

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2018

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE 204,) R19-1
PREVENTION OF SIGNIFICANT) (Rulemaking – Air)
DETERIORATION, AMENDMENTS TO 35)
ILL. ADM. CODE PARTS 101, 105, 203, 211,)
AND 215)

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by K. Papadimitriu and C.K. Zalewski):

On July 2, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to amend the Board's air pollution regulations. The proposal seeks to establish a state Prevention of Significant Deterioration (PSD) permitting program in Illinois and the procedures for that program. IEPA's proposal includes a Statement of Reasons (SR) and Technical Support Document (TSD). In addition, IEPA filed a motion to waive the procedural requirement to submit a copy of the documents it proposes to incorporate by reference (Mot.).

Below, the Board first provides a brief overview of IEPA's proposal. The Board then accepts the proposal for hearing and, without commenting on their merits, proposes the rules for public comment. Next, the Board grants IEPA motion for waiver, after which the Board addresses federal notice requirements. The proposed rules appear in this order's addendum.

PROPOSAL

Public Act 99-463, effective Jan. 1, 2016, amended the Illinois Environmental Protection Act (Act) by adding Section 9.1 (415 ILCS 5/9.1). New Section 9.1 of the Act requires the Board to adopt regulations establishing PSD and nonattainment New Source Review (NaNSR) permit programs. 415 ILCS 9.1(c). The federal Clean Air Act (CAA) generally requires states to submit State Implementation Plans (SIPs) adopting PSD and NaNSR programs. 42 U.S.C. §§ 7410, 7475, 7502.

IEPA currently administers the NaNSR program through Part 203 of the Board's air pollution regulations. 35 Ill. Adm. Code 203 (Major Stationary Sources Construction and Modification). And, since 1981, IEPA has fulfilled its PSD obligations by implementing the federal PSD permit program in Illinois for the United States Environmental Protection Agency (USEPA) under a delegation agreement. SR at 2 (citing 46 Fed. Reg. 9580 (Jan. 29, 2981); and 40 C.F.R. § 52.738(b) (parenthetical omitted)). IEPA explains that, consistent with Section 9.1 of the Act, this rulemaking will enable IEPA to assume from USEPA full responsibility for PSD permitting in Illinois, and make the Board responsible for any administrative review of PSD permit determinations issued by IEPA. *Id.* at 1-2.

IEPA proposes adding new Part 204 (Prevention of Significant Deterioration) in the Board's air pollution regulations, 35 Ill. Adm. Code: Subtitle B. New Part 204 would consist of 11 subparts, Subpart A through Subpart K. IEPA explains that its proposed Part 204 largely reflects USEPA's PSD permit program regulations in 40 C.F.R. § 52.21. SR at 28. IEPA's proposal describes the CAA requirements (SR at 4-7), the requirements of the PSD permit program (SR at 7-14), and the obligations on affected sources of air pollution (SR at 14-28). IEPA's proposal provides a section-by-section explanation of proposed Part 204. SR at 103-158. The proposal also details instances where the proposed language differs from 40 C.F.R. § 52.21. These differences, IEPA explains, are due to recent litigation involving USEPA and its PSD program. SR at 30-85.

In addition, to provide for appeals of PSD permit determinations to the Board, IEPA proposes amending the Board's procedural rules in 35 Ill. Adm. Code 101 and 105. SR at 3, 85-92. The proposal includes section-by-section explanations of these procedural rule amendments. SR at 158-164.

IEPA also proposes amending three Parts of the Board's current air pollution regulations: (1) Part 203 (35 Ill. Adm. Code 203, Major Stationary Source Construction and Modifications); (2) Part 211 (35 Ill. Adm. Code 211, Definitions and General Provisions); and (3) Part 215 (35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations). These proposed changes update relevant language to address both the federal PSD program and new Part 204. SR at 3, 93-98. The proposal provides section-by-section explanations of these amendments. SR at 164-165.

In addition, IEPA's proposal generally addresses the regions and air pollution sources affected by, and the technical feasibility and economic reasonableness of, the proposed rules. SR at 98-101. IEPA also describes the communications it had with interested persons while it was developing the proposal. SR at 101-103.

