iii) of the Act, which derives from 40 CFR § 124.19(a)(4) and EAB caselaw. SR at 89-90.

IEPA EJ Policies and Procedures

Based on federal requirements applicable to it as a recipient of USEPA assistance, IEPA has adopted an EJ policy and related procedures. PC 2 at 18 (¶1); PC 5 at 2; *see* 40 C.F.R. § 7.90 (Grievance procedures); IEPA Exhs. A (EJ Policy), B (Public Participation Policy), C (Grievance Procedure). IEPA placed its policies and procedures on its website at https://www2.illinois.gov/epa/topics/environmental-justice/Pages/default.aspx (last visited February 19, 2020). These policies and procedures would apply "during PSD permitting under Part 204," as they apply to "the Bureau of Air's permit program including PSD permitting under 40 CFR 52.21." PC 2 at 18 (¶1); *see* Tr.2 at 67-68. IEPA asserts that this proposal "would not alter" its policy or procedure. PC 2 at 8 (¶4b-1); Tr.2 at 33. IEPA states that it "supports, and will continue to implement, these efforts with regard to its various programs, and the proposed rulemaking in no way diminishes such efforts." PC 1 at 10-11 (¶3d); *see* CARE Questions at 3 (¶3d); Tr.1 at 34.

IEPA's EJ Public Participation policy "generally requires the Bureau of Air to review air pollution control permit applications to ascertain whether the proposed action will take place in or involve an area of concern for EJ." PC 2 at 18 (¶1); *see* IEPA Exh. B at 3. If so, IEPA's EJ Officer recommends appropriate outreach based on factors including "the type of permit, potential impact of the project or Agency action, type of source and level of interest." IEPA Exh. B at 3. Either the permit applicant or IEPA may initiate outreach. If IEPA initiates outreach, it "will provide the community with information regarding the proposed action by means of an EJ notification letter." PC 2 at 18 (¶1); *see* IEPA Exh. B at 3-4. Depending on public response to the letter, IEPA "may hold an informational meeting or availability session to inform residents in the area of concern for EJ of the scope and nature of the proposed action." PC 2 at 18 (¶1); *see* IEPA Exh. B at 5-7.

IEPA has also adopted procedures "to address circumstances in which a person or entity believes these policies have not been appropriately followed by a Bureau." PC 2 at 18, 19 (¶1),

citing 40 C.F.R. Parts 5, 7; *see* IEPA Exh. C. A written complaint alleging a violation may be filed with IEPA "typically within 60 days of any alleged violations." PC 2 at 19 (¶1); *see* IEPA Exh. C at 2. Within 10 days of receiving a complaint, IEPA "will provide the complainant with written notice of receipt and, as necessary," request any additional information the complainant must submit to meet filing requirements. *Id*. Based on information it receives, IEPA then determines whether "it has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant an investigation." PC 2 at 19 (¶1); *see* IEPA Exh. C at 2-3. Within 120 days after accepting a complaint, IEPA responds in writing with its resolution. *Id*. A person who wishes to contest the outcome of IEPA's grievance procedure may file a complaint with USEPA's Office of Civil Rights. PC 2 at 19 (¶1), citing 40 C.F.R. Part 7.

IEPA states that its EJ policy is a matter of "internal management" and is "not a formal rule developed from a statutory or regulatory enactment affecting environmental permitting." PC 1 at 8 (¶3a); *see* PC 2 at 14 (¶8b-1). IEPA adds that its actions addressing EJ "would be pursuant to its EJ policy and would not be pursuant to Part 204." PC 2 at 19 (¶2); *see id*. at 20 (¶3). IEPA's grievance procedures state that they "do not apply to administrative action that are being pursued in another forum." IEPA Exh. C at 1 (Purpose); *see* Tr.2 at 31-32. IEPA argues that reviewing the EJ complaint "is separate and distinct from any administrative review contemplated by the Board." PC 2 at 15 (¶8c); Tr.2 at 56; *see* PC 2 at 20 (¶3). IEPA concludes that its proposal does "not require or contemplate administrative review by the Board of the Illinois EPA's implementation of its environmental justice policy."

EAB Authority

IEPA has implemented the federal PSD program through a delegation agreement with USEPA since 1981. PC 3 at 2-3, citing SR at 2; 46 Fed. Reg. 9580 (Jan. 29, 1981). IEPA clarified that 40 C.F.R. § 52.21 governs the federal PSD program and applies "in those states and other jurisdictions that do not have a USEPA-approved SIP PSD program." PC 2 at 20 (¶4). Delegated states exercise permitting authority on behalf of USEPA according to 40 C.F.R. § 52.21. This has historically been the approach in Illinois, and it provides the basis for EAB review of PSD permits issued by IEPA. *Id*.; *see* PC 3 at 3, citing SR at 85.

The Board asked IEPA what weight it should give to EAB decisions. Tr.2 at 71-72. IEPA responded that, as a general matter, because "EAB functions as a judicial tribunal, the Illinois EPA would expect significant weight to be given to relevant EAB decisions." PC 2 at 21 (¶6).

Section 9.1(d)(1) of the Act provides that "[n]o person shall violate any provisions of Section 111, 112, 165, and 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto. . . ." PC 2 at 20-21, citing 415 ILCS 5/9.1(d)(1) (2018); *see* 42 U.S.C. § 7475 (Section 165 preconstruction requirements). Based on this language, IEPA concludes that "the Board would necessarily have to consider EAB precedents as they are linked to Section 165 of the Clean Air Act when hearing appeals that involve the related provisions in Part 204." PC 2 at 21 (¶4). IEPA adds that, if USEPA perceived that a Board decision in a PSD permit appeal had the effect of relaxing the applicable requirements of Part 204, "USEPA could

take the position that the decision was contrary to the SIP and find Illinois' PSD SIP deficient." *Id*. (¶5); *see* Tr.2 at 71.

Executive Order 12898

The Board asked IEPA what weight it should give to EAB decisions on the issue of EJ. Tr.2 at 71-72. IEPA argues that "the fact that the EAB considers EJ in PSD permit appeals does not justify consideration of EJ by the Board in PSD permit appeals." PC 2 at 22 (¶6). IEPA states that EAB's authority to review these issues stems from Executive Order 12898 (EO 12898). *Id*.

In 1994, the President issued EO 12898 entitled "Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations. 59 Fed. Reg. 7629 (Feb. 16, 1994). EO 12898 directs each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." EO 12898 (§ 1-101).

EO 12898 provides that federal agencies must develop an EJ strategy that "identifies and addresses disproportionately high and adverse human health or environmental effects of its program policies, and activities on minority populations and low-income populations. It also directs federal agencies to develop strategies to address these effects." EO 12898 (§ 1-103). The strategy must include

> programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment minority populations and low-income populations; (4) and identify differential patterns of consumption of natural resources among minority populations and low-income populations. *Id*.

EO 12898 provides that "[f]ederal agencies shall implement this order consistent with, and to the extent permitted by, existing law." EO 12898 (§ 6-608). It also provides that it "is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person." EO 12898 (§ 6-609). EO 12898 further provides that it "shall not be construed to create any right to judicial review involving the compliance of noncompliance of the United States, its agencies, its officers, or any other person with this order." *Id*.

IEPA concludes that, because state authorities do not include similar language, "the Board should not afford any deference to EAB decisions in this respect." PC at 21 (¶6). Responding to CARE, IEPA stated that it "cannot point to any existing source of state law that indicates that the Board would currently have the authority to hear appeals related to

environmental justice as part of PSD permit appeals." Tr. 2 at 54; *see* CARE Questions 2 at 5 (¶8a).

Illinois Environmental Justice Act (EJA)

CARE acknowledges that, as a state entity, the Board "is not governed by EO 12898." PC 3 at 5. CARE also acknowledges that EJ is not mentioned in the Board's rules, IEPA's statement of reasons, or Board precedent. *See* PC 3 at 11; PC 4 at 4-5.

However, CARE asserts that EJ is "an important policy consideration that the Board should, in its discretion, review" in PSD permit appeals. *See* PC 3 at 8; Tr. 1 at 32. CARE cites the Illinois General Assembly's 2011 enactment of the Illinois Environmental Justice Act (EJA), 415 ILCS 155/5 (2018). PC 3 at 5; PC 4 at 2; *see* Public Act 97-391, eff. Aug. 16, 2011.

Summary. The EJA includes the following legislative findings:

(i) the principle of environmental justice requires that no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effect of environmental pollution;

(ii) certain communities in the State may suffer disproportionately from environmental hazards related to facilities with permits approved by the State; and

(iii) these environmental hazards can cause long-term health effects. 415 ILCS 115/5 (2018)

The EJA also establishes the Environmental Justice Commission (EJ Commission) with specified duties, which include advising State entities on EJ issues, reviewing the impact of State laws on EJ, assessing the adequacy of State laws regarding EJ, and recommending to the Governor options to address EJ. 415 ILCS 155/10(d) (2018). Annually, the EJ Commission must report its findings and recommendations to the Governor and the General Assembly. 415 ILCS 155/10(e) (2018).

Although CARE acknowledges that the EJA does not create a cause of action, it argues that these legislative findings establish EJ as "an important policy consideration that the Board should, in its discretion, review." PC 3 at 5.

IEPA responded that EJA does not place on State agencies the kind of responsibilities that EO 12898 places on federal agencies. PC 2 at 10-11 (¶6b); Tr.2 at 43, 49; *see* PC 3 at 8. EO 12898 requires in part that "each Federal agency shall make achieving environmental justice part of its mission. . . ." EO 12898 (¶1-101: Agency Responsibilities). IEPA asserts that, while language of this nature warrants considering EJ in federal PSD permit appeals, it "does not mean that review of environmental justice concerns are likewise authorized by applicable law in the context of a state-approved PSD program when similar language does not exist in 415 ILCS 155/5 or elsewhere." PC 2 at 11 (¶6b); *see* Tr.2 at 44. IEPA also argues that any allegation that

it failed to implement its EJ policy should be reviewed by USEPA's Office of Civil Rights under 40 C.F.R. Part 7 and not by the Board as an important policy consideration. PC 2 at 12 (¶6d); Tr.2 at 47-48. IEPA adds that it is appropriate for the Board to review a PSD permitting program that it "created" but not to review an EJ policy that it did not create. PC 2 at 12 (¶6d).; *see id*. at 13 (¶6e); Tr.2 at 48.

IEPA concludes that the Board must ultimately determine whether implementing EJ is an important policy consideration that the Board should review because "there is no state provision mandating such obligation." PC 2 at 11 (¶6b); *see id*. at 12 (¶6c), 14-15 (¶8b); Tr.2 at 54.

Board Finding. The Board agrees that the EJA does not specifically require IEPA to consider or the Board to review EJ in making permit determinations. Nonetheless, in the EJA the General Assembly specifically found that permits approved by the State may result in certain communities suffering disproportionately from environmental hazards. 415 ILCS 155/5(ii) (2018). The General Assembly also found that these hazards "can cause long-term health effects." *Id*.

Beyond these findings, the EJA establishes the EJ Commission with a broad membership and specific obligations to review legal authorities and make recommendation to the Governor. The Commission must report annually on its findings and recommendations, indicating that the General Assembly considers EJ an issue of significant and ongoing importance. These findings and authorities persuade the Board that EJ is an "important policy consideration," and it finds that it may review EJ in a PSD permit appeal under Section 40.3(a)(2)(iii)(B) of the Act.

EAB Caselaw

Having found that it may consider EJ, the Board believes that EAB caselaw guides that consideration. IEPA argues that USEPA's "discretion to implement a federal mandate means little in any discussion on the Board's discretion to review environmental justice where no similar state mandate exists." PC 5 at 8. The Board does not discount the significance of EAB cases. While the Board recognizes that these cases address implementation of EO 12898, it believes that they provide a framework for exercising the Board's discretion to review EJ in a PSD permit appeal.

Chemical Waste Management of Indiana. USEPA Region V issued the federal portion of a RCRA permit for a landfill. In response to comments regarding EJ, the Region performed a demographic analysis of the area within a one-mile radius of the facility and held an information meeting to discuss issues including EJ. The Region concluded that "operation of the facility would not have a disproportionately adverse health or environmental impact on minority or low-income populations living near the facility." Chemical Waste Management, 6 E.A.D. 66, 69-70 (June 29, 1995). Petitioners claims included that the Region's measures addressing EJ raised an important policy issue warranting review. *Id*. at 68. EAB denied review of the petitions. It stated that there are "substantial limitations" on implementing EO 12898 within the constraints of applicable substantive requirements. *Id* at 73.

EO 12898 "does not have the effect of changing the substantive requirement for issuance of a permit under RCRA and its implementing requirements." Chemical Waste Management, 6 E.A.D. 66, 72 (June 29, 1995). Similarly, the Board's finding that it may review EJ as an important policy consideration does not amend requirements for issuance of a PSD permit.

Envotech. USEPA Region 5 issued Class I UIC permits authorizing Envotech to drill, construct, test, and operate two hazardous waste injection wells. Envotech, L.P Milan, Michigan, 6 E.A.D. 260, slip op. at 2 (Feb. 15, 1996). EAB consolidated its consideration of 36 petitions seeking review. *Id*. at 1. "Various petitioners" contended that considering EJ and EO 12898 "dictate that the permits should be denied because the area surrounding the site is already host to numerous burdensome land uses." *Id*. at 11.

EAB cited Chemical Waste Management of Indiana. While that case involved a permit issued under a separate statutory authority, EAB found it "nonetheless instructive here since both statutes use similar permitting processes." Envotech, L.P Milan, Michigan, 6 E.A.D. 260, slip op. at 12 (Feb. 15, 1996). EAB cited the conclusion that EO 12898 "does not purport to, and does not have the effect of changing the substantive requirements for issuance of a permit under RCRA and its implementing regulations." *Id*. EO 12898 by its own terms must be implemented consistent with existing law. 59 Fed. Reg. 7629 (Feb. 16, 1994) (§ 6-608). "[T]he Agency is required to issue a permit to an applicant who meets the requirements of the statute and its implementing regulations." Envotech, L.P Milan, Michigan, 6 E.A.D. 260, slip op. at 12 (Feb. 15, 1996). The Board notes that Section 39(a) of the Act provides in pertinent part that, when Board rules require a permit to construct or operate a facility, "it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility . . . will not cause a violation of this Act or regulations adopted hereunder." 415 ILCS 5/39(a) (2018).

Muskegon Development Company. USEPA Region 5 issued an Underground Injection Control (UIC) Class II permit authorizing the Muskegon Development Company to convert an oil production well into a fresh water injection well to enhance oil recovery from its other nearby oil production wells. Muskegon Development Company, 2019 WL 1987188 (Apr. 19, 2019). A third party challenged the permit on five grounds, including environmental justice. *Id.* at 2.

On review, EAB stated that USEPA "cannot deny or condition a UIC permit based on environmental justice considerations where the permittee has demonstrated full compliance with the statutory and regulatory requirements." Muskegon Development Company, 2019 WL 1987188 at 13. (Apr. 19, 2019); citing Envirotech, L.P. Milan, Michigan, 6 E.A.D. 260 at 13 (Feb. 15, 1996). EAB acknowledged that EO 12898 gives USEPA "discretion to determine how best to implement its mandate within the confines of existing law." Muskegon Development Company, 2019 WL 1987188 at 11 (Apr. 19, 2019).

Definition of BACT

Finally, while participants commented on whether the definition of "BACT" introduces EJ into review of a PSD permit, the Board is not persuaded that it does so and reviews that issue below.

The federal rules define "best available control technology" or "BACT" as

> an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, *taking into account energy, environmental, and economic impacts and other costs*, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. 40 C.F.R. § 52.21(b)(12) (emphasis added).

CARE argues that accounting for "energy, environmental, and economic impacts and other costs" as factors in determining a BACT limitation introduces EJ into a PSD permit appeal. PC 3 at 6.

CARE noted that, in Genesee Power Station, USEPA's Office of General Counsel (OGC) challenged EAB's rationale that "the BACT requirement does not authorize the permitting authority to redefine (*i.e.*, to fundamentally alter the design or business purpose of the source) the proposed source as a method of controlling emissions, even if such a redefinition would obviously bring about a substantial reduction in emissions." CARE Questions 2 at 5 (¶9), *see* Genesee Power Station, LP, 1993 WL 473846 n.1 (Oct. 22, 1993) (Order on Motion for Clarification); Tr.2 at 61. CARE noted OGC's position that "the CAA requirement to consider alternatives to the proposed source, and the broad statutory definition of 'best available control technology' (BACT), provided ample opportunity for consideration of environmental justice in PSD permitting." Exh. B at 12 (USEPA Memorandum); *see* PC 3 at 7-8; PC 4 at 4.

IEPA stresses that the EAB resolved the motion for clarification by striking the appropriate portions of its original decision. In doing so, the EAB stated that it took "no position on the merits of the rationales offered by the OGC." Genesee Power Station, LP, 1993 WL 473846 (Oct. 22, 1993); *see* PC 2 at 17 (¶9b); Tr.2 at 63. IEPA added that "[t]he EAB did not decide whether it was permissible to address environmental justice concerns under the federal definition of BACT at 40 C.F.R. § 52.21.(b)(12)." PC 2 at 17 (¶9c), citing Genesee Power Station, LP, 1993 WL 473846 n.1 (Oct. 22, 1993); *see* Tr.2 at 65.

IEPA disputes that the definition of BACT provides a basis to address EJ in permitting. PC 5 at 5, citing PC 2 at 16-17 (¶9). Because the President issued Executive Order 12898 soon after the Genesee Power Station decision, IEPA argues that the EAB has not had to determine whether it is permissible to address EJ under the definition of BACT at 40 C.F.R. § 52.21(b)(12). PC 5 at 6.

After considering these authorities and argument, the Board is not persuaded that the regulatory definition of BACT introduces EJ into review of PSD permitting, and it concludes that the definition does not provide a basis to appeal an IEPA determination under proposed Section 105.608.

Conclusion

For the reasons expressed above, the Board finds that environmental justice concerns are an important policy consideration and that the Board therefore has the discretion to review them in a PSD permit appeal. The Board further finds that a petition for review of an IEPA PSD permit determination may include an environmental justice claim, but only if the petitioner identifies an independent statutory or regulatory ground for appeal.

Based on relevant EAB caselaw, the Board concludes that consideration of EJ does not amend substantive permitting requirements. Accordingly, IEPA cannot deny as PSD permit — based solely on EJ considerations— when the applicant complies with all statutory and regulatory permit requirements. Nor can IEPA impose a condition in a PSD permit based solely on EJ considerations, *i.e.*, when the applicant, absent that condition, complies with all statutory and regulatory permitting requirements. However, the Board finds that IEPA has discretion within substantive PSD permitting requirements to consider EJ.

Section 204.1140: Additional Impact Analysis

Section 52.21(o) of the federal PSD regulations addresses additional impact analysis. Subsection (3) provides that "[t]he administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate." 40 C.F.R. § 52.21(o)(3). IEPA's proposal does not include language based on 40 C.F.R. § 52.21(o)(3) because "Illinois currently does not have any Class I areas" or one in close proximity. PC 1 at 3 (¶2a); *see* SR at 75, CARE Questions at 2 (¶2a). For the reasons discussed below, the Board finds that the record now before it does not support including this language in its first-notice proposal but seeks additional comment on this issue.

Background

Congress has designated 158 areas such as international parks, national wilderness areas, and national memorial parks as Class I areas, which require the highest level of air quality protection. SR at 25-26; 42 U.S.C. § 7472. Under 40 C.F.R. § 52.21(g), States and Indian Governing Bodies have authority to redesignate areas from Class II to Class I, provided that the USEPA Administrator approves the redesignation as part of the state's SIP. PC 1 at 4; 40 C.F.R.

§ 52.21(g)(1). Neither the U.S. Congress nor the Illinois General Assembly has re-designated any area in Illinois as Class I, so all areas in the state are designated as Class II. SR at 73. IEPA notes that the federal Class 1 areas nearest to Illinois are the Mingo National Wildlife Area in Missouri and Mammoth Cave National Park in Kentucky. SR at 76, n.70, citing 40 C.F.R. §§ 81.411, 81.416.

IEPA Proposal

IEPA's proposal does not include language based on 40 C.F.R. § 52.21(o)(3). SR at 76; *see* Comp. 204 at 54. IEPA stressed that "Illinois currently does not have any Class I areas" or one in close proximity. PC 1 at 3 (¶2a); *see* SR at 76; CARE Questions at 2 (¶2a). IEPA argued that a provision based on 40 C.F.R. § 52.21(o)(3) "is not needed for the USEPA to approve a state PSD program for Illinois." *Id*.; *see* SR at 76, citing 40 C.F.R. § 51.166(p).

Section 9.1(c) of the Act requires Board rules to be modeled on 40 C.F.R. § 52.21. PC 2 at 2 (¶1b); *see* CARE Questions 2 at 1 (¶1b). IEPA notes that "40 C.F.R. § 52.21(o)(3) provides the Administrator with the option of requiring visibility monitoring in any *federal* Class 1 area near a proposed new stationary source or major modification for such purposes and by such means as is *necessary and appropriate*." PC 2 at 2 (¶1b) (emphasis in original). If any area in or near Illinois became a federal Class I areas, IEPA states that it "would review the adequacy of the state PSD program at that time." PC 2 at 2 (¶1b); *see* PC 1 at 6 (¶2d-2). When changes are warranted, "the Illinois EPA will appropriately initiate any needed rulemaking proceeding." *Id*. PC 1 at 6 (¶2d-2).

The Board asked IEPA to comment on its anticipated procedure to amend Part 204 if Illinois redesignates an area as Class I. Tr.1 at 27. IEPA responded that designating "any *state* Class I area would not be relevant to the discretion afforded the Administrator in 40 CFR 52.21(o)(3) for *federal* Class I areas." PC 1 at 6 (¶2d-2) (emphasis in original); *see* PC 2 at 2 (¶1b). IEPA also clarified that, if the state redesignates an area to Class I, Illinois would not need to amend the PSD program to comply with the CAA. PC 1 at 6 (¶2d-3); *see* Tr.1 at 28. Noting that Illinois had not redesignated any area, IEPA characterized the question as "a collateral issue" that is "not useful to the present rulemaking." PC 1 at 6 (¶2d-2); *see* Tr. 1 at 30; PC 1 at 4, 6. IEPA suggests that the value of this provision is speculative and remote. *See* PC 1 at 3 (¶2a); Tr.1 at 21.

CARE Questions

CARE asked IEPA why it believes "that the fact that no Class I areas *currently* exist in Illinois provides support for the proposed action?" CARE Questions at 2 (¶2a) (emphasis in original). CARE stressed that the President on February 15, 2019, signed a bill including a provision redesignating the Indiana Dunes National Lakeshore as a national park. PC 3 at 10 (citation omitted). CARE argued that this area approximately 50 miles from Chicago meets the regulatory requirement for redesignation, although it had not been designated a federal Class I area. *Id*., citing 40 C.F.R. § 52.21(e)(4)(ii). IEPA responded that "[t]he fact that Illinois does not have any Class I areas means that the absence of a provision in Part 204 similar to 40 CFR 52.21(o)(3) currently does not have any effects or consequences." PC 1 at 3 (¶2a); Tr.1 at 20.

CARE noted that 40 C.F.R. § 52.21(g) allows states to redesignate areas as Class I. CARE Questions at 2 (¶2b). CARE asked IEPA how the absence of any existing Class I areas in Illinois is relevant to a possible future designation. *Id*. IEPA responded that it is "unquestioned" that Illinois has authority to redesignate under the PSD program, which is reflected in proposed Section 204.930, Redesignation. PC 1 at 4 (¶2b); *see* Prop. 204 at 41-43; Tr.1 at 20-21. IEPA argues that the fact that it has not exercised this authority does not mean that it lacks the authority. PC 1 at 4 (¶2b); *see* Tr.1 at 21. IEPA emphasizes that, while the PSD program has existed for more than 35 years, the state "has not redesignated any areas in Illinois to Class I" during that time. PC 1 at 6 (¶2d-2). IEPA argued that, while the state may redesignate an area as Class I under the PSD program, it would not be a federal Class I area to which 40 C.F.R. § 52.21(o)(3) would apply. PC 2 at 4 (¶1c); Tr.1 at 22; *see* PC 1 at 6 (¶2d-3).

Asserting that "the goal of the PSD program is to protect public health and welfare from the adverse effects of increased air pollution," CARE questioned whether omitting language based on 40 C.F.R. § 52.21(o)(3) is "antithetical" to the CAA and the PSD program. CARE Questions at 2 (¶2d); *see* Tr.1 at 24-25. IEPA responded that the PSD program "restricts the magnitude of the deterioration in air quality that is allowed for certain pollutants from baseline levels of air quality, with different values for the allowable deterioration based on the designation of the area" as Class I, II, or III. PC 1 at 5 (¶2d-1); Tr.1 at 24-25. IEPA argues that PSD increments address air quality-related values such as visibility or protecting specific ecosystems. PC 1 at 5 (¶2d-1). IEPA stated that, "while visibility may be an air quality related value in certain areas, including mandatory federal Class I areas, monitoring of visibility does not provide direct measurements of the concentrations of pollutants in the atmosphere." *Id*. at 7 (¶2f-1); *see* Tr.1 at 30. IEPA adds that other CAA requirements address public health and welfare: adopting NAAQS, requiring states to develop SIPs, and requiring specific elements in SIPs for nonattainment areas. PC 1 at 5 (¶2d-1) (citations omitted); *see* Tr.1 at 24.

Potential Costs

If neither the state nor Indian Governing Bodies redesignate land as Class I, CARE asked IEPA whether there is "any cost to preserve the authority found in 40 CFR § 52.21(o)(3)?" CARE Questions at 2 (¶2e). IEPA first responded that a provision based on 40 C.F.R. § 52.21(o)(3) could confuse PSD permit applicants by suggesting that Illinois has a Class I area. PC 1 at 6-7 (¶2e); Tr.1 at 28-30.

CARE asked IEPA to explain why it expects applicants to be confused when Illinois has administered the federal PSD program under a delegation agreement since 1981. CARE Questions at 5 (¶3a). IEPA emphasized that "the *federal* PSD program has always applied in Illinois." PC 2 at 5 (¶3a) (emphasis in original); *see* Tr.2 at 26. IEPA argues that permit applicants would not expect national rules to be tailored to Illinois. "However, it is reasonable when considering requirements under a state PSD program, established through state rulemaking, such as proposed Part 204, to expect that those rules were developed to consider the specific circumstances in that state." PC 2 at 5 (¶3a); Tr.2 at 26-27. CARE also asked IEPA whether it could be argued that "altering or removing aspects of the federal program that has been in effect for the past 30+ years has the potential to cause just as much confusion?" CARE

Questions at 5-6 (¶3b). IEPA acknowledged that the difference between the federal and state rules "may create some confusion." PC 2 at 6 (¶3b); Tr.2 at 27. However, IEPA stresses that USEPA has not relied on 40 C.F.R. § 52.21(o)(3) for a project in Illinois since it adopted that provision more than 40 years ago. *Id*.

As a second cost, IEPA asserts that including the provision would imply that Illinois has determined that visibility is an air quality-related value in any redesignated area. PC 1 at 6-7. Third, IEPA argues that including the provision would imply that a PSD permit applicant may be required to conduct visibility monitoring in such an area regardless of whether the applicant can obtain permits or approval from the authority that actually manages that Class I area. *Id*.

Fourth, the provision would require the Board to elaborate on the broad language in Section 52.21(o)(3), which provides for visibility monitoring "for such purpose," "by such means," and "as . . . necessary and appropriate." *Id*. IEPA added that "40 CFR 52.21(o)(3) cannot simply be transferred into Part 204." PC 2 at 6 (¶3d); Tr.2 at 29-30. IEPA suggested that the Board would need to "address the legal, policy and technical issues posed by the language of 40 CFR 52.21(o)(3)." PC 2 at 6 (¶3c); Tr.2 at 29.

Fifth, IEPA asserts that the provision would impose costs that cannot now be estimated because 40 C.F.R. § 52.21(o)(3) does not define or specify the monitoring that may be required. PC 1 at 6-7.; *see* Tr. 1 at 29-31; PC 2 at 5-7. IEPA explains that "40 CFR 52.21(o)(3) does not provide any specificity or definition for the nature of the visibility monitoring that such person might be required to conduct." PC 2 at 7 (¶3e).; Tr.2 at 31. Finally, IEPA argued that, while visibility in some areas may be an air quality related value, monitoring visibility "does not provide direct measurements of the concentrations of pollutants in the atmosphere." PC 1 at 7 (¶2f-1); *see* CARE Questions at 7 (¶2f-1); Tr.1 at 30.

IEPA concludes that the costs of including language based on 40 C.F.R. § 52.21(o)(3) outweigh the benefits. IEPA argues that including this language would be appropriate only after a Class I area is designated. PC 2 at 2. If Congress creates a new federal Class I area, IEPA could revise Section 204.100 so that it incorporates by reference 40 C.F.R. Part 81, Designation of Areas for Air Quality Planning Purposes. *Id.* at 24 (¶1-iii).

CARE disputes IEPA's conclusion. PC 3 at 8-11. CARE argues that "nothing in [Section 9.1(c)] shall be construed to limit … the authority of the Board to adopt elements of a PSD program that are more stringent than those contained in 40 C.F.R. § 52.21." *Id*. CARE reports that the President re-designated the Indiana Dunes National Lakeshore, approximately 50 miles from Chicago as a National Park on February 15, 2019. *Id.* at 10 (citation omitted). Because it meets criteria to be redesignated as a Federal Class I area, CARE argues that Congress could redesignate it. *Id.* at 10. CARE concludes that adopting language based on 40 C.F.R. § 51.21(o)(3) "is far preferable to reactive legislating." PC 3 at 10.

Board Determines Not To Include the Provision

Although the Board recognizes CARE's emphatic position in favor of language based on 40 C.F.R. §52.21(o)(3), the Board is not persuaded by the record now before it to include that

language in its proposed Section 204.1140. The Board places particular weight on the fact that there is not now a federal Class I area within Illinois or in close proximity to it. Without such an area, IEPA asserts that this language is not necessary for USEPA to approve a state PSD program for Illinois. IEPA persuasively argues that omitting this language will not now have detrimental effects or consequences.

The Board recognizes that Illinois may redesignate an area as Class I. As IEPA argues, however, the state designation would not bring the area within subsection (o)(3), which applies to federal Class I areas. IEPA effectively acknowledges that, if any area in or near Illinois becomes a federal Class I area, it will be necessary to review the PSD program and initiate any rulemaking required to revise it.

The Board recognizes the costs and impacts of including a visibility monitoring provision based on 40 C.F.R § 52.21(o)(3) identified by IEPA. These costs are couched largely in terms of uncertainty and confusion. The Board recognizes that this stems in part from the provision allowing the Administrator to require monitoring "for such purposes and by such means as the Administrator deems necessary and appropriate." The Board weighs these costs against a requirement that does not apply to any area in or near Illinois.

Based on the record now before it and for the reasons above, the Board declines to include language based on 40 C.F.R. § 52.21(o)(3) in Section 204.1140 of its first-notice proposal.

However, the Board takes notice that the president signed House Joint Resolution 31, the Consolidated Appropriations Act, 2019, which became Public Law No. 116-6 on February 15, 2019. *See* 35 Ill. Adm. Code 101.630 (notice); *see also* 735 ILCS 5/8-1003, 1104 (2018) (statutes). Among provisions for the U.S. Department of the Interior, Public Law 116-6 re-titles Indiana Dunes National Lake Shore as a national park. P.L. No. 116-6 (Div. E, Title 1, § 115(a)); *see* 16 U.S.C. § 460u (2018). CARE argues that this makes it eligible for re-designation as a federal Class I area, but the record does not now indicate any action since February 2019 on the status of the park.

Below under "Filing Comments," the Board seeks comment on any effect of this statutory re-titling. The Board also seeks comment on whether this re-titling warrants including in proposed Section 204.1140 language based on 40 C.F.R. § 52.21(o)(3). The Board seeks comment from IEPA and welcomes comment from any of the participants. If any participant favors including language based on 40 C.F.R. § 52.21(o)(3) in proposed Part 204, the Board requests that the participant submit proposed rule language for consideration.

SECTION-BY-SECTION SUMMARY OF IEPA PROPOSAL

Many provisions of IEPA's original proposal did not trigger comments or questions. For others, the rulemaking process resolved many questions and disputes. The section-by-section summary below reviews testimony, comments, questions, and responses that culminated in agreed revisions. The summary also identifies the source of the proposed provision in the Board's record.

Part 101: General Rules

IEPA issues PSD permits under a delegation agreement with USEPA and will continue to do so until USEPA approves proposed Part 204 as a SIP revision. SR at 85. PSD permits issued by IEPA under this delegated authority are subject to review by EAB according to USEPA rules. *Id*., citing 40 C.F.R. § 124.19; *see* SR at 35, n.50. Once Illinois has a SIP-approved PSD program, PSD permits issued by IEPA will be subject to Board review under the Act and the Board's procedural rules. *Id*. at 86, citing 415 ILCS 5/40.3; 35 Ill. Adm. Code 101, 105. IEPA states that, if it uses authority under Part 204 to modify a permit that it originally issued through the delegated program, then administrative review of the modified permit would be before the Board. SR at 86, n.74, citing In re Delta Energy Center, 17 E.A.D. 371 (June 20, 2017).

Proposed Part 204 necessitates conforming changes to Part 101 of the Board's Procedural Rules, and IEPA proposes to define terms necessary to establish procedures for PSD permit appeals to the Board. SR at 3, 86-88, 97, 101. The Board summarizes proposed amendments to Part 101 in the following subsections of the opinion.

Subpart B: Definitions

Section 101.202: Definitions for Board's Procedural Rules. IEPA proposed to add and amend definitions for terms used in Part 201. SR at 86-87, 158; *see* 35 Ill. Adm. Code 201 (Permits and General Provisions).

"Record," "Hearing," and "Comment" Generally. IEPA proposed to clarify definitions including those for terms such as "record" and "public comment." The Board asked why IEPA believes that definitions of "Agency record" and "OSFM record" are necessary. Board Questions at 2 (¶7a). IEPA responded that existing definitions do not distinguish processes before the Board from processes before other agencies such as IEPA and the OSFM. PC 1 at 34 (¶7c-1). As an example, IEPA stated that Part 101 does not now distinguish a "record" before IEPA when it makes a permit decision and a "record" kept by the Board when it reviews an IEPA decision. *Id*. IEPA adds that 35 Ill. Adm. Code 105.302(f) addressing Clean Air Act Permit Program appeals already uses the term "Agency record." *Id*.

The Board asked how these proposed definitions relate to the proposed PSD program. Board Questions at 2 (¶7c). First, IEPA responded that the "Agency public comment" process affects who may appeal a PSD permit and the issues they may raise. PC 1 at 35 (¶7c-1), citing 415 ILCS 5/40.3 (2018); Prop. 105 at 11 (Section 105.604). Second, proposed requirements for the content of a petition to appeal a PSD permit refer to the "Agency record" and "Agency public comment" process. PC 1 at 35 (¶7c-1), citing 415 ILCS 5/40.3 (2018); Prop. 105 at 11-13 (Section 105.608). Third, the proposed rules require IEPA to file with the Board an "Agency record," which includes testimony at an "agency public hearing" and comment submitted during the "Agency public comment" period. PC 1 at 36 (¶7c-1), citing 415 ILCS 5/40.3 (2018); Prop. 105 at 13-14 (Section 105.612). Finally, the Board's decision is based exclusively on the "Agency record." PC 1 at 36 (¶7c-1), citing 415 ILCS 5/40.3 (2018); Prop. 105 at 14 (Section 105.614)

Agency Public Comment. IEPA proposed that "'[a]gency public comment' means information submitted to the Agency on a proposed Agency decision either by oral statement made at an Agency public hearing or written statement submitted to the Agency during the period for comment by the public." Prop. 101 at 5.

Agency Public Hearing. IEPA proposed that "'[a]gency public hearing' means a public proceeding to provide interested persons an opportunity to understand and comment on a proposed Agency decision." Prop. 101 at 5.

Agency Public Hearing Record. IEPA proposed that "'[a]gency public hearing record' means the record of the Agency public hearing, as kept by the Agency." Prop. 101 at 5.

Agency Record. IEPA proposed that "'[a]gency record' means a record of final Agency decision, as kept by the Agency, of those documents required by the State agency record meeting the applicable requirements of 35 Ill. Adm. Code Part 105." Prop. 101 at 5.

The Attorney General's Office asked whether "there is a state agency record requiring a record of final Agency decision or whether the second word record should be deleted?" Tr.1 at 85. IEPA responded that "state agency record" refers to Part 105 requirements for what must be included in a state agency record. PC 1 at 36 (¶7c-2). IEPA argues that "[t]his necessarily differs from the OSFM record and what must be included in the OSFM record of decision." *Id*., citing 35 Ill. Adm. Code 101.202, 105.508. IEPA asserts that its proposed definition "is correct." PC 1 at 36 (¶7c-2). The Board's first-notice proposal reflects IEPA's proposed language.

CAAPP Permit. IEPA proposed that "'CAAPP permit' means any permit issued, renewed, amended, modified or revised pursuant to Section 39.5 of the Act." Prop. 101 at 6.

CAAPP Permit Appeal. IEPA proposed that "'CAAPP permit appeal' means an appeal of a CAAPP permit as addressed by 35 Ill. Adm. Code Part 105." Prop. 101 at 6.

OSFM Record. IEPA proposed that "'OSFM record' means a record of final OSFM decision, as kept by the OSFM, of those documents of the OSFM that constitute the OSFM record relating to the eligibility and deductible decision and meeting the applicable requirements of 35 Ill. Adm. Code Part 105." Prop. 101 at 12.

The Board asked IEPA to provide OSFM's position on the proposed definition. Board Questions at 2 (¶7b). IEPA provided proposed drafts of Parts 101 and 105 to OSFM before it filed them with the Board. PC 1 at 35 (¶7b). Counsel for the two agencies later discussed the proposed rules, and IEPA reports that "OSFM had no objection to the proposed language addressing an 'OSFM record.'" *Id*.; *see* SR at 87, n.75.

The Board questioned whether this definition should refer to "the eligibility and deductibility decision." Board Questions at 9 (¶45). IEPA responded that it had shared with OSFM all proposed revisions involving its programs. PC 1 at 72 (¶45). IEPA suggested that it would not agree to revise this definition without OSFM's agreement. *Id*.

The Board notes that Section 105.508 of its procedural rules, OSFM Record and Appearance, refers twice to an OSFM determination on "deductibility." 35 Ill. Adm. Code 105.508. Under "Filing Comments" below at page 160, the Board seeks comment on whether these provisions should be consistent with one another and whether either should be revised.

Participants in a CAAPP Comment Process. IEPA also proposed to delete the definition of the term "Participant in a CAAPP Comment Process." Prop. 101 at 13; *see* 35 Ill. Adm. Code 101.202. IEPA stated that "this term is not employed elsewhere within the Board's procedural regulations." SR at 87 n.76; *see* PC 1 at 34 (¶6).

PSD. IEPA proposed that "'PSD' means the Prevention of Significant Deterioration of Air Quality program as authorized by Section 9.1(c) of the Act and as adopted by 35 Ill. Adm. Code Part 204." Prop. 101 at 13-14.

PSD Permit. IEPA proposed that "'PSD permit' means any PSD permit issued, extended or revised pursuant to Section 9.1(c) of the Act and 35 Ill. Adm. Code Part 204." Prop. 101 at 14.

PSD Permit Appeal. IEPA proposed that "'PSD permit appeal' means an appeal of a PSD permit as addressed by 35 Ill. Adm. Code Part 105." Prop. 101 at 14.

Subpart C: Computation of Time, Filing, Service of Documents, and Statutory Decision Deadlines

Section 101.302: Filing of Documents.

Subsection (e)(3). This subsection setting fees for initial filings provides in its entirety that "Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed under Section 40 of the Act, $75." 35 Ill. Adm. Code 101.302(e)(3).

IEPA did not initially propose to revise this subsection (*see* Prop. 101 at 18), and the Board asked IEPA to confirm that this language encompasses "the Agency's PSD permit decisions under new proposed Part 204, as required by 415 ILCS 5/40.3(c)." Board Questions at 3; *see* Tr.1 at 86.

IEPA responded that subsection (e)(3) "does not appear to address Section 40.3(a)(1) of the Act in those instances where the applicant petitions for a hearing before the Board to compel the Agency to act on a pending application." PC 1 at 37. Because IEPA would not in that case have made a permit decision, IEPA states that it would not be encompassed within the existing language addressing a "Petition for Review of Agency Permit Decision" or "any other appeal filed under Section 40 of the Act." *Id*.

To include PSD appeals filed under Section 40.3 of the Act, IEPA proposed to revise this subsection as follows: "Petition for Review of Agency Permit Decision, UST Decision or any

permit appeal filed under Section 40 or 40.3 of the Act, $75." PC 1 at 37. The Board includes this revision in its first-notice proposal.

Subsection (h)(2)(A). In this subsection addressing electronic filing, IEPA proposed to include PSD appeals by providing that "[t]he Agency record required by 35 Ill. Adm. Code 105.212, 105.302, ~~or~~ 105.410, or 105.612 or 35 Ill. Adm. Code 125.208" "must be filed through COOL or on compact disk or other portable electronic data storage device." Prop. 101 at 19; *see* SR at 87, 158-159.

Section 101.308: Statutory Decision Deadlines and Waiver of Deadlines. In subsection (a), IEPA proposed that "[p]etitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), Pollution Control Facility Siting Review (Section 40.1 of the Act), CAAPP permit appeals (Section 40.2 of the Act), and PSD permit appeals (Section 40.3 of the Act)." Prop. 101 at 21; *see* SR at 87, 159.

Subpart F: Hearings, Evidence, and Discovery

Section 101.610: Duties and Authority of the Hearing Officer.

Subsection (f). Among the duties of the Board's hearing officer is the authority to "[d]etermine that a witness is adverse, hostile, or unwilling under Section 101.624." 35 Ill. Adm. Code 101.610(f).

At the first hearing, the Attorney General's Office sought "clarification on whether any additional language after the word 'unwilling' should be included?" Tr.1 at 87. IEPA responded that its proposal is consistent with Section 101.624, which addresses questioning adverse, hostile, or unwilling witnesses. PC 1 at 37-38 (¶9b). IEPA does not propose to clarify subsection (f), and the Board's first-notice proposal does not revise it. *Id*.

Subsection (i). IEPA proposed to clarify that the Hearing Officer has the authority to "[o]rder the filing of any required Agency record, OSFM record or local siting authority record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline." Prop. 101 at 22; *see* SR at 88, 159.

The Board asked IEPA why it believed this revision was necessary. Board Questions at 2 (¶9). IEPA responded that the Board's procedural rules now define "record" as "the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during a proceeding." PC 1 at 37 (¶9a); *see* 35 Ill. Adm. Code 101.202. IEPA argues that this allows the Board's hearing officer to require the filing of the Board's record but not the administrative record of another agency at the time of its final decision. PC 1 at 37 (¶9a). IEPA suggested that the proposed revision clarifies that the hearing officer may order the specified records to be filed. *See id*.

Section 101.626: Information Produced at Hearing. IEPA proposed language providing that, under the Illinois Administrative Procedure Act, "the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code Part 105." Prop. 101 at 23; *see* SR at 88, 159.

Part 105: Appeals of Final Decisions of State Agencies

To implement Part 204, IEPA proposes to make conforming changes to Part 105 of the Board's procedural rules, including a new Subpart F to establish requirements for PSD permit appeals. IEPA also proposed conforming changes. SR at 3, 88, 92.

Subpart A: General Provisions

Section 105.104: Definitions.

Subsection (a). IEPA proposed to add language designated as subsection (a) and providing that "[n]onattainment New Source Review (NaNSR) means Illinois' rules for Major Stationary Sources Construction and Modification (MSSCAM) at 35 Ill. Adm. Code Part 203." Prop. 105 at 3; *see* SR at 92, 159.

Subsection (b). IEPA proposed to re-designate the existing section as subsection (b) and amend it to provide that "~~For the purposes of this Part,~~Other words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise." Prop. 105 at 3.

Section 105.108: Dismissal of Petition.

Subsection (a). IEPA proposed to amend this subsection by providing that a petition is subject to dismissal if the Board determines that "[t]he petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408, ~~or~~ 105.506 or 105.608." Prop. 105 at 3; *see* SR at 92, 160.

Subsection (b). IEPA proposed to amend this subsection by providing that a petition is subject to dismissal if the Board determines that "[t]he petition is untimely under Section 105.206, 105.302, 105.404, ~~or~~ 105.504 or 105.606." Prop. 105 at 3; *see* SR at 160.

Section 105.112: Burden of Proof. In subsection (a) placing the burden of proof on the petitioner, IEPA proposed to add to cited authorities a reference to Section 40.3(a)(2) of the Act. Prop. 105 at 3; *see* SR at 92, 160.

Section 105.116: Record Filing. IEPA first proposed to amend the title of this section to "Agency or OSFM Record Filing." Prop. 105 at 4. Throughout subsections (a) and (b), IEPA proposed clarifying language referring specifically to filing Agency records or OSFM records with the Board. Prop. 105 at 4*; see* SR at 92 n.79, 160.

Noting that IEPA had proposed to revise "State agency" to "Agency or "OSFM," the Board asked IEPA to explain why this change was necessary. Board Questions. at 3 (¶11). IEPA responded that IEPA and OSFM are separately responsible for filing their records. PC 1 at 38 (¶11). IEPA argues that its revision clarifies these responsibilities. *Id*.

Section 105.118: Sanctions for Non-Compliant Filing of the Record. IEPA proposed clarifying language "authorizing the Board to impose sanctions upon the relevant State agency, either the Agency or OSFM, for its failure to timely file the required administrative record with the Board." SR at 160; *see* SR at 92 n.79, 160; Prop. 105 at 4.

Noting that IEPA had proposed to revise "State agency" to "Agency" or "OSFM," the Board asked IEPA to explain why this revision was necessary. Board Questions at 3 (¶11). IEPA responded that IEPA and OSFM are separately responsible for filing their respective records. PC 1 at 38 (¶11). IEPA argued that its revision clarifies that "any sanctions imposed by the Board will only be upon the appropriate state agency." *Id*.

Subpart B: Appeal of Agency Permit Decisions and Other Final Decisions of the Agency

Section 105.200: Applicability. While this section generally applies Subpart B to Board appeals, it provides exceptions in subsection (a) for CAAPP permit appeals addressed in Subpart C and in subsection (b) for underground storage tank appeals addressed in Subpart D. 35 Ill. Adm. Code 105.200. IEPA proposed to add a subsection (c) providing a third exception: "[w]hen the appeal is of a final PSD permit decision of the Agency, which is addressed in Subpart F of this Part." Prop. 105 at 5; *see* SR at 88 n.77, 160.

Section 105.210: Petition Content Requirements. Twice in subsection (d) addressing petitions for review of a National Pollutant Discharge Elimination System (NPDES) permit under Section 105.204(b), IEPA proposed language clarifying that "public hearing" refers to an "Agency public hearing." Prop. 105 at 5; *see* SR at 92 n.79, 160-61.

Section 105.212: Agency Record. Throughout subsections (a) and (b), IEPA proposed language clarifying that the "record" and "hearing" refer to the Agency record and Agency public hearing. Prop. 105 at 5-6; *see* SR at 92 n.79, 161; PC 1 at 38-39 (¶12).

IEPA also proposed to rename this section "The Agency Record" to be consistent with its proposed revision of the Table of Contents for Part 105. Prop. 105 at 1; s*ee* PC 1 at 38 (¶10). IEPA commented that this revision intends to clarify "which administrative record the record is referring to." PC 1 at 39 (¶12); *see* Board Questions at 3 (¶12).

Section 105.214: Board Hearing. Twice in subsection (a), IEPA proposed language clarifying that "record" refers to the Agency record. Prop. 105 at 6; *see* SR at 92 n.79, 161.

Subpart C: CAAPP Permit Appeals

Section 105.302: General Requirements. In subsections (d) and (f), IEPA proposed language clarifying that refences to the comment process, public comment period and public hearing record refer specifically to the Agency. Prop. 105 at 7-8; *see* SR at 92 n.79, 161.

Section 105.304: Petition Content Requirements. In subsection (a), IEPA proposed to correct typographical errors in each of the subsections (1) through (4). SR. at 161; *see* Prop. 105 at 8-9.

Subpart D: Appeal of Agency Leaking Underground Storage Tank (LUST) Decisions

Section 105.410: Agency Record. In subsection (a), IEPA proposed language clarifying that "record" refers to the Agency record. Prop. 105 at 9; *see* SR at 92 n.79, 161; PC 1 at 38-39 (¶12).

IEPA also proposed to rename this section "The Agency Record" to be consistent with its proposed revision of the Table of Contents for Part 105. Prop. 105 at 2; *see* PC 1 at 38 (¶10). IEPA commented that this revision intends to clarify "which administrative record the record is referring to." PC 1 at 39 (¶12); *see* Board Questions at 3 (¶12).

