

ILLINOIS POLLUTION CONTROL BOARD
July 20, 2023

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

Adopted Rule. Final Notice.

OPINION AND ORDER OF THE BOARD (by M. Gibson):

The Board today adopts rules amending the Board air regulations. On December 7, 2022, the Illinois Environmental Protection Agency (IEPA) proposed to amend Parts 201, 202, and 212 of the Board’s air pollution regulations. See 35 Ill. Adm. Code 201, 202, 212. IEPA filed the proposal under the “fast-track” procedures of Section 28.5 of the Act. See 415 ILCS 5/28.5 (2020). Section 28.5 requires the Board to proceed toward adoption of the proposed rules by meeting a series of specific deadlines.

IEPA proposed to remove provisions that give facilities a “prima facie” defense to emission limit exceedances during a startup, malfunction, or breakdown event. IEPA asserts that its proposal implements changes identified by USEPA as necessary to comply with the federal Clean Air Act (CAA). After the Board adopts the rules, IEPA intends to submit them to USEPA as a State Implementation Plan (SIP) revision. IEPA also asserts that its proposal includes changes necessary for USEPA to approve a revised SIP. On December 15, 2022, the Board accepted the proposal for hearing without commenting on its substantive merits and submitted it to first-notice publication. See 46 Ill. Reg. 20627, 20638, 20644 (Dec. 30, 2022). The Board’s April 6, 2023 second-notice opinion reviewed the rulemaking record and discussed various questions and issues. At its July 18, 2023 meeting, JCAR responded to the Board’s proposal by objecting on three grounds.

This opinion begins with the procedural history of this rulemaking docket and briefly reviews the rulemaking and regulatory background. It then responds to JCAR’s objections, briefly reviews the change to its second-notice proposal, and considers the economic reasonableness and technical feasibility of the proposal. The Board then directs its Clerk to submit the rules to the Secretary of State for publication in the *Illinois Register*. The adopted rules can be found in the addendums to this order.

PROCEDURAL HISTORY

On December 7, 2022, IEPA filed a rulemaking proposal under the “fast-track” procedures of Section 28.5 of the Act (415 ILCS 5/28.5 (2020)). The proposal included IEPA’s Statement of Reasons (SR); its proposed revisions to Parts 201, 202, and 212 (Prop. 201, 202, and 212, respectively); and a motion for waiver of requirements to submit copies of specified documents.

On December 12, 2022, the Board received comments and objections from C23D32, which describes itself as “a private and anonymous investigative watchdog group” monitoring IEPA action. The Board docketed it as Public Comment 1 (PC 1). The Board summarized and analyzed the comments it received in this rulemaking in its second-notice filing, which can be found in Public Comment 18 (PC 18).

In an order on December 15, 2022, the Board accepted the proposal for hearing without commenting on its substantive merits, granted IEPA’s motion to waive specified copy requirements, and submitted the proposal to first-notice publication in the *Illinois Register*. See 46 Ill. Reg. 20627, 20638, 20644 (Dec. 30, 2022). Instead of reproducing that opinion here, the Board directs readers to the Clerk’s Office On-Line (COOL) on the Board’s website (pcb.illinois.gov), where the entire docket including the first-notice opinion and order can be viewed under this docket number R 23-18.

On December 16, 2022, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of IEPA’s proposal by January 27, 2023. See 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request.

Also on December 16, 2022, the Board’s hearing officer issued a Notice of Hearing and Order scheduling three hearings.

On December 30, 2022, the Board received comments from the Illinois Environmental Regulatory Group (IERG), docketed as Public Comment 2 (PC 2). On January 5, 2023, the Board received comments from the Illinois Manufacturers’ Association (IMA), docketed as Public Comment 3 (PC 3).

On January 9, 2023, IEPA pre-filed the testimony of Rory Davis (IEPA Test.), Manager of the Regulatory Development Unit in the Air Quality Planning Section of IEPA’s Bureau of Air.

On January 12, 2023, the Board received pre-filed questions for IEPA’s witness from the Illinois Environmental Regulatory Group (IERG Questions.1).

On January 17, 2023, the Board received comments from JCAR, docketed as Public Comment 4 (PC 4).

On January 18, 2023, the Board received pre-filed questions for IEPA’s witness from Dynegy Midwest Generation, LLC; Electric Energy, Inc.; Illinois Power Generating Company, Illinois Power Resources Generating, LLC; and Kincaid Generation, LLC (collectively, Dynegy) (Dynegy Questions). Also on January 18, 2023, a Board hearing officer order submitted questions to IEPA’s witness (Board Questions.1). Additionally, the Board received comments from the Chemical Industry Council of Illinois (CICI) on January 18, 2023, docketed as Public Comment 5 (PC 5).

The Board held the first hearing as scheduled on January 19, 2023, and received the transcript (Tr.1) on January 25, 2023.

On January 20, 2023, a Board hearing officer order set the schedule regarding outstanding requests to IEPA and follow up questions and answers. On January 30, 2023, IEPA filed responses to questions directed to it at the first hearing (IEPA Resps.1).

On January 27, 2023, the Board received comments from the Citizens Against Ruining the Environment (CARE), docketed as Public Comment 6 (PC 6). On February 2, 2023, the Board received comments from the Glass Packaging Institute, docketed as Public Comment 7 (PC 7).

