

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R22-
PARTS 201, 202, AND 212) (Rulemaking – Air)

NOTICE

TO: Illinois Pollution Control Board Illinois Department of Natural Resources
Don Brown, Clerk Office of General Counsel
60 East Van Buren Street, Suite 630 One Natural Resources Way
Chicago, Illinois 60605 Springfield, Illinois 62702
don.brown@illinois.gov renee.snow@illinois.gov

Office of the Illinois Attorney General
Environmental Bureau North
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
enviro@ilag.gov

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Board the RULEMAKING PROPOSAL entitled "AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212" and APPEARANCES of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Charles E. Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: December 7, 2022

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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Finding of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 87 Fed. Reg. 1680 (Jan. 12, 2022).

UNITED STATES ENVTL. PROTECTION AGENCY, WITHDRAWAL OF THE OCTOBER 9, 2020,
MEMORANDUM ADDRESSING STARTUP, SHUTDOWN, AND MALFUNCTIONS IN STATE
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APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Dana Vetterhoffer
Dana Vetterhoffer
Deputy General Counsel
Division of Legal Counsel

DATED: December 7, 2022

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APPEARANCE

The undersigned hereby enters his appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Charles E Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: December 7, 2022

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL OF
REGULATION**

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:



John J. Kim
Director

DATED: December 7, 2022

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CONSENT TO RECEIPT OF E-MAIL SERVICE

I, the undersigned, authorize the service of documents on me by e-mail in lieu of receiving paper documents in the above-captioned proceeding. My e-mail address to receive service is as follows:

dana.vetterhoffer@illinois.gov

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Dana Vetterhoffer
Dana Vetterhoffer
Deputy General Counsel
Division of Legal Counsel

DATED: December 7, 2022

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CONSENT TO RECEIPT OF E-MAIL SERVICE

I, the undersigned, authorize the service of documents on me by e-mail in lieu of receiving paper documents in the above-captioned proceeding. My e-mail address to receive service is as follows:

Charles.matoesian@illinois.gov

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Charles E. Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: December 7, 2022

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***THIS IS A FAST TRACK
RULEMAKING***

**FILED IN ACCORDANCE WITH SECTION
28.5 OF THE ENVIRONMENTAL
PROTECTION ACT (415 ILCS 5/28.5)**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION FOR WAIVER OF REQUIREMENTS

The Proponent, the Illinois Environmental Protection Agency (“Illinois EPA”), by its attorney, and pursuant to 35 Ill. Adm. Code 101.500, 102.302(a)(7), and 102.402, respectfully moves that the Illinois Pollution Control Board (“Board”) waive the requirement that the Illinois EPA submit copies of the documents relied upon in a 415 ILCS 5/28.5 fast-track rulemaking. In support of its Motion, Illinois EPA states as follows:

1. Section 102.302(a)(7) of the Board’s procedural rules requires that the Illinois EPA provide copies of all documents directly relied upon.
2. The Illinois EPA has provided a list of documents which were directly relied upon when drafting the regulatory proposal. The documents relied upon are as follows:
 - a. *State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction*, 78 Fed. Reg. 12460, 12463 (Feb. 22, 2013).
 - b. *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, 80 Fed. Reg. 33840 (June 12, 2015).
 - c. *Finding of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, 87 Fed. Reg. 1680 (Jan. 12, 2022).
 - d. UNITED STATES ENVTL. PROTECTION AGENCY, WITHDRAWAL OF THE OCTOBER 9, 2020, MEMORANDUM ADDRESSING STARTUP, SHUTDOWN, AND MALFUNCTIONS IN STATE IMPLEMENTATION PLANS AND IMPLEMENTATION OF THE PRIOR POLICY (Sept. 30, 2021).

3. The above listed documents are both lengthy and publicly available. Given the length of these documents and their availability, Illinois EPA requests that the Board waive the normal requirements of providing the documents relied upon and allow Illinois EPA to simply list the documents in its proposal.

WHEREFORE, the Illinois EPA moves that the Board waive the requirement to provide copies of the documents relied upon.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Charles E. Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: December 7, 2022

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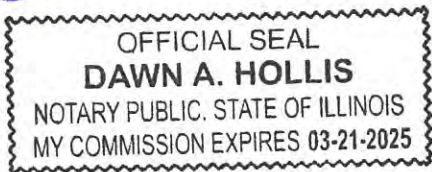
AFFIRMATION

I, Charles E. Matoesian, under oath, hereby state and affirm that I am an Assistant Counsel for the Illinois EPA and that the facts cited in the foregoing Motion for Waiver of Requirements are true and correct to the best of my information and belief.

Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

SUBSCRIBED AND SWORN TO BEFORE ME
this 7th day of December, 2022

Notary Public



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STATEMENT OF REASONS

I. INTRODUCTION

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) submits this Statement of Reasons to the Illinois Pollution Control Board (“Board”) pursuant to Sections 10, 27, 28, 28.2, and 28.5 of the Environmental Protection Act (“Act”) (415 ILCS 5/10, 27, 28, and 28.5) and 35 Ill. Adm. Code 102.202 in support of the attached proposal of regulations. The proposed rulemaking would amend the Illinois Administrative Code to remove provisions that allow sources to request, and the Illinois EPA to grant, advance permission to continue operating during a malfunction, or to violate emission limitations during startup. Removing these provisions is necessary for the Illinois EPA to comply with the United States Environmental Protection Agency’s (“USEPA”) *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction* (“SSM SIP Call”), 80 Fed. Reg. 33840 (June 12, 2015) and *Finding of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction* (“Finding of Failure to Submit SIP Revisions”), 87 Fed. Reg. 1680 (Jan. 12, 2022).

This proposal is intended to meet obligations of the State of Illinois under the Clean Air Act (“CAA”), 42 U.S.C. § 4701, *et seq.* Specifically, CAA Section 110(a) requires Illinois to

submit a SIP “which provides for the implementation, maintenance, and enforcement” of the National Ambient Air Quality Standards. 42 U.S.C. § 7410(a). Section 110(k)(5) requires states to revise the SIP if the Administrator determines the SIP is inadequate to comply with the requirements of the CAA. 42 U.S.C. § 7410(k)(5). USEPA made such a determination in the SSM SIP Call and further found that the State of Illinois failed to make a timely SIP submittal in response to the SSM SIP Call.

In order to comply with the CAA, the SSM SIP Call, and the Finding of Failure to Submit SIP Revisions, the Agency is proposing amendments to 35 Ill. Adm. Code Parts 201, 202, and 212. The proposed amendments remove provisions that ultimately provided certain sources with an affirmative defense in regard to emission exceedances during periods of malfunction or startup. Removal of these provisions would bring Illinois into compliance with the CAA and the SSM SIP Call, and they are necessary to obtain USEPA’s approval of Illinois’ SIP submittal.