Section 105.412: Board Hearing. IEPA proposed language clarifying that "record" refers to the Agency record. Prop. 105 at 9; *see* SR at 92 n.79, 161. IEPA commented that this revision intends to clarify "which administrative record the record is referring to." PC 1 at 39 (¶12); *see* Board Questions at 3 (¶12).

Subpart E: Appeal of OSFM LUST Decisions

Section 105.508: OFSM Record and Appearance. In subsection (b), IEPA proposed to clarify that "record" refers to the OFSM record. Prop. 105 at 10; *see* SR at 92 n.79, 161; PC 1 at 38-39 (¶12).

Subpart F: PSD Permit Appeals

IEPA intends that Subpart B, Appeal of Agency Permit Decisions and Other Final Decisions of the Agency, would not apply to appeals of final IEPA decisions on PSD permits. SR at 88, n.77. Instead, Subpart F would apply to these appeals. *Id*.

Section 105.600: Applicability. IEPA proposed to add this section providing in its entirety that "[t]his Subpart applies to proceedings before the Board concerning appeals from final PSD permit determinations made under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204." Prop. 105 at 10; *see* SR at 162.

The Board asked what appeal process IEPA expects when it issues a decision containing PSD and other permits. Tr.1 at 74-75. IEPA responded that Section 40.3 of the Act and Subpart F would govern appeals of PSD permits. PC 1 at 32 (¶4a-2). Section 40(a) of the Act and Subpart B would govern appeals of state construction permit. *Id*. If a permit addresses a project subject to Part 203, Sections 40(a) and (d) and Subpart B would govern appeals of requirements

addressing NaNSR. *Id*. IEPA added that Part 101 establishes general procedural requirements and must be considered with the more specific requirements in Subparts B and F. *Id*.

Section 105.602: Parties.

Subsection (a). IEPA proposed to add this subsection headed "Petitioner" and providing in its entirety that "[t]he person who files a petition for review of the Agency's final decision must be named the petitioner." Prop. 105 at 10; *see* SR at 162.

Subsection (b). IEPA proposed to add this subsection headed "Respondent" and providing in its entirety that "[t]he Agency must be named the respondent. If a petition is filed under Section 105.604(c) of this Subpart by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency." Prop. 105 at 10; *see* SR at 162.

Section 105.604: Who May File a Petition for Review. CARE cited 2 Ill. Adm. Code 2175, the Board's organizational rules, which notes the Board's authority under the Act to hear various permit appeals. CARE argued that, on the issue of third-party appeal rights, Section 2175 appears to be inconsistent with this section. CARE Questions at 1 (¶1), citing 2 Ill. Adm. Code 2175.600 (a)(2). CARE asked IEPA whether there was a proceeding to amend Section 2175 underway "to include the rights of third parties" in PSD permit appeals. CARE Questions at 1 (¶1a). If not, CARE asked what effect this would have on the rights of those third parties. *Id*. at 2.

IEPA responded that the Part 2175 rules "are informational and merely describe the Board's organizational framework and its various activities as granted by the Act." PC 1 at 2 (¶1a-1), citing 2 Ill. Adm. Code 2175.100 (Summary and Purpose). IEPA stressed that Section 2175.600(a)(11) allows the Board to hear "proceedings authorized by the Act," including third-party appeals under Section 40.3. PC 1 at 2 (¶1a-1). While IEPA acknowledges that Section 2175.600(a)(2) refers specifically to third-party appeals of RCRA and NDPES permits, it argues that "nothing suggests that it restricts the Board from hearing third-party appeals in other types of cases" authorized by the Act. *Id*. IEPA adds that Section 2175.600(a)(2) does not mention third-party appeals under the CAAPP permit program, but it argues that "there seems to be little doubt as to the Board's legal authority for hearing such appeals." *Id*.

IEPA states that, if the Board adopts Subpart F, it will establish procedures for PSD appeals under the Act. PC 1 at 3 (¶1a-1). IEPA adds that, if there is a conflict between Part 2175 and the procedural rules at Part 105, "the procedural rules will control." *Id*., citing 2 ILCS 2175.100. IEPA concludes that the Board may amend its rules at Section 2175 "as a house-keeping matter if it so chooses, but these amendments are not necessary." PC 1 at 3 (¶1a-1).

Subsection (a). Based on Section 40.3(a)(1) of the Act, IEPA proposed that, "[*i*]*f the Agency refused to grant or grants with conditions a PSD permit under Section 9.1(c) of the Act and 35 Ill. Adm. Code Part 204, the applicant may petition for a hearing before the Board to contest the decision of the Agency*. [415 ILCS 5/40.3(a)(1)]. Prop. 105 at 11; *see* 415 ILCS 5/40.3(a)(1) (2018); SR at 88, 162.

The Board asked IEPA to comment on removing italicization from text that is not based on the verbatim language of the Act. Board Questions at 10 (¶46j). IEPA responded that "[t]his change is acceptable." PC 1 at 75 (¶46j). In its order below, the Board proposes Section 105.604(a) as follows: "*[i[f the Agency refused to grant or grants with conditions a PSD permit* under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204, *the applicant may petition for a hearing before the Board to contest the decision of the Agency*. [415 ILCS 5/40.3(a)(1)]"

Subsection (b). Based on Section 40.3(a)(1) of the Act, IEPA proposed that, "[*i*]*f the Agency fails to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, the applicant may petition for a hearing before the Board to compel the Agency to act on the application in a time that is deemed reasonable by the Board*. [415 ILCS 5/40.3(a)(1)]. Prop. 105 at 11; *see* 415 ILCS 5/40.3(a)(1) (2018); SR at 88, 162.

` The Board noted that proposed Section 204.1330 requires IEPA to issue or deny a PSD permit within one year after receiving a complete application. The Board asked IEPA to comment on whether an applicant has any recourse if IEPA does not take action on an application within one year after receiving it. Board Questions at 7-8 (¶34c). IEPA responded that this subsection addresses an applicant's right to appeal if IEPA "fails to act on an application for a PSD permit within one year of submittal of a compete PSD application." PC 1 at 62 (¶34c-1).

At the first hearing, CARE asked whether subsection (b) would give IEPA more than one year in practice "to grant a permit so long as the applicant doesn't immediately file an appeal". Tr.1 at 117-18. IEPA first responded that proposed Section 204.1330 requires it to grant or deny a PSD permit within one year after receiving a complete application. PC 1 at 63 (¶34c-2). Second, IEPA stated that subsection (b) is consistent with Section 40.3(a)(1) of the Act, which provides that, if the Agency fails to act on an application for a PSD permit by the specified deadline, "the applicant may, before the Agency denies or issues the final permit, petition for a hearing before the Board to compel the Agency to act on the application in a reasonable time. *Id*. (emphasis in original); *see* 415 ILCS 5/40.3(a)(1) (2018). Third, IEPA does not expect permit applicants to allow it more than one year to act on a complete application unless an applicant places a project "on hold." PC 1 at 63 (¶34c-2). Because an applicant cannot begin construction of a major source until it receives a permit, applicants "have every incentive to ensure receipt of a timely construction permit." *Id*. Finally, IEPA argues that, because "the permit applicant is most directly affected by any failure of the Agency to take action in a timely manner, it is appropriate that a permit applicant decide how to proceed." *Id*.

CARE addressed subsection (b) by raising this hypothetical situation: IEPA "receives a complete application and they do not grant or deny a permit and the applicant doesn't immediately file for appeal." Tr.1 at 119. CARE then questioned whether this situation would allow an indefinites amount of time to pass until IEPA acted on the application or the applicant appealed. *Id*. IEPA responded that this situation "is theoretically possible" but "not likely unless the applicant places the application 'on hold.'" PC 1 at 64 (¶34c-4).

CARE also asked whether its hypothetical situation would be consistent with the proposed one-year deadline in Section 204.1330. Tr.1 at 119-20. IEPA responded that, although it "would not conform with Section 204.1330," it would be consistent with Section 40.3(a)(1) of the Act, which allows the applicant to petition for a hearing before the Board to compel the Agency to act on the application. PC 1 at 64 (¶34c-5). IEPA argues that "[t]his approach is generally consistent with principles of administrative law" under which an aggrieved party has the means to seek action from an agency. *Id*. IEPA suggests that this is consistent with Sections 40(a)(3) and 40.2(c) of the Act, under which an applicant is entitled to an appellate court order if the Board fails to take action on a petition for review of an IEPA action within 120 days of receiving it. *Id*.; *see* 415 ILCS 5/40(a)(3), 40.2(c) (2018).

Finally, the Board asked IEPA to comment on removing italicization from text that is not based on the verbatim language of the Act. Board Questions at 10 (¶46j). IEPA responded that "[t]his change is acceptable." PC 1 at 75 (¶46j). In its order below, the Board proposes Section 105.604(b) as follows: "[*i*]*f the Agency fails to act on an application for a PSD permit within the time frame specified in* Section 39(f)(3) of the Act, *the applicant may petition for a hearing before the Board to compel the Agency to act on the application in a time that is deemed reasonable* by the Board. [415 ILCS 5.40.3(a)(1)]"

Subsection (c). Based on Section 40.3(a)(2) of the Act, IEPA proposed that

> [*a*]*ny person who participated in the Agency public comment process for a PSD permit and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the Agency's public comment process, the person may still petition for hearing, but only upon issues where the final permit conditions reflect changes from the draft permit that was made available during the Agency public comment process.* Prop. 105 at 11; *see* 415 ILCS 5/40.3(a)(2) (2018); SR at 88, 162.

The Board asked IEPA to comment on whether it would be acceptable to add "a" after the phrase "the person may still petition for" and to add "proposed" after "reflects changes from." Board Questions at 10 (¶46k). IEPA responded that this "is acceptable." PC 1 at 75 (¶46k). The Board also asked IEPA to comment on removing italicization from text that is not based on the verbatim language of the Act. Board Questions at 10 (¶46j). IEPA responded that this change is also acceptable." PC 1 at 75 (¶46j). In its order below, the Board proposes Section 105.604(c) as follows:

> [*a*]*ny person who participated in the* Agency *public comment process* for a PSD permit *and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the* Agency's *public comment process, the person may still petition for a hearing, but only upon issues where the final permit conditions reflect changes from the proposed draft permit* that was made available during the Agency public comment process. [415 ILCS 5/40.3(a)(2)]

Section 105.606: Time to File Petition for Review.

Subsection (a). IEPA proposed to add this subsection providing in its entirety that, "[e]xcept as provided in subsection (b), if a person who may petition the Board under Section 105.604 of this Subpart wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file the petition with the Clerk within 35 days after the date of the Agency's final permit action." Prop. 105 at 11; *see* SR at 88, 163.

The Board asked IEPA whether it would clarify this subsection to provide that, "[e]xcept as provided in Subsection (b), a person who may petition the Board under Section 105.604 ~~of this Subpart wishes to appeal~~ for review of the Agency's final decision ~~to the Board under this Subpart, the person~~ must file the petition with the Clerk within 35 days after the date of the Agency's final permit action." Board Questions at 10 (¶47a). IEPA responded that these revisions are acceptable. PC 1 at 75 (¶47a).

The Board has continued to review proposed additions to its procedural rules. The Board asks IEPA and the other participants whether the following revision more succinctly focuses on the petition filing deadline: Any petition for review under Section 105.604(a) or (c) must be filed with the Clerk within 35 days after the date of the Agency's final permit action. Below under "Filing Comments on the Board's First-Notice Opinion," the Board requests comment on this specific subsection.

Subsection (b). IEPA proposed to add this subsection providing in its entirety that, "[i]f the permit applicant wishes to appeal the Agency's failure to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, the person must file a petition for review with the Clerk before the Agency denies or issues the final permit." Prop. 105 at 11; *see* SR at 163.

The Board asked IEPA whether it would clarify this subsection to provide that "A ~~If the~~ permit applicant who wishes to appeal the Agency's failure to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, ~~the person~~ must file a petition for review with the Clerk before the Agency denies or issues the final permit." Board Questions at 10 (¶47b). IEPA responded that the revisions are acceptable. PC 1 at 75 (¶47b).

As in subsection (a), the Board has continued to review proposed additions to its procedural rules. The Board asks IEPA and the other participants whether the following revision more succinctly focuses on the petition filing deadline: Any petition for review under Section 105.604(b) must be filed with the Clerk before the Agency denies or issues the final permit. Below under "Filing Comments on the Board's First-Notice Opinion," the Board requests comment on this specific subsection.

Section 105.608: Petition Content Requirements.

Subsection (a). IEPA originally proposed to add this subsection providing that,

> [f]or petitions under Section 105.604(a) or (c) of this Subpart all pertinent information in support of each issue raised for review shall be contained within the body of the petition. The Board will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, *the petition must include*" specified items of information. Prop. 105 at 11; *see* SR at 88, 163.

IEPA agreed to revisions suggested by the Board. IEPA first agreed to a new subsection (a) providing in its entirety that "[a]ll petitions under Section 105.604 must comply with 35 Ill. Adm. Code 101.Subpart C." PC 1 at 43.

Subsection (b). IEPA also agreed to re-designate the original subsection (a) as (b) and revise it to provide that

> "[a] petition under Section 105.604(a) or (c), must contain within the body of the petition all pertinent information in support of each issue raised for review. The Board will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. The petition must include" specified items of information. PC 1 at 43; *see* SR at 163.

Subsection (b)(1). As the first item, IEPA proposed "[t]he Agency's final decision or issued PSD permit." Prop. 105 at 12; *see* PC 1 at 43.

Subsection (b)(2). As the second item, IEPA proposed "[a] statement as to how the petitioner participated in the Agency public comment process." Prop. 105 at 12; *see* PC 1 at 43.

Subsection (b)(3). After agreeing to clarifying revisions suggested by the Board, IEPA proposed as the third item "[a]ll *such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected*." PC 1 at 43; *see* 415 ILCS 5/40.3(a)(2)(i) (2018); Prop. 105 at 12; SR at 89.

Subsection (b)(4). As the fourth item, IEPA originally proposed

> *[t]he issues proposed for review, citing* to a specific permit term or condition where applicable and *to the Agency record where those issues were raised* with reasonable specificity during the public comment period, citing to any relevant page numbers in the public comments submitted to the Agency and attaching this public comment to the petition. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must *explain why such issues were not required to be raised during the Agency public comment process*." Prop. 105 at 12; *see* SR at 89.

Section 40.3(a)(2)(ii) of the Act requires that the petition "state the issues proposed for review, citing to the record where those issues were raised or explaining why such issues were not required to be raised during the comment period." 415 ICLS 5/40.3(a)(2)(ii) (2018). The

Board asked IEPA whether its proposal limits the statutory language by requiring additional information. Board Questions at 3 (¶13a).

IEPA first responded that its proposal is consistent with Section 40.3(a)(2)(ii) and appropriately implements administrative review. PC 1 at 39-41 (¶13a). IEPA argues that requiring a citation to the permit term, where applicable, connects the appeal to the permit decision. *Id*. at 40. IEPA adds that that is particularly important in appeals of permit conditions, which may be detailed. *Id*., n.12. Citing the specific condition also connects the appeal to such elements of the Agency record as a project summary or responsiveness summary. *Id*. at 40. Also, IEPA asserts that its proposed standard "is consistent with the EAB's historic federal administrative review of PSD permitting decisions." *Id*. at 39, n.11 (citations omitted). Finally, IEPA argues that its proposed requirements are consistent with the Board's authority to adopt implementing rules. *Id*. at 41. IEPA argues that, while the General Assembly may not have enacted these specific requirements, there is no apparent legislative intent to prohibit the Board from adopting them. *Id*. (citation omitted).

The Board also asked IEPA what it considered to be "reasonable specificity" and to provide examples. Board Questions at 3 (¶13b). IEPA responded that it is not sufficiently specific to repeat objections made during the Agency comment period. PC 1 at 41 (¶13b). "Rather, the petitions should demonstrate why the permitting authority's response to those objections necessitates review." *Id*., citing Knauf Fiber Glass, GmbH, 9 E.A.D. 1, 5 (EAB 2000); Sutter Power Plant, 8 E.A.D. 680, 687 (EAB 1999). IEPA argues that requiring "reasonable specificity" allows the reviewing authority to ascertain the appealed issue. PC 1 at 41 (¶13b). IEPA adds that it is consistent with EAB authority and requirements for a petition to appeal a Title V permit. *Id*., citing 40 C.F.R. ¶70.8. As examples of specificity, IEPA cites four EAB cases. PC 1 at 42 (13b) (citations omitted).

The Board questioned whether some part of the Agency record could fall outside the Agency comment period. Board Questions at 3 (¶13c). IEPA responded that "[m]ost documents in a permit record are typically generated outside of the public comment period, typically before the public comment period." PC 1 at 42 (¶13c). IEPA identified the issued permit or permit denial as documents that would be added to the record after the comment period closes. IEPA suggested that these are distinct from "those documents that are generated in direct response to the public comment period." *Id*.

The Board also asked IEPA whether issues raised in a permit application or correspondence with IEPA would be considered to have originated "during the public comment period." Board Questions at 3 (¶13c). IEPA responded that issues raised in the application or correspondence will not relate to the public comment period unless they are submitted to IEPA during the comment period or "independently raised as an issue in a public comment." PC 1 at 42 (¶13c).

The Board asked IEPA, "[i]f a petitioner does not have a copy of the record when filing a petition," would failing to attach the cited comment bar the petitioner from filing? Board Questions at 3 (¶13d). IEPA responded that a petitioner does not need to have a complete copy of the Agency record to file a petition. PC 1 at 42(¶13d). However, IEPA states that the

petitioner "would have to show that the issue(s) that are the subject of the petition were raised during the public comment period." *Id*. IEPA indicated that a petitioner could meet this requirement by "providing a copy of the relevant written comment(s)." *Id*. at 43. If a petitioner does not have a copy of the comments, they could meet this requirement with "an annotated copy of the response to comments." *Id*. If the petitioner commented orally at hearing, the petitioner could meet this requirement "with an annotated copy of the transcript for the public hearing." *Id*. IEPA stressed that documents are accessible to the public through its website. *Id*. IEPA acknowledged an exception for issues that were not required to be raised during the comment period. *Id*. at 42-43 (¶13c), citing 415 ILCS 5/40.3(a)(2) (2018). In this case, the petitioner could meet the requirement by explaining "that the petition involved subsequent developments which could not have been raised during the public comment period." PC 1 at 43 (¶13c).

The Board questioned whether the following revision would be acceptable to IEPA:

> *[t]he issues proposed for review, citing* to a specific permit term or condition, where applicable, and *to the Agency record where those issues were raised* ~~with reasonable specificity during the public comment period~~, citing to any relevant document and page numbers in ~~public comments submitted to~~ the Agency record and attaching ~~this public comment~~ a copy of the cited document to the petition, if available. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must *explain why such issues were not required to be raised during the Agency public comment process*." Board Questions at 5.

IEPA responded that "only those issues that were appropriately raised during the public comment period (and for which the Agency's previous response to those issues was clearly erroneous or involve an exercise of discretion or an important policy consideration that the Board should, in its discretion, review) are appropriately before the Board for review." PC 1 at 45 (¶13e), citing 415 ILCS 5/40.3(a)(2) (2018). IEPA states that the Agency record will include the initial permit application, correspondence that will not generally relate to the public comment period, and documents prepared after the comment period closes. PC 1 at 42, 45. IEPA argues that the Board's proposed changes suggest that "a petitioner could cite to *any* document in the Agency record to support its assertion that that the issue was raised during the public comment period." *Id*. at 45 (emphasis in original). The Agency responded that the following revision of subsection (b)(4) would be acceptable:

> *[t]he issues proposed for review, citing* to a specific permit term or condition, where applicable, and *to the* Agency *record where those issues were raised* ~~with reasonable specificity during the public comment period~~, citing to any relevant page numbers in public comments submitted to the Agency and attaching this public comment to the petition. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must *explain why such issues were not required to be raised during the Agency public comment process*. PC 1 at 45.

During the second hearing, the Board asked whether it would be appropriate for a participant to raise an issue that is reflected in the record but was not raised during the public comment period. Tr.2 at 93-94.

IEPA responded that the Board's suggestion "would be improper" because it suggests "that a petitioner could cite to *any* document in the Agency record to support its assertion that the issue was raised during the public comment period." PC 2 at 31 (¶1) (emphasis in original). IEPA argues that "would inappropriately expand the statutory language of Section 40.3(a)((ii) and (iii) of the Act." *Id*. at 35. IEPA acknowledges that the Agency record for a PSD permitting action may include documents that precede the public comment period or documents such as an issued permit that are prepared after it. *Id*. at 32. However, IEPA argues that these materials would not be supplied by the public unless actually submitted to IEPA during the public comment period. *Id*.

IEPA argues that Section 40.3(a)(2)(ii) of the Act repeatedly uses the term "issues," which must necessarily be raised during the public comment period if it is possible to do so. PC 2 at 32 (¶1). Requiring a citation to the record where issues were raised "would necessarily refer to comments made during the public comment period." *Id*. at 33. IEPA states that it is during the public comment process that members of the public may raise issues, which might include "a proposal to use one control technology over another control technology, a proposal to set BACT for a given piece of equipment that might not be as stringent as a BACT limit set elsewhere for a similar piece of equipment or the failure of an air quality impact analysis to employ a certain reference level." *Id*. at 32.

IEPA also argues that its proposal is consistent with Section 40.3(a)(2)(iii) of the Act, which requires a petitioner to address IEPA's previous response to issues. PC 2 at 32 (¶1). After a public comment period, IEPA prepares a Responsiveness Summary responding to issues raised by the public during the comment period. *Id*. IEPA asserts that it can respond to issues as contemplated by subsection (iii) only if a participant raises the issues during the public comment period. *Id*.

Finally, IEPA argues that its proposal is consistent with EAB's review of PSD permitting decisions and with efficient administrative review. PC 2 at 33-34 (¶1). IEPA cites EAB's statement that "the PSD permitting process requires a specific time for public comments so that issues may be raised and 'the permit issuer can make timely and appropriate adjustments to the permit determination, or, if no adjustments are made, the permit issuer can include an explanation of why none are necessary." *Id*. at 34, citing Christian County Generation, 13 E.A.D. 49, 459-60 (EAB 2008). If a petitioner can rely on any document in the record, it could effectively become the permitting authority on these newly-raised issues, or it could remand the permit and cause unnecessary delays. *Id*.

The Board also asked if the petitioner raises a question "that was raised by someone else during the public comment period or before or after public comment period that wasn't raised by the petitioner itself would that still be appropriate?' Tr.2 at 95. IEPA responded that public comments must be submitted during the public comment period. PC 2 at 35 (¶2). IEPA indicates that it must set a comment deadline in order to meet the proposed requirement that it

reach a determination on a permit application within one year of receiving a complete application. *Id*. IEPA also responds to the Board's reference to a "question" as an "issue" raised during the public comment period. *Id*. IEPA concluded that,

> "[t]o the extent that an issue was raised by a participant in the public comment process and another participant in the public comment process filed a Petition for Review with the Board explaining how the Agency's previous response, if any, to that issue (raised by the other participant) is clearly erroneous or an exercise of discretion or an important policy consideration that the Board should, in its discretion, review, nothing in Section 40(a)(3) would prohibit the Board from accepting such a Petition for Review. *Id*.

In its order below, the Board submits IEPA's proposed subsection (b)(4) to first-notice publication.

Subsection (b)(5). After agreeing to clarifying changes suggested by the Board, IEPA proposed as the fifth item "*[a]n explanation why the Agency's previous response to the issues, if any, proposed for review was:* (A*) Clearly erroneous; or* (B) *An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.* [415 ILCS 5/40.3(a)(2)]." PC 1 at 44 (¶13e); *see* Prop. 105 at 12.

Subsection (c). After re-designating the original subsection (b) as (c), IEPA agreed to revisions suggested by the Board and proposed that "[a] petition under Section 105.604(b) must include the date that a complete permit application for a PSD permit was submitted to the Agency and an explanation as to why the submittal made on such date made the application complete." PC 1 at 44; *see* Prop. 105 at 12.

Subsection (d). After re-designating the original subsection (c) as (d), IEPA agreed to revisions suggested by the Board and proposed that

> [a] petition under Section 105.604(a) or (c) may include a request to stay the effectiveness of any final Agency action on a PSD permit application until final action is taken by the Board under Section 40.3 of the Act. Any stay request must include a clear delineation of all the contested conditions of the PSD permit. To the extent that a stay of any or all of the uncontested conditions of the permit is sought, any stay request must indicate how these uncontested conditions would be affected by the Board's review of the contested conditions." PC 1 at 44; *see* Prop. 105 at 12; SR at 88-89, 163.

Subsection (e). IEPA originally proposed that, "[f]or petitions under Section 105.604(c) of this Subpart, any stay request must also demonstrate" that it meets three conditions. Prop. 105 at 12; *see* SR at 88-89, 163.

The Board questioned whether the following revision of subsection (e) would be acceptable to IEPA: "[a] stay request filed by a person other than the permit applicant must also demonstrate" the same three conditions. Board Questions at 6. IEPA responded that "a stay

request may only be made by the applicant or 'any person who participated in the Agency public comment process for a PSD permit and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit.'" PC 1 at 45 (¶13e). IEPA adds that, "if the petitioner failed to participate in the Agency's public comment process, the person may still petition for a hearing, but only upon issues where the final permit conditions reflect changes from the draft permit that was made available during the Agency public comment process." *Id*. n.14, citing 415 ILCS 5/40.3(a)(2) (2018). IEPA argues that the Board's proposed language would allow any "person" as defined by the Act and Board regulations to request a stay. PC 1 at 45, citing 415 ILCS 5/3.315 (2018); 35 Ill. Adm. Code 101.202. IEPA further argues that its proposed Section 105.604(c) is not as broad as the statutory definition of "person." PC 1 at 45. IEPA concludes that the Board's proposed revision is not acceptable. *Id*.

The Board submits IEPA's proposed subsection (e) to first-notice publication.

Subsection (e)(i). As the first condition, IEPA proposed that a stay request must demonstrate "[t]hat an immediate stay is required in order to preserve the status quo without endangering the public." Prop. 105 at 12.

Subsection (e)(2). As the second condition, IEPA proposed "[t]hat it is not contrary to public policy." Prop. 105 at 13.

Subsection (e)(3). As the third condition, IEPA proposed "[t]hat there is a reasonable likelihood of success on the merits." Prop. 105 at 113. The Board asked IEPA to comment on whether it would be acceptable to italicize the language in subsections (e)(1), (e)(2), and (e)(3) and also refer to Section 40.3(d)(3) of the Act on which they are based. Board Questions at 5 (¶13e). IEPA's objection to the Board's proposed subsection (e) did not address these revisions (PC 1 at 44 (¶13e)), which the Board includes in its first-notice proposal.

Section 105.610: Board Standards for Granting Stays.

Subsection (a). IEPA proposed that,

> *[i]f requested by the permit applicant, the Board may stay the effectiveness of any final agency action on a PSD permit application during the pendency of the review process. In such cases, the Board shall stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. Any stays granted by the Board shall be deemed effective upon the date of the final Agency action appealed by the applicant.* [415 ILCS 5/40.3(d)(2)] Prop. 105 at 13; *see* SR at 89, 163.

Subsection (b). IEPA proposed that,

> *[i]f requested by a party other than the permit applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application during the*

> *pendency of the review process. In such cases, the Board may stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. The party requesting the stay has the burden of demonstrating that an immediate stay is required in order to preserve the status quo without endangering the public, that is not contrary to public policy and that there is a reasonable likelihood of success on the merits. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed under Section 105.606 of this Subpart and shall remain in effect until a decision is issued by the Board on the petition.* [415 ILCS 5/40.3(d)(3)] Prop. 105 at 13; *see* SR at 89, 163.

The Board questioned whether it would be appropriate to delete the sentence beginning "The party requesting the stay has the burden . . ." because the preceding Section 105.608 includes that language. Board Questions at 6; *see* Prop. 105 at 13. IEPA responded that subsection (b) restates verbatim Section 40.3(d)(3) of the Act. PC 1 at 46. IEPA added that, "to avoid any needless confusion," it does not favor revising the statutory language. *Id*. The Board includes IEPA's proposed language in its first-notice proposal.

Section 105.612: The Agency Record. The Board noted that subsection (a) and (b) proposed to add "Agency" before "record." Board Questions at 3 (¶12). The Board asked IEPA to comment on why it proposed this addition. *Id*. IEPA responded that it clarifies the rule by providing "an additional identifier as to which administrative agency" the record refers. PC 1 at 39 (¶12).

Subsection (a). IEPA proposed that "[t]he Agency must file a copy of its entire Agency record of its decision with the Clerk in accordance with Section 105.116." Prop. 105 at 13; *see* SR at 89, 163.

Subsection (b). IEPA proposed that "[t]he Agency record must include" eight specified items. Prop. 105 at 13; *see* SR at 89, 163.

Subsection (b)(1). As the first item, IEPA proposed "[a]ny permit application or other request that resulted in the Agency's final decision." Prop. 105 at 13.

Subsection (b)(2). As the second item. IEPA proposed "[c]orrespondence with the applicant and any documents or material submitted by the applicant to the Agency related to the permit application." Prop. 105 at 13.

Subsection (b)(3). As the third item, IEPA proposed "[t]he project summary, statement of basis or fact sheet." Prop. 105 at 14.

Subsection (b)(4). As the fourth item, IEPA proposed "[t]he Agency public hearing record of any Agency public hearing held under 35 Ill. Adm. Code 252.205. including any transcripts and exhibits." Prop. 105 at 14.

Subsection (b)(5). As the fifth item, IEPA proposed "[a]ll written comments received during the Agency public comment period under 35 Ill. Adm. Code 252.201, including any extension or reopening under 35 Ill. Adm. Code 252.208." Prop. 105 at 14.

Subsection (b)(6). As the sixth item, IEPA proposed "[t]he response to comments required by 35 Ill. Adm. Code 252.210 and any new material placed in the Agency record under that Section." Prop. 105 at 14.

Subsection (b)(7). As the seventh item, IEPA proposed "[t]he final permit." Prop. 105 at 14.

Subsection (b)(8). As the eighth item, IEPA proposed "[a]ny other information the Agency relied upon in making its final decision." *See* Prop. 105 at 14.

IERG noted that subsection (b) refers to IEPA rules at 35 Ill. Adm. Code 252 that are the subject of a separate IEPA rulemaking. IERG asked what IEPA's plans are for that rulemaking. IERG Questions at 2 (¶6). IEPA responded that it intended to publish a first-notice proposal in the spring of 2019. "While the Agency rulemaking is not as far along as the pending rulemaking before the Board, an Agency rulemaking is typically a much shorter process than a Board rulemaking." PC 2 at 25; *see* PC 1 at 14 (¶6). IEPA submitted a draft version of Sections 252.208 and 252.210 to assist the Board in understanding what these provisions may require when adopted. PC 2 at 25-26; *see* 43 Ill. Reg. 7028 (June 21, 2019) (first-notice proposal).

Section 105.614: Board Hearing. IEPA proposed that,

> [e]xcept as provided in subsections (a) and (b), the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101, Subpart F, upon an appropriately filed petition for preview under this Subpart. *The* hearing and *decision of the Board will be based exclusively on the* Agency *record* at the time the permit decision was issued, *unless the parties agree to supplement the Agency record*. Any PSD permit issued by the Agency shall be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency. [415 ILCS 5/40.3(d)(1)] Prop. 105 at 14; *see* SR at 89, 164.

IEPA states that a petition for review of a PSD permitting decision must include "the issues proposed for review" and may, as one ground, explain why IEPA's previous response, if any, to those issues is "clearly erroneous." 415 ILCS 5/40.3(a)(2) (2018); *see* SR at 89. When EAB reviews a permit decision for clear error, it evaluates whether "the permitting authority's analysis reflects considered judgment and is 'rational in light of all the information in the record, including the conflicted opinions.'" SR at 91, citing Steel Dynamics, Inc., 9 E.A.D. 165, 180, n.16 (EAB 2000). IEPA cites EAB's recent statement that, "[i]n reviewing a permit issuer's exercise of its discretion, the Board applies an abuse of discretion standard. . . . The Board will uphold a permit issuer's reasonable exercise of discretion if that exercise is cogently explained and supported in the record." SR at 91, citing Arizona Public Service Company Ocotillo Power Plant, 17 E.A.D. 323, 324-25 (EAB 2016). IEPA proposes that the Board uphold PSD permits if

IEPA's technical decision-making reflects considered judgment. SR at 92. IEPA argues that this has been EAB's standard of review when reviewing PSD permitting decisions made by delegated agencies or USEPA Regional Offices. *Id*.

The Board asked IEPA to explain a standard of review based on whether the Agency's technical decisions "reflect considered judgement by the Agency." Board Questions at 5 (¶15). IEPA responded that the Board's review of PSD permitting decisions is based "exclusively on the record before the Agency unless the parties agree to supplement the record." PC 1 at 46 (¶15), citing 415 ILCS 5/40.3(d)(1) (2018). IEPA states that the record must explain both its decision-making process and the rationale for its decision. PC 1 at 46, citing Newmont Nevada Energy Investment L.L.C. TS Power Plant, 12 EAB 429, 463 (2005). Because a PSD permitting decision is often complex and requires technical review, the rationale "should clearly be set forth in the record particularly as the decision was questioned or challenged by public comment." PC 1 at 47. If data or opinions conflict, EAB reviews the record "to determine whether the permit authority has adequately considered the issue and whether its decision is 'rational in light of all the information in the record, including the conflicting opinions and data.'" *Id*. at 47-48 (citations omitted). IEPA cites EAB's finding that, "[o]n matters that are fundamentally technical or scientific in nature, the Board will typically defer to a permit issuer's technical expertise as long as the permit issuer adequately explains its rationale and supports its reasoning in the administrative record." PC 1 at 47 n.15, citing City of Palmdale (Palmdale Hybrid Power Project), 15 EAB 700, 705 (2012) (citations omitted).

Based on IEPA's response to the Board's questions, IERG asked whether IEPA intends to "apply the same standard of review and adherence to precedent as the EAB applies in reviewing PSD permit appeals?" IERG Questions 2 at 3 (¶5); Tr.2 at 88. In response, IEPA stated its position that Section 40.3 of the Act "embodies the same standard of review and adherence to precedence as the EAB currently applies in reviewing PSD permit appeals." PC 2 at 29 (¶5); Tr.2 at 88-89.

IERG noted IEPA's final proposed sentence of subsection (a) providing that "[a]ny PSD permit issued by the Agency shall be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency." IERG stated that this "is in addition to Section 40.3(d)(1) of the Act" and asked IEPA to expand upon "the type of technical decisions that would be subject to the Agency's considered judgment under this provision," including single stationary source, potential to emit, legally and practicably enforceable limits, assessment of fugitive emissions, RMRR exclusion, replacement unit, baseline actual emissions and projected actual emissions, net emissions increase calculation, physical change and BACT applicability, determining BACT, air quality impacts demonstration and the preconstruction ambient air quality analysis, and additional impacts analysis. IERG Questions 2 at 3-4 (¶6).

IEPA responded that Agency technical decisions would include these 12 "and any others that the EAB has historically upheld" if the challenged decisions reflected considered judgment in the permit record. PC 2 at 30 (¶ 6-i); Tr.2 at 91. IERG asked IEPA to address what those other types of decisions would be. Tr.2 at 92. IEPA responded that, beyond those listed by IERG, technical decisions in PSD permitting could involve

> the definition of an emission unit for purposes of application of BACT, the enforceability of limits established as BACT, requirements for site-specific pre-application ambient air quality monitoring, requirements for post-construction monitoring, the reference level(s) used in air quality impact analyses for pollutant(s) for which there are not a NAAQS, the reference levels for impacts on vegetation and soils used in additional impact analyses, and whether the land manager for a federal Class I area has demonstrated that a proposed project would have an adverse impact on visibility in or other air quality related values of such lands. PC 2 at 30 (¶ 6-ii).

IEPA added that this list may be incomplete "because there may be technical decisions involved in the issuance of PSD permits that cannot be foreseen at this time." *Id*. IEPA suggested that it is not necessary for the Board to compile a complete and final list of these decisions. *See id.* IEPA argued that, in an appeal of a PSD permit issued under Part 204, "it is appropriate that any technical decisions by the Illinois EPA involved in the issuance of that PSD permit be upheld by the Board if the decisions reflect the considered judgment of the Illinois EPA, as reflected in the Illinois EPA's record for that permit proceeding" or in the parties' agreed supplement to that record. *Id*.

Subsection (a). IEPA proposed that "[t]he Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under 35 Ill. Adm. Code 101.516." Prop. 105 at 14; *see* SR at 92, 164.

Because granting summary judgement by definition means that no hearing will be held, the Board asked IEPA to comment on this proposed subsection. Board Questions at 5 (¶16). IEPA responded that Section 40.3(a)(2) of the Act provides that the Board will hold a hearing unless it finds that the petition is frivolous or lacks adequate factual support. PC 1 at 49, citing 415 ILCS 40.3(a)(2) (2018). Proposed subsection (b) reflects this language. IEPA argues that omitting subsection (a) could suggest that granting summary judgment may not dispose of a petition. PC 1 at 49. IEPA included this language "[t]o avoid any confusion in the event that the Board were to dispose of a petition for review on a motion for summary judgment." *Id*.

Subsection (b). IEPA proposed that "[t]he Board will not hold a hearing on a petition for review under this Subpart if the Board determines that" the petition meets one of two conditions. Prop. 105 at 14; *see* SR at 92, 164.

Subsection (b)(1). As the first condition, IEPA proposed that "[t]he petition is *frivolous*." Prop. 105 at 14; *see* SR at 164.

Subsection (b)(2). As the second condition, IEPA proposed that "[t]he petition *lacks facially adequate factual statements* as required by Section 105.608 of this Subpart [415 ILCS 5/40.3(a)(2)]." Prop. 105 at 14; *see* SR at 164.

Subsection (c). IEPA proposed that, "[i]f the Board determines to hold a hearing, the Clerk will give notice of the hearing under 35 Ill. Adm. Code 101.602." Prop. 105 at 14; *see* SR at 92, 164.

Part 203: Major Stationary Sources Construction and Modification

IEPA notes that it currently administers PSD permitting for USEPA through a delegation agreement under 40 C.F.R. § 52.21. SR at 93. In Part 203, certain provisions refer to permits issued under 40 C.F.R. § 52.21. *Id*. IEPA proposed revisions so that these provisions also refer to permits issued under proposed new Part 204. *Id*.

Subpart B: Major Stationary Sources in Nonattainment Areas

Section 203.207: Major Modification of a Source. Subsection (a) provides that, with some exceptions, physical changes or specified changes in the method of operating a major stationary source will constitute a major modification. 35 Ill. Adm. Code 203.207(a); *see* SR at 93.

Subsection (c) lists various actions that are not included within "[a] physical change or change in the method of operation." 35 Ill. Adm. Code 203.207(c); *see* SR at 93.

Subsection (c)(5)(A). This provision excepts the use of alternative fuel or raw material under specified circumstances unless that use would be prohibited by an enforceable condition under various permitting authorities. IEPA proposed to add a reference to Part 204 to these authorities. Prop. 203 at 4; *see* SR at 93-94, 164. IEPA suggests that conditions in permits issued under Part 204 should limit this exception. *See* SR at 94.

Subsection (c)(6). This provision excepts an increase in hours of operation or production rate unless the increase would be prohibited by an enforceable condition under specified permitting authorities. IEPA proposed to add a reference to Part 204 to these authorities. Prop. 203 at 4; *see* SR at 93-94, 165. IEPA suggests that conditions in permits issued under Part 204 should limit this exception. *See* SR at 94.

Part 204: Prevention of Significant Deterioration

Proposed Part 204 intends to allow IEPA to assume responsibility for PSD permitting and to provide for administrative review of those permits by the Board. SR at 1-2, 4 n.2. While the proposed rules generally mirror the federal PSD rule (40 C.F.R. § 52.21), certain provisions vary because there are relevant judicial decisions and USEPA responses to them. SR at 29; TSD at 4; Schnepp Test. at 3. IEPA submitted a "redlined" version of proposed Part 204 (Comp. 204), which compares it to federal rules. SR at 30.

Mr. Romaine described IEPA's proposed Part 204 as "superficially more stringent" than 40 C.F.R. § 52.21. Tr.1 at 55. In response to a Board question, IEPA explained that "[t]his is because it does not include provisions of 40 CFR 52.21 that are obsolete, duplicative or extraneous. It does not include provisions in 40 CFR 52.21 that are currently stayed for which the stays could be theoretically lifted. It also does not include provisions that courts have found to be contrary to the Clean Air Act." PC 1 at 29 (¶3a-5). IEPA argues that these differences do not result in state PSD program more stringent in practice but a program reflecting actual

requirements implemented when IEPA submitted its proposal to the Board. *Id*. IEPA argues that its proposal is substantially identical to the current federal PSD program and is intended to be approvable by USEPA as a SIP revision under Section 110(1) of the CAA. SR at 3-4; TSD at 4, 39; *see* PC 1, Exh. A (USEPA/IEPA correspondence).

IEPA proposed to organize Part 204 "to ease use and determinations of applicability and to collect common requirements into various subparts." SR at 30.

Subpart A: General Provisions

Section 204.100: Incorporations by Reference. In subsections (a) through (xx), IEPA proposed to incorporate by reference various materials necessary to implement proposed Part 204. Prop. 204 at 4-6; *see* SR at 31, 103-09. IEPA stated that these materials are not included in 40 C.F.R. § 52.21, but incorporating them in Part 204 is "consistent with regulatory practice in Illinois." SR at 31; *see* Comp. 204 at 4-6.

When the rules cite materials incorporated by reference, the Board proposed to state that the cited materials are "incorporated by reference in Section 204.100," and IEPA accepted this revision. Board Questions at 5-6 (¶17a); PC 1 at 50.

Proposed Section 204.290 refers to "Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)" (Prop. 204 at 12), and IEPA agreed with the Board to incorporate it by reference in this section. Board Questions at 6 (¶23); PC 1 at 53.

The Board questioned why IEPA's proposal included subsections (hh), (ii), and (xx) as "Reserved" without incorporating materials. Board Questions at 6 (¶18); *see* Prop. 204 at 5-6. IEPA responded that USEPA reserved corresponding 40 C.F.R. Parts 83, 84, and 99. If USEPA promulgates regulations in those Parts, the Board could incorporate them "without changing the corresponding numbering of this Section." PC 1 at 50.

CARE requested that IEPA explain why it proposed to incorporate 40 C.F.R. Part 52 by reference but did not proposed language based upon 40 C.F.R. § 52.21(o)(3). Tr.1 at 57-59. IEPA responded that it proposed to incorporate the entirety of 40 C.F.R. § 52.21 because the proposed rules refer specifically to it. PC 1 at 28 (¶3a-4). IEPA elaborated that incorporating these provision does not mean that IEPA "is proposing the substantive adoption of these federal regulations as a matter of State law for inclusion in the SIP." *Id*. IEPA instead proposes to adopt Part 204 as a matter of State law to include in the SIP. *Id*.

Section 204.110: Abbreviations and Acronyms. IEPA proposed to list abbreviations and acronyms used in Part 204. Prop. 204 at 6-7; *see* SR at 32, 109. IEPA stated that 40 C.F.R. § 52.21 does not include a similar section. IEPA argues that listing them in Part 204 is "consistent with regulatory practice in Illinois." SR at 32; *see* Comp. 204 at 6-7.

While IEPA's proposal included the abbreviation "Illinois EPA" (Prop. 104 at 6), the Board questioned whether the abbreviation should be replaced with "Agency" to be consistent

with Board rules. Board Questions at 6 (¶19). IEPA responded that this change "is acceptable." PC 1 at 50 (¶19).

Section 204.120: Severability. IEPA proposed that "[i]f any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby." Prop. 204 at 7; *see* SR at 109.

The Board asked IEPA whether the following revision would be acceptable: "[i]f any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, it will not affect the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid~~, shall not be affected thereby~~." Board Questions at 10-11 (¶47c).

IEPA responded that it based its proposed language on 40 C.F.R. § 52.21(bb) and 40 C.F.R. § 51.166(x). PC 1 at 76 (¶47c). IEPA argues that its own proposal follows the applicable federal regulations more closely than the Board's proposed revision. *Id*. The Board's first-notice proposal includes language originally proposed by IEPA.

Subpart B: Definitions

Section 204.200: Definitions. IEPA proposed that, "[u]nless otherwise specified in this Part, the definitions of the terms used in this Part shall be the same as those used in the Board Rules and Regulations at 35 Ill. Adm. Code 211." Prop. 204 at 7; *see* SR at 109. IEPA stated that many of the terms specifically defined in Subpart B "are unique to Part 204." SR at 109.

The Board asked IEPA whether the following revision would be acceptable: "[u]nless otherwise specified in this Part, ~~the definitions of the~~ terms used in this Part ~~shall be the same~~ have the same meaning as ~~those~~ the terms used in ~~the Board Rules and Regulations at~~ 35 Ill. Adm. Code Part 211." Board Questions at 11 (¶47d). IEPA responded that the proposed revision "ís acceptable." PC 1 at 76 (¶47d).

Section 204.210: Actual Emissions.

Subsection (a). IEPA proposed that "actual emissions" means

> the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subsections (b) through (d) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL [Plantwide Applicability Limitation] under Subpart K. Instead, Sections 204.240 and 204.600 shall apply for those purposes. Prop. 204 at 7; *see* SR at 109-110.

Subsection (b). IEPA proposed that,

> [i]n general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Illinois EPA shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. Prop. 204 at 7; *see* SR at 110.

Subsection (c). IEPA proposed that "[t]he Illinois EPA may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit." Prop. 204 at 7; *see* SR at 110.

Subsection (d). IEPA proposed that "[f]or any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." Prop. 204 at 7; *see* SR at 110.

Section 204.220: Adverse Impact on Visibility. IEPA proposed that "adverse impact on visibility" means

> visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Prop. 204 at 7-8; *see* SR at 110.

The Board asked whether IEPA modeled its proposed definition on "any act or regulation." Board Questions at 6 (¶20). IEPA responded that it is based on the definition of the same term at 40 C.F.R. § 52.21(b)(29). PC 1 at 50 (¶20); Tr.1 at 94 (Romaine testimony).

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

Section 204.230: Allowable Emissions. IEPA proposed that "[a]llowable emissions" means "the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of" the three measures in subsections (a) through (c). Prop. 204 at 8; *see* SR at 32, 110-111.

Subsection (a). As the first measure, IEPA proposed "[t]he applicable standards as set forth in 40 C.F.R. Parts 60, 61, 62, and 63." Prop. 204 at 8; *see* SR at 111. The corresponding federal rules refers to Parts 60 and 61. 40 C.F.R. §52.21(b)(16); *see* Comp. 204 at 8.

IEPA reports that federal rules now define "allowable emissions" as "the emissions rate of a stationary source calculated at the source's maximum rated capacity and the most stringent of either certain specified applicable standards, applicable SIP emissions limitation or the emissions rate identified as a federally enforceable permit condition." SR at 32, citing 40 C.F.R. § 52.21(b)(16).

To include all potentially applicable federal standards, IEPA proposed to include a reference to 40 C.F.R. Part 62, Subpart O of which addresses Approval and Promulgation of State Plans for Designated Facilities and Pollutants for Sources in Illinois. SR at 32. IEPA states that, regarding regulations for existing sources required by Section 111(d) of the CAA, USEPA may adopt NSPS standards for a source category for pollutants for which there is no associated NAAQS. In that event, states may opt to accept USEPA guidelines at 40 C.F.R. Part 61 instead of developing its own regulations. *Id*., n.48. IEPA reports that, while Illinois has not yet done this, it may occur for municipal solid waste landfills, at which the regulated NSR pollutant is "municipal solid waste landfill emissions" limited as non-methane organic compounds. *Id*. If Illinois relies on 40 C.F.R Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, it would be codified by a USEPA rulemaking in 40 C.F.R. Part 62, Subpart O. *Id*.

IEPA also proposed to include a reference to 40 C.F.R. Part 63, which pertains to National Emission Standards for Hazardous Air Pollutants for Source Categories. SR at 32. IEPA reports that, while 40 C.F.R. Part 63 addresses emission of hazardous air pollutants for certain regulated sources, it also establishes limits for PM and organic material. SR at 32, n.49. USEPA has set limits on these pollutants "as surrogates for emissions of particular hazardous air pollutants as generally regulated by 40 CFR Part 63." *Id*.

Subsection (b). As the second measure, IEPA proposed "[t]he applicable SIP emissions limitation, including those with a future compliance date." Prop. 204 at 8; *see* SR at 111.