On February 6, 2023, the Board received pre-filed testimony from five participants: Dynegy pre-filed the testimony of Cynthia Vodopivec (Dynegy Test.), the American Petroleum Institute (API) pre-filed the testimony of John Derek Reese (API Test.), IERG pre-filed testimony of Kelly Thompson and David R. Wall (IERG Test.), Midwest Generation (MWG) pre-filed testimony of Sharene Shealey (MWG Test.), and CICI pre-filed testimony Lisa Frede (CICI Test.). Also on February 6, 2023, IERG filed follow-up questions to IEPA's responses directed to it at the first hearing (IERG Questions.2).

On February 14, 2023, a Board hearing officer order submitted questions to participant witnesses (Board Questions.2). Also on February 14, 2023, IEPA filed its response to IERG's follow-up questions (IEPA Resps.2). Additionally, the Board received comments from the Sierra Club on February 14, 2023, docketed as Public Comment 8 (PC 8).

On February 15, 2023, the Board received pre-filed questions from the Illinois Attorney General's Office (AG) (AG Questions) based on testimony pre-filed by participants for the second hearing.

The Board held the second hearing as scheduled on February 16, 2023, and received the transcript (Tr.2) on February 21, 2023. Also on February 21, 2023, a Board hearing officer order cancelled the third hearing at the request of IEPA, set the deadline of February 24, 2023 for responses to outstanding requests for information, and set the public comment period deadline as March 7, 2023.

On February 24, 2023, the Board received responses for outstanding requests for information from IERG (IERG Resps.) and CICI (CICI Resps.). On March 1, 2023, the Board received responses for outstanding requests for information from Dynegy (Dynegy Resps.) and MWG (MWG Resps.1). On March 7, 2023, the Board received a supplemental response from MWG (MWG Resps.2).

On March 2, 2023, the Board received comments from the Illinois Association of Aggregate Producers (IAAP), docketed as Public Comment 9 (PC 9). On March 6, 2023, the Board received comments from C23D32, docketed as Public Comment 10 (PC 10).

On March 7, 2023, the Board received post-hearing comments from the following participants: IEPA (PC 11); API (PC 12); IERG (PC 13); Dynegy and MWG (PC 14); and the AG (PC 15). On March 29, the Board responded to JCAR's suggested changes, docketed as Public Comment 16 (PC 16).

On April 6, 2023, the Board adopted a second-notice proposal (Second Notice) for review by the Joint Committee on Administrative Rules (JCAR). On April 12, 2023, JCAR rejected the Board's second-notice filing. On May 4, 2023 and May 5, 2023, the Board responded to JCAR's questions about the Board's second-notice filing, respectively docketed as Public Comment 17 (PC 17) and Public Comment 18 (PC 18). On May 8, 2023, JCAR accepted the Board's second-notice filing.

On May 18, 2023, the Board received MWG's statement regarding an error in the Board's revised second notice filing, docketed as Public Comment 19 (PC 19). On June 1, 2023, a Board hearing officer order granted MWG's request that the Board's second-notice filing should reflect that Dynegy and MWG jointly filed and commented in PC 14.

At its meeting on July 18, 2023, JCAR responded to the Board's proposal by objecting on three grounds.

BACKGROUND

The Board's second-notice detailed the background on "fast-track" rulemaking and the regulatory background. Instead of reproducing that opinion here, the Board directs readers to the Clerk's Office On-Line (COOL) on the Board's website (pcb.illinois.gov), where the entire docket including the second-notice opinion and order can be viewed under this docket number R 23-18.

JCAR OBJECTIONS

At its meeting on July 18, 2023, JCAR considered the Board's second-notice proposal to adopt amendments to remove provisions that allow IEPA to give advance permission to facilities to continue operating during a malfunction or breakdown or to violate emission standards during startup.

First, JCAR objected to this proposal because the Board did not adequately consider the economic reasonableness of the proposal.

The Board considered the economic reasonableness of the rules when it proposed them to JCAR for second notice. The Board found that the amendments are economically reasonable because they "do not impose any new or additional obligations such as emission limits or control requirements on affected sources." IEPA's Statement of Reasons at 15. The proposal does not change emission limits or a source's obligation to comply with them; it only affects a source's ability to request and obtain a "prima facie" defense (meaning a rebuttable, not an absolute, defense) that it may use if an enforcement action results from exceeding emission limits during a startup, malfunction, or breakdown event.

IEPA has always had authority to initiate an enforcement action against a source that exceeds emission limits during such an event. IEPA will continue considering these exceedances on a case-by-case basis as it has done in the past.