II. STATEMENT OF FACTS

A. Overview of SSM

USEPA defines “SSM” as “startup, shutdown, or malfunction at a source. It does not include periods of maintenance at such a source. An SSM event is a period of startup, shutdown, or malfunction during which there are exceedances of the applicable emission limitations and thus excess emissions.” *State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction*, 78 Fed. Reg. 12460, 12463 (Feb. 22, 2013) (“Proposed SSM SIP Call”). Excess emissions are “the emissions of air pollutants from a source that exceed any applicable SIP emission limitations.” *Id.*

Many states' SIPs include provisions that pertain to SSM events, and these provisions generally provide some measure of leniency from emission limitations during periods of SSM. *Id.* at 12464. When the CAA was first being enacted "it was widely believed that emission limitations set at levels representing good control of emissions during periods of normal operation could in some cases not be met with the same emission control strategies during periods of startup, shutdown, maintenance, or malfunction." *Id.* Because pollution control strategies were not thought to be applicable during SSM, states included provisions in their SIPs providing "absolute or conditional" exemptions from emission limitations for excess emissions during SSM. *Id.*

SSM provisions vary from SIP to SIP, but they generally address situations where meeting emission limitations is difficult during periods of startup, shutdown, or malfunction. USEPA categorizes the various SSM provisions as either "an automatic exemption, a statement regarding exercise of enforcement discretion by the air agency or an affirmative defense." *SSM SIP Call*, 80 *Fed. Reg.* 33840, 33844 (June 12, 2015).

USEPA defines these terms in the SSM SIP Call. The term "automatic exemption" is defined as "a generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations." *Id.* at 33842. A "director's discretion provision" means "in general, a regulatory provision that authorizes a state regulatory official unilaterally to grant exemptions or variances from otherwise applicable emission limitations or control measures, or to excuse noncompliance with otherwise applicable emission limitations or control measures, which would be binding on the [USEPA] and the public." *Id.* Finally, "affirmative defense" is defined as

in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. The term affirmative defense provision means more specifically a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304.

Id.

Illinois' SSM provisions are contained in Part 201 of Title 35 of the Illinois Administrative Code. This Part contains general provisions applicable to permits. Subpart I of the Part is entitled "Malfunctions, Breakdowns, or Startups." Section 201.261 sets forth a method by which sources can submit a request to the Agency in the application for an operating permit for permission to continue to operate during a malfunction or breakdown, or to violate emission limitations during startup. 35 Ill. Adm. Code 201.261. If the request is for continuation of operation during a malfunction or breakdown, the request

shall include as a minimum: a full and detailed explanation of why such continued operation is necessary; the anticipated nature, sources and quantities of emissions which will occur during such continued operation; the anticipated length of time during which such operation will continue; all measures, such as use of off-shift labor or equipment which will be taken to minimize the quantity of air contaminant emissions and length of time during which such operation will continue

Id. at (a).

If a source is seeking permission to violate emission limitations during startup, the request "shall include, as a minimum: a description of the startup procedure for each emission source, the duration and frequencies of such startups, the type and quantities of emissions during such startups and the applicant's efforts to minimize any such startup emissions, duration of individual startups and frequency of startups." *Id.*

Section 201.262 sets out the standards that the Agency must consider in order grant permission to a source to continue operation during a malfunction or breakdown or to violate emission limitations during startup. 35 Ill. Adm. Code 201.262. In order to obtain permission to continue operation during a malfunction, the permit applicant must submit proof of the following to the Agency: “continued operation is necessary to prevent injury to persons or severe damage to equipment; or that such continued operation is required to provide essential services; provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be a sufficient reason for granting of permission.” *Id.* In order to obtain permission to violate emission limitations during startup, the permit applicant must affirmatively show “that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups.” *Id.*

Section 201.263 contains recordkeeping and reporting requirements for a source that obtains advance permission pursuant to Section 201.261. 35 Ill. Adm. Code 201.263. Section 201.264 states that a source wanting to continue to operate during a malfunction or to violate emission standards during startup prior to the issuance of an operating permit must make an immediate application for permission to do so. 35 Ill. Adm. Code 201.264.

Section 201.265 states that the grant of permission to continue operations during a malfunction or to violate emission limitations during startup constitutes a prima facie defense to an enforcement action alleging violation of the Administrative Code or air quality standards. 35 Ill. Adm. Code 201.265.

The Agency has historically interpreted these provisions as establishing an affirmative defense should excess emissions result in an enforcement action. The regulations “provide sources with ‘the opportunity to make a claim of malfunction/breakdown or startup, with the

viability of such claim subject to specific review against the requisite requirements.” *Proposed SSM SIP Call*, 78 *Fed. Reg.* 12460, 12514 (quoting Ill. Env'tl. Protection Agency, Statement of Basis for a Planned Revision of the CAAPP Permit for U.S. Steel Corp. Granite City Works (March 15, 2011), at 37). Therefore, the Agency still considers excess emissions during SSM to be violations, and the advance permission granted in the operating permit under Part 201 simply allows a source to assert a prima facie defense should those violations be the subject of an enforcement proceeding. *Proposed SSM SIP Call*, 78 *Fed. Reg.* 12460, 12514. The Agency does not interpret or implement the regulations to provide any type of exemption from applicable limitations.

B. The SSM SIP Call

On June 12, 2015, in response to a petition filed by the Sierra Club, USEPA issued a SIP Call regarding provisions in SIPs of 36 states, including Illinois, requiring these states to submit revised SIPs correcting deficiencies in their SSM provisions. USEPA found that SIP provisions that contain automatic exemptions, director's discretion exemptions, or affirmative defenses from otherwise applicable emission limitations during SSM are impermissible under the CAA because the law considers emissions in excess of emission limitations to be violations. *SSM SIP Call*, 80 *Fed. Reg.* 33840, 33844. Section 110(a)(2)(A) of the CAA requires SIPs to contain emission limitations, and the definition of emission limitations in Section 302(k) mandates that the limitations apply on a continuous basis. *Id.* at 33847. Broadly stated, “emissions limitations in SIP provisions cannot contain exemptions for emissions during SSM events.” *Id.* at 33889.

USEPA determined that Illinois' SSM provisions at 35 Ill. Adm. Code 201.261, 201.262, and 201.265 can be interpreted to provide for discretionary exemptions from emission limitations during periods of SSM, and therefore they are inconsistent with the CAA because the emission

limitations are not continuously applicable. *Id.* at 33965, 33966. In its proposed SSM SIP Call, USEPA explained that Illinois' rules "can be read to create exemptions by authorizing a state official to determine in the permitting process that the excess emissions during startup and malfunction will not be considered violations of the applicable emission limitations." *Proposed SSM SIP Call*, 78 *Fed. Reg.* 12460, 12514. The discretion provided to the Agency could impermissibly preclude enforcement by USEPA or a citizen. *Id.* at 12515.

USEPA further explained that even if the prima facie defense provided in Section 201.265 is considered an affirmative defense, the provisions are also deficient. It indicated that "the enforcement structure of the CAA, embodied in section 113 and section 304, precludes any affirmative defense provisions that would operate to limit a court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate." *SSM SIP Call*, 80 *Fed. Reg.* 33840, 33851. In finding these provisions in the Illinois Administrative Code to be inconsistent with the CAA, USEPA granted the Sierra Club's petition and issued a SIP Call with respect to the three identified regulations. *Id.* at 33966.

The SSM SIP Call sets forth options for curing the inadequacies, including removal of the provisions from the SIPs; inclusion of procedures by which air agency personnel can exercise enforcement discretion; or development of "alternative numerical limitations or other technological control requirements or work practice requirements [applicable] during startup or shutdown events." *Id.* at 33844.

SIP submissions curing the deficiencies were required to be submitted to USEPA by November 22, 2016. *Id.* at 33848. The CAA provides USEPA with six months to review SIP

submittals for completeness with the required criteria. *See* 42 U.S.C. § 7410(k)(1)(B). If a state does not submit such a submission or if the submission is incomplete, USEPA must issue a finding a failure to submit. 42 U.S.C. § 7410(k)(5).

