ILLINOIS POLLUTION CONTROL BOARD
April 22, 1993

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO THE NEW	)	R92-21
SOURCE REVIEW RULES	)	(Rulemaking)
35 ILL. ADM. CODE 203	)	

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):[1]

On November 13, 1992, the Illinois Environmental Protection Agency (Agency) filed this proposal for rulemaking. The proposal is intended to address permitting for the construction and operation of new or modified major stationary sources in nonattainment areas. The proposal represents one part of Illinois' submittal of a complete state implementation plan (SIP). Pursuant to Section 182(a) of the Clean Air Act, as amended in 1990, Illinois is to adopt and submit its plan by November 15, 1992. On November 19, 1992, the Board adopted the First Notice Opinion and Order in this proceeding without comment on the substance of the rule.

This proposal was filed pursuant to Section 28.5 of the Act and was accepted for hearing. (P.A. 87-1213, effective September 26, 1992.) Pursuant to the provisions of that section the Board is required to proceed within set time-frames toward the adoption of this regulation. The Board has no discretion to adjust these time-frames under any circumstances. The Board held two hearings as prescribed by Section 28.5 on January 6, 1993, and February 5, 1993. The record in this proceeding was closed on February 23, 1993, fourteen days after the availability of transcripts from the February 5 hearing.

On March 11, 1993, the Board timely adopted the second notice opinion and order. The second notice was submitted to the Joint Committee on Administrative Rules (JCAR) on that same day. On April 22, 1993, the Board received a certification of no objection from JCAR. Today, the Board acts to send this rulemaking to final notice.

PROCEDURAL HISTORY

The Agency filed a motion with the proposal on November 13, asking that the Board waive several requirements which govern the filing of a regulatory proposal. Specifically, the Agency asked

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[1] The Board wishes to acknowledge the special contribution made by Marie E. Tipsord, who has served as Hearing Officer throughout these proceedings.

that it be allowed to submit the original and five complete copies of the proposal and four partial copies of the proposal, rather than the original and nine complete copies to the Board. Further, the Agency asked that it not be required to supply the Attorney General or the Department of Energy and Natural Resources with a complete copy of the proposal. Lastly, the Agency asked that it not be required to submit documents which are readily available to the Board on which the Agency will rely at hearing. The Board granted the Agency's motion on November 19, 1992.

At the January 6, 1993, hearing in this matter, the Board's hearing officer entered an order based on arguments made at the hearing. The order would allow anyone who argues that they may be prejudiced by the notice in the Mt. Vernon newspaper to question Mr. Romaine of the Agency on his testimony given at the January 6, 1993, hearing. In addition, the hearing officer stated that: "my reading of 28.5 is that the Agency should be available, and therefore shall be available to answer additional questions at the second hearing . . .". (Tr. at 124.) The hearing officer limited the scope of questioning to unresolved issues pursuant to Section 28.5(g)(1)(B). (Tr. at 127.)

On January 13, 1993, the Board received a filing from the Illinois Environmental Protection Agency (Agency) entitled "Agency's Objection to Hearing Officer's Ruling, Language Added to Section 203.112 Pursuant to Hearing Officer Order, and USEPA'S September 3, 1992, transition memo" (objection). On January 15, 1993, the Board received a second filing from the Agency entitled "Motion for Expedited Decision on Agency's Objection to Hearing Officer's Ruling" (motion). On January 20, 1993, the Board received responses to the objection filed by the Illinois Environmental Regulatory Group (IERG), Illinois Steel Group (Steel) and Stepan Company (Stepan).

On January 21, 1993, the Board upheld the hearing officer's order. The Board states:

> Upon reviewing the transcript and the arguments put forward by participants, the Board is persuaded that hearing officer has correctly read Section 28.5 of the Act. Allowing questions of the Agency at a second hearing will ensure the development of complete rulemaking record as well as expediting the process. Such a reading of Section 28.5(g) comports with the legislative goal of expedited rulemaking under the Clean Air Act. The Board affirms the hearing officer order. (R92-21, January 21, 1993, at 5.)

On January 27, 1993, the Board received a document entitled "Comments of Chicago Lung Association and the Illinois Chapter of the Sierra Club". The document was filed by Mr. Ron Burke on behalf of Chicago Lung Association and the Illinois Chapter of

the Sierra Club. The filing states: "If a waiver from the Board is necessary, Chicago Lung Association and the Illinois Chapter of the Sierra Club request one." The Board will considered this filing a motion to waive for good cause the written submission of testimony 10 days before hearing pursuant to Section 28.5(g) of the Act. On February 4, 1993, the Board denied the motion.

On January 29, 1993, the Agency and the Illinois Environmental Regulatory Group filed a joint motion requesting that the Board interpret Section 203.209(b) as set forth in the motion. The Board will discuss this motion in more detail below as the interpretation of Section 203.209(b) was a substantive issue in the proceeding.

On February 23, 1993, a motion to incorporate information from previous proceedings into this docket filed by the Illinois Steel Group. The Board did not receive responses to this motion and on February 24, 1993, the American Automobile Manufacturers filed motion to file its public comment instanter. The Board did not receive responses to this motion. On March 11, 1993, the Board denied both motions.

On April 14, 1993, IERG filed a motion to clarify the February 5, 1993, testimony of Mr. Sid Marder. The motion asks for clarification of subsection d on page 141 of the transcript. The motion further states that the Agency does not object to this clarification. The clarification would amend the testimony to read:

> d. In the case where a source has filed a complete application for a construction permit~~,~~ including a PSD permit, prior to the date of an area as nonattainment, or the dates given above, whichever occurs later, the calculation shall not include emission increases allowed by that permit.

On April 19, 1993, the Board received a response to the April 14 motion from the Agency indicating support for the motion and joining with IERG in moving that the Board adopt the clarification. The Board grants the motion and will clarify, in this opinion, Mr. Marder's testimony.

The Board also notes that the Agency at the hearing on February 5 and in its final comment renewed its objection to answering questions at the second hearing. (Tr. at 133; PC 10 at 12-13.)[2] The Board notes the objection.

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[2]The transcripts from the 1/6/93 and 2/5/93 hearings were consecutively numbered and will be cited as "Tr. at __"; testimony was entered as if read and given an exhibit number, exhibits will be cited as "Exh. __ at __"; public comments will

DISCUSSION

The Board stated at first notice that it was necessary to format the proposal submitted by the Agency to comport with filing and other requirements of the Administrative Code Unit of the Secretary of State's Office prior to submission for first notice. The specific changes necessary were:

1. The table of contents contained italicized material;
2. The authority note did not include Section 10 of the Act;
3. Section 203.145 included a Source note incorrectly numbered;
4. Section 203.206 contained incorrect strike-through and underlines and required renumbering;
5. The indent levels in Section 203.302(a)(3)(A) and (B) were incorrect;
6. Section 203.303 contained incorrect strike-through and underlines and an error in a citation;
7. Subpart H in the text had incorrect spacing.

