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Don A. Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren, Suite 630
Chicago, IL 60605

Re: Public Comment, the Illinois Environmental Protection Agency Proposed Amendments to 35 Ill. Adm. Code 201, 202, and 212, R 2023-018

Via email: Don.Brown@illinois.gov

To The Clerk:

Please be advised that I represent Citizens Against Ruining the Environment (CARE).¹ CARE is a not for profit organization whose members live, work and recreate in Will County, Illinois. The following comments address Illinois Pollution Control Board Docket R 2023-018, In the Matter of Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212.

CARE has several reasons for its interest in this rulemaking. For several years, CARE participated in permit proceedings and permit appeals challenging the application of startup and shutdown exemptions for emission exceedances. Most of CARE's work focused on the nine coal-fired electric generating units that operated at Midwest Generation's Will County and Joliet facilities. This work culminated in CARE's participation as a party in federal litigation against Midwest Generation based, in part, on emission exceedances at these and other units. Many of these emission exceedances occurred during periods of startup and malfunction for which Midwest Generation claimed permit exemptions and affirmative defenses. The primary focus of CARE's advocacy in this case was opacity – the clarity of smoke – which is correlated to particulate matter emissions. However, CARE's members - like millions of other residents of northeast Illinois – live in ozone non-attainment air quality regions. Moreover, there are several still-operating facilities in Will County that have exemptions for excess emissions during startup and malfunction periods, for example, massive oil refineries in Lemont and Joliet.

¹ <https://www.willcountycare.org/>

CARE has significant “sweat equity” addressing the subject matter of this rulemaking, reflecting CARE’s longstanding and passionate commitment to healthy air quality for Will County residents. For these reasons, CARE is submitting these comments generally supporting the Illinois EPA’s (“IL EPA”) rulemaking proposal. As an initial matter, CARE endorses the use of fast track rulemaking and concurs with the Board that this proposal complies with 415 ILCS 5/28.5.² CARE also asserts the proposed rule would appropriately amend the Illinois Administrative Code to remove provisions that allow sources to request, and the Illinois EPA to grant, permission for sources to exceed emission limits during startup and malfunction periods.³ However, given the number of facilities that already possess permits with provisions allowing excess emissions during startup and malfunction periods, CARE emphasizes the need for the final Board action to state explicitly that these facilities are immediately subject to the new regulatory standards and are subject to enforcement for violations of the new standards. This is the only way to ensure that this rulemaking culminates not only in a change in regulatory words, but also changes in the behavior of existing permitted entities that will immediately improve air quality for Illinois residents.

Generally, the IL EPA proposal aligns with the 2022 Final Action by the United States Environmental Protection Agency (U.S. EPA) by removing provisions allowing and creating exceptions during SSMs. As of January 12, 2022, Illinois was one of only 12 states that failed to submit a State Implementation Plan (SIP) that complied with U.S. EPA’s final 2015 SSM SIP Action. This U.S. EPA Action clarified, restated, and updated U.S. EPA’s national policy regarding SSM provisions in SIPs⁴. IL EPA’s proposal is a step in the right direction. However, there are two unaddressed concerns.

First, IL EPA does not adequately address existing permits with permission to operate in violation of emission limitations during SSM, an especially critical concern for facilities with permits that will not need to be renewed for several years. Second and related, for facilities with existing permits, it’s unclear if new regulatory mandates will be immediately and practically enforceable, creating uncertainty for regulated facilities and the communities in which these facilities operate. The critical issue is how IL EPA will implement its proposal to ensure it is not just a regulatory change but also immediately and directly affects the permits, operations and enforcement options related to existing permitted sources. CARE seeks explicit clarification that existing permit terms will no longer be valid and that existing facilities cannot be “grandfathered” out of requirements prohibiting excess emissions during SSM.

