

**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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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. 12101, effective July 25, 2023.

SUBPART A: GENERAL PROVISIONS

Section 202.101 Definitions

Unless a different meaning of a term is clear from its context, the definitions of terms used for this Part shall be the same as those used in this Chapter, 35 Ill. Adm. Code Subtitle B, Chapter I (Chapter).

Section 202.104 Actual Emissions

"Actual emissions" means the actual rate of annual emissions of a pollutant from an operational emission source for a particular date equal to the mean rate at which the emission source actually emitted the pollutant during the two-year period which immediately precedes the particular date and which is determined by the Illinois Environmental Protection Agency (Agency) to be representative of normal emission source operation; however:

- a) The Agency shall allow the use of a different time period upon a determination that it is more representative of normal emission source operation. The burden shall be on the applicant to demonstrate that another time period is more representative. Actual emissions shall be calculated using the emission source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- b) If the Agency determines that there is inadequate information to determine actual emissions as indicated in the preceding paragraphs, the Agency shall use the potential to emit of the emission source.

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 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.
- c) 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 be the source's potential to emit.

(Source: Amended at 47 Ill. Reg. 12101, effective July 25, 2023)

Section 202.110 Alternative Control Strategy (ACS)

"Alternative control strategy" means a specific program of emissions limitations and requirements which is environmentally equivalent to that which would otherwise be required by applicable statutes or regulations, and under which the owner or operator of an emission source increases emissions of a regulated pollutant beyond the emission baseline at one or more emission sources and correspondingly reduces emissions of the same pollutant below the emission baseline at other emission sources.

Section 202.113 Chapter

References to "this Chapter" or "Chapter 2" in this Part shall mean Pollution Control Board air pollution rules and regulations as contained in Chapter 2: Air Pollution Regulations and as codified under 35 Ill. Adm. Code: Subtitle B, Chapter I.

Section 202.116 Emission Baseline

"Emission baseline" means the starting point or reference level from which increases and decreases in emissions are measured. The rules governing determination of emission offsets, calculation of net emission increases, and evaluation of ACS strategies specify the particular emission baseline that applies for that purpose.

Section 202.119 Multi-person ACS

"Multi-person ACS" means an ACS which includes emission sources which are owned and controlled by different persons who have formed a joint venture for purposes of the ACS.

Section 202.122 Potential to Emit

"Potential to emit" means the maximum capacity of an emission source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the emission source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

Section 202.125 Abbreviations

"ug" is an abbreviation for micrograms.
"m³" is an abbreviation for cubic meter.
"SO₂" is an abbreviation for sulfur dioxide.
"TSP" is an abbreviation for particulate matter.
"NO_x" is an abbreviation for nitrogen oxides.
"CO" is an abbreviation for carbon monoxide.

Section 202.140 Scope

Pursuant to a permit issued by the Agency under this Part, a person or persons may use an ACS for emission sources, including fugitive emission sources, in lieu of compliance with conflicting requirements which would otherwise be applicable under this Chapter.

Section 202.142 Severability

Notwithstanding 35 Ill. Adm. Code 201.125, if any provision of Part 202 is stayed or declared invalid by a final order, no longer subject to appeal, of any court of competent jurisdiction, then the entirety of Part 202 shall be deemed stayed or invalidated until the stay is lifted or the Pollution Control Board (Board) acts to revalidate the Part.

SUBPART B: PERMIT APPLICATION

Section 202.201 Emission Baseline for Alternative Control Strategies

- a) The baseline for reviewing decreases or increases of emissions from emission sources which are the subject of an ACS shall be the lesser of the actual emissions or the allowable emissions prescribed by this Chapter.
- b) Notwithstanding subsection (a), an increment of emission reduction shall be creditable under an ACS to the extent that it:
 - 1) Was achieved as a result of the installation of pollution control equipment, changes in process, procedures, or materials, or the shutdown of an emission source which would not have occurred but for the purpose of creating an emission reduction;
 - 2) Reduced emissions beyond the requirements of Board regulations; and
 - 3) Was not relied upon in the State Implementation Plan (SIP) demonstration to demonstrate compliance with ambient air quality standards in the compliance year in nonattainment areas or maintenance of air quality in other areas.
- c) For purposes of subsection (b), the burden shall generally be on the permit applicant. However, for the purpose of subsection (b)(3) it shall be the responsibility of the Agency to demonstrate that the SIP demonstration either did or did not rely upon the emission reduction in question, whether from the particular emission source or the category to which it belongs.
- d) Notwithstanding subsection (b)(3), if an emission source is located in an area for which the SIP does not demonstrate attainment of the air quality standards by the compliance year for the pollutant which is the subject of the ACS, it may utilize an emission reduction credit only to the extent that that reduction reduces its emissions below actual emissions.