The Board also notes that the text of the proposal contained several typographical and grammatical errors which the Board could not correct prior to hearing under the provisions of Section 28.5(m) of the Act. Those corrections were made at second notice.

The Agency presented testimony in support of the proposal at the January 6, 1993, hearing. Mr. Christopher Romaine testified for the Agency. Mr. Romaine indicated that the New Source Rules (NSR) apply only in nonattainment areas for the contaminants for which the area is designated nonattainment. (Exh. 1 at 5.) The rules establish a construction permit program with four essential requirements imposed on owners or operators of major projects. (Exh. 1 at 2.) The four requirements are:

1. The imposition of the lowest achievable emission rate (LAER);

2. A major project must be accompanied by compensating emission offsets from other sources in the area;

3. Present compliance by other sources in the state which are under common ownership or control with the person proposing the project;

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be cited as "PC __ at __".

4. The final requirement applies only to nonattainment areas for ozone and carbon monoxide. In these areas an analysis of alternatives to a particular major project must be made which demonstrates that the benefits of the project outweigh the environmental and social costs.

(Exh. 1 at 3-4.)

A source is considered to be "major" if there is a new source, if there is a physical change at a source which is not major where the physical change itself constitutes a major source, if there is reconstruction of a major source, or if there is a significant modification to a major source. (Exh. 1 at 4.) Significant modifications are an emissions increase of 100 and 25 tons per year (tpy) for carbon monoxide and particulate matter, respectively. A significant modification for volatile organic compounds, nitrogen oxides and sulfur dioxide is 40 tpy. (Exh. 1 at 5.)

The adoption of these rules is important to Illinois in order to meet our obligations to adopt appropriate new source review rules and avoid federal sanctions if we do not have rules in place. The adoption of these rules will also codify in Illinois several provisions which USEPA considers requirements for permit issuance. (Exh. 1 at 19.) Further, in Attachment A to the Statement of Reasons filed with the proposal, the USEPA indicated that the proposal is federally approvable. The Agency also indicated that the changes discussed below would not alter the approvability of the proposal. (PC 10 at 11-12.)

The economic impact of these regulations on sources range from incidental to a maximum of $6500 per ton for offsets and control.

The participants in this proceeding were in general agreement with the proposal. For the most part in areas where there was disagreement an agreement was worked out before submission of final comments. The discussion following is a section by section analysis of changes made pursuant to comments, as well as a discussion of the areas of contention at second notice.

Interpretation of Section 203.209(b)

The Board notes that the interpretation of Section 203.209(b) was an issue discussed at the January 6, 1993, hearing. The Agency had indicated that it would interpret the language in Section 203.209(b) as allowing the Agency to look prospectively as well as retroactively at emissions from a source. Mr. Romaine, testifying for the Agency stated: "It is

our intent that these rules are written so that one could look back prior to the time an area is designated nonattainment, a severe or serious ozone nonattainment area." (Tr. 1 at 43.)

The testimony of the Chicago Lung Association and the Sierra Club stated the "Agency should be able to use a period of five consecutive years for determining significant emissions increases which goes back prior to designation of an area as nonattainment or reclassification of a nonattainment." (Exh. 7 at 1.)

The January 29, 1993, joint motion asked that the Board adopt an interpretation of Section 203.209(b) that was significantly different than the interpretation first espoused by the Agency. Specifically, the motion provides that "for purposes of determining whether a net emissions increase of a particular pollutant is significant, the calculation commences with the date of designation of an area as nonattainment for ozone". (1/29/93 at 1.)[3] The motion also requests that the Board's opinion reflect that it is the Board's intent that Section 203.209(b) be interpreted consistently with federal guidelines and if USEPA should issue guidelines or promulgate a rule which is contrary to the interpretation proposed the federal interpretation immediately takes precedence over the Board's opinion. (1/29/93 at 1.)

At the February 5, 1993, hearing, Mr. Sid Marder of IERG testified in support of the motion. (Tr. at 138-155.) Mr. Marder pointed out that USEPA has not issued any guidance on the interpretation of Section 203.209(b); therefore "the review period pursuant to Section 203.209(b) should extend only to the date of such designation for equity reasons." (Exh. 3 at 2.) Mr. Marder also sets forth the specific dates for the review to commence under Section 203.209(b). Those dates are:

a. For sources located in the newly designated nonattainment areas in the Chicago area, for example, Will and McHenry Counties, and the designated townships in Kendall and Grundy Counties, the calculation for VOM emissions commences no earlier than January 6, 1992.

b. For sources located in all ozone nonattainment areas of the state, for example, Chicago and the Metro-East area, the calculation for NO_x emissions commences no

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[3]The January 29, 1993, motion will be cited as "1/29/93 at __".

earlier than November 15, 1992.

c. For sources with potential to emit at least 25 tons per year but less than 100 tons per year and which are located in the Chicago nonattainment area, the calculation for VOM emissions commences at either the time that the source became major or November 15, 1990, whichever time is later.

d. In the case where a source has filed a complete application for a construction permit including a PSD permit, prior to the date of an area as nonattainment, or the dates given above, whichever occurs later, the calculation shall not include emission increases allowed by that permit.

(Tr. at 140-141.)

Mr. Marder further notes that "these dates and times are critical and we ask that they be explicitly noted in the Board's opinion". (Tr. at 141.)

Mr. Romaine responded to questions at the February 5, 1993, hearing regarding the joint motion. Mr. Romaine was asked if the dates and circumstances espoused in Mr. Marder's testimony accurately reflected the Agency's position. Mr. Romaine agreed that the dates and circumstances stated by Mr. Marder did reflect the Agency's position. (Tr. at 156-158.) Mr. Romaine also agreed that the Board's opinion should state the interpretation set forth in the motion as well as the dates and circumstances of applicability. (Tr. at 158.)

The city of Chicago submitted comments in support of the joint motion (PC 5 at 1) and Mr. Daniel Muno on behalf of Stepan Company and Ms. Maria Heiberger on behalf of CPC International, Inc., also testified in support of the interpretation put forward in the January 29, 1993, motion. (Tr. at 208 and 212; Exh. 9 and 11.) The testimony provided by Mr. Muno included extensive statutory construction arguments in support of a non-retroactive application of Section 203.209(b). (Exh. 9 at 4-7.)

