

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO) R18-20
35 ILL. ADM. CODE 225.233,) (Rulemaking – Air)
MULTI-POLLUTANT STANDARDS (MPS))

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES TO BOARD QUESTIONS SET FORTH IN HEARING OFFICER ORDER DATED OCTOBER 4, 2018, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: December 10, 2018

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSES TO BOARD QUESTIONS SET FORTH IN HEARING OFFICER ORDER
DATED OCTOBER 4, 2018**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, and submits the following in response to the series of questions for participants developed by the Illinois Pollution Control Board ("Board") as set forth in the Hearing Officer Order dated October 4, 2018. Additionally, the Agency does not object to either the Board's Second First Notice proposal or the findings in the Board's October 4, 2018, Second First Notice Order.

Attached as Exhibits are the Agency's responses to the questions posed by the Board to participants in Attachment A to the October 4, 2018, Order (Exhibit 1), and the Agency's suggested amendments to the Board's proposal (Exhibit 2).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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Assistant Counsel
Division of Legal Counsel

DATED: December 10, 2018

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EXHIBIT 1

ILLINOIS EPA'S RESPONSES TO BOARD QUESTIONS

A. Compliance Date for Proposed Mass Limits

1. A rule adopted by the Board is effective upon filing with the Secretary of State unless a later date is required by statute or specified by the Board. 5 ILCS 100/5-40(d). At second first notice, the Board has proposed the compliance date for the proposed mass-based limits and for combining MPS Groups as the beginning of calendar year 2019. *See* proposed revised MPS rule provisions at Sections 225.233 (e)(1)(C), (D) and (E). Please comment on whether the proposed date is acceptable, or should the Board adopt a delayed effective date of January 1 of the year following the year of the rule adoption for the proposed mass-based limits and for combining MPS Groups? If so, please propose and support a specific delayed effective date.

The Board should maintain the January 1, 2019, compliance date, as there is no compelling reason to delay. The purpose of the rule is to provide operational flexibility to Vistra by combining the MPS Groups and providing mass-based standards for compliance. This rulemaking began with an initial filing on October 2, 2017, and the final hearing is scheduled for late January. Therefore, it would be preferable for the effective date of the rule to be January 1, 2019, in order to effectuate the purpose of the rulemaking. As the SO₂ and NO_x standards are annual, and the NO_x seasonal standard does not apply until May 1, Vistra will have adequate time to ensure compliance, even though the rule will be adopted by the Board after January 1, 2019.

B. Adjustment of Proposed Mass-Based Caps

2. Please comment on how IEPA would enforce the proposed revised MPS rule provisions at Sections 225.233(f), (g) and (h) that require adjustment of mass-based cap in case of:
 - a. Transfer of the MPS EGUs?
 - b. Permanent shutdown (retirement) of the MPS EGUs?
 - c. Temporary shutdown (mothballing) of the MPS EGUs?

The Agency will track the transfer, permanent shutdown, and temporary shutdown of any EGUs and adjust the caps accordingly upon receiving the required notifications or otherwise determining that such actions have occurred if the notifications are not properly made.

3. Please comment on whether the adjustment of the mass-based MPS caps should take effect in a manner other than proposed in Sections 225.233(f), (g) and (h) in case of:

a. Transfer of the MPS EGUs?

The Agency does not object to the adjustment of the caps in the event of a transfer in the manner proposed by the Board in Section 225.233(f). However, the Agency proposes a change to Section 225.233(f)(1)(A), as delineated in Exhibit 2. The Agency suggests removing the phrase “beginning with the year in which the transfer occurs” from the last sentence of this subsection, as this phrase does not take the NO_x seasonal limitation into consideration. Furthermore, subparagraph (C) addresses compliance by the transferor and transferee in more detail, specifying that the owner/operator as of the last day of the pertinent compliance period (annual or seasonal) is responsible for compliance for the entire compliance period, making the above phrase unnecessary and potentially confusing.