(Source: Amended at 7 Ill. Reg. 8091, effective June 27, 1983)

Section 202.210 Permit Application Information

In addition to other information which may be required under 35 Ill. Adm. Code 201, a permit application under this Subpart shall:

- a) List the emission sources to be included in the ACS, the emission baseline the applicant believes to be applicable to each emission source, and the remaining useful life of each emission source.
- b) Describe the proposed modifications to the emission sources and quantify the emission increases and decreases anticipated to occur as a result of each modification.
- c) Identify the Board regulations and the terms of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1001 et seq.) to which the applicant believes the ACS provides an alternative.
- d) Describe the methods currently used to assure compliance and the methods proposed to be used under the ACS. Such methods may include, but are not limited to recordkeeping, equipment or emissions monitoring, source testing, and material or process specifications.
- e) Provide an analysis of the ACS pursuant to this Subpart.
- f) Contain a certification, signed by all ACS applicants, stating that a copy of the ACS application has been sent by certified mail to the United States Environmental Protection Agency (USEPA) if any of the emission sources included in the ACS are presently the subject of a federal notice of violation or federal enforcement action under the provisions of the Clean Air Act (42 U.S.C. 7401 et seq.), including civil actions filed under Section 113(b), criminal actions filed under Section 113(c), a notice imposing non-compliance penalties issued under Section 120, administrative orders issued under Section 113(a), or a citizen suit filed under Section 304 where the USEPA has intervened (42 U.S.C. 7413 and 7420).
- g) Provide such other information as the Agency can demonstrate to be necessary for the determination of compliance with the standards of issuance in Section 202.306, including the results of any source tests or ambient air monitoring.

(Source: Amended at 7 Ill. Reg. 8091, effective June 27, 1983)

Section 202.211 Analysis of Emissions

- a) A permit application under this Subpart must provide a comparison of the baseline emissions and the emissions that would be permitted under the proposed ACS for each emission source involved in the ACS. Where

appropriate, this analysis must address differences between the emission sources to be covered by the ACS regarding:

- 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 during start-up with excess emissions;
 - 4) Methods of operation, including operating schedules, range of raw materials or products; and
 - 5) Other characteristics of the emission sources or their operation which may affect equivalence of emissions.
- b) The analysis must describe any increases in emissions from emission sources outside the ACS which may accompany the proposed ACS.

(Source: Amended at 47 Ill. Reg. 12101, effective July 25, 2023)

Section 202.212 Analysis of Environmental Quality

- a) A permit application under this Subpart shall provide a comparison of the ambient air quality under existing requirements and the ambient air quality which would exist under the proposed ACS. This analysis shall include dispersion modeling based on the best and most appropriate models for the pollutant and emission sources involved, unless the Agency finds that:
- 1) Due to the characteristics of the pollutant and emission source, dispersion modeling is inappropriate or unnecessary for determining effects on air quality; or
 - 2) The location of emission sources included in the ACS are not more than 250 meters apart, the effective plume height of the emission increases and decreases are not significantly different and the differences in the characteristics of the emission sources are not likely to affect ambient air quality; or
 - 3) Differences in location, plume height, operating practice, and other characteristics of the emission sources subject to the ACS are not likely to significantly affect ambient air quality. An effect on ambient air quality is significant if it equals or exceeds the levels specified in the following table:

<u>Pollutant</u>	<u>Annual</u>	<u>SIGNIFICANCE LEVELS</u>			
		<u>24- Hour</u>	<u>8- Hour</u>	<u>3- Hour</u>	<u>1- Hour</u>
SO ₂	1.0 ug/m ³	5 ug/m ³		25 ug/m ³	
TSP	1.0 ug/m ³	5 ug/m ³			
NO _x	1.0 ug/m ³				
CO			0.5 mg/m ³		2 mg/m ³

- b) The applicant shall analyze the air quality impacts resulting from trades between emission sources, including the impact of emissions which differ in their qualitative impact on health or the environment.
- c) The analysis shall describe any other impacts on the environment which may accompany the proposed ACS.

Section 202.213 Analysis of Methods of Assuring Compliance

A permit application under this Subpart shall provide a comparison of the methods of assuring compliance under existing requirements and the methods of assuring compliance which would be used under the proposed ACS. As a minimum, the analysis shall address the effectiveness, reliability, and accessibility of these methods.

SUBPART C: PERMIT CONDITIONS AND ISSUANCE

Section 202.301 Permit Conditions

- a) The permit shall specify:
 - 1) All emission limits which apply to emission sources under the ACS, and
 - 2) Any compliance procedures which shall be followed by the permittee.
- b) The permit may be conditioned so that compliance with the terms of the ACS will continue in the event of change of ownership of emission sources, and such terms will be made applicable to the new owner.
- c) The Agency may impose such other permit conditions in a permit as are necessary to accomplish the purposes of the Act or of this Part.

