

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| IN THE MATTER OF: |) | |
| |) | |
| |) | R 23-18 |
| AMENDMENTS TO 35 ILL. ADM. CODE |) | (Rulemaking – Air) |
| PARTS 201, 202, AND 212 |) | |

NOTICE OF FILING

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| TO: Mr. Don A. Brown, Clerk of the Board Illinois Pollution Control Board 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 | Timothy Fox Chloe Salk Hearing Officers Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 |
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(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **IERG'S PRE-FILED QUESTIONS FOR ILLINOIS EPA WITNESSES**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: January 12, 2023

By: /s/ Melissa S. Brown

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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) R 23-18
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking – Air)
PARTS 201, 202, AND 212)

IERG’S PRE-FILED QUESTIONS FOR ILLINOIS EPA WITNESSES

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys HEPLERBROOM, LLC, and hereby files its Pre-Filed Questions for Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) witnesses at the First Hearing scheduled for January 19, 2023.

SMB Origin and Purpose (R71-23, Subpart I)

1. The startup, malfunction, and breakdown (“SMB”) provisions in Sections 201.149 and 201.261-201.265 were adopted in 1972 in PCB R 71-23 (then known as Rules 105(a) and 105(b)-(f)). Back in 1971 and 1972, what was the purpose of these provisions?
2. On Page 3 of Illinois EPA’s Statement of Reasons (“SOR”), Illinois EPA explains: “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’ ... 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.” Is this reasoning consistent with the origin and purpose of the SMB provisions in Part 201?
3. Have there been any substantive changes to the SMB rules in Parts 201, 202, or 212 since 1972? If so, please describe the changes.
4. On Page 5 of the SOR, the Agency states: “The Agency has historically interpreted these provisions as establishing an affirmative defense should excess emissions result in an enforcement action.” Has this been the interpretation of the Agency’s Permit Section since 1972?
 - a. Has this been the interpretation of the Agency’s Compliance Section since 1972?
 - b. Does this interpretation equate to “granting permission” for “irreducible startup emissions” when “conditions may result in less than optimum emission control”

as stated in the April 1972 Illinois Pollution Control Board (“Board”) decision in PCB R 71-23 that adopted the SMB provisions?

- c. Please provide examples of SMB language that was included in air operating and construction permits following the adoption of the SMB provisions in PCB R 71-23.
- d. Has the typical SMB language included in air permits evolved since 1972? How so and what has been the basis of such evolution?

1971 Numeric Standards (R71-23, Subpart II)

5. Were the Part 201 (then Rule 105) SMB provisions taken into consideration when proposing and adopting the original numeric standards for CO, NO_x, PM, SO₂, VOM in PCB R 71-23 (that now reside in Subchapter c)?
6. Were the original PCB R 71-23 numeric standards “set at levels representing good control of emissions during periods of normal operation”?
7. In 1971, what would have been the basis for establishing numerical emission standards for periods of startup and shutdown?
 - a. Were continuous emission monitoring systems existent and widely available at the time?
 - b. Would stack tests have been conducted during periods of non-steady-state operation? If yes, would it have been the approach back then to require averaging of multiple runs, e.g., three one-hour test runs?

Justification for Fast Track Proposal

8. On page 7 of the SOR, Illinois EPA discusses the July 2015 judicial review of the 2015 startup, shutdown, and malfunction (“SSM”) Finding of Substantial Inadequacy and State Implementation Plan (“SIP”) Call (hereinafter “2015 SIP Call”). Illinois EPA explains that the case was first held in abeyance in April 2017. Did the Agency consider, at any time prior to April 2017, proceeding with a standard Board rulemaking to propose amendments to address the 2015 SIP Call?
 - a. If no, why not? If yes, please summarize the discussions regarding that consideration and the justification for not proceeding with a rulemaking during that period.
9. On page 7 of the SOR, Illinois EPA states: “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.” As noted on page 7 of the SOR, the judicial review was first held in abeyance in April 2017 and

“[a]ctivity on SSM at the federal level remained on hold until 2020. . . .” Did the Agency have an end date in mind to its “wait and see” approach?

- a. Did the Agency have ongoing internal discussions during the period between 2017 and 2020 regarding initiating a rulemaking to address the 2015 SIP Call?
 - i. If no, why not? If yes, please summarize the discussions and the justification for not proceeding with a rulemaking during that period.
10. When did the Agency first conclude that removal of the SMB affirmative defense provisions was the path the Agency was going to take in response to the January 12, 2022 Finding of Failure to Submit SIP Revisions in Response to the 2015 SIP Call (hereinafter “2022 Finding of Failure”)?
11. When did the Agency come to the conclusion that a Fast Track proceeding was necessary for this rulemaking?
12. Did the Agency, at any time after the January 12, 2022 Finding of Failure, consider proceeding with a standard Board rulemaking to propose amendments addressing SMB?
 - a. If no, why not? If yes, please summarize discussions regarding that consideration and the justification for concluding that a Fast Track proceeding was necessary.

