

**TITLE 35: ENVIRONMENTAL PROTECTION**  
**SUBTITLE B: AIR POLLUTION**  
**CHAPTER II: ENVIRONMENTAL PROTECTION**  
**AGENCY**

**PART 252**  
**PUBLIC PARTICIPATION IN THE**  
**AIR POLLUTION CONTROL PERMIT PROGRAM**

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AUTHORITY: Implementing and authorized by Sections 4, 9.1(d), 9.1(e), 39, 39(f)(2), 39.1(c) and 39.1(d) of the Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 4 Ill. Reg. 10, p. 246, effective February 22, 1980; former Part repealed and new Part adopted at 8 Ill. Reg. 8197, effective June 1, 1984; amended at 17 Ill. Reg. 9684, effective June 10, 1993; amended at 22 Ill. Reg. 19253, effective October 13, 1998; amended at 42 Ill. Reg. 15997, effective August 1, 2018; amended at 44 Ill. Reg. 10873, effective June 10, 2020.

## **SUBPART A: INTRODUCTION**

### **Section 252.101 Purpose**

This Part is adopted to:

- a) Specify public participation procedures that shall accompany the processing of certain air pollution permit applications by the Illinois Environmental Protection Agency; and
- b) Provide the public with an opportunity to comment on certain proposed air pollution permits that may be of public interest.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.102 Abbreviations and Acronyms**

|        |  |
|--------|--|
| ACS    | Alternative Control Strategies                         |
| Act    | Illinois Environmental Protection Act [415 ILCS 5]     |
| Agency | Illinois Environmental Protection Agency               |
| Board  | Illinois Pollution Control Board                       |
| CAA    | Clean Air Act (42 USC 7401 et seq.)                    |
| CAAPP  | Clean Air Act Permit Program                           |
| HAPs   | Hazardous Air Pollutants                               |
| MACT   | Maximum Achievable Control Technology                  |
| MSSCAM | Major Stationary Sources Construction and Modification |
| NSR    | New Source Review                                      |

|       |  |
|-------|--|
| NANSR | Nonattainment Area New Source Review                   |
| PSD   | Prevention of Significant Deterioration of Air Quality |
| USEPA | United States Environmental Protection Agency          |

(Source: Former Section 252.102 renumbered to Section 252.104 and new Section 252.102 added at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.103 Definitions**

- a) NANSR means rules for MSSCAM at 35 Ill. Adm. Code 203.
- b) Other terms in this Part have the same meaning as ascribed in Sections 3 and 39.5(1) of the Act and the Board's rules on Air Pollution (35 Ill. Adm. Code: Subtitle B, Chapter I), as appropriate to the subject matter of the provisions.

(Source: Former Section 252.103 renumbered to Section 252.105 and new Section 252.103 renumbered from Section 252.104 and amended at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.104 Applicability**

- a) This Part applies to all applications filed with the Agency for:
  - 1) Permits for the construction of a new major stationary source or a major modification of a major stationary source pursuant to the NANSR rules (35 Ill. Adm. Code 203);
  - 2) Permits for the construction of a new major stationary source or a major modification of a major stationary source pursuant to the PSD rules (35 Ill. Adm. Code 204);
  - 3) Permits for the construction of a source or a modification of a source that would constitute a new major stationary source or a major modification of a major stationary source, subject to public participation pursuant to subsections (a)(1) or (2), if they were not accompanied by contemporaneous emissions decreases or if federally enforceable significant restrictions were not placed on the source or modification by the permit;
  - 4) Permits for the use of ACS pursuant to 35 Ill. Adm. Code 202;
  - 5) Permits to operate sources pursuant to CAAPP, Section 39.5 of the Act, and significant modifications of any permit issued thereunder;

- 6) Permits to operate sources that contain federally enforceable conditions, including permits that exclude sources from the applicability of the permitting requirements described in subsection (a)(1), (a)(2) or (a)(5);
  - 7) Permits for the construction or reconstruction of major sources of HAPs that require a determination of case-by-case MACT, pursuant to Sections 9.1(d) and 39(f) of the Act and CAA section 112(g) (42 USC 7412(g));
  - 8) Permits for the construction of a source of public interest or emission units of public interest at a source, the criteria for which are outlined in subsection (b);
  - 9) Revisions to permits described in subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) and (a)(7) as specified by applicable regulations. This Part shall apply to all revisions that: revise any standard established on a case-by-case basis; alter conditions imposed to meet requirements for emissions offsets; or relax testing, monitoring, recordkeeping or reporting requirements.
- b) The Director of the Agency shall determine whether a source or emission units are of public interest. In making this decision, the Director of the Agency shall consider:
- 1) The type of permit for which the application is made;
  - 2) The nature and amount of pollutants that will be emitted by the source;
  - 3) Possible effects of the emissions on health and the environment;
  - 4) The location of the source;
  - 5) The interest in the source exhibited by the public, based on comments and inquiries received by the Agency;
  - 6) Other factors that are distinctive to the source; and
  - 7) The proposed action by the Agency.