Section 202.302 Records and Reports

- a) The Agency shall require that a permittee operating under an ACS maintain such records as necessary to determine compliance with the requirements of the ACS.
 - 1) These records shall include, but shall not be limited to the actual and allowable emission rates, or the parameters from which these rates are determined or related operational parameters of the equipment.
 - 2) The records shall be maintained as prescribed in the permit.
 - 3) These records shall be available to the Agency and copies of these records shall be sent to the Agency upon written request. The Agency shall make such records available to the public pursuant to Sections 7 and 7.1 of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1007 and 1007.1) and regulations promulgated hereunder.
- b) A permittee operating under an ACS shall submit to the Agency reports containing such reasonable information and at such reasonable frequency as the Agency may specify pursuant to a condition of a permit or general procedures established by the Agency, to assure that the terms of the ACS are met.
- c) A permittee operating under an ACS shall notify the Agency within 72 hours by telephone or telegram of circumstances, which will make compliance with the requirements of the ACS impossible.
 - 1) This notice shall be followed within ten days by written confirmation which describes the circumstances which prevent compliance with the requirements of the ACS and supplies a preliminary Compliance Program which will result in compliance with this Chapter.
 - 2) The permittee shall take all reasonable steps to come into compliance with the ACS or this Chapter as expeditiously as possible.

Section 202.303 Monitoring and Testing

The Agency may require that equipment testing and monitoring, as authorized elsewhere in this Chapter, accompany the construction or operation of emission sources under a permit containing an ACS.

Section 202.304 Compliance Dates

- a) No owner or operator subject to a permit utilizing an ACS is relieved of the responsibility for achieving and maintaining a reduction of emissions as expeditiously as practicable, but not later than the compliance date required under other applicable regulations.
- b) Notwithstanding subsection (a), an owner or operator may demonstrate compliance with 35 Ill. Adm. Code 215 pursuant to an Agency approved alternative compliance plan contained in a permit utilizing an ACS which is applied for prior to December 31, 1982. The Agency shall approve such an alternative compliance plan if, and only if, the applicant demonstrates that:
 - 1) The alternative compliance plan extends the compliance date for each emission source subject to the ACS no longer than necessary to enable that emission source to utilize the ACS, but in no case later than December 31, 1987;
 - 2) The emission source belongs to a category of emission sources having a compliance date of December 31, 1982 or later under 35 Ill. Adm. Code 215;
 - 3) The use of an ACS will result in either greater or faster overall emission reductions than would otherwise be achieved; and
 - 4) Such extension is consistent with the requirements of the Clean Air Act.

Section 202.305 Public Participation

The initial issuance of a permit containing an ACS shall be subject to applicable Agency public participation procedures (35 Ill. Adm. Code 166) prior to issuance. At a minimum, the Agency shall provide an opportunity for public comment.

Section 202.306 Standards for Issuance

The Agency shall issue a permit containing an ACS if, and only if, the permit applicant demonstrates that:

- a) The ACS provides, in the aggregate with respect to each regulated pollutant, equivalent or less total emissions than would otherwise be required.
- b) The impact of the ACS is environmentally equivalent to that which would otherwise be achieved and maintained under existing requirements.

- c) The methods for assuring compliance with the conditions and requirements of the permit under the ACS are equivalent to those that are associated with otherwise applicable requirements.
- d) The ACS complies with any applicable requirements contained in 35 Ill. Adm. Code 203, 230 or 231.
- e) USEPA has not disapproved the proposed ACS or any compliance schedule it may contain due to the existence of a federal enforcement action pending against a participant in the ACS.
- f) The ACS does not permit an increase in emissions of any pollutant which is listed or regulated pursuant to Section 112 of the Clean Air Act (42 U.S.C. 7412 et seq.).

(Source: Amended at 7 Ill. Reg. 8091, effective June 27, 1983)

Section 202.307 Notification to USEPA

Upon issuance of an ACS permit, the Agency shall notify USEPA of emission limitations, alternative compliance plans, and any other permit conditions applicable to emission sources under an ACS.