The Board assures JCAR that it has carefully considered JCAR's first objection. Because the rules only remove a prima facie defense and do not add any obligations, the Board determined that its proposal is economically reasonable. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Second, JCAR objected to this proposal because the Board failed to consider less costly alternatives. The proposal was filed as a "fast-track" rulemaking under Section 28.5 of the Act. Section 28.5(a) of the Act restricts the use of fast-track procedures to adopting rules that are "required to be adopted" by the CAA. Because the alternative standards proposed by industry in this rulemaking are not "required to be adopted" by the CAA, the Board could not consider them in this rulemaking. However, the Board did find it appropriate to consider alternative standards and therefore opened a sub-docket dedicated to addressing them. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Third, JCAR objected to IEPA's late use of Section 28.5 fast-track procedures and IEPA's late stakeholder outreach in addressing a rule deficiency identified by the United States Environmental Protection Agency in June 2015. These JCAR concerns appear to be with IEPA. The Board can only respond for itself. IEPA filed the proposed amendments with the Board under the fast-track procedures in December 2022. The proposed amendments are required to comply with the CAA. Under these circumstances, Section 28.5(c) of the Act required the Board to conduct the rulemaking using the fast-track procedures. The Board did not receive any motions to remove the rulemaking from those procedures. And the Board has no authority over IEPA outreach to stakeholders. The Board therefore respectfully declines to modify or withdraw its proposal on these bases. The Board has, however, placed JCAR's objection on the Board's website where it is publicly available for IEPA and others to review.

Finally, JCAR asked the Board and IEPA to report back to JCAR at its August meeting in Springfield on the progress of the sub-docket for the alternative standard proposals. The Board agrees to attend JCAR's August meeting and report on the sub-docket's progress.

SECOND NOTICE CHANGES

JCAR proposed one non-substantive change. This change is reflected in the adopted rules below but is not specifically addressed in this opinion.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Potentially Affected Facilities

IEPA states that removing the startup, shutdown, or malfunction (SSM) provisions would apply statewide. SR at 15. “Any source that applies for an operating permit that would otherwise seek this permission from the Agency would be impacted by this rulemaking.” *Id.*

Request for Economic Impact Study

As noted above under “Procedural History,” the Board on December 16, 2022, requested that DCEO conduct an economic impact study of IEPA’s proposal by January 27, 2023. *See* 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request. At the second hearing, no participant testified or commented on the Board’s request or the response to it. Tr.2 at 71-72.

Technical Feasibility

Based on the record before it, the Board concluded that its second-notice proposal was technically feasible. Second Notice at 21-22. IEPA asserts that the proposed amendments are technically feasible because they “do not impose any new or additional obligations such as emission limits or control requirements on affected sources.” SR at 15. IEPA asserts that “Illinois’ SSM provisions never excused sources from the obligation to comply with emission standards during startup or malfunction events.” *Id.* IEPA argues that the effect of its proposal is only on the ability of a source to seek advance permission for a legal defense to excess emissions through a permit application. *Id.* IEPA adds that the Board would have addressed the technical feasibility of the underlying standards when it adopted them. *Id.*

The record does not persuasively dispute the conclusion the Board reached in its second-notice opinion. The second-notice change discussed above does not foreseeably affect technical feasibility. Based on its review of the record now before it, the Board concludes that its adopted rules are technically feasible. *See* 415 ILCS 5/27(a) (2020).

Economic Reasonableness

Based on the record before it, the Board concluded that its second-notice proposal was economically reasonable. Second Notice at 22. IEPA asserts that the proposed amendments are economically reasonable because they “do not impose any new or additional obligations such as emission limits or control requirements on affected sources.” SR at 15. IEPA adds that the Board would have addressed the economic reasonableness of the underlying standards when it adopted them. *Id.* IEPA acknowledges that, if the Board adopts the proposed rules, some sources may wish “to make changes to source configurations, operations and practices, or pollution control equipment to meet applicable emission limits at all times.” SR at 15. IEPA argues that these costs “are indeterminate due to the widely varied source categories that could be affected and the measures that may be necessary for sources to ensure compliance with applicable standards and limitations at all times.” *Id.*

The record does not persuasively dispute the conclusion the Board reached in its second-notice opinion. The second-notice change discussed above does not foreseeably affect economic reasonableness. Based on its review of the record now before it, the Board concludes that its

adopted rules are economically reasonable and will not have an adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2020).

CONCLUSION

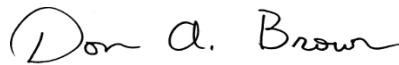
While the Board has carefully considered JCAR's objections and recommendations, it respectfully declines to modify or withdraw its proposal based on the objections. For the reason above, the Board concludes to adopt amendments to Parts 201, 202, and 212 of its air pollution rules. The Board finds that its proposed rules are technically feasible and economically reasonable and will not have an adverse economic impact on the people of the State of Illinois. The adopted rules appear in the addendums to this order. Proposed additions are underlined and proposed deletions are struck through.

ORDER

The Board directs the Clerk to submit adopted rules to the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 20, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

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201.102	Definitions
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SUBPART B: GENERAL PROVISIONS

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201.124	Annual Report
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201.126	Repealer

SUBPART C: PROHIBITIONS

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201.142	Construction Permit Required
201.143	Operating Permits for New Sources
201.144	Operating Permits for Existing Sources
201.146	Exemptions from State Permit Requirements
201.147	Former Permits
201.148	Operation Without Compliance Program and Project Completion Schedule
201.149	Operation During Malfunction, Breakdown or Startups
201.150	Circumvention
201.151	Design of Effluent Exhaust Systems

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

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201.152	Contents of Application for Construction Permit
201.153	Incomplete Applications (Repealed)

