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Subject: [External] R2023-018 - RULEMAKING PROPOSAL entitled "AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212
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COMMENTS and OBJECTION to R2023-018 - RULEMAKING PROPOSAL entitled "AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212

C23D32 is a private and anonymous investigative watchdog group that monitors IEPA leadership behaviors and actions for abuse and corruption of authority.

The IEPA has failed RULEMAKING PROPOSAL entitled "AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212to comply with its own Environmental Justice policy putting those disadvantaged citizens in harms way. This failure is systemic throughout the Bureau of Air programs because of the privileges and prejudices held by the IEPA leadership. This leadership uses deceptive and racist practices that culminate in bigoted outcomes.

Such IEPA leadership cannot be trusted to make impartial decisions on such rulemaking actions that will directly impact the lives of citizens because of the explicit and implicit biases displayed by this leadership. C23D32 exists to expose incompetency and dishonesty and examine the outcome of such behavior in an effort to impose change to an Agency fraught with corrupt and unethical leaders.

Introduction – Objection to Fast Track procedures for this Rulemaking

C23D32 strenuously objects to the use of the fast track procedures for the reasons stated below. Additionally, the IEPA has not complied with the requirements for allowance of such a fast track process. Lastly, the public deserves to be informed of the merits and to weigh in on the impacts of this rulemaking.

Sec. 28. Proposal of regulations; procedure.

If such proposal is made by the Agency or by the Department, the Board shall schedule a public hearing without regard to the above conditions. The Board may hold one or more hearings to consider both the merits and the economics of the proposal. The Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions. [So the Board is not prohibited from such acceptance of comments on this type of rulemaking action].

No substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of state-wide regulations hearings shall be held in at least two areas. [The public outreach performed by the IEPA is not sufficient to meet this requirement].

At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the state concerned of the date, time, place and purpose of such hearing; give written notice to any person in the area concerned who has in writing requested notice of public hearings; and make available to any person upon request copies of the proposed regulations, together with summaries of the

reasons supporting their adoption. [None of this was ever done].

In all fast-track rulemakings under this Section, the Board must take into account factors set forth in subsection (a) of Section 27 of this Act.

Sec. 27. Rulemaking.

In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. [None of this was provided in the Statement of Reasons].

To aid the Board and to assist the public in determining which facilities will be affected, the person filing a proposal shall describe, to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule. [None of this was provided in the Statement of Reasons].

1. **Environmental Just and Outreach -**

This IEPA had 8 years to develop a rulemaking, hold outreach with all interested parties including those marginalized populations, under-represented populations and over-burdened populations in the State of Illinois. However, it chose to do nothing as it always does with everything it is responsible for doing. What did this IEPA say?

> " . . . . . the Agency did not move forward with a rulemaking at that time. It opted to wait and see . . . . . ." [pg. 8 – Statement of Reasons].

This choice has resulted in putting the State of Illinois in a very bad position and one that now has this IEPA requesting "fast-track" procedures which would disenfranchise a significant portion of the State population. Also, this IEPA has violated its own Environmental Justice policy by providing preferential treatment to a select few. Notice that the public is clearly not identified as an interested stakeholder in this rulemaking.

> "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." [pg. 16 – Statement of Reasons].

This is yet another example of this IEPA intentionally taking actions to directly ignore the citizens voices. Not only are they ignoring certain privileged voices, but they are also ignoring minority, low income, English limited, and protected classes of voices So, this IEPA cannot use the excuse that to avoid mandatory sanctions, Illinois must submit final rule amendments to USEPA in a SIP submittal that is complete.

> "The . . . . . request for fast-track rulemaking will bring Illinois into compliance

with the SSM SIP Call within the 18-month timeframe." [pg. 14 – Statement of Reasons].

This is simply a downright lie and deception to make the public believe this IEPA has only 18 months. They actually had nearly 8 years, but they made a conscious decision not to do anything rather than proactively prepare in advance. Poor or lack of planning and leadership on this IEPA's part does not constitute an emergency at the expense of prohibiting public participation in the rulemaking process and violating the publics civil rights.

For this reason, the IEPA must pull this rulemaking off of the filing notice and perform Environmental Justice outreach on this rulemaking that reaches all parts of the State of Illinois before it refiles this rulemaking with the Board. It cannot be selective in who it chooses to include and not include even though this is how this IEPA operates by preferential treatment. We would think that this IEPA would have had the common sense to do this given all the scrutiny and civil rights cases filed against them in the permitting process. Now they are doing the same thing in the rulemaking process.

2. <u>Technical and Economic Feasibility -</u>

This rulemaking will increase the emissions in the State because sources have no way to control emissions from many of these startups, shutdowns and malfunctions. Now with this rulemaking there will not be a requirement to minimize emissions or any incentive to minimize emissions. Sources now can simply emit whatever they want to emit because they can and the consequences will not change. The question becomes one of which is cheaper?, to emit emissions during these events and pay penalties?, to spend money to control these emissions? or to minimize emissions? The answer is they will now emit whatever because it is expensive to control these emissions and it is expensive to minimize these emissions (but less expensive to control) Thus, this rulemaking is going to create pollution in the State of Illinois without something to replace the requirement to minimize emissions during these events.

