

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
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	)	R19-
FINAL DECISIONS OF STATE AGENCIES,	)	(Rulemaking – Air)
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	)	

**NOTICE**

To: Pollution Control Board, Attn: Clerk  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601-3218

Matthew Dunn, Chief  
Environmental Enforcement Asbestos  
Litigation Division  
Office of the Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62701-1271

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the REGULATORY PROPOSAL entitled "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" and supporting documents of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Sally A. Carter*

Sally Carter  
Assistant Counsel

Dated: July 2, 2018

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P.O. Box 19276  
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(217) 782-5544  
[sally.carter@Illinois.gov](mailto:sally.carter@Illinois.gov)

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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40 CFR Part 50 (2018)\*

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40 CFR Part 89 (2018)\*

40 CFR Part 90 (2018)\*

40 CFR Part 91 (2018)\*

40 CFR Part 92 (2018)\*

40 CFR Part 93 (2018)\*

40 CFR Part 94 (2018)\*

40 CFR Part 95 (2018)\*

40 CFR Part 96 (2018)\*

40 CFR Part 97 (2018)\*

40 CFR Part 98 (2018)\*


16. *Technical Support Document for Proposed Prevention of Significant Deterioration (PSD)*, AQPSTR 18-03, June 2018

17. Certificate of Service

\*Copies of documents with an asterick beside them have not been provided.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Sally Carter  
Assistant Counsel  
Division of Legal Counsel

DATED: July 2, 2018

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**APPEARANCE**

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Sally Carter*  
 Sally Carter  
 Assistant Counsel  
 Division of Legal Counsel

Dated: July 2, 2018

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R19-  
(Rulemaking – Air)

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY PROPOSAL OF REGULATIONS**

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulations.

Cordially submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Alec Messina  
Director

Dated: July 2, 2018

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544



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**CERTIFICATION OF ORIGINATION**

The Illinois Environmental Protection Agency certifies in accordance with 35 Ill. Adm. Code 102.202(i) that this proposal for amendments to 35 Ill. Adm. Code 101, 105, 203, 211 and 215 amends the most recent version of the rules as published on the Illinois Pollution Control Board’s website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Sally Carter*  
Sally Carter  
Assistant Counsel

Dated: July 2, 2018

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**MOTION FOR WAIVER OF COPY REQUIREMENTS**

The Illinois Environmental Protection Agency (“Illinois EPA”), by its attorney, and pursuant to 35 Ill. Adm. Code 101.500, 102.200, and 102.402, respectfully moves that the Illinois Pollution Control Board (“Board”) waive the requirement that the Illinois EPA provide copies of the certain documents incorporated by reference. In support of its Motion, Illinois EPA states as follows:

1. Section 102.202 of the Board’s procedural rules requires that a proposal for a regulation of general applicability include “any material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the [Illinois Administrative Procedure Act]” (“IAPA”). 35 Ill. Adm. Code 102.202(d). Section 27(a) of the Environmental Protection Act also requires that the Illinois EPA provide information supporting a regulatory proposal. 415 ILCS 5/27(a).

2. The Illinois EPA’s proposal incorporates by reference the following documents:  
40 CFR Part 50 (2018)

40 CFR Part 51 (2018)

40 CFR Part 52 (2018)

40 CFR Part 53 (2018)

40 CFR Part 54 (2018)

40 CFR Part 55 (2018)

40 CFR Part 56 (2018)

40 CFR Part 57 (2018)

40 CFR Part 58 (2018)

40 CFR Part 59 (2018)

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40 CFR Part 89 (2018)

40 CFR Part 90 (2018)

40 CFR Part 91 (2018)

40 CFR Part 92 (2018)

40 CFR Part 93 (2018)

40 CFR Part 94 (2018)

40 CFR Part 95 (2018)

40 CFR Part 96 (2018)

40 CFR Part 97 (2018)

40 CFR Part 98 (2018)

3. The documents listed above consist of several hundred pages. They are all part of the Code of Federal Regulations, are all readily accessible to or are within the possession of the Board, and are all publicly available online. Given the volume and ease of accessibility of these documents, the Illinois EPA moves that the Board waive the requirement that the Illinois EPA provide copies of such documents.

4. Section 5-75(a) of the IAPA provides that an agency may incorporate by reference the regulations, standards, and guidelines of an agency of the United States or a nationally recognized organization or association without publishing the incorporated material in full. 5 ILCS 100/5-75(a). Section 5-75(c) of the IAPA provides that such agency shall maintain a copy of the referenced material in at least one of its principal offices and shall make it available to the public upon request. 5 ILCS 100/5-75(c).

WHEREFORE, the Illinois EPA moves that the Board waive the requirement that the Illinois EPA provide copies of the aforementioned documents.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Sally Carter*  
Sally Carter  
Assistant Counsel

Dated: July 2, 2018

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**STATEMENT OF REASONS**

**I. INTRODUCTION**

The Illinois Environmental Protection Agency (Illinois EPA or Agency) submits this Statement of Reasons to the Illinois Pollution Control Board (Board) pursuant to Sections 9.1(c), 10, 27, and 28 of the Environmental Protection Act (Act) (415 ILCS 5/9.1(c), 10, 27, and 28) and 35 Ill. Adm. Code 102.202 in support of new 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration and of 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, and 35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations. The Illinois EPA is proposing these regulations to enable the Illinois EPA to assume full responsibility for Prevention of Significant Deterioration (PSD) permitting in Illinois from the United States Environmental Protection

Agency (USEPA) and further, for the Board to assume responsibility for any administrative review of PSD permits issued by the Illinois EPA.

This rulemaking is intended to meet certain obligations of the State of Illinois under the Act requiring the Board to adopt regulations establishing a PSD permit program meeting the requirements of Section 165 of the Clean Air Act (CAA), 42 U.S.C. §7475. 415 ILCS 5/9.1(c). While the Board has not historically been affirmably required to adopt a state PSD program, the Illinois General Assembly recently amended the Act mandating such requirement. The CAA generally requires states to submit a State Implementation Plan (SIP) to adopt a PSD program, 42 U.S.C. §§7410(a)(2)(C) and 7471; the Illinois EPA has historically fulfilled this obligation by implementing the PSD program on behalf of USEPA pursuant to a delegation agreement with USEPA that has been in effect since 1981. 46 Fed. Reg. 9580 (January 29, 1981); *see also*, 40 CFR 52.738(b) (“The provisions of 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Illinois.”). Delegated states are those states that have yet to adopt a PSD program as part of the state’s SIP, but rather are states that have been delegated the authority to issue PSD permits on behalf of the USEPA, relying instead on USEPA’s PSD program in 40 CFR 52.21. This historic approach taken by Illinois was and remains consistent with USEPA statements on the matter. *See*, 74 Fed. Reg. 58688, 58689 (“[f]or those areas designated unclassifiable or attainment, states must meet other statutory and regulatory requirements to prevent significant deterioration of air quality in those areas.”).

This proposal is the first step in establishing a SIP-approved PSD program in Illinois.<sup>1</sup> In addition to the proposed 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration, the Illinois EPA is proposing relevant amendments to the Board's procedural regulations necessary to accommodate appeals of PSD permits to the Board. These proposed changes have been memorialized in 35 Ill. Adm. Code 101, General Rules, and 35 Ill. Adm. Code 105, Appeals of Final Decisions of State Agencies. The Illinois EPA is also proposing relevant amendments to the Board's regulations, 35 Ill. Adm. Code 203, Major Stationary Source Construction and Modification, 35 Ill. Adm. Code 211, Definitions and General Provisions, and 35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations, as certain provisions in these regulations currently refer to permits issued pursuant to the federal PSD program. These revisions to these regulations update these provisions so that they address both the federal PSD program, which the Illinois EPA has historically implemented, and new Part 204. It should also be noted, while not a part of this regulatory proposal to the Board, the Illinois EPA is currently amending relevant Agency rules as well, 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program, to accommodate a SIP-approved PSD program in Illinois. These rules specify the relevant public participation procedures before the Agency that must accompany the processing of permit applications for certain sources of air pollution, including PSD permits, issued by the Illinois EPA.

SIP revisions are required to undergo public notice and opportunity for hearing before they are submitted to USEPA for approval under 40 CFR §51.102 and Appendix V to Part 51. The Board's procedural rules provide for notice that meets this requirement, as set forth

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<sup>1</sup> Notably, an "[a]pproved program" means a State implementation plan providing for issuance of PSD permits which has been approved by EPA under the Clean Air Act and 40 CFR Part 51. An 'approved state' is one administering an approved program." 40 CFR 124.41.



under 35 Ill. Adm. Code 102.416. To be adequate, the notice must describe the revisions and specify that the adopted rule will be submitted as a SIP revision to USEPA. Given proposed Part 204<sup>2</sup> and the relevant amendments to Parts 203<sup>3</sup> and 211<sup>4</sup> is intended to be submitted by the State of Illinois as a SIP revision, the Agency recommends that the following or similar language be included in the Board's notice of hearings regarding this rulemaking:

If adopted by the Board, the Illinois EPA will submit proposed Part 204 and amendments to Parts 203 and 211 to the United States Environmental Protection Agency (USEPA) for review and approval as a State Implementation Plan (SIP) revision to satisfy Clean Air Act (CAA) requirements regarding Prevention of Significant Deterioration. 42 U.S.C. §§7410(a)(2)(C) and 7471. The revisions submitted to USEPA will include not only the amendments to current regulatory provisions under this proposal, but also the newly created provisions, as well as an analysis demonstrating that the proposal does not interfere with attainment or maintenance of any applicable National Ambient Air Quality Standard, reasonable further progress, or any other applicable requirement of the CAA. This notice is intended to satisfy the requirements of Section 110(l) of the CAA, 42 U.S.C. §7410(l), regarding public notice for SIP submittals.

## **II. STATEMENT OF FACTS**

### **A. Introduction to NSR, PSD and NaNSR**

The New Source Review program mandated by Congress requires the USEPA to designate geographic areas within states, based on existing air quality, on a pollutant-by-pollutant basis, as either being in attainment,<sup>5</sup> unclassifiable<sup>6</sup> or nonattainment<sup>7</sup> with the

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<sup>2</sup> The Illinois EPA has historically implemented the PSD program on behalf of USEPA pursuant to a delegation agreement with USEPA that has been incorporated into Illinois' SIP. 40 CFR 52.738(b). Again, Part 204 is intended to supplant the federal PSD program in Illinois once it is approved by USEPA and takes effect.

<sup>3</sup> By means of Part 203, the Illinois EPA administers the permit review of new sources and modifications to existing sources in nonattainment areas. Part 203 has been SIP approved by USEPA as well. 40 CFR 52.736.

<sup>4</sup> Illinois' definition of volatile organic material in Part 211 has also been included in Illinois' SIP. 40 CFR 52.750.

<sup>5</sup> An attainment area is an area where the air quality meets the NAAQS for a pollutant. 42 U.S.C. §7407(d)(ii).

National Ambient Air Quality Standards (NAAQS).<sup>8</sup> 42 U.S.C. §7407(d). In an attainment or unclassifiable area, the goal is to generally prevent the significant deterioration of air quality in these areas. 74 Fed. Reg. 58688, 58689. (November 13, 2000). In a nonattainment area, states must develop a State Implementation Plan (SIP) to reduce emissions to come into attainment as quickly as possible consistent with the CAA and implementing regulations. 74 Fed. Reg. at 58689.

The term New Source Review (NSR)<sup>9</sup> refers to two distinct preconstruction permitting programs triggered by the proposed construction of large stationary sources of air pollution, specifically the proposed construction of a major stationary source or construction of a major modification at an existing stationary source of air pollutants generally regulated under the CAA. These preconstruction permitting programs are set forth in Parts C and D of Title I of the CAA.

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<sup>6</sup> An unclassifiable area is an area that cannot be classified as meeting or not meeting the NAAQS for a pollutant. 42 U.S.C. §7407(d)(iii).

<sup>7</sup> A nonattainment area is an area where the air quality does not meet the NAAQS for a pollutant. 42 U.S.C. §7407(d)(i).

<sup>8</sup> The CAA requires the USEPA to set NAAQS for certain pollutants at levels requisite to protect public health and welfare. 42 U.S.C. §7409(b). There are two types of national ambient air quality standards. Primary standards seek to protect public health; meanwhile secondary standards seek to protect public welfare, i.e., decreased visibility and damage to animals, crops, vegetation and buildings.

<sup>9</sup> In referring to NSR, the reference is typically to both nonattainment NSR and PSD. However, confusion exists given a few early USEPA guidance documents employed the term NSR exclusively for the nonattainment NSR regulations, i.e., USEPA did not always include PSD when discussing NSR. However, when referring to NSR today, the reference is to both nonattainment NSR and PSD.

Part D establishes the nonattainment NSR (NaNSR) program that applies to those areas of the country designated nonattainment with respect to a particular criteria pollutant.<sup>10</sup> *See, 42 U.S.C. §§7501-7509.* The NaNSR program ensures that emissions of a criteria pollutant from a major project does not interfere with a state's attainment plan for a particular pollutant. The strategy of the NaNSR regulations assumes that minor new sources or minor modifications do not significantly impact air quality or interfere with plans devised to achieve NAAQS compliance. Illinois EPA currently administers the NaNSR program in Illinois through Section 203, Major Stationary Sources Construction and Modification, 35 Ill. Adm. Code 203.<sup>11</sup> This program is administered as an integral part of the permit programs in Part 201. The Part 203 regulations specify which projects are major and the requirements which apply to such projects to assure that they are developed in a manner consistent with ongoing efforts to meet air quality standards.<sup>12</sup>

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<sup>10</sup> NAAQS have been set for six principal pollutants, commonly referred to as the criteria pollutants. These are ozone (O<sub>3</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>). In addition, the precursors of ozone (VOC and NO<sub>x</sub>) and PM<sub>2.5</sub> (SO<sub>2</sub> and NO<sub>x</sub>) are typically characterized as criteria pollutants. NAAQS are the maximum allowable concentration ceiling for each of the criteria pollutants.

<sup>11</sup> Part 203 satisfied Illinois' obligation to submit a SIP to adopt and receive SIP approval for a NaNSR program, 42 U.S.C. §§7410(a)(2)(C) and 7502; *see also*, 40 CFR 52.736; *see also*, 74 Fed. Reg. 58688, 58689 (For areas designated nonattainment, "states must develop a . . . SIP . . . that provides for attainment of the NAAQS as expeditiously as practicable, in accordance with the requirements of the CAA and applicable EPA regulations.").

<sup>12</sup> For a major project, NaNSR requires emission limits for the nonattainment area pollutant that represent Lowest Achievable Emission Rate (LAER), compensating emission reductions from other sources, commonly called offsets, information confirming that other existing major sources owned by the applicant within Illinois are in compliance with applicable air pollution regulations or on a program to come into compliance, an analysis of alternatives to the project, and a public comment period with an opportunity for public hearing. The requirements applicable to the construction of a major stationary source or the construction of a major modification at an existing stationary source for a nonattainment pollutant in a nonattainment area differ from the requirements applicable to the construction of a major stationary source or the construction of a major modification at an existing stationary source for an attainment pollutant in an attainment area.

Part C of the CAA establishes the second preconstruction permitting program, the PSD program; PSD may be applicable in those areas formally designated as attainment or unclassifiable with the NAAQS for both criteria and non-criteria pollutants.<sup>13</sup> *See*, 42 U.S.C. §§7470-7479; 40 CFR 81. Similar to the NaNSR program, the strategy underlying the PSD regulations assumes that minor new sources or minor modifications do not significantly affect air quality. Accordingly, when applicable, the PSD program requires a source to obtain a PSD permit before beginning construction of a new major stationary source or construction of a major modification of an existing stationary source and to comply with other PSD requirements. 42 U.S.C. §7475(a). The PSD program has been and will continue to be a critical tool in meeting Illinois' air quality objectives. Proposed Part 204 would be one in a series of permit programs intended to track emissions, to ensure that sources are meeting their regulatory obligations, and to maintain permits.

**B. The federal PSD program**

The USEPA has two sets of federal regulations addressing PSD. The regulations governing state PSD programs established pursuant to state law and submitted to USEPA for approval and incorporation into SIPs are codified at 40 CFR 51.166. Meanwhile, the

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<sup>13</sup> Non-criteria pollutants include pollutants subject to any standard under Section 111 of the CAA. This necessarily includes particulate matter (PM). Non-criteria pollutants also include Class I or Class II substances subject to a standard under Title VI of the CAA or a pollutant that is otherwise subject to regulation under the CAA except for Section 112 pollutants. "Under the PSD regulations, stationary sources that emit, or have the potential to emit, any air pollutant subject to regulation under the Act, either criteria or noncriteria, at major stationary sources are subject to the PSD regulations (see 40 CFR 52.21(i)(2))." *Letter to Mr. Robert Kalish, Environmental Services Department, The Dow Chemical Company from John S. Seitz, Director, Office of Air Quality Planning and Standards, USEPA, dated May 4, 1995.*

regulations governing the federal PSD programs are set forth at 40 CFR 52.21 and applies in those states without a SIP-approved PSD program.<sup>14</sup>

The PSD program seeks to protect public health and welfare from the adverse effects of air pollution. Specifically, this includes ensuring that the construction of a major stationary source or the construction of a major modification at an existing stationary source in an attainment area<sup>15</sup> will not interfere with any portion of the SIP to prevent the significant deterioration of air quality while allowing economic growth in a manner consistent with the preservation of clean air resources. 42 U.S.C. § 7470. In issuing a PSD permit, permitting authorities must address several requirements including an evaluation of the impact of the proposed major stationary source or modified stationary source to ensure that project emissions will not result in a violation of the NAAQS or applicable PSD ambient air quality increments. 40 CFR §52.21(k). In addition, a central provision of PSD is the requirement that subject sources be equipped with Best Available Control Technology (BACT) for all PSD pollutants emitted in major or significant amounts. 40 CFR §52.21(j). This, along, with other aspects of the PSD program, prevents violations of the NAAQS; protects air quality in areas of special natural, recreational, scenic or historic value; and ensure the public is informed and possesses an opportunity to comment on proposed PSD permitting actions.

#### 1. Applicability

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<sup>14</sup> On December 31, 2002, the USEPA published a revision to the federal PSD regulations, which is commonly referred to as NSR Reform. These requirements became effective on March 3, 2003.

<sup>15</sup> Although, an area may be designated as attainment or unclassifiable for one or more criteria pollutants and nonattainment for other pollutants, PSD will only apply to the attainment or unclassifiable pollutants in that area. A project could be located in an area designated as attainment or unclassifiable for some pollutants while simultaneously being nonattainment for other pollutants.

The applicability criteria for PSD are likely one of the more complicated aspects of this preconstruction permitting program. Issuance of a PSD permit is generally required for construction of a new major stationary source and construction of a major modification at an existing major stationary source. Determining whether a proposed or existing stationary source is major is based on its emissions of any pollutant regulated under the CAA, with the exception of hazardous air pollutants and greenhouse gases.<sup>16</sup> *See, generally*, 42 U.S.C. §§7470-7479. Construction of a new major stationary source occurs if a major stationary source will be built at an undeveloped site or if a physical change will occur at an existing non-major stationary source and the physical change, by itself, would constitute a major stationary source.

There are two different emission thresholds for a major source under the PSD rules, 100 tons per year and 250 tons per year. If a source is in one of the specific source categories listed in the federal PSD regulations, the source is a major stationary source if it emits or has the potential to emit 100 tons per year (tpy) or more of any “PSD regulated” pollutant. There are 28 listed source categories, which include, among others, fossil fuel-fired steam electric power plants, Portland cement plants and chemical process plants. For sources in these listed source categories, fugitive emissions always count toward the 100 tpy threshold. If a source is not in one of the listed source categories, an emission threshold of 250 tpy applies. 42 U.S.C. §§7475(a), 7479(1), (2)(C), 7411(a)(4). For these sources, fugitive emissions may or may not count toward the 250 tpy threshold. Fugitive emissions are counted if the source is in a source category that, as of August 7, 1980 was being regulated under Sections 111 or

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<sup>16</sup> Under the CAA, the term source means an entire plant or manufacturing complex. 42 USC §§ 7411(a)(3), 7661(2). A stationary source includes all pollutant-emitting activities that belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under common ownership or control.

112 of the Clean Air Act. Examples of these source categories include automobile and light-duty truck surface coating operations, glass manufacturing plants and beryllium machining operations. It should be emphasized that under the PSD rules, fugitive emissions are emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Thus, fugitive emissions are not defined as emissions that are not captured but as emissions that could not reasonably be captured. Common sources of fugitive emissions, as that term is defined by the PSD rules, are roadways and quarry operations.

Determining whether a proposed project at an existing major stationary source is a major modification is a multi-step process. As an initial matter, the project must include a new emissions unit or a physical change or an operational change (or a change in the method of operation) of an existing emission unit or major stationary source so as to constitute a modification. 40 CFR 51.166(b)(2)(i). Then, a major modification is generally based on whether the proposed project will cause a significant emissions increase for a regulated pollutant and also a significant net emissions increase for the same pollutant. 40 CFR 51.166(b)(2)(ii). The change in emissions for a project is the sum of the increases and decreases in actual emissions from existing emissions units as a result of the project and the increases in potential emissions from new units installed as part of the project.<sup>17, 18</sup> If the

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<sup>17</sup> On March 13, 2018, the USEPA Administrator found that the relevant provisions of 40 CFR 52.21(a)(2)(iv) and 40 CFR 51.166 provide that the “differences in emissions” from the various emission units involved in a project should always be summed. (Scott Pruitt, Administrator of USEPA, Memorandum, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” March 13, 2018.) This interpretation is the subject of a petition for review currently pending before the U.S. Court of Appeals for the District of Columbia. *Environmental Defense Fund, Natural Resources Defense Council and Sierra Club v. U.S. Environmental Protection Agency and Scott Pruitt*, Case No. 18-1149, on May 29, 2018.

Prior to the issuance of this memorandum, the handling of the changes in emissions from a proposed project under the federal PSD rule depended on the types of emissions units involved in a

increase in emissions for a particular pollutant equals or exceeds the significant emission rate set for that pollutant, then the analysis may be extended to include creditable changes in actual emissions resulting from other contemporaneous projects to consider the net change in emissions of the source. 40 CFR 51.166(b)(3). This consideration of contemporaneous changes in emissions is commonly referred to as a “netting” exercise. Netting is used when a proposed modification is significant by itself but would not be subject to PSD by taking into account other emission decreases during the contemporaneous timeframe. In the most-simple terms, the emissions increase from the proposed modification plus all other creditable contemporaneous emission increases and decreases are summed together. *New Source Review Workshop Manual* (Draft 1990), (*NSR Manual*)<sup>19</sup> A.35. A PSD permit is required for a proposed modification if for a subject pollutant the emissions increase from the modification, itself, and the net emission increase from the modification are both significant.

To determine the net emission increase from a proposed modification, one must first determine the contemporaneous period for the specific proposed modification. The

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project. If the project only involved existing units, differences in emissions were summed. However, if the project involved both existing and new units (or only new units), only the increases in emissions were to be summed without any consideration of decreases in emissions that would occur in the project.

<sup>18</sup> Project emissions include the debottlenecking of any up-stream or down-stream equipment, or any increased utilization of support facilities. Modifications may involve emission increases at units that are not physically altered themselves but are debottlenecked or otherwise affected by a physical change or change in the method of operation of an emission unit. For instance, units that are upstream or downstream of the unit(s) that is being physically or operationally modified may have increases in emissions due to the changes at the modified units.

<sup>19</sup> “The NSR Manual has been used as a guidance document in conjunction with new source review workshops and training, and as a guide for state and federal permitting officials with respect to PSD requirements and policy. Although it is not a binding Agency regulation, the NSR Manual has been looked to by this Board as a statement of the Agency’s thinking on certain PSD issues.” *In re Prairie State Generating Co.*, 13 E.A.D. 1, 6, fn. 2, citing *In re RockGen Energy Ctr.*, 8 E.A.D. 536, 542 f.10 (EAB 1999), *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 129, n.13(EAB 1999).



contemporaneous period begins five years before construction commences on the proposed modification. The contemporaneous period ends on the date that the increase in emissions occurs from the particular modification. The contemporaneous period is the period between these two dates. For a pollutant for which a source undertakes a specific netting analysis, creditable emission increases and decreases that have or will occur in the contemporaneous period must be identified and taken into account. Creditable increases include the proposed project emission increases and all other authorized emission increases in the contemporaneous period. Creditable decreases are emission decreases, to the extent that they exceed SIP requirements, that occur in the contemporaneous period.<sup>20</sup> These decreases are creditable reductions in actual emissions from an emissions unit to the extent that they are or can be made federally enforceable.<sup>21</sup> A determination for the amount of each creditable emissions increase and decrease in the contemporaneous period must be made. All creditable increases and decreases in the contemporaneous period, which necessarily includes the increase from the proposed modification, are summed for comparison to the applicable PSD significant emission rate. If the calculated net increase equals or exceeds the applicable significance emission rate, then PSD permitting has been triggered.<sup>22, 23</sup>

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<sup>20</sup> For example, if a proposed project would result in an increase of 100 tpy of a pollutant but three years earlier the source removed a compliant unit that had actual emissions of 75 tpy of the same pollutant, then a decrease of 75 tpy is available such that the contemporaneous net increase from the proposed project after considering that decrease would only be 25 tpy.

<sup>21</sup> In determining creditable emission changes, a number of criteria apply. An increase or decrease is creditable only if the permitting authority has not previously relied upon it in issuing a PSD permit, which permit remains effective. For pollutants with PSD increments, an increase or decrease in actual emissions occurring before an area's baseline date is creditable only if it would be considered in calculating remaining available increment for the particular pollutant. Credit cannot be taken for the mandatory decrease in emissions that would be needed for an emission unit to be in compliance. Future emission decreases must be enforceable when construction on a project begins and then actually occur within the contemporaneous period. *NSR Manual A.47-A.48.*

<sup>22</sup> The relevant significance thresholds are as follows:

In addition to the applicability criteria for preconstruction PSD review, the federal regulations provide for the applicability of recordkeeping and reporting requirements for certain projects that occur at an existing major stationary source and that are determined to not be major modifications. 40 CFR §51.166(r)(6)-(7); *see also*, 40 CFR §52.21(r)(6)-(7).

Table 1  
Pollutant Significant Emissions Increase Rates for  
Major Modifications in 40 CFR Part 52.21(b)(23)

Pollutant	Significant Emissions Increase
Carbon monoxide	100 tpy
Nitrogen oxides (NO <sub>x</sub> )	40 tpy
Sulfur dioxide (SO <sub>2</sub> )	40 tpy
Particulate matter	25 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions, also 40 tpy of SO <sub>2</sub> or 40 tpy of NO <sub>x</sub> emissions
Ozone	40 tpy of volatile organic compounds or NO <sub>x</sub>
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup> tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

<sup>23</sup> If a project is subject to PSD due to other pollutants, BACT will apply to greenhouse gas (GHG) emissions if the source has the potential to emit GHG in excess of 75,000 tons per year. On June 23, 2014, the United States Supreme Court issued its opinion in *Utility Air Regulatory Group v. EPA*, holding that the USEPA's interpretation that GHGs are "regulated pollutants" that can, on their own trigger PSD and Title V permitting requirements was impermissible because it would cover small sources that Congress did not expect would need to undergo permitting. In addition, the USEPA cannot deviate from the explicit 100 and 250 tpy applicability thresholds established under the CAA for the PSD and Title V programs. The Court also held that the USEPA has discretion to require BACT for "anyway" sources, meaning sources which are otherwise subject to PSD permitting requirements based on emissions of non-GHG pollutants. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 189 L. Ed. 2d 372 (2014).

As an alternative to the major modification applicability criteria summarized above, the federal PSD program allows an existing major stationary source to obtain a Plantwide Applicability Limit (PAL) for a particular pollutant. This alternative provides an entirely different set of applicability criteria. 40 CFR §51.166(w)(1); *see also*, 40 CFR §52.21(aa)(1).

## **2. Main requirements of PSD**

If a proposed unit or source is subject to PSD, the proposed unit or source will be subject to four central obligations by way of PSD. These include the requirement that new major sources and significant modifications of existing major sources be equipped with Best Available Control Technology (BACT) for all PSD pollutants emitted in significant amounts, an air quality analysis, an additional impact analysis, and public notice to ensure that the public has an opportunity to comment on the proposed PSD determination.<sup>24</sup>

### **BACT**

The CAA requires major stationary sources to obtain PSD permits prior to construction or modification, which necessarily includes a BACT review to minimize emissions of each regulated pollutant and the development of appropriate emission limits. 42 U.S.C. §7475(a)(4). BACT is defined by the CAA as follows:

[A]n emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available

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<sup>24</sup> Many sources find it advantageous to avoid PSD applicability and thus, it is not uncommon for new minor stationary sources or minor modifications at any existing major stationary source to “voluntarily” use control measures and accept enforceable emission limits that approach, equal or even exceed BACT level controls. Consequently, while the PSD program does not necessarily result in reductions in actual emissions given it is a preconstruction permitting program, the PSD program, both directly and indirectly, continues to support, if not force, continuing improvements in emission control technology.

methods, systems and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each pollutant.

42 U.S.C. § 7479(3). The USEPA has consistently interpreted the statutory and regulatory BACT definitions as containing two core requirements that must be met by any BACT determination.<sup>25</sup> First, the BACT analysis must include consideration of the most stringent control option that is available and technically feasible, (i.e., those which provide the “maximum degree of emissions reduction”). Second, any decision to require a lesser degree of emissions reduction must be justified by an objective analysis of “energy, environmental, and economic impacts.”

In this process, the most effective control that is available and technically feasible is assumed to constitute BACT for a particular unit, unless the energy, environmental and economic impacts associated with that control operation are found to be excessive. An important resource for BACT determinations is USEPA’s RACT<sup>26</sup>/BACT/LAER Clearinghouse (Clearinghouse or RBLC), a national compendium of control technology determinations maintained by USEPA. Other documents that are consulted include general information in technical literature and information on other similar or related projects that are proposed or have been recently permitted. If the source is subject to a New Source Performance Standard (NSPS), the minimum control efficiency to be considered in a BACT analysis must result in an emission rate less than or equal to the NSPS emission rate. In other words, the applicable NSPS represents the maximum allowable emission limit from an emission unit subject to PSD. Furthermore, BACT requirements only apply to the pollutants

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<sup>25</sup> USEPA, Office of Air and Radiation, Memorandum from J.C. Potter to the Regional Administrators. Washington, D.C., December 1, 1987.

<sup>26</sup> Reasonably Available Control Technology or RACT.

that are subject to PSD review (i.e., significant net emissions increase) and the emission units that are newly installed or physically modified, or have changed their operation.

Ultimately, BACT determinations result in the selection of an emission limit that represents application of the selected control technology, modification of production processes or methods of emission control that are specific to each proposed project. This may include fuel cleaning or treatment and innovative fuel combustion techniques. BACT may also be a design, equipment, work practice or operational standard if imposition of an emissions limit is not feasible. Typically, regulatory agencies such as the Illinois EPA follow the process or framework set forth in USEPA's *New Source Review Workshop Manual* (Draft 1990) for guidance in determining BACT through a methodology commonly referred to as the "top-down" method.<sup>27, 28</sup>

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<sup>27</sup> "The NSR Manual is not a binding Agency regulation and, as such, strict application of the methodology described in the NSR Manual is not mandatory." *In re Cardinal FG Co.*, 12 E.A.D. 153, 162 (EAB 2005). "However, a careful and detailed analysis of the criteria identified in the regulatory definition of BACT is required, and the methodology described in the NSR Manual provides a framework that assures adequate consideration of the regulatory criteria and consistency with the PSD permitting program." *Id.*

<sup>28</sup> Employing the classic top-down method, the five steps in a BACT analysis are as follows. The first step is to identify all potentially available control options. Available control options are those air pollution control technologies, including the application of production processes or innovative control technologies, including fuel cleaning or innovative combustion techniques, with the practical potential for application to the proposed emissions unit and the regulated pollutant under review. *NSR Manual at B.5.*

The second step is to eliminate the technically infeasible control options from those identified in the first step. For each identified technology, the permitting authority must determine if the technology has been demonstrated, i.e., if the technology has been installed and operated successfully elsewhere on a similar facility. If the technology has not been demonstrated, then the technology must be both available and applicable. If the technology has been neither demonstrated nor found to be both available and applicable, the technology is eliminated from further consideration. *NSR Manual at B.7.*

The third step is to rank the remaining control technologies by control effectiveness for the pollutant under review in descending order with the most effective control alternative at the top. This step necessarily includes a consideration of the control efficiencies among various control techniques utilizing different emission performance levels and different measures of effectiveness. *NSR Manual at B.22-B.25.*

In step four, the direct impact of each control alternative is analyzed for its energy,

### **Air Quality Determination**

As already discussed, in conjunction with the BACT analysis, the permitting authority typically sets an emission limitation or limitations that represent BACT for emissions for those PSD pollutants emitted in significant amounts from the proposed project. Emissions are the quantity of pollutants emitted by a source, as they are released to the atmosphere from various emission units. Standards are set limiting the amount of these emissions as a means to address the presence of contaminants in the air. The quality of air that people breathe is known as ambient air quality. Ambient air quality considers the emissions from a particular source after they have dispersed from the source following release from a stack or other emission point, in combination with pollutants emitted from other nearby sources and background pollutant levels. The level of pollutants in ambient air is typically expressed in terms of the concentration of the pollutant in the air. One form of this expression is parts per million.

The USEPA has standards for the level of various pollutants in the ambient air. These ambient air quality standards are based on a broad collection of scientific data to define levels of ambient air quality where adverse human health impacts and welfare impacts may occur. As part of the process of adopting air quality standards, the USEPA compiles

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environmental, and economic impacts. Issues regarding the cost-effectiveness of the alternative technologies are considered under this step. *NSR Manual* at B.31-.46. In the event that the top control technology is shown to be inappropriate due to excessive energy, environmental or economic impacts, the next most stringent alternative becomes the new control candidate and is similarly evaluated until a technology is determined to be appropriate. This analysis seeks to validate the suitability of the top control option identified, or to provide a clear justification as to why the top control option should not be selected. *NSR Manual* at B.26-B.50.

Finally, under step five, the most effective control alternative not eliminated in step four is selected as BACT for the proposed project to control the pollutant under review. In addition, the permitting authority typically sets an appropriate emissions limit as BACT for the pollutant under review based on the selected control. *NSR Manual* at B.53.

scientific information on the potential impacts of the pollutant into a “criteria” document. Hence the pollutants for which air quality standards exist are known as criteria pollutants. Based upon the nature and effects of a pollutant, appropriate numerical standards and associated averaging times are set to protect against adverse impacts. For some pollutants, several standards are set, for others only a single standard has been established.

As previously discussed, areas can be designated as attainment or unclassifiable or nonattainment for criteria pollutants, based on the existing air quality. In a nonattainment area, efforts must be taken to reduce emissions to come into attainment. In other areas, the goal is to generally preserve the existing clean air resource and to ensure that increases in emissions do not cause a significant deterioration in air quality. 42 USC §7476. An area can be nonattainment for one pollutant and attainment for another.

An air quality analysis is the process of assessing future ambient concentrations of a pollutant in an area as a result of a proposed project, and comparing those concentrations to the air quality standard or other reference level. An air quality analysis uses a combination of monitoring data and modeling as appropriate. In monitoring, the levels of pollutants in the air are actually sampled on a routine basis. This is particularly valuable as monitoring provides data on actual air quality, considering actual weather and the operation and emissions of sources.<sup>29</sup> The Illinois EPA operates a network of ambient air monitoring stations across the state.

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<sup>29</sup> See, 42 U.S.C. §7474(e); *see also*, 40 CFR 52.21(k). Any application for a PSD permit shall contain an ambient air quality analysis of the proposed site and in those areas that may be impacted by emissions from the proposed major stationary source or major modification. *Id.* This analysis must include air quality monitoring data collected for a year before applying for a permit unless the State “determines that a complete and adequate analysis for such purpose may be accomplished in a shorter time period.” 42 U.S.C. §7474(e)(2). The USEPA subsequently “adopted regulations that exempt sources from preconstruction monitoring requirements for a pollutant if the source can demonstrate that its ambient air impact is less than a value known as the [significant monitoring concentration].”

As a practical matter, ambient air quality monitors cannot be installed and operated at all possible points in a particular area. Nor can ambient monitoring be used to assess the impacts of a proposed construction project, which has not yet been built. Modeling is used, along with monitoring data for background air quality, for this purpose. Modeling uses mathematical equations to predict ambient concentrations based on the rates of emissions and other data including the heights of stacks, the velocity and temperature of exhaust gases, and weather data (*e.g.*, speed and wind direction). Modeling is performed by computers, allowing detailed estimates to be made of air quality impacts considering actual hour-by-hour weather data. Modeling techniques are well developed for essentially stable pollutants like particulate matter, SO<sub>2</sub> and CO, and can readily address the impacts of individual sources and projects. The modeling techniques for ozone, which is a reactive pollutant, are more complex and have generally been developed for analysis of ozone air quality over entire urban areas. As such, these modeling techniques are not applied to a single source or project whose potential emissions of ozone precursors (*i.e.*, VOM or NO<sub>x</sub>) are small. Other analysis techniques are generally used to address air quality impacts for ozone.<sup>30</sup>

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72 Fed. Reg. 54,112, 54,141 (September 21, 2007). However, the D.C. Circuit Court of Appeals vacated those rules establishing a PM<sub>2.5</sub> significant monitoring concentration (SMC) finding that PM<sub>2.5</sub> SMCs could not be employed to exempt applicants from the requirement to compile preconstruction monitoring data. *Sierra Club v. Environmental Protection Agency*, No. 10-1413 (D.C. Cir. January 22, 2013).

<sup>30</sup> Most recently, USEPA has recommended the use of Modeled Emission Rates for Precursors (MERPs), a technique which relates USEPA-generated photochemical modeling results, a critical air quality threshold for ozone and a source's ozone precursor emissions for assessing ozone impacts. *Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier I Demonstration Tool for Ozone and PM<sub>2.5</sub> under the PSD Permitting Program*, Richard A. Wayland, Division Director, Air Quality Assessment Division, USEPA, dated December 2, 2016.



All PSD permits require an air quality analysis of the ambient impacts associated with the emissions of subject pollutants from a proposed project.<sup>31</sup> A main purpose of the air quality analysis is to assure that new emissions emitted from a proposed major stationary source or major modification will not cause or contribute to a violation of any applicable NAAQS<sup>32</sup> or PSD increment.<sup>33</sup> An air quality analysis must also include an additional impact analysis. *See*, 40 CFR 52.21(o). As a proposed project would potentially impact an area that is designated a Class I area under the PSD rules, another purpose of a PSD air quality analysis is to protect air quality related values in such areas.<sup>34</sup> *See*, 40 CFR 52.21(p).

<sup>31</sup> Given the global nature of the impacts of emissions of GHGs and the fact that NAAQS and ambient air quality have not been established for carbon dioxide, air quality analyses are currently not required for emissions of GHGs.

<sup>32</sup> The applicable NAAQS are listed in the following table.

National Ambient Air Quality Standards (NAAQS)

Pollutant	Averaging Period	NAAQS ( $\mu\text{g}/\text{m}^3$ )
NO <sub>2</sub>	1-hr	188
	Annual	100
SO <sub>2</sub>	1-hr	196
	3-hr	1300
	24-hr	365
	Annual	80
PM <sub>2.5</sub>	24-hr	35
	Annual	12
PM <sub>10</sub>	24-hr	150

<sup>33</sup> Section 165 of the CAA generally gives states the authority to determine that a PSD permit should not be issued when an air quality related value (AQRV) in a Class I area would be adversely impacted by a proposed project. *See*, 42 U.S.C. §7475(d)(2)(c).

<sup>34</sup> There are not any areas in Illinois that are Class I areas. There are Class I areas in Kentucky and Missouri (i.e., Mammoth Cave National Park in central Kentucky and the wilderness area at the Mingo Wildlife Refuge in southeastern Missouri) that could potentially be impacted by the emissions of a proposed large new major stationary source or major modification in Illinois depending upon its location. The nearest Class I area to the north of Illinois is the Rainbow Lake Wilderness Area in northern Wisconsin, about 250 kilometers north of the Illinois-Wisconsin border.

### **NAAQS Analyses**

In practice, USEPA's procedures for NAAQS analysis for pollutants involve an initial "screening" analysis and, if more than de minimis impacts are predicted, further analysis. The initial analysis evaluates the impacts of the emissions increase from the proposed new source or the increase or net increase in emissions from a modification. The results of the initial analysis determine whether a further impact analysis is required. If predicted concentrations are found to be de minimis a further analysis is not required. If the results of the initial analysis show impacts that are more than de minimis, then further analysis must be performed for that pollutant and, as applicable, relevant averaging time. The concentrations that are used to distinguish impacts that are and are not de minimis are referred to as "significant impact levels" (SILs). USEPA has established SILs for certain pollutants and averaging times.<sup>35</sup> For certain other pollutants, it has developed recommendations for SILs but recognizes that permitting authorities have the discretion to use other values of SILs as appropriate for particular circumstances.<sup>36</sup>

### **PSD Increment**

The PSD program sets limits on the allowable increases in concentrations of certain pollutants in the ambient air. These maximum allowable increases in ambient concentrations are referred to as PSD increments or increments. A PSD increment is the amount that the

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<sup>35</sup> USEPA has adopted SILs for NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub> and CO. 40 CFR 51, Appendix S, Section III.

<sup>36</sup> USEPA recently announced recommended SIL values for the 8-hour ozone NAAQS and the annual and 24-hour PM<sub>2.5</sub> NAAQS. The recommended value for the SILs for ozone is 1.0 ppb, PM<sub>2.5</sub> on a 24-hour average is 1.2 µg/m<sup>3</sup> and PM<sub>2.5</sub> on an annual average is 0.2 µg/m<sup>3</sup>. *Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program*, USEPA, April 17, 2018 ("EPA recommends that permitting authorities consider using these SIL values for ozone and PM<sub>2.5</sub> on a case-by-case basis at the same points in the PSD air quality analysis as SIL values historically have been used in the PSD program . . ."). These recommended values are currently the subject of a petition for review filed by the Sierra Club before the U.S. Court of Appeals for the District of Columbia Circuit, Case No. 18-1167, on June 18, 2018.

concentration of a subject air pollutant an area is allowed to increase as a result of growth in emissions.<sup>37</sup> PSD increments may act to restrict the air quality in attainment or unclassifiable areas to levels below the applicable NAAQS. The PSD increments limit the increases in concentrations of a pollutant that can occur from the applicable baseline ambient air concentration for a subject pollutant regardless of whether the NAAQS would be exceeded or not.<sup>38</sup>

Increments are currently set for SO<sub>2</sub>, PM<sub>10</sub>, NO<sub>2</sub> and PM<sub>2.5</sub>. For purposes of PSD, the PSD increments for Class II areas that currently apply in Illinois as listed in the following table.

<b>Class II PSD Increments</b>		
<b>Pollutants</b>	<b>Averaging Period</b>	<b>PSD Increment (µg/m<sup>3</sup>)</b>
NO <sub>2</sub>	Annual	25
SO <sub>2</sub>	3-hr	512
	24-hr	91
	Annual	20
PM <sub>2.5</sub>	24-hr	9
	Annual	4
PM <sub>10</sub>	24-hr	30
	Annual	17

<sup>37</sup> In order to obtain a PSD permit under Section 165(a)(3) of the CAA, the source must demonstrate that emissions “will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, [or] (B) national ambient air quality standard in any air quality control region.” 42 U.S.C. §7475(a)(3). The “maximum allowable increase” of an air pollutant that may occur above a set baseline concentration is the PSD increment. 72 Fed. Reg. 54112, 54116 (September 21, 2007); *see also*, 42 U.S.C. §7473.

<sup>38</sup> As a general matter, if the baseline concentration in an area for a pollutant is “low,” the PSD increment will be constraining. Conversely, if the baseline concentration is “high,” *i.e.*, near the NAAQS, the NAAQS will be constraining.

The baseline concentrations are determined separately for each pollutant and averaging time and, in general, are the ambient concentrations of a pollutant that exists in a baseline area as of the date that the first complete application for a PSD project in that area is submitted subject to adjustment for changes in concentration due to changes in emissions at major sources. Baseline areas are defined for a particular pollutant and averaging time in the way in which the attainment designations are made for the relevant NAAQS for a state by USEPA. In Illinois, designations of areas as attainment or unclassifiable are generally made for individual counties; as such, the baseline areas are each individual county. Because of the way that the baseline concentrations are set, two dates are involved in determining the baseline concentration. First, the major source baseline date is the date after which changes in emissions of PSD major sources may affect the amount of increment that is available. The second is the minor source baseline date and this is the date after which changes in emissions at minor sources also affect the amount of increment that is available. The major source baseline date is established by regulation for each particular pollutant and averaging time, tied to the date that the particular increment is adopted. The minor source baseline date is the date of submittal of the first complete PSD permit application for a project within a particular baseline after the trigger date.<sup>39</sup>

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<sup>39</sup> The two baseline dates are a consequence of how the effects of changes in emissions are determined. For major PSD sources, the effects of changes in emissions on the available increment may be determined by modeling. However, the effects of changes in emissions of other sources cannot necessarily be readily determined by modeling. This is because of the myriad of minor sources that may affect air quality in a baseline area. Thus, the PSD program contemplates that the first PSD application for a project in a baseline area would determine baseline concentrations representative of the time that the application was prepared and submitted based on monitored air quality in the area. This concentration would then be adjusted using modeling to account for the effect of changes in emissions at major sources.

After the minor source baseline date, emission increases and decreases at all sources act to consume and expand the available increment. The emissions to be included in the increment analysis are the actual emission increases (or decreases) after the major source baseline date that are associated with construction at a major source, and the actual emission increases (or decreases) at any stationary source after the minor source baseline date.

Significant deterioration occurs when the overall result considering impact from a proposed project would exceed the applicable PSD increment. A proposed project cannot be permitted if it would result in an exceedance of the air quality NAAQS, even if not all of the PSD increment would be consumed.

#### **Additional Impact Analysis**<sup>40</sup>

An additional impact analysis must be performed for all PSD projects. This analysis assesses the impact on soils and vegetation in the vicinity of the proposed project caused by any increase in emissions of any subject pollutant from the proposed project under review. This analysis must also consider the impacts on air quality due to the growth in emissions that would be associated with a proposed project. 40 CFR §§51.166(o), 52.21(o). Associated growth is industrial, commercial, and residential growth that will occur in the area due to the proposed project. The growth analysis involves an assessment of the projected residential,

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<sup>40</sup> While not required by the federal CAA, a variety of state and federal consultations must be completed for a proposed PSD project in Illinois. Historically, pursuant to the delegated PSD program in Illinois, required consultations include the federal Endangered Species Act, the Illinois' Endangered Species Protection Act, the National Historic Preservation Act and the Illinois' Historic Preservation Act. Once a SIP-approved program is in place, necessary consultations would only include the Illinois' Endangered Species Protection Act and the Illinois' Historic Preservation Act.

Any assessment performed pursuant to the state or federal endangered species acts, analyze whether a proposed project would show expected impacts on any identified threatened or endangered species. Pursuant to the National Historic Preservation Act, the potential effects of a proposed permit action are evaluated on historic properties eligible for inclusion in the National Register of Historic Places consistent with the requirements of the National Historic Preservation Act. A letter summarizing the assessment is then provided to the State Historic Preservation Officer for consultation and concurrence with the determination.

commercial, and industrial growth that will occur as a result of the PSD project and, if there would be such growth, an estimate of the emissions and air quality impacts associated with this growth.

### **Class I Area Impact Analysis**

PSD further reflects Congress' judgment that, among these areas designated attainment or unclassifiable with the NAAQS, certain areas commonly referred to as Class I areas deserve the highest level of air quality protection. *See*, 42 U.S.C §7470(2) (providing one purpose of the PSD program is "to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational scenic or historic value."). Sections 160 through 169 of the CAA, as amended in 1977, establish a detailed regulatory program to protect the quality of the air in these regions of the United States.

In this vein, the PSD program provides special protection for areas of special national or regional natural value. Such areas are designated as Class I areas for purposes of PSD increments, which allows for very little deterioration of air quality.<sup>41</sup> Certain existing areas were designated as mandatory Class I areas, precluding redesignation to a less restrictive class in order to acknowledge the value of preventing deterioration of air quality in these areas.<sup>42</sup> Congress designated 158 areas as Class I areas including international parks,

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<sup>41</sup> In addition, the PSD regulations contain measures to protect the remaining "clean" areas, the Class II areas. While Congress set forth procedures to establish Class III areas, that would allow for greater deterioration than Class I or II areas, no Class III areas exist in Illinois. Nor is the Agency aware of the existence of any Class III areas in the United States. In all cases, ambient concentrations cannot violate any of the NAAQS.

<sup>42</sup> States possess the authority to redesignate Class II areas to Class I areas. 42 U.S.C. §7474.

national wilderness areas and national memorial parks in excess of 5,000 acres and national parks in excess of 6,000 acres, in existence on August 7, 1997. 42 U.S.C. §7472.

In addition to the added protection of air quality provided by being subject to Class I PSD increments, the permitting authority and the Federal Land Manager<sup>43</sup> are responsible for defining specific Air Quality Related Values (AQRV's) for an area and for establishing the criteria to determine whether emissions from major new and modified sources will cause an adverse impact on the AQRV. 42 USC §7475. All PSD projects that propose to locate within 100 kilometers of a Class I area must perform Class I area impact analysis to ensure that the proposed project will not adversely impact the relevant AQRV. In addition, PSD projects proposing to locate a distance greater than 100 kilometers from a Class I area that due to their size may have an impact on a Class I area and that emit certain pollutants (PM<sub>10</sub>, SO<sub>2</sub> and NO<sub>2</sub>) must complete a Class I area impact analysis.

For these Class I areas, one air quality related value that must be addressed in any assessment of the impact of emissions from a proposed project is visibility. For this purpose, visibility means the presence of material in the atmosphere that obscures or scatters the passage of light and interferes with the human perception of scenery or vistas. Visibility is affected both by natural atmospheric and meteorological conditions and by the presence of anthropogenic emissions in the atmosphere. While good visibility is clearly an esthetic value, poor visibility and degradation of visibility also pose concerns for air quality and the environment if they are attributable to the presence of pollutants in the atmosphere.

As with air quality impacts, computer modeling has been developed to predict the impacts of emissions of different pollutants on visibility. However, visibility modeling is

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<sup>43</sup> The federal regulations define the "Federal Land Manager" to mean "with respect to any lands in the United States, the Secretary of the Department with authority over such lands." 40 CFR §52.21(b)(24).

more complex than the modeling typically used for PSD air quality analyses as it must address the long-range transport of pollutants, the reactions and transformations that occur during transport, and the role of moisture, ammonia and ozone in the atmosphere in these reactions. Visibility is typically evaluated in terms of the extent to which the passage of light is obscured and extinguished as it passes through the atmosphere.

### **Public Participation**

The PSD program requires that prior to the issuance of a PSD permit, the permitting authority must provide the public with adequate opportunity for involvement. This is done through the public notice and comment procedures. Each permit authority has adopted regulations specifying these public notice procedures.

In the event of a preliminary determination that the application for a proposed project meets applicable state and federal air pollution control requirements, the Illinois EPA is required to provide the public with notice of the proposed action and the conditions of the draft permit. 35 Ill. Adm. Code Part 252. Accompanying any such draft permit is the Project Summary detailing the basis of the proposed action. In Illinois, the Illinois EPA is required to provide at least a 30-day public comment period on the draft permit and, if requested by the public, an opportunity for public hearing on the proposed action. 35 Ill. Adm. Code 252.201(e), 252.205. In the event of public comments, a final decision shall only be issued by the Illinois EPA after due consideration of all comments received; this necessarily includes a response to all significant comments.<sup>44</sup>

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<sup>44</sup> In Illinois, the responses to comments are typically memorialized in a document referred to as a Responsiveness Summary.



The Illinois EPA is currently amending its relevant public notice procedures at 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program, to accommodate a SIP-approved PSD program in Illinois.

**C. Legislation Prompting PSD Program**

In 2016, legislation became effective mandating the Board adopt regulations Establishing a PSD program meeting the requirements of Section 165 of the CAA. 415 ILCS 5/9.1(c). Prior to this legislative mandate, the Board possessed the authority to adopt regulations meeting the requirements of Section 165 of the CAA but it had not been required by state law<sup>45</sup> and the Board never adopted regulations establishing a PSD program for Illinois. Accordingly, the Illinois EPA currently administers the PSD permit program in Illinois pursuant to a delegation agreement with the USEPA/Region 5. *See*, 46 Fed. Reg. 9580 (January 29, 1981); *see also*, 40 CFR 52.738(b).<sup>46</sup> Given the Illinois EPA issues PSD permits pursuant to a delegation agreement with USEPA, the Illinois EPA is a delegated state permit authority who “stands in the shoes” of the USEPA Administrator when implementing permitting under the federal PSD program. *See*, 46 Fed. Reg. 9580 (January 29, 1981); *In re Zion Energy, LLC*, 9 E.A.D. 701, 701-702, fn.1 (EAB 2001).

**D. The Illinois EPA's Regulatory Proposal**

The Illinois EPA is proposing a state PSD program which is based largely on the federal PSD regulations set forth at 40 CFR §52.21. Section 9.1(c) of the Act provides that the Board establish a PSD program consistent with the requirements of 40 CFR 52.21 except

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<sup>45</sup> This legislation also mandated that the Board adopt NaNSR regulations. However, using its existing discretionary authority, the Board had already adopted such regulations at 35 Ill. Adm. Code Part 203 in 1983.

<sup>46</sup> USEPA has not historically enforced the requirement to submit a SIP to adopt a PSD program. 42 U.S.C. §§7410(a)(2)(c) and 7471.

for plan disapproval in 40 CFR 52.21(a)(1), public participation in 40 CFR 52.21(q), environmental impact statements in 40 CFR 52.21(s), disputed permits or redesignations in 40 CFR 52.21(t) and delegation of authority in 40 CFR 52.21(u). 415 ILCS 5/9.1(c). The Board is also authorized to adopt elements of a PSD program that are more stringent than those contained in 40 CFR §52.21. *Id.*

In addition, Public Act 099-0463 established the following definition of “PSD permit” in Section 3.363 of the Act, 415 ILCS 5/3.363:

*. . . means a permit or a portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 165 of the Clean Air Act and 40 CFR 51.166.*

415 ILCS 5/3.363 (emphasis added). This definition comports with the mandate of the CAA that requires states to develop and submit for USEPA approval SIPs that contain emission limitations and other control measures to ensure that each of the relevant NAAQS is achieved and maintained. Illinois’ definition of “PSD permit” provides that a state PSD permit may only be issued once the state PSD permit program has been approved as part of Illinois’ SIP.<sup>47</sup> *See*, 42 U.S.C. §§7407(a), 7410(a)(1) & (2), (1), 7475(a)(3). The CAA’s PSD requirements are among those that must be addressed in a state SIP. 42 U.S.C. §7410(a)(2)(C), (D). 40 CFR §51.166 sets forth in detail those requirements that must be included in any PSD program submitted to USEPA for SIP approval.

Given the interplay between these federal and state law requirements, the Illinois EPA is proposing a state PSD program based largely on the language of 40 CFR 52.21 but

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<sup>47</sup> The practical effect of Illinois’ definition of “PSD permit” is that proposed Part 204 will not replace 40 CFR 52.21 in Illinois until these new rules have been SIP-approved by the USEPA. In the interim, PSD permitting in Illinois will continue to be administered by the Illinois EPA pursuant to the delegation agreement with USEPA as it has been historically done.

also ensuring that this program meets the requirements for a SIP submittal to USEPA in 40 CFR 51.166. In conjunction with this filing, the Illinois EPA has included an annotated version of Part 204 showing those provisions that differ from the regulatory language of 40 CFR 52.21. It should be noted that the Illinois EPA is proposing to organize Part 204 to ease use and determinations of applicability and to collect common requirements into various subparts. The proposed organization of new Part 204 strives to make a more coherent series of requirements and obligations. In those areas where the language does not mirror the exact language of 40 CFR 52.21, the legal basis for these changes is detailed in the following discussion.

### **Greenhouse gases**

As an initial matter, the Illinois EPA is proposing a number of changes compared to the current federal regulations to appropriately address recent court decisions regarding the permitting of greenhouse gases (GHG) under the PSD permitting program. In 2010, USEPA issued the GHG Tailoring Rule (Tailoring Rule) addressing the permitting of GHG emissions under the PSD program and the Title V permit program. 75 Fed. Reg. 31514 (June 3, 2010). In June 2014, the U.S. Supreme Court ruled in *Utility Air Regulatory Group v. EPA (UARG)* that the USEPA may not consider GHG as a pollutant for purposes of determining whether a source is required to obtain a PSD permit or a Title V permit. *UARG v. EPA*, 134 S.Ct. 2427 (2014). Further, the Supreme Court held that PSD or Title V permits, that are required based on emissions of other pollutants, may continue to address GHG emissions. For this purpose, the Court described such sources as “anyway sources,” since permitting was not being required based only on emissions of GHGs. Consistent with this decision, the D.C. Circuit Court of Appeals issued an Amended Judgment in *Coalition for Responsible Regulation, Inc.*

*v. Environmental Protection Agency*, Nos. 09-1322, 10-073, 10-1092 and 10-1167 (D.C. Cir. April 10, 2015). The Amended Judgment vacated the provisions in the PSD regulation that would require a stationary source to obtain a PSD permit solely because the source emits or has the potential to emit GHGs above the applicable major source or significant emission threshold. In addition, the D.C. Circuit directed USEPA to consider whether additional changes to these regulations were necessary in light of the Supreme Court's decision and if so, to make such changes. In August 2015, USEPA issued a final rule removing provisions requiring a stationary source to obtain a PSD permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds or there is a significant emissions increase of GHGs from a modification. 80 Fed. Reg. 50199 (August 19, 2015) (addressing 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)). On October 2016, USEPA proposed revisions to the PSD regulations to further address the *Coalition* Amended Judgment. 81 Fed. Reg. 68110 (October 3, 2016). In this proposed regulation, USEPA proposed changes to several regulatory definitions, GHG Plantwide Applicability Limitations, and other sections to ensure that a source is not required to obtain a PSD permit solely due to its potential to emit GHGs above applicable thresholds. Finally, the proposed regulation would establish a significant emissions rate for GHGs. The Illinois EPA is proposing revisions for GHGs consistent with these recent federal decisions and USEPA's regulatory activity, as will be discussed in greater detail in the following discussion of the section-by-section differences with the regulatory language of 40 CFR 52.21.

**Section 204.100      Incorporations by Reference**

While not included in 40 CFR 52.21, Part 204 would incorporate those materials necessary to implement this part consistent with regulatory practice in Illinois.

**Section 204.110      Abbreviations and Acronyms**

While not included in 40 CFR 52.21, Part 204 would identify those abbreviations and acronyms necessary to implement this part consistent with regulatory practice in Illinois.

**Section 204.230      Allowable Emissions**

The Illinois EPA is proposing to refer to 40 CFR Parts 62 and 63 in the definition of “allowable emissions” in 35 Ill. Adm. Code 204.230. As it currently exists in 40 CFR 52.21(b)(16), the definition of “allowable emissions” is the emissions rate of a stationary source calculated at the source’s maximum rated capacity and the most stringent of either certain specified applicable standards, applicable SIP emissions limitation or the emissions rate identified as a federally enforceable permit condition. In order to include all potentially applicable federal standards, the Illinois EPA is proposing the inclusion of 40 CFR Parts 62 and 63 in addition to Parts 60 and 61. 40 CFR Part 62, Subpart O addresses the Approval and Promulgation of State Plans for Designated Facilities and Pollutants for sources in Illinois<sup>48</sup> while 40 CFR Part 63 pertains to the National Emission Standards for Hazardous Air Pollutants for Source Categories.<sup>49</sup>

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<sup>48</sup> An option that is available to states with respect to the regulations for existing sources required by Section 111(d) of the CAA is when USEPA adopts NSPS standards for a category of source for pollutant(s) for which there are not associated national ambient air quality standard is to accept the USEPA’s guidelines at 40 CFR Part 61 rather than develop its own regulations. While Illinois has not done this yet, it is something that may occur in the future. For example, this could occur in the future for municipal solid waste landfills at which the regulated NSR pollutant is “municipal solid waste landfill emissions,” which are limited as non-methane organic compounds rather than adopting new regulations for existing municipal solid waste landfills. Illinois may decide to rely on the emission guidelines at 40 CFR 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. If Illinois were to proceed in this manner, the effectiveness of 40 CFR 60, Subpart Cf to existing landfills in Illinois would be codified by rulemaking by USEPA in CFR 62, Subpart O.

<sup>49</sup> While 40 CFR Part 63 addresses emissions of hazardous air pollutants for certain regulated sources, 40 CFR Part 63 establishes limits for PM and organic material. Limits for these pollutants have been set by USEPA as surrogates for emissions of particular hazardous air pollutants as generally regulated by 40 CFR Part 63.

**Section 204.240      Baseline Actual Emissions**

The Illinois EPA is proposing a definition of “baseline actual emissions” that is consistent with the federal definition at 40 CFR 52.21(b)(48) except that Section 204.240 would clarify the ambiguous term “currently” at 40 CFR 52.21(b)(48)(ii)(c). The Illinois EPA’s proposal would clarify that the term “currently” for purposes of “baseline actual emissions” should be applied consistently with USEPA’s statements in its 2002 NSR reform package regarding the meaning of this term. 67 Fed. Reg. 80186, 80197 (December 2002). According to the definition of “baseline actual emissions,” existing emission units, other than existing electric generating units, may select any 24-month period during a 10-year look back period immediately preceding the change to calculate its baseline actual emissions for each contemporaneous event. The baseline actual emissions for each emissions unit has to be adjusted to reflect the current emission limits that apply to each emission unit. USEPA indicated in its 2002 NSR reform package that the term “current” means “in the context of contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.” *Id.* To ensure consistency in interpretation, the Illinois EPA is assigning the same meaning to the term “current” in Part 204’s definition of “baseline actual emissions.” The Illinois EPA is proposing the following language for Section 204.240:

The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. “Currently,” in the context of a contemporaneous emissions change, refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change. However, if an emission limitation is part of a ~~Maximum Achievable Control~~ ~~Technology~~ standard that the ~~USEPA Administrator~~ proposed or promulgated under ~~40 CFR pPart 63 of this chapter~~, the baseline actual emissions need only be adjusted if the ~~State~~ Illinois EPA has taken credit for such emissions reductions in an

attainment demonstration or maintenance plan consistent with the requirements of 40 CFR §51.165(a)(3)(ii)(G) of this chapter.

**Section 204.260 Baseline Concentration**

As previously discussed, the baseline concentration is relevant as it is considered when determining the amount of allowable PSD increment that is available for a proposed project. The term generally means the ambient concentration of a specific pollutant that exists in a baseline area at the time of the applicable “minor source baseline date” with adjustments for changes in concentrations due to changes in emissions at major sources. The “minor source baseline date” as defined by 40 CFR 52.21(b)(14)(ii) is the date that the first complete PSD permit application for a major modification for the pollutant is submitted for an area that is designated attainment or unclassifiable for the pollutant. After the minor source baseline date, all emission increases consume increment and emission decreases expand the amount of available increment. *In re W. Suburban Recycling & Energy Ctr., LP*, 8 E.A.D. 192, 195 (EAB 1999), 72 Fed. Reg. 31372, 31376-77 (June 6, 2007). As such, the baseline concentration is an essential aspect of the allowable increments under the PSD regulations. *See*, 45 Fed. Reg. 52676 at 52718 (“Increment consumption or expansion is directly related to baseline concentration. Any emissions not included in the baseline are counted against the increment”). The language of the federal PSD program is clear; actual emissions from any major stationary source that commenced construction after the major source baseline date will not be included in the baseline concentration.

However, disagreements have taken place over the manner one determines the amount of increment a modified source consumes. *See, In re Northern Michigan University Ripley Heating Plant*, 14 E.A.D. 283, 306-331 (EAB 2009); *see also, Clean Water Action Council of Northeastern Wisconsin, Inc., et al. v. United States Environmental Protection*

*Agency, et al.*, 7<sup>th</sup> Circuit Court of Appeals, No. 12-3388 (August 29, 2014). Permitting authorities and USEPA have typically taken the position that any “post-baseline change in a facility’s emissions (be it upward or downward) resulting from a major modification must be factored into the increments analysis.” *In re Northern Michigan University Ripley Heating Plant*, 14 E.A.D. 283, 311 (EAB 2009). While various challengers have frequently argued that “all emissions from a source that has undergone a major modification since the baseline date must be treated as increment-consuming, not just the emissions associated with the change.” *Id.*

The USEPA’s Environmental Appeals Board<sup>50</sup> (EAB) has provided a thorough review of this point in the *Northern Michigan University* matter. During its review, the EAB considered the legislative history, USEPA’s historical interpretation of Congressional intent and the plain language of the relevant statutory and regulatory provisions. The EAB found the arguments of the environmental advocacy organizations unpersuasive. *Id.* at pg. 317

The EAB found as follows:

[T]he legislative history does suggest that Congress intended its definition of ‘baseline concentration’ to be interpreted in such a way that *changes* in emissions would be the focus of the increment calculus for replaced (and by implication, modified) sources.

*Id.* at pg. 314. (EAB 2009). The EAB later went onto find that:

[O]ne could reasonably construe the statutory, regulatory, and preamble language to mean that *all actual emissions from the modifications to a source* consume increment,

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<sup>50</sup> USEPA’s Environmental Appeals Board is the final USEPA decisionmaker involving administrative appeals of many environmental statutes that USEPA administers. Most significantly for purposes of this discussion, the EAB possesses the authority to hear PSD permit appeals of permitting decisions made by USEPA’s Regional Administrators. Given that the Illinois EPA has historically implemented the PSD program on behalf of USEPA pursuant to a delegation agreement with USEPA, any review of these decisions have been heard by the EAB as well. These permit appeals are governed by the procedural requirements of 40 CFR Part 124.



not that *all actual emissions from the modifications to the source plus actual emissions from the portions of the source that were not modified* consume increment.

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Were Sierra Club's views to prevail, no increment credit would be given for sources that shut down, and emissions already counted in the baseline concentration would be counted again against the PSD increment – in effect, double counting.

*Id.* at pg. 316. More recently, the Seventh Circuit Court of Appeals considered the definition of “baseline concentration” in Section 169(4) of the CAA finding that pre-1975 emissions are included in the baseline while only those new emissions attributable to a modification are counted against the maximum allowable increase.<sup>51</sup> *Clean Water Action Council of Northeastern Wisconsin, Inc., et al. v. United States Environmental Protection Agency, et al.*, 7<sup>th</sup> Circuit Court of Appeals, No. 12-3388 (August 29, 2014); *see also*, 42 U.S.C. §7479(4).

In order to avoid potential disagreements in the implementation of Part 204, and consistent with the above precedents, the Illinois EPA is proposing the following language for inclusion in the definition of “baseline concentration” for Part 204.260(b)(1):

Actual emissions, as defined in Section 204.210 of this Part paragraph (b)(21) of this section, from any major stationary source on which construction commenced after the major source baseline date. For a major stationary source in existence on the major source baseline date, “actual emissions” for the purposes of this subsection shall mean increases or decreases in actual emissions resulting from construction commencing after the major source baseline date.

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<sup>51</sup> The Seventh Circuit determined any contrary reading could result in two problems.

The Councils' approach could produce two undesirable outcomes. Under one understanding of the Council's view, the 1975 baseline would keep changing as old plants become “new.” Every time a company modified a pre-1975 plant, all of the emissions that formerly were part of the baseline would not have to be counted against a state's allowance. . . . The other understanding of the Council's view involves double counting a “new” source's emissions. Rather than moving all the pre-1975 emissions from the baseline, a modification could cause the pre-1975 emission to count against the state's allowance and remain in the baseline.

*Clean Water Action Council of Northeastern Wisconsin, Inc., et al. v. United States Environmental Protection Agency, et al.*, 7<sup>th</sup> Circuit Court of Appeals, No. 12-3388, slip op. at pgs. 8-9 (August 29, 2014).

This language clarifies the appropriate implementation of this term, as confirmed by the EAB.

**Section 204.280 Best Available Control Technology**

The Illinois EPA is proposing to include the additional reference to 40 CFR Parts 62 and 63 in the definition of “best available control technology” in 35 Ill. Adm. Code 204.280. As it currently exists in 40 CFR 52.21(b)(12), the definition of “best available control technology” provides that “in no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61.” To be consistent with the definition of BACT in Section 169(3) of the CAA, the Illinois EPA is proposing the inclusion of 40 CFR Parts 62 and 63 in addition to Parts 60 and 61.

