

ILLINOIS POLLUTION CONTROL BOARD
August 14, 1986

IN THE MATTER OF:)
)
PARTICULATE EMISSION LIMITATIONS,) R82-1 (Docket B)
RULE 203(g)(1) AND 202(b) OF)
CHAPTER 2)

PROPOSED RULE. THIRD FIRST NOTICE.

PROPOSED OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

On March 14, 1986, the Board adopted an Interim Order in R82-1 separating that proceeding into two dockets: Docket A: Particulates and Docket B: Opacity. At that time the Board intended to proceed to second notice on the particulate rules while further considering the opacity rules. However, the Joint Committee on Administrative Rules (JCAR) refused to allow the Board to proceed in that manner. Therefore, on May 9, 1986, the Board adopted a Fourth Second Notice order including both the opacity and the particulate rules.

Second notice was received by JCAR on May 16, 1986, and was considered by JCAR on June 23, 1986, at which time it objected to each of the opacity rules but none of the particulate rules. In response the Board determined that it would withdraw the opacity rules but proceed to adopt and file the particulate rules. The Board adopted a Resolution and Order to that effect on July 2, 1986, and indicated that a new first notice order would be adopted concerning the opacity rules in the near future under Docket B. This is that notice.

Several issues remain following the Fourth Second Notice Order based upon comments which have been received by the Board. These include the following:

Whether "Reasonable Time" should be defined in Section 212.124(c) [now renumbered as subsection (d)]. This has been suggested by Commonwealth Edison, the United States Environmental Protection Agency (USEPA) and JCAR, but opposed by the Illinois Environmental Protection Agency. It was considered at hearing but the Board has found it difficult to fashion appropriate language.

Whether "Similar Operating Conditions" should be defined in that same section. USEPA and JCAR also recommend this while the Agency opposes it. Again, the Board has been unable to fashion appropriate language despite hearing testimony on this issue.

Whether the 60% limitation of Section 212.126(d)(2) should be eliminated. Commonwealth Edison has questioned the support for that limitation.

Whether the Board should add a requirement to Section 212.124(c) that in a subsequent performance test to be used as a defense to violation of the opacity standard the opacity must equal or exceed that occurring at the time of the alleged violation. The Agency and USEPA argue that such a requirement is necessary for federal approval. Commonwealth Edison has argued that the vagaries of opacity would undermine the defense if that language is added. The Board accepted Commonwealth Edison's argument in its Fourth Second Notice (May 9, 1986, p.3), but has reversed itself here and accepted the Agency's language since, as USEPA points out, "a source could conceivably operate the control device only during stack tests under Section 214.124(c) and never pay a fine for an opacity violation." (P.C. no. 38, p.3).

Whether standards must be added to Section 212.126(b) and (d) regarding when the Agency may refuse to accept test results which were conducted without prior review and approval and how deficiencies in proposed test specifications and procedures will be determined. This has not been specifically addressed but served as one of JCAR's bases for objection to this section.

Whether levels of justification must be established under Section 212.126(l) regarding how the factors of Section 27(a) of the Illinois Environmental Protection Act will be considered in deciding whether to adopt an adjusted standard. JCAR has argued that this is necessary.

Whether process sources have been improperly excluded from the adjusted standards procedure of Section 212.126. The Illinois Manufacturer's Association has suggested that it is improper to modify the opacity limitations for process sources without allowing them this relief. The Board agrees and has proposed amendments to the rules to remedy this.

The Board believes that each of these issues are worthy of additional consideration and invites further comment and testimony on them.

The Board has modified the proposal by adding a new Section 212.124(c) to refer to the adjusted standard procedure as an exception to the otherwise applicable opacity limitations and has renumbered formerly proposed subsection (c) to (d). The Board has made other relatively minor changes in response to JCAR comments and objections to Sections 212.124(d) and 212.126(a)(2) and typographical corrections.

ORDER

The Board hereby proposes the following amendments for first notice:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS FOR
STATIONARY SOURCES
PART 212: VISUAL AND PARTICULATE MATTER EMISSIONS
SUBPART B: VISUAL EMISSIONS

Section 212.121 Opacity Standards

For the purposes of this Subpart, all visual emission opacity standards and limitations shall be considered equivalent to corresponding Ringelmann Chart readings, as described under the definition of opacity (35 Ill. Adm. Code 211.122).