The cap will be adjusted for the compliance period in which the transfer occurs. As similarly provided for in the Agency’s Statement of Reasons, if the proposed combined MPS Group is subject to an annual tonnage cap for NO_x emissions of 22,469 tons per year, and in March 2020, the owner of the MPS Group transfers Baldwin, which has a NO_x allocation amount of 5,400 tons per year, to a new owner, the MPS Group's annual NO_x cap of 22,469 tons per year would be reduced to 17,069 tons per year. The owner and operator of the original MPS Group would be required to comply with this adjusted limit in 2020 and would not include NO_x emissions from Baldwin EGUs (even those that occurred in January and February) in calculations determining compliance with that limit. The owner of the new MPS Group consisting of the acquired Baldwin EGUs would be subject to an annual tonnage cap for NO_x emissions of 5,400 tons per year beginning in 2020 and would be required to include Baldwin EGUs' NO_x emissions for the entire 2020 calendar year in its calculations determining compliance. The same is true as it applies to the other caps.

b. Permanent shutdown (retirement) of the MPS EGUs?

The Agency does not object to the adjustment of the caps in the event of permanent shutdown in the manner proposed by the Board in Section 225.233(g). For example, if a permanent shutdown occurs on February 1, 2020, the cap is adjusted according to the allocations in Section 225.233(g)(2) for the entire compliance period, *i.e.*, all of calendar year 2020 for the NO_x and SO₂ annual caps and ozone season 2020 for the NO_x seasonal cap.

Utilizing the date that an owner/operator submits a request to modify its operating permit to reflect the shutdown of a unit, or to withdraw the permit for the source, as the date of permanent shutdown is logical and provides sources and the Agency with a clear-cut, objective way to determine “permanence” for purposes of this rule.

c. Temporary shutdown (mothballing) of the MPS EGUs?

The Agency does not object to the adjustment of the caps in the manner proposed by the Board in Section 225.233(h) in the event of a temporary shutdown, but suggests changes to the language of this section, as set forth in Exhibit 2.

While the Board indicated in its Second First Notice Order that it considers “temporary shutdown” to occur when a unit does not generate electricity or emissions for an entire compliance period, the rule language does not reflect that, and in fact the rule does not define “temporary shutdown” at all. The Agency therefore proposes changes to Section 225.233(h)(1) and (h)(3) to reflect the Board’s stated intent and specify that emission caps are only adjusted if a unit “does not operate during an entire compliance period.” For example, if an EGU does not operate from February 1 to October 31, the EGU will have had a temporary shutdown for the entire NO_x seasonal compliance period, but not the entire annual compliance period. The EGU must still comply with unadjusted annual SO₂ and NO_x caps in this example. The NO_x seasonal cap must be adjusted to account for the temporary shutdown over the ozone season, and the owner must report and demonstrate compliance accordingly.

The Agency also proposes changes to Section 225.233(h)(3)(D) to alter the timing of reporting and the information reported. First, sources cannot notify the Agency “within seven days after the *start date* of [temporary] shutdown,” as a temporary shutdown will not even be deemed to have occurred until a unit has been shut down for an entire compliance period. The Agency therefore suggests requiring notification within seven days after the *end* of each such compliance period. If a unit does not operate, for example, from March 2018 until January 2020, the source would submit a “temporary shutdown” notification to the Agency within seven days after the end of the 2018 ozone season, again within seven days after the end of the 2019 ozone season, and finally, within seven days after the end of the 2019 annual compliance period. Second, sources may not know the “duration” of the temporary shutdown at the time of reporting, as the unit may still be temporarily shut down at that point. The Agency does not need such information to determine compliance, and thus suggests eliminating that reporting requirement.

Similarly, the Agency further proposes revising the language in Section 225.233(h)(1)(B) that indicates that the MPS Group must comply with the adjusted emissions limitations “beginning with the compliance period or periods during which the temporary shutdown occurs” and that the adjusted limits “no longer apply, if the [EGUs] resume operation.” This language conflicts with the concept that a unit must be shut down for an entire compliance period to be considered temporarily shut down for that compliance period. The Agency suggests amending the language to indicate that the MPS Group must comply with the adjusted limit for the pertinent compliance period (i.e., the compliance period during which the unit did not operate). Whenever the unit resumes operation, it will simply no longer

provide “temporary shutdown” notifications to the Agency, and the original emissions limitations will again apply.

d. Please also comment on whether NO_x ozone season mass caps should be adjusted in the year in which an EGU is mothballed if it is mothballed for the entire NO_x ozone season as required in Sections 225.233(e)(1)(d) and (h)(1)?