The regulatory definition of “best available control technology” in 40 CFR 52.21(b)(12) is similar to the statutory definition of BACT in Section 169(3) of the CAA except that the statutory definition provides that “in no event shall application of ‘best available control technology’ result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to *section 111 or 112 of this Act.*” (*emphasis added*). Given Parts 62 and 63 were respectively established pursuant to Sections 111 and 112 of the CAA, it is appropriate to refer to Parts 62 and 63 in the definition of “best available control technology.”

**Section 204.290 Building, Structure, Facility or Installation**

The Illinois EPA is proposing not to include the clause “except the activities of any vessel” from the definition of “Building, Structure, Facility or Installation” at 40 CFR 52.21(b)(6)(i). In 1983, the D.C. Circuit Court of Appeals heard a matter involving the scope

of USEPA's authority to regulate emissions from activities involving ships and marine vessels. Prior to this decision, USEPA considered that it did not possess the requisite authority to regulate any emissions from marine vessels at terminals as stationary sources of emissions and as such, excluded pollutant-emitting activities from marine vessels from the definition of building, structure, facility or installation. This is because marine vessels are mobile sources. However, the D.C. Circuit vacated this exemption and further directed the USEPA to perform additional review consistent with its opinion. *Natural Resources Defense Council, Inc. V. EPA*, 725 F.2d 761, 771 (D.C. Cir. 1984) (“[t]he agency should therefore have examined the nature of specific interactions between a mobile source and an attendant stationary source to determine which categories of emissions can . . . and should . . . be attributed to the stationary source”). While the USEPA has not removed this vacated language from the definition of “Building, Structure, Facility or Installation,” USEPA recognized that the “*vacatur* leaves no legally effective regulation that would exempt ‘the activities of any vessel’ from consideration for permit permitting purposes.” *Letter from Charles J. Sheehan, USEPA, Region VI, Regional Counsel, to Mr. Michael Cathey, Managing Director, El Paso Energy Bridge Gulf of Mexico, dated October 28, 2003*. Given the D.C. Circuit’s *vacatur* of this regulatory language and to facilitate approval of Part 204 by USEPA<sup>52</sup>, the Illinois EPA is proposing that the first sentence in the definition reads as follows:

“Building, structure, facility or installation” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) ~~except the activities of any vessel.~~

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<sup>52</sup> It should be noted that the Board, itself, has already recognized that emissions of marine vessels that occur from loading of gasoline and crude oil are appropriately regulated as emissions from marine terminals. *See*, Subpart GG in 35 Ill. Adm. Code Part 218 and 219.

**Section 204.350 Dispersion Technique**

To ensure consistency with 40 CFR 52.21, the Illinois EPA is proposing to include a definition of “dispersion technique” in Part 204. This term is used in 40 CFR 52.21 but its meaning is addressed elsewhere in 40 CFR Part 52. In particular, 40 CFR 52.01, Definitions, provides that all terms used in Part 52 but not defined within a particular section shall have the meaning afforded to them by the CAA and 40 CFR Parts 51 and 60. As such, the term “dispersion technique” in 40 CFR 52.21 has the definition afforded to it by 40 CFR 51.100(hh). In order to ensure that the term “dispersion technique” in Part 204 has the meaning that applies for 40 CFR 52.21, the Illinois EPA is proposing the inclusion of the definition of “dispersion technique” from 40 CFR 51.100(hh) in Part 204. This will also maintain consistency with 35 Ill. Adm. Code Part 203 as it includes this definition for “dispersion techniques.”

**Section 204.380 Excessive Concentration**

To ensure consistency with 40 CFR 52.21, the Illinois EPA is proposing to include a definition of “excessive concentration” in Part 204. This term is relevant for the provisions of the PSD rules that address the heights of stacks and use of dispersion enhancement techniques in PSD permitting, as addressed in proposed Section 204.1000; however, the definition of this term is not found in 40 CFR 52.21. However, as 40 CFR 52.01, Definitions, provides that all terms used in Part 52 but not defined within a particular section shall have the meaning given to them by the CAA and 40 CFR Parts 51 and 60, the term “excessive concentration” has the definition afforded to it by 40 CFR 51.100(kk). In order to ensure that the term “excessive concentration” in Part 204 has the meaning that applies for 40 CFR 52.21, the Illinois EPA is proposing the inclusion of the definition of “excessive

concentration” from 40 CFR 51.100(kk) in Part 204 with certain changes as appropriate for inclusion in Part 204. The Illinois EPA is proposing to not include the dates included in 40 CFR 51.100(kk) in proposed Part 204 given these dates have long since passed. Bearing in mind that Part 204 will apply to the permitting of future projects, the inclusion of these dates is unnecessary in the definition of “excessive concentration” in proposed 35 Ill. Adm. Code 204.380.

In full, the proposed changes from 40 CFR 51.100(kk) follow:

- b) For sources seeking credit ~~after October 11, 1983~~, for increases in existing stack heights up to the heights established under ~~§51.100(ii)(2)~~ Section 204.420(b), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in ~~paragraph (kk)(1)~~ subsection (a) of this Section, except that the emission rate specified by ~~any applicable State implementation plan~~ the SIP (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the ~~authority administering the State implementation plan~~ Illinois EPA; and
- c) For sources seeking credit ~~after January 12, 1979~~ for a stack height determined under ~~§51.100(ii)(2)~~ Section 204.420(b) where the ~~authority administering the State implementation plan~~ Illinois EPA requires the use of a field study or fluid model to verify GEP good engineering practice stack height, for sources seeking stack height credit ~~after November 9, 1984~~ based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit ~~after December 31, 1970~~ based on the aerodynamic influence of structures not adequately represented by the equations in ~~§51.100(ii)(2)~~ Section 204.420(b), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

#### **Section 204.400      Federally Enforceable**

The Illinois EPA is proposing to also refer to 40 CFR Parts 62 and 63 in the definition of “federally enforceable” in 35 Ill. Adm. Code 204.400. As it currently exists in 40 CFR 52.21(b)(17), the definition of “federally enforceable” means “all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan . .

.” In order to include all potentially applicable standards, the Illinois EPA is proposing to refer to 40 CFR Parts 62 and 63 in addition to Parts 60 and 61.

**Section 204.420 Good Engineering Practice**

To ensure consistency with 40 CFR 52.21, the Illinois EPA is proposing to include a definition of “good engineering practice” in Part 204. This term is used in provisions of 40 CFR 52.21 dealing with stack heights and dispersion enhancement techniques but the meaning of the term “good engineering practice” is addressed elsewhere. In particular, 40 CFR 52.01, Definitions, provides that all terms used in Part 52 but not defined within a particular section shall have the meaning afforded to them by the CAA and 40 CFR Parts 51 and 60. As such, the term “good engineering practice” in 40 CFR 52.21 has the definition afforded to it by 40 CFR 51.100(ii). In order to ensure that the term “good engineering practice” in Part 204 has the meaning that applies for 40 CFR 52.21, the Illinois EPA is proposing the inclusion of the definition of “good engineering practice” from 40 CFR 51.100(ii) in Part 204. In addition, given the term “good engineering practice” makes use of the term “stack” that has the meaning given to it by 40 CFR 51.100(ff), the Illinois EPA is proposing to include this definition of “stack” within this definition of “good engineering practice.”

The proposed definition of “good engineering practice” is as follows:

“Good engineering practice,” with respect to stack height, means the greater of:

- a) 65 meters, measured from the ground-level elevation at the base of the stack;
- b) The following:
  - 1) For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits required under 40 CFR Part 52;

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

- 2) For all other stacks:

$$H_g = H + 1.5L$$

where:

$H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the USEPA or Illinois EPA may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

- c) The height demonstrated by a fluid model or a field study approved by the USEPA or Illinois EPA, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.
- d) For purposes of this definition, "stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

## **Section 201.430 Greenhouse Gases**

As previously mentioned, USEPA recently proposed a stand-alone definition for "greenhouse gases" as part of the proposed addition of certain exemptions related to greenhouse gases to the definitions of "major modification" and "major stationary source." 81 Fed. Reg. 68110 (October 3, 2016). The changes to the definitions of "major modification" and "major stationary source" are discussed further below. The definition of "greenhouse gases" is currently included within the definition of "subject to regulation" at 40 CFR 52.21(b)(49). Consistent with USEPA's current proposal, Part 204 would have a separate definition of "greenhouse gases." This would not change the meaning of the term.

“Greenhouse gases” would still mean the aggregate group of six gases or categories of gases, specifically, carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. *See*, 40 CFR 52.21(b)(49)(i); *see also*, 81 Fed. Reg. 68110, 68143 (October 3, 2016).<sup>53</sup> In addition, CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) would continue to be computed by:

- (a) Multiply[ing] the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas’s associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter – Global Warming Potentials.
- (b) Sum[m]ing the resultant value for each gas to compute a tpy CO<sub>2</sub>e.

81 Fed. Reg. 68110, 68143 (October 3, 2016); *see also*, 40 CFR 52.21(b)(49)(ii). The Illinois EPA is proposing the following as the definition of “greenhouse gases” in Section 204.430:

“Greenhouse gases (GHGs)”, means the air pollutant defined in 40 CFR §86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: ~~Carbon dioxide~~CO<sub>2</sub>, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ~~shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section and complies with the PAL permit containing the GHG PAL.~~

~~(ii) For purposes of paragraphs (b)(49)(iii) through (v) of this section, tTo represent an amount of GHGs emitted, the term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted, and shall be used and computed as follows:~~

- (a) ~~Multiplying~~ the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas’s associated global warming potential published at Table A-1 to ~~sSubpart A of 40 CFR pPart 98 of this chapter~~ Global Warming Potentials. ~~For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by~~

<sup>53</sup> Note that this definition is consistent with the Act’s definition of “greenhouse gases” set forth in 415 ILCS 5/ 3.207.



~~products, residues and waste from agriculture, forestry and related industries as well as the non fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non fossilized and biodegradable organic material).~~

- (b) Sum the resultant value ~~from paragraph (b)(49)(ii)(a) of this section~~ for each gas to compute a tpy CO<sub>2</sub>e.

~~(iii) The term *emissions increase* as used in paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in paragraph (b)(23)(ii) of this section.~~

~~(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:~~

- ~~(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or~~
- ~~(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and.~~

## **Section 204.490 Major Modification**

The Illinois EPA is proposing a definition of “major modification” in Section 204.490 that generally mirrors the definition at 40 CFR 52.21(b)(2) with four exceptions. First, the provision of 40 CFR 52.21(b)(2) and its statement that a “physical change or change in the method of operation shall not include routine maintenance, repair and replacement,” the Illinois EPA did not include the requirements of the “equipment replacement provisions” in 40 CFR 52.21(cc). As explained in more detail later in this Statement of Reasons, the Illinois EPA is not proposing to include 40 CFR 52.21(cc) in Part 204 given the D.C. Circuit Court of Appeals indefinitely stayed 40 CFR 52.21(cc). *State of New York, et al. v. EPA*, No. 03-

1380 (D.C. Cir. December 24, 2003). *See*, the discussion below regarding 40 CFR 52.21(cc). In response to such decision, the USEPA subsequently included a note to 40 CFR 52.21(b)(2) indicating that this particular paragraph had been indefinitely stayed.<sup>54</sup>

Second, the Illinois EPA is not proposing to include 40 CFR 52.21(b)(2)(iii)(k) which identifies “[t]he reactivation of a very clean coal-fired electric utility steam generating unit” as an activity that would not be considered a modification of a source for purposes of PSD, i.e., a physical change or change in the method of operation. As discussed further below, the Illinois EPA is also not proposing to include the definition of “Reactivation of a very clean coal-fired electric utility steam generating unit” of 40 CFR 52.21(b)(38) in Part 204. This is because at this time, in 2018, there are no existing utility units in Illinois to which these provisions could apply. This definition only applies for the reactivation of units that not been in operation for a period of two years before November 15, 1990, when the Clean Air Act Amendments of 1990 were adopted. The unit also had to have SO<sub>2</sub> control with at least 85 percent efficiency. Since it is not possible for such a unit to now be present in Illinois, it does not make sense to include this obsolete exception in the definition of “major modification” in Section 204.490.

Third, the Illinois EPA is not proposing to include the language of 40 CFR 52.21(b)(2)(v) providing that fugitive emissions will only be counted in determining if a proposed physical or change in the method of operation would result in a major modification for sources categories in designated source categories. In response to a petition for reconsideration of a rulemaking involving this regulatory language, the USEPA elected to

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<sup>54</sup> The note further provides that in the event the court terminates the stay, the stayed provisions immediately become effective. At that time, the USEPA would advise the public of the stay’s termination by documenting the stay in the Federal Register. In the event the court terminates the stay, the Illinois EPA would decide at that time whether a revision to these regulations and the SIP is warranted.

stay the language and to revert to the regulatory text that existed prior to this rulemaking. 76 Fed. Reg. 17556 (March 30, 2011). The last note at the end of the body of 40 CFR 52.21 confirms that this regulatory provision has been indefinitely stayed. Section 204.490 would appropriately address the manner in which fugitive emissions are currently addressed under 40 CFR 52.21 when determining whether a proposed project at a major stationary source would be a major modification.

Finally, with regard to one addition to the definition of “major modification,” USEPA proposed changes in 2016 to several definitions in 40 CFR 52.21 to clarify that a stationary source need not obtain a PSD permit for a proposed source or for a proposed project at an existing source simply because it would emit or has the potential to emit greenhouse gas emissions above the applicable significant emission rate. 81 Fed. Reg. 68110 (October 3, 2016). One such change would involve the definition of “major modification.” The USEPA has proposed to add a clause to this definition such that a “physical change or change in the method of operation at an existing major source that would result in a significant increase in emissions of any regulated NSR pollutant except for GHGs and a significant net emission increase of that regulated NSR pollutant would be a major modification required to obtain a permit.” *Id.* at 68117. (The Illinois EPA is also proposing a change to the federal definition of “major stationary source” in Part 204 that mirrors the related changes recently proposed by USEPA).

#### **Section 204.510 Major Stationary Source**

As previously mentioned, USEPA recently proposed changes to several definitions in 40 CFR 52.21 to clarify that a stationary source need not obtain a PSD permit simply because it emits or has the potential to emit greenhouse gas emissions above the applicable significant

emission rate. 81 Fed. Reg. 68110 (October 3, 2016). One such definitional change took place in the definition of “major modification.” The second definitional change proposed by USEPA occurs here, in the definition of “major stationary source.” The USEPA added an exemption clause to this definition such that a “new stationary source that emits, or has the potential to emit, 100 or 250 tpy or more, as applicable, of any regulated NSR pollutant *except for GHGs* would be required to obtain a PSD permit before it is constructed.” *Id.* at 68117 (emphasis added). The Illinois EPA is proposing a federal definition of “major stationary source” in Part 204 that mirrors the relevant change recently proposed by USEPA.

**Section 204.530      Nearby**

To ensure consistency with 40 CFR 52.21, the Illinois EPA is proposing to include a definition of “nearby” in Part 204. This term is used in 40 CFR 52.21 but its meaning is addressed elsewhere in 40 CFR Part 52. In particular, 40 CFR 52.01, Definitions, provides that all terms used in Part 52 but not defined within a particular section shall have the meaning afforded to them by the CAA and 40 CFR Parts 51 and 60. As such, the term “nearby” in 40 CFR 52.21 has the definition afforded to it by 40 CFR 51.100(jj). In order to ensure that the term “nearby” in Part 204 has the meaning that applies for 40 CFR 52.21, the Illinois EPA is proposing the inclusion of the definition of “nearby” from 40 CFR 51.100(jj) in Part 204.

**Section 204.550      Net Emissions Increase**

The Illinois EPA is proposing a definition of “net emissions increase” in Section 204.550 that would generally parallel 40 CFR 52.21(b)(3) with three exceptions. First, Section 204.550 would not include the language of 40 CFR 52.21(b)(3)(iii)(b) providing that “[a]n increase or decrease in actual emission is creditable only if . . . [t]he increase or

decrease in emissions did not occur at a Clean Unit . . .” given a 2005 D.C. Circuit Court of Appeals decision vacating the portions of 40 CFR 52.21 that would have addressed “Clean Units.” The D.C. Circuit found that the USEPA had exceeded its statutory authority when adopting regulations that provided that applicability of PSD for a class of emission units referred to as Clean Unit would be addressed differently than for other existing emission units. *New York v. EPA*, 413 F.3d 3, 38-39 (D.C. Cir. 2005). (Under USEPA’s approach found to be invalid, a change would not “increase” emissions and would not trigger PSD so long as the change did not alter the unit’s Clean Unit status even if the change were to increase net actual emissions at the source).

Second, the Illinois EPA is not proposing to include in Section 204.550 the language of 40 CFR 52.21(b)(3)(iii)(c) providing that fugitive emissions will only be counted in determining if a proposed physical or operational change would result in a major modification for sources in designated categories or sources. In response to a petition for reconsideration of 40 CFR 52.21(b)(3)(iii)(c) by an environmental advocacy organization, the USEPA elected to stay the revised regulatory language and to revert back to the earlier regulatory text. 76 Fed. Reg. 17556 (March 30, 2011). The last note at the end of the body of 40 CFR 52.21 confirms that 40 CFR 52.21(b)(3)(iii)(c) has been indefinitely stayed.

Third, the Illinois EPA is proposing to remove the term “replacement unit” in the shakedown provision of 40 CFR 52.21(b)(3)(viii) and to replace this term with “[a]ny emissions unit that replaces an existing emissions unit.” This change is appropriate because USEPA inadvertently created a definition of the term “replacement unit” that would otherwise apply here when it adopted changes to the PSD regulations to treat “replacement units” as existing units.

By way of further explanation, the undefined term “replacement unit” has been utilized in the shakedown provisions at 40 CFR 52.21(b)(3)(viii) since USEPA’s final regulation in 1980. The proposal for the 1980 regulations was less concise than the final regulation in 1980, providing as follows:

Where the new emission unit is a replacement for an emission unit that is being shut down in order to provide the necessary reductions, the Administrator may allow up to 180 days for shakedown of the new emission unit before the existing emission unit is required to cease operation.

44 Fed. Reg. 51924, 51952 (September 5, 1979). In the final regulation, the USEPA adopted the more succinct phrase “replacement unit”, which is in place today, but with no discussion of this slight difference between the final regulation and the proposed regulation. 45 Fed. Reg. 52676, 52730 (August 7, 1980). It is important to note that no definition was provided for “replacement unit” in the final regulation. That being said, the preamble to the final regulation describes this language as follows: “Any unit that requires shakedown becomes operational only after a reasonable shakedown period (not to exceed 180 days).” *Id.* at 52698. For almost 25 years, the term “replacement unit” was only used in the context of determining the timing for net emissions increases under 40 CFR 52.21(b)(3). In the context of the definition of net emission increase, a “replacement unit” does not have to have the same basic design parameters as the unit being replaced. Nor was “replacement unit” restricted to those instances where no creditable emission decreases were generated from the unit being replaced. Rather the term provided for a reasonable transition between a new unit and an existing unit that would be shut down.

However, the USEPA adopted a narrow definition of “replacement unit” in its November 2003 reconsideration regulation without notice and comment. 68 Fed. Reg. 63021 (November 7, 2003). This definition of the term “replacement unit” was adopted to clarify

when the replacement of an existing unit can be considered a modification, as provided for by 40 CFR 52.21(b)(7)(ii) so that the actual-to-projected-actual applicability test may be used to determine whether the proposed replacement unit would result in an emissions increase. 68 Fed. Reg. 63012, 63024. The adopted definition of “replacement unit” provides, in part, that “no creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.” 40 CFR 52.21(b)(33). In other words, according to the definition of “replacement unit,” a unit is not a replacement unit if the unit being replaced is used in a netting analysis. However, the shakedown provision in 40 CFR 52.21(b)(3)(viii) is specific to a netting analysis.

As such, by this action, the USEPA inadvertently foreclosed the use of the shakedown provision for a replacement unit as now defined by 40 CFR 52.21(b)(33). There is no evidence that the USEPA intended such an outcome or even envisioned that its narrow definition of “replacement unit” would eliminate the shakedown provision.<sup>55</sup> No discussion

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<sup>55</sup> Clark County best provided an example of the unintended effect of the reconsideration regulation to USEPA’s historic definition of “net emissions increase.”

A source wants to install a new, efficient, 250 MMBtu/hr boiler with NO<sub>x</sub> PTE of 45 tpy as a replacement for an old, inefficient, 300 MMBtu/hr boiler with baseline actual NO<sub>x</sub> emissions of 200 tpy. The existing boiler is required to meet the plant’s process steam needs, so the source owner is unwilling to shut down the existing boiler until he has assurance that the new boiler operates as intended. He anticipates a 15-day shakedown period during which the new boiler will be tuned and the contractually required performance test will be conducted. Under the federal rules in effect from 1980 through 2002, and under the proposed section 12.2, this shakedown period can be accommodated and the source can still use the emission reductions from shutting down the existing boiler to “net out” of PSD review. However, because the new boiler’s heat input capacity differs from the existing boiler’s, the new boiler does not meet the definition of REPLACEMENT UNIT. If the new definition were interpreted as applying to the term “replacement unit” as used in the definition of NET EMISSIONS INCREASE, the decrease from shutting down the existing boiler would not be contemporaneous with the increase from operating the new boiler. Netting would not be allowed, and the owner would forego the opportunity to install the more efficient boiler.

*Clark County’s Response to USEPA’s Approvability Issues for Clark County Draft Rules – Section 0 and 12.1*, July 18, 2007.

of such an outcome exists in USEPA's 2003 reconsideration regulation. 68 Fed. Reg. 63021 (November 7, 2003). If USEPA intended to tighten this definition of "net emissions increase" by means of this new definition of "replacement unit," USEPA should have undertaken a notice and comment rulemaking but it did not.

Moreover, USEPA has approved alternative language in PSD SIP submittals correcting this oversight. As recently as 2015, the Arizona Department of Environmental Quality addressed the shakedown provision in its definition of "net emissions increase" so that instead of applying to "[a]ny replacement unit that requires shakedown," it applies to "[a]ny emissions unit that replaces an existing emissions unit and that requires shakedown." A.A.C. R18-2-101(87). The USEPA approved this language without any specific discussion in the Federal Register. 80 Fed. Reg. 67319, 67334 (November 2, 2015). Notably, Arizona's language is very similar to the language now proposed for inclusion in Part 204.

Other states have addressed the matter in a slightly different fashion. For instance, the Texas Commission on Environmental Quality continued to employ the undefined term "replacement unit" in the shakedown provision but then adopted and defined a new term "replacement facility" for purposes of their NSR reform rule. This approach, as well, was approved by USEPA without any specific discussion. *USEPA Technical Support Document Revisions to Texas State Implementation Plan Relating to Eight-Hour Ozone and New Source Review Reform*, October 25, 2012 (30 TAC §116.12-17 and §116.12-23); *see also*, 77 Fed. Reg. 65119 (October 25, 2012).

New York took a third approach by making no use of the term "replacement unit" or an alternative term in the shakedown provision. Instead, New York provided that "the owner or operator is allowed a shakedown period for such major facility or modified emission



source(s) according to the following . . . [t]he shakedown period shall not exceed 180 days from the date of commencement of operation. . .” 6 NYCRR 231-231-3.8. New York then defines “commence operation” or “commencement of operation” as one of two things including “the date on which the facility shakedown period ends for a proposed modified facility which utilizes future ERC’s for netting.” 6 NYCRR 231-2314.1(b)(12). This approach was approved by USEPA as well. 75 Fed. Reg. 43892, 43985 (July 27, 2010) and 75 Fed. Reg. 70142, 70143 (November 17, 2010).

Finally, the Clark County portion of the SIP for the State of Nevada met a more detailed review of this issue by USEPA. In addition to applying to “Any replacement unit that requires shakedown,” the USEPA approved “any new emissions unit that replaces an existing emissions unit that requires shakedown.” While the USEPA initially expressed concern over Clark County’s definition of “net emissions increase” after Clark County explained the regulatory history above, the USEPA approved the proposed definition. *See, USEPA’s Approvability Issues for Clark County Draft Rules – Section 0 and 12.1*, June 29, 2007; *see also, Clark County’s Response to USEPA’s Approvability Issues for Clark County Draft Rules – Section 0 and 12.1*, July 18, 2007. In fact, USEPA specifically addressed this change in its approval of this definition:

We note that paragraph (6) of subsection 12.2.2(ii) mirrors EPA’s provision in 40 CFR 51.166(b)(3)(vii) for replacement units that require shakedown except that, in addition to any ‘replacement unit’ (as defined in 40 CFR 51.166(b)(32)), paragraph (6) provides that any other ‘new emission unit that replaces an existing emissions unit and that requires shakedown’ is also allowed a reasonable shakedown period before the emission increase is considered to have occurred. This is acceptable.

*USEPA, Region IX, Air Division, Technical Support Document for EPA’s Notice of Proposed Rulemaking for revisions to the Nevada State Implementation Plan, Clark County Department of Air Quality & Environmental Management, New Source Review Permitting*

*Program, Including Minor Source, NSR and PSD programs*, July 11, 2012; *see also*, 77 Fed. Reg. 64039 (October 18, 2012).

The USEPA's action on the PSD SIPs for Texas, Clark County and New York confirm that the term "replacement unit" cannot be simply used for the shakedown provision. Given the simplicity of the approach taken by Arizona, the Illinois EPA is proposing the inclusion of similar language in Section 204.550 (i.e., substitute the term "replacement unit" with "[a]ny emissions unit that replaces an existing emissions unit").

#### **Section 204.560 Potential to Emit**

The definition of "potential to emit" in Part 204 would duplicate the same definition in 40 CFR 52.21(b)(4) with one difference. Consistent with federal precedent, in addition to the term "federally enforceable," this proposal would include the additional phrase "legally and practicably enforceable by a state or local air pollution control agency" such that the second sentence of the definition would be as follows:

Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable *or legally and practicably enforceable by a state or local air pollution control agency*.

Section 204.560 (emphasis added). In 1995, the D.C. Circuit found on two occasions that the USEPA exceeded its authority when it determined that only federally enforceable emission limitations should be considered to restrict a source's potential to emit. The first such decision involved the hazardous air pollutant programs under Section 112 of the CAA where the court ultimately found that the USEPA failed to demonstrate the existence of Congressional intent to disregard state limitations in any determination of major source status. *National Mining Association v. EPA*, 313 U.S. App. D.C. 363, 59 F.3d 1351 (D.C.

Cir. 1995). In a briefly worded decision relying on *National Mining*, the D.C. Circuit subsequently vacated and remanded the “potential to emit definition” in the PSD and NaNSR regulations to the USEPA. *Chemical Manufacturers Association, et al. v EPA*, No. 89-1514 (D.C. Cir. September 15, 1995).

Given these decisions, USEPA subsequently issued guidance interpreting how the definition of “potential to emit” should be read. “The term ‘federally enforceable’ should now be read to mean ‘federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.’”<sup>56</sup> *Release of interim Policy on Federal Enforceability of Limitations on Potential to Emit from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Addressees*, dated January 22, 1996. More recently, a federal district court agreed that the relevant criterion in a determination of a source’s potential to emit is whether a limitation is “enforceable by a governmental entity.” *United States of America v. Questar Gas Management Company*, No. 2:08-CV-167 TS (District of Utah, Central Division, May 11, 2011). Consistent with this precedent, the Illinois EPA is proposing language in 35 Ill. Adm. Code 204.560 that would appropriately allow a limitation to restrict a source’s “potential to emit” so long as the limitation is either federally enforceable or *legally and practicably enforceable by a state or local air pollution control agency*.

#### **Section 204.570 Prevention of Significant Deterioration (PSD) Permit**

The Illinois EPA is proposing to include a definition of “prevention of significant deterioration (PSD) permit” in Section 204.570 that is identical to the Act’s statutory definition rather than the definition of “prevention of significant deterioration (PSD)

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<sup>56</sup> USEPA has yet to promulgate a new definition of “potential to emit.”

*program*” in 40 CFR 52.21(b)(43) (emphasis added). *See*, 415 ILCS 5/3.363. The federal definition of “PSD program” is as follows:

means the EPA-implemented major source preconstruction permit programs under this section or the program or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to § 51.166 of this chapter to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

40 CFR 52.21(b)(43). Given the Illinois EPA would no longer be a delegated permitting authority under 40 CFR 52.21 once Part 204 is part of Illinois’ SIP, an EPA-implemented program would not be relevant for purposes of Part 204. Second, while Part 204 would be submitted to the USEPA for approval and incorporation into Illinois’ SIP, Part 204 does not need to generally define a PSD program. Rather, it is appropriate for Part 204 to define a “PSD permit” and to do so consistent with Illinois’ relevant enabling legislation. Section 204.570 would appropriately provide as follows:

“Prevention of Significant Deterioration (PSD) permit” means a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois EPA under the construction permit program pursuant to Section 9.1(c) of the Act that has been approved by the USEPA and incorporated into the Illinois SIP to implement the requirements of Section 165 of the CAA and 40 CFR 51.166.

**Section 204.580      Process Unit**

The Illinois EPA is proposing a definition of “process unit” in Section 204.580 that differs slightly from 40 CFR 52.21(b)(55). Again, the definition of 40 CFR 52.21(b)(55) has been indefinitely stayed. *State of New York, et al. v. EPA*, No. 03-1380 (D.C. Cir. December 24, 2003). Subsequent to the D.C. Circuit Court of Appeals stay of 40 CFR 52.21(cc), which necessarily also included relevant definitions, the USEPA addressed the stay by adding a note to each of the definitions affected by the decision noting that such definition was stayed. 69 Fed. Reg. 40274. As discussed further below, the D.C. Circuit subsequently vacated the

“equipment replacement provision” which necessarily included these definitions. While the USEPA has not yet taken action in 40 CFR 52.21 to address this vacatur, the Illinois EPA is generally proposing to omit any vacated definitions from Part 204.

However, the definition of “process unit” must still be addressed in Part 204. The term “process unit” is also used in the definition of “replacement unit.” Absent a definition of “process unit” in Part 204, the definition of this term would be the definition provided by 35 Ill. Adm. Code 211.5210.<sup>57</sup> *See*, 204.200 providing unless otherwise specified in Part 204, the definitions of the terms in Part 204 shall be those used in Part 211. Given the definition of “process unit” at 35 Ill. Adm. Code 211.5210 addresses equipment and components assembled to produce one or more chemicals, this definition would not provide the broad definition of this term that is appropriate in the context of PSD; a PSD specific definition for “process unit” must be included within Part 204. The Illinois EPA is proposing the following definition.

“Process unit” means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. A process unit may contain more than one emissions unit.

This definition is derived from the stayed definition of “process unit” in 40 CFR 51.166 and 52.21, which is appropriate. The D.C. Circuit’s vacatur of the definition of “process unit” as it would be part of the provisions for “maintenance, repair and replacement” did not reject this definition of “process unit” as it would be used in the other

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<sup>57</sup> “Process unit” means equipment and components assembled to produce, as intermediate or final products, one or more chemicals. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. For purposes of Subpart Q of Parts 215, 218 and 219, a process unit must produce one or more of the chemicals listed in Appendix A of 35 Ill. Adm. Code 215, 218 or 219, as applicable.

provisions of the PSD regulations. *See, State of New York, et al. v. EPA*, No. 03-1380 (D.C. Circuit March 17, 2006).

**Section 204.610 Regulated NSR Pollutant**

The Illinois EPA is proposing a definition of “regulated NSR pollutant” in Section 204.610 that differs from 40 CFR 52.21(b)(50)(v) in that it expressly excludes any hazardous air pollutants as is provided by Section 112(b)(6) of the CAA. This exclusion includes hazardous air pollutants listed in Section 112(b)(1) of the CAA, hazardous air pollutants added to the list pursuant to Section 112(b)(3) of the CAA, and hazardous substances listed pursuant to Section 112(r)(3) of the CAA which have not been delisted pursuant to Section 112(r) of the CAA unless such hazardous air pollutant is otherwise addressed as a NSR pollutant. In this regard, HAP compounds would continue to be addressed as they are a component of another pollutant that is a regulated pollutant, *e.g.*, volatile organic material or particulate. However, they would not be regulated individually as hazardous air pollutants.

Proposed Section 204.610(e) reads as follows:

Notwithstanding subsection (a) paragraphs (b)(50)(i) through (d) (iv) of this Section, the term “regulated NSR pollutant” shall not include any or all hazardous air pollutants either listed in Section 112(b)(1) of the CAA or (42 USC 7412(b)(1)), or added to the list pursuant to Section 112(b)(2) or (b)(3) of the CAA or (42 USC 7412(b)(2) or (b)(3)) or substances listed pursuant to Section 112(r)(3) of the CAA (42 USC 7412(r)(3)), and which have not been delisted pursuant to Section 112(b)(3) or (r) of the CAA (42 USC 7412(b)(3) or (r)) or, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the CAA or (42 USC 7408).

Given the prohibition of Section 112(b)(6) of the CAA stating that PSD shall not apply to pollutants listed under Section 112, hazardous air pollutants listed in Section 112(b)(1) of the CAA, hazardous air pollutants added to the list pursuant to Section 112(b)(3) of the CAA and hazardous substances listed under Section 112(r)(3) for purposes of risk management

planning and otherwise not delisted pursuant to Section 112(r) of the CAA should not be addressed as a regulated air pollutant under PSD unless otherwise regulated as an NSR pollutant. 42 U.S.C. §7412(b)(6). However, in 40 CFR 52.21(b)(50)(v), USEPA did not address the treatment of certain listed hazardous air pollutants.<sup>58</sup> If this change were not made, certain substances that are only regulated under Section 112(r)(3) of the CAA, e.g., nitric acid, could be inappropriately considered regulated PSD pollutants under Part 204.

#### **Section 204.620 Replacement Unit**

In the definition of “replacement unit,” the Illinois EPA is proposing to also include the relevant provisions addressing “basic design parameters” of process units at 40 CFR 52.21(cc)(2). In the federal definition of “replacement unit,” 40 CFR 52.21(b)(33), one criterion for a replacement unit, 40 CFR 52.21(b)(33)(iii) is that “[t]he replacement does not alter the basic design parameter (as discussed in [40 CFR 52.21] (cc)(2) of this section) of the process unit.” However, as explained further below, the Illinois EPA is not proposing to include 40 CFR 52.21(cc) in Part 204 given the D.C. Circuit Court of Appeals vacated 40 CFR 52.21(cc). *State of New York, et al. v. EPA*, No. 03-1380 (D.C. Cir. March 17, 2006). In this decision, the D.C. Circuit vacated the provisions addressing “basic design parameters” as they would be part of provisions for “maintenance, repair and replacement.” However, in this decision, the D.C. Circuit did not reject these provisions addressing “basic design parameter” as they are used to implement the definition of replacement unit. Nor did the D.C. Circuit even consider the role of these provisions in the definition of replacement unit.

When USEPA initially adopted the definition of “replacement unit” in 2003, one of the criteria USEPA included in this definition was that the replacement must not change the

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<sup>58</sup> Recently, Alabama made a similar change to its definition of “regulated NSR pollutant”; this approach was approved by USEPA. 73 Fed. Reg. 4133, 4135 (January 24, 2008) (“Such compounds are excluded from the federal NSR rules pursuant to 40 CFR 51.166(b)(49)(iv)”).

basic design parameter of the process unit. 68 Fed. Reg. 63021, 63029 (November 7, 2003) (expressly providing in the definition of “replacement unit” that “the replacement does not alter the basic design parameters (as discussed in paragraph (cc)(2) of this section) of the process unit”). It is apparent that the USEPA intended to implement the phrase “basic design parameter” in accordance with the provision at 40 CFR 52.21(cc)(2). Nor was USEPA’s intent affected by a subsequent vacatur of the provisions for maintenance, repair and replacement. *State of New York, et al. v. EPA*, No. 03-1380 (D.C. Circuit March 17, 2006).

This is confirmed by USEPA’s actions subsequent to the D.C. Circuit’s decision. In every instance where a state has adopted the vacated provision, the USEPA has approved them. As recently as 2015, USEPA approved that portion of Arizona’s SIP adopting the definition of “basic design parameters” in its definition of “replacement unit. 80 Fed. Reg. 67331 (November 2, 2015). In USEPA’s response to comments document for the Arizona NSR reform rule, USEPA provided the following discussion:

*Comment 12:*

One commenter states that we must approve ADEQ’s definition of basic design parameter because the D.C. Circuit made no finding in *State of New York V. EPA* that the use of the “basic design parameter” definition was “impermissible.” This issue was not before the court in *State of New York v. EPA*. At the time the EPA codified the replacement unit provisions, the EPA relied on a previously codified definition of “basic design parameter” to explain how it will interpret the phrase “basic design parameters” in implementing the replacement unit provisions. The vacatur of the “basic design parameters” definition for purposes of a separate, unrelated rulemaking has no effect on the EPA’s stated interpretation of that phrase for purposes of the replacement unit provisions. Accordingly, the EPA’s statements in the preamble remain its interpretation for purposes of implementing those provisions. ADEQ’s interpretation is fully consistent with the EPA’s interpretation.

*Response 12:*

The EPA agrees with the commenter that our proposed partial disapproval of the definition for “basic design parameter” was erroneous. We note that ADEQ did not adopt any of the other provisions of the Equipment Replacement Provisions, which



were the subject of the D.C. Circuit Court's decision in *State of New York v. EPA*. We agree with the commenter that ADEQ's adoption of a definition for basic design parameter is acceptable in this case, and consistent with the EPA's past statements related to this term.

*Id.* at 67331.<sup>59</sup>

#### **Section 204.640      Reviewing Authority**

In Section 204.640, the Illinois EPA is proposing that the term "reviewing authority" means the Illinois EPA unless the current, delegated PSD program in Illinois under 40 CFR 52.21 is being addressed. In that context, the term "reviewing authority" would refer to the USEPA or the Illinois EPA. Proposed Section 204.640 would also be specific to Illinois rather than broadly written like the federal definition of "reviewing authority." *See*, 40 CFR 52.21(b)(51) (encompassing any agency or entity authorized by the USEPA to carry out a permit program under 40 CFR 51.165 or 51.166). As compared to the definition of "reviewing authority" at 40 CFR 52.21(b)(51), proposed Section 204.640 reads as follows:

~~"Reviewing authority" means the Illinois EPA or, State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under §51.165 and §51.166 of this chapter, or the Administrator in the case of EPA implemented a permit programs under this section. 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA.~~

#### **Section 204.650      Secondary Emissions**

The definition of "secondary emissions" in Section 204.650 would depart from USEPA's definition in 40 CFR 52.21(b)(18) in two respects. First, the Illinois EPA is

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<sup>59</sup> In 2012, the USEPA approved Texas' NSR reform regulation stating in its Technical Support Document that the "definition is approvable because TCEQ adopted the definition of 'basic design parameters' *not to implement the ERP*, but to implement the definition of 'replacement unit' in 30 TAC 116.12(31) which uses the term 'basic design parameters.'" *Technical Support Document, Revisions to Texas State Implementation Plan Relating to the Eight-Hour Ozone and New Source Review Reform*, EPA-R06-OAR-2011-0332-0008. *See also*, 77 Fed. Reg. 65119 (October 25, 2012). In 2010, USEPA also approved Georgia's adoption of the definition for "basic design parameter" in Rule 391-3-1-.02(7)(a)2.(viii). 73. Fed. Reg. 51606, 75 Fed. Reg. 71022.

proposing four additional criteria for secondary emissions in Section 204.650. (i.e., specific, well defined, quantifiable, and impacting the same general area as the proposed source). This addition would be consistent with statements of the USEPA's EAB that these criteria were "inadvertently omitted from the regulatory definition of 'secondary emissions' at 40 CFR §52.21(b)(18) when the definition was amended in 1982." *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 166, fn. 62 (EAB 1999). The EAB went on to acknowledge that while USEPA has yet to correct the omission, USEPA has made reference to these four criteria in a variety of policy statements. *Id.* For instance, USEPA's *NSR Manual* states as follows with regard to "secondary emissions":

Although secondary emissions are excluded from the potential emissions estimates used for applicability determinations, they must be considered in PSD analyses if PSD review is required. In order to be considered, however, *secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification undergoing review.*

USEPA's *NSR Manual* at pg. A.18 (Draft 1990) (emphasis added). The EAB also pointed to a federal register indicating that secondary emissions must be specific, well defined, quantifiable and impact the same general area as the stationary source or modification. *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 166, fn. 62 (EAB 1999) citing 54 Fed. Reg. 27286, 27289 (June 28, 1989). The EAB further reiterated its position regarding secondary emissions in a subsequent decision. *In re Encogen Cogeneration Facility*, 8 E.A.D. 244 (EAB 1999). Perhaps most significantly, the four criteria also appear in the definition of "secondary emissions" in the requirements for the submittal of any state implementation plan to prevent the significant deterioration of air quality. 40 CFR 51.166(b)(18). Consistent with these statements, the Illinois EPA is proposing to incorporate these four criteria in the definition of "secondary emissions."

Second, the Illinois EPA is proposing to not include language in the definition of “secondary emissions” set forth in 40 CFR 52.21(b)(18)(i) and (ii). This wording is duplicative of the language included in the first paragraph of 40 CFR 52.21(b)(18); the repetition in subsequent paragraphs makes little sense. It is noteworthy that the USEPA did not include this extraneous language in the definition of “secondary emissions” in its regulatory requirement for state implementation plans to prevent significant deterioration of air quality. 40 CFR 51.166(b)(18). Accordingly, as compared to 40 CFR 52.21(b)(18), the definition of “secondary emissions” in proposed Section 204.650 reads as follows:

“Secondary emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. For the purposes of this Part, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions.

- i) ~~Emissions from ships or trains coming to or from the new or modified stationary sources;~~
- ii) ~~Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.~~

**Section 204.660      Significant – Inclusion of GHG and Ozone Depleting Substances**

Section 204.660 would reflect the definition of “significant” in 40 CFR 52.21(b)(23) except that it addresses two additional pollutants, GHG and ozone depleting substances. First, as previously mentioned, the USEPA recently proposed a significant emission rate for emissions of GHGs. 81 Fed. Reg. 68110 (October 3, 2016). The USEPA selected an

emissions rate for GHG of 75,000 tpy CO<sub>2e</sub>; consistent with USEPA's proposal, the Illinois EPA is proposing the same significant emissions rate for GHGs for Part 204.

Second, the Illinois EPA is proposing a significant emissions rate for emissions of ozone depleting substances (ODS). This is necessary because of the ubiquity of sources with the potential for ODS emissions, e.g., refrigeration systems and air conditioning equipment. "Significant" in (b)(23)(ii) means "in reference to a net emissions increase or the potential of a source to emit *a regulated NSR pollutant* that paragraph (b)(23)(i) of this section, do not list, *any emissions rate*" (emphasis added). Thus, for purposes of applicability of PSD, any emissions rate is deemed "significant" for any regulated NSR pollutant not listed in 40 CFR 52.21(b)(23)(i). The definition of "regulated NSR pollutant" in 40 CFR 52.21(b)(50)(iii) includes any Class I or II substance subject to a standard established by title VI of the CAA, i.e., ozone depleting substances. Given ozone depleting substances are regulated by title VI of the CAA, ozone depleting substances are "subject to regulation" for purposes of PSD applicability. *See also*, 42 U.S.C. 7671a (listing those ozone depleting substances subject to regulation).

Absent a determination of a "significant level" for ozone depleting substances, a modification at a major stationary source resulting in any net increase of emissions of ozone depleting substances would be subject to the substantive requirements of PSD. As such, if a threshold for ozone depleting substances is not in the definition of "significant," frequent every day activities would require a PSD permit. Ozone depleting substances are typically used as a refrigerant by both commercial users and households. Less commonly, given the requirements of Title VI of the CAA, they are used as fire suppressants, blowing agents in Styrofoam insulation board and other plastic foam products. 61 Fed. Reg. 38250, 38307

(July 23, 1996). Absent such an emission rate, a PSD permit would be required, for example, in each instance that a major stationary source experienced a leak from room unit air conditioner. Given the costs incumbent in a PSD permit application and the resources consumed in an individualized BACT determination in any given PSD permitting transaction, PSD permitting for potential incidental losses of ozone depleting substances from such units would make little sense. Such losses are addressed by provisions under Title VI of the CAA, which function to eliminate the continued use of ozone depleting substances. The rate chosen by the Illinois EPA, 100 tons per year, is included in the State of Washington's PSD program, WAC 170-400-720/173-400-720(4)(b)(iii)(B). In this regard, USEPA made special note in its January 7, 2015 proposed acceptance of the Washington PSD program, that a 100 ton per year significant emission rate for ozone depleting substances was consistent with USEPA guidance<sup>60</sup>. 80 Fed. Reg. 838, 840 (January 7, 2015).

**Section 204.680      Stack in Existence**

To ensure consistency with 40 CFR 52.21, the Illinois EPA is proposing to include a definition of "stack in existence" in Part 204. This term is used in 40 CFR 52.21 but its meaning is addressed elsewhere in 40 CFR Part 52. In particular, 40 CFR 52.01, Definitions, provides that all terms used in Part 52 but not defined within a particular section shall have the meaning afforded to them by the CAA and 40 CFR Parts 51 and 60. As such, the term "stack in existence" in 40 CFR 52.21 has the definition afforded to it by 40 CFR 51.100(gg). In order to ensure that the term "stack in existence" in Part 204 has the meaning that applies

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<sup>60</sup> The USEPA made no objection to a permitting authority issuing a permit to a proposed source that would emit less than 100 tpy of ozone depleting substances. See, *Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Gustave Von Bodungen, Assistant Secretary, State of Louisiana*, dated February 24, 1998; see also, *Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director, Environmental Technology American Standard*, dated March 19, 1998.

for 40 CFR 52.21, the Illinois EPA is proposing the inclusion of the definition of “stack in existence” from 40 CFR 51.100(gg) in Part 204.

**Section 204.690 Stationary Source**

The Illinois EPA is proposing a definition of “stationary source” in Section 204.690 that differs from 40 CFR 52.21(b)(5) in that it expressly excludes from a stationary source those “emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act.” Under Section 302(z) of the CAA, nonroad engines are not regulated as stationary sources. 42 U.S.C. § 7602(z) (“‘stationary source’ means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216”). Instead, “nonroad” engines are regulated under the CAA’s provisions for motor vehicles in Title II of the CAA.

The Illinois EPA is proposing the inclusion of language similar to Section 302(z) of the CAA in Section 204.690 that would be consistent with USEPA’s implementation of federal permitting programs. USEPA has routinely determined that nonroad engines are not stationary sources based on the definition of “stationary source” in Section 302(z) of the CAA. Nonroad engines are consequently excluded from federal stationary source permitting requirements. For example, when permitting proposed major sources in attainment areas under the PSD regulations, USEPA has stated that the definition in Section 302(z) of the CAA governs and nonroad engines are not part of a stationary source.<sup>61</sup> *See, In re Diamond*

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<sup>61</sup> It should be noted that for purposes of permitting proposed major projects in nonattainment areas, Illinois’s regulations for nonattainment NSR, which have been approved by USEPA, exclude emissions from a nonroad engine from such permitting by means of the definition for “building, structure and facility” in 35 Ill. Adm. Code 203.122.

*Wanapa I, L.P. Wanapa Energy Center*, PSD Appeal No. 05-06, slip op. at 15, fn. 12, (EAB Feb. 9, 2006), citing *In re Cardinal FG Co.*, 12 E.A.D. 153, 171 (2005) (“the Clean Air Act expressly excludes from the PSD permitting requirements emissions resulting directly from a nonroad engine or a nonroad vehicle”); see also, *Letter from Cheryl Newton, USEPA Region V, to G. Vinson Hellwig, Michigan Department of Natural Resources and Environment*, dated August 16, 2010 (“EPA’s air permitting programs such as NSR and Title V generally cover only emissions from stationary sources. Section 302(z) of the Act defines stationary source as . . . EPA interprets this definition as excluding emissions from internal combustion motor vehicle engines only when those engines are being used for transportation purposes”). Nor has USEPA concluded that nonroad engines are appropriately a part of a “stationary source” for purposes of Title V permitting. See, *Letter from Jack P. Broadbent, USEPA Region IX, to Mr. Marc Chytilo, Law Office of Marc Chytilo*, page 11 (December 14, 2001) (“Nonroad engines are a category of units/equipment that, under the Clean Air Act Section 302(z), are excluded from the definition of ‘stationary source,’ and hence, are exempt from stationary source permitting requirements, i.e., Title V . . .”).

Given USEPA’s written guidance confirms that it recognizes that the definition of “stationary source” does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle, the Illinois EPA is proposing the following definition of “stationary source”:

“Stationary source” means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant. Emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the CAA (42 USC 7550) are not part of a stationary source.

**Section 204.700      Subject to Regulation**

As previously mentioned, USEPA recently proposed changes to the PSD regulations involving “greenhouse gases” to implement the decision of the Supreme Court in *UARG*. 81 Fed. Reg. 68110 (October 3, 2016). In the definition of “subject to regulation,” USEPA proposes to remove the explanatory language describing “greenhouse gases” transferring this language to a separate, new definition for “greenhouse gases (GHGs)” at 40 CFR 52.21(b)(32). Consistent with USEPA’s proposed change, Part 204 would also include the “greenhouse gas” language in a new definition rather than as explanatory language in the term “subject to regulation.” This would not change the meaning of “greenhouse gases.”

In the definition of subject to regulation, USEPA also proposes the insertion of the following sentence to ensure that the proposed action did not somehow suggest that greenhouses gases are not “subject to regulation.” “Pollutants subject to regulation include, but are not limited to, greenhouse gases as defined in Section 204.430 ~~paragraph (b)(32) of this section.~~” *See*, 81 Fed. Reg. 68110, 68143. The Illinois EPA is also proposing the same language be included in the Part 204 definition of “subject to regulation.”

Finally, USEPA proposes to remove the PSD applicability thresholds for GHGs currently set forth in the term “subject to regulation.” It is proposing that the significant emission rate for greenhouse gases now be included in the definition of “significant,” at 40 CFR 52.21(b)(23), like the significant emission rate for other pollutants. 81 Fed. Reg. 68110, 68118; *see also*, 40 CFR 52.21(b)(49)(iv). Consistent with USEPA’s proposal, Section 204.700 would also remove the PSD applicability thresholds for greenhouse gases from the definition of “subject to regulation.”

**Section 204.800      Applicability**



Consistent with 40 CFR 52.21(a)(2)(iv), Section 204.800(d) would set forth how one determines whether a proposed project at an existing major source is a major modification. This includes the three approaches for determining whether a project would result in a significant emissions increase as set out in 40 CFR 52.21(a)(2)(iv)(c), (d) and (f). The applicable approach depends on the type of emission units in a project. 40 CFR 52.21(a)(2)(iv)(b). For projects involving only existing units, the actual-to-projected actual applicability test applies, which looks at the difference between projected emissions and baseline emissions of affected units. 40 CFR 52.21(a)(2)(iv)(c). For projects involving only new units, the actual-to-potential test applies, which looks at the potential emissions of the new units since their baseline emissions are zero. 40 CFR 52.21(a)(2)(iv)(d). Finally, the hybrid test applies for projects that involve both existing and new units generally using the combination of the approaches for each type of unit. 40 CFR 52.21(a)(2)(iv)(f). Part 204 would mirror these requirements that were originally proposed in conjunction with NSR reform. 67 Fed. Reg. 80186 (December 31, 2002).

Unfortunately, 40 CFR 52.21(a)(2)(iv)(b) uses the term “modified” when discussing the approaches to calculate whether a significant emissions increase will occur by indicating that the particular approach is “dependent on the type of emission unit *being modified*.” 40 CFR 52.21(a)(2)(iv)(b) (emphasis added). As indicated above, the applicability of PSD is not limited to modified emissions units but may also involve new units. Projects may also involve existing units that are affected by the project that would experience increases in emissions due to the project but would not undergo any physical or operational changes, e.g., an upstream or downstream unit. In order to avoid confusion, the Illinois EPA is proposing to alter the phrase “emissions units being modified” to “emissions units involved in the

project.” The first sentence of 204.800(d)(2) would now read that “The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type(s) of emission units involved in the project being modified, according to subsections (d)(3) through (d)(5) paragraphs (a)(2)(iv)(c) through (f) of this Section.” Incidentally, the use of the term “involved in” in 204.800(d)(2) would be consistent with the use of the term “involve” in 40 CFR 52.21(a)(2)(iv)(c), (d), and (f), as reflected in Sections 204.800(d)(3) through (5).

In addition to the aforementioned language change in 204.800(d), the Illinois EPA is proposing a new paragraph (e) in Section 204.800 for further clarity. This new subsection would simply direct any project involving an existing major source that is not a major modification for a regulated NSR pollutant to the relevant requirements of Subpart I when a reasonable possibility exists that the project for that pollutant may result in a significant emissions increase in that pollutant.<sup>62</sup>

#### **Section 204.820      Source Obligation**

In the event the owner or operator constructs or operates a source or modification inconsistent with the application or with the terms of approval to construct, proposed Section 204.820 would subject an owner or operator to appropriate enforcement action consistent with 40 CFR 52.21(r)(1). 40 CFR 52.21(r)(1) also provides that an owner or operator of a source or modification would also be subject to enforcement if actual construction begins without applying for and receiving approval to construct. Rather than stating that “any owner or operator of a source or modification . . . who *commences* construction . . . without applying for and receiving approval . . . shall be subject to appropriate enforcement action”

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<sup>62</sup> It should be noted that the substance of 204.1400 is consistent with the requirements of 40 CFR 52.21(r)(6) and (7).

as set forth in 40 CFR 52.21(r)(1) (emphasis added), Section 204.820 would utilize the phrase “*begins actual construction*” (emphasis added). Proposed Section 204.820 reads as follows:

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this ~~Part section~~ or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this ~~Part section~~ who ~~commences~~ begins actual construction after the effective date of ~~this Part these regulations~~ without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

Given “commence” is a term that would be defined in Section 204.320 to mean that “the owner or operator *has all necessary preconstruction approvals or permits . . .*” it is unnecessary to state that an owner or operator would be subject to enforcement if construction “commences” without applying for and receiving approval to construct as 40 CFR 52.21(r)(1) does. *See also*, 40 CFR 52.21(b)(9). Section 204.820 would appropriately reflect this change.

#### **Section 204.860 Exemptions**

Consistent with 40 CFR 52.21(i), the Illinois EPA is proposing an exception to the substantive requirements of PSD, e.g., control technology review, air quality analysis, public participation, and additional impact analysis, if any of the exemptions delineated by Section 204.860 are met. While 40 CFR 52.21(i) has over time set forth exemptions from the substantive requirements of PSD during transitional periods of time, at the request of the governor of the state in which the source or modification would be located, or certain aspects of PSD for subject sources, the Illinois EPA is not proposing to include all of these exemptions of 40 CFR 52.21(i).

First, the Illinois EPA is proposing to not include a number of transition provisions set forth within 40 CFR 52.21(i) in proposed Part 204; the bulk of these transition provisions

that the Agency is not proposing to carry over have passed.<sup>63</sup> 40 CFR 52.21(i). Bearing in mind that these changes pertain merely to the timing of a particular change in the federal PSD regulation, these changes are self-explanatory.

In a similar vein, the Illinois EPA is proposing to not carry over an exemption that currently exists in 40 CFR 52.21(i)(12) despite the exemption's potentially relevant timing. This exemption provides certain sources the benefit of not being subject to the revised 8-hour NAAQS for ozone of 0.070 ppm if the Administrator determined its permit application to be complete on or before October 1, 2015 or the Administrator proceeded to public notice on its draft permit on or before December 28, 2015. Given there are currently no applications pending before the Illinois EPA that meet this standard this exemption is appropriately excluded from Part 204.

Second, the Illinois EPA is proposing adoption of the exemption at 40 CFR 52.21(i)(1)(vi) with minor changes for Section 204.860. In particular, the exemption for nonprofit health or nonprofit educational institutions would be appropriately specific to Illinois rather than generically written for any state implementing PSD permitting by means of a delegation agreement with USEPA. Accordingly, the Illinois EPA is proposing the following for Section 204.860(a)(1):

The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution and the

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<sup>63</sup> To the extent that a new major stationary source previously complied with the applicable requirements of 40 CFR 52.21 prior to Illinois receiving SIP approval of this Part 204, the new major stationary source would not now be subject to the requirements of 35 Ill. Adm. Code Part 204 for that construction activity previously subject to 40 CFR 52.21. The same is true for a major stationary source that previously complied with the applicable requirements of 40 CFR 52.21 for a particular physical change or change in the method of operation prior to Illinois receiving SIP approval of this Part 204. In this instance, the major stationary source would not now be subject to the requirements of 35 Ill. Adm. Code Part 204 for that change or change in the method of operation previously subject to 40 CFR 52.21.

~~gGovernor of Illinois the state in which the source or modification would be located requests that it be exempted~~ it from those requirements; or

Finally, the Illinois EPA is not proposing to carry over the exemption in 40 CFR 52.21(i)(5). When adopted, this provision allowed the Administrator to exempt a stationary source or modification from the preconstruction monitoring data requirements of 40 CFR 52.21(m) if modeled impacts were below the specified significant monitoring concentration (SMC). 45 Fed. Reg. 52676, 52710 (August 7, 1980). Recently, USEPA adopted an SMC to exempt permit applicants from preconstruction monitoring for PM<sub>2.5</sub>. 72 Fed. Reg. 54112, 54138-42 (September 21, 2007). In January 2013, the U.S. Court of Appeals for the D.C. Circuit vacated this portion of the regulation pertaining to PM<sub>2.5</sub> finding that USEPA lacked *de minimis* authority to promulgate an SMC for PM<sub>2.5</sub> that can be used to exempt an owner of a proposed source or modification from undertaking the year-long pre-construction air quality monitoring required under Section 165(e)(2) of the CAA. *Sierra Club v. Environmental Protection Agency*, No. 10-1413 (D.C. Cir. January 22, 2013). The D.C. Circuit expressly stated that “[g]iven how extraordinarily rigidly Congress stated its monitoring mandate in §165(e)(2), we are not persuaded by the EPA’s arguments that it has *de minimus* authority to exempt the preconstruction monitoring requirement.” *Id.* While the D.C. Circuit only addressed the use of SMCs for PM<sub>2.5</sub> and did not address their use for other criteria pollutants, the D.C. Circuit could not have been clearer.<sup>64</sup> The CAA requires the use

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<sup>64</sup> The Illinois EPA is proposing to not carry over the explicit exemption for preconstruction monitoring for both criteria and non-criteria pollutants. The exemption for preconstruction monitoring for non-criteria pollutants is currently set forth in 40 CFR 52.21(i)(5)(i)(h) through (k) and includes the following non-criteria pollutants: fluorides, total reduced sulfur, hydrogen sulfide and reduced sulfur compounds. While the D.C. Circuit Court did not address non-criteria pollutants but merely focused on criteria pollutants in its decision, the preconstruction monitoring obligation for non-criteria pollutants is not mandatory but based on the judgment of the Administrator. 40 CFR 52.21(m)(1)(ii). Given the statements made by the D.C. Circuit regarding criteria pollutants and the discretion afforded to the Administrator to determine whether preconstruction monitoring is necessary

of preconstruction monitoring data.<sup>65</sup> As such, the Illinois EPA's proposal does not include the exemption from pre-construction monitoring for any criteria or non-criteria pollutant as currently found in 40 CFR 52.21(i).

### **Section 204.930      Redesignation**

Section 204.930 pertaining to the process for changing the designation of areas of the State for purposes of PSD increments is consistent with the process set forth in 40 CFR 52.21(g). In addition, proposed Section 204.930 would clarify that *as of the initial effective date of 35 Ill. Adm. Code 204*, all areas of Illinois are Class II areas as of December 5, 1974.<sup>66</sup> If this provision did not expressly include such a restriction on the timing of its applicability, questions of the regulation's reach could develop in the future. In those instances where a statute or regulation is silent, the United States Supreme Court has directed courts to employ a series of judicial default rules in the civil context to determine if a statute or regulation should have retroactive effect. *Landgraf v. USI Film Products*, 511 U.S. 244, 280, 114 S.Ct. 1483, 1505, 128 L.Ed. 2d 229, 262 (1994). In order to avoid any potential confusion, it is best to expressly provide that while all areas of Illinois are Class II as of December 5, 1974, this designation only took place for purposes of Part 204 as of its initial

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for non-criteria pollutants, an exemption from preconstruction monitoring for non-criteria pollutants is not necessary. Accordingly, the Illinois EPA is also proposing to not carry over the exemption from pre-construction monitoring for non-criteria pollutants.

<sup>65</sup> In response to the January 22, 2013, D.C. Circuit decision, the USEPA noted that it will not waive the requirement for pre-construction monitoring data. However, sources can continue to rely on data from the existing monitoring networks so long as the permitting authority finds the data to be representative of the air quality in the area of concern. *Circuit Court Decision on PM<sub>2.5</sub> Significant Impact Levels and Significant Monitoring Concentration, Questions and Answers*, USEPA, Office of Air Quality Planning and Standards March 4, 2013.

<sup>66</sup> Prior to this time and pursuant to 40 CFR 52.21(g), all areas of Illinois were designated Class II areas as of December 5, 1974.

effective date.<sup>67</sup> Accordingly, the Illinois EPA is proposing the following language for inclusion in Section 204.930(a).

As of the initial effective date of 35 Ill. Adm. Code 204, Aall areas of the State (except as otherwise provided under Section 204.920 paragraph (e) of this section) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by Section 204.920 of this Part paragraph (e) of this section may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the USEPA Administrator as a revision to the applicable SIPstate implementation plan.

### **Section 204.1100 Control Technology Review**

The Illinois EPA is proposing to include references to 40 CFR Parts 62 and 63 in Section 204.110 that do not exist in 40 CFR 52.21(j). 40 CFR 52.21(j), “control technology review” provides that “a major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR parts 60 and 61.” To be consistent with the statutory definition of BACT in Section 169(3) of the CAA, the Illinois EPA is proposing to refer to 40 CFR Parts 62 and 63 in addition to Parts 60 and 61.

The statutory definition of BACT in Section 169(3) provides that “in no event shall application of ‘best available control technology’ result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to *section 111 or 112 of this Act.*” (*emphasis added*). Given Parts 62 and 63 were respectively established pursuant to Sections 111 and 112 of the CAA, it is appropriate to identify Parts 62 and 63 as emissions standards and standards of performance that a major stationary source or major modification must comply with as such standards are applicable.

### **Section 204.1130 Air Quality Analysis**

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<sup>67</sup> Prior to this date, all areas of Illinois are Class II areas as of December 5, 1974 by means of 40 CFR 52.21.

Pursuant to 40 CFR 52.21(m)(1)(iii), the air quality analysis that must be submitted as part of a PSD permit application for a pollutant must contain continuous air quality monitoring data for the pollutant if a NAAQS exists for the pollutant, except if the pollutant is nonmethane hydrocarbons. For purposes of Section 204.1130, it is not necessary to explicitly exclude nonmethane hydrocarbons from this requirement. This is because there is no longer a NAAQS for nonmethane hydrocarbons so an explicit exclusion is not needed.<sup>68</sup>

The Illinois EPA is also proposing not to include certain provisions related to air quality monitoring data in 40 CFR 52.21(m)(1)(v) and (vii). This is because these requirements would only be applicable for a complete application submitted in certain periods. (*i.e.*, between June 8, 1981 and February 9, 1982, and between December 1, 1998 and August 1, 1989). Given these periods have passed, and the submittal of a complete application between these dates is no longer possible, the Illinois EPA is proposing to not include these data requirements in Section 204.1130.<sup>69</sup>

Nor is the Illinois EPA proposing to include a provision related to air quality monitoring in 40 CFR 52.21(m)(1)(viii). This section addresses monitoring of PM<sub>10</sub> under 40 CFR 52.21(i)(11)(i) and (ii) and provides that any monitoring method used must have been approved by the Administrator. It further provides that any estimate of the ambient concentrations of PM<sub>10</sub> is required to utilize data collected by the approved monitoring method consistent with estimating procedures approved by the Administrator. However, the reference to 40 CFR 52.21(i)(11)(i) and (ii) in 40 CFR 52.21(m)(1)(viii) is not correct given the former addresses PM<sub>2.5</sub> and the latter speaks to PM<sub>10</sub>. This typographical error originated

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<sup>68</sup> At the time 40 CFR 52.21(m)(1)(iii) was adopted, a NAAQS did exist for nonmethane hydrocarbon. *See*, 45 Fed. Reg. 52676 (August 7, 1980).

<sup>69</sup> Note that for applications received during these dates, 40 CFR 52.21(m)(1)(v) and (vii), as applicable, would apply.



in December 2002 when USEPA adopted NSR reform. In that rulemaking, USEPA renumbered paragraphs in 40 CFR 52.21(i) due to its removal of paragraphs (i)(1), (i)(2) and (i)(3). Paragraph (i)(11) became paragraph (i)(8) but the reference in 40 CFR 52.21(m)(1)(viii) to paragraph (i)(11) was not corrected. *See*, 67 Fed. Reg. 80186, 80274 (December 2002). As the Agency is not proposing that Section 204.860 include 40 CFR 52.21(i)(8), the reference to 40 CFR 52.21(i)(8) in Section 204.1130 is unnecessary. As previously discussed, the Agency is not proposing to include the exemption provided by 40 CFR 52.21(i)(8) given it only applied to applications filed before June 1, 1988 or December 1, 1988. In view of this, there is no need to include provisions of air quality monitoring for a section of 40 CFR 52.21 not proposed for inclusion in Part 204.

**Section 204.1140 Additional Impact Analysis**

The Illinois EPA is proposing to not include 40 CFR 52.21(o)(3) in Section 204.1140. 40 CFR 52.21(o)(3) provides the Administrator with the option of requiring visibility monitoring in any Federal Class I area near a proposed new stationary source or major modification as is necessary and appropriate. 40 CFR 51.166(p) does not mandate that each applicable state implementation plan submitted to USEPA for review and approval contain such requirement. Moreover, given no Class I area exists in Illinois, or in close proximity to Illinois, such monitoring would not be needed.<sup>70</sup> Accordingly, it is not appropriate to include such a requirement in Part 204.

**Section 204.1300 Notification of Application Completeness to Applicants**

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<sup>70</sup> The closest Class I area exists within 125 kilometers of Illinois' borders. Mingo National Wilderness Area in Missouri is within 125 kilometers of Illinois. In addition to Mingo National Wilderness Area, a Class I area exists in Kentucky at Mammoth Cave National Park. *See*, 40 CFR §81.416 and 40 CFR §81.411.

To address an administrative action by the Agency that is to accompany the processing of PSD permit applications pursuant to 40 CFR 51.166(q)(1), the Illinois EPA is proposing language requiring the Agency to notify the applicant within 30 days of receipt of an application for a permit pursuant to this Part as to the completeness of or deficiency in the application. Similar to the language in 40 CFR 51.166(q)(1), proposed Section 204.1300 reads as follows:

The Illinois EPA shall notify the applicant within 30 days of receipt as to the completeness of an application for a permit pursuant to this Part or any deficiency in the application or information submitted in such an application. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Illinois EPA received all required information.

**Section 204.1310 Transmittal of Application to USEPA**

To address an administrative action by the Agency that is to accompany the processing of PSD permit applications pursuant to Section 165(d)(1) of the CAA and 40 CFR 51.166(p), the Illinois EPA is proposing language requiring the Agency to provide to the USEPA a copy of each application for a PSD permit that it receives. Similar to the language in 40 CFR 51.166(p), proposed Section 204.1310 reads as follows:

The Illinois EPA shall transmit to the USEPA a copy of each permit application submitted pursuant to this Part relating to a major stationary source or a major modification.

**Section 204.1320 Public Participation**

Consistent with the public participation requirements that must accompany the processing of PSD permits as provided by 40 CFR 51.166(q), the Illinois EPA is proposing similar language in Section 204.1320. Proposed Section 204.1320 would reference the Illinois EPA's public participation procedures at 35 Ill. Adm. Code Part 252. 35 Ill. Adm. Code Part 252 includes procedures that must accompany the processing of permit

applications for certain sources of air pollution, including PSD permits, issued by the Illinois EPA. This public participation process is currently in use for Illinois' nonattainment NSR program. *See*, 35 Ill. Adm. Code 203.150. As previously discussed, the Illinois EPA is currently amending 35 Ill. Adm. Code Part 252, to accommodate a SIP-approved PSD program in Illinois. Similar to the language of 35 Ill. Adm. Code 203.150, the Illinois EPA is proposing the following language for inclusion in proposed Section 204.1320:

Prior to the initial issuance of a permit pursuant to this Part or a modification of a permit issued pursuant to this Part, the Illinois EPA shall provide, at a minimum, notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing pursuant to the Illinois EPA's public participation procedures set forth at 35 Ill. Adm. Code Part 252.

**Section 204.1330 Issuance Within One Year of Submittal of Complete Application**

Consistent with Section 39(f)(3) of the Act and Section 165(c) of the CAA, which require a final permitting decision within a year of receipt of a complete application for a PSD permit, the Illinois EPA is proposing the following language for inclusion in proposed Section 204.1330.

Within one year after receipt of a complete application, a permit shall be granted or denied by the Illinois EPA.