201.154	Signatures (Repealed)
201.155	Standards for Issuance (Repealed)
201.156	Conditions
201.157	Contents of Application for Operating Permit
201.158	Incomplete Applications
201.159	Signatures
201.160	Standards for Issuance
201.161	Conditions
201.162	Duration
201.163	Joint Construction and Operating Permits
201.164	Design Criteria
201.165	Hearings
201.166	Revocation
201.167	Revisions to Permits
201.168	Appeals from Conditions
201.169	Special Provisions for Certain Operating Permits
201.170	Portable Emission Units
201.175	Registration of Smaller Sources (ROSS)

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN SMALLER SOURCES

Section	
201.180	Applicability (Repealed)
201.181	Expiration and Renewal (Repealed)
201.187	Requirement for a Revised Permit (Repealed)

SUBPART F: CAAPP PERMITS

Section	
201.207	Applicability
201.208	Supplemental Information
201.209	Emissions of Hazardous Air Pollutants
201.210	Categories of Insignificant Activities or Emission Levels
201.211	Application for Classification as an Insignificant Activity
201.212	Revisions to Lists of Insignificant Activities or Emission Levels

SUBPART G: EXPERIMENTAL PERMITS (Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

Section	
201.241	Contents of Compliance Program
201.242	Contents of Project Completion Schedule

201.243	Standards for Approval
201.244	Revisions
201.245	Effects of Approval
201.246	Records and Reports
201.247	Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section	
201.261	Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup (<u>Repealed</u>)
201.262	Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup (<u>Repealed</u>)
201.263	Records and Reports (<u>Repealed</u>)
201.264	Continued Operation or Startup Prior to Granting of Operating Permit (<u>Repealed</u>)
201.265	Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup (<u>Repealed</u>)

SUBPART J: MONITORING AND TESTING

Section	
201.281	Permit Monitoring Equipment Requirements
201.282	Testing
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SUBPART K: RECORDS AND REPORTS

Section	
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SUBPART L: CONTINUOUS MONITORING

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201.401	Continuous Monitoring Requirements
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201.404	Monitoring System Malfunction
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SUBPART M: PERMIT BY RULE (PBR) – GENERAL PROVISIONS

Section	
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201.505	Applicability
201.510	Notice of Intent to Be Covered By a PBR (Notification)
201.515	Commencing Construction or Modification
201.520	Modification or Change in Status of an Emission Unit Covered by a PBR
201.525	Standard Conditions for PBR
201.530	Recordkeeping and Reporting
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SUBPART N: PERMIT BY RULE (PBR) – BOILERS LESS THAN OR EQUAL TO 100
MMBTU/HR

Section	
201.600	Applicability
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201.610	Federal NSPS and NESHAP Requirements
201.615	Opacity Requirements
201.620	Requirements for Use of Diesel Fuel and Refinery Fuel Gas
201.625	Carbon Monoxide (CO) Requirements
201.630	Nitrogen Oxide (NO _x) Requirements
201.635	PBR Boiler Reporting Requirements

201.APPENDIX A	Rule into Section Table
201.APPENDIX B	Section into Rule Table
201.APPENDIX C	Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, 39.5, and 39.12 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, 39.5, and 39.12].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg.30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 33 Ill. Reg. 11965, effective August 6, 2009; amended in R10-21 at 34 Ill. Reg.19575, effective December 1, 2010; amended in R12-

10 at 35 Ill. Reg. 19790, effective December 5, 2011; amended in R13-18 at 38 Ill. Reg. 1005, effective December 23, 2013; amended in R17-9 at 41 Ill. Reg. 4140, effective March 24, 2017; amended in R23-18 at 47 Ill. Reg. _____, effective _____.

SUBPART C: PROHIBITIONS

Section 201.149 Operation During Malfunction, Breakdown or Startups

~~A No person must not shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the applicable standards or limitations stated set forth in Subchapter c except as specifically provided for by such standard or limitation. ~~of this Chapter unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown.~~ A No person must not shall cause or allow violation of the applicable standards or limitations stated set forth in that Subchapter c during startup except as specifically provided for by such standard or limitation. ~~unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup.~~~~

(Source: Amended at 47 Ill. Reg. _____, effective _____)

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.157 Contents of Application for Operating Permit

An application for an operating permit must shall contain, ~~as a minimum,~~ the data and information specified in Section 201.152. Each application must shall list all individual emission units and air pollution equipment for which a permit is sought. Any applicant may seek to obtain from the Agency a permit for each emission unit, or such emission units as are similar in design or principle of operation or function, or for all emission units encompassed in an identifiable operating unit, unless subject to the provisions of Section 201.169 of this Subpart or required to obtain an operating permit with federal enforceable conditions in compliance with pursuant to Section 39.5 of the Act. To the extent that the above specified data and information has previously been submitted to the Agency in compliance with pursuant to this Subpart, the data and information need not be resubmitted, ~~but; provided, however, that~~ the applicant must certify that the data and information previously submitted remains true, correct and current. An application for an operating permit must shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups, the types and quantities of emissions during startup, and the applicant's efforts to minimize any such startup emissions, duration of individual startups, and frequency of startups. ~~If applicable, pursuant to the requirements of Subpart I of this Part, an application for a permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups and quantities of emissions during startup in excess of emissions during operations, and the applicant's efforts to minimize any such startup emissions.~~ The Agency may adopt procedures that require data and information in addition to and in amplification of the matters specified in the first sentence of this Section, that are reasonably designed to determine compliance with this Chapter, and

ambient air quality standards, and that specify ~~set forth~~ the format by which all data and information must ~~shall~~ be submitted.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section 201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)