The Board asked IEPA to explain the phrase "including those with a future compliance date." Board Questions at 6 (¶21). IEPA first stressed that its proposal is based on the corresponding federal rule. PC 1 at 53 (¶21); Tr.1 at 97 (Schnepp testimony); *see* 40 C.F.R. § 52.21(b)(16)(ii). IEPA then stated that, when evaluating the net change in emissions from a proposed project, the phrase prevents "a source from inappropriately determining contemporaneous decreases in emission from current levels of emission that are higher than relied upon in the applicable SIP." PC 1 at 53 (¶21); Tr.1 at 97-98. IEPA illustrated its response with an example:

> a source has an emissions unit that currently emits 10.0 pounds of a pollutant per hour. A new rule that limits emissions to 2.0 pounds per hour has been adopted by the state and approved as part of its SIP. The new rule has a future compliance date, providing subject sources with up to two years to install additional emission

> control equipment or make other changes to meet the new, lower emission standard. When evaluating the net change in emissions from a proposed project to show that the project is not a major modification, the source may not receive credit for the decrease in emissions of this emission unit that is required by this new rule. Subject to other applicable requirements for an evaluation of the net change in emissions from a proposed project, the source could receive credit for a decrease in emissions from this unit only to [the] extent that future emissions will be less than 2.0 pounds per hour. PC 1 at 53 (¶21); Tr.1 at 98.

Subsection (c). As the third measure, IEPA proposed "[t]he emissions rate specified as a federally enforceable permit condition, including those with a future compliance date." Prop. 204 at 8; *see* SR at 111.

Section 204.240: Baseline Actual Emissions. IEPA proposed that "baseline actual emissions" means "the rate of emissions, in tons per year, of a regulated NSR pollutant determined in accordance with subsections (a) through (d) of this Section." Prop. 204 at 8; *see* SR at 33-34, 111.

IEPA noted that the Board's proposed Section 204.240 included three subsections designated (a) and a fourth designated (b). PC 1 at 77. The Board agrees with IEPA that these designations should be corrected for ease of reference and does so below in this opinion and the order.

Subsection (a). IEPA proposed that,

> [f]or any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Illinois EPA shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Prop. 204 at 8; *see* SR at 111.

Subsection (a)(1). IEPA proposed that "[t]he average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions." Prop. 204 at 8; *see* SR at 111.

Subsection (a)(2). IEPA "[t]he average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period." Prop. 204 at 8; *see* SR at 111.

Subsection (a)(3). IEPA proposed that "[f]or a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different

consecutive 24-month period can be used for each regulated NSR pollutant." Prop. 204 at 8-9; *see* SR at 111.

Subsection (a)(4). IEPA proposed that "[t]he average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (a)(2) of this Section." Prop. 204 at 9; *see* SR at 111.

Subsection (b). IEPA proposed that:

> for an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit under 40 C.F.R. 52.21 or by the Illinois EPA for a permit required by the SIP, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. Prop. 204 at 9; *see* SR at 111-112.

Subsection (b)(1). IEPA proposed that "[t]he average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions." Prop. 204 at 9; *see* SR at 111-12.

Subsection (b)(2). IEPA proposed that "[t]he average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period." Prop. 204 at 9; *see* SR at 111-12.

Subsection (b)(3). IEPA proposed that

> [t]he average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. '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. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the USEPA proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the Illinois EPA has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G). Prop. 204 at 9; *see* SR at 33, 111-12.

IEPA states that its proposed language is consistent with the corresponding federal rule except that it clarifies the term "currently." SR at 33-34; *see* 40 C.F.R. § 52.21(b)(48)(ii)(c); Comp. 204 at 9. IEPA argues that the term "should be applied consistently with USEPA's statements in its 2002 NSR reform package regarding the meaning of the term." SR at 33, citing 67 Fed. Reg. 80186, 80197 (Dec. 31, 2002). USEPA stated that "'[c]urrent 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." *Id*. IEPA assigned the same meaning of the term to this definition "[t]o ensure consistency in interpretation." SR at 33.

The Board asked IEPA to comment on whether it would be acceptable to remove the phrase "the requirements of" as unnecessary in this subsection. Board Questions at 10 (¶46d). IEPA responded that the phrase "is consistent with 40 CFR 52.21(b)(48)(ii)(c) and 51.166(b)(47)(ii)(c)," and the Board includes it in its first-notice proposal. PC 1 at 73 (¶46d).

Subsection (b)(4). IEPA proposed that, "[f]or a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant." Prop. 204 at 9; *see* SR at 111-12.

Subsection (b)(5). IEPA proposed that "[t]he average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsections (b)(2) and (b)(3)." Prop. 204 at 10; *see* SR at 111-12.

Subsection (c). IEPA proposed that, "[f]or a new emission unit, the baseline actual emissions for purposes of determining the emission increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit." Prop. 204 at 10; *see* SR at 112.

Subsection (d). IEPA proposed that, "[f]or a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subsection(a) of this Section, for other existing emission units in accordance with the procedures contained in subsection (b) of this Section, and for a new emissions unit in accordance with the procedures contained in subsection (c) of this Section." Prop. 204 at 10; *see* SR at 112.

Section 204.250: Baseline Area.

Subsection (a). IEPA proposed that "baseline area" means

> any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)((ii) or (iii)) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as

follows: Equal to or greater than 1.0 µg/m^3 (annual average) for SO_2, NO_2, or PM_{10}; or equal to or greater than 0.3 µg/m^3 (annual average) for $PM_{2.5}$. Prop. 204 at 10; *see* SR at 112.

IEPA commented that the Board's proposal for public comment in this subsection had not used subscripts in the terms SO_2, NO_2, $PM_{2.5}$, and PM_{10}. PC 1 at 77. The Board has corrected these references with subscripts above in its opinion and below in its order.

Subsection (b). IEPA proposed that

[a]rea redesignations under Section 107(d)(1)(A)(ii) or (iii) of the CAA (43 U.S.C. 7407(d)(1)(A)(ii) or (iii)) cannot intersect or be smaller than the area of impact of any major stationary source or major modification which 1) [e]stablishes a minor source baseline date or 2) [i]s subject to this Part and would be constructed in the State proposing the redesignation. Prop. 204 at 10; *see* SR at 112.

The Board asked IEPA to clarify whether the term "constructed in the State" refers to construction in Illinois. Board Questions at 6 (¶22). IEPA responded that, in the context of this Part, the term "refers to a major stationary source or major modification constructed in the State of Illinois." PC 1 at 53 (¶22); Tr.1 at 99 (Romaine testimony). IEPA added that this wording reflects 40 C.F.R. §§ 51.166 and 52.21, which generally address "the size of areas for which designations of attainment and nonattainment status may be made." *Id*.

Subsection (c). IEPA proposed that:

[a]ny baseline area established originally for the TSP [total suspended particulates] increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Illinois EPA rescinds the corresponding minor source baseline date in accordance with Section 204.520(c). Prop. 204 at 10; *see* SR at 112-113.

Section 204.260: Baseline Concentration.

Subsection (a). Baseline concentration is relevant "when determining the amount of allowable PSD increment that is available for a proposed project." SR at 34.

IEPA proposed that the term means the "ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include" two elements. Prop. 204 at 11; *see* SR at 34-37, 113.

Subsection (a)(1). As the first element, IEPA proposed "[t]he actual emissions, as defined in Section 204.210, representative of sources in existence on the applicable minor source

baseline date, except as provided in subsection (b) of this Section." Prop. 204 at 11; *see* SR at 113.

Subsection (a)(2). As the second element, IEPA proposed "[t]he allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date." Prop. 204 at 11; *see* SR at 113.

Subsection (b). IEPA proposed that subsections (b)(1) and (b)(2) "will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s)." Prop. 204 at 11; *see* SR at 113.

Subsection (b)(1). IEPA noted that there have been disputes over how to determine the amount of increment a modified source consumes. SR at 34. IEPA reports that permitting authorities including USEPA typically conclude that any "post-baseline change in a facility's emissions (be it upward or downward) resulting from a major modification must be factored into the increments analysis." *Id*. at 35, citing Northern Michigan University Ripley Heating Plant, 14 E.A.D. 283, 311 (EAB 2009). Challengers have asserted that "all emissions from a source that has undergone a major modification since the baseline date must be treated as increment-consuming, not just the emissions associated with the change." *Id*.

EAB has found that "[o]ne could reasonably construe the statutory, regulatory and preamble language to mean that *all actual emissions from the modification to a source* consume increment, not that *all actual emissions from the modifications to the source plus actual emissions from the portions of the source that were not modified* consume increment." SR at 35-36, citing Northern Michigan University Ripley Heating Plant, 14 E.A.D. 283, 316 (EAB 2009). After considering the CAA's definition of "baseline concentration," the Seventh Circuit Court of Appeals found that "pre-1975 emissions are included in the baseline while only those new emissions attributable to a modification are counted against the maximum allowable increase." SR at 36, citing Clean Water Action Council of Northeastern Wisconsin, Inc. v. USEPA, *et al.*, 765 F.3d 749, 754 (2014).

To be consistent with these precedents and avoid disputes when implementing Part 204, IEPA proposed that the baseline concentration will not include

> [a]ctual emissions, as defined in Section 204.210, from any major stationary source on which construction commenced after the major source baseline date." For a major stationary source in existence on the major source baseline date, 'actual emissions' for the purposes of this subsection shall mean increases or decreases in actual emissions resulting from construction commencing after the major source baseline date. *See* Prop. 204 at 11; Comp. 204 at 11; SR at 34-37, 113.

The Board asked IEPA to comment on whether it would be acceptable to clarify this subsection by striking "shall" as unnecessary. Board Questions at 10 (¶46g). IEPA responded that "shall" can be struck. IEPA stated that this language intends to be consistent with EAB

precedents, suggesting that it need not be consistent with corresponding federal regulations. PC 1 at 74 (¶46g), citing SR at 34-37.

Subsection (b)(2). IEPA also proposed that the baseline concentration will not include "[a]ctual emissions increases and decreases, as defined in Section 204.210, at any stationary source occurring after the minor source baseline date." Prop. 204 at 11; *see* SR at 34-37, 113.

Section 204.270: Begin Actual Construction. IEPA proposed that "[b]egin actual construction" means, "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change." Prop. 204 at 11; *see* SR at 113.

Section 204.280: Best Available Control Technology (BACT). The federal definition of BACT provides that "in no event shall application of best available control technology result in emissions of any pollutant which would exceed the emission allowed by any applicable standard under 40 CFR parts 60 and 61." SR at 37, citing 40 C.F.R. § 52.21(b)(12). However, the statutory definition refers to a standard established to section 111 or 112 of the CAA. SR at 37. Since Parts 62 and 63 were enacted under Sections 111 and 112, IEPA argues that "it is appropriate to refer to Parts 62 and 63 in the definition of 'best available control technology.'" *Id*. IEPA proposed that "Best Available Control Technology" means

> an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Illinois EPA, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. 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, 61, 62, and 63. If the Illinois EPA determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction available by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results." Prop. 204 at 11-12; *see* SR at 113-14; Comp. 204 at 11-12.

IERG asked whether the proposed Part 204 control requirements differ from corresponding requirements under 40 C.F.R. § 52.21. IERG Questions at 1 (¶2). IEPA

responded that the requirements "would generally not differ." PC 1 at 12 (¶2a). However, IEPA acknowledged that this definition is one case in which proposed Part 204 is "superficially more stringent" than the federal regulations. *Id*. IEPA argued that adding references to Parts 62 and 63 maintains consistency with the definition of BACT in Section 169(3) of the CAA. *Id*.; Tr.2 at 37-38 (Romaine testimony).

Section 204.290: Building, Structure, Facility, or Installation.

Subsection (a). Federal regulations define "building, structure, facility, of installation" in part as "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except activities of any vessel." 40 C.F.R. § 52.21(b)(6)(i). IEPA states that the D.C. Circuit Court of Appeal in 1983 addressed USEPA's authority to regulate emissions from activities involving ships and marine vessels. SR at 37-38. USEPA took the position that it lacked "authority to regulate any emissions from marine vessels at terminals as stationary sources" and excluded marine vessels from this definition as mobile sources. *Id*. at 38. The court vacated this exception and directed USEPA to perform additional review. *Id*., citing Natural Resources Defense Council v. EPA, 725 F.2d 761, 771 (D.C. Cir. 1984). IEPA states that, while USEPA recognizes the *vacatur* of this language, it has not removed it from this definition. SR at 38 (citation omitted).

To reflect the vacated exemption and facilitate USEPA's approval of Part 204, IEPA proposed that "[b]uilding, structure, facility, or installation" means

> all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'Major Group' (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively). Prop. 204 at 12; *see* SR at 38, 114, Comp. 204 at 12.

The Board noted the proposal's reference to the Standard Industrial Classification Manual and asked IEPA to comment on whether it must be incorporated by reference. Board Questions at 6 (¶23). IEPA agreed that "this publication should be incorporated by reference" and provided a copy of it. PC 1 at 53 (¶23) Tr.1 at 100; *see* PC 1, Exh. 4.

In its order below, the Board proposes to incorporate this publication as Section 204.100(yy). The Board also proposes to add to this definition a phrase clarifying that the manual is incorporated by reference there.

Subsection (b). IEPA proposed that

> [n]otwithstanding the provisions of subsection (a) of this Section, building structure, facility, or installation means, for onshore activities under Standard Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emission control device. Surface site, as used in this subsection, has the same meaning as in 40 CFR 63,761. Prop. 204 at 12; *see* SR 37-38, 114.

Section 204.300: Clean Coal Technology. IEPA proposed that "[c]lean coal technology" means "any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of SO_2 or NO_x associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990." Prop. 204 at 12; *see* SR at 114.

The Board asked IEPA to clarify what constitute "significant reductions." Board Questions at 6 (¶24). IEPA responded that it is not necessary to clarify this term because the four provisions of Part 204 that use it "reasonably circumscribe its meaning." PC 1 at 54 (¶24); Tr.1 at 100. IEPA adds that the corresponding federal regulations refer to "significant reductions in air emissions." PC 1 at 54 (¶24); Tr.1 at 103, citing 40 C.F.R. §§ 51.166(b)(33), 51.21(b)(34). IEPA argues that USEPA would only approve a clarification of this definition "if it can be shown that the result is more stringent or at least as stringent as the federal definition. PC 1 at 54 (¶24); Tr.1 at 103-04, citing 40 C.F.R. § 51.166(b).

Section 204.310: Clean Coal Technology Demonstration Project. IEPA proposed that "[c]lean coal technology demonstration project" means "a project using funds appropriated under the heading 'Department of Energy—Clean Coal Technology,' up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the USEPA. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project." Prop. 204 at 12-13; *see* SR at 114-115.

When asked to clarify what constitutes a "significant reduction" (Board Questions at 6 (¶24)), IEPA responded that the term reasonably circumscribes its own meaning. PC 1 at 54 (¶24); Tr.1 at 101. IEPA stressed that the project must be funded to at least a 20 percent extent by specified federal funds. IEPA argues that these provide objective criteria and signify that either USEPA or the US Department of Energy "must find that the potential benefits of a planned project are worthy of substantial federal funding." *Id*.

Section 204.320: Commence. IEPA proposed that "[c]ommence," "as applied to construction of a major stationary source or major modification means that the owner or operator

has all necessary preconstruction approvals or permits" and has performed one of the two actions in subsections (a) and (b). Prop. 204 at 13; *see* SR at 115.

Subsection (a). As the first of those actions, IEPA proposed that the owner or operator has "[b]egun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time." Prop. 204 at 13; *see* SR at 115.

Subsection (b). As the second, IEPA proposed that the owner or operator has "[e]ntered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time." Prop. 204 at 13; *see* SR at 115.

Section 204.330: Complete. IEPA proposed that "[c]omplete" means, "in reference to an application for a permit, that the application contains all of the information necessary for processing the application." Prop. 204 at 13; *see* SR at 115.

Section 204.340: Construction. IEPA proposed that "[c]onstruction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions." Prop. 204 at 13; *see* SR at 115.

Section 204.350: Dispersion Technique. Under 40 C.F.R. § 52.01, all terms used in Part 52 but not defined in a section are defined by the CAA and 40 C.F.R. Parts 51 and 60. Accordingly, the term "dispersion technique" in 40 C.F.R. § 52.21 is defined by 40 C.F.R. § 51.100(hh). SR at 39. IEPA proposes to add that definition to ensure that the term has the same meaning in Part 204. *Id*.; *see* Comp. 204 at 13-15.

IEPA's first post-hearing comments noted that the Board's proposal for public comment included errors in the designation of subsections and with subscripts (PC 1 at 77), and the Board corrects these below in this opinion and in its first-notice proposal.

Subsection (a). IEPA proposed that "[d]ispersion technique" means "any technique which attempts to affect the concentration of a pollutant in the ambient air" by performing one of three actions. Prop. 204 at 13; *see* SR at 115-16.

Subsection (a)(1). As the first action, IEPA proposed "[u]sing that portion of a stack which exceeds good engineering practice stack height." Prop. 204 at 13; *see* SR at 115-16.

Subsection (a)(2). As the second action, IEPA proposed "[v]arying the rate of emissions of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant." Prop. 204 at 13; *see* SR at 115-16.

Subsection(a)(3). As the third action, IEPA proposed "[i]ncreasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective

handling of exhaust gas streams so as to increase the exhaust gas plume rise." Prop. 204 at 13; *see* SR at 115-16.

Subsection (b). IEPA proposed five actions that subsection (a) does not include. Prop. 204 at 13; *see* SR at 39, 116.

Subsection (b)(1). As the first action, IEPA proposed "[t]he reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the stationary source generating the gas stream." Prop. 204 at 14.

Subsection (b)(2). As the second action, IEPA proposed "[t]he merging of exhaust gas streams" under three specified circumstances. Prop. 204 at 14-15.

Subsection (b)(2)(A). As the first circumstance, IEPA proposed "[t]he merging of exhaust gas streams where [t]he source owner or operator demonstrates that the stationary source was originally designed and constructed with such merged gas streams." *See* Prop. 204 at 14.

Subsection (b)(2)(B). As the second, IEPA also proposed the merging of gas streams where,

> [a]fter July 8, 1985 such merging is part of a change in operation at the stationary source that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques shall apply only to the emission limitation for the pollutant affected by such change in operation. Prop. 204 at 14.

Subsection (b)(2)(C). As the third to which the sentence defining "dispersion technique" does not include, IEPA proposed the merging of gas streams where,

> [b]efore July 8, 1985, such merging was part of a change in operation at the stationary source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Illinois EPA shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Illinois EPA shall deny credit for the effects of such merging in calculating the allowable emissions for the source. Prop. 204 at 14.

Subsection (b)(3). As the third action, IEPA proposed "[s]moke management in agricultural or silvicultural prescribed burning programs." Prop. 204 at 14.

Subsection (b)(4). As the fourth action, IEPA proposed "[e]pisodic restrictions on residential wood burning and open burning." Prop. 204 at 14.

Subsection (b)(5). As the fifth action, IEPA proposed "[t]echniques under subsection (a)(3) of this Section which increase final exhaust gas plume rise where the resulting allowable emissions of SO_2 from the stationary source do not exceed 5,000 tpy." Prop. 204 at 14.

Section 204.360: Electric Utility Steam Generating Unit. IEPA proposed that "electric utility steam generating unit" means

> any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would product electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility. Prop. 204 at 14-15; *see* SR at 116.

Section 204.370: Emissions Unit. IEPA proposed that "[e]missions unit" means "any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in Section 204.360." Prop. 204 at 15; *see* SR at 116.

For the purposes of Part 204, IEPA proposed that subsections (a) and (b) describe two types of emissions units.

Subsection (a). IEPA proposed that the first type of emission unit, "a new emission unit," is "any emission unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emission unit first operated." Prop. 204 at 15; *see* SR at 116.

Subsection (b). IEPA proposed that the second type of emission unit, "an existing emission unit," is "any emission unit that does not meet the requirements in subsection (a) of this Section. A replacement unit, as defined in Section 204.620, is an existing emission unit." Prop. 204 at 15; *see* SR at 116.

Section 204.380: Excessive Concentration. Although 40 C.F.R. § 52.21 does not define this term, it is relevant to address stack heights and dispersion enhancement techniques in PSD permitting. SR at 39, 116. Under 40 C.F.R. § 52.01, all terms used in Part 52 but not defined in a section are defined by the CAA and 40 C.F.R. Parts 51 and 60. *Id*. Accordingly, the term "excessive concentration" in 40 C.F.R. § 52.21 is defined by 40 C.F.R. § 51.100(kk). *Id*. IEPA proposes to add that definition to ensure that the term has the same meaning in Part 204. *Id*.; *see* Comp. 204 at 15-16.

Because that definition refers to dates in 1979 and 1983 that have passed, IEPA proposes to omit references to those dates from its proposal. SR at 40; *see* Comp. 204 at 16. Because Part

204 applies to permits for future projects, IEPA argues that these dates are not necessary. SR at 40.

Subsection (a). IEPA proposed to add this subsection providing that,

> for sources seeking credit for stack height exceeding that established under Section 204.420(b), a maximum ground-level concentration due to emissions from a stack due to in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to this Part, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than an ambient air increment under Section 204.900. The allowable emission rate to be used in making demonstrations of excessive concentration shall be prescribed by the NSPS that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Illinois EPA, an alternative emission rate shall be established in consultation with the source owner or operator. Prop. 204 at 15.; *see* SR at 116.

Subsection (b). IEPA proposed to add this subsection providing that,

> for sources seeking credit for increases in existing stack heights up to the heights established under Section 204.420(b), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection (a) of this Section, except that the emission rate specified by the SIP (or in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the Illinois EPA. Prop 204 at 15-16; *see* SR at 39-40, 117.

Subsection (c). IEPA proposed to add this subsection providing that,

> for sources seeking credit for a stack height determined under Section 204.420(b) where the Illinois EPA requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit based on the aerodynamic influence of structures not adequately represented by the equations in Section 204.420(b), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects. Prop. 204 at 16; *see* SR at 39-40, 117.

Section 204.390: Federal Land Manager. IEPA proposed that, with respect to any lands in the United States, "[f]ederal land manager" means "the Secretary of the department with authority over such lands." Prop. 204 at 16; *see* SR at 117.

Section 204.400: Federally Enforceable. The federal rules define "federally enforceable" in part as "all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR parts 60 and 61. . . ." SR at 40, citing 40 C.F.R. § 52.32(b)(17). However, to include all potentially applicable standards, IEPA proposed to add references to Parts 62 and 63. SR at 41; *see* Comp. 204 at 17.

IEPA proposed to define "[f]ederally enforceable" as

> all limitations and conditions which are enforceable by the USEPA, including those requirements developed pursuant to 40 CFR Parts 60, 61, 62 and 63, requirements within the SIP, any permit requirements established pursuant to 40 CFR 52.21 or this Part or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an USEPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program. Prop. 204 at 16; *see* SR at 117.

Section 204.410: Fugitive Emissions. IEPA proposed to define "fugitive emissions" as "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening." Prop. 204 at 16; *see* SR at 118.

Section 204.420: Good Engineering Practice. Although 40 C.F.R. § 52.21 uses this term to address stack height and dispersion techniques, it does not define it. SR at 41. Under 40 C.F.R. § 52.01, all terms used in Part 52 but not defined in a section are defined by the CAA and 40 C.F.R. Parts 51 and 60. *Id*. Accordingly, the term "good engineering practice" in 40 C.F.R. § 52.21 is defined by 40 C.F.R. § 51.100(ii). *Id*. IEPA proposes to add that definition to ensure that the term has the same meaning in Part 204. *Id*.; *see* Comp. 204 at 17-18.

IEPA noted that the Board's proposal for public comment included errors in the designation of subsections (PC 1 at 77), which the Board corrects below in this opinion and in its order.

IEPA proposed that, with respect to stack height, "[g]ood engineering practice" means the greater of the measures in subsections (a) through (c). Prop. 204 at 16; *see* SR at 118.

Subsection (a). As the first measure, IEPA proposed "65 meters, measured from the ground-level elevation at the base of the stack." Prop. 204 at 16; *see* SR at 118.

Subsection (b). As the second measure, IEPA proposed in subsection (b)(1) that,

> [f]or 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. Prop. 204 at 16-17.
>
> "For all other stacks," IEPA proposed in subsection (b)(2) that
>
> Hg = H + 1.5L
>
> where:
> Hg = good engineering practice stack height, measured from the ground 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 USEPA or Illinois EPA may require the use of a field study or fluid model to verify good engineering practice stack height for the source. Prop. 204 at 17; *see* SR at 118.

Subsection (c). As the third measure, IEPA proposed "[t]he height demonstrated by a fluid model or a field study approved by the USEPA or Illinois EPA, 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." Prop. 204 at 17; *see* SR at 118.

Subsection (d). Because the federal definition of "good engineering practice" uses the term "stack," IEPA proposes to define it based on the federal rules. SR at 41, citing 40 C.F.R. § 51.100(ff); *see* Comp. 204 at 18.

IEPA proposed that, "[f]or the 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." Prop. 204 at 17; *see* SR at 118.

Section 201.430: Greenhouse Gases. In the federal rules, this term is defined within the definition of "subject to regulation." SR at 42, citing 40 C.F.R. 52.21(b)(49). However, IEPA reports that USEPA recently proposed a stand-alone definition when it proposed exemptions related to greenhouse gases in the definitions of "major modification" and "major stationary source." SR at 42, citing 81 Fed. Reg. 68110 (Oct. 3, 2016). IEPA proposed to add this separate definition without changing the meaning of term. SR at 42; *see* Comp. 204 at 18-19. IEPA added that this definition is consistent with the Act's definition of "greenhouse gases." SR at 43, n.53, citing 415 ILCS 5/3.207 (2018).

IEPA proposed that "[g]reenhouse gases (GHG)" means "the air pollutant defined in 40 CFR 86.1818-12a as the aggregate group of six greenhouse gases: CO_2, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." Prop. 204 at 17; *see* SR at 43, 118-19.

"To represent an amount of GHGs emitted, the term 'tpy CO_2 equivalent emissions (CO_2e) shall be used and computed" as provided by the steps in subsections (a) and (b). Prop. 204 at 17; *see* SR at 43, 118-19.

Subsection (a). As the first step of the computation, IEPA proposed to "[m]ultiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials." Prop. 204 at 17; *see* SR at 43, 119.

Subsection (b). As the second step, IEPA proposed to "[s]um the resultant value for each gas to compute a tpy CO_2e." Prop. 204 at 17; *see* SR at 43, 119.

IEPA noted that the Board's proposal for public comment included errors in the use of subscripts (PC 1 at 77), which the Board corrects below in this opinion and in its order.

Section 204.440: High Terrain. IEPA proposed that "[h]igh terrain" means "any area having an elevation 900 feet or more above the base of the stack of a source." Prop. 204 at 17-18; *see* SR at 119.

Section 204.450: Indian Reservation. IEPA proposed that "Indian Reservation" means "any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress." Prop. 204 at 18; SR at 119.

Section 204.460: Indian Governing Body. IEPA proposed that "Indian Governing Body" means "the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the US and recognized by the US as possessing power of self-government." Prop. 204 at 18; *see* SR at 119.

Section 204.470: Innovative Control Technology. IEPA proposed that "[i]nnovative control technology" means "any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any current control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts." Prop. 204 at 18; *see* SR at 119.

Section 204.480: Low Terrain. IEPA proposed that "[l]ow terrain" means "any area other than high terrain." Prop. 205 at 18; *see* SR at 119.

Section 204.490: Major Modification. IEPA noted that the Board's proposal for public comment included errors in the designation of subsections. PC 1 at 78. The Board corrects these errors below in this opinion and in its order.

Subsection (a). While IEPA's proposed definition generally mirrors the federal definition, it made one change in this subsection to reflect recent USEPA rulemaking. SR at 46, citing 40 C.F.R. 52.21 § 52.21. IEPA noted that USEPA amended definitions "to clarify that a stationary source need not obtain a PSD permit for a proposed source or for a proposed project at an existing source simply because it would emit or has the potential to emit greenhouse gas emissions above the applicable significant emission rate." SR at 46, citing 81 Fed. Reg. 68110 (Oct. 3, 2016).

IEPA proposed that "[m]ajor modification" means "any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in Section 204.670) of a regulated NSR pollutant (as defined in Section 204.610) other than GHGs as defined in Section 204.430); and a significant net emissions increase of that pollutant from the major stationary source." Prop. 204 at 18; *see* SR at 46, 120; Comp. 204 at 20.

As the proposed definition applies to a significant increase in emissions of a regulated NSR pollutant other than GHGs, the Board asked to clarify whether the definition of "Regulated NSR Pollutant" at Section 204.610 includes GHGs. Board Questions at 7 (¶28). IEPA responded that this definition includes GHGs. PC 1 at 58 (¶28). IEPA elaborates that GHGs are a regulated NSR pollutant pursuant to Section 204.610(d) as GHGs are a pollutant that is otherwise 'subject to regulation' as that term is defined in Section 204.700. *Id*. at 58-59. IEPA adds that "Section 204.700 specifically states that '[p]ollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430.'" *Id*. at 59.

Subsection (b). IEPA proposed that "[a]ny significant emissions increase (as defined in Section 204.670) from any emissions units or net emissions increase (as defined in Section 204.550) at a major stationary source that is significant for VOM or NO_x shall be considered significant for ozone." Prop. 204 at 18; *see* SR at 120.

Subsection (c). IEPA proposed that "[a] physical change or change in the method of operation shall not include" a number of activities. Prop. 204 at 18; *see* SR at 120.

Subsection (c)(1). As the first of the activities, IEPA proposed "[r]outine maintenance, repair and replacement." Prop. 204 at 18.

IEPA stated that this proposed subsection differs from the corresponding federal rule because it does not include requirements of the "equipment replacement provisions" at 40 C.F.R. § 52.21(cc). SR at 44; *see* Comp. 204 at 20. IEPA reports that the D.C. Circuit Court of Appeals indefinitely stayed that provision. SR at 44-45, citing State of New York v. EPA, No. 03-1380 (D.C. Cir. Dec. 24, 2003). If the court lifts the stay, IEPA would determine whether to propose to revise Part 204 and the SIP. SR at 45, n.54.

Subsection (c)(2). As the second activity, IEPA proposed "[u]se of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791) (or any superseding legislation) or by

reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791)." Prop. 204 at 18-19.

Subsection (c)(3). As the third activity, IEPA proposed "[u]se of an alternative fuel by reason of an order or rule under Section 125 of the CAA (42 U.S.C. 7425)." Prop. 204 at 19.

Subsection (c)(4). As the fourth activity, IEPA proposed "[u]se of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste." Prop. 204 at 19.

Subsection (c)(5). As the fifth activity, IEPA proposed "[u]se of an alternative fuel or raw material by a stationary source" meeting one of two conditions. Prop. 204 at 19.

Subsection (c)(5)(A). As the first of the two conditions, IEPA proposed to require a use that "[t]he source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or this Part." Prop. 204 at 19.

IEPA states that its original proposal "failed to address that, in addition to major PSD permitting, federally enforceable permit conditions could be established by minor source construction permits." IEPA Mot. at 2, citing 35 Ill. Adm. Code 201.142, 201.143. IEPA adds that Illinois' NsNSR rules allow either minor or major source permitting to establish these conditions. IEPA Mot. at 2, citing 35 Ill. Adm. Code 203.207(c). IEPA reports that USEPA Region 5 has approved language consistent with this approach in PSD SIPs. Mot. at 3-4 (citations omitted). To reflect that either minor or major source construction permits may establish federally enforceable limits, and to maintain consistency with 35 Ill. Adm. Code 203.207, IEPA moved to amend this proposed subsection by adding a reference to conditions established under 35 Ill. Adm. Code 201.142 or 201.143. *Id*. at 5.

The Board grants IEPA's unopposed motion to amend this subsection and includes the amendment in its first-notice proposal.

Subsection (c)(5)(B). As the second condition, IEPA proposed to require a use that "[t]he source is approved to use under any permit issued under 40 CFR 52.21 or this Part." Prop. 204 at 19.

For the same reasons as it moved to amend its proposed subsection (A), IEPA moved to amend this subsection by adding a reference to conditions established under 35 Ill. Adm. Code 201.142 or 201.143. IEPA Mot. at 5.

The Board grants IEPA's unopposed motion to amend this subsection and includes the amendment in its first-notice proposal.

Subsection (c)(6). As the sixth activity, IEPA proposed that "[a]n increase in the hours of operation or in the production rate, unless such change would be prohibited under any

federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or this Part." Prop. 204 at 19.

For the same reasons as it moved to amend its proposed subsection (c)(5), IEPA moved to amend this subsection by adding a reference to conditions established under 35 Ill. Adm. Code 201.142 or 201.143. IEPA Mot. at 6.

The Board grants IEPA' unopposed motion to amend this subsection and includes the amendment in its first-notice proposal.

Subsection (c)(7). As the seventh activity, IEPA proposed "[a]ny change in ownership at a stationary source." Prop. 204 at 19.

Subsection (c)(8). As the eighth activity, IEPA proposed "[t]he installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with" two authorities. Prop. 204 at 19.

Subsection (c)(8)(A). As the first of the two authorities, IEPA proposed "[t]he Illinois' SIP." Prop. 204 at 19.

Subsection (c)(8)(B). As the second authority, IEPA proposed "[o]ther requirements necessary to attain and maintain the NAAQS during the project and after it is terminated." Prop. 204 at 19.

Subsection (c)(9). As the ninth activity, IEPA proposed "[t]he installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis." Prop. 204 at 19.

IEPA did not propose to add a subsection based on 40 C.F.R. § 52.21(b)(2)(iii)(*k*) exempting "reactivation of a very clean coal-fired electric utility steam generating unit." SR at 45, 83, citing 40 C.F.R. § 52.21(b)(38). IEPA explains that this exemption applies to reactivating units that had not operated for two years before November 15, 1990, the date on which the Clean Air Act Amendments of 1990 were adopted. *Id*. The unit was also required to have SO_2 control with at least 85 percent efficiency. *Id*. Since there is no unit in Illinois to which this could apply, IEPA considers it unnecessary and did not include it in its proposal. *Id*.

Subsection (d). IEPA proposed that the definition of "major modification" "shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Subpart K for a PAL for that pollutant. Instead, the definition at Section 204.1720 [PAL Major Modification] shall apply." Prop. 204 at 19; *see* SR at 120.

Finally, IEPA explained that it would not include language from the federal rule "providing 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. SR at 45, citing 40 C.F.R. § 52.21(b)(2)(v). IEPA reports that, when USEPA responded to a motion to reconsider a rulemaking involving this language, it opted to "stay the language and revert to the regulatory text that existed prior to this rulemaking." SR at 46, citing 76 Fed. Reg. 17556 (Mar. 30, 2010).

Section 204.500: Major Source Baseline Date. IEPA proposed that, depending on the pollutant, this term means one of three dates. Prop. 204 at 20; *see* SR at 120.

Subsection (a). IEPA proposed that, for PM_{10} and SO_2. the "[m]ajor source baseline date" is January 6, 1975. Prop. 204 at 20; *see* SR at 120.

Subsection (b). IEPA proposed that, for NO_2, the "[m]ajor source baseline date" is February 8, 1988. Prop. 204 at 20; *see* SR at 120.

Subsection (c). IEPA proposed that, for $PM_{2.5}$, the "[m]ajor source baseline date" is October 20, 2010. Prop. 204 at 20; *see* SR at 120.

Finally, IEPA noted that the Board's proposal for public comment included errors in the use of subscripts. PC 1 at 78. The Board corrects these errors above in this opinion and in its order.

Section 204.510: Major Stationary Source. IEPA noted that the Board's proposal for public comment included errors in the designation of subsections and included a typographical error in subsection (c)(5). PC 1 at 78. The Board corrects both below in this opinion and in its order.

Subsection (a). IEPA proposed three standards under which a source meets the definition of this term. Prop. 204 at 20; *see* SR at 120-21.

Subsection (a)(1). As the first standard, IEPA proposed that "[m]ajor stationary source" means any "stationary sources of air pollutants which emits, or has the potential to emit, 100 tpy or more of any regulated NSR pollutant" from categories listed in this subsection. Prop. 204 at 20; *see* SR at 120-21. One of the categories is "municipal incinerators capable of charging more than 250 tons of refuse per day." Prop. 204 at 20.

IEPA reports that USEPA seeks to correct its NSR rules based on 1990 CAA amendments that were not addressed in earlier federal rulemakings. IEPA Mot. 2 at 4; *see* 84 Fed. Reg.70092, 70095-96 (Dec. 20, 2019) (Error Corrections to New Source Review Regulations). The 1990 amendments revised Section 169(l) of the CAA and addressed municipal incinerators by lowering the charging capacity threshold from more than 250 tons of refuse per day to more than 50 tons of refuse per day. IEPA Mot. 2 at 4, citing 84 Fed. Reg. 70092, 70096 (Dec. 20, 2019); *see* 42 U.S.C. § 7479. With this statutory revision, municipal incinerators with the potential to emit at least 100 tons per year of any regulated NSR pollutant would be a major facility if its charging capacity would be more than 50 tons of refuse per day. *Id*. In its proposed Error Corrections rule, USEPA proposes to revise 40 C.F.R. §

52.21(b)(1)(i)(*a*) to change the major source threshold for municipal incinerators. 84 Fed. Reg.70092, 70096 (Dec. 20, 2019).

IEPA moves to amend similar language in its proposed subsection (a)(1), which is based on the historic language of 40 C.F.R. § 52.21. IEPA Mot. 2 at 4, 5. The Board grants IEPA's unopposed motion and includes the amendment in its first-notice proposal.

Subsection (a)(2). IEPA reports that USEPA recently proposed to amend several definitions "to clarify that a stationary source need not obtain a PSD permit simply because it emits or has the potential to emit greenhouse gas emissions above the applicable significant emission rate." SR at 46-47, citing 81 Fed. Reg. 68110 (Oct. 3, 2016). In this subsection, IEPA proposes language that reflects both the federal definition and USEPA's recent amendment.

Accordingly, as the second standard to meet this definition, IEPA proposed that, "[n]otwithstanding the stationary source size specified in subsection (a)(1) of this Section, any stationary source which emits, or has the potential to emit, 250 tpy or more of a regulated NSR pollutant (except GHGs as defined in 204.430)." Prop. 204 at 20; Comp. 204 at 22.

Subsection (a)(3). As the third standard, IEPA proposed that "[a]ny physical change that would occur at a stationary source not otherwise qualifying under this Section, as a major stationary source, if the changes would constitute a major stationary source by itself." Prop. 204 at 20.

Subsection (b). IEPA proposed that "[a] major source that is major for VOM or NO_x shall be considered major for ozone." Prop. 204 at 20; *see* SR at 121.

Subsection (c). IEPA proposed that "the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a major stationary source, unless the source belongs to one of the" 27 listed categories of stationary sources. Prop. 204 at 21; *see* SR at 121. The eighth of those categories is "[m]unicipal incinerators capable of charging more than 250 tons of refuse per day." Prop. 204 at 22.

For the same reason that it proposed to amend this threshold in subsection (a)(1) (*see supra* at 89-90), IEPA moves to amend the threshold for municipal incinerators in subsection (c)(8). IEPA Mot. 2 at 4, 6; *see* 84 Fed. Reg. 70092, 77095 (Dec. 20, 2019). The Board grants IEPA's unopposed motion to amend this subsection and includes the amendment in its first-notice proposal.

Section 204.520: Minor Source Baseline Date. IEPA noted that the Board's proposal for public comment included errors in the use of subscripts. PC 1 at 78. The Board corrects these below in this opinion and in its order.

Subsection (a). IEPA proposed that, depending on the pollutant, "[m]inor source baseline date" means "the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or this Part submits a complete application under the relevant regulations." Prop. 204 at 21-22; *see* SR at 121.

Subsection (a)(1). For PM_{10} and SO_2, IEPA proposed that the trigger date is August 7, 1977. Prop. 204 at 22.

Subsection (a)(2). For NO_2, IEPA proposed that the trigger date is February 8, 1988. Prop. 204 at 22.

Subsection (a)(3). For $PM_{2.5}$, IEPA proposed that the trigger date is October 20, 2011. Prop. 204 at 22.

Subsection (b). IEPA proposed two conditions under which "the baseline date is established for each pollutant for which increments have been established." Prop. 204 at 22; SR at 121.

Subsection (b)(1). As the first condition, IEPA proposed a requirement that "[t]he area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) for the pollutant on the date of its complete application under 40 CFR 52.21 or this Part [204]." Prop. 204 at 22; *see* SR at 121.

Subsection (b)(2). As the second condition, IEPA proposed that, "[i]n the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant." Prop. 204 at 22; *see* SR at 121.

Subsection (c). IEPA proposed that

> any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the Illinois EPA shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Illinois EPA, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant PM_{10} emissions. Prop. 204 at 22; *see* SR at 122.

Section 204.530: Nearby. This term is used in 40 C.F.R. § 52.21 but is defined in 40 C.F.R. § 51.100(jj). SR at 47, citing 40 C.F.R. § 52.01 (Definitions). To make proposed Part 204 consistent with 40 C.F.R. § 52.21, IEPA proposes to include the definition from 40 C.F.R. § 51.100(jj). SR at 47; *see* Comp. 204 at 24.

IEPA proposed that, "with respect to a specific structure or terrain feature," the term "nearby" has two elements. Prop. 204 at 22; *see* SR at 47, 122.

Subsection (a). As the first element, IEPA proposed that, "[f]or purposes of applying the formulae provided in Section 204.420(b)," the term "means that distance up to five times the

lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile)." Prop. 204 at 22; *see* SR at 122.

Subsection (b). As the second element, IEPA proposed that,

> [f]or conducting demonstrations under Section 204.420(c)," the term "means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40 percent of the good engineering practice stack height determined by the formula provided in Section 204.420(b)(2) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. Prop. 204 at 22-23; *see* SR at 122.

Section 204.540: Necessary Preconstruction Approvals or Permits. IEPA proposed that "[n]ecessary preconstruction approvals or permits" means "those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable SIP." Prop. 204 at 23; *see* SR at 122.

Section 204.550: Net Emissions Increase. IEPA noted that the Board's proposal for public comment incorrectly underlined the heading of this section. PC 1 at 78. The Board corrects this below in its order.

Subsection (a). IEPA proposed that, "with respect to any regulated NSR pollutant emitted by a major stationary source," "net emissions increase" means the amount by which the sum of two amounts exceeds zero." Prop. 204 at 23; *see* SR at 122.

Subsection (a)(1). As the first amount, IEPA proposed "[t]he increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Section 204.800(d) [Applicability]." Prop. 204 at 23; *see* SR at 122.

Subsection (a)(2). As the second amount, IEPA proposed "[a]ny other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subsection shall be determined as provided in Section 204.240, except that Sections 204.240(a)(3) and 204.240(b)(4) shall not apply." Prop. 204 at 23; *see* SR at 122.

Subsection (b). IEPA proposed that "[a]n increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between" two dates. Prop. 204 at 23; *see* SR at 123.

Subsection (b)(1). As the first of the two dates, IEPA proposed "[t]he date five years before construction on the particular change commences." Prop. 204 at 23.

Subsection (b)(2). As the second, IEPA proposed "[t]he date that the increase from the particular change occurs." Prop. 204 at 23.

Subsection (b)(3). IEPA also proposed that "[a]n increase or decrease in actual emissions in creditable only if the reviewing authority has not relied on it in issuing a permit for the source under 40 CFR 52.21 or this Part, which permit is in effect when the increase in actual emissions from the particular change occurs." Prop. 204 at 23.

While IEPA's proposed definition generally follows 40 C.F.R. § 52.21(b)(3), IEPA did not propose to include in this subsection language providing that "[a]n increase or decrease in actual emission is creditable only if . . [t]he increase or decrease in emissions did not occur at a Clean Unit. . . ." SR at 47-48, citing 40 C.F.R. § 52.21(b)(3)(iii)(*b*); *see* Comp. 204 at 25. The D.C. Circuit Court of Appeals found that "USEPA had exceeded its authority when adopting regulations that provided that applicability of PSD for a class of emission units referred to as Clean Unit would be addressed differently than for other existing emission units." SR at 48, citing New York v. EPA, 413 F.3d 3, 38-39 (D.C. Cir. 2005). IEPA stated that, under the invalidated approach, "a change would not 'increase' emissions and would not trigger PSD so long as the change did not alter the unit's Clean Unit status even if the change were to increase net actual emissions at the source." SR at 48.

IEPA also did not include in this subsection language providing that "fugitive emissions will only be counted in determining if a proposed physical or operational change would result in a major modification" for designated sources. SR at 48, citing 40 C.F.R. § 52.21(b)(3)(iii)(*c*) *see* Comp. 204 at 25. Responding to a motion to reconsider the federal provision, "IEPA elected to stay the revised regulatory language and to revert back to the earlier regulatory text." SR at 48, citing 76 Fed. Reg. 17556 (Mar. 30, 2011).

Subsection (c). IEPA proposed that "[a]n increase or decrease in actual emissions of SO_2, PM, or NO_x that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available." Prop. 204 at 23; *see* SR at 123.

Subsection (d). IEPA proposed that "an increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level." Prop. 204 at 23; *see* SR at 123.

Subsection (e). IEPA proposed that "[a] decrease in actual emissions is creditable only to the extent that it meets three conditions. Prop. 204 at 24; *see* SR at 123.

Subsection (e)(1). As the first condition, IEPA proposed that "[t]he old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions." Prop. 204 at 24; SR at 123.

Subsection (e)(2). As the second condition, IEPA proposed that "[i]t is enforceable as a practicable matter at and after the time that actual construction on the particular change begins." Prop. 204 at 24; *see* SR at 123.

The Board noted that this subsection uses the term "enforceable" without any description such as "legally" or "practicably" as in proposed Section 204.560. The Board asked IEPA to comment on the intended difference between these types of enforceability. Board Questions at 6 (¶25).

IEPA responded that, under this definition, being "enforceable as a practical matter" is a criterion that must be met for an emissions decrease to be creditable for purposes of netting. PC 1 at 55 (¶25). Limitations under the PSD program must be both "legally enforceable" and "practically enforceable." *Id*. As the program has evolved, "limitations established by a State or local permitting authority may be sufficient even if USEPA itself cannot enforce them." *Id*. Also, "USEPA concluded that it is not appropriate to consider a provision that simply restricted the annual emissions of a source to be enforceable. It is also necessary for limitations that are to be relied upon under the PSD program to be developed in a way that compliance could be verified in practice and enforcement could be undertaken for any violations." *Id*.

IEPA adds that the term is consistent with the corresponding federal rule. PC 1 at 55 (¶25), citing 40 C.F.R. § 52.21(b)(3)(iv)(*b*).

Subsection (e)(3). As the third condition, IEPA proposed that "[i]t has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change." Prop. 204 at 24; *see* SR at 123.

Subsection (f). Since 1980, the federal shakedown provision has included the undefined term "replacement unit," which is used to determine the timing of net emissions increases. SR at 49, citing 40 C.F.R. § 52.21(b)(3)(viii). IEPA states that USEPA in 2003 defined "replacement unit" in part by providing that "no creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced." SR at 50, citing 40 C.F.R. § 52.21(b)(33); 68 Fed. Reg. 63012, 63024 (Nov. 7, 2003). IEPA argues that, under this definition, "a unit is not a replacement unit if the unit being replaced is used in a netting analysis." SR at 50. However, IEPA adds that the shakedown provision specifically relates to a netting analysis. *Id*. IEPA argues that USEPA's definition "inadvertently foreclosed the use of the shakedown provision for a replacement unit as now defined." *Id*., citing 40 C.F.R. § 52.21(b)(33).

IEPA reports that USEPA has approved language correcting this problem in PSD SIP submissions. Arizona, as one example, applies its shakedown to "[a]ny emissions unit that replaces an existing emissions unit and that requires shakedown." SR at 51, citing 80 Fed. Reg. 67319, 67334 (Nov. 2, 2015); A.A.C. R 18-2-101(87). While noting that other states have approached this somewhat differently (*id*. at 51-53), IEPA follows Arizona's approach.

Specifically, IEPA proposed that "[a]n increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and

begins to emit a particular pollutant. 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." Prop. 204 at 24; *see* SR at 123; Comp. 204 at 26.

Subsection (g). IEPA proposed that "[s]ubsection 204.210(b) [Baseline Actual Emissions] shall not apply for determining creditable increases and decreases." Prop. 204 at 24; *see* SR at 123.

Section 204.560: Potential to Emit. IEPA proposed to duplicate the federal definition with one exception. SR at 53, citing 40 C.F.R. § 52.21(b)(4). IEPA reports that in 1995 the D.C. Circuit found on two occasions that "the USEPA exceeded its authority when it determined that only federally enforceable emission limitations should be considered to restrict a source's potential to emit." SR at 53, citing National Mining Ass'n. v. EPA, 59 F.3d 1351 (D.C. Cir. 1995); Chemical Manufacturers Ass'n v. EPA, No. 89-1514 (D.C. Cir. Sept. 15, 1995). Subsequent USEPA guidance recommended that this definition should refer to a limit that is "federally enforceable or legally and practicably enforceable by a state or local air pollution control agency." SR at 54 (citation omitted).

Accordingly, IEPA proposed that "[p]otential to emit" means

> the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on a source's capacity to emit a pollutant, including air pollution control equipment and restrictions on ours 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 or legally and practicably enforceable by a state or local air pollution control agency. Secondary emissions do not count in determining the potential to emit of a stationary source." Prop. 204 at 24; *see* SR at 123-24; Comp. 204 at 26.

