

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

(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, **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S QUESTIONS IN RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES TO QUESTIONS RECEIVED AT FIRST HEARING**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Melissa S. Brown

Dated: February 6, 2023

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**IERG’s QUESTIONS IN RESPONSE TO IEPA’S
RESPONSES TO QUESTIONS RECEIVED AT FIRST HEARING**

NOW COMES, the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the Illinois Pollution Control Board’s (“Board”) Hearing Officer Order dated January 20, 2023, hereby submits IERG’s written questions directed to the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency” or “IEPA”) in response to Illinois EPA’s January 30, 2023 Responses to Questions received at First Hearing.

Questions as to IEPA’s Response to Question #1

- a) In response to Question 1, Illinois EPA stated: “The Agency notes that both the volume of records and the inability to search permits based on particular provisions within them limits its ability to provide the requested information” Please provide an estimate of time it would have taken Agency staff to open all current CAAPP and FESOP permits and use the search function to identify permits that reference “201.149,” “201.261,” or “201.262.”
 - 1. Why did the Agency not perform this search either as part of developing its proposal in this rulemaking or as early as 2015 in response to the 2015 SSM SIP Call?

- b) In response to Question 1, Illinois EPA stated: “As to the question of whether the Agency’s SMB language has evolved since 1971, to the best of the Agency’s knowledge, the Board’s SMB regulation establishing that the impact of SMB provisions is an affirmative defense and the Agency’s implementation of that language have not changed”
 - 1. Was the Agency unable to locate a current permit that contains no obligation to notify regarding SMB events or file a report or notification concerning a startup with excess emissions? Is the Agency aware that such permits have been issued?
 - i. If so, how does that align with the Agency’s claim that each occurrence is evaluated individually and a decision made on whether or not to pursue enforcement?

2. Is the Agency aware of any operating permits that were issued in the past including SMB provisions that simply stated: “Operation in excess of applicable emission standards is allowed during startup” and “Operation in excess of applicable emission standards is allowed during malfunction and breakdown”.
 - i. If so, would the Agency consider those provisions as only establishing a prima facie defense?
3. Has the repeal of the Agency rule 35 Ill. Adm. Code Part 260 “Policy for Granting Permission to Operate During Periods of Excess Emissions” (13 Ill. Reg. 9503, effective June 12, 1989) resulted in any evolution in the SMB language? As background, the language in prior 35 Ill. Adm. Code 260.206 stated: “In granting a request to operate during periods of excess emissions, the Agency shall include those conditions which will insure that the applicant does not cause any violation of the Environmental Protection Act or regulations promulgated thereunder *other than those violations specifically allowed* in the operating permit issued by the Agency pursuant to this Part”. (Emphasis Added). If so, how?
 - c) How many of the state’s four petroleum refineries have SMB relief provisions in their current operating permits for FCCUs and other units?
 - d) When was the last CAAPP permit issued to a petroleum refinery with SMB provisions?

Questions as to IEPA’s Response to Question #2

- a) In response to Question 2, the Agency states that, in reviewing the documents available on the Board’s website in PCB R 71-23, there were several documents that discuss SMB provisions. IERG’s review of the Board’s online docket for PCB R 71-23 does not show any documents that address SMB provisions other than the Board’s April 12, 1972 Order. Can the Agency please provide a listing of which documents other than the April 12, 1972 Order discuss SMB provisions.
- b) In response to Question 2, the Agency stated: “If there are passages that IERG has specific questions about, the Agency would be happy to answer those if possible.” As noted in IERG’s pre-proposal comment submitted to the Agency on December 6, 2022 and IERG’s comment filed with the Board on December 30, 2022, the April 12, 1972 Board Order in PCB R 71-23 includes the following passage:

Rule 105: Malfunctions, Breakdowns, and Startups. No machine works perfectly all the time. Further, startup conditions may result in less than optimum emission control. The policy of this Rule is that insofar as is practicable, efforts shall be made to reduce the incidence and duration of startups and excessive emissions during startup periods; and that, except in special cases, equipment whose pollution controls are out of order should not be operated, just as an automobile should not be operated when its brakes are out of commission. Clearly the latter principle cannot be

absolute, for it may not be worth blacking out the entire Midwest to prevent emissions from a partly malfunctioning boiler precipitator. We cannot resolve the myriad of individual variations in a single rule. The Agency's admirable proposal, which we have adopted, places case-by-case discretion in the Agency under its permit powers, providing that if special conditions warrant permission to operate during a malfunction, or if irreducible startup emissions will somewhat exceed the general standards, [Illinois] EPA may grant permission for such emissions upon application and proof.