- a) ~~A request for permission to continue to operate during a malfunction or breakdown, if desired, shall be included as an integral part of the application for an operating permit pursuant to Subpart D, and shall include as a minimum: a full and detailed explanation of why such continued operation is necessary; the anticipated nature, sources and quantities of emissions which will occur during such continued operation; the anticipated length of time during which such operation will continue; all measures, such as use of off-shift labor or equipment which will be taken to minimize the quantity of air contaminant emissions and length of time during which such operation will continue. When the standards or limitations of Subchapter c of this Chapter will be violated during startup, a request for permission to violate such standards or limitations shall be an integral part of the application for an operating permit pursuant to Subpart D, and shall include, as a minimum: a description of the startup procedure for each emission source, the duration and frequencies of such startups, the type and quantities of emissions during such startups and the applicant's efforts to minimize any such startup emissions, duration of individual startups and frequency of startups.~~
- b) ~~The Agency may adopt procedures which require data and information in addition to or in amplification of the matters set forth in subsection (a), and which set forth the format in which all data and information shall be submitted. Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1001 et seq.) (APA Act).~~

(Source: Repealed at 47 Ill. Reg. _____, effective _____)

Section 201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)

~~Permission shall not be granted to allow continued operation during a malfunction or breakdown unless the applicant submits proof to the Agency that: such continued operation is necessary to prevent injury to persons or severe damage to equipment; or that such continued operation is required to provide essential services; provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be a sufficient reason for granting of permission. Permission shall not be granted to allow violation of the standards or limitations of~~

~~Subchapter c of this Chapter during startup unless the applicant has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups.~~

(Source: Repealed at 47 Ill. Reg. _____, effective _____)

Section 201.263 Records and Reports (Repealed)

~~Any person who causes or allows the continued operation of an emission source during a malfunction or breakdown of the emission source or related air pollution control equipment when such continued operation would cause a violation of the standards or limitations set forth in Subchapter c of this Chapter shall immediately report such incident to the Agency by telephone, telegraph or such other method as constitutes the fastest available alternative, except if otherwise provided in the operating permit. Thereafter, any such person shall comply with all reasonable directives of the Agency with respect to the incident. In addition, any person subject to this Subpart shall maintain such records and make such reports as may be required in procedures adopted by the Agency pursuant to Subpart K.~~

(Source: Repealed at 47 Ill. Reg. _____, effective _____)

Section 201.264 Continued Operation or Startup Prior to Granting of Operating Permit (Repealed)

~~Any person desiring to continue to operate, or to startup in accordance with Section 201.149 prior to the date when an operating permit is required pursuant to Section 201.143 or 201.144, shall make immediate application for permission to operate during a malfunction, breakdown or startup in accordance with Section 201.261.~~

(Source: Repealed at 47 Ill. Reg. _____, effective _____)

Section 201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup (Repealed)

~~The granting of permission to operate during a malfunction or breakdown, or to violate the standards or limitations of Subchapter c of this Chapter during startup, and full compliance with any terms and conditions connected therewith, shall be a prima facie defense to an enforcement action alleging a violation of Section 201.149, of the emission and air quality standards of this Chapter, and of the prohibition of air pollution during the time of such malfunction, breakdown or startup.~~

(Source: Repealed at 47 Ill. Reg. _____, effective _____)

SUBPART K: RECORDS AND REPORTS

Section 201.301 Records

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

- a) The Agency may adopt procedures which:
 - 1) Require additional records be maintained consistent with this Part ~~these regulations~~; and
 - 2) Specify ~~Set forth~~ the format in which all records ~~must shall~~ be maintained.
- b) ~~The Such~~ procedures and formats, and revisions ~~thereto~~, ~~will shall~~ not become effective until filed with the Secretary of State as required by the Illinois Administrative Procedure Act [5 ILCS 100]~~APA Act~~.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 202
ALTERNATIVE CONTROL STRATEGIES

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202.~~APPENDIX~~ Appendix A Pre-Codification into Codified
 202.~~APPENDIX~~ Appendix B Codified into Pre-Codification

AUTHORITY: Implementing Section 9.3 and authorized by Sections 5 and 27 of the Environmental Protection Act [415 ILCS 5/5, 9.3 and 27].

SOURCE: 35 Ill. Adm. Code 212 adopted in R81-20 (Interim) at 6 Ill. Reg. 6703, effective May 20, 1982; renumbered to 35 Ill. Adm. Code 202 and amended in R81-20(A) at 7 Ill. Reg. 8091, effective June 27, 1983; codified at 7 Ill. Reg. 13584; corrected at 7 Ill. Reg. 14561; amended in R81-20(B) at 8 Ill. Reg. 4171, effective March 16, 1984; amended in R23-18 at 47 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 202.107 Allowable Emissions

- a) "Allowable emissions" means the emission rate of an emission source calculated using the maximum rated capacity of the emission source (unless the emission source is subject to permit conditions or other enforceable limits ~~that~~^{which} restrict the operating rate, or hours of operation, or both) and the more stringent of the following:
 - 1) The applicable emission standard or limitation contained in this Chapter, including those with a future compliance date; or
 - 2) The emissions rate specified as a permit condition, including those with a future compliance date.