The Board finds the arguments put forward regarding the interpretation of Section 203.209(b) persuasive. Therefore, the Board will grant in part the joint motion put forward by the Agency and IERG. Thus, the Board adopts an interpretation of Section 203.209(b) that provides "for purposes of determining whether a net emissions increase of a particular pollutant is significant, the calculation commences with the date of designation of an area as nonattainment for ozone". (1/29/93 at 1.) The specific dates of designation are those stated above in

Mr. Marder's testimony. The Board however hesitates to provide for an automatic change in interpretation of Section 203.209. Therefore, the Board will allow any party, upon notice of a different interpretation by USEPA, to move for reconsideration on this issue at anytime. Such a filing may be filed under Section 101.300 or 101.301 and the Board hereby waives, for purposes of this issue, the time deadlines set forth in those procedural rules.

Section 203.206

Mr. Marder also testified concerning the "dual source definition" currently contained in Section 203.206. Mr. Marder points out that the USEPA in its December 17, 1992, Federal Register notice of USEPA's final approval of the state's existing new source review rules (Exh. 4) discussed the dual source definition.[4] The USEPA indicated in that notice that a plant-wide definition of source would be acceptable under the Clean Air Act. (Tr. at 143; Exh. 4 at 59933.) Thus, Mr. Marder suggested that Section 203.206(a) be amended to reflect a plant-wide definition of source. (Tr. at 144.) The specific language suggested by Mr. Marder in Section 203.206 is:

> a) For purposes of this Part, the term "major stationary source" shall exclusively mean "building, structure and facility", as those terms are defined in Section 203.113 of this Part.

(Renumbering the remainder of the Section).

The Steel Group points out in its comments (PC 6) that the current definition of source found in the Board's rules allows for an individual piece of equipment to be considered a major source if the emission rate is high enough. (PC 6 at 3.) As a result changes in such equipment would have to be offset by changes within that "source". (PC 6 at 3.) The Steel Group maintains that such a definition acts as a disincentive to the replacement of control equipment. (PC at 4.) The Steel Group agrees that the change in Section 203.206(a) proposed by IERG would have the desired effect. (PC 6 at 4.) However, the Steel Group believes such a change would create a confusing definition section. (PC 6 at 4.) The Steel Group advocates deleting the definition of "installation" at Section 203.125 to adopt the plant-wide definition of source. (PC 6 at 5.)

The Agency at the February 5, 1993, hearing and in its final comments expressed support for the language proposed by IERG.

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[4]The Board notes that the USEPA final approval appeared after the initial filing of the proposal.

(Tr. at 160; PC 10 at 3-4.) In addition, CPC and Stepan expressed support for this change. (Exh. 11 at 4; Exh. 9 at 12.)

The Board agrees that the adoption of a plant-wide source definition is advisable at this time. Without discussing the merits of the two alternatives to adopting the plant-wide definition the Board will accept the IERG proposal. The Board notes that Section 203.125 was not proposed for amendment at first notice and therefore the Board will not open that section at this time.

Mr. Ron Burke, testifying on behalf of the Chicago Lung Association and the Sierra Club, offered an amendment to Section 203.206(d). Mr. Burke offered a change regarding fugitive emissions. (Tr. at 193.) Specifically, the amendment would include fugitive emissions in calculation of whether a source is a major source in a nonattainment area and provides:

> d) For purposes of this Part, in areas that are classified as serious, severe, or extreme nonattainment, the fugitive emissions of a stationary source shall be included in determining whether it is a major stationary source. In areas that are not classified as serious, severe or extreme nonattainment, the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources.

The Agency supports this change as it incorporates guidance received by the Agency from USEPA. (Exh. 6.) In addition the city of Chicago stated in support for the amendment. (PC 5 at 2.) The Board will accept the amendment put forward by Mr. Burke.

Section 203.201

The Illinois Manufacturer's Association (IMA) expressed concern with the applicability of the proposal to sources with pending permit applications or which have permits that have not been constructed. (PC 4 at 1.) IMA asks the Board to exempt from these regulations any source which had filed its application on or before the date on which the Clean Air Act required the states to adopt those rules. IMA points out that the provisions of these regulations include requirements that the control equipment and process measures produce LAER (Section 203.301) and that the source provide offsets (Section 203.302). (PC 4 at 2.) The IMA points that both of these procedures are intended to be met prior to permit application. (PC 4 at 2.)

The IMA also points that Mr. Romaine testified on behalf of the Agency that the Agency did not intend to apply the amended

provisions to include sources which had applied for their permits before November 15, 1992. (PC 4 at 2.) The IMA also cites to the USEPA transitional guidance document entered in this proceeding as Exhibit 2 which indicates that sources which submitted complete applications by the submittal deadline may receive final permits under the existing rules. (PC 4 at 3.)

Therefore, the IMA asks that the Board amend Section 203.201 to reflect the policy expressed in the USEPA guidance documents as well as that expressed by the Agency. That policy is one whereby a permit application filed by November 15, 1992, for nitrogen oxides and volatile organic material emission for sources located in ozone nonattainment areas are not subject to these amendments. Further, these amendments do not apply to permit applications filed by June 30, 1992, for PM10 or by May 15, 1992, for SO_2. (PC 4 at 4.) The specific change requested would add to the end of Section 203.201, the following:

> Revisions to this Part which were adopted to implement the Clean Air Act Amendments of 1990 shall not apply to any new major stationary source or major modification for which a permit application was submitted by June 30, 1992, for PM10, May 15, 1992, for SO_2, or by November 15, 1992, for nitrogen oxides and volatile organic material emissions for sources located in all ozone nonattainment areas.

CPC International, Inc., also expressed concern regarding the status of construction permits issued where the facility is not complete. (Exh. 11 at 4; PC 7 at 5.)

The Agency states that it has "no objection" to the revision to Section 203.201 being proposed by the IMA. The Board is persuaded that the IMA's offered amendment will accurately reflect the transition policy of the USEPA and the Agency. The Board will amend Section 203.201 as requested by the IMA.