**Subpart K: Plantwide Applicability Limitations (PALs)**

In Part 204, Subpart K, the Illinois EPA is proposing to set out the regulatory requirements for PALs in a number of sections rather than one lengthy section as in 40 CFR 52.21. *See*, 40 CFR 52.21(aa). The Illinois EPA is also proposing to include the definitions from 40 CFR 52.21(b) that are only pertinent to PALs within Part 204, Subpart K rather than proposed Part 204, Subpart B, which would include definitions germane to the entire PSD program. In sum, the proposed lay out of Subpart K strives to make a more coherent series of requirements and obligations for PALs.

Beyond this, proposed Subpart K would reflect those changes to PALs recently proposed by USEPA to address the *UARG* decision and an ensuing Amended Judgment issued by the D.C. Circuit Court of Appeals. *UARG v. EPA*, 134 S.Ct. 2427 (2014); *see also*, *Coalition for Responsible Regulation, Inc. v. Environmental Protection Agency*, Nos. 09-1322, 10-073, 10-1092 and 10-1167 (D.C. Cir. April 10, 2015). Given a source must be an existing major source to be eligible for a PAL permit and a source is not subject to PSD based only on its GHG emissions, USEPA has recently proposed to revise 40 CFR 52.21 to remove the ability for a source that is only “major” for GHGs to obtain a GHG PAL. In a similar vein, USEPA has offered revisions to ensure a source establishing a GHG PAL retains its ability to be a minor source. 81 Fed. Reg. 68110 (October 3, 2016). USEPA also proposed to alter these PAL provisions such that an existing “anyway source” could still obtain a GHG PAL, but only to relieve the source from the requirement to address BACT for GHGs when the source triggers PSD for another NSR pollutant. *Id.* The proposed revisions tendered in proposed Part 204 by the Illinois EPA mirror these changes recently proposed by USEPA.

**Section 204.1630 Allowable Emissions**

As previously discussed, the proposed definition of “potential to emit” in Section 204.560 would provide that limitations that may be considered when determining potential to emit may be either “legally and practicably enforceable by a state or local air pollution control agency” or “federally enforceable.” Accordingly, Section 204.1630 does not need to include the language in 40 CFR 52.21(aa)(2)(ii)(b) that provides that, for PALs, limitations that may be considered when determining potential to emit may be “enforceable as practical matter” as well as federally enforceable. Proposed Section 204.1630 reads as follows:

~~“Allowable emissions” means “allowable emissions” as defined in Section 204.230 paragraph (b)(16) of this section, except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b) of this section that~~ The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as practical matter on the emissions unit’s potential to emit.

**Section 204.1670      Lowest Achievable Emission Rate (LAER)**

Given, for purposes of PSD, the term “lowest achievable emission rate” is only relevant to the provisions for PALs, *e.g.*, proposed Subpart K, the Illinois EPA is proposing that this term be defined in Subpart K rather than with the definitions in Subpart B. While the definition of LAER in 40 CFR 52.21(b)(53) refers to the federal definition of LAER, the Illinois EPA is proposing a definition consistent with Illinois’ SIP-approved nonattainment NSR program, 35 Ill. Adm. Code Part 203. Proposed Section 204.1670 reads as follows:

“Lowest achievable emission rate” (“LAER”) is as defined in §51.165(a)(1)(xiii) of this chapter shall have the meaning given by the provisions at 35 Ill. Adm. Code 203.301(a).

It should be noted that the substance of 40 CFR 51.165(a)(1)(xiii) and 35 Ill. Adm. Code 203.301(a) are the same. Any language differences between the federal regulations and the state counterpart do not alter the meaning of the defined term “lowest achievable emission rate.”<sup>71</sup>

**Section 204.1680      Major Emissions Unit**

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<sup>71</sup> 40 CFR 51.165(a)(1)(xiii)(A) provides that LAER will be the most stringent SIP emission limitation for any class or category of stationary source unless *the owner or operator of the proposed stationary source* demonstrates that the limitation is not achievable (*emphasis added*). Meanwhile, 35 Ill. Adm. Code 203.301(a)(1) provides that LAER will be the most stringent SIP emission limitation for any class or category of stationary source unless *it is* demonstrated that the limitation is not achievable (*emphasis added*). Second, while both regulations prohibit any new or modified source from emitting any pollutant in excess of the amount established by an applicable new source performance standard, Section 203.301(a)(2) clarifies that these are new source performance standards adopted by the USEPA, which are made applicable under Illinois law pursuant to Section 9.1(d) of the Act. *See*, 40 CFR 51.165(a)(1)(xiii)(B) and 35 Ill. Adm. Code 203.301(a)(2).

In Section 204.1680, the Illinois EPA is proposing the elimination of any portion of the definition of “major emissions unit” for PALs specific to nonattainment areas as Part 204 solely deals with attainment areas. *See*, 40 CFR 52.21(aa)(2)(iv). At the time USEPA initially promulgated PALs, USEPA included one set of regulatory language for both Parts C and D of Title I of the CAA, *i.e.*, both PSD and nonattainment area permitting. 67 Fed. Reg. 80186 (December 31, 2002). Likely for ease of rulemaking, USEPA utilized the same PAL language for both regulatory programs. Rather than including this drafting artifact in Part 204, the Illinois EPA is proposing a definition of “major emissions unit” specific to PALs in an attainment area. Proposed Section 204.1680 reads as follows:

“Major emissions unit” means aAny emissions unit that emits or has the potential to emit 100 tons per year tpy or more of the PAL pollutant in an attainment area,~~;~~ or

- a) ~~Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act CAA for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(e) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.~~
- b) ~~For a GHG PAL issued on a CO<sub>2</sub>e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO<sub>2</sub>e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL permit is being issued.~~

**Section 204.1760 Reasonably Achievable Control Technology (RACT)**

Given the definition of “reasonably achievable control technology” is only germane to PALs as would be addressed by proposed Subpart K, the Illinois EPA is proposing that this term be defined in Subpart K rather than in the definitions in Subpart B. While the definition of RACT in 40 CFR 52.21(b)(54) refers to 40 CFR 51.100(o), the Illinois EPA is

proposing the inclusion of the language from 40 CFR 51.100(o) in 35 Ill. Adm. Code 204.1760. Proposed Sections 204.1760 reads as follows:

“Reasonably achievable control technology” (“RACT”) is defined in §51.100(o) of this Chapter means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

- a) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;
- b) The social, environmental, and economic impact of such controls; and
- c) Alternative means of providing for attainment and maintenance of such standard.

### **Section 204.1910 Transition Requirements**

Consistent with 40 CFR 52.21(aa)(15), proposed Part 204 would ensure that a PAL permit under the PSD program is only issued in accordance with the PAL provisions of Part 204, Subpart K. However rather than referencing the date the federal PAL requirements became effective, Section 204.1910 would reference the initial effective date of Part 204.

The Illinois EPA is proposing to omit the transitional requirement from 40 CFR 52.21(w)(15)(ii) for PALs in 35 Ill. Adm. Code 204.1910. 40 CFR 52.21(aa)(15)(ii) provides that a PAL established prior to March 3, 2003 may be superseded by a PAL that meets the federal requirements for PALs in 40 CFR 52.21(aa). Given no PAL has been established in Illinois, this language would be superfluous. Proposed Section 204.1910 reads as follows:

- (i) ~~The Illinois EPA Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa) through (15) of this Subpart section after the initial effective date of 35 Ill. Adm. Code 204 March 3, 2003.~~
- (ii) ~~The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.~~

### **Regulatory provisions of 40 CFR 52.21 not proposed for inclusion in Part 204**

The Illinois EPA is not proposing the inclusion of certain provisions of 40 CFR 52.21 in Part 204. The legal basis for this aspect of the proposal is addressed in the following discussion. In one instance, the Agency's preference is to rely upon an existing state definition in Part 211 and in another, a defined term is not used in 40 CFR 52.21. Finally, a number of definitions are not proposed for inclusion due to a federal stay of the applicable provision.

**40 CFR 52.21(b)(30) Volatile organic compound**

40 CFR 52.21(b)(3) defines the term "volatile organic compound" to mean that definition set forth in 40 CFR 51.100(s). Rather than referring to a definition of "volatile organic compound" that might differ from the state definition of "volatile organic compound" in 35 Ill. Adm. Code 211.7150, a single definition of "volatile organic compound" for PSD permitting and other permitting in the State is preferable. As such, the Illinois EPA is proposing that the PSD program refer to the definition of "volatile organic compound" as set forth in 35 Ill. Adm. Code 211.7150.<sup>72</sup>

**40 CFR 52.21(b)(38) Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit**

The Illinois EPA is proposing to not include the definition of "Reactivation of a very clean coal-fired electric utility steam generating unit" of 40 CFR 52.21(b)(38) in proposed Part 204. As discussed, there are no units in Illinois that could qualify for this definition. In addition, over twenty-five years have passed since the enactment of the Clean Air Act. Accordingly, the Illinois EPA is not proposing the inclusion of this definition which is now extraneous in Illinois in Part 204.

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<sup>72</sup> As the Pollution Control Board is aware, Illinois has historically kept the definition of "volatile organic material" up-to-date when USEPA revised its definition of VOM.



**40 CFR 52.21(b)(39) Pollution prevention**

40 CFR 52.21(b)(39) defines the term “pollution prevention” but no longer makes use of this term elsewhere in 40 CFR 52.21. This term was used in the “Clean Unit Provision” of the federal PSD program, which was struck down by *New York v. EPA*, 413 F.3d 3, 38-39 (D.C. Cir. 2005). Given this term is no longer used in 40 CFR 52.21, the Illinois EPA is not proposing its inclusion in Part 204.

**40 CFR 52.21(b)(56) Functionally equivalent component**

**40 CFR 52.21(b)(57) Fixed capital costs**

**40 CFR 52.21(b)(58) Total capital investment**

The Illinois EPA is not proposing the inclusion of the defined terms “functionally equivalent component,” “fixed capital costs” and “total capital investment” in Part 204 given that 40 CFR 52.21 indicates that these definitions have been indefinitely stayed. *State of New York, et al. v. EPA*, No. 03-1380 (D.C. Cir. December 24, 2003). Subsequent to the D.C. Circuit Court of Appeals stay of 40 CFR 52.21(cc) that necessarily included relevant definitions as well, the USEPA issued a final regulation reflecting the stay by adding a note to each of the definitions affected by the decision. 69 Fed. Reg. 40274. As previously discussed, the D.C. Circuit subsequently vacated the “equipment replacement provision” which necessarily included these definitions as well. While the USEPA has not taken subsequent action to appropriately reflect this vacatur, these vacated definitions should not be included in proposed Part 204. As such, the Illinois EPA is proposing to omit these vacated definitions in Part 204.

**40 CFR 52.21(cc)**

The Illinois EPA is proposing the omission of 40 CFR 52.21(cc) in Part 204 given the D.C. Circuit Court vacated this provision. *State of New York, et al. v. EPA*, No. 03-1380

(D.C. Cir. March 17, 2006). 40 CFR 52.21(cc) contains an “equipment replacement provision” that refines the provision of the definition of major modification, 40 CFR 52.21(b)(2)(iii)(a) that provides that routine maintenance, repair and replacement should not be a major modification under the PSD program. 40 CFR 52.21 does not appropriately reflect the vacatur of 40 CFR 52.21(cc). Instead, 40 CFR 52.21 simply indicates that this provision has been indefinitely stayed. *State of New York, et al. v. EPA*, No. 03-1380 (D.C. Cir. December 24, 2003). As previously discussed, subsequent to the D.C. Circuit Court of Appeals stay, the USEPA issued a final regulation reflecting the stay by adding a note to each of the routine maintenance, repair and replacement provisions affected by the decision. 69 Fed. Reg. 40274. Only after the USEPA issued its final regulation reflecting the stay did the D.C. Circuit vacate the “equipment replacement provision” in its entirety. However, the USEPA has not taken further action in 40 CFR 52.21 to appropriately reflect this vacatur. Rather than including this language in Part 204 with a subsequent note indicating that the provision has been vacated, the Illinois EPA is proposing to not include the vacated language of 40 CFR 52.21(cc) in Part 204.

### **35 Ill. Adm. Code Parts 101 and 105**

The Illinois EPA has historically issued PSD permits pursuant to a delegation agreement with USEPA and will continue until this regulatory proposal is SIP-approved by USEPA.<sup>73</sup> In this capacity, a PSD permit issued by the Illinois EPA has been and is currently subject to review by USEPA’s EAB in accordance with 40 CFR §124.19. Section 124.19

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<sup>73</sup> *Accord.*, 415 ILCS 5/3.363 (“‘PSD permit’ means a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 165 of the Clean Air Act and 40 CFR 51.166.”).

limits the EAB's review to PSD permits issued by the USEPA or delegated agencies; Part 124 does not apply to PSD permits issued under a SIP-approved PSD program. *In re Zion Energy, LLC*, 9 E.A.D. 701, 701-702, fn.1 (EAB 2001); *see also, In re Dominion Energy Brayton Point, LLC*, PSD Appeal No. 09-01, slip op. at 2-3 (May 13, 2009) ("The . . . [EAB's] jurisdiction to review PSD permit extends only to those issues relating to permit conditions that implement the federal PSD program."). However, once the state of Illinois has its own SIP-approved PSD program, PSD permits issued by the Illinois EPA will be subject to Board review consistent with the procedural requirements of Section 40.3 of the Act, 415 ILCS 5/40.3 and 35 Ill. Adm. Code Parts 101 and 105.<sup>74</sup>

### **1. Regulatory Background**

The Agency's proposed revisions to 35 Ill. Adm. Code Parts 101 and 105 are intended to further clarify certain aspects of these procedural provisions and to provide regulatory requirements for appeals of PSD permits to the Board. Part 101, titled General Rules, contains those general regulations that apply to all Board proceedings. Part 105, titled Appeals of Final Decisions of State Agencies, contains the Board's procedural requirements for appeals of final agency decisions, *i.e.*, permit decisions, leaking underground storage tank decisions, etc.

### **2. Proposed Amendments to Part 101**

The Agency's proposal would clarify certain terms employed in Part 101. During the course of drafting, the Illinois EPA found that the Board's procedural regulations made no

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<sup>74</sup> If the Illinois EPA were in the future to modify a PSD permit, previously issued pursuant to 40 CFR 52.21, by means of Part 204, any administrative review of such action would be before the Board. *See, In re Delta Energy Center*, 17 E.A.D. 371 (June 20, 2017) ("Although BAAQMD issued Delta's PSD permit under a federal delegated program, subsequent to August 31, 2016, any actions on PSD permits, including Delta's, fall under BAAQMD's jurisdiction because BAAQMD now administers an approved PSD program under its own authority.").

distinction between “public comments” submitted to the Board during a pending proceeding and “public comments” submitted to the Agency during a public comment period for a proposed decision. Nor did the Board’s procedural regulations make a distinction between a “record” kept by the Clerk of all documents filed during a Board proceeding and a “record” of a final Agency decision as kept by the Agency of documents required by 35 Ill. Adm. Code Part 105. The Agency found other instances where the Board’s procedural regulations were silent on certain definitions necessary to clarify the distinct administrative processes before the Board and the Agency.<sup>75</sup> The Agency’s proposal therefore incorporates additional clarifying definitions in Part 101.<sup>76</sup> In addition, the Agency’s proposal includes certain definitions in Part 101 necessary for the incorporation of procedural requirements to address a PSD permit appeal before the Board.

The Agency’s proposal addresses collateral issues related to the incorporation of provisions addressing a PSD permit appeal as well. First, the Illinois EPA is proposing language in Part 101 requiring the filing of any PSD applications through Clerk’s Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. Second, the Illinois EPA is proposing to include language in Part 101 providing Clean Air Act Permitting Program (CAAPP) permit appeals and PSD permit appeals have a 120-day statutory decision deadline.

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<sup>75</sup> This includes the notable distinction between a Board record, an Agency record and an Office of State Fire Marshall (OSFM) record. The Agency has not proposed any substantive changes to the procedural regulations involving the OSFM. However, the Agency had no choice but to clarify the difference between a record of the Board and the record of a final Agency decision and a record of a final OSFM decision. Agency counsel has consulted with counsel for OSFM regarding this proposed change.

<sup>76</sup> The Illinois EPA is also proposing the deletion of the definition for “Participant in a CAAPP Comment Process” given this term is not employed elsewhere within the Board’s procedural regulations.

Third, the Illinois EPA is proposing to clarify language in Section 101.610(i) authorizing the Board Hearing Officer to order the filing of any required Agency record, OSFM record or local siting authority record. Finally, the Illinois EPA is proposing the inclusion of additional language in Section 101.626 authorizing the Board Hearing Officer to admit evidence that is admissible under the rules of evidence as applied in Illinois civil courts except as otherwise provided in Part 101 or 35 Ill. Adm. Code Part 105.

### **3. Proposed Amendments to Part 105**

The Agency's proposal would expressly include a new Subpart F in Part 105 memorializing the requirements for any PSD permit appeal and would further address collateral issues elsewhere within Part 105 related to the incorporation of these requirements. First, Subpart F, PSD Permit Appeals, would apply to Board proceedings of appeals from final PSD determinations.<sup>77</sup> 35 Ill. Adm. Code 105.600. The Agency proposal would authorize an applicant to file an appeal of a PSD permit if the Agency refused to grant, or grants with conditions, a PSD permit or if the Agency fails to act on an application for a PSD permit within one year of submittal of a complete PSD application. Any person who participated in the Agency public comment process for a PSD permit would also be authorized to file an appeal of a PSD permit. 35 Ill. Adm. Code 105.604. Within 35 days after the date of final Agency action on a PSD permit, the Agency proposal would mandate that any petition for review would be required to be filed with the Board. 35 Ill. Adm. Code 105.606. Moreover, Subpart F would also detail the petition content requirements for any such petition and any request to stay the effectiveness of any final Agency action on a PSD

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<sup>77</sup> The Agency proposes that 35 Ill. Adm. Code, Subpart B, Appeal of Agency Permit Decisions and Other Final Decisions of the Agency, would not apply when the appeal is of a final PSD permit decision of the Agency; rather Subpart F, PSD Permit Appeals, would be applicable to appeals of final PSD determinations. 35 Ill. Adm. Code 105.200.

permit. 35 Ill. Adm. Code 105.608. The proposed standard for the Board to grant a stay in 35 Ill. Adm. Code 105.610 would mirror the applicable statutory language of Sections 40.3(d)(2) and 40.3(d)(3) of the Act. 35 Ill. Adm. Code 105.612 would require the filing of the Agency record of its decision consistent with the requirements of 35 Ill. Adm. Code 105.116 and would further detail the content requirements of any such record. Consistent with Section 40.3(d)(1) of the Act, the Agency proposes that the hearing and decision of the Board be based exclusively on the Agency record at the time the permit or decision was issued, unless the parties agree to supplement the Agency record. 35 Ill. Adm. Code 105.614.

The Agency's proposal further provides for the inclusion of a standard of review for any PSD permit issued by the Agency. Section 40.3(a)(2) of the Act provides that any petition filed with the Board requesting review of a PSD permit decision shall:

- (i) Include such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected;
- (ii) State the issues proposed for review, citing to the record where those issues were raised or explaining why such issues were not required to be raised during the public comment process; and
- (iii) Explain why the Agency's previous response, if any, to those issues is (A) *clearly erroneous* or (B) *an exercise of discretion or an important policy consideration that the Board should, in its discretion, review*.

415 ILCS 5/40.3(a)(2) (emphasis added). This language of Section 40.3(a)(2)(iii) requiring an explanation how the Agency's response to comments is clearly erroneous or an exercise of discretion or an important policy consideration that the Board, in its discretion, should review, derives from 40 CFR Part 124 and EAB caselaw. The EAB's review of final PSD permit decisions is governed by the procedural requirements of 40 CFR Part 124 and is discretionary. *In re Avenal Power Ctr., LLC*, 15 E.A.D. 384, 394-95 (EAB 2011). Consistent with Section 40.3(a)(2)(iii), review is warranted where the permit decision involves a

“finding of fact or conclusion of law which is clearly erroneous” or where it involves “an exercise of discretion or an important policy consideration.” 40 CFR §124.19(a)(1) and (2).<sup>78</sup>

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<sup>78</sup> In reviewing an exercise of discretion by a permitting agency, the EAB applies an abuse of discretion standard. *In re Guam Waterworks Auth.*, 15 E.A.D. 437, 443 fn. 7 (EAB 2011). In construing these requirements, the EAB has consistently recognized that its review authority is exercised “sparingly” and that the scope of such review is carefully circumscribed. *See*, 45 Fed. Reg. 33290, 33412 (May 19, 1980); *accord*, *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 126-127 (EAB 1999); *In re Zion Energy, LLC*, 9 E.A.D. 701, 705 (EAB 2001).

It is a long-standing USEPA policy to favor final adjudication of most permitting decisions at the Regional [or appropriate state] level. *See*, *In re MCN Oil & Gas Company*, UIC Appeal No. 02-03, slip op. at 6 (EAB, September 4, 2002). In the absence of clear error or other compelling reason warranting review, the EAB frequently defers to the Regional or delegated permitting authorities. *In re Metcalf Energy*, PSD Appeals Nos. 01-07 and 01-08, slip op. at 12 (EAB, August 10, 2001). Nowhere is the EAB’s deference more evident than in matters that are “quintessentially technical” in nature. *Id.*; *In re Three Mountain Power, LLC*, 10 E.A.D. 39, 54 (EAB 2001).

As a rule, only those issues that have been preserved for appeal may be raised with the EAB. Accordingly, a petitioner seeking review must demonstrate that the issues and/or arguments supporting its position were raised, either by the petitioner or another commenter, during the public comment period. *See*, 40 CFR §124.19; *In re Kendall New Century Development*, 11 E.A.D. 40, 48 (EAB, April 29, 2003); *In re Avon Custom Mixing Services, Inc.*, 10 E.A.D. 700, 704-705 (EAB 2002). Alternatively, a petitioner may plead that the issue for which review is sought was not “reasonably ascertainable” during the public comment period. *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 250, fn. 8 (EAB 1999), *citing In re Keystone Cogeneration Systems*, 3 E.A.D. 766 (EAB 1992). In either event, the burden rests with the petitioner. The EAB has stated that it will not “scour the record” but, rather, will expect the petitioner to prove that an issue has been properly raised. *In re Encogen Facility*, 8 E.A.D. 244, 250 fn. 10 (EAB 1999).

Other procedural requirements borne by a petitioner in permit appeals before the EAB are equally demanding. A petitioner may only rely upon those issues that were “reasonably ascertainable” and may only advance those arguments supporting a position that were “reasonably available” during the public comment period. *See*, 40 CFR §124.13. Those issues and/or arguments must have been raised with “sufficient specificity” in order to ensure that the permit authority is afforded notice and an opportunity to cure the alleged deficiencies in the permit prior to issuance. *In re Kendall New Century Development*, PSD Permit Appeal No. 03-01, slip op. at 9, 11 E.A.D. 40, 48 (EAB, April 29, 2003).

In a similar vein before the EAB, a petitioner is obligated to “explain why the permitting authority’s response to those objections is clearly erroneous or otherwise merits review.” *Zion Energy, L.L.C.*, 9 E.A.D. 701, 705 (EAB 2001), *citing In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 127 (EAB 1999). A petitioner cannot simply repeat or restate the arguments presented during the public notice period but must, instead, supply information or technical grounds in its petition that demonstrate the merits of administrative review. *See*, *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 226 (EAB 2000), *citing In re Maui Electric Company*, 8 E.A.D. 1, 8 (EAB 1998).

The EAB also demands that a petitioner, in identifying its objections to a permit, make its allegations both “specific and substantiated,” especially where the object involves the “technical judgments” of the permit authority. *See*, *In re Avon Custom Mixing Services, Inc.*, 10 E.A.D. 700, 705 (EAB 2002). This burden ensures that the issues and/or arguments on appeal are well defined and actually represent a “bona fide” disagreement between the petitioner and the permit authority. If expert opinions or data are in conflict, the EAB examines the record of the proceeding to determine

When evaluating a permit decision for clear error, the EAB evaluates whether the remainder of the permitting authority's analysis reflects considered judgment and is "rational in light of all the information in the record, including the conflicting opinions." *See, In re Steel Dynamics Inc*, 9 E.A.D. 165, 180, fn. 16 (EAB 2000), quoting, *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 568 (EAB 1998). More recently in 2016, the EAB stated that the following principles govern its review:

Section 124.19 of Title 40 of the Code of Federal Regulations governs Board review of a PSD permit. Under part 124, the petitioner bears the burden of demonstrating that review is warranted. *See* 40 C.F.R. §124.19(a)(4). Ordinarily, the Board will deny review of a permit decision and thus not remand it unless the petitioner demonstrates that the permit decision is based on a *clearly erroneous finding of fact or conclusion of law, or involves a matter of policy or exercise of discretion that warrants review*. *Id.* §124.19(a)(4)(i)(A)-(B); *see, e.g., In re La Paloma Energy Ctr., LLC*, 16 E.A.D. 267, 269 (EAB 2014). The Board's power to grant review "should be only sparingly exercised," and most permit conditions should be finally determined at the [permit issuer's] level." Consolidated Permit Regulations, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980), *see also* Revisions to Procedural Rules Applicable in Permit Appeals, 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013).

When evaluating a challenged permit decision for *clear error*, the Board examines the administrative record that serves as the basis for the permit to determine *whether the permit issuer exercised "considered judgment" in issuing the permit*. *See, e.g., In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 191, 224-25 (EAB 2000); *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 417-18 (EAB 1997); *see also In re Shell Offshore, Inc.*, 13 E.A.D. 357, 386 (EAB 2007) (permit issuer must articulate with reasonable clarity the reasons supporting its conclusions and the significance of the crucial facts it relied on in reaching its conclusions). In reviewing a permit issuer's exercise of its discretion, the Board applies an abuse of discretion standard. *See, e.g., In re Guam, Waterworks Auth.*, 15 E.A.D. 437, 443 n. 7 (EAB 2011). The Board will uphold a permit issuer's reasonable exercise of discretion if that exercise is cogently explained and supported in the record. *See Ash Grove*, 7 E.A.D. at 397 ("acts of

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whether the permit authority has adequately considered the issue and whether its decision is "rational in light of all the information in the record, including the conflicting opinions and data." *In re Three Mountain Power, LLC*, 10 E.A.D. 39, 50 (EAB 2001), citing, *In re Steel Dynamics, Inc*, 9 E.A.D. 165, 180, fn. 16 (EAB 2000).



discretion must be adequately explained and justified”); *see also Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) (“[w]e have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner”).

*In re Arizona Public Service Company Ocotillo Power Plant*, 17 E.A.D. 323, 324-325 (EAB 2016), (*emphasis added*). Consistent with EAB precedence, the Agency proposes that any PSD permit issued by the Agency be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency. 35 Ill. Adm. Code 105.614. The Agency supports this standard of review given this has been the same standard of review employed by USEPA’s EAB in its review of any PSD decisions issued by delegated agencies and/or USEPA Regional Offices.

Finally, the Agency proposes the inclusion of 35 Ill. Adm. Code 105.614(a) and (b) that collectively indicate those instances that the Board will not hold a hearing on a petition for review; in the event the Board determines that a hearing is warranted, notice is required pursuant to 35 Ill. Adm. Code 101.602. 35 Ill. Adm. Code 614(c).

As previously mentioned, Section 105 would also address collateral issues related to the inclusion of Subpart F. First, the Agency’s proposal would clarify the term “Nonattainment New Source Review” in relation to Illinois’ regulations for Major Stationary Sources Construction and Modification (MSSCAM) at 35 Ill. Adm. Code Part 203. 35 Ill. Adm. Code 105.104. Second, the proposal would subject a petition to dismissal if the Board determined that the petition does not contain the requisite informational requirements or the petition is untimely. 35 Ill. Adm. Code 105.108. Finally, the Agency is proposing that the burden of proof in a PSD appeal be on the petitioner. 35 Ill. Adm. Code 105.112.<sup>79</sup>

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<sup>79</sup> Similar to Part 101, the Agency is proposing to clarify instances in Part 105 where the Board’s procedural regulations were silent on the distinction between a Board, Agency or OSFM record and an Agency public comment process, Agency public comment period, Agency hearing and an Agency

### **35 Ill. Adm. Code 203, 211 and 215**

As previously discussed, Illinois currently has the federal PSD program. The Illinois EPA administers PSD permitting for USEPA under a delegation agreement issuing PSD permits pursuant to 40 CFR 52.21. The Illinois EPA is proposing relevant amendments to the Board's existing regulations at 35 Ill. Adm. Code 203, Major Stationary Sources Construction and Modification, 35 Ill. Adm. Code 211, Definitions and General Provisions, and 35 Ill. Adm. Code 215, Organic Material Emissions Standards and Limitations, as certain provisions in these regulations currently refer to permits issued pursuant to 40 CFR 52.21. The Illinois EPA is proposing revisions to update these regulations so that they address permits issued under either 40 CFR 52.21, which the Illinois EPA currently implements, or new Part 204.

#### **1. Proposed Amendments to Part 203**

For Part 203, the Agency's proposal would add two references to Part 204 in Section 203.207, Major Modification of a Source. Section 203.207 generally provides that a "major modification of a source" is a "physical change or change in the method of operation" of a stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated nonattainment. Subsection (c) of this Section identifies certain changes to a source or emission unit that do not constitute "a physical change or change in the method of operation." The references to Part 204 would be added in 203.207(c)(5)(A) and (c)(6). Subsection (c)(5)(A) provides that a "physical change or a change in the method of operation" shall not include the:

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public hearing record. 35 Ill. Adm. Code 105.116, 105.118, 105.210, 105.212, 105.214, 105.302, 105.410, 105.412, and 105.508.

[u]se of an alternative fuel or raw material by a stationary source which . . . [w]as capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition established after December 21, 1976, pursuant to 40 CFR 52.21, this Part, or 35 Ill. Adm. Code 201.142 or 201.143.

The proposed revision would add a reference to Part 204 in 35 Ill. Adm. Code

203.207(c)(5)(A). This change is necessary because conditions in permits issued pursuant to Part 204 will become relevant for Section 203.207(c)(5)(A).

Subsection (c)(6) provides that a “physical change or a change in the method of operation” shall not include an increase in the hours of operation or in the production rate unless such change would be prohibited by any enforceable permit condition established after December 21, 1976 pursuant to 40 CFR 52.21, this Part or 35 Ill. Adm. Code 201.142 or 201.143. The proposed revision would also add a reference to Part 204 in 35 Ill. Adm. Code 203.207(c)(6). This change is also necessary because conditions in permits issued pursuant to Part 204 will become relevant for Section 203.207(c)(6).

## **2. Proposed Amendments to Part 211**

In Part 211, the Agency is proposing to remove outdated references and to update the references to the NSR program in Section 211.7150(b) in the definition of “Volatile Organic Material (VOM) or Volatile Organic Compound (VOC).” This subsection provides that for purposes of determining VOM emissions and compliance with emission limits, VOM will be measured by the test methods in Illinois’ SIP or 40 CFR Part 60 or by source-specific test methods that have been established pursuant to a permit issued under an approved Title V program; under 40 CFR 51, Subpart I or Appendix S; or under 40 CFR 52.21. 40 CFR Part 51 sets forth the USEPA’s requirements for the preparation, adoption and submittal of implementation plans; 40 CFR Part 51, Subpart I delineates the requirements specific to a

SIP-approved PSD or NaNSR program; 40 CFR 51, Appendix S details the requirements of the Emission Offset Interpretative Ruling, which may also be a legal basis for NaNSR permits. As previously discussed, the regulations governing the federal PSD program are set forth at 40 CFR 52.21 and apply in states without SIP-approved PSD programs.

For each of these USEPA regulations that may be the authority or basis for a permit, the Illinois' regulations incorporate the USEPA regulations by reference in 35 Ill. Adm. Code 218.112 and 219.112. However, these incorporations refer to the version of these USEPA regulations as of July 1, 1991. As such, according to Section 211.7150(b), in circumstances where standard test methods for VOM are not suitable for testing emissions and use of an alternative test method is not authorized by the Title V permit, an alternative method may only be used if it is authorized by a PSD or NaNSR permit issued pursuant to the relevant regulations that existed in 1991. The current definition does not provide for VOM to be measured using source specific, alternative test methods established in a NSR permit issued pursuant to post 1991 regulations. This provision needs to be updated to both correct the date sensitive reference to 40 CFR 52.21, 40 CFR 51, Subpart I and Appendix S and to also address proposed Part 204.

Recognizing that 35 Ill. Adm. Code Part 203 is Illinois' SIP-approved NaNSR program, except as NaNSR permits address PM<sub>2.5</sub>, Part 203 is appropriately referenced in lieu of 40 CFR 51, Subpart I or Appendix S.<sup>80</sup> Moreover, given the federal PSD program has historically been implemented in Illinois pursuant to state authority established by Section 9.1(d) of the Act, Section 9.1(d) is rightly referenced in place of 40 CFR 52.21. Finally, the Agency is proposing Part 204 would be adopted pursuant to Section 9.1 of the Act. Permits

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<sup>80</sup> While NaNSR permits for PM<sub>2.5</sub> have historically been issued pursuant to 40 CFR 51, Appendix S, Illinois has implemented Appendix S by means of state authority set forth in Section 9.1(d) of the Act. Section 9.1(d) of the Act may be appropriately referenced in lieu of 40 CFR 51, Appendix S.

issued pursuant to Part 204 will also be fittingly addressed by reference to Section 9.1(d), in the same manner as permits issued pursuant to the federal PSD program in Illinois. Proposed Section 211.7150(b) reads as follows:

For purposes of determining VOM emissions and compliance with emissions limits, VOM will be measured by the test methods in the approved implementation plan or 40 CFR 60, appendix A, incorporated by reference at 35 Ill. Adm. Code 215.105, 218.112, and 219.112, as applicable, or by source-specific test methods that have been established pursuant to a permit issued under a program approved or promulgated under Title V of the Clean Air Act; under 35 Ill. Adm. Code 203 40 CFR 51, subpart I or appendix S, incorporated by reference at 35 Ill. Adm. Code 218.112 and 219.112; or under Section 9.1(d) of the Act 40 CFR 52.21, incorporated by reference at 35 Ill. Adm. Code 218.112 and 219.112, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOM if the amount of such compounds is accurately quantified and the exclusion is approved by the Agency.

### **3. Proposed Amendments to Part 215**

The Illinois EPA is proposing to update Part 215, Organic Material Emission Standards and Limitations to appropriately address proposed Part 204, as well as PSD permits issued under the historic federal PSD program in Illinois, and to remove outdated references. Revisions are proposed to 35 Ill. Adm. Code 215.920 addressing the applicability of Subpart PP Miscellaneous Fabricated Product Manufacturing Processes; 35 Ill. Adm. Code 215.940 addressing the applicability of Subpart QQ Miscellaneous Formulation Manufacturing Processes; and 35 Ill. Adm. Code 215.960 addressing the applicability of Subpart RR Miscellaneous Organic Chemical Manufacturing Processes. Each of these sections provide that no limits under their respective subparts shall apply to emission sources whose VOM emissions are subject to limits in 35 Ill. Adm. Code 230 or 231, LAER pursuant to 35 Ill. Adm. Code 203 or BACT pursuant to 40 CFR 52.21 (1987) or pursuant to Section 9.4 of the Act. As written, these sections provide that no limits under these subparts shall be applicable to emissions sources whose emissions of VOM are subject to BACT but only as

BACT was established pursuant to 40 CFR 52.21 as it existed in 1987. These sections need to be updated to both correct the date sensitive reference to 40 CFR 52.21 and to address Illinois' proposed PSD program. Proposed Section 215.920(d)(2), 215.940(d)(2), 215.960(d)(2) reads as follows:

No limits under this Subpart shall apply to:

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- 2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, pursuant to 35 Ill. Adm. Code 203; or Best Available Control Technology, pursuant to a permit issued under Section 9.1(d) of the Act 40 CFR 52.21 (1987) or pursuant to Section 9.4 of the Act. ~~The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~

### **III. PURPOSE AND EFFECT OF THE PROPOSAL**

As previously discussed, the Illinois General Assembly amended the Act mandating the Board adopt regulations establishing a state PSD program consistent with the requirements of 40 CFR 52.21. 415 ILCS 5/9.1(c). For sources in Illinois, the Illinois EPA currently administers the PSD permit program on behalf of USEPA pursuant to a delegation agreement with USEPA. 46 Fed. Reg. 9580 (January 29, 1981). This proposal is the first step in establishing a USEPA-approved PSD program in Illinois. This proposal includes new 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration. Relevant amendments to the Board's procedural regulations are also proposed to accommodate appeals of PSD permits to the Board, with proposed changes to 35 Ill. Adm. Code 101, General Rules, and 35 Ill. Adm. Code 105, Appeals of Final Decisions of State Agencies. Finally, this proposal would include relevant amendments to the Board's regulations, 35 Ill. Adm. Code 203, Major Stationary Sources Construction and Modification, 35 Ill. Adm. Code 211, Definitions

and General Provisions, 35 Ill. Adm. Code 215, Organic Material Emission Standards and Limitations, to update these provisions so that they address both the federal PSD program, which the Illinois EPA has historically implemented, and new Part 204.

#### **IV. GEOGRAPHIC REGIONS AND SOURCES AFFECTED**

The PSD program is applicable statewide. Again, the PSD program regulates both criteria pollutants (*i.e.*, ozone, carbon monoxide, sulfur dioxide, particulate matter, lead, and nitrogen dioxide) and non-criteria pollutants (*i.e.*, sulfuric acid mist, particulate matter, greenhouse gases, etc.). The PSD program impacts all areas of the state designated attainment or unclassifiable for one or more of the six criteria pollutants that comprise the NAAQS. The notable exception is those areas designated nonattainment for a particular criteria pollutant. *In re Prairie State Generating Company*, 13 E.A.D. 1, 5-6 (EAB 2006). In lieu of PSD, NaNSR applies in nonattainment areas for those pollutants for which an area is designated nonattainment. 42 U.S.C. §§7501-7515; 40 CFR §§51.160-51.165; *In re Sutter Power Plant*, 8 E.A.D. 680, 682, fn.2 (EAB 1999). Although a single geographic area may be designated as attainment or unclassifiable for a criteria pollutant and as nonattainment for other criteria pollutants, the PSD permitting requirements will apply to the attainment/unclassifiable pollutants in that geographic area. *In re Sutter Power Plant*, 8 E.A.D. 680, 682 fn. 2 (EAB 1999).

In Illinois, the following areas have been designated nonattainment by USEPA: (i) The greater Chicago area has been designated nonattainment for ozone; (ii) The St. Louis Metro East area has been designated nonattainment for both ozone and PM<sub>2.5</sub>; (iii) Areas surrounding Pekin<sup>81</sup> and Lemont,<sup>82</sup> Alton Township and Williamson County have been

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<sup>81</sup> The Pekin nonattainment area includes Tazewell County (partial-Cincinnati and Pekin Townships) and Peoria County (partial-Hollis Township).

designated nonattainment for SO<sub>2</sub>.<sup>83</sup> 40 CFR §81.314. These regions of the State for these criteria pollutants would not be affected by the proposed regulations. All other regions of the State would be subject to proposed Part 204 for other pollutants regulated by the PSD program.

## **V. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS**

### **A. Part 204**

PSD reviews are completed by the Illinois EPA on a case-by-case basis so the technical feasibility and the costs of compliance with either the federal PSD program or Part 204 would generally be source specific. However, as previously discussed, Part 204 would not alter the requirements for the permitting of new or modified major stationary sources that are currently in effect in Illinois under 40 CFR 52.21. The regulations would continue to detail how an applicant determines whether a proposed new or modified stationary source is subject to Part 204 and, in those instances where a stationary source is subject to Part 204, require a pre-construction review of any proposed project to ensure that resulting emissions are not responsible for a violation of the NAAQS or applicable PSD ambient air quality increments. Subject sources must still be equipped with BACT for all PSD pollutants emitted in significant amounts. The available control technology would not differ depending on the permitting authority; and consistent with a historic tenet of PSD permitting, any technology selected as BACT should be readily available.

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<sup>82</sup> The Lemont nonattainment area includes Cook County (partial-Lemont Township) and Will County (partial-DuPage and Lockport Townships).

<sup>83</sup> Effective August 3, 2018, the St. Louis Metro East area will be designated nonattainment (marginal) for the 2015 8-hour ozone standard. 83 FR 25776 (June 4, 2018).



Nor would these changes directly affect the cost of compliance for regulated sources. Again, the costs of compliance are generally source specific. New sources or modified sources would continue to incur costs associated with determining regulatory applicability. Minor modifications at certain sources would simply incur the costs associated with maintaining records while other sources would also be subject to emission monitoring depending on activities at the source. Sources subject to PSD, in its entirety, would have costs associated with preparing the permit application that necessarily includes a review of available control technology, a BACT proposal and additional impact assessments.

Given the available control technology should remain the same, regardless of the administering agency, the costs to industry to install BACT should not change under proposed Part 204. Moreover, the permitting fees would remain the same under Part 204 as 40 CFR 52.21. The USEPA has not charged fees for administering the PSD program in Illinois given the Illinois EPA has historically issued these permits pursuant to its delegation agreement. The Illinois EPA has charged and would continue to charge construction permit application fees for air pollution sources consistent with Section 9.12 of the Act, 415 ILCS 5/9.12. These fees would continue to apply regardless of whether USEPA administers the PSD program in Illinois or if the Illinois EPA acquires its own PSD program by means of Part 204.

These regulations would allow the Illinois EPA to integrate all requirements in a single state-issued permit. Under Part 204, an applicant would submit a single construction permit application to the Illinois EPA and would no longer be required to submit a separate application to the USEPA for review of potential impacts to visibility in Class I areas, 40 CFR 52.21(p), for Endangered Species Act consultation, 16 USC 1531 *et seq.*, or for

National Historic Preservation Act consultation, 16 USC 470 *et seq.* This should streamline the permitting process and should be beneficial to the regulated community.

The Illinois EPA's analysis, explained in detail in Section IX of the Technical Support Document and supporting documentation, demonstrates that no substantive technical or economic impacts will result from the adoption of a state PSD permit program.

**B. Part 101 and Part 105**

The Agency's amendments to Part 101 and Part 105 are also technically and economically reasonable. The Agency's proposed amendments to Parts 101 and 105 would impose no additional requirements upon sources subject to Part 204, but rather would set forth the process by which a PSD permit may be appealed to the Board. Moreover, these amendments to Parts 101 and 105 would be consistent with recent legislation passed by the General Assembly establishing the review process for PSD permits and is both technically feasible and economically reasonable. 415 ILCS 5/40.3. Regardless, there is no requirement for the Board to discuss and consider the economic impacts of the Board's administrative procedures. 415 ILCS 5/27(b).

**C. Part 203, Part 211 and Part 215**

Finally, the Agency's amendments to Part 203, Part 211 and Part 215 are both technically and economically reasonable. The Agency's proposed amendments to Parts 203, 211 and 215 would impose no additional requirements upon sources subject to Part 204, but rather would merely update Parts 203, 211 and 215 so that they address both the historic, federal PSD program and new Part 204.

**VI. COMMUNICATION WITH INTERESTED PARTIES AND USEPA**

The Illinois EPA engaged in extensive outreach on this proposal. During the development of this proposal, the Illinois EPA met with representatives from sources potentially impacted by Part 204. In addition, given the language proposed to address the distinction between administrative matters reviewed by the Board and administrative actions taken by the Illinois EPA and the OSFM, the Illinois EPA provided a draft of proposed Parts 101 and 105 to the OSFM. Subsequent discussions were held between counsel for the Illinois EPA and the OSFM.

On October 2, 2017, the Illinois EPA posted online and provided a draft of these proposed regulations, including Part 204 and proposed amendments to Part 101 and 105, to public interest groups and other interested individuals, soliciting comments on the draft proposal.

The Illinois EPA also engaged in outreach on this proposal with USEPA. At the same time that the Illinois EPA posted this proposal online, the Illinois EPA provided this proposal to USEPA, Region 5 for preliminary review and comment. USEPA, Region 5 provided preliminary feedback to the Illinois EPA in subsequent discussions. In January 2018, the Illinois EPA provided USEPA, Region 5 with a revised regulatory package for additional review and comment.

The Illinois EPA received several comments on the proposal. The Illinois EPA reviewed and considered all comments; this proposal, as appropriate, addresses these concerns and incorporates suggestions set forth in those comments. Such comments can generally be categorized as substantive, i.e., pertaining to proposed Part 204 or the need to update other Board regulations so that they address both the federal PSD program and new Part 204 or procedural, i.e., pertaining to the proposed amendments to Parts 101 and 105. In

addition, while not the subject of this Board rulemaking, comments addressed the Illinois EPA's proposed amendments to its public participation procedure in the applicable Agency rules, 35 Ill. Adm. Code Part 252. The Illinois EPA is making this submittal after interested parties have had an opportunity to review the proposal and to discuss any issues with the Illinois EPA.

## **VII. SYNOPSIS OF TESTIMONY**

The Illinois EPA anticipates calling Christopher Romaine, Manager, Construction Permit Unit, Bureau of Air, Illinois EPA, and Jason Schnepf, Environmental Protection Specialist, Construction Permit Unit, Bureau of Air, Illinois EPA, as witnesses at hearing. Mr. Romaine and Mr. Schnepf will testify regarding the Illinois EPA's proposal for Part 204 as submitted by the Illinois EPA. Written testimony will be submitted prior to hearing in accordance with the Board's procedural regulations. Mr. Romaine and Mr. Schnepf will be available for questions, as will Mr. Jeffrey Sprague of the Modeling Unit, Air Quality Planning Section (AQPS) in the Bureau of Air, Illinois EPA. Mr. Sprague is the Manager of the Modeling Unit.

## **VIII. THE ILLINOIS EPA'S PROPOSAL**

The following is a section-by-section summary of the Illinois EPA's proposed Part 204 and the amendments to Parts 101, 105, 203, 211 and 215.

### **35 Ill. Adm. Code Part 204**

#### **SUBPART A: GENERAL PROVISIONS**

##### **Section 204.100 Incorporations by Reference**

This Section sets forth the documents that are incorporated by reference in this Part. Subsection (a) incorporates by reference Part 50 of Title 40 of the Code of Federal

Regulations, 40 CFR Part 50, which address National Primary and Secondary Ambient Air Quality Standards.

Subsection (b) incorporates by reference Part 51 of Title 40 of the Code of Federal Regulations, 40 CFR Part 51, which address Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Subsection (c) incorporates by reference Part 52 of Title 40 of the Code of Federal Regulations, 40 CFR Part 52, which address Approval and Promulgation of Implementation Plans.

Subsection (d) incorporates by reference Part 53 of Title 40 of the Code of Federal Regulations, 40 CFR Part 53, which address Ambient Air Monitoring Reference and Equivalent Methods.

Subsection (e) incorporates by reference Part 54 of Title 40 of the Code of Federal Regulations, 40 CFR Part 54, which address Prior Notice of Citizen Suits.

Subsection (f) incorporates by reference Part 55 of Title 40 of the Code of Federal Regulations, 40 CFR Part 55, which address Outer Continental Shelf Air Regulations.

Subsection (g) incorporates by reference Part 56 of Title 40 of the Code of Federal Regulations, 40 CFR Part 56, which address Regional Consistency.

Subsection (h) incorporates by reference Part 57 of Title 40 of the Code of Federal Regulations, 40 CFR Part 57, which address Primary Nonferrous Smelter Orders.

Subsection (i) incorporates by reference Part 58 of Title 40 of the Code of Federal Regulations, 40 CFR Part 58, which address Ambient Air Quality Surveillance.

Subsection (j) incorporates by reference Part 59 of Title 40 of the Code of Federal Regulations, 40 CFR Part 59, which address National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

Subsection (k) incorporates by reference Part 60 of Title 40 of the Code of Federal Regulations, 40 CFR Part 60, which address Standards of Performance for New Stationary Sources.

Subsection (l) incorporates by reference Part 61 of Title 40 of the Code of Federal Regulations, 40 CFR Part 61, which address National Emission Standards for Hazardous Air Pollutants.

Subsection (m) incorporates by reference Part 62 of Title 40 of the Code of Federal Regulations, 40 CFR Part 62, which address Approval and Promulgation of State Plans for Designated Facilities and Pollutants.

Subsection (n) incorporates by reference Part 63 of Title 40 of the Code of Federal Regulations, 40 CFR Part 63, which address National Emission Standards for Hazardous Air Pollutants for Source Categories.

Subsection (o) incorporates by reference Part 64 of Title 40 of the Code of Federal Regulations, 40 CFR Part 64, which address Compliance Assurance Monitoring.

Subsection (p) incorporates by reference Part 65 of Title 40 of the Code of Federal Regulations, 40 CFR Part 65, which address Consolidated Federal Air Rule.

Subsection (q) incorporates by reference Part 66 of Title 40 of the Code of Federal Regulations, 40 CFR Part 66, which address Assessment and Collection of Noncompliance Penalties by EPA.

Subsection (r) incorporates by reference Part 67 of Title 40 of the Code of Federal Regulations, 40 CFR Part 67, which address EPA Approval of State Noncompliance Penalty Program.

Subsection (s) incorporates by reference Part 68 of Title 40 of the Code of Federal Regulations, 40 CFR Part 68, which address Chemical Accident Prevention Provisions.

Subsection (t) incorporates by reference Part 69 of Title 40 of the Code of Federal Regulations, 40 CFR Part 69, which address Special Exemptions from Requirements of the Clean Air Act.

Subsection (u) incorporates by reference Part 70 of Title 40 of the Code of Federal Regulations, 40 CFR Part 70, which address State Operating Permit Programs.

Subsection (v) incorporates by reference Part 71 of Title 40 of the Code of Federal Regulations, 40 CFR Part 71, which address Federal Operating Permit Programs.

Subsection (w) incorporates by reference Part 72 of Title 40 of the Code of Federal Regulations, 40 CFR Part 72, which address Permit Regulation.

Subsection (x) incorporates by reference Part 73 of Title 40 of the Code of Federal Regulations, 40 CFR Part 73, which address Sulfur Dioxide Allowance System.

Subsection (y) incorporates by reference Part 74 of Title 40 of the Code of Federal Regulations, 40 CFR Part 74, which address Sulfur Dioxide Opt-Ins.

Subsection (z) incorporates by reference Part 75 of Title 40 of the Code of Federal Regulations, 40 CFR Part 75, which address Continuous Emission Monitoring.

Subsection (aa) incorporates by reference Part 76 of Title 40 of the Code of Federal Regulations, 40 CFR Part 76, which address Acid Rain Nitrogen Oxides Emission Reduction Program.

Subsection (bb) incorporates by reference Part 77 of Title 40 of the Code of Federal Regulations, 40 CFR Part 77, which address Excess Emissions.

Subsection (cc) incorporates by reference Part 78 of Title 40 of the Code of Federal Regulations, 40 CFR Part 78, which address Appeal Procedures.

Subsection (dd) incorporates by reference Part 79 of Title 40 of the Code of Federal Regulations, 40 CFR Part 79, which address Registration of Fuels and Fuel Additives.

Subsection (ee) incorporates by reference Part 80 of Title 40 of the Code of Federal Regulations, 40 CFR Part 80, which address Regulation of Fuels and Fuel Additives.

Subsection (ff) incorporates by reference Part 81 of Title 40 of the Code of Federal Regulations, 40 CFR Part 81, which address Designations of Areas for Air Quality Planning Purposes.

Subsection (gg) incorporates by reference Part 82 of Title 40 of the Code of Federal Regulations, 40 CFR Part 82, which address Protection of Stratospheric Ozone.

Subsection (hh) is reserved.

Subsection (ii) is reserved.

Subsection (jj) incorporates by reference Part 85 of Title 40 of the Code of Federal Regulations, 40 CFR Part 85, Control of Air Pollution from Mobile Sources.

Subsection (kk) incorporates by reference Part 86 of Title 40 of the Code of Federal Regulations, 40 CFR Part 86, which address Control of Emissions from New and In-use Highway Vehicles and Engines.

Subsection (ll) incorporates by reference Part 87 of Title 40 of the Code of Federal Regulations, 40 CFR Part 87, which address Control of Air Pollution from Aircraft and Aircraft Engines.



Subsection (mm) incorporates by reference Part 88 of Title 40 of the Code of Federal Regulations, 40 CFR Part 88, which address Clean-fuel Vehicles.

Subsection (nn) incorporates by reference Part 89 of Title 40 of the Code of Federal Regulations, 40 CFR Part 89, which address Control of Emissions from New and In-use Nonroad Compression-Ignition Engines.

Subsection (oo) incorporates by reference Part 90 of Title 40 of the Code of Federal Regulations, 40 CFR Part 90, which address Control of Emissions from Nonroad Spark-Ignition Engines at or Below 19 Kilowatts.

Subsection (pp) incorporates by reference Part 91 of Title 40 of the Code of Federal Regulations, 40 CFR Part 91, which address Control of Emissions from Marine Spark-Ignition Engines.

Subsection (qq) incorporates by reference Part 92 of Title 40 of the Code of Federal Regulations, 40 CFR Part 92, which address Control of Air Pollution from Locomotives and Locomotive Engines.

Subsection (rr) incorporates by reference Part 93 of Title 40 of the Code of Federal Regulations, 40 CFR Part 93, which address Determining Conformity of Federal Actions to State or Federal Implementation Plans.

Subsection (ss) incorporates by reference Part 94 of Title 40 of the Code of Federal Regulations, 40 CFR Part 94, which address Control of Emissions from Marine Compression-Ignition Engines.

Subsection (tt) incorporates by reference Part 95 of Title 40 of the Code of Federal Regulations, 40 CFR Part 95, which address Mandatory Patent Licenses.

Subsection (uu) incorporates by reference Part 96 of Title 40 of the Code of Federal Regulations, 40 CFR Part 96, which address NO<sub>x</sub> Budget Trading Program and CAIR NO<sub>x</sub> and SO<sub>2</sub> Trading Programs for State Implementation Plans.

Subsection (vv) incorporates by reference Part 97 of Title 40 of the Code of Federal Regulations, 40 CFR Part 97, which address Federal NO<sub>x</sub> Budget Trading Program, CAIR NO<sub>x</sub> and SO<sub>2</sub> Trading Programs, CSAPR NO<sub>x</sub> and SO<sub>2</sub> Trading Programs, and Texas SO<sub>2</sub> Trading Program excluding 40 CFR Part 97, Subpart FFFFF.

Subsection (ww) incorporates by reference Part 98 of Title 40 of the Code of Federal Regulations, 40 CFR Part 98, which address Mandatory Greenhouse Gas Reporting.

Subsection (xx) is reserved.

**Section 204.110      Abbreviations and Acronyms**

This Section sets forth the abbreviations and acronyms used in Part 204.

**Section 204.120      Severability**

This Section states that a finding that any provision of Part 204 is invalid does not affect the validity of this Part as a whole or any provision of this Part not found invalid.

**SUBPART B: DEFINITIONS**

**Section 204.200      Definitions**

This Subpart provides definitions for certain terms used in Part 204 and incorporates definitions found in 35 Ill. Adm. Code 211. The terms specifically defined in this Subpart include many terms that are unique to Part 204.

**Section 204.210      Actual Emissions**

This Section provides a definition for “Actual emissions.” Subsection (a) provides that “Actual emissions” means the actual rate of emissions of a regulated NSR pollutant from

an emissions unit, as determined in accordance with subsections (b) through (d) except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL.

Subsection (b) provides that actual emissions as of a particular date equal the average rate that the unit actually emitted the pollutant during the preceding consecutive 24-month period, unless the Illinois EPA determines another earlier time period is more representative of normal source operation. Subsection (b) further generally details the data necessary to calculate a unit's actual emissions.

Subsection (c) provides that the Illinois EPA may presume that a unit's source-specific allowable emissions are equivalent to a unit's actual emissions.

Subsection (d) provides that for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.

#### **Section 204.220 Adverse Impact on Visibility**

The Section provides a definition for "Adverse impact on visibility." "Adverse impact on visibility" means visibility impairment which interferes with the preservation of a visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking certain factors into account and how these factors correlate with the times of visitor use and the frequency and timing of natural conditions that reduce visibility.

#### **Section 204.230 Allowable Emissions**

This Section provides a definition for "Allowable emissions." "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity

of the source unless the source is subject to federally enforceable limits and the most stringent of subsections (a) through (c).

Subsection (a) refers to the applicable standards as set forth in 40 CFR Parts 60, 61 62, and 63.

Subsection (b) refers to the applicable SIP emissions limitation.

Subsection (c) refers to the emissions rate specified as a federally enforceable permit condition.

#### **Section 204.240      Baseline Actual Emissions**

This Section provides a definition for “Baseline actual emissions.” “Baseline actual emissions” means the rate of emissions of a regulated NSR pollutant determined consistent with subsections (a) through (d). Subsection (a) provides that for any existing electric utility steam generating unit, baseline actual emissions means the average rate at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding actual construction of the project unless the Illinois EPA allows the use of a more representative time period of normal source operation. It further describes the procedures that are to be used for calculating baseline actual emissions for any existing electric utility steam generating unit.

Subsection (b) provides that for an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either actual construction of the project or the date a complete permit application is received by the USEPA for a permit under 40 CFR 52.21 or by the Illinois EPA for a permit required by the SIP,

whichever is earlier. It further explains the procedures that are to be used for calculating baseline actual emissions for any existing emission unit other than an electric utility steam generating unit.

Subsection (c) provides that for a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase from the unit's initial construction and operation shall equal zero; and thereafter, shall equal the unit's potential to emit.

Subsection (d) provides that for a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units consistent with subsection (a), for other existing emissions units consistent with subsection (b), and for a new emissions unit consistent with subsection (c).

#### **Section 204.250      Baseline Area**

The Section provides a definition for "Baseline area." Subsection (a) provides that "Baseline area" means the intrastate area designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date for a pollutant would be constructed. The baseline area would also include any other intrastate area designated as attainment or unclassifiable in which such source or modification would have an annual impact of at least  $1.0 \mu\text{g}/\text{m}^3$  for  $\text{SO}_2$ ,  $\text{NO}_2$  or  $\text{PM}_{10}$  and at least  $0.3 \mu\text{g}/\text{m}^3$  for  $\text{PM}_{2.5}$ .

Subsection (b) provides limitations on area redesignations.

Subsection (c) provides that any baseline area established relative to the former increments for total suspended particulate matter (TSP) shall remain in effect and apply for purposes of determining available  $\text{PM}_{10}$  increments, except that such baseline area shall not

remain in effect if the Illinois EPA rescinds the corresponding minor source baseline date in accordance with Section 204.520(c).

**Section 204.260      Baseline Concentration**

This Section provides a definition for “Baseline concentration.” Subsection (a) provides that “Baseline concentration” means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. It further details what emissions must be included in determining the baseline concentration for each pollutant for which a minor source baseline date is established. Subsection (b) details certain emissions that will not be included when determining the baseline concentration and consequently, will affect the applicable maximum allowable increase.

**Section 204.270      Begin Actual Construction**

This Section provides a definition for “Begin actual construction.” “Begin actual construction” generally means the initiation of physical on-site construction activities on an emissions unit that are permanent in nature. Regarding a change in method of operation, this term refers to on-site activities that mark the initiation of the change excluding preparatory activities.

**Section 204.280      Best Available Control Technology (BACT)**

This Section provides a definition for “Best available control technology.” “Best available control technology” generally means an emissions limitation based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Illinois EPA determines is achievable for such source or modification on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs. While this section

further explains how such limitation is to be set, in no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63.

**Section 204.290 Building, Structure, Facility, or Installation**

This Section provides a definition for “Building, structure, facility, or installation.” Subsection (a) provides that “Building, structure, facility, or installation” means all pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). It further details how a determination is made that these pollutant-emitting activities belong to the same industrial grouping.

Subsection (b) provides that notwithstanding subsection (a), for purposes of onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, a different definition for building, structure, facility or installation applies.

**Section 204.300 Clean Coal Technology**

This Section provides a definition for “Clean coal technology.” “Clean coal technology” generally means any technology at a new or existing facility which will achieve significant reductions in SO<sub>2</sub> or NO<sub>x</sub> emissions associated with the use of coal in electricity generation, or process steam that was not in widespread use as of November 15, 1990.

**Section 204.310 Clean Coal Technology Demonstration Project**

This Section provides a definition for “Clean coal technology demonstration project.” “Clean coal technology demonstration project” generally means a project employing funds appropriated under the heading “Department of Energy – Clean Coal Technology,” up to

\$2,500,000,000 for the commercial demonstration of clean coal technology, or similar projects funded through appropriations for the USEPA.

**Section 204.320 Commence**

The Section provides a definition for “Commence” as applied to construction of a major stationary source or major modification. “Commence” means that the owner or operator has all necessary preconstruction approvals or permits. Subsections (a) and (b) further provide that the owner or operator either has begun, or caused to begin, a continuous program of actual on-site construction or entered into binding agreements or contractual obligations to undertake a program of actual construction, which cannot be cancelled or modified without substantial loss. Both subsections (a) and (b) provide that construction must be completed within a reasonable time.

**Section 204.330 Complete**

This Section provides a definition for “Complete” for permit applications. “Complete” means that the application contains all the information necessary for processing the application.

**Section 204.340 Construction**

This Section provides a definition for “Construction.” “Construction” generally means any physical change or change in the method of operation that would result in an emissions change.

**Section 204.350 Dispersion Technique**

This Section provides a definition for “Dispersion technique.” Subsection (a) provides that “Dispersion technique” means any technique which attempts to affect a pollutant’s concentration in the ambient air by using that portion of a stack which exceeds



good engineering practice stack height; by varying a pollutant's emission rate according to atmospheric conditions or ambient concentrations of that pollutant; by increasing final exhaust gas plume rise by manipulating various parameters or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. Subsection (b) delineates what is not included within subsection (a).

**Section 204.360 Electric Utility Steam Generating Unit**

This Section provides a definition for "Electric utility steam generating unit." "Electric utility steam generating unit" generally means any steam electric generating unit constructed for the purpose of supplying more than a third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale.

**Section 204.370 Emissions Unit**

This Section provides a definition for "Emissions unit." "Emissions unit" generally means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant. It further provides that there are two types of emissions units, "new emissions units" and "existing emissions units," respectively, as delineated by subsections (a) and (b).

**Section 204.380 Excessive Concentration**

This Section provides a definition for "Excessive concentration" for purposes of determining good engineering practice stack height under Section 204.420(c). Subsection (a) generally defines an excessive concentration to be a concentration that would be at least 40% in excess of the concentration without the nearby buildings or terrain feature being present and that contributes to a total concentration that is greater than a NAAQS.

Subsection (b) provides that for sources seeking credit for increases in existing stack heights up to the heights established under Section 204.420(b), an excessive concentration is either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection (a), except that the emission rate specified by the SIP shall be used (or in the absence of such a limit, the actual emission rate), or (ii) the actual presence of a local nuisance caused by the existing stack as determined by the Illinois EPA.

Subsection (c) provides that for sources seeking credit for a stack height determined under Section 204.420(b) where the Illinois EPA requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit based on the aerodynamic influence of structures not adequately represented by the equations in Section 204.420(b), an excessive concentration is a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects to be at least 40% in excess of the maximum concentration that would be experienced in the absence of such downwash, wakes, or eddy effects.

**Section 204.390 Federal Land Manager**

This Section provides a definition for “Federal Land Manager.” “Federal Land Manager” means the Secretary of the department with authority over any lands of the United States.

**Section 204.400 Federally Enforceable**

This Section provides a definition for “Federally enforceable.” “Federally enforceable” means all limitations and conditions which are enforceable by USEPA. This definition further sets forth in detail these requirements enforceable by USEPA.

**Section 204.410 Fugitive Emissions**

This Section provides a definition for “Fugitive emissions.” “Fugitive emissions” means emissions which could not reasonably pass through a stack, chimney, vent, or other similar opening.

**Section 204.420 Good Engineering Practice**

This Section provides a definition for “Good engineering practice” for purposes of stack height. “Good engineering practice” stack height means the greater of subsections (a) through (c). Subsection (a) identifies a default minimum good engineering practice stack height of 65 meters, measured from the ground-level elevation at the base of the stack. Subsection (b) sets forth two formula good engineering stack heights. The first is for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits. The second formula is for all other stacks. Finally, subsection (c) provides for a wind tunnel determined maximum good engineering practice stack height, *i.e.*, the height demonstrated by a model or a study approved by the USEPA or Illinois EPA, which ensures that stack emissions do not result in excessive concentrations of any air pollutant due to atmospheric downwash, wakes, or eddy effects created by the proposed source, nearby structures or nearby terrain features. Subsection (d) generally indicates for purposes of this definition, “stack” is any point in a source designed to emit solids, liquids or gases into the air.

**Section 204.430 Greenhouse Gases (GHGs)**

This Section provides a definition for “Greenhouse gases.” “Greenhouse gases (GHGs)” means the air pollutant defined in 40 CFR 86.1818–12(a) as an aggregate group of six greenhouse gases. To represent an amount of GHGs emitted, the Section further indicates

that the term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall be used. Subsections (a) and (b) provide the manner that “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall be computed.

**Section 204.440 High Terrain**

This Section provides a definition for “High terrain.” “High terrain” means any area having an elevation 900 feet or more above the base of the stack of a source.

**Section 204.450 Indian Reservation**

This Section provides a definition for “Indian Reservation.” “Indian Reservation” generally means any federally recognized reservation.

**Section 204.460 Indian Governing Body**

This Section provides a definition for “Indian Governing Body.” “Indian Governing Body” generally means the governing body of any group of Indians subject to US jurisdiction and recognized by the US as possessing power of self-government.

**Section 204.470 Innovative Control Technology**

This Section provides a definition for “Innovative control technology.” “Innovative control technology” generally means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any current control system or of achieving at least comparable reductions at lower cost.

**Section 204.480 Low Terrain**

This Section provides a definition for “Low terrain.” “Low terrain” means any area other than high terrain.

**Section 204.490 Major Modification**

This Section provides a definition for “Major modification.” Subsection (a) generally provides that “Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant other than greenhouse gases; and a significant net emissions increase of that pollutant from the major stationary source.

Subsection (b) provides that any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOM or NO<sub>x</sub> shall be considered significant for ozone.

Subsection (c) specifies nine activities that are not considered a physical change or change in the method of operation.

Subsection (d) provides that this definition for “major modification” shall not apply for a regulated NSR pollutant when the major stationary source is complying with Subpart K for a PAL for that pollutant. In that instance, the definition of “PAL major modification” at Section 204.1720 shall apply.

#### **Section 204.500 Major Source Baseline Date**

This Section provides a definition for “Major source baseline date.” Subsection (a) sets a “Major source baseline date” of January 6, 1975 for PM<sub>10</sub> and SO<sub>2</sub>. Subsection (b) sets February 8, 1988 as the “Major source baseline date” for NO<sub>2</sub>. Subsection (c) sets a “Major source baseline date” of October 20, 2010 for PM<sub>2.5</sub>.

#### **Section 204.510 Major Stationary Source**

This Section provides a definition for “Major stationary source.” “Major stationary source” is defined in subsection (a) as a stationary source emitting or having the potential to emit 100 tpy or more of any regulated NSR pollutant from the 28 listed industrial source

categories in subsection (a)(1). If a stationary source does not fall within one of the 28 listed source categories then any stationary source that emits or has the potential to emit 250 tpy or more of any regulated NSR pollutant (except greenhouse gases) is a major stationary source. Finally, subsection (a) provides that any physical change that would occur at a stationary source not otherwise qualifying under this Section, is a major stationary source, if the changes would constitute a major stationary source by itself.

Subsection (b) provides that a major source that is major for VOM or NO<sub>x</sub> shall be considered major for ozone.

Subsection (c) provides that the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the 27 categories of stationary sources set forth in subsection (c).

#### **Section 204.520      Minor Source Baseline Date**

This section provides a definition for “Minor source baseline date.” Subsection (a) provides that “Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification submits a complete application. Trigger dates are specified for PM<sub>10</sub> and SO<sub>2</sub>, NO<sub>2</sub>, and PM<sub>2.5</sub>.

Subsection (b) generally provides that the baseline date is established for each pollutant for which increments have been established if the area where the proposed source or modification would construct is designated attainment or unclassifiable for the pollutant on the date of its complete application; and in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Subsection (c) generally provides that any minor source baseline date originally established relative to the historic increment for total suspended particulates shall remain in effect and shall apply when determining available PM<sub>10</sub> increments. However, the Illinois EPA shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Illinois EPA, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that minor source baseline date did not result in significant PM<sub>10</sub> emissions.

**Section 204.530      Nearby**

This Section provides a definition for “Nearby.” With respect to a specific structure or terrain feature, “Nearby” is defined in subsection (a) for purposes of applying the formulas in Section 204.420(b). Meanwhile, subsection (b) provides a definition of “Nearby” for purposes of conducting demonstrations under Section 204.420(c).

**Section 204.540      Necessary Preconstruction Approvals or Permits**

This Section provides a definition for “Necessary preconstruction approvals or permits.” “Necessary preconstruction approvals or permits” mean those permits or approvals required under Federal statute and regulation and the applicable SIP.