Public Outreach

2015 SIP Call

13. Please summarize the outreach that Illinois EPA conducted with the public and stakeholders on the 2015 SSM SIP Call prior to January 2022.
14. Given the complexity and the potentially broad scope of impact of the 2015 SIP Call, did the Agency conduct an information request with some or all permit holders that have SMB provisions in their current operating permits? Why or why not? If so, please summarize the information request(s) and response(s).
15. Has the Agency conducted information requests in the past for purposes of proposing new or revised rules (e.g., the NO_x RACT rule)?
16. Were there inquiries made to the Agency regarding the 2015 SIP Call by any regulated entities prior to January 2022? If so, please describe such instance(s) and the Agency’s response(s).

2022 Finding of Failure

17. Did the Agency conduct any outreach to the public and stakeholders in response to the 2022 Finding of Failure prior to November 17, 2022? If so, please describe the outreach and response to the outreach.

18. Were there inquiries made to the Agency regarding the 2022 Finding of Failure by any regulated entities prior to November 17, 2022? If so, please describe the instance(s) and the Agency's response(s).
19. What was the basis for the Agency's pre-proposal outreach being conducted as late as November 17, 2022?
20. In the pre-proposal outreach e-mail circulated on November 17, 2022, the Agency communicated a deadline of December 6, 2022 for providing comments on its pre-proposal draft rules. What was the basis for that timeframe to provide comments?
21. The Agency filed its proposal with the Board on December 7, 2022, which was one day after the deadline of December 6, 2022 to submit comments on the pre-proposal draft rules. What consideration was given by the Agency to comments submitted during the pre-proposal outreach period?
22. On page 16 of the SOR, Illinois EPA states that "[s]ome commenters expressed concern with removal of the SSM provisions which can be explored further in the rulemaking process." What was the Agency's reasoning for not addressing in the SOR the pre-proposal comments received by the Agency and the Agency's response to the concerns raised in the comments?
23. Please provide copies of the comments received during the pre-proposal outreach period.

Contents of Fast Track Proposal

24. On page 10 of the SOR, Illinois EPA states that it sought guidance from USEPA following the 2015 SIP Call regarding available options, including establishing alternative emission standards during SMB events, but that "[n]o clear guidance was provided at that time." At the time of these discussions, was Illinois EPA considering or discussing any specific alternative emission standards? If so, which one(s)?
 - a. Please summarize the guidance/response received from USEPA during this time.
 - b. In a Federal Register for the 2015 SIP Call, did USEPA reiterate and provide additional explanation as to guidance concerning how states may elect to replace existing exemptions for excess emissions during SSM events with properly developed alternative emission limitations that apply during periods of SSM?
 - c. What additional guidance was Illinois EPA seeking from USEPA on development of alternative emission limitations that apply during periods of SSM?
25. On pages 10-12 of the SOR, Illinois EPA states that it again sought guidance from USEPA following the 2021 Memorandum and 2022 Finding of Failure, including whether setting alternative emission limits during periods of SMB would be approvable.

Electronic Filing: Received, Clerk's Office 01/12/2023

At the time of these discussions, was Illinois EPA considering or discussing any specific alternative emission standards? If so, which one(s)?

- a. During those conversations, USEPA did not indicate that setting alternative emission limits would not be approvable, correct?
 - b. On page 11 of the SOR, Illinois EPA states that, when discussing options in response to the 2022 Finding of Failure, USEPA stated that it could make no guarantees as to the approvability of alternative emission standards. Did USEPA explain what concerns it had with approval of alternative emissions standards, especially when USEPA has promulgated alternate standards for federal rules (including NSPS and MACT standards)? If so, please summarize the discussion.
26. On page 7 of the SOR, Illinois EPA states that the 2015 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.’” In Illinois EPA’s discussions with USEPA following the 2015 SIP Call, did Illinois EPA consider and/or discuss the option of including procedures by which air agency personnel can exercise enforcement discretion?
- a. If no, why not? If yes, please describe the potential procedures discussed and USEPA’s response.
27. In Illinois EPA’s discussions with USEPA following the 2022 Finding of Failure, did Illinois EPA consider and/or discuss the option of including procedures by which air agency personnel can exercise enforcement discretion?
- a. If no, why not? If yes, please describe the potential procedures discussed and USEPA’s response.
28. On Page 11 of SOR, the Agency states that the USEPA “could make no guarantees as to the approvability of alternative emission standards.” Did the Agency discuss whether the sanctions clock can be stopped by a partial approval?
- a. If so, please summarize those discussions, both internal discussions and discussions with USEPA.
 - b. Do the Federal Registers for the 2015 SIP Call and 2022 Finding of Failure state that the SIP submittal has to be “approvable” or “complete”? If “complete,” did the discussions with USEPA lead the Agency to believe that a “complete” submittal has the same meaning as an approvable submittal?
29. Page 2 of the Pre-Filed Testimony of Rory Davis states: “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.” What does the