Several states sought judicial review of the SSM SIP Call in the United States Court of Appeals for the D.C. Circuit on July 27, 2015. *Environ. Comm. Fl. Elec. Power v. EPA, et al.*, No. 15–1239 (D.C. Cir. July 27, 2015); *Finding of Failure to Submit SIP Revisions*, 87 *Fed. Reg.* 1680, 1681 (Jan. 12, 2022). On April 24, 2017, after the parties fully briefed the case, the Court granted USEPA’s petition to hold the case in abeyance to allow USEPA time to reassess the SSM SIP Call following a change in presidential administration. *Environ. Comm. Fl. Elec. Power v. EPA*, No. 15-1239 (D.C. Cir. Apr. 24, 2017). The litigation has remained in abeyance since 2017. Due to the abeyance and USEPA’s stated intention to review/reconsider the SIP Call and its overall SSM policy, the Agency did not move forward with a rulemaking at that time. It opted to wait and see what USEPA ultimately concluded before acting to respond to the 2015 SSM SIP Call.

C. USEPA Memorandums

Activity on SSM at the federal level remained on hold until 2020 when USEPA Regions 4, 6, and 7 took final actions to withdraw the SIP Call in regard to the SIPs of Texas, North Carolina, and Iowa, respectively. *Finding of Failure to Submit SIP Revisions*, 87 *Fed. Reg.* 1680, 1681. The withdrawal of the SSM SIP Call to these states is also the subject of pending litigation. *Id.*

In October 2020, USEPA issued a guidance memorandum “establish[ing] a new national policy that permitted the inclusion of certain provisions governing SSM periods in SIPs, including those related to exemptions and affirmative defenses.” *Id.*; *see* UNITED STATES ENVTL.

PROTECTION AGENCY, INCLUSION OF PROVISIONS GOVERNING PERIODS OF STARTUP, SHUTDOWN, AND MALFUNCTIONS IN STATE IMPLEMENTATION PLANS (Oct. 9, 2020) (“2020 Memorandum”).

The 2020 Memorandum stated that it “supersedes the 2015 SSM SIP policy on exemption and affirmative defense provisions. The remaining parts of 2015 SSM SIP policy remain in effect.”

2020 Memorandum at 3. This 2020 Memorandum created a modicum of confusion and difficulty for states, as USEPA did not take any regulatory action to withdraw or change the SSM SIP Call. However, USEPA stated its intent to review the SSM SIP Call as it pertained to the remaining states to determine if USEPA should maintain, modify, or withdraw the SIP Call for a particular state through a future regulatory action. *Id.* Due to the change in presidential administration following the 2020 election, this review of the SSM SIP Call for specific states was never undertaken by USEPA.

In September 2021, USEPA issued another memorandum withdrawing the 2020 Memorandum. UNITED STATES ENVTL. PROTECTION AGENCY, WITHDRAWAL OF THE OCTOBER 9, 2020, MEMORANDUM ADDRESSING STARTUP, SHUTDOWN, AND MALFUNCTIONS IN STATE IMPLEMENTATION PLANS AND IMPLEMENTATION OF THE PRIOR POLICY 1 (Sept. 30, 2021) (“2021 Memorandum”). The 2021 Memorandum reinstated the 2015 SSM SIP Call and reiterated USEPA’s view that exemption provisions and affirmative defense provisions in SIPs are generally inconsistent with the CAA. *Id.* USEPA rejected the reasoning contained in the 2020 Memorandum and stated that it no longer intends to review and potentially modify or withdraw the SIP Call. *Id.* at 5.

D. Finding of Failure to Submit SIP Revisions

In keeping with the 2021 Memorandum, USEPA published a final Finding of Failure to Submit SIP Revisions on January 12, 2022. *See Finding of Failure to Submit SIP Revisions*, 87

Fed. Reg. 1680. The Finding of Failure to Submit SIP Revisions applies to 12 states, including Illinois. *Id.* at 1681.

The Finding of Failure to Submit SIP Revisions became effective on February 11, 2022. The consequences of the finding are laid out in CAA Section 179. Section 179(a) provides states with 18 months to cure the finding of failure. 42 U.S.C. § 7509(a). If Illinois fails to submit the required SIP revision within that timeframe, USEPA must impose sanctions. The imposed sanction may either be the loss of highway funds or an increase in the emissions offset ratio for New Source Review. 42 U.S.C. § 7509(b)(1), (2). If USEPA finds a lack of good faith in a state's failure to correct the SIP deficiency, USEPA must apply both sanctions until the state comes into compliance. 42 U.S.C. § 7509(a). Even without a lack of good faith, Section 179(a) states that “[i]f the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter,” then both sanctions will be imposed. *Id.*

Furthermore, without an adequate SIP submission, USEPA has the obligation to implement a Federal Implementation Plan pursuant to Section 110(c)(1) of the CAA within 24 months of the Finding. 42 U.S.C. § 7410(c)(1).

E. Illinois EPA's Response to the SSM SIP Call

Following the 2015 SSM SIP Call, the Illinois EPA sought guidance from USEPA Region 5 regarding implementation of some of the available options that were discussed in the SSM SIP Call, including how to go about establishing acceptable alternative emission standards during startup and malfunction or breakdown events, as well as examples of provisions that would be acceptable. No clear guidance was provided at that time. Following the 2021 Memorandum and Finding of Failure, Illinois EPA staff again sought the advice of USEPA Region 5 staff as to the options available to states. The Illinois EPA inquired as to whether

setting alternative emission limits during periods of startup and malfunction or breakdown, as mentioned in the SSM SIP Call, was still acceptable to USEPA, and whether such provisions would be approvable by USEPA. USEPA advised that no formal guidance was forthcoming, at least at that time, and that it could make no guarantees as to the approvability of alternative emission standards. Region 5 staff indicated that, while it would consider and assess any path chosen by a state, the only path that is definitely approvable is removal of the offending SSM provisions. USEPA noted that the SIP submittals it had already received in response to the SSM SIP Call implemented this option and removed the offending provisions from the SIPs.¹ USEPA

