

ILLINOIS POLLUTION CONTROL BOARD

January 19, 2017

IN THE MATTER OF:)
)
PERMIT BY RULE FOR BOILERS:) R17-9
AMENDMENTS TO: 35 ILL. ADM. CODE) (Rulemaking – Air)
PARTS 201 AND 211)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

The Board proceeds to second notice today with proposed amendments Parts 201 and 211 of its air pollution regulations.¹ The proposal will allow small boilers to be constructed under a “permit-by-rule,” eliminating the need for the Illinois Environmental Protection Agency (Illinois EPA) to individually grant construction permits for these types of boilers. The proposal also contains general provisions that will accommodate future permits-by-rule for other types of emission units. The Board expects the rules to reduce administrative and economic burdens on Illinois EPA and permit holders without sacrificing environmental protection.

Since accepting Illinois EPA’s rulemaking proposal for hearing and proposing amendments for first notice, the Board has held two hearings and received public comments. The Board now submits proposed amendments to the Joint Committee on Administrative Rules (JCAR) for second-notice review.

In this second-notice opinion, the Board does not repeat its descriptions of the relevant laws, which are set forth in the Board’s first-notice opinion. Instead, the Board first recites this rulemaking’s procedural history and then discusses the changes that the Board makes to the first-notice proposal. The Board also discusses the technical feasibility and economic reasonableness of the proposal, as well as hearing requirements concerning Illinois’ State Implementation Plan under the federal Clean Air Act. Finally, in its order, the Board directs the Clerk to issue the second-notice rules to JCAR.

PROCEDURAL HISTORY

On August 23, 2016, Illinois EPA filed the rulemaking proposal and a Statement of Reasons supporting the proposal. On September 8, 2016, the Board issued an opinion and order accepting the proposal for hearing and adopting it for first-notice publication. The first-notice proposal appeared in the *Illinois Register* on September 30, 2016.²

¹ 35 Ill. Adm. Code 201, 211.

² 40 Ill. Reg. 13545, 13580 (Sept. 30, 2016).

On September 22, 2016, the hearing officer scheduled two hearings: the first on October 26, 2016 and the second on November 16, 2016 (both via videoconference between Springfield and Chicago).

On October 12, 2016, Illinois EPA filed the written testimony of Rory Davis, an environmental protection engineer in the air quality planning section of Illinois EPA's air pollution control division. On October 19, 2016, the Board's hearing officer and the Illinois Environmental Regulatory Group (IERG) filed separate written questions for Illinois EPA witnesses. The first hearing took place on October 26, 2016. The Board received the hearing transcript on November 2, 2016.

No witness filed written testimony before the second hearing, which took place on November 16, 2016. The Board received the hearing transcript on November 30, 2016. The Board accepted public comments through December 16, 2016.³ Two public comments were filed on that date, one by Illinois EPA and one by IERG.⁴

CHANGES AT SECOND NOTICE

Below, the Board discusses notable changes to the rule language that it is making at second notice. The second-notice proposal also includes minor, self-explanatory changes to the rule language's style and grammar that are not further discussed here.

Section 201.500 describes the purpose of Subpart M, the general provisions for permit-by-rule. The Board adds language clarifying that Subpart M applies to the subsequent subparts describing specific types of emission units, *e.g.*, Subpart N (describing certain types of boilers).⁵ Illinois EPA agrees that the change improves clarity.⁶

Under Section 201.510 of the proposal, an owner or operator seeking to construct or modify an emission unit under a permit-by-rule must submit a notice of intent to be covered. Section 201.510(a)(11) provides that the statements and information in the notice of intent must be certified by a "responsible official." Illinois EPA confirms that the "responsible official" is defined in Section 39.5 of the Act.⁷ The second-notice proposal makes this explicit.

Section 201.600(a)(2) provides that a boiler may be covered under a permit-by-rule if it is designed by the manufacturer to emit nitrogen oxides (NO_x) at a rate no greater than 0.05 pounds

³ Transcript of second hearing (Tr. 2) at 12:4-5 (setting Nov. 30, 2016 comment deadline); Hearing Officer Order (Nov. 30, 2016) (extending deadline to Dec. 9, 2016); Hearing Officer Order (Dec. 8, 2016) (extending deadline to Dec. 16, 2016).

⁴ IERG public comment (IERG Comment); Illinois EPA public comment (IEPA Second Comment).

⁵ Hearing Officer Order at ¶ 5 (Oct. 19, 2016) (Board questions).

