

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN MATTER OF:)
)
) R 2023-018
AMENDMENTS TO 35 ILL. ADMIN. CODE) (Rulemaking-Air)
PARTS 201, 202 AND 212)

NOTICE OF FILING

TO: Don Brown
Clerk
Illinois Pollution Control Board
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Persons on Attached Service List

PLEASE TAKE NOTICE THAT on the 15th day of February, 2023, I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, the Illinois Attorney General's Questions for Participants Testifying at the Second Hearing on behalf of the Illinois Attorney General's Office, for the People of the State of Illinois, true and correct copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Jason E. James
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CERTIFICATE OF SERVICE

I, Jason E. James, an Assistant Attorney General, caused to be served on this 15th day of February, 2023, a true and correct copy of Illinois Attorney General's Questions for Participants Testifying at the Second Hearing on behalf of the Illinois Attorney General's Office, for the People of the State of Illinois, true and correct copies of which are attached hereto and hereby served upon the persons listed on the Service List via electronic mail or electronic filing, as indicated.

/s/ Jason E. James

Jason E. James

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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)

Illinois Attorney General's Questions for Participants Testifying at Second Hearing

Questions for Chemical Industry Council of Illinois (CICI)

1. CICI states that a member has a consent decree with the U.S. Environmental Protection Agency (USEPA) stating that NOx emissions limits do not apply during startup, shutdown, and malfunction (CICI testimony at 3). When was this consent decree agreed to? Please supplement this rulemaking record with any related information.
2. CICI states that Ohio is working to “tailor a workable solution for their state-specific needs” with respect to their startup, shutdown, and malfunction (SSM) rules (CICI testimony at 5). Has Ohio submitted an updated State Implementation Plan (SIP) to USEPA for approval? If so, has USEPA approved it? CICI also states that other states have taken similar actions. Which other states have done so? Has USEPA approved any of these other State SIPs? Please supplement this rulemaking record with any related information.
3. CICI states that “without this exception or affirmative defense, each startup and shutdown will result in deviations of NOx emission limits . . . and opacity limits or all permits in Illinois would have to be updated to address higher NOx emissions or opacity exceedances” (CICI testimony at 3). Is it your belief that deviations and higher emissions during SSM events will necessarily result in exceedances? If that is the case, have CICI's member companies explored any potential improvements to pollution control equipment to prevent exceedances of the emission and opacity limits?

Questions for Midwest Generation (MWG)

1. MWG offers what it calls an alternative averaging period, arguing that this would satisfy the requirements set out in USEPA's 2015 guidance (MWG testimony at 11-13). Please elaborate on why this proposal would satisfy the 2015 guidance. Has any other state submitted a similar proposal to USEPA and, if so, did USEPA approve it? If yes, what was the outcome in other states? Did the implementation of an alternative averaging period result in additional opacity or emissions? Please supplement this rulemaking record with any related information.
2. How did MWG conclude that an alternative average period was the best option? Does MWG rely on any evidence or analysis that demonstrates an alternative averaging period is an effective means of satisfying the requirements set out in USEPA's 2015 guidance?

What evidence suggests a 3-hour averaging period is best?

3. Do you believe that MWG's proposed alternative averaging period an effective way of addressing startup and shutdown emissions for all types of emission limits? Is MWG's proposal intended to apply only to coal-fired electric generating units, or other sources of pollution as well? Did MWG collaborate with Dynegey on creating its proposal?

Questions for the Illinois Environmental Regulatory Group (IERG)

1. IERG states that use of "enforcement discretion is inconsistent with the approach that USEPA has elected to take" (IERG testimony at 11). How is this accurate considering USEPA's statements on use of enforcement discretion in its 2015 guidance? *See* 80 Fed. Reg. 33,841, 33,980 (June 12, 2015).
2. IERG discusses USEPA's approaches to SSM events in its 2015 guidance. In particular, IERG discusses USEPA's criteria for developing alternative emission limitations. However, in the same guidance document, USEPA also describes how use of agency enforcement discretion is consistent with the Clean Air Act. Is it your opinion that IEPA's approach to use of its enforcement discretion is consistent with the CAA and able to be approved by the USEPA? In what ways is use of enforcement discretion inconsistent with USEPA's approach?
3. Has any other state proposed alternative emissions limitations that resemble those proposed by IERG? If so, have they been approved by USEPA? Please supplement this rulemaking record with any related information.

Questions for the American Petroleum Institute (API)

1. API states that establishing "rule-specific SMB provisions . . . would easily satisfy USEPA's guidance" (API testimony at 7). Has any other state established such provisions and, if so, have they been approved by USEPA? Please supplement this rulemaking record with any related information.
2. USEPA explicitly discusses enforcement discretion as a means "consistent with CAA requirements for SIP provisions that states can use" to address SSM events. *Id.* Is it your opinion that IEPA's proposed use of its enforcement discretion complies with the 2015 guidance document's discussion of enforcement discretion?
3. API states that "companies typically have a policy of not allowing operation in noncompliance with applicable regulations," and there is a concern that this rulemaking might result in extended outages or shutdowns (API testimony at 20). Can you please elaborate on this concern in the light of the purpose of Title II of the Act, which is "to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control

necessary to prevent pollution”? 415 ILCS 5/8. In your experience, have there been extended outages due to concerns of noncompliance from SSM events under the existing regulations?

4. API states that IEPA’s proposed amendments will unfairly and unlawfully render numerous state emissions limitations and standards infeasible or impossible to meet. *Id* at 1. Is it your contention that this rulemaking is either unfair or unlawful? If not, then what is the basis for this testimony? Are you aware of any other state that has submitted a SIP with provisions that resemble IEPA’s proposal? If so, have they been reviewed by any court or regulatory authority determine that the revised air regulations unfairly and unlawfully render numerous state emissions limitations and standards infeasible or impossible to meet?
5. API details its concerns with adverse impacts, which API claims will result from IEPA’s proposed amendments. Have you considered what possible adverse impacts will result from API’s proposal? Do you have an opinion on whether these adverse impacts affect air quality in environmental justice communities?

Questions for Dynegy

1. Dynegy states that its proposal would satisfy USEPA’s 2015 guidance (Dynegy testimony at 19). Please elaborate on your opinion of how it satisfies the 2015 guidance. Are you aware of any other state that has established regulatory provisions that resemble Dynegy’s proposal and, if so, have they been approved by USEPA? Did Dynegy collaborate with MWG on developing its proposal? Please provide to this regulatory record any related information.
2. USEPA explicitly discusses enforcement discretion as a means “consistent with CAA requirements for SIP provisions that states can use” to address SSM events. *See* 80 Fed. Reg. 33,841, 33,980 (June 12, 2015). Is it your opinion that IEPA’s proposed use of its enforcement discretion complies with the 2015 guidance document’s discussion of enforcement discretion? Why or why not.