The Board asked IEPA whether it would be acceptable to replace the phrase "by a state or local air pollution agency" with the phrase "by the Agency." Board Questions at 7 (¶26). IEPA responded that the Board should not make this substitution because the proposed phrase is consistent with USEPA guidance. PC 1 at 58 (¶26); Tr.1 at 104-05. Mr. Romaine suggested that the Board's proposed language would mean that limitations imposed by a local air pollution control agency would not restrict potential emissions in a way that could be relied upon for purposes of Part 204. Tr.1 at 106. IEPA stressed that the City of Chicago and the Cook County Department of Environmental Control "routinely address emission units and could be covered by this term." PC 2 at 36 (¶3); *see* Tr.2 at 95-96.

Section 204.570: Prevention of Significant Deterioration (PSD) Permit. IEPA noted that, under the federal definition, "PSD program" means "the EPA-implemented major source preconstruction permit programs under this section or the program or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to § 51.166 of this chapter to implement the requirements of that section." SR at 54-55, citing 40 C.F.R. § 52.21(b)(43). If Part 204 becomes

part of Illinois' SIP, IEPA would no longer be a delegated permitting authority, and an IEPA-implemented program would no longer be relevant. SR at 55. Also, IEPA argues that Part 204 would not need to define a PSD program. IEPA concludes that "it is appropriate to define a 'PSD permit'" with language based on Section 3.363 of the Act. *Id*.; *see* 415 ILCS 5/3.363 (2018).

Consequently, IEPA originally proposed that "PSD permit" means "*a permit or portion of a permit for a new major source or major modification that is issued by the Illinois EPA under the construction permit program pursuant to Section 9.1(c) of the Act that has been approved by the USEPA and incorporated into the Illinois SIP to implement Section 165 of the CAA and 40 CFR 51.166*." Prop. 204 at 24; *see* SR at 124; Comp. 204 at 26.

The Board requested that IEPA provide a citation for the italicized text and remove italics from text that is not based on statutory language. Board Questions at 7 (¶27). IEPA responded with a revised definition providing that PSD Permit means:

> *a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois* EPA *under the construction permit program pursuant to* Section 9.1(c) of the Act *that has been approved by the* USEPA *and incorporated into the Illinois SIP to implement the requirements of Section 165 of the Clean Air Act and 40 C.F.R. 51.166.* [415 ILCS 5/3.363]. PC 1 at 58; *see* Tr.1 at 58.

Section 204.580: Process Unit. IEPA proposed a definition that differs from the corresponding federal definition. SR at 55, citing 40 C.F.R. § 52.21(b)(55). IEPA reports that the D.C. Circuit Court of Appeals stayed 40 C.F.R. § 52.21(cc), which included relevant definitions. SR at 55-56, citing State of New York v. EPA, No. 03-1380 (D.C. Cir. Dec. 24, 2003). The D.C. Circuit then vacated the provision including these definitions. *Id*. Because Part 211 now includes a definition of "process unit," Part 204 must include a PSD-specific definition. SR at 55, citing 35 Ill. Adm. Code 211.5210. IEPA relies on the stayed definitions at 40 C.F.R. §§ 51.166 and 52.21, arguing that D.C. Circuit vacated the term as it would be part of "maintenance, repair and replacement" provisions and not for the other elements of the PSD program. SR at 56-57.

Accordingly, IEPA proposed that "[p]rocess unit" means "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. A process unit may contain more than one emissions unit." Prop. 204 at 24; *see* SR at 124; Comp. 204 at 26-27.

Section 204.590: Project. IEPA proposed that "[p]roject" means "a physical change in, or change in the method of operation of, an existing major stationary source." Prop. 204 at 24-25; *see* SR at 124.

Section 204.600: Projected Actual Emissions.

Subsection (a). IEPA proposed that this term means

> the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. Prop. 204 at 25; *see* SR at 124-125.

Subsection (b). IEPA proposed that, before beginning actual construction, the owner or operator of a major stationary source considers specific factors to determine projected actual emissions. Prop. 204 at 25; *see* SR at 125.

Subsection(b)(1). As the first factor, IEPA proposed that the owner or operator "[s]hall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under Illinois' SIP." Prop. 204 at 25.

Subsection (b)(2). As the second factor, IEPA proposed that the owner or operator "[s]hall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions." Prop. 204 at 25; *see* SR at 125.

Subsection (b)(3). As the third factor, IEPA proposed that the owner or operator

> [s]hall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Section 204.240 and that are also unrelated to the particular project, including any increased utilization due to product demand growth." Prop. 204 at 25; *see* SR at 125.

Subsection (b)(4). As the fourth factor, IEPA proposed that the owner or operator, "[i]n lieu of using the method set out in subsections (b)(l) through (b)(3) of this Section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Section 204.560 [Potential to Emit]." Prop. 204 at 25; *see* SR at 125.

Section 204.610: Regulated NSR Pollutant. IEPA proposed that this term means those pollutants identified in subsections (a)-(d). Prop. 204 at 25-26; *see* SR at 125-26.

Subsection (a). IEPA proposed that the term first means "[a]ny pollutant for which a NAAQS has been promulgated." Prop. 204 at 26; *see* SR at 125-26. This includes pollutants described in subsection (a)(1) and (a)(2).

Subsection (a)(1). As a pollutant for which a NAAQS has been promulgated, IEPA first included

> $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form PM at ambient temperatures. On or after January 1, 2011, such condensable PM shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable PM unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable PM shall not be considered in violation of this Part unless the applicable implementation plan required condensable PM to be included. Prop. 204 at 26; *see* SR at 126.

Subsection (a)(2). As a pollutant for which a NAAQS has been promulgated, IEPA also included "[a]ny pollutant identified under this subsection as a constituent or precursor for a pollutant for which a NAAQS has been promulgated." *See* Prop. 204 at 26. IEPA listed in subsections (a)(2)(A)-(D) four pollutants that are precursors for the purposes of Part 204. Prop. 204 at 26; *see* SR at 126.

Subsection (a)(2)(A). As the first, IEPA proposed that "VOM and NO_x are precursors to ozone in all attainment and unclassifiable areas." Prop. 204 at 26.

Subsection (a)(2)(B). As the second, IEPA proposed that "SO_2 is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas." Prop. 204 at 26.

Subsection (a)(2)(C). As the third, IEPA proposed that "NO_x are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of NO_x from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations." Prop. 204 at 26.

Subsection (a)(2)(D). As the fourth, IEPA proposed that "VOM are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of VOM from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations." *See* Prop. 204 at 26.

Subsection (b). As a second category of pollutant for which a NAAQS has been promulgated, IEPA proposed "[a]ny pollutant that is subject to any standard promulgated under Section 111 of the CAA (42 U.S.C. 7401)." Prop. 204 at 26; *see* SR at 126.

Subsection (c). As a third category, IEPA proposed "[a]ny Class I or II substance subject to a standard promulgated by Title VI of the CAA (42 U.S.C. 7671, *et seq*.)." Prop. 204 at 26; *see* SR at 126.

Subsection (d). As a fourth category, IEPA proposed "[a]ny pollutant that otherwise is subject to regulation as defined in Section 204.700 [Subject to Regulation]." Prop. 204 at 26; *see* SR at 126.

As the proposed definition of "major modification" applies to a significant increase in emissions of a regulated NSR pollutant other than GHGs, the Board asked to clarify whether the definition of "Regulated NSR Pollutant" includes GHGs. Board Questions at 7 (¶28). IEPA responded that that it does include them. PC 1 at 58 (¶28); Tr. at 107-09. IEPA elaborates that GHGs are a regulated NSR pollutant pursuant to Section 204.610(d) as GHGs are a pollutant that is otherwise 'subject to regulation' as that term is defined in Section 204.700. PC 1 at 58-59 (¶28). IEPA adds that "Section 204.700 specifically states that '[p]ollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430.'" *Id*. at 59.

Subsection (e). IEPA proposed a definition that differs from the definition in the federal rules. SR at 57, citing 40 C.F.R. § 52.21(b)(50)(v). Based on language providing that "PSD shall not apply to pollutants listed under Section 112, hazardous air pollutants listed in Section 112(b)(1) of the CAA, hazardous air pollutants 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 not otherwise delisted pursuant to Section 112(r) of the CAA, [they] should not be addressed as a regulated air pollutant under PSD unless otherwise regulated as an NSR pollutant." SR at 57-78, citing 42 U.S.C. § 7412(b)(6). IEPA elaborated that hazardous air pollutant compounds "would continue to be addressed as they are a component of another pollutant that is a regulated pollutant, *e.g.*, volatile organic material or particulate." SR at 58. IEPA stated that, if it did not propose to change the federal definition, then "certain substance that are only regulated under Section 112(r)(3) of the CAA, *e.g.*, nitric acid, could be inappropriately considered regulated PSD pollutant under Part 204." *Id*.

Accordingly, IEPA proposed that,

> [n]otwithstanding subsections (a) through (d) of this Section, the term '[r]egulated air pollutant' shall not include any or all listed hazardous air pollutants either listed in Section 112(b)(1) of the CAA (42 U.S.C. 7412(b)(1)), or added to the list pursuant to Section 112(b)(2) or (b)(3) of the CAA (42 U.S.C. 7412(b)(2) or (b)(3)) or substances listed pursuant to Section 112(r)(3) of the CAA (42 U.S.C. 7412(r)(3)), and which have not been delisted pursuant to Section 112(b)(3) or (r) of the CAA (42 U.S.C. 7412(b)(3) or (r)), unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a pollutant listed under Section 108 of the CAA (42 U.S.C. 7408). Prop. 204 at 27; *see* SR at 126, Comp. 204 at 29.

IEPA noted that the Board's proposal for public comment included errors in the use of subscripts. PC 1 at 78. The Board corrects these in its opinion and order.

Section 204.620: Replacement Unit. IEPA proposed that "[r]eplacement unit" means "an emission unit for which criteria as listed in subsections (a) through (d) of this Section are

met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced." Prop. 204 at 27; *see* SR at 126.

Subsection (a). As the first criterion, IEPA proposed that "[t]he emissions unit is a reconstructed unit within the meaning of 40 C. F.R 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit." Prop. 204 at 27; SR at 126.

Subsection (b). As the second criterion, IEPA proposed that "[t]he emissions unit is identical to or functionally equivalent to the replaced emissions unit." Prop. 204 at 27; *see* SR at 126.

Subsection (c). The federal definition of "replacement unit" (40 C.F.R. § 52.21(b)(33)) refers to the "basic design parameters" of process units at 40 C.F.R. § 52.21(cc)(2). SR at 58. IEPA does not propose to include that reference because the D.C. Circuit Court of Appeals vacated that provision. *Id*., citing State of New York v. EPA, No. 03-1380 (D.C. Cir. Mar. 17, 2006). However, IEPA argues that the court vacated provisions for "basic design parameters" as they would be part of "maintenance, repair and replacement" and not as they would implement the definition of "replacement unit." SR at 58. When other states have included the vacated language in the definition of "replacement unit," IEPA argues that USEPA has approved it. *Id*. at 59, citing 80 Fed. Reg. 67331 (Nov. 2, 2015) (Arizona SIP approval).

Accordingly, as the third criterion, IEPA proposed that "[t]he replacement does not alter the basic design parameter(s) of the process unit." Prop. 204 at 27; *see* SR at 127; *see* Comp. 204 at 29-30. IEPA further proposed six standards for determining the basic design parameters of a process unit. *Id.*

Subsection (c)(1). As the first standard, IEPA proposed that,

> [e]xcept as provided in subsection (c)(3) of this Section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit. Prop. 204 at 27.

Subsection (c)(2). As the second standard, IEPA proposed that,

> [e]xcept as provided in subsection (c)(3) of this Section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter. Prop. 204 at 27.

Subsection (c)(3). As the third standard, IEPA proposed that,

> [i]f the owner or operator believes the basic design parameter(s) in subsections (c)(l) and (c)(2) of this Section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Illinois EPA an alternative basic design parameter(s) for the source's process unit(s). If the Illinois EPA approves of the use of an alternative basic design parameter(s), the Illinois EPA shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s). Prop. 204 at 28.

Subsection (c)(4). As the fourth standard, IEPA proposed that "[t]he owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in subsections (c)(2) and (c)(3) of this Section." Prop. 204 at 28.

Subsection(c)(5). As the fifth standard, IEPA proposed that, "[i]f design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity." Prop. 204 at 28.

Subsection (c)(6). As the sixth standard, IEPA proposed that "[e]fficiency of a process unit is not a basic design parameter." Prop. 204 at 28.

Subsection (d). As the fourth criterion to establish that an emission unit is a replacement unit, IEPA proposed that "[t]he replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emission unit is brought back into operation, it shall constitute a new emission unit." Prop. 204 at 28; *see* SR at 127.

Section 204.630: Repowering.

Subsection (a). IEPA proposed that this term means

> replacement of an existing coal-fired boiler with any of the listed clean coal technologies: atmospheric or pressurized fluid bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by USEPA, in consultation with the US Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990." Prop. 204 at 28; *see* SR at 127.

Subsection (b). IEPA proposed that "'[r]epowering' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the US Department of Energy." Prop. 204 at 28; *see* SR at 127.

Subsection (c). IEPA proposed that it "shall give expedited consideration to permit applications for any source that satisfies the requirements of this Section and is granted an extension under Section 409 of the CAA (42 U.S.C. 7651h)." Prop. 204 at 29; *see* SR at 127.

Section 204.640: Reviewing Authority. IEPA characterizes the federal definition as "broadly written" and proposes a definition that would be specific to Illinois. SR at 60, citing 40 C.F.R. § 52.21(b)(51). IEPA proposes that this term "means the Illinois EPA unless the current, delegated PSD program in Illinois under 40 CFR 52.21 is being addressed." SR at 60.

Specifically, IEPA proposed that "[r]eviewing authority" means "the Illinois EPA or, in the case of a permit program under 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA." Prop. 204 at 29; *see* SR at 128; Comp. 204 at 31.

Section 204.650: Secondary Emissions. IEPA proposed a definition that departs from USEPA's in two respects. SR at 60, citing 40 C.F.R. § 52.21(b)(18).

First, IEPA proposed the additional criteria that secondary emissions must be "specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification undergoing review." SR at 61; *see* PC 1 at 19 (¶2b). The EAB has observed that these criteria were "inadvertently omitted" when USEPA amended the definition. SR at 61, citing Knauf Fiber Glass, 8 E.A.D. 121, 166, n.2 (EAB 1999). IEPA states that, although USEPA has not corrected the omission, it has referred to or relied upon these four criteria. SR at 61 (citations omitted); *see* Com. 204 at 31.

Second, IEPA proposes to omit subsections (i) and (ii) of the federal definition. SR at 62, citing 40 C.F.R. § 52.21(b)(18)(i), (ii); *see* PC 1 at 19 (¶2b); Comp. 204 at 31. IEPA argues that these subsections duplicate language in the first paragraph of that section. SR at 61; *see* 40 C.F.R. § 52.21(b)(18). IEPA stresses that USEPA did not include this language in its definition of "secondary emissions" in its SIP requirements. SR at 62, citing 40 C.F.R. § 51.166(b)(18) *see* PC 1 at 19 (¶2b).

Consequently, IEPA proposed that "secondary emissions" means

> emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. For the purposes of this Part, secondary

emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Prop. 204 at 29; *see* SR at 128.

Section 204.660: Significant.

Subsection (a). IEPA proposed that, "in reference to a net emissions increase or the potential of a source to emit" any of the 19 pollutants specified in a table, "any emissions rate that would equal or exceed" the specified rates. Prop. 204 at 29-30; *see* SR at 128.

IEPA's proposed subsection (a) reflects the federal definition at 40 C.F.R. § 52.21(b)(23) except that it includes two additional pollutants. SR at 62. First, USEPA proposed for GHGs a significant emissions rate of 75,000 tpy CO_2e. *Id*. at 62-63, citing 81 Fed. Reg. 68110 (Oct 3, 2016). IEPA proposes "the same significant emissions rate for GHGs for Part 204." SR at 63; *see* Comp. 204 at 32.

Second, the federal definition of "significant" provides in part that, "in reference to a net emissions increase or the potential of a source to emit *a regulated NSR pollutant* that paragraph (b)(23)(i), does not list, *any emissions rate*." SR at 63 (emphasis in original), citing 40 C.F.R. § 52.21(b)(23)(ii). IEPA states that "regulated NSR pollutant" is defined in the federal rules to include "any Class I or II substance subject to a standard established by title VI of the CAA, *i.e.*, ozone depleting substances." SR at 63, citing 40 C.F.R. § 52.21(b)(50)(iii). IEPA argues that, if it did not propose a significant level for ozone depleting substances, the "a modification at a major stationary source resulting in any net increase in emissions of ozone depleting substances would be subject to the substantive requirements of PSD." SR at 63. IEPA states that ozone depleting substances are widely used in sources such as refrigeration systems and air conditioning equipment and asserts that it "would make little sense" to regulate potential incidental losses from those units through PSD permitting. *Id*. IEPA proposed an emission rate of 100 tpy, which USEPA had proposed to accept in the State of Washington's PSD program. *Id*., citing 80 Fed. Reg. 838, 840 (Jan. 7, 2015); *see* Comp. 204 at 33.

The Board asked IEPA to explain why the emission rate for some of the pollutants were expressed in tons per year and others were expressed in megagrams per year. Board Questions at 7 (¶29). IEPA first responded by noting that, where emission rates are in megagrams per year, subsection (a) includes equivalents in tons per year. PC 1 at 59 (¶29). IEPA suggests that rates are expressed in different units of measurement "because this is the form in which the USEPA adopted significant emission rates for these pollutants under the PSD program." *Id*.; Tr.1 at 109. IEPA argued that it is not appropriate to convert these all to tons per year "because the emission rates in megagrams per year and tons per year are actually slightly different." PC 1 at 59 (¶29); Tr.1 at 109-10. Because they are different, resetting these rates into tons per year "would affect the stringency of Part 204 compared to 40 CFR 52.21(23)(i)." PC 1 at 59 (¶29); Tr.1 at 110.

Subsection (b). IEPA proposed that "[s]ignificant" means "in reference to a net emissions increase or the potential of a source to emit" a regulated NSR pollutant not listed in the table in subsection (a), "any emissions rate." Prop. 204 at 30; *see* SR at 128.

Subsection (c). IEPA proposed that, "[n]otwithstanding subsection (a) of this Section, 'significant' means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hr average)." Prop. 204 at 30; *see* SR at 128.

Section 204.670: Significant Emissions Increase. IEPA proposed that this term means, "for a regulated NSR pollutant, an increase in emissions that is significant (as defined in Section 204.660) for that pollutant." Prop. 204 at 30; *see* SR at 129.

Section 204.680: Stack in Existence. Under 40 C.F.R. § 52.01, all terms used in Part 52 but not defined in one of its sections are defined by the CAA and 40 C.F.R. Parts 51 and 60. Accordingly, the term "stack in existence" in 40 C.F.R. § 52.21 is defined by 40 C.F.R. § 51.100(gg). SR at 64. IEPA proposes to add that definition to ensure that the term has the same meaning in Part 204. *Id*. at 64-65.

IEPA proposed that this term means

> that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time. Prop. 204 at 30-31; *see* SR at 129; Comp. 204 at 33

Section 204.690: Stationary Source. The federal rules define "stationary source" as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." SR at 65, citing 40 C.F.R. § 52.21(b)(5). However, Section 302(z) of the CAA defines the term to exclude "emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216." SR at 65, citing 42 U.S.C. § 7602(z). IEPA argues that USEPA has consistently determined that these are not part of a stationary source. SR at 65-66 (citations omitted). IEPA proposes to add to the federal definition language based on Section 302(z) of the CAA that is consistent with USEPA's implementation of federal permitting. *Id*. at 65. IEPA adds that this is consistent with the definition in the Board's regulations for nonattainment NSR, which have been approved by USEPA. *Id*., n.61, citing 35 Ill. Adm. Code 203.112(b)(1).

IEPA proposed that "[s]tationary source" means "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. 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. 7550) are not a part of a stationary source." Prop. 204 at 31; *see* SR at 129; Comp. 204 at 33.

Section 204.700: Subject to Regulation. IEPA reports that USEPA proposed changes to the PSD regulations involving greenhouse gases. SR at 67, citing 81 Fed. Reg. 68110 (Oct. 3, 2016). USEPA proposed to remove explanatory language describing greenhouse gases from the

definition of "subject to regulation" and place it in a new definition of greenhouse gases. SR at 67, citing 40 C.F.R. § 52.21(b)(32). IEPA similarly proposes to place this language in a new definition and argues that this "would not change the meaning" of the term. SR at 67; *see* Comp. 204 at 34-35.

USEPA proposed to add to this definition the following sentence: "[p]ollutants subject to regulation include, but are not limited to, greenhouse gases as defined in paragraph (b)(32) of this section." SR at 67, citing 81 Fed. Reg. 68110, 68143 (Oct. 3, 2016). IEPA suggests that this additional language clarifies that greenhouse gases are subject to regulation. SR at 67. IEPA proposed to include similar language referring to the definition of greenhouse gases in Section 204.430. *Id*.; *see* Comp. 204 at 33.

Also, USEPA proposed to include the significant emission rate for greenhouse gases in the definition of "significant" with rates for other pollutants. SR at 67, citing 40 C.F.R. § 52.21(b)(49)(iv); 81 Fed Reg. 68110, 68118 (Oct. 3, 2016). IEPA also proposed to 'remove the PSD applicability thresholds for greenhouse gases" from this definition. SR at 67; *see* Comp. 204 at 34-35.

Accordingly, IEPA proposed that "[s]ubject to regulation" means,

> for any air pollutant, that the pollutant is subject to either a provision in the CAA, or a nationally-applicable regulation codified by the USEPA in 40 CFR Parts 50 through 99, that requires control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430. Prop. 204 at 31; *see* SR at 129.

Section 204.710: Temporary Clean Coal Technology Demonstration Project. IEPA proposed that "[t]emporary clean coal technology demonstration project" means "a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Illinois SIP and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated." Prop. 204 at 31; *see* SR at 129-130.

Subpart C: Major Stationary Sources In Attainment and Unclassifiable Areas

Mr. Schnepp testified that IEPA's proposal "generally" mirrors the current provisions of the federal PSD rule. Schnepp Test. at 3, citing 40 C.F.R. § 52.21. IERG asked IEPA whether applicability of the PSD program would differ under proposed Part 204 from the federal rules. IERG Questions at 1 (¶1). IEPA responded that "PSD applicability under proposed Part 204 would not differ from PSD applicability under 40 C.F.R. 52.21." PC 1 at 12 (¶1a); *see* Tr.1 at 36.

However, IEPA added that future changes to the federal rules could result in differences in applicability between the federal rules and Part 204. PC 1 at 12 (¶1a); *see* Tr.1 at 36. IERG asked whether, if USEPA amends the federal rules, IEPA would consider proposing

corresponding amendments. Tr.1 at 36. IEPA responded that "part of adopting a state PSD program necessarily means that rulemaking will likely be required in the future to make changes to Part 204. When such changes are warranted, the Illinois EPA will appropriately initiate the needed rulemaking proceeding." PC 1 at 12 (¶1b); *see* Tr.1 at 36.

Section 204.800: Applicability.

Subsection (a). IEPA proposed that "[t]he requirements of this Part apply to the construction of any new major stationary source (as defined in Section 204.510) or any project at an existing major stationary source in an area designated attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii))." Prop. 204 at 31; *see* SR at 130.

Subsection (b). IEPA proposed that "[t]he requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides." Prop. 204 at 31; *see* SR at 130.

The Board asked whether it would be acceptable to clarify subsections (a) and (b) by striking the phrase "the requirements of" as unnecessary. Board Questions at 10 (¶46d). IEPA responded that this phrase "is consistent with 40 CFR 52.21(a)(2)(i) and (ii) and 51.166(a)(7)(i) and (ii)." PC 1 at 73 (¶46d). IEPA argued that it "should not be removed" from either subsection. *Id*.

Subsection (c). IEPA proposed that "[n]o new major stationary source or major modification to which the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Illinois EPA has authority to issue any such permit." Prop. 204 at 31-32; *see* SR at 130.

Subsection (d). Consistent with the federal rules, subsection (d) "addresses how one determines whether a proposed project at an existing major source is a major modification." SR at 130; *see id*. at 68., citing 40 C.F.R. § 52.21(a)(2)(iv).

Subsection (d)(1). IEPA first proposed that,

> [e]xcept as otherwise provided in subsection (e) of this Section, and consistent with the definition of major modification contained in Section 204.490, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in Section 204.670), and a significant net emissions increase (as defined in Sections 204.550 and 204.660). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions

> increase, then the project is a major modification only if it also results in a significant net emissions increase. Prop. 204 at 32; *see* SR at 130.

In its second motion to amend, IEPA reports that USEPA proposes to remove a reference to a provision vacated by New York v. IEPA, 413 F.3d 3 (D.C. Cir. 2005). IEPA Mot. 2 at 2-3; *see* 84 Fed. Reg. 70092, 70094, 70106 (Dec. 20, 2019) (Error Corrections to New Source Review Regulations). IEPA argues that, although its original proposal appropriately removed the vacated provisions, it inadvertently included in this subsection a cross reference to subsection (e). IEPA Mot. 2 at 3, citing SR at 47-48. IEPA states that subsection (e) is not based on 40 C.F.R. § 52.21 but was proposed to clarify Part 204. IEPA Mot. 2 at 3; *see* SR at 69, 131. IEPA argues that the correct cross reference in subsection (d)(1) "would be the same as that in 40 C.F.R. § 52.21(a)(2)(iv)(*a*)," which would refer to 40 C.F.R. § 52.21(a)(2)(v). Because its proposed subsection (f) corresponds to that provision, IEPA proposed to correct its cross reference from subsection (e) to (f). IEPA Mot. 2 at 2-3, 7; *see* 84 Fed. Reg. 70092, 70095, 70106 (Dec. 20, 2019).

The Board grants IEPA's unopposed motion to amend this subsection. IEPA's proposed amendment is reflected below in the Board's order.

Subsection (d)(2). In calculations to determine whether a significant emissions increase will occur, the federal rules refers to "the type of emission unit *being modified*." SR at 68 (emphasis in original), citing 40 C.F.R. § 52.21(a)(2)(iv)(*b*). However, PSD may also apply to new units. SR at 68. It may also apply to an "upstream" or "downstream" unit that experiences an emission increase as a result of a project without itself undergoing any physical or operational change. *Id*. To clarify subsection (d)(2), IEPA proposes to replace the phrase "emissions unit being modified" with "emission unit involved in the project." *Id*. at 68-69. IEPA adds that the term "involve" is consistent with 40 C.F.R. § 52.21(a)(2)(iv)(*c*, *d*, *f*), which are reflected in subsections (d)(3-5). *Id*. at 69.

Accordingly, IEPA proposed that

> [t]he procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type(s) of emissions units involved in the project, according to subsections (d)(3) through (d)(5) of this Section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in Section 204.550. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase. Prop. 204 at 32; *see* SR at 130; Comp. 204 at 36.

Subsection (d)(3). IEPA next addressed an "[a]ctual-to-projected-actual applicability test for projects that only involve existing emissions units." Prop. 204 at 32; *see* SR at 130-131. IEPA states that this test "looks at the difference between projected emissions and baseline emissions of affected units." SR at 68. IEPA proposed that

> [a] significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Section 204.600) and the baseline actual emissions (as defined in Section 204.240(a) and (b)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 204.660). Prop. 204 at 32; *see* SR at 68, citing 40 C.F.R. 52.21(a)(2)(iv)(*c*).

Subsection (d)(4). IEPA next addressed an "[a]ctual-to-potential test for projects that only involve construction of a new emissions unit(s)." Prop. 204 at 32; *see* SR at 68, 131. IEPA states that this test "looks at the potential emissions of the new units since their baseline emissions are zero." SR at 68. IEPA proposed that

> [a] significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Section 204.560) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Section 204.420(c)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Section 204.660). Prop. 204 at 32; *see* SR at 68, citing 40 C.F.R § 52.21(a)(2)(iv)(*d*).

Subsection (d)(5). As the fifth principle, IEPA addressed a "[h]ybrid test for projects that involve multiple types of emissions units." Prop. 204 at 33; *see* SR at 131. IEPA states that this test generally uses a "combination of the approaches for each type of unit." SR at 68. IEPA proposed 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, using the method specified in subsections (d)(3) and (d)(4) of this Section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660)." Prop. 204 at 33; *see* SR at 68; citing 40 C.F.R. 52.21(a)(2)(iv)(*f*).

Subsection (e). IEPA proposed to add a subsection that is not based on the corresponding federal rules. SR at 69. To clarify Part 204, IEPA proposed to "direct any project involving an existing major source that is not a major modification for a regulated NSR pollutant to the relevant requirements of Subpart I [Nonapplicability Recordkeeping and Reporting] when a reasonable possibility exists that the project for that pollutant may result in a significant emissions increase in that pollutant." *Id*.

IEPA proposed that,

> [e]xcept as otherwise provided in Section 204.1400(f)(2), the provisions of Section 204.1400 apply with respect to any regulated NSR pollutant emitted from projects involving existing units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility,

within the meaning of Section 204.1400(f), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Section 204.600(b)(1) through (b)(3) for calculating projected actual emissions. Prop. 204 at 33; *see* SR at 69, 131; *see* Comp. 204 at 37.

Subsection (f). IEPA proposed that, "[f]or any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Subpart K." Prop. 204 at 33; *see* SR at 131.

Section 204.810: Source Information. IEPA proposed that "[t]he owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under this Part." Prop. 204 at 33; *see* SR at 131.

Subsection (a). "With respect to a source or modification to which Sections 204.810, 204.1100, 204.1120, and 204.1200 apply," IEPA proposed that the information must include three items. Prop. 204 at 33; *see* SR at 131-132.

In its second motion to amend, IEPA reports that USEPA seeks to correct a reference in its NSR rules. IEPA Mot. 3; citing 84 Fed. Reg.70092, 70095 (Dec. 20, 2019) (Error Corrections to New Source Review Regulations). USEPA explains that in 1980 it "made significant revisions to the PSD regulations under parts 51 and 52. One revision deleted existing paragraph (k) and redesignated paragraphs (l) through (s) as (k) through (r)." 84 Fed. Reg. 70092, 70094 (Dec. 20, 2019), citing 48 Fed. Reg. 52676 (Aug. 7, 1980); *see* IEPA Mot. 2 at 3. However, outdated references remained in 40 C.F.R. § 52.21(n)(1), on which this proposed section is based. IEPA Mot. 2 at 3; *see* 84 Fed. Reg. 70092, 70094 (Dec. 20, 2019). To correct the cross references in this subsection, IEPA proposes to amend them to "Sections 204.1100, 204.1110, 204.1120, and 204.1140." IEPA Mot. 2 at 3-4, 8.

The Board grants IEPA's unopposed motion to amend this subsection and includes the amendments in its first-notice proposal.

Subsection (a)(1). As the first item of required information, IEPA proposed "[a] description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout." Prop. 204 at 33; *see* SR at 131.

Subsection (a)(2). As the second item, IEPA proposed "[a] detailed schedule for construction of the source or modification." Prop. 204 at 33; *see* SR at 131-32.

Subsection (a)(3). As the third item, IEPA proposed "[a] detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information as necessary to determine that BACT, as applicable, would be applied." Prop. 204 at 33; *see* SR at 132.

Subsection (b). "Upon request of the Illinois EPA," IEPA proposed that the owner or must provide two items of information. Prop. 204 at 33; *see* SR at 132.

Subsection (b)(1). As the first item, IEPA proposed "[t]he air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact." Prop. 204 at 33; *see* SR at 132.

Subsection (b)(2). As the second item, IEPA proposed "[t]he air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect." Prop. 204 at 34; *see* SR at 132.

Section 204.820: Source Obligation. Under the federal rules, an owner or operator who constructs or operates a source or modification inconsistent with the permit application or with the terms of approval to construct is subject to enforcement. SR at 69, citing 40 C.F.R. § 52.21(r)(1). An owner or operator is also subject to enforcement if construction begins without applying for and receiving approval to construct. *Id*. However, the federal rules use the term "commence," which proposed Section 204.320 defines to mean that "the owner or operator *has all necessary preconstruction approvals or permits*. . . ." SR at 69, citing 40 C.F.R. § 52.21(b)(9) (defining "commence"). IEPA argues that "it is unnecessary to state that an owner or operator would be subject to enforcement if construction 'commences' without applying for and receiving approval to constrict as 40 CFR 52.21(r)(1) does." SR at 69. IEPA proposed instead to refer to an owner or operator that "begins actual construction." *Id*.; *see* Comp. 204 at 38.

Accordingly, IEPA proposed that:

> [a]ny owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who begins actual construction after the effective date of this Part without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action. Prop. 204 at 34; *see* SR at 69-70, 132.

Section 204.830: Permit Expiration. IEPA proposed that:

> approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Illinois EPA may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date. Prop. 204 at 35; *see* SR at 132.

Section 204.840: Effect of Permits. IEPA proposed that "[a]pproval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, State, or Federal law." Prop. 204 at 34; *see* SR at 132.

Section 204.850: Relaxation of a Source-Specific Limitation. IEPA proposed that,

> at such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall apply to the source or modification as though construction had not yet commenced on the source or modification. Prop. 204 at 34; *see* SR at 133.

The Board asked whether it would be acceptable to clarify this subsection by striking the phrase "the requirements of" as unnecessary. Board Questions at 10 (¶46d). IEPA responded that this phrase "is consistent with 40 CFR 52.21(r)(4) and 51.166(r)(2)." PC 1 at 73 (¶46d). IEPA argued that it "should not be removed." *Id*.

Section 204.860: Exemptions. IEPA proposes to exempt sources or modifications from the substantive requirements of the PSD program if it meets specified conditions. Sr at 70, citing 40 C.F.R. § 52.21(i). However, IEPA does not propose to include each of the exemptions in the federal rule. *Id*.

First, USEPA has provided exemptions during transition periods. Where those transition periods have passed, IEPA did not propose to include the corresponding exemptions. SR at 70-71; *see* Comp. 204 at 39-40.

USEPA rules exempt certain sources from the revised 8-hour NAAQS for ozone "if the Administrator determined its permit application to be complete on or before October 1, 2015 or if the Administrator proceeded to public notice on or before December 28, 2015." SR at 71., citing 40 C.F.R. § 5.21(i)(12). While this exemption appears not to have passed, IEPA does not include it. IEPA argues that, because "there are currently no applications pending before the Illinois EPA that meet this standard," it appropriately excludes the exemption from Part 204." SR at 71; *see* Comp. 204 at 45-46.

Second, IEPA proposes to modify an exemption for non-profit health or educational institutions. SR at 71, citing 40 C.F.R. § 52.21(i)(1)(vi). IEPA amends language "generically written for any state implementing PSD permitting by means of a delegation agreement with USEPA" by making it specific to Illinois. SR at 71-72; *see* Comp. 204 at 40.

Third, IEPA notes that 40 C.F.R. § 52.21(i)(5) "allowed the Administrator to exempt a stationary source or modification from the preconstruction monitoring data requirements of 40 CFR 5.21(m) if modeled impacts were below the specified significant monitoring concentrations

(SMC)." SR at 72, citing 45 Fed. Reg. 52676, 52710 (Aug. 7, 1980). However, IEPA reports that the U.S. Court of Appeals for the D.C. Circuit vacated this rule as it applies to $PM_{2.5}$, "finding that USEPA lacked *de minimus* authority to promulgate an SMC for $PM_{2.5}$ that can be used to exempt an owner of a proposed source or modification from undertaking the year-long pre-construction air quality monitoring required under Section 165(e)(2) of the CAA." SR at 72, citing Sierra Club v. EPA, No. 10-1413 (D.C. Cir. Jan. 22, 2013). While the court addressed only SMC for $PM_{2.5}$ and not for other criteria pollutants, IEPA argues that the court "could not have been clearer" that the CAA requires preconstruction monitoring data. SR at 72-73. IEPA's proposal does not include the exemption for any criteria or non-criteria pollutant. *Id*. at 73. Noting the Administrator's discretion to determine whether this monitoring is necessary for non-criteria pollutants, IEPA concluded that it would not include the exemption from them. *Id*., n.64, citing 40 C.F.R. § 52.21(m)(1)(ii); *see* Comp. 204 at 43; PC 1 at 13 (¶2a); Tr.1 at 38-40.

Subsection (a). IEPA proposed three circumstances under which "[t]he requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall not apply to a particular major stationary source or major modification." Prop. 204 at 34; *see* SR at 133.

The Board asked IEPA whether it was appropriate to replace "shall" with "do." Board Questions at 10 (¶46h). IEPA responded that it based this provision on 40 C.F.R. §§ 51.166(i)(1) and 52.21(i)(1). PC 1 at 74 (¶46h). While Part 52 uses "shall," Part 51 uses "do." *Id*. IEPA suggests that the Board's proposed replacement is appropriate, and the Board includes it in its first-notice proposal. *See id*.

Subsection (a)(1). As the first of these circumstances, IEPA proposed "[t]he source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution and the Governor of Illinois exempts it from those requirements." Prop. 204 at 35; *see* SR at 71-72, 133; Comp. 204 at 39-40.

Subsection (a)(2). As the second circumstance, IEPA proposed "[t]he source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to" any of 27 categories listed in subsections (A) through (AA). Prop. 204 at 35-36; *see* SR at 133. The eighth of those categories is "[m]unicipal incinerators capable of charging more than 250 tons of refuse per day." Prop. 204 at 35.

For the same reason that it proposed to amend this threshold in Section 204.510(a)(1) and (c)(8) (*see supra* at 89-90), IEPA moves to amend the threshold for municipal incinerators in subsection (c)(8). IEPA Mot. 2 at 4, 9; *see* 84 Fed. Reg. 70092, 77095 (Dec. 20, 2019). The Board grants IEPA's unopposed motion to amend this subsection and includes the amendment in its first-notice proposal.

Subsection (a)(3). IEPA commented that the Board's proposal had designated this as a second subsection (a)(1). PC 1 at 78. The Board corrects this by re-designating it as subsection (a)(3) in this opinion and in its order below.

As the third circumstance, IEPA proposed "[t]he source is a portable stationary source which has previously received a permit under 40 CFR 52.21 or this Part" and meets four conditions. Prop. 204 at 36; *see* SR at 133.

Subsection (a)(3)(A). As the first condition, IEPA proposed that "[t]he owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary." Prop. 204 at 36.

Subsection (a)(3)(B). As the second condition, IEPA proposed that "[t]he emissions from the source would not exceed its allowable emissions." Prop. 204 at 36.

Subsection (a)(3)(C). As the third condition, IEPA proposed that "[t]he emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated." Prop. 204 at 36.

Subsection (a)(3)(D). As the fourth condition, IEPA proposed that:

> [r]easonable notice is given to the Illinois EPA prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Illinois EPA not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Illinois EPA." Prop. 204 at 36.

Subsection (b). IEPA proposed that

> the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall 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 (42 U.S.C. 7407). Nonattainment designations for revoked NAAQS, as contained in 40 CFR Part 81, shall not be viewed as current designations under Section 107 of the CAA (42 U.S.C. 7407) for purposes of determining the applicability of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 to a major stationary source or major modification after the revocation of that NAAQS is effective. Prop. 204 at 37; *see* SR at 133-34.

Subsection (c). IEPA proposed that "Sections 204.1110, 204.1130, and 204.1140 do not apply to a major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification" meet two conditions. Prop. 204 at 37; *see* SR at 134.

Subsection (c)(1). As the first condition, IEPA proposed that the emissions "[w]ould impact no Class I area and no area where an applicable increment is known to be violated." Prop. 204 at 37; *see* SR at 134.

Subsection (c)(2). As the second condition, IEPA proposed that the emissions "[w]ould be temporary." Prop. 204 at 37; *see* SR at 134.

Subsection (d). IEPA proposed that "[t]he requirements of Sections 204.1110, 204.1130, and 204.1140 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tpy." Prop. 204 at 37; *see* SR at 134.

Subpart D: Increment

Section 204.900: Ambient Air Increments. IEPA proposed that, "[i]n areas designated as Class I, II or III, increases in pollutant concentrations over the baseline concentrations shall be limited to" concentrations listed for $PM_{2.5}$, PM_{10}, SO_2, and NO_2 separately for each of the three classes. Prop. 204 at 37-38; *see* SR at 134. Based on the class designation and pollutant, the table provides a maximum allowable increase based on an annual arithmetic mean, a 24-hour maximum, or a three-hour maximum, depending on the pollutant. Prop. 204 at 37-38. IEPA further proposed that, "[f]or any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location." Prop. 204 at 38.

Section 204.910: Ambient Air Ceilings. IEPA proposed that "[n]o concentration of a pollutant shall exceed" one of two concentrations, "whichever concentration is lowest for the pollutant for a period of exposure." Prop. 204 at 38-39; *see* SR at 134-35.

Subsection (a). As the first of those two limits, IEPA proposed "[t]he concentration permitted under the national secondary ambient air quality standard." Prop. 204 at 38; *see* SR at 135.

Subsection (b). As the second of those two limits, IEPA proposed "[t]he concentration permitted under the national primary ambient air quality standard." Prop. 204 at 39; *see* SR at 135.

Section 204.920: Restrictions on Area Classifications.

Subsection (a). IEPA proposed that four categories of "areas which were in existence on August 7, 1977, are Class I areas and may not be redesignated." Prop. 204 at 39; *see* SR at 135.

Subsection (a)(1). As the first category, IEPA proposed "[i]nternational parks." Prop. 204 at 39.

Subsection (a)(2). As the second category, IEPA proposed "[n]ational wilderness areas which exceed 5,000 acres in size." Prop. 204 at 39.

Subsection (a)(3). As the third category, IEPA proposed "[n]ational memorial parks which exceed 5,000 acres in size." Prop. 204 at 39.

Subsection (a)(4). As the fourth category, IEPA proposed "[n]ational parks which exceed 6,000 acres in size." Prop. 204 at 39.

The Board asked IEPA whether it is necessary to define the term "Federal Class I area" or cite a specific federal regulation addressing those areas. Board Questions at 6 (¶20). IEPA responded that a separate definition is not necessary because this subsection identifies them. PC 1 at 50 (¶20); Tr.1 at 94. IEPA states that this language mirrors 40 C.F.R. § 52.21(e)(1) "and is consistent with the approach to identification of federal Class I areas in 40 CFR 52.21." *Id*.

However, Mr. Romaine testified that the Board's question triggered further scrutiny of this section and "revealed a flaw." Tr.1 at 95; PC 1 at 51 (¶20). Mr. Romaine explained that proposed subsections (b) and (c) refer to redesignation "as provided for in this Part." *Id.*; *see* Prop. 204 at 39. He argues that this is based on federal rules and is appropriate for areas redesignated within Illinois. Tr.1 at 95; PC 1 at 51 (¶20), citing 40 C.F.R. §§ 51.166(e)(2), 51.166 (e)(3), 52.21(e)(2). However, it does not accommodate redesignations that may take place in other states under their own PSD programs and not under Part 204. Tr.1 at 95; PC 1 at 51 (¶20). Although this would not prevent other states from redesignating areas under their own programs, "it would preclude reliance on those new designations of areas for purposes of Part 204." Tr.1 at 96; PC 1 at 51 (¶20). Mr. Romaine argues that, under these circumstances, "Part 204 would not properly serve to prevent significant deterioration of air quality in any state-designated Class I areas outside of Illinois from new major stationary sources or major modifications in Illinois." *Id*.

During the first hearing, IEPA committed to consider possible revisions of Part 204 to address this issue. Tr.1 at 96-97; PC 1 at 51 (¶20). In its post-hearing comments, however, IEPA stated that further review showed that "there are not currently Class I Areas in other states that need to be considered as part of this rulemaking." PC 1 at 51-52 (¶20) (reviewing SIPSs of 12 adjacent or nearby states); PC 2 at 2 (¶1b) (clarifying Wisconsin redesignation). IEPA concluded that "it would be reasonable for Part 204 to simply address the procedural requirements for redesignation by the State of Illinois of area(s) to Class I, as provided for by 40 CFR 51.166(g)." *Id*.

Subsection (b). IEPA proposed that "[a]reas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Part." Prop. 204 at 39; *see* SR at 135.

Subsection (c). IEPA proposed that "[a]ny other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Part." Prop. 204 at 39; *see* SR at 135.

IERG asked IEPA if it envisions "that if a new federal Class I area is designated that would impact permitting in Illinois, that the Agency would need to propose a revision to Part 204 to address that?" Tr.2 at 75. IEPA first responded that current federal Class I areas were generally created by the U.S. Congress under Section 162 of the CAA. PC 2 at 23 (¶1-iii). If there is a federal Class I area created in Illinois or a nearby state that could be affected by a major project in Illinois, then IEPA "expects that Part 204 would need to be revised so that it would address this new area." *Id*. IEPA added that "this revision could be as simple as updating Section 204.100, Incorporations by Reference, so that it refers to a new edition of 40 CFR Part 81," which lists these areas. *Id*.

Subsection (d). IEPA proposed two categories of areas that may be redesignated only as Class I or II as provided in Part 204. Prop. 204 at 39; *see* SR at 135.

Subsection (d)(1). As the first category, IEPA proposed "[a]n area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore." Prop. 204 at 39; *see* SR at 135.

Subsection (d)(2). As the second category, IEPA proposed "[a] national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size." Prop. 204 at 39; *see* SR at 135.

Section 204.930: Redesignation.

Subsection (a). While IEPA's proposal is based on 40 C.F.R. § 52.21(g), it provides that all Illinois areas are Class II as of December 5, 1974, as of the effective date of Part 204. SR at 73; *see* Comp. 204 at 48. "Prior to this date, all areas of Illinois are Class II areas as of December 5, 1974 by means of 40 CFR 52.21." *Id*. at 74, n.67. To avoid a question about the reach of Part 204, IEPA argued that "it is best to expressly provide that while all areas of Illinois are Class II as of December 5, 1974, this designation only took place for purposes of Part 204 as of its initial effective date." *Id*. at 73-74.

IEPA proposed that,

> [a]s of the initial effective date of 35 Ill. Adm. Code 204, all areas of the State (except as provided under Section 204.920) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by Section 204.920) may be proposed by the State or Indian Governing Bodies, as provided below, subject to approval by USEPA as a revision to the applicable SIP. Prop. 204 at 39; *see* SR at 135.

Subsection (b). Noting that the federal rules provide states with authority to redesignate areas as Class I, CARE asked IEPA to comment on whether the present lack of designations is relevant to potential designation. CARE Questions at 2 (¶2b), citing 40 C.F.R. § 52.21(g). Mr. Romaine responded that Section 164(a) of the CAA provides Illinois authority to redesignate areas from Class I to Class II under PSD, and subsection (b) "would act to confirm this

authority." Tr.1at 21. Mr. Romaine added that, while Illinois has not undertaken a redesignation, this "does not show that the state does not have this authority." *Id*.

IEPA proposed six conditions under which "[t]he State may submit to the USEPA a proposal to redesignate areas of the State Class I or Class II." Prop. 204 at 39; *see* SR at 135-136.

Subsection (b)(1). As the first condition, IEPA proposed that "[a]t least one public hearing has been held in accordance with procedures established in 35 Ill. Adm. Code Part 252." Prop. 204 at 40; *see* SR at 135.

Subsection (b)(2). As the second condition, IEPA proposed that "[o]ther States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing." Prop. 204 at 40; *see* SR at 135.

Subsection (b)(3). As the third condition, IEPA proposed that

> [a] discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion. Prop. 204 at 40; *see* SR at 135-136.

Subsection (b)(4). As the fourth condition, IEPA proposed that,

> [p]rior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager). Prop. 204 at 40; *see* SR at 136.

Subsection (b)(5). As the fifth condition, IEPA proposed that "[t]he State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation." Prop. 204 at 40; *see* SR at 136.

Subsection (c). IEPA proposed four conditions under which "[a]ny area other than an area to which Section 204.920 refers may be redesignated as Class III." Prop. 204 at 40; *see* SR at 136.

Subsection (c)(1). As the first condition, IEPA proposed that "[t]he redesignation would meet the requirements of subsection (b) of this Section." Prop. 204 at 40; *see* SR at 136.

Subsection (c)(2). As the second condition, IEPA proposed that

> [t]he redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of Illinois, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation. Prop. 204 at 40; *see* SR at 136.

Subsection (c)(3). As the third condition, IEPA proposed that "[t]he redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any NAAQS." Prop. 204 at 41; *see* SR at 136.

Subsection (c)(4). As the fourth condition, IEPA proposed that

> [a]ny permit application for any major stationary source or major modification, subject to review under Section 204.1120 which could receive a permit under this Section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III. Prop. 204 at 41; *see* SR at 136.