To this end, a clear and unambiguous mandate should issue that current permit holders must comply with new obligations for operating during SSM, despite holding permits that create outmoded accommodations. CARE’s concern is underscored by a public comment by the Illinois Manufacturers’ Association (IMA) that was submitted to the R 2023-018 docket on January 5, 2023. The IMA contends that the ability of sources to comply with emission standards during SSM events is unrealistic and will result in noncompliance with emission control⁵. CARE asserts IL EPA’s regulatory proposal should become immediately effective and enforceable for existing permit holders. CARE emphasizes that IL EPA’s proposal to remove exceptions aligns with the CAA and the 2022 U.S. EPA’s *Environmental Justice Consideration* statement that the removal of provisions that create exceptions to operate and violate emission limitations during SSM “[...] will promote greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by ensuring that

² <https://casetext.com/statute/illinois-compiled-statutes/health-and-safety/chapter-415-environmental-safety/act-5-environmental-protection-act/title-vii-regulations/section-415-ilcs-5285-clean-air-act-rules-fast-track>

³ <https://pcb.illinois.gov/documents/dsweb/Get/Document-107128>

⁴ <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00138.pdf>

⁵ <https://pcb.illinois.gov/documents/dsweb/Get/Document-107385>

air agencies meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward reducing excess emissions during periods of SSM⁶.”

Notably, SIP proposals submitted by IL EPA failed in 2015 and 2022 because of the exemptions that continued to exist in IL EPA proposals. U.S. EPA’s mandates are clear. Emissions above permit limits during startup and malfunction periods are 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 continuously. *Id.* at 33847⁷. Specifically, “emissions limitations in SIP provisions cannot contain exemptions for emissions during SSM events.” *Id.* at 33889⁸. Future sources will be unable to obtain exemptions. It is less clear what measures IL EPA will take to ensure sources are not violating emission limitations until permit renewal.

According to the 2015 Final Action (SSM Action; 33840)⁹, SSM exemption provisions cannot be automatic exemptions, discretionary exemptions, or broad enforcement discretion provisions. Illinois SIPs that the U.S. EPA disapproved were determined to contain language within SSM provisions at 35 Ill. Adm. Code 201.261, 201.262, and 201.265 could be interpreted to provide discretionary exemptions from emission limitations during periods of SSM. As such, they were inconsistent with the CAA because the emission limitations are not continuously applicable. *Id.* at 33965, 33966. In the SSM SIP Call, U.S. EPA explained that Illinois’ rules created various interpretations. For example, one interpretation created 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 the enforcement by U.S. EPA or a citizen. *Id.* at 12515¹⁰.

U.S. EPA’s “Evaluation Regarding Illinois’ Failed State Implementation Plan: The SSM SIP Call” listed some options to address the inadequacies. For example, the removal of the provisions from the SIPs, the inclusion of procedures by which air agency personnel can exercise enforcement discretion, or the development of “alternative numerical limitations or other technological control requirements or work practice requirements applicable during startup or shutdown events. *Id.* at 33844¹¹. Section 110(k)(5) of the CAA requires states to correct deficiencies in the SIP in response to findings of inadequacy.

Comments submitted on December 30, 2022 by the Illinois Environmental Regulatory Group point to the uncertainty that arises when there is noncompliance and uncertainty regarding enforcement. CARE agrees. In response, CARE asserts that IL EPA’s proposal should be implemented, should be immediately effective including for existing permitted sources, and should be immediately enforceable using the full range of enforcement options currently established in the Illinois Environmental Protection Act and its implementing regulations. This is the only way to ensure this proceeding culminates not only a change in regulatory words, but also will be practically and immediately enforceable in the manner mandated by U.S. EPA.

For these reasons, CARE endorses the elimination of provisions that enable affirmative defenses for excess emissions during startup and malfunction periods. Removing these provisions correctly forecloses permit

⁶ <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00138.pdf>

⁷ <https://thefederalregister.org/80-FR/33840/2015-12905.pdf>

⁸ *Id.*

⁹ <https://thefederalregister.org/80-FR/33840/2015-12905.pdf>

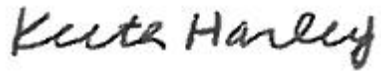
¹⁰ <https://www.govinfo.gov/content/pkg/FR-2013-02-22/pdf/2013-03734.pdf#page=2>

¹¹ <https://thefederalregister.org/80-FR/33840/2015-12905.pdf>

applicants from requesting exemptions and the IL EPA's ability to allow for the exemptions in permits. CARE urges the Board to adopt the proposed regulations with the addition of provisions making it clear that the new regulatory mandates apply immediately to existing permit holders and can be immediately enforced.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Keith Harley". The signature is written in a cursive, slightly slanted style.

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