Section 203.303(b)

The Illinois Steel Group recommends that Section 203.303(b) be amended to clear up an inconsistency within that section. The Steel Group points out that Section 203.303(b)(2) directly conflicts with subsection (b)(3) and (b)(4). (PC 6 at 16.) Subsection (b)(2) could be construed for any source shutdown whether past or present. Subsection (b)(3) is directed towards future shutdowns and (b)(4) toward past shutdowns. (PC 6 at 17.) Therefore, the Steel Group recommends that Section 203.303(b) be amended to clear up the inconsistency as follows:

b) The emission offsets provided:

1) Must be of the same pollutant and further be of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase from a particular change;

2) Must, ~~in the case of a shutdown, have occurred since April 24, 1979 or the date the area is designated by the USEPAUnited States Environmental Protection Agency (USEPA) as a nonattainment area for the pollutant, whichever is more recent, and the shutdown source is being replaced by a similar new source; and must,~~ in the case of a fuel combustion source, be based on the type of fuel being burned at the time the permit application is filed, and, if offset is to be produced by a future switch to a cleaner fuel, be accompanied by evidence that long-term supplies of the clean fuel are available and a commitment to a specified alternative control measure which would achieve the same degree of emission reduction if return of the dirtier fuel is proposed;

~~3) Must, in the case of a shutdown of a source or permanent curtailment of production or operating hours occurring on or after the date a permit application is filed for a new or modified source, have been made known to the affected work force;~~

~~4~~ 3) Must, in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated a nonattainment area for the pollutant, whichever is more recent, and, until the USEPA has approved the attainment demonstration and state trading or marketing rules for the relevant pollutant, the proposed new or modified source must be a replacement for the shutdown or curtailment;

~~5~~ 4) Must be federally enforceable by permit;

~~6~~ 5) Must not have been previously relied on, as demonstrated by the Agency, in issuing any permit pursuant to 35 Ill. Adm. Code 201.142 or 201.143 or this Part, or for demonstrating attainment or reasonable further progress.

The Agency states that it has no objection to the amendment

proposed by the Steel Group. (PC 10 at 10.) The city of Chicago also indicated that it "supports any modifications to the language in the current proposal that may be necessary in order to comport with the original intent and to avoid any inconsistencies that may exist with other subparts of this section". (PC 5 at 2.) The Board agrees that the language proposed by the Steel Group will help to make the intent of the rule clear. Therefore the Board will adopt the amendment.

Section 203.207

Pennzoil Company raises a concern regarding the major modification de minimis criteria of 25 tons per year or more of VOCs and NO_x. (PC 2 at 5.) Pennzoil maintains that the phrase "an increase in emissions of 25 tons per year" in Section 203.207(d) should include the word "net" before emissions. Pennzoil believes that such a change is consistent with the Clean Air Act and reflects the intent of the proposal. (PC 2 at 5.)

The Steel Group echoes the concern initially brought by Pennzoil and argues that an amendment to Section 203.207(d) would more accurately reflect the intent of the Clean Air Act. (PC 6 at 13-14.) The Steel Group states:

> The effect of the rule as IEPA has proposed it, is that a source which could net out of the NSR rules under the de minimis exemption could be brought back into the rules by proposed Section 203.207(d) if it had a greater than 25 tpy increase at any emission unit. (PC 6 at 13.)

The Agency opposes an amendment to Section 203.207(d). (PC 10 at 6-7.) The Agency argues that the intent of the Clean Air Act under these provisions refer to an increase from a single change. (PC 10 at 6.) The Agency states that it is inappropriate and inconsistent to introduce the "net increase" concept of Section 182(c)(6) of the Clean Air Act into this section. (PC 10 at 6.)

The Board finds that the record lacks sufficient information for the Board to amend Section 203.207(d).

Other Comments

Pennzoil suggested that the definition in Section 203.112(should be revised to include "installation" in order to be completely consistent with USEPA's definition. (PC 2 at 2.) I addition, Pennzoil suggested that the listing of sources in Section 203.206(a) should be reorganized so that the listings

in a more logical order. (PC 2 at 4.)

The Agency indicated that it did not concur with the changes suggested by Pennzoil. Specifically, the Agency indicated that a change was not necessary to Section 203.112(a) given the agreed upon change Section 203.206(a). (PC 10 at 5.) The Agency also stated that the order of Section 203.206(a) did not create an ambiguity. (PC 10 at 5.)

The Society of Plastics Industry (SPI) suggested that "non-volatile compounds also be exempted from the VOC definition". (PC 3 at 2.) The Agency indicated that it had specifically included the definition promulgated by USEPA in 1992 and that no further change was necessary. (PC 10 at 7.)

Stepan and CPC also expressed a concern regarding statements made at hearing by Mr. Romaine on the issue of "negligible" increases in emissions. (PC 8 at 6; Exh. 9 at 12; Exh. 11 at 4.) Stepan and CPC are requesting written guidance from the Agency on how it will interpret "negligible" increases. The Agency indicated in testimony that such written guidance would be forthcoming.

The Chicago Lung Association and Sierra Club also suggested that the Agency and the Board amend the rules to include pollution prevention. Mr. Burke testified that this was not federally required at this time. (Tr. at 203.) The Board does not believe that a proceeding brought under Section 28.5 of the Act is the proper place to address this issue.

JCAR & SOS

The Board made several nonsubstantive changes in response to comments from JCAR and the Administrative Code Unit of the Secretary of State's office. These changes are reflected in the Board's final order.

CONCLUSION

This proposal is necessary to insure USEPA approval of a state implementation plan under the Clean Air Act Amendments of 1990. The Agency's proposal includes economic information, technical review and indications that the proposal is approvable. The participants in this proceeding all indicated general agreement and support of the proposal. The Board finds that the record supports proceeding to final notice with the proposal as amended in this opinion. The Board hereby adopts this proposal for final notice.

ORDER

The Board directs the Clerk to cause the filing of the following proposal for second notice with the Joint Committee on Administrative Rules:

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

PART 203
MAJOR STATIONARY SOURCES CONSTRUCTION AND MODIFICATION

SUBPART A: GENERAL PROVISIONS

Section
203.101 Definitions
203.103 Actual Construction
203.104 Actual Emissions
203.107 Allowable Emissions
203.110 Available Growth Margin
203.112 Building, Structure and Facility
203.113 Commence
203.116 Construction
203.117 Dispersion Enhancement Techniques
203.119 Emission Baseline
203.12~~2~~1 Emission Offset
203.12~~3~~2 Emissions Unit
203.123 Federally Enforceable
203.124 Fugitive Emissions
203.125 Installation
203.126 ~~LAER~~Lowest Achievable Emission Rate
203.127 Nonattainment Area
203.128 Potential to Emit
203.131 Reasonable Further Progress
203.134 Secondary Emissions
203.136 Stationary Source
203.145 Volatile Organic ~~Compound~~Material
203.150 Public Participation
203.155 Severability (Repealed)

SUBPART B: MAJOR STATIONARY ~~EMISSIONS~~ SOURCES IN NONATTAINMENT AREAS

Section
203.201 Prohibition
203.202 Coordination with Permit Requirement and Application Pursuant to 35 Ill. Adm. Code 201
203.203 Construction Permit Requirement and Application
203.204 Duration of Construction Permit (Repealed)
203.205 Effect of Permits
203.206 Major Stationary Source

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS

SUBPART F: OPERATION OF A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION

SUBPART G: GENERAL MAINTENANCE OF EMISSION OFFSETS

SUBPART H: OFFSETS FOR EMISSION INCREASES FROM ROCKET ENGINES AND MOTOR FIRING

AUTHORITY: Implementing Section 9.1 and 10 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 1009.1, 1010 and 1027) [415 ILCS 5/9.1, 10 and 27].

