

From: McGill, Richard
Sent: Wednesday, November 02, 2016 2:53 PM
To: 'Eastvold, Jonathan C.'
Subject: RE: First Notice questions on 35 IAC 201 rulemaking (R17-9)

Good afternoon. Below, I have responded to your inquiries, which are repeated (in bold) for convenience:

1. **201.500, 2nd line: "following Subparts" → I'm assuming that this is plural because (pursuant to PA 97-95) this is only the first of several PBR rules? Please advise if not.**

You are correct.

2. **Why the delay (since the PA's July 2011 effective date) to add PBR provisions?**

These rules are not late from a statutory perspective and my sense is that they are not late from a practical perspective either. Section 39.12 of the Environmental Protection Act (Act) authorizes but does not require the proposal or adoption of PBR rules. In contrast, Section 9.14(d) of the Act, which concerned the registration of smaller sources (ROSS), also part of PA 97-95, required a rulemaking proposal from IEPA and required Board adoption within 120 days after receiving the proposal. Please keep in mind too that the Board is prohibited by Section 28(b) of the Act from, on its own motion, proposing rules "to implement the provisions required by or related to the Clean Air Act Amendments of 1990, as now or hereafter amended."

A PBR proposal can be filed with the Board by anyone, including an industry association. The Board received this first PBR proposal in 8/16—from IEPA. Section 39.12 required IEPA to, in consultation with industry, identify permit types for which PBR would be appropriate. IEPA's proposal mentions that it met several times with the Illinois Environmental Regulatory Group and shared drafts of proposed rules; IEPA also shared drafts of proposed rules with USEPA and had phone calls with USEPA to discuss and resolve comments. I cannot speak to IEPA's resources, but besides these efforts, IEPA has proposed (and the Board has completed) three time-sensitive air rulemakings since PA 97-95 took effect: ROSS (eff. 12/11); Vapor Recovery (eff. 12/13); & Lead (eff. 4/14). Also, in 1/14, IEPA proposed an emergency rulemaking on coke/coal bulk terminals.

3. **201.540(b), last sentence: How would you state your rationale for this last sentence ("A violation exists...already occurred.")?**

The last sentence concerns *when* IEPA's determination takes place. Specifically, it makes clear that even if IEPA determines--*after* operations commence--that the submittal is incomplete, enforcement authorities can find a violation. Absent this sentence, an owner/operator might argue that finding a violation in this circumstance is improper retroactive enforcement.

4. **201.605(b), first two lines → What is the relationship between the 3 CFR citations (connected by an and and an or)? Should the “and” after “60.41c” be replaced by a comma?**

The meaning of 201.605(b) is unclear because 40 CFR § 60.41(c) does not exist. 40 CFR § 63.7575 and § 63.11237 both define temporary boiler, and § 60.41 contains definitions of terms used in the definitions of temporary boiler. The Board will ask IEPA to clarify its intent behind this language.

5. **201.635, opening paragraph, last line: “required by the applicable requirements referenced in Subpart M” → Is there any way to make this reference a bit more specific?**

Yes. The only provision of Subpart M that imposes recordkeeping requirements is 201.530. Accordingly, the last line should more informatively (and economically) read “required by Section 201.530.”

Please let me know if you would like to discuss this or if have any other questions.

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From: Eastvold, Jonathan C. [<mailto:JonathanE@ilga.gov>]
Sent: Friday, October 28, 2016 11:22 AM
To: McGill, Richard
Cc: James, Jason
Subject: [External] First Notice questions on 35 IAC 201 rulemaking (R17-9)

We had a couple of questions on this rulemaking:

- 1) 201.500, 2nd line: “following Subparts” → I’m assuming that this is plural because (pursuant to PA 97-95) this is only the first of several PBR rules? Please advise if not.
- 2) Why the delay (since the PA’s July 2011 effective date) to add PBR provisions?
- 3) 201.540(b), last sentence: How would you state your rationale for this last sentence (“A violation exists...already occurred.”)?
- 4) 201.605(b), first two lines → What is the relationship between the 3 CFR citations (connected by an and and an or)? Should the “and” after “60.41c” be replaced by a comma?
- 5) 201.635, opening paragraph, last line: “required by the applicable requirements referenced in Subpart M” → Is there any way to make this reference a bit more specific?

Thanks so much for your help.

Jonathan

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