**Section 204.550      Net Emissions Increase**

This Section provides a definition for “Net emissions increase.” Subsection (a) provides that “Net emissions increase” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount that the sum of the emissions increase from a particular physical change or change in the method of operation at a stationary source and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable exceed zero.

Subsection (b) delineates when an increase or decrease in actual emissions is contemporaneous with the increase from the particular change.

Subsections (c) through (f) provide the criteria for whether an increase or decrease in actual emissions is creditable. Subsection (c) provides that an increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit under 40 CFR 52.21 or Part 204 for the source (that is still in effect when the increase in actual emissions from the change occurs). Subsection (d) provides that an increase or decrease in actual emissions of SO<sub>2</sub>, PM, or NO<sub>x</sub> that occurs prior to the applicable minor source baseline date is creditable only if it must be considered in calculating the maximum allowable increases remaining available. Subsection (e) provides that an increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level. Subsection (f) provides that a decrease in actual emissions is creditable only to the extent that the old level of actual or allowable emissions, whichever is lower, exceeds the new level of actual emissions; it is enforceable at and after the time that actual construction on the particular change begins; and it has approximately the same qualitative significance as the increase from the particular change.

Subsection (g) specifies when an increase from a physical change at a source shall be considered to occur.

Subsection (h) provides that Subsection 204.210(b) in the definition of “actual emissions” shall not apply for determining creditable increases and decreases.

#### **Section 204.560      Potential to Emit**

This Section provides a definition for “Potential to emit.” “Potential to emit” generally means the maximum capacity of a stationary source to emit a pollutant under its



physical and operational design. Any physical or operational limitation on a source's capacity to emit a pollutant, shall be deemed part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.

**Section 204.570 Prevention of Significant Deterioration (PSD) Permit**

This Section provides a definition for "Prevention of Significant Deterioration (PSD) Permit." "PSD permit" means a permit or portion of a permit for a new major source or modification that is issued by the Illinois EPA under the construction permit program pursuant to Section 9.1(c) of the Act that has been approved by the USEPA and incorporated into the Illinois SIP to implement Section 165 of the CAA and 40 CFR 51.166.

**Section 204.580 Process Unit**

This Section provides a definition of "Process Unit." "Process Unit" generally means any collection of structures that utilizes material inputs to produce or store an intermediate or final product.

**Section 204.590 Project**

This Section provides a definition for "Project." "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

**Section 204.600 Projected Actual Emissions**

This Section provides a definition for "Projected actual emissions." Subsection (a) provides that "Projected actual emissions" are a projection of emissions increases directly attributable to the project. Depending on the nature of the project, the source must project annual emissions into the future for a five-year period or a ten-year period if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated

NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. The greatest annual emission projection is the "Projected actual emissions."

Subsection (b) provides that in performing any analysis of the projected emissions that result from the proposed change, the owner or operator of the major stationary source shall consider all relevant information, including but not limited to that detailed in subsection (b)(1); shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and shall exclude in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth. In lieu of using the aforementioned method, the owner or operator of the major stationary source may elect to use the emissions unit's potential to emit as its projected actual emissions.

**Section 204.610      Regulated NSR Pollutant**

This Section provides a definition for "Regulated NSR pollutant." "Regulated NSR pollutant" means those pollutants identified in subsections (a) through (d). Subsection (a) includes any pollutant for which a NAAQS has been promulgated and for purposes of PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions, includes emissions from a source or activity, which are emitted in gaseous form but condense to form particulate matter at ambient temperatures. Condensable PM shall be included in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits on or after January 1, 2011.

Subsection (a) further provides that a “Regulated NSR pollutant” includes any pollutant identified under subsection (a)(2) as a constituent or precursor for a pollutant for which a NAAQS has been promulgated.

Subsections (b) through (d) further provides that “Regulated NSR pollutant” also includes any pollutant that is subject to any standard promulgated under Section 111 of the CAA, any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA and any any pollutant that otherwise is subject to regulation.

Subsection (e) generally provides that notwithstanding subsections (a) through (d), the term “Regulated NSR pollutant” shall not include any or all listed hazardous air pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a pollutant listed under Section 108 of the CAA.

#### **Section 204.620 Replacement Unit**

This Section provides a definition for “Replacement unit.” “Replacement unit” means an emissions unit for which certain criteria as listed in subsections (a) through (d), are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit being replaced.

Subsection (a) provides that the emissions unit must be reconstructed unit within the meaning afforded by federal regulation, or the emissions unit completely takes the place of an existing emissions unit.

Subsection (b) provides that the emissions unit must be identical to or functionally equivalent to the replaced emissions unit.

Subsection (c) provides that the replacement must not alter the basic design parameter(s) of the process unit and explicitly details how a process unit's basic design parameters shall be determined.

Subsection (d) provides that the replaced emissions unit must be permanently removed, disabled or barred from operation at the major stationary source by a practically enforceable permit. Subsection (d) further provides that if the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**Section 204.630      Repowering**

This Section provides a definition for "Repowering." Subsection (a) provides that "Repowering" means replacement of an existing coal-fired boiler with any of the listed clean coal technologies. As determined by USEPA, in consultation with the US Secretary of Energy, "Repowering" can also include any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

Subsection (b) provides that "Repowering" shall also include any oil and/or gas-fired unit awarded clean coal technology demonstration funding as of January 1, 1991, by the US Department of Energy.

Subsection (c) provides that the Agency shall give expedited consideration to permit applications for any source that satisfies these requirements and is granted an extension under Section 409 of the CAA.

**Section 204.640      Reviewing Authority**

This Section provides a definition for “Reviewing authority.” “Reviewing authority” means the Illinois EPA or, in the case of 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA.

**Section 204.650 Secondary Emissions**

This Section provides a definition for “Secondary emissions.” “Secondary emissions” generally means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Rather, secondary emissions include emissions from offsite support facilities which would not be constructed or increase emissions except due to the construction or operation of the major stationary source or major modification.

**Section 204.660 Significant**

This Section provides a definition for “Significant.” “Significant” means, in reference to a net emissions increase or the potential of a source to emit those pollutants identified by subsection (a), a rate of emissions that would equal or exceed any of the rates specified in this same subsection (a).

Subsection (b) further details “Significant” to mean in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in subsection (a), any emissions rate.

Subsection (c) further specifies that notwithstanding subsection (a), “Significant” means any emissions rate or any net emissions increase associated with a major stationary source or major modification, that would construct within 10 kilometers of a Class I area, and have an impact equal to or greater than  $1 \mu\text{g}/\text{m}^3$  (24-hr average).

**Section 204.670 Significant Emissions Increase**

This Section provides a definition for “significant emissions increase.” “Significant emissions increase” is an increase in emissions for a regulated NSR pollutant that is significant.

**Section 204.680      Stack in Existence**

This Section provides a definition for “Stack in existence.” “Stack in existence” generally means that the owner or operator had begun a continuous program of physical on-site construction of the stack or entered into binding agreements or contractual obligations to construct the stack within a reasonable time.

**Section 204.690      Stationary Source**

This Section provides a definition for “Stationary source.” “Stationary source” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Such definition excludes emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle.

**Section 204.700      Subject to Regulation**

This Section provides a definition for “Subject to regulation.” “Subject to regulation” generally means, for any air pollutant, that the pollutant is subject to either a provision in the CAA, or a regulation codified by the USEPA that requires control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect to limit or restrict the quantity of emissions of that pollutant released from the regulated activity.

**Section 204.710      Temporary Clean Coal Technology Demonstration Project**

This Section provides a definition for “Temporary clean coal technology demonstration project.” “Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for less than 5 years, and which

complies with applicable requirements necessary to attain and maintain the NAAQS both during and after the project.

**SUBPART C: MAJOR STATIONARY SOURCES IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

**Section 204.800 Applicability**

This Section addresses the applicability of proposed Part 204. Subsection (a) provides that Part 204 applies to the construction of any new major stationary source or any project at an existing major stationary source in an area designated attainment or unclassifiable.

Subsection (b) provides that the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as otherwise indicated in this Part.

Subsection (c) provides that no new major stationary source or major modification to which the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply shall begin actual construction without a permit indicating that the source or modification will meet those requirements.

Subsection (d) addresses how one determines whether a proposed project at an existing major source is a major modification. Subsection (d)(1) generally provides that a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases, a significant emissions increase as well as a significant net emissions increase. Subsection (d)(2) provides that the procedure for calculating whether a significant emissions increase will occur depends upon the type(s) of emissions units involved in the project, according to subsections (d)(3) through (d)(5). Subsection (d)(3) provides that the

actual-to-projected-actual applicability test applies for projects that only involve existing emissions units. Subsection (d)(4) provides that the actual-to-potential test applies for projects that only involve construction of new emissions units. Subsection (d)(5) provides that the hybrid test applies for projects that involve multiple types of emissions units.

Subsection (e) addresses the applicability of Subpart I, which requires recordkeeping and reporting for certain projects at existing major sources that are not major modifications. It provides that for a proposed project that includes changes to existing units and is determined to not be a major modification for a regulated NSR pollutant but does not use the potential emissions as the projected actual emissions of the existing units, the owner or operator shall comply with the relevant requirements of Subpart I for that pollutant. These requirements are applicable where there is a “reasonable possibility” for this pollutant based on the criteria in Section 204.1400(f) that the project may result in a significant emissions increase.

Subsection (f) provides that for any major stationary source for a PAL for a regulated NSR pollutant, the source shall comply with Subpart K for that pollutant.

**Section 204.810      Source Information**

This Section requires an owner or operator of a proposed major stationary source or major modification to submit all information necessary to perform any analysis or make any determination required under Part 204.

Subsection (a) provides that for purposes of Sections 204.810, 204.1100, 204.1120, and 204.1200, an owner or operator shall submit a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing design and plant layout; a detailed construction



schedule; and a detailed description as to what system of continuous emission reduction is planned, emission estimates, and other information as necessary to determine that BACT, as applicable, would be applied.

Subsection (b) generally provides that upon request of the Illinois EPA, the owner or operator shall provide information on the air quality impact of the source or modification, and the nature and extent of any or all growth which has occurred since August 7, 1977, in the area the source or modification would affect.

**Section 204.820 Source Obligation**

This Section provides that any owner or operator who constructs or operates a source or modification not in accordance with its application or with any construction approval or any owner or operator of a source or modification subject to this Part who begins actual construction without applying for and receiving construction approval shall be subject to enforcement.

**Section 204.830 Permit Expiration**

This Section provides that construction approval shall become invalid if construction is not commenced within 18 months of approval, if construction is discontinued for 18 months or more, or if construction is not completed within a reasonable time. The Illinois EPA may extend the 18-month period upon a satisfactory showing that an extension is justified. This Section also addresses the timing of phased construction projects.

**Section 204.840 Effect of Permits**

This Section provides that approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable requirements.

**Section 204.850 Relaxation of a Source-Specific Limitation**

This Section provides that when a source or modification becomes a major stationary source or major modification solely due to a relaxation of any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, then the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall apply to the source or modification as though construction had not yet commenced on the source of modification.

**Section 204.860 Exemptions**

This Section sets forth exemptions to the various requirements of Part 204.

Subsection (a) provides exemptions to Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 for a particular major stationary source or major modification, if: 1) the source or modification is a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of Illinois exempts it from those requirements; 2) the source or modification would be a major stationary source or major modification only if quantifiable fugitive emissions are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of 27 categories listed in subsection (a)(2); or 3) the source is a portable stationary source which has previously received a permit under 40 CFR 52.21 or Part 204 and meets the additional requirements of subsection (a)(3).

Subsection (b) provides that Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall not apply to a major stationary source or major modification with respect to a pollutant if, as to that

pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA (42 USC 7407). It also provides that nonattainment designations for revoked NAAQS shall not be viewed as current designations for purposes of determining the applicability of these same sections to a major stationary source or major modification after the revocation of that NAAQS is effective.

Subsection (c) provides that the requirements of Sections 204.1110, 204.1130, and 204.1140 do not apply to a major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification would not impact a Class I area and no area where an applicable increment is known to be violated, and would be temporary.

Subsection (d) provides that the requirements of Sections 204.1110, 204.1130, and 204.1140 as they pertain to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tpy.

#### **SUBPART D: INCREMENT**

##### **Section 204.900      Ambient Air Increments**

This Section provides that in areas designated as Class I, II or III, increases in pollutant concentrations over the baseline concentrations shall be limited to the amounts identified in the table in this section.

##### **Section 204.910      Ambient Air Ceilings**

This Section provides that no concentration of a pollutant shall exceed the amount specified in subsections (a) or (b), whichever concentration is lower for the pollutant for a

period of exposure. Subsection (a) limits the concentration to the concentration permitted under the national secondary ambient air quality standard.

Subsection (b) limits the concentration to the concentration permitted under the national primary ambient air quality standard.

**Section 204.920      Restrictions on Area Classifications**

Subsection (a) provides that certain specified areas that were in existence on August 7, 1977, are Class I areas and may not be redesignated.

Subsection (b) provides that those areas that were redesignated Class I under the regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Part.

Subsection (c) provides that any other area, unless otherwise specified, is designated Class II, but may be redesignated as provided in this Part.

Subsection (d) describes certain areas that may only be redesignated Class I or II.

**Section 204.930      Redesignation**

Subsection (a) provides that as of the initial effective date of this Part, all areas of the State except as provided by Section 204.920 are designated Class II as of December 5, 1974. Redesignation (except as precluded by Section 204.920) may be proposed subject to USEPA approval.

Subsection (b) provides that the Illinois EPA may submit to the USEPA a proposal to redesignate areas of the State Class I or Class II provided that the procedural requirements of this subsection are met. These requirements include at least one public hearing; timely notification to States, Indian Governing Bodies, and Federal Land Managers potentially affected by the proposed redesignation; a discussion of the reasons for the proposed

redesignation timely made available for public inspection; additional requirements when the proposed redesignation includes any Federal lands; and consultation with local and other substate general purpose governments in the area covered by the proposed redesignation.

Subsection (c) provides that any area other than an area to which Section 204.920 refers may be redesignated as Class III so long as the requirements of this subsection are met. These requirements include that the requirements of subsection (b) are met; the redesignation, except any established by an Indian Governing Body, has been approved by the Governor of Illinois, after appropriate consultations and if appropriate units of local government enact legislation or pass resolutions concurring in the redesignation; the redesignation would not cause, or contribute to, a concentration of any air pollutant which would cause an exceedance; and any permit application subject to review under Section 204.1120 which could receive a permit only if the area were Class III, any material submitted as part of that application, were available, for public inspection prior to any redesignation public hearing.

Subsection (d) provides that lands within an Indian Reservation may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the USEPA a proposal to redesignate areas Class I, Class II, or Class III so long as the requirements of this subsection have been met.

Subsection (e) provides that the USEPA shall disapprove, within 90 days, a proposed redesignation if it finds, after appropriate public notice, that it does not meet the procedural requirements of this Section or is inconsistent with Section 204.920.

Subsection (f) provides that if the USEPA disapproves any proposed redesignation, the proposal may be resubmitted after correcting any noted deficiencies.

## **SUBPART E: STACK HEIGHTS**

### **Section 204.1000 Stack Heights**

Subsection (a) provides that the degree of emission limitation required for control of any air pollutant under this Part shall not be affected by the stack height of any source in excess of good engineering practice, or any other dispersion technique.

Subsection (b) provides that subsection (a) shall not apply with respect to stack heights in existence or to dispersion techniques implemented before December 31, 1970.

## **SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

### **Section 204.1100 Control Technology Review**

Subsection (a) provides that a major stationary source or major modification shall meet each applicable emissions limitation and/or standard of performance under the SIP and 40 CFR Parts 60, 61, 62 and 63.

Subsection (b) provides that a new major stationary source shall apply BACT for each regulated NSR pollutant that it would potentially emit in significant amounts.

Subsection (c) provides that, for the pollutant for which PSD is applicable, the BACT requirement applies to each new emissions unit proposed to be constructed at the source that would emit such pollutants. The BACT requirement also applies to each existing unit at which an emissions increase in the relevant pollutant(s) would occur as a result of a physical change or change in the method of operation of the unit.

Subsection (d) provides that for phased construction projects, BACT shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each project phase. The owner or operator

of the applicable stationary source may be required to demonstrate the adequacy of any previous BACT determination.

**Section 204.1110 Source Impact Analysis**

This Section provides that allowable emission increases from a proposed source or modification in conjunction with all other applicable emissions increases or reductions shall not cause or contribute to air pollution in violation of subsections (a) or (b).

Subsection (a) forbids any violation of any NAAQS in any air quality control region by the proposed source or modification.

Subsection (b) prohibits any applicable maximum allowable increase over the baseline concentration in any area by the proposed source or modification.

**Section 204.1120 Air Quality Models**

Subsection (a) provides that all estimates of ambient concentrations required under this Section shall be based on applicable requirements specified in Appendix W of 40 CFR Part 51.

Subsection (b) provides that where an air quality model specified in 40 CFR Part 51, Appendix W is inappropriate, the model may be modified or another model substituted subject to the requirements of this subsection.

**Section 204.1130 Air Quality Analysis**

Subsection (a) details the air quality material that must be submitted in conjunction with an application for a permit under this Part. An analysis of the ambient air quality in the area that the major stationary source or major modification would affect shall be included in application materials. This includes an analysis for each pollutant that a source would have the potential to emit in a significant amount and for each pollutant for which a modification

would result in a significant net emissions increase. For those pollutants without a NAAQS, the analysis shall contain air quality monitoring data the Illinois EPA deems necessary to assess ambient air quality for that pollutant. For those pollutants with a standard, the analysis shall contain appropriate continuous air quality monitoring data. The continuous air quality monitoring data shall have been gathered over at least one year and shall represent at least the year preceding receipt of the application, unless the Illinois EPA determines that an analysis can be accomplished with less monitoring data.

Subsection (b) requires the owner or operator of a major stationary source or major modification to perform post-construction monitoring as the Illinois EPA determines is necessary to determine the effect emissions from the project may have, or are having, on air quality.

Subsection (c) provides that the owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B during the operation of monitoring stations for purposes of meeting the requirements of this Section.

#### **Section 204.1140 Additional Impact Analyses**

Subsection (a) provides that the owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur and growth associated with the source or modification.

Subsection (b) provides that the owner or operator shall provide an analysis of the air quality impact projected for the area as a result of growth associated with the source or modification.

### **SUBPART G: ADDITIONAL REQUIREMENTS FOR CLASS I AREAS**

#### **Section 204.1200 Additional Requirements for Sources Impacting Federal Class I Areas**



Subsection (a) details the notice obligations of the Illinois EPA relative to the Federal Land Managers for Class I areas. Notably, the Illinois EPA shall provide appropriate and timely written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal Land Manager and the Federal official with direct responsibility for the management of such lands. The Illinois EPA shall also provide the Federal Land Manager and the Federal official with a timely copy of the draft permit.

Subsection (b) details the responsibilities of the Federal Land Managers. The Federal Land Manager and the federal official with direct responsibility for the management of Class I lands shall protect the air quality related values of such lands and consider, with the Illinois EPA, whether a proposed source or modification will have an adverse impact.

Subsection (c) addresses procedural requirements that the Illinois EPA must meet for any visibility analysis performed by the Federal Land Manager that shows an adverse impact on visibility. The Illinois EPA shall consider any timely analysis performed by the Federal Land Manager that shows that a proposed project may have an adverse impact on visibility in any Federal Class I area. Where the Illinois EPA finds that such an analysis is not sufficient to demonstrate an ensuing adverse impact on visibility, the Illinois EPA must explain its decision in the notice of public hearing or give notice as to where the explanation can be obtained.

Subsection (d) provides that the Illinois EPA shall not issue the permit when the Federal Land Manager of any such lands demonstrates to the satisfaction of the Illinois EPA that the emissions from a proposed source or modification would adversely impact the air quality-related values of those lands.

Subsection (e) authorizes the Illinois EPA to issue the permit where the owner or operator of a proposed source or modification demonstrates to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values, notwithstanding that the change in air quality from such project would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. Provided the applicable requirements of Part 204 are met, the Illinois EPA may issue the permit to include emission limitations necessary to assure that emissions of SO<sub>2</sub>, PM<sub>2.5</sub>, PM<sub>10</sub>, and NO<sub>x</sub> would not exceed the alternative maximum allowable increases for those pollutants set forth within this subsection.

Subsection (f) authorizes the Governor to grant a variance from such alternative maximum allowable increase for SO<sub>2</sub> set forth within subsection (e) subject to the variance not adversely affecting air quality related values and concurrence by the Federal Land Manager. Subsection (f) details the applicable procedural requirements and in the event such a variance is granted, including that the Illinois EPA shall issue a permit to such source or modification pursuant to the requirements of subsection (h), provided that the applicable requirements of this Part are otherwise met.

Subsection (g) authorizes the Governor to grant a variance with the President's concurrence in those cases where the Federal Land Manager does not concur. Subsection (g) details the applicable procedural requirements in the event such a variance is granted, including that the Illinois EPA shall issue a permit pursuant to the requirements of subsection (h) provided that the applicable requirements of this Part are otherwise met.

Subsection (h) specifies the applicable alternative to the alternative maximum allowable increases in SO<sub>2</sub> ambient concentration that apply for Presidential or gubernatorial variance for permits issued pursuant to subsections (f) or (g).

**SUBPART H: GENERAL OBLIGATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**Section 204.1300 Notification of Application Completeness to Applicants**

This Section provides that the Illinois EPA shall notify the applicant within 30 days of receipt of an application for a permit pursuant to this Part as to the completeness of the application or as to the deficiency in the application. In the event of a deficiency in the application, the date of receipt of the application shall be the date that the Illinois EPA received all required information.

**Section 204.1310 Transmittal of Application to USEPA**

This Section provides that the Illinois EPA shall provide to the USEPA a copy of each permit application received pertaining to a major stationary source or major modification.

**Section 204.1320 Public Participation**

This Section provides that prior to the initial issuance of a permit or a modification of a permit issued pursuant to this Part, the Illinois EPA shall provide notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing pursuant to the 35 Ill. Adm. Code Part 252.

**Section 204.1330 Issuance Within One Year of Submittal of Complete Application**

This Section provides that within one year after receipt of a complete application, the Illinois EPA shall grant or deny the permit.

**Section 204.1340 Permit Rescission**

Subsection (a) provides that any permit issued under this Part shall remain in effect until it expires or is rescinded under this Section.

Subsection (b) provides that an owner or operator of a stationary source or modification that holds a permit issued under this Part or 40 CFR 52.21 that meets the requirement in subsection (c) may request that the permit or a portion of the permit be rescinded.

Subsection (c) provides that the Illinois EPA may grant an application for rescission if it shows that this Part would not apply to the source or modification.

Subsection (d) provides that if the Illinois EPA rescinds a permit under this Section, timely public notice of the rescission shall be posted by the Illinois EPA on its web site.

#### **SUBPART I: NONAPPLICABILITY RECORDKEEPING AND REPORTING**

##### **Section 204.1400 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources**

The requirements of this Section apply if a “reasonable possibility” exists, based on the criteria specified later in Section 204.1400(f), that a project that is not projected to be a major modification for a pollutant when the owner or operator elects to use the method in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions after the project may, nevertheless in practice, result in a significant emissions increase.

Subsection (a) provides that prior to beginning actual construction of a subject project, the owner or operator shall document and maintain a record of the information specified by this subsection.

Subsection (b) provides if the emissions unit is an existing electric utility steam generating unit, the owner or operator shall provide a copy of the information in subsection (a) to the Illinois EPA prior to beginning actual construction.

Subsection (c) provides the owner or operator shall track or monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified by the recordkeeping requirements of subsection (a).

Subsection (c) requires the owner or operator to calculate and maintain a record of the annual emissions for a period of 5 years or 10 years following resumption of regular operations after the change depending on whether the project increases the design capacity or potential to emit that pollutant at such emissions unit(s).

Subsection (d) provides if the unit is an existing electric utility steam generating unit, the owner or operator shall submit a timely report to the Illinois EPA detailing the unit's annual emissions.

Subsection (e) provides if the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall timely submit a report to the Illinois EPA the information detailed in this subsection if the project's annual emissions exceed the baseline actual emissions by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection.

Subsection (f) defines a "reasonable possibility" for purposes of this section. If the projected increase in emissions of a pollutant is 50 percent or more of the relevant significant emission rate, a "reasonable possibility" is presumed to exist. If the sum of the projected increase plus the amount excluded pursuant to Section 204.600(b)(3) is at least 50 percent of

the significant emission rate, a “reasonable possibility” is also presumed to exist but the source must only keep the records specified by Section 204.1400(a).

Subsection (g) provides that the owner or operator of the source shall make the information required by this Section available for review upon a request for inspection by the Illinois EPA or USEPA or by a request by the general public to the Illinois EPA.

#### **SUBPART J: INNOVATIVE CONTROL TECHNOLOGY**

##### **Section 204.1500 Innovative Control Technology**

Subsection (a) provides that by no later than the close of the public comment period on a draft PSD permit, an owner or operator of a proposed major stationary source or major modification may request the Illinois EPA to approve a system of innovative control technology as an alternative to BACT.

Subsection (b) provides that the Illinois EPA shall, with the consent of the Governor, determine that the source or modification may employ innovative control technology, so long as the substantive and procedural requirements of this subsection are met.

Subsection (c) details those instances where the Illinois EPA may subsequently withdraw its approval to employ innovative control technology made under this Section.

Subsection (d) provides if a source or modification fails to achieve the required continuous emission reduction within the specified time period or the date that the approval is withdrawn, the Illinois EPA may allow the owner or operator up to 3 years to achieve BACT through the use of a demonstrated system of control.

#### **SUBPART K: PLANTWIDE APPLICABILITY LIMITATION**

This Subpart provides a system for establishing and applying PALs which will avoid triggering review under the PSD program for certain modifications implemented by an existing major source.

**Section 204.1600    Applicability**

Subsection (a) authorizes the Illinois EPA to approve the use of actuals PALs for any existing major stationary source if the PALs meet the requirements in Subpart K.

Subsection (b) provides that any physical change or change in the method of operation of a major stationary source that maintains source-wide emissions below the PAL level, meets the requirements of Subpart K, and complies with the PAL permit is not a major modification for the PAL pollutant, does not have to be approved through the major NSR program, and is not subject to Section 204.850.

Subsection (c) acknowledges that a major stationary source with a PAL permit shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practices established prior to the effective date of the PAL.

**Section 204.1610    Definitions**

The Illinois EPA is proposing the addition of Section 204.1610 which provides definitions for certain terms used in Subpart K.

**Section 204.1620    Actuals PAL**

This Section provides a definition for “Actuals PAL.” “Actuals PAL” for a major stationary source is a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

**Section 204.1630    Allowable Emissions**

This Section provides a definition for “Allowable emissions.” For purposes of Subpart K, “allowable emissions” means the definition of “allowable emissions” as defined in Section 204.230 except that it shall be calculated considering any emissions limitation that is enforceable as a practical matter on the emissions unit’s potential to emit.

**Section 204.1640      Continuous Emissions Monitoring System (CEMS)**

This Section provides a definition for “Continuous emissions monitoring system.” “Continuous emissions monitoring system” means all of the equipment that may be required to meet the applicable data acquisition and availability requirements of Part 204.

**Section 204.1650      Continuous Emissions Rate Monitoring System (CERMS)**

This Section provides a definition for “Continuous emissions rate monitoring system.” “Continuous emissions rate monitoring system” means the equipment to determine and record the pollutant mass emissions rate.

**Section 204.1660      Continuous Parameter Monitoring System (CPMS)**

This Section provides a definition for “Continuous parameter monitoring system.” “Continuous parameter monitoring system” is the equipment necessary to meet the data acquisition and availability requirements of Part 204 to monitor process and control device operational parameters and to continuously record average operational parameter values.

**Section 204.1670      Lowest Achievable Emission Rate (LAER)**

This Section provides a definition for “Lowest achievable emission rate.” “Lowest achievable emission rate” has the meaning that this term is given in 35 Ill. Adm. Code 203.301(a).

**Section 204.1680      Major Emissions Unit**



This Section provides a definition for “Major emissions unit.” “Major emissions unit” means any emissions unit that emits or has the potential to emit 100 tpy or more of the PAL pollutant.

**Section 204.1690 Plantwide Applicability Limitation (PAL)**

This Section provides a definition for “Plantwide applicability limitation.” “Plantwide applicability limitation (PAL)” means an emission limitation expressed as provided in this section for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with Subpart K.

**Section 204.1700 PAL Effective Date**

This Section provides a definition for “PAL effective date.” “PAL effective date” means the issuance date for the PAL permit; however, for an increased PAL, the “PAL effective date” is the date any emissions unit that is part of a PAL major modification becomes operational and begins to emit the PAL pollutant.

**Section 204.1710 PAL Effective Period**

This Section provides a definition for “PAL effective period.” “PAL effective period” means the period beginning with the PAL effective date and ending 10 years later.

**Section 204.1720 PAL Major Modification**

This Section provides a definition for “PAL major modification.” “PAL major modification” means any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

**Section 204.1730 PAL Permit**

This Section provides a definition for “PAL permit.” “PAL permit” means the permit that establishes a PAL for a major stationary source.

**Section 204.1740 PAL Pollutant**

This Section provides a definition for “PAL pollutant.” “PAL pollutant” means the pollutant for which a PAL is established at a major stationary source.

**Section 204.1750 Predictive Emissions Monitoring System (PEMS)**

This Section provides a definition for “Predictive emissions monitoring system.” “Predictive emissions monitoring system” means the equipment necessary to monitor process and control device operational parameters and to calculate and record the mass emissions rate.

**Section 204.1760 Reasonably Achievable Control Technology (RACT)**

This Section provides a definition for “Reasonably Achievable Control Technology” or RACT. RACT means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account the necessity of imposing such controls, the impacts of such controls and alternative means to attain and maintain a NAAQS.

**Section 204.1770 Significant Emissions Unit**

This Section provides a definition for “Significant emissions unit.” “Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than its significant level but less than the amount necessary to qualify as a major emissions unit.

**Section 204.1780 Small Emissions Unit**

This Section provides a definition for “Small emissions unit.” “Small emissions unit” means an emissions unit that emits or has the potential to emit the PAL pollutant less than its significant level.

**Section 204.1790 Permit Application Requirements**

This Section specifies the information to be included in an application requesting a PAL permit. This information generally includes a listing of all emissions units designated as small, significant or major based on their PTE. The information necessarily includes all requirements applicable to each unit, emission limitations, or work practices; baseline actual emission calculations that necessarily includes emissions associated with startup, shutdown and malfunction; and calculation procedures proposed to convert the monitoring system data to monthly emissions and annual emissions.

**Section 204.1800 General Requirements for Establishing PAL**

This Section identifies the requirements that must be met to establish a PAL at a major stationary source. Subsection (a) specifies that the PAL shall impose an annual emission limitation that is enforceable as a practical matter, for the entire major stationary source; the PAL shall be established in a PAL permit that meets all applicable public participation requirements; the PAL permit shall meet the content requirements of Section 204.1830; the PAL shall include all quantifiable fugitive emissions at the major stationary source; and each PAL shall regulate emissions of only one pollutant and have a PAL effective period of 10 years. The owner or operator of a major stationary source with a PAL permit shall comply with all applicable monitoring, recordkeeping, and reporting requirements for each emissions unit under the PAL.

Subsection (b) provides that emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as offsets unless the PAL is reduced by the amount of such reductions and such reductions would be creditable in the absence of the PAL.

**Section 204.1810 Public Participation Requirements**

The Section provides that PALs for existing major stationary sources shall be established, renewed or increased consistent with 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program.

**Section 204.1820 Setting the 10-Year Actuals PAL Level**

This Section provides the mechanism for establishing any actuals PAL level. Subsection (a) provides the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus the applicable significant level for the PAL pollutant.

Subsection (b) provides that for newly constructed units on which actual construction began after the 24-month period, the emissions must be added to the PAL level in an amount equal to the units' potential to emit.

**Section 204.1830 Contents of the PAL Permit**

This Section specifies the information to be included in a PAL permit. The PAL permit must contain, at a minimum, the PAL pollutant and the applicable source-wide emission limitation; the PAL permit effective period; specification in the PAL permit pertaining to renewal of the PAL; a requirement that startups, shutdowns, and malfunctions emissions be included in emission calculations; a requirement that the major stationary

source is subject to Section 204.1850 upon PAL expiration; the calculation procedures required to convert monitoring system data to monthly emissions and annual emissions; a requirement to monitor all emissions units in accordance with Section 204.1880; a requirement to retain records required by Section 204.1890 on site; a requirement to timely submit the reports required by Section 204.1900; and any other requirements the Illinois EPA deems necessary to implement and enforce the PAL.

**Section 204.1840 Effective Period and Reopening a PAL Permit**

This Section provides 10 years as the effective period for a PAL in subsection (a) and specifies the conditions in subsection (b) under which the Illinois EPA must or may reopen a PAL permit. Subsection (c) requires that all reopenings, with the exception of reopenings meant to correct typographical/calculation errors that do not increase the PAL level, shall comply with the public participation requirements of Section 204.1810.

**Section 204.1850 Expiration of a PAL**

This Section sets forth those requirements that a source must comply with upon expiration of a PAL and further authorizes the Illinois EPA to determine whether and how to distribute PAL allowable emissions and to issue a revised permit incorporating allowable limits as it deems appropriate. Subsection (a) further provides that each emissions unit that existed under the PAL shall comply with an allowable emission limit under a revised permit established according to subsection (a). The major stationary source shall timely submit a proposed allowable emission limitation for each emissions unit by distributing the PAL allowable emissions among each emissions unit that existed under the PAL.

Subsection (b) provides that each emissions unit shall comply with the allowable emission limit on a 12-month rolling basis. The Illinois EPA may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS for compliance purposes.

Subsection (c) provides that the source shall comply with a source-wide emissions cap equivalent to the PAL emission limitation until a revised permit incorporating allowable limits for each emissions unit or groups of emissions units is issued.

Subsection (d) provides that any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if it meets the definition of major modification.

Subsection (e) provides that the major stationary source owner or operator shall continue to comply with any applicable requirements that may have applied either during the PAL effective period or prior to that period except for emission limitations established pursuant to Section 204.850 but eliminated by the PAL in accordance with Section 204.1600(b)(3).

**Section 204.1860      Renewal of a PAL**

This Section establishes the procedures before a request to renew a PAL can be approved. Subsection (a) provides that the procedures of Section 204.1810 shall be followed by the Illinois EPA in approving any PAL renewal request. The proposed PAL level and a written rationale for this level shall be provided for public comment.

Subsection (b) provides that a major stationary source owner or operator shall submit a timely application to request renewal of a PAL. A timely application must be submitted at least 6 months prior to, but not earlier than 18 months from permit expiration. If a complete

renewal application is timely filed, then the PAL shall continue to be effective until issuance of the renewal PAL.

Subsection (c) details the application requirements for a renewal request.

Subsection (d), provides that in determining whether and how to adjust the PAL, the Illinois EPA shall consider subsections (d)(1) and (2). Subsection (d)(1) provides if the new value of the PAL, as calculated in the same manner as the existing PAL, would be 80 percent or more of the existing PAL, the PAL may be renewed at the same level. Subsection (d)(2) provides that the Illinois EPA has the discretion to set the value of the new PAL at a level it determines to be more representative of the source's baseline actual emissions or that it determines to be more appropriate considering certain relevant factors. In no case may any PAL adjustment fail to comply with subsection (d)(3). Subsection (d)(3) provides that if the new value of the PAL, as calculated in the same manner as the existing PAL, would exceed the PTE of the source, the new PAL must be set at a value no greater than the PTE of the source. If the new value for the PAL, calculated in the same manner as the existing PAL, would exceed the current PAL, the PAL must be set at the value of the current PAL unless the major stationary source has timely complied with the provisions for modification or increase in a PAL.

Subsection (e) addresses the timing of any adjustment to the PAL if a State or Federal requirement becomes applicable to the PAL source during the PAL effective period.

#### **Section 204.1870      Increasing the PAL During the PAL Effective Period**

This Section establishes the conditions to be met to increase a PAL emission limitation. Subsection (a) provides that a complete application shall be submitted identifying the emissions unit(s) contributing to the increase in emissions causing the major stationary

source's emissions to equal or exceed the PAL. This application shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. These emissions units, regardless of the magnitude of their emissions increase, shall comply with any emissions requirements resulting from the major NSR process. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

Subsection (b) provides that the new PAL shall be calculated as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

Subsection (c) provides that the PAL permit revised to increase the PAL level must meet the public notice requirements of Section 204.1810.

#### **Section 204.1880     Monitoring Requirements**

This Section sets forth the monitoring obligations a PAL source must meet during the PAL effective period. Subsection (a) provides that each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce



the PAL permit.<sup>84</sup> The PAL monitoring system must meet the requirements in subsection (b) and must be approved by the Illinois EPA. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.

Subsection (b) identifies the minimum performance requirements for approved monitoring approaches that are acceptable when conducted in accordance with subsections (c) through (i); these specifically include mass balance calculations for activities using coatings or solvents; CEMS; CPMS or PEMS; and emission factors.

Subsection (c) provides an owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the requirements of this subsection.

Subsection (d) provides that an owner or operator using CEMS to monitor PAL pollutant emissions shall meet the requirements of this subsection.

Subsection (e) provides that an owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the requirements of this subsection.

Subsection (f) provides that an owner or operator using emission factors to monitor PAL pollutant emissions shall meet the requirements of this subsection.

Subsection (g) provides that an owner or operator must record and report the maximum potential emissions (with no consideration of enforceable emission limitations or operational restrictions for an emissions unit) during any period of time that there is no monitoring data unless another method is specified in the PAL permit.

Subsection (h) provides, notwithstanding the requirements of subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation

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<sup>84</sup> An alternative monitoring approach may be utilized if it meets the requirements of subsection (a)(1) and if approved by the Illinois EPA.

between the monitored parameter and the PAL pollutant emissions rate at all operating points of the emissions unit, the Illinois EPA shall, at the time of permit issuance, establish default values for determining PAL compliance and shall determine that operation of the emissions unit during operating conditions when no correlation exists between monitored parameter(s) and the PAL pollutant emissions is violation of the PAL.

Subsection (i) sets forth the requirements for re-validating the data used to establish the PAL pollutant.

#### **Section 204.1890 Recordkeeping Requirements**

This Section establishes the recordkeeping obligations a PAL source must meet during and after the PAL effective period. Subsection (a) provides that the PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL for 5 years from the date of such record.

Subsection (b) provides that the PAL permit shall require an owner or operator to retain a copy of the records set forth within this subsection for the duration of the PAL effective period plus 5 years.

#### **Section 204.1900 Reporting and Notification Requirements**

The Illinois EPA is proposing the addition of Section 204.1900 establishing the reporting and recordkeeping obligations a PAL source must meet during the PAL effective period. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports, meeting the requirements in subsections (a) through (c), to the Illinois EPA in accordance with the CAAPP.

Subsection (a) details the informational requirements for the semi-annual report that shall be submitted to the Illinois EPA within 30 days of the end of each reporting period.

Subsection (b) details the information requirements for deviation reports. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available.

Subsection (c) provides that the owner or operator shall submit the results of any re-validation test or method to the Illinois EPA within 3 months after completion of such test or method.

#### **Section 204.1910 Transition Requirements**

This Section prohibits the Illinois EPA from issuing any PAL that does not comply with the requirements of this Subpart after the initial effective date of 35 Ill. Adm. Code Part 204.

#### **Amendments to 35 Ill. Adm. Code Part 101, the Board's General Rules**

#### **Section 101.202 Definitions for Board's Procedural Rules**

The Illinois EPA is proposing revisions to Section 101.202 which provides definitions for certain terms used in Part 201. Definitions are proposed for the terms "Agency public comment," "Agency public hearing," "Agency public hearing record," "Agency record," "CAAPP permit," "CAAPP permit appeal," "OSFM record," "PSD," "PSD permit," and "PSD permit appeal." The Illinois EPA is also proposing the deletion of the definition for "Participant in a CAAPP Comment Process."

#### **Section 101.302 Filing of Documents**

The Illinois EPA is proposing the addition of language in Section 101.302(h)(2)(A) requiring the filing of any PSD applications through Clerk's Office On-Line (COOL) or on

compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF.

**Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines**

The Illinois EPA is proposing the addition of language in Section 101.308(a) providing that both CAAPP permit appeals and PSD permit appeals have a 120-day statutory decision deadline.

**Section 101.610 Duties and Authority of the Hearing Officer**

The Illinois EPA is proposing to clarify the language in Section 101.610(i) providing that the Board Hearing Officer has the authority to order the filing of any required Agency record, OSFM record or local siting authority record in a manner that provides for the timely review of issues consistent with any statutory decision deadline.

**Section 101.626 Information Produced at Hearing**

The Illinois EPA is proposing the addition of language in Section 101.626 providing that the Board Hearing Officer will admit evidence that is admissible under the rules of evidence as applied in Illinois civil courts except as otherwise provided in this Part or 35 Ill. Adm. Code Part 105.

**Amendments to 35 Ill. Adm. Code Part 105, the Board's Procedural Rules for Appeals of Final Decisions of State Agencies**

**Section 105.104 Definitions**

The Illinois EPA is proposing the addition of a definition for the term "Nonattainment New Source Review" (NaNsr) in Section 105.104. NaNsr would mean Illinois' regulations for Major Stationary Sources Construction and Modification (MSSCAM) at 35 Ill. Adm. Code Part 203.

**Section 105.108 Dismissal of Petition**

The Illinois EPA is proposing the addition of language in Section 105.108 providing that a petition is subject to dismissal if the Board determines that the petition does not meet the informational requirements of 35 Ill. Adm. Code 105.608 or the petition is untimely pursuant to 35 Ill. Adm. Code 105.606.

**Section 105.112      Burden of Proof**

The Illinois EPA is proposing the inclusion of additional statutory authority, i.e., 415 ILCS 5/40.3(a)(2), for Section 105.112 providing that the burden of proof shall be on the petitioner.

**Section 105.116      Agency or OSFM Record Filing**

The Illinois EPA is proposing language clarifying Section 105.116 pertaining to the filing of Agency or OSFM records with the Board.

**Section 105.118      Sanctions for Untimely Filing of the Record**

The Illinois EPA is proposing language clarifying Section 105.118 authorizing the Board to impose sanctions upon the relevant State agency, either the Agency or OSFM, for its failure to timely file the required administrative record with the Board.

**Section 105.200      Applicability**

The Illinois EPA is proposing the addition of language in Section 105.200 providing that 35 Ill. Adm. Code, Subpart B, Appeal of Agency Permit Decisions and Other Final Decisions of the Agency, shall not apply when the appeal is of a final PSD permit decision of the Agency; such decisions will be addressed by Subpart F, PSD Permit Appeals.

**Section 105.210      Petition Content Requirements**

The Illinois EPA is proposing language clarifying Section 105.210(d) providing that for petitions under Section 105.204(b), the petition must address whether the petitioner raised

the issues contained within the petition during the public notice period or during the Agency public hearing.

**Section 105.212      Agency Record**

The Illinois EPA is proposing clarifying language in Section 105.212 regarding the Agency record, the Agency public hearing record and the Agency public hearing.

**Section 105.214      Board Hearing**

The Illinois EPA is proposing clarifying language in Section 105.214 regarding the Agency record.

**Section 105.302      General Requirements**

The Illinois EPA is proposing clarifying language in Section 105.302 regarding the Agency public comment process, the Agency public comment period, and the Agency public hearing record.

**Section 105.304      Petition Content Requirements**

The Illinois EPA is proposing the correction of typographical errors in Section 105.304.

**Section 105.410      Agency Record**

The Illinois EPA is proposing clarifying language in Section 105.410 regarding the Agency record.

**Section 105.412      Board Hearing**

The Illinois EPA is proposing clarifying language in Section 105.412 regarding the Agency record.

**Section 105.508      OSFM Record and Appearance**

The Illinois EPA is proposing clarifying language in Section 105.508 regarding the OSFM record.

**Section 105.600      Applicability**

The Illinois EPA is proposing the addition of Section 105.600 providing that 35 Ill. Adm. Code, Subpart F, PSD Permit Appeals, shall apply to Board proceedings for appeals of final PSD determinations.

**Section 105.602      Parties**

The Illinois EPA is proposing the addition of Section 105.602(a) identifying the petitioner in any petition for review of the Agency's final PSD decision.

The Illinois EPA is proposing the addition of Section 105.602(b) identifying the respondent in any petition for review of the Agency's final PSD decision.

**Section 105.604      Who May File a Petition for Review**

The Illinois EPA is proposing the addition of Section 105.604(a) to address the appeal rights of the applicant to the Board if the Agency refused to grant or grants with conditions a PSD permit.

The Illinois EPA is proposing the addition of Section 105.604(b) to address the appeal rights of the applicant to the Board if the Agency fails to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act.

The Illinois EPA is proposing the addition of Section 105.604(c) to address the appeal rights of any person who participated in the Agency public comment process for a PSD permit and is aggrieved or has an interest that may be adversely affected by the PSD permit.

**Section 105.606      Time to File Petition for Review**

The Illinois EPA is proposing the addition of Section 105.606(a) providing the deadline to file a petition for review of an Agency's final PSD decision with the Board.

The Illinois EPA is proposing the addition of Section 105.606(b) providing the deadline to file a petition for review of the Agency's failure to act on an application for a PSD permit within the applicable statutory deadline.

**Section 105.608      Petition Content Requirements**

The Illinois EPA is proposing the addition of Section 105.608(a) providing the content requirements for all petitions filed with the Board pursuant to 35 Ill. Adm. Code 105.604(a) or (c).

The Illinois EPA is proposing the addition of Section 105.608(b) providing the additional content requirements for all petitions filed with the Board pursuant to 35 Ill. Adm. Code 105.604(b).

The Illinois EPA is proposing the addition of Section 105.608(c) providing that for any petition filed with the Board pursuant to 35 Ill. Adm. Code 105.604(a) or (c), the petition may request a stay of the Agency's final PSD decision. Section 105.608(c) would set forth the content requirements for any such stay requests.

The Illinois EPA is proposing the addition of Section 105.608(d) providing additional content requirements for any stay request filed pursuant to 35 Ill. Adm. Code 105.604(c).

**Section 105.610      Board Standards for Granting Stays**

The Illinois EPA is proposing the addition of Section 105.610(a) addressing the standard for granting a stay requested by the permit applicant.

The Illinois EPA is proposing the addition of Section 105.610(b) addressing the standard for granting a stay requested by a party other than the permit applicant.



**Section 105.612      The Agency Record**

The Illinois EPA is proposing the addition of Section 105.612(a) providing that the Agency must file a copy of the entire record for its decision with the Board in accordance with 35 Ill. Adm. Code 105.116.

The Illinois EPA is proposing the addition of Section 105.612(b) addressing the content requirements of the Agency's record.

**Section 105.614      Board Hearing**

The Illinois EPA is proposing the addition of Section 105.614 addressing the requirements for any public hearing and decision of the Board in any PSD permit appeal.

The Illinois EPA is proposing the addition of Section 105.614(a) providing that the Board will not hold a hearing if the petition is disposed of by an appropriately filed motion for summary judgment.

The Illinois EPA is proposing the addition of Section 105.614(b) providing that the Board will not hold a hearing on a petition if the Board determines that the petition is frivolous or does not meet the content requirement of Section 105.608.

The Illinois EPA is proposing the addition of Section 105.614(c) providing that, in the event of a hearing in an appeal proceeding, the Board will provide notice required by 35 Ill. Adm. Code 101.602.

**Amendments to 35 Ill. Adm. Code Part 203, Major Stationary Sources Construction and Modification**

**Section 203.207      Major Modification of a Source**

The Illinois EPA is proposing to include a reference to Part 204 in Section 203.207(c)(5)(A).

The Illinois EPA is proposing to include a reference to Part 204 in Section 203.207(c)(6).

**Amendments to 35 Ill. Adm. Code Part 211, Definitions and General Provisions**

**Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)**

The Illinois EPA is proposing to remove outdated references and to update the references to both the PSD program and the NaNSR program in Section 211.7150(b).

**Amendments to 35 Ill. Adm. Code Part 215, Organic Material Emissions Standards and Limitations**

**Section 215.920 Applicability (Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes)**

The Illinois EPA is proposing to remove outdated references and to update the references to the PSD program in Section 215.920(d)(2).

**Section 215.940 Applicability (Subpart QQ: Miscellaneous Formulation Manufacturing Processes)**

The Illinois EPA is proposing to remove outdated references and to update the references to the PSD program in Section 215.940(d)(2).

**Section 215.960 Applicability (Subpart RR: Miscellaneous Organic Chemical Manufacturing Processes)**

The Illinois EPA is proposing to remove outdated references and to update the references to the PSD program in Section 215.960(d)(2).

**IX. CONCLUSION**

For the reasons stated above, the Illinois EPA hereby submits this regulatory proposal and requests the Board to adopt these regulations for the State of Illinois.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS**

**PART 204  
PREVENTION OF SIGNIFICANT DETERIORATION**

**SUBPART A: GENERAL PROVISIONS**

**Section**

204.100	Incorporations by Reference
204.110	Abbreviations and Acronyms
204.120	Severability

**SUBPART B: DEFINITIONS**

**Section**

204.200	Definitions
204.210	Actual Emissions
204.220	Adverse Impact on Visibility
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204.240	Baseline Actual Emissions
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204.260	Baseline Concentration
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204.280	Best Available Control Technology (BACT)
204.290	Building, Structure, Facility, or Installation
204.300	Clean Coal Technology
204.310	Clean Coal Technology Demonstration Project
204.320	Commence
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204.370	Emissions Unit
204.380	Excessive Concentration
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204.400	Federally Enforceable
204.410	Fugitive Emissions
204.420	Good Engineering Practice
204.430	Greenhouse Gases (GHGs)
204.440	High Terrain
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204.480	Low Terrain
204.490	Major Modification
204.500	Major Source Baseline Date
204.510	Major Stationary Source
204.520	Minor Source Baseline Date
204.530	Nearby
204.540	Necessary Preconstruction Approvals or Permits
204.550	Net Emissions Increase
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204.600	Projected Actual Emissions
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204.650	Secondary Emissions
204.660	Significant
204.670	Significant Emissions Increase
204.680	Stack in Existence
204.690	Stationary Source
204.700	Subject to Regulation
204.710	Temporary Clean Coal Technology Demonstration Project

**SUBPART C: MAJOR STATIONARY SOURCES IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

<b>Section</b>	
204.800	Applicability
204.810	Source Information
204.820	Source Obligation
204.830	Permit Expiration
204.840	Effect of Permits
204.850	Relaxation of a Source-Specific Limitation
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**SUBPART D: INCREMENT**

<b>Section</b>	
204.900	Ambient Air Increments
204.910	Ambient Air Ceilings
204.920	Restrictions on Area Classifications
204.930	Redesignation

**SUBPART E: STACK HEIGHTS**

**Section**

204.1000 Stack Heights

**SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

**Section**

204.1100 Control Technology Review

204.1110 Source Impact Analysis

204.1120 Air Quality Models

204.1130 Air Quality Analysis

204.1140 Additional Impact Analyses

**SUBPART G: ADDITIONAL REQUIREMENTS FOR CLASS I AREAS**

**Section**

204.1200 Additional Requirements for Sources Impacting Federal Class I Areas

**SUBPART H: GENERAL OBLIGATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**Section**

204.1300 Notification of Application Completeness to Applicants

204.1310 Transmittal of Application to USEPA

204.1320 Public Participation

204.1330 Issuance Within One Year of Submittal of Complete Application

204.1340 Permit Rescission

**SUBPART I: NONAPPLICABILITY RECORDKEEPING AND REPORTING**

**Section**

204.1400 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources

**SUBPART J: INNOVATIVE CONTROL TECHNOLOGY**

**Section**

204.1500 Innovative Control Technology

**SUBPART K: PLANTWIDE APPLICABILITY LIMITATIONS**

**Section**

204.1600 Applicability

204.1610 Definitions

204.1620 Actuals PAL

204.1630	Allowable Emissions
204.1640	Continuous Emissions Monitoring System (CEMS)
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204.1690	Plantwide Applicability Limitation (PAL)
204.1700	PAL Effective Date
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204.1880	Monitoring Requirements
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204.1900	Reporting and Notification Requirements
204.1910	Transition Requirements

AUTHORITY: Implementing Section 9.1 and 10 and authorized by Section 27 and 28 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, 27 and 28].

SOURCE: Adopted and codified at ....., effective ....., codified at .....

## **SUBPART A: GENERAL PROVISIONS**

### **Section 204.100 Incorporations by Reference**

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) 40 CFR Part 50 (2018)
- b) 40 CFR Part 51 (2018)
- c) 40 CFR Part 52 (2018)

- d) 40 CFR Part 53 (2018)
- e) 40 CFR Part 54 (2018)
- f) 40 CFR Part 55 (2018)
- g) 40 CFR Part 56 (2018)
- h) 40 CFR Part 57 (2018)
- i) 40 CFR Part 58 (2018)
- j) 40 CFR Part 59 (2018)
- k) 40 CFR Part 60 (2018)
- l) 40 CFR Part 61 (2018)
- m) 40 CFR Part 62 (2018)
- n) 40 CFR Part 63 (2018)
- o) 40 CFR Part 64 (2018)
- p) 40 CFR Part 65 (2018)
- q) 40 CFR Part 66 (2018)
- r) 40 CFR Part 67 (2018)
- s) 40 CFR Part 68 (2018)
- t) 40 CFR Part 69 (2018)
- u) 40 CFR Part 70 (2018)
- v) 40 CFR Part 71 (2018)
- w) 40 CFR Part 72 (2018)
- x) 40 CFR Part 73 (2018)
- y) 40 CFR Part 74 (2018)
- z) 40 CFR Part 75 (2018)
- aa) 40 CFR Part 76 (2018)
- bb) 40 CFR Part 77 (2018)
- cc) 40 CFR Part 78 (2018)
- dd) 40 CFR Part 79 (2018)
- ee) 40 CFR Part 80 (2018)
- ff) 40 CFR Part 81 (2018)
- gg) 40 CFR Part 82 (2018)
- hh) (Reserved)
- ii) (Reserved)
- jj) 40 CFR Part 85 (2018)
- kk) 40 CFR Part 86 (2018)
- ll) 40 CFR Part 87 (2018)
- mm) 40 CFR Part 88 (2018)
- nn) 40 CFR Part 89 (2018)
- oo) 40 CFR Part 90 (2018)
- pp) 40 CFR Part 91 (2018)
- qq) 40 CFR Part 92 (2018)
- rr) 40 CFR Part 93 (2018)
- ss) 40 CFR Part 94 (2018)
- tt) 40 CFR Part 95 (2018)
- uu) 40 CFR Part 96 (2018)
- vv) 40 CFR Part 97 (2018), excluding 40 CFR Part 97, Subpart FFFFF (2018)
- ww) 40 CFR Part 98 (2018)



xx) (Reserved)

**Section 204.110 Abbreviations and Acronyms**

The following abbreviations and acronyms are used in this Part:

$\mu\text{g}/\text{m}^3$	micrograms per cubic meter
Act	Illinois Environmental Protection Act
BACT	Best Available Control Technology
Board	Illinois Pollution Control Board
CAA	Clean Air Act
CAAPP	Clean Air Act Permit Program
CEMS	Continuous Emissions Monitoring System
CERMS	Continuous Emissions Rate Monitoring System
$\text{CO}_2$	carbon dioxide
$\text{CO}_2\text{e}$	carbon dioxide equivalent
CPMS	Continuous Parameter Monitoring System
GHG	Greenhouse Gas
$\text{H}_2\text{S}$	hydrogen sulfide
hr	hour
Illinois EPA	Illinois Environmental Protection Agency
LAER	Lowest Achievable Emission Rate
lbs	pounds
lb/hr	pounds per hour
MW	megawatts
NAAQS	National Ambient Air Quality Standards
NAICS	North American Industry Classification System
$\text{NO}_2$	nitrogen dioxide
$\text{NO}_x$	nitrogen oxides
NSPS	New Source Performance Standards
NSR	New Source Review
$\text{O}_2$	oxygen
PAL	Plantwide Applicability Limitation
PEMS	Predictive Emissions Monitoring System
PM	Particulate Matter
$\text{PM}_{2.5}$	Particulate Matter equal to or less than 2.5 microns in diameter (Fine Particulate Matter)
$\text{PM}_{10}$	Particulate Matter equal to or less than 10 microns in diameter
ppm	parts per million
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
SIP	State Implementation Plan
$\text{SO}_2$	sulfur dioxide
tpy	tons per year
TSP	total suspended particulates
US	United States

USEPA	United States Environmental Protection Agency
VOC	Volatile Organic Compound
VOM	Volatile Organic Material
yr	year

**Section 204.120 Severability**

If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SUBPART B: DEFINITIONS**

**Section 204.200 Definitions**

Unless otherwise specified in this Part, the definitions of the terms used in this Part shall be the same as those used in the Board Rules and Regulations at 35 Ill. Adm. Code Part 211.

**Section 204.210 Actual Emissions**

- a) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subsections (b) through (d) of this Section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subpart K. Instead, Sections 204.240 and 204.600 shall apply for those purposes.
- b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Illinois EPA shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- c) The Illinois EPA may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**Section 204.220 Adverse Impact on Visibility**

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the

Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

**Section 204.230 Allowable Emissions**

“Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a) The applicable standards as set forth in 40 CFR Parts 60, 61, 62 and 63;
- b) The applicable SIP emissions limitation, including those with a future compliance date; or
- c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**Section 204.240 Baseline Actual Emissions**

“Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (a) through (d) of this Section.

- a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Illinois EPA shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
  - 1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
  - 2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
  - 3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A

different consecutive 24-month period can be used for each regulated NSR pollutant.

- 4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (a)(2) of this Section.
- b)
- For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required under 40 CFR 52.21 or by the Illinois EPA for a permit required by the SIP, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
    - 1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
    - 2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
    - 3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. "Currently" in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the USEPA proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the Illinois EPA has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
    - 4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

- 5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsections (b)(2) and (b)(3).
- c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subsection (a) of this Section, for other existing emissions units in accordance with the procedures contained in subsection (b) of this Section, and for a new emissions unit in accordance with the procedures contained in subsection (c) of this Section.

**Section 204.250      Baseline Area**

- a) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1  $\mu\text{g}/\text{m}^3$  (annual average) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>; or equal to or greater than 0.3  $\mu\text{g}/\text{m}^3$  (annual average) for PM<sub>2.5</sub>.
- b) Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
  - 1) Establishes a minor source baseline date; or
  - 2) Is subject to this Part and would be constructed in the State proposing the redesignation.
- c) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the Illinois EPA rescinds the corresponding minor source baseline date in accordance with Section 204.520(c).

**Section 204.260      Baseline Concentration**

- a) "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:
  - 1) The actual emissions, as defined in Section 204.210, representative of sources in existence on the applicable minor source baseline date, except as provided in subsection (b) of this Section; and
  - 2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.
  
- b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
  - 1) Actual emissions, as defined in Section 204.210, from any major stationary source on which construction commenced after the major source baseline date. For a major stationary source in existence on the major source baseline date, "actual emissions" for the purposes of this subsection shall mean increases or decreases in actual emissions resulting from construction commencing after the major source baseline date; and
  - 2) Actual emissions increases and decreases, as defined in Section 204.210, at any stationary source occurring after the minor source baseline date.

**Section 204.270      Begin Actual Construction**

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**Section 204.280      Best Available Control Technology (BACT)**

"Best Available Control Technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Illinois EPA, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62

and 63. If the Illinois EPA determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**Section 204.290 Building, Structure, Facility, or Installation**

- a) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).
- b) Notwithstanding the provisions of subsection (a) of this Section, building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within  $\frac{1}{4}$  mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this subsection, has the same meaning as in 40 CFR 63.761.

**Section 204.300 Clean Coal Technology**

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of SO<sub>2</sub> or NO<sub>x</sub> associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

**Section 204.310 Clean Coal Technology Demonstration Project**

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy – Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects

funded through appropriations for the USEPA. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

**Section 204.320 Commence**

“Commence” as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**Section 204.330 Complete**

“Complete” means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

**Section 204.340 Construction**

“Construction” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**Section 204.350 Dispersion Technique**

- a) “Dispersion technique” means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
  - 1) Using that portion of a stack which exceeds good engineering practice stack height;
  - 2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - 3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.
- b) The preceding sentence in Section 204.350(a) does not include:



- 1) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the stationary source generating the gas stream;
- 2) The merging of exhaust gas streams where:
  - A) The source owner or operator demonstrates that the stationary source was originally designed and constructed with such merged gas streams;
  - B) After July 8, 1985 such merging is part of a change in operation at the stationary source that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques shall apply only to the emission limitation for the pollutant affected by such change in operation; or
  - C) Before July 8, 1985, such merging was part of a change in operation at the stationary source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Illinois EPA shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Illinois EPA shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
- 3) Smoke management in agricultural or silvicultural prescribed burning programs;
- 4) Episodic restrictions on residential wood burning and open burning; or
- 5) Techniques under subsection (a)(3) of this Section which increase final exhaust gas plume rise where the resulting allowable emissions of SO<sub>2</sub> from the stationary source do not exceed 5,000 tpy.

**Section 204.360 Electric Utility Steam Generating Unit**

“Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale.

Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**Section 204.370 Emissions Unit**

“Emissions unit” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in Section 204.360. For purposes of this Part, there are two types of emissions units as described in subsections (a) and (b) of this Section.

- a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.
- b) An existing emissions unit is any emissions unit that does not meet the requirements in subsection (a) of this Section. A replacement unit, as defined in Section 204.620, is an existing emissions unit.

**Section 204.380 Excessive Concentration**

“Excessive concentration” is defined for the purpose of determining good engineering practice stack height under Section 204.420(c) and means:

- a) For sources seeking credit for stack height exceeding that established under Section 204.420(b), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to this Part, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than an ambient air increment under Section 204.900. The allowable emission rate to be used in making demonstrations of excessive concentration shall be prescribed by the NSPS that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Illinois EPA, an alternative emission rate shall be established in consultation with the source owner or operator.
- b) For sources seeking credit for increases in existing stack heights up to the heights established under Section 204.420(b), either (i) a maximum ground-level

concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection (a) of this Section, except that the emission rate specified by the SIP (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the Illinois EPA; and

- c) For sources seeking credit for a stack height determined under Section 204.420(b) where the Illinois EPA requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit based on the aerodynamic influence of structures not adequately represented by the equations in Section 204.420(b), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

**Section 204.390 Federal Land Manager**

“Federal Land Manager” means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

**Section 204.400 Federally Enforceable**

“Federally enforceable” means all limitations and conditions which are enforceable by the USEPA, including those requirements developed pursuant to 40 CFR Parts 60, 61, 62 and 63, requirements within the SIP, any permit requirements established pursuant to 40 CFR 52.21 or this Part or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an USEPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

**Section 204.410 Fugitive Emissions**

“Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**Section 204.420 Good Engineering Practice**

“Good engineering practice,” with respect to stack height, means the greater of:

- a) 65 meters, measured from the ground-level elevation at the base of the stack;
- b) The following:
  - 1) For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits required under 40 CFR Part 52:

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

- 2) For all other stacks:

$$H_g = H + 1.5L$$

where:

$H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s) provided that the USEPA or Illinois EPA may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

- c) The height demonstrated by a fluid model or a field study approved by the USEPA or Illinois EPA, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.
- d) For purposes of this definition, "stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

#### **Section 204.430 Greenhouse Gases (GHGs)**

"Greenhouse gases (GHGs)" means the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: CO<sub>2</sub>, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To represent an amount of GHGs emitted, the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall be used and computed as follows:

- a) Multiply the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98—Global Warming Potentials.
- b) Sum the resultant value for each gas to compute a tpy CO<sub>2</sub>e.

#### **Section 204.440 High Terrain**

“High terrain” means any area having an elevation 900 feet or more above the base of the stack of a source.

**Section 204.450 Indian Reservation**

“Indian Reservation” means any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.

**Section 204.460 Indian Governing Body**

“Indian Governing Body” means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the US and recognized by the US as possessing power of self-government.

**Section 204.470 Innovative Control Technology**

“Innovative control technology” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

**Section 204.480 Low Terrain**

“Low terrain” means any area other than high terrain.

**Section 204.490 Major Modification**

- a) “Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in Section 204.670) of a regulated NSR pollutant (as defined in Section 204.610) other than GHGs (as defined in Section 204.430); and a significant net emissions increase of that pollutant from the major stationary source.
- b) Any significant emissions increase (as defined in Section 204.670) from any emissions units or net emissions increase (as defined in Section 204.550) at a major stationary source that is significant for VOM or NO<sub>x</sub> shall be considered significant for ozone.
- c) A physical change or change in the method of operation shall not include:
  - 1) Routine maintenance, repair and replacement;
  - 2) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental

- Coordination Act of 1974 (15 U.S.C. 791) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791);
- 3) Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA (42 U.S.C. 7425);
  - 4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
  - 5) Use of an alternative fuel or raw material by a stationary source which:
    - A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or this Part; or
    - B) The source is approved to use under any permit issued under 40 CFR 52.21 or this Part;
  - 6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or this Part;
  - 7) Any change in ownership at a stationary source;
  - 8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
    - A) The Illinois' SIP, and
    - B) Other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated; or
  - 9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.
- d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Subpart K for a PAL for that pollutant. Instead, the definition at Section 204.1720 shall apply.

**Section 204.500 Major Source Baseline Date**

“Major source baseline date” means:

- a) In the case of PM<sub>10</sub> and SO<sub>2</sub>, January 6, 1975;
- b) In the case of NO<sub>2</sub>, February 8, 1988; and
- c) In the case of PM<sub>2.5</sub>, October 20, 2010.

**Section 204.510 Major Stationary Source**

a) “Major stationary source” means:

- 1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tpy or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;
- 2) Notwithstanding the stationary source size specified in subsection (a)(1) of this Section, any stationary source which emits, or has the potential to emit, 250 tpy or more of a regulated NSR pollutant (except GHGs as defined in 204.430); or
- 3) Any physical change that would occur at a stationary source not otherwise qualifying under this Section, as a major stationary source, if the changes would constitute a major stationary source by itself.

b) A major source that is major for VOM or NO<sub>x</sub> shall be considered major for ozone.

- c) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
- 1) Coal cleaning plants (with thermal dryers);
  - 2) Kraft pulp mills;
  - 3) Portland cement plants;
  - 4) Primary zinc smelters;
  - 5) Iron and steel mills;
  - 6) Primary aluminum ore reduction plants;
  - 7) Primary copper smelters;
  - 8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
  - 9) Hydrofluoric, sulfuric, or nitric acid plants;
  - 10) Petroleum refineries;
  - 11) Lime plants;
  - 12) Phosphate rock processing plants;
  - 13) Coke oven batteries;
  - 14) Sulfur recovery plants;
  - 15) Carbon black plants (furnace process);
  - 16) Primary lead smelters;
  - 17) Fuel conversion plants;
  - 18) Sintering plants;
  - 19) Secondary metal production plants;
  - 20) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
  - 21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - 22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - 23) Taconite ore processing plants;
  - 24) Glass fiber processing plants;
  - 25) Charcoal production plants;
  - 26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
  - 27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA.

**Section 204.520 Minor Source Baseline Date**

- a) “Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21



or this Part submits a complete application under the relevant regulations. The trigger date is:

- 1) In the case of PM<sub>10</sub> and SO<sub>2</sub>, August 7, 1977;
  - 2) In the case of NO<sub>2</sub>, February 8, 1988; and
  - 3) In the case of PM<sub>2.5</sub>, October 20, 2011.
- b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
- 1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) for the pollutant on the date of its complete application under 40 CFR 52.21 or this Part; and
  - 2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- c) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the Illinois EPA shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Illinois EPA, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

**Section 204.530      Nearby**

“Nearby,” with respect to a specific structure or terrain feature:

- a) For purposes of applying the formulae provided in Section 204.420(b) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and
- b) For conducting demonstrations under Section 204.420(c) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40 percent of the good engineering practice stack height determined by the formula provided in Section 204.420(b)(2) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of

the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

**Section 204.540 Necessary Preconstruction Approvals or Permits**

“Necessary preconstruction approvals or permits” mean those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable SIP.

**Section 204.550 Net Emissions Increase**

- a) “Net emissions increase” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
  - 1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Section 204.800(d); and
  - 2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subsection shall be determined as provided in Section 204.240, except that Sections 204.240(a)(3) and 204.240(b)(4) shall not apply.
- b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
  - 1) The date five years before construction on the particular change commences; and
  - 2) The date that the increase from the particular change occurs.
  - 3) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under 40 CFR 52.21 or this Part, which permit is in effect when the increase in actual emissions from the particular change occurs.
- c) An increase or decrease in actual emissions of SO<sub>2</sub>, PM, or NO<sub>x</sub> that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

- e) A decrease in actual emissions is creditable only to the extent that:
  - 1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
  - 2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and
  - 3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any emissions unit that replaces an existing emissions unit that requires shakedown, becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- g) Subsection 204.210(b) shall not apply for determining creditable increases and decreases.