SOURCE: Adopted and codified at 7 Ill. Reg. 9344, effective July 22, 1983; codified at 7 Ill. Reg. 13588; amended in R85-20 at 12 Ill. Reg. 6118, effective March 22, 1988; amended in R91-24 at 16 Ill. Reg. 13551, effective August 24, 1992; amended in _____ at __ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 203.101 Definitions

Unless ~~a different meaning of the term is clear from its context~~ otherwise specified within this Part, the definitions of the terms used in~~for~~ this Part shall be the same as those used in the Pollution Control Board (Board) Rules and Regulations 35 Ill. Adm. Code 201 and 211.

(Source: Amended at 17 Ill. Reg. _____, effective _____.)

Section 203.107 Allowable Emissions

a) "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable permit conditions or other such federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1) Any applicable standards adopted by the United States Environmental Protection Agency (USEPA) pursuant to Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7401, et seq.) and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act (Act) (Ill. Rev. Stat. ~~1985~~1991, ch. 111 1/2, pars. 1001 et seq.) [415 ILCS 5/1 et seq.];

2) The applicable emission standards or limitations contained in this Chapter and approved by ~~the United States Environmental Protection Agency (~~USEPA~~)~~ pursuant to Section 110(a)(2) or 110 (a)(3) of the Clean Air Act, including those standards or limitations with a future compliance date and any other emission standard or limitation enforceable under the Environmental Protection Act or by the USEPA under Section 113 of the Clean Air Act; or

3) The emissions rate specified as ~~an~~ a federally enforceable permit condition including those emissions rates with a future compliance date.

b) The allowable emissions may be based on ~~an~~ a federally enforceable permit condition limiting material or fuel throughput.

c) If a source is not subject to an emission standard described in subsection (a) above and is not subject to a permit condition described in subsection (b) above, the allowable emissions shall be the source's potential to emit.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.110 Available Growth Margin

"Available ~~G~~growth ~~M~~margin" means the portion which remains of any emission allowance for new or modified major stationary sources expressly identified in the attainment demonstration approved by the United States~~U.S.~~ Environmental Protection Agency ~~(USEPA)~~ under Section 172(~~b~~c)(~~5~~4) of the Clean Air Act (42 U.S.C. 7502(~~b~~c)(~~5~~4)) for a particular pollutant and area in a zone (within a nonattainment area) to which economic development should be targeted, in accordance with Section 173(a)(1)(B) of the Clean Air Act (42 U.S.C. 7503(a)(1)(B)).

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.112 Building, Structure and Facility

a) The terms "building", "structure", and "facility" include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively) incorporated by reference in 35 Ill. Adm. Code 720.111.

b) The terms "building", "structure", and "facility" shall also include:

1) the transfer of materials, including but not limited to grain, gasoline, petroleum liquids, coal, fertilizer, crushed stone and ore, from vessels, motor vehicles or other conveyances, irrespective of ownership or industrial grouping, to or from a building, structure, or facility as defined in subsection (a) above, and

2) activities at or adjacent to such building, structure or facility which are associated with such transfer, including but not limited to ~~idling of propulsion engines,~~ the operation of engines to provide heat, refrigeration or lighting, operating of auxiliary engines for pumps or cranes, and transfer of materials from hold to hold or tank to tank during onloading or offloading operations

except those activities causing emissions resulting directly from internal combustion engines from transportation purposes or from a non road engine or non road vehicle as defined in Section 216 of the Clean Air Act (42 U.S.C. 7401 et seq.).

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.12~~2~~1 Emission Offset

"Emission offset" means a creditable emission reduction used to compensate for the increase in emissions resulting from a new major source or a major modification in accordance with Sections 203.302 and 203.303 of this Part.

(Source: Section 203.121 renumbered from Section 203.122 and amended at 17 Ill. Reg. _____, effective _____)

Section 203.12~~3~~2 Emissions Unit

"Emissions ~~U~~unit" means any part of a stationary source which emits or has the potential to emit any air pollutant subject to regulation under the Act or this Chapter or by the United States Environmental Protection Agency ~~USEPA~~ under the Clean Air Act (42 U.S.C. 7401~~, the Act or~~ et seq.).

(Source: Former Section 203.122 renumbered to Section 203.121, Section 203.122 renumbered from Section 203.123, and Section amended at 17 Ill. Reg. _____, effective _____)

Section 203.123 Federally Enforceable

"Federally enforceable" means enforceable by the United States Environmental Protection Agency.

(Source: Former Section 203.123 renumbered to Section 203.122, new Section 203.123 added at 17 Ill. Reg. _____, effective _____ _____)

Section 203.126 ~~LAER~~Lowest Achievable Emission Rate

"LAER" is an ~~abbreviation~~acronym for lowest achievable emission rate.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.128 Potential to Emit

"Potential to ~~E~~emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity

of the 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.145 Volatile Organic ~~Compound~~Material

~~"Volatile Organic Compound" means "volatile organic material", as that term is defined at 35 Ill. Adm. Code 211.122.~~

"Volatile organic material" (VOM) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane), 1,1,1-trichlorethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); cloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,12-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

1) Cyclic, branched, or linear, completely fluorinated alkanes;

2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon

and fluorine.

b) For purposes of determining VOM emissions and compliance with emissions limits, VOM will be measured by the test methods in the approved implementation plan or 40 CFR Part 60, Appendix A, incorporated by reference at Sections 215.105, 218.112, and 219.112, as applicable or by source-specific test methods which have been established pursuant to a permit issued pursuant to a program approved or promulgated under Title V of the Clean Air Act or under 40 CFR Part 51, Subpart I or Appendix S, incorporated by reference at Sections 218.112 and 219.112 or under 40 CFR Part 52.21, incorporated by reference at Sections 218.112 and 219.112, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOM if the amount of such compounds is accurately quantified, and such exclusions are approved by the Agency.

c) As a precondition to excluding these negligibly-reactive compounds as VOM or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly-reactive compounds in the source's emissions.

d) The United States Environmental Protection Agency shall not be bound by any State determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the provisions of paragraph (2).