¹ USEPA has issued final rules for 13 states, or portions of states, named in the SSM SIP Call: Alaska, Arizona, California, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Montana, New Jersey, New Mexico – Albuquerque-Bernalillo County, South Carolina, and Tennessee – Knox County, and each of these approved the removal of the SSM provisions that were identified in the SIP Call. *See Air Plan Approval; AK; Removal of Excess Emissions Provision*, 86 Fed. Reg. 68960 (Dec. 6, 2021); *Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality and Maricopa County Air Quality Department*, 87 Fed. Reg. 14802 (March 16, 2022); *Approval of California Air Plan Revisions, Eastern Kern County Air Pollution Control District and Imperial County Air Pollution Control District*, 87 Fed. Reg. 51259 (Aug. 22, 2022); *Air Plan Approval; Kentucky; Removal of Excess Emissions Provisions*, 87 Fed. Reg. 49528 (Aug. 11, 2022); *Air Plan Approval; Louisiana; Repeal of Excess Emissions Related Provisions*; 87 Fed. Reg. 60292 (Oct. 5, 2022); *Air Plan Approval; Indiana, Michigan, and Minnesota; Revised Startup, Shutdown, and Malfunction Provisions*, 87 Fed. Reg. 50261 (Aug. 16, 2022); *Air Plan Approval; Montana; Administrative Rule Revisions: 17.8.334*, 87 Fed. Reg. 7725 (Feb. 10, 2022); *Approval of Air Quality Implementation Plans; New Jersey; Removal of Excess Emissions Provision*, 87 Fed. Reg. 46890 (Aug. 1, 2022); *Air Plan Approval; Albuquerque – Bernalillo County; New Mexico; Excess Emissions*, 87 Fed. Reg. 52690 (Aug. 29, 2022); *Air Plan Approval; South Carolina; Revisions to Startup, Shutdown, and Malfunction Rules*, 87 Fed. Reg. 62034 (Oct. 13, 2022); *Air Plan Approval; TN; Revisions to the Knox County Portion of the TN SIP*, 81 Fed. Reg. 91033 (Dec. 16, 2016). USEPA has further issued proposed rules approving SIP submission from Delaware, Mississippi, and New Mexico that also remove the SSM provisions identified in the SIP Call. *See Air Plan Approval; Delaware; Removal of Excess Emissions Provisions*, 87 Fed. Reg. 61555 (Oct. 12, 2022); *Air Plan Approval; Mississippi; Revision of Excess Emissions Provisions*, 87 Fed. Reg. 34609 (June 7, 2022); *Air Plan Approval; New Mexico; Excess Emissions*, 87 Fed. Reg. 59373 (Sept. 30, 2022). USEPA has not yet issued final approval of these SIP submissions. On the other hand, USEPA has proposed disapproving a SIP revision submitted by Georgia which would allow sources to comply with certain work practice standards instead of emission limitations during periods of SSM and would describe requirements for minimizing excess emissions during periods of SSM. *See Disapproval of Air Quality Implementation Plans; Georgia; Proposed Revisions to Georgia's Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction*, 87 Fed. Reg. 72941 (November 28, 2022).

advised that this compliance option is the most straightforward way to comply with the SSM SIP Call and that it did not know what a SIP submittal incorporating the other two options would actually entail or whether it would be approvable.

Based upon the SSM SIP Call and the advice provided by USEPA, the Agency is proposing to remove the identified provisions in their entirety. Additionally, the Agency is proposing other changes to Parts 201, 202, and 212 that would remove references to the repealed provisions of Part 201 or provide clarification. These amendments are logical and necessary outgrowths of revisions required by USEPA.

F. Fast Track Rulemaking

This regulatory proposal is submitted to the Board as a fast-track rulemaking under Section 28.5 of the Act. Section 28.5 states that “[w]hen the [CAA] requires rules other than identical in substance rules to be adopted, upon request by the Agency, the Board must adopt rules under fast-track rulemaking requirements.” 415 ILCS 5/28.5(c). Pursuant to the Act, “‘requires to be adopted’ refers only to those regulations or parts of regulations for which the [USEPA] is empowered to impose sanctions against the State for failure to adopt such rules.” 415 ILCS 5/28.5(b).

This rulemaking proposal satisfies the criteria of Section 28.5. First, this proposal is not identical in substance to any federal regulation. The proposed amendments to Illinois’ regulations are a response to USEPA’s SSM SIP Call. The Agency’s proposal to repeal the SSM provisions in the Illinois Administrative Code aligns with one of the options articulated in the SSM SIP Call to correct the deficiencies in the SIP, and furthermore, this path is preferred by USEPA. Second, the proposed rule is required to be adopted. As explained above, USEPA has issued a Finding of Failure to Submit SIP Revisions, which became effective on February 11,

2022. Thus, to avoid mandatory sanctions under Section 179 of the CAA by August 11, 2023, Illinois must submit final rule amendments to USEPA in a SIP submittal, and USEPA must find that such submittal is complete.

G. SIP Submittal

As explained above, if adopted, the proposed rules will be submitted as a SIP revision for approval by USEPA. SIP revisions are required to undergo public notice and opportunity for hearing before they are submitted to USEPA for approval under 40 CFR § 51.102 and Appendix V to Part 51. The Board's procedural rules provide for notice that meets this requirement, as set forth in 35 Ill. Adm. Code 102.416. To be adequate, the notice must describe the revisions and specify that the adopted rule will be submitted as a SIP revision to USEPA. Therefore, the Agency requests that the Board include the following or similar language in its notice of hearing regarding this rulemaking:

If adopted by the Board, the Illinois EPA will submit the proposed amendments to 35 Ill. Adm. Code Parts 201, 202, and 212 to the United States Environmental Protection Agency ("USEPA") for review and approval as a revision to Illinois' State Implementation Plan ("SIP") regarding startup, malfunction, and breakdown events. The revisions submitted to USEPA include removal of Sections 201.261, 201.262, and 201.265, which were identified as inconsistent with the Clean Air Act in USEPA's 2015 Startup, Shutdown, and Malfunction SIP Call. Additionally, the SIP submittal will contain amendments to other sections of the Administrative Code arising from the removal of those three provisions, including removal of Sections 201.263 and 201.264, and amendments to Sections 201.149, 201.157, 201.301, 202.107, 202.211, 212.124, and 212.324. These amendments remove references to provisions removed from the SIP and provide clarification. This notice is intended to satisfy the requirements of Clean Air Act Section 110(1), 42 U.S.C. § 7410(1) (public notice for SIP revisions).

The Agency will not be submitting a CAA Section 110(l) anti-backsliding demonstration with the proposed SIP revisions. USEPA advised the Illinois EPA that removing the SSM provisions from the SIP is a SIP-strengthening action, and therefore there are no anti-backsliding considerations to analyze.

III. PURPOSE AND EFFECT OF THE PROPOSAL

As explained in detail above, the purpose and effect of this rule is to repeal the SSM provisions in Illinois' regulations in order comply with the SSM SIP Call and the Finding of Failure to Submit SIP Provisions. Section 110(k)(5) of the CAA requires states to correct deficiencies in the SIP in response to findings of inadequacy, and Section 179(a) gives a state 18 months in which to do so, or face sanctions. The proposed rule removes the provisions that the SSM SIP Call identified as inadequate to meet the requirements of the CAA. The complete repeal of Subpart I of Part 201 requires amendments to other regulations to remove specific references to such Subpart. The proposed rule and request for fast-track rulemaking will bring Illinois into compliance with the SSM SIP Call within the 18-month timeframe.

As explained above, Illinois' SSM provisions do not change the substantive emissions standards otherwise applicable to sources. In other words, sources that obtain "permission" under SSM regulations to continue operating during malfunction events or to exceed emission standards during startup events are still required to comply with all applicable emission standards during those time periods; any exceedances that occur during those events are still considered violations that could result in enforcement action against the source. All the Illinois EPA's permission establishes is an affirmative defense for a source in such an enforcement action. Removing SSM provisions now will simply eliminate a source's ability to obtain this advance permission going forward; sources can no longer seek permission from the Agency in their permit application to continue operation during a malfunction or to violate emission limitations during startup, and the Agency can no longer grant such permission. Sources without this permission will not be able to assert a regulation-based prima facie defense in an enforcement action for emission exceedances that occur during malfunction or startup events.

IV. GEOGRAPHIC REGIONS AND SOURCES AFFECTED

Removal of the SSM provisions is applicable statewide. Any source that applies for an operating permit that would otherwise seek this permission from the Agency would be impacted by this rulemaking.

V. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

The proposed amendments are, in general, both technically feasible and economically reasonable because the amendments do not impose any new or additional obligations such as emission limits or control requirements on affected sources. Illinois' SSM provisions never excused sources from the obligation to comply with emission standards during startup or malfunction events. The determination that those emission standards are technically feasible and economically reasonable would have been appropriately addressed by the Board in the rulemakings that established those specific standards and should not be revisited here. The extent of this rulemaking's impact is the ability of a source to seek advance permission in permitting applications in order to obtain a legal defense to emission exceedances that is currently available under the Board's regulations.

