

ILLINOIS POLLUTION CONTROL BOARD
June 22, 2006

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R06-27
201 (NEW SECTION 201.501 PSD) (Rulemaking - Air)
CONSTRUCTION PERMITS))

Proposed Rule. First Notice.

ORDER OF THE BOARD (by T.E. Johnson):

On June 20, 2006, the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking pursuant to Sections 27 and 28 of Environmental Protection Act (Act) (415 ILCS 5/9.8, 27 and 28 (2004)). The Agency proposes the addition of a section to the air regulations that would eliminate an automatic 30-day stay of the effectiveness of prevention of significant deterioration of air quality (PSD) permits. Concurrent with the proposal, the Agency filed a motion for expedited review and for a special meeting.

The Board is entering this order at a special meeting scheduled pursuant to Section 5(a) of the Act (415 ILCS 5/5(a) (2004)) and held June 22, 2006, after due notice was given under the Open Meetings Act. *See* 5 ILCS 120/2.02(a) (2004). For the reasons more fully explained below, the Board accepts the Agency's proposal for hearing and grants the motion for expedited consideration.

PROPOSAL AND BACKGROUND

In the statement of reasons, the Agency asserts that the PSD provisions of the Clean Air Act, 42 U.S.C. §7401 *et seq.*, were enacted in 1977 to regulate new major stationary sources and major modifications to existing sources. Stat. at 1. The PSD program applies in areas in the country that are deemed to be attainment or unclassifiable with respect to national ambient air quality standards (NAAQS). *Id.* The Agency administers the PSD program through a delegation agreement with the United States Environmental Protection Agency (USEPA). *Id.* PSD involves a preconstruction permitting process in which an applicant for a major new source or modification must submit a permit application prior to commencing construction that demonstrates that emissions from the proposed facility will not cause or contribute to an exceedance of any applicable NAAQS or air quality increment, and that the proposed facility will employ the Best Available Control Technology for all pollutants for which the source is major. *Id.*

The Agency asserts that an appeal of the PSD permit issued in Illinois is subject to the procedural requirements of the federal regulations at 40 C.F.R. Part 124, which provide that final permits decisions are automatically stayed for 30 days after issuance. Stat. at 2. The Agency notes that in a number of other states, USEPA has approved state programs that do not provide for an automatic 30-day stay. *Id.*

The Agency is proposing to eliminate the automatic 30-day stay, thereby “leveling the playing field” in Illinois while not causing any adverse impact to the environment. Stat. at 2. The proposal would add a new Subpart M to Part 201, the Board’s general permit provisions. New Section 201.501 in effect provides that PSD permits are effective upon issuance a) unless the permit states otherwise by its terms, or b) an appeal has been filed and a stay of the permit has been granted. Stat. at 4.

The Agency asserts that this is the sole purpose and effect of the regulatory proposal. Stat. at 4. The Agency asserts that if adopted, the proposal will be subject to approval by USEPA, and cannot be relied upon for PSD permits until USEPA has approved it as part of Illinois’ State Implementation Plan. *Id.*

MOTION FOR EXPEDITED CONSIDERATION AND EXPEDITED REVIEW

In the motion, the Agency asserts that in a number of states other than Illinois, the USEPA has approved state programs that do not provide for an automatic 30-day stay after issuance of a final PSD permit. Mot. at 1. The Agency argues that increasing interstate competition for economic development places Illinois at a disadvantage in competing for new projects because of the automatic stay disparity between its PSD delegated program and surrounding states’ PSD approved programs. *Id.*

The Agency asserts that this regulation needs to be adopted in an expedited manner. Mot. at 2. In addition, the Agency requests that the Board hold a special meeting to accept this rulemaking proposal and proceed to first notice under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* 2004) (APA) without reaching a decision on the merits of the proposal. *Id.* The Agency also requests that the requisite public hearing be scheduled as soon as possible in accordance with Section 28(a) of the Act. *Id.* The motion is accompanied by the required affirmation attesting that the facts cited in the motion are true. Mot. at 4.