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.150 Public Participation

Prior to the initial issuance or revision of a permit pursuant to Subpart B, the Agency shall provide, at a minimum, notice of the proposed issuance of a permit, ~~and~~ a comment period, and opportunity for public hearing pursuant to the Agency public participation procedures ~~found at~~ set forth at 35 Ill. Adm. Code ~~166~~ 252.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

SUBPART B: MAJOR STATIONARY ~~EMISSIONS~~ SOURCES IN NONATTAINMENT AREAS

Section 203.201 Prohibition

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit volatile organic materials or nitrogen oxides. Revisions to this Part which were adopted to implement the Clean Air Act Amendments of 1990 shall not apply to any new major stationary source or major modification for which a permit application was submitted by June 30, 1992, for PM-10, May 15, 1992, for SO_2, or by November 15, 1992, for nitrogen oxides and volatile organic material emissions for sources located in all ozone nonattainment areas.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.203 Construction Permit Requirement and Application

a) A construction permit is required prior to actual construction of a major new source or major modification.

b) Applications for construction permits required under this Section shall contain sufficient information to demonstrate compliance with 35 Ill. Adm. Code 201 and the requirements of this ~~Subchapter~~ Part including, but not limited to, Subpart C.

c) The permit shall include conditions specifying the manner in which the requirements of Subparts B and C of this Part are satisfied.

d) No permittee shall violate any condition contained in a construction permit issued for a new major stationary source or major modification which is subject to this Part.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.206 Major Stationary Source

a) For purposes of this Part, the term "major stationary source" shall exclusively mean "building, structure and facility," as those terms are defined in Section 203.113 of this Part.

~~a~~b) The following constitute a major stationary source:

1) ~~Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant for which pollutant the area is a nonattainment area.~~For an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit volatile organic material in an amount equal to or greater than the following:

A) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone;

B) 50 tons per year in an area classified as serious nonattainment for ozone;

C) 25 tons per year in an area classified as severe nonattainment for ozone; and

D) 10 tons per year in an area classified as extreme nonattainment for ozone.

2) ~~Any physical change that would occur at a stationary source not qualifying under paragraph 1 as a major stationary source, if the change would constitute a major stationary source by itself.~~ For an area designated as nonattainment for nitrogen dioxide, a major stationary source is a stationary source which emits or has the potential to emit 100 tons per year or more of nitrogen dioxide.

3) For an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit nitrogen oxides in an amount equal to or greater than the following, unless United States Environmental Protection Agency (USEPA) has made a finding under Sections 110 and 182(f) of the Clean Air Act that controlling of emissions of nitrogen oxides from such sources shall not be required:

A) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone,

B) 50 tons per year in an area classified as serious nonattainment for ozone,

C) 25 tons per year in an area classified as severe nonattainment for ozone, and

D) 10 tons per year in an area classified as extreme nonattainment for ozone.

4) For an area designated nonattainment for PM-10, a major stationary source is a stationary source which emits or has the potential to emit:

A) 100 tons per year or more of PM-10 in an area classified as moderate nonattainment area, or

B) 70 tons per year or more of PM-10 in an area classified as serious nonattainment.

5) For an area designated nonattainment for carbon monoxide, a major stationary source is a stationary source which emits or has the potential to emit:

A) 100 tons per year or more of carbon monoxide in a nonattainment area, except as provided in (B) below,

B) 50 tons per year or more in an area classified as "serious" nonattainment for carbon monoxide where stationary sources significantly contribute to ambient carbon monoxide levels, as determined under rules issued by USEPA, pursuant to the Clean Air Act.

6) For an area designated nonattainment for a pollutant other than ozone, nitrogen dioxide, PM-10 or carbon monoxide, a major stationary source is a stationary source which emits or has the potential to emit 100 tons per year or more of the pollutant.

~~b~~c) ~~A major stationary source that is a major for volatile organic compounds shall be considered major for ozone.~~ Any physical change that occurs at a stationary source which does not qualify under subsection (a) of this Section as a major stationary source will be considered a major stationary source, if the change would constitute a major stationary source by itself.

~~e~~d) The reconstruction of a major stationary source will be treated as the construction of a new major stationary source if the fixed capital cost of new components exceeds approximately half of the fixed capital cost of an entirely new stationary source. Determining whether reconstruction will occur is based on the following:

1) Fixed capital cost shall mean the capital needed to provide all the depreciable components;

2) The fixed capital cost for the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

3) The estimated life of the source after the replacements compared to the life of a comparable entirely new source; and

4) The extent to which the components being replaced cause or contribute to the emissions from the source.

~~d~~e) For purposes of this Part, in areas that are classified as serious, severe, or extreme nonattainment, the fugitive emissions of a stationary source shall be included in determining whether it is a major stationary source. In areas that are not classified as serious, severe or extreme nonattainment, the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

1) Coal cleaning plants (with thermal dryers);

2) Kraft pulp mills;

3) Portland cement plants;

4) Primary zinc smelters;

5) Iron and steel mills;

6) Primary aluminum ore reduction plants;

7) Primary copper smelters;

8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

9) Hydrofluoric, sulfuric, or nitric acid plants;

10) Petroleum refineries;

11) Lime plants;

12) Phosphate rock processing plants;

13) Coke oven batteries;

14) Sulfur recovery plants;

15) Carbon black plants (furnace process);

16) Primary lead smelters;

17) Fuel conversion plants;

18) Sintering plants;

19) Secondary metal production plants;

20) Chemical process plants;

21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million Btu per hour heat input;

22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23) Taconite ore processing plants;

24) Glass fiber processing plants;

25) Charcoal production plants;

26) Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;

27) Any other stationary source categor~~y~~ies ~~which was~~ regulated ~~as of August 7, 1980 by USEPA~~ by a standard promulgated under Section 111 or 112 of the Clean Air Act (42 U.S.C. 7411, 7412), but only with respect to those air pollutants that have been regulated for that category;

28) Any other stationary source category designated by the USEPA by rule.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.207 Major Modification of a Source

a) Except as provided in ~~S~~subsection (c) below, a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area, shall constitute a major modification of a source.

b) Any net emissions increase that is significant for volatile organic ~~compounds~~ material or nitrogen oxides shall be considered significant for ozone.

c) A physical change or change in the method of operation shall not include:

1) Routine maintenance, repair, and replacement which does not constitute reconstruction pursuant to Section 203.206(c).