**Section 204.560 Potential to Emit**

“Potential to emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by a state or local air pollution control agency. Secondary emissions do not count in determining the potential to emit of a stationary source.

**Section 204.570 Prevention of Significant Deterioration (PSD) Permit**

“Prevention of Significant Deterioration (PSD) Permit” means *a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois EPA under the construction permit program pursuant to Section 9.1(c) of the Act that has been approved by the USEPA and incorporated into the Illinois SIP to implement the requirements of Section 165 of the CAA and 40 CFR 51.166.*

**Section 204.580 Process Unit**

“Process unit” means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. A process unit may contain more than one emissions unit.

**Section 204.590 Project**

“Project” means a physical change in, or change in the method of operation of, an existing major stationary source.

**Section 204.600 Projected Actual Emissions**

- a) “Projected actual emissions” means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.
- b) In determining the projected actual emissions under subsection (a) of this Section (before beginning actual construction), the owner or operator of the major stationary source:
  - 1) Shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the State or Federal regulatory authorities, and compliance plans under Illinois’ SIP; and
  - 2) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
  - 3) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Section 204.240 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
  - 4) In lieu of using the method set out in subsections (b)(1) through (b)(3) of this Section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Section 204.560.

**Section 204.610 Regulated NSR Pollutant**

“Regulated NSR pollutant” means the following:

- a) Any pollutant for which a NAAQS has been promulgated. This includes, but is not limited to, the following:
  - 1) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity, which condense to form PM at ambient temperatures. On or after January 1, 2011, such condensable PM shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable PM unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable PM shall not be considered in violation of this Part unless the applicable implementation plan required condensable PM to be included.
  - 2) Any pollutant identified under this subsection as a constituent or precursor for a pollutant for which a NAAQS has been promulgated. Precursors for purposes of this Part are the following:
    - A) VOM and NO<sub>x</sub> are precursors to ozone in all attainment and unclassifiable areas.
    - B) SO<sub>2</sub> is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas.
    - C) NO<sub>x</sub> are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of NO<sub>x</sub> from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
    - D) VOM are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the State demonstrates to the satisfaction of the USEPA or the USEPA demonstrates that emissions of VOM from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
- b) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA (42 U.S.C. 7401);
- c) Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA (42 U.S.C. 7671, et seq.);
- d) Any pollutant that otherwise is subject to regulation as defined in Section 204.700.

- e) Notwithstanding subsections (a) through (d) of this Section, the term “regulated NSR pollutant” shall not include any or all hazardous air pollutants either listed in Section 112(b)(1) of the CAA (42 U.S.C. 7412(b)(1)), or added to the list pursuant to Section 112(b)(2) or (b)(3) of the CAA (42 U.S.C. 7412(b)(2) or (b)(3)) or substances listed pursuant to Section 112(r)(3) of the CAA (42 U.S.C. 7412(r)(3)), and which have not been delisted pursuant to Section 112(b)(3) or (r) of the CAA (42 U.S.C. 7412 (b)(3) or (r)), unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a pollutant listed under Section 108 of the CAA (42 U.S.C. 7408).

**Section 204.620 Replacement Unit**

“Replacement unit” means an emissions unit for which all the criteria listed in subsections (a) through (d) of this Section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

- a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- c) The replacement does not alter the basic design parameter(s) of the process unit. Basic design parameters of a process unit shall be determined as follows:
  - 1) Except as provided in subsection (c)(3) of this Section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.
  - 2) Except as provided in subsection (c)(3) of this Section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

- 3) If the owner or operator believes the basic design parameter(s) in subsections (c)(1) and (c)(2) of this Section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Illinois EPA an alternative basic design parameter(s) for the source's process unit(s). If the Illinois EPA approves of the use of an alternative basic design parameter(s), the Illinois EPA shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).
  - 4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in subsections (c)(2) and (c)(3) of this Section.
  - 5) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
  - 6) Efficiency of a process unit is not a basic design parameter.
- d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**Section 204.630 Repowering**

- a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the USEPA, in consultation with the US Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
- b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the US Department of Energy.

- c) The Illinois EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this Section and is granted an extension under Section 409 of the CAA (42 U.S.C. 7651h).

**Section 204.640      Reviewing Authority**

“Reviewing authority” means the Illinois EPA or, in the case of a permit program under 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA.

**Section 204.650      Secondary Emissions**

“Secondary emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. For the purposes of this Part, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions.

**Section 204.660      Significant**

- a) “Significant” means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tpy
NO <sub>x</sub>	40 tpy
SO <sub>2</sub>	40 tpy
PM	25 tpy of particulate matter emissions
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of SO <sub>2</sub> emissions; 40 tpy of NO <sub>x</sub> emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under Section 204.610(a)(2)(C)
Ozone	40 tpy of VOM or NO <sub>x</sub>
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy



Total reduced sulfur (including H <sub>2</sub> S):	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S):	10 tpy
GHGs	75,000 tpy CO <sub>2</sub> e
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo- <i>p</i> -dioxins and dibenzofurans):	3.2 × 10 <sup>-6</sup> megagrams per year (3.5 × 10 <sup>-6</sup> tpy)
Municipal waste combustor metals (measured as PM):	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as SO <sub>2</sub> and hydrogen chloride):	36 megagrams per year (40 tpy)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds):	45 megagrams per year (50 tpy)
Ozone depleting substances:	100 tpy

- b) “Significant” means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subsection (a) of this Section, does not list, any emissions rate.
- c) Notwithstanding subsection (a) of this Section, “significant” means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hr average).

**Section 204.670 Significant Emissions Increase**

“Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in Section 204.660) for that pollutant.

**Section 204.680 Stack in Existence**

“Stack in existence” means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without

substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

**Section 204.690 Stationary Source**

“Stationary source” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the CAA (42 U.S.C. 7550) are not a part of a stationary source.

**Section 204.700 Subject to Regulation**

“Subject to regulation” means, for any air pollutant, that the pollutant is subject to either a provision in the CAA, or a nationally-applicable regulation codified by the USEPA in 40 CFR Parts 50 through 99, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, GHGs as defined in Section 204.430.

**Section 204.710 Temporary Clean Coal Technology Demonstration Project**

“Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Illinois’ SIP and other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated.

**SUBPART C: MAJOR STATIONARY SOURCES IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

**Section 204.800 Applicability**

- a) The requirements of this Part apply to the construction of any new major stationary source (as defined in Section 204.510) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)).
- b) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Part otherwise provides.
- c) No new major stationary source or major modification to which the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply shall begin actual construction without a permit that states that the major stationary source or major

modification will meet those requirements. The Illinois EPA has authority to issue any such permit.

- d) The requirements of the program will be applied in accordance with the principles set out in subsections (d)(1) through (d)(5) of this Section.
- 1) Except as otherwise provided in subsection (e) of this Section, and consistent with the definition of major modification contained in Section 204.490, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in Section 204.670), and a significant net emissions increase (as defined in Sections 204.550 and 204.660). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
  - 2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type(s) of emissions units involved in the project, according to subsections (d)(3) through (d)(5) of this Section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Section 204.550. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
  - 3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Section 204.600) and the baseline actual emissions (as defined in Section 204.240(a) and (b)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).
  - 4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Section 204.560) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Section 204.240(c)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).

- 5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subsections (d)(3) and (d)(4) of this Section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660).
- e) Except as otherwise provided in Section 204.1400(f)(2), the provisions of Section 204.1400 apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Section 204.1400(f), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions.
- f) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Subpart K.

#### **Section 204.810 Source Information**

The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

- a) With respect to a source or modification to which Sections 204.810, 204.1100, 204.1120, and 204.1200 apply, such information shall include:
  - 1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
  - 2) A detailed schedule for construction of the source or modification; and
  - 3) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information as necessary to determine that BACT, as applicable, would be applied.
- b) Upon request of the Illinois EPA, the owner or operator shall also provide information on:
  - 1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

- 2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

**Section 204.820 Source Obligation**

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who begins actual construction after the effective date of this Part without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

**Section 204.830 Permit Expiration**

Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Illinois EPA may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

**Section 204.840 Effect of Permits**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, State, or Federal law.

**Section 204.850 Relaxation of a Source-Specific Limitation**

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**Section 204.860 Exemptions**

- a) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall not apply to a particular major stationary source or major modification, if:

- 1) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution and the Governor of Illinois exempts it from those requirements; or
- 2) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:
  - A) Coal cleaning plants (with thermal dryers);
  - B) Kraft pulp mills;
  - C) Portland cement plants;
  - D) Primary zinc smelters;
  - E) Iron and steel mills;
  - F) Primary aluminum ore reduction plants;
  - G) Primary copper smelters;
  - H) Municipal incinerators capable of charging more than 250 tons of refuse per day;
  - I) Hydrofluoric, sulfuric, or nitric acid plants;
  - J) Petroleum refineries;
  - K) Lime plants;
  - L) Phosphate rock processing plants;
  - M) Coke oven batteries;
  - N) Sulfur recovery plants;
  - O) Carbon black plants (furnace process);
  - P) Primary lead smelters;
  - Q) Fuel conversion plants;

- R) Sintering plants;
  - S) Secondary metal production plants;
  - T) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
  - U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - W) Taconite ore processing plants;
  - X) Glass fiber processing plants;
  - Y) Charcoal production plants;
  - Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
  - AA) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 7412); or
- 3) The source is a portable stationary source which has previously received a permit under 40 CFR 52.21 or this Part, and
- A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;
  - B) The emissions from the source would not exceed its allowable emissions;
  - C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
  - D) Reasonable notice is given to the Illinois EPA prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Illinois EPA not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Illinois EPA.

- b) The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the CAA (42 U.S.C. 7407). Nonattainment designations for revoked NAAQS, as contained in 40 CFR Part 81, shall not be viewed as current designations under Section 107 of the CAA (42 U.S.C. 7407) for purposes of determining the applicability of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 to a major stationary source or major modification after the revocation of that NAAQS is effective.
- c) The requirements of Sections 204.1110, 204.1130, and 204.1140 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:
  - 1) Would impact no Class I area and no area where an applicable increment is known to be violated, and
  - 2) Would be temporary.
- d) The requirements of Sections 204.1110, 204.1130, and 204.1140 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than 50 tpy.

**SUBPART D: INCREMENT**

**Section 204.900 Ambient Air Increments**

In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
<b>Class I Area</b>	
<b>PM<sub>2.5</sub>:</b>	
Annual arithmetic mean	1
24-hr maximum	2
<b>PM<sub>10</sub>:</b>	
Annual arithmetic mean	4



24-hr maximum	8
SO <sub>2</sub> :	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
NO <sub>2</sub> :	
Annual arithmetic mean	2.5
Class II Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean	4
24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
SO <sub>2</sub> :	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
NO <sub>2</sub> :	
Annual arithmetic mean	25
Class III Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean	8
24-hr maximum	18
PM <sub>10</sub> :	
Annual arithmetic mean	34
24-hr maximum	60
SO <sub>2</sub> :	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
NO <sub>2</sub> :	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

**Section 204.910      Ambient Air Ceilings**

No concentration of a pollutant shall exceed:

- a)      The concentration permitted under the national secondary ambient air quality standard, or

- b) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

**Section 204.920      Restrictions on Area Classifications**

- a) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:
  - 1) International parks,
  - 2) National wilderness areas which exceed 5,000 acres in size,
  - 3) National memorial parks which exceed 5,000 acres in size, and
  - 4) National parks which exceed 6,000 acres in size.
- b) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Part.
- c) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Part.
- d) The following areas may be redesignated only as Class I or II:
  - 1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
  - 2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

**Section 204.930      Redesignation**

- a) As of the initial effective date of 35 Ill. Adm. Code 204, all areas of the State (except as otherwise provided under Section 204.920) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by Section 204.920) may be proposed by the State or Indian Governing Bodies, as provided below, subject to approval by the USEPA as a revision to the applicable SIP.
- b) The State may submit to the USEPA a proposal to redesignate areas of the State Class I or Class II provided that:

- 1) At least one public hearing has been held in accordance with procedures established in 35 Ill. Adm. Code Part 252;
  - 2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;
  - 3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;
  - 4) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and
  - 5) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- c) Any area other than an area to which Section 204.920 refers may be redesignated as Class III if—
- 1) The redesignation would meet the requirements of subsection (b) of this Section;
  - 2) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of Illinois, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

- 3) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any NAAQS; and
  - 4) Any permit application for any major stationary source or major modification, subject to review under Section 204.1120 which could receive a permit under this Section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.
- d) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the USEPA a proposal to redesignate areas Class I, Class II, or Class III provided that:
- 1) The Indian Governing Body has followed procedures equivalent to those required of a State under subsections (b), (c)(3), and (c)(4) of this Section; and
  - 2) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.
- e) The USEPA shall disapprove, within 90 days of submission, a proposed redesignation of any area only if it finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this Section or is inconsistent with Section 204.920. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.
- f) If the USEPA disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the USEPA.

#### **SUBPART E: STACK HEIGHTS**

##### **Section 204.1000 Stack Heights**

- a) The degree of emission limitation required for control of any air pollutant under this Part shall not be affected in any manner by:
  - 1) So much of the stack height of any source as exceeds good engineering practice, or

- 2) Any other dispersion technique.
- b) Subsection (a) of this Section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

**SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

**Section 204.1100 Control Technology Review**

- a) A major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61, 62 and 63.
- b) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.
- c) A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
- d) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

**Section 204.1110 Source Impact Analysis**

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

- a) Any NAAQS in any air quality control region; or
- b) Any applicable maximum allowable increase over the baseline concentration in any area.

**Section 204.1120 Air Quality Models**

- a) All estimates of ambient concentrations required under this Section shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models).
- b) Where an air quality model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the USEPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 35 Ill. Adm. Code Part 252.

**Section 204.1130 Air Quality Analysis**

- a) Preapplication analysis.
  - 1) Any application for a permit under this Part shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:
    - A) For the source, each pollutant that it would have the potential to emit in a significant amount;
    - B) For the modification, each pollutant for which it would result in a significant net emissions increase.
  - 2) With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Illinois EPA determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.
  - 3) With respect to any such pollutant for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
  - 4) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Illinois EPA determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

- 5) The owner or operator of a proposed stationary source or modification of VOM who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.
- b) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Illinois EPA determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.
- c) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this Section.

**Section 204.1140 Additional Impact Analyses**

- a) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
- b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

**SUBPART G: ADDITIONAL REQUIREMENTS FOR CLASS I AREAS**

**Section 204.1200 Additional Requirements for Sources Impacting Federal Class I Areas**

- a) Notice to Federal Land Managers. The Illinois EPA shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Illinois EPA shall also provide the Federal Land Manager and such Federal officials with a copy of the preliminary determination required under 35 Ill. Adm. Code Part 252, and shall make available to them any materials used in making that determination, promptly after the Illinois EPA makes such determination. Finally, the Illinois EPA shall also notify all affected Federal Land Managers

within 30 days of receipt of any advance notification of any such permit application.

- b) **Federal Land Manager.** The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Illinois EPA, whether a proposed source or modification will have an adverse impact on such values.
- c) **Visibility analysis.** The Illinois EPA shall consider any analysis performed by the Federal Land Manager, provided within 30 days of the notification required by subsection (a) of this Section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Illinois EPA finds that such an analysis does not demonstrate to the satisfaction of the Illinois EPA that an adverse impact on visibility will result in the Federal Class I area, the Illinois EPA must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.
- d) **Denial—impact on air quality related values.** The Federal Land Manager of any such lands may demonstrate to the Illinois EPA that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Illinois EPA concurs with such demonstration, then it shall not issue the permit.
- e) **Class I variances.** The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Illinois EPA may, provided that the applicable requirements of this Part are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of SO<sub>2</sub>, PM<sub>2.5</sub>, PM<sub>10</sub>, and NO<sub>x</sub> would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM <sub>2.5</sub> : Annual arithmetic mean	4



24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
SO <sub>2</sub> :	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
NO <sub>2</sub> :	
Annual arithmetic mean	25

- f) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (e) of this Section may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for SO<sub>2</sub> for a period of 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Illinois EPA shall issue a permit to such source or modification pursuant to the requirements of subsection (h) of this Section, provided that the applicable requirements of this Part are otherwise met.
- g) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Illinois EPA shall issue a permit pursuant to the requirements of subsection (h) of this Section, provided that the applicable requirements of this Part are otherwise met.
- h) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (f) or (g) of this Section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of SO<sub>2</sub> from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE [Micrograms per cubic meter]		
Period of exposure		
	Low Terrain	High Terrain
24-hr maximum	36	62
3-hr maximum	130	221

**SUBPART H: GENERAL OBLIGATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**Section 204.1300 Notification of Application Completeness to Applicants**

The Illinois EPA shall notify the applicant within 30 days of receipt as to the completeness of an application for a permit pursuant to this Part or any deficiency in the application or information submitted in such an application. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Illinois EPA received all required information.

**Section 204.1310 Transmittal of Application to USEPA**

The Illinois EPA shall transmit to the USEPA a copy of each permit application submitted pursuant to this Part relating to a major stationary source or a major modification.

**Section 204.1320 Public Participation**

Prior to the initial issuance of a permit pursuant to this Part or a modification of a permit issued pursuant to this Part, the Illinois EPA shall provide, at a minimum, notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing pursuant to the Illinois EPA's public participation procedures set forth at 35 Ill. Adm. Code Part 252.

**Section 204.1330 Issuance Within One Year of Submittal of Complete Application**

Within one year after receipt of a complete application, a permit shall be granted or denied by the Illinois EPA.

**Section 204.1340 Permit Rescission**

- a) Any permit issued under this Part or a prior version of this Part shall remain in effect, unless and until it expires under Section 204.830 or is rescinded under this Section.
- b) An owner or operator of a stationary source or modification who holds a permit issued under this Part or 40 CFR 52.21 for the construction of a new source or modification that meets the requirement in subsection (c) may request that the Illinois EPA rescind the permit or a particular portion of the permit.

- c) The Illinois EPA may grant an application for rescission if the application shows that this Part would not apply to the source or modification.
- d) If the Illinois EPA rescinds a permit under this Section, the Illinois EPA shall post a notice of the rescission determination on a public web site identified by the Illinois EPA within 60 days of the rescission.

#### **SUBPART I: NONAPPLICABILITY RECORDKEEPING AND REPORTING**

##### **Section 204.1400 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources**

Except as otherwise provided in subsection (f)(2) of this Section, the provisions of this Section apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions unit(s) at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (f) of this Section, that a project that is not a major modification for the pollutant may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions.

- a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
  - 1) A description of the project;
  - 2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
  - 3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Section 204.600(b)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (a) of this Section to the Illinois EPA. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Illinois EPA before beginning actual construction.
- c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (a)(2) of this Section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a

period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.

- d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA within 60 days after the end of each year during which records must be generated under subsection (c) of this Section setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA if the annual emissions, in tons per year, from the project identified in subsection (a) of this Section, exceed the baseline actual emissions (as documented and maintained pursuant to subsection (a)(3) of this Section), by a significant amount (as defined in Section 204.660) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subsection (a)(3) of this Section. Such report shall be submitted to the Illinois EPA within 60 days after the end of such year. The report shall contain the following:
  - 1) The name, address and telephone number of the major stationary source;
  - 2) The annual emissions as calculated pursuant to subsection (c) of this Section; and
  - 3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- f) A "reasonable possibility" under this Section occurs when the owner or operator calculates the project to result in either:
  - 1) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
  - 2) A projected actual emissions increase that, added to the amount of emissions excluded under Section 204.600(b)(3), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Section 204.670 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subsection (f)(2), and not also within the meaning of subsection

(f)(1) of this Section, then subsections (b) through (e) of this Section do not apply to the project.

- g) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the Illinois EPA or USEPA or the general public pursuant to the requirements contained in Section 39.5(8)(e) of the Act.

#### **SUBPART J: INNOVATIVE CONTROL TECHNOLOGY**

##### **Section 204.1500 Innovative Control Technology**

- a) An owner or operator of a proposed major stationary source or major modification may request the Illinois EPA in writing no later than the close of the comment period under 35 Ill. Adm. Code Part 252 to approve a system of innovative control technology.
- b) The Illinois EPA shall, with the consent of the Governor, determine that the source or modification may employ a system of innovative control technology, if:
  - 1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
  - 2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 204.1100(b), by a date specified by the Illinois EPA. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;
  - 3) The source or modification would meet the requirements of Sections 204.1100 and 204.1110, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Illinois EPA;
  - 4) The source or modification would not before the date specified by the Illinois EPA:
    - A) Cause or contribute to a violation of an applicable NAAQS; or
    - B) Impact any area where an applicable increment is known to be violated; and
  - 5) All other applicable requirements including those for public participation have been met.

- 6) The provisions of Section 204.1200 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.
- c) The Illinois EPA shall withdraw any approval to employ a system of innovative control technology made under this Section, if:
  - 1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
  - 2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
  - 3) The Illinois EPA decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.
- d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (c) of this Section, the Illinois EPA may allow the source or modification up to an additional 3 years to meet the requirement for the application of BACT through use of a demonstrated system of control.

#### **SUBPART K: PLANTWIDE APPLICABILITY LIMITATION**

##### **Section 204.1600      Applicability**

- a) The Illinois EPA may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this Subpart. The term "PAL" shall mean "actuals PAL" throughout this Subpart.
- b) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in this Subpart, and complies with the PAL permit:
  - 1) Is not a major modification for the PAL pollutant;
  - 2) Does not have to be approved through the major NSR program; and
  - 3) Is not subject to the provisions in Section 204.850 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).
- c) Except as provided under subsection (b)(2) of this Section, a major stationary source shall continue to comply with all applicable Federal or State requirements,

emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

**Section 204.1610 Definitions**

For the purposes of this Subpart, the definitions in Sections 204.1620 through 204.1780 apply. When a term is not defined in these sections, it shall have the meaning given in this Part, Part 211, or in the CAA.

**Section 204.1620 Actuals PAL**

“Actuals PAL” for a major stationary source means a PAL based on the baseline actual emissions (as defined in Section 204.240) of all emissions units (as defined in Section 204.370) at the source, that emit or have the potential to emit the PAL pollutant.

**Section 204.1630 Allowable Emissions**

“Allowable emissions” means “allowable emissions” as defined in Section 204.230, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

**Section 204.1640 Continuous Emissions Monitoring System (CEMS)**

“Continuous emissions monitoring system” or “CEMS” means all of the equipment that may be required to meet the data acquisition and availability requirements of this Part, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**Section 204.1650 Continuous Emissions Rate Monitoring System (CERMS)**

“Continuous emissions rate monitoring system” or “CERMS” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**Section 204.1660 Continuous Parameter Monitoring System (CPMS)**

“Continuous parameter monitoring system” or “CPMS” means all of the equipment necessary to meet the data acquisition and availability requirements of this Part to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

**Section 204.1670 Lowest Achievable Emission Rate (LAER)**

“Lowest achievable emission rate” or “LAER” shall have the meaning given by the provisions at 35 Ill. Adm. Code 203.301(a).

**Section 204.1680 Major Emissions Unit**

“Major emissions unit” means any emissions unit that emits or has the potential to emit 100 tpy or more of the PAL pollutant in an attainment area.

**Section 204.1690 Plantwide Applicability Limitation (PAL)**

Plantwide applicability limitation” or (“PAL”) means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG emission limitation for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subpart.

**Section 204.1700 PAL Effective Date**

“PAL effective date” generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

**Section 204.1710 PAL Effective Period**

“PAL effective period” means the period beginning with the PAL effective date and ending 10 years later.

**Section 204.1720 PAL Major Modification**

“PAL major modification” means, notwithstanding Sections 204.490 and 204.550 (the definitions for major modification, and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

**Section 204.1730 PAL Permit**

“PAL permit” means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the SIP, or the CAAPP permit issued by the Illinois EPA that establishes a PAL for a major stationary source.

**Section 204.1740 PAL Pollutant**

“PAL pollutant” means the pollutant for which a PAL is established at a major stationary source.

**Section 204.1750 Predictive Emissions Monitoring System (PEMS)**

“Predictive emissions monitoring system” or “PEMS” means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or



CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**Section 204.1760 Reasonably Achievable Control Technology (RACT)**

“Reasonably Achievable Control Technology” or “RACT” means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

- a) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;
- b) The social, environmental, and economic impact of such controls; and
- c) Alternative means of providing for attainment and maintenance of such standard.

**Section 204.1770 Significant Emissions Unit**

“Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Section 204.660 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Section 204.1680.

**Section 204.1780 Small Emissions Unit**

“Small emissions unit” means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Section 204.660 or in the CAA, whichever is lower.

**Section 204.1790 Permit Application Requirements**

As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Illinois EPA for approval:

- a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.
- b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.
- c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and

annual emissions based on a 12-month rolling total for each month as required by Section 204.1890(a).

**Section 204.1800 General Requirements for Establishing PAL**

- a) The Illinois EPA is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in this Section are met.
- 1) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG PAL, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
  - 2) The PAL shall be established in a PAL permit that meets the public participation requirements in Section 204.1810.
  - 3) The PAL permit shall contain all the requirements of Section 204.1830.
  - 4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
  - 5) Each PAL shall regulate emissions of only one pollutant.
  - 6) Each PAL shall have a PAL effective period of 10 years.
  - 7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Sections 204.1880 through 204.1900 for each emissions unit under the PAL through the PAL effective period.
- b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets pursuant to 35 Ill. Adm. Code Part 203 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**Section 204.1810 Public Participation Requirements**

PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 35 Ill. Adm. Code Part 252. This includes the requirement that the Illinois EPA provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Illinois EPA must address all material comments before taking final action on the permit.

**Section 204.1820      Setting the 10-Year Actuals PAL Level**

- a)      Except as provided in subsection (b) of this Section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in Section 204.240) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under Section 204.660 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Illinois EPA shall specify a reduced PAL level(s) in tons per year (or tons per year CO<sub>2</sub>e for a GHG PAL) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Illinois EPA is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
  
- b)      For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (a) of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

**Section 204.1830      Contents of the PAL Permit**

- a)      The PAL permit must contain, at a minimum, the information in subsections (a)(1) through (10) of this Section.
  - 1)      The PAL pollutant and the applicable source-wide emission limitation in tons per year, or tons per year CO<sub>2</sub>e for a GHG PAL.
  - 2)      The PAL permit effective date and the expiration date of the PAL (PAL effective period).

- 3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Section 204.1860 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Illinois EPA.
- 4) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
- 5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Section 204.1850.
- 6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by Section 204.1890(a).
- 7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Section 204.1880.
- 8) A requirement to retain the records required under Section 204.1890 on site. Such records may be retained in an electronic format.
- 9) A requirement to submit the reports required under Section 204.1900 by the required deadlines.
- 10) Any other requirements that the Illinois EPA deems necessary to implement and enforce the PAL.

**Section 204.1840 Effective Period and Reopening a PAL Permit**

The requirements in subsections (a) and (b) of this Section apply to actuals PALs.

- a) PAL effective period. The Illinois EPA shall specify a PAL effective period of 10 years.
- b) Reopening of the PAL permit.
  - 1) During the PAL effective period, the Illinois EPA must reopen the PAL permit to:
    - A) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

- B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets pursuant to 35 Ill. Adm. Code Part 203; and
  - C) Revise the PAL to reflect an increase in the PAL as provided under Section 204.1870.
- 2) The Illinois EPA shall have discretion to reopen the PAL permit for the following:
- A) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;
  - B) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Illinois EPA may impose on the major stationary source under the SIP; and
  - C) Reduce the PAL if the Illinois EPA determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
- c) Except for the permit reopening in subsection (b)(1)(A) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Section 204.1810.

**Section 204.1850 Expiration of a PAL**

Any PAL that is not renewed in accordance with the procedures in Section 204.1860 shall expire at the end of the PAL effective period, and the requirements in this Section shall apply.

- a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subsections (a)(1) and (2) of this Section.
  - 1) Within the time frame specified for PAL renewals in Section 204.1860(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Illinois EPA) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL

had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Section 204.1860(e), such distribution shall be made as if the PAL had been adjusted.

- 2) The Illinois EPA shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Illinois EPA determines is appropriate.
- b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Illinois EPA may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
- c) Until the Illinois EPA issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (a)(2) of this Section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
- d) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in Section 204.490.
- e) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Section 204.850, but were eliminated by the PAL in accordance with the provisions in Section 204.1600(b)(3).

**Section 204.1860      Renewal of a PAL**

- a) The Illinois EPA shall follow the procedures specified in Section 204.1810 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Illinois EPA.
- b) Application deadline. A major stationary source owner or operator shall submit a timely application to the Illinois EPA to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application

submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

- c) Application requirements. The application to renew a PAL permit shall contain the information required in subsections (c)(1) through (4) of this Section.
  - 1) The information required in Section 204.1790(a) through (c).
  - 2) A proposed PAL level.
  - 3) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
  - 4) Any other information the owner or operator wishes the Illinois EPA to consider in determining the appropriate level for renewing the PAL.
  
- d) PAL adjustment. In determining whether and how to adjust the PAL, the Illinois EPA shall consider the options outlined in subsections (d)(1) and (2) of this Section. However, in no case may any such adjustment fail to comply with subsection (d)(3) of this Section.
  - 1) If the emissions level calculated in accordance with Section 204.1820 is equal to or greater than 80 percent of the PAL level, the Illinois EPA may renew the PAL at the same level without considering the factors set forth in subsection (d)(2) of this Section; or
  - 2) The Illinois EPA may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Illinois EPA in its written rationale.
  - 3) Notwithstanding subsections (d)(1) and (2) of this Section:
    - A) If the potential to emit of the major stationary source is less than the PAL, the Illinois EPA shall adjust the PAL to a level no greater than the potential to emit of the source; and
    - B) The Illinois EPA shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Section 204.1870 (increasing a PAL).

- e) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Illinois EPA has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or CAAPP permit renewal, whichever occurs first.

**Section 204.1870 Increasing the PAL During the PAL Effective Period**

- a) The Illinois EPA may increase a PAL emission limitation only if the major stationary source complies with the provisions in subsections (a)(1) through (4) of this Section.
  - 1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
  - 2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
  - 3) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (a)(1) of this Section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
  - 4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
- b) The Illinois EPA shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming



application of BACT equivalent controls as determined in accordance with subsection (a)(2)), plus the sum of the baseline actual emissions of the small emissions units.

- c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Section 204.1810.

**Section 204.1880 Monitoring Requirements**

- a) General requirements.
  - 1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time, or in CO<sub>2</sub>e per unit of time for a GHG PAL. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
  - 2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsection (b)(1) through (4) of this Section and must be approved by the Illinois EPA.
  - 3) Notwithstanding subsection (a)(2) of this Section, the owner or operator may also employ an alternative monitoring approach that meets subsection (a)(1) of this Section if approved by the Illinois EPA.
  - 4) Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.
- b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i) of this Section:
  - 1) Mass balance calculations for activities using coatings or solvents;
  - 2) CEMS;
  - 3) CPMS or PEMS; and
  - 4) Emission factors.

- c) **Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
- 1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
  - 2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
  - 3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Illinois EPA determines there is site-specific data or a site-specific monitoring program to support another content within the range.
- d) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
- 1) CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and
  - 2) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
- e) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
- 1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
  - 2) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Illinois EPA, while the emissions unit is operating.
- f) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
- 1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

- 2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - 3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Illinois EPA determines that testing is not required.
- g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
- h) Notwithstanding the requirements in subsections (c) through (g) of this Subpart, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Illinois EPA shall, at the time of permit issuance:
- 1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or
  - 2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
- i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Illinois EPA. Such testing must occur at least once every 5 years after issuance of the PAL.

**Section 204.1890 Recordkeeping Requirements**

- a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.
- b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:
  - 1) A copy of the PAL permit application and any applications for revisions to the PAL; and

- 2) Each annual certification of compliance pursuant to Section 39.5(7)(p)(v) of the Act and the data relied on in certifying the compliance.

**Section 204.1900 Reporting and Notification Requirements**

The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Illinois EPA in accordance with the CAAPP. The reports shall meet the requirements in subsections (a) through (c) of this Section.

- a) Semi-annual report. The semi-annual report shall be submitted to the Illinois EPA within 30 days of the end of each reporting period. This report shall contain the information required in subsections (a)(1) through (7) of this Section.
  - 1) The identification of owner and operator and the permit number.
  - 2) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG PAL) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Section 204.1890(a).
  - 3) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
  - 4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.
  - 5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
  - 6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Section 204.1880(g).
  - 7) A signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report.
- b) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements,

including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

- 1) The identification of owner and operator and the permit number;
  - 2) The PAL requirement that experienced the deviation or that was exceeded;
  - 3) Emissions resulting from the deviation or the exceedance; and
  - 4) A signed statement by the responsible official (as defined by the CAAPP) certifying the truth, accuracy, and completeness of the information provided in the report.
- c) Re-validation results. The owner or operator shall submit to the Illinois EPA the results of any re-validation test or method within 3 months after completion of such test or method.

**Section 204.1910 Transition Requirements**

- a) The Illinois EPA may not issue a PAL that does not comply with the requirements in this Subpart after the initial effective date of 35 Ill. Adm. Code 204.

**REDLINED  
PROPOSED NEW  
35 ILL. ADM. CODE  
PART 204**



**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS**

**PART 204  
PREVENTION OF SIGNIFICANT DETERIORATION**

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204.1870	Increasing the PAL during the PAL Effective Period
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204.1900	Reporting and Notification Requirements
204.1910	Transition Requirements

AUTHORITY: Implementing Section 9.1 and 10 and authorized by Section 27 and 28 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 27 and 28].

SOURCE: Adopted and codified at ..., effective ...; codified at ....

## **SUBPART A: GENERAL PROVISIONS**

### **Section 204.100 Incorporations by Reference**

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) 40 CFR Part 50 (2018)
- b) 40 CFR Part 51 (2018)
- c) 40 CFR Part 52 (2018)

- d) 40 CFR Part 53 (2018)
- e) 40 CFR Part 54 (2018)
- f) 40 CFR Part 55 (2018)
- g) 40 CFR Part 56 (2018)
- h) 40 CFR Part 57 (2018)
- i) 40 CFR Part 58 (2018)
- j) 40 CFR Part 59 (2018)
- k) 40 CFR Part 60 (2018)
- l) 40 CFR Part 61 (2018)
- m) 40 CFR Part 62 (2018)
- n) 40 CFR Part 63 (2018)
- o) 40 CFR Part 64 (2018)
- p) 40 CFR Part 65 (2018)
- q) 40 CFR Part 66 (2018)
- r) 40 CFR Part 67 (2018)
- s) 40 CFR Part 68 (2018)
- t) 40 CFR Part 69 (2018)
- u) 40 CFR Part 70 (2018)
- v) 40 CFR Part 71 (2018)
- w) 40 CFR Part 72 (2018)
- x) 40 CFR Part 73 (2018)
- y) 40 CFR Part 74 (2018)
- z) 40 CFR Part 75 (2018)
- aa) 40 CFR Part 76 (2018)
- bb) 40 CFR Part 77 (2018)
- cc) 40 CFR Part 78 (2018)
- dd) 40 CFR Part 79 (2018)
- ee) 40 CFR Part 80 (2018)
- ff) 40 CFR Part 81 (2018)
- gg) 40 CFR Part 82 (2018)
- hh) (Reserved)
- ii) (Reserved)
- jj) 40 CFR Part 85 (2018)
- kk) 40 CFR Part 86 (2018)
- ll) 40 CFR Part 87 (2018)
- mm) 40 CFR Part 88 (2018)
- nn) 40 CFR Part 89 (2018)
- oo) 40 CFR Part 90 (2018)
- pp) 40 CFR Part 91 (2018)
- qq) 40 CFR Part 92 (2018)
- rr) 40 CFR Part 93 (2018)
- ss) 40 CFR Part 94 (2018)
- tt) 40 CFR Part 95 (2018)
- uu) 40 CFR Part 96 (2018)
- vv) 40 CFR Part 97 (2018), excluding 40 CFR Part 97, Subpart FFFFF (2018)
- ww) 40 CFR Part 98 (2018)

xx) (Reserved)

**Section 204.110      Abbreviations and Acronyms**

The following abbreviations and acronyms are used in this Part:

<u><math>\mu\text{g}/\text{m}^3</math></u>	<u>micrograms per cubic meter</u>
<u>Act</u>	<u>Illinois Environmental Protection Act</u>
<u>BACT</u>	<u>Best Available Control Technology</u>
<u>Board</u>	<u>Illinois Pollution Control Board</u>
<u>CAA</u>	<u>Clean Air Act</u>
<u>CAAPP</u>	<u>Clean Air Act Permit Program</u>
<u>CEMS</u>	<u>Continuous Emissions Monitoring System</u>
<u>CERMS</u>	<u>Continuous Emissions Rate Monitoring System</u>
<u>CO<sub>2</sub></u>	<u>carbon dioxide</u>
<u>CO<sub>2</sub>e</u>	<u>carbon dioxide equivalent</u>
<u>CPMS</u>	<u>Continuous Parameter Monitoring System</u>
<u>GHG</u>	<u>Greenhouse Gas</u>
<u>H<sub>2</sub>S</u>	<u>hydrogen sulfide</u>
<u>hr</u>	<u>hour</u>
<u>Illinois EPA</u>	<u>Illinois Environmental Protection Agency</u>
<u>LAER</u>	<u>Lowest Achievable Emission Rate</u>
<u>lbs</u>	<u>pounds</u>
<u>lb/hr</u>	<u>pounds per hour</u>
<u>MW</u>	<u>megawatts</u>
<u>NAAQS</u>	<u>National Ambient Air Quality Standards</u>
<u>NAICS</u>	<u>North American Industry Classification System</u>
<u>NO<sub>2</sub></u>	<u>nitrogen dioxide</u>
<u>NO<sub>x</sub></u>	<u>nitrogen oxides</u>
<u>NSPS</u>	<u>New Source Performance Standards</u>
<u>NSR</u>	<u>New Source Review</u>
<u>O<sub>2</sub></u>	<u>oxygen</u>
<u>PAL</u>	<u>Plantwide Applicability Limitation</u>
<u>PEMS</u>	<u>Predictive Emissions Monitoring System</u>
<u>PM</u>	<u>Particulate Matter</u>
<u>PM<sub>2.5</sub></u>	<u>Particulate Matter equal to or less than 2.5 microns in diameter (Fine Particulate Matter)</u>
<u>PM<sub>10</sub></u>	<u>Particulate Matter equal to or less than 10 microns in diameter</u>
<u>ppm</u>	<u>parts per million</u>
<u>PSD</u>	<u>Prevention of Significant Deterioration</u>
<u>RACT</u>	<u>Reasonably Available Control Technology</u>
<u>SIP</u>	<u>State Implementation Plan</u>
<u>SO<sub>2</sub></u>	<u>sulfur dioxide</u>
<u>tpy</u>	<u>tons per year</u>
<u>TSP</u>	<u>total suspended particulates</u>
<u>US</u>	<u>United States</u>

<u>USEPA</u>	<u>United States Environmental Protection Agency</u>
<u>VOC</u>	<u>Volatile Organic Compound</u>
<u>VOM</u>	<u>Volatile Organic Material</u>
<u>yr</u>	<u>year</u>

**Section 204.120 Severability**

If any provision of this ~~section~~Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this ~~section~~Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SUBPART B: DEFINITIONS**

**Section 204.200 Definitions**

Unless otherwise specified in this Part, the definitions of the terms used in this Part shall be the same as those used in the Board Rules and Regulations at 35 Ill. Adm. Code Part 211.

**Section 204.210 Actual Emissions**

- a) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subsections (b) through (d) paragraphs (b)(21)(ii) through (iv) of this sSection, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subpart K, paragraph (aa) of this section. Instead, Sections 204.240 and 204.600 paragraphs (b)(41) and (b)(48) of this section shall apply for those purposes.
- b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Illinois EPA Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- c) The Illinois EPA Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**Section 204.220 Adverse Impact on Visibility**

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

**Section 204.230 Allowable Emissions**

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a) The applicable standards as set forth in 40 CFR ~~p~~Parts 60, ~~and~~ 61, 62 and 63;
- b) The applicable ~~State Implementation Plan (SIP)~~ emissions limitation, including those with a future compliance date; or
- c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**Section 204.240 Baseline Actual Emissions**

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with ~~subsections (a) through (d) paragraphs (b)(48)(i) through (iv)~~ of this section

- a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The ~~Illinois EPA Administrator~~ shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
  - 1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
  - 2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

- 3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
  - 4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (a)(2) paragraph (b)(48)(i)(b) of this section.
- b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority Administrator for a permit required under 40 CFR 52.21 this section or by the Illinois EPA Authority for a permit required by the SIP a plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
- 1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
  - 2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
  - 3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. "Currently" in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the USEPA Administrator proposed or promulgated under 40 CFR Part 63 of this chapter, the baseline actual emissions need only be adjusted if the State-Illinois EPA has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) of this chapter.



- 4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- 5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsections (b)(2) and (b)(3) paragraphs (b)(48)(ii)(b) and (c) of this section.
- c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subsection (a) paragraph (b)(48)(i) of this section, for other existing emissions units in accordance with the procedures contained in subsection (b) paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in subsection (c) paragraph (b)(48)(iii) of this section.

**Section 204.250 Baseline Area**

- a) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m<sup>3</sup> (annual average) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>; or equal or greater than 0.3 µg/m<sup>3</sup> (annual average) for PM<sub>2.5</sub>.
- b) Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)) cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
  - 1) Establishes a minor source baseline date; or
  - 2) Is subject to this Part CFR 52.21 and would be constructed in the state as the state proposing the redesignation.
- c) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available

~~PM<sub>10</sub>PM-10~~ increments, except that such baseline area shall not remain in effect if the Illinois EPA Administrator rescinds the corresponding minor source baseline date in accordance with ~~Section 204.220(c)paragraph (b)(14)(i) of this section.~~

**Section 204.260 Baseline Concentration**

- a) "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:
- 1) The actual emissions, as defined in ~~Section 204.210paragraph (b)(21) of this section,~~ representative of sources in existence on the applicable minor source baseline date, except as provided in ~~subsection (b)paragraph (b)(13)(i) of this section;~~ and
  - 2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.
- b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
- 1) Actual emissions, as defined in ~~Section 204.210paragraph (b)(21) of this section,~~ from any major stationary source on which construction commenced after the major source baseline date. For a major stationary source in existence on the major source baseline date, "actual emissions" for the purposes of this subsection shall mean increases or decreases in actual emissions resulting from construction commencing after the major source baseline date; and
  - 2) Actual emissions increases and decreases, as defined in ~~Section 204.210paragraph (b)(21) of this section,~~ at any stationary source occurring after the minor source baseline date.

**Section 204.270 Begin Actual Construction**

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**Section 204.280 Best Available Control Technology (BACT)**

"Best Available Control Technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Illinois EPA Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of ~~best available control technology~~ BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR ~~parts~~ Parts 60, and 61, 62 and 63. If the Illinois EPA Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of ~~best available control technology~~ BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**Section 204.290 Building, Structure, Facility, or Installation**

- a) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) ~~except the activities of any vessel~~. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).
- b) Notwithstanding the provisions of ~~paragraph (b)(4)(i) subsection (a)~~ of this Section, building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this ~~subsection paragraph (b)(4)(i)~~, has the same meaning as in 40 CFR 63.761.

**Section 204.300 Clean Coal Technology**

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide (SO<sub>2</sub>) or oxides of nitrogen (NO<sub>x</sub>) associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

**Section 204.310 Clean Coal Technology Demonstration Project**

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy – Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency (EPA). The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

**Section 204.320 Commence**

"Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**Section 204.330 Complete**

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

**Section 204.340 Construction**

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**Section 204.350 Dispersion Technique**

- a) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

- 1) Using that portion of a stack which exceeds good engineering practice stack height;
  - 2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - 3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.
- b) The preceding sentence in Section 204.350(a) does not include:
- 1) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the stationary source generating the gas stream;
  - 2) The merging of exhaust gas streams where:
    - A) The source owner or operator demonstrates that the stationary source was originally designed and constructed with such merged gas streams;
    - B) After July 8, 1985 such merging is part of a change in operation at the ~~facility~~ stationary source that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques shall apply only to the emission limitation for the pollutant affected by such change in operation; or
    - C) Before July 8, 1985, such merging was part of a change in operation at the ~~facility~~ stationary source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the ~~reviewing agency~~ Illinois EPA shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the ~~reviewing agency~~ Illinois EPA shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

- 3) Smoke management in agricultural or silvicultural prescribed burning programs;
- 4) Episodic restrictions on residential wood burning and open burning; or
- 5) Techniques under ~~§ 51-100(h)(1)(iii)~~ subsection (a)(3) of this Section which increase final exhaust gas plume rise where the resulting allowable emissions of ~~sulfur dioxide~~SO<sub>2</sub> from the ~~facility~~ stationary source do not exceed 5,000 ~~tons per year~~tpy.

### **Section 204.360 Electric Utility Steam Generating Unit**

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

### **Section 204.370 Emissions Unit**

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in Section 204.360 paragraph (b)(31) of this section. For purposes of this Partsection, there are two types of emissions units as described in subsections (a) and (b) paragraphs (b)(7)(i) and (ii) of this sSection.

- a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.
- b) An existing emissions unit is any emissions unit that does not meet the requirements in subsection (a) paragraph (b)(7)(i) of this sSection. A replacement unit, as defined in Section 204.620 paragraph (b)(33) of this section, is an existing emissions unit.

### **Section 204.380 Excessive Concentration**

"Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51-100(ii)(3) Section 204.420(c) and means:

- a) For sources seeking credit for stack height exceeding that established under ~~§ 51-100(ii)(2)~~ Section 204.420(b), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration

experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to ~~the prevention of significant deterioration program (40 CFR 51.166 and 52.21)~~ this Part, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than ~~a prevention of significant deterioration increment~~ an ambient air increment under Section 204.900. The allowable emission rate to be used in making demonstrations ~~under this part~~ of excessive concentration shall be prescribed by the ~~new source performance standard~~ NSPS that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the ~~authority administering the State implementation plan~~ Illinois EPA, an alternative emission rate shall be established in consultation with the source owner or operator.

- b) For sources seeking credit ~~after October 11, 1983~~, for increases in existing stack heights up to the heights established under ~~§ 51.100(ii)(2)~~ Section 204.420(b), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in ~~paragraph (kk)(1)~~ subsection (a) of this Section, except that the emission rate specified by ~~any applicable State implementation plan~~ the SIP (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the ~~authority administering the State implementation plan~~ Illinois EPA; and
- c) For sources seeking credit ~~after January 12, 1979~~ for a stack height determined under ~~§ 51.100(ii)(2)~~ Section 204.420(b) where the ~~authority administering the State implementation plan~~ Illinois EPA requires the use of a field study or fluid model to verify ~~GEP~~ good engineering practice stack height, for sources seeking stack height credit ~~after November 9, 1984~~ based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit ~~after December 31, 1970~~ based on the aerodynamic influence of structures not adequately represented by the equations in ~~§ 51.100(ii)(2)~~ Section 204.420(b), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

**Section 204.390 Federal Land Manager**

"Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

**Section 204.400 Federally Enforceable**

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator USEPA, including those requirements developed pursuant to 40 CFR Parts 60, and 61, 62 and 63, requirements within any applicable State implementation plan or SIP, any permit requirements established pursuant to 40 CFR 52.21 or this Part or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an USEPA-approved program that is incorporated into the State implementation plan SIP and expressly requires adherence to any permit issued under such program.

**Section 204.410 Fugitive Emissions**

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**Section 204.420 Good Engineering Practice**

"Good engineering practice," with respect to stack height, means the greater of:

- a) 65 meters, measured from the ground-level elevation at the base of the stack;
- b) The following:
  - 1) For a stack in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals or permits required under 40 CFR Part 52:

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

- 2) For all other stacks:

$$H_g = H + 1.5L$$

where:

$H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s) provided that the USEPA or Illinois EPA may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or



- c) The height demonstrated by a fluid model or a field study approved by the USEPA or Illinois EPA, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.
- d) For purposes of this definition, "stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

### **Section 204.430 Greenhouse Gases (GHGs)**

~~"Greenhouse gases (GHGs)" means the air pollutant defined in §40 CFR 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide CO<sub>2</sub>, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.~~

~~(ii) For purposes of paragraphs (b)(49)(iii) through (v) of this section, to represent an amount of GHGs emitted, the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be used and computed as follows:~~

- ~~a)(a) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR pPart 98 of this chapter—Global Warming Potentials.~~

~~For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).~~

- ~~b)(b) Sum the resultant value from paragraph (b)(49)(ii)(a) of this section for each gas to compute a tpy CO<sub>2</sub>e.~~

~~(iii) The term *emissions increase* as used in paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in~~

paragraphs (b)(3) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in paragraph (b)(23)(ii) of this section.

(iv) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and,

**Section 204.440 High Terrain**

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

**Section 204.450 Indian Reservation**

"Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.

**Section 204.460 Indian Governing Body**

"Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the ~~United States~~ US and recognized by the ~~United States~~ US as possessing power of self-government.

**Section 204.470 Innovative Control Technology**

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

**Section 204.480 Low Terrain**

"Low terrain" means any area other than high terrain.

**Section 204.490 Major Modification**

- a) **“Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in Section 204.670 paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in Section 204.610 paragraph (b)(50) of this section) other than GHGs (as defined in Section 204.430 paragraph (b)(32) of this section); and a significant net emissions increase of that pollutant from the major stationary source.**
- b) **Any significant emissions increase (as defined in Section 204.670 at paragraph (b)(40) of this section) from any emissions units or net emissions increase (as defined in Section 204.550 paragraph (b)(3) of this section) at a major stationary source that is significant for ~~volatile organic compounds~~ VOM or NO<sub>x</sub> shall be considered significant for ozone.**
- c) **A physical change or change in the method of operation shall not include:**
  - 1) **Routine maintenance, repair and replacement.** ~~Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;~~
  - 2) **Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791) (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act (16 U.S.C. 791);**
  - 3) **Use of an alternative fuel by reason of an order or rule under Section 125 of the Act (42 U.S.C. 7425);**
  - 4) **Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;**
  - 5) **Use of an alternative fuel or raw material by a stationary source which:**
    - A) **The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or this Part under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or**
    - B) **The source is approved to use under any permit issued under 40 CFR 52.21 or this Part under regulations approved pursuant to 40 CFR 51.166;**

- 6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or ~~this Part under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.~~
- 7) Any change in ownership at a stationary source.
- 8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
  - A) ~~The Illinois' State implementation plan~~ SIP for the State in which the project is located, and
  - B) Other requirements necessary to attain and maintain the ~~national ambient air quality standards~~ NAAQS during the project and after it is terminated.
- 9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.
- ~~10) The reactivation of a very clean coal-fired electric utility steam-generating unit.~~
- d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under ~~Subpart K paragraph (aa) of this section for a PAL for that pollutant. Instead, the definition at Section 204.1720 paragraph (aa)(2)(viii) of this section shall apply.~~
- ~~e) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.~~

#### **Section 204.500 Major Source Baseline Date**

"Major source baseline date" means:

- a) In the case of  $PM_{10}$  and ~~sulfur dioxide~~  $SO_2$ , January 6, 1975;
- b) In the case of ~~nitrogen dioxide~~  $NO_2$ , February 8, 1988; and
- c) In the case of  $PM_{2.5}$ , October 20, 2010.

**Section 204.510 Major Stationary Source**

a) "Major stationary source" means:

- 1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;
- 2) Notwithstanding the stationary source size specified in subsection (a)(1) paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant (except GHGs as defined in 204.430 paragraph (b)(3) of this section); or
- 3) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section, as a major stationary source, if the changes would constitute a major stationary source by itself.

b) A major source that is major for volatile organic compounds (VOC) or NO<sub>x</sub> shall be considered major for ozone.

c) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- 1) Coal cleaning plants (with thermal dryers);
- 2) Kraft pulp mills;
- 3) Portland cement plants;
- 4) Primary zinc smelters;

- 5) Iron and steel mills;
- 6) Primary aluminum ore reduction plants;
- 7) Primary copper smelters;
- 8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 9) Hydrofluoric, sulfuric, or nitric acid plants;
- 10) Petroleum refineries;
- 11) Lime plants;
- 12) Phosphate rock processing plants;
- 13) Coke oven batteries;
- 14) Sulfur recovery plants;
- 15) Carbon black plants (furnace process);
- 16) Primary lead smelters;
- 17) Fuel conversion plants;
- 18) Sintering plants;
- 19) Secondary metal production plants;
- 20) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- 21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- 22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 23) Taconite ore processing plants;
- 24) Glass fiber processing plants;
- 25) Charcoal production plants;
- 26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- 27) Any other stationary source category which, as of August 7, 1980, is being regulated under ~~section~~ Section 111 or 112 of the Act ~~CAA~~.

**Section 204.520 Minor Source Baseline Date**

- a) “Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or ~~this Part~~ regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:
  - 1) In the case of PM<sub>10</sub> and ~~sulfur dioxide~~ SO<sub>2</sub>, August 7, 1977;
  - 2) In the case of ~~nitrogen dioxide~~ NO<sub>2</sub>, February 8, 1988; and
  - 3) In the case of PM<sub>2.5</sub>, October 20, 2011.

- b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
  - 1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under ~~Section 107(d)(1)(A)(ii) or (iii) of the Act CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii))~~ for the pollutant on the date of its complete application under 40 CFR 52.21 or ~~this Part under regulations approved pursuant to 40 CFR 51.166;~~ and
  - 2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- c) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available ~~PM<sub>10</sub>~~ ~~PM-10~~ increments, except that the ~~Illinois EPA Administrator~~ shall rescind a minor source baseline date where it can be shown, to the satisfaction of the ~~Illinois EPA Administrator~~, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of ~~PM<sub>10</sub>~~ ~~PM-10~~ emissions.

**Section 204.530      Nearby**

“Nearby,” with respect to a specific structure or terrain feature:

- a) For purposes of applying the formulae provided in Section 204.420(b) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and
- b) For conducting demonstrations under Section 204.420(c) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40 percent of the good engineering practice stack height determined by the formula provided in Section 204.420(b)(2) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

**Section 204.540      Necessary Preconstruction Approvals or Permits**

“Necessary preconstruction approvals or permits” mean those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable ~~State Implementation Plan~~ SIP.

**Section 204.550 Net Emissions Increase**

- a) "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
- 1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to ~~Section 204.800(d) paragraph (a)(2)(iv) of this section~~; and
  - 2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this ~~subsection paragraph (b)(3)(i)(b)~~ shall be determined as provided in ~~Section 204.240 paragraph (b)(48) of this section, except that Sections 204.240(a)(3) and 204.240(b)(4) paragraphs (b)(48)(i)(e) and (b)(48)(ii)(d) of this section shall not apply.~~
- b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
- 1) The date five years before construction on the particular change commences; and
  - 2) The date that the increase from the particular change occurs.
- c) An increase or decrease in actual emissions is creditable only if:
- ~~The Administrator or other reviewing authority has not relied on it in issuing a permit for the source under 40 CFR 52.21 or this Part this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and~~
- ~~1) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.~~
  - ~~2) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (b)(1)(iii) of this section or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories.~~
- c) An increase or decrease in actual emissions of sulfur dioxide  $SO_2$ , particulate matter  $PM$ , or nitrogen oxides  $NO_x$  that occurs before the applicable minor source



baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

- d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- e) A decrease in actual emissions is creditable only to the extent that:
  - 1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
  - 2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; ~~and-~~
  - 3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; ~~and~~
- f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any ~~replacement unit~~ emissions unit that replaces an existing emissions unit that requires shakedown, becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- g) ~~Subsection 204.210(b) Paragraph (b)(21)(ii) of this section~~ shall not apply for determining creditable increases and decreases.

#### **Section 204.560 Potential to Emit**

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by a state or local air pollution control agency. Secondary emissions do not count in determining the potential to emit of a stationary source.

#### **Section 204.570 Prevention of Significant Deterioration (PSD) Permit**

"Prevention of Significant Deterioration (PSD) Permit" means a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois EPA under the construction permit program pursuant to Section 9.1(c) of the Act that has been approved by the USEPA and incorporated into the Illinois SIP to implement the requirements of Section 165 of the CAA and 40 CFR 51.166.

#### **Section 204.580 Process Unit**

“Process unit” means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. A process unit may contain more than one emissions unit.

**Section 204.590 Project**

“Project” means a physical change in, or change in the method of operation of, an existing major stationary source.

**Section 204.600 Projected Actual Emissions**

- a) “Projected actual emissions” means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.
- b) In determining the projected actual emissions under ~~subsection (a) paragraph (b)(4)(i)~~ of this section (before beginning actual construction), the owner or operator of the major stationary source:
  - 1) Shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the State or Federal regulatory authorities, and compliance plans under Illinois’ the approved State Implementation Plan ~~SIP~~; and
  - 2) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
  - 3) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Section 204.240 paragraph (b)(18) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
  - 4) In lieu of using the method set out in subsections (b)(1) paragraphs (a)(4)(ii)(e) through (b)(3)(e) of this section, may elect to use the

emissions unit's potential to emit, in tons per year, as defined under Section 204.560 paragraph (b)(4) of this section.

**Section 204.610 Regulated NSR Pollutant**

"Regulated NSR pollutant," for purposes of this section, means the following:

- a) Any pollutant for which a ~~national ambient air quality standard~~ NAAQS has been promulgated. This includes, but is not limited to, the following:
  - 1) ~~PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter~~ PM at ambient temperatures. On or after January 1, 2011, such condensable ~~particulate matter~~ PM shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable ~~particulate matter~~ PM unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable ~~particulate matter~~ PM shall not be considered in violation of this ~~section-Part~~ Part unless the applicable implementation plan required condensable ~~particulate matter~~ PM to be included.
  - 2) Any pollutant identified under this ~~subsection~~ paragraph (b)(5)(i)(b) as a constituent or precursor for a pollutant for which a ~~national ambient air quality standard~~ NAAQS has been promulgated. Precursors identified by the Administrator for purposes of this ~~Part~~ NSR are the following:
    - A) ~~Volatile organic compounds~~ VOM and ~~nitrogen oxides~~ NO<sub>x</sub> are precursors to ozone in all attainment and unclassifiable areas.
    - B) ~~Sulfur dioxide~~ SO<sub>2</sub> is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas.
    - C) ~~Nitrogen oxides~~ NO<sub>x</sub> are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction ~~of the USEPA or the USEPA~~ demonstrates that emissions of ~~nitrogen oxides~~ NO<sub>x</sub> from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
    - D) ~~Volatile organic compounds~~ VOM are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction ~~of the USEPA or the USEPA~~ demonstrates that emissions of ~~volatile organics~~

~~compounds~~ VOM from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

- b) Any pollutant that is subject to any standard promulgated under ~~s~~Section 111 of the ActCAA (42 U.S.C. 7401);
- c) Any Class I or II substance subject to a standard promulgated under or established by title VI of the ActCAA (42 U.S.C. 7671, et seq.);
- d) Any pollutant that otherwise is subject to regulation ~~as defined in Section 204.700 under the Act as defined in paragraph (b)(49) of this section.~~
- e) Notwithstanding ~~subsections (a) paragraphs (b)(50)(i) through (d)(iv) of this s~~Section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in ~~s~~Section 112(b)(1) of the ActCAA (42 U.S.C. 7412(b)(1)), or added to the list pursuant to ~~s~~Section 112(b)(2) or (b)(3) of the ActCAA (42 U.S.C. 7412(b)(2) or (b)(3)) or substances listed pursuant to Section 112(r)(3) of the CAA (42 U.S.C. 7412(r)(3)), and which have not been delisted pursuant to ~~s~~Section 112(b)(3) or (r) of the ActCAA (42 U.S.C. 7412(b)(3) or (r)), unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under ~~s~~section 108 of the ActCAA (42 U.S.C. 7408).

#### **Section 204.620 Replacement Unit**

"Replacement unit" means an emissions unit for which all the criteria listed in ~~subsections (a) through (d) paragraphs (b)(33)(i) through (iv) of this s~~Section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

- a) The emissions unit is a reconstructed unit within the meaning of 40 CFR § 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- c) The replacement does not alter the basic design parameter(s)~~(as discussed in paragraph (c)(2) of this section)~~ of the process unit. Basic design parameters of a process unit shall be determined as follows:
  - 1) Except as provided in subsection (c)(3) of this Section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum

fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

- 2) Except as provided in subsection (c)(3) of this Section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.
  - 3) If the owner or operator believes the basic design parameter(s) in subsections (c)(1) and (c)(2) of this Section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Illinois EPA an alternative basic design parameter(s) for the source's process unit(s). If the Illinois EPA approves of the use of an alternative basic design parameter(s), the Illinois EPA shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).
  - 4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in subsections (c)(2) and (c)(3) of this Section.
  - 5) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
  - 6) Efficiency of a process unit is not a basic design parameter.
- d) **The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.**

**Section 204.630 Repowering**

- a) **"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as**

determined by the USEPA Administrator, in consultation with the US Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

- b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the US Department of Energy.
- c) The Illinois EPA Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subSection and is granted an extension under Section 409 of the Clean Air Act (CAA) (42 U.S.C. 7651h).

#### **Section 204.640      Reviewing Authority**

~~“Reviewing authority” means the Illinois EPA or, State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under §51.165 and §51.166 of this chapter, or the Administrator in the case of a EPA implemented permit programs under this section. the Illinois EPA or, in the case of permit programs under 40 CFR 52.21, the USEPA or its delegate, the Illinois EPA.~~

#### **Section 204.650      Secondary Emissions**

~~“Secondary emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel. For the purposes of this Part, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions.~~

- a) ~~Emissions from ships or trains coming to or from the new or modified stationary source; and~~
- b) ~~Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.~~

#### **Section 204.660      Significant**

- a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides (NO <sub>x</sub> )	40 tpy
Sulfur dioxide (SO <sub>2</sub> )	40 tpy
Particulate matter (PM)	25 tpy of particulate matter emissions
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide (SO <sub>2</sub> ) emissions; 40 tpy of nitrogen oxide (NO <sub>x</sub> ) emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under Section 204.610(a)(2)(C) paragraph (b)(5) of this section
Ozone	40 tpy of volatile organic compounds (VOC) or nitrogen oxides (NO <sub>x</sub> )
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S):	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S):	10 tpy
GHGs	75,000 tpy CO <sub>2</sub> e
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo- <i>p</i> -dioxins and dibenzofurans):	3.2 × 10 <sup>-6</sup> megagrams per year (3.5 × 10 <sup>-6</sup> lbs per year)
Municipal waste combustor metals (measured as particulate matter (PM)):	14 megagrams per year (15 lbs per year)
Municipal waste combustor acid gases (measured as sulfur dioxide (SO <sub>2</sub> ) and hydrogen chloride):	36 megagrams per year (40 lbs per year)
Municipal solid waste landfills emissions	45 megagrams per year (50 tons per year (tpy))

(measured as nonmethane organic compounds):	
Ozone depleting substances:	100 tpy

- b) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that ~~subsection paragraph (b)(23)(i)(a)~~ of this section, does not list, any emissions rate.
- c) Notwithstanding ~~subsection (a) paragraph (b)(23)(i)~~ of this section, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour ~~hr~~ average).

**Section 204.670 Significant Emissions Increase**

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in ~~Section 204.66 paragraph (b)(23)~~ of this section) for that pollutant.

**Section 204.680 Stack in Existence**

"Stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

**Section 204.690 Stationary Source**

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the CAA (42 U.S.C. 7550) are not a part of a stationary source.

**Section 204.700 Subject to Regulation**

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the ~~Clean Air Act~~ CAA, or a nationally-applicable regulation codified by the ~~USEPA Administrator in 40 CFR Parts 50 through 99 subchapter C of this chapter,~~ that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Pollutants subject to regulation include, but are not limited to, GHGs as defined in ~~Section 204.430 paragraph (b)(32)~~ of this section, except that:



- a) — Greenhouse gases (GHGs): the air pollutant defined in 40 CFR 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride shall not be subject to regulation except as provided in subsection (d) paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in Paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.
- b) — For purposes of subsection (c) and (d) paragraphs (b)(49)(iii) through (v) of this section, the term tpy CO<sub>2</sub>e equivalent emissions (CO<sub>2</sub>e) shall represent an amount of GHGs emitted, and shall be computed as follows:
- 1) — Multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 of this chapter — Global Warming Potentials. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).
  - 2) — Sum the resultant value from subsection (b)(1) paragraph (b)(49)(i)(a) of this section for each gas to compute a tpy CO<sub>2</sub>e.
- c) — The term “emissions increase” as used in subsection (d) paragraphs (b)(49)(iv) through (v) of this section shall mean that both a significant emissions increase (as calculated using the procedures in ection 204.1(d) paragraph (a)(2)(iv) of this section) and a significant net emissions increase (as defined in Sections 204.0 and 204.1 paragraphs (b)(2) and (b)(23) of this section) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in ection 204.1(b) paragraph (b)(23)(ii) of this section.
- d) — Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:
- 1) — The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs and is not covered by the exemption at ection 204.1(b), and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

- ~~2) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHG and is not covered by the exemption of section 204.(b), and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more, and:~~

### **Section 204.710 Temporary Clean Coal Technology Demonstration Project**

~~“Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located, Illinois’ SIP and other requirements necessary to attain and maintain the national ambient air quality standards NAAQS during the project and after it is terminated.~~

## **SUBPART C: MAJOR STATIONARY SOURCES IN ATTAINMENT AND UNCLASSIFIABLE AREAS**

### **Section 204.800 Applicability**

- a) The requirements of this ~~section-Part~~ apply to the construction of any new major stationary source (as defined in ~~Section 204.510~~ paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under ~~sSections 107(d)(1)(A)(ii) or (iii) of the Act~~CAA (42 U.S.C. 7407(d)(1)(A)(ii) or (iii)).
- b) The requirements of ~~Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200~~ paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this ~~section-Part~~ otherwise provides.
- c) No new major stationary source or major modification to which the requirements of ~~Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200~~ paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The ~~Illinois EPA Administrator~~ has authority to issue any such permit.
- d) The requirements of the program will be applied in accordance with the principles set out in ~~subsections (d)(1) through (d)(5)~~ paragraphs (a)(2)(iv)(v) through (f) of this ~~section~~Section.
- 1) Except as otherwise provided in ~~subsection (c)~~ paragraphs (a)(2)(v) and (vi) of this ~~sSection~~, and consistent with the definition of major modification contained in ~~Section 204.490~~ paragraph (b)(2) of this section,

a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in Section 204.670 paragraph (b)(10) of this section), and a significant net emissions increase (as defined in Sections 204.550 and 204.660 paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

- 2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type(s) of emissions units involved in the project being modified, according to subsections (d)(3) through (d)(5) paragraphs (a)(2)(iv)(e) through (f) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Section 204.550 paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
- 3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Section 204.600 paragraph (b)(11) of this section) and the baseline actual emissions (as defined in Section 204.240(a) and (b) paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section 204.660 paragraph (b)(23) of this section).
- 4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Section 204.560 paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Section 204.240(c) paragraph (b)(48)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Section 204.660 paragraph (b)(23) of this section).
- 5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using

the method specified in subsections (d)(3) and (d)(4) paragraphs (a)(2)(iv)(c) through (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Section 204.660 paragraph (b)(23) of this section).

- e) Except as otherwise provided in Section 204.1400(f)(2), the provisions of Section 204.1400 apply with respect to any regulated NSR pollutant emitted from projects involving existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Section 204.1400(f), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Sections 204.600(b)(1) through (b)(3) for calculating projected actual emissions.
- e)f) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Subpart K paragraph (aa) of this section.

#### **Section 204.810 Source Information**

The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under this Partsection.

- a) With respect to a source or modification to which Sections 204.810, 204.1100, 204.1120, and 204.1200 paragraphs (j), (l), (n) and (p) of this section apply, such information shall include:
  - 1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
  - 2) A detailed schedule for construction of the source or modification; and
  - 3) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information as necessary to determine that BACT best available control technology, as applicable, would be applied.
- b) Upon request of the Administrator Illinois EPA, the owner or operator shall also provide information on:

- 1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
- 2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

**Section 204.820 Source Obligation**

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this ~~Partsection~~ or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this ~~Partsection~~ who ~~commences~~ begins actual construction after the effective date of ~~this Partthese regulations~~ without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

**Section 204.830 Permit Expiration**

Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The ~~Illinois EPA Administrator~~ may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

**Section 204.840 Effect of Permits**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the ~~State implementation plan~~ SIP and any other requirements under local, State, or Federal law.