- b) The allowable emissions may be expressed as a permit condition limiting annual emissions or material or fuel throughput.
- e) ~~Allowable emissions shall include a reasonable estimate of emissions in excess of applicable standards during start-up, malfunction, or breakdown, as appropriate, only if the applicable provisions of 35 Ill. Adm. Code Part 201 have been complied with.~~
- c)d) If an emission source is not subject to an emission standard under subsection (a) and is not conditioned pursuant to subsection (b), the allowable emissions will ~~shall~~ be the source's potential to emit.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

SUBPART B: PERMIT APPLICATION

Section 202.211 Analysis of Emissions

- a) A permit application under this Subpart ~~must shall~~ provide a comparison of the baseline emissions and the emissions ~~that~~ ~~which~~ would be permitted under the proposed ACS for each emission source involved in the ACS. Where appropriate, this analysis ~~must shall~~ address differences between the emission sources to be covered by the ACS ~~regarding with regard to~~:
 - 1) Methods of determining emissions;
 - 2) Consistency and reliability of the performance of the emission sources and any associated control devices;
 - 3) Frequency and duration of operating during malfunction or breakdown with excess emissions, or ~~excess emissions~~ during start-up with excess emissions;
 - 4) Methods of operation, including operating schedules, range of raw materials or products, ~~ete.~~; and
 - 5) Other characteristics of the emission sources or their operation which may affect equivalence of emissions.
- b) The analysis ~~must shall~~ describe any increases in emissions from emission sources outside the ACS which may accompany the proposed ACS.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY
SOURCES

PART 212
VISIBLE AND PARTICULATE MATTER EMISSIONS

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212.121	Opacity Standards (Repealed)
212.122	Visible Emissions Limitations for Certain Emission Units For Which Construction or Modification Commenced On or After April 14, 1972
212.123	Visible Emissions Limitations for All Other Emission Units
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212.181	Limitations for Incinerators
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212.185	Continuous Automatic Stoking Animal Pathological Waste Incinerators

SUBPART E: PARTICULATE MATTER EMISSIONS FROM FUEL COMBUSTION
EMISSION UNITS

Section

- 212.201 Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively Located in the Chicago Area
- 212.202 Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively Located Outside the Chicago Area
- 212.203 Controlled Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively
- 212.204 Emission Units For Which Construction or Modification Commenced On or After April 14, 1972, Using Solid Fuel Exclusively
- 212.205 Coal-fired Industrial Boilers For Which Construction or Modification Commenced Prior to April 14, 1972, Equipped with Flue Gas Desulfurization Systems
- 212.206 Emission Units Using Liquid Fuel Exclusively
- 212.207 Emission Units Using More Than One Type of Fuel
- 212.208 Aggregation of Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972
- 212.209 Village of Winnetka Generating Station (Repealed)
- 212.210 Emissions Limitations for Certain Fuel Combustion Emission Units Located in the Vicinity of Granite City

SUBPART K: FUGITIVE PARTICULATE MATTER

Section

- 212.301 Fugitive Particulate Matter
- 212.302 Geographical Areas of Application
- 212.304 Storage Piles
- 212.305 Conveyor Loading Operations
- 212.306 Traffic Areas
- 212.307 Materials Collected by Pollution Control Equipment
- 212.308 Spraying or Choke-Feeding Required
- 212.309 Operating Program
- 212.310 Minimum Operating Program
- 212.312 Amendment to Operating Program
- 212.313 Emission Standard for Particulate Collection Equipment
- 212.314 Exception for Excess Wind Speed
- 212.315 Covering for Vehicles
- 212.316 Emissions Limitations for Emission Units in Certain Areas

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

Section

- 212.321 Process Emission Units For Which Construction or Modification Commenced On or After April 14, 1972
- 212.322 Process Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972
- 212.323 Stock Piles

212.324 Process Emission Units in Certain Areas

SUBPART N: FOOD MANUFACTURING

Section

212.361 Corn Wet Milling Processes
212.362 Emission Units in Certain Areas

SUBPART O: PETROLEUM REFINING, PETROCHEMICAL AND CHEMICAL MANUFACTURING

Section

212.381 Catalyst Regenerators of Fluidized Catalytic Converters

SUBPART Q: STONE, CLAY, GLASS AND CONCRETE MANUFACTURING

Section

212.421 Portland Cement Processes For Which Construction or Modification Commenced
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212.423 Emission Limits for the Portland Cement Manufacturing Plant Located in LaSalle
County, South of the Illinois River
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and Associated Quarry Operations Located in LaSalle County, South of the
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212.425 Emission Units in Certain Areas

SUBPART R: PRIMARY AND FABRICATED METAL PRODUCTS AND MACHINERY MANUFACTURE

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212.447 Hot Metal Desulfurization Not Located in the BOF
212.448 Electric Arc Furnaces
212.449 Argon-Oxygen Decarburization Vessels
212.450 Liquid Steel Charging
212.451 Hot Scarfing Machines
212.452 Measurement Methods
212.455 Highlines on Steel Mills
212.456 Certain Small Foundries

- 212.457 Certain Small Iron-Melting Air Furnaces
- 212.458 Emission Units in Certain Areas

