

ILLINOIS POLLUTION CONTROL BOARD  
October 7, 1993

IN THE MATTER OF: )  
 )  
AMENDMENTS TO THE NEW ) R93-26  
SOURCE REVIEW RULES ) (Rulemaking)  
35 ILL. ADM. CODE 203 )

Proposed Rule. First Notice.

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

On September 23, 1993, the Illinois Environmental Protection Agency (Agency) filed a "Motion For Expedited Correction and Affidavit". The Agency's motion asks that the Board submit to the Joint Committee on Administrative Rules (JCAR) a request for an expedited correction of 35 Ill. Adm. Code 203, pursuant to Section 5-85 of the Illinois Administrative Procedures Act (APA). (5 ILCS 100/5-85; Mot. at 1.) On October 1, 1993, the Board received a response to the Agency's motion filed by the Illinois Steel Group (Steel Group) opposing the adoption of an expedited correction.

Section 5-85 of the APA allows an agency to request that JCAR issue a certification of correction of an adopted rule to correct: 1) non-substantive errors; 2) omissions or errors which create a discrepancy between adopted rule text and text previously submitted; 3) or any discrepancies between adopted rule text and agreements certified by JCAR.

The Agency explains that it had proposed an amendment to Section 203.209(a)(4) in its November 13, 1992, proposal which was the subject of this docket. The Agency failed to interlineate the "2" and underline the "1" as required by the Administrative Code Style Manual in the existing language referring to tons per year. (Mot. at 1-2.) Thus, the proposed language appeared as "4d) Particulate matter measured as PM-10: 15 tpy". During the January 6, 1993, regulatory matter on this proceeding, attorney Heidi Hanson noted that the "15" in Section 203.209(a)(4) was not properly underlined. (Tr. at 55-56; Mot. at 2.) The Agency, in its comments submitted after hearing, stated that "the '1' on the number 15 (tons per year) should be underlined and a '2' should be added and interlineated". (P.C. 10 at 2; Mot. at 2.) However, the Board's second notice opinion and order indicated the language as "4d) Particulate matter measured as PM-10: 25 tpy".

The Board's final order also reflected the error that occurred at second notice and the language as adopted reads "4) Particulate matter measured as PM-10: 25 tpy". Thus, the adopted rule does not reflect the change as proposed at first notice.

The Agency states in its motion:

The Agency did not become aware of this discrepancy in

the Board's final order and Illinois Register publication until months after the publication date. The Agency informed the Board by telephone of this discrepancy and now files this Motion for Expedited Correction to address the error.

The Steel Group argues that the change requested by the Agency is substantive in nature. The Steel Group further argues that because the error "was perpetuated throughout the rulemaking" the public "never had notice that the IEPA was proposing to lower the significance level". (Steel at 2.) Therefore, the Steel Group asks the Board to deny the Agency's motion.

The Board agrees that an error occurred and that the error must be corrected as quickly as possible since this section of the rules is a part of Illinois' SIP submittal. However, the question before the Board is how best to correct this typographical error. Although, the Board agrees with the Agency that an efficient method to correct this error may be to request expedited correction through JCAR, the Board does not wish to appear to be making substantial regulatory changes through the expedited correction process. Therefore, the Board will open a new rulemaking docket under Section 28.2 of the Act and proceed to hearing on such rulemaking. The hearing can be scheduled to coincide with the upcoming public hearings in R93-24, so that additional costs will be kept to a minimum. The Board will proceed to first notice under the APA with the correction to Section 203.209.

The Agency's motion is denied and the Board sends the Section 203.209 amendments to first notice.

#### ORDER

The Board directs the Clerk to cause the filing of the following proposed rule for First Notice in the Illinois Register:

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  
 203.121 Emission Offset  
 203.122 Emissions Unit  
 203.123 Federally Enforceable  
 203.124 Fugitive Emissions  
 203.125 Installation  
 203.126 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 Material  
 203.150 Public Participation  
 203.155 Severability (Repealed)

SUBPART B: MAJOR STATIONARY 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  
 203.207 Major Modification of a Source  
 203.208 Net Emission Determination  
 203.209 Significant Emissions Determination  
 203.210 Relaxation of a Source-Specific Limitation  
 203.211 Permit Exemption Based on Fugitive Emissions

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY SOURCES IN  
 NONATTAINMENT AREAS

Section  
 203.301 Lowest Achievable Emission Rate  
 203.302 Maintenance of Reasonable Further Progress and Emission  
 Offsets  
 203.303 Baseline and Emission Offsets Determination  
 203.304 Exemptions from Emissions Offset Requirement (Repealed)  
 203.305 Compliance by Existing Sources  
 203.306 Analysis of Alternatives

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

## Section

- 203.601 Lowest Achievable Emission Rate Compliance Requirement
- 203.602 Emission Offset Maintenance Requirement
- 203.603 Ambient Monitoring Requirement (Repealed)

## SUBPART G: GENERAL MAINTENANCE OF EMISSION OFFSETS

## Section

- 203.701 General Maintenance of Emission Offsets

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

## Section

- 203.801 Offsetting by Alternative or Innovative Means

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 R92-21 at 17 Ill. Reg. 6973, effective April 30, 1993; amended in R93-26 at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: MAJOR STATIONARY SOURCES IN  
NONATTAINMENT AREAS

## Section 203.209 Significant Emissions Determination

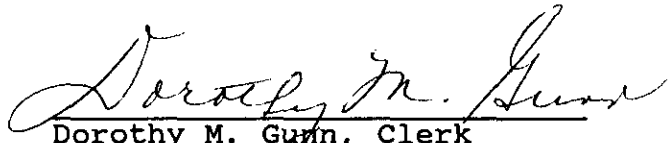
- a) A net emission increase in the pollutant emitted is significant if the rate of emission is equal to or in excess of the following:
  - 1) Carbon monoxide: 100 tons per year (tpy)
  - 2) Nitrogen oxides: 40 tpy for a nonattainment area for nitrogen dioxide and 40 tpy for an ozone nonattainment area, except as provided in subsection (b) of this Section
  - 3) Sulfur dioxide: 40 tpy
  - 4) Particulate matter measured as PM-10: ~~2~~15 tpy
  - 5) Ozone: 40 tpy of volatile organic material, except as provided in subsection (b) of this Section
  - 6) 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 \_\_\_\_\_)

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 7<sup>th</sup> day of October, 1993, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board