2) Use of an alternative fuel or raw material by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791, et seq.).

3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act (42 U.S.C. 7425).

4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

5) Use of an alternative fuel or raw material by a stationary source which:

A) Was capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition established after December 21, 1976, pursuant to 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143, or

B) Is approved for use under any permit issued pursuant to this Part or 35 Ill. Adm. Code 201.142 or 201.143.

6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143.

7) Any change in ownership at a stationary source.

d) In areas classified as serious or severe nonattainment for ozone, beginning November 15, 1992, or such later date that an area is classified by the United States Environmental Protection Agency (USEPA) as a serious or severe nonattainment area for ozone, any physical change or change in the method of operation of a major stationary source which results in an increase in emissions of 25 tons per year or more of volatile organic material or nitrogen oxides from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a major modification unless:

1) The emissions and potential to emit emissions of such pollutant, i.e., volatile organic material or nitrogen oxides, are less than 100 tons per year, and

2) The owner or operator of the source elects to offset the increase by a greater reduction in emissions of such pollutant, i.e., volatile organic material or nitrogen oxides, from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

e) In areas classified as extreme nonattainment for ozone, beginning on the date that an area is classified by USEPA as an extreme nonattainment area for ozone, any physical change in or change in the method of operation of a major stationary source which results in any increase in emissions of volatile organic material or nitrogen oxides from a discrete operation, unit, or other pollutant emitting activity shall be considered a major modification.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.208 Net Emission Determination

A net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. The following steps determine whether the increase or decrease in emissions is available.

a) Except for increases or decreases in volatile organic material and nitrogen oxides emissions in serious and

severe ozone nonattainment areas which are addressed in Section 203.209(b), an increase or decrease in actual emissions is contemporaneous only if it occurs between the date that an increase from a particular change occurs and the date five years before a timely and complete application is submitted for the particular change. It must also occur after either April 24, 1979, or the date the area is designated by the ~~U.S.~~United States Environmental Protection Agency ~~(USEPA)~~ as a nonattainment area for the pollutant, whichever is more recent~~;~~.

b) An increase or decrease in actual emissions is creditable:

1) Only if there is not in effect for the source at the time the particular change occurs, a permit which relied on the same increase or decrease in actual emissions; and

2) Only to the extent the new and old levels differ.

c) A decrease in actual emissions is creditable to the extent that:

1) It is federally enforceable at and after the time that actual construction on the particular change begins;

2) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

3) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; and

4) It is demonstrated by the Agency not to have been previously relied on in issuing any permit pursuant to this part or 35 Ill. Adm. Code 201.142 or 201.143 or for demonstrating attainment or reasonable further progress in the nonattainment area which the particular change will impact.

d) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a shakedown period not to exceed 180 days.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.209 Significant Emissions Determination

a) A net emission increase in the pollutant emitted is significant if the rate of emission is equal to or in excess of the following:

1~~a~~) Carbon monoxide: 100 tons per year (tpy)

2~~b~~) Nitrogen oxides: 40 tpy for a nonattainment area for nitrogen dioxide and 40 tpy for an ozone nonattainment area, except as provided in subsection (b) of this Section

3~~c~~) Sulfur dioxide: 40 tpy

4~~d~~) Particulate matter measured as PM-10: 25 tpy

5e) Ozone: 40 tpy of volatile organic ~~compounds~~ material, except as provided in subsection (b) of this Section

6~~f~~) Lead: 0.6 tpy

b) For areas classified as serious or severe nonattainment for ozone, an increase in emissions of volatile organic material or nitrogen oxides shall be considered significant if the net emissions increase of such air pollutant from a stationary source located within such area exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. This provision shall become effective beginning November 15, 1992, or such later date that an area is classified as a serious or severe nonattainment area for ozone.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS

Section 203.301 Lowest Achievable Emission Rate

a) For any source, lowest achievable emission rate (LAER) will be the more stringent rate of emissions based on the following:

1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source,

unless it is demonstrated that such limitation is not achievable; or

2) The most stringent emission limitation which is achieved in practice by such a class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard adopted by United States Environmental Protection Agency (USEPA) pursuant to Section 111 of the Clean Air Act and made applicable in Illinois pursuant to Section 9.1 of the Act.

b) The owner or operator of a new major stationary source shall demonstrate that the control equipment and process measures applied to the source will produce LAER.

c) The owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to each emissions unit at which a net increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation.

d) The owner or operator shall provide a detailed showing that the proposed emission limitations constitute LAER. Such demonstration shall include:

1) A description of the manner in which the proposed emission limitation was selected, including a detailed listing of information resources,

2) Alternative emission limitations, and

3) Such other reasonable information as the Agency may request as necessary to determine whether the proposed emission limitation is LAER.

e) In areas classified as serious or severe nonattainment for ozone, for modifications which are major pursuant to the applicability provisions of Section 203.207(d) for volatile organic material and nitrogen oxide emissions, LAER shall apply except as provided as follows:

1) In the case of a stationary source which does not emit or have the potential to emit 100 tons per year or more of volatile organic material or nitrogen oxides, a requirement for Best Available Control Technology (BACT) as defined in Section 169 of the Clean Air Act (42 U.S.C. 7401 et seq.) substitutes for LAER. BACT shall be determined in accordance with policies and procedures published by the USEPA.

2) In the case of a stationary source which emits or has the potential to emit 100 tons per year or more of volatile organic material or nitrogen oxides, the requirements for LAER shall not apply if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of such pollutant from other operations, units or activities within the source at an internal offset ratio of at least 1.3 to 1.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.302 Maintenance of Reasonable Further Progress and Emission Offsets

a) The owner or operator of a new major source or major modification shall provide emission offsets equal to or greater than the allowable emissions from the source or the net increase in emissions from the modification sufficient to allow the Agency to determine that the source or modification will not interfere with reasonable further progress as set forth in Section 173 of the Clean Air Act (42 U.S.C. 7401 et seq.).

1) For new major sources or major modifications in ozone nonattainment areas the ratio of total emission reductions provided by emission offsets for volatile organic material or nitrogen oxides to total increased emissions of such contaminants shall be at least as follows:

A) 1.1 to 1 in areas classified as marginal;

B) 1.15 to 1 in areas classified as moderate;

C) 1.2 to 1 in areas classified as serious;

D) 1.3 to 1 in areas classified as severe; and

E) 1.5 to 1 in areas classified as extreme.

