



February 13, 2023

Clerk's Office
Illinois Pollution Control Board
60 E. Van Buren, Suite 630
Chicago, IL 60605

Via email to Don.Brown@illinois.gov and Clerk's Office Online at pcb.illinois.gov

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

To the Clerk:

Please accept these comments on behalf of Sierra Club¹ regarding Illinois Pollution Control Board Docket R-2023-18, *In the Matter of Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*.

Sierra Club supports the use of fast track rulemaking in this proceeding to make a long-overdue correction to Illinois's SIP to bring it into compliance with the Clean Air Act. It has been almost a decade since the U.S. EPA found that Illinois's SIP included unlawful startup, shutdown, and malfunction ("SSM") provisions.² Allowing polluters to apply and receive permission to violate emission limits puts those in the vicinity of such facilities at unacceptable risk. Because overburdened environmental justice communities bear the brunt of these concentrated bursts of regulated pollutants, Illinois's continued non-compliance with federal law

¹ Sierra Club is the largest nonprofit grassroots environmental organization in the United States, with more than 27,000 members in Illinois. Sierra Club is dedicated to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. In keeping with our mission, Sierra Club seeks to accelerate climate mitigation measures, and ensure that those measures both achieve their stated outcomes and reduce harm to communities impacted by historic and contemporary environmental injustices.

² State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 Fed. Reg. 12460, 12463 (Feb. 22, 2013)

undermines the Governor's and Legislature's stated commitment to addressing the impacts of environmental racism. This proposed rulemaking is an important first step to address the environmental justice harms associated with these exceptions (concerns specifically cited by the U.S. EPA in finding Illinois had failed to submit an SIP in compliance with the 2015 SIP Call³). Sierra Club is therefore pleased to see Illinois EPA address this problem, however belatedly, rather than wait for a Federal Implementation Plan to be imposed.⁴

Although Sierra Club is generally supportive of the proposed rules as written, we are concerned that operators who have applied for, and received, exemptions under what Illinois EPA now agrees are unlawful provisions may continue to rely on these exemptions and exceed emission limitations. Sierra Club agrees with Citizens Against Ruining the Environment that the proposed rules should explicitly and unambiguously state that the revised regulations will immediately apply to all *existing* permit holders.⁵ Permits issued under Illinois law may be valid for up to 10 years.⁶ Simply waiting until these permits expire and are renewed to remove any SSM exemptions, or requiring Illinois EPA to pursue enforcement actions against individual facilities to clarify emission limits puts nearby communities at unacceptable risk.

Illinois EPA should therefore make clear that any permit conditions or waivers that allow SSM emissions in excess of regulatory limits issued under the prior regulations are rendered void by this rulemaking, and that polluters can no longer evade liability for excessive emissions during periods of startup, shutdown, or malfunction by recourse to these unlawfully issued exceptions. Specifically, Sierra Club believes, and urges Illinois EPA to clarify, that the proposed revisions to 35 Ill. Adm. Code 201.149 prohibit emissions in excess of applicable standards and limitations regardless as to whether a previously issued permit provides for operation during a malfunction or purports to permit violations during startup. Although Sierra Club does not believe Illinois EPA should rely on piecemeal enforcement actions to address now-defunct exemptions in existing permits, we do request that Illinois EPA to prioritize enforcement of air pollution limits against permit-holders in low-income, minority, and overburdened communities who violate limits during startup, shutdown, or malfunctions and to

³ 87 Fed. Reg. 1680, 1682 (“[I]t is intended that the actions and deadlines resulting from this notice will promote greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by ensuring that air agencies meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward reducing excess emissions during periods of SSM.”)

⁴ See Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 Fed. Reg. 1680 (Jan. 12, 2022).

⁵ See <https://pcb.illinois.gov/documents/dsweb/Get/Document-107548> at 2.

⁶ 35 Ill. Adm. Code 201.162(a).

consistently take the position, in such actions, that any permission granted under Subpart I no longer provides a defense to such enforcement.

In addition to this broader concern, we also suggest two additional revisions to the existing Illinois Administrative Code, both of which we believe are technical in nature. First, the proposed change to Section 201.301 appears to be inadvertently overbroad. As written, the proposed rule would make the following deletion:

The owner or operator of any emission source or air pollution control equipment shall maintain, as a minimum: records detailing all activities pursuant to any compliance program and project completion schedule pursuant to Subpart H; ~~records detailing all malfunctions, breakdowns or startups pursuant to Subpart I~~ and records of all monitoring and testing conducted pursuant to Subpart J, plus records of all monitoring and testing of any type whatsoever conducted with respect to specified air contaminants. All such records shall be made available to the Agency at any reasonable time

Sierra Club understands the purpose of this change is to delete reference to Subpart I, which the proposed amendments remove in its entirety. However, Sierra Club believes the deletion goes too far in removing operators' obligation to maintain records detailing malfunctions, breakdowns, and startups. Although operators are no longer permitted to *continue* operation during malfunctions and breakdowns, operators should still report any such events as they occur. Similarly, although operators may no longer receive permission to violate limitations during startup, facilities will still have startups and these startups are likely to be associated with increased emissions even if they remain within permitted limits. Retaining existing reporting requirements with respect to these events therefore remains an important component of the overall purpose of the rules in protecting Illinois air quality.

Sierra Club therefore urges IL EPA to leave reference to "records detailing all malfunctions, breakdowns or startups" in Section 201.301 while deleting any reference to Subpart I. Doing so will ensure that operators continue to provide important information to IL EPA and the public about how facilities operate and if and when any increased emissions occur. Sierra Club proposes revising Section 201.301 as follows instead:

The owner or operator of any emission source or air pollution control equipment shall maintain, as a minimum: records detailing all activities pursuant to any compliance program and project completion schedule pursuant to Subpart H; ~~records detailing all malfunctions, breakdowns or startups pursuant to Subpart I~~ and records of all monitoring and testing conducted pursuant to Subpart J, plus records of all monitoring and testing of any type whatsoever conducted with respect to specified air contaminants, and records detailing all malfunctions, breakdowns

or startups. All such records shall be made available to the Agency at any reasonable time.

Third, Sierra Club suggests deleting 35 Ill. Adm. Code 205.225. This provision currently states: "Participating or new participating sources permitted to operate during startup, malfunction or breakdown pursuant to 35 Ill. Adm. Code 201.262, 270.407 and 270.408 are not required to hold ATUs for excess VOM emission during startup, malfunction and breakdown as authorized in the source's permit." IL EPA has proposed deleting Sections 201.262, 270.407, and 270.408 in their entirety, so under the proposed revisions, there are no sources to which this provision would apply. Sierra Club views this additional revision as purely clerical to make Part 201 internally consistent and avoid ambiguity.

Thank you for your consideration of these comments.

Sincerely,

/s/Megan Wachspress

Megan Wachspress

Staff Attorney, Environmental Law Program

Sierra Club

2101 Webster St., Suite 1300

Oakland, CA 94612

megan.wachspress@sierraclub.org

(773) 704-9310