**Section 204.850 Relaxation of a Source-Specific Limitation**

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**Section 204.860 Exemptions**

- a) **The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 paragraphs (j) through (t) of this section shall not apply to a particular major stationary source or major modification, if:**
- 1) — Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or
  - 2) — The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:
    - A) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;
    - B) Commenced construction before March 19, 1979; and
    - C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or
  - 3) — The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or
  - 4) — The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:
    - A) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;
    - B) Commenced construction before March 19, 1979; and
    - C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or
  - 5) — The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:
    - A) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

~~B) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and~~

~~C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or~~

~~6)1) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution and the gGovernor of ~~the state of Illinois in which the source or modification would be located~~ requests that it be exempt it from those requirements; or~~

~~7)2) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:~~

~~A) Coal cleaning plants (with thermal dryers);~~

~~B) Kraft pulp mills;~~

~~C) Portland cement plants;~~

~~D) Primary zinc smelters;~~

~~E) Iron and steel mills;~~

~~F) Primary aluminum ore reduction plants;~~

~~G) Primary copper smelters;~~

~~H) Municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~I) Hydrofluoric, sulfuric, or nitric acid plants;~~

~~J) Petroleum refineries;~~

~~K) Lime plants;~~

~~L) Phosphate rock processing plants;~~

~~M) Coke oven batteries;~~

- N) Sulfur recovery plants;
  - O) Carbon black plants (furnace process);
  - P) Primary lead smelters;
  - Q) Fuel conversion plants;
  - R) Sintering plants;
  - S) Secondary metal production plants;
  - T) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
  - U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - W) Taconite ore processing plants;
  - X) Glass fiber processing plants;
  - Y) Charcoal production plants;
  - Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
  - AA) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act (CAA (32 U.S.C. 7411 or 7412); or
- 8)3) The source is a portable stationary source which has previously received a permit under 40 CFR 52.21 of this Part~~this section~~, and
- A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; ~~and~~
  - B) The emissions from the source would not exceed its allowable emissions; ~~and~~
  - C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and



D) Reasonable notice is given to the Illinois EPA Administrator prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Illinois EPA Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Illinois EPA Administrator.

~~9) The source or modification was not subject to §52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:~~

~~A) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;~~

~~B) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and~~

~~C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.~~

~~10) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Administrator subsequently determines that the application as submitted was complete with respect to the particular matter requirements then in effect in the section. Instead, the requirements of paragraphs (j) through (r) of this section that were in effect before July 31, 1987 shall apply to such source or modification:~~

b) **The requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 paragraphs (j) through (r) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Act (42 U.S.C. 7407). Nonattainment designations for revoked NAAQS, as contained in 40 CFR Part 81, shall not be viewed as current designations under Section 107 of the Act (42 U.S.C. 7407) for purposes of determining the applicability of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, 204.1200, and 204.1400 paragraphs (j) through (r) of this section to a major stationary source or major modification after the revocation of that NAAQS is effective.**

c) **The requirements of Sections 204.1110, 204.1130, and 204.1140 paragraphs (k), (m) and (o) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:**

- 1) Would impact no Class I area and no area where an applicable increment is known to be violated, and
  - 2) Would be temporary.
- d) The requirements of Sections 204.1110, 204.1130, and 204.1140 paragraphs (k), (m) and (o) of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology BACT would be less than 50 tons per year<sup>tpy</sup>.
- e) — The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) of this section, with respect to monitoring for a particular pollutant if:
- 1) — The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
    - A) Carbon monoxide — 575  $\mu\text{g}/\text{m}^3$ , 8-hour average;
    - B) Nitrogen dioxide — 14  $\mu\text{g}/\text{m}^3$ , annual average;
    - C)  $\text{PM}_{2.5}$  — 0  $\mu\text{g}/\text{m}^3$ ;
    - D)  $\text{PM}_{10}$  — 10  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - E) Sulfur dioxide — 13  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - F) Ozone;
    - G) Lead — 0.1  $\mu\text{g}/\text{m}^3$ , 3-month average;
    - H) Fluorides — 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - I) Total reduced sulfur — 10  $\mu\text{g}/\text{m}^3$ , 1-hour average;
    - J) Hydrogen sulfide — 0.2  $\mu\text{g}/\text{m}^3$ , 1-hour average;
    - K) Reduced sulfur compounds — 10  $\mu\text{g}/\text{m}^3$ , 1-hour average; or
  - 2) — The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or
  - 3) — The pollutant is not listed in paragraph (i)(5)(i) of this section.
- f) — The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) of this section, shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete.

Instead, the requirements at 40 CFR 52.21(i) and (n) as in effect on June 19, 1978 apply to any such source or modification.

g)

1) — The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1)(ii) through (iv) of this section, and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

2) — The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii) through (iv).

h)

1) — At the discretion of the Administrator, the requirements for air quality monitoring of  $PM_{10}$  in paragraphs (m)(1)(i)-(iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i)-(iv).

2) — The requirements for air quality monitoring of  $PM_{10}$  in paragraphs (m)(1)(ii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less

than 4 months), the data that paragraph (m)(1)(ii) requires shall have been gathered over a shorter period.

- i) — The requirements of paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Administrator subsequently determined that the application as submitted before that date was complete.
- j) — The requirements in paragraph (k)(1)(ii) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM-10 if (i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM-10 took effect in an implementation plan to which this section applies, and (ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(1)(ii) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.
- k) — The requirements of paragraph (k)(1) of this section shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM<sub>2.5</sub> in effect on March 18, 2013 if:
  - 1) — The Administrator has determined a permit application subject to this section to be complete on or before December 14, 2012. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for PM<sub>2.5</sub> in effect at the time the Administrator determined the permit application to be complete; or
  - 2) — The Administrator has first published before March 18, 2013 a public notice that a draft permit subject to this section has been prepared. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for PM<sub>2.5</sub> in effect on the date the Administrator first published a public notice that a draft permit has been prepared.
- l) — The requirements of paragraph (k)(1) of this section shall not apply to a permit application for a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015 if:
  - 1) — The Administrator has determined the permit application subject to this section to be complete on or before October 1, 2015. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to

the national ambient air quality standards for ozone in effect at the time the Administrator determined the permit application to be complete; or

- 2) ~~The Administrator has first published before December 28, 2015 a public notice of a preliminary determination or draft permit for the permit application subject to this section. Instead, the requirements in paragraph (k)(1) of this section shall apply with respect to the national ambient air quality standards for ozone in effect on the date the Administrator first published a public notice of a preliminary determination or draft permit.~~

**SUBPART D: INCREMENT**

**Section 204.900 Ambient Air Increments**

In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
<b>Class I Area</b>	
<b>PM<sub>2.5</sub>:</b>	
Annual arithmetic mean	1
24-hr maximum	2
<b>PM<sub>10</sub>:</b>	
Annual arithmetic mean	4
24-hr maximum	8
<del>Sulfur dioxide</del> <b>SO<sub>2</sub>:</b>	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
<del>Nitrogen dioxide</del> <b>NO<sub>2</sub>:</b>	
Annual arithmetic mean	2.5
<b>Class II Area</b>	
<b>PM<sub>2.5</sub>:</b>	
Annual arithmetic mean	4
24-hr maximum	9
<b>PM<sub>10</sub>:</b>	
Annual arithmetic mean	17
24-hr maximum	30
<del>Sulfur dioxide</del> <b>SO<sub>2</sub>:</b>	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512

<del>Nitrogen dioxide</del> NO <sub>2</sub> :	
Annual arithmetic mean	25
Class III Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean	8
24-hr maximum	18
PM <sub>10</sub> :	
Annual arithmetic mean	34
24-hr maximum	60
<del>Sulfur dioxide</del> SO <sub>2</sub> :	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
<del>Nitrogen dioxide</del> NO <sub>2</sub> :	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

**Section 204.910 Ambient Air Ceilings**

No concentration of a pollutant shall exceed:

- a) The concentration permitted under the national secondary ambient air quality standard, or
- b) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

**Section 204.920 Restrictions on Area Classifications**

- a) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:
  - 1) International parks,
  - 2) National wilderness areas which exceed 5,000 acres in size,
  - 3) National memorial parks which exceed 5,000 acres in size, and
  - 4) National parks which exceed 6,000 acres in size.

- b) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Partsection.
- c) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Partsection.
- d) The following areas may be redesignated only as Class I or II:
  - 1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
  - 2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

**Section 204.930 Redesignation**

- a) As of the initial effective date of 35 Ill. Adm. Code 204.920 paragraph (e) of this section (except as otherwise provided under Section 204.920 paragraph (e) of this section) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by Section 204.920 paragraph (e) of this section) may be proposed by the respective State or Indian Governing Bodies, as provided below, subject to approval by the USEPA Administrator as a revision to the applicable State implementation plan SIP.
- b) The State may submit to the USEPA Administrator a proposal to redesignate areas of the State Class I or Class II provided that:
  - 1) At least one public hearing has been held in accordance with procedures established in 35 Ill. Adm. Code Part 252.51-102 of this chapter;
  - 2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;
  - 3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

- 4) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and
  - 5) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- c) Any area other than an area to which ~~Section 204.920~~ paragraph (e) of this section refers may be redesignated as Class III if—
- 1) The redesignation would meet the requirements of ~~subsection (b) paragraph (g)(2) of this section~~;
  - 2) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of ~~the State of Illinois~~, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;
  - 3) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any ~~national ambient air quality standard~~ NAAQS; and
  - 4) Any permit application for any major stationary source or major modification, subject to review under ~~Section 204.1120~~ paragraph (l) of this section which could receive a permit under this ~~Section~~ only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.



- d) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the ~~USEPA Administrator~~ a proposal to redesignate areas Class I, Class II, or Class III, provided, that:
- 1) The Indian Governing Body has followed procedures equivalent to those required of a State under ~~subsections (b), (c)(3), and (c)(4) paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv) of this section~~; and
  - 2) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.
- e) The ~~USEPA Administrator~~ shall disapprove, within 90 days of submission, a proposed redesignation of any area only if ~~he-it~~ finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this ~~paragraph~~ Section or is inconsistent with Section 204.110 ~~paragraph (e) of this section~~. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.
- f) If the ~~USEPA Administrator~~ disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the ~~USEPA Administrator~~.

#### SUBPART E: STACK HEIGHTS

##### Section 204.1000 Stack Heights

- a) The degree of emission limitation required for control of any air pollutant under this ~~section~~ Part shall not be affected in any manner by—:
- 1) So much of the stack height of any source as exceeds good engineering practice, or
  - 2) Any other dispersion technique.
- b) ~~Subsection (a) Paragraph (1)(1)~~ of this ~~Section~~ shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

#### SUBPART F: REQUIREMENTS FOR MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS IN ATTAINMENT AND UNCLASSIFIABLE AREAS

##### Section 204.1100 Control Technology Review

- a) A major stationary source or major modification shall meet each applicable emissions limitation under the ~~State Implementation Plan~~ SIP and each applicable emissions standard and standard of performance under 40 CFR ~~Parts 60, and 61,~~ parts 60, 62 and 63.
- b) A new major stationary source shall apply ~~best available control~~ technology BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.
- c) A major modification shall apply ~~best available control~~ technology BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
- d) For phased construction projects, the determination of ~~best available control~~ technology BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of ~~best available control~~ technology BACT for the source.

#### **Section 204.1110 Source Impact Analysis**

~~Required demonstration.~~ The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

- a) Any ~~national ambient air quality standard~~ NAAQS in any air quality control region; or
- b) Any applicable maximum allowable increase over the baseline concentration in any area.

#### **Section 204.1120 Air Quality Models**

- a) All estimates of ambient concentrations required under this ~~paragraph~~ Section shall be based on applicable air quality models, data-bases, and other requirements specified in Appendix W of 40 CFR pPart 51 of this chapter (Guideline on Air Quality Models).
- b) Where an air quality model specified in Appendix W of 40 CFR pPart 51 of this chapter (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a

model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the USEPA Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 35 Ill. Adm. Code Part 252 developed in accordance with paragraph (g) of this section.

**Section 204.1130 Air Quality Analysis**

a) Preapplication analysis.

- 1) Any application for a permit under this Part section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:
  - A) For the source, each pollutant that it would have the potential to commit in a significant amount;
  - B) For the modification, each pollutant for which it would result in a significant net emissions increase.
- 2) With respect to any such pollutant for which no National Ambient Air Quality Standard NAAQS exists, the analysis shall contain such air quality monitoring data as the Illinois EPA Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.
- 3) With respect to any such pollutant (~~other than nonmethane hydrocarbons~~) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- 4) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Illinois EPA Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.
- 5) ~~For any application which becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv) of this section, between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) of this section, requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:~~

~~A) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by these regulations.~~

~~B) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) of this section requires shall have been gathered over at least that shorter period.~~

~~C) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.~~

**6)5) The owner or operator of a proposed stationary source or modification of volatile organic compounds VOM who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.**

~~7) For any application that becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv) pertaining to PM<sub>10</sub>, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.~~

~~8) With respect to any requirements for air quality monitoring of PM<sub>10</sub> under paragraphs (i)(1)(i) and (ii) of this section the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.~~

**b) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Illinois EPA Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.**

- c) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to ~~40 CFR Part 58 of this chapter~~ during the operation of monitoring stations for purposes of satisfying ~~paragraph (m) of this Section~~.

**Section 204.1140 Additional Impact Analyses**

- a) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
- b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.
- ~~e) Visibility monitoring. The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.~~

**SUBPART G: ADDITIONAL REQUIREMENTS FOR CLASS I AREAS**

**Section 204.1200 Additional Requirements for Sources Impacting Federal Class I Areas**

- a) Notice to Federal ~~L~~ and ~~M~~ managers. The ~~Illinois EPA Administrator~~ shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal ~~L~~ and ~~M~~ manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The ~~Illinois EPA Administrator~~ shall also provide the Federal ~~L~~ and ~~M~~ manager and such Federal officials with a copy of the preliminary determination required under ~~35 Ill. Adm. Code Part 252 paragraph (q) of this section~~, and shall make available to them any materials used in making that determination, promptly after the ~~Illinois EPA Administrator~~ makes such determination. Finally, the ~~Illinois EPA Administrator~~ shall also notify all affected Federal ~~L~~ and ~~M~~ managers within 30 days of receipt of any advance notification of any such permit application.

- b) **Federal Land Manager.** The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Illinois EPA Administrator, whether a proposed source or modification will have an adverse impact on such values.
- c) **Visibility analysis.** The Illinois EPA Administrator shall consider any analysis performed by the Federal Land Manager, provided within 30 days of the notification required by subsection (a) paragraph (p)(1) of this Section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Illinois EPA Administrator finds that such an analysis does not demonstrate to the satisfaction of the Illinois EPA Administrator that an adverse impact on visibility will result in the Federal Class I area, the Illinois EPA Administrator must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.
- d) **Denial—impact on air quality related values.** The Federal Land Manager of any such lands may demonstrate to the Illinois EPA Administrator that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Illinois EPA Administrator concurs with such demonstration, then it shall not issue the permit.
- e) **Class I variances.** The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies to the State, the State may authorize the Illinois EPA Administrator may, if provided, that the applicable requirements of this section-Part are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide SO<sub>2</sub>, PM<sub>2.5</sub>, PM<sub>10</sub>, and nitrogen oxides NO<sub>x</sub>, would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM <sub>2.5</sub> : Annual arithmetic mean	4

24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide SO <sub>2</sub> :	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide NO <sub>2</sub> :	
Annual arithmetic mean	25

- f) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (c) paragraph (q)(4) of this ~~Section~~ may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for ~~sulfur dioxide SO<sub>2</sub>~~ for a period of ~~twenty-four~~ 24 hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Illinois EPA Administrator shall issue a permit to such source or modification pursuant to the requirements of subsection (h) paragraph (q)(7) of this ~~Section~~ Part provided ~~that~~ that the applicable requirements of this ~~Part~~ section are otherwise met.
- g) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the Illinois EPA Administrator shall issue a permit pursuant to the requirements of subsection (h) paragraph (q)(7) of this ~~Section~~ Part provided ~~that~~ that the applicable requirements of this ~~section-Part~~ section are otherwise met.
- h) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (f) or (g) paragraph (q)(5) or (6) of this ~~Section~~ the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of ~~sulfur dioxide SO<sub>2</sub>~~ from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE [Micrograms per cubic meter]		
Period of exposure	Terrain areas	
	Low Terrain	High Terrain
24-hr maximum	36	62
3-hr maximum	130	221

**SUBPART H: GENERAL OBLIGATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**Section 204.1300 Notification of Application Completeness to Applicants**

The Illinois EPA shall notify the applicant within 30 days of receipt as to the completeness of an application for a permit pursuant to this Part or any deficiency in the application or information submitted in such an application. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Illinois EPA received all required information.

**Section 204.1310 Transmittal of Application to USEPA**

The Illinois EPA shall transmit to the USEPA a copy of each permit application submitted pursuant to this Part relating to a major stationary source or a major modification.

**Section 204.1320 Public Participation**

The administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. Prior to the initial issuance of a permit pursuant to this Part or a modification ~~revision~~ of a permit issued pursuant to this Part, the Illinois EPA shall provide, at a minimum, notice of the proposed issuance or modification of a permit, a comment period, and opportunity for public hearing pursuant to the Illinois EPA's public participation procedures set forth at 35 Ill. Adm. Code Part 252.

**Section 204.1330 Issuance Within One Year of Submittal of Complete Application**

Within one year after receipt of a complete application, a permit shall be granted or denied by the Illinois EPA.

**Section 204.1340 Permit Rescission**

- a) Any permit issued under this ~~section-Part~~ or a prior version of this ~~section-Part~~ shall remain in effect, unless and until it expires under ~~paragraph (r)~~ of this ~~s~~Section 204.830 or is rescinded under this ~~paragraph (w)~~Section.
- b) An owner or operator of a stationary source or modification who holds a permit issued under this ~~section-Part~~ or 40 CFR 52.21 for the construction of a new source or modification that meets the requirement in ~~paragraph (w)(3)~~ of this



~~subsection (c)~~ may request that the ~~Administrator- Illinois EPA~~ rescind the permit or a particular portion of the permit.

- c) The ~~Administrator- Illinois EPA~~ may grant an application for rescission if the application shows that this ~~section-Part~~ would not apply to the source or modification.
- d) If the ~~Administrator- Illinois EPA~~ rescinds a permit under this ~~paragraph~~Section, the ~~Administrator- Illinois EPA~~ shall post a notice of the rescission determination on a public ~~W~~web site identified by the ~~Administrator- Illinois EPA~~ within 60 days of the rescission.

## SUBPART I: NONAPPLICABILITY RECORDKEEPING AND REPORTING

### Section 204.1400 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources

Except as otherwise provided in ~~subsection (f)(2) paragraph (f)(6)(vi)(b)~~ of this ~~S~~Section, the provisions of this ~~Section paragraph (f)(6)~~ apply with respect to any regulated NSR pollutant emitted from projects involving at existing emissions unit(s) at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of ~~subsection (f) paragraph (f)(6)(vi)~~ of this ~~s~~Section, that a project that is not a ~~part of a major modification for the pollutant~~ may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in ~~Sections 204.600(b)(1) through (b)(3) paragraphs (b)(4)(i)(a) through (e)~~ of this ~~section~~ for calculating projected actual emissions.

- a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
  - 1) A description of the project;
  - 2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
  - 3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under ~~Section 204.600(b)(3) paragraph (b)(4)(i)(c)~~ of this ~~section~~ and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in ~~subsection (a) paragraph (f)(6)(i)~~ of this ~~s~~Section to the ~~Illinois EPA Administrator~~. Nothing in this ~~paragraph (f)(6)(ii) subsection~~ shall be

construed to require the owner or operator of such a unit to obtain any determination from the Illinois EPA Administrator before beginning actual construction.

- c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (a)(2) paragraph (r)(6)(i)(b) of this Section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.
- d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA Administrator within 60 days after the end of each year during which records must be generated under subsection (c) paragraph (r)(6)(iii) of this Section setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Illinois EPA Administrator if the annual emissions, in tons per year, from the project identified in subsection (a) paragraph (r)(6)(i) of this Section, exceed the baseline actual emissions (as documented and maintained pursuant to subsection (a)(3) paragraph (r)(6)(i)(e) of this Section), by a significant amount (as defined in Section 204.660 paragraph (b)(2.3) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subsection (a)(3) paragraph (r)(6)(i)(e) of this Section. Such report shall be submitted to the Illinois EPA Administrator within 60 days after the end of such year. The report shall contain the following:
  - 1) The name, address and telephone number of the major stationary source;
  - 2) The annual emissions as calculated pursuant to subsection (c) paragraph (r)(6)(iii) of this Section; and
  - 3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- f) A "reasonable possibility" under paragraph (r)(6) of this Section occurs when the owner or operator calculates the project to result in either:
  - 1) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in Section 204.670 under paragraph (b)(40) of this section (without reference to the

amount that is a significant net emissions increase), for the regulated NSR pollutant; or

- 2) A projected actual emissions increase that, added to the amount of emissions excluded under ~~Section 204.600(b)(3) paragraph (b)(4)(ii)(e) of this section,~~ sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under ~~Section 204.670 paragraph (b)(4) of this section~~ (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of ~~this subsection (1)(2) paragraph (r)(6)(vi)(b) of this section,~~ and not also within the meaning of ~~subsection (f)(1) paragraph (r)(6)(v)(a) of this section,~~ then ~~subsections (b) through (e) of this Section provisions (r)(6)(ii) through (v) do not apply to the project.~~
- g) The owner or operator of the source shall make the information required to be documented and maintained pursuant to ~~this Section paragraph (r)(6) of this section~~ available for review upon a request for inspection by the Illinois EPA or USEPA Administrator or the general public pursuant to the requirements contained in ~~§70.4(b)(3)(viii) of this chapter; Section 39.5(8)(e) of the Act.~~

## SUBPART J: INNOVATIVE CONTROL TECHNOLOGY

### Section 204.1500 Innovative Control Technology

- a) An owner or operator of a proposed major stationary source or major modification may request the ~~Illinois EPA Administrator~~ in writing no later than the close of the comment period under ~~35 Ill. Adm. Code Part 25240 CFR 124.10~~ to approve a system of innovative control technology.
- b) The ~~Illinois EPA Administrator~~ shall, with the consent of the ~~governor(s) of the affected State(s) Governor,~~ determine that the source or modification may employ a system of innovative control technology, if:
  - 1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
  - 2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under ~~Section 204.1100(b) paragraph (j)(2) of this section,~~ by a date specified by the ~~Illinois EPA Administrator.~~ Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;
  - 3) The source or modification would meet the requirements of ~~Sections 204.1100 and 204.1110 paragraphs (j) and (k) of this section,~~ based on the

emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Illinois EPA Administrator;

4) The source or modification would not before the date specified by the Illinois EPA Administrator:

A) Cause or contribute to a violation of an applicable ~~national ambient air quality standard~~ NAAQS; or

B) Impact any area where an applicable increment is known to be violated; and

5) All other applicable requirements including those for public participation have been met.

6) The provisions of Section 204.1200 ~~paragraph (j) of this section~~ (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

c) The Illinois EPA Administrator shall withdraw any approval to employ a system of innovative control technology made under this ~~section~~ section, if:

1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3) The Illinois EPA Administrator decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

d) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with ~~subsection (c) paragraph (3) of this section~~ subsection (c) paragraph (3) of this section, the Illinois EPA Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of ~~best available control technology~~ BACT through use of a demonstrated system of control.

## SUBPART K: PLANTWIDE APPLICABILITY LIMITATION

### Section 204.1600 Applicability

~~Actuals PALs. The provisions in paragraphs (a) (1) through (5) of this section govern actuals PALs.~~

- a) ~~The Illinois EPA Administrator~~ may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO<sub>2</sub>e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in this Subpart paragraphs (aa)(1) through (15) of this section. The term "PAL" shall mean "actuals PAL" throughout ~~this Subpart paragraph (aa) of this section~~.
- b) Any physical change in or change in the method of operation of a major stationary source ~~or a GHG-only source~~ that maintains its total source-wide emissions below the PAL level, meets the requirements in ~~paragraphs (aa)(1) through (15) this Subpart of this section~~, and complies with the PAL permit:
  - 1) Is not a major modification for the PAL pollutant;
  - 2) Does not have to be approved through the ~~major NSR program PSD program~~; and
  - 3) Is not subject to the provisions in ~~Section 204.850 paragraph (r)(4) of this section~~ (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and
  - 4) ~~Does not make GHGs subject to regulation as defined by paragraph (b)(49) of this section.~~
- c) Except as provided under ~~subsection (b)(2) paragraph (aa)(1)(i)(e) of this section~~, a major stationary source ~~or a GHG-only source~~ shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

#### **Section 204.1610 Definitions**

For the purposes of this ~~section~~ Subpart, the definitions in ~~paragraphs (aa)(2)(i) through (xi) Sections 204.1620 through 204.1780 of this section~~ apply. When a term is not defined in these ~~sections~~ paragraphs, it shall have the meaning given in this Part, Part 211, or in the paragraph (b) of this section or in the Act CAA.

#### **Section 204.1620 Actuals PAL**

"Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in ~~Section 204.240 paragraph (b)(18) of this section~~) of all emissions units (as defined in ~~Section 204.370 paragraph (b)(7) of this section~~) at the source, that emit or have the potential to emit the PAL pollutant. ~~For a GHG-only source, actuals PAL means a PAL based on the baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of all~~

emissions units (as defined in paragraph (aa)(2)(xiv) of this section) at the source, that emit or have the potential to emit GHGs.

### **Section 204.1630 Allowable Emissions**

~~“Allowable emissions” means “allowable emissions” as defined in Section 204.230 paragraph (b)(16) of this section, except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b) of this section. T that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.~~

~~An emissions unit’s potential to emit shall be determined using the definition in paragraph (b)(4) of this section, except that the words “or enforceable as a practical matter” should be added after “federally enforceable.”~~

~~**Baseline actual emissions** for a GHG PAL means the average rate, in tons per year CO<sub>2</sub>e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the permitting authority for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO<sub>2</sub>e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.~~

~~(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.~~

~~(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.~~

~~(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.~~

~~(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by paragraphs (aa)(2)(xiii)(b) and (e) of this section.~~

### **Section 204.1640 Continuous Emissions Monitoring System (CEMS)**

~~"Continuous emissions monitoring system" or ("CEMS") means all of the equipment that may be required to meet the data acquisition and availability requirements of this Partsection, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.~~

**Section 204.1650 Continuous Emissions Rate Monitoring System (CERMS)**

~~"Continuous emissions rate monitoring system" or ("CERMS") means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).~~

**Section 204.1660 Continuous Parameter Monitoring System (CPMS)**

~~"Continuous parameter monitoring system" or ("CPMS") means all of the equipment necessary to meet the data acquisition and availability requirements of this Partsection, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.~~

~~Emissions unit with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:~~

~~(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.~~

~~(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (aa)(2)(xiv)(a) of this section.~~

~~GHG-only source means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(1) of this section and the amount of GHGs on a CO<sub>2</sub>e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(49) of this section at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under paragraph (aa) of this section.~~

**Section 204.1670 Lowest Achievable Emission Rate (LAER)**

~~"Lowest achievable emission rate" or ("LAER)" is as defined in §51.165(a)(1)(xiii) of this chapter. shall have the meaning given by the provisions at 35 Ill. Adm. Code 203.301(a).~~

**Section 204.1680 Major Emissions Unit**

~~"Major emissions unit" means a: Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area, or~~

- ~~a) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act CAA for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(e) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.~~
- ~~b) For a GHG PAL issued on a CO<sub>2</sub>e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO<sub>2</sub>e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL permit is being issued.~~

~~Minor source means any stationary source that does not meet the definition of major stationary source in paragraph (b)(1) of this section for any pollutant at the time the PAL is issued.~~

#### **Section 204.1690 Plantwide Applicability Limitation (PAL)**

~~"Plantwide applicability limitation" or ("PAL)" means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG emission limitation for a pollutant at a major stationary source or GHG only source, that is enforceable as a practical matter and established source-wide in accordance with this Subpart paragraphs (a)(1) through (15) of this section.~~

#### **Section 204.1700 PAL Effective Date**

~~PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.~~

#### **Section 204.1710 PAL Effective Period**

~~PAL effective period means the period beginning with the PAL effective date and ending 10 years later.~~

#### **Section 204.1720 PAL Major Modification**

~~"PAL major modification" means, notwithstanding Sections 204.490 and 204.550 paragraphs (b)(2), (b)(3), and (b)(49) of this section (the definitions for major modification, and net emissions increase, and subject to regulation), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.~~



**Section 204.1730 PAL Permit**

"PAL permit" means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the ~~State Implementation Plan~~ SIP, or the ~~title VCAAPP~~ permit issued by the Illinois EPA Administrator that establishes a PAL for a major stationary source ~~or a GHG only source.~~

**Section 204.1740 PAL Pollutant**

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source ~~or a GHG only source. For a GHG only source, the only available PAL pollutant is greenhouse gases.~~

**Section 204.1750 Predictive Emissions Monitoring System (PEMS)**

"Predictive emissions monitoring system" or ("PEMS") means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**Section 204.1760 Reasonably Achievable Control Technology (RACT)**

~~"Reasonably Achievable Control Technology" or ("RACT") is as defined in §51.100(e) of this Chapter. means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:~~

- ~~a) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;~~
- ~~b) The social, environmental, and economic impact of such controls; and~~
- ~~c) Alternative means of providing for attainment and maintenance of such standard.~~

**Section 204.1770 Significant Emissions Unit**

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in ~~Section 204.660 paragraph (b)(23) of this section~~ or in the ~~Act~~ CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in ~~paragraph (aa)(2)(iv) of this section~~ Section 204.1680. For a GHG PAL issued on a CO<sub>2</sub>e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO<sub>2</sub>e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in ~~paragraph (aa)(2)(iii) of this section~~, but less than the amount that would qualify the unit as a major emissions unit as defined in ~~paragraph (aa)(2)(iv)(e) of this section.~~

**Section 204.1780 Small Emissions Unit**

~~"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Section 204.060 paragraph (b)(2)(i) of this section or in the Act/CAA, whichever is lower. For a GHG PAL issued on a CO<sub>2</sub>e basis, small emissions unit means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO<sub>2</sub>e basis defined as "significant" for the purposes of paragraph (b)(49)(iii) of this section at the time the PAL permit is being issued.~~

**Section 204.1790 Permit Application Requirements**

As part of a permit application requesting a PAL, the owner or operator of a major stationary source ~~or a GHG only source~~ shall submit the following information to the Illinois EPA Administrator for approval:

- a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.
- b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.
- c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Section 204.1890(a) paragraph (aa)(13)(i) of this section.
- d) ~~As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in paragraph (b)(1)(i)(a) and (b) of this section or a GHG only source as defined in paragraph (aa)(2)(xii) of this section.~~

**Section 204.1800 General Requirements for Establishing PAL**

- a) The Illinois EPA Administrator is allowed to establish a PAL at a major stationary source ~~or a GHG source~~, provided that at a minimum, the requirements in paragraphs (aa)(1)(i)(a) through (g) of this section are met.
  - 1) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG PAL, that is enforceable as a practical matter, for the entire major stationary

~~source or GHG only source.~~ For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source ~~or GHG only source~~ owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source ~~or GHG only source~~ owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

- 2) The PAL shall be established in a PAL permit that meets the public participation requirements in ~~Section 204.1810 paragraph (a)(5) of this section.~~
  - 3) The PAL permit shall contain all the requirements of ~~Section 204.1830 paragraph (a)(7) of this section.~~
  - 4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source ~~or GHG only source.~~
  - 5) Each PAL shall regulate emissions of only one pollutant.
  - 6) Each PAL shall have a PAL effective period of 10 years.
  - 7) The owner or operator of the major stationary source ~~or GHG only source~~ with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in ~~Sections 204.1880 through 204.1900 paragraphs (a)(12) through (14) of this section~~ for each emissions unit under the PAL through the PAL effective period.
- b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets ~~pursuant to 35 Ill. Adm. Code Part 203 under §51.165(a)(3)(ii) of this chapter~~ unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

#### **Section 204.1810 Public Participation Requirements**

PALs for existing major stationary sources ~~or GHG only source~~ shall be established, renewed, or increased through a procedure that is consistent with ~~35 Ill. Adm. Code Part 252 §§51.160 and 51.161 of this chapter.~~ This includes the requirement that the ~~Illinois EPA Administrator~~ provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for

submittal of public comment. The ~~Illinois EPA Administrator~~ must address all material comments before taking final action on the permit.

**Section 204.1820 Setting the 10-Year Actuals PAL Level**

- a) Except as provided in ~~subsection (b) paragraph (aa)(6)(i) and (ii) of this section,~~ the plan shall provide that the actuals PAL level for a major stationary source ~~or a GHG-only source~~ shall be established as the sum of the baseline actual emissions (as defined in ~~Section 204.240 paragraph (b)(48) of this section or, for GHGs, paragraph (aa)(2)(xiii) of this section~~) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under ~~Section 204.60 paragraph (b)(23) of this section~~ or under the ~~AaCAA~~, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The ~~Illinois EPA reviewing authority~~ shall specify a reduced PAL level(s) in tons/ per year (or tons per year CO<sub>2</sub>e for a GHG PAL) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the ~~Illinois EPA reviewing authority~~ is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
- b) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in ~~subsection (a) paragraph (aa)(6)(i) of this section,~~ the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
- e) ~~For CO<sub>2</sub>e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO<sub>2</sub>e basis for the purposes of paragraph (b)(49)(iii) at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO<sub>2</sub>e based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level (in tons per year CO<sub>2</sub>e) in the PAL permit to become effective on the future compliance date(s) of any~~

applicable Federal or state regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit.

**Section 204.1830 Contents of the PAL Permit**

- a) The PAL permit must contain, at a minimum, the information in ~~subsections (a) (1) through (10) paragraphs (aa)-(7)(i) through (xi)~~ of this ~~s~~Section.
- 1) The PAL pollutant and the applicable source-wide emission limitation in tons per year, or tons per year CO<sub>2e</sub> for a GHG PAL.
  - 2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).
  - 3) Specification in the PAL permit that if a major stationary source ~~or GHG-only source-owner or operator~~ applies to renew a PAL in accordance with ~~Section 204.1860 paragraph (aa)-(10) of this section~~ before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by ~~a reviewing authority~~ the Illinois EPA.
  - 4) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
  - 5) A requirement that, once the PAL expires, the major stationary source ~~or GHG-only source~~ is subject to the requirements of ~~Section 204.1850 paragraph (aa)(9) of this section~~.
  - 6) The calculation procedures that the major stationary source ~~or GHG-only source-owner or operator~~ shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by ~~Section 204.1890(a) paragraph (aa)(13)(i) of this section~~.
  - 7) A requirement that the major stationary source ~~or GHG-only source-owner or operator~~ monitor all emissions units in accordance with the provisions under ~~Section 204.1880 paragraph (aa)(12) of this section~~.
  - 8) A requirement to retain the records required under ~~Section 204.1890 paragraph (aa)(13) of this section~~ on site. Such records may be retained in an electronic format.
  - 9) A requirement to submit the reports required under ~~Section 204.1900 paragraph (aa)(14) of this section~~ by the required deadlines.

- 10) Any other requirements that the ~~Illinois EPA Administrator~~ deems necessary to implement and enforce the PAL.
- ~~11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under paragraph (b)(49) of this section as long as the source complies with the PAL.~~

#### **Section 204.1840 Effective Period and Reopening a PAL Permit**

The requirements in ~~subsections (a) and (b) paragraphs (aa)(8)(i) and (ii)~~ of this Section apply to actuals PALs.

- a) PAL effective period. The ~~Illinois EPA Administrator~~ shall specify a PAL effective period of 10 years.
- b) Reopening of the PAL permit.
  - 1) During the PAL effective period, the ~~Illinois EPA Administrator~~ must reopen the PAL permit to:
    - B) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
    - C) Reduce the PAL if the owner or operator of the major stationary source creates credible emissions reductions for use as offsets pursuant to 35 Ill. Adm. Code Part 203 under §51-165(a)(3)(ii) of this chapter; and
    - D) Revise the PAL to reflect an increase in the PAL as provided under Section 204.1870 paragraph (aa)(11) of this section.
  - 2) The ~~Illinois EPA Administrator~~ shall have discretion to reopen the PAL permit for the following:
    - A) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;
    - B) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the ~~State Illinois EPA~~ may impose on the major stationary source ~~or GHG-only source under the State Implementation Plan (SIP)~~; and

- C) Reduce the PAL if the reviewing authority Illinois EPA determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
  
- c) Except for the permit reopening in subsection (b)(1)(A) paragraph (aa)(8)(i)(v)(1) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Section 204.1810 paragraph (aa)(5) of this section.

### **Section 204.1850 Expiration of a PAL**

Any PAL that is not renewed in accordance with the procedures in Section 204.1860 paragraph (a)(10) of this section shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) of this section shall apply.

- a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in subsections (a)(1) and (2) paragraphs (aa)(9)(i)(v) and (v) of this Section.
  - 1) Within the time frame specified for PAL renewals in Section 204.1860(b) paragraph (aa)(10)(i) of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Illinois EPA Administrator) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Section 204.1860(c) paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.
  - 2) The Illinois EPA Administrator shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Illinois EPA Administrator determines is appropriate.
  
- b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Illinois EPA Administrator may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS,

CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

- c) Until the ~~Illinois EPA Administrator~~ issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under ~~subsection (a)(2) paragraph (aa)(9)(i)(b)~~ of this sSection, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
- d) Any physical change or change in the method of operation at the major stationary source ~~or GHG-only source~~ will be subject to major NSR requirements if such change meets the definition of major modification in ~~Section 204.490 paragraph (b)(2) of this section.~~
- e) The major stationary source ~~or GHG-only source~~ owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to ~~Section 204.850 paragraph (c)(4) of this section,~~ but were eliminated by the PAL in accordance with the provisions in ~~Section 204.1600(b)(3) paragraph (aa)(1)(i)(e) of this section.~~

#### **Section 204.1860      Renewal of a PAL**

- a) The ~~Illinois EPA Administrator~~ shall follow the procedures specified in ~~Section 204.1810 paragraph (aa)(5) of this section~~ in approving any request to renew a PAL for a major stationary source ~~or GHG-only source~~, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~Illinois EPA Administrator.~~
- b) Application deadline. A major stationary source ~~or GHG-only source~~ owner or operator shall submit a timely application to the ~~Illinois EPA Administrator~~ to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source ~~or GHG-only source~~ submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
- c) Application requirements. The application to renew a PAL permit shall contain the information required in ~~subsections (c)(1) through (4) paragraphs (aa)(10)(iii)(a) through (d)~~ of this sSection.



- 1) The information required in Section 204.1790(a) through (c) paragraphs (aa)(3)(i) through (ii) of this section.
  - 2) A proposed PAL level.
  - 3) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
  - 4) Any other information the owner or operator wishes the Illinois EPA Administrator to consider in determining the appropriate level for renewing the PAL.
- d) PAL adjustment. In determining whether and how to adjust the PAL, the Illinois EPA Administrator shall consider the options outlined in subsections (d)(1) and (2) paragraphs (aa)(10)(iv)(a) and (b) of this section. However, in no case may any such adjustment fail to comply with subsection (d)(3) paragraph (aa)(10)(iv)(c) of this section.
- 1) If the emissions level calculated in accordance with Section 204.1820 paragraph (aa)(6) of this section is equal to or greater than 80 percent of the PAL level, the Illinois EPA Administrator may renew the PAL at the same level without considering the factors set forth in subsection (d)(2) paragraph (aa)(10)(iv)(b) of this section; or
  - 2) The Illinois EPA Administrator may set the PAL at a level that ~~he or she~~ determines to be more representative of the source's baseline actual emissions, or that ~~he or she~~ determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Illinois EPA Administrator in ~~his or her~~s written rationale.
  - 3) Notwithstanding subsections (d)(1) and (2) paragraphs (aa)(10)(iv)(a) and (b) of this section:
    - A) If the potential to emit of the major stationary source ~~or GHG only source~~ is less than the PAL, the Illinois EPA Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and
    - B) The Illinois EPA Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source ~~or GHG only source~~ has complied with the provisions of Section 204.1870 paragraph (aa)(11) of this section (increasing a PAL).

- e) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Illinois EPA Administrator has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or ~~title V~~ CAAPP permit renewal, whichever occurs first.

**Section 204.1870 Increasing the PAL During the PAL Effective Period**

- a) The Illinois EPA Administrator may increase a PAL emission limitation only if the major stationary source ~~or GHG-only source~~ complies with the provisions in ~~subsections (a)(1) through (4) paragraphs (aa)(1)(i)(a) through (d)~~ of this section.
- 1) The owner or operator of the major stationary source ~~or GHG-only source~~ shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary ~~or GHG-only source's~~ emissions to equal or exceed its PAL.
  - 2) As part of this application, the major stationary source ~~or GHG-only source~~-owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
  - 3) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in ~~subsection (a)(1) paragraph (aa)(1)(i)(a)~~ of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
  - 4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

- b) The ~~Illinois EPA Administrator~~ shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with ~~subsection (a)(2) paragraph (aa)(11)(i)(b)~~), plus the sum of the baseline actual emissions of the small emissions units.
- c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of ~~Section 204.1810 paragraph (aa)(5) of this section~~.

#### **Section 204.1880 Monitoring Requirements**

- a) General requirements.
  - 1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time, or in CO<sub>2</sub>e per unit of time for a GHG PAL. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
  - 2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in ~~subsection (b)(1) through (4) paragraphs (aa)(12)(i)(a) through (d)~~ of this ~~Section~~ and must be approved by the ~~Illinois EPA Administrator~~.
  - 3) Notwithstanding ~~subsection (a)(2) paragraph (aa)(12)(i)(b)~~ of this ~~Section~~, ~~you~~ the owner or operator may also employ an alternative monitoring approach that meets ~~subsection (a)(1) paragraph (aa)(12)(i)(a)~~ of this ~~Section~~ if approved by the ~~Illinois EPA Administrator~~.
  - 4) Failure to use a monitoring system that meets the requirements of this ~~Section~~ renders the PAL invalid.
- b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in ~~subsections (c) through (i) paragraphs (aa)(12)(iii) through (ix)~~ of this ~~Section~~:
  - 1) Mass balance calculations for activities using coatings or solvents;
  - 2) CEMS;

- 3) CPMS or PEMS; and
  - 4) Emission factors.
- c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
- 1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
  - 2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
  - 3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Illinois EPA Administrator determines there is site-specific data or a site-specific monitoring program to support another content within the range.
- d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
- 1) CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and
  - 2) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
- e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
- 1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
  - 2) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Illinois EPA Administrator, while the emissions unit is operating.

- f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
- 1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
  - 2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - 3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Illinois EPA Administrator determines that testing is not required.
- g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
- h) Notwithstanding the requirements in ~~subsections (c) through (g)~~ ~~paragraphs (aa) through (ff)~~ of this section Subpart, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Illinois EPA Administrator shall, at the time of permit issuance:
- 1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or
  - 2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
- i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Illinois EPA Administrator. Such testing must occur at least once every 5 years after issuance of the PAL.

**Section 204.1890 Recordkeeping Requirements**

- a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subpart

~~paragraph (aa)~~ and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

- b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:
- 1) A copy of the PAL permit application and any applications for revisions to the PAL; and
  - 2) Each annual certification of compliance pursuant to Section 39.5(7)(p)(v) of the Act~~the V~~ and the data relied on in certifying the compliance.

### **Section 204.1900 Reporting and Notification Requirements**

The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Illinois EPA Administrator in accordance with the CAAAP~~applicable title V operating permit program~~. The reports shall meet the requirements in subsections (a) through (c)~~paragraphs (aa)(1)-(i) through (ii)~~ of this sSection.

- a) **Semi-annual report.** The semi-annual report shall be submitted to the Illinois EPA Administrator within 30 days of the end of each reporting period. This report shall contain the information required in subsections (a)(1) through (7)~~paragraphs (aa)(1)-(i)(c) through (g)~~ of this sSection.
- 1) The identification of owner and operator and the permit number.
  - 2) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a GHG PAL) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Section 204.1890(a) paragraph (aa)(13)(i)~~of this section~~.
  - 3) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
  - 4) A list of any emissions units modified or added to the major stationary source ~~or a GHG-only source~~ during the preceding 6-month period.
  - 5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
  - 6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit

monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Section 204.1880(g)(aa)(2)(vii).

- 7) A signed statement by the responsible official (as defined by the applicable title V operating permit program (CAAPP)) certifying the truth, accuracy, and completeness of the information provided in the report.
- b) Deviation report. The major stationary source ~~or a GHG-only source~~ owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) ~~§70.6(a)(3)(iii)(B) of this chapter~~ shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B) ~~§70.6(a)(3)(iii)(B) of this chapter~~. The reports shall contain the following information:
- 1) The identification of owner and operator and the permit number;
  - 2) The PAL requirement that experienced the deviation or that was exceeded;
  - 3) Emissions resulting from the deviation or the exceedance; and
  - 4) A signed statement by the responsible official (as defined by the applicable title V operating permit program (CAAPP)) certifying the truth, accuracy, and completeness of the information provided in the report.
- c) Re-validation results. The owner or operator shall submit to the Illinois EPA Administrator the results of any re-validation test or method within 3 months after completion of such test or method.

#### **Section 204.1910 Transition Requirements**

- a) The Illinois EPA Administrator may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this Subpart section after the initial effective date of 35 Ill. Adm. Code 204, March 3, 2003.
- b) The Administrator may supersede any PAL that was established prior to March 3, 2003 with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 101  
GENERAL RULES

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**AUTHORITY:** Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

**SOURCE:** Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, 2015, amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 9930, effective July 5, 2017.; amended in R - at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: DEFINITIONS

### **Section 101.202 Definitions for Board's Procedural Rules**

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act. [415 ILCS 5]

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board under authority granted to the Board by Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding under Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or

regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency public comment" means information submitted to the Agency on a proposed Agency decision either by oral statement made at an Agency public hearing or written statement submitted to the Agency during the period for comment by the public.

"Agency public hearing" means a public proceeding to provide interested persons an opportunity to understand and comment on a proposed Agency decision.

"Agency public hearing record" means the record of the Agency public hearing, as kept by the Agency.

"Agency recommendation" means the document filed by the Agency under Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Agency record" means a record of final Agency decision, as kept by the Agency, of those documents required by the State agency record meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval under any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism,*

*blueprint or map.* [415 ILCS 5/7.1]

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board under Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"CAAPP permit" means any permit issued, renewed, amended, modified or revised pursuant to Section 39.5 of the Act.

"CAAPP permit appeal" means an appeal of a CAAPP permit as addressed by 35 Ill. Adm. Code Part 105.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor under Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before

the Board under Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal *Clean Air Act*, as now and hereafter amended (42 USC 7401 et seq.). [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act (33 USC 1251 et seq.).

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website at <http://www.ipcb.state.il.us/COOL/external/>.

"Complaint" means the initial filing that begins an enforcement proceeding under Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article.* [415 ILCS 5/7.1]

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory

proceedings. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means *paper that has been processed to remove inks, clays, coatings, binders and other contaminants.* [415 ILCS 20/2.1]

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function under Section 4(r) of the Act.

"Digital signature" means *a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device.* [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.* [5 ILCS 175/5-105]

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document.* [5 ILCS 175/5-105]

"Environmental Management System Agreement" or "EMSA" means the

agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed under Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act. [415 ILCS 150]

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:*

*statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record;*

*statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and*

*statements made by a State employee of the Board to Board members or other employees of the Board. [5 ILCS 430/5-50(b)] For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114)*

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted under Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40. [415 ILCS 5/28.2]*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West



Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act. [5 ILCS 100]

"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.* [415 ILCS 5/7.2]

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding,

who voluntarily participates as a party in the proceeding with permission of the Board. (See Section 101.402.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the permission the Board. (See Section 101.402.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.* [415 ILCS 5/3.330(b)]

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7(a)]

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section. See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made under Title XVI of the Act.

"OSFM record" means a record of final OSFM decision, as kept by the OSFM, of those documents of the OFSM that constitute the OSFM record relating to the eligibility and deductible decision and meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

~~"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.~~

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation under Section 30 of the Act during an ongoing proceeding. (See Section 101.404)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board under Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" is defined at Section 3.330(a) of the Act for purposes of this Part and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream.* [415 ILCS 20/3(f)(2)(i) and (ii)] (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing.* [415 ILCS 5/27(d)] (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board under authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency under Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"PSD" means the Prevention of Significant Deterioration of Air Quality program as authorized by Section 9.1(c) of the Act and as adopted by 35 Ill. Adm. Code

Part 204.

"PSD permit" means any PSD permit issued, extended or revised pursuant to Section 9.1(c) of the Act and 35 Ill. Adm. Code Part 204.

"PSD permit appeal" means an appeal of a PSD permit as addressed by 35 Ill. Adm. Code Part 105.

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d))

"PWSO Act" means the Public Water Supply Operations Act. [415 ILCS 45]

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required under Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held under Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording.* [415 ILCS 5/7.1]

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and 101.304)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section. See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought under Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding under an order of the Board or by operation of law. (See Section 101.514)

"Subpoena" means a command to appear at a certain time and place to give

testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made under Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board under Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.* [415 ILCS 5/35(a)]

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at Ill. Reg. \_\_\_\_\_, effective

~~Amended at 41 Ill. Reg. 9930, effective July 5, 2017)~~

**SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND  
STATUTORY DECISION DEADLINES**

**Section 101.302 Filing of Documents**

a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.

b) All documents to be filed with the Board must be filed with the Clerk.

1) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), documents must be filed at the following address:

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.

3) Each document being filed with the Clerk must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).

4) The date on which a document is considered to have been filed is determined under Section 101.300(b).

5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.



- c) Electronic documents may be filed through COOL under Subpart J. Paper documents may be filed with the Clerk by U.S. Mail, in person, or by third-party commercial carrier.
- d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1), but cannot be paid in cash.
  - 1) Petition for Site-Specific Regulation, \$75;
  - 2) Petition for Variance, \$75;
  - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed under Section 40 of the Act, \$75;
  - 4) Petition to Review Pollution Control Facility Siting Decisions, under Section 40.1 of the Act, \$75; and
  - 5) Petition for Adjusted Standard, under Section 28.1 of the Act, \$75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B, and double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
  - 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
  - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed through COOL electronically.

- 1) If a document is filed in paper, the original and two copies of the document (three total) are required. If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.
- 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device, meet the requirements of Section 101.1030(g) and, to the extent technically feasible, in text-searchable Adobe PDF:
  - A) The Agency record required by 35 Ill. Adm. Code 105.212, 105.302, ~~or~~ 105.410, or 105.612 or 35 Ill. Adm. Code 125.208 (see 35 Ill. Adm. Code 105.116);
  - B) The OSFM record required by 35 Ill. Adm. Code 105.508 (see 35 Ill. Adm. Code 105.116);
  - C) The local siting authority record required by 35 Ill. Adm. Code 107.302 (see 35 Ill. Adm. Code 107.304); and
  - D) A petition filed under 35 Ill. Adm. Code 104 or 35 Ill. Adm. Code 106 (see 35 Ill. Adm. Code 104.106 and 35 Ill. Adm. Code 106.106)
- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted under 35 Ill. Adm. Code 130 must be filed through COOL.
- 4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed under Section 5-75 of the IAPA. [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal must be filed through COOL. In addition, the rulemaking proponent must:
  - A) File a paper original of the copyrighted document. The rulemaking proposal also must include:
    - i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or

- ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
- B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except with permission or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h).
- j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of a motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material; however, materials that may be readily available to the Board, such as prior Board opinions and orders, federal and Illinois regulations, and federal and Illinois statutes, need not be included in appendices.
- l) Documents filed that do not meet the requirements of 35 Ill. Adm. Code. Subtitle A may be rejected by the Clerk or the hearing officer. Any rejection of a filing will include a description of the Board's rules that have not been met.

(Source: Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_  
Amended at 40 Ill. Reg. 7912, effective May 20, 2016)

**Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines**

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act), CAAPP permit appeals (Section 40.2 of the Act), and PSD permit appeals (Section 40.3 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under Subpart H. This Section will be strictly construed where there is a decision deadline unless the Board receives a waiver as set out in subsection (c).
- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.
  - 1) An open waiver waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4), the decision period recommences as of the date the notice to reinstate is filed with the Board.
  - 2) A time certain waiver must be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 41 Ill. Reg. 9930, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY**

**Section 101.610 Duties and Authority of the Hearing Officer**

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;
- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling under Section 101.624;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence under Section 101.614;
- i) Order the filing of any required Agency record, OSFM record, local siting authority record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery under Sections 101.614 and 101.616;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502;
- o) Set status report schedules;
- p) Require all participants in a rulemaking proceeding to state their positions with respect to the proposal; and

- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 41 Ill. Reg. 9930, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

### **Section 101.626 Information Produced at Hearing**

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code Part 105.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections prior to its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must have been made in the regular course of business, provided it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.

- f) **Prior Inconsistent Statements.** Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) **Oral and Written Statements.** Oral and written statements from participants may be taken at hearing in accordance with Section 101.628.

(Source: Amended at 41 Ill. Reg. 9930, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 105  
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

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105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)

105.APPENDIX B Comparison of Former and Current Rules (Repealed)

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 9930, effective July 5, 2017; amended in R18- at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**Section 105.104 Definitions**

- a) Nonattainment New Source Review (NaNSR) means Illinois' rules for Major Stationary Sources Construction and Modification (MSSCAM) at 35 Ill. Adm. Code Part 203.
- ~~a)~~
- b) ~~For the purpose of this Part,~~ Other words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

(Source: Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 105.108 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408, ~~or~~ 105.506 or 105.608;
- b) The petition is untimely under Section 105.206, 105.302, 105.404, ~~or~~ 105.504 or 105.606;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;
- d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or
- e) Other grounds exist that bar the petitioner from proceeding.

(Source: ~~Amended at 41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 105.112 Burden of Proof**

Unless this Part provides otherwise:

- a) *The burden of proof shall be on the petitioner except as provided in subsection (b) of this Section [415 ILCS 5/40(a)(1), 40(b) and (e)(3), and 40.2(a) and 40.3(a)(2)].*
- ~~b)~~ *The burden of proof is on the Agency if the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules. [415 ILCS 5/40(a)(1)]*

(Source: Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

**Section 105.116 Agency or OSFM Record Filing**

- a) The State agency must file with the Board the entire record of ~~its~~ the Agency's or OSFM's decision, as applicable, within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the ~~State agency~~ Agency or OSFM wishes to seek additional time to file ~~its~~ the record, it must file a request for extension before the date on which ~~its~~ the record is due to be filed. Under 35 Ill. Adm. Code 101.302(h)(2), ~~each~~ the State agency must file ~~its~~ the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record also must meet the requirements of 35 Ill. Adm. Code 101. Subpart J.
- b) The Agency record or OSFM record, as applicable, must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "R" placed before the number of each page. This page number must appear in the top right corner of each page. The Agency record or OSFM record must be certified by the applicable State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the Agency record or OSFM record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: ~~Amended at 41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

**Section 105.118 Sanctions for Untimely Filing of the Record**

If the ~~State agency~~ Agency or OSFM unreasonably fails to timely file ~~its~~ the record on or before the date required under this Part, or unreasonably fails to prepare the record in accordance with this Part and 35 Ill. Adm. Code 101 Subpart J, the Board may sanction the relevant State agency in accordance with 35 Ill. Adm. Code 101. Subpart H.

(Source: ~~Amended at 41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

**SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY**

**Section 105.200 Applicability**

This Subpart applies to any appeal to the Board of the Agency's final permit decisions and other final decisions of the Agency, except:

- a) When the appeal is of a final CAAPP decision of the Agency, which is addressed in Subpart C of this Part; ~~and~~
- b) When the appeal is of a final leaking underground storage tank decision of the Agency, which is addressed in Subpart D of this Part; ~~and~~
- c) When the appeal is of a final PSD permit decision of the Agency, which is addressed in Subpart F of this Part.

(Source: Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

### **Section 105.210      Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- a) The Agency's final decision or issued permit;
- b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable under Section 105.206;
- c) A statement specifying the grounds of appeal; and
- d) For petitions under Section 105.204(b), *a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the Agency public hearing on the NPDES permit application, if an Agency public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility.* [415 ILCS 5/40(e)(2)]

(Source: Amended at 41 Ill. Reg. 10084, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

### **Section 105.212      Agency Record**

- a) The Agency must file its entire Agency record of its decision with the Clerk in accordance with Section 105.116.
- b) The Agency record must include:
  - 1) Any permit application or other request that resulted in the Agency's final decision;

- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
- 4) The Agency public hearing record file of any Agency public hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

(Source: ~~Amended at 41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. , effective \_\_\_\_\_

**Section 105.214 Board Hearing**

- a) Except as provided in subsections (b), (c) and (d), the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review. The hearing will be based exclusively on the Agency record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the Agency record under Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) if the Board determines that:
  - 1) The petition is duplicative or frivolous; or
  - 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) if the Board determines that the petition is duplicative or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under 35 Ill. Adm. Code 101.602.

(Source: Amended at 41 Ill. Reg. 10084, effective July 5, 2017) Amended at Ill. Reg. effective \_\_\_\_\_)

## SUBPART C: CAAPP PERMIT APPEALS

### Section 105.302 General Requirements

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it must provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 41(a) of the Act [415 ILCS 5/41(a)] a copy of each notification of denial pertaining to the permit applicant.
- c) The applicant, any person who participated in the public comment process under Section 39.5(8) of the Act, or any other person who could obtain judicial review under Section 41(a) of the Act may contest the decisions of the Agency enumerated in this subsection (c) by filing with the Clerk a petition for review of the Agency's action in accordance with this Section:
  - 1) Denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness regarding a submitted CAAPP application;
  - 2) Issuance of a CAAPP permit with one or more conditions or limitations;
  - 3) Failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable; or
  - 4) Failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) under Section 39.5(14) of the Act.
- d) For purposes of this Subpart, a person who participated in the Agency public comment process is someone who, during the Agency public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.

- e) The petition filed under subsection (c) must be filed within 35 days after the Agency's final permit action unless:
  - 1) The petition is based solely on grounds arising after the 35 day period expires, in which case the petition may be filed within 35 days after the new grounds for review arise.
  - 2) The applicant is challenging the Agency's failure to timely take final action under Section 39.5 of the Act, in which case the petition must be filed before the Agency takes the final action.
  - 3) However, under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.
- f) The Agency must appear as respondent at the hearing and must file within 30 days after service of the petition, an answer consisting of the entire Agency record of the application including the CAAPP permit application, the Agency public hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.
- g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.
- h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
- i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]*

(Source: Amended at 41 Ill. Reg. 10084, effective July 5, 2017) Amended at Ill. Reg. effective \_\_\_\_\_ )

#### **Section 105.304      Petition Content Requirements**

- a) The petition must include:
  - 1) A concise description of the CAAPP source for which the permit is sought;
  - 2) A statement of the Agency's decision or part thereof to be reviewed;

- 3) Aa justification as to why the Agency's decision or part thereof was in error; and
  - 4) Tthe other materials upon which the petitioner relies in its petition.
- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board under Section 40.2 of the Act.

(Source: Amended at ~~41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

#### SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

##### **Section 105.410 Agency Record**

- a) The Agency must file the entire Agency record of its decision with the Board in accordance with Section 105.116.
- b) The Agency record must include:
  - 1) The plan or budget submittal or other request that requires an Agency decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;
  - 3) The final determination letter; and
  - 4) Any other information the Agency relied upon in making its determination.

(Source: Amended at ~~41 Ill. Reg. 10084, effective July 5, 2017~~) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

##### **Section 105.412 Board Hearing**

The Board will conduct a public hearing in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600 (b)) upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought under 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the Agency record before the Agency at the time the permit or decision was issued.



(Source: Amended at 41 Ill. Reg. 10084, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

#### SUBPART E: APPEAL OF OSFM LUST DECISIONS

##### **Section 105.508 OSFM Record and Appearance**

- a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.
- b) The OSFM must file the entire OSFM record of its decision with the Board in accordance with Section 105.116. The OSFM record must include:
  - 1) The request for OSFM determination of eligibility or deductibility;
  - 2) Correspondence with the petitioner;
  - 3) The denial letter; and
  - 4) Any other information the OSFM relied upon in making its determination.

(Source: Amended at 41 Ill. Reg. 10084, effective July 5, 2017) Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

#### SUBPART F: PSD PERMIT APPEALS

##### Section 105.600 Applicability

This Subpart applies to proceedings before the Board concerning appeals from final PSD permit determinations made under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

##### Section 105.602 Parties

- a) Petitioner. The person who files a petition for review of the Agency's final decision must be named the petitioner.
- b) Respondent. The Agency must be named the respondent. If a petition is filed under Section 105.604(c) of this Subpart by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

Section 105.604      Who May File a Petition for Review

- a) *If the Agency refused to grant or grants with conditions a PSD permit under Section 9.1(d) of the Act and 35 Ill. Adm. Code Part 204, the applicant may petition for a hearing before the Board to contest the decision of the Agency. [415 ILCS 5/40.3(a)(1)]*
  
- b) *If the Agency fails to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, the applicant may petition for a hearing before the Board to compel the Agency to act on the application in a time that is deemed reasonable by the Board. [415 ILCS 5/40.3(a)(1)]*
  
- c) *Any person who participated in the Agency public comment process for a PSD permit and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the Agency's public comment process, the person may still petition for hearing, but only upon issues where the final permit conditions reflect changes from the draft permit that was made available during the Agency public comment process. [415 ILCS 5/40.3(a)(2)]*

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 105.606      Time to File Petition for Review

- a) Except as provided in subsection (b), if a person who may petition the Board under Section 105.604 of this Subpart wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file the petition with the Clerk within 35 days after the date of the Agency's final permit action.
  
- b) If the permit applicant wishes to appeal the Agency's failure to act on an application for a PSD permit within the time frame specified in Section 39(f)(3) of the Act, the person must file a petition for review with the Clerk before the Agency denies or issues the final permit.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 105.608      Petition Content Requirements

- a) For petitions under Section 105.604(a) or (c) of this Subpart, all pertinent information in support of each issue raised for review shall be contained within the body of the petition. The Board will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- i) The Agency's final decision or issued PSD permit;
  - ii) A statement as to how the petitioner participated in the Agency public comment process;
  - iii) All facts necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected;
  - iv) The issues proposed for review, citing to a specific permit term or condition where applicable and to the Agency record where those issues were raised with reasonable specificity during the public comment period, citing to any relevant page numbers in the public comments submitted to the Agency and attaching this public comment to the petition. If the issues proposed for review were not raised with reasonable specificity during the public comment period, the petition must explain why such issues were not required to be raised during the Agency public comment process; and
  - v) An explanation why the Agency's previous response to the issues proposed for review, if any, was:
    - 1. Clearly erroneous; or
    - 2. An exercise of discretion or an important policy consideration that the Board should, in its discretion, review. [415 ILCS 5/40.3(a)(2)]
- b) For petitions under Section 105.604(b) of this Subpart, in addition to the requirements of 35 Ill. Adm. Code 101. Subpart C, the petition must also include the date that a complete permit application for a PSD permit was submitted to the Agency and an explanation as to why the submittal made on such date made the application complete.
- c) For petitions under Section 105.604(a) or (c) of this Subpart, the petition may include a request to stay the effectiveness of any final Agency action on a PSD permit application until final action is taken by the Board under Section 40.3 of the Act. Any stay request must include a clear delineation of all the contested conditions of the PSD permit. To the extent that a stay of any or all of the uncontested conditions of the permit is sought, any stay request must indicate how these uncontested conditions would be affected by the Board's review of the contested conditions.
- d) For petitions under Section 105.604(c) of this Subpart, any stay request must also demonstrate:
- i) That an immediate stay is required in order to preserve the status quo without endangering the public;

ii) That it is not contrary to public policy; and

iii) That there is a reasonable likelihood of success on the merits.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 105.610 Board Standards for Granting Stays

a) If requested by the permit applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application during the pendency of the review process. In such cases, the Board shall stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant. [415 ILCS 5/40.3(d)(2)]

b) If requested by a party other than the permit applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application during the pendency of the review process. In such cases, the Board may stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. The party requesting the stay has the burden of demonstrating that an immediate stay is required in order to preserve the status quo without endangering the public, that it is not contrary to public policy and that there is a reasonable likelihood of success on the merits. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed under Section 105.606 of this Subpart and shall remain in effect until a decision is issued by the Board on the petition. [415 ILCS 5/40.3(d)(3)]

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 105.612 The Agency Record

a) The Agency must file a copy of its entire Agency record of its decision with the Clerk in accordance with Section 105.116.

b) The Agency record must include:

i) Any permit application or other request that resulted in the Agency's final decision;

ii) Correspondence with the applicant and any documents or material submitted by the applicant to the Agency related to the permit application;

- iii) The project summary, statement of basis or fact sheet;
- iv) The Agency public hearing record of any Agency public hearing held under 35 Ill. Adm. Code 252.205, including any transcripts and exhibits;
- v) All written comments received during the Agency public comment period under 35 Ill. Adm. Code 252.201, including any extension or reopening under 35 Ill. Adm. Code 252.208;
- vi) The response to comments required by 35 Ill. Adm. Code 252.210 and any new material placed in the Agency record under that Section;
- vii) The final permit; and
- viii) Any other information the Agency relied upon in making its final decision.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 105.614 Board Hearing

Except as provided in subsections (a) and (b), the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101, Subpart F, upon an appropriately filed petition for review under this Subpart. The hearing and decision of the Board will be based exclusively on the Agency record at the time the permit or decision was issued, unless the parties agree to supplement the Agency record. Any PSD permit issued by the Agency shall be upheld by the Board if the technical decisions contained therein reflect considered judgment by the Agency. [415 ILCS 5/40.3(d)(1)]

- a) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under 35 Ill. Adm. Code 101.516.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board determines that:
  - i) The petition is frivolous; or
  - ii) The petition lacks facially adequate factual statements as required by Section 105.608 of this Subpart [415 ILCS 5/40.3(a)(2)].
- c) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under 35 Ill. Adm. Code 101.602.

(Source: Added at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)

(Source: Repealed at 41 Ill. Reg. 10084, effective July 5, 2017)

105.APPENDIX B Comparison of Former and Current Rules (Repealed)

(Source: Repealed at 29 Ill. Reg. 8811, effective June 8, 2005)

**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS**

**PART 203  
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**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 and 28.5 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 27 and 28.5].

**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 R93-9 at 17 Ill. Reg. 16630, effective September 27, 1993; amended in R93-26 at 18 Ill. Reg. 6335, effective April 15, 1994; amended in R98-10 at 22 Ill. Reg. 5674, effective March 10, 1998; amended in R - at Ill. Reg. , effective \_\_\_\_\_.

**SUBPART B: MAJOR STATIONARY SOURCES IN NONATTAINMENT AREAS**

**Section 203.207      Major Modification of a Source**

- a) Except as provided in subsection (c), (d), (e) or (f) below, a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area, shall constitute a major modification of a source.
- b) Any net emissions increase that is significant for volatile organic material or nitrogen oxides shall be considered significant for ozone.
- c) A physical change or change in the method of operation shall not include:
  - 1) Routine maintenance and repair.
  - 2) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791, et seq.).
  - 3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act (42 U.S.C. 7425).

- 4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- 5) Use of an alternative fuel or raw material by a stationary source which:
  - A) Was capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition established after December 21, 1976, pursuant to 40 CFR 52.21, 35 Ill. Adm. Code Part 204, this Part, or 35 Ill. Adm. Code 201.142 or 201.143, or
  - B) Is approved for use under any permit issued pursuant to this Part or 35 Ill. Adm. Code 201.142 or 201.143.
- 6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21, 35 Ill. Adm. Code Part 204, this Part, or 35 Ill. Adm. Code 201.142 or 201.143.
- 7) Any change in ownership at a stationary source.
- d) In an area classified as serious or severe nonattainment for ozone, increased emissions of volatile organic material or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall be considered de minimis for purposes of this Part if the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years that includes the year in which such increase occurred.
- e) In the case of any major stationary source of volatile organic material or nitrogen oxides located in an area classified as serious or severe nonattainment for ozone (other than a source which emits or has the potential to emit 100 tons or more of volatile organic material or nitrogen oxides per year), whenever any change at that source results in any increase (other than a de minimis increase) in emissions of volatile organic

material or nitrogen oxides, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a major modification for purposes of this Part, except such increase shall not be considered a major modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic material or nitrogen oxides, respectively, from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

- f) In areas classified as extreme nonattainment for ozone, beginning on the date that an area is classified by USEPA as an extreme nonattainment area for ozone, any physical change in or change in the method of operation of a major stationary source which results in any increase in emissions of volatile organic material or nitrogen oxides from a discrete operation, unit, or other pollutant emitting activity shall be considered a major modification.