(Source: Former Section 252.104 renumbered to Section 252.103 and new Section 252.104 renumbered from Section 252.102 and amended at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.105 Application for a PSD Permit**

- a) The procedures of this Part shall also apply if the Agency proposes to deny an

application for a PSD permit.

- b) For a proposed denial of an application for a PSD permit, the following shall apply:
  - 1) When the procedures of this Part refer to a draft permit, they shall apply to a draft permit denial letter; and
  - 2) When the procedures of this Part refer to a notice of intent to issue, they shall apply to a notice of intent to deny.

(Source: Former Section 252.105 renumbered to Section 252.106 and new Section 252.105 renumbered from Section 252.103 and amended at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.106 Consolidation**

- a) For a combined PSD and NANSR permit, the Agency shall consolidate the public participation activities.
- b) For other permits subject to this Part, the Agency may consolidate the public participation activities for two or more permits when the operations to be permitted are similar, related, or in close geographical proximity, when practicable.

(Source: Section 252.106 renumbered from Section 252.105 and amended at 44 Ill. Reg. 10873, effective June 10, 2020)

## **SUBPART B: PROCEDURES FOR PUBLIC REVIEW**

### **Section 252.201 Notice and Opportunity to Comment**

- a) The Agency shall issue a notice for the planned issuance of any permit described in Section 252.104, renewal of any operating permit described in Section 252.104, and permit actions described in Section 252.105.
- b) The notice shall be given to:
  - 1) The public, by prominent placement at a dedicated page on the Agency's website. The notice shall remain on the Agency's website for the duration of the public comment period. If the Agency's website is unavailable for a prolonged period of time, the comment period will be extended for an equivalent amount of time. Notice shall also be by advertisement in a newspaper of general circulation in the area where the source is located if either:

- A) The Director of the Agency or his/her designee determines, for a particular permit, that additional notice would serve the interests of the public or of the Agency. In making this determination, the Agency shall consider public interest; or
  - B) Pursuant to the Act or other applicable law, notice is required to be published in a newspaper for the type of permit at issue;
- 2) Local government air pollution control offices within Illinois that are in the area affected by the source;
  - 3) The chief executives of the municipality and county in which the source is to be located, including the mayor or president, clerk, county board chairman, county clerk, and state's attorney;
  - 4) Members of the General Assembly from the legislative district in which the source is located;
  - 5) Any state whose air quality may be affected and that is contiguous to Illinois or is within 50 miles of the source;
  - 6) The permit applicant;
  - 7) Persons on the public participation mailing list for the air pollution control permit program;
  - 8) For purposes of PSD permits, in addition to the notice given by means of subsections (b)(1) through (7), notice shall also be given to USEPA; any comprehensive regional land use planning agency for the area in which the source would be located; and any State Land Manager, Federal Land Manager, or Native American Governing Body whose lands may be affected by emissions from the regulated activity; and
  - 9) For purposes of CAAPP permits, in addition to the notice given by means of subsections (b)(1) through (7), the notice shall be given to USEPA when it is provided to the public.
- c) The notice shall include:
- 1) The name and address of the applicant and the source, and the name and address of the Agency;
  - 2) The activity or activities involved in the permit action;
  - 3) The preliminary decision of the Agency to grant the permit;

- 4) For the proposed issuance of a PSD permit, the degree of ambient air increment consumed by the project;
  - 5) For a case-by-case MACT determination pursuant to CAA section 112(g) and (j), a description of the emission limitation or work practice standard in the draft permit that constitutes MACT;
  - 6) The location of the documents available for public review;
  - 7) A request for written comments on the Agency's draft permit;
  - 8) The date the comment period closes;
  - 9) Instructions on how to request a public hearing if a decision to hold a hearing has not already been made pursuant to Section 252.205(a) or (b); and
  - 10) The name, address and telephone number of the Agency contact person from whom the public may obtain additional information.
- d) The notice to the permit applicant shall also include the draft permit and project summary, statement of basis, or fact sheet required by Section 252.203.
  - e) The notice shall provide for a 30-day public comment period. The Agency may extend the comment period upon written request if any applicable statutory period for the Agency decision, as prescribed in Section 39 of the Act, allows for an extension.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.202      Draft Permit**

The Agency shall prepare for public review a draft permit, including proposed conditions.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.203      Project Summary, Statement of Basis, or Fact Sheet**

- a) The Agency shall prepare a project summary or statement of basis to accompany the draft permit for a new major stationary source, major modification of a major stationary source, issuance or renewal of a CAAPP permit, or a significant modification of a CAAPP permit. The project summary or statement of basis shall describe the basis of the Agency's decision to grant the permit. For purposes of PSD permits, this description shall also include an explanation of the source's effect on ambient air quality.

