

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
AMENDMENTS TO 35 ILL. ADM. CODE ) R23-18  
 ) (Rulemaking – Air)  
PARTS 201, 202, AND 212 )

**NOTICE**

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Board the PREFILED TESTIMONY OF RORY DAVIS 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  
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DATED: January 9, 2023

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PARTS 201, 202, AND 212 ) (Rulemaking – Air)

**PREFILED TESTIMONY OF RORY DAVIS**

My name is Rory Davis. I am the manager of the Regulatory Development Unit in the Air Quality Planning Section of the Illinois Environmental Protection Agency's ("Illinois EPA" or "Agency") Bureau of Air. I have been employed by the Agency in the Air Quality Planning Section for 16 years and was an Environmental Protection Engineer in the Air Quality Planning Section prior to taking my current position as manager. I have a Bachelor of Science degree in Computational Physics as well as a Bachelor of Science degree in Mathematics from Illinois State University. I have a Master's degree in Engineering from the University of Illinois at Chicago. My graduate studies consisted of an interdisciplinary program involving coursework from the Chemical Engineering and Mechanical Engineering fields with a concentration on Environmental Engineering. I am also a Licensed Professional Engineer in the State of Illinois. In my current position with the Agency, my duties include coordinating Illinois' air quality planning activities in the state and region, managing regulatory proposals, and maintaining the Bureau of Air's air emissions inventories. I will be providing testimony regarding the proposed amendments to Title 35 of the Illinois Administrative Code ("35 IAC") Parts 201, 202, and 212 regarding startup, shutdown, and malfunction ("SSM") provisions.

**The Proposed Revisions**

As stated in the Agency's Statement of Reasons for the proposed rulemaking, the Agency is proposing the revisions to 35 IAC Parts 201, 202, and 212 in order to comply with the Clean Air Act, United States Environmental Protection Agency's ("USEPA") SSM State Implementation Plan ("SIP") Call (*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)), and the Finding of Failure to Submit SIP Revisions related to the SSM SIP Call (*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)). The proposed revisions remove SSM provisions in the aforementioned Parts that provided certain sources the ability to request in their permit application an affirmative defense for excess emissions during periods of malfunction or startup. The removal of these rule provisions will eliminate the ability of sources to make such a request, and eliminate the ability of the Agency to include in issued permits language providing for such an affirmative defense.

The Agency's proposal will ensure that the Agency can submit an approvable SIP to USEPA in response to the SSM SIP Call and the Finding of Failure to submit SIP revisions. As is also discussed in the Statement of Reasons, prior to proposing this rulemaking, the Agency consulted with USEPA Region 5 staff to determine whether different approaches rather than simply removing the offending SSM provisions would be approvable. Their response was that no formal guidance regarding developing alternative limitations was forthcoming, that a simple removal of the SSM provisions was the most straightforward compliance option, and that removal was the only approach that was definitely approvable. Additionally, the Agency is unaware of any other state that has promulgated alternative emission limitations and had those limitations approved by USEPA as satisfying the SIP Call. To the Agency's knowledge, all states that have obtained SIP approval did so by removing the offending provisions from their SIPs, as the Agency is proposing to do in this rulemaking. USEPA, likewise, could not direct the Agency to any alternative approaches that had been approved.

Given USEPA's August 2023 deadline for Illinois to respond to the SIP Call or else incur sanctions, the uncertainty as to the demonstration that may be necessary to successfully justify to USEPA any relaxation of current emission limitations, and the uncertainty as to whether *any* alternative limitations would be approvable by USEPA, it is not tenable for alternative limitations to be developed and adequately vetted as part of this rulemaking. All emission standards that currently apply to sources

were adequately supported when the Board adopted them, and SSM provisions never excused sources from the obligation to comply with those standards. If a source exceeded the standard, it was always a violation subject to potential enforcement by the Illinois EPA or by others.

I am prepared to answer any questions from hearing participants regarding these and other issues relevant to the rulemaking during the hearing or in writing subsequent to the hearing if necessary.

CERTIFICATE OF E-MAIL SERVICE

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

That I have served the attached PREFILED TESTIMONY OF RORY DAVIS by e-mail upon:

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That the number of pages in this e-mail transmission is 7.

That the e-mail transmission took place before 5:00 p.m. on the date of January 9, 2023.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Charles E Matoesian  
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DATED: January 9, 2023

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