



OFFICE OF THE SECRETARY OF STATE

ALEXI GIANNOULIAS • Secretary of State

August 8, 2023

POLLUTION CONTROL BOARD
DON BROWN
100 W RANDOLPH ST
STE 11-500
CHICAGO, IL 60601

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 47, Issue 32 of the Illinois Register, dated 8/11/2023.

ADOPTED RULES

Permits and General Provisions 35 Ill. Adm. Code 201 Point of Contact: Shannon Bilbruck	12089
Alternative Control Strategies 35 Ill. Adm. Code 202 Point of Contact: Shannon Bilbruck	12101
Visible and Particulate Matter Emissions 35 Ill. Adm. Code 212 Point of Contact: Shannon Bilbruck	12107

AGENCY REFUSAL IN RESPONSE TO A STATEMENT OF OBJECTION

Permits and General Provisions 35 Ill. Adm. Code 201 Point of Contact: Shannon Bilbruck	12147
Alternative Control Strategies 35 Ill. Adm. Code 202 Point of Contact: Shannon Bilbruck	12150
Visible and Particulate Matter Emissions 35 Ill. Adm. Code 212 Point of Contact: Shannon Bilbruck	12152



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If you have any questions, you may contact the Administrative Code Division at
(217) 782 - 7017.

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POLLUTION CONTROL BOARD

NOTICE OF REFUSAL TO MEET THE OBJECTION AND RECOMMENDATION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of Part: Permits and General Provisions
- 2) Code Citation: 35 Ill. Adm. Code 201
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
201.149	Amendment
201.157	Amendment
201.261	Repealed
201.262	Repealed
201.263	Repealed
201.264	Repealed
201.265	Repealed
201.301	Amendment
- 4) Date Notice of Proposed Amendments Published in the Register: December 30, 2022, 46 Ill. Reg. 20627
- 5) Date JCAR Statements of Objection and Recommendation Published in the Register: August 4, 2023
- 6) Summary of Action Taken by the Agency:

At its meeting on July 18, 2023, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt amendments to remove provisions that allow the Illinois Environmental Protection Agency (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

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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 Environmental Protection Act (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 federal Clean Air Act (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.

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- 1) Heading of Part: Alternative Control Strategies
- 2) Code Citation: 35 Ill. Adm. Code 202
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
202.107	Amendment
202.211	Amendment
- 4) Date Notice of Proposed Amendments Published in the Register: December 30, 2022, 46 Ill. Reg. 20638
- 5) Date JCAR Statements of Objection and Recommendation Published in the Register: August 4, 2023
- 6) Summary of Action Taken by the Agency:

At its meeting on July 18, 2023, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt amendments to remove provisions that allow the Illinois Environmental Protection Agency (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.

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- 1) Heading of Part: Visible and Particulate Matter Emissions
- 2) Code Citation: 35 Ill. Adm. Code 212
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
212.124	Amendment
212.324	Amendment
- 4) Date Notice of Proposed Amendments Published in the Register: December 30, 2022, 46 Ill. Reg. 20644
- 5) Date JCAR Statements of Objection and Recommendation Published in the Register: August 4, 2023
- 6) Summary of Action Taken by the Agency:

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

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