Based on the passage above or any other passage in the April 1972 Order, does the Agency acknowledge that the emission standards' numerical values were established at lower values that did not encompass believed higher emission rates anticipated during startup periods?

Questions as to IEPA's Response to Question #4

- a) In response to Question 4, the Agency states that it "is not providing documents that are attorney-client privileged, attorney work product, predecisional, or that have already been provided to the Board in this rulemaking." Please describe in general terms what documents would constitute "predecisional" documents.
 - i. Do any "predecisional" documents exist in relation to this rulemaking that are not protected under attorney-client privilege or attorney work product? If so, please provide the Agency's basis for withholding such "predecisional" documents.

Questions as to IEPA's Response to Question #5

- a) In response to Question 5, the Agency stated: "Comments that requested alternative standards did not change the Agency's proposal either. As explained in its Statement of Reasons and again during hearing, without any indication from USEPA that alternative limits will, in practice, be approvable and without additional direction or guidance from USEPA regarding the support necessary to satisfy the criteria set forth in its 2015 SIP Call for alternative limits, it is not advisable to propose or adopt such limits particularly not in this rulemaking considering the August 2023 adoption/submittal/completeness deadline." Following the Agency's receipt of IERG's pre-proposal comments on December 6, 2022, did the Agency discuss with USEPA the alternatives addressed on Page 10 of IERG's comment, including the two CO standards for boilers and Fluidized catalytic cracker units (FCCUs), for which USEPA had recently removed SSM relief provisions and inserted alternative emission limits in their analogous federal rules? If "no," why not? If "yes," what does the Agency understand to be the obstacles to putting forth a complete proposal that includes these alternative standards?
 - i. More specifically, did the Agency understand that these federal standards would not satisfy one or more of the seven USEPA criteria for developing alternate emission limitations and, if so, which?

- b) In response to Question 5, the Agency stated: “To the Agency’s knowledge, all other states that have successfully addressed the SIP Call have done so by removing SSM provisions from their SIPs, and the states that have developed alternative standards have had such standards rejected by USEPA as insufficient.” IERG is assuming for purposes of this question that “successfully addressed the SIP Call” means that the states’ revisions to address the SIP Call were approved by USEPA. Did the states that successfully addressed the SIP Call have the same underlying numerical standards as Illinois?
- i. Is it possible that the states that successfully addressed the SIP Call had previously updated their underlying numerical standards since their initial adoption, such that those states did not have underlying standards that needed to be addressed through SSM provisions?
 - ii. Which state(s) has the Agency identified that have “rejected” alternative standards? And, for each of those states, are those “rejections” final?
 - iii. For each state, what was the basis of “rejection”, whether proposed or final? More specifically, was the basis of denial related to one or more of the seven USEPA criteria for approvable alternative emission limitations?
 - iv. For each state in which USEPA rejected alternative standards, do those states have a 200 ppm, corrected to 50% excess air, CO standard that applies to fuel combustion emission sources?
 - v. For each state in which USEPA rejected alternative standards, do those states have a petroleum refinery with an FCCU? If “yes,” do those states have a 200 ppm, corrected to 50% excess air, CO standard that applies to FCCUs?

Questions as to IEPA’s Response to Question #10

- a) In response to Question 10, the Agency stated as to its search of CAAPP permits: “The Agency conducted a search based on the Standard Industrial Classification Group Code 28 which resulted in 16 sources.” However, in response to IERG’s Question 1 concerning providing examples of SMB permit language, the Agency stated: “The Agency notes that both the volume of records and the inability to search permits based on particular provisions within them limits its ability to provide the requested information.” What are the Agency’s search capabilities for CAAPP permits?

Questions as to IEPA’s Response to Question #11

- a) In response to Question 11, the Agency sets forth four options for regulatory relief. Assuming that a source sought relief under one of these options relating to periods of SMB, which of these four options would require USEPA approval?
- a. Do these regulatory relief options align with USEPA’s vision for how the 2015 SIP Call and 2022 Finding of Failure should be addressed?

- b) If alternative emission limits are addressed through one of these four regulatory relief options, as opposed to being addressed in this rulemaking, will the anti-backsliding demonstration become more difficult? Why or why not?
- c) For the SIP approval process and the required technical demonstration and anti-backsliding applicability, what are the differences for different criteria pollutants? Is there a difference for CO relative to the other criteria pollutants, as Illinois has never had a designated CO nonattainment area?

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: February 6, 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
**THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S QUESTIONS IN
RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSES TO QUESTIONS RECEIVED AT FIRST HEARING** via electronic mail
upon:

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

That the number of pages in the email transmission is 8.

That the email transmission took place before 5:00 p.m. on the February 6, 2023.

Date: February 6, 2023

/s/ Melissa S. Brown
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