The Agency acknowledges that, if the proposed amendments are adopted, some sources in Illinois may desire to make changes to source configurations, operations and practices, or pollution control equipment to meet applicable emission limits at all times. The costs associated with any such changes are indeterminate due to the widely varied source categories that could potentially be affected and the measures that may be necessary for sources to ensure compliance with applicable standards and limitations at all times.

VI. SYNOPSIS OF TESTIMONY

The Illinois EPA anticipates calling Rory Davis, Manager of the Regulatory Development Unit, Air Quality Planning Section, Bureau of Air, Illinois EPA, as a witness at hearing. Mr. Davis will testify and answer questions regarding the proposed rule. Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules.

VII. PUBLIC OUTREACH

The Illinois EPA engaged in outreach on this proposal with interested stakeholders from industry, non-governmental environmental organizations, and USEPA. The Illinois EPA received several comments asking for additional time to review the Agency's proposal; however, due to the deadline to respond to the SIP Call, the Agency was unable to accommodate those requests. Some commenters expressed concern with removal of the SSM provisions which can be explored further in the rulemaking process.

VIII. THE ILLINOIS EPA'S PROPOSAL

Generally, the Illinois EPA's proposal implements changes identified by USEPA in the SSM SIP Call as necessary to comply with the requirements of the CAA in order to obtain SIP approval. As required by Section 28.2 of the Act, the Illinois EPA certifies that this proposed rule is federally required in order to meet the requirements of the CAA. 415 ILCS 5/28.2. The proposed rule responds to the requirements of Section 110(a) and (k)(5) of the CAA and to the USEPA's SIP Call and Finding of Failure as described in more detail above. 42 U.S.C. § 7410(a), (k)(5). The Illinois EPA further certifies that the proposal amends the most recent version of the Illinois Administrative Code as published on the Board's website.

35 Ill. Adm. Code 201

Subpart C: Prohibitions

Section 201.149 Operation During Malfunction, Breakdown, or Startups

The Illinois EPA proposes amending this Section by removing the references to advance permission to continue operation during a malfunction or to violate emission limitations during startup. The Agency proposes specifying that violation of applicable standards or limitations is allowed only as specifically provided by the standard or limitation.

Subpart D: Permit Applications and Review Process

Section 201.157 Contents of Application for Operating Permit

The Illinois EPA proposes specifying that the application for an operating permit contain information regarding startup when emissions of an emission unit would be higher during startup than during normal operations of the emission unit. The Agency also proposes to remove a reference to Subpart I from this section.

Subpart I: Malfunctions, Breakdowns, or Startups

Section 201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown, or Startup

The Illinois EPA proposes repeal of this section because USEPA found it to be inconsistent with the CAA.

Section 201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown, or Startup

The Illinois EPA proposes repeal of this section because USEPA found it to be inconsistent with the CAA.

Section 201.263 Records and Reports

The Illinois EPA proposes repeal of this section because it is dependent upon and unnecessary without Sections 201.261 and 201.262.

Section 201.264 Continued Operation or Startup Prior to Granting of Operating Permit

The Illinois EPA proposes repeal of this section because it is inconsistent with the USEPA's SSM Policy and the CAA.

Section 201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

The Illinois EPA proposes repeal of this section because USEPA found it to be inconsistent with the CAA.

Subpart K: Records and Reports

Section 201.301 Records

The Illinois EPA proposes removing the reference to the records required under Subpart I as the Agency is proposing repeal of that entire Subpart.

35 Ill. Adm. Code 202

Subpart A: General Provisions

Section 202.107 Allowable Emissions

The Illinois EPA proposes removing subsection (c) because it is dependent upon Part 201, Subpart I, which is being repealed.

Subpart B: Permit Application

Section 202.211 Analysis of Emissions

The Illinois EPA is proposing non-substantive amendments to subsection (a)(3) of this Section that make minor wording changes for greater clarification.

35 Ill. Adm. Code 212

Subpart B: Visible Emissions

Section 212.124 Exceptions

The Illinois EPA is proposing to remove subsection (a) of this Section because it references the provisions contained in Part 201, Subpart I.

Subpart L: Particulate Matter Emissions from Process Emission Units

Section 212.324 Process Emission Units in Certain Areas

The Illinois EPA is proposing to remove a sentence in subsection (f) of this Section that contains a cross-reference to Section 201.149 regarding advance permission for continued operation during malfunction or breakdown or violation of emission limitations during startup.

IX. CONCLUSION

For the reasons stated above, the Illinois EPA hereby submits this regulatory proposal and requests the Board to adopt these rules for the State of Illinois.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Charles E. Matoesian
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DATED: December 7, 2022

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section	
201.101	Other Definitions
201.102	Definitions
201.103	Abbreviations and Units
201.104	Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section	
201.121	Existence of Permit No Defense
201.122	Proof of Emissions
201.123	Burden of Persuasion Regarding Exceptions
201.124	Annual Report
201.125	Severability
201.126	Repealer

SUBPART C: PROHIBITIONS

Section	
201.141	Prohibition of Air Pollution
201.142	Construction Permit Required
201.143	Operating Permits for New Sources
201.144	Operating Permits for Existing Sources
201.146	Exemptions from State Permit Requirements
201.147	Former Permits
201.148	Operation Without Compliance Program and Project Completion Schedule
201.149	Operation During Malfunction, Breakdown or Startups
201.150	Circumvention
201.151	Design of Effluent Exhaust Systems

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section	
201.152	Contents of Application for Construction Permit
201.153	Incomplete Applications (Repealed)
201.154	Signatures (Repealed)

201.155	Standards for Issuance (Repealed)
201.156	Conditions
201.157	Contents of Application for Operating Permit
201.158	Incomplete Applications
201.159	Signatures
201.160	Standards for Issuance
201.161	Conditions
201.162	Duration
201.163	Joint Construction and Operating Permits
201.164	Design Criteria
201.165	Hearings
201.166	Revocation
201.167	Revisions to Permits
201.168	Appeals from Conditions
201.169	Special Provisions for Certain Operating Permits
201.170	Portable Emission Units
201.175	Registration of Smaller Sources (ROSS)

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN
SMALLER SOURCES

Section	
201.180	Applicability (Repealed)
201.181	Expiration and Renewal (Repealed)
201.187	Requirement for a Revised Permit (Repealed)

SUBPART F: CAAPP PERMITS

Section	
201.207	Applicability
201.208	Supplemental Information
201.209	Emissions of Hazardous Air Pollutants
201.210	Categories of Insignificant Activities or Emission Levels
201.211	Application for Classification as an Insignificant Activity
201.212	Revisions to Lists of Insignificant Activities or Emission Levels

SUBPART G: EXPERIMENTAL PERMITS
(Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

Section	
201.241	Contents of Compliance Program
201.242	Contents of Project Completion Schedule
201.243	Standards for Approval
201.244	Revisions

- 201.245 Effects of Approval
- 201.246 Records and Reports
- 201.247 Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section

- 201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)
- 201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)
- 201.263 Records and Reports (Repealed)
- 201.264 Continued Operation or Startup Prior to Granting of Operating Permit (Repealed)
- 201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)

SUBPART J: MONITORING AND TESTING

Section

- 201.281 Permit Monitoring Equipment Requirements
- 201.282 Testing
- 201.283 Records and Reports

SUBPART K: RECORDS AND REPORTS

Section

- 201.301 Records
- 201.302 Reports

SUBPART L: CONTINUOUS MONITORING

Section

- 201.401 Continuous Monitoring Requirements
- 201.402 Alternative Monitoring
- 201.403 Exempt Sources
- 201.404 Monitoring System Malfunction
- 201.405 Excess Emission Reporting
- 201.406 Data Reduction
- 201.407 Retention of Information
- 201.408 Compliance Schedules

- 201.APPENDIX A Rule into Section Table
- 201.APPENDIX B Section into Rule Table
- 201.APPENDIX C Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71 -23, 4 PCB 191, filed and effective April 14, 1972; 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. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R10-21 at 34 Ill. Reg. 19575, effective December 1, 2010; amended in R12-10 at 35 Ill. Reg. 19790, effective December 5, 2011, amended in R13-18 at 38 Ill. Reg. 1005, effective December 23, 2013; amended in R22 at Ill. Reg. , effective .