2) The offset requirement provided in subsection (1) above shall not be applicable in extreme areas to a modification of an existing source:

A) if such modification consists of installation of equipment required to comply with the implementation plan or the Clean Air Act; or

B) if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of such pollutant from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

b) The Agency shall allow the use of all or some portion of the available growth margin to satisfy subsection (a) above if the owner or operator can present evidence that the possible sources of emission offsets were investigated, ~~and~~ none were available at that time and the new or modified major stationary source is located in a zone (within the nonattainment area) identified by United States Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.303 Baseline and Emission Offsets Determination

a) An emission offset must be obtained from a source in operation prior to the permit application for the new or modified source. Emission offsets must be effective prior to start-up of the new or modified source.

b) The emission offsets provided:

1) Must be of the same pollutant and further be of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase from a particular change;

2) Must, ~~in the case of a shutdown, have occurred since April 24, 1979 or the date the area is designated by the USEPA as a nonattainment area for the pollutant, whichever is more recent, and the shutdown source is being replaced by a similar new source; and must,~~ in the case of a fuel combustion source, be based on the type of fuel being burned at the time the permit application is

filed, and, if offset is to be produced by a future switch to a cleaner fuel, be accompanied by evidence that long-term supplies of the clean fuel are available and a commitment to a specified alternative control measure which would achieve the same degree of emission reduction if return of the dirtier fuel is proposed;

~~3) Must, in the case of a shutdown of a source or permanent curtailment of production or operating hours occurring on or after the date a permit application is filed for a new or modified source, have been made known to the affected work force;~~

~~4~~3) Must, in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated a nonattainment area for the pollutant, whichever is more recent, and, until the United States Environmental Protection Agency has approved the attainment demonstration and state trading or marketing rules for the relevant pollutant, the proposed new or modified source must be a replacement for the shutdown or curtailment;

~~5~~4) Must be federally enforceable by permit;

~~6~~5) Must not have been previously relied on, as demonstrated by the Agency, in issuing any permit pursuant to 35 Ill. Adm. Code 201.142 or 201.143 or this Part, or for demonstrating attainment or reasonable further progress.

c) ~~The baselines for determining emission offsets are as follows:~~

~~1)~~ ~~Except as provided in subsection (2), t~~The baseline for determining the extent to which emission reductions are creditable as offsets shall be the actual emissions of the source from which the offset is to be obtained, to the extent they are within any applicable emissions limitations of this Chapter or the Act or any applicable standards adopted by USEPA pursuant to Section 111 and 112 of the Clean Air Act, and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act (Ill. Rev. Stat. 1991 ch. 111 1/2, par. 1009.1) [415 ILCS 5/9.1].

~~2) If the demonstration of reasonable further progress and attainment of ambient air quality~~

~~standards approved by USEPA pursuant to Section 110(a)(2) or 110(a)(3) of the Clean Air Act is based on the applicable emission limitations of this Chapter or the Act or any applicable standards adopted by USEPA pursuant to Section 111 and 112 of the Clean Air Act and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act for sources within an area, and the source from which the offset is to be obtained is subject to such limitations, the baseline for offsets shall be the lesser of such limitation or the potential to emit of the source.~~

d) The location of sources providing the emission ~~offsets:~~reductions to fulfill the offset requirements of this Section:

1) ~~Must, for particulate matter, sulfur dioxide and carbon monoxide, be such that, relative to the site of the proposed new or modified source, the location of the offset, together with its effective stack height, ensures a positive net air quality benefit. This shall be demonstrated by atmospheric simulation modeling, unless the sources providing the offset are on the same premises or in the immediate vicinity of the new or modified source and the pollutants disperse from substantially the same effective stack height. In determining effective stack height, credit shall not be given for dispersion enhancement techniques. The owner or operator of a proposed new or modified source shall perform the analysis to demonstrate the acceptability of the location of an offset, if the Agency declines to make such analysis. Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practices, as determined pursuant to 40 CFR 51.100 (1987) (no future amendments or editions are included), the creditable stack height shall be used.~~ Must be achieved in the same nonattainment area as the increase being offset, except as provided as follows:

A) An owner or operator may obtain the necessary emission reductions from another nonattainment area where such other area has an equal or higher nonattainment classification than the area in which the source is located, and

B) The emission reductions from such other area

contribute to a violation of the national ambient air quality standard in the nonattainment area in which the new or modified source is located.

2) ~~Must, for nitrogen oxides, be in the general vicinity of the proposed new or modified source.~~Must, for particulate matter, sulfur dioxide and carbon monoxide, be such that, relative to the site of the proposed new or modified source, the location of the offset, together with its effective stack height, ensures a positive net air quality benefit. This shall be demonstrated by atmospheric simulation modeling, unless the sources providing the offset are on the same premises or in the immediate vicinity of the new or modified source and the pollutants disperse from substantially the same effective stack height. In determining effective stack height, credit shall not be given for dispersion enhancement techniques. The owner or operator of a proposed new or modified source shall perform the analysis to demonstrate the acceptability of the location of an offset, if the Agency declines to make such analysis. Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practices, as determined pursuant to 40 CFR 51.100 (1987) (no future amendments or editions are included), the creditable stack height shall be used.

~~3) Must, for volatile organic compounds, be in the broad vicinity of the proposed new or modified source; that is, offsets must be obtained from within the Air Quality Control Region of the new or modified source, or from other areas which may be contributing to the ozone problem at the site of the new or modified source.~~

e) Replacement of one volatile organic ~~compound~~material with another of lesser reactivity does not constitute an emission reduction.

f) Emission reductions otherwise required by the Clean Air Act (42 U.S.C. 7401 et seq.) shall not be creditable for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by the Clean Air Act shall be creditable as emission reductions for such purposes if such emissions

reductions meet the requirements of this Subpart.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

Section 203.306 Analysis of Alternatives

~~For emission of volatile organic compounds or carbon monoxide,~~ ~~t~~The owner or operator shall demonstrate that benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification, based upon an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source.

(Source: Amended at 17 Ill. Reg. _____, effective _____)

SUBPART H: OFFSETS FOR EMISSION INCREASES FROM ROCKET ENGINES AND MOTOR FIRING

Section 203.801 Offsetting by Alternative or Innovative Means

A source may offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

a) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990;

b) The source demonstrates to the satisfaction of the Agency that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

c) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security; and

d) The source will comply with an alternative measure, imposed by the Agency or Board, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(Source: Added at 17 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 22nd day of April, 1993, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board