Subsection (d). IEPA proposed that "[l]ands within the exterior boundaries of Indian Reservation may be redesignated only by the appropriate Indian Governing Body. IEPA proposed two conditions under which "[t]he appropriate Indian Governing Body may submit to the USEPA a proposal to redesignate areas Class I, Class II, or Class III." Prop. 204 at 41; *see* SR at 136.

Subsection (d)(1). As the first condition, IEPA proposed that "[t]he Indian Governing Body has followed procedures equivalent to those required of a State under subsections (b), (c)(3), and (c)(4) of this Section." Prop. 204 at 41.

Subsection (d)(2). As the second condition, IEPA proposed that "[s]uch redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation." Prop. 204 at 41.

Subsection (e). IEPA proposed that

> [t]he USEPA shall disapprove, within 90 days of submission, a proposed redesignation of any are only if it finds, after notice and opportunity for public

hearing, that such redesignation does not meet the procedural requirements of this Section or is inconsistent with Section 204.920. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved. Prop. 204 at 41; *see* SR at 136.

Subsection (f). IEPA proposed that, "[i]f the USEPA disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the USEPA." Prop 204 at 41; *see* SR at 136.

Subpart E: Stack Heights

Section 204.1000: Stack Heights.

Subsection (a). IEPA proposed that "[t]he degree of emission limitation required for control of any air pollutant under this Part shall not be affected in any manner by" two factors. Prop. 204 at 41; *see* SR at 137.

Subsection (a)(1). As the first factor, IEPA proposed "[s]o much of the stack height of any source as exceeds good engineering practice." Prop. 204 at 41; *see* SR at 137.

Subsection (a)(2). As the second factor, IEPA proposed "[a]ny other dispersion technique." Prop. 204 at 42; *see* SR at 137.

The Board asked IEPA to clarify whether subsection (a) requires that the degree of emission limitation must not be affected by stack height of any source exceeding good engineering practice under Section 204.420. Board Questions at 7 (¶30); Tr. 1 at 110-11. If so, the Board asked IEPA to provide amended rule language reflecting IEPA's intent. Board Questions at 7 (¶30); Tr. 1 at 110-111. IEPA responded that the Board's understanding of the statement was accurate. IEPA added that "good engineering practice" is defined by proposed Section 204.420. PC 1 at 60 (¶30); Tr. 1 at 111.

Subsection (b). IEPA proposed that "[s]ubsection (a) of this Section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then." Prop. 204 at 42; *see* SR at 137.

Subpart F: Requirements for Major Stationary Sources and Major Modifications in Attainment and Unclassifiable Areas

Participants disputed whether proposed Part 204 should address additional visibility monitoring in Federal Class I areas to follow 40 C.F.R. § 52.21(o)(3). The Board discussed this issue above under "Disputed Issues." *Supra* at 40-44.

Section 204.1100: Control Technology Review.

Subsection (a). IEPA notes that the corresponding federal rule refers to compliance with standards under 40 C.F.R. Parts 60 and 61. SR at 74, citing 40 C.F.R. § 52.21(j). However, the

statuary definition of "BACT" refers to standards established under Section 111 or 112 of the CAA. SR at 74. IEPA argues that, because USEPA adopted Parts 62 and 63 under Sections 111 and 112, it is appropriate to include them as standards with which sources must comply. *Id*.

To be consistent with the statutory definition, IEPA proposed that "[a] major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61, 62 and 63." Prop. 204 at 43; *see* SR at 137; Comp. 204 at 51.

IERG questioned whether proposed requirements in Part 204 differ from the corresponding requirements at 40 C.F.R. § 52.21. IERG Questions at 2 (¶2). IEPA identified this subsection as one instance in which "Part 204 is superficially more stringent than 40 CFR 52.21." PC 1 at 12 (¶2a); *see* Tr.1 at 37-38. IEPA emphasized that referring to Parts 62 and 63 in addition to Parts 60 and 61 maintains consistency with the CAA definition of BACT. *Id*.

Subsection (b). IEPA originally proposed that "[a] new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts." Prop. 204 at 42; *see* SR at 137.

IEPA agreed to the Board's proposed revision (Board Questions at 7 (¶31)) providing that "[a] new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts as defined in Section 204.660." PC 1 at 60 (¶31).

IEPA's proposed definition of "major modification" applies to a significant increase in emissions of a regulated NSR pollutant other than GHGs. Prop. 204 at 18; *see supra* at 85-89. The Board asked IEPA to clarify whether the definition of "Regulated NSR Pollutant" includes GHGs. Board Questions at 7 (¶28). IEPA responded that GHGs are a regulated NSR pollutant pursuant to Section 204.610(d), as GHGs are a pollutant that is otherwise 'subject to regulation' as that term is defined in Section 204.700. PC 1 at 58-59 (¶28). IEPA adds that "Section 204.700 specifically states that '[p]ollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430.'" *Id*. at 59.

Regarding the definition of "major stationary source," IEPA reports that USEPA recently proposed to amend several definitions "to clarify that a stationary source need not obtain a PSD permit simply because it emits or has the potential to emit greenhouse gas emissions above the applicable significant emission rate." SR at 46-47, citing 81 Fed. Reg. 68110 (Oct. 3, 2016). Determining whether a proposed new source is a major source would be based on emission of regulated NSR pollutants other than GHGs. PC 1 at 59 (¶28). However, under subsection (b), "once a proposed new source is major for a regulated NSR pollutant other than GHGs, the BACT requirement also applies to the source for other regulated NSR pollutant(s) for which the source's emissions are significant." *Id*.

Subsection (c). IEPA proposed that

> [a] major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit. Prop. 204 at 42; *see* SR at 137.

Subsection (d). IEPA proposed that,

> [f]or phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source. Prop. 204 at 42; *see* SR at 137-138.

Section 204.1110: Source Impact Analysis. IEPA proposed that "[t]he owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of" two standards. Prop 204 at 42; *see* SR at 138.

Subsection (a). As the first standard, IEPA proposed "[a]ny NAAQS in any air quality control region." Prop. 204 at 42; *see* SR at 138.

The Board asked IEPA to explain the term "air quality region" and whether it should be defined in Subpart B. Board Questions at 7 (¶32). IEPA responded that 40 C.F.R §§ 51.166 and 52.21 do not define the term, so Part 204 does not need to define it to be approved by USEPA. PC 1 at 60 (¶32). However, IEPA states that the definition of "region" at 40 C.F.R.§ 51.100(m) could appropriately be adapted. *Id*. If the Board wishes to provide a definition, it could propose that the term means "an air quality control region as designated by USEPA under Section 107(c) of the Clean Air Act." *Id*.

Subsection (b). As the second standard, IEPA proposed "[a]ny applicable maximum allowable increase over the baseline concentration in any area." Prop. 204 at 42; *see* SR at 138.

The Board asked IEPA whether "maximum allowable increase" refers to an increase over levels established in Sections 204.900 or 204.1200. Board Questions at 7 (¶33). If so, the Board asked whether cross references to those sections would be appropriate. *Id*. IEPA responded that the suggested cross references would be appropriate. PC 1 at 61 (¶33); *see* Tr.1 at 112-13. IEPA proposed to revise subsection (b) to provide that "[a]ny applicable maximum allowable increase, as set forth in Section 204.900 and or Section 204.1200, as applicable, over the baseline concentration in any area." PC 1 at 61 (¶33).

IEPA noted that its original proposal linked subsections (a) and (b) with the conjunction "or." PC 1 at 60 (¶32); *see* Prop. 204 at 42. IEPA stated that this is based on the corresponding federal rules. PC 1 at 60 (¶32), citing 40 C.F.R. §§ 51.166(k), 52.21(l). However, IEPA argued

that "or" suggests that a demonstration must show that increased emissions would not cause or contribute to a violation of only one of the two standards. PC 1 at 60-61 (¶32). IEPA argues that Michigan's SIP-approved PSD rules confirm that demonstrations must show that neither of the two would be violated. *Id*. at 61 (citation omitted). IEPA proposes to delete "or", and the Board's first-notice proposal deletes it. *Id*.

Section 204.1120: Air Quality Models.

Subsection (a). IEPA proposed that "[a]ll estimates of ambient concentrations required under this Section shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models)." Prop. 204 at 43; *see* SR at 138.

Subsection (b). IEPA proposed that,

> [w]here an air quality model specified in 40 CFR Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the USEPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 35 Ill. Adm. Code Part 252. Prop. 204 at 43; *see* SR at 138.

Section 204.1130: Air Quality Analysis.

Subsection (a). IEPA proposed this subsection headed "preapplication analysis." Prop. 204 at 43; *see* SR at 138-39. IEPA's proposal differs from the corresponding federal rule because it does not include certain provisions relating to air quality monitoring data. SR at 75, citing 40 C.F.R. §§ 52.21(m)(1)(v) and (vii). IEPA states that these requirements apply to complete applications submitted during periods that passed more than 30 years ago. SR at 75. Because it is no longer possible to submit an application during those times, IEPA proposed not to include the requirements. *Id*.; *see* Comp. 204 at 52, 53.

IEPA also proposed not to include a provision corresponding to 40 C.F.R. § 52.21(m)(1)(viii), which addresses monitoring of PM_{10} under 40 C.F.R. § 52.21(i)(11)(i) and (ii). SR at 75. IEPA reports that the cross reference to the monitoring provision is incorrect as it addresses $PM_{2.5}$. *Id*. IEPA states that this error originated with reform of NSR rules that redesignated subsection (i)(11) as (i)(8) without correcting the cross reference in 40 C.F.R. § 52.21(m)(1)(viii). *Id*. at 76, citing 67 Fed. Reg. 80186, 80274 (Dec. 2002). IEPA does not propose the exemption provided by redesignated 40 C.F.R. § 52.21(i)(8) because it applies to applications filed more than 30 years ago. SR at 76. IEPA concludes that "there is no need to include provisions of air quality monitoring for a section of 40 CFR 52.21 not proposed for inclusion in Part 204." *Id*; *see* Comp. 204 at 53.

Subsection (a)(1). IEPA proposed that

> [a]ny application for a permit under this Part shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of" specified pollutants. Prop. 204 at 43; *see* SR at 138-139.

Subsection (a)(1)(A). As the first of the pollutants, IEPA proposed that the analysis must address "[f]or the source, each pollutant that it would have the potential to emit in a significant amount." Prop. 204 at 43; *see* SR at 138.

Subsection (a)(1)(B). Second, IEPA proposed that the analysis must address "[f]or the modification, each pollutant for which it would result in a significant net emissions increase." Prop. 2404 at 43; *see* SR at 138-39.

Subsection (a)(2). IEPA proposed that, "[w]ith respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Illinois EPA determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect." Prop. 204 at 43; *see* SR at 139.

Subsection (a)(3). The corresponding federal rule requires that, for each pollutant for which a NAAQS exists, an air quality analysis must include continuous air quality monitoring data for the pollutant, unless the pollutant is nonmethane hydrocarbons. SR at 75, citing 40 C.F.R. § 52.21(m)(1)(iii). IEPA notes that, at the time USEPA adopted the federal rule, there was a NAAQS for nonmethane hydrocarbon. SR at 75, n.68, citing 45 Fed. Reg. 52676 (Aug. 7, 1980). Because there no longer is a NAAQS for that pollutant, "it is not necessary to explicitly exclude nonmethane hydrocarbons from this requirement." SR at 75; *see* Comp. 204 at 52.

Accordingly, IEPA proposed that, "[w]ith respect to any such pollutant for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase." Prop. 204 at 43; *see* SR at 139.

Subsection (a)(4). IEPA proposed that,

> [i]n general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Illinois EPA determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period. Prop. 204 at 43; *see* SR at 139.

Subsection (a)(5). IEPA proposed that "[t]he owner or operator of a proposed stationary source or modification of VOM who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection." Prop. 204 at 44.

Subsection (b). Under the heading "Post-construction monitoring," IEPA proposed that

> [t]he owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Illinois EPA determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area. Prop. 204 at 44; *see* SR at 139.

Subsection (c). Under the heading "Operations of monitoring stations," IEPA proposed that "[t]he owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this Section." Prop. 204 at 44; *see* SR at 139.

Section 204.1140: Additional Impact Analyses.

Subsection (a). IEPA proposed that

> [t]he owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. Prop. 204 at 44; *see* SR at 139.

Subsection (b). IEPA proposed that "[t]he owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification." Prop. 204 at 44; *see* SR at 139.

Subpart G: Additional Requirements for Class I Areas

Section 204.1200: Additional Requirements for Sources Impacting Federal Class I Areas.

IEPA pointed out that subsections (e), (f), and (h) of the Board's proposal for public comment included errors in the use of subscripts. PC 1 at 78. The Board corrects these below in this opinion and in the order.

Subsection (a). Under the heading "Notice to Federal Land Managers," IEPA proposed that

> [t]he Illinois EPA shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal Land Manager and the Federal official with direct responsibility for the management of any lands within any

> such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility on the Federal Class I area. The Illinois EPA shall also provide the Federal Land Manager and such Federal officials with a copy of the preliminary determination required under 35 Ill. Adm. Code Part 252, and shall make available to them any materials used in making that determination, promptly after the Illinois EPA makes such determination. Finally, the Illinois EPA shall also notify all affected Federal Land Managers within 30 days of receipt of any advance notification of any such permit application. Prop 204 at 44-45; *see* SR at 140.

Subsection (b). Under the heading "Federal Land Manager," IEPA proposed that "[t]he Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Illinois EPA, whether a proposed source or modification will have an adverse impact on such values." Prop. 204 at 45; *see* SR at 140; Tr.1 at 26-27 (Romaine testimony).

Subsection (c). Under the heading "Visibility analysis," IEPA proposed that

> [t]he Illinois EPA shall consider any timely analysis performed by the Federal Land Manager, provided within 30 days of the notification required by subsection (a) of this Section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Illinois EPA finds that such an analysis does not demonstrate to the satisfaction of the Illinois EPA that an adverse impact on visibility will result in a Federal Class I area, the Illinois EPA must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained. Prop. 204 at 45; *see* SR at 140.

Subsection (d). Under the heading "Denial—impact on air quality related values," IEPA proposed that

> [t]he Federal Land Manager of any such lands may demonstrate to the Illinois EPA that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values(including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for the Class I area. If the Illinois EPA concurs with such demonstration, then it shall not issue the permit. Prop. 204 at 45; *see* SR at 140.

Subsection (e). Under the heading "Class I variances," IEPA proposed that

> [t]he owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Illinois EPA may, provided that the applicable requirements of this Part are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of SO_2, $PM_{2.5}$, PM_{10}, and NO_x would not exceed" the maximum allowable increases over minor source baseline concentrations for pollutants listed in a table. Prop. 204 at 45-46; *see* SR at 141.

The table lists these increases for $PM_{2.5}$, PM_{10}, SO_2, and NO_2 based variously on the annual arithmetic mean, the 24-hour maximum, and the three-hour maximum. Prop. 204 at 45-46.

Subsection (f). Under the heading "Sulfur dioxide variance by Governor with Federal Land Manager's concurrence," IEPA proposed that

> [t]he owner or operator of a proposed source or modification which cannot be approved under subsection (e) of this Section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for SO_2 for a period of 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Illinois EPA shall issue a permit to such source or modification pursuant to the requirements of subsection (h) of this Section, provided that the applicable requirements of this Part are otherwise met. Prop. 204 at 46; *see* SR at 141.

Subsection (g). Under the heading "Variance by the Governor with the President's concurrence," IEPA proposed that,

> [i]n any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Illinois EPA shall issue a permit pursuant to the requirements of subsection (h) of this Section, provided that the applicable requirements of this Part are otherwise met. Prop. 204 at 46; *see* SR at 141.

Subsection (h). Under the heading "Emission limitations for Presidential or gubernatorial variance," IEPA proposed that,

> [i]n the case of a permit issued pursuant to subsections (f) or (g) of this Section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of SO_2 from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases. . . . Prop. 204 at 46; *see* SR at 142.

The table in subsection (h) lists these increases based on both high and low terrain and for a 24-hour maximum and a three-hour maximum. Prop. 204 at 47.

IEPA also proposed to require that the emissions limitations must "assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period." Prop. 204 at 46.

Subpart H: General Obligations of the Illinois Environmental Protection Agency

Section 204.1300: Notification of Application Completeness to Applicants. IEPA proposed that "[t]he Illinois EPA shall notify the applicant within 30 days of receipt as to the completeness of an application for a permit pursuant to this Part or any deficiency in the application or information submitted in such an application. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Illinois EPA received all required information." Prop. 204 at 47; *see* SR at 77, citing 40 C.F.R. 51.166(q)(1); SR at 142; PC 1 at 61 (¶34a); Comp. 204 at 77. IEPA noted that the CAA does not set a deadline for a completeness demonstration (PC 2 at 38, n.4), and 40 C.F.R. § 52.21 also does not include such a requirement (PC 1 at 19 ¶2b).

IERG asked IEPA whether it intends to issue this notification in writing. Tr.1 at 138-39. IEPA responded that "a written notification addressing application completeness will be provided to the applicant." PC 1 at 76 (¶48).

IERG also asked what the effect would be if IEPA did not issue that notice within 30 days. Tr.1 at 139. IEPA responds that the effect "will depend on the particular circumstances." PC 1 at 76 (¶49). IEPA first argues that failure to notify "would have no impact if the submitted PSD application is patently incomplete." *Id*. IEPA then states that these applications "are commonly submitted in pieces." *Id*. Applicants generally first address applicability before addressing BACT and then air quality impact analyses and then other impacts. *Id*. IEPA stresses that it is not practically possible "to determine that an application is fully complete so as to support issuance of a PSD permit until the technical review of the application is complete." *Id*. IEPA cautions that, even after an applicant has received notification that its application is complete, it should expect requests for additional information to prepare a draft permit for public comment. *Id*. at 77. IEPA concludes that absence of notification becomes an issue only if

> (i) the Agency fails to take timely action on the application within one year, as provided for by Section 204.1330, (ii) the applicant elects to file a petition for review pursuant to Section 105.606, and (iii) the applicant argues in its appeal that the start of the one-year period should be considered to be the date that the Agency should have notified it that the application was complete in accordance with Section 204.1330. *Id*.

However, IEPA acknowledged that, if it fails within 30 days to provide notice of completeness or any deficiency, its "inaction would not be consistent with proposed Section 204.1300." PC 2 at 39 (¶8); *see* Tr.1 at 103.

The Board asked IEPA whether it will notify applicants of "the date on which IEPA determined the application to be complete." Board Questions at 7 (¶34a). IEPA responded that this section requires IEPA within 30 days of receiving an application to notify the applicant that it is complete or that it is deficient. PC 1 at 61 (¶34a); Tr. 1 at 115.

The Board asked IEPA to comment on whether this section should require notification of a complete application that would begin the one-year clock under proposed Section 204.1330. Board Questions at 8 (¶34b). IEPA responded that Section 204.1300 requires IEPA "to *notify* the applicant within 30 days of receipt of an application for a permit pursuant to Part 204 as to the completeness of or deficiency in the application." PC 1 at 61 (¶34b-1) (emphasis in original); Tr.1 at 115-16. IEPA elaborated that, within 30 days of receiving an application, it would appropriately notify the applicant whether it considers the application "to be patently incomplete or to be a partial application, as well as when the submittal contains material fully addressing the applicable requirements." PC 2 at 38-39 (¶6); *see* Tr. 2 at 101.

The Board then asked IEPA whether it would consider the date of that notice to be start of the one-year period under proposed Section 204.1330 for issuance or denial of the permit. Tr.1 at 116.

IEPA acknowledged that, if it determines that an application is complete, then the notification date "would generally begin the one-year period for the Agency to grant or deny a PSD permit." PC 1 at 62 (¶34b-2). However, IEPA argued that "this would not always be the case." *Id*. First, IEPA stated that the rules and circumstances could change after it determines a permit is complete but before it determined whether to grant or deny the permit. *Id*. If USEPA adopts a new NAAQS or redesignates an area from nonattainment to attainment, IEPA suggests that a pending application could become incomplete. *Id*. Second, an applicant may amend its application to reflect substantial revisions or the discovery of a material error. *Id*. In that case, IEPA argues that its original determination of completeness would no longer apply, and it would need to provide a new determination "to reestablish the one-year deadline." *Id*. Third, IEPA states that applicants may request that IEPA suspend review of the application. IEPA reports that it routinely grants those requests, which "stop the one-year review clock." *Id*. Finally, IEPA stresses that PSD permits are generally complex and controversial. "Even after a careful completeness determination has been made, an applicant should expect that it will need to supplement its application with additional information as requested by the permitting authority, to enable the review and processing of the application to continue." *Id*.

If IEPA does not issue a completeness determination or notice of deficiency within 30 days, IERG asked what IEPA would consider the start of the one-year deadline under proposed Section 204.1330. Tr.2 at 99-100. IEPA responded that, if it does not notify the applicant of a deficiency, the applicant "could presume" that the one-year period begins on the date IEPA received the application. PC 2 at 37-38 (¶5). IEPA cautioned that this presumption would not apply "if the submitted application is patently incomplete." *Id*. at 38. IEPA also cautioned that applications are often submitted in stages, so applicants "should not expect action by the Illinois EPA within one year of the date of the initial submittal." *Id*. IEPA elaborated that its technical review of a PSD permit application can reveal certain deficiencies. As one example, IEPA states that evaluating BACT determinations "routinely entails review of and comparison to information that is not in the submitted application." *Id*. IEPA argues that, even if an application is not patently incomplete, "an applicant should not presume that the application is actually complete so as to allow *favorable* action to be taken on the application, much less favorable action to be taken *within one year*. *Id*. (emphasis in original). IEPA adds that applicants "must be prepared to expeditiously supplement or revise its applications" to obtain favorable action within one year. *Id*.

The Board asked IEPA to consider a case in which it notified an applicant that the initial application was deficient, and the applicant then submitted requested documents. IEPA agreed that there would be a second 30-day period for IEPA to notify the applicant whether the revised application is complete. Tr.2 at 96-97. If the revised application is not complete and the applicant submits a second revised application, there "will be another 30-day period and a third notice of completeness or deficiency." *Id*. at 98.

Section 204.1310: Transmittal of Application to USEPA. IEPA proposed language based on 40 C.F.R. § 51.166(p), which provides notice of PSD permit applications to USEPA. SR at 77; *see* Comp. 204 at 57. IEPA notes that 40 C.F.R. § 52.21 does not include a similar requirement. PC 1 at 19 (¶2b). Specifically, IEPA proposed that "[t]he Illinois EPA shall transmit to the USEPA a copy of each permit application submitted pursuant to this Part pertaining to a major stationary source or major modification." Prop. 204 at 47; *see* SR at 142.

IERG noted that "40 CFR 51.166(p) is applicable only to sources impacting Federal Class I areas" and questions whether this section should apply only to applications for sources affecting those areas. IERG Questions 2 at 2 (¶3); Tr.2 at 78-79. IEPA agreed that federal requirement applies only to sources affecting federal Class I areas and that SIP approval likely only requires following 40 C.F.R. § 51.166(p) to that extent. PC 2 at 26 ¶(3-i). However, USEPA Region V expects IEPA to provide it with a copy of each PSD permit application. IEPA adds that it "is prepared to continue this practice which it currently carries out under the delegation agreement," typically by providing a copy at the beginning of the public comment period." *Id*. Based on these factors, IEPA "is not proposing to change this aspect of its original proposal." *Id*.

Section 204.1320: Public Participation. IEPA notes that 40 C.F.R. § 51.166(q) requires public participation during consideration of PSD permit applications. SR at 77. The federal PSD program at 40 C.F.R. § 52.21 "generally makes use of the public participation requirements

of 40 CFR Part 124." PC 1 at 19 (¶2b). IEPA rules address public participation in permitting, including the nonattainment NSR program. SR at 78, citing 35 Ill. Adm. Code 203.150; *see* 35 Ill. Adm. Code 252. IEPA is now amending its rules to include a SIP-approved PSD program. *Id*. IEPA proposed the following language based on 35 Ill. Adm. Code 203.150:

> [p]rior to the initial issuance of a permit pursuant to this Part or a modification of a permit issued pursuant to this Part, the Illinois EPA shall provide, at a minimum, notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing pursuant to the Illinois EPA's public participation procedures set forth at 35 Ill. Adm. Code Part 252. Prop. 204 at 47; *see* SR at 142, Comp. 204 at 57.

Section 204.1330: Issuance Within One Year of Submittal of Complete Application. IEPA proposed a deadline for a final permitting decision that is consistent with the CAA and the Act. SR at 78, citing 415 ILCS 39(f)(3) (2018); *see* Comp. 204 at 57. Specifically, IEPA proposed that, "[w]ithin one year after receipt of a complete application, a permit shall be granted or denied by the Illinois EPA." Prop. 204 at 47; *see* SR at 142.

The Board asked IEPA to comment on "whether the applicant has any recourse if the Agency does not take any action within a year after the receipt of the complete application." Board Questions at 8 (¶34c); *see* Tr.1 at 115-16. IEPA responded that proposed Section 105.604(b) addresses the applicant's right to appeal to the Board. PC 1 at 62-63 (¶34c-1), citing 415 ILCS 5/40.3(a)(1) (2018); *see supra* at 52-54.

CARE asked IEPA to explain its "reasoning for not considering a permit to be denied if a decision is not reached within one years. Tr.1 at 120. IEPA responded that this is not consistent with the Act. IEPA states that Section 39.3 sets a one-year deadline but does not require denial or issuance if IEPA does not taken final action by that time. PC 1 at 65 (¶34c-6), citing 415 ILCS 5.39(f)(3) (2018). IEPA argues that "[t]his is appropriate as permit action under the PSD program should not occur as a result of the permitting authority's failure to act in a timely manner." PC 1 at 65 (¶34c-6). IEPA also argues that this is consistent with USEPA practice, which allows an applicant to request holding consideration of the permit application and reactivating it. *Id.* (citation omitted).

Section 204.1340: Permit Rescission.

Subsection (a). IEPA proposed that "[a]ny permit issued under this Part or a prior version of this Part shall remain in effect, unless and until it expires under Section 204.830 or is rescinded under this Section." Prop. 204 at 47; *see* SR at 143.

Subsection (b). IEPA proposed that "[a]n owner or operator of a stationary source or modification who holds a permit issued under this Part or 40 CFR 52.21 for the construction of a new source or modification that meets the requirement in subsection (c) may request that the Illinois EPA rescind the permit or a particular portion of the permit." Prop. 204 at 47; *see* SR at 143.

Subsection (c). IEPA proposed that "[t]he Illinois EPA may grant an application for rescission if the application shows that this Part would not apply to the source or modification." Prop. 204 at 48; *see* SR at 143.

Subsection (d). IEPA proposed that, "[i]f the Illinois EPA rescinds a permit under this Section, the Illinois EPA shall post a notice of the rescission determination on a public web site identified by the Illinois EPA within 60 days of the rescission." Prop. 204 at 48; *see* SR at 143.

The Board asked IEPA to explain how it would identify the website on which it would post the rescission notice. Board Questions at 8 (¶35). IEPA's response noted that USEPA found electronic notice must be the primary form of public notice for NSR permitting. PC 1 at 66 (¶35a), citing 81 Fed. Reg. 71613 (Oct. 18, 2016); *see* Tr.1 at 121. USEPA specified that notice of rescission must be "posted on the same website that the permitting authority uses to post documents for public comment periods on draft permits. This was required as USEPA found that each permitting authority should have a single, consistent noticing method for all subjects to avoid confusion." PC 1 at 66 (¶35a), citing 81 Fed. Reg. 71613, 71616 (Oct. 18, 2016); *see* Tr.1 at 121-22.

The Board asked IEPA to identify the website on which it will post notices of rescission. Tr.1 at 122. IEPA responded that it will post these notices at https://ww2.illinois.gov/epa/public-notices/boa-notices/Pages/archive.aspx. PC 1 at 66 (¶35b). IEPA cautioned that, "[a]s with any website, the location of this website could change in the future." *Id*.

Subpart I: Nonapplicability Recordkeeping and Reporting

Section 204.1400: Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources. Proposed Part 204 includes recordkeeping and reporting requirements for certain projects at an existing major source "that are determined not to be major modifications." Schnepp Test. at 9. He added that these requirements would apply to projects for which the projected increase in one or more emissions is "50 percent or more of the applicable significant emission rate." *Id*.

Subsection (a). IEPA proposed that,

> [e]xcept as otherwise provided in subsection (f)(2) of this Section, the provisions of this Section apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions unit(s) at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (f) of this Section, that a project that is not a major modification for the pollutant may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(l) through (b)(3) for calculating projected actual emissions. Prop. 204 at 48; *see* SR at 143.

Subsection (b). IEPA proposed that "[b]efore beginning actual construction of the project, the owner or operator shall document and maintain a record" of specified information. Prop. 204 at 48; *see* SR at 143.

Subsection (b)(1). As the first item of information, IEPA proposed "[a] description of the project." Prop. 204 at 48; *see* SR at 143.

Subsection (b)(2). As the second item, IEPA proposed "[i]dentification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project." Prop. 204 at 48; *see* SR at 143.

Subsection (b)(3). As the third item, IEPA proposed

> [a] description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Section 204.600(b)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable. Prop. 204 at 48.

Subsection (c). IEPA proposed that, "[i]f the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (a) of this Section to the Illinois EPA. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Illinois EPA before beginning actual construction." Prop. 204 at 48; *see* SR at 144.

Subsection (d). IEPA proposed that,

> [t]he owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (a)(2) of this Section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit. Prop. 204 at 48-49; *see* SR at 144.

Subsection (e). IEPA proposed that, "if the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA within 60 days after the end of each year during which records must be generated under subsection (c) of this Section setting out the unit's annual emissions during the calendar year that preceded submission of the report." Prop. 204 at 49; *see* SR at 144.

Subsection (f). IEPA proposed that,

> [i]f the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA if the annual emissions, in tons per year, from the project identified in subsection (a) of this Section, exceed the baseline actual emissions (as documented and maintained pursuant to subsection (a)(3) of this Section), by a significant amount (as defined in Section 204.660) for the regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subsection (a)(3) of this Section. Such report shall be submitted to the Illinois EPA within 60 days after the end of such year. Prop. 204 at 49; *see* SR at 144.

IEPA also proposed that the report must contain specified items of information.

Subsection (f)(1). As the first item of information, IEPA proposed "[t]he name, address and telephone number of the major stationary source." Prop. 204 at 49.

Subsection (f)(2). As the second item, IEPA proposed "[t]he annual emissions as calculated pursuant to subsection (c) of this Section." Prop. 204 at 49.

Subsection (f)(3). As the third item, IEPA proposed "[a]ny other information that the owner or operator wishes to include in the report (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection)." Prop. 204 at 49.

Subsection (g). IEPA proposed that "[a] 'reasonable possibility' under this Section occurs when the owner or operator calculates the project to result in" one of two occurrences. Prop. 204 at 49; *see* SR at 144-145.

Subsection (g)(1). As the first of the two occurrences, IEPA proposed "[a] projected actual emissions increase of at least 50 percent of the amount that is a 'significant emissions increase' as defined in Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant." Prop. 204 at 49.

Subsection (g)(2). As the second of the two occurrences, IEPA proposed

> [a] projected actual emissions increase that, added to the amount of emissions excluded under Section 204.600(b)(3), sums to at least 50 percent of the amount that is a 'significant emissions increase,' as defined under Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subsection (f)(2), and not also within the meaning of subsection (f)(l) of this Section, then subsections (b) through (e) of this Section do not apply to the project. Prop. 204 at 49-50.

Subsection (h). IEPA proposed that "[t]he owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the Illinois EPA or USEPA or the general public

pursuant to the requirements contained in Section 39.5(8)(e) of the Act." Prop. 204 at 50; *see* SR at 145.

Subpart J: Innovative Control Technology

Section 204.1500: Innovative Control Technology.

Subsection (a). IEPA proposed that "[a]n owner or operator of a proposed major stationary source or major modification may request the Illinois EPA in writing no later than the close of the comment period under 35 Ill. Adm. Code Part 252 to approve a system of innovative control technology." Prop. 204 at 50; *see* SR at 145.

Subsection (b). IEPA proposed that "[t]he Illinois EPA shall, with the consent of the Governor, determine that the source or modification may employ innovative control technology" if it meets six conditions. Prop. 204 at 50; *see* SR at 145.

IEPA commented that the Board's proposed subsection (b) "includes two subsections (1) and (2). PC 1 at 78. The Board corrects this repetition below in its opinion and order.

Subsection (b)(1). As the first condition, IEPA proposed that "[t]he proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function." Prop. 204 at 50.

Subsection (b)(2). As the second condition, IEPA proposed that "[t]he owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 204.1100(b), by a date specified by the Illinois EPA. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance." Prop. 204 at 50.

Subsection (b)(3). As the third condition, IEPA proposed that "[t]he source or modification would meet the requirements of Sections 204.1100 and 204.1110, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Illinois EPA." Prop. 204 at 50.

Subsection (b)(4). As the fourth condition, IEPA proposed that "[t]he source or modification would not before the date specified by the Illinois EPA" result in one of two occurrences. Prop. 204 at 50.

Subsection (b)(4)(A). As the first of the two occurrences, IEPA proposed that the source or modification would not "[c]ause or contribute to a violation of an applicable NAAQS." Prop. 204 at 50. IEPA argues that this effectively provides that "public health and welfare must be protected during the demonstration period." PC 1 at 67 (¶36), citing 40 C.F.R. § 52.21(v)(2)(iv)(*a*); *see* Tr.1 at 125.

Subsection (b)(4)(B). As the second of the two occurrences, IEPA proposed that the source or modification would not "[i]mpact any area where an applicable increment is known to be violated." Prop. 204 at 50; *see* PC 1 at 67 (¶36), citing 40 C.F.R. § 5.21(v)(iv)(*b*); Tr.1 at 124.

The Board asked IEPA to comment on whether it "needs to ensure that the source does not also cause or contribute to a violation of any maximum allowable increase." Board Questions at 8 (¶36). IEPA responded that subsection (b) reflects 40 C.F.R. § 52.21(v), which does not require that innovative control technology does not result in exceeding applicable PSD increments during the demonstration period for that technology. PC 1 at 67 (¶36); *see* Tr.1 at 123-24.

However, because the rules provide for a limited demonstration period, "any exceedance of an applicable PSD increment must be temporary." PC 1 at 67 (¶36); *see* Tr.1 at 125. At the end of the demonstration, "the applicable PSD increments may not be violated." PC 1 at 67 (¶36), citing 40 C.F.R. § 5.21(v)(iii); *see* Tr.1 at 125. IEPA adds that, "if the innovative control technology fails, a source may be provided with up to three years to meet the PSD requirement for BACT using demonstrated control technology. However, during the further period in which the source is transitioning from innovative to demonstrated control technology, the PSD increments must be met." PC 1 at 67 (¶36), citing 40 C.F.R. § 52.21(v)(iv)(*b*); *see* Tr.1 at 125-26.

Subsection (b)(5). As the fifth condition, IEPA proposed that "[a]ll other applicable requirements including those for public participation have been met." Prop. 204 at 50.

Subsection (b)(6). As the sixth condition, IEPA proposed that "[t]he provisions of Section 204.1200 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification." Prop. 204 at 51.

Subsection (c). IEPA proposed that "[t]he Illinois EPA shall withdraw any approval to employ a system of innovative control technology made under this Section" under three circumstances. Prop. 204 at 51; *see* SR at 145.

Subsection (c)(1). As the first circumstance, IEPA proposed that "[t]he proposed system fails by the specified date to achieve the required continuous emissions reduction rate." Prop. 204 at 51.

Subsection (c)(2). As the second circumstance, IEPA proposed that "[t]he proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety." Prop. 204 at 51.

Subsection (c)(3). As the third circumstance, IEPA proposed that "[t]he Illinois EPA decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety." Prop. 204 at 51.

Subsection (d). IEPA proposed that,

> [i]f a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (c), the Illinois EPA may allow the source or modification up to an additional 3 years to meet the requirement for the application of BACT through the use of a demonstrated system of control. Prop. 204 at 51; *see* SR at 145.

Subpart K: Plantwide Applicability Limitation (PAL)

IEPA proposed "a system for establishing and applying PALs which will avoid triggering review under the PSD program for certain modifications implemented by an existing major source." SR at 146.

In Subpart K, IEPA proposed to reflect changes recently proposed by USEPA in response to federal court decisions. SR at 79 (citations omitted). Because a source must be an existing major source to be eligible for a PAL permit, and a source is not subject to PSD based only on its GHG emissions, USEPA proposed to remove the ability of a source that is major only for GHGs to obtain a GHG PAL. USEPA also propose "to ensure that a source establishing a GHG PAL retains its ability to be a minor source." USEPA also proposed to amend PAL provisions so 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 for another NSR pollutant." SR at 79, citing 81 Fed. Reg. 68110 (Oct. 3, 2016).

IEPA proposed PAL requirements in a series of sections rather than the single lengthy section in the federal rules. SR at 78, citing 40 C.F.R. § 52.21(aa). IEPA argues that this organization makes Subpart K "a more coherent series of requirements." *Id.*; *see* Comp. 204 at 61-80.

Section 204.1600: Applicability.

Subsection (a). IEPA proposed that "[t]he Illinois EPA may approve the use of an actuals PAL for any existing major stationary source if the PAL meet the requirements in this Subpart. The term 'PAL' shall mean 'actuals PAL' throughout this Subpart." Prop. 204 at 51; *see* SR at 146.

Subsection (b). IEPA proposed that "[a]ny physical change or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Subpart, and complies with the PAL permit" achieves three results. Prop. 204 at 51; *see* SR at 146.

Subsection (b)(1). As the first result, IEPA proposed that the change "[i]s not a major modification for the PAL pollutant." Prop. 204 at 51; *see* SR at 146.

Subsection (b)(2). As the second result, IEPA proposed that the change "[d]oes not have to be approved through the major NSR program." Prop. 204 at 51; *see* SR at 146.

Subsection (b)(3). As the third result, IEPA proposed that the change "[i]s not subject to the provisions in Section 204.850 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program)." Prop. 204 at 51; *see* SR at 146.

Subsection (c). IEPA proposed that, "[e]xcept as provided under subsection (b)(2) of this Section, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements established prior to the effective date of the PAL." Prop. 204 at 51-52; *see* SR at 146.

Section 204.1610: Definitions. IEPA proposed to place the definitions applicable only to PALs in Subpart K rather than Subpart B, which includes definitions relevant to the entire PSD program. SR at 78, citing 40 C.F.R. § 52.21(b).

IEPA proposed that, "[f]or purposes of this Subpart, the definitions in Sections 204.1620 through 204.1780 apply. When a term is not defined in these sections, it shall have the meaning given in this Part, Part 211, or in the CAA. Prop. 204 at 52; *see* SR at 146.

Section 204.1620: Actuals PAL. IEPA proposed that "[a]ctuals PAL" "for a major stationary source means a PAL based on the baseline actual emissions (as defined in Section 204.240) of all emission units (as defined in Section 204.370) at the source, that emit or have the potential to emit the PAL pollutant." Prop. 204 at 52; *see* SR at 146.

Section 204.1630: Allowable Emissions. Under the proposed definition of "potential to emit" at Section 204.560, the limitations that can be considered when determining potential to emit may be either "legally and practically enforceable by a state or local air pollution agency" or "federally enforceable." SR at 79. IEPA argues that this definition need not include federal language providing that, for PALs, limitations that may be considered may be "enforceable as a practical matter" as well as federally enforceable. *Id*., citing 40 C.F.R. § 52.21(aa)(2)(ii)(*b*); *see* Comp. 204 at 63.

Accordingly, IEPA proposed that "[a]llowable emissions" means "'allowable emissions' as defined in Section 204.230, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit." Prop. 204 at 52; *see* SR at 147; *supra* at 94 (addressing enforceability 'as a practical matter').

Section 204.1640: Continuous Emissions Monitoring System (CEMS). IEPA proposed that "'[c]ontinuous emissions monitoring system' or 'CEMS' means all of the equipment that may be required to meet the data acquisition and availability requirements of this Part to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis." Prop 204 at 52; *see* SR at 147.

Section 204.1650: Continuous Emissions Rate Monitoring System (CERMS). IEPA proposed that "'[c]ontinuous emissions monitoring system' or 'CERMS' means the total

equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time)." Prop. 204 at 52; *see* SR at 147.

Section 204.1660: Continuous Parameter Monitoring System (CPMS). IEPA proposed that "'[c]ontinuous parameter monitoring system' or 'CPMS' means all of the equipment necessary to meet the data acquisition and availability requirements of this Part to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis." Prop. 204 at 52; *see* SR at 147.

Section 204.1670: Lowest Achievable Emission Rate (LAER). The federal definition of LAER at 40 C.F.R. § 52.21(b)(53) refers to 40 C.F.R. § 51.165(a)(1)(xiii), which provides that "LAER will be the most stringent SIP emission limitation for any class or category of stationary source unless *the owner or operator of the proposed stationary source* demonstrates that the limitation is not achievable." SR at 80, n.71 (emphasis in original). Illinois' SIP-approved nonattainment NSR program provides that "LAER will be the most stringent SIP emission limitation for any class or category of stationary source unless *it is* demonstrated that the limitation is not achievable." *Id*., citing 35 Ill. Adm. Code 203.301(a)(1). IEPA adds that, while both provisions prohibit emissions in excess of amounts established by an applicable new source performance standard, "Section 203.301(a)(2) clarifies that these are new source performance standards adopted by the USEPA, which are made applicable under Illinois law pursuant to Section 9.1(d) of the Act. SR at 80, n.71. IEPA concludes that the two definitions are substantially the same, and it proposes a definition based on the Illinois program. SR at 80; Comp. 204 at 64.

Specifically, IEPA proposed that "'[l]owest achievable emission rate' or 'LAER' shall have the meaning given by the provisions at 35 Ill. Adm. Code 203.301(a). Prop. 204 at 52; *see* SR at 147.

Section 204.1680: Major Emission Unit. When USEPA first promulgated PAL rules, it adopted one set of rules for both PSD and nonattainment areas. SR at 81, citing 67 Fed. Reg. 80186 (Dec. 31, 2002). Since proposed Part 204 deals solely with attainment areas, IEPA proposes to strike language specific to nonattainment areas. SR at 81, citing 40 C.F.R. § 52.21(aa)(2)(iv); *see* Comp. 204 at 65.

Specifically, IEPA proposed that "'[m]ajor emission unit' means any emissions unit that emits or has the potential to emit 100 tpy or more of the PAL pollutant in an attainment area." Prop. 204 at 53; *see* SR at 148.

Section 204.1690: Plantwide Applicability Limitation (PAL). IEPA proposed that "'[p]lantwide applicability limitation' or ('PAL') means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG emission limitation for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subpart." Prop. 204 at 53; *see* SR at 148.

Section 204.1700: PAL Effective Date. IEPA proposed that "'PAL effective date' generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of a PAL major modification becomes operational and begins to emit the PAL pollutant." Prop. 204 at 53; *see* SR at 148.

Section 204.1710: PAL Effective Period. IEPA proposed that "'PAL effective period' means the period beginning with the PAL effective date and ending 10 years later." Prop. 204 at 53; *see* SR at 148.

Section 204.1720: PAL Major Modification. IEPA proposed that "'PAL major modification' means, notwithstanding Sections 204.490 and 204.550 (the definitions for major modification, and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL." Prop. 204 at 53; *see* SR at 148.

Section 204.1730: PAL Permit. IEPA proposed that "'PAL permit' means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the SIP, or the CAAPP permit issued by the Illinois EPA that establishes a PAL for a major stationary source." Prop. 204 at 53; *see* SR at 149.

Section 204.1740: PAL Pollutant. IEPA proposed that "'PAL pollutant' means the pollutant for which a PAL is established at a major stationary source." Prop. 204 at 53; *see* SR at 149.

Section 204.1750: Predictive Emissions Monitoring System (PEMS). IEPA proposed that "'[p]redictive emissions monitoring system' or 'PEMS' means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis." Prop. 204 at 53-54; *see* SR at 149.

Section 204.1760: Reasonably Achievable Control Technology (RACT). The federal definition of RACT at 40 C.F.R. § 52.21(b)(54) refers to 40 C.F.R. § 51.100(o), and IEPA proposes to include the language of that provision in this definition. SR at 81-82; *see* Comp. 204 at 66.

Specifically, IEPA proposed that "'Reasonably Available Control Technology' or 'RACT' means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account" three specified factors. Prop. 204 at 54; *see* SR at 149.

Subsection (a). As the first factor, IEPA proposed "[t]he necessity of imposing such controls in order to attain and maintain a national ambient air quality standard." Prop. 204 at 54.

Subsection (b). As the second factor, IEPA proposed "[t]he social, environmental, and economic impact of such controls." Prop. 204 at 54.

Subsection (c). As the third factor, IEPA proposed "[a]lternative means of providing for attainment and maintenance of such standard." Prop. 204 at 54.

Section 204.1770: Significant Emissions Unit. IEPA proposed that "'[s]ignificant emissions unit' means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Section 204.660 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify as a major emissions unit as defined in Section 204.1680." Prop. 204 at 54; *see* SR at 149.

Section 204.1780: Small Emissions Unit. IEPA proposed that "'[s]mall emissions unit' means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Section 204.660 or in the CAA, whichever is lower." Prop. 204 at 54; *see* SR at 150.

Section 204.1790: Permit Application Requirements. IEPA proposed that, "[a]s part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit" specified items of information to IEPA for approval. Prop. 204 at 54; *see* SR at 150.

Subsection (a). As the first item, IEPA proposed "[a] list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit." Prop. 204 at 54; *see* SR at 150.

Subsection (b). As the second item, IEPA proposed "[c]alculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction." Prop. 204 at 54.

Subsection (c). As the third item, IEPA proposed that "[t]he calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Section 204.1890(a)." Prop. 204 at 54-55.

Section 204.1800: General Requirements for Establishing a PAL.

Subsection (a). IEPA proposed that "[t]he Illinois EPA is allowed to establish a PAL at a major stationary source, provided that at a minimum," it meets seven specified requirements. Prop. 204 at 55; *see* SR at 150.

The Board asked IEPA whether its proposed language means that it would have "discretion on whether to grant a PAL application at a major stationary source." Board Questions at 8 (¶38b-i). IEPA responded that it would have this discretion, which it argues is consistent with federal rules. PC 1 at 68 (¶38bi-1), citing 40 C.F.R. §§ 51.166(w)(4)(i),

52.21(aa)(4)(i). IEPA stressed that this also consistent with proposed Section 204.1600(a), which provides that IEPA "may approve the use of an Actuals PAL." PC 1 at 68 (¶38bi-1), citing 40 C.F.R. §§ 51.166(w)(1)(i), 52.21(aa)(1)(i); *see* Prop. 204 at 51. IEPA added that it would not object to revised language requiring its action on an application. PC 1 at 68-69 (¶38bi-1). IEPA argues that this would not jeopardize SIP approval, because "any PAL permit that would be issued would be required to comply with relevant requirements for PAL permits." *Id*. at 69; Tr. 2 at 99; PC 2 at 37 (¶4).

The Board asked IEPA whether a PAL application limits the scope of IEPA's review of eligible PAL pollutants. Board Questions at 8 (¶38b-ii). IEPA responded that its "review of the application would be limited to those pollutants sought to be covered by the PAL permit. PC 1 at 70 (¶38bi-2); Tr.1 at 130. When evaluating a PAL permit application, IEPA stated that it would apply the Subpart K requirements. PC 1 at 70 (¶¶38bi-ii, 38b-iii); Tr.1 at 131. IEPA added that its proposal did not need to include additional criteria, as Subpart K is consistent with the federal rules. PC 1 at 70 (¶38bi-iii); Tr.1 at 131-32, citing 40 C.F.R. §§ 51.166(w), 52.21(aa).

Responding to a Board question, IEPA stated that, under proposed Section 204.670, a GHG PAL does not apply "only in the event of a 'significant emissions increase' of GHG emissions." Board Questions at 8 (¶38c); PC 1 at 70 (¶38c). IEPA elaborated that "[t]he owner or operator of a major source would apply for a PAL permit for GHGs or any other regulated NSR pollutant as a preemptive measure so that PSD permits would not be required for possible future projects at the source." PC 1 at 70 (¶38c); Tr.1 at 133.

Subsection (a)(1). IEPA pointed out that this subsection did not use a subscript in the term "CO_2e." PC 1 at 78. The Board has corrected this below in this opinion and in the order.

As the first requirement, IEPA proposed that

> [t]he PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL. Prop. 204 at 55; *see* SR at 150.

Subsection (a)(2). As the second requirement, IEPA proposed that "[t]he PAL shall be established in a PAL permit that meets the public participation requirements in Section 204.1810." Prop. 204 at 55; *see* SR at 150.

Subsection (a)(3). As the third requirement, IEPA proposed that "[t]he PAL permit shall contain all the requirements of Section 204.1830." Prop. 204 at 55; *see* SR at 150.

Subsection (a)(4). As the fourth requirement, IEPA proposed that "[t]he PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source." Prop. 204 at 55; *see* SR at 150.