~~{Board Note: This Subpart as it applies to sources regulated by Subpart E has been ruled invalid by the Illinois Supreme Court, Celotex v. IPCB et al. 68 Ill. Dec. 1087, 445 NE2d 752.}~~

Section 212.123 Limitations for All Other Sources

- a) No person shall cause or allow the emission of smoke or other particulate matter, ~~from any other emission source into the atmosphere of~~ with an opacity greater than 30 percent, into the atmosphere from any emission source other than those sources subject to Section 212.122.
- b) Exception: The emission of smoke or other particulate matter from any such emission source may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such more opaque emissions permitted during any 60 minute period shall occur from only one such emission source located within a 305 m (1000 ft) radius from the center point of any other such emission source owned or operated by such person, and provided further that such more opaque emissions permitted from each such emission source shall be limited to 3 times in any 24 hour period.

Section 212.124 Exceptions

- a) Startup. Sections 212.122 and 212.123 shall apply during times of startup except as provided in the operating permit in 35 Ill. Adm. Code 201.

- b) Emissions of water and water vapor. Sections 212.122 and 212.123 shall not apply to emissions of water or water vapor from an emission source.
- c) Adjusted standards. An emission source which has obtained an adjusted opacity standard pursuant to Section 212.126 shall be subject to that standard rather than the limitations of Section 212.122 or 212.123.
- d) Compliance with the particulate regulations of this Part a defense.

~~Sections 212.122 and 212.123 shall not apply if it is shown that the emission source, was at the time of such emission, in compliance with the applicable mass emission limitations of this Part.~~

- 1) An exceedance of the limitations of Sections 212.122 and 212.123 is prima facie evidence of a violation of the applicable particulate limitations of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time, under similar operating conditions, and in accordance with Section 212.110, the owner or operator shows that the source is in compliance with the mass emission limitations.
- 2) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time, under similar operating conditions, and in accordance with Section 212.110, the owner or operator shows that the source is in compliance with the allowable mass emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

Section 212.126 Adjusted Opacity Standards Procedures

- a) Pursuant to Section 28.1 of the Act, adjusted visible emissions standards for emission sources subject to either Section 212.122 or 212.123 shall be granted by the Board to the extent consistent with federal law based upon a demonstration by such a source that the results of a performance test conducted pursuant to this Section and Section 212.110 show that the source meets the applicable particulate mass emission limitations at the same time that the visual emissions

exceed the otherwise applicable standards. Such adjusted opacity limitations:

- 1) Shall be specified as a condition in operating permits issued pursuant to 35 Ill. Adm. Code 201;
 - 2) Shall substitute for that limitation otherwise applicable;
 - 3) Shall not allow an opacity greater than 60 percent at any time; and
 - 4) Shall allow opacity for one six-minute averaging period in any 60 minute period to exceed the adjusted opacity standard.
- b) For the purpose of establishing an adjusted opacity standard, any owner or operator of an emission source which meets the requirements of subsection (a), above, may request the Agency to determine the average opacity of the emissions from the emission source during any performance test(s) conducted pursuant to Section 212.110. The Agency may refuse to accept the results of emissions tests conducted pursuant to this Section which are conducted without prior review and approval of the test specifications and procedures by the Agency.
- c) Any request for the determination of the average opacity of emissions shall be made in writing, including all test specifications and procedures, and submitted to the Agency at least thirty days before the proposed test date.
- d) The Agency will advise the owner or operator of an emission source which has requested an opacity determination of any deficiencies in the proposed test specifications and procedures as expeditiously as practicable but no later than 20 days prior to the proposed test date so as to minimize any disruption of the proposed testing schedule.
- e) The owner or operator shall give written notice to the Agency of the time and place of the performance test at least 10 days prior to the date of that test and shall allow Agency personnel to be present during that test.
- f) The method for determining an adjusted opacity standard is as follows:
- 1) A minimum of 60 consecutive minutes of opacity readings obtained in accordance with USEPA Test

Method 9, (35 Ill. Adm. Code 230, Appendix A), shall be taken during each sampling run. Therefore, for each performance test (which normally consists of three sampling runs), a total of three sets of opacity readings totaling three hours or more shall be obtained.