"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." [pg. 15 – Statement of Reasons]

"The Agency acknowledges that, ... may desire to make changes to source configurations, operations and practices, or pollution control equipment to meet applicable emission limits at all times." [pg. 15 – Statement of Reasons]

"The costs associated with any such changes are indeterminate . . . . ." [pg. 15 – Statement of Reasons]

"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."
> [pg. 13 – Statement of Reasons]

The entire basis of this rulemaking is because this IEPA did not have time to develop appropriate and effective rules to address the SIP Call which occurred way back in 2015. This IEPA blames the USEPA because the USEPA did not and refused to provide guidance (these specific discussions with USEPA have not been released to the public as part of the rulemaking record and will not be because this IEPA says they did not rely on anything but the list of documents in the Statement of Reasons (another luxury this IEPA has with fast tracking, they don't have to share a record). This is familiar also in the permitting process where they also do not share permit records for which numerous petitions to object have been filed on minor modifications that should have been significant modifications in an effort to avoid public notice and participation.

So, there is no technical justification showing that emissions will definitively be reduced because sources must comply with emission limits at all times now. There is only the rational that "because USEPA says so" it must be true. Why are there still provisions to provide excess emissions during startups in applications and keep records but not for malfunctions and breakdowns? This rule essentially deems these modes of operation as no longer abnormal operation, but normal operation. So, these emissions need to be included in all calculations and submittals as normal operation in the application to show compliance. If a source does not provide such submittal of emissions, then this IEPA cannot be compelled (as it says it must by rule in all permit actions) to issue any permit because the application will not have included all emission estimates. Since these are now normal modes of operation, they fall under the monitoring and testing requirements for the applicable requirements and must be monitored and tested to demonstrate compliance where such rule requires monitoring and testing. However, this monitoring and testing is usually not easily accomplished for these modes of abnormal operation. Even though the rule may attempt to redefine reality, the reality of these events do not change just because a rule would tell you otherwise on paper.

> "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. No clear guidance was provided at that time.
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> 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. USEPA advised that no formal guidance was forthcoming.
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> USEPA advised that removing the offending provisions from the SIP compliance option is the most straightforward and that it [USEPA] did not know what a SIP submittal alternatives would actually entail or whether it would be approvable."
> [pgs. 10 to 12 – Statement of Reasons]

This is so deceptive that it is almost laughable if not for the serious ramifications that such hazardous decision can cause. The USEPA, for years, has been addressing SSM events in its own federal rules

(NESHAPs for instance) by creating alternative emission limitations usually in the form of work practices. See for example the Boiler MACT or MATS rule or the Refinery Sector rules. So, for the USEPA to make such statements is actually ludicrous as they know for a fact that there is guidance by way of similar rules and they know what those rules look like because they created them.

For this reason, the IEPA must pull this rulemaking off of the filing notice and must fix this rulemaking to allow for continued operation of those SSM events where they will cause more pollution or cause catastrophic disasters as a result of explosions, damage to property, life, etc. This could be accomplished with a very simple statement in 201.149 which says

> 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 in 35 IAC, subchapter c or other applicable NSPS and/or NESHAP-MACT.**
>
> 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 in 35 IAC, subchapter c or other applicable NSPS and/or NESHAP-MACT**.

3. SIP Call Itself –

The SIP call from 2015 and likewise all future direction from USEPA covers only starups, shutdowns, and malfunctions. The SIP call does not cover breakdowns. The Statement of Reasons acknowledges this indirectly by using the terminology "malfunction" (absent "breakdown) when referring to the SIP call but when referring to the SIP it says "malfunction and breakdown." These two events are not the same because malfunctions are those events where equipment is still running (an ongoing situation at suboptimal conditions) with potential for higher emissions on an ongoing basis and breakdown is where equipment has stopped running with potential for higher emissions at that instance when equipment ceased up. The SIP is for both event types yet this IEPA claims that it must remove both to comply with the SIP call and hence a fast track process. This is just not true. No where does the Statement of Reasons explain why Illinois chose to go beyond the SIP call and remove the breakdown authority.

For this reason, the IEPA must pull this rulemaking off of the filing notice and must reinsert breakdown authority into this rulemaking before it refiles this rulemaking with the Board. This IEPA cannot make assumptions and use fictional definitions to determine what it must and would like to do in this rulemaking.

Because this rule is based on nothing more than some bureaucrats opinion that was likely influenced by narrow-minded IEPA leadership toward unpreparedness rather than consideration for the community this rulemaking must be pulled off notice, fixed and refiled at a later date to do the right thing.

It is appalling that a governmental agency such as the IEPA, charged with protecting the health and welfare of the State of Illinois citizens, would commit such dangerous acts of aggression and hostility toward its citizens. This is nothing more than legal bullying of the citizens to accept whatever this leadership says. In fact, there is a pattern of of underlying incapacities to perform fundamentally elements of these programs.