ACCEPTANCE OF PROPOSAL

The Board finds that IEPA's proposal satisfies the content requirements for rulemaking proposals (35 Ill. Adm. Code 102.202), considering the waiver granted below. The Board therefore accepts the proposal for hearing. The Board intends to hold two public hearings on the proposal, by videoconference in Chicago and Springfield. *See* 35 Ill. Adm. Code 101.600(b), 102.114. The Board directs its assigned hearing officer to schedule and proceed to hearing under the rulemaking provisions of the Act and the Board's procedural rules (415 ILCS 5/27, 28 (2016); 35 Ill. Adm. Code 102). Interested persons are encouraged to contact the hearing officer to be added to this docket's notice list or service list.

The Board proposes the rules for public comment without sending them to first-notice publication in the *Illinois Register* and without commenting on the merits of the proposal. This step will allow more time for filing public comments. The proposed rules appear in the addendum to this order.

The Board encourages interested persons to file public comments. Any written public comment must be filed with the Clerk of the Board and include this rulemaking's docket number (R19-1). Further, filing a public comment must be accomplished electronically through the Clerk's Office On-Line (COOL) on the Board's website (pcb.illinois.gov). 35 Ill. Adm. Code 101.302(j). If it is not reasonably practicable for a person to file a public comment through COOL, that person should contact the Clerk at 312-814-3461. 35 Ill. Adm. Code 101.1000(c). The Clerk can also answer general questions about filing. All filings, including public comments, must be served on the hearing officer and on the participants listed on this rulemaking's service list (available on COOL).

Finally, IEPA filed the proposal under the following caption:

Proposed New 35 Ill. Adm. Code 204, Prevention of Significant Deterioration, Amendments to 35 Ill. Adm. Code 101, General Rules 35 Ill. Adm. Code 105, Appeals of Final Decisions of State Agencies, 35 Ill. Adm. Code 203, Major Stationary Source Construction and Modification, 35 Ill. Adm. Code 211, Definitions and General Provisions, 35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations.

For easier citation, the Board shortens the caption to "Proposed New 35 Ill. Adm. Code 204, Prevention of Significant Deterioration, Amendments to 35 Ill. Adm. Code Parts 101, 105, 203, 211, and 215."

MOTION FOR WAIVER OF COPY REQUIREMENTS

The Board's procedural rules require a rulemaking proponent to submit all materials that it proposes to have incorporated by reference in proposed rules. 35 Ill. Adm. Code 102.202(d). IEPA's proposal includes a motion to waive this requirement. IEPA's proposed rules would incorporate by reference forty-nine (49) Parts of Title 40 of the Code of Federal Regulations, consisting of several hundred pages of USEPA rules. Mot. at 1-4.

The Illinois Administrative Procedure Act (IAPA) permits a State agency to incorporate by reference, in its rules, federal regulations without publishing them in full, but only if the federal agency issuing the regulations makes copies readily available to the public. The State agency incorporating the federal regulations by reference must, among other things, maintain a copy of the incorporated regulations in its office and make them available to the public upon request. *See* 5 ILCS 100/5-75(a), (c) (2016).

USEPA regulations are readily available online. *See, e.g.*, U.S. Government Publishing Office, Code of Federal Regulation (Annual Edition) (2017), *available at* <https://www.gpo.gov/fdsys/browse/collectionCfr.action>. In compliance with the IAPA, the Board maintains a copy of USEPA regulations and makes them available to the public upon request. Under these circumstances and given the volume of the documents proposed for incorporation by reference, the Board grants IEPA's motion to waive the requirement to submit copies of these documents with its proposal.

NOTICE OF SIP REVISION SUBMITTAL

If adopted by the Board, new Part 204 and amendments to Parts 203 and 211 would become a SIP revision. SR at 4. The SIP revision would also include an analysis demonstrating that the proposal does not interfere with attaining or maintaining any applicable National Ambient Air Quality Standard, reasonable further progress, or any other applicable CAA requirement. *Id.*

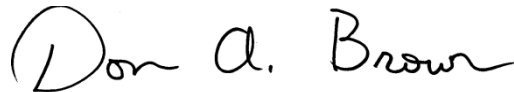
IEPA would submit the SIP revision to USEPA for review and approval. 42 U.S.C. §§ 7410(a)(2)(C) and 7471. SR at 4. To satisfy CAA requirements for public notice of SIP submittals (42 U.S.C. § 7410(1)), IEPA recommends language to include in this rulemaking's public hearing notice (*id.*), which the Board will consider.

ORDER

The Board accepts IEPA's rulemaking proposal for hearing. The Board directs the hearing officer to proceed to hearing. The Board also proposes the rule for public comment without submitting them to first-notice publication or commenting on their merits. The Board invites public comment on the proposed rules, which appear in the addendum to this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 23, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Clerk
Illinois Pollution Control Board