- 2) After the results of the performance tests are received from the emission source, the status of compliance with the applicable mass emission limitation shall be determined by the Agency. In accordance with USEPA Test Method 5 (35 Ill. Adm. Code 230, Appendix A), the average of the results of the three sampling runs must be less than the allowable mass emission rate in order for the source to be considered in compliance. If compliance is demonstrated, then only those test runs with results which are less than the allowable mass emission rate shall be considered as acceptable test runs for the purpose of establishing an adjusted opacity standard.
- 3) The opacity readings for each acceptable sampling run shall be divided into sets of 24 consecutive readings. The average opacity for each set shall be determined by dividing the sum of the 24 readings within each set by 24.
- 4) The second highest six-minute average shall be selected as the adjusted opacity standard.
- g) The owner or operator shall submit a written report of the results of the performance test to the Agency at least 30 days prior to filing a petition for an adjusted standard with the Board.
- h) If, upon review of such owner's or operator's written report of the results of the performance test(s), the Agency determines that the emission source is in compliance with all applicable emission limitations for which the performance tests were conducted, but fails to comply with the requirements of Section 212.122 or 212.123, the Agency shall notify the owner or operator as expeditiously as practicable, but no later than 20 days after receiving the written report, that it will support the owner or operator in a petition to the Board to establish an adjusted opacity standard for the emission source.
- i) The owner or operator may petition the Board for an adjusted visible emission standard either jointly with

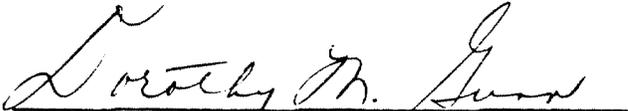
the Agency or singly. Ten copies of such petition shall be filed with the Clerk of the Board. The petition shall include the following information:

- 1) A description of the business or activity of the petitioner, including its location and relevant pollution control equipment;
 - 2) The quantity and type of materials discharged from the process or activity for which the adjusted standard is requested;
 - 3) A copy of any correspondence between the petitioner and the Agency regarding the performance test(s) which form the basis of the adjusted standard request;
 - 4) A copy of the written report submitted to the Agency pursuant to subsection (g) above;
 - 5) A statement that the performance test(s) were conducted in accordance with the conditions and procedures accepted by the Agency pursuant to Section 212.110;
 - 6) A statement regarding the specific limitation requested; and
 - 7) A statement as to whether the Agency supports the requested adjusted standard.
- j) The Clerk shall give notice of the petition and shall schedule a hearing in accordance with 35 Ill. Adm. Code 103. The hearing shall be held in accordance with 35 Ill Adm. Code 103.
- k) In order to qualify for an adjusted standard the owner or operator must prove in an adjudicative hearing before the Board:
- 1) That the performance test(s) were conducted in accordance with the conditions and procedures accepted by the Agency pursuant to Section 212.110;
 - 2) That the emission source and associated air pollution control equipment were operated and maintained in a manner so as to minimize the opacity of the emissions during the performance test(s); and

- 3) That the proposed adjusted opacity standard was determined in accordance with subsection (f).
- 1) In considering the proposed petition for an adjusted standard and the hearing record, the Board shall take into account the factors contained in Section 27(a) of the Act. The Board shall issue and enter a written opinion stating the facts and reasons leading to its decision on the petition for an adjusted standard.
- m) The Board shall issue and enter such orders concerning the petition for an adjusted standard as are appropriate for the reasons stated in its written opinion. Such appropriate orders may include but are not limited to orders accepting or rejecting the requested limitation, directing that further hearings be held to develop further information or to cure any procedural defects, or remanding the petition to the petitioner with suggested revisions. Another hearing shall be held on any revised petition.
- n) Nothing in this Section shall impair any rights authorized by the Act or Board Regulations that the owner or operator or any other person may have to initiate or participate in any proceeding before the Board, including general or site-specific regulatory, variance, or permit proceedings. However, Agency determinations made pursuant to Section 212.126(b) may not be appealed to the Board.

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 14th day of August, 1986 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board