Agency understand to be unsatisfactory with the other states' alternative emission limitations?

- a. Has the Agency discussed whether USEPA's seven criteria for developing alternative emission limitations were met by the states whose alternative emission limitations were not approved by USEPA?
 - b. Do all states have the same numeric standards for pollutants? For example, do all states have the 200 ppm CO standard for "fuel combustion emission sources" and "petroleum and petrochemical processes" found in 35 Ill. Adm. Code 216.121 and 216.361, respectively?
30. Historically, has USEPA's NSPS and NESHAP rules allowed for operation outside of the generally applicable emission standards during periods of SSM?
- a. If so, has USEPA updated its regulations to remove those provisions?
 - b. In some cases, has USEPA included new alternative standards that are applicable during periods of SSM? If yes, please provide some examples.
31. Section 28.5 of the Illinois Environmental Protection Act ("Act") requires, in a Fast Track rulemaking, that the Agency provide "a list of any documents upon which it directly relied in drafting the rule or upon which it intends to rely at the hearing and must provide such documents to the Board." 415 ILCS 5/28.5(d)(7). Has the Agency directly relied on any documented communications from USEPA Region 5 as the basis for this proposal (e.g., emails, letters, meeting notes or minutes, etc.)?
32. Per Section 28.5 of the Act, "[t]he Agency must include in its submission ... a description of the process or processes affected, an identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency." 415 ILCS 5/28.5(d)(8). Is the Agency aware of any process or processes affected?
- a. Has the Agency provided a description of any such processes in the Proposal?
 - b. What types of operating permits are impacted by the proposed rule amendments (e.g., ROSS, LOP, SOP, FESOP, CAAPP)?
 - c. Are construction permits impacted by the proposed rule amendments?
 - d. Does the Agency's Permit Section have the ability to prepare a list of which facilities have active operating and construction permits with SMB provisions? If so, why was that list not provided as part of Illinois EPA's proposal pursuant to 415 ILCS 5/28.5(d)(8)?

SIP Submittal

33. On page 13 of the SOR, the Agency states that it will not be submitting a Clean Air Act Section 110(l) anti-backsliding demonstration. What is such a demonstration?
34. On page 13 of the SOR, Illinois EPA stated that “USEPA advised the Illinois EPA that removing the SSM provisions from the SIP is a SIP-strengthening action, and therefore no anti-backsliding considerations to analyze”. Is there any documentation that reflects USEPA’s position that Illinois EPA can provide (e.g., emails, letters, meeting notes or minutes, etc.)?
35. Would removal of SSM provisions coupled with the addition of alternate emission standard(s) for period(s) of SMB be SIP-strengthening, as well? Why or why not?
36. If Illinois EPA’s proposal is adopted by the Board, what does the Agency anticipate the steps and timing will be for submitting the rules to USEPA for approval as a SIP revision and for USEPA approving or disapproving the submittal?

Permitting

37. In its pre-proposal comment and again in its December 30, 2022 comment filed with the Board, IERG requested that Illinois EPA provide a witness from the Permit Section at the first hearing. What was the Agency’s reasoning for not granting the request?
38. How has the Illinois EPA Permit Section recently been handling renewal of operating permits or revisions to construction permits with existing SMB provisions?
39. How has the Illinois EPA Permit Section recently been handling new requests for SMB provisions in operating permit renewals and construction permit revisions?
40. What communications has the Illinois EPA Permit Section had with CAAPP and/or FESOP applicants requesting SMB authorizations regarding the completion of application forms regarding “Compliance Certification” and/or “Compliance Plan/Schedule of Compliance”?
41. Has the Illinois EPA’s Permit Section’s SMB approach changed since the 2022 Finding of Failure? If so, how?
42. If Illinois EPA’s proposal is adopted by the Board, what will be the approach of the Agency’s Permit Section to removing SMB language from existing operating and construction permits?
43. If the Board adopts Illinois EPA’s proposal, has the Agency considered the timing required for engineering, procurement, and permitting for sources that could install control devices to meet generally applicable standards during SMB periods?