(Source: (Source: Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ Amended at  
~~22 Ill. Reg. 5674, effective March 10, 1998)~~

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS  
FOR STATIONARY SOURCES

PART 211  
DEFINITIONS AND GENERAL PROVISIONS

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211.102	Abbreviations and Conversion Factors

SUBPART B: DEFINITIONS

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211.122	Definitions (Repealed)
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211.150	Accumulator
211.170	Acid Gases
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211.510 Application Area  
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211.740 Brakehorsepower (rated-bhp)  
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211.790 Bulk Gasoline Plant  
211.810 Bulk Gasoline Terminal  
211.820 Business Machine Plastic Parts  
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211.830 Can  
211.850 Can Coating  
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211.890 Capture  
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211.980 Chemical Manufacturing Process Unit  
211.990 Choke Loading  
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211.1000 Class II Finish  
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211.1320 Commence Commercial Operation  
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211.1328 Common Stack  
211.1330 Complete Combustion  
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211.1370 Concrete Curing Compounds  
211.1390 Concentrated Nitric Acid Manufacturing Process  
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211.1455 Contact Adhesive  
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211.1467 Continuous Coater  
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211.1490 Control Device  
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211.1565 Cove Base Installation Adhesive  
211.1570 Crude Oil  
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211.1630 Custody Transfer  
211.1650 Cutback Asphalt  
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211.1670 Daily-Weighted Average VOM Content  
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211.1700 Deadener  
211.1710 Degreaser  
211.1730 Delivery Vessel  
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211.1770 Distillate Fuel Oil  
211.1780 Distillation Unit  
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211.1810 Dry Cleaning Operation or Dry Cleaning Facility  
211.1830 Dump-Pit Area  
211.1850 Effective Grate Area  
211.1870 Effluent Water Separator  
211.1872 Ejection Cartridge Sealant  
211.1875 Elastomeric Materials  
211.1876 Electric Dissipating Coating  
211.1877 Electric-Insulating Varnish  
211.1878 Electrical Apparatus Component  
211.1880 Electrical Switchgear Compartment Coating  
211.1882 Electrodeposition Primer (EDP)  
211.1883 Electromagnetic Interference/Radio Frequency Interference (EMI/RFI)  
Shielding Coatings  
211.1885 Electronic Component  
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211.1900 Electrostatic Prep Coat  
211.1910 Electrostatic Spray

211.1920 Emergency or Standby Unit  
211.1930 Emission Rate  
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211.1970 Enamel  
211.1990 Enclose  
211.2010 End Sealing Compound Coat  
211.2030 Enhanced Under-the-Cup Fill  
211.2040 Etching Filler  
211.2050 Ethanol Blend Gasoline  
211.2055 Ethylene Propylenediene Monomer (DPDM) Roof Membrane  
211.2070 Excess Air  
211.2080 Excess Emissions  
211.2090 Excessive Release  
211.2110 Existing Grain-Drying Operation (Repealed)  
211.2130 Existing Grain-Handling Operation (Repealed)  
211.2150 Exterior Base Coat  
211.2170 Exterior End Coat  
211.2190 External Floating Roof  
211.2200 Extreme High-Gloss Coating  
211.2210 Extreme Performance Coating  
211.2230 Fabric Coating  
211.2250 Fabric Coating Line  
211.2270 Federally Enforceable Limitations and Conditions  
211.2285 Feed Mill  
211.2290 Fermentation Time  
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211.2310 Final Repair Coat  
211.2320 Finish Primer Surfacer  
211.2330 Firebox  
211.2350 Fixed-Roof Tank  
211.2355 Flare  
211.2357 Flat Glass  
211.2358 Flat Wood Paneling  
211.2359 Flat Wood Paneling Coating Line  
211.2360 Flexible Coating  
211.2365 Flexible Operation Unit  
211.2368 Flexible Packaging  
211.2369 Flexible Vinyl  
211.2370 Flexographic Printing  
211.2390 Flexographic Printing Line  
211.2410 Floating Roof  
211.2415 Fog Coat  
211.2420 Fossil Fuel  
211.2425 Fossil Fuel-Fired



211.2430 Fountain Solution  
211.2450 Freeboard Height  
211.2470 Fuel Combustion Emission Unit or Fuel Combustion Emission Source  
211.2490 Fugitive Particulate Matter  
211.2510 Full Operating Flowrate  
211.2525 Gasket/Gasket Sealing Material  
211.2530 Gas Service  
211.2550 Gas/Gas Method  
211.2570 Gasoline  
211.2590 Gasoline Dispensing Operation or Gasoline Dispensing Facility  
211.2610 Gel Coat  
211.2615 General Work Surface  
211.2620 Generator  
211.2622 Glass Bonding Primer  
211.2625 Glass Melting Furnace  
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211.2650 Grain  
211.2670 Grain-Drying Operation  
211.2690 Grain-Handling and Conditioning Operation  
211.2710 Grain-Handling Operation  
211.2730 Green-Tire Spraying  
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211.2815 Heat Input  
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211.2825 Heat-Resistant Coating  
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211.2840 Heatset Web Letterpress Printing Line  
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211.2870 Heavy Liquid  
211.2890 Heavy Metals  
211.2910 Heavy Off-Highway Vehicle Products  
211.2930 Heavy Off-Highway Vehicle Products Coating  
211.2950 Heavy Off-Highway Vehicle Products Coating Line  
211.2955 High Bake Coating  
211.2956 High Build Primer Surfacer  
211.2958 High Gloss Coating  
211.2960 High-Performance Architectural Coating  
211.2965 High Precision Optic  
211.2970 High Temperature Aluminum Coating  
211.2980 High Temperature Coating

211.2990 High Volume Low Pressure (HVL) Spray  
211.3010 Hood  
211.3030 Hot Well  
211.3050 Housekeeping Practices  
211.3070 Incinerator  
211.3090 Indirect Heat Transfer  
211.3095 Indoor Floor Covering Installation Adhesive  
211.3100 Industrial Boiler  
211.3110 Ink  
211.3120 In-Line Repair  
211.3130 In-Process Tank  
211.3150 In-Situ Sampling Systems  
211.3170 Interior Body Spray Coat  
211.3190 Internal-Floating Roof  
211.3210 Internal Transferring Area  
211.3215 Janitorial Cleaning  
211.3230 Lacquers  
211.3240 Laminate  
211.3250 Large Appliance  
211.3270 Large Appliance Coating  
211.3290 Large Appliance Coating Line  
211.3300 Lean-Burn Engine  
211.3305 Letterpress Printing Line  
211.3310 Light Liquid  
211.3330 Light-Duty Truck  
211.3350 Light Oil  
211.3355 Lime Kiln  
211.3370 Liquid/Gas Method  
211.3390 Liquid-Mounted Seal  
211.3410 Liquid Service  
211.3430 Liquids Dripping  
211.3450 Lithographic Printing Line  
211.3470 Load-Out Area  
211.3475 Load Shaving Unit  
211.3480 Loading Event  
211.3483 Long Dry Kiln  
211.3485 Long Wet Kiln  
211.3487 Low-NO<sub>x</sub> Burner  
211.3490 Low Solvent Coating  
211.3500 Lubricating Oil  
211.3505 Lubricating Wax/Compound  
211.3510 Magnet Wire  
211.3530 Magnet Wire Coating  
211.3550 Magnet Wire Coating Line

211.3555 Maintenance Cleaning  
211.3570 Major Dump Pit  
211.3590 Major Metropolitan Area (MMA)  
211.3610 Major Population Area (MPA)  
211.3620 Manually Operated Equipment  
211.3630 Manufacturing Process  
211.3650 Marine Terminal  
211.3660 Marine Vessel  
211.3665 Mask Coating  
211.3670 Material Recovery Section  
211.3690 Maximum Theoretical Emissions  
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211.3705 Medical Device  
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211.3730 Metal Furniture Coating  
211.3750 Metal Furniture Coating Line  
211.3760 Metallic Coating  
211.3770 Metallic Shoe-Type Seal  
211.3775 Metal to Urethane/Rubber Molding or Casting Adhesive  
211.3780 Mid-Kiln Firing  
211.3785 Military Specification Coating  
211.3790 Miscellaneous Fabricated Product Manufacturing Process  
211.3810 Miscellaneous Formulation Manufacturing Process  
211.3820 Miscellaneous Industrial Adhesive Application Operation  
211.3830 Miscellaneous Metal Parts and Products  
211.3850 Miscellaneous Metal Parts and Products Coating  
211.3870 Miscellaneous Metal Parts or Products Coating Line  
211.3890 Miscellaneous Organic Chemical Manufacturing Process  
211.3910 Mixing Operation  
211.3915 Mobile Equipment  
211.3925 Mold Seal Coating  
211.3930 Monitor  
211.3950 Monomer  
211.3960 Motor Vehicles  
211.3961 Motor Vehicle Adhesive  
211.3965 Motor Vehicle Refinishing  
211.3966 Motor Vehicle Weatherstrip Adhesive  
211.3967 Mouth Waterproofing Sealant  
211.3968 Multi-Colored Coating  
211.3969 Multi-Component Coating  
211.3970 Multiple Package Coating  
211.3975 Multipurpose Construction Adhesive  
211.3980 Nameplate Capacity

211.3985 Natural Finish Hardwood Plywood Panel  
211.3990 New Grain-Drying Operation (Repealed)  
211.4010 New Grain-Handling Operation (Repealed)  
211.4030 No Detectable Volatile Organic Material Emissions  
211.4050 Non-Contact Process Water Cooling Tower  
211.4052 Non-Convertible Coating  
211.4055 Non-Flexible Coating  
211.4065 Non-Heatset  
211.4067 NO<sub>x</sub> Trading Program  
211.4070 Offset  
211.4080 One-Component Coating  
211.4090 One Hundred Percent Acid  
211.4110 One-Turn Storage Space  
211.4130 Opacity  
211.4150 Opaque Stains  
211.4170 Open Top Vapor Degreasing  
211.4190 Open-Ended Valve  
211.4210 Operator of a Gasoline Dispensing Operation or Operator of a Gasoline  
Dispensing Facility  
211.4220 Optical Coating  
211.4230 Organic Compound  
211.4250 Organic Material and Organic Materials  
211.4260 Organic Solvent  
211.4270 Organic Vapor  
211.4280 Other Glass  
211.4285 Outdoor Floor Covering Installation Adhesive  
211.4290 Oven  
211.4310 Overall Control  
211.4330 Overvarnish  
211.4350 Owner of a Gasoline Dispensing Operation or Owner of a Gasoline  
Dispensing Facility  
211.4370 Owner or Operator  
211.4390 Packaging Rotogravure Printing  
211.4410 Packaging Rotogravure Printing Line  
211.4430 Pail  
211.4450 Paint Manufacturing Source or Paint Manufacturing Plant  
211.4455 Pan-Backing Coating  
211.4460 Panel  
211.4470 Paper Coating  
211.4490 Paper Coating Line  
211.4510 Particulate Matter  
211.4530 Parts Per Million (Volume) or PPM (Vol)  
211.4540 Perimeter Bonded Sheet Flooring  
211.4550 Person

211.4590	Petroleum
211.4610	Petroleum Liquid
211.4630	Petroleum Refinery
211.4650	Pharmaceutical
211.4670	Pharmaceutical Coating Operation
211.4690	Photochemically Reactive Material
211.4710	Pigmented Coatings
211.4720	Pipeline Natural Gas
211.4730	Plant
211.4735	Plastic
211.4740	Plastic Part
211.4750	Plasticizers
211.4760	Plastic Solvent Welding Adhesive
211.4765	Plastic Solvent Welding Adhesive Primer
211.4768	Pleasure Craft
211.4769	Pleasure Craft Surface Coating
211.4770	PM-10
211.4790	Pneumatic Rubber Tire Manufacture
211.4810	Polybasic Organic Acid Partial Oxidation Manufacturing Process
211.4830	Polyester Resin Material(s)
211.4850	Polyester Resin Products Manufacturing Process
211.4870	Polystyrene Plant
211.4890	Polystyrene Resin
211.4895	Polyvinyl Chloride Plastic (PVC Plastic)
211.4900	Porous Material
211.4910	Portable Grain-Handling Equipment
211.4930	Portland Cement Manufacturing Process Emission Source
211.4950	Portland Cement Process or Portland Cement Manufacturing Plant
211.4960	Potential Electrical Output Capacity
211.4970	Potential to Emit
211.4990	Power Driven Fastener Coating
211.5010	Precoat
211.5012	Prefabricated Architectural Coating
211.5015	Preheater Kiln
211.5020	Preheater/Precalciner Kiln
211.5030	Pressure Release
211.5050	Pressure Tank
211.5060	Pressure/Vacuum Relief Valve
211.5061	Pretreatment Coating
211.5062	Pretreatment Wash Primer
211.5065	Primary Product
211.5070	Prime Coat
211.5075	Primer Sealant
211.5080	Primer Sealer

211.5090 Primer Surfacer Coat  
211.5110 Primer Surfacer Operation  
211.5130 Primers  
211.5140 Printed Interior Panel  
211.5150 Printing  
211.5170 Printing Line  
211.5185 Process Emission Source  
211.5190 Process Emission Unit  
211.5195 Process Heater  
211.5210 Process Unit  
211.5230 Process Unit Shutdown  
211.5245 Process Vent  
211.5250 Process Weight Rate  
211.5270 Production Equipment Exhaust System  
211.5310 Publication Rotogravure Printing Line  
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211.5335 Radiation Effect Coating  
211.5340 Rated Heat Input Capacity  
211.5350 Reactor  
211.5370 Reasonably Available Control Technology (RACT)  
211.5390 Reclamation System  
211.5400 Red Coating  
211.5410 Refiner  
211.5430 Refinery Fuel Gas  
211.5450 Refinery Fuel Gas System  
211.5470 Refinery Unit or Refinery Process Unit  
211.5480 Reflective Argent Coating  
211.5490 Refrigerated Condenser  
211.5500 Regulated Air Pollutant  
211.5510 Reid Vapor Pressure  
211.5520 Reinforced Plastic Composite  
211.5530 Repair  
211.5535 Repair Cleaning  
211.5550 Repair Coat  
211.5570 Repaired  
211.5580 Repowering  
211.5585 Research and Development Operation  
211.5590 Residual Fuel Oil  
211.5600 Resist Coat  
211.5610 Restricted Area  
211.5630 Retail Outlet  
211.5640 Rich-Burn Engine  
211.5650 Ringelmann Chart  
211.5670 Roadway

211.5690 Roll Coater  
211.5710 Roll Coating  
211.5730 Roll Printer  
211.5750 Roll Printing  
211.5770 Rotogravure Printing  
211.5790 Rotogravure Printing Line  
211.5800 Rubber  
211.5810 Safety Relief Valve  
211.5830 Sandblasting  
211.5850 Sanding Sealers  
211.5860 Scientific Instrument  
211.5870 Screening  
211.5875 Screen Printing  
211.5880 Screen Printing on Paper  
211.5885 Screen Reclamation  
211.5890 Sealer  
211.5910 Semi-Transparent Stains  
211.5930 Sensor  
211.5950 Set of Safety Relief Valves  
211.5970 Sheet Basecoat  
211.5980 Sheet-Fed  
211.5985 Sheet Rubber Lining Installation  
211.5987 Shock-Free Coating  
211.5990 Shotblasting  
211.6010 Side-Seam Spray Coat  
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211.6015 Single-Ply Roof Membrane  
211.6017 Single-Ply Roof Membrane Adhesive Primer  
211.6020 Single-Ply Roof Membrane Installation and Repair Adhesive  
211.6025 Single Unit Operation  
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211.6060 Soft Coat  
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211.6065 Solids Turnover Ratio (R<sub>T</sub>)  
211.6070 Solvent  
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211.6140 Specialty Coatings  
211.6145 Specialty Coatings for Motor Vehicles  
211.6150 Specialty High Gloss Catalyzed Coating  
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211.6190 Specialty Soybean Crushing Source

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211.6330 Stationary Emission Source  
211.6350 Stationary Emission Unit  
211.6355 Stationary Gas Turbine  
211.6360 Stationary Reciprocating Internal Combustion Engine  
211.6370 Stationary Source  
211.6390 Stationary Storage Tank  
211.6400 Stencil Coat  
211.6405 Sterilization Indicating Ink  
211.6410 Storage Tank or Storage Vessel  
211.6420 Strippable Spray Booth Coating  
211.6425 Stripping  
211.6427 Structural Glazing  
211.6430 Styrene Devolatilizer Unit  
211.6450 Styrene Recovery Unit  
211.6460 Subfloor  
211.6470 Submerged Loading Pipe  
211.6490 Substrate  
211.6510 Sulfuric Acid Mist  
211.6530 Surface Condenser  
211.6535 Surface Preparation  
211.6540 Surface Preparation Materials  
211.6550 Synthetic Organic Chemical or Polymer Manufacturing Plant  
211.6570 Tablet Coating Operation  
211.6580 Texture Coat  
211.6585 Thin Metal Laminating Adhesive  
211.6587 Thin Particleboard  
211.6590 Thirty-Day Rolling Average  
211.6610 Three-Piece Can  
211.6620 Three or Four Stage Coating System  
211.6630 Through-the-Valve Fill  
211.6635 Tileboard  
211.6640 Tire Repair  
211.6650 Tooling Resin  
211.6670 Topcoat  
211.6690 Topcoat Operation  
211.6695 Topcoat System  
211.6710 Touch-Up  
211.6720 Touch-Up Coating



211.6730	Transfer Efficiency
211.6740	Translucent Coating
211.6750	Tread End Cementing
211.6770	True Vapor Pressure
211.6780	Trunk Interior Coating
211.6790	Turnaround
211.6810	Two-Piece Can
211.6825	Underbody Coating
211.6830	Under-the-Cup Fill
211.6850	Undertread Cementing
211.6860	Uniform Finish Blender
211.6870	Unregulated Safety Relief Valve
211.6880	Vacuum Metallizing
211.6885	Vacuum Metalizing Coating
211.6890	Vacuum Producing System
211.6910	Vacuum Service
211.6930	Valves Not Externally Regulated
211.6950	Vapor Balance System
211.6970	Vapor Collection System
211.6990	Vapor Control System
211.7010	Vapor-Mounted Primary Seal
211.7030	Vapor Recovery System
211.7050	Vapor-Suppressed Polyester Resin
211.7070	Vinyl Coating
211.7090	Vinyl Coating Line
211.7110	Volatile Organic Liquid (VOL)
211.7130	Volatile Organic Material Content (VOMC)
211.7150	Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)
211.7170	Volatile Petroleum Liquid
211.7190	Wash Coat
211.7200	Washoff Operations
211.7210	Wastewater (Oil/Water) Separator
211.7220	Waterproof Resorcinol Glue
211.7230	Weak Nitric Acid Manufacturing Process
211.7240	Weatherstrip Adhesive
211.7250	Web
211.7270	Wholesale Purchase – Consumer
211.7290	Wood Furniture
211.7310	Wood Furniture Coating
211.7330	Wood Furniture Coating Line
211.7350	Woodworking
211.7400	Yeast Percentage

211.APPENDIX A Rule into Section Table

211.APPENDIX B Section into Rule Table

**AUTHORITY:** Implementing Sections 9, 9.1, 9.9 and 10 and authorized by Sections 27 of the Environmental Protection Act [415 ILCS 5/9, 9.1, 9.9, 10, 27].

**SOURCE:** Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 Ill. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 5223, effective March 28, 1991; amended in R88-14 at 15 Ill. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 Ill. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 Ill. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 Ill. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 Ill. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 Ill. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 Ill. Reg. 1253, effective January 18, 1994; amended in R94-12 at 18 Ill. Reg. 14962, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15744, effective October 17, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg. 16929, effective November 15, 1994; amended in R94-21, R94-31 and R94-32 at 19 Ill. Reg. 6823, effective May 9, 1995; amended in R94-33 at 19 Ill. Reg. 7344, effective May 22, 1995; amended in R95-2 at 19 Ill. Reg. 11066, effective July 12, 1995; amended in R95-16 at 19 Ill. Reg. 15176, effective October 19, 1995; amended in R96-5 at 20 Ill. Reg. 7590, effective May 22, 1996; amended in R96-16 at 21 Ill. Reg. 2641, effective February 7, 1997; amended in R97-17 at 21 Ill. Reg. 6489, effective May 16, 1997; amended in R97-24 at 21 Ill. Reg. 7695, effective June 9, 1997; amended in R96-17 at 21 Ill. Reg. 7856, effective June 17, 1997; amended in R97-31 at 22 Ill. Reg. 3497, effective February 2, 1998; amended in R98-17 at 22 Ill. Reg. 11405, effective June 22, 1998; amended in R01-9 at 25 Ill. Reg. 108, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4582, effective March 15, 2001; amended in R01-17 at 25 Ill. Reg. 5900, effective April 17, 2001; amended in R05-16 at 29 Ill. Reg. 8181, effective May 23, 2005; amended in R05-11 at 29 Ill. Reg. 8892, effective June 13, 2005; amended in R04-12/20 at 30 Ill. Reg. 9654, effective May 15, 2006; amended in R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R08-6 at 32 Ill. Reg. 1387, effective January 16, 2008; amended in R07-19 at 33 Ill. Reg. 11982, effective August 6, 2009;

amended in R08-19 at 33 Ill. Reg. 13326, effective August 31, 2009; amended in R10-7 at 34 Ill. Reg. 1391, effective January 11, 2010; amended in R10-8 at 34 Ill. Reg. 9069, effective June 25, 2010; amended in R10-20 at 34 Ill. Reg. 14119, effective September 14, 2010; amended in R11-23 at 35 Ill. Reg. 13451, effective July 27, 2011; amended in R12-24 at 37 Ill. Reg. 1662, effective January 28, 2013; amended in R13-1 at 37 Ill. Reg. 1913, effective February 4, 2013; amended in R14-7 at 37 Ill. Reg. 19824, effective November 27, 2013; amended in R14-16 at 38 Ill. Reg. 12876, effective June 9, 2014; amended in R14-16 at 39 Ill. Reg. 5410, effective March 24, 2015; amended at 41 Ill. Reg. 1096, effective January 23, 2017; amended in R17-09 at 41 Ill. Reg. 4173, effective March 24, 2017; amended in R17-11 at 41 Ill. Reg. 13389, effective October 23, 2017; amended in R - at Ill. Reg. , effective \_\_\_\_\_.

#### SUBPART A: GENERAL PROVISIONS

#### **Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)**

“Volatile organic material” (also “VOM”) or “volatile organic compound” (also “VOC”) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

- a) This definition of VOM includes any organic compound that participates in atmospheric photochemical reactions, other than the compounds listed in this subsection (a). USEPA has determined that the compounds listed in this subsection (a) have negligible photochemical reactivity.

2-Amino-2-methylpropan-1-ol(CAS No. 124-68-5)  
Bis(difluoromethoxy)difluoromethane(HFE-236cal2, CAS No. 78522-47-1)  
1,2-Bis(difluoromethoxy)-1,1,2,2-tetrafluoroethane(HFE-338pcc13, CAS No. 188690-78-0)  
tertiary-Butyl acetate(1,1-dimethylethyl acetic acid ester, CAS No. 540-88-5)  
1-Chloro-1,1-difluoroethane(HCFC-142b, CAS No. 75-68-3)  
Chlorodifluoromethane(CFC-22, CAS No. 75-45-6)  
1-Chloro-1-fluoroethane(HCFC-151a, CAS No. 1615-75-4)  
Chlorofluoromethane(HCFC-31, CAS No. 593-70-4)  
Chloropentafluoroethane(CFC-115, CAS No. 76-15-3)  
2-Chloro-1,1,1,2-tetrafluoroethane(HCFC-124, CAS No. 2837-89-0)

1-Chloro-4-(trifluoromethyl)benzene(parachlorobenzotrifluoride (PCBTF), CAS No. 98-56-6)  
(1E)-1-Chloro-3,3,3-trifluoroprop-1-ene(trans-1-chloro-3,3,3-trifluoroprop-1-ene, CAS No. 102687-65-0)  
1,1,1,2,2,3,4,5,5,5-Decafluoro-3-methoxy-4-trifluoromethylpentane(HFE-7300, CAS No. 132182-92-4)  
1,1,1,2,3,4,4,5,5,5-Decafluoropentane(HFC 43-10mee, CAS No. 138495-42-8)  
Dichlorodifluoromethane(CFC-12, CAS No. 75-71-8)  
1,1-Dichloro-1-fluoroethane(HCFC-141b, CAS No. 1717-00-6)  
Dichloromethane(methylene chloride, CAS No. 75-09-2)  
3,3-Dichloro-1,1,1,2,2-pentafluoropropane(HCFC-225ca, CAS No. 422-56-0)  
1,3-Dichloro-1,1,2,2,3-pentafluoropropane(HCFC-225cb, CAS No. 507-55-1)  
1,2-Dichloro-1,1,2,2-tetrafluoroethane(CFC-114, CAS No. 76-14-2)  
1,1-Dichloro-2,2,2-trifluoroethane(HCFC-123, CAS No. 306-83-2)  
1,2-Dichloro-1,1,2-trifluoroethane(HCFC-123a, CAS No. 354-23-4)  
1,1-Difluoroethane(HFC-152a, CAS No. 75-37-6)  
Difluoromethane(HFC-32, CAS No. 75-10-5)  
(Difluoromethoxy)difluoromethane(HFE-134, CAS No. 1691-17-4)  
1-(Difluoromethoxy)-2-[(difluoromethoxy)(difluoro)methoxy]-1,1,2,2-tetrafluoroethane(HFE-43-10pccc124, CAS No. 188690-77-9)  
2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane(CAS No. 163702-08-7)  
Dimethyl carbonate(CAS No. 616-38-6)  
Ethane(CAS No. 74-84-0)  
2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane(CAS No. 163702-06-5)  
3-Ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane(HFE-7500, CAS No. 297730-93-9)  
1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane(HFE-7200, CAS No. 163702-05-4)  
Ethylfluoride(HFC-161, CAS No. 353-36-6)  
1,1,1,2,2,3,3-Heptafluoro-3-methoxypropane(HFE-7000, CAS No. 375-03-1)

- 1,1,1,2,3,3,3-Heptafluoropropane(HFC-227ea, CAS No. 431-89-0)
- 1,1,1,2,3,3-Hexafluoropropane(HFC-236ea, CAS No. 431-63-0)
- 1,1,1,3,3,3-Hexafluoropropane(HFC-236fa, CAS No. 690-39-1)
- Methane(CAS No. 74-82-8)
- Methyl acetate(methyl ethanoate, CAS No. 79-20-9)
- 4-Methyl-1,3-dioxolan-2-one(propylene carbonate, CAS No. 108-32-7)
- Methyl formate(methyl methanoate, CAS No. 107-31-3)
- 1,1,1,2,2,3,3,4,4-Nonafluoro-4-methoxybutane(HFE-7100, CAS No. 163702-07-6)
- 1,1,1,3,3-Pentafluorobutane(HFC-365mfc, CAS No. 406-58-6)
- Pentafluoroethane(HFC-125, CAS No. 354-33-6)
- 1,1,2,2,3-Pentafluoropropane(HFC-245ca, CAS No. 679-86-7)
- 1,1,2,3,3-Pentafluoropropane(HFC-245ea, CAS No. 24270-66-4)
- 1,1,1,2,3-Pentafluoropropane(HFC-245eb, CAS No. 431-31-2)
- 1,1,1,3,3-Pentafluoropropane(HFC-245fa, CAS No. 460-73-1)
- Perfluorocarbon compounds that fall into the following classes:
  - Cyclic, branched, or linear, completely fluorinated alkanes
  - Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
  - Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
  - Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
- Propan-2-one(acetone or dimethylketone, CAS No. 67-64-1)
- Siloxanes: cyclic, branched, or linear completely-methylated
  - Tetrachloroethene(perchloroethylene, CAS No. 127-18-4)
  - 1,1,2,2-Tetrafluoroethane(HFC-134, CAS No. 359-35-3)
  - 1,1,1,2-Tetrafluoroethane(HFC-134a, CAS No. 811-97-2)
  - (1E)-1,3,3,3-Tetrafluoropropene(trans-1,3,3,3-tetrafluoropropene, HFO-1234ze, CAS No. 29118-24-9)
  - 2,3,3,3-Tetrafluoroprop-1-ene(HFO-1234yf, CAS No. 754-12-1)
  - 1,1,1-Trichloroethane(methyl chloroform, CAS No. 71-55-6)
  - 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy)ethane(HFE-347pcf2, CAS No. 406-78-0)
  - Trichlorofluoromethane(CFC-11, CAS No. 75-69-4)
  - 1,1,2-Trichloro-1,2,2-trifluoroethane(CFC-113, CAS No. 76-13-1)
  - 1,1,1-Trifluoroethane(HFC-143a, CAS No. 420-46-2)

Trifluoromethane(HFC-23, CAS No. 75-46-7)

- b) For purposes of determining VOM emissions and compliance with emissions limits, VOM will be measured by the test methods in the approved implementation plan or 40 CFR 60, appendix A, incorporated by reference at 35 Ill. Adm. Code 215.105, 218.112, and 219.112, as applicable, or by source-specific test methods that have been established pursuant to a permit issued under a program approved or promulgated under Title V of the Clean Air Act; under ~~35 Ill. Adm. Code 203-40 CFR 51, subpart I or appendix S, incorporated by reference at 35 Ill. Adm. Code 218.112 and 219.112;~~ or under Section 9.1(d) of the Act under 40 CFR 52.21, incorporated by reference at 35 Ill. Adm. Code 218.112 and 219.112, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOM if the amount of such compounds is accurately quantified and the exclusion is approved by the Agency.
- c) As a precondition to excluding these negligibly-reactive compounds as VOM, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Agency, the amount of negligibly-reactive compounds in the source's emissions.
- d) The USEPA will not be bound by any State determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the test methods in subsection (b).

(Source: ~~Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ Amended at 41 Ill. Reg. 13389, effective October 23, 2017)~~

**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER c: EMISSIONS STANDARDS AND LIMITATIONS  
FOR STATIONARY SOURCES**

**PART 215  
ORGANIC MATERIAL EMISSION STANDARDS AND  
LIMITATIONS**

**SUBPART A: GENERAL PROVISIONS**

<b>Section</b>	
215.100	Introduction
215.101	Clean-up and Disposal Operations
215.102	Testing Methods
215.103	Abbreviations and Conversion Factors
215.104	Definitions
215.105	Incorporation by Reference
215.106	Afterburners
215.107	Determination of Applicability
215.108	Measurement of Vapor Pressures
215.109	Monitoring for Negligibly-Reactive Compounds

**SUBPART B: ORGANIC EMISSIONS FROM STORAGE AND  
LOADING OPERATIONS**

<b>Section</b>	
215.121	Storage Containers
215.122	Loading Operations
215.123	Petroleum Liquid Storage Tanks
215.124	External Floating Roofs
215.125	Compliance Dates and Geographical Areas
215.126	Compliance Plan
215.127	Emissions Testing
215.128	Measurement of Seal Gaps

**SUBPART C: ORGANIC EMISSIONS FROM MISCELLANEOUS  
EQUIPMENT**

<b>Section</b>	
215.141	Separation Operations
215.142	Pumps and Compressors
215.143	Vapor Blowdown
215.144	Safety Relief Valves

**SUBPART E: SOLVENT CLEANING**

<b>Section</b>	
215.181	Solvent Cleaning in General
215.182	Cold Cleaning
215.183	Open Top Vapor Degreasing
215.184	Conveyorized Degreasing
215.185	Compliance Plan

**SUBPART F: COATING OPERATIONS**

<b>Section</b>	
215.202	Compliance Schedules
215.204	Emission Limitations for Manufacturing Plants
215.205	Alternative Emission Limitations
215.206	Exemptions from Emission Limitations
215.207	Compliance by Aggregation of Emission Units
215.208	Testing Methods for Volatile Organic Material Content
215.209	Exemption from General Rule on Use of Organic Material
215.210	Alternative Compliance Schedule
215.211	Compliance Dates and Geographical Areas
215.212	Compliance Plan
215.213	Special Requirements for Compliance Plan
215.214	Roadmaster Emissions Limitations (Repealed)
215.215	DMI Emissions Limitations

**SUBPART H: SPECIAL LIMITATIONS FOR SOURCES IN  
MAJOR URBANIZED AREAS WHICH ARE NONATTAINMENT  
FOR OZONE**

<b>Section</b>	
215.240	Applicability
215.241	External Floating Roofs
215.245	Flexographic and Rotogravure Printing
215.249	Compliance Dates

**SUBPART I: ADJUSTED RACT EMISSIONS LIMITATIONS**

<b>Section</b>	
215.260	Applicability
215.261	Petition
215.263	Public Hearing
215.264	Board Action
215.267	Agency Petition

**SUBPART K: USE OF ORGANIC MATERIAL**

<b>Section</b>	
215.301	Use of Organic Material
215.302	Alternative Standard



- 215.303 Fuel Combustion Emission Sources
- 215.304 Operations with Compliance Program
- 215.305 Viscose Exemption (Repealed)

**SUBPART N: VEGETABLE OIL PROCESSING**

**Section**

- 215.340 Hexane Extraction Soybean Crushing
- 215.342 Hexane Extraction Corn Oil Processing
- 215.344 Recordkeeping for Vegetable Oil Processes
- 215.345 Compliance Determination
- 215.346 Compliance Dates and Geographical Areas
- 215.347 Compliance Plan

**SUBPART P: PRINTING AND PUBLISHING**

**Section**

- 215.401 Flexographic and Rotogravure Printing
- 215.402 Exemptions
- 215.403 Applicability of Subpart K
- 215.404 Testing and Monitoring (Repealed)
- 215.405 Compliance Dates and Geographical Areas
- 215.406 Alternative Compliance Plan
- 215.407 Compliance Plan
- 215.408 Heatset Web Offset Lithographic Printing
- 215.409 Testing Methods for Volatile Organic Material Content
- 215.410 Emissions Testing

**SUBPART Q: LEAKS FROM SYNTHETIC ORGANIC  
CHEMICAL AND POLYMER MANUFACTURING EQUIPMENT**

**Section**

- 215.420 Applicability
- 215.421 General Requirements
- 215.422 Inspection Program Plan for Leaks
- 215.423 Inspection Program for Leaks
- 215.424 Repairing Leaks
- 215.425 Recordkeeping for Leaks
- 215.426 Report for Leaks
- 215.427 Alternative Program for Leaks
- 215.428 Compliance Dates
- 215.429 Compliance Plan
- 215.430 General Requirements
- 215.431 Inspection Program Plan for Leaks
- 215.432 Inspection Program for Leaks
- 215.433 Repairing Leaks
- 215.434 Recordkeeping for Leaks

- 215.435 Report for Leaks
- 215.436 Alternative Program for Leaks
- 215.437 Open-Ended Valves
- 215.438 Standards for Control Devices
- 215.439 Compliance Plan

**SUBPART R: PETROLEUM REFINING AND RELATED INDUSTRIES; ASPHALT MATERIALS**

**Section**

- 215.441 Petroleum Refinery Waste Gas Disposal
- 215.442 Vacuum Producing Systems
- 215.443 Wastewater (Oil/Water) Separator
- 215.444 Process Unit Turnarounds
- 215.445 Leaks: General Requirements
- 215.446 Monitoring Program Plan for Leaks
- 215.447 Monitoring Program for Leaks
- 215.448 Recordkeeping for Leaks
- 215.449 Reporting for Leaks
- 215.450 Alternative Program for Leaks
- 215.451 Sealing Device Requirements
- 215.452 Compliance Schedule for Leaks
- 215.453 Compliance Dates and Geographical Areas

**SUBPART S: RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS**

**Section**

- 215.461 Manufacture of Pneumatic Rubber Tires
- 215.462 Green Tire Spraying Operations
- 215.463 Alternative Emission Reduction Systems
- 215.464 Emissions Testing
- 215.465 Compliance Dates and Geographical Areas
- 215.466 Compliance Plan
- 215.467 Testing Methods for Volatile Organic Material Content

**SUBPART T: PHARMACEUTICAL MANUFACTURING**

**Section**

- 215.480 Applicability of Subpart T
- 215.481 Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers
- 215.482 Control of Air Dryers, Production Equipment Exhaust Systems and Filters
- 215.483 Material Storage and Transfer
- 215.484 In-Process Tanks
- 215.485 Leaks
- 215.486 Other Emission Sources

- 215.487 Testing
- 215.488 Monitors for Air Pollution Control Equipment
- 215.489 Recordkeeping (Renumbered)
- 215.490 Compliance Schedule (Renumbered)

**SUBPART U: COKE MANUFACTURING AND BY-PRODUCT RECOVERY**

- Section**
- 215.500 Exceptions
- 215.510 Coke By-Product Recovery Plants
- 215.512 Coke By-Product Recovery Plant Leaks
- 215.513 Inspection Program
- 215.514 Recordkeeping Requirements
- 215.515 Reporting Requirements
- 215.516 Compliance Dates
- 215.517 Compliance Plan

**SUBPART V: AIR OXIDATION PROCESSES**

- Section**
- 215.520 Applicability
- 215.521 Definitions
- 215.525 Emission Limitations for Air Oxidation Processes
- 215.526 Testing and Monitoring
- 215.527 Compliance Date

**SUBPART W: AGRICULTURE**

- Section**
- 215.541 Pesticide Exception

**SUBPART X: CONSTRUCTION**

- Section**
- 215.561 Architectural Coatings
- 215.562 Paving Operations
- 215.563 Cutback Asphalt

**SUBPART Y: GASOLINE DISTRIBUTION**

- Section**
- 215.581 Bulk Gasoline Plants
- 215.582 Bulk Gasoline Terminals
- 215.583 Gasoline Dispensing Facilities - Storage Tank Filling Operations
- 215.584 Gasoline Delivery Vessels
- 215.585 Gasoline Volatility Standards (Repealed)
- 215.586 Emissions Testing

**SUBPART Z: DRY CLEANERS**

<b>Section</b>	
215.601	Perchloroethylene Dry Cleaners (Repealed)
215.602	Exemptions (Repealed)
215.603	Leaks (Repealed)
215.604	Compliance Dates and Geographical Areas (Repealed)
215.605	Compliance Plan (Repealed)
215.606	Exception to Compliance Plan (Repealed)
215.607	Standards for Petroleum Solvent Dry Cleaners
215.608	Operating Practices for Petroleum Solvent Dry Cleaners
215.609	Program for Inspection and Repair of Leaks
215.610	Testing and Monitoring
215.611	Exemption for Petroleum Solvent Dry Cleaners
215.612	Compliance Dates and Geographical Areas
215.613	Compliance Plan
215.614	Testing Method for Volatile Organic Material Content of Wastes
215.615	Emissions Testing

**SUBPART AA: PAINT AND INK MANUFACTURING**

<b>Section</b>	
215.620	Applicability
215.621	Exemption for Waterbase Material and Heatset Offset Ink
215.623	Permit Conditions
215.624	Open-top Mills, Tanks, Vats or Vessels
215.625	Grinding Mills
215.628	Leaks
215.630	Clean Up
215.636	Compliance Date

**SUBPART BB: POLYSTYRENE PLANTS**

<b>Section</b>	
215.875	Applicability of Subpart BB
215.877	Emissions Limitation at Polystyrene Plants
215.879	Compliance Date
215.881	Compliance Plan
215.883	Special Requirements for Compliance Plan
215.886	Emissions Testing

**SUBPART PP: MISCELLANEOUS FABRICATED PRODUCT  
MANUFACTURING PROCESSES**

<b>Section</b>	
215.920	Applicability
215.923	Permit Conditions
215.926	Control Requirements

**SUBPART QQ: MISCELLANEOUS FORMULATION  
MANUFACTURING PROCESSES**

**Section**

215.940	Applicability
215.943	Permit Conditions
215.946	Control Requirements

**SUBPART RR: MISCELLANEOUS ORGANIC CHEMICAL  
MANUFACTURING PROCESSES**

**Section**

215.960	Applicability
215.963	Permit Conditions
215.966	Control Requirements

215.Appendix A	Rule into Section Table
215.Appendix B	Section into Rule Table
215.Appendix C	Past Compliance Dates
215.Appendix D	List of Chemicals Defining Synthetic Organic Chemical and Polymer Manufacturing
215.Appendix E	Reference Methods and Procedures
215.Appendix F	Coefficients for the Total Resource Effectiveness Index (TRE) Equation

**AUTHORITY:** Implementing Sections 9.1 and 10 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/9.1, 10 and 27].

**SOURCE:** Adopted as Chapter 2: Air Pollution, Rule 205: Organic Material Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-3, 33 PCB 357, at 3 Ill. Reg. 18, p. 41, effective May 3, 1979; amended in R78-3 and R78-4, 35 PCB 75, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5 at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13601 Corrected at 7 Ill. Reg. 14575; amended in R82-14 at 8 Ill. Reg. 13254, effective July 12, 1984; amended in R83-36 at 9 Ill. Reg. 9114, effective May 30, 1985; amended in R82-14 at 9 Ill. Reg. 13960, effective August 28, 1985; amended in R85-28 at 11 Ill. Reg. 3127, effective February 3, 1987; amended in R82-14 at 11 Ill. Reg. 7296, effective April 3, 1987; amended in R85-21(A) at 11 Ill. Reg. 11770, effective June 29, 1987; recodified in R86-39 at 11 Ill. Reg. 13541; amended in R82-14 and R86-12 at 11 Ill. Reg. 16706, effective September 30, 1987; amended in R85-21(B) at 11 Ill. Reg. 19117, effective November 9, 1987; amended in R86-36, R86-39, R86-40 at 11 Ill. Reg. 20829, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 815, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7311, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7650, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10893, effective June 27, 1989; amended in R88-30(A) at 14 Ill. Reg.

3555, effective February 27, 1990; emergency amendments in R88-30A at 14 Ill. Reg. 6421, effective April 11, 1990, for a maximum of 150 days; amended in R88-19 at 14 Ill. Reg. 7596, effective May 8, 1990; amended in R89-16(A) at 14 Ill. Reg. 9173, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 3309, effective February 15, 1991; amended in R88-14 at 15 Ill. Reg. 8018, effective May 14, 1991; amended in R91-7 at 15 Ill. Reg. 12217, effective August 19, 1991; amended in R91-10 at 15 Ill. Reg. 15595, effective October 11, 1991; amended in R89-7(B) at 15 Ill. Reg. 17687, effective November 26, 1991; amended in R91-9 at 16 Ill. Reg. 3132, effective February 18, 1992; amended in R91-24 at 16 Ill. Reg. 13555, effective August 24, 1992; amended in R91-30 at 16 Ill. Reg. 13849, effective August 24, 1992; amended in R98-15 at 22 Ill. Reg. 11427, effective June 19, 1998; amended in R12-24 at 37 Ill. Reg. 1683, effective January 28, 2013; expedited correction at 37 Ill. Reg. 16858, effective January 28, 2013; amended in R - at Ill. Reg. - effective \_\_\_\_\_.

**SUBPART PP: MISCELLANEOUS FABRICATED PRODUCT  
MANUFACTURING PROCESSES**

**Section 215.920      Applicability**

- a) The requirements of this Subpart shall apply to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.
- b) The requirements of this Subpart shall apply to a plant's miscellaneous fabricated product manufacturing process emission sources which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z if the plant is subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.
- c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart shall continue to apply to a miscellaneous fabricated products manufacturing process emission source which was subject to and met the control requirements of Section 215.926.
- d) No limits under this Subpart shall apply to:
  - 1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 1.0 tons per year if the total emissions from such sources not complying with Section 215.926 does not exceed 5.0 tons per year, and

- 2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, pursuant to 35 Ill. Adm. Code 203; or Best Available Control Technology, pursuant to a permit issued under Section 9.1(d) of the Act ~~40 CFR 52.21 (1987) or pursuant to Section 9.4 of the Act. The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~
- e) For the purposes of this Subpart, an emission source shall be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughput or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.
- f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: Added at 12 Ill. Reg. 7311, effective April 8, 1988 Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **SUBPART QQ: MISCELLANEOUS FORMULATION MANUFACTURING PROCESSES**

### **Section 215.940 Applicability**

- a) The requirements of this Subpart shall apply to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.
- b) The requirements of this Subpart shall apply to a plant's miscellaneous formulation manufacturing process emission sources, which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, if the plant is subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.
- c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart shall continue to apply to a miscellaneous formulation

manufacturing process emission source which was subject to the met the control requirements of Section 215.946.

- d) No limits under this Subpart shall apply to:
- 1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 2.5 tons per year if the total emissions from such sources not complying with Section 215.946 does not exceed 5.0 tons per year, and
  - 2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, pursuant to 35 Ill. Adm. 203; or Best Available Control Technology, pursuant to a permit issued under Section 9.1(d) of the Act 40 CFR 52.21 (1987) or pursuant to Section 9.4 of the Act. ~~The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~
- e) For the purposes of this Subpart, an emission source shall be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughput or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.
- f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: ~~Added at 12 Ill. Reg. 7311, effective April 8, 1988~~) Amended at Ill. Reg. \_\_\_\_\_  
effective \_\_\_\_\_)

**SUBPART RR: MISCELLANEOUS ORGANIC CHEMICAL  
MANUFACTURING PROCESSES**

**Section 215.960      Applicability**

- a) The requirements of this Subpart shall apply to the following counties:  
Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.



- b) The requirements of this Subpart shall apply to a plant's miscellaneous organic chemical manufacturing process emission sources which are not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z if the plant is subject to this Subpart. A plant is subject to this Subpart if it contains process emission sources, not regulated by Subparts B, E, F, N, P, Q, R, S, U, V, X, Y, or Z, which as a group would emit 100 tons or more per year of volatile organic material if no air pollution control equipment were used.
- c) If a plant ceases to fulfill the criteria of subsection (b), the requirements of this Subpart shall continue to apply to a miscellaneous organic chemical manufacturing process emission source which was subject to and met the control requirements of Section 215.966.
- d) No limits under this Subpart shall apply to:
  - 1) Emission sources with emissions of volatile organic material to the atmosphere less than or equal to 1.0 ton per year if the total emissions from such sources not complying with Section 215.966 does not exceed 5.0 tons per year, and
  - 2) Emission sources whose emissions of volatile organic material are subject to limits in 35 Ill. Adm. Code 230 or 35 Ill. Adm. Code 231; or the Lowest Achievable Emission Rate, pursuant to 35 Ill. Ill. Adm. Code 203; or Best Available Control Technology, pursuant to a permit issued Section 9.1(d) of the Act ~~40 CFR 52.21 (1987)~~ or pursuant to Section 9.4 or the Act. ~~The Board incorporates by reference 40 CFR 52.21 (1987). This incorporation includes no subsequent amendments or editions.~~
- e) For the purposes of this Subpart, an emission source shall be considered regulated by a Subpart if it is subject to the limits of that Subpart or it would be subject to the limits of that Subpart if the emission sources, emitting VOM, had sufficient size, throughout or emissions, or if the emission source did not meet a specific exemption contained in that Subpart.
- f) For the purposes of this Subpart, uncontrolled volatile organic material emissions are the emissions of volatile organic material which would result if no air pollution control equipment were used.

(Source: Added at 12 Ill. Reg. 7311, effective April 8, 1988 Amended at Ill. Reg. \_\_\_\_\_ effective \_\_\_\_\_)

**TECHNICAL SUPPORT DOCUMENT**

**for**

**PROPOSED ILLINOIS RULES FOR  
PREVENTION OF SIGNIFICANT DETERIORATION  
(PSD)**

**AQPSTR 18-03**

**July 1, 2018**

**ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY  
1021 NORTH GRAND AVENUE EAST  
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## **EXECUTIVE SUMMARY**

The Illinois Environmental Protection Agency (Illinois EPA) is proposing amendments to Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code) to implement the permitting requirements of the Prevention of Significant Deterioration (PSD) program in Illinois pursuant to state rules. The PSD program is required by Section 165 of the federal Clean Air Act. The Illinois EPA is proposing that these new state regulations be codified at 35 Ill. Adm. Code Part 204.

Currently, the Illinois EPA implements the federal PSD permit program pursuant to a delegation agreement with the United States Environmental Protection Agency (USEPA). Part 204 is intended to supplant the federal PSD program in Illinois once it is approved by USEPA and takes effect. Part 204 would be directly enforceable by Illinois EPA and other parties under the authority of both state and federal law.

The provisions of the proposed rule would generally mirror the provisions of the existing federal PSD rule at 40 CFR 52.21. In certain provisions, the proposed rule does not follow the language in 40 CFR 52.21 as necessary so that Part 204 would accurately reflect the actual federal PSD program as modified by relevant judicial decisions and USEPA's responses to those decisions.<sup>1</sup> Given that the state PSD permit program addressed by proposed Part 204 would be substantially identical to the currently applicable federal PSD program, the requirements of the proposed rules are technically feasible, and substantive adverse economic impacts will not result from the adoption of these proposed rules. Moreover, the proposed amendments are also likely approvable as a revision to Illinois' State Implementation Plan (SIP) in accordance with Section 110(l) of the Clean Air Act.

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<sup>1</sup> For example, the determination whether a stationary source is a major source under the PSD program is commonly based on the potential emissions of the source. Limitations that enforceably restrict the operation and emissions of sources are considered when determining their potential emissions. For this purpose, 40 CFR 52.21(b)(17) provides that any such limitations must be federally enforceable, i.e., enforceable under the applicable State Implementation Plan (SIP) and by the USEPA. However, consistent with a federal court decision, the proposed rule would provide that for a limitation to be considered enforceable, it may be either federally enforceable or enforceable by a state or local air pollution control agency.

## **INTRODUCTION**

This document describes the PSD program required by the federal Clean Air Act and related regulations adopted by USEPA, as would be addressed by proposed 35 Ill. Adm. Code Part 204. This proposed rule, which the Illinois EPA is submitting to the Illinois Pollution Control Board (Board) for its action, would create a state PSD permitting program in Illinois. This state program would replace the federal PSD permitting program, which the Illinois EPA currently administers and has administered for many years.<sup>2</sup> The Board's adoption of a state PSD program for Illinois is required by Section 9.1(c) of the Illinois Environmental Protection Act, 415 ILCS 5/9.1(c), which requires the Board to adopt regulations establishing a PSD program meeting the requirements of Section 165 of the Clean Air Act, 42 U.S.C. 7475.

The technical feasibility and economic reasonableness of proposed 35 Ill. Adm. Code Part 204 are discussed in Section IX of this document. The content of this proposed rule is discussed in the Statement of Reasons prepared by the Illinois EPA for this rulemaking.

In addition to proposing a state PSD permitting program for Illinois, the Illinois EPA's rulemaking proposal includes relevant revisions to the Board's procedural regulations to accommodate appeals of PSD permit actions to the Board.<sup>3</sup> The proposal also includes proposed revisions to certain provisions of the Board's regulations for control of air pollution as these provisions currently refer to permits issued pursuant to the federal PSD program.<sup>4</sup> The proposed revisions would update these provisions so that they address permits issued pursuant to either the federal PSD program or new Part 204. These revisions are also discussed in the Statement of Reasons accompanying this proposed rulemaking.

### **I. BACKGROUND AND GENERAL APPLICABILITY**

#### **What is the PSD Permitting Program?**

The PSD permitting program is a permitting program established by the federal Clean Air Act for the proposed construction or modification of sources of emissions to prevent significant deterioration of air quality. It applies to proposed new major sources of emissions and proposed major modifications at existing major sources. For such projects, it requires the owner or operator of the proposed project to demonstrate that the potential impacts of the increases in emissions on air quality and air quality related values are within acceptable levels. The PSD program also

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<sup>2</sup> Since its inception in 1974, the PSD program has been implemented in Illinois pursuant to federal regulations codified at 40 CFR 52.21. These regulations have been incorporated into the Illinois State Implementation Plan (SIP) by USEPA at 40 CFR § 52.738. USEPA Region 5 initially administered the PSD permitting program in Illinois. For the last 38 years, since April 7, 1980, the Illinois EPA has administered this program in Illinois pursuant to a delegation of authority from USEPA.

<sup>3</sup> Changes are proposed to two Board procedural rules: 35 Ill. Adm. Code Part 101, General Rules; and 35 Ill. Adm. Code Part 105, Appeals of Final Decisions of State Agencies.

<sup>4</sup> Changes are proposed to three existing Board regulations for air pollution control: 35 Ill. Adm. Code Part 203, Major Stationary Sources Construction and Modification; 35 Ill. Adm. Code Part 211, Definitions and General Provisions; and 35 Ill. Adm. Code Part 215, Organic Material Emission Standards and Limitations.

requires that the emissions of new emission units and emission units that will be modified be controlled by the application of Best Available Control Technology (BACT), as determined by the permitting authority on a case-by-case basis during permitting.

The PSD permitting program is one of three preconstruction permitting programs for sources of emissions required by the Clean Air Act. The other permit programs are the basic construction permit program<sup>5</sup> and the nonattainment new source review (NaNSR) program. In Illinois, the basic construction permit program is implemented pursuant to the provisions of 35 Ill. Adm. Code Part 201 Subpart A, B and D. It applies to pollutant-emitting sources that qualify as non-major sources, as well as to major sources. The NaNSR program in Illinois is implemented through the requirements of 35 Ill. Adm. Code Part 203. The NaNSR program applies only for major stationary sources located in an area that USEPA has designated as nonattainment for a pollutant, i.e., air quality in the area does not meet the National Ambient Air Quality Standard(s) for the pollutant. In addition, the NaNSR program only applies for the pollutant for which such an area has been designated as nonattainment and/or the precursor(s) of that pollutant. For sources in a nonattainment area for a pollutant, the PSD permitting program does not apply for pollutant(s) that are only regulated as they contribute to such nonattainment. As a group, the basic construction permit program, the NaNSR program and the PSD permit program are commonly referred to as New Source Review (NSR).

#### **What pollutants are addressed by the PSD program?**

The specific air pollutants addressed by the PSD program are referred to as “regulated NSR pollutants.” Regulated NSR pollutants include the majority of pollutants for which there are National Ambient Air Quality Standards (NAAQS) adopted by USEPA, i.e., carbon monoxide (CO), particulate matter<sub>10</sub> (PM<sub>10</sub>), particulate matter<sub>2.5</sub> (PM<sub>2.5</sub>), sulfur dioxide (SO<sub>2</sub>) and lead. Regulated NSR pollutants also include volatile organic material (VOM) and nitrogen oxides (NO<sub>x</sub>),<sup>6</sup> which are regulated because they are precursors to pollutants for which there are NAAQS, reacting in the atmosphere to form those pollutants. The NAAQS pollutants and designated precursors pollutants that are currently regulated NSR pollutants are listed in the following table.

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<sup>5</sup> The USEPA refers to the PSD permit program as a “preconstruction” permit program because PSD permits are to be obtained before commencement of construction. As such, it is similar to Illinois’ construction permit program, which requires construction permits to be obtained before beginning construction on an emission unit or air pollution control equipment that is not covered by exemption(s) in 35 Ill. Adm. Code 201.146.

<sup>6</sup> The pollutant nitrogen oxides (NO<sub>x</sub>) include both nitrogen dioxide (NO<sub>2</sub>) and nitric oxide or nitrogen monoxide (NO), which oxidizes in the air to form NO<sub>2</sub>.

### NAAQS Pollutants and Precursor Pollutants

- Volatile organic material (VOM) and nitrogen oxides (NO<sub>x</sub>), as they are precursors to ozone, for which there is a NAAQS\*
- NO<sub>x</sub>, as it is a precursor to nitrogen dioxide (NO<sub>2</sub>), for which there is a NAAQS\*\*
- Sulfur dioxide (SO<sub>2</sub>)
- Particulate matter<sub>10</sub> (PM<sub>10</sub>)
- Particulate matter<sub>2.5</sub> (PM<sub>2.5</sub>) and precursors NO<sub>x</sub> and SO<sub>2</sub>
- Carbon monoxide (CO)
- Lead

\* Ozone, itself, is not a regulated NSR pollutant. Ambient air quality for ozone is addressed by measures to reduce emissions of the precursor pollutants VOM and NO<sub>x</sub>.

\*\* NO<sub>2</sub>, itself, is not a regulated pollutant. Ambient air quality for NO<sub>2</sub> is addressed by measures to reduce emissions of NO<sub>x</sub>.

Regulated NSR pollutants under the PSD program also include all pollutants that USEPA regulates under a New Source Performance Standard (NSPS), 40 CFR Part 60,<sup>7</sup> and to certain other pollutants for which USEPA has adopted regulations under the Clean Air Act that restrict the emissions of that pollutant. The additional “other regulated NSR pollutants” that are presently regulated by an NSPS or are otherwise subject to regulation are listed in the following table.

Hazardous air pollutants (HAP), as listed in or pursuant to Section 112 of the Clean Air Act, are not regulated NSR pollutants. This is because Section 112(b)(6) of the Clean Air Act specifically provides that PSD shall not apply to pollutants that are listed under Section 112 of the Clean Air Act. When quantifying emissions of regulated NSR pollutants that include more than one compound, emissions of a HAP are included if the regulated pollutant is a constituent NAAQS pollutant or a precursor pollutant, but they are not included if the regulated NSR pollutant is one of the “other regulated NSR pollutants.”<sup>8,9</sup>

<sup>7</sup> It is noteworthy that USEPA has adopted certain standards under the NSPS in such a way that pollutants are only regulated as they are emitted by particular types of emission units. For example, USEPA has adopted NSPS that apply to emissions of “municipal solid waste (MSW) landfill emissions,” measured as nonmethane organic compounds (NMOC). Accordingly, for MSW landfills, emissions of NMOC are addressed as a regulated NSR pollutant under the PSD program. However, it is implicit that MSW landfill emissions can only be emitted by MSW landfills. Accordingly, NMOC are not generally addressed as a regulated NSR pollutant. That is, the PSD permitting program does not directly address emissions of NMOC at sources other than MSW landfills.

<sup>8</sup> See also, 40 CFR 52.21(b)(40)(v).

<sup>9</sup> For example, consider the pollutant “reduced sulfur compounds” (RSC), which is regulated under PSD as certain units are subject to emission standards for RSC under the New Source Performance Standards (NSPS) for Petroleum Refineries, 40 CFR 60 Subpart J. RSC are defined by 40 CFR 60.101(l) to mean hydrogen sulfide (H<sub>2</sub>S), carbonyl sulfide (COS) and carbon disulfide (CS<sub>2</sub>). Carbonyl sulfide and carbon disulfide are both listed HAPs. Both compounds also qualify as VOM.

For purposes of PSD or NaNSR, when determining the VOM emissions of a unit that emits carbonyl sulfide or carbon disulfide, the emissions of these compounds are included. This is because VOM is



### Other Regulated NSR Pollutants

- Particulate matter (PM)\*
- Fluorides
- Sulfuric Acid Mist
- Hydrogen sulfide (H<sub>2</sub>S)
- Total reduced sulfur compounds (TRS)\*\*
- Reduced sulfur compounds (RSC)\*\*
- Municipal Waste Combustor (MWC) acid gases, MWC Metals, and MWC organics
- Municipal Solid Waste Landfills Emissions
- Ozone Depleting Substances (ODS)
- Greenhouse Gases (GHGs)\*\*\*

\* Particulate matter only includes filterable particulate as would be measured by USEPA Reference Method 5 and not condensable particulate.

\*\* TRS and RSC both include H<sub>2</sub>S.

\*\*\* GHGs are only addressed as a regulated NSR pollutant if applicability of PSD review is triggered for a proposed source or project based on its emissions of another regulated NSR pollutant.

#### **Which sources of emissions are subject to the PSD permit program?**

The PSD permit program generally applies to major stationary sources, i.e., sources that actually emit or could potentially emit one or more regulated NSR pollutants in quantities at or above the applicable major source threshold. The amount of a regulated NSR pollutant that a source is capable of emitting, considering any enforceable restrictions, is called its potential to emit (PTE) or potential emissions for that pollutant. Examples of major stationary sources include petroleum refineries, steel mills and coal-fired power plants.

Under the PSD program, a stationary source consists of all of the stationary pollutant-emitting activities that are under common control, are located on contiguous or adjacent properties, and belong to the same industrial grouping. (The PSD program does not directly apply to mobile sources such as cars, trucks or locomotives or to nonroad engines.) Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same “major group” in the federal Standard Industrial Classification Manual, i.e., have the same first two-digit code in this manual, which classifies establishments based on their primary economic activity.<sup>10</sup> USEPA

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regulated under PSD and NaNSR as it is a “precursor pollutant.” However, neither of these compounds is included when determining RSC emissions. This is because RSC is regulated under PSD only as it is an “other pollutant.” (In this regard, under the PSD rule, RSC now actually only consists of H<sub>2</sub>S.)

<sup>10</sup> Under the PSD rule, pollutant emitting activities at support facilities are considered to be in the same industrial grouping as the facility that they support regardless of the two-digit SIC Code of the support facility. For example, hydrogen plants have been constructed adjacent to certain petroleum refineries and are operated to supply the hydrogen needed in certain refining operations. These hydrogen plants are classified under SIC Code 2813, Industrial Gases, which is different than the classification of the refineries, SIC Code 2911. However, under the PSD rule, given the essential role of these hydrogen plants

recognizes that in some circumstances the determination whether two properties are adjacent for purposes of the PSD program may involve a case-by-case determination.

The major source threshold depends upon the type or category of source. The PSD program identifies 28 categories of sources for which the PSD major stationary source threshold is 100 tons per year (tpy) of a regulated NSR pollutant. If a source is not in a listed source category, then the major stationary source threshold is 250 tpy of a pollutant.<sup>11</sup>

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in supporting the operation of the refineries, each refinery and its associated hydrogen plant(s) are considered to belong to the same industrial grouping.

<sup>11</sup> Notably, the criteria for a major stationary source under the PSD program are different than the criteria for a major source under the Title V operating permit program. (The Title V permit program in Illinois is the Clean Air Act Permit Program or CAAPP, pursuant to Section 39.5 of the Environmental Protection Act). For emissions of a regulated NSR pollutant, the major source threshold of the Title V program is 100 tpy for all categories of sources. As such, all PSD major sources are also major for purposes of Title V/CAAPP permitting. However, not all Title V/CAAPP major sources are major for purposes of PSD.

**Categories of Sources Subject to a PSD Major Source Threshold of  
100 Tons per Year**

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour (mmBtu/hr) heat input
- Coal cleaning plants (with thermal dryers)
- Kraft pulp mills
- Portland cement plants
- Primary zinc smelters
- Iron and steel mill plants
- Primary aluminum ore reduction plants (with thermal dryers)
- Primary copper smelters
- Municipal incinerators capable of charging more than 250 tons of refuse per day
- Hydrofluoric acid plants
- Sulfuric acid plants
- Nitric acid plants
- Petroleum refineries
- Lime plants
- Phosphate rock processing plants
- Coke oven batteries
- Sulfur recovery plants
- Carbon black plants (furnace process)
- Primary lead smelters
- Fuel conversion plants
- Sintering plants
- Secondary metal production plants
- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140)
- Fossil-fuel boilers (or combinations thereof) totaling more than 250 mmBtu/hr heat input
- Petroleum storage & transfer units with a total storage capacity exceeding 300,000 barrels
- Taconite ore processing plants
- Glass fiber processing plants
- Charcoal production plants

**How is Potential to Emit (PTE) determined?**

The PTE of a stationary source, or an emissions unit, is generally defined as its capacity to emit a pollutant under its physical and operational design. Physical and operational limitations on the source's or unit's capacity to emit a pollutant, such as the use of air pollution control equipment, restrictions on hours of operation or on the type or amount of material combusted or processed, are treated as part of its design if the limitation or the effect it would have on emissions is or will be federally enforceable or enforceable by a state or local air pollution control agency.

In addition to being legally enforceable, in order to be considered enforceable for purposes of limiting PTE, a permit condition or other limitation or requirement must be enforceable as a

practical matter. This means that the limitation must be amenable to assessment of compliance on an ongoing basis, being accompanied by requirements for testing, monitoring, inspections, and recordkeeping, as appropriate. As such, exceedances of limitations that restrict a source's potential emissions of a pollutant should be readily subject to enforcement.

**Do “fugitive emissions” count when determining whether a source is major?**

Under the PSD rule, fugitive emissions are defined as emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.<sup>12</sup> Whether fugitive emissions are considered when determining if a source is major depends on the type or category of stationary source. Fugitive emissions are considered for the following categories of sources. For other categories of sources, fugitive emissions are not considered.<sup>13</sup>

- The 28 listed categories of sources for which the major source threshold is 100 tpy.
- Categories of sources that were being regulated under an NSPS as of August 7, 1980, including asphalt concrete plants, ferroalloy production facilities, glass manufacturing plants, stationary gas turbines, and automobile and light-duty truck surface coating operations.
- Categories of sources that were being regulated under a National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, as of August 7, 1980 including machine shops that process beryllium or beryllium oxides.

**What activities are subject to PSD permitting?**

In general, three types of activities are subject to PSD permitting:

- A company or other entity that proposes to construct a new major stationary source must obtain a PSD permit.
- The owner or operator of an existing major stationary source must obtain a PSD permit for a proposed major modification. As discussed at length later in this document, a major modification is a proposed project, i.e., proposed physical change(s) or change(s) in the method of operation, at an existing major source, that would significantly increase emissions of one or more regulated NSR pollutants from the source.

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<sup>12</sup> Common examples of fugitive emissions are dust (i.e., particulate matter) from vehicle traffic on roadways and VOM from leaking flanges or connectors at gasoline and petroleum product terminals.

<sup>13</sup> For example, consider a proposed new source that is not a listed source and for which fugitive emissions do not count towards applicability of PSD. Assume that this source's PTE for PM is 300 tpy, of which 60 tpy are fugitive emissions (only 240 tpy are non-fugitive emissions). If this source is not major based on its emissions of another regulated NSR pollutant, this source would not be subject to PSD review based on its PTE for PM. This is because its fugitive emissions would not be included when determining whether it is a major source. For this source to be major based on its PTE for PM emissions, its PTE for non-fugitive emissions of PM would have to be 250 tpy or more.

Of course, if this proposed source were to be a major stationary source based on its PTE for non-fugitive emissions of another regulated NSR pollutant other than PM, e.g., SO<sub>2</sub>, this example would be largely irrelevant. The source would be a major source for purposes of PSD because of its SO<sub>2</sub> emissions even if all of its PTE for PM were due to fugitive emissions.

- The owner or operator of an existing stationary source that is not major must obtain a PSD permit for a proposed physical change or changes to the source if the changes would constitute a major stationary source by themselves.

**Are “nonattainment pollutants” regulated under the PSD program?**

As already discussed, even if a stationary source is located in an area that is designated as nonattainment for a pollutant, that pollutant and/or its precursors are still regulated NSR pollutants under the PSD program. Emissions of the pollutant or its precursors may trigger the need for a PSD permit as they are still relevant for determining whether a source is a major stationary source.

However, emissions of the nonattainment pollutant and/or its precursors would not be subject to PSD review if they are only regulated relative to the NAAQS for only a single pollutant. In particular, since emissions of VOM are generally only regulated under NSR as they are a precursor to ozone, PSD does not apply for VOM for sources that are in areas that are designated nonattainment for ozone. Instead, VOM emissions of such sources are addressed by the NaNSR program.<sup>14</sup> The circumstances are similar for PM<sub>10</sub> and direct PM<sub>2.5</sub><sup>15</sup>, which are only regulated under NSR as there are NAAQS for PM<sub>10</sub> and PM<sub>2.5</sub> and they are not also precursors to other pollutants.

Because the applicability of PSD and NaNSR permitting requirements is determined separately for each regulated NSR pollutant, both PSD and NaNSR permitting requirements can apply for a single project. It is also possible that both PSD and nonattainment NSR permitting requirements can apply for a certain pollutant. For example, NO<sub>x</sub> is regulated under NSR as it is a precursor to NO<sub>2</sub>, PM<sub>2.5</sub> and ozone in the atmosphere. A proposed project in an area that is nonattainment for ozone could be subject to NaNSR for NO<sub>x</sub> as NO<sub>x</sub> is a precursor to ozone and subject to PSD for NO<sub>x</sub> as NO<sub>x</sub> is a precursor for NO<sub>2</sub> and PM<sub>2.5</sub>.

## **II. NEW MAJOR SOURCES**

**For a proposed new major source, for which pollutants does PSD review apply?**

For a proposed new major stationary source, PSD review generally applies for the regulated NSR pollutant(s) for which the PTE is above the major stationary source threshold (i.e., 100 tons per year for sources belonging to one of the 28 categories of sources; 250 tons per year for all other sources) and for the regulated NSR pollutants for which the PTE would be significant (e.g., 25 tons per year of PM). In other words, once a proposed major new source qualifies as a major source for one regulated NSR pollutant, other than greenhouse gases, PSD is generally applicable for all other regulated NSR pollutants for which the potential emissions are significant. Based on

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<sup>14</sup> As already mentioned, the NaNSR permitting program in Illinois is addressed by 35 Ill. Adm. Code Part 203, Major Stationary Sources Construction and Modification.

<sup>15</sup> Direct PM<sub>2.5</sub> are solid particles emitted directly from an air emissions source or activity, or are the gaseous or vaporous emissions from a unit that condense to form PM at ambient temperatures. 40 CFR Part 51, Appendix M, Method 201A.

current designations in Illinois, the only exceptions would be for VOM, PM<sub>10</sub> or direct PM<sub>2.5</sub> if the proposed source would be constructed in an area that is designated nonattainment for ozone, PM<sub>10</sub> or PM<sub>2.5</sub>, respectively. (In that case, the applicability of the requirements of NaNSR would be considered for that pollutant.)