DISCUSSION

Motions for expedited review are addressed at Section 101.512 of the Board’s regulations. Pursuant to that section, in deciding such a motion the Board must consider all statutory requirements and whether material prejudice will result from the granting of the motion. *See* 35 Ill. Adm. Code 101.512. Further, the Board will grant a motion for expedited review consistent with available resources and decision deadlines. *Id.* In addition, unless undue delay or material prejudice would result, the Board will not grant any motion before expiration of the 14-day response period except in deadline driven proceedings where no waiver has been filed. *See* 35 Ill. Adm. Code 101.500(d).

The Board finds that in this instance undue delay and material prejudice would result if the Agency’s motion were not addressed prior to the expiration of the 14-day response period. The Board will therefore consider the motion at this time. The Board is persuaded by the Agency’s statement that the proposed rulemaking will serve to eliminate any competitive disadvantage for Illinois caused by the automatic stay disparity between its PSD delegated

program and surrounding states' PSD approved programs. The Board finds that the Agency has demonstrated that expedited review is necessary under the considerations outlined in 35 Ill. Adm. Code 101.512. Accordingly, the Board grants the Agency's motion to expedite, and is considering this proposal at a special Board Meeting scheduled today solely to address this proposal.

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.208 and 102.210. The proposal is accepted for hearing. In order to expedite the rulemaking process, the Board is today sending this proposal to first notice under the APA without commenting on the merits of the proposal. The Board has, however, made one non-substantive changes to the proposal to conform it to codification requirements.

In its statement of reasons, the Agency did not provide an analysis of technical feasibility and economic reasonableness, stating that such an analysis is not appropriate in this case because the proposal does not impose new emission limitations or require new control devices on affected sources. However, the Act requires the Board to take into account several factors in promulgating regulations, specifically including the technical feasibility and economic reasonableness of complying with the amended regulations. *See, e.g.*, 415 ILCS 5/27(a) (2004); Granite City v. PCB, 155 Ill. 2d 149; 613 N.E.2d 719 (1993); Commonwealth Edison v. PCB, 62 Ill. 2d 494; 343 N.E.2d 459 (1976).

The Agency is directed to provide an analysis of the technical feasibility and economic reasonableness of this proposal. In addition, the Agency is directed to provide a summary of the procedural aspects of the PSD program, including all relevant delegations and whether the Agency has previously submitted a request to USEPA for approval of a State Implementation Plan (SIP) for PSD.

Finally, the Agency has requested that the "requisite public hearing be scheduled as soon as possible in accordance with Section 28(a) of the Act." Mot. at 2. As the Agency is proposing a state-wide regulation, hearings must be held in at least two areas of the state. 415 ILCS 5/28(b) (2004), and at least 30 days newspaper notice of these hearings must be published in the State's nine air regions to meet Clean Air Act notice requirements for rules that will be part of a SIP submittal to USEPA. 35 Ill. Adm. Code 102.416. Some of these air regions do not have daily newspapers of general circulation, so that publication must occur in weekly newspapers. As a practical matter, then, the mechanics of causing notice publication dictate that the first hearing will be held some 40-45 days from now.

In addition, the Board must follow the APA timeframes in its general rulemaking process. The Board must accept public comment for at least 45 days following publication of today's first-notice proposal in the *Illinois Register*; the earliest possible date for such publication is July 7. After completion of the hearings and Board adoption of a second-notice proposal, the Board must submit a second notice proposal to the Joint Committee on Administrative Review (JCAR), which has 45 days to review the proposal. Only then can the Board proceed to adopt a rule. *See* 35 Ill. Adm. Code 102.604, 102.606.

Consistent with the notice constraints and the fixed APA time periods, the Board will proceed with this rulemaking in an expedited manner. The Board directs the hearing officer to schedule public hearings as expeditiously as possible.