SUBPART S: AGRICULTURE

- Section
- 212.461 Grain-Handling and Drying in General
- 212.462 Grain-Handling Operations
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SUBPART T: CONSTRUCTION AND WOOD PRODUCTS

- Section
- 212.681 Grinding, Woodworking, Sandblasting and Shotblasting

SUBPART U: ADDITIONAL CONTROL MEASURES

- Section
- 212.700 Applicability
- 212.701 Contingency Measure Plans, Submittal and Compliance Date
- 212.702 Determination of Contributing Sources
- 212.703 Contingency Measure Plan Elements
- 212.704 Implementation
- 212.705 Alternative Implementation

- 212.Appendix A Rule into Section Table
- 212.Appendix B Section into Rule Table
- 212.Appendix C Past Compliance Dates
- 212.Illustration A Allowable Emissions From Solid Fuel Combustion Emission Sources Outside Chicago (Repealed)
- 212.Illustration B Limitations for all New Process Emission Sources (Repealed)
- 212.Illustration C Limitations for all Existing Process Emission Sources (Repealed)
- 212.Illustration D McCook Vicinity Map
- 212.Illustration E Lake Calumet Vicinity Map
- 212.Illustration F Granite City Vicinity Map

AUTHORITY: Implementing Section 10 and authorized by Section 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rules 202 and 203: Visual and Particulate Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-15, 32 PCB 403, at 3 Ill. Reg. 5, p. 798, effective February 3, 1979; amended in R78-10, 35 PCB 347, at 3 Ill. Reg. 39, p. 184, effective September 28, 1979; amended in R78-11, 35 PCB 505, at 3 Ill. Reg. 45, p. 100, effective October 26, 1979; amended in R78-9, 38 PCB

411, at 4 Ill. Reg. 24, p. 514, effective June 4, 1980; amended in R79-11, 43 PCB 481, at 5 Ill. Reg. 11590, effective October 19, 1981; codified at 7 Ill. Reg. 13591; amended in R82-1 (Docket A), at 10 Ill. Reg. 12637, effective July 9, 1986; amended in R85-33 at 10 Ill. Reg. 18030, effective October 7, 1986; amended in R84-48 at 11 Ill. Reg. 691, effective December 18, 1986; amended in R84-42 at 11 Ill. Reg. 1410, effective December 30, 1986; amended in R82-1 (Docket B) at 12 Ill. Reg. 12492, effective July 13, 1988; amended in R91-6 at 15 Ill. Reg. 15708, effective October 4, 1991; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R91-22 at 16 Ill. Reg. 7880, effective May 11, 1992; amended in R91-35 at 16 Ill. Reg. 8204, effective May 15, 1992; amended in R93-30 at 18 Ill. Reg. 11587, effective July 11, 1994; amended in R96-5 at 20 Ill. Reg. 7605, effective May 22, 1996; amended in R23-18 at 47 Ill. Reg. _____, effective _____.

~~BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.~~

SUBPART B: VISUAL EMISSIONS

Section 212.124 Exceptions

- a) ~~Sections 212.122 and 212.123 of this Subpart shall apply during times of startup, malfunction and breakdown except as provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201.~~
- a)b) Sections 212.122 and 212.123 will of this Subpart shall not apply to emissions of water or water vapor from an emission unit.
- b)e) An emission unit that which has obtained an adjusted opacity standard in compliance with pursuant to Section 212.126 will of this Subpart shall be subject to that standard rather than the limitations of Section 212.122 or 212.123 ~~of this Subpart.~~
- c)d) Compliance with the particulate regulations of this Part will ~~shall~~ constitute a defense.
 - 1) For all emission units that which are not subject to Chapters 111 or 112 of the CAA and Sections 212.201, 212.202, 212.203 or 212.204 ~~of this Part~~ but ~~which~~ are subject to Sections 212.122 or 212.123 ~~of this Subpart~~: the opacity limitations of Sections 212.122 and 212.123 will of this Subpart ~~shall~~ not apply if it is shown that the emission unit was, at the time of ~~such~~ emission, in compliance with the applicable particulate emissions limitations of Subparts D through T ~~of this Part~~.
 - 2) For all emission units that which are not subject to Chapters 111 or 112 of the CAA but ~~which~~ are subject to Sections 212.201, 212.202, 212.203 or 212.204 ~~of this Part~~:

- A) An exceedance of the limitations of Section 212.122 or 212.123 ~~will of this Subpart shall~~ constitute a violation of the applicable particulate limitations of Subparts D through T ~~of this Part~~. It ~~will shall~~ be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the unit and the control devices, and in accordance with Method 5, 40 CFR ~~part~~ 60, incorporated by reference in Section 212.113 ~~of this Part~~, the owner or operator shows that the emission unit is in compliance with the particulate emission limitations.
- B) It ~~will shall~~ be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions of the emission unit and the control devices, and in accordance with Method 5, 40 CFR part 60, Appendix A, incorporated by reference in Section 212.113 ~~of this Part~~, the owner or operator shows that the emission unit is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