Yes, the NO_x seasonal caps should be adjusted if an EGU is temporarily shut down for an entire NO_x ozone season, for consistency with the Board’s approach to temporary shutdowns. In the example provided above in the answer to Question 3.c., the owner of the EGU would have to notify the Agency in accordance with the Agency’s suggested changes to Section 225.233(h)(3) that the EGU was temporarily shut down for the entire ozone season and would have to demonstrate compliance with the adjusted NO_x seasonal cap.

4. Please comment on whether mass-based MPS caps adjustments should be pro-rated in a calendar year in which the EGU unit stops operating within the same MPS Group in case of:
 - a. Permanent shutdown (retirement) of the MPS EGUs to comply with Section 225.233(g)(1)?
 - b. Temporary shutdown (mothballing) of the MPS EGUs to comply with Section 225.233(h)(1)?

The Agency does not recommend pro-rating the mass caps in the calendar year in which the unit stops operating because pro-rating would unnecessarily complicate the rule language and would serve no useful purpose from a compliance perspective. The proposed mass-based caps are annual and seasonal standards, making pro-rating on a monthly basis (or weekly basis for shutdowns that occur mid-month) imperfect from a compliance standpoint. Also, the concept of pro-rating does not make sense in relation to temporary shutdowns – if a temporary shutdown only occurs when a unit stops operating for an entire compliance period, there is nothing to pro-rate, as the entire compliance period would be implicated.

5. Please comment on which date the IEPA should consider a date of transfer and a date of permanent and temporary shutdown of an MPS EGU? Would the dates the owner/operator indicate in their written notifications required under Section 225.233(f)(3), (g)(3) and (h)(3) be proper dates? Please also comment on the following:

The Agency considers the actual date that ownership of one or more EGUs transfers from a seller to a buyer to be the transfer date for compliance purposes and is unaware of a tenable alternative. The date required in the notification provision in Section 225.233(f)(3) is the proper date.

For a permanent shutdown, as stated in the rule, the date of shutdown is the date the owner or operator submits a written request to the Agency to modify its permit to reflect the shutdown or submits a request to withdraw the permit for the source.

This is the clearest, most objective way to identify the “date of permanent shutdown” for purposes of this rule, as it is the date after which the source is no longer permitted to operate the unit. The Agency suggests modifying the language of Section 225.233(g)(3) (see Exhibit 2) to clarify what is considered “date of permanent shutdown,” consistent with the above.

The Board’s question is confusing for purposes of “date of temporary shutdown.” “Temporary shutdown” is a term of art under this rule because, as the rule is written, a temporary shutdown occurs when a unit is shut down for the entire compliance period, *i.e.*, the NOx seasonal compliance period or one calendar year. A temporary shutdown will not be deemed to have occurred until the unit is shut down for an entire compliance period. The “start date” of a temporary shutdown can therefore only be identified and communicated to the Agency following the end of the applicable compliance period. The Agency has suggested a change to Section 225.233(h)(3) to include such a notification (see Exhibit 2).

a. In case of discrepancy between the notification provided under Section 225.233(f)(3)(A) and (B), which date should control?

It is unlikely there would be a discrepancy between the notifications required of the transferring owner and the acquiring owner because these entities will have entered into a contract for the transfer of the units, which would likely include a transfer date. However, if the dates differ from one another, the Agency would investigate the matter and make a determination regarding the appropriate date of transfer.

b. Is there a conflict between Section 225.233(g)(1)(B) and (3)(D)? In case of discrepancy between dates provided under Section 225.233(g)(1)(B) and (3)(D), which date will control?

There is no conflict, but the Agency has suggested language revising Section 225.233(g)(3)(D) to remove any ambiguity. The Agency’s proposed revisions clarify that the date of permanent shutdown is the date the owner or operator submits a written request to the Agency to modify its permit to reflect the shutdown or submits a request to withdraw the permit for the source.