Subsection (a)(5). As the fifth requirement, IEPA proposed that "[e]ach PAL shall regulate emissions of only one pollutant." Prop. 204 at 55; *see* SR at 150.

The Board asked IEPA whether an owner or operator specifies the NSR pollutant that is the subject of its application or whether the application must address "all potential NSR pollutants." Board Questions at 8 (¶38a). IEPA responded that the applicant must specify the pollutant addressed in its application but "need not address other pollutants to satisfy the Permit Application Requirements in Section 204.1790." PC 1 at 68 (¶38a); Tr.1 at 127. IEPA added that under proposed Section 204.1790(b), the application must include "calculations of the baseline actual emissions for the PAL pollutant (with supporting documentation)." *Id*.

Subsection (a)(6). As the sixth requirement, IEPA proposed that "[e]ach PAL shall have a PAL effective period of 10 years." Prop. 204 at 55; *see* SR at 150.

Subsection (a)(7). As the seventh requirement, IEPA proposed that "[t]he owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Sections 204.1880 through 204.1900 for each emissions unit under the PAL through the PAL effective period." Prop. 204 at 55; *see* SR at 150.

Subsection (b). IEPA proposed that "[a]t no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets pursuant to 35 Ill. Adm. Code Part 203 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL." Prop. 204 at 55; *see* SR at 151.

Section 204.1810: Public Participation Requirements. IEPA proposed that

> PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 35 Ill. Adm. Code Part 252. This includes the requirement that the Illinois EPA provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Illinois EPA must address all material comments before taking final action on the permit. Prop. 204 at 55-56; *see* SR at 151.

Section 204.1820: Setting the 10-Year Actuals PAL Level.

Subsection (a). IEPA pointed out that this subsection of the Board's proposal for public comment included errors in the use of subscripts. PC 1 at 78. The Board corrects these below in its opinion and order.

IEPA proposed that,

> [e]xcept as provided in subsection (b) of this Section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in Section 204.240) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under Section 204.660 or under the CAA, whichever is lower." When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Illinois EPA shall specify a reduced PAL level(s) in tons per year (or tons per year $C0_2e$ for a GHG PAL) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Illinois EPA is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s). Prop. 204 at 56; *see* SR at 151.

Responding to a Board question about the subsection's reference to "the plan," IEPA confirmed that the term refers to the SIP. Board Questions at (¶39); PC 1 at 70 (¶39); Tr.1 at 133-34.

Subsection (b). IEPA proposed that, "[f]or newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (a) of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units." Prop. 204 at 56; *see* SR at 151.

Section 204.1830: Contents of a PAL Permit. As originally proposed by IEPA, this section included only a single section. IEPA stated that it would be acceptable to make subsection (a) a preamble and then redesignate subsections (a)(1) through (a)(10) as subsections (a) through (j). Board Questions at 9 (¶40); PC 1 at 70-71 (¶40)

IEPA proposed that "[t]he PAL permit must contain, at a minimum," ten specified items of information. Prop. 204 at 56; *see* SR at 151.

Subsection (a). IEPA pointed out that this subsection of the Board's proposal for public comment included an error in the use of the subscript in the term "CO_2e.". PC 1 at 78. The Board corrects this below in its opinion and order.

As the first item, IEPA proposed "[t]he PAL pollutant and the applicable source-wide emission limitation in tons per year, or tons per year $C0_2e$ for a GHG PAL." Prop. 204 at 56; *see* SR at 151.

Subsection (b). As the second item. IEPA proposed "[t]he PAL permit effective date and the expiration date of the PAL (PAL effective period)." Prop. 204 at 56; *see* SR at 151.

Subsection (c). As the third item, IEPA proposed "[s]pecification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Section 204.1860 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Illinois EPA." Prop. 204 at 57; *see* SR at 151.

Subsection (d). As the fourth item, IEPA proposed "[a] requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions." Prop. 204 at 57; *see* SR at 151.

Subsection (e). As the fifth item, IEPA proposed "[a] requirement that, once the PAL expires, the major stationary source is subject to the requirements of Section 204.1850." Prop. 204 at 57; *see* SR at 151-52.

Subsection (f). As the sixth item, IEPA proposed "[t]he calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by Section 204.1890(a)." Prop. 204 at 57; *see* SR at 152.

Subsection (g). As the seventh item, IEPA proposed "[a] requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Section 204.1880." Prop. 204 at 57; *see* SR at 152.

Subsection (h). As the eighth item. IEPA proposed "[a] requirement to retain the records required under Section 204.1890 on site. Such records may be retained in an electronic format." Prop. 204 at 57; *see* SR at 152.

Subsection (i). As the ninth item, IEPA proposed "[a] requirement to submit the reports required under Section 204.1900 by the required deadlines." Prop. 204 at 57; *see* SR at 152.

Subsection (j). As the tenth item, IEPA proposed "[a]ny other requirements that the Illinois EPA deems necessary to implement and enforce the PAL." Prop. 204 at 57; *see* SR at 152.

Section 204.1840: Effective Period and Reopening a PAL Permit. IEPA proposed that [t]he requirements in subsections (a) and (b) apply to actuals PALs." Prop. 204 at 57; *see* SR at 152.

Subsection (a). With the heading "PAL effective period," IEPA proposed that "[t]he Illinois EPA shall specify a PAL effective period of 10 years." Prop. 204 at 57; *see* SR at 152.

The Board asked IEPA whether all PAL permits will have a 10-year duration or whether 10 years is a maximum duration. Board Questions at 9 (¶41). IEPA responded that "PAL permits will have a 10-year effective period." PC 1 at 71 (¶41); Tr.1 at 135. IEPA added that it proposed a 10-year duration to be consistent with federal rules. *Id*., citing 40 C.F.R. §§ 51.166(w)(i)(4)(*f*); 52.21(aa)(4)(i)(*f*).

Subsection (b). Under the heading "Reopening of the PAL permit," IEPA proposed various requirements. Prop. 204 at 57-58; *see* SR at 152.

Subsection (b)(1). IEPA proposed that, "[d]uring the PAL effective period, the Illinois EPA must reopen the PAL permit" for three specified purposes. Prop. 204 at 57; *see* SR at 152.

The Board asked IEPA whether reopening a PAL permit is always initiated by IEPA or whether a permittee may request that IEPA reopen it. Board Questions at 9 (¶42). IEPA responded that the proposal allows either IEPA or the applicant to do so under specific circumstances. Under subsection (b)(1)(B), IEPA "must reopen the PAL permit to reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets" under Part 203. Since that occurs as part of a new project, IEPA could initiate the reopening. PC 1 at 71 (¶42); Tr.1 at 136. Under subsection (b)(1)(C), IEPA reopens the PAL Permit to revise the PAL to reflect an increase. Since the owner or operator is required to submit an application to request an increase in the PAL limit, this reopening would be initiated by the applicant. PC 1 at 71 (¶42); Tr.1 at 135-36.

Subsection (b)(1)(A). As the first purpose, IEPA proposed reopening the PAL permit to "[c]orrect typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL." Prop. 204 at 57.

Subsection (b)(1)(B). As the second purpose, IEPA proposed reopening the PAL permit to "[r]educe the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets pursuant to 35 Ill. Adm. Code Part 203." Prop. 204 at 58.

Subsection (b)(1)(C). As the third purpose, IEPA proposed reopening the PAL permit to "[r]evise the PAL to reflect an increase in the PAL as provided under Section 204.1870." Prop. 204 at 58.

Subsection (b)(2). IEPA proposed that "[t]he Illinois EPA shall have discretion to reopen the PAL permit" for three specified purposes. Prop. 204 at 58.

Subsection (b)(2)(A). As the first purpose, IEPA proposed that the IEPA has discretion to reopen the PAL permit to "[r]educe the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date." Prop. 204 at 58.

Subsection (b)(2)(B). As the second purpose, IEPA proposed that the IEPA has discretion to reopen the PAL permit to "[r]educe the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Illinois EPA may impose on the major stationary source under the SIP." Prop. 204 at 58.

Subsection (b)(2)(C). As the third purpose, IEPA proposed that the IEPA has discretion to reopen the PAL permit to "[r]educe the PAL if the Illinois EPA determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public." Prop. 204 at 58.

Subsection (c). IEPA proposed that, "except for the permit reopening in subsection (b)(1)(A) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Section 204.1810." Prop 204 at 58; *see* SR at 152.

Section 204.1850: Expiration of a PAL. IEPA proposed that "[a]ny PAL that is not renewed in accordance with the procedures in Section 204.1860 shall expire at the end of the PAL effective period," and five specified requirements will apply. Prop. 204 at 58.

Subsection (a). As the first requirement, IEPA proposed that "[e]ach emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subsections (a)(l) and [a](2)." Prop. 204 at 58; *see* SR at 152.

Subsection (a)(1). As the first procedure, IEPA proposed that,

> [w]ithin the time frame specified for PAL renewals in Section 204.1860(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Illinois EPA) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Section 204.1860(e), such distribution shall be made as if the PAL had been adjusted. Prop. 204 at 58-59.

Subsection (a)(2). As the second procedure, IEPA proposed that "[t]he Illinois EPA shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Illinois EPA determines is appropriate." Prop. 204 at 59.

Subsection (b). As the second requirement, IEPA proposed that "[e]ach emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Illinois EPA 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." Prop. 204 at 59; *see* SR at 153.

Subsection (c). As the third requirement. IEPA proposed that, "[u]ntil the Illinois EPA issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (a)(2) of this Section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation." Prop. 204 at 59; *see* SR at 153.

Subsection (d). As the fourth requirement, IEPA proposed that "[a]ny physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in Section 204.490." Prop. 204 at 59; *see* SR at 153.

Subsection (e). As the fifth requirement, IEPA proposed that

> [t]he major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Section 204.850, but were eliminated by the PAL in accordance with the provisions in Section 204.1600(b)(3)." Prop. 204 at 59; *see* SR at 153.

Section 204.1860: Renewal of a PAL.

Subsection (a). IEPA proposed that

> [t]he Illinois EPA shall follow the procedures specified in Section 204.1810 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Illinois EPA. Prop. 204 at 59; *see* SR at 153.

Subsection (b). With the heading "Application deadline," IEPA proposed that

> [a] major stationary source owner or operator shall submit a timely application to the Illinois EPA to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within

this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued. Prop. 204 at 59-60; *see* SR at 153-54.

Subsection (c). IEPA proposed that "[t]he application to renew a PAL permit shall contain the information required in subsections (c)(l) through (4) of this Section." Prop. 204 at 60; *see* SR at 154.

Subsection (c)(1). IEPA proposed that the renewal application must contain "[t]he information required in Section 204.1790(a) through (c)." Prop. 204 at 60.

Subsection (c)(2). IEPA proposed that the renewal application must contain "[a] proposed PAL level." Prop. 204 at 60.

Subsection (c)(3). IEPA proposed that the renewal application must contain "[t]he sum of the potential to emit of all emissions units under the PAL (with supporting documentation)." Prop. 204 at 60.

Subsection (c)(4). IEPA proposed that the renewal application must contain "[a]ny other information the owner or operator wishes the Illinois EPA to consider in determining the appropriate level for renewing the PAL." Prop. 204 at 60.

Subsection (d). With the heading "PAL adjustment," IEPA proposed that, "[i]n determining whether and how to adjust the PAL, the Illinois EPA shall consider the options outlined in subsections (d)(l) and (2) of this Section. However, in no case may any such adjustment fail to comply with subsection (d)(3) of this Section." Prop. 204 at 60; *see* SR at 154.

Subsection (d)(1). IEPA proposed that, "[i]f the emissions level calculated in accordance with Section 204.1820 is equal to or greater than 80 percent of the PAL level, the Illinois EPA may renew the PAL at the same level without considering the factors set forth in subsection (d)(2) of this Section." Prop. 204 at 60; *see* SR at 154.

Subsection (d)(2). IEPA proposed that "[t]he Illinois EPA may set the PAL at a level it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Illinois EPA in its written rationale." Prop. 204 at 60; *see* SR at 154.

Subsection (d)(3). IEPA proposed two action it may take "[n]otwithstanding subsections (d)(1) and (2).

Subsection (d)(3)(A). First, IEPA proposed that, "[n]otwithstanding subsections (d)(l) and (2) of this Section, "[i]f the potential to emit of the major stationary source is less than the PAL, the Illinois EPA shall adjust the PAL to a level no greater than the potential to emit of the source." Prop. 204 at 60; *see* SR at 154.

Subsection (d)(3)(B). Second, IEPA proposed that, "[n]otwithstanding subsections (d)(l) and (2) of this Section, "[t]he Illinois EPA shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Section 204.1870 (increasing a PAL)." Prop. 204 at 60; *see* SR at 154.

Subsection (e). IEPA proposed that, "[i]f the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Illinois EPA has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or CAAPP permit renewal, whichever occurs first." Prop. 204 at 61; *see* SR at 154.

Section 204.1870: Increasing the PAL During the PAL Effective Period.

Subsection (a). IEPA proposed that "[t]he Illinois EPA may increase a PAL emission limitation only if the major stationary source complies with" four specified requirements. Prop. 204 at 61; *see* SR at 154-55.

Subsection (a)(1). As the first requirement, IEPA proposed that "[t]he owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL." Prop. 204 at 61; *see* SR at 154-55.

The Board asked IEPA whether the "complete application" refers only to the requirements of this section or whether the requirements of Sections 204.1790 and 204.1830 also apply. Board Questions at 9 (¶43). IEPA responded that subsection (a)(1) does not relieve an applicant from the requirement of Section 204.1790 "to have a complete and up-to-date permit application when making a request to increase a PAL during the PAL effective permit." PC 1 at 71 (¶43); Tr.1 at 137.

IEPA clarified that approving a PAL increase under this section should not be considered a renewal extending the effective period of the PAL. "[T]he information required under Section 204.1870 would not necessarily satisfy the requirements for Renewal of a PAL under Section 204.1860." PC 1 at 71 (¶43); Tr.1 at 137. IEPA added that "nothing in Section 204.1870 forecloses increasing the PAL during the PAL effective period at the same time as a renewal of a PAL in Section 204.1860." *Id*.

Subsection (a)(2). As the second requirement, IEPA proposed that,

> [a]s part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new

> BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply. Prop. 204 at 61; *see* SR at 155.

Subsection (a)(3). As the third requirement, IEPA proposed that

> [t]he owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (a)(l) of this Section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL. Prop. 204 at 61; *see* SR at 155.

Subsection (a)(4). As the fourth requirement, IEPA proposed that "[t]he PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant." Prop. 204 at 61; *see* SR at 155.

Subsection (b). IEPA proposed that

> [t]he Illinois EPA shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2)), plus the sum of the baseline actual emissions of the small emissions units. Prop. 204 at 61-62; *see* SR at 155.

Subsection (c). IEPA proposed that "[t]he PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Section 204.1810." Prop. 204 at 62; *see* SR at 155.

Section 204.1880: Monitoring Requirements.

Subsection (a). Under the heading "General requirements," IEPA proposed four subsections. Prop. 204 at 62; *see* SR at 155-56.

Subsection (a)(1). IEPA pointed out that this subsection of the Board's proposal for public comment included an error in the use of the subscript in the term "CO_2e." PC 1 at 78. The Board corrects this below in its opinion and order.

IEPA proposed that

> [e]ach PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time, or in CO_2e per unit of time for a GHG PAL. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit. Prop. 204 at 62; *see* SR at 155.

Subsection (a)(2). IEPA proposed that "[t]he PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsection (b)(l) through (4) of this Section and must be approved by the Illinois EPA." Prop. 204 at 62; *see* SR at 155-156.

Subsection (a)(3). IEPA proposed that, "[n]otwithstanding subsection (a)(2) of this Section, the owner or operator may also employ an alternative monitoring approach that meets subsection (a)(l) of this Section if approved by the Illinois EPA." Prop. 204 at 62.

Subsection (a)(4). IEPA proposed that "[f]ailure to use a monitoring system that meets the requirements of this Section renders the PAL invalid." Prop. 204 at 62.

If a PAL is rendered invalid under this subsection, the Board asked IEPA to clarify whether the source becomes subject to enforcement or whether IEPA would establish allowable emission limitations in a revised permit. Board Questions at 9 (¶44).

IEPA first responded that this subsection addresses required monitoring for emission of one or more PAL pollutants and "is not directly linked to expiration of a PAL without renewal." PC 1 at 72 (¶44). IEPA added that a response to this question depends on specific circumstances. A source could request early termination of the PAL under the expiration provisions at Section 204.1850. Termination could also result from enforcement for failure to use required monitoring. The source then could resume the required monitoring or request a permit revision to change its monitoring requirements. Beyond these examples, IEPA declined to describe how it might exercise its discretion to enforce program requirements. *See id*.

Subsection (b). Under the heading "minimum performance requirements for approved monitoring approaches," IEPA proposed to specify acceptable general monitoring approaches, "when conducted in accordance with the minimum requirements in subsections (c) through (i) of this Section." Prop. 204 at 62; *see* SR at 156.

Subsection (b)(1). As the first acceptable approach, IEPA proposed "[m]ass balance calculations for activities using coatings or solvents." Prop. 204 at 62.

Subsection (b)(2). As the second acceptable approach, IEPA proposed "CEMS." Prop. 204 at 62.

Subsection (b)(3). As the third acceptable approach, IEPA proposed "CPMS or PEMS." Prop. 204 at 62.

Subsection (b)(4). As the fourth acceptable approach, IEPA proposed "[e]mission factors." Prop. 204 at 62.

Subsection (c). Under the heading "Mass balance calculations," IEPA proposed that "[a]n owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents" shall meet three specified requirements. Prop. 204 at 63; *see* SR at 156.

Subsection (c)(1). As the first requirement, IEPA proposed that an owner or operator shall "[p]rovide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit." Prop. 204 at 63.

Subsection (c)(2). As the second requirement, IEPA proposed that an owner or operator shall "[a]ssume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process." Prop. 204 at 63.

Subsection (c)(3). As the third requirement, IEPA proposed that an owner or operator shall,

> [w]here the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Illinois EPA determines there is site-specific data or a site-specific monitoring program to support another content within the range. Prop. 204 at 63.

Subsection (d). Under the heading "CEMS," IEPA proposed that "[a]n owner or operator using CEMS to monitor PAL pollutant emissions" shall meet two specified requirements. Prop. 204 at 63; *see* SR at 156.

Subsection (d)(1). As the first requirement, IEPA proposed that "CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B." Prop. 204 at 63.

Subsection (d)(2). As the second requirement, IEPA proposed that "CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating." Prop. 204 at 63.

Subsection (e). Under the heading "CPMS or PEMS," IEPA proposed that "[a]n owner or operator using CPMS or PEMS to monitor PAL pollutant emissions" shall meet two specified requirements. Prop. 204 at 63; *see* SR at 156.

Subsection (e)(1). As the first requirement, IEPA proposed that "[t]he CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit." Prop. 204 at 63.

Subsection (e)(2). As the second requirements, IEPA proposed that "[e]ach CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Illinois EPA, while the emissions unit is operating." Prop. 204 at 63.

Subsection (f). Under the heading "Emission factors," IEPA proposed that "[a]n owner or operator using emission factors to monitor PAL pollutant emissions" shall meet three requirements. Prop. 204 at 63; *see* SR at 156.

Subsection (f)(1). As the first requirement, IEPA proposed that "[a]ll emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development." Prop. 204 at 63.

Subsection (f)(2). As the second requirement, IEPA proposed that "[t]he emissions unit shall operate within the designated range of use for the emission factor, if applicable." Prop. 204 at 66.

Subsection (f)(3). As the third requirement, IEPA proposed that, "[i]f technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Illinois EPA determines that testing is not required." Prop. 204 at 64.

Subsection (g). IEPA proposed that "[a] source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit." Prop. 204 at 64; *see* SR at 156.

Subsection (h). IEPA proposed that,

> [n]otwithstanding the requirements in subsections (c) through (g) of this Subpart, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Illinois EPA shall, at the time of permit issuance" perform two specified actions. Prop. 204 at 64; *see* SR at 156-57.

Subsection (h)(1). As the first action, IEPA proposed that the IEPA must "[e]stablish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s)." Prop. 204 at 64; *see* SR at 157.

Subsection (h)(2). As the second action, IEPA proposed that the IEPA must "[d]etermine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL." Prop. 204 at 64; *see* SR at 157.

Subsection (i). Under the heading "Re-validation," IEPA proposed that "[a]ll data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Illinois EPA. Such testing must occur at least once every 5 years after issuance of the PAL." Prop. 204 at 64; *see* SR at 157.

Section 204.1890: Recordkeeping Requirements.

Subsection (a). IEPA proposed that "[t]he PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record." Prop. 204 at 64; *see* SR at 157.

Subsection (b). IEPA proposed that, for the duration of the PAL effective period plus five years, "[t]he PAL permit shall require an owner or operator to retain a copy" of specified records. Prop. 204 at 64; *see* SR at 157.

Subsection (b)(1). As the first of those records, IEPA proposed "[a] copy of the PAL permit application and any applications for revisions to the PAL." Prop. 204 at 64; *see* SR at 157.

Subsection (b)(2). As the second, IEPA proposed "[e]ach annual certification of compliance pursuant to Section 39.5(7)(p)(v) of the Act and the data relied on in certifying the compliance." Prop. 204 at 65; *see* SR at 157.

Section 204.1900: Reporting and Notification Requirements. IEPA proposed that "[t]he owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Illinois EPA in accordance with the CAAPP. Prop. 204 at 65; *see* SR at 157-58. The reports must meet specified requirements proposed in three subsections.

Subsection (a). IEPA proposed that "[t]he semi-annual report shall be submitted to the Illinois EPA within 30 days of the end of each reporting period" and must contain specified items of information. Prop. 204 at 65; *see* SR at 158.

Subsection (a)(1). As the first item, IEPA proposed "[t]he identification of owner and operator and the permit number." Prop. 204 at 65.

Subsection (a)(2). IEPA pointed out that this subsection of the Board's proposal for public comment included an error in the use of the subscript in the term "CO_2e.". PC 1 at 78. The Board corrects this below in its opinion and order.

As the second item, IEPA proposed "[t]otal annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Section 204.1890(a)." Prop. 204 at 65.

Subsection (a)(3). As the third item, IEPA proposed "[a]ll data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions." Prop. 204 at 65.

Subsection (a)(4). As the fourth item, IEPA proposed "[a] list of any emissions units modified or added to the major stationary source during the preceding 6-month period." Prop. 204 at 65.

Subsection (a)(5). As the fifth item, IEPA proposed "[t]he number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken." Prop. 204 at 65.

Subsection (a)(6). As the sixth item, IEPA proposed

> "[a] notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Section 204.1880(g)." Prop. 204 at 65.

Subsection (a)(7). As the seventh item, IEPA proposed "[a] signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report." Prop. 204 at 65.

Subsection (b). Under the heading "Deviation report." IEPA proposed that

> [t]he major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). Prop. 204 at 65-66; *see* SR at 158.

IEPA proposed that the report include four items of information.

Subsection (b)(1). As the first item, IEPA proposed "[t]he identification of owner and operator and the permit number." Prop. 204 at 66.

Subsection (b)(2). As the second item. IEPA proposed "[t]he PAL requirement that experienced the deviation or that was exceeded." Prop. 204 at 66.

Subsection (b)(3). As the third item, IEPA proposed "[e]missions resulting from the deviation or the exceedance." Prop. 204 at 66.

Subsection (b)(4). As the fourth item, IEPA proposed "[a] signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report." Prop. 204 at 66.

Subsection (c). Under the heading "Re-validation results," IEPA proposed that "[t]he owner or operator shall submit to the Illinois EPA the results of any re-validation test or method within 3 months after completion of such test or method." Prop 204 at 66; *see* SR at 158.

Section 204.1910: Transition Requirements. The federal rules provide that a PAL established before March 3, 2003, "may be superseded by a PAL that meets the federal requirements for PALs in 40 CFR 52.21(aa)." SR at 82, citing 40 C.F.R. § 52.21(aa)(15)(ii). IEPA proposes to omit this provision, as "no PAL has been established in Illinois," and "this language would be superfluous." *Id*.; Comp. 204 at 80.

The federal rules also provide that the Administrator may not issue a PAL permit that does not meet requirements effective March 3, 2003. SR at 82, citing 40 C.F.R. § 52.21(aa)(15). IEPA proposes language consistent with that requirement. However, instead of referring to the date on which the federal requirements became effective, IEPA refers to the initial effective date of Part 204. *Id*.

Accordingly, IEPA proposed that "[t]he Illinois EPA may not issue a PAL that does not comply with the requirements in this Subpart after the initial effective date of 35 Ill. Adm. Code 204." Prop. 204 at 66; *see* SR at 158.

Finally, IEPA noted that the Board's proposal for public comment included a single subsection (a) without including any additional subsection. PC 1 at 77. IEPA proposed to delete the reference to subsection (a). *Id*.

Part 211: Definitions and General Provisions

To implement Part 204, IEPA proposes to make conforming changes to Part 211 of the Board's air pollution rules (35 Ill. Adm. Code 211). SR at 3-4.

Section 211.7150: Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)

The federal rules define "volatile organic compound" by referring to the definition at 40 C.F.R. § 51.100(s). SR at 83, citing 40 C.F.R. § 52.21(b)(3). IEPA notes this existing state definition and indicates that a single definition "for PSD permitting and other permitting in the State is preferable." SR at 83. Accordingly, IEPA's proposal reflects the existing definition. *Id*

In this definition, subsection (b) addresses methods for measuring VOM to determine emissions and compliance with limits. These methods include source-specific tests established by a permit issued under specified authorities. 35 Ill. Adm. Code 211.1750(b). For USEPA regulations that may be the authority for a permit, Board rules now incorporate by reference regulations as of July 1, 1991. SR at 95, citing 35 Ill. Adm. Code 218.112, 219.112. Also, since Part 203 is Illinois' SIP-approved NaNSR program except for permits addressing $PM_{2.5}$, Part 203 appropriately replaces specified federal authorities. SR at 95. Finally, because the federal PSD program and Part 204 would be implemented under the Act, it is appropriate to refer to Section 9.1(d) of the Act in place of 40 C.F.R. § 52.21. *Id*.

In this section, IEPA proposed to remove outdated references to various authorities and add a reference to permits issued under Section 9.1(d) of the Act and Part 203 of the Board's rules. Prop. 211 at 19; *see* SR at 94-96, 165.

Part 215: Organic Material Emissions Standards and Limitations

To implement Part 204, IEPA proposes to make conforming changes to Part 215 of the Board's air pollution rules (35 Ill. Adm. Code 215). SR at 3-4. IEPA proposes amendments that "appropriately address proposed Part 204, as well as PSD permits issued under the historic PSD program in Illinois, and to remove outdated references." *Id*. at 96.

Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes

Section 215.920: Applicability. Subsection (d) provides that this Subpart's limits do not apply to sources whose VOM emission are subject to limits in specified authorities. 35 Ill. Adm. Code 215.920(d). In subsection (d)(2), IEPA proposed removing outdated references and adding a reference to "a permit issued under Section 9.1(d) of the Act." Prop. 215 at 9; *see* SR at 165.

Subpart QQ: Miscellaneous Formulation Manufacturing Processes

Section 215.940: Applicability. Subsection (d) provides that this Subpart's limits do not apply to sources whose VOM emissions are subject to limits in specified authorities. 35 Ill. Adm. Code 215.940(d). IEPA proposed removing outdated references and adding a reference to "a permit issued under Section 9.1(d) of the Act." Prop. 215 at 10; *see* SR at 165.

Subpart RR: Miscellaneous Organic Chemical Manufacturing Processes

Section 215.960: Applicability. Subsection (d) provides that this Subpart's limits do not apply to sources whose VOM emissions are subject to limits in specified authorities. 35 Ill. Adm. Code 215.960(d). IEPA proposed removing outdated references and adding a reference to "a permit issued under Section 9.1(d) of the Act." Prop. 215 at 11; *see* SR at 165.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2018)), the Board requested in a letter dated September 11, 2018, that DCEO conduct an economic impact study of the Agency's proposed rules. The Board requested that DCEO determine by October 26, 2018, whether it would conduct such a study. The Board received no response to this request. No person testified or commented on the Board's request or the lack of a response to it from DCEO. *See* Tr.1 at 8.

Affected Facilities

The PSD program applies statewide and regulated both criteria pollutants and non-criteria pollutants such as particulate matter and GHGs. SR at 98. The PSD program affects all areas of the state designated as attainment or unclassifiable for one or more of the criteria pollutants comprising the NAAQS: ozone, carbon monoxide, sulfur dioxide, particulate matter, lead, and nitrogen dioxide. *Id*. In nonattainment areas, NaNSR applies in place of PSD for those pollutants for which the area is designated nonattainment. *Id*., citing 42 U.S.C. §§ 7501-7515, 40 C.F.R. §§ 51.160-51.165; Sutter Power Plant, 8 E.A.D. 680, 682 n.2 (EAB 1999). While an area may be designated as attainment or unclassifiable for one criteria pollutant and nonattainment for another, "the PSD permitting requirements will apply to the attainment/unclassifiable pollutants in that geographic area." SR at 98, citing Sutter Power Plant, 8 E.A.D. 680, 682 n.2 (EAB 1999).

In Illinois, the Chicago area has been designated nonattainment for ozone, the St. Louis Metro East area has been designated nonattainment for ozone and $PM_{2.5}$. SR at 98, citing 40 C.F.R. § 81.314. Four areas have been designated nonattainment for SO_2: Williamson County; Alton Township; in the Pekin Area, Cincinnati and Pekin Townships in Tazewell County and Hollis Township in Peoria County; and in the Lemont Area, DuPage and Lockport Townships in Will County and Lemont Township in Cook County. SR at 98-99, citing 40 C.F.R. § 81.314. The proposed regulations would not affect these areas of the state for these pollutants. SR at 99. "All other regions of the State would be subject to proposed Part 204 for other pollutants regulated by the PSD program." *Id*.

Technical Feasibility

IEPA argues that, because proposed Part 204 is "substantially identical to the currently applicable federal PSD program," its requirements are technically feasible. TSD at 4.

Part 204

IEPA states that its proposed Part 204 would not alter the requirements now in effect under 40 C.F.R. § 52.21 for permitting new or modified major sources. SR at 99. IEPA's proposal would continue to require that applicants determine applicability of Part 204 and, if it does apply, would require a review of the project to ensure that its emission do not violate the NAAQS or applicable PSD ambient air quality increments. *Id*. "Subject sources must still be equipped with BACT for all PSD pollutants emitted in significant amounts." *Id*. IEPA argues

that "available control technology would not differ depending on the permitting authority." *Id*. BACT requires that IEPA "impose only emission limits that it determines, on a case-by-case basis, to be achievable (*i.e.*, technically feasible) for the emissions units and stationary sources to which those limits will apply." TSD at 38. IEPA argues that no substantive technical impacts will result from its proposed state PSD program and concludes that all elements of Part 204 are technically feasible. *Id.* at 101; TSD at 38.

Parts 101 and 105

IEPA argues that its proposed amendments to these two parts "would impose no additional requirements upon sources subject to Part 204." SR at 101. The amendments would establish the process to appeal a PSD permit to the Board. *Id*. IEPA adds that the proposal appropriately implements the Act's process for review of PSD permits. *Id*., citing 415 ILCS 5/40.3 (2018). IEPA concludes that its proposed amendments to Parts 101 and 105 are technically feasible. SR at 101; *see* TSD at 38.

Parts 203, 211, and 215

IEPA argues that its proposed amendments to these three parts "would impose no additional requirements upon sources subject to Part 204." SR at 101. IEPA states that the amendments "merely update" these three parts to address the both the federal PSD program and proposed Part 204. *Id*. IEPA concludes that its proposed amendments to Parts 203, 211, and 215 are technically feasible. *Id*.; *see* TSD at 38.

Based on this record, the Board concludes that its first-notice proposal is technically feasible.

Economic Reasonableness

IEPA argues that, because proposed Part 204 is "substantially identical to the currently applicable federal PSD program," adopting its proposal will not result in "substantive adverse economic impacts." TSD at 4.

Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2018)), the Board requested in a letter dated September 11, 2018, that DCEO conduct an economic impact study of IEPA's proposed rules. The Board requested that DCEO determine by October 26, 2018, whether it would conduct such a study. The Board received no response to this request. No person at either hearing testified or commented on the Board's request or the lack of a response to it from DCEO.

Part 204

IEPA states the proposal's requirements "are already in effect pursuant to the federal PSD rules at 40 CFR 52.21." TSD at 38. Because compliance costs are generally source-specific, control technology should remain the same and that costs to install BACT should not

change based on the administering agency. SR at 100; *see* TSD at 38. IEPA adds that "permitting fees would remain the same under Part 204 as 40 CFR 52.21." *Id*., citing 415 ILCS 5/9.12 (2018) (construction permit fees). IEPA also states that proposed Part 204 combines all requirements into a single construction permit application and a single state-issued permit, which should benefit regulated entities. SR at 100-01. IEPA concludes that its proposed Part 204 will not result in any substantive economic impacts. *Id.* at 101; *see* TSD at 38.

Parts 101 and 105

IEPA argues that its proposed amendments establish the process to appeal a PSD permit and "would impose no additional requirements upon sources subject to Part 204." SR at 101. IEPA adds that the proposal appropriately implements the statutory process for review of PSD permits. *Id*., citing 415 ILCS 5/40.3 (2018). IEPA argues that the Board is not required to consider the economic impact of administrative procedures. SR at 101, citing 415 ILCS 5/27(b) (2018).

Parts 203, 211, and 215

IEPA states that its proposed amendments "merely update" these three parts to address the both the federal PSD program and proposed Part 204. SR at 101. IEPA argues that amendments "impose no additional requirements upon sources subject to Part 204." *Id*. IEPA concludes that its proposed amendments to Parts 203, 211, and 215 are economically reasonable. *Id*.; *see* TSD at 38.

Based on this record, the Board concludes that its first-notice proposal is economically reasonable.

FILING COMMENTS ON THE BOARD'S FIRST-NOTICE PROPOSAL

First-notice publication of the Board's proposal in the *Illinois Register* will start a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. 5 ILCS 100/5-40(b) (2018).

The Board welcomes comment on any part on its proposal. In its order above, however, the Board specifically requested comment on the following four issues:

1. IEPA's proposed definition of "OSFM record" in Section 101.202 refers to an "eligibility and deductible decision," and the Board questioned it should refer to an "eligibility and deductibility decision." IEPA suggested that it would not agree to revise this definition without OSFM's agreement. Section 105.508 of the Board's procedural rules, OSFM Record and Appearance, now refers twice to an OSFM determination on "deductibility." 35 Ill. Adm. Code 105.508. The Board specifically seeks comment on whether these provisions should be consistent with one another and whether either the proposed definition or the existing provisions should be revised.

2. Above the Board declined to add language based on 40 C.F.R. § 52.21(o)(3) and allowing visibility monitoring in federal Class I areas. *Supra* at 40-44. However, the Board noted that Public Law No. 116-6 re-titles Indiana Dunes National Lake Shore as a national park. The Board seeks comment on any effect of this statutory re-titling. The Board also seeks comment on whether this re-titling warrants including in proposed Part 204 language based on 40 C.F.R. § 52.21(o)(3). The Board seeks comment from IEPA and welcomes comment from any of the participants. If any participant favors adding language based on 40 C.F.R. § 52.21(o)(3) to proposed Part 204, the Board requests that the participant submit proposed rule language for consideration.

3. The Board has continued to review new Section 105.606(a), which proposes a petition filing deadline. In the opinion above, the Board questioned whether the following revision more succinctly focuses on the deadline: Any petition for review under Section 105.604(a) or (c) must be filed with the Clerk within 35 days after the date of the Agency's final permit action. The Board requests comment on this revision from IEPA and any other participant. If any participant proposes further revision, the Board requests that the participant submit proposed rule language for consideration.

4. The Board has continued to review new Section 105.606(b), which proposes a petition filing deadline. In the opinion above, the Board questioned whether the following revision more succinctly focuses on the deadline: Any petition for review under Section 105.604(b) must be filed with the Clerk before the Agency denies or issues the final permit. The Board requests comment on this revision from IEPA and any other participant. If any participant proposes further revision, the Board requests that the participant submit proposed rule language for consideration.

Comments must be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website (www.ipcb.state.il.us). The comment should indicate the docket number for this rulemaking, R19-1. Questions about filing comments can be directed to the Clerk's Office at 312-814-3461.

Public comments and all other filings with the Clerk must be served on the hearing officer and on those persons on the Service List for this rulemaking. The current version of the Service List for R19-1 is available on COOL.

CONCLUSION

The Board proposes to revise its air pollution rules by adding a new Part 204 and amending Parts 101, 105, 203, 211, and 215. The proposed rules appear in the addendum. With the exception of proposed new Part 204, proposed additions appear underlined and proposed deletions appear struck through.

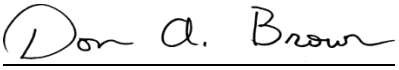
Publishing the proposed rules in the *Illinois Register* will start a period of at least 45 days during which any person may file public comments with the Clerk of the Board.

ORDER

The Board directs the Clerk to file the first-notice proposal with the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 5, 2020, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

SUBPART B: DEFINITIONS

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

SUBPART E: MOTIONS

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

SUBPART G: ORAL ARGUMENT

SUBPART H: SANCTIONS

101.APPENDIX H Affidavit or Certificate of E-Mail Service
101.ILLUSTRATION A E-Mail Service by Non-Attorney
101.ILLUSTRATION B E-Mail Service by Attorney
101.APPENDIX I Consent to Receipt of E-Mail Service

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 9.1(c), 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 9.1(c), 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, 2015, amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 9930, effective July 5, 2017; amended in R19-19 at 43 Ill. Reg. 9674, effective August 22, 2019; amended in R19-1 at 44 Ill. Reg._____, effective_____.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act. [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board under authority granted to the Board by Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, informational, or time-limited water quality standard proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding under Section 28.1 of the Act and 35 Ill. Adm.

Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency public comment" means information submitted to the Agency on a proposed Agency decision either by oral statement made at an Agency public hearing or written statement submitted to the Agency during the period for comment by the public.

"Agency public hearing" means a public proceeding to provide interested persons an opportunity to understand and comment on a proposed Agency decision.

"Agency public hearing record" means the record of the Agency public hearing, as kept by the Agency.

"Agency recommendation" means the document filed by the Agency under Section 28.1(d)(3), 37(a), or 38.5(g) of the Act in which the Agency provides its recommended disposition of a petition for an adjusted standard, a variance, or a time-limited water quality standard, respectively. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218, 104.416, and 104.550.)

"Agency record" means a record of final Agency decision, as kept by the Agency, of those documents required by the State agency record meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval under any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing,*

sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map. [415 ILCS 5/7.1]

"Attorney General" means the Attorney General of the State of Illinois or his or her representatives.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board under Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that summarizes the facts of a proceeding, states the pertinent laws, and argues how the laws apply to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"CAAPP permit" means any permit issued, renewed, amended, modified or revised under Section 39.5 of the Act.

"CAAPP permit appeal" means an appeal of a CAAPP permit as addressed by 35 Ill. Adm. Code Part 105.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor under Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board under Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" *means the* federal *Clean Air Act, as now and hereafter amended* (*43 USC 7401 et seq.).* [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act (33 USC 1251 et seq.).

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory, regulatory, and time-limited water quality standard proceedings. COOL is located on the Board's website at pcb.illinois.gov.

“Code of Civil Procedure” means 735 ILCS 5.

"Complaint" means the initial filing that begins an enforcement proceeding under Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article.* [415 ILCS 5/7.1]

"Counter-complaint" means a pleading that a respondent files stating a claim against a complainant in an enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files stating a claim against a co-party in an enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land, and water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board must decide an adjudicatory proceeding. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control

facility siting decisions respectively.)

"Decision period" means the timeframe established by the Act within which the Board must make a final decision in specified adjudicatory proceedings. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act, which establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants.* [415 ILCS 20/2.1]

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function under Section 4(r) of the Act.

"Digital signature" means *a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device.* [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.* [5 ILCS 175/5-105]

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document.* [5 ILCS 175/5-105]

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed under Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act. [415 ILCS 150]

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the* Board. For this definition, a time-limited water quality standard is considered a regulatory matter. *"Ex parte communication" does not include the following:*

> *statements by a person publicly made in a public forum,* including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record;
>
> *statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and*
>
> *statements made by a State employee of the* Board *to* Board members *or other employees of the* Board. [5 ILCS 430/5-50(b)] For this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted under Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or*

subsection (a) of Section 22.40. [415 ILCS 5/28.2]

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer when the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act. [5 ILCS 100]

"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.* [415 ILCS 5/7.2]

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board to seek input and comment from the public regarding the need for a rulemaking on a specific subject.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court

that is not dispositive of all the contested issues in the proceeding. (See Section 101.908) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with permission of the Board. (See Section 101.402.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the permission the Board. (See Section 101.402.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in the name of a properly included party.

"Motion" means a request made to the Board or the hearing officer for obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.* [415 ILCS 5/3.330(b)]

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7(a)]

"Notice list" means the list of persons in a regulatory or time-limited water quality standard proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section. See also 35 Ill. Adm. Code 102.422 and 104.520(b)(4).)

"Notice to reinstate" means a document filed that restarts the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made under Title XVI of the Act.

"OSFM record" means a record of final OSFM decision, as kept by the OSFM, of those documents of the OFSM that constitute the OSFM record relating to the eligibility and deductible decision and meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding but is not a party, or who takes part in a regulatory or other quasi-legislative proceeding or a time-limited water quality standard proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the proceeding's notice list, testifying at hearing, or making public remarks at a Board meeting. The participants in a time-limited water quality standard proceeding include the petitioner and the Agency and are further described at 35 Ill. Adm. Code 104.520(b).

~~"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.~~

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation under Section 30 of the Act during an ongoing proceeding. (See Section 101.404)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the* Board *as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board

under Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding (other than an enforcement proceeding,) or a time-limited water quality standard proceeding.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" is defined at Section 3.330(a) of the Act for this Part and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream.* [415 ILCS 20/3(f)(2)(i) and (ii)] (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case or a time-limited water quality standard proceeding to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing.* [415 ILCS 5/27(d)] (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board under authority granted by Section 5 of the Act or as otherwise provided by law. Board proceedings are generally of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings). A time-limited water quality standard is neither adjudicatory nor subject to rulemaking procedural requirements. (See 415 ILCS 5/38.5(a), (l)).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a

regulation.

"Provisional variance" means a short-term variance sought by an applicant and issued by the Agency under Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"PSD" means the Prevention of Significant Deterioration of Air Quality program as authorized by Section 9.1(c) of the Act and as adopted by 35 Ill. Adm. Code Part 204.

"PSD permit" means any PSD permit issued, extended or revised under Section 9.1(c) of the Act and 35 Ill. Adm. Code Part 204.

"PSD permit appeal" means an appeal of a PSD permit as addressed by 35 Ill. Adm. Code Part 105.

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d))

"PWSO Act" means the Public Water Supply Operations Act. [415 ILCS 45]
"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required under Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during a proceeding.

"Recycled paper" means paper that contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held under Title VII of the Act or other applicable law regarding regulations.

"Regulatory relief mechanisms" means variances, provisional variances, adjusted standards, and time-limited water quality standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for Part 130, *describing, depicting, containing, constituting, reflecting or recording.* [415 ILCS 5/7.1]

"Requester" means, for Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (43 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law to adopt, amend, or repeal a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H)

"SDWA" means the federal Safe Drinking Water Act (43 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and 101.304)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory, adjudicatory, or time-limited water quality standard proceeding upon whom parties or participants must serve motions, prefiled questions, prefiled testimony, and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section. See also 35 Ill. Adm. Code 102.432.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a

citizen's enforcement proceeding, that is brought under Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding under an order of the Board or by operation of law. (See Section 101.514)

"Subpoena" means a command to appear at a specified time and place to testify on a specified matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516)

"Third party complaint" means a pleading that a respondent files stating a claim against a person who is not already a party to the enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

“Time-Limited Water Quality Standard” or “TLWQS means a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of that relief. (See 35 Ill. Adm. Cod104.Subtitle E.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made under Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation,

requirement or order of the Board granted to a petitioner by the Board under Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.* [415 ILCS 5/35(a)]

"Waiver" means the intentional relinquishing of a known right, usually regarding a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at pcb.illinois.gov.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section 101.302 Filing of Documents

a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.

b) All documents to be filed with the Board must be filed with the Clerk.

1) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), documents must be filed at the following address:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for electronic filings through COOL are addressed in Section 101.1010.

3) Each document being filed with the Clerk must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).

4) The date on which a document is considered to have been filed is determined under Section 101.300(b).

5) Serving a document upon a hearing officer does not qualify as filing it with the Clerk unless the document is submitted to the hearing officer during a hearing.

c) Electronic documents may be filed through COOL under Subpart J. Paper documents may be filed with the Clerk by U.S. Mail, in person, or by third-party commercial carrier.

d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.

e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL with a valid credit card, but cannot be paid in cash.

1) Petition for Site-Specific Regulation, $75;

2) Petition for Variance, $75;

3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed under Section 40 or 40.3 of the Act, $75;

4) Petition to Review Pollution Control Facility Siting Decisions, under Section 40.1 of the Act, $75;

5) Petition for Adjusted Standard, under Section 28.1 of the Act, $75; and

6) Petition for TLWQS, under Section 38.5, $75.

f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in compliance with Section 101.304.

g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B, and double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:

1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and

2) The size of the type in the body of the text must be at least 12 point font, and in footnotes at least 10-point font.

h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed through COOL electronically.

1) If a document is filed in paper, the original and two copies of the document (three total) are required. If a document is filed through COOL in compliance with Subpart J, no paper original or copy of the document is required.

2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device, comply with Section 101.1030(g), and, to the extent technically feasible, in text-searchable Adobe PDF:

A) The Agency record required by 35 Ill. Adm. Code 105.212, 105.302, ~~or~~ 105.410, or 105.612 or 35 Ill. Adm. Code 125.208 (see 35 Ill. Adm. Code 105.116);

B) The OSFM record required by 35 Ill. Adm. Code 105.508 (see 35 Ill. Adm. Code 105.116);

C) The local siting authority record required by 35 Ill. Adm. Code 107.302 (see 35 Ill. Adm. Code 107.304); and

D) A petition filed under 35 Ill. Adm. Code 104 or 35 Ill. Adm. Code 106 (see 35 Ill. Adm. Code 104.106 and 35 Ill. Adm. Code 106.106

3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted under 35 Ill. Adm. Code 130 must be filed through COOL.

4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed under Section 5-75 of the IAPA. [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal must be filed through COOL. In addition, the rulemaking proponent must:

A) File a paper original of the copyrighted document. The rulemaking proposal also must include:

i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or

ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or

B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.

i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except with permission or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in compliance with subsection (h).

j) Oversized Exhibits. When practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In compliance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.

k) Page Limitation. No motion, brief in support of a motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material; however, materials that may be readily available to the Board,

such as prior Board opinions and orders, federal and Illinois regulations, and federal and Illinois statutes, need not be included in appendices.

l) Documents filed that do not comply with 35 Ill. Adm. Code.Subtitle A may be rejected by the Clerk or the hearing officer. Any rejection of a filing will include a description of the Board's rules that have not been met.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), ~~and~~ Pollution Control Facility Siting Review (Section 40.1 of the Act), CAAPP permit appeals (Section 40.2 of the Act), and PSD permit appeals (Section 40.3 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.

b) When the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under Subpart H. This Section will be strictly construed when there is a decision deadline unless the Board receives a waiver under subsection (c).

c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.

1) An open waiver waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. Under Section 101.300(b)(4), the decision period restarts on the date on which the notice to reinstate is filed with the Board.

2) A time certain waiver must be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.610 Duties and Authority of the Hearing Officer

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;

b) Administer oaths and affirmations;

c) Allow for the examination of or examine witnesses to ensure a clear and complete record;

d) Regulate the course of the hearing, including controlling the order of proceedings;

e) Establish reasonable time limits on the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;

f) Determine that a witness is adverse, hostile, or unwilling under Section 101.624;

g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;

h) Order the production of evidence under Section 101.614;

i) Order the filing of any required Agency record, OSFM record, local siting authority record or recommendation in a manner that provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;

j) Initiate, schedule, and conduct a pre-hearing conference;

k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;

l) Rule upon objections and evidentiary questions;

m) Order discovery under Sections 101.614 and 101.616;

n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board consistent with Section 101.502;

o) Set status report schedules;

p) Require all participants in a rulemaking or TLWQS proceeding to state their positions regarding the proposal or petition, as applicable; and

q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 101.626 Information Produced at Hearing

In compliance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code Part 105.

a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.

b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.

c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.

d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record before the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections before its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.

e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must have been made in the regular course of business, if it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards. All other

circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.

f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.

g) Oral and Written Statements. Oral and written statements from participants may be taken at hearing under Section 101.628.