Technical Feasibility and Economic Reasonableness

44. On page 15 of the SOR, the Agency states that “Illinois’ SSM provisions never excused sources from the obligation to comply with emission standards during startup or malfunction events.” What is the Agency’s basis for this statement?
- a. How does that position align with permit conditions that “authorize” or “grant” startup, and malfunction/breakdown events?
 - b. If the SMB/SSM provisions have never excused sources from the obligations to comply with emission standards during startup or malfunction events, what is USEPA’s basis and need for the SSM SIP Call?
45. On page 15 of the SOR, the Agency states: “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.” When were the emission standards referenced by the Agency originally adopted in relation to the SMB provisions that were adopted in PCB R 71-23? Before, during same time, or after?
46. On page 15 of the SOR, the Agency states that “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.” What is the basis for this statement?
- a. Has the Agency considered what controls are available to control emissions “to meet applicable emission limits at all times”? If so, please summarize any discussions and provide any documentation concerning such consideration. If not, why not?
 - b. Has the Agency considered whether it is technically feasible in all situations to control emissions “to meet applicable emission limits at all times”? If so, please summarize any discussions and provide any documentation concerning such consideration. If not, why not?
47. On page 15 of the SOR, the Agency states that “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.” Has the Agency performed any outreach or information requests, including to permit holders, industry organizations, USEPA, state regulatory agencies, or any other person or organization, to obtain such cost information?
- a. If so, please describe the outreach and summarize the responses to the outreach. If no, why not?

48. Has the Agency determined that the costs of any control measures and/or equipment that may be necessary to comply with emission standards at all times are outweighed by the benefits of the proposal? If yes, please summarize your findings. If no, why not?
49. If the Board adopts the Agency's proposal, what should companies who rely upon the SMB provisions do when their units need to startup or shutdown, or when they experience a malfunction?
50. If the Board adopts the Agency's proposal, how much time will companies who had previously relied upon the SMB provisions be given to consider alternatives or implement operational or equipment changes in order to achieve compliance with emission standards during periods of SMB?
 - a. Has the Agency taken into consideration the time involved in procuring and installing new control measures and/or equipment that may be necessary as a result of the proposal, if adopted? If yes, please summarize. If no, why not?
51. Where operational or other changes needed to achieve compliance with emission standards during periods of SMB are technically infeasible or economically unreasonable, does Illinois EPA expect companies to continue operating during periods of SMB and rely on the Agency's use of enforcement discretion?
 - a. If so, what is the Agency's basis for this position? If not, what alternatives do companies have during periods of SMB?

Agency's Proposed Amendments to 35 Ill. Adm. Code 201.149

52. Explain what the addition of "except as specifically provided for by such standard or limitation" means in both sentences of the proposed amendments to Section 201.149.
53. Do the General Conditions in existing operating permits contain a provision based on Section 201.149? If so, what is that provision?
54. If the Board adopts the Agency's proposal, will a provision based on Section 201.149 be included in the General Conditions for operating permits issued after this rulemaking?
 - a. If so, how would the applicability of the Section 201.149 provision after this rulemaking be different than how it has been applied previously?

Agency's Proposed Amendments to 35 Ill. Adm. Code 201.157

55. Was the Agency's Permit Section involved in the development of the proposed revisions to Section 201.157? If so, please describe the Permit Sections' involvement.
56. What metric is used in deciding if emissions during startup are higher than emissions during normal operations (e.g., lb/hr, ppm, lb/btu heat input, etc.)?

57. If emissions during startup are higher than during normal operations but do not exceed the numerical emission standard, does the applicant have an obligation to address startups in the operating permit application per Section 201.157?
58. If the Board adopts the Agency's proposal, how will the Agency's Permit Section utilize the emissions information for startups required by Section 201.157?
- a. Will this information be used to add or revise permit conditions? If so, please describe.

Effective Date of Amendments

59. Did the Agency consider making the effective date of the proposed amendments the date of USEPA approval as a SIP revision, as opposed to the date of Board adoption? If so, please summarize the discussions regarding such consideration. If not, why not?
60. Would the Agency be opposed to making the effective date of the proposed amendments the date of USEPA approval as a SIP revision, as opposed to the date of Board adoption? If so, why?

Respectfully Submitted,

The Illinois Environmental
Regulatory Group

Date: January 12, 2023

By: /s/ Melissa S. Brown

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following: That I have served the attached **IERG'S**

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That my email address is Melissa.Brown@heplerbroom.com

That the number of pages in the email transmission is 13.

That the email transmission took place before 5:00 p.m. on the January 12, 2022.

Date: January 12, 2022

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