6. Please comment if there are limitations on how often and for how long an MPS EGU may be mothballed for.

To the Agency’s knowledge, there are no limitations on how often a unit can be temporarily shut down, nor would such limitations serve a useful purpose. For purposes of this rule, limiting the duration of a temporary shutdown is not needed, as the emissions caps are reduced by the same allocation amounts regardless of whether the unit is mothballed or permanently shut down.

The duration of the shutdown of a unit may be relevant for purposes of the Prevention of Significant Deterioration and Nonattainment New Source Review

permit programs, 40 CFR § 52.21 and 35 Ill. Adm. Code 203, respectively. A “mothballed” unit may eventually be considered to be permanently shut down pursuant to those regulations. Under USEPA policy, a source that has been shut down for two years is currently presumed to be permanently shut down. As such, if the owner or operator then proposed to reactivate the unit, the unit would be considered to be a new source, subject to New Source Review. However, the presumption that the unit has been permanently shut down is rebuttable. The owner or operator may show by its actions at the time that the unit was shut down, and thereafter, that the shutdown was not intended to be permanent. USEPA has indicated that it intends to reconsider this policy in the near future. Letter from William L. Wehrum, Assistant Adm’r, United States Env’tl. Protection Agency, to LeAnn Johnson Koch, Perkins Coie (Apr. 5, 2018) ([http://www.4cleanair.org/sites/default/files/Documents/Signed Response to LeAnn Johnson Koch Perkins Coie re Limetree Bay Terminals OAR-18-000-6176.pdf](http://www.4cleanair.org/sites/default/files/Documents/Signed%20Response%20to%20LeAnn%20Johnson%20Koch%20Perkins%20Coie%20re%20Limetree%20Bay%20Terminals%20OAR-18-000-6176.pdf)).

7. Please comment on whether and how a mass caps should be adjusted for units retired and mothballed before the effective date of MPS revisions adopted in this rulemaking.

The mass caps should not be adjusted for units mothballed before the date the MPS revisions are adopted, as that unit may start operating again; the “baseline” mass cap should therefore account for that operation. If the unit continues to be mothballed for an entire compliance period following rule adoption, the Board’s current rule proposal already contains a mechanism for reducing the mass cap.

Similarly, the Board’s rule proposal also already addresses reduction of the emissions caps due to shutdown; however, any units that permanently shut down prior to the rule’s adoption could be removed from the proposed rule.

EXHIBIT 2

ILLINOIS EPA'S SUGGESTED AMENDMENTS TO SECTION 225.233

The Agency recommends the following revisions to the Board's Second First Notice proposal:

1. Amend Section 225.233(e)(1)(C), (D), and (E)(i) as follows:

e) Emission Standards for NO_x and SO₂

1) NO_x Emission Standards:

* * *

- C) Except as otherwise provided in subsections (f), (g), and (h), beginning in calendar year 2019 and continuing in each calendar year thereafter, the owner and operator of the EGUs in an MPS Group must not cause or allow to be discharged into the atmosphere combined annual NO_x emissions in excess of 22,469 tons from all EGUs.
- D) Except as otherwise provided in subsection (f), (g), and (h), beginning in ~~the~~ calendar year 2019 and continuing in each calendar year thereafter, from May 1 to September 30 the owner and operator of the EGUs in an MPS Group must not cause or allow to be discharged into the atmosphere combined NO_x emissions in excess of 11,500 tons from all EGUs.
- E) On and after January 1, 2019, the owner and operator of any of Baldwin Units 1 and 2, Coffeen Units 1 and 2, Duck Creek Unit 1, E.D. Edwards Unit 3, and Havana Unit 9 must comply with the following:
 - i) Operate each existing selective catalytic reduction (SCR) control system on each EGU in accordance with good operating practices and at all times when the unit it serves is in operation, provided that such operation of the SCR control system is consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR control system. During any such period in which the SCR is not operational, the owner and operator must minimize emissions to the extent reasonably practicable. All NO_x emissions from each EGU, regardless of whether the SCR is operational or non-operational, must be included in

- ii) determining compliance with the emission standards set forth under subsections (e)(1)(C), (e)(1)(D), ~~and~~ (f)(1), (g)(1), and (h)(1) as applicable.