CONCLUSION

The Board today adopts the following first-notice order under the APA (5 ILCS 100/5-5 *et seq.* (2004)) without commenting on the merits of the proposal. The proposal will be published in the *Illinois Register* whereupon a 45-day comment period will begin. The Board asks that parties interested in commenting on this proposal address any written comments to the Clerk of the Board. At least two hearings will be held. Persons interested in information about the scheduling and conduct of the hearings should contact John C. Knittle, the hearing officer assigned to this matter.

Copies of this opinion, the proposed rules, and any hearing officer order may be viewed and downloaded from the Board's Web site at <http://www.ipcb.state.il.us/>. Copies may also be requested in writing from the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601 or via telephone at 312.814.3620.

ORDER

The Board directs the Clerk to cause publication of the following rule in the *Illinois Register* for first notice under the Administrative Procedure Act (5 ILCS 100/5-5 *et seq.* (2004)):

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

PART 201
PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section	
201.101	Other Definitions
201.102	Definitions
201.103	Abbreviations and Units
201.104	Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section	
201.121	Existence of Permit No Defense
201.122	Proof of Emissions

201.123	Burden of Persuasion Regarding Exceptions
201.124	Annual Report
201.125	Severability
201.126	Repealer

SUBPART C: PROHIBITIONS

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

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

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

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

Section

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

SUBPART F: CAAPP PERMITS

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

SUBPART G: EXPERIMENTAL PERMITS (Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

- Section
- 201.241 Contents of Compliance Program
- 201.242 Contents of Project Completion Schedule
- 201.243 Standards for Approval
- 201.244 Revisions
- 201.245 Effects of Approval
- 201.246 Records and Reports
- 201.247 Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

- Section
- 201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup
- 201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup
- 201.263 Records and Reports
- 201.264 Continued Operation or Startup Prior to Granting of Operating Permit
- 201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

SUBPART J: MONITORING AND TESTING

- Section
- 201.281 Permit Monitoring Equipment Requirements
- 201.282 Testing

201.283 Records and Reports

SUBPART K: RECORDS AND REPORTS

Section

201.301 Records
201.302 Reports

SUBPART L: CONTINUOUS MONITORING

Section

201.401 Continuous Monitoring Requirements
201.402 Alternative Monitoring
201.403 Exempt Sources
201.404 Monitoring System Malfunction
201.405 Excess Emission Reporting
201.406 Data Reduction
201.407 Retention of Information
201.408 Compliance Schedules

**SUBPART M: PREVENTION OF SIGNIFICANT DETERIORATION (PSD)
CONSTRUCTION PERMITS**

Section

201.501 PSD Construction Permits

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

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

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

Reg. 4901, effective March 3, 2006; amended in R06-27 at 30 Ill. Reg. ____, effective _____;

SUBPART M: PREVENTION OF SIGNIFICANT DETERIORATION (PSD)
CONSTRUCTION PERMITS

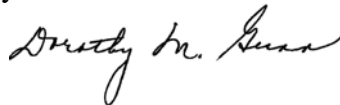
Section 201.501 PSD Construction Permits

- a) This Section relates to any final permit decision by the Agency relating to a Prevention of Significant Deterioration (PSD) construction permit issued pursuant to Sections 9.1 and 39 of the Act implementing Section 165 of the Clean Air Act.
- b) Notwithstanding the provisions of 40 C.F.R. 124.15(b), a final PSD construction permit shall become effective on the date of issuance unless otherwise stated in the final permit. However, any person with standing in accordance with 40 C.F.R 124.19 may seek to file an appeal with the United States Environmental Protection Agency's Environmental Appeals Board and may request a stay of the permit.
- c) This Section applies to permits issued on or after the effective date of the approval of this Subpart as part of Illinois' State Implementation Plan under the Clean Air Act.

(Source: Added at 30 Ill. Reg. ____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 22, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board