

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW 35 ILL. ADM. CODE 204)	R19-1
PREVENTION OF SIGNIFICANT)	(Rulemaking – Air)
DETERIORATION, AMENDMENTS TO 35)	
ILL. ADM. CODE PARTS 101, 105, 203, 211)	
AND 215)	

NOTICE

TO: Don Brown
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SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the **SECOND MOTION TO AMEND RULEMAKING PROPOSAL** a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
 PROTECTION AGENCY

By: *Sally A. Carter*
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DATED: January 13, 2020

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW 35 ILL. ADM. CODE 204)	R19-01
PREVENTION OF SIGNIFICANT)	(Rulemaking – Air)
DETERIORATION, AMENDMENTS TO 35)	
ILL. ADM. CODE PARTS 101, 105, 203, 211)	
AND 215)	

SECOND MOTION TO AMEND RULEMAKING PROPOSAL

NOW COMES the Proponent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, and pursuant to 35 Ill. Adm. Code 101.500 and 102.402, moves that the Illinois Pollution Control Board (Board) amend proposed new Part 204 to revise Section 204.510 of Subpart B and to revise Sections 204.800, 204.810 and 204.860 of Subpart C. In support of its Motion, the Illinois EPA states as follows:

On July 2, 2018, the Illinois EPA filed a proposal with the Board to add a new Part 204, 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration (PSD) that would be applicable to the proposed construction of a major stationary source or a major modification at an existing stationary source of air pollutants generally regulated under the Clean Air Act (CAA), except to the extent that nonattainment new source review (NaNSR) is or could be applicable for such proposed project. In this rulemaking proposal, the Illinois EPA also proposed 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 Sources Construction and Modification; 35 Ill. Adm. Code 211, Definitions and General Provisions, and 35 Ill. Adm. Code 215, Organic Material Emission Standards and Limitations. This rulemaking proposal was submitted pursuant to the Illinois Environmental Protection Act (Act) as it requires the Board to adopt regulations establishing a PSD permit program meeting the requirements of Section 165 of the CAA, 42 U.S.C. §7475. 415 ILCS 5/9.1(c). The Board held hearings on this proposal on November 27, 2018, in Chicago, and on February 26, 2019, in Springfield.

On December 20, 2019, the United States Environmental Protection Agency (USEPA) published its proposed rule for Error Corrections to New Source Review Regulations (Error Correction Rule). 84 Fed. Reg. 700092. This proposed rule would make what USEPA characterizes as non-substantive and administrative revisions to the various New Source Review (NSR) permit regulations including its PSD regulations. USEPA has grouped the proposed revisions into five categories: 1) correction of typographical and spelling errors; 2) removal of court-vacated language; 3) removal or update of outdated or incorrect cross references; 4) conformance with changes to NSR made by the 1990 CAA Amendments; and 5) removal of certain outdated exemptions.

While the Illinois EPA's July 2018 proposal to the Board made a number of these changes as compared to the current federal PSD regulations to appropriately correct typographical errors and/or incorrect cross references, to address recent court decisions and to remove certain outdated exemptions, the Illinois EPA has identified a few revisions recently proposed by USEPA that were not foreseen or appropriately addressed in the Illinois EPA's proposal to the Board. This motion addresses these further revisions to the PSD regulations now proposed by USEPA.

First, the USEPA is proposing to remove a reference in 40 CFR 52.21 to a vacated provision for Pollution Control Projects (PCPs) at 40 CFR 52.21(a)(2)(iv)(a). The Illinois EPA's proposal addressed the vacatur of 40