2. Amend Section 225.233(f)(1)(A) as follows:

- f) Transfer of EGUs in an MPS Group
 - 1) If EGUs in an MPS Group are transferred to a different owner:
 - A) For the MPS Group from which EGUs are transferred: The combined emissions limitations for the MPS Group set forth in this Section, as applicable, must be adjusted by subtracting from those limitations the applicable allocation amounts set forth in Columns A, B, and C in subsection (f)(2) that are attributable to the transferred EGUs. The owner and operator of the MPS Group must comply with the adjusted emissions limitations ~~beginning with the year in which the transfer occurs.~~

3. Amend Section 225.233(g)(3)(D) as follows:

- g) Permanent Shutdown of EGUs in an MPS Group
 - ***
 - 3) If one or more EGUs in an MPS Group are permanently shut down, the owner must notify the Agency's Bureau of Air, Compliance Section, in writing within seven days after the date of shutdown. Such notification must include the following information:
 - D) Date of permanent shutdown, which is the date the owner or operator submitted a written request to the Agency to modify its operating permit to reflect the shutdown or to withdraw the permit for the source.

4. Amend Section 225.233(h)(1)(B) as follows:

- h) Temporary shutdown of EGUs in an MPS Group
 - 1) If one or more EGUs in an MPS Group do not operate during ~~temporarily shut down over~~ an entire compliance period or periods:
 - ***

- B) The owner and operator of the MPS Group must comply with the adjusted emissions limitations for such, beginning with the compliance period or periods during which the temporary shutdown occurs. The adjusted emissions limitations will no longer apply, if the EGU or EGUs resume operation.

5. Amend Section 225.233(h)(3)(C) and (D) as follows:

- h) Temporary shutdown of EGUs in an MPS Group

* * *

- 3) If one or more EGUs in an MPS Group do not operate during ~~temporarily shut down over an entire compliance period,~~ the owner or operator must notify the Agency's Bureau of Air, Compliance Section in writing within seven days after the end of each such compliance period start date of shutdown. Such notification must include the following information:
 - A) Name and address of the owner and operator;
 - B) List of the EGUs temporarily shut down;
 - C) For the remaining EGUs in the MPS Group, calculations pursuant to subsection (g)(1)(B) demonstrating the adjusted combined annual NO_x emissions limitation, the adjusted combined NO_x emissions limitation from May 1 through September 30, and the adjusted combined annual SO₂ emissions limitation that are applicable to the MPS Group for the pertinent compliance period during the temporary shutdown of one or more EGUs; and
 - D) Date that the EGU or EGUs stopped operating~~Start date and duration of temporary shutdown.~~

6. Amend Section 225.233(k)(2)(A) and (B) as follows:

- k) Reporting

* * *

- 2) On and after January 1, 2019, and continuing each year thereafter, the owner and operator of the EGUs in an MPS Group must demonstrate compliance with the applicable requirements set forth in this subsection (k)(2).
 - A) Beginning in 2020, and continuing each year thereafter, the owner and operator of EGUs in an MPS Group must submit to the

Agency's Bureau of Air, Compliance Section, a report demonstrating compliance with the annual emissions standards under subsections (e)(1)(C), (e)(2)(C), (e)(2)(D), ~~and (f)(1), (g)(1), and (h)(1)~~, as applicable, and with the requirements under subsection (e)(1)(E)(i), as applicable, on or before March 1 of each year. The compliance report must include the following for the preceding calendar year:

* * *

- B) By November 1 of each year, the owner and operator of EGUs in an MPS Group must submit to the Agency's Bureau of Air, Compliance Section, a report demonstrating compliance with the seasonal emissions standards under subsections (e)(1)(D), (e)(1)(E)(ii), ~~and (f)(1), (g)(1), and (h)(1)~~, as applicable. The compliance report must include the following for the preceding May 1 through September 30:

* * *

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