Section 212.324 Process Emission Units in Certain Areas

- a) Applicability-
- 1) This Section ~~applies shall apply~~ to any process emission unit located in any of the following areas:
- A) That area bounded by lines from Universal Transmercator (UTM) coordinate 428000mE, 4631000mN, east to 435000mE, 4631000mN, south to 435000mE, 4623000mN, west to 428000mE, 4623000mN, north to 428000mE, 4631000mN, in the vicinity of McCook in Cook County, as shown in Illustration D of this Part;
- B) That area bounded by lines from Universal Transmercator (UTM) coordinate 445000mE, 4622180mN, east to 456265mE, 4622180mN, south to 456265E, 4609020N, west to 445000mE,

4609020mN, north to 445000mE, 4622180mN, in the vicinity of Lake Calumet in Cook County, as shown in Illustration E of this Part; and

C) That area bounded by lines from Universal Transmercator (UTM) coordinate 744000mE, 4290000mN, east to 753000mE, 4290000mN, south to 753000mE, 4283000mN, west to 744000mE, 4283000mN, north to 744000mE, 4290000mN, in the vicinity of Granite City in Madison County, as shown in Illustration F of this Part.

2) This Section ~~does shall~~ not alter the applicability of Sections 212.321 and 212.322 ~~of this Subpart.~~

3) The emission limitations of this Section are not applicable to any emission unit subject to a specific emissions standard or limitation contained in any of the following Subparts ~~of this Part:~~

A) Subpart N, Food Manufacturing;

B) Subpart Q, Stone, Clay, Glass and Concrete Manufacturing;

C) Subpart R, Primary and Fabricated Metal Products and Machinery Manufacture; and

D) Subpart S, Agriculture.

b) General Emission Limitation. Except as otherwise provided in this Section, ~~a no~~ person ~~must not shall~~ cause or allow the emission into the atmosphere, of PM-10 from any process emission unit to exceed 68.7 mg/scm (0.03 gr/scf) during any ~~one-hour~~ ~~one hour~~ period.

c) Alternative Emission Limitation. In lieu of the emission limit of 68.7 mg/scm (0.03 gr/scf) contained in subsection (b) ~~of this Section,~~ ~~a no~~ person ~~must not shall~~ cause or allow the emissions from the following emission units to exceed the corresponding limitations ~~in the following table:~~

Emissions Units	Emissions Limit	
	Metric	English
1) Shotblasting emission units in the Village of McCook equipped with fabric filters as of June 1, 1991	22.9 mg/scm	0.01 gr/scf

- 2) All process emission units at 5% opacity 5% opacity manufacturers of steel wool with soap pads located in the Village of McCook
- d) Exceptions. The mass emission limits contained in subsections (b) and (c) ~~will of this Section~~ shall not apply to those emission units with no visible emissions other than fugitive particulate matter; however, if a stack test is performed, this subsection is not a defense to a finding of a violation of the mass emission limits contained in subsections (b) and (c) of this Section.
- e) Special Emissions Limitation for Fuel-Burning Process Emission Units in the Vicinity of Granite City. A ~~No~~ person must not shall cause or allow emissions of PM-10 into the atmosphere to exceed 12.9 ng/J (0.03 ~~lbs/MMBtu lbs/mmbtu~~) of heat input from the burning of fuel other than natural gas at any process emission unit located in the vicinity of Granite City as defined in subsection (a)(1)(C) ~~of this Section.~~
- f) Maintenance and Repair. For any process emission unit subject to subsection (a) ~~of this Section,~~ the owner or operator must shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in this Section ~~will shall~~ be met at all times. ~~This Section shall not affect the applicability of 35 Ill. Adm. Code 201.149.~~ Proper maintenance must shall include the following ~~minimum~~ requirements:
 - 1) Visual inspections of air pollution control equipment;
 - 2) Maintenance of an adequate inventory of spare parts; and
 - 3) Expeditious repairs, unless the emission unit is shutdown.
- g) Recordkeeping of Maintenance and Repair:
 - 1) Written records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment must shall be kept in compliance accordance with subsection (f) ~~of this Section.~~
 - 2) The owner or operator must shall document any period during which any process emission unit was in operation when the air pollution control equipment was not in operation or was malfunctioning so as to cause an emissions level in excess of the emissions limitation. These records must shall include documentation of causes for pollution control equipment not operating or such malfunction and ~~shall~~ state what corrective actions were taken and what repairs were made.

- 3) A written record of the inventory of all spare parts not readily available from local suppliers must ~~shall~~ be kept and updated.
 - 4) Copies of all records required by this Section must ~~shall~~ be submitted to the Agency within ten ~~(10)~~ working days after a written request by the Agency.
 - 5) The records required under this Section must ~~shall~~ be kept and maintained for at least three ~~(3)~~ years and must ~~shall~~ be available for inspection and copying by Agency representatives during working hours.
 - 6) Upon written request by the Agency, a report must ~~shall~~ be submitted to the Agency for any period specified in the request stating the following: the dates during which any process emission unit was in operation when the air pollution control equipment was not in operation or was not operating properly, documentation of causes for pollution control equipment not operating or not operating properly, and a statement of what corrective actions were taken and what repairs were made.
- h) Compliance Date. Emission units must ~~shall~~ comply with the emissions limitations and recordkeeping and reporting requirements of this Section by May 11, 1993, or upon initial start-up, whichever occurs later.

(Source: Amended at 47 Ill. Reg. _____, effective _____)