- b) The Agency shall prepare a fact sheet for every draft permit for which a project summary or statement of basis is not prepared.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.204 Availability of Documents**

- a) Copies of the following documents shall be made available for public inspection during the public comment period:
  - 1) The public notice;
  - 2) The project summary, statement of basis, or fact sheet;
  - 3) The draft permit;
  - 4) The permit application, including any compliance plans; and
  - 5) For purposes of a draft PSD permit, this shall also include any additional supporting data furnished by the applicant and other information the Agency relied upon in making its proposed decision.
- b) A copy of the draft permit shall be placed at a dedicated page on the Agency's website for the duration of the public comment period. Copies of the other documents listed in subsection (a) shall be available for review at:
  - 1) The Bureau of Air's offices at 1021 North Grand Avenue East, Springfield IL 62794-9276; and
  - 2) The Bureau of Air's regional office closest to the location of the source.
- c) All documents listed in subsection (a) shall also be available in accordance with 35 Ill. Adm. Code 130 and Sections 7 and 7.1 of the Act.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.205 Opportunity for Public Hearing**

- a) A public hearing shall be held on any action subject to this Part when applicable law or rule provides the applicant opportunity for a hearing and the applicant makes a written request for a hearing.
- b) The Director of the Agency or his/her designee shall order that a hearing be held on a permit application subject to this Part when the Agency has determined that a hearing would serve the interests of the public or of the Agency. In making this



determination, the Agency shall consider:

- 1) The level of public interest as indicated by the inquiries and comments received by the Agency on the draft permit;
- 2) The opportunity to increase public understanding of the project and of the Agency's proposed decision by means of public hearing;
- 3) Receipt by the Agency of a written request for a hearing citing material issues with respect to the terms and conditions of the draft permit from:
  - A) A significant number of persons, to be determined by the Director of the Agency, either individually or in a petition;
  - B) A member of the General Assembly representing the district in which the source is located; or
  - C) A chief executive officer from a county or municipality in which the source is located as described in Section 252.201(b)(3).

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.206 Procedures for Public Hearings**

- a) Except as provided in subsection (b), hearings shall be conducted in accordance with the Agency's "Procedures for Permit and Closure Plan Hearings" (35 Ill. Adm. Code 166: Subpart A (Informational Permit and Closure Plan Hearings)).
- b) Hearings requested by the ACS permit applicant pursuant to Section 39.1(d) of the Act shall be conducted in accordance with the Agency's "Procedures for Permit and Closure Plan Hearings" (35 Ill. Adm. Code 166: Subpart B (Contested Case Permit Hearings)).
- c) Notwithstanding subsection (b), persons requesting hearings subject to 35 Ill. Adm. Code 166: Subpart B may waive their rights to the procedures of the Contested Case Permit Hearings by notifying the hearing officer to that effect. When persons waive their rights to Contested Case Permit Hearings, those hearings shall be held in accordance with 35 Ill. Adm. Code 166: Subpart A.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.207 Obligation to Raise Issues and Provide Information During the Public Comment Period for PSD Permits**

All persons, including applicants, who believe any condition of a draft PSD permit is

inappropriate or that the Agency's tentative decision to prepare a draft PSD permit is inappropriate shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period. Any supporting materials submitted shall be submitted in full and may not be incorporated by reference, unless they are already:

- a) Part of the administrative record in the same proceeding; or
- b) Consist of State or federal statutes and regulations, USEPA documents of general applicability, or other generally available reference materials.

(Source: Added at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.208 Reopening of the Public Comment Period for PSD Permits**

- a) The Agency may order the public comment period for PSD permits reopened. The public notice of any comment period under this Section shall be issued under Section 252.201 and shall define the scope of the reopening, including an identification of those issues to which the requirements of this Section apply.
- b) Comments filed during the reopened comment period shall be limited to the issues that are the subject of the reopened public comment period as set forth in the notice that caused its reopening under subsection (a). When the public comment period is reopened under this Section, all persons, including the applicant, who believe any relevant condition of a draft permit is inappropriate or that the Agency's decision to prepare a draft permit is inappropriate shall submit all reasonably available factual grounds supporting their position, including all supporting material, by the close of the public comment period.