(Source: Amended at 44 Ill. Reg._____, effective_____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

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SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

SUBPART E: APPEAL OF OSFM LUST DECISIONS

SUBPART F: PSD PERMIT APPEALS

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 9.1(c), 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 9.1(c), 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4344, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 10084, effective July 5, 2017; amended in R19-1 at 44 Ill. Reg._____, effective_____.

SUBPART A: GENERAL PROVISIONS

Section 105.104 Definitions

a) Nonattainment New Source Review (NaNSR) means Illinois' rules for Major Stationary Sources Construction and Modification (MSSCAM) at 35 Ill. Adm. Code Part 203.

b) Other ~~For the purpose of this Part,~~ words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.108 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

a) The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408, ~~or~~ 105.506, or 105.608;

b) The petition is untimely under Section 105.206, 105.302, 105.404, ~~or~~ 105.504, or 105.606;

c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;

d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or

e) Other grounds exist that bar the petitioner from proceeding.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.112 Burden of Proof

Unless this Part provides otherwise:

a) *The burden of proof shall be on the petitioner* except as provided in subsection (b) ~~of this Section~~ [415 ILCS 5/40(a)(1), 40(b) and (e)(3)~~, and~~ 40.2(a) and 40.3(a)(2)]~~.~~

b) The burden of proof is on the Agency if *the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules*. [415 ILCS 5/40(a)(1)]

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.116 Agency or OSFM Record Filing

a) The State agency must file with the Board the entire record of the Agency's or OSFM's ~~its~~ decision, as applicable, within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the Agency or OSFM ~~State agency~~ wishes to seek additional time to file its ~~the~~ record, it must file a request for extension before the date on which its ~~the~~ record is due to be filed. Under 35 Ill. Adm. Code 101.302(h)(2), each ~~the State~~ agency must file its ~~the~~ record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record also must meet the requirements of 35 Ill. Adm. Code 101. Subpart J.

b) The Agency record or OSFM record, as applicable, must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "R" placed before the number of each page. This page number must appear in the top right corner of each page. The Agency record or OSFM record must be certified by the applicable State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the Agency record or OSFM record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.118 Sanctions for Non-Compliant Filing of the Agency Record or the OSFM Record

If the Agency or OSFM ~~State agency~~ unreasonably fails to timely file its ~~the~~ record on or before the date required under this Part, or unreasonably fails to prepare the record in accordance with this Part and 35 Ill. Adm. Code 101 Subpart J, the Board may sanction the relevant State agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY

Section 105.200 Applicability

This Subpart applies to any appeal to the Board of the Agency's final permit decisions and other final decisions of the Agency, except:

a) When the appeal is of a final CAAPP decision of the Agency, which is addressed in Subpart C ~~of this Part; and~~

b) When the appeal is of a final leaking underground storage tank decision of the Agency, which is addressed in Subpart D ~~of this Part~~; and~~.~~

c) When the appeal is of a final PSD permit decision of the Agency, which is addressed in Subpart F.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.210 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

a) The Agency's final decision or issued permit;

b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable under Section 105.206;

c) A statement specifying the grounds of appeal; and

d) For petitions under Section 105.204(b), *a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the* Agency *public hearing on the NPDES permit application, if* an Agency *public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility.* [415 ILCS 5/40(e)(2)]

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.212 The Agency Record

a) The Agency must file its entire Agency record of ~~its~~ decision with the Clerk in accordance with Section 105.116.

b) The Agency record must include:

1) Any permit application or other request that resulted in the Agency's final decision;

2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;

3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;

4) The Agency public hearing record ~~file~~ of any Agency public hearing that may have been held before the Agency, including any transcripts and exhibits; and

5) Any other information the Agency relied upon in making its final decision.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.214 Board Hearing

a) Except as provided in subsections (b), (c) and (d), the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review. The hearing will be based exclusively on the Agency record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the Agency record under Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.

b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under 35 Ill. Adm. Code 101.516.

c) The Board will not hold a hearing on a petition for review under Section 105.204(c) if the Board determines that:

1) The petition is duplicative or frivolous; or

2) The petitioner is so located as to not be affected by the permitted facility.

d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) if the Board determines that the petition is duplicative or frivolous.

e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under 35 Ill. Adm. Code 101.602.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART C: CAAPP PERMIT APPEALS

Section 105.302 General Requirements

a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.

b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it must provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 41(a) of the Act [415 ILCS 5/41(a)] a copy of each notification of denial pertaining to the permit applicant.

c) The applicant, any person who participated in the public comment process under Section 39.5(8) of the Act, or any other person who could obtain judicial review under Section 41(a) of the Act may contest the decisions of the Agency enumerated in this subsection (c) by filing with the Clerk a petition for review of the Agency's action in accordance with this Section:

1) Denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness regarding a submitted CAAPP application;

2) Issuance of a CAAPP permit with one or more conditions or limitations;

3) Failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable; or

4) Failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) under Section 39.5(14) of the Act.

d) For purposes of this Subpart, a person who participated in the Agency public comment process is someone who, during the Agency public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.

e) The petition filed under subsection (c) must be filed within 35 days after the Agency's final permit action unless:

1) The petition is based solely on grounds arising after the 35 day period expires, in which case the petition may be filed within 35 days after the new grounds for review arise.

2) The applicant is challenging the Agency's failure to timely take final action under Section 39.5 of the Act, in which case the petition must be filed before the Agency takes the final action.

3) However, under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.

f) The Agency must appear as respondent at the hearing and must file, within 30 days after service of the petition, an answer consisting of the entire Agency record of the application, including the CAAPP permit application, the Agency public hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.

g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.

h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.

i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit.* [415 ILCS 5/40.2(e)]

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.304 Petition Content Requirements

a) The petition must include:

1) Aa concise description of the CAAPP source for which the permit is sought;

2) Aa statement of the Agency's decision or part thereof to be reviewed;

3) Aa justification as to why the Agency's decision or part thereof was in error; and

4) The the other materials upon which the petitioner relies in its petition.

b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board under Section 40.2 of the Act.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

Section 105.410 The Agency Record

a) The Agency must file the entire Agency record of its decision with the Board in accordance with Section 105.116.

b) The Agency record must include:

1) The plan or budget submittal or other request that requires an Agency decision;

2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;

3) The final determination letter; and

4) Any other information the Agency relied upon in making its determination.

(Source: Amended at 44 Ill. Reg._____, effective_____)

Section 105.412 Board Hearing

The Board will conduct a public hearing in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600 (b)) upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary

judgment brought under 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the Agency record before the Agency at the time the permit or decision was issued.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.508 OSFM Record and Appearance

a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.

b) The OSFM must file the entire OSFM record of its decision with the Board in accordance with Section 105.116. The OSFM record must include:

1) The request for OSFM determination of eligibility or deductibility;

2) Correspondence with the petitioner;

3) The denial letter; and

4) Any other information the OSFM relied upon in making its determination.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART F: PSD PERMIT APPEALS

Section 105.600 Applicability

This Subpart applies to proceedings before the Board concerning appeals from final PSD permit determinations made under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204.

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.602 Parties

a) Petitioner. The person who files a petition for review of the Agency's final decision must be named the petitioner.

b) Respondent. The Agency must be named the respondent. If a petition is filed under Section 105.604(c) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.604 Who May File a Petition for Review

a) *If the Agency refused to grant or grants with conditions a PSD permit* under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204, *the applicant may petition for a hearing before the Board to contest the decision of the Agency.* [415 ILCS 5/40.3(a)(1)]

b) *If the Agency fails to act on an application for a PSD permit within the time frame specified* in Section 39(f)(3) of the Act, *the applicant may petition for a hearing before the Board to compel the Agency to act on the application in a time that is deemed reasonable* by the Board. [415 ILCS 5/40.3(a)(1)]

c) *Any person who participated in the* Agency *public comment process* for a PSD permit *and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the Agency's public comment process, the person may still petition for a hearing, but only upon issues where the final permit conditions reflect changes from the proposed draft permit* that was made available during the Agency public comment process. [415 ILCS 5/40.3(a)(2)]

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.606 Time to File Petition for Review

a) Except as provided in subsection (b), a person who may petition the Board under Section 105.604 for review of the Agency's final decision must file the petition with the Clerk within 35 days after the date of the Agency's final permit action.

b) A permit applicant who wishes to appeal the Agency's failure to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act must file a petition for review with the Clerk before the Agency denies or issues the final permit.

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.608 Petition Content Requirements

a) All petitions under Section 105.604 must comply with 35 Ill. Adm. Code 101.Subpart C.

b) A petition under Section 105.604(a) or (c) must be contained within the body of the petition all pertinent information in support of each issue raised for review. The Board will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *The petition must include*:

1) The Agency's final decision or issued PSD permit;

2) A statement as to how the petitioner participated in the Agency public comment process;

3) All *such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected;*

4) *The issues proposed for review,* citing to a specific permit term or condition where applicable and *to the Agency record where those issues were raised*, citing to any relevant page numbers in the public comments submitted to the Agency and attaching this public comment to the petition. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must *explain why such issues were not required to be raised during the Agency public comment process;* and

5) *An explanation why the Agency's previous response, if any, to the issues proposed for review was:*

A) *Clearly erroneous; or*

B) *An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.* [415 ILCS 5/40.3(a)(2)]

c) A petition under Section 105.604(b)

d) must include the date that a complete permit application for a PSD permit was submitted to the Agency and an explanation as to why the submittal made on such date made the application complete.

d) A petition under Section 105.604(a) or (c) may include a request to stay the effectiveness of any final Agency action on a PSD permit application until final action is taken by the Board under Section 40.3 of the Act. Any stay request must include a clear delineation of all the contested conditions of the PSD permit. To the extent that a stay of any or all of the uncontested conditions of the permit is sought, any stay request must indicate how these uncontested conditions would be affected by the Board's review of the contested conditions.

e) For petitions under Section 105.604(c), any stay request must also demonstrate:

1) *That an immediate stay is required in order to preserve the status quo without endangering the public*;

2) *That it is not contrary to public policy; and*

3) *That there is a reasonable likelihood of success on the merits*. [415 ILCS 5/40.3(d)(3)]

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.610 Board Standards for Granting Stays

a) *If requested by the permit applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application during the pendency of the review process. In such cases, the Board shall stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant.* [415 ILCS 5/40.3(d)(2)]

b) *If requested by a party other than the permit applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application during the pendency of the review process. In such cases, the Board may stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. The party requesting the stay has the burden of demonstrating that an immediate stay is required in order to preserve the status quo without endangering the public, that it is not contrary to public policy and that there is a reasonable likelihood of success on the merits. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed under Section 105.606 of this Subpart and shall remain in effect until a decision is issued by the Board on the petition.* [415 ILCS 5/40.3(d)(3)]

(Source: Added at 44 Ill. Reg._____, effective_____)

***S*ection 105.612 The Agency Record**

a) The Agency must file a copy of its entire Agency record of its decision with the Clerk in accordance with Section 105.116.

b) The Agency record must include:

1) Any permit application or other request that resulted in the Agency's final decision;

2) Correspondence with the applicant and any documents or material submitted by the applicant to the Agency related to the permit application;

3) The project summary, statement of basis or fact sheet;

4) The Agency public hearing record of any Agency public hearing held under 35 Ill. Adm. Code 252.205, including any transcripts and exhibits;

5) All written comments received during the Agency public comment period under 35 Ill. Adm. Code 252.201, including any extension or reopening under 35 Ill. Adm. Code 252.208;

6) The response to comments required by 35 Ill. Adm. Code 252.210 and any new material placed in the Agency record under that Section;

7) The final permit; and

8) Any other information the Agency relied upon in making its final decision.

(Source: Added at 44 Ill. Reg._____, effective_____)

Section 105.614 Board Hearing

Except as provided in subsections (a) and (b), the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101, Subpart F, upon an appropriately filed petition for review under this Subpart. *The* hearing and *decision of the Board will be based exclusively on the* Agency *record* at the time the permit or decision was issued, *unless the parties agree to supplement the Agency record*. Any PSD permit issued by the Agency must be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency. [415 ILCS 5/40.3(d)(1)]

a) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under 35 Ill. Adm. Code 101.516.

b) The Board will not hold a hearing on a petition for review under this Subpart if the Board determines that:

1) The petition is *frivolous*; or

2) The petition *lacks facially adequate factual statements* as required by Section 105.608 [415 ILCS 5/40.3(a)(2)].

c) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under 35 Ill. Adm. Code 101.602.

(Source: Added at 44 Ill. Reg._____, effective_____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 203
MAJOR STATIONARY SOURCES CONSTRUCTION AND MODIFICATION

SUBPART A: GENERAL PROVISIONS

SUBPART B: MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS

SUBPART F: OPERATION OF A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION

SUBPART G: GENERAL MAINTENANCE OF EMISSION OFFSETS

SUBPART H: OFFSETS FOR EMISSION INCREASES FROM ROCKET ENGINES AND MOTOR FIRING

AUTHORITY: Implementing Section 9.1 and 10 and authorized by Section 27 and 28.5 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1009.1, 1010 and 1027) [415 ILCS 5/9.1, 10 27 and 28.5].

SOURCE: Adopted and codified at 7 Ill. Reg. 9344, effective July 22, 1983; codified at 7 Ill. Reg. 13588; amended in R85-20 at 12 Ill. Reg. 6118, effective March 22, 1988; amended in R91-24 at 16 Ill. Reg. 13551, effective August 24, 1992; amended in R92-21 at 17 Ill. Reg. 6973, effective April 30, 1993; amended in R93-9 at 17 Ill. Reg. 16630, effective September 27, 1993; amended in R93-26 at 18 Ill. Reg. 6335, effective April 15, 1994; amended in R98-10 at 22 Ill.

Reg. 5674, effective March 10, 1998; amended in R19-1 at 44 Ill. Reg._____, effective _____.

SUBPART B: MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS

Section 203.207 Major Modification of a Source

a) Except as provided in subsection (c), (d), (e) or (f) below, a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area, must ~~shall~~ constitute a major modification of a source.

b) Any net emissions increase that is significant for volatile organic material or nitrogen oxides must ~~shall~~ all be considered significant for ozone.

c) A physical change or change in the method of operation must ~~shall~~ not include:

1) Routine maintenance and repair.

2) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (43 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan under ~~pursuant to~~ the Federal Power Act (16 U.S.C. 791, et seq.).

3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act (43 U.S.C. 7435).

4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

5) Use of an alternative fuel or raw material by a stationary source which:

A) Was capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition established after December 21, 1976, under ~~pursuant to~~ 40 CFR 52.21, 35 Ill. Adm. Code Part 204, this Part, or 35 Ill. Adm. Code 201.143 or 201.143, or

B) Is approved for use under any permit issued under ~~pursuant to~~ this Part or 35 Ill. Adm. Code 201.143 or 201.143.

6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition which was established after December 21, 1976 under ~~pursuant to~~ 40 CFR 52.21, 35 Ill. Adm. Code Part 204, this Part, or 35 Ill. Adm. Code 201.143 or 201.143.

7) Any change in ownership at a stationary source.

d) In an area classified as serious or severe nonattainment for ozone, increased emissions of volatile organic material or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a stationary source located in the area must ~~shall~~ be considered de minimis for purposes of this Part if the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years that includes the year in which such increase occurred.

e) In the case of any major stationary source of volatile organic material or nitrogen oxides located in an area classified as serious or severe nonattainment for ozone (other than a source which emits or has the potential to emit 100 tons or more of volatile organic material or nitrogen oxides per year), whenever any change at that source results in any increase (other than a de minimis increase) in emissions of volatile organic material or nitrogen oxides, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source, such increase must ~~shall~~ be considered a major modification for purposes of this Part, except such increase must ~~shall~~ not be considered a major modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic material or nitrogen oxides, respectively, from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

f) In areas classified as extreme nonattainment for ozone, beginning on the date that an area is classified by USEPA as an extreme nonattainment area for ozone, any physical change in or change in the method of operation of a major stationary source which results in any increase in emissions of volatile organic material or nitrogen oxides from a discrete operation, unit, or other pollutant emitting activity must ~~shall~~ be considered a major modification.

(Source: Amended at 44 Ill. Reg._____, effective_____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 204
PREVENTION OF SIGNIFICANT DETERIORATION

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204.1610 Definitions
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204.1630 Allowable Emissions
204.1640 Continuous Emissions Monitoring System (CEMS)
204.1650 Continuous Emissions Rate Monitoring System (CERMS)
204.1660 Continuous Parameter Monitoring System (CPMS)

AUTHORITY: Implementing Section 9.1 and 10 and authorized by Section 27 and 28 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1009.1, 1010, and 1027) [415 ILCS 5/9.1, 10, 27 and 28].

SOURCE: Adopted in R19-1 at 44 Ill. Reg._____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 204.100 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

a) 40 CFR Part 50 (2018)
b) 40 CFR Part 51 (2018)
c) 40 CFR Part 52 (2018)
d) 40 CFR Part 53 (2018)
e) 40 CFR Part 54 (2018)
f) 40 CFR Part 55 (2018)
g) 40 CFR Part 56 (2018)

h) 40 CFR Part 57 (2018)
i) 40 CFR Part 58 (2018)
j) 40 CFR Part 59 (2018)
k) 40 CFR Part 60 (2018)
l) 40 CFR Part 61 (2018)
m) 40 CFR Part 62 (2018)
n) 40 CFR Part 63 (2018)
o) 40 CFR Part 64 (2018)
p) 40 CFR Part 65 (2018)
q) 40 CFR Part 66 (2018)
r) 40 CFR Part 67 (2018)
s) 40 CFR Part 68 (2018)
t) 40 CFR Part 69 (2018)
u) 40 CFR Part 70 (2018)
v) 40 CFR Part 71 (2018)
w) 40 CFR Part 72 (2018)
x) 40 CFR Part 73 (2018)
y) 40 CFR Part 74 (2018)
z) 40 CFR Part 75 (2018)
aa) 40 CFR Part 76 (2018)
bb) 40 CFR Part 77 (2018)
cc) 40 CFR Part 78 (2018)
dd) 40 CFR Part 79 (2018)
ee) 40 CFR Part 80 (2018)
ff) 40 CFR Part 81 (2018)
gg) 40 CFR Part 82 (2018)
hh) (Reserved)
ii) (Reserved)
jj) 40 CFR Part 85 (2018)
kk) 40 CFR Part 86 (2018)
ll) 40 CFR Part 87 (2018)
mm) 40 CFR Part 88 (2018)
nn) 40 CFR Part 89 (2018)
oo) 40 CFR Part 90 (2018)
pp) 40 CFR Part 91 (2018)
qq) 40 CFR Part 92 (2018)
rr) 40 CFR Part 93 (2018)
ss) 40 CFR Part 94 (2018)
tt) 40 CFR Part 95 (2018)
uu) 40 CFR Part 96 (2018)
vv) 40 CFR Part 97 (2018), excluding 40 CFR Part 97, Subpart FFFFF (2018)
ww) 40 CFR Part 98 (2018)
xx) (Reserved)
yy) Standard Industrial Classification Manual, 1972, as amended by 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)

Section 204.110 Abbreviations and Acronyms

The following abbreviations and acronyms are used in this Part:

$\mu g/m^3$	micrograms per cubic meter
Act	Illinois Environmental Protection Act
Agency	Illinois Environmental Protection Agency
BACT	Best Available Control Technology
Board	Illinois Pollution Control Board
CAA	Clean Air Act
CAAPP	Clean Air Act Permit Program
CEMS	Continuous Emissions Monitoring System
CERMS	Continuous Emissions Rate Monitoring System
CO_2	carbon dioxide
CO_2e	carbon dioxide equivalent
CPMS	Continuous Parameter Monitoring System
GHG	Greenhouse Gas
H_2S	hydrogen sulfide
hr	hour
LAER	Lowest Achievable Emission Rate
lbs	pounds
lb/hr	pounds per hour
MW	megawatts
NAAQS	National Ambient Air Quality Standards
NAICS	North American Industry Classification System
NO_2	nitrogen dioxide
NO_x	nitrogen oxides
NSPS	New Source Performance Standards
NSR	New Source Review
O_2	oxygen
PAL	Plantwide Applicability Limitation
PEMS	Predictive Emissions Monitoring System
PM	Particulate Matter
$PM_{2.5}$	Particulate Matter equal to or less than 2.5 microns in diameter (Fine Particulate Matter)
PM_{10}	Particulate Matter equal to or less than 10 microns in diameter
ppm	parts per million
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
SIP	State Implementation Plan
SO_2	sulfur dioxide
tpy	tons per year
TSP	total suspended particulates
US	United States
USEPA	United States Environmental Protection Agency

VOC	Volatile Organic Compound
VOM	Volatile Organic Material
yr	year

Section 204.120 Severability

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBPART B: DEFINITIONS

Section 204.200 Definitions

Unless otherwise specified in this Part, terms used in this Part have the same meaning as the terms used in 35 Ill. Adm. Code Part 211.

Section 204.210 Actual Emissions

a) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subsections (b) through (d), except that this definition must not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subpart K. Instead, Sections 204.240 and 204.600 must apply for those purposes.

b) In general, actual emissions as of a particular date must equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Illinois EPA must allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

c) The Illinois EPA may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

d) For any emissions unit that has not begun normal operations on the particular date, actual emissions must equal the potential to emit of the unit on that date.

Section 204.220 Adverse Impact on Visibility

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment,

and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

Section 204.230 Allowable Emissions

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a) The applicable standards as set forth in 40 CFR Parts 60, 61, 62 and 63, incorporated by reference in 35 Ill. Adm. Code 204.100;

b) The applicable SIP emissions limitation, including those with a future compliance date; or

c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Section 204.240 Baseline Actual Emissions

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (a) through (d).

a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Illinois EPA must allow the use of a different time period upon a determination that it is more representative of normal source operation.

    1) The average rate must include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

    2) The average rate must be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

    3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

4) The average rate must not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (a)(2).

b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required under 40 CFR 52.21 or by the Illinois EPA for a permit required by the SIP, whichever is earlier, except that the 10-year period must not include any period earlier than November 15, 1990.

1) The average rate must include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2) The average rate must be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3) The average rate must be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. "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. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the USEPA proposed or promulgated under 40 CFR Part 63, incorporated by reference in 35 Ill. Adm. Code 204.100, the baseline actual emissions need only be adjusted if the Illinois EPA has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

5) The average rate must not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsections (b)(2) and (b)(3).

c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit must equal zero; and thereafter, for all other purposes, must equal the unit's potential to emit.

d) For a PAL for a stationary source, the baseline actual emissions must be calculated for existing electric utility steam generating units in accordance with the procedures contained in subsection (a), for other existing emissions units in accordance with the procedures contained in subsection (b), and for a new emissions unit in accordance with the procedures contained in subsection (c).

Section 204.250 Baseline Area

a) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (43 U.S.C. 7407(d)(1)(A)(ii) or (iii)) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 $\mu g/m^3$ (annual average) for SO_2, NO_2, or PM_{10}; or equal or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

b) Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the CAA (43 U.S.C. 7407(d)(1)(A)(ii) or (iii)) cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

1) Establishes a minor source baseline date; or

2) Is subject to this Part and would be constructed in the State proposing the redesignation.

c) Any baseline area established originally for the TSP increments must remain in effect and must apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area must not remain in effect if the Illinois EPA rescinds the corresponding minor source baseline date in accordance with Section 204.520(c).

Section 204.260 Baseline Concentration

a) "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline

concentration is determined for each pollutant for which a minor source baseline date is established and must include:

1) The actual emissions, as defined in Section 204.210, representative of sources in existence on the applicable minor source baseline date, except as provided in subsection (b); and

2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

1) Actual emissions, as defined in Section 204.210, from any major stationary source on which construction commenced after the major source baseline date. For a major stationary source in existence on the major source baseline date, "actual emissions" for the purposes of this subsection mean increases or decreases in actual emissions resulting from construction commencing after the major source baseline date; and

2) Actual emissions increases and decreases, as defined in Section 204.210, at any stationary source occurring after the minor source baseline date.

Section 204.270 Begin Actual Construction

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Section 204.280 Best Available Control Technology (BACT)

"Best Available Control Technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Illinois EPA, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event must application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63, incorporated by reference in 35 Ill. Adm. Code 204.100. If the Illinois EPA determines that technological or economic limitations on the application of measurement methodology to a

particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard must, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

Section 204.290 Building, Structure, Facility, or Installation

a) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively), incorporated by reference in Section 204.100.

b) Notwithstanding the provisions of subsection (a), building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities must be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this subsection, has the same meaning as in 40 CFR 63.761.

Section 204.300 Clean Coal Technology

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of SO_2 or NO_x associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

Section 204.310 Clean Coal Technology Demonstration Project

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy – Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects

funded through appropriations for the USEPA. The Federal contribution for a qualifying project must be at least 20 percent of the total cost of the demonstration project.

Section 204.320 Commence

"Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Section 204.330 Complete

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

Section 204.340 Construction

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

Section 204.350 Dispersion Technique

a) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

1) Using that portion of a stack which exceeds good engineering practice stack height;

2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

b) The preceding sentence in Section 204.350(a) does not include:

1) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the stationary source generating the gas stream;

2) The merging of exhaust gas streams where:

   A) The source owner or operator demonstrates that the stationary source was originally designed and constructed with such merged gas streams;

   B) After July 8, 1985 such merging is part of a change in operation at the stationary source that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques must apply only to the emission limitation for the pollutant affected by such change in operation; or

   C) Before July 8, 1985, such merging was part of a change in operation at the stationary source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Illinois EPA must presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Illinois EPA must deny credit for the effects of such merging in calculating the allowable emissions for the source;

3) Smoke management in agricultural or silvicultural prescribed burning programs;

4) Episodic restrictions on residential wood burning and open burning; or

5) Techniques under subsection (a)(3) which increase final exhaust gas plume rise where the resulting allowable emissions of SO_2 from the stationary source do not exceed 5,000 tpy.

Section 204.360 Electric Utility Steam Generating Unit

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale.

Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Section 204.370 Emissions Unit

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in Section 204.360. For purposes of this Part, there are two types of emissions units as described in subsections (a) and (b).

a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

b) An existing emissions unit is any emissions unit that does not meet the requirements in subsection (a). A replacement unit, as defined in Section 204.620, is an existing emissions unit.

Section 204.380 Excessive Concentration

"Excessive concentration" is defined for the purpose of determining good engineering practice stack height under Section 204.430(c) and means:

a) For sources seeking credit for stack height exceeding that established under Section 204.430(b), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to this Part, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than an ambient air increment under Section 204.900. The allowable emission rate to be used in making demonstrations of excessive concentration must be prescribed by the NSPS that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Illinois EPA, an alternative emission rate must be established in consultation with the source owner or operator.

b) For sources seeking credit for increases in existing stack heights up to the heights established under Section 204.430(b), either (i) a maximum ground-level

concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection (a), except that the emission rate specified by the SIP (or, in the absence of such a limit, the actual emission rate) must be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the Illinois EPA; and

c) For sources seeking credit for a stack height determined under Section 204.430(b) where the Illinois EPA requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit based on the aerodynamic influence of structures not adequately represented by the equations in Section 204.430(b), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

Section 204.390 Federal Land Manager

"Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

Section 204.400 Federally Enforceable

"Federally enforceable" means all limitations and conditions which are enforceable by the USEPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, incorporated by reference in 35 Ill. Adm. Code 204.100, requirements within the SIP, any permit requirements established under 40 CFR 52.21, incorporated by reference in 35 Ill. Adm. Code 204.100, or this Part or under regulations approved under 40 CFR Part 51, Subpart I, incorporated by reference in 35 Ill. Adm. Code 204.100, including operating permits issued under an USEPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

Section 204.410 Fugitive Emissions

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Section 204.420 Good Engineering Practice

"Good engineering practice," with respect to stack height, means the greater of:

a) 65 meters, measured from the ground-level elevation at the base of the stack;

b) The following:

1) 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, incorporated by reference in 35 Ill. Adm. Code 204.100:

$H_g = 2.5H$,

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

2) 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 Illinois EPA may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

c) The height demonstrated by a fluid model or a field study approved by the USEPA or Illinois EPA, 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.

d) 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.

Section 204.430 Greenhouse Gases (GHGs)

*"*Greenhouse gases (GHGs)" means the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: CO_2, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To represent an amount of GHGs emitted, the term "tpy CO_2 equivalent emissions (CO_2e)" must be used and computed as follows:

a) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials, incorporated by reference in 35 Ill. Adm. Code 204.100.

b) Sum the resultant value for each gas to compute a tpy CO_2e.

Section 204.440 High Terrain

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

Section 204.450 Indian Reservation

"Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.

Section 204.460 Indian Governing Body

"Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the US and recognized by the US as possessing power of self-government.

Section 204.470 Innovative Control Technology

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

Section 204.480 Low Terrain

"Low terrain" means any area other than high terrain.

Section 204.490 Major Modification

a) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in Section 204.670) of a regulated NSR pollutant (as defined in Section 204.610) other than GHGs (as defined in Section 204.430); and a significant net emissions increase of that pollutant from the major stationary source.

b) Any significant emissions increase (as defined in Section 204.670) from any emissions units or net emissions increase (as defined in Section 204.550) at a major stationary source that is significant for VOM or NO_x must be considered significant for ozone.

c) A physical change or change in the method of operation must not include:

1) Routine maintenance, repair and replacement;

2) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act (16 U.S.C. 791);

3) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA (43 U.S.C. 7435);

4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

5) Use of an alternative fuel or raw material by a stationary source which:

   A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 under 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143; or

   B) The source is approved to use under any permit issued under 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143;

6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, under 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143;

7) Any change in ownership at a stationary source;

8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

   A) The Illinois SIP, and

   B) Other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption must apply on a pollutant-by-pollutant basis.

d) This definition must not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Subpart K for a PAL for that pollutant. Instead, the definition at Section 204.1720 must apply.

Section 204.500 Major Source Baseline Date

"Major source baseline date" means:

a) In the case of PM_{10} and SO_2, January 6, 1975;

b) In the case of NO_2, February 8, 1988; and

c) In the case of $PM_{2.5}$, October 20, 2010.

Section 204.510 Major Stationary Source

a) "Major stationary source" means:

1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tpy or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2) Notwithstanding the stationary source size specified in subsection (a)(1), any stationary source which emits, or has the potential to emit, 250 tpy or more of a regulated NSR pollutant (except GHGs as defined in 204.430); or

3) Any physical change that would occur at a stationary source not otherwise qualifying under this Section, as a major stationary source, if the changes would constitute a major stationary source by itself.

b) A major source that is major for VOM or NO_X must be considered major for ozone.

c) The fugitive emissions of a stationary source must not be included in determining for any of the purposes whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

1) Coal cleaning plants (with thermal dryers);

2) Kraft pulp mills;

3) Portland cement plants;

4) Primary zinc smelters;

5) Iron and steel mills;

6) Primary aluminum ore reduction plants;

7) Primary copper smelters;

8) Municipal incinerators capable of charging more than 50 tons of refuse per day;

9) Hydrofluoric, sulfuric, or nitric acid plants;

10) Petroleum refineries;

11) Lime plants;

12) Phosphate rock processing plants;

13) Coke oven batteries;

14) Sulfur recovery plants;

15) Carbon black plants (furnace process);

16) Primary lead smelters;

17) Fuel conversion plants;

18) Sintering plants;

19) Secondary metal production plants;

20) Chemical process plants—The term chemical processing plant must not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23) Taconite ore processing plants;

24) Glass fiber processing plants;

25) Charcoal production plants;

26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA.

Section 204.520 Minor Source Baseline Date

a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or this Part submits a complete application under the relevant regulations. The trigger date is:

1) In the case of PM_{10} and SO_2, August 7, 1977;

2) In the case of NO_2, February 8, 1988; and

3) In the case of $PM_{2.5}$, October 20, 2011.

b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (43 U.S.C. 7407(d)(1)(A)(ii) or (iii)) for the pollutant

on the date of its complete application under 40 CFR 52.21 or this Part; and

2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

c) Any minor source baseline date established originally for the TSP increments must remain in effect and must apply for purposes of determining the amount of available PM_{10} increments, except that the Illinois EPA must rescind a minor source baseline date where it can be shown, to the satisfaction of the Illinois EPA, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

Section 204.530 Nearby

"Nearby," with respect to a specific structure or terrain feature:

a) For purposes of applying the formulae provided in Section 204.430(b) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

b) For conducting demonstrations under Section 204.430(c) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40 percent of the good engineering practice stack height determined by the formula provided in Section 204.430(b)(2) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

Section 204.540 Necessary Preconstruction Approvals or Permits

"Necessary preconstruction approvals or permits" mean those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable SIP.

Section 204.550 Net Emissions Increase

a) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under Section 204.800(d); and

2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subsection must be determined as provided in Section 204.240, except that Sections 204.240(a)(3) and 204.240(b)(4) must not apply.

b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

1) The date five years before construction on the particular change commences; and

2) The date that the increase from the particular change occurs.

3) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under 40 CFR 52.21 or this Part, which permit is in effect when the increase in actual emissions from the particular change occurs.

c) An increase or decrease in actual emissions of SO_2, PM, or NO_x that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e) A decrease in actual emissions is creditable only to the extent that:

1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. 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.

g) Subsection 204.210(b) must not apply for determining creditable increases and decreases.

Section 204.560 Potential to Emit

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. 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, must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by a state or local air pollution control agency. Secondary emissions do not count in determining the potential to emit of a stationary source.

Section 204.570 Prevention of Significant Deterioration (PSD) Permit

"Prevention of Significant Deterioration (PSD) Permit" means *a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois* EPA *under the construction permit program pursuant to* Section 9.1(c) of the Act *that has been approved by the* USEPA *and incorporated into the Illinois SIP to implement the requirements of Section 165 of the CAA and 40 CFR 51.166.* [415 ILCS 5/3.363]

Section 204.580 Process Unit

"Process unit" means 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. A process unit may contain more than one emissions unit.

Section 204.590 Project

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

Section 204.600 Projected Actual Emissions

a) "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

b) In determining the projected actual emissions under subsection (a) (before beginning actual construction), the owner or operator of the major stationary source:

1) Must consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under Illinois' SIP; and

2) Must include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

3) Must exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Section 204.240 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4) In lieu of using the method set out in subsections (b)(1) through (b)(3), may elect to use the emissions unit's potential to emit, in tons per year, as defined under Section 204.560.

Section 204.610 Regulated NSR Pollutant

"Regulated NSR pollutant" means the following:

a) Any pollutant for which a NAAQS has been promulgated. This includes, but is not limited to, the following:

1) $PM_{2.5}$ emissions and PM_{10} emissions must include gaseous emissions from a source or activity, which condense to form PM at ambient temperatures. On or after January 1, 2011, such condensable PM must be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date must not be based on condensable PM unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable PM must not be considered in violation of this Part unless the applicable implementation plan required condensable PM to be included.

2) Any pollutant identified under this subsection as a constituent or precursor for a pollutant for which a NAAQS has been promulgated. Precursors for purposes of this Part are the following:

A) VOM and NOx are precursors to ozone in all attainment and unclassifiable areas.

B) SO_2 is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

C) NOx are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of NOx from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

D) VOM are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of VOM from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

b) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA (43 U.S.C. 7401);

c) Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA (43 U.S.C. 7671, et seq.);

d) Any pollutant that otherwise is subject to regulation as defined in Section 204.700.

e) Notwithstanding subsections (a) through (d), the term "regulated NSR pollutant" must not include any or all hazardous air pollutants either listed in Section 112(b)(1) of the CAA (43 U.S.C. 7412(b)(1)), or added to the list under Section 112(b)(2) or (b)(3) of the CAA (43 U.S.C. 7412(b)(2) or (b)(3)) or substances listed under Section 112(r)(3) of the CAA (43 U.S.C. 7412(r)(3)), and which have not been delisted under Section 112(b)(3) or (r) of the CAA (43 U.S.C. 7412 (b)(3) or (r)), unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a pollutant listed under Section 108 of the CAA (43 U.S.C. 7408).

Section 204.620 Replacement Unit

"Replacement unit" means an emissions unit for which all the criteria listed in subsections (a) through (d) are met. No creditable emission reductions must be generated from shutting down the existing emissions unit that is replaced.

a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c) The replacement does not alter the basic design parameter(s) of the process unit. Basic design parameters of a process unit must be determined as follows:

1) Except as provided in subsection (c)(3), for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

2) Except as provided in subsection (c)(3), the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

3) If the owner or operator believes the basic design parameter(s) in subsections (c)(1) and (c)(2) is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Illinois EPA an alternative basic design parameter(s) for the source's process unit(s). If the Illinois EPA approves of the use of an alternative basic design parameter(s), the Illinois EPA must issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

4) The owner or operator must use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in subsections (c)(2) and (c)(3).

5) If design information is not available for a process unit, then the owner or operator must determine the process unit's basic design parameter(s) using

the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

6) Efficiency of a process unit is not a basic design parameter.

d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it must constitute a new emissions unit.

Section 204.630 Repowering

a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the USEPA, in consultation with the US Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b) Repowering must also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the US Department of Energy.

c) The Illinois EPA must give expedited consideration to permit applications for any source that satisfies the requirements ~~of this Section~~ and is granted an extension under Section 409 of the CAA (43 U.S.C. 7651h).

Section 204.640 Reviewing Authority

"Reviewing authority" means the Illinois EPA or, in the case of a permit program under 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA.

Section 204.650 Secondary Emissions

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. For the purposes of this Part, secondary emissions must be specific, well defined, quantifiable, and

impact the same general area as the major stationary source or major modification which causes the secondary emissions.

Section 204.660 Significant

a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tpy
NO_x	40 tpy
SO_2	40 tpy
PM	25 tpy of particulate matter emissions
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy of direct $PM_{2.5}$emissions; 40 tpy of SO_2 emissions; 40 tpy of NO_x emissions unless demonstrated not to be a $PM_{2.5}$ precursor under Section 204.610(a)(2)(C)
Ozone	40 tpy of VOM or NO_x
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S):	10 tpy
Reduced sulfur compounds (including H_2S):	10 tpy
GHGs	75,000 tpy CO_2e
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-*p*-dioxins and dibenzofurans):	3.2×10^{-6} megagrams per year (3.5×10^{-6} tpy)
Municipal waste combustor metals (measured as PM):	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as SO_2 and hydrogen chloride):	36 megagrams per year (40 tpy)
Municipal solid waste landfills emissions	45 megagrams per year (50 tpy)

(measured as nonmethane organic compounds):	
Ozone depleting substances:	100 tpy

b) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subsection (a), does not list, any emissions rate.

c) Notwithstanding subsection (a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hr average).

Section 204.670 Significant Emissions Increase

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in Section 204.660) for that pollutant.

Section 204.680 Stack in Existence

"Stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

Section 204.690 Stationary Source

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. 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 (43 U.S.C. 7550) are not a part of a stationary source.

Section 204.700 Subject to Regulation

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the CAA, or a nationally-applicable regulation codified by the USEPA in 40 CFR Parts 50 through 99, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430.

Section 204.710 Temporary Clean Coal Technology Demonstration Project

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Illinois' SIP and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

SUBPART C: MAJOR STATIONARY SOURCES IN ATTAINMENT AND UNCLASSIFIABLE AREAS

Section 204.800 Applicability

a) The requirements of this Part apply to the construction of any new major stationary source (as defined in Section 204.510) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the CAA (43 U.S.C. 7407(d)(1)(A)(ii) or (iii)).

b) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.

c) No new major stationary source or major modification to which the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply must begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Illinois EPA has authority to issue any such permit.

d) The requirements of the program will be applied in accordance with the principles set out in subsections (d)(1) through (d)(5).

1) Except as otherwise provided in subsection (f), and consistent with the definition of major modification contained in Section 204.490, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in Section 204.670), and a significant net emissions increase (as defined in Sections 204.550 and 204.660). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type(s) of emissions units involved in the project, according to subsections (d)(3) through (d)(5). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the

second step of the process) is contained in the definition in Section 204.550. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Section 204.600) and the baseline actual emissions (as defined in Section 204.240(a) and (b)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Section 204.560) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Section 204.240(c)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subsections (d)(3) and (d)(4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

e) Except as otherwise provided in Section 204.1400(f)(2), the provisions of Section 204.1400 apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Section 204.1400(f), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions.

f) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source must comply with the requirements under Subpart K.

Section 204.810 Source Information

The owner or operator of a proposed major stationary source or major modification must submit all information necessary to perform any analysis or make any determination required under this Part.

a) With respect to a source or modification to which Sections 204.1100, 204.1110, 204.1130, and 204.11400 apply, such information must include:

1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2) A detailed schedule for construction of the source or modification; and

3) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information as necessary to determine that BACT, as applicable, would be applied.

b) Upon request of the Illinois EPA, the owner or operator must also provide information on:

1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

Section 204.820 Source Obligation

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted under this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who begins actual construction after the effective date of this Part without applying for and receiving approval hereunder, must be subject to appropriate enforcement action.

Section 204.830 Permit Expiration

Approval to construct must become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Illinois EPA may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

Section 204.840 Effect of Permits

Approval to construct must not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, State, or Federal law.

Section 204.850 Relaxation of a Source-Specific Limitation

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 must apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 204.860 Exemptions

a) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 do not apply to a particular major stationary source or major modification, if:

1) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution and the Governor of Illinois exempts it from those requirements; or

2) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

A) Coal cleaning plants (with thermal dryers);

B) Kraft pulp mills;

C) Portland cement plants;

D) Primary zinc smelters;

E) Iron and steel mills;

F) Primary aluminum ore reduction plants;

G) Primary copper smelters;

H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

I) Hydrofluoric, sulfuric, or nitric acid plants;

J) Petroleum refineries;

K) Lime plants;

L) Phosphate rock processing plants;

M) Coke oven batteries;

N) Sulfur recovery plants;

O) Carbon black plants (furnace process);

P) Primary lead smelters;

Q) Fuel conversion plants;

R) Sintering plants;

S) Secondary metal production plants;

T) Chemical process plants—The term chemical processing plant must not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

W) Taconite ore processing plants;

X) Glass fiber processing plants;

Y) Charcoal production plants;

Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

AA) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (43 U.S.C. 7411 or 7412); or

3) The source is a portable stationary source which has previously received a permit under 40 CFR 52.21 or this Part, and

A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

B) The emissions from the source would not exceed its allowable emissions;

C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

D) Reasonable notice is given to the Illinois EPA prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice must be given to the Illinois EPA not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Illinois EPA.

b) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 must 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 (43 U.S.C. 7407). Nonattainment designations for revoked NAAQS, as contained in 40 CFR Part 81, incorporated by reference in 35 Ill. Adm. Code 204.100, must not be viewed as current designations under Section 107 of the CAA (43 U.S.C. 7407) for purposes of determining the applicability of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 to a major stationary source or major modification after the revocation of that NAAQS is effective.

c) The requirements of Sections 204.1110, 204.1130, and 204.1140 must not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1) Would impact no Class I area and no area where an applicable increment is known to be violated, and

2) Would be temporary.

d) The requirements of Sections 204.1110, 204.1130, and 204.1140 as they relate to any maximum allowable increase for a Class II area must not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tpy.

SUBPART D: INCREMENT

Section 204.900 Ambient Air Increments

In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration must be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hr maximum	2
PM_{10}:	
Annual arithmetic mean	4
24-hr maximum	8
SO_2:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
NO_2:	
Annual arithmetic mean	2.5
Class II Area	
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
SO_2:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
NO_2:	
Annual arithmetic mean	25
Class III Area	

$PM_{2.5}$:	
Annual arithmetic mean	8
24-hr maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hr maximum	60
SO_2:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
NO_2:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Section 204.910 Ambient Air Ceilings

No concentration of a pollutant must exceed:

a) The concentration permitted under the national secondary ambient air quality standard, or

b) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

Section 204.920 Restrictions on Area Classifications

a) All of the following areas which were in existence on August 7, 1977, must be Class I areas and may not be redesignated:

1) International parks,

2) National wilderness areas which exceed 5,000 acres in size,

3) National memorial parks which exceed 5,000 acres in size, and

4) National parks which exceed 6,000 acres in size.

b) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, must remain Class I, but may be redesignated as provided in this Part.

c) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Part.

d) The following areas may be redesignated only as Class I or II:

1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 204.930 Redesignation

a) As of the initial effective date of 35 Ill. Adm. Code 204, all areas of the State (except as otherwise provided under Section 204.920) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by Section 204.920) may be proposed by the State or Indian Governing Bodies, as provided below, subject to approval by the USEPA as a revision to the applicable SIP.

b) The State may submit to the USEPA a proposal to redesignate areas of the State Class I or Class II provided that:

1) At least one public hearing has been held in accordance with procedures established in 35 Ill. Adm. Code Part 252;

2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

4) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. I n redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State must have published a list of any inconsistency between such redesignation and such comments

and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

5) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

c) Any area other than an area to which Section 204.920 refers may be redesignated as Class III if—

1) The redesignation would meet the requirements of subsection (b);

2) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of Illinois, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

3) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any NAAQS; and

4) Any permit application for any major stationary source or major modification, subject to review under Section 204.1120 which could receive a permit under this Section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

d) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the USEPA a proposal to redesignate areas Class I, Class II, or Class III provided that:

1) The Indian Governing Body has followed procedures equivalent to those required of a State under subsections (b), (c)(3), and (c)(4); and

2) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

e) The USEPA must disapprove, within 90 days of submission, a proposed redesignation of any area only if it finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements or is inconsistent with Section 204.920. If any such disapproval occurs, the classification of the area must be that which was in effect prior to the redesignation which was disapproved.

f) If the USEPA disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the USEPA.

SUBPART E: STACK HEIGHTS

Section 204.1000 Stack Heights

a) The degree of emission limitation required for control of any air pollutant under this Part must not be affected in any manner by:

1) So much of the stack height of any source as exceeds good engineering practice, or

2) Any other dispersion technique.

b) Subsection (a) must not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS IN ATTAINMENT AND UNCLASSIFIABLE AREAS

Section 204.1100 Control Technology Review

a) A major stationary source or major modification must meet each applicable emissions limitation under the SIP and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61, 62 and 63, incorporated by reference in 35 Ill. Adm. Code 204.100.

b) A new major stationary source must apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts as defined in Section 204.660.

c) A major modification must apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

d) For phased construction projects, the determination of BACT must be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

Section 204.1110 Source Impact Analysis

The owner or operator of the proposed source or modification must demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

a) Any NAAQS in any air quality control region;

b) Any applicable maximum allowable increase as set forth in Section 204.900 and/or Section 204.1200, as applicable, over the baseline concentration in any area.

Section 204.1120 Air Quality Models

a) All estimates of ambient concentrations required under this Section must be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models), incorporated by reference in 35 Ill. Adm. Code 204.100.

b) Where an air quality model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models), incorporated by reference in 35 Ill. Adm. Code 204.100, is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the USEPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 35 Ill. Adm. Code Part 252.

Section 204.1130 Air Quality Analysis

a) Preapplication analysis.

1) Any application for a permit under this Part must contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

A) For the source, each pollutant that it would have the potential to emit in a significant amount;

B) For the modification, each pollutant for which it would result in a significant net emissions increase.

2) With respect to any such pollutant for which no NAAQS exists, the analysis must contain such air quality monitoring data as the Illinois EPA determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3) With respect to any such pollutant for which such a standard does exist, the analysis must contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4) In general, the continuous air quality monitoring data that is required must have been gathered over a period of at least one year and must represent at least the year preceding receipt of the application, except that, if the Illinois EPA determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required must have been gathered over at least that shorter period.

5) The owner or operator of a proposed stationary source or modification of VOM who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV, incorporated by reference in 35 Ill. Adm. Code 204.100, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

b) Post-construction monitoring. The owner or operator of a major stationary source or major modification must, after construction of the stationary source or modification, conduct such ambient monitoring as the Illinois EPA determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

c) Operations of monitoring stations. The owner or operator of a major stationary source or major modification must meet the requirements of Appendix B to 40 CFR Part 58, incorporated by reference in 35 Ill. Adm. Code 204.100, during the operation of monitoring stations for purposes of satisfying this Section.