SUBPART C: PROHIBITIONS

Section 201.149 Operation During Malfunction, Breakdown or Startups

No person shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the applicable standards or limitations set forth in Subchapter c of this Chapter except as specifically provided for by such standard or limitation. ~~unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown.~~ No person shall cause or allow violation of the applicable standards or limitations set forth in that Subchapter during startup except as specifically provided for by such standard or limitation. ~~unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup.~~

(Source: Amended at Ill. Reg. _____, effective _____)

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.157 Contents of Application for Operating Permit

An application for an operating permit shall contain, as a minimum, the data and information specified in Section 201.152. Each application shall list all individual emission units and air

pollution equipment for which a permit is sought. Any applicant may seek to obtain from the Agency a permit for each emission unit, or such emission units as are similar in design or principle of operation or function, or for all emission units encompassed in an identifiable operating unit, unless subject to the provisions of Section 201.169 of this Subpart or required to obtain an operating permit with federal enforceable conditions pursuant to Section 39.5 of the Act. To the extent that the above specified data and information has previously been submitted to the Agency pursuant to this Subpart, the data and information need not be resubmitted; provided, however, that the applicant must certify that the data and information previously submitted remains true, correct and current. If emissions of an emission unit during startup would be higher than during normal operation of the emission unit, an application for an operating permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups, the types and quantities of emissions during startup, and the applicant's efforts to minimize any such startup emissions, duration of individual startups, and frequency of startups. ~~If applicable, pursuant to the requirements of Subpart I of this Part, an application for a permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups and quantities of emissions during startup in excess of emissions during operations, and the applicant's efforts to minimize any such startup emissions.~~ The Agency may adopt procedures that require data and information in addition to and in amplification of the matters specified in the first sentence of this Section, that are reasonably designed to determine compliance with this Chapter, and ambient air quality standards, and that set forth the format by which all data and information shall be submitted.

(Source: Amended at Ill. Reg. _____, effective _____)

~~SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS~~

~~Section 201.261 — Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup~~

- ~~a) — A request for permission to continue to operate during a malfunction or breakdown, if desired, shall be included as an integral part of the application for an operating permit pursuant to Subpart D, and shall include as a minimum: a full and detailed explanation of why such continued operation is necessary; the anticipated nature, sources and quantities of emissions which will occur during such continued operation; the anticipated length of time during which such operation will continue; all measures, such as use of off-shift labor or equipment which will be taken to minimize the quantity of air contaminant emissions and length of time during which such operation will continue. When the standards or limitations of Subchapter c of this Chapter will be violated during startup, a request for permission to violate such standards or limitations shall be an integral part of the application for an operating permit pursuant to Subpart D, and shall include, as a minimum: a description of the startup procedure for each emission source, the duration and frequencies of such startups, the type and quantities of emissions during such startups and the applicant's efforts to minimize any such startup emissions, duration of individual startups and frequency of startups.~~

- b) ~~The Agency may adopt procedures which require data and information in addition to or in amplification of the matters set forth in subsection (a), and which set forth the format in which all data and information shall be submitted. Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1001 et seq.) (APA Act).~~

~~(Source: Repealed at Ill. Reg. _____, effective _____)~~

~~**Section 201.262 — Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup**~~

~~Permission shall not be granted to allow continued operation during a malfunction or breakdown unless the applicant submits proof to the Agency that: such continued operation is necessary to prevent injury to persons or severe damage to equipment; or that such continued operation is required to provide essential services; provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be a sufficient reason for granting of permission. Permission shall not be granted to allow violation of the standards or limitations of Subchapter c of this Chapter during startup unless the applicant has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups.~~

~~(Source: Repealed at Ill. Reg. _____, effective _____)~~

~~**Section 201.263 — Records and Reports**~~

~~Any person who causes or allows the continued operation of an emission source during a malfunction or breakdown of the emission source or related air pollution control equipment when such continued operation would cause a violation of the standards or limitations set forth in Subchapter c of this Chapter shall immediately report such incident to the Agency by telephone, telegraph or such other method as constitutes the fastest available alternative, except if otherwise provided in the operating permit. Thereafter, any such person shall comply with all reasonable directives of the Agency with respect to the incident. In addition, any person subject to this Subpart shall maintain such records and make such reports as may be required in procedures adopted by the Agency pursuant to Subpart K.~~

~~(Source: Repealed at Ill. Reg. _____, effective _____)~~

~~**Section 201.264 — Continued Operation or Startup Prior to Granting of Operating Permit**~~

~~Any person desiring to continue to operate, or to startup in accordance with Section 201.149 prior to the date when an operating permit is required pursuant to Section 201.143 or 201.144, shall make immediate application for permission to operate during a malfunction, breakdown or startup in accordance with Section 201.261.~~

(Source: Repealed at Ill. Reg. _____, effective _____)

Section 201.265 — ~~Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup~~

~~The granting of permission to operate during a malfunction or breakdown, or to violate the standards or limitations of Subchapter c of this Chapter during startup, and full compliance with any terms and conditions connected therewith, shall be a prima facie defense to an enforcement action alleging a violation of Section 201.149, of the emission and air quality standards of this Chapter, and of the prohibition of air pollution during the time of such malfunction, breakdown or startup.~~

(Source: Repealed at Ill. Reg. _____, effective _____)

SUBPART K: RECORDS AND REPORTS

Section 201.301 Records

The owner or operator of any emission source or air pollution control equipment shall maintain, as a minimum: records detailing all activities pursuant to any compliance program and project completion schedule pursuant to Subpart H; ~~records detailing all malfunctions, breakdowns or startups pursuant to Subpart I~~ and records of all monitoring and testing conducted pursuant to Subpart J, plus records of all monitoring and testing of any type whatsoever conducted with respect to specified air contaminants. All such records shall be made available to the Agency at any reasonable time.

- a) The Agency may adopt procedures which:
 - 1) Require additional records be maintained consistent with these regulations; and
 - 2) Set forth the format in which all records shall be maintained.
- b) Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the APA Act.