(Source: Added at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.209 Issuance of a Final PSD Permit Decision**

After the close of the public comment period on a draft PSD permit under Section 252.201 or 252.208, the Agency shall provide notice of the final PSD permit decision to the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on the final PSD permit under Section 40.3 of the Act and 35 Ill. Adm. Code 105. For purposes of this Section, a final permit decision means a final decision to issue, deny or modify a PSD permit.

(Source: Added at 44 Ill. Reg. 10873, effective June 10, 2020)

### **Section 252.210 Response to Comments for a Final PSD Permit Decision**

- a) By the date that any final PSD permit decision is issued, the Agency shall consider all written comments submitted by the close of the public comment period and all comments formally made at any public hearing. The Agency shall issue a response to comments that shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. The Agency may group related comments together and provide one unified response for each issue raised; and
- b) Any documents, excluding statutory or regulatory references, cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the Agency may, in addition to formally providing a written response to comments, document its response to those matters by adding new materials to the administrative record.

(Source: Added at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **Section 252.211 Administrative Record for a Final PSD Permit Decision**

- a) The Agency shall base final PSD permit decisions on the administrative record as defined in subsection (b).
- b) In addition to the final permit decision, the administrative record for any final permit decision shall consist of:
  - 1) The application and any supporting data furnished by the applicant;
  - 2) The draft permit or notice of intent to deny the application;
  - 3) The project summary, statement of basis, or fact sheet;
  - 4) All documents cited in the project summary, statement of basis, or fact sheet;
  - 5) All comments received during the public comment period under Section 252.201 (including any reopening under Section 252.208);
  - 6) The transcript of any hearing held under Section 252.205;
  - 7) Any written materials submitted to the Hearing Officer at the hearing;
  - 8) The response to comments required by Section 252.210 and any new material placed in the record under that Section; and
  - 9) Any other information contained in the supporting file for the final permit

decision and any other information the Agency relied upon in making its final decision.

(Source: Added at 44 Ill. Reg. 10873, effective June 10, 2020)

### **SUBPART C: USEPA REVIEW AND OBJECTION PROCEDURES**

#### **Section 252.301 USEPA Review of and Objection to Proposed CAAPP Permits**

- a) For draft CAAPP permits, following the public notice and comment period provided for by Section 252.201, the Agency shall consider all comments received and shall determine the contents of a proposed CAAPP permit. The proposed CAAPP permit shall be provided to USEPA for review and comment for a period of 45 days unless USEPA waives review.
- b) If USEPA objects to the contents of a proposed CAAPP permit in writing and with a justification for its objections as provided in CAA Title V and regulations promulgated thereunder, the Agency shall respond to USEPA's objection. The Agency shall provide the applicant and any person who participated in the public comment process under this Part 10 days to submit written comments to the Agency contact person described at Section 252.201(c)(10) regarding any revisions the Agency is proposing to make in response to USEPA's objections. The Agency may then revise and resubmit the proposed CAAPP permit, without any further public participation, within 90 days after the date of the objection.
- c) If USEPA does not object to the contents of a proposed CAAPP permit in writing and with a justification for its objections in accordance with procedures established under CAA Title V, the Agency shall issue the proposed permit as the CAAPP permit without further change.
- d) If USEPA does not object in writing to issuance of a proposed CAAPP permit, any person may petition USEPA, within 60 days after expiration of the 45-day review period, to make an objection in accordance with applicable procedures established under CAA Title V.
- e) If the CAAPP permit has not yet been issued and USEPA objects to the proposed permit as a result of a petition, the Agency shall not issue the permit until USEPA's objection has been resolved. The Agency shall provide for a 10-day comment period as set forth in subsection (b). A petition does not, however, stay the effectiveness of a permit or its requirements if the permit was issued after expiration of the 45-day review period and prior to a USEPA objection.
- f) If the Agency has issued a CAAPP permit after expiration of the 45-day review

period and prior to receipt of a USEPA objection, the Agency may, after receiving an objection from USEPA, revise and resubmit the permit to USEPA after providing for a 10-day comment period as set forth in subsection (b). If the Agency fails to submit a revised permit in response to the objection, USEPA shall modify, terminate or revoke the permit, pursuant to the CAA.

(Source: Amended at 44 Ill. Reg. 10873, effective June 10, 2020)

#### **SUBPART D: AGENCY ACTION**

##### **Section 252.401 Final Permit Action**

After the close of the comment period including the period for USEPA's review of a proposed permit, the Agency shall take final action. The Agency shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

(Source: Added at 17 Ill. Reg. 9684, effective June 10, 1993)