⁶ Transcript of first hearing (Tr. 1) at 16:14-15.

⁷ Board Questions at ¶ 10, Tr. 1 at 20:8-13, discussing 415 ILCS 5/39.5 (2014).

per million British Thermal Units (lb/mmBtu). In response to IERG's proposed clarification,⁸ Illinois EPA offers revised language,⁹ which the Board includes in the second-notice proposal.

Section 201.605(c) provides that the notification for a boiler permit-by-rule must describe potential emissions from the boiler. The Board proposes that these potential emissions be given in tons per year. Illinois EPA agrees with this change.¹⁰

Proposed Section 201.630 requires that boilers covered by a permit-by-rule comply with appropriate combustion tuning work practices. However, the first-notice proposal's language would, for some types of boilers, inadvertently require compliance with both the State's NO_x reasonably available control technology (RACT) requirements¹¹ and similar federal requirements.¹² Illinois EPA and IERG assert that requiring compliance with both at the same time is duplicative and unnecessary.¹³ The Board agrees and changes Section 201.630 at second notice so that only one of these requirements, as appropriate, applies to a boiler covered by a permit-by-rule.

Section 201.635 requires the owner or operator of the permit-by-rule boiler maintain records that are "referenced in Subpart M."¹⁴ JCAR suggests that the Board make this reference more specific.¹⁵ The Board agrees and amends the rule at second notice so that it references the only record maintenance provision in Subpart M, *i.e.*, Section 201.530.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As required by Section 27(b) of the Act,¹⁶ the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study concerning the rulemaking proposal in a letter dated October 24, 2016. The Board requested a response by November 15, 2016, but has not received one. During the second hearing, the hearing officer provided an opportunity to comment on the Board's request and DCEO's lack of a response, but no participant did.¹⁷

According to Illinois EPA, permits-by-rule are intended to reduce "the administrative burdens and associated costs for the owners and operators of regulated sources," as well as reduce the burden on Illinois EPA itself.¹⁸ Illinois EPA also states that the types of boilers

⁸ IERG Questions at ¶ 18.

⁹ Nov. 7, 2016 Illinois EPA Comment at 2.

¹⁰ Board Questions at ¶ 24; Tr. 1 at 30:14-21.

¹¹ 35 Ill. Adm. Code 217, Subparts D and E.

¹² 40 C.F.R. 63 Subpart DDDDD.

¹³ IERG Comment at 2-3, IEPA Second Comment at 1-3. *See also* IERG Questions at ¶ 19; Tr. 1 at 37:19-38:1 (discussing Section 201.630).

¹⁴ First Notice Section 201.635.

¹⁵ Nov. 2, 2016 Board Response to JCAR Comment at 2.

¹⁶ 415 ILCS 5/27(b) (2014).

¹⁷ Tr. 2 at 9:23-10:20.

¹⁸ Statement of Reasons at 6.

targeted by the proposal are in common use across a range of industries.¹⁹ The Board agrees with Illinois EPA that the proposed rules are designed to decrease the administrative burden on the permit issuer as well as the permit holder. They will not impose any additional economic burden. Nor do the rules impose any additional technical burden. The Board finds that the amendments proposed for second-notice review are technically feasible and economically reasonable.

REVISION TO ILLINOIS SIP

Illinois EPA intends to submit the final rules produced to the United States Environmental Protection Agency (USEPA) as a revision to Illinois' State Implementation Plan (SIP) under the federal Clean Air Act. Illinois EPA also intends to submit an anti-backsliding demonstration to USEPA, as required by Section 110(l) of the Clean Air Act. Federal regulations require public notice and the opportunity for hearing before submitting SIP revisions to USEPA.²⁰

On September 30, 2016, a hearing officer order stated that the November 16, 2016 hearing would address the SIP revisions. On October 14, 2016, the *Illinois Register* published notice of the hearing to address SIP revisions.²¹ During that hearing, the hearing officer provided an opportunity to comment on the SIP revisions, but no participant did.²²

ORDER

For second-notice review, the Board directs that the Clerk submit to JCAR the proposed amendments to Parts 201 and 211 of the Board's air pollution regulations (found in the addendum to this order). In the addendum, proposed additions to Parts 201 and 211 are underlined and proposed deletions are stricken.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 19, 2017, by a vote of 5-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board

¹⁹ Statement of Reasons at 7.

²⁰ 40 C.F.R. § 51.102.

²¹ 40 Ill. Reg. 14135 (Oct. 26, 2016).

²² Tr. 2 at 10:21–11:22.