Section 204.1140 Additional Impact Analyses

a) The owner or operator must provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and

general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

b) The owner or operator must provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

SUBPART G: ADDITIONAL REQUIREMENTS FOR CLASS I AREAS

Section 204.1200 Additional Requirements for Sources Impacting Federal Class I Areas

a) Notice to Federal Land Managers. The Illinois EPA must provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification must include a copy of all information relevant to the permit application and must be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification must include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Illinois EPA must also provide the Federal Land Manager and such Federal officials with a copy of the preliminary determination required under 35 Ill. Adm. Code Part 252, and must make available to them any materials used in making that determination, promptly after the Illinois EPA makes such determination. Finally, the Illinois EPA must also notify all affected Federal Land Managers within 30 days of receipt of any advance notification of any such permit application.

b) Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Illinois EPA, whether a proposed source or modification will have an adverse impact on such values.

c) Visibility analysis. The Illinois EPA must consider any analysis performed by the Federal Land Manager, provided within 30 days of the notification required by subsection (a), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Illinois EPA finds that such an analysis does not demonstrate to the satisfaction of the Illinois EPA that an adverse impact on visibility will result in the Federal Class I area, the Illinois EPA must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

d) Denial—impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Illinois EPA that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Illinois EPA concurs with such demonstration, then it must not issue the permit.

e) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Illinois EPA may, provided that the applicable requirements of this Part are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of SO_2, $PM_{2.5}$, PM_{10}, and NOx would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
SO_2:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
NO_2:	
Annual arithmetic mean	25

f) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (e) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for SO_2 for a period of 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a

variance from such maximum allowable increase. If such variance is granted, the Illinois EPA must issue a permit to such source or modification under the requirements of subsection (h), provided that the applicable requirements of this Part are otherwise met.

g) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager must be transmitted to the President. The President may approve the Governor's recommendation if the President finds that the variance is in the national interest. If the variance is approved, the Illinois EPA must issue a permit under the requirements of subsection (h), provided that the applicable requirements of this Part are otherwise met.

h) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued under subsections (f) or (g) the source or modification must comply with such emission limitations as may be necessary to assure that emissions of SO_2 from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE [Micrograms per cubic meter]		
Period of exposure		
	Low Terrain	High Terrain
24-hr maximum	36	62
3-hr maximum	130	221

SUBPART H: GENERAL OBLIGATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Section 204.1300 Notification of Application Completeness to Applicants

The Illinois EPA must notify the applicant within 30 days after receipt as to the completeness of an application for a permit under this Part or any deficiency in the application or information submitted in such an application. In the event of such a deficiency, the date of receipt of the application must be the date on which the Illinois EPA received all required information.

Section 204.1310 Transmittal of Application to USEPA

The Illinois EPA must transmit to the USEPA a copy of each permit application submitted under this Part relating to a major stationary source or a major modification.

Section 204.1320 Public Participation

Prior to the initial issuance of a permit under this Part or a modification of a permit issued under this Part, the Illinois EPA must provide, at a minimum, notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing under the Illinois EPA's public participation procedures set forth at 35 Ill. Adm. Code Part 252.

Section 204.1330 Issuance Within One Year of Submittal of Complete Application

Within one year after receipt of a complete application, a permit must be granted or denied by the Illinois EPA.

Section 204.1340 Permit Rescission

a) Any permit issued under this Part or a prior version of this Part must remain in effect, unless and until it expires under Section 204.830 or is rescinded under this Section.

b) An owner or operator of a stationary source or modification who holds a permit issued under this Part or 40 CFR 52.21 for the construction of a new source or modification that meets the requirement in subsection (c) may request that the Illinois EPA rescind the permit or a particular portion of the permit.

c) The Illinois EPA may grant an application for rescission if the application shows that this Part would not apply to the source or modification.

d) If the Illinois EPA rescinds a permit under this Section, the Illinois EPA must post a notice of the rescission determination on a public web site identified by the Illinois EPA within 60 days after the rescission.

SUBPART I: NONAPPLICABILITY RECORDKEEPING AND REPORTING

Section 204.1400 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources

a) Except as otherwise provided in subsection (f)(2), the provisions of this Section apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions unit(s) at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (f), that a project that is not a major modification for the pollutant may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions.

b) Before beginning actual construction of the project, the owner or operator must ~~shall~~ document and maintain a record of the following information:

1) A description of the project;

2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Section 204.600(b)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

c) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator must provide a copy of the information set out in subsection (a) to the Illinois EPA. Nothing in this subsection must be construed to require the owner or operator of such a unit to obtain any determination from the Illinois EPA before beginning actual construction.

d) The owner or operator must monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (a)(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.

e) If the unit is an existing electric utility steam generating unit, the owner or operator must submit a report to the Illinois EPA within 60 days after the end of each year during which records must be generated under subsection (c) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

f) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator must submit a report to the Illinois EPA if the annual emissions, in tons per year, from the project identified in subsection (a), exceed the baseline actual emissions (as documented and maintained under subsection (a)(3)), by a significant amount (as defined in Section 204.660) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under subsection (a)(3). Such report must be

submitted to the Illinois EPA within 60 days after the end of such year. The report must contain the following:

1) The name, address and telephone number of the major stationary source;

2) The annual emissions as calculated under subsection (c); and

3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

g) A "reasonable possibility" under this Section occurs when the owner or operator calculates the project to result in either:

1) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2) A projected actual emissions increase that, added to the amount of emissions excluded under Section 204.600(b)(3), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subsection (f)(2), and not also within the meaning of subsection (f)(1), then subsections (b) through (e) do not apply to the project.

h) The owner or operator of the source must make the information required to be documented and maintained under this Section available for review upon a request for inspection by the Illinois EPA or USEPA or the general public under the requirements contained in Section 39.5(8)(e) of the Act.

SUBPART J: INNOVATIVE CONTROL TECHNOLOGY

Section 204.1500 Innovative Control Technology

a) An owner or operator of a proposed major stationary source or major modification may request the Illinois EPA in writing no later than the close of the comment period under 35 Ill. Adm. Code Part 252 to approve a system of innovative control technology.

b) The Illinois EPA must with the consent of the Governor, determine that the source or modification may employ a system of innovative control technology, if:

1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 204.1100(b), by a date specified by the Illinois EPA. Such date must not be later than 4 years after the time of startup or 7 years after permit issuance;

3) The source or modification would meet the requirements of Sections 204.1100 and 204.1110, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Illinois EPA;

4) The source or modification would not before the date specified by the Illinois EPA:

A) Cause or contribute to a violation of an applicable NAAQS; or

B) Impact any area where an applicable increment is known to be violated; and

5) All other applicable requirements including those for public participation have been met.

6) The provisions of Section 204.1200 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

c) The Illinois EPA must withdraw any approval to employ a system of innovative control technology made under this Section, if:

1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3) The Illinois EPA decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (c), the Illinois EPA may allow the source or

modification up to an additional 3 years to meet the requirement for the application of BACT through use of a demonstrated system of control.

SUBPART K: PLANTWIDE APPLICABILITY LIMITATION

Section 204.1600 Applicability

a) The Illinois EPA may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this Subpart. The term "PAL" must mean "actuals PAL" throughout this Subpart.

b) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in this Subpart, and complies with the PAL permit:

1) Is not a major modification for the PAL pollutant;

2) Does not have to be approved through the major NSR program; and

3) Is not subject to the provisions in Section 204.850 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

c) Except as provided under subsection (b)(2), a major stationary source must continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

Section 204.1610 Definitions

For the purposes of this Subpart, the definitions in Sections 204.1620 through 204.1780 apply. When a term is not defined in these sections, it must have the meaning given in this Part, Part 211, or in the CAA.

Section 204.1620 Actuals PAL

"Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in Section 204.240) of all emissions units (as defined in Section 204.370) at the source, that emit or have the potential to emit the PAL pollutant.

Section 204.1630 Allowable Emissions

"Allowable emissions" means "allowable emissions" as defined in Section 204.230, except that the allowable emissions for any emissions unit must be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

Section 204.1640 Continuous Emissions Monitoring System (CEMS)

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this Part, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Section 204.1650 Continuous Emissions Rate Monitoring System (CERMS)

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

Section 204.1660 Continuous Parameter Monitoring System (CPMS)

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this Part to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

Section 204.1670 Lowest Achievable Emission Rate (LAER)

"Lowest achievable emission rate" or "LAER" must have the meaning given by the provisions at 35 Ill. Adm. Code 203.301(a).

Section 204.1680 Major Emissions Unit

"Major emissions unit" means any emissions unit that emits or has the potential to emit 100 tpy or more of the PAL pollutant in an attainment area.

Section 204.1690 Plantwide Applicability Limitation (PAL)

Plantwide applicability limitation" or ("PAL") means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG emission limitation for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subpart.

Section 204.1700 PAL Effective Date

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

Section 204.1710 PAL Effective Period

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

Section 204.1720 PAL Major Modification

"PAL major modification" means, notwithstanding Sections 204.490 and 204.550 (the definitions for major modification, and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

Section 204.1730 PAL Permit

"PAL permit" means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the SIP, or the CAAPP permit issued by the Illinois EPA that establishes a PAL for a major stationary source.

Section 204.1740 PAL Pollutant

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

Section 204.1750 Predictive Emissions Monitoring System (PEMS)

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

Section 204.1760 Reasonably Achievable Control Technology (RACT)

"Reasonably Achievable Control Technology" or "RACT" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

a) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

b) The social, environmental, and economic impact of such controls; and

c) Alternative means of providing for attainment and maintenance of such standard.

Section 204.1770 Significant Emissions Unit

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Section 204.660 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Section 204.1680.

Section 204.1780 Small Emissions Unit

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Section 204.660 or in the CAA, whichever is lower.

Section 204.1790 Permit Application Requirements

As part of a permit application requesting a PAL, the owner or operator of a major stationary source must submit the following information to the Illinois EPA for approval:

a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source must indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Section 204.1890(a).

Section 204.1800 General Requirements for Establishing PAL

a) The Illinois EPA is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in this Section are met.

1) The PAL must impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator must show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator must show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2) The PAL must be established in a PAL permit that meets the public participation requirements in Section 204.1810.

3) The PAL permit must contain all the requirements of Section 204.1830.

4) The PAL must include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

5) Each PAL must regulate emissions of only one pollutant.

6) Each PAL must have a PAL effective period of 10 years.

7) The owner or operator of the major stationary source with a PAL must comply with the monitoring, recordkeeping, and reporting requirements provided in Sections 204.1880 through 204.1900 for each emissions unit under the PAL through the PAL effective period.

b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 35 Ill. Adm. Code Part 203 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

Section 204.1810 Public Participation Requirements

PALs for existing major stationary sources must be established, renewed, or increased through a procedure that is consistent with 35 Ill. Adm. Code Part 252. This includes the requirement that the Illinois EPA provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Illinois EPA must address all material comments before taking final action on the permit.

Section 204.1820 Setting the 10-Year Actuals PAL Level

a) Except as provided in subsection (b), the plan must provide that the actuals PAL level for a major stationary source must be established as the sum of the baseline actual emissions (as defined in Section 204.240) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under Section 204.660 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Illinois EPA must specify a reduced PAL level(s) in tons per year (or tons per year CO_2e for a GHG PAL) in the PAL

permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Illinois EPA is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit must contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

b) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (a), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

Section 204.1830 Contents of the PAL Permit

The PAL permit must contain, at a minimum, the information in subsections (a) through (j).

a) The PAL pollutant and the applicable source-wide emission limitation in tons per year, or tons per year CO_2e for a GHG PAL.

b) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Section 204.1860 before the end of the PAL effective period, then the PAL must not expire at the end of the PAL effective period. It must remain in effect until a revised PAL permit is issued by the Illinois EPA.

d) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Section 204.1850.

f) The calculation procedures that the major stationary source owner or operator must use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by Section 204.1890(a).

g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Section 204.1880.

h) A requirement to retain the records required under Section 204.1890 on site. Such records may be retained in an electronic format.

i) A requirement to submit the reports required under Section 204.1900 by the required deadlines.

j) Any other requirements that the Illinois EPA deems necessary to implement and enforce the PAL.

Section 204.1840 Effective Period and Reopening a PAL Permit

The requirements in subsections (a) and (b) apply to actuals PALs.

a) PAL effective period. The Illinois EPA must specify a PAL effective period of 10 years.

b) Reopening of the PAL permit.

1) During the PAL effective period, the Illinois EPA must reopen the PAL permit to:

A) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 35 Ill. Adm. Code Part 203; and

C) Revise the PAL to reflect an increase in the PAL as provided under Section 204.1870.

2) The Illinois EPA must have discretion to reopen the PAL permit for the following:

A) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

B) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Illinois EPA may impose on the major stationary source under the SIP; and

C) Reduce the PAL if the Illinois EPA determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by

a Federal Land Manager and for which information is available to the general public.

c) Except for the permit reopening in subsection (b)(1)(A) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings must be carried out in accordance with the public participation requirements of Section 204.1810.

Section 204.1850 Expiration of a PAL

Any PAL that is not renewed in accordance with the procedures in Section 204.1860 must expire at the end of the PAL effective period, and the requirements in this Section must apply.

a) Each emissions unit (or each group of emissions units) that existed under the PAL must comply with an allowable emission limitation under a revised permit established according to the procedures in subsections (a)(1) and (a)(2).

1) Within the time frame specified for PAL renewals in Section 204.1860(b), the major stationary source must submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Illinois EPA) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Section 204.1860(e), such distribution must be made as if the PAL had been adjusted.

2) The Illinois EPA must decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Illinois EPA determines is appropriate.

b) Each emissions unit(s) must comply with the allowable emission limitation on a 12-month rolling basis. The Illinois EPA 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.

c) Until the Illinois EPA issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (a)(2), the source must continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

d) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in Section 204.490.

e) The major stationary source owner or operator must continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under Section 204.850, but were eliminated by the PAL in accordance with the provisions in Section 204.1600(b)(3).

Section 204.1860 Renewal of a PAL

a) The Illinois EPA must follow the procedures specified in Section 204.1810 in approving any request to renew a PAL for a major stationary source, and must provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Illinois EPA.

b) Application deadline. A major stationary source owner or operator must submit a timely application to the Illinois EPA to request renewal of a PAL. A timely application is one that is submitted at least 6 months before, but not earlier than 18 months before, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL must continue to be effective until the revised permit with the renewed PAL is issued.

c) Application requirements. The application to renew a PAL permit must contain the information required in subsections (c)(1) through (4).

1) The information required in Section 204.1790(a) through (c).

2) A proposed PAL level.

3) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

4) Any other information the owner or operator wishes the Illinois EPA to consider in determining the appropriate level for renewing the PAL.

d) PAL adjustment. In determining whether and how to adjust the PAL, the Illinois EPA must consider the options outlined in subsections (d)(1) and (d)(2). However, in no case may any such adjustment fail to comply with subsection (d)(3).

1) If the emissions level calculated in accordance with Section 204.1820 is equal to or greater than 80 percent of the PAL level, the Illinois EPA may renew the PAL at the same level without considering the factors set forth in subsection (d)(2); or

2) The Illinois EPA may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Illinois EPA in its written rationale.

3) Notwithstanding subsections (d)(1) and (d)(2):

A) If the potential to emit of the major stationary source is less than the PAL, the Illinois EPA must adjust the PAL to a level no greater than the potential to emit of the source; and

B) The Illinois EPA must not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Section 204.1870 (increasing a PAL).

e) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Illinois EPA has not already adjusted for such requirement, the PAL must be adjusted at the time of PAL permit renewal or CAAPP permit renewal, whichever occurs first.

Section 204.1870 Increasing the PAL During the PAL Effective Period

a) The Illinois EPA may increase a PAL emission limitation only if the major stationary source complies with the provisions in subsections (a)(1) through (4).

1) The owner or operator of the major stationary source must submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application must identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

2) As part of this application, the major stationary source owner or operator must demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that

would result from BACT equivalent controls on each significant or major emissions unit must be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit must be equal to the level of BACT or LAER with which that emissions unit must currently comply.

3) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (a)(1), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) must comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

4) The PAL permit must require that the increased PAL level must be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b) The Illinois EPA must calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2)), plus the sum of the baseline actual emissions of the small emissions units.

c) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of Section 204.1810.

Section 204.1880 Monitoring Requirements

a) General requirements.

1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time, or in CO_2e per unit of time for a GHG PAL. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsection (b)(1) through (4) and must be approved by the Illinois EPA.

3) Notwithstanding subsection (a)(2), the owner or operator may also employ an alternative monitoring approach that meets subsection (a)(1) if approved by the Illinois EPA.

4) Failure to use a monitoring system that meets the requirements ~~of this Section~~ renders the PAL invalid.

b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

1) Mass balance calculations for activities using coatings or solvents;

2) CEMS;

3) CPMS or PEMS; and

4) Emission factors.

c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents must meet the following requirements:

1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Illinois EPA determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions must meet the following requirements:

1) CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B, incorporated by reference in 35 Ill. Adm. Code 204.100; and

2) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions must meet the following requirements:

1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

2) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Illinois EPA, while the emissions unit is operating.

f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions must meet the following requirements:

1) All emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2) The emissions unit must operate within the designated range of use for the emission factor, if applicable; and

3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions must conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Illinois EPA determines that testing is not required.

g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Illinois EPA must, at the time of permit issuance:

1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Illinois EPA. Such testing must occur at least once every 5 years after issuance of the PAL.

Section 204.1890 Recordkeeping Requirements

a) The PAL permit must require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

b) The PAL permit must require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

1) A copy of the PAL permit application and any applications for revisions to the PAL; and

2) Each annual certification of compliance under Section 39.5(7)(p)(v) of the Act and the data relied on in certifying the compliance.

Section 204.1900 Reporting and Notification Requirements

The owner or operator must submit semi-annual monitoring reports and prompt deviation reports to the Illinois EPA in accordance with the CAAPP. The reports must meet the requirements in subsections (a) through (c).

a) Semi-annual report. The semi-annual report must be submitted to the Illinois EPA within 30 days of the end of each reporting period. This report must contain the information required in subsections (a)(1) through (7).

1) The identification of owner and operator and the permit number.

2) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e for a GHG PAL) based on a 12-month rolling total for each month in the reporting period recorded under Section 204.1890(a).

3) All data relied upon, including any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Section 204.1880(g).

7) A signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report.

b) Deviation report. The major stationary source owner or operator must promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 40 CFR 70.6(a)(3)(iii)(B) must satisfy this reporting requirement. The deviation reports must be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports must contain the following information:

1) The identification of owner and operator and the permit number;

2) The PAL requirement that experienced the deviation or that was exceeded;

3) Emissions resulting from the deviation or the exceedance; and

4) A signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report.

c) Re-validation results. The owner or operator must submit to the Illinois EPA the results of any re-validation test or method within 3 months after completion of such test or method.

Section 204.1910 Transition Requirements

The Illinois EPA may not issue a PAL that does not comply with the requirements in this Subpart after the initial effective date of 35 Ill. Adm. Code 204.

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SUBTITLE B: AIR POLLUTION
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DEFINITIONS AND GENERAL PROVISIONS

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211.2415 Fog Coat
211.2430 Fossil Fuel
211.2435 Fossil Fuel-Fired
211.2430 Fountain Solution
211.2450 Freeboard Height
211.2470 Fuel Combustion Emission Unit or Fuel Combustion Emission Source
211.2490 Fugitive Particulate Matter
211.2510 Full Operating Flowrate
211.2525 Gasket/Gasket Sealing Material
211.2530 Gas Service
211.2550 Gas/Gas Method

211.2570 Gasoline
211.2590 Gasoline Dispensing Operation or Gasoline Dispensing Facility
211.2610 Gel Coat
211.2615 General Work Surface
211.2620 Generator
211.2622 Glass Bonding Primer
211.2625 Glass Melting Furnace
211.2630 Gloss Reducers
211.2650 Grain
211.2670 Grain-Drying Operation
211.2690 Grain-Handling and Conditioning Operation
211.2710 Grain-Handling Operation
211.2730 Green-Tire Spraying
211.2750 Green Tires
211.2770 Gross Heating Value
211.2790 Gross Vehicle Weight Rating
211.2800 Hardwood Plywood
211.2810 Heated Airless Spray
211.2815 Heat Input
211.2820 Heat Input Rate
211.2825 Heat-Resistant Coating
211.2830 Heatset
211.2840 Heatset Web Letterpress Printing Line
211.2850 Heatset Web Offset Lithographic Printing Line
211.2870 Heavy Liquid
211.2890 Heavy Metals
211.2910 Heavy Off-Highway Vehicle Products
211.2930 Heavy Off-Highway Vehicle Products Coating
211.2950 Heavy Off-Highway Vehicle Products Coating Line
211.2955 High Bake Coating
211.2956 High Build Primer Surfacer
211.2958 High Gloss Coating
211.2960 High-Performance Architectural Coating
211.2965 High Precision Optic
211.2970 High Temperature Aluminum Coating
211.2980 High Temperature Coating
211.2990 High Volume Low Pressure (HVLP) Spray
211.3010 Hood
211.3030 Hot Well
211.3050 Housekeeping Practices
211.3070 Incinerator
211.3090 Indirect Heat Transfer
211.3095 Indoor Floor Covering Installation Adhesive
211.3100 Industrial Boiler
211.3110 Ink
211.3120 In-Line Repair

211.3130 In-Process Tank
211.3150 In-Situ Sampling Systems
211.3170 Interior Body Spray Coat
211.3190 Internal-Floating Roof
211.3210 Internal Transferring Area
211.3215 Janitorial Cleaning
211.3230 Lacquers
211.3240 Laminate
211.3250 Large Appliance
211.3270 Large Appliance Coating
211.3290 Large Appliance Coating Line
211.3300 Lean-Burn Engine
211.3305 Letterpress Printing Line
211.3310 Light Liquid
211.3330 Light-Duty Truck
211.3350 Light Oil
211.3355 Lime Kiln
211.3370 Liquid/Gas Method
211.3390 Liquid-Mounted Seal
211.3410 Liquid Service
211.3430 Liquids Dripping
211.3450 Lithographic Printing Line
211.3470 Load-Out Area
211.3475 Load Shaving Unit
211.3480 Loading Event
211.3483 Long Dry Kiln
211.3485 Long Wet Kiln
211.3487 Low-NO_x Burner
211.3490 Low Solvent Coating
211.3500 Lubricating Oil
211.3505 Lubricating Wax/Compound
211.3510 Magnet Wire
211.3530 Magnet Wire Coating
211.3550 Magnet Wire Coating Line
211.3555 Maintenance Cleaning
211.3570 Major Dump Pit
211.3590 Major Metropolitan Area (MMA)
211.3610 Major Population Area (MPA)
211.3620 Manually Operated Equipment
211.3630 Manufacturing Process
211.3650 Marine Terminal
211.3660 Marine Vessel
211.3665 Mask Coating
211.3670 Material Recovery Section
211.3690 Maximum Theoretical Emissions
211.3695 Maximum True Vapor Pressure

211.3705 Medical Device
211.3707 Medical Device and Pharmaceutical Manufacturing
211.3710 Metal Furniture
211.3730 Metal Furniture Coating
211.3750 Metal Furniture Coating Line
211.3760 Metallic Coating
211.3770 Metallic Shoe-Type Seal
211.3775 Metal to Urethane/Rubber Molding or Casting Adhesive
211.3780 Mid-Kiln Firing
211.3785 Military Specification Coating
211.3790 Miscellaneous Fabricated Product Manufacturing Process
211.3810 Miscellaneous Formulation Manufacturing Process
211.3820 Miscellaneous Industrial Adhesive Application Operation
211.3830 Miscellaneous Metal Parts and Products
211.3850 Miscellaneous Metal Parts and Products Coating
211.3870 Miscellaneous Metal Parts or Products Coating Line
211.3890 Miscellaneous Organic Chemical Manufacturing Process
211.3910 Mixing Operation
211.3915 Mobile Equipment
211.3925 Mold Seal Coating
211.3930 Monitor
211.3950 Monomer
211.3960 Motor Vehicles
211.3961 Motor Vehicle Adhesive
211.3965 Motor Vehicle Refinishing
211.3966 Motor Vehicle Weatherstrip Adhesive
211.3967 Mouth Waterproofing Sealant
211.3968 Multi-Colored Coating
211.3969 Multi-Component Coating
211.3970 Multiple Package Coating
211.3975 Multipurpose Construction Adhesive
211.3980 Nameplate Capacity
211.3985 Natural Finish Hardwood Plywood Panel
211.3990 New Grain-Drying Operation (Repealed)
211.4010 New Grain-Handling Operation (Repealed)
211.4030 No Detectable Volatile Organic Material Emissions
211.4050 Non-Contact Process Water Cooling Tower
211.4052 Non-Convertible Coating
211.4055 Non-Flexible Coating
211.4065 Non-Heatset
211.4067 NO_x Trading Program
211.4070 Offset
211.4080 One-Component Coating
211.4090 One Hundred Percent Acid
211.4110 One-Turn Storage Space
211.4130 Opacity

211.4150 Opaque Stains
211.4170 Open Top Vapor Degreasing
211.4190 Open-Ended Valve
211.4310 Operator of a Gasoline Dispensing Operation or Operator of a Gasoline Dispensing Facility
211.4320 Optical Coating
211.4330 Organic Compound
211.4350 Organic Material and Organic Materials
211.4360 Organic Solvent
211.4370 Organic Vapor
211.4380 Other Glass
211.4385 Outdoor Floor Covering Installation Adhesive
211.4390 Oven
211.4310 Overall Control
211.4330 Overvarnish
211.4350 Owner of a Gasoline Dispensing Operation or Owner of a Gasoline Dispensing Facility
211.4370 Owner or Operator
211.4390 Packaging Rotogravure Printing
211.4410 Packaging Rotogravure Printing Line
211.4430 Pail
211.4450 Paint Manufacturing Source or Paint Manufacturing Plant
211.4455 Pan-Backing Coating
211.4460 Panel
211.4470 Paper Coating
211.4490 Paper Coating Line
211.4510 Particulate Matter
211.4530 Parts Per Million (Volume) or PPM (Vol)
211.4540 Perimeter Bonded Sheet Flooring
211.4550 Person
211.4590 Petroleum
211.4610 Petroleum Liquid
211.4630 Petroleum Refinery
211.4650 Pharmaceutical
211.4670 Pharmaceutical Coating Operation
211.4690 Photochemically Reactive Material
211.4710 Pigmented Coatings
211.4720 Pipeline Natural Gas
211.4730 Plant
211.4735 Plastic
211.4740 Plastic Part
211.4750 Plasticizers
211.4760 Plastic Solvent Welding Adhesive
211.4765 Plastic Solvent Welding Adhesive Primer
211.4768 Pleasure Craft
211.4769 Pleasure Craft Surface Coating

211.4770 PM-10
211.4790 Pneumatic Rubber Tire Manufacture
211.4810 Polybasic Organic Acid Partial Oxidation Manufacturing Process
211.4830 Polyester Resin Material(s)
211.4850 Polyester Resin Products Manufacturing Process
211.4870 Polystyrene Plant
211.4890 Polystyrene Resin
211.4895 Polyvinyl Chloride Plastic (PVC Plastic)
211.4900 Porous Material
211.4910 Portable Grain-Handling Equipment
211.4930 Portland Cement Manufacturing Process Emission Source
211.4950 Portland Cement Process or Portland Cement Manufacturing Plant
211.4960 Potential Electrical Output Capacity
211.4970 Potential to Emit
211.4990 Power Driven Fastener Coating
211.5010 Precoat
211.5012 Prefabricated Architectural Coating
211.5015 Preheater Kiln
211.5020 Preheater/Precalciner Kiln
211.5030 Pressure Release
211.5050 Pressure Tank
211.5060 Pressure/Vacuum Relief Valve
211.5061 Pretreatment Coating
211.5062 Pretreatment Wash Primer
211.5065 Primary Product
211.5070 Prime Coat
211.5075 Primer Sealant
211.5080 Primer Sealer
211.5090 Primer Surfacer Coat
211.5110 Primer Surfacer Operation
211.5130 Primers
211.5140 Printed Interior Panel
211.5150 Printing
211.5170 Printing Line
211.5185 Process Emission Source
211.5190 Process Emission Unit
211.5195 Process Heater
211.5210 Process Unit
211.5230 Process Unit Shutdown
211.5245 Process Vent
211.5250 Process Weight Rate
211.5270 Production Equipment Exhaust System
211.5310 Publication Rotogravure Printing Line
211.5330 Purged Process Fluid
211.5335 Radiation Effect Coating
211.5340 Rated Heat Input Capacity

211.5350 Reactor
211.5370 Reasonably Available Control Technology (RACT)
211.5390 Reclamation System
211.5400 Red Coating
211.5410 Refiner
211.5430 Refinery Fuel Gas
211.5450 Refinery Fuel Gas System
211.5470 Refinery Unit or Refinery Process Unit
211.5480 Reflective Argent Coating
211.5490 Refrigerated Condenser
211.5500 Regulated Air Pollutant
211.5510 Reid Vapor Pressure
211.5520 Reinforced Plastic Composite
211.5530 Repair
211.5535 Repair Cleaning
211.5550 Repair Coat
211.5570 Repaired
211.5580 Repowering
211.5585 Research and Development Operation
211.5590 Residual Fuel Oil
211.5600 Resist Coat
211.5610 Restricted Area
211.5630 Retail Outlet
211.5640 Rich-Burn Engine
211.5650 Ringelmann Chart
211.5670 Roadway
211.5690 Roll Coater
211.5710 Roll Coating
211.5730 Roll Printer
211.5750 Roll Printing
211.5770 Rotogravure Printing
211.5790 Rotogravure Printing Line
211.5800 Rubber
211.5810 Safety Relief Valve
211.5830 Sandblasting
211.5850 Sanding Sealers
211.5860 Scientific Instrument
211.5870 Screening
211.5875 Screen Printing
211.5880 Screen Printing on Paper
211.5885 Screen Reclamation
211.5890 Sealer
211.5910 Semi-Transparent Stains
211.5930 Sensor
211.5950 Set of Safety Relief Valves
211.5970 Sheet Basecoat

211.5980 Sheet-Fed
211.5985 Sheet Rubber Lining Installation
211.5987 Shock-Free Coating
211.5990 Shotblasting
211.6010 Side-Seam Spray Coat
211.6012 Silicone-Release Coating
211.6015 Single-Ply Roof Membrane
211.6017 Single-Ply Roof Membrane Adhesive Primer
211.6020 Single-Ply Roof Membrane Installation and Repair Adhesive
211.6025 Single Unit Operation
211.6030 Smoke
211.6050 Smokeless Flare
211.6060 Soft Coat
211.6063 Solar-Absorbent Coating
211.6065 Solids Turnover Ratio (R_T)
211.6070 Solvent
211.6090 Solvent Cleaning
211.6110 Solvent Recovery System
211.6130 Source
211.6140 Specialty Coatings
211.6145 Specialty Coatings for Motor Vehicles
211.6150 Specialty High Gloss Catalyzed Coating
211.6170 Specialty Leather
211.6190 Specialty Soybean Crushing Source
211.6210 Splash Loading
211.6230 Stack
211.6250 Stain Coating
211.6270 Standard Conditions
211.6290 Standard Cubic Foot (scf)
211.6310 Start-Up
211.6330 Stationary Emission Source
211.6350 Stationary Emission Unit
211.6355 Stationary Gas Turbine
211.6360 Stationary Reciprocating Internal Combustion Engine
211.6370 Stationary Source
211.6390 Stationary Storage Tank
211.6400 Stencil Coat
211.6405 Sterilization Indicating Ink
211.6410 Storage Tank or Storage Vessel
211.6430 Strippable Spray Booth Coating
211.6435 Stripping
211.6437 Structural Glazing
211.6430 Styrene Devolatilizer Unit
211.6450 Styrene Recovery Unit
211.6460 Subfloor
211.6470 Submerged Loading Pipe

211.6490 Substrate
211.6510 Sulfuric Acid Mist
211.6530 Surface Condenser
211.6535 Surface Preparation
211.6540 Surface Preparation Materials
211.6550 Synthetic Organic Chemical or Polymer Manufacturing Plant
211.6570 Tablet Coating Operation
211.6580 Texture Coat
211.6585 Thin Metal Laminating Adhesive
211.6587 Thin Particleboard
211.6590 Thirty-Day Rolling Average
211.6610 Three-Piece Can
211.6620 Three or Four Stage Coating System
211.6630 Through-the-Valve Fill
211.6635 Tileboard
211.6640 Tire Repair
211.6650 Tooling Resin
211.6670 Topcoat
211.6690 Topcoat Operation
211.6695 Topcoat System
211.6710 Touch-Up
211.6720 Touch-Up Coating
211.6730 Transfer Efficiency
211.6740 Translucent Coating
211.6750 Tread End Cementing
211.6770 True Vapor Pressure
211.6780 Trunk Interior Coating
211.6790 Turnaround
211.6810 Two-Piece Can
211.6825 Underbody Coating
211.6830 Under-the-Cup Fill
211.6850 Undertread Cementing
211.6860 Uniform Finish Blender
211.6870 Unregulated Safety Relief Valve
211.6880 Vacuum Metallizing
211.6885 Vacuum Metalizing Coating
211.6890 Vacuum Producing System
211.6910 Vacuum Service
211.6930 Valves Not Externally Regulated
211.6950 Vapor Balance System
211.6970 Vapor Collection System
211.6990 Vapor Control System
211.7010 Vapor-Mounted Primary Seal
211.7030 Vapor Recovery System
211.7050 Vapor-Suppressed Polyester Resin
211.7070 Vinyl Coating

AUTHORITY: Implementing Sections 9, 9.1, 9.9 and 10 and authorized by Sections 27 of the Environmental Protection Act [415 ILCS 5/9, 9.1, 9.9, 10, 27].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 Ill. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 5223, effective March 28, 1991; amended in R88-14 at 15 Ill. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 Ill. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 Ill. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 Ill. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 Ill. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 Ill. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 Ill. Reg. 1253, effective January 18, 1994; amended in R94-12 at 18 Ill. Reg. 14962, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15744, effective October 17, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg.

16929, effective November 15, 1994; amended in R94-21, R94-31 and R94-32 at 19 Ill. Reg. 6823, effective May 9, 1995; amended in R94-33 at 19 Ill. Reg. 7344, effective May 22, 1995; amended in R95-2 at 19 Ill. Reg. 11066, effective July 12, 1995; amended in R95-16 at 19 Ill. Reg. 15176, effective October 19, 1995; amended in R96-5 at 20 Ill. Reg. 7590, effective May 22, 1996; amended in R96-16 at 21 Ill. Reg. 2641, effective February 7, 1997; amended in R97-17 at 21 Ill. Reg. 6489, effective May 16, 1997; amended in R97-24 at 21 Ill. Reg. 7695, effective June 9, 1997; amended in R96-17 at 21 Ill. Reg. 7856, effective June 17, 1997; amended in R97-31 at 22 Ill. Reg. 3497, effective February 2, 1998; amended in R98-17 at 22 Ill. Reg. 11405, effective June 22, 1998; amended in R01-9 at 25 Ill. Reg. 108, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4582, effective March 15, 2001; amended in R01-17 at 25 Ill. Reg. 5900, effective April 17, 2001; amended in R05-16 at 29 Ill. Reg. 8181, effective May 23, 2005; amended in R05-11 at 29 Ill. Reg. 8892, effective June 13, 2005; amended in R04-12/20 at 30 Ill. Reg. 9654, effective May 15, 2006; amended in R07-18 at 31 Ill. Reg. 14354, effective September 25, 2007; amended in R08-6 at 32 Ill. Reg. 1387, effective January 16, 2008; amended in R07-19 at 33 Ill. Reg. 11982, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13326, effective August 31, 2009; amended in R10-7 at 34 Ill. Reg. 1391, effective January 11, 2010; amended in R10-8 at 34 Ill. Reg. 9069, effective June 25, 2010; amended in R10-20 at 34 Ill. Reg. 14119, effective September 14, 2010; amended in R11-23 at 35 Ill. Reg. 13451, effective July 27, 2011; amended in R12-24 at 37 Ill. Reg. 1662, effective January 28, 2013; amended in R13-1 at 37 Ill. Reg. 1913, effective February 4, 2013; amended in R14-7 at 37 Ill. Reg. 19824, effective November 27, 2013; amended in R14-16 at 38 Ill. Reg. 12876, effective June 9, 2014; amended in R14-16 at 39 Ill. Reg. 5410, effective March 24, 2015; amended at 41 Ill. Reg. 1096, effective January 23, 2017; amended in R17-09 at 41 Ill. Reg. 4173, effective March 24, 2017; amended in R17-11 at 41 Ill. Reg. 13389, effective October 23, 2017; amended in R19-1 at 44 Ill. Reg._____, effective_____.

SUBPART A: GENERAL PROVISIONS

Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)

"Volatile organic material" (also "VOM") or "volatile organic compound" (also "VOC") means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

a) This definition of VOM includes any organic compound that participates in atmospheric photochemical reactions, other than the compounds listed in this subsection (a). USEPA has determined that the compounds listed in this subsection (a) have negligible photochemical reactivity.

2-Amino-2-methylpropan-1-ol(CAS No. 124-68-5)
Bis(difluoromethoxy)difluoromethane(HFE-236cal2, CAS No. 78522-47-1)
1,2-Bis(difluoromethoxy)-1,1,2,2-tetrafluoroethane(HFE-338pcc13, CAS No. 188690-78-0)

tertiary-Butyl acetate(1,1-dimethylethyl acetic acid ester, CAS No. 540-88-5)
1-Chloro-1,1-difluoroethane(HCFC-143b, CAS No. 75-68-3)
Chlorodifluoromethane(CFC-22, CAS No. 75-45-6)
1-Chloro-1-fluoroethane(HCFC-151a, CAS No. 1615-75-4)
Chlorofluoromethane(HCFC-31, CAS No. 593-70-4)
Chloropentafluoroethane(CFC-115, CAS No. 76-15-3)
2-Chloro-1,1,1,2-tetrafluoroethane(HCFC-124, CAS No. 2837-89-0)
1-Chloro-4-(trifluoromethyl)benzene(parachlorobenzotrifluoride (PCBTF), CAS No. 98-56-6)
(1E)-1-Chloro-3,3,3-trifluoroprop-1-ene(trans-1-chloro-3,3,3-trifluoroprop-1-ene, CAS No. 102687-65-0)
1,1,1,2,2,3,4,5,5,5-Decafluoro-3-methoxy-4-trifluoromethylpentane(HFE-7300, CAS No. 132182-92-4)
1,1,1,2,3,4,4,5,5,5-Decafluoropentane(HFC 43-10mee, CAS No. 138495-42-8)
Dichlorodifluoromethane(CFC-12, CAS No. 75-71-8)
1,1-Dichloro-1-fluoroethane(HCFC-141b, CAS No. 1717-00-6)
Dichloromethane(methylene chloride, CAS No. 75-09-2)
3,3-Dichloro-1,1,1,2,2-pentafluoropropane(HCFC-225ca, CAS No. 432-56-0)
1,3-Dichloro-1,1,2,2,3-pentafluoropropane(HCFC-225cb, CAS No. 507-55-1)
1,2-Dichloro-1,1,2,2-tetrafluoroethane(CFC-114, CAS No. 76-14-2)
1,1-Dichloro-2,2,2-trifluoroethane(HCFC-123, CAS No. 306-83-2)
1,2-Dichloro-1,1,2-trifluoroethane(HCFC-123a, CAS No. 354-23-4)
1,1-Difluoroethane(HFC-152a, CAS No. 75-37-6)
Difluoromethane(HFC-32, CAS No. 75-10-5)
(Difloromethoxy)difluoromethane(HFE-134, CAS No. 1691-17-4)
1-(Difloromethoxy)-2-[(difluoromethoxy)(difluoro)methoxy]-1,1,2,2-tetrafluoroethane(HFE-43-10pccc124, CAS No. 188690-77-9)
2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane(CAS No. 163702-08-7)
Dimethyl carbonate(CAS No. 616-38-6)
Ethane(CAS No. 74-84-0)
2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane(CAS No. 163702-06-5)
3-Ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane(HFE-7500, CAS No. 297730-93-9)
1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane(HFE-7200, CAS No. 163702-05-4)
Ethylfluoride(HFC-161, CAS No. 353-36-6)
1,1,1,2,2,3,3-Heptafluoro-3-methoxypropane(HFE-7000, CAS No. 375-03-1)
1,1,1,2,3,3,3-Heptafluoropropane(HFC-227ea, CAS No. 431-89-0)
1,1,1,2,3,3-Hexafluoropropane(HFC-236ea, CAS No. 431-63-0)

1,1,1,3,3,3-Hexafluoropropane(HFC-236fa, CAS No. 690-39-1)
Methane(CAS No. 74-82-8)
Methyl acetate(methyl ethanoate, CAS No. 79-20-9)
4-Methyl-1,3-dioxolan-2-one(propylene carbonate, CAS No. 108-32-7)
Methyl formate(methyl methanoate, CAS No. 107-31-3)
1,1,1,2,2,3,3,4,4-Nonafluoro-4-methoxybutane(HFE-7100, CAS No. 163702-07-6)
1,1,1,3,3-Pentafluorobutane(HFC-365mfc, CAS No. 406-58-6)
Pentafluoroethane(HFC-125, CAS No. 354-33-6)
1,1,2,2,3-Pentafluoropropane(HFC-245ca, CAS No. 679-86-7)
1,1,2,3,3-Pentafluoropropane(HFC-245ea, CAS No. 24370-66-4)
1,1,1,2,3-Pentafluoropropane(HFC-245eb, CAS No. 431-31-2)
1,1,1,3,3-Pentafluoropropane(HFC-245fa, CAS No. 460-73-1)
Perfluorocarbon compounds that fall into the following classes:
Cyclic, branched, or linear, completely fluorinated alkanes
Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
Propan-2-one(acetone or dimethylketone, CAS No. 67-64-1)
Siloxanes: cyclic, branched, or linear completely-methylated
Tetrachloroethene(perchloroethylene, CAS No. 127-18-4)
1,1,2,2-Tetrafluoroethane(HFC-134, CAS No. 359-35-3)
1,1,1,2-Tetrafluoroethane(HFC-134a, CAS No. 811-97-2)
(1E)-1,3,3,3-Tetrafluoropropene(trans-1,3,3,3-tetrafluoropropene, HFO-1234ze, CAS No. 29118-24-9)
2,3,3,3-Tetrafluoroprop-1-ene(HFO-1234yf, CAS No. 754-12-1)
1,1,1-Trichloroethane(methyl chloroform, CAS No. 71-55-6)
1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy)ethane(HFE-347pcf2, CAS No. 406-78-0)
Trichlorofluoromethane(CFC-11, CAS No. 75-69-4)
1,1,2-Trichloro-1,2,2-trifluoroethane(CFC-113, CAS No. 76-13-1)
1,1,1-Trifluoroethane(HFC-143a, CAS No. 430-46-2)
Trifluoromethane(HFC-23, CAS No. 75-46-7)

b) For purposes of determining VOM emissions and compliance with emissions limits, VOM will be measured by the test methods in the approved implementation plan or 40 CFR 60, appendix A, incorporated by reference at 35 Ill. Adm. Code 215.105, 218.112, and 219.112, as applicable, or by source-specific test methods that have been established under ~~pursuant to~~ a permit issued under a program approved or promulgated under Title V of the Clean Air Act; under 35 Ill. Adm. Code 203~~40 CFR51, subpart I or appendix S, incorporated by reference at 35 Ill. Adm. Code 218.112 and 219.112~~; or under Section 9.1(d) of the Act~~under 40 CFR 52.21, incorporated by reference at 35 Ill. Adm. Code~~

~~218.112 and 219.112, as applicable~~. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOM if the amount of such compounds is accurately quantified and the exclusion is approved by the Agency.

c) As a precondition to excluding these negligibly-reactive compounds as VOM, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly-reactive compounds in the source's emissions.

d) The USEPA will not be bound by any State determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the test methods in subsection (b).

(Source: Amended at 44 Ill. Reg. _____, effective_____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSIONS STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 215
ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS

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Section

SUBPART B: ORGANIC EMISSIONS FROM STORAGE AND LOADING OPERATIONS

Section

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SUBPART RR: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING PROCESSES

215.APPENDIX F Coefficients for the Total Resource Effectiveness Index (TRE) Equation

AUTHORITY: Implementing Sections 9.1 and 10 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/9.1, 10 and 27].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 205: Organic Material Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-3, 33 PCB 357, at 3 Ill. Reg. 18, p. 41, effective May 3, 1979; amended in R78-3 and R78-4, 35 PCB 75, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5 at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13601 Corrected at 7 Ill. Reg. 14575; amended in R82-14 at 8 Ill. Reg. 13254, effective July 12, 1984; amended in R83-36 at 9 Ill. Reg. 9114, effective May 30, 1985; amended in R82-14 at 9 Ill. Reg. 13960, effective August 28, 1985; amended in R85-28 at 11 Ill. Reg. 3127, effective February 3, 1987; amended in R82-14 at 11 Ill. Reg. 7296, effective April 3, 1987; amended in R85-21(A) at 11 Ill. Reg. 11770, effective June 29, 1987; recodified in R86-39 at 11 Ill. Reg. 13541; amended in R82-14 and R86-12 at 11 Ill. Reg. 16706, effective September 30, 1987; amended in R85-21(B) at 11 Ill. Reg. 19117, effective November 9, 1987; amended in R86-36, R86-39, R86-40 at 11 Ill. Reg. 20829, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 815, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7311, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7650, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10893, effective June 27, 1989; amended in R88-30(A) at 14 Ill. Reg. 3555, effective February 27, 1990; emergency amendments in R88-30A at 14 Ill. Reg. 6431, effective April 11, 1990, for a maximum of 150 days; amended in R88-19 at 14 Ill. Reg. 7596, effective May 8, 1990; amended in R89-16(A) at 14 Ill. Reg. 9173, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 3309, effective February 15, 1991; amended in R88-14 at 15 Ill. Reg. 8018, effective May 14, 1991; amended in R91-7 at 15 Ill. Reg. 12217, effective August 19, 1991; amended in R91-10 at 15 Ill. Reg. 15595, effective October 11, 1991; amended in R89-7(B) at 15 Ill. Reg. 17687, effective November 26, 1991; amended in R91-9 at 16 Ill. Reg. 3132, effective February 18, 1992; amended in R91-24 at 16 Ill. Reg. 13555, effective August 24, 1992; amended in R91-30 at 16 Ill. Reg. 13849, effective August 24, 1992; amended in R98-15 at 22 Ill. Reg. 11437, effective June 19, 1998; amended in R12-24 at 37 Ill. Reg. 1683, effective January 28, 2013; expedited correction at 37 Ill. Reg. 16858, effective January 28, 2013; amended in R19-1 at 44 Ill. Reg._____, effective_____.

SUBPART PP: MISCELLANEOUS FABRICATED PRODUCT MANUFACTURING PROCESSES

Section 215.920 Applicability

a) The requirements of this Subpart must ~~shall~~ apply to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.

b) The requirements of this Subpart must ~~shall~~ apply to a plant's miscellaneous fabricated product manufacturing process emission sources which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z if the plant is

subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.

c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart must ~~shall~~ continue to apply to a miscellaneous fabricated products manufacturing process emission source which was subject to and met the control requirements of Section 215.926.

d) No limits under this Subpart must ~~shall~~ apply to:

1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 1.0 tons per year if the total emissions from such sources not complying with Section 215.926 does not exceed 5.0 tons per year, and

2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, under ~~pursuant to~~ 35 Ill. Adm. Code 203; or Best Available Control Technology, under a permit issued under Section 9.1(d) of the Act~~pursuant to 40 CFR 52.21 (1987)~~ or under ~~pursuant to~~ Section 9.4 of the Act. ~~The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~

e) For the purposes of this Subpart, an emission source must ~~shall~~ be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughput or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.

f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART QQ: MISCELLANEOUS FORMULATION MANUFACTURING PROCESSES

Section 215.940 Applicability

a) The requirements of this Subpart must ~~shall~~ apply to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.

b) The requirements of this Subpart must ~~shall~~ apply to a plant's miscellaneous formulation manufacturing process emission sources, which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, if the plant is subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.

c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart must ~~shall~~ continue to apply to a miscellaneous formulation manufacturing process emission source which was subject to the met the control requirements of Section 215.946.

d) No limits under this Subpart must ~~shall~~ apply to:

1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 2.5 tons per year if the total emissions from such sources not complying with Section 215.946 does not exceed 5.0 tons per year, and

2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, under ~~pursuant to~~ 35 Ill. Adm. 203; or Best Available Control Technology, under a permit issued under Section 9.1(d) of the Act~~pursuant to~~ or under ~~pursuant to~~ Section 9.4 of the Act. ~~The Board incorporates by reference 40 CFR 52.,21 (198 7). This incorporation includes no subsequent amendments or editions.~~

e) For the purposes of this Subpart, an emission source must ~~shall~~ be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughput or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.

f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: Amended at 44 Ill. Reg._____, effective_____)

SUBPART RR: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING PROCESSES

Section 215.960 Applicability

a) The requirements of this Subpart must ~~shall~~ apply to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.

b) The requirements of this Subpart must ~~shall~~ apply to a plant's miscellaneous organic chemical manufacturing process emission sources which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z if the plant is subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.

c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart must ~~shall~~ continue to apply to a miscellaneous organic chemical manufacturing process emission source which was subject to and met the control requirements of Section 215.966.

d) No limits under this Subpart must ~~shall~~ apply to:

1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 1.0 ton per year if the total emissions from such sources not complying with Section 215.966 does not exceed 5.0 tons per year, and

2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, under ~~pursuant to~~ 35 Ill. Ill. Adm. Code 203; or Best Available Control Technology, under a permit issued under Section 9.1(d) of the Act~~pursuant to 40 CFR 52.,21 (198 7)~~ or under ~~pursuant to~~ Section 9.4 of the Act. ~~The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~

e) For the purposes of this Subpart, an emission source must ~~shall~~ be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughout or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.

f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: Amended at 44 Ill. Reg._____, effective_____)