(Source: Amended at 7 Ill. Reg. 8091, effective June 27, 1983)

SUBPART D: PERMIT DURATION, REVISION AND RENEWAL

Section 202.401 Duration

- a) A permit containing an ACS shall be issued for no longer than five years, or for such shorter period as the Agency may specify as necessary for periodic review of the ACS or to accomplish the purposes of the Act or of this Chapter. However, an ACS permit may not be issued for a period of time which is greater than the useful life of an emission source which contributes an emission reduction to the ACS. The burden of proving the useful life of the emission source is on the applicant.
- b) Upon the initial issuance or renewal of an ACS permit, the Agency shall consider all factors which it reasonably construes as bearing upon the useful life of an emission source which contributes an emission reduction to the ACS. Where a shutdown emission source contributes an emission reduction to an ACS, the Agency shall specify the useful life of the shutdown emission source in a permit condition. Factors which the Agency considers shall include, as a minimum:

- 1) The anticipated useful life of the principal components of the emission source upon purchase;
 - 2) The physical condition of the principal components of the emission source;
 - 3) The technological acceptability of the emission source;
 - 4) The economic viability of the emission source; and
 - 5) The demonstrated useful life of emission sources of the same category or functional type.
- c) The Agency shall make a record of the factors considered and the basis for its initial or modified determination of useful life made pursuant to subsection (b).

(Source: Amended at 8 Ill. Reg. 4171, effective March 16, 1984)

Section 202.402 Revision

- a) Timing
- 1) An application for revision of a permit containing an ACS shall be submitted at least 180 days prior to the date on which the revision is required to go into effect.
 - 2) If the standard under this Chapter for an emission source included in the ACS is changed and a revised ACS is being proposed, an application for revision of a permit containing the ACS shall be submitted at least 90 days prior to the date a compliance plan must be submitted.
- b) The applicant shall submit the information specified in Section 202.210 which is necessary to show that the revised ACS will meet the standards of permit issuance specified in Section 202.306.
- c) Unless the Agency finds that the proposed revisions to the ACS are not substantive in nature and do not alter fundamental details of the ACS which was approved under the prior permit, issuance of the revised permit shall be subject to public participation pursuant to Section 202.305.

Section 202.403 Renewal

- a) An application for renewal of a permit containing an ACS shall be submitted at least 180 days prior to the expiration of the previous permit.

- b) Applications for renewal shall contain the information specified in Section 202.210. However, an analysis of the effect of the ACS on air quality pursuant to Section 202.212 need be provided only if:
 - 1) The other information submitted pursuant to this subsection is different from the information upon which the permit was previously issued, and
 - 2) the differences include a change in the applicable emission limit or operation of the source or may otherwise significantly affect air quality.
- c) Unless the Agency finds that changes in the application are not substantive in nature and do not alter fundamental details of the ACS which was approved under the prior permit, renewal of the permit shall be subject to public participation pursuant to Section 202.305.

(Source: Amended at 7 Ill. Reg. 8091, effective June 27, 1983)

SUBPART E: ALTERNATIVE CONTROL STRATEGIES INVOLVING MORE THAN ONE PERSON

Section 202.501 Applicability

Persons who propose or participate in a multi-person ACS shall be subject to the rules found in this Subpart in addition to the remainder of this Part.

Section 202.502 Permit Application

In addition to the information required in Section 212.210, persons who propose a multi-person ACS shall:

- a) Identify the persons having ownership and control of the emission sources to be included in the ACS.
- b) Provide a written agreement showing the participants' intent to pursue the multi-person ACS and to be jointly bound by the terms and conditions of any permits which are issued pursuant to the application.

Section 202.503 Duration

All permits issued under a multi-person ACS shall have the same expiration date.

Section 202.504 Permit Conditions

Each participant in a multi-person ACS shall be issued an individual permit which shall be conditioned on the continuing compliance of the other participants with the limitations in their permits.

Section 202.505 Records and Reports

All records and reports of the participants in a multi-person ACS which are not confidential in nature shall be available for inspection to the other participants upon reasonable notice of a request to inspect.

Section 202.506 Revocation

Permit revocation or other sanctions may be initiated before the Board against any and all persons in the multi-person ACS, regardless of the ownership and control of the emission source at which the violations occurred or any contracts or other agreements between the participants.

Section 202.507 Termination

- a) If a participant in a multi-person ACS intends to terminate involvement in the ACS, it shall give written notice to the Agency and the other participants in the ACS at least 180 days prior to the anticipated termination date.
- b) If the ACS will not meet the standards of issuance with only the remaining participants, they may:
 - 1) Propose a revised ACS to include the remaining sources and persons; this proposal shall be submitted to the Agency at least 120 days before new permits are required; or
 - 2) Apply for revised permits, pursuant to the otherwise applicable regulations in this Chapter; such applications shall be submitted at least 90 days before the permits are required; or
- c) If the notice of termination of the multi-person ACS does not allow sufficient time to meet the time periods in Subsection 202.507(b) above, the participants may seek variance relief from the Board from the requirements of this Chapter and of the Act.

APPENDIX A Pre-Codification into Codified

<u>Pre-Codification</u>	<u>Section</u>
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APPENDIX B
Codified into Pre-Codification

<u>Section</u>	<u>Pre-Codification</u> <u>Section</u>
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Appendix B	Added in Codification