(Source: Amended at Ill. Reg. _____, effective _____)

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS**

**PART 202
ALTERNATIVE CONTROL STRATEGIES**

SUBPART A: GENERAL PROVISIONS

Section

202.101	Definitions
202.104	Actual Emissions
202.107	Allowable Emissions
202.110	Alternative Control Strategy (ACS)
202.113	Chapter
202.116	Emission Baseline
202.119	Multi-person ACS
202.122	Potential to Emit
202.125	Abbreviations
202.140	Scope
202.142	Severability

SUBPART B: PERMIT APPLICATION

Section

202.201	Emission Baseline for Alternative Control Strategies
202.210	Permit Application Information
202.211	Analysis of Emissions
202.212	Analysis of Environmental Quality
202.213	Analysis of Methods of Assuring Compliance

SUBPART C: PERMIT CONDITIONS AND ISSUANCE

Section

202.301	Permit Conditions
202.302	Records and Reports
202.303	Monitoring and Testing
202.304	Compliance Dates
202.305	Public Participation
202.306	Standards for Issuance
202.307	Notification to USEPA

SUBPART D: PERMIT DURATION, REVISION AND RENEWAL

Section

202.401	Duration
202.402	Revision
202.403	Renewal

SUBPART E: ALTERNATIVE CONTROL STRATEGIES INVOLVING MORE THAN ONE PERSON

Section

202.501	Applicability
202.502	Permit Application
202.503	Duration
202.504	Permit Conditions
202.505	Records and Reports
202.506	Revocation
202.507	Termination
Appendix A	Pre-Codification into Codified
Appendix B	Codified into Pre-Codification

AUTHORITY: Implementing Section 9.3 and authorized by Sections 5 and 27 of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1005, 1009.3, and 1027).

SOURCE: 35 Ill. Adm. Code 212 adopted in R81-20 (Interim) at 6 Ill. Reg. 6703, effective May 20, 1982; renumbered to 35 Ill. Adm. Code 202 and amended in R81-20(A) at 7 Ill. Reg. 8091, effective June 27, 1983; codified at 7 Ill. Reg. 13584; corrected at 7 Ill. Reg. 14561; amended in R81-20(B) at 8 Ill. Reg. 4171, effective March 16, 1984; amended in R22 at Ill. Reg. , effective .

SUBPART A: GENERAL PROVISIONS`

Section 202.107 Allowable Emissions

- a) "Allowable emissions" means the emission rate of an emission source calculated using the maximum rated capacity of the emission source (unless the emission source is subject to permit conditions or other enforceable limits which restrict the operating rate, or hours of operation, or both) and the more stringent of the following:
 - 1) The applicable emission standard or limitation contained in this Chapter, including those with a future compliance date; or

- 2) The emissions rate specified as a permit condition including those with a future compliance date.
- b) The allowable emissions may be expressed as a permit condition limiting annual emissions or material or fuel throughput.
- ~~e) Allowable emissions shall include a reasonable estimate of emissions in excess of applicable standards during start-up, malfunction, or breakdown, as appropriate, only if the applicable provisions of 35 Ill. Adm. Code Part 201 have been complied with.~~
- c) If an emission source is not subject to an emission standard under subsection (a) and is not conditioned pursuant to subsection (b), the allowable emissions shall be the source's potential to emit.

(Source: Amended at Ill. Reg. _____, effective _____)

SUBPART B: PERMIT APPLICATION

Section 202.211 Analysis of Emissions

- a) A permit application under this Subpart shall provide a comparison of the baseline emissions and the emissions which would be permitted under the proposed ACS for each emission source involved in the ACS. Where appropriate, this analysis shall address differences between the emission sources to be covered by the ACS with regard to:
 - 1) Methods of determining emissions;
 - 2) Consistency and reliability of the performance of the emission sources and any associated control devices;
 - 3) Frequency and duration of operating during malfunction or breakdown with excess emissions, or ~~excess emissions~~ during start-up with excess emissions;
 - 4) Methods of operation, including operating schedules, range of raw materials or products, etc.; and
 - 5) Other characteristics of the emission sources or their operation which may affect equivalence of emissions.
- b) The analysis shall describe any increases in emissions from emission sources outside the ACS which may accompany the proposed ACS.

(Source: Amended at Ill. Reg. _____, effective _____)

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY
SOURCES**

**PART 212
VISIBLE AND PARTICULATE MATTER EMISSIONS**

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- 212.108 Measurement Methods for PM-10 Emissions and Condensable PM-10 Emissions
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- 212.181 Limitations for Incinerators
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- 212.201 Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively Located in the Chicago Area
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- 212.210 Emissions Limitations for Certain Fuel Combustion Emission Units Located in the Vicinity of Granite City

SUBPART K: FUGITIVE PARTICULATE MATTER

Section

- 212.301 Fugitive Particulate Matter
- 212.302 Geographical Areas of Application
- 212.304 Storage Piles
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- 212.308 Spraying or Choke-Feeding Required
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- 212.314 Exception for Excess Wind Speed
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- 212.316 Emissions Limitations for Emission Units in Certain Areas

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

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- 212.321 Process Emission Units For Which Construction or Modification Commenced On or After April 14, 1972
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- 212.323 Stock Piles
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SUBPART N: FOOD MANUFACTURING

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- 212.361 Corn Wet Milling Processes
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- 212.381 Catalyst Regenerators of Fluidized Catalytic Converters

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- 212.441 Steel Manufacturing Processes
- 212.442 Beehive Coke Ovens

212.443	Coke Plants
212.444	Sinter Processes
212.445	Blast Furnace Cast Houses
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SUBPART T: CONSTRUCTION AND WOOD PRODUCTS

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Section

212.700	Applicability
212.701	Contingency Measure Plans, Submittal and Compliance Date
212.702	Determination of Contributing Sources
212.703	Contingency Measure Plan Elements
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212.705	Alternative Implementation

212.Appendix A	Rule into Section Table
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212.Appendix C	Past Compliance Dates

212.Illustration A	Allowable Emissions From Solid Fuel Combustion Emission Sources Outside Chicago (Repealed)
212.Illustration B	Limitations for all New Process Emission Sources (Repealed)
212.Illustration C	Limitations for all Existing Process Emission Sources (Repealed)
212.Illustration D	McCook Vicinity Map
212.Illustration E	Lake Calumet Vicinity Map
212.Illustration F	Granite City Vicinity Map

AUTHORITY: Implementing Section 10 and authorized by Section 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rules 202 and 203: Visual and Particulate Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-15, 32 PCB 403, at 3 Ill. Reg. 5, p. 798, effective February 3, 1979; amended in R78-10, 35 PCB 347, at 3 Ill. Reg. 39, p. 184, effective September 28, 1979; amended in R78-11, 35 PCB 505, at 3 Ill. Reg. 45, p. 100, effective October 26, 1979; amended in R78-9, 38 PCB 411, at 4 Ill. Reg. 24, p. 514, effective June 4, 1980; amended in R79-11, 43 PCB 481, at 5 Ill. Reg. 11590, effective October 19, 1981; codified at 7 Ill. Reg. 13591; amended in R82-1 (Docket A), at 10 Ill. Reg. 12637, effective July 9, 1986; amended in R85-33 at 10 Ill. Reg. 18030, effective October 7, 1986; amended in R84-48 at 11 Ill. Reg. 691, effective December 18, 1986; amended in R84-42 at 11 Ill. Reg. 1410, effective December 30, 1986; amended in R82-1 (Docket B) at 12 Ill. Reg. 12492, effective July 13, 1988; amended in R91-6 at 15 Ill. Reg. 15708, effective October 4, 1991; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R91-22 at 16 Ill. Reg. 7880, effective May 11, 1992; amended in R91-35 at 16 Ill. Reg. 8204, effective May 15, 1992; amended in R93-30 at 18 Ill. Reg. 11587, effective July 11, 1994; amended in R96-5 at 20 Ill. Reg. 7605, effective May 22, 1996; amended in R22 at Ill. Reg. , effective .

BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

SUBPART B: VISIBLE EMISSIONS

Section 212.124 Exceptions

- ~~a)~~ Sections 212.122 and 212.123 of this Subpart shall apply during times of startup, malfunction and breakdown except as provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201.
- ab) Sections 212.122 and 212.123 of this Subpart shall not apply to emissions of water or water vapor from an emission unit.
- be) An emission unit which has obtained an adjusted opacity standard pursuant to Section 212.126 of this Subpart shall be subject to that standard rather than the limitations of Section 212.122 or 212.123 of this Subpart.

- c) Compliance with the particulate regulations of this Part shall constitute a defense.
- 1) For all emission units which are not subject to Chapters 111 or 112 of the CAA and Sections 212.201, 212.202, 212.203 or 212.204 of this Part but which are subject to Sections 212.122 or 212.123 of this Subpart: the opacity limitations of Sections 212.122 and 212.123 of this Subpart shall not apply if it is shown that the emission unit was, at the time of such emission, in compliance with the applicable particulate emissions limitations of Subparts D through T of this Part.
 - 2) For all emission units which are not subject to Chapters 111 or 112 of the CAA but which are subject to Sections 212.201, 212.202, 212.203 or 212.204 of this Part:
 - A) An exceedance of the limitations of Section 212.122 or 212.123 of this Subpart shall constitute a violation of the applicable particulate limitations of Subparts D through T of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the unit and the control devices, and in accordance with Method 5, 40 CFR part 60, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the particulate emission limitations.
 - B) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions of the emission unit and the control devices, and in accordance with Method 5, 40 CFR part 60, Appendix A, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

(Source: Amended at Ill. Reg. _____, effective _____)

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

Section 212.324 Process Emission Units in Certain Areas

- a) Applicability.

- 1) This Section shall apply to any process emission unit located in any of the following areas:
 - A) That area bounded by lines from Universal Transmercator (UTM) coordinate 428000mE, 4631000mN, east to 435000mE, 4631000mN, south to 435000mE, 4623000mN, west to 428000mE, 4623000mN, north to 428000mE, 4631000mN, in the vicinity of McCook in Cook County, as shown in Illustration D of this Part;
 - B) That area bounded by lines from Universal Transmercator (UTM) coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN, south to 456265E, 4609020N, west to 445000mE, 4609020mN, north to 445000mE, 4622180mN, in the vicinity of Lake Calumet in Cook County, as shown in Illustration E of this Part;
 - C) That area bounded by lines from Universal Transmercator (UTM) coordinate 744000mE, 4290000mN, east to 753000mE, 4290000mN, south to 753000mE, 4283000mN, west to 744000mE, 4283000mN, north to 744000mE, 4290000mN, in the vicinity of Granite City in Madison County, as shown in Illustration F of this Part.
- 2) This Section shall not alter the applicability of Sections 212.321 and 212.322 of this Subpart.
- 3) The emission limitations of this Section are not applicable to any emission unit subject to a specific emissions standard or limitation contained in any of the following Subparts of this Part:
 - A) Subpart N, Food Manufacturing;
 - B) Subpart Q, Stone, Clay, Glass and Concrete Manufacturing;
 - C) Subpart R, Primary and Fabricated Metal Products and Machinery Manufacture; and
 - D) Subpart S, Agriculture.
- b) General Emission Limitation. Except as otherwise provided in this Section, no person shall cause or allow the emission into the atmosphere, of PM-10 from any process emission unit to exceed 68.7 mg/scm (0.03 gr/scf) during any one hour period.

- c) Alternative Emission Limitation. In lieu of the emission limit of 68.7 mg/scm (0.03 gr/scf) contained in subsection (b) of this Section, no person shall cause or allow the emissions from the following emission units to exceed the corresponding limitations in the following table:

	Emissions Units	Emissions Limit	
		Metric	English
1)	Shotblasting emission units in the Village of McCook equipped with fabric filters as of June 1, 1991	22.9 mg/scm	0.01 gr/scf
2)	All process emission units at manufacturers of steel wool with soap pads located in the Village of McCook	5% opacity	5% opacity

- d) Exceptions. The mass emission limits contained in subsections (b) and (c) of this Section shall not apply to those emission units with no visible emissions other than fugitive particulate matter; however, if a stack test is performed, this subsection is not a defense finding of a violation of the mass emission limits contained in subsections (b) and (c) of this Section.
- e) Special Emissions Limitation for Fuel-Burning Process Emission Units in the Vicinity of Granite City. No person shall cause or allow emissions of PM-10 into the atmosphere to exceed 12.9 ng/J (0.03 lbs/mmbtu) of heat input from the burning of fuel other than natural gas at any process emission unit located in the vicinity of Granite City as defined in subsection (a)(1)(C) of this Section.
- f) Maintenance and Repair. For any process emission unit subject to subsection (a) of this Section, the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in this Section shall be met at all times. ~~This Section shall not affect the applicability of 35 Ill. Adm. Code 201.149.~~ Proper maintenance shall include the following minimum requirements:
- 1) Visual inspections of air pollution control equipment;
 - 2) Maintenance of an adequate inventory of spare parts; and
 - 3) Expedient repairs, unless the emission unit is shutdown.
- g) Recordkeeping of Maintenance and Repair.
- 1) Written records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment shall be kept in accordance with subsection (f) of this Section.

- 2) The owner or operator shall document any period during which any process emission unit was in operation when the air pollution control equipment was not in operation or was malfunctioning so as to cause an emissions level in excess of the emissions limitation. These records shall include documentation of causes for pollution control equipment not operating or such malfunction and shall state what corrective actions were taken and what repairs were made.
 - 3) A written record of the inventory of all spare parts not readily available from local suppliers shall be kept and updated.
 - 4) Copies of all records required by this Section shall be submitted to the Agency within ten (10) working days after a written request by the Agency.
 - 5) The records required under this Section shall be kept and maintained for at least three (3) years and shall be available for inspection and copying by Agency representatives during working hours.
 - 6) Upon written request by the Agency, a report shall be submitted to the Agency for any period specified in the request stating the following: the dates during which any process emission unit was in operation when the air pollution control equipment was not in operation or was not operating properly, documentation of causes for pollution control equipment not operating or not operating properly, and a statement of what corrective actions were taken and what repairs were made.
- h) Compliance Date. Emission units shall comply with the emissions limitations and recordkeeping and reporting requirements of this Section by May 11, 1993, or upon initial start-up, whichever occurs later.

(Source: Amended at Ill. Reg. _____, effective _____)

CERTIFICATE OF E-MAIL SERVICE

I, the undersigned, on affirmation, state the following:

That I have served the attached RULEMAKING PROPOSAL entitled "AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212" and APPEARANCES by e-mail upon:

Illinois Pollution Control Board
Don Brown, Clerk
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605
don.brown@illinois.gov

Illinois Department of Natural Resources
Office of General Counsel
One Natural Resources Way
Springfield, Illinois 62702
renee.snow@illinois.gov

Office of the Illinois Attorney General
Environmental Bureau North
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
enviro@ilag.gov

That my e-mail address is Charles.matoesian@illinois.gov.

That the number of pages in this e-mail transmission is 52.

That the e-mail transmission took place before 5:00 p.m. on the date of December 7, 2022.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Charles E Matoesian
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: December 7, 2022

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