**What amounts of emissions are considered significant?**

The emissions or the emissions increase for a regulated NSR pollutant is considered significant for purposes of the PSD program if it is equal to or more than the value specified in the PSD rule for that pollutant. The significant emissions rates for different pollutants are listed below.

Significant Emissions Rates	
Pollutant	Emission Rate (tpy)
Carbon monoxide (CO)	100
Nitrogen oxides (NO <sub>x</sub> )	40
Sulfur dioxide (SO <sub>2</sub> )	40
Particulate matter (PM)	25
PM <sub>10</sub>	15
PM <sub>2.5</sub>	10 tpy direct PM <sub>2.5</sub> 40 tpy SO <sub>2</sub> 40 tpy NO <sub>x</sub> *
Ozone	40 tpy VOM 40 tpy NO <sub>x</sub>
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10
Total reduced sulfur (including H <sub>2</sub> S)	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
GHGs	75,000 tpy as CO <sub>2</sub> e
Municipal waste combustor (MWC) organics (measured as total 4 through 8-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000035 Mg/y)
MWC metals (measured as PM)	15 (14 Mg/y)
MWC acid gases (measured as SO <sub>2</sub> and hydrogen chloride)	40 (36 Mg/y)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 (45 Mg/y)
Ozone depleting substances	100
* NO <sub>x</sub> is presumed to be a precursor to PM <sub>2.5</sub> unless if it is demonstrated to or determined by USEPA to its satisfaction that NO <sub>x</sub> emissions in a specific area are not a significant contributor to that area's ambient concentration of PM <sub>2.5</sub> , as provided for by 40 CFR 52.21(b)(50)(i)(b)(3).	

**When a PSD permit is required, when may construction begin?**

If a PSD permit is required, the owner or operator is not allowed to begin actual construction of the new major stationary source (or major modification) until a final PSD permit is issued and in effect. The PSD rule defines the prohibited activities to be, in general, "initiation of physical on-

site construction activities on an emissions unit which are of a permanent nature.” Examples of prohibited activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to proposed major modification involving operational changes rather than physical changes, prohibited activities are “on-site activities other than preparatory activities which mark the initiation of the change.”<sup>16</sup>

**At existing minor sources, what triggers a requirement for PSD permitting?**

Construction of a new major stationary source can occur at an existing, non-major stationary source. This would occur when proposed physical changes at the existing source would occur such that these changes by themselves would constitute a major stationary source. When a minor source undertakes changes that make it a major source, future projects at the source will be evaluated against the PSD significant emission rates.

The general exception would be if the existing source is located in a nonattainment area and a pollutant that would otherwise be subject to PSD is only regulated under NSR for its role in contributing to air quality for the pollutant for which the area is nonattainment. For example, in an area that is currently designated nonattainment for ozone air quality, a proposed project would never be subject to PSD for VOM emissions.

### **III. MAJOR MODIFICATIONS**

**What proposed changes at existing major stationary sources are subject to PSD permitting?**

By definition, a major modification is generally a proposed “physical change” or a “change in the method of operation” of an existing major source (i.e., a “project”) that would result in both a significant emissions increase of a regulated NSR pollutant (other than GHGs) and a significant net emissions increase of that pollutant from the source.<sup>17</sup> For this purpose, the approach to GHGs is the same as that for whether a source is a major stationary source. Emissions of GHGs are only addressed if a proposed project is already a major modification subject to PSD for another regulated NSR pollutant. In addition, if a source is located in a nonattainment area and a pollutant that would trigger PSD is only regulated under NSR for its role in contributing to air quality for the pollutant for which the area is designated nonattainment, the modification is not subject to PSD for that pollutant.<sup>18</sup>

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<sup>16</sup> For example, if the use of a new type of raw material is proposed that will not meet any of the exclusions for use of alternative materials, and the change will cause emissions increase(s) and net emissions increase(s) that are significant, then the source must obtain a PSD permit before it begins to use the new raw material.

<sup>17</sup> For a major source that is subject to a Plantwide Applicability Limitation (PAL) for a pollutant, the PSD rule uses a different definition for a major modification for that pollutant. As will be discussed in more detail later, for such a source, a major modification for that pollutant is a project that would result in emissions exceeding the PAL.

<sup>18</sup> If the “nonattainment-only” pollutant is the only pollutant for which increases in emissions are significant, the proposed modification is not subject to PSD.

The PSD rule specifies certain changes at sources that are not considered physical changes or changes in the method of operation. Assuming that these activities can be distinguished from activities at a source that are not excluded from PSD review, these activities are not subject to PSD review.<sup>19</sup> In particular, routine maintenance, repair and replacement activities are not considered physical changes under the PSD rule.<sup>20</sup> Permissible increases in the utilization or hours of operation of emissions unit are not considered changes in the method of operation or operational changes under the PSD rule.<sup>21</sup>

Finally, if the fugitive emissions of the source are not required to be considered in determining applicability and the project would not be a major modification for a pollutant considering only non-fugitive emissions, then PSD review is not applicable for that pollutant.

#### **What activities constitute a single project?**

When determining the applicability of PSD, a collection of activities that is technically and economically related or interdependent are addressed as a single project. A source is not allowed to divide a project into multiple, nominally separate changes, each with its own analysis of emissions increase, possibly circumventing PSD permitting for the project as a whole.<sup>22</sup>

#### **How does one determine whether a project will have a significant emissions increase?**

As previously discussed, a proposed project is a major modification and is potentially subject to PSD review, on a pollutant-by-pollutant basis, if it would result in both a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant. The PSD rule includes provisions prescribing how the emissions increase of a regulated NSR pollutant from a project is to be determined, as well as provisions for the determination of the net

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<sup>19</sup> Under Illinois' regulations, a state construction permit also may not be needed for these excluded activities.

<sup>20</sup> Other than routine maintenance, repair and replacement, the specific activities that are not considered physical changes to an emission unit under the PSD rules are likely obsolete. They include: 1) the installation, operation, cessation, or removal of certain temporary clean coal technology demonstration projects; 2) the installation or operation of certain permanent clean coal technology demonstration projects that constitutes repowering; and 3) the reactivation of a very clean coal-fired electric utility steam generating unit.

<sup>21</sup> The activities that are not considered changes in the method of operation include the following:

- Any change in ownership at a stationary source.
- An increase in the hours of operation or in the production rate, unless such change would be prohibited under any NSR permit condition which was established after January 6, 1975.
- Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- Use of an alternative fuel or raw material by a stationary source which:
  - The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any NSR permit condition which was established after January 6, 1975; or
  - The source is approved to use under its PSD permit.

<sup>22</sup> Permitting authorities routinely evaluate nominally separate physical changes and changes in method of operation at a major stationary source to determine whether they should be "aggregated" and appropriately considered part of a single larger project.



emissions increase. To determine whether the change in emissions for a project is significant for a pollutant, one must determine the changes in emissions of the various units or groups of units affected by the project.

**How does one determine the increase in emissions for a new unit?**

The owner or operator must begin by identifying all emissions units whose emissions of that pollutant could be affected by the project and classifying each such unit as either new or existing. An emissions unit is a new emissions unit if it is (or will be) newly constructed and it has existed for less than two years from the date it first operated. An emissions unit is an existing emissions unit if it is not a new emissions unit. The change in emissions or increase from a project is determined by summing changes in emissions from each affected unit or group of units. For a new emissions unit, the prescribed procedure is the actual-to-potential applicability test. The emissions change from each emissions unit is calculated as the difference between its PTE following completion of the project and its baseline actual emissions. In the case of a proposed new unit, the baseline actual emissions are zero, and this procedure results in the increase from the new unit initially being its PTE. In the case of a new unit that is affected by a project during its first two years of operation, the baseline actual emissions are equal to the unit's potential to emit. This is relevant if another, separate project occurs that involves or affects the new unit. Until such a unit has operated for a period of two years, to have representative data for actual emissions, changes are evaluated from the established PTE for a unit. A subsequent project will only have an increase from the new unit if it would act to increase the unit's PTE.

**How does one determine the increase for existing emission units?**

For existing units, the prescribed calculation procedure is the "actual-to-projected-actual applicability test." Under this procedure, the change in emissions of an emissions unit is calculated as the difference between its projected actual emissions and its baseline actual emissions. The total emissions increase from the project is calculated as the sum of the differences.

The baseline actual emissions for an existing emissions unit generally are its actual, annual average emissions – including quantifiable fugitive emissions and emissions associated with startups, shutdowns, and malfunctions and with certain required downward adjustments, during a recent 24-month period, as selected by the source. The baseline actual emissions for an existing emissions unit that is not an electric utility steam generating unit are the average rate, in tpy, at which the unit actually emitted the pollutant during a consecutive 24-month period selected from the ten-year period immediately preceding the earlier of either (a) the date on which the source files a complete application for a construction permit for the project or (b) the date on which the source begins actual construction of the project (i.e., if no construction permit is required). A source may not select or use a baseline period where information is not adequate to determine annual emissions and to make any required downward adjustments to the emissions.

These baseline actual emissions must be adjusted downward to exclude noncompliant emissions that occurred while the emissions unit was operating above any emission limit that was legally enforceable during the baseline period. In addition, the baseline actual emissions rate from a unit

must be adjusted downward to exclude any emissions that would have exceeded a limit with which the unit must currently comply.<sup>23, 24</sup>

For projects involving more than one existing emissions unit, the same baseline period must be used for all such units in the actual-to-projected-actual calculations for a particular pollutant. However, a source may use different baseline periods for different pollutants.

The projected actual emissions are generally the maximum amount, in tpy, at which the owner or operator of the source projects an existing emissions unit will emit a regulated NSR pollutant in any calendar year in either the five or ten-year period after the unit resumes regular operation following completion of the project. As an alternative to making a projection of actual emissions, the owner or operator may elect to use the PTE of the emissions unit in lieu of actual emissions. If the source elects to make a projection, then the defined period for the projection is ten years if the project involves increasing the emissions unit's design capacity or its PTE for that regulated NSR pollutant and if full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. Otherwise, the defined period is five years. Like the baseline actual emissions, the projected actual emissions include quantifiable fugitive emissions and emissions associated with startups, shutdowns, and malfunctions.

In making the projection, the source is required to consider all relevant information. Examples of potentially relevant information specifically listed in the PSD regulations include the source's expectations regarding its expected business activity and historical operational data.

#### **What is the "demand growth exclusion"?**

If the projected actual emissions of a regulated NSR pollutant from an existing emissions unit exceed its baseline actual emissions, further analysis may be required to assess the extent to which this emissions increase should be considered in determining whether a proposed project is a major modification. As stated by USEPA:

The NSR regulatory provisions require that the physical or operational change "result in" an increase in actual emissions in order to consider that change to be a modification. In other words, NSR will not apply unless EPA finds that there is a

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<sup>23</sup> For example, consider an emissions unit that during the selected baseline period was subject to a PM standard of 2.5 pound/hour and whose actual PM emission rate was 2.0 pounds/hour. If a new rule now limits PM emissions to 1.0 pound per hour, the baseline emissions would be determined using this new emission rate, so that its baseline actual emission would be half of what was actually emitted during the baseline period. (1.0 pound/hour ÷ 2.0 pounds/hour = 0.50.)

<sup>24</sup> The provisions for baseline actual emissions for electric utility steam generating units are different than those for other emissions units. For an existing electric utility steam generating unit, baseline actual emissions are the average rate, in tpy, at which the unit actually emitted the pollutant during any consecutive 24-month period within the five-year period immediately preceding the date on which actual construction begins on a proposed project. Use of a different period is allowed if the permitting authority determines that a different period is more representative of normal source operation. The baseline actual emissions must be adjusted downward to exclude noncompliant emissions that occurred while the unit was operating above any emission limit that was legally enforceable during the baseline period.

causal link between the proposed change and any post-change increase in emissions.<sup>25</sup>

Accordingly, the PSD rule provides that the source must quantify the portion of the emissions increase that should not be attributed to the project. The rules provide that, in calculating the increase in emissions that will result from a project, the source shall exclude that portion of the unit's emissions following the project that the unit could have accommodated during the baseline period and that are also unrelated to the particular project. This exclusion or adjustment is commonly referred to as the "demand growth exclusion."<sup>26</sup>

**Is an emissions unit that would be installed to replace an existing unit considered a new unit?**

If the emissions unit that would be installed would meet the criteria to be considered a replacement unit, it would be addressed as an existing unit under the PSD rule. That is, the change in emissions would be evaluated comparing the baseline actual emissions of the existing unit and the projected actual emissions that replaces it.

To be a replacement unit, the following criteria must be met: 1) The unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) or it completely takes the place of an existing emissions unit; 2) The unit is identical to or functionally equivalent to the replaced emissions unit; 3) The unit that is replaced will permanently cease operation, either being rendered inoperable through physical means or through enforceable permit terms; and 4) The replacement does not

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<sup>25</sup> "Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources." 57 *FR* 32314 at p. 32326. (July 21, 1992).

<sup>26</sup> The following example illustrates the "demand growth exclusion." A printing plant that is a major source for PSD, which is in an area that is attainment for ozone, proposes to modify one of its larger printing presses by adding two more printing stations. This will enable this press to print specialty jobs that also involve use of inks that contain metallic flecks, in addition to the standard inks applied on the eight existing stations. The pollutant of concern for applicability of PSD is VOM. The average VOM emissions of the press in the selected baseline period were 120 tpy. The source projects that the annual VOM emissions of the press after the project could be as much as 170 tpy. The difference between this projection and the baseline emissions, 50 tpy, is significant since it is equal to or more than 40 tpy.

Upon closer examination, the source realizes that much of this increase in VOM emissions would be due to growth in conventional printing jobs that do not involve use of any metallic inks. The source examines the year by year growth in use of this press and determines that, even without the two additional print stations, the future emissions of the press would be projected to be at least 150 tpy. In addition, this level of operation and VOM emissions would have been accommodated by the presses in the selected baseline period. The design capacity of the press with only eight printing stations is on the order of 165 tpy and changes have not been made to the press since the baseline period to increase its capacity.

The source concludes that the increase in VOM emissions from the proposed project is only 20 tpy, which is not significant ( $170 \text{ tpy} - 150 \text{ tpy} = 20 \text{ tpy}, < 40 \text{ tpy}$ ). The adjustment to this increase ( $30 \text{ tpy}$ ) could have been accommodated during the baseline time period ( $150 \text{ tpy} < 165 \text{ tpy}$ ). The adjustment is also unrelated to the project as it reflects the operation of the press with only conventional printing jobs. The increase in emissions for the project accounts for all operation and VOM emissions of the press for specialty printing jobs (all 10 print stations), not just the emissions from the two new printing stations.

alter the basic design parameter(s) of the process unit of which it is a part.<sup>27</sup> For this final criterion, the source may select the basic design parameter from several specified parameters relating to input or output capacity and must quantify the basic design parameter using credible information such as design information or the results of historic testing of the capacity of the project unit.

**How are the increases in emissions from the various units involved in or affected by a project combined to determine whether the overall increase is significant?**

The actual-to-projected-actual calculation is performed for each existing emissions unit and the actual-to-potential calculation is performed for each new emissions unit. Currently under the federal PSD rule, the total emissions increase from a proposed project is the sum of the differences in emissions.<sup>28</sup>

**Is the owner or operator of a source required to keep records in conjunction with an actual-to-projected-actual evaluation?**

As discussed, for existing emissions units affected by a proposed project, the changes in emissions are evaluated using the actual-to-projected-actual applicability test. As part of this

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<sup>27</sup> As defined by the PSD rule, a “process unit” generally means “any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. . . . a process unit may contain more than one emission unit.” The definition was likely developed from the definition of “process unit” in the NSPS for Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry, 40 CFR 60.481, which more narrowly addresses collections of components that process raw materials to produce, as intermediate or final products, certain listed chemicals.

The use of the term “process unit” in the criteria for replacement units in the PSD rule is significant. When a proposed emission unit would take the place an existing unit that is part of a collection of units and/or equipment that operates together in an integrated manner, the proposed project must be evaluated relative to its impact on the capacity of the collection of units and/or equipment. While the capacity of the proposed emissions unit considered by itself could be larger than the unit that would be replaced, the overall capacity of the “process unit” could be unaffected if the process unit is constrained by the capacity of its other existing units and/or equipment. Alternatively, a proposed emissions unit that has more capacity than the unit that it would replace could remove a constraint on the capacity of the process unit; in which case, the proposed unit would be addressed as a new unit.

<sup>28</sup> On March 13, 2018, the Administrator of USEPA found that the relevant provisions of 40 CFR 52.21(a)(2)(iv) provide that the “differences in emissions” from the various emission units involved in a project should always be summed. (Scott Pruitt, Administrator of USEPA, Memorandum, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” March 13, 2018.) This interpretation is the subject of a petition for review filed by the Environmental Defense Fund, Natural Resources Defense Council and Sierra Club before the U.S. Court of Appeals for the District of Columbia Circuit, Case No. 18-1149, on May 29, 2018.

Prior to the issuance of this memorandum, the handling of the changes in emissions from a proposed project under the federal PSD rule depended on the types of emissions units involved in a proposed project. If the project only involved existing units, differences in emissions were summed. However, if the project involved both existing and new units (or only new units), only the increases in emissions were to be summed without any consideration of decreases in emissions that would occur in the project.

evaluation, a source may either make a projection of actual emissions of an emissions unit or elect to substitute the PTE of the unit. If the source proceeds based on the projected actual emissions of any unit, certain requirements may still apply under the PSD rule even if the proposed project is not a major modification. These requirements involve recordkeeping and reporting related to emissions and applicability of PSD to the project. These requirements apply on a pollutant-specific basis if one of the following is met. The first criterion is that the projected emissions increase from the project is 50 percent or more of the relevant significant emission rate. The second criterion, which applies if the first criterion is not met, is that the projected emissions increase is 50 percent or more of the relevant significant emission rate when any emissions excluded due to the demand growth exclusion are added to the projected emissions increase.

If either criterion is met for a particular pollutant, then, for that pollutant, before beginning actual construction of the project, the source must document and maintain a record of a description of the project; a list of emissions units whose emissions may be affected by the project; the applicability analysis including the baseline actual emissions, the projected actual emissions, the amount of the projected actual emissions rate excluded from the emissions increase calculation, and an explanation for why such amount was excluded; and any netting analysis, if applicable.<sup>29</sup>

If the first criterion is met for a particular pollutant, then the source must keep records of the emissions of that pollutant from all emissions units identified in the preconstruction applicability analysis and must maintain records for the annual emissions on a calendar year basis. This recordkeeping must be conducted for a period of at least five years following completion of the project, unless the project increases the design capacity or PTE of the emissions unit, in which case these records must be kept for a period of ten years. The source must report to the permitting authority if the annual emissions from the project in a calendar year exceed the baseline actual emissions by a significant amount.<sup>30</sup>

#### **How does one determine whether a project will have a significant net emissions increase?**

If a proposed project will cause a significant emissions increase in a regulated NSR pollutant, then PSD applicability depends on whether the project will also result in a significant net emissions increase for that pollutant. To show that this will not occur, the permit applicant performs an analysis commonly referred to as a “netting” analysis. This analysis addresses the combination of the significant emissions increase from the proposed project and any other increases and decreases in emissions of that regulated NSR pollutant at the source that are both contemporaneous with the project and creditable. The provisions of the PSD rule regarding these two criterion are discussed below in the next two sections.

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<sup>29</sup> If an existing emissions unit affected by the project is an electric utility steam generating unit, the source must also send a copy of these records to the permitting authority before beginning actual construction.

<sup>30</sup> If an existing emissions unit affected by the project is an electric utility steam generating unit, then the source must submit a report to the permitting authority within 60 days after the end of each calendar year presenting the unit's annual emissions during the calendar year.

**What is the contemporaneous period for a netting analysis for a proposed project?**

An increase or decrease in emissions is contemporaneous with a proposed project if it occurs between the date five years before construction commences on the project and the date that the emissions increase from the project occurs. Thus, both emission decreases that have already occurred and future emission decreases that will be part of a project or otherwise occur during construction on a project may be within the contemporaneous period. The contemporaneous period ends when the emission increase from the proposed project occurs, which is generally when a new or modified emissions unit becomes operational. However, an emissions unit that takes the place of an existing unit and that requires shakedown is considered to become operational only after a reasonable shakedown period not to exceed 180 days.<sup>31</sup>

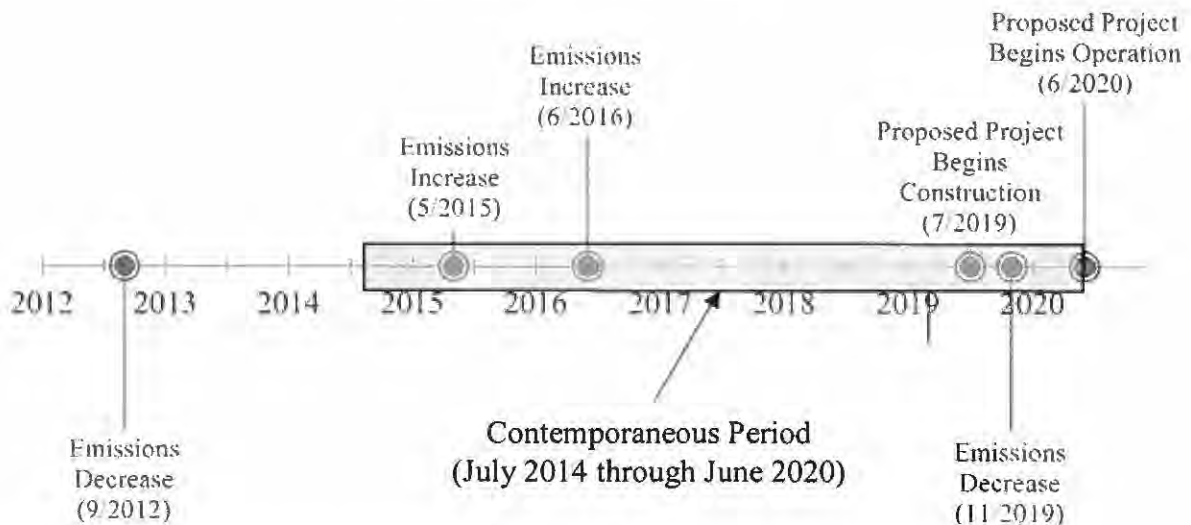
The PSD rule defines the date on which construction of a project commences as the earliest date by which the source has obtained all permits or approvals required under the federal Clean Air Act and also either has begun actual construction, to be completed within a reasonable time, or has entered into qualifying binding agreements or contractual obligations for actual construction.

The following example illustrates the provisions of the PSD rule governing contemporaneous periods. The example involves a proposed project on which construction will commence on July 1, 2019 and that will begin operation on June 30, 2020. Accordingly, the contemporaneous period for this project extends from July 2014 through June 2020, inclusive. A netting analysis for this proposed project must address other projects during this period that resulted in increases in actual emissions. In this example, along with the emission increase from the proposed project, there are two previous projects with increases in emissions that must be addressed in the netting analysis, one in May 2015 and one in June 2016. In addition, a planned emission decrease in November 2019 would be contemporaneous and could be included in the netting analysis. A past emission decrease that occurred in September 2012, more than five years before the date construction on the project will commence, is outside the contemporaneous period for the proposed project and cannot be included in this netting analysis.

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<sup>31</sup> The provisions for emissions units that will take the place of existing units accommodate a reasonable transition between the units. In this regard, it is not appropriate to expect the existing units to be shut down until the shakedown of the new units has been completed and they have demonstrated the ability to reliably take the place of the existing units.

## Example for the Contemporaneous Period For a Proposed Project



### What emission increases and decreases are credible in a netting analysis for a project?

In a netting analysis, the creditable amount, if any, for each identified contemporaneous increase and decrease in emissions at the source must be determined. An increase or decrease in emissions generally is not creditable if the permitting authority has relied on it in issuing a PSD permit for the source. This applies only if the PSD permit is in effect when the increase in actual emissions from a particular change occurs. A particular emission increase or decrease is considered to have been relied upon if it was included in the PSD permit application submitted by the source and been relied upon in support of issuance of the PSD permit.<sup>32</sup>

Also, a decrease in emissions that would result from shutting down an emissions unit is not creditable if the unit would be replaced by a unit that is being addressed as a “replacement unit” in the evaluation for the change in emissions from a proposed project. If this decrease were considered in that evaluation for a proposed project and also allowed to be a creditable decrease in a netting analysis, this decrease would inappropriately be relied upon twice.<sup>33</sup>

<sup>32</sup> Consider a major stationary source with a project in 2015 that increased actual emissions by 30 tpy, and another project in 2016 that decreased actual emissions by 20 tpy. Assume the source submitted a complete PSD permit application for a third project, which application addressed both the proposed project and the net emissions increase, and received a PSD permit for this third project in 2017. The emissions increase of 30 tpy in 2015 and the emissions decrease of 20 tpy are deemed to have been relied upon; they are not creditable for future netting analyses as long as the PSD permit remains in effect.

<sup>33</sup> In addition, the PSD increments, as will be discussed later in this document, have a role in determining whether an increase or decrease in emissions of SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, or NO<sub>x</sub> is creditable. Increases or decreases in emissions of these pollutants generally are not creditable if they occurred before the applicable minor source baseline date for PSD increment consumption purposes. They are creditable if they are required to be considered in an analysis for the consumption of PSD increment by a proposed

If a particular contemporaneous increase or decrease in actual emissions is not categorically excluded from being creditable, then the creditable amount of the increase or decrease must be determined. The contemporaneous increase in emissions from a particular emissions unit is creditable to the extent that the new level of actual emissions from the unit exceeds its baseline actual emissions. For this purpose, the PSD rule generally provides that the projected actual emissions may be used as the new level of actual emissions. In practice, the increases in emissions are often determined using the future PTE or allowable emissions of emissions units. A contemporaneous decrease in emissions from a particular emissions unit generally is creditable to the extent that the unit's baseline actual emissions or its old level of allowable emissions, whichever is lower, exceeds its new level of actual emissions. In addition, a decrease is creditable only to the extent that it will be enforceable as a practical matter on the date that the source begins actual construction of the project for which a netting analysis is being performed. For an emissions unit that is providing an emission decrease but will continue to be operated, this necessarily entails setting limits on the future operation and emissions of that unit, with such limits to become effective no later than the end of the contemporaneous period.

The provisions of the PSD rule that govern baseline actual emissions when determining the increase in emissions from a proposed project have already been discussed. When determining the net increase in emissions from a project, two of those provisions do not apply. First, a source may select any eligible baseline period for the baseline actual emissions of an existing emissions unit when determining the creditable amount of the increase or decrease in emissions from the unit. The same baseline period does not have to be used for a regulated pollutant for all emissions units, as is required when determining the emissions increase from the project, itself. Second, for an existing emissions unit that is not an electric utility steam generating unit, while a source remains subject to a requirement to adjust the baseline actual emissions rate downward to exclude any emissions that would have exceeded an enforceable limit, this requirement only applies to enforceable limits that existed just prior to the date of the specific contemporaneous increase or decrease in emissions. Otherwise, new limits established in conjunction with particular contemporaneous increases or decreases, themselves, could result in some or all of those increases or decreases no longer being creditable.

#### **Do fugitive emissions count when determining whether a project is a major modification?**

Fugitive emissions are always considered when evaluating whether a proposed project at a major source would be a major modification. When the source at which the project would occur is in a category for which fugitive emissions (i.e., emissions that could not reasonably pass through a stack, vent or other similar opening) are included when determining if a source is major, the PSD rule does not differentiate between the fugitive and non-fugitive emissions of the project.<sup>34</sup>

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project (i.e., if the emissions increase will consume a portion of the available increment or the emissions decrease will expand the available increment).

<sup>34</sup> The categories of sources for which fugitive emissions must be included when determining whether a source is major are: 1) The 28 listed categories of sources for which the major source threshold is 100 tpy; 2) Categories of sources that, as of August 7, 1980, were being regulated under an NSPS; and 3) Categories of sources that, as of August 7, 1980, were being regulated under a NESHAP.



However, if the source at which the proposed project would occur is not in a category for which fugitive emissions are included when determining if a source is major, the fugitive emissions of the project ultimately may not “count.” This is because of exemptions in the PSD rule that provide that if a proposed project at such a source would only be a major modification due to fugitive emissions, the substantive requirements for issuance of a PSD permit shall not apply to the project.<sup>35</sup> On the other hand, if a proposed project is a major modification for any pollutant based on its non-fugitive emissions, these exemptions are not applicable, the substantive requirements of PSD would apply to the project for all regulated pollutants emitted in significant amounts, including both non-fugitive and fugitive emissions of those pollutants.

#### **What is a Plantwide Applicability Limitation (PAL)?**

The PSD program includes provisions for the issuance of permits to existing major stationary sources with Plantwide Applicability Limitations (PALs). A PAL restricts all emissions of a particular regulated NSR pollutant from a subject source. For a source with a PAL for a pollutant, applicability of PSD review for that pollutant is not determined from the increases in emissions of that pollutant due to a proposed project. Instead, if the source’s actual emissions of the pollutant with a proposed project will remain below the applicable PAL, the project is not a major modification for that pollutant even if the increases in emissions of the pollutant due to the project would be significant.

Each PAL must be established in a PAL permit issued by the permitting authority for a 10-year term. In order to obtain a PAL, the source must submit an appropriate permit application specifically requesting a PAL (or PALs for multiple pollutants). Among other information, the application must include a listing of emissions units at the source that have the potential to emit that pollutant; their baseline actual emissions (with supporting documentation); the classification of each emissions unit as small, significant or major;<sup>30</sup> and identification of all applicable emissions limits.

A PAL for a particular pollutant must generally be set starting from the baseline actual emissions for all emissions units at the source that can emit the pollutant. For existing emissions units, the source must select one baseline period; consistent with the provisions of the PSD rule, e.g., the

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<sup>35</sup> In particular, 40 CFR 52.21(i) of the federal PSD rule provides the following. A similar exemption is contained in the definition of “major modification,” at 40 CFR 52.21(b)(2)(v).

(i) *Exemptions.* (1) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if;

...

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: ...[List of source categories for which fugitive emissions are considered].

<sup>30</sup> An emissions unit is small with respect to a particular regulated NSR pollutant if its PTE is less than the significant level; significant if its PTE is equal to or greater than the significant level, but less than 100 tpy; and major if its PTE is 100 tpy or more.

same 24-month baseline period must be used for all existing emissions units.<sup>37</sup> For any new emissions units (i.e., any units that have operated for less than two years or that are not yet operational but for which construction has commenced), the baseline actual emissions are the PTE of the units.<sup>38</sup> To set the value of the PAL, the significant emission rate for the pollutant is added to the baseline actual emissions determined in the manner described above.

At the end of the 10-year term, a PAL permit must be renewed or it expires.<sup>39</sup> When a PAL permit is renewed, the level of the new PAL generally is set in the same manner used to set the original PAL with several exceptions. Most significantly, the permitting authority has discretion to set the value of the new PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage voluntary emissions reductions at the source, or other relevant factors.<sup>40</sup>

A PAL may be increased if the source applies for and obtains a PSD permit for a PAL major modification, making the required demonstration for an increase in the PAL. Among other information, the application must identify the emissions units that will contribute to the increase in emissions that will cause the source's emissions to equal or exceed the PAL. Applicable substantive requirements of PSD must be met for these emissions units. For example, for new or modified emissions units, the issued PSD permit must include BACT requirements even though such units will also become or remain subject to the PAL. The required demonstration for an increase in the PAL begins with a new PAL-setting calculation, generally performed in the same manner as described previously for an initial PAL.<sup>41</sup>

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<sup>37</sup> When PALs are set for several pollutants, a different baseline period may be used for each pollutant.

<sup>38</sup> There are two exceptions to the general requirement for using baseline actual emissions rates to compute the level of the PAL. First, for each emissions unit which has been permanently shut down since the selected baseline period, its contribution to the PAL is zero. Second, for each existing emissions unit for which actual construction began after the selected baseline period, the level of the PAL is computed using its PTE in lieu of its baseline actual emissions.

<sup>39</sup> If a PAL permit expires, the permitting authority must establish new emissions limits for all emissions units at the source that have the potential to emit the pollutant subject to the PAL. These new emissions limits will represent a distribution of the PAL that will sum to the value of the PAL. Until these new limits are set, the source continues to be subject to the PAL permit.

<sup>40</sup> When renewing a PAL, there are three more exceptions resulting in downward adjustment of the new PAL: (1) If the source's PTE has declined below the current PAL level, the new PAL must be adjusted downward so that it does not exceed the source's PTE; (2) If the new value of the PAL would be less than 80 percent of the current PAL, the PAL must be renewed at a lower level; and (3) If the new value for the PAL would exceed the current PAL, and the source did not timely comply with the provisions for a modification or increase in a PAL, any new PAL must be set at the value of the current PAL.

<sup>41</sup> There are three exceptions to this general provision dealing with increases in PALs. First, for each emissions unit that will be subjected to PSD review as part of the PAL major modification (i.e., each emissions unit contributing to the increase), the level of the increased PAL is determined using its allowable emissions in lieu of its baseline actual emissions. The allowable emissions of a unit are calculated using its maximum capacity and the most stringent federally enforceable limit to which it is subject, which will generally be the BACT limit set in the PSD permit for the PAL major modification.

#### **IV. BEST AVAILABLE CONTROL TECHNOLOGY (BACT)**

##### **For which emissions units is BACT required?**

For a proposed new major stationary source, BACT generally is required for each regulated NSR pollutant for which PSD applies, including potentially GHGs. For each such pollutant, BACT is required for that pollutant for the various emission units (pollutant-emitting activities) at the source that would emit that pollutant. This includes the fugitive emissions of a pollutant from emissions units if the source is subject to PSD for the pollutant. This also includes emissions units that emit GHGs if the source is subject to PSD for GHGs.

For a proposed major modification subject to PSD for a pollutant, the BACT requirement applies to each proposed new emissions unit that would emit that pollutant. It also applies to each existing emissions unit at which a net increase in emissions of that pollutant would occur as a result of a physical change or change in the method of operation in the unit. In determining whether a physical change or change in the method of operation would occur at an emissions unit, the exclusions in the definition of major modification are relevant.<sup>42</sup>

##### **What is BACT?**

BACT is an emissions limit or limits for a pollutant for an emissions unit or group of related units established by the permitting authority based on its determination of the maximum degree of reduction in emissions of that pollutant that is achievable through application of production processes or available methods, systems, and techniques. BACT is commonly described as a technology that is used to control or reduce emissions of a pollutant. However, by definition,

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Second, for each significant or major emissions unit that was not subjected to PSD review in the PSD permit for the PAL major modification and which is not required to comply with a BACT or LAER requirement that was established within the preceding ten years, the level of the increased PAL is computed using its baseline actual emissions with an appropriate downward adjustment assuming application of BACT-equivalent controls. The level of control that would result from BACT-equivalent controls on each significant or major emissions unit will be determined by the permitting authority based on a new BACT analysis at the time the application is submitted.

Lastly, the increased PAL is calculated without adding an amount equal to the significant emission rate for the pollutant. If the increased PAL as computed using this procedure would exceed the existing PAL, then the required demonstration has been made and the permitting authority will issue a revised PAL permit reflecting the increased PAL. The increased PAL will be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

<sup>42</sup> One of the exclusions provides that an increase in operation of an emissions unit, by itself, is not considered a change in method of operation of the unit if it is capable of accommodating the increase in operation and the increase is not restricted by an enforceable limitation.

For example, consider an existing boiler that will experience an increase in operation due to the proposed construction of a new process unit, which will use steam. Even though this new process unit will be subject to the BACT requirement of PSD, if physical changes would not be made to the boilers at the source to produce this additional steam and existing limitations do not need to be relaxed, the boilers would not be subject to the BACT requirement.

BACT constitutes the substantive emission limit(s) or requirement(s) that are set as BACT for subject emissions units, not the underlying control technologies.

BACT determinations are made on a case-by-case basis and, as appropriate, take into account energy, environmental, and economic impacts and other costs. BACT limits are established in PSD permits and must be at least as stringent as the standard(s) applicable to such emissions unit(s) under any applicable federal NSPS or NESHAP. BACT is generally a numerical emission limit but, if the permitting authority determines that technological or economic limitations on the application of measurement technology would make the imposition of numerical limit(s) infeasible, the permitting authority may instead establish non-numerical BACT requirement(s), such as design, work practice or operational requirement(s). Proposed determinations of BACT are a matter that is subject to review and comment by the public during the comment period before final action is taken on a PSD application.

#### **What role does the PSD permit applicant play in establishing BACT?**

An application for a PSD permit must contain all information that is necessary to determine that BACT would be applied. In practice, permitting authorities require that applicants for PSD permits include detailed demonstrations in their applications showing that BACT is appropriately proposed for a project. Applicants routinely provide permitting authorities with relevant information that is needed when determining BACT for a proposed project, including a review of possible emission control technologies and information on the technical feasibility, achievable emission reductions, energy impacts, environmental impacts, and economic impacts and other costs of those possible technologies.

#### **How are BACT determinations generally made by permitting authorities?**

Permitting authorities generally make BACT determinations using the “top-down process,” as recommended by USEPA and described in detail in its New Source Review Workshop Manual.<sup>43</sup> A top-down BACT analysis for a particular emissions unit or group of related units entails the following five steps. Depending on the proposed source and affected emissions units, the different steps may have varying degrees of significance for the final determination of BACT.

- Step 1: Identify all available control technologies
- Step 2: Eliminate control technologies that are not technically feasible
- Step 3: Rank remaining control technologies by control effectiveness
- Step 4: Evaluate impacts of control technologies
- Step 5: Establish BACT

The use of the top-down BACT process is not mandated by USEPA’s rules for state PSD programs, but many permitting authorities have found it to be an effective approach for making BACT determinations. The top-down process assures consideration of the most effective control technologies and the most stringent emission limits or requirements that are achievable. If a less stringent limit or requirement is proposed or set as BACT, the adverse impacts that are the basis

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<sup>43</sup> USEPA, *New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting*, Draft, October 1990, commonly referred to as the USEPA’s NSR Manual.

for the decision are clearly set forth. This is why this process is referred to as the “top-down” BACT process.

**What is Step 1 in a Top-Down BACT Analysis?**

In the first step, available or “candidate” emission control technologies, which have a potential for reducing emissions of the target pollutant from the proposed unit(s), are identified. For this purpose, available control technologies include add-on control devices (e.g., fabric filter baghouses or afterburners). Available control technologies that must also be identified include alternative fuels or raw materials (e.g., lower-sulfur fuels or low-solvent coatings) and alternative methods or processes that would reduce the formation or level of emissions (e.g., ultra-low-NO<sub>x</sub> burners or floating roof storage tanks). Available control technologies can be identified based on their use on emissions units in the same source category or based on their use on other units in other source categories with similar emission characteristics and exhaust gas streams. Available emission control technologies are commonly identified from information in the USEPA’s online RACT/BACT/LAER Clearinghouse (RBLC), permits for existing sources, relevant USEPA air pollution control rules and rulemakings, technical journals and published research papers.

**What is Step 2 in a Top-Down BACT Analysis?**

In the second step, the available emission control technologies that have been identified are reviewed for their technical feasibility. Control technologies that are not technically feasible need not be considered further. An available control technology is considered to be technically feasible for purposes of BACT if it would function efficiently on the subject emissions unit(s). An available control technology may be determined to be technically feasible for a particular emissions unit(s) based on its successful use on similar unit(s) in a different source category. This often entails a comparison of factors such as the units’ sizes, functions, raw materials and products, and exhaust gas stream compositions.<sup>44</sup>

**What is Step 3 in a Top-Down BACT Analysis?**

In Step 3 of a top-down BACT analysis, the technically feasible options for control of emissions of the pollutant from the emission unit or group of units that is the subject of the BACT analysis are ranked in order of control effectiveness, with the most effective control option at the top of the ranking. The control options that are ranked in Step 3 include each of the control technologies that have been determined to be feasible in Step 2 of the BACT analysis. If any of these feasible control technologies can be implemented with a large range of control effectiveness, in Step 3 of

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<sup>44</sup> In practice, if a permit applicant seeks to show that an available control technology would not be technically feasible because of the differences between the subject unit(s) under review and other units at which the control technology has been used, the applicant must fully explain and support its position. For example, the use of proprietary processes that would not be available to the applicant may justify a determination that a control technology is not technically feasible for the subject unit. However, technical challenges that would be posed with a particular control technology that could be overcome with additional capital or operating costs are not an appropriate basis on which to show that a technology is not technically feasible. The additional costs associated with use of such a technology are appropriately considered as Step 4 in the top-down BACT analysis.

the analysis, different values of control effectiveness must be selected and ranked separately as distinct control options.<sup>45</sup> As two or more of the technically feasible available control technologies may be used in combination to achieve greater control effectiveness, these combinations of control technology should also be addressed as separate control option in the ranking of control options.<sup>46</sup> If the top-ranked control option has not been selected as BACT, a value for the baseline level of emissions should also be included at the bottom of this ranking. For this purpose, the baseline emissions are a realistic scenario for the greatest emissions of the unit or units in the absence of any control.

The effectiveness of the control options may be expressed as a control efficiency for the pollutant or the emission rate that would be achieved, or both. The effectiveness of the control options is accompanied by data for the annual emissions of the pollutant that would accompany use of the various control options.

#### **What is Step 4 in a Top-Down BACT Analysis?**

In Step 4 of a top-down BACT analysis, the control options ranked in Step 3 may be further investigated if the top ranked control option is not selected as the technical basis of the limit(s) or requirement(s) that will constitute BACT. Control option(s) may be rejected for use as BACT due to the accompanying adverse energy impacts, environmental impacts, and economic impacts and other costs of the option(s). The top ranked option that is not rejected becomes the technical basis for the emission limit(s) or requirements that will be set as BACT. If the top-ranked option is proposed as the technical basis of BACT by the applicant, Step 4 may be skipped or, if there are any adverse energy or environmental impacts associated with the selected control option that are worthy of being noted, greatly simplified.

If the control option proposed by an applicant is not the top-ranked control option, then the BACT demonstration prepared by the applicant must include an analysis of energy impacts, environmental impacts, and economic impacts and other cost of the option selected by the applicant and the higher ranked options to support the rejection of the higher ranked options.

The energy impacts commonly identified in BACT analyses involve the amount of fuel or electricity that control technologies consume. For electrical generating units, reductions in the net power output due to the electricity used by control devices may also be considered.

The environmental impacts that are commonly identified in BACT analyses involve adverse impacts associated with generation of solid waste or wastewater, particularly as those impacts

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<sup>45</sup> For example, for wet scrubbing technology for control of particulate emissions, high-efficiency scrubbing, moderate-efficiency scrubbing and low-efficiency scrubbing would be addressed as three separate control options in the ranking in Step 3 of the top-down BACT analysis.

<sup>46</sup> For example, for a wet cooling tower, feasible control technologies to reduce particulate emissions include managing the level of solids in the water that is circulated in the cooling tower and improving the efficiency of the drift eliminator, reducing the loss of water droplets from the cooling tower. In the ranking of control options prepared in Step 3, in addition to being addressed individually, the combination of these control technologies would also be addressed as an option.

cannot be fully expressed as costs associated with use of a technology.<sup>47</sup> Beneficial environmental impacts may also be considered as particular control technologies reduce emissions of pollutant(s) other than the pollutant for which BACT is required.

The cost impacts of a control option are the costs that the source would incur to procure, install, maintain, and operate the control option. To determine the direct costs to a source from use of various add-on control devices, USEPA recommends relying on the air pollution control technology costing methodologies set forth in its *EPA Air Pollution Control Cost Manual*.<sup>48</sup> Also, relevant are any cost savings from a control option, such as the value of recovered or retained product.

The evaluation of economic impacts in Step 4 generally uses a methodology, which is also outlined in USEPA's guidance, for expressing the costs of a control option on an annualized basis and then calculating the cost effectiveness of the option. Cost-effectiveness is the cost of the reduction in emissions of the target pollutant that would no longer be emitted, in dollars per ton or pound of avoided emissions. Both average cost effectiveness and incremental cost effectiveness are potentially meaningful measures to be considered.<sup>49</sup>

Values for cost effectiveness are useful in the BACT determination process because they provide a ready comparison between the control options currently under consideration and control options considered in previous BACT determinations. However, cost effectiveness values do not necessarily form the entire basis for the selection of the control option because they do not reflect consideration of energy impacts, environmental impacts and other cost impacts. Rather, they simply provide a ratio or a comparison of the cost impact of a control option and the associated reduction in emissions. Although information for cost-effectiveness is often useful, there generally are not set values of cost-effectiveness below which a control option will always be selected as BACT and above which a control option will never be selected.

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<sup>47</sup> For example, for a source is land-locked, the consumption of water in control devices may be constrained by the need to maintain zero discharge from the source. If a source is served by a municipal wastewater treatment plant, such a constraint would not be present and the impact from wastewater from a particular control technology may be able to be adequately addressed in terms of the discharge fees.

<sup>48</sup> The *EPA Air Pollution Control Cost Manual* is available on-line at:

[www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution#cost manual](http://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution#cost%20manual).

<sup>49</sup> For example, if the average annualized cost of the top-ranked control option for a proposed emissions unit is \$1,000,000/year and the annual reduction in emissions of the subject pollutant with that control option is 200 tpy, then the average cost effectiveness of that control option is \$5,000/ton. ( $\$1,000,000/\text{year} \div 200 \text{ tpy} = \$5,000/\text{ton}$ .)

In its BACT demonstration, the applicant proposes a less effective control option. If the average annualized cost of the control option proposed by the applicant is \$600,000 and the annual reduction in emissions with that option is 180 tpy, the average cost-effectiveness of this other option is \$3,333/ton. In addition, the incremental cost effectiveness of the top-ranked control option compared to this option proposed by the applicant is \$20,000/ton. ( $\$1,000,000/\text{year} - \$600,000/\text{year} = \$400,000/\text{year}$ ;  $200 \text{ tpy} - 180 \text{ tpy} = 20 \text{ tpy}$ ; and  $\$400,000/\text{year} \div 20 \text{ tpy} = \$20,000/\text{ton}$ .)

### **What is Step 5 in a Top-Down BACT Analysis?**

In Step 5 of the top-down BACT analysis, the numeric emission limit(s) or other requirement(s) that will represent BACT are selected. These provisions will be based on the level of emissions that is achievable with the control option selected in Step 4. The setting of the BACT provisions will necessarily reflect the permitting authority's reasoned judgment.<sup>50</sup> The form of the emission limit may vary by pollutant, by type of unit and type of technology. The BACT provisions must be achievable considering normal variation in operation and emissions of emission units when properly operated and maintained.

BACT requirements must be enforceable as a practical matter. As noted previously, BACT is generally set as numeric emission limit(s). However, if the permitting authority determines that technological or economic limitations on the application of measurement methodology would make the imposition of numeric emission limit infeasible, the permitting authority may instead establish a non-numeric requirement (e.g., equipment design, work practice or operational requirements).

### **What is the relationship between BACT and the air quality requirements of PSD?**

The BACT requirement of the PSD permit program is independent of the program's requirement that an applicant for a PSD permit demonstrate that a proposed source or project will not cause violations of air quality standards or PSD increments or have unacceptable impacts related to its emissions. In some cases, it may be necessary for the permitting authority to impose additional requirements in a PSD permit to address these other air quality and emissions related requirements of the PSD program.<sup>51</sup>

## **V. PSD REQUIREMENTS FOR AIR QUALITY ANALYSES**

### **When a PSD permit is required, for what pollutants are air quality analyses required?**

The air quality analysis requirements of the PSD permitting program apply to each regulated NSR pollutant emitted at or above applicable thresholds for a proposed new major stationary source or

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<sup>50</sup> The emission limit must not be so stringent that it is not achievable on an ongoing basis for the life of the emissions unit provided that the unit and its control are properly maintained and operated. The emission limit must also be sufficiently stringent so as to represent the maximum reduction in emissions achievable with the selected control option.

<sup>51</sup> For example, BACT limits for boilers for NO<sub>x</sub> are commonly set in the same terms of the NSPS for boilers, 40 CFR 60 Subpart Db, i.e., pounds of NO<sub>x</sub> per mmBtu of heat input, average of 30 operating days, rolled daily. BACT limits for boilers set in these terms are effective in addressing the performance of NO<sub>x</sub> control technologies. They address normal variation in operation while still providing for limits that fully address the reduction in NO<sub>x</sub> emissions that is achievable. Limits for NO<sub>x</sub> set over shorter periods of time would necessarily be higher to reasonably accommodate normal variation in operation.

However, since BACT limits set in these terms do not limit the hourly rate of NO<sub>x</sub> emissions, such limits do not directly address the impact of a boiler on the hourly NAAQS for NO<sub>2</sub>. To address the impact of boilers on the hourly NAAQS for NO<sub>2</sub>, PSD permits may set separate limits for the hourly rate of NO<sub>x</sub> emissions. These limits are based on the emission rate for the boilers used in the air quality analyses required by the PSD rule, rather than the BACT requirements of the PSD rule.



major modification of an existing stationary source in those areas of the state formally designated as attainment or unclassifiable with the national ambient air quality standards for criteria pollutants.<sup>52</sup>

#### **What analyses of air quality impacts are required under the PSD rule?**

The PSD rule requires an applicant for a PSD permit for a new major stationary source or major modification to conduct several types of analyses to address the air quality impacts of the proposed source or modification. These include demonstrating that the emissions of any regulated NSR pollutant for which PSD is applicable would not cause or contribute to a violation of any NAAQS or PSD increments. For this purpose, actual ambient air quality data representative of the site of the source will need to be assembled and considered if the source or modification would have meaningful impacts on air quality. The impacts of “other regulated NSR pollutants” on air quality must also be addressed. In addition, as discussed in Section VII of this document, “additional impacts analyses” are required addressing certain emissions and air quality related impacts of the source or modification, such as visibility impairment or adverse impacts on soils or vegetation. Lastly, as discussed in Section VIII of this document, specific analyses may need to be conducted to address the impacts of a proposed source or major modification on Class I area(s). For example, for Class I area(s), demonstrations may be needed to show that the emissions of the source or modification will not cause or contribute to a violation of the Class I increments in the area(s). If such analyses are needed, the Federal Land Managers for the area(s) will also have a role in the review of those analyses.

#### **What are PSD increments?**

The PSD program is designed to prevent significant deterioration of air quality while still allowing for some increases in emissions and increases in the concentrations of pollutants in the air in areas provided, of course, that concentrations would not rise to the level that NAAQS would be violated. The PSD increments are the permissible levels of increased concentrations of pollutants in the air under the PSD program, as evaluated from baseline ambient concentrations of the pollutant. The PSD program establishes different increments for an area depending upon its classification, i.e., Class I, Class II or Class III. The current PSD increments are shown in the table below.

The PSD increments for Class I areas are the most restrictive and provide for the smallest increases in pollutant levels in an area. The federal Clean Air Act designates over 150 areas in the United States that are deserving of the protections provided by status as Class I areas. These “mandatory” Class I areas include international parks; national wilderness areas larger than 5,000 acres; national memorial parks larger than 5,000 acres; and national parks larger than 6,000 acres.

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<sup>52</sup> In its guidance for permitting for GHG emissions, “PSD And Title V Permitting Guidance for Greenhouse Gases,” March 1, 2011, USEPA explains that the air quality impacts of GHGs are more appropriately addressed simply through the application of BACT as it serves to address the impacts of any given source or project. This is because there is not a NAAQS for GHGs. GHG emissions also do not affect ambient air quality or have other impacts on the environment that were considered when the PSD program was developed. Analyses for the impacts of GHG emissions for global warming and climate change are typically conducted for changes in GHG emissions that are orders of magnitude larger than the increases in emissions from individual sources and projects that might be analyzed in PSD permit reviews.

The PSD program also provides for the governmental authorities to designate areas for which they are responsible as Class I areas on an area-specific basis if they find that the Class I increments are appropriate for the area.<sup>53</sup>

For Class II areas, the PSD increments allow for moderate increases in the concentrations of pollutants. Most areas of the United States are classified as Class II areas.<sup>54</sup> For Class III areas, the PSD increments would allow for substantial increases in concentrations of pollutants. However, there are currently not any Class III areas in the United States.

PSD Increments			
Pollutant and Averaging Time	Maximum allowable increase ( $\mu\text{g}/\text{m}^3$ )		
	Class I	Class II	Class III
<b>PM<sub>2.5</sub>:</b>			
Annual arithmetic mean	1	4	8
24-hr maximum	2	9	18
<b>PM<sub>10</sub>:</b>			
Annual arithmetic mean	4	17	34
24-hr maximum	8	30	60
<b>SO<sub>2</sub>:</b>			
Annual arithmetic mean	2	20	40
24-hr maximum	5	91	182
3-hr maximum	25	512	700
<b>NO<sub>2</sub>:</b>			
Annual arithmetic mean	2.5	25	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location. 42 U.S.C. 7473.

#### **What are the basic requirements for air quality analyses to address NAAQS and PSD Increments?**

To obtain a PSD permit for a proposed new major source or major modification, the applicant must provide an analysis demonstrating that the emissions increases from the proposed major source or major modification would not cause or contribute to a violation of any applicable NAAQS or to an exceedance of any applicable PSD increment. As appropriate, this analysis must address “secondary emissions” associated with a source or project that are well-defined and quantifiable and will impact the same general area as the source or modification. Secondary emissions are those emissions, excluding emissions from mobile sources such as cars, trucks, trains, nonroad vehicles, and nonroad engines that would occur as a result of the construction or

<sup>53</sup> There are not any areas in Illinois that are Class I areas. There are Class I areas in Kentucky and Missouri (i.e., Mammoth Cave National Park in central Kentucky and the wilderness area at the Mingo Wildlife Refuge in southeastern Missouri) that could potentially be impacted by the emissions of a proposed large new major stationary source or major modification in Illinois depending upon its location. The nearest Class I area to the north of Illinois is the Rainbow Lake Wilderness Area in northern Wisconsin, about 250 kilometers north of the Illinois-Wisconsin border.

<sup>54</sup> All areas in Illinois are currently designated as Class II areas under the PSD program. While the PSD program includes provisions for Class II areas to be redesignated as Class I or Class III areas, this has not occurred for any area in Illinois.

operation of a major stationary source or major modification but do not come from the proposed source or modification itself.

As the analysis entails computer modeling, the air quality impact analysis must be performed in a manner consistent with the requirements of the USEPA's Guideline on Air Quality Models, codified at Appendix W of 40 CFR Part 51. Deviations from these procedures may be made with written approval of the USEPA. In addition, as required by Section 123 of the Clean Air Act, the analysis must not take credit for stack height in excess of the good engineering practice (GEP) or for any other dispersion technique.<sup>55</sup> In this regard, except as provided by the dispersion of emissions provided by stack heights that reflect good engineering practice, sources are required to meet air quality requirements by controlling their emissions, not by dispersion.

### **What are "Significant Impact Levels"?**

As already discussed, an applicant for a PSD permit must demonstrate that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any NAAQS or PSD increment. When processing applications for PSD permits, USEPA and permitting authorities consider this requirement to be satisfied when an applicant demonstrates that the increased emissions from the proposed new or modified source will not have a significant or meaningful impact on ambient air quality. This includes not having a meaningful impact at a location where a violation of the NAAQS or PSD increment is occurring or may be projected to occur. Significant impact levels (SIL) are values for air quality impacts that are considered to represent meaningful impacts. USEPA has established SILs for NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub> and CO, 40 CFR 51, Appendix S, Section III. For PM<sub>2.5</sub> and ozone, USEPA has developed recommendations for SILs but recognizes that permitting authorities have the discretion to use other values of SIL as appropriate for specific circumstances.<sup>56</sup> The SILs are fractions of the NAAQS and PSD increments.<sup>57</sup>

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<sup>55</sup> GEP stack height is generally 65 meters. A greater height may be shown to constitute GEP stack height based on an analysis of the location and dimensions of nearby buildings and other structures as they contribute to downwash. A greater GEP stack height may also be established based on the results of fluid modeling or a field study for a source that is or would be located in an area of complex terrain, with terrain that rises to heights well above expected plume levels.

Prohibited dispersion techniques also include operational constraints which would vary the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant and design techniques that would increase final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or merging exhaust gases from several existing stacks into one stack.

<sup>56</sup> Peter Tsirigotis, USEPA, Memorandum. "Guidance on Significant Impacts Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program," April 17, 2018. These recommended values are currently the subject of a petition for review filed by the Sierra Club before the U.S. Court of Appeals for the District of Columbia Circuit, Case No. 18-1167, on June 18, 2018.

<sup>57</sup> For example, the SIL for NO<sub>2</sub> on an annual average adopted by USEPA is 1.0 µg/m<sup>3</sup>, compared to the NAAQS of 100 µg/m<sup>3</sup> and the Class II PSD increment of 25 µg/m<sup>3</sup>.

The SIL recommended by USEPA for PM<sub>2.5</sub> on an annual basis is 0.2 µg/m<sup>3</sup>, compared to the NAAQS of 12 µg/m<sup>3</sup> and the Class II PSD increment of 4 µg/m<sup>3</sup>.

The SILs are commonly used in two different ways in air quality impact analyses. First, a “screening analysis” is typically performed by the applicant to determine whether the predicted change in ambient concentration of a pollutant resulting from a proposed project will exceed the SIL at any point in time and space. If not, then the applicant has demonstrated that the proposed emissions increases would not cause or contribute to a violation of the NAAQS or to an exceedance of the PSD increment. Further analysis typically is not required of the applicant.

If the predicted change in ambient concentration resulting from a proposed project exceeds the SIL then a more refined “cumulative analysis” is required with respect to that NAAQS and, if applicable, that PSD increment.

The requirements for the cumulative NAAQS dispersion analysis, which are generally set forth in the USEPA’s Guideline on Air Quality Models, provide for determining the predicted changes in ambient concentration of a pollutant due to the emissions increases from the proposed major stationary source or a major modification, and from nearby stationary sources, and adding these changes to a measured background concentration. If the total predicted concentration will exceed the NAAQS or PSD increments at a particular receptor and time, then a violation is predicted. The requested PSD permit can be issued only if the applicant demonstrates that the contribution of the proposed project to the predicted violation will not exceed the SIL.<sup>58</sup>

#### **How is a PSD increment analysis conducted?**

PSD increment analyses typically evaluate the amount of the increment that would be consumed by the proposed new source or major modification and any previous consumption and expansion of increment to show that the increment would not be exceeded. If the impacts of a proposed source or modification are significant, this involves preparing an inventory of activities within the area that occurred after the baseline date that did or will increase actual emissions, as well as any activities that decreased actual emissions. Increment-affecting increases in actual emissions are described as consuming increment because they reduce the amount of the allowable change in concentration that remains available for subsequent projects. Increment-affecting decreases in actual emissions are described as expanding increment because they increase the amount of the available increment that remains available for subsequent projects.

The procedures for dispersion modeling for purposes of demonstrating compliance with PSD increments are structurally similar to the procedures for the cumulative NAAQS analysis

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<sup>58</sup> Modeling techniques are well developed for essentially stable pollutants like particulate matter, SO<sub>2</sub>, and CO, and can readily address the impacts of individual sources and projects. The modeling techniques for ozone, which is a reactive pollutant, are more complex and have generally been developed for analysis of ozone air quality over entire urban areas. As such, these modeling techniques are not applied to a single source or project whose potential emissions of ozone precursors (*i.e.*, VOM or NO<sub>x</sub>) are small. Other analysis techniques are generally used to address air quality impacts for ozone. Most recently, USEPA has recommended the use of Modeled Emission Rates for Precursors (MERPs), a technique which relates USEPA-generated photochemical modeling results, a critical air quality threshold for ozone and a source’s ozone precursor emissions for assessing ozone impacts. *Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier I Demonstration Tool for Ozone and PM<sub>2.5</sub> under the PSD Permitting Program*, Richard A. Wayland, Division Director, Air Quality Assessment Division, USEPA, dated December 2, 2016.

described above. There are two main differences between increment analyses and NAAQS analyses. First, the inventory of emissions units and emissions is smaller because it includes only increment-affecting emissions changes, not all emissions. Second, the predicted changes in ambient concentrations of pollutants are not added to ambient background concentrations. This is because the PSD increments restrict changes in pollutant concentrations in an area, not the maximum concentration of pollutants like the NAAQS.<sup>59</sup>

## **VI. MONITORED DATA FOR AMBIENT AIR QUALITY**

### **For a NAAQS pollutant, what monitored data is needed in a PSD permit application?**

The PSD rule requires that a PSD permit application include, for each NAAQS pollutant subject to the air quality analysis requirements, continuous ambient air quality monitoring data representative of the area that would be impacted by the emissions from the major stationary source or major modification. The data generally must have been gathered over the one-year period preceding submittal of the permit application.<sup>60</sup> By reference to 40 CFR Part 58, the PSD rule also prescribes certain procedures and quality assurance requirements for the ambient monitoring stations at which such data is collected.

Permitting authorities routinely operate ambient air quality monitoring networks for pollutants for which there are NAAQS. Data from these networks may be used to satisfy the preconstruction air quality monitoring requirements if the permitting authority determines that the location of an existing monitoring station can be considered representative of the air quality in the area of the proposed major stationary source or major modification.

### **For a pollutant that is not a NAAQS pollutant, what monitored data is required?**

The PSD rule generally provides that a PSD permit application must include, for each pollutant other than a NAAQS pollutant that is subject to the air quality analysis requirements, such ambient air quality monitoring data as the permitting authority determines is necessary to assess ambient air quality for that pollutant in the area that the emissions of the pollutant would affect.

### **Is post-construction ambient air quality monitoring required under the PSD program?**

The PSD rule provides that a PSD permit may require that the permittee perform post-construction ambient air quality monitoring. Requirements for locations and duration of such monitoring will be based upon the permitting authority's judgment regarding any monitoring that is necessary to determine the effects on ambient air quality.

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<sup>59</sup> If the PSD increment at issue is a Class I increment, then the permitting authority may issue a PSD permit only if the Federal Land Manager responsible for the affected Class I area grants a waiver from the Class I increment with respect to the proposed major stationary source or major modification.

<sup>60</sup> A data-gathering period of less than one year but at least four months is permissible if the permitting authority determines that an adequate analysis can be accomplished with monitoring data gathered over that shorter period.

For ozone, as an alternative to providing air quality data collected by site-specific preconstruction monitoring, if an applicant for a PSD permit satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV, post-construction monitoring data may be used to satisfy the air quality analysis requirements.

## VII. ADDITIONAL IMPACTS ANALYSIS

### **What is required for the Additional Impacts Analysis?**

As part of a PSD permit application, the applicant must provide an analysis of the impairment to visibility, soils and vegetation that would potentially occur as a result of the emissions from the proposed major stationary source or major modification and from general commercial, residential, industrial and other growth associated with the source or modification.<sup>61</sup>

The applicant is required to provide an analysis that will enable the permitting authority to assess the effects of the emissions of the proposed major stationary source or major modification. The material commonly used by applicants for this purpose include peer-reviewed literature, USEPA-provided ecological screening levels, and miscellaneous resources published by the U.S. Department of Agriculture and U.S. Fish and Wildlife Service.<sup>62</sup>

The growth analysis is used to assess emissions that could result from general commercial, residential, industrial, and other growth that could occur from the project. Applicants for PSD permits use the growth analysis to assess the emissions impacts of activities that are not a part of the major stationary source but can reasonably be expected to occur as a result of construction of the major stationary source or major modification.

## VIII. ANALYSIS FOR IMPACTS ON CLASS I AREA(S)

### **What is required under PSD with respect to impacts on Class I areas?**

In conjunction with a PSD permit application for a proposed new source or major modification whose emissions may affect a Class I area, the PSD rule requires that an analysis of the anticipated impacts on visibility in the Class I area be provided to the appropriate Federal Land Manager (FLM).<sup>63</sup> To determine whether a proposed source or modification may affect a nearby Class I area, an initial screening approach developed by the FLMs is currently used for projects that are more than 50 kilometers from a Class I area.<sup>64, 65</sup> When a project is closer to a Class I

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<sup>61</sup> With respect to vegetation, while the federal PSD rule provides that the analysis of emission-related impacts needs to consider only impairment to vegetation with significant commercial or recreational value, other statutes require that impacts to endangered or threatened species of vegetation also be addressed.

<sup>62</sup> In Illinois, information is also available from the Illinois Department of Natural Resources.

<sup>63</sup> The U.S. Department of Agriculture manages national wilderness areas. The U.S. Department of the Interior manages national parks.

<sup>64</sup> To address their role in the implementation of the PSD permit program, FLMs use a common set of guidance for the various Class I areas that they manage. This guidance is developed by the Federal Land Managers' Air Quality Related Values Work Group, commonly referred to as FLAG. This group is comprised of appropriate staff from the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS) and the U.S. Forest Service (USFS).

<sup>65</sup> The approach to initial screening developed by FLAG is based on the ratio of the maximum combined emissions of SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub> and sulfuric acid mist from a source or modification on a 24-hour basis and the distance of the source from the Class I area. If the ratio is less than "10," comparing the annualized emissions in tons per year and the distance in kilometers, further analysis for impacts on a Class I area is not needed. For example, for a source that is 55 kilometers from a Class I area and would operate year

area or this screening approach shows that a proposed source or modification may affect a Class I area, more refined screening techniques may be used. Other than the initial screening, permitting authorities commonly require the applicant for the PSD permit to conduct the analyses to assess any impacts on visibility and other air-quality related values in the Class I area.

Under the PSD rules, the applicable FLM has an affirmative responsibility to protect the air quality related values, including visibility, in a Class I area. Consistent with this responsibility, the FLM generally will review the visibility impacts analysis and other information provided in the PSD permit application to assess whether the proposed major stationary source or major modification will have an adverse impact on such values. The permitting authority will consider any analysis performed by the FLM that shows that the proposed major stationary source or major modification would have an adverse impact on visibility in a Class I area. The permitting authority may agree with the FLM's finding, in which case, a PSD permit must be denied unless the proposed source or project is appropriately revised. The permitting authority may also disagree with the FLM, in which case, assuming all other PSD review requirements are satisfied, a PSD permit may be issued.<sup>66</sup>

## **IX. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS OF PROPOSED PART 204**

### **Are the requirements of the proposed rule technically feasible?**

All requirements of the proposed PSD rule, 35 Ill. Adm. Code Part 204, are technically feasible. Notably, the substantive requirement of the PSD rule that is the basis for most emission limits is the BACT requirement. This requirement expressly provides that the Illinois EPA impose only emission limits that it determines, on a case-by-case basis, to be achievable (i.e., technically feasible) for the emissions units and stationary sources to which those limits will apply.

### **Are the requirements of the proposed rule economically reasonable?**

The requirements of the proposed PSD rule are economically reasonable. The adoption of this rule will not change the requirements of the PSD program applicable to owners and operators of existing and proposed major stationary sources in Illinois. The requirements of this rule, as summarized in this Technical Support Document, are already in effect pursuant to the federal PSD rule at 40 CFR 52.21. Thus, additional economic impacts are not expected to result from adoption of 35 Ill. Adm. Code Part 204.

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round, further analysis would not be needed if the combined emissions of SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub> and sulfuric acid mist from the source or modification are 1.41 tons per day. (1.41 tons/day x 365 days/year ÷ 55 kilometers = 9.4, 9.4 < 10.)

<sup>66</sup> The PSD program addresses impacts on visibility and air quality related values in Class I areas differently than the PSD increment. If the air quality impact analysis for a proposed major source or major modification shows that it would cause a violation of a PSD increment in a Class I area, a requirement for issuance of a PSD permit would not have been met. As related to this requirement, unless the project is appropriately revised, the permitting authority may only issue a PSD permit for the proposed major source or major modification if the FLM grants a waiver from the Class I increment.

## **X. STATE IMPLEMENTATION PLAN CONSIDERATIONS**

Illinois is required to submit the proposed state PSD program to the USEPA as a revision to Illinois' SIP. Section 110(l) of the CAA prohibits USEPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. As previously addressed in this document and discussed in greater detail in the accompanying Statement of Reasons, the provisions of the proposed rule would generally mirror the provisions of the existing federal PSD rule at 40 CFR 52.21. In those instances where the proposed rule does not follow the language in 40 CFR 52.21, this is as necessary so that Part 204 would accurately reflect the actual federal PSD program as modified by relevant judicial decisions and USEPA's responses to those decisions. Given that the state PSD permit program addressed by proposed Part 204 would be substantially identical to the currently applicable federal PSD program, the proposed amendments are approvable as a SIP revision pursuant to the CAA Section 110(l).



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
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 ) R19 -  
FINAL DECISIONS OF STATE AGENCIES, ) (Rulemaking – Air)  
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 )

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, state that I have served the attached REGULATORY PROPOSAL entitled “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” and supporting documents of the Illinois Environmental Protection Agency upon the person to whom it is directed, by mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed, to the following persons:

Matthew Dunn, Chief  
Litigation Division  
Office of the Attorney General  
500 South Second Street  
Springfield, IL 62706

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Sally Carter*  
Sally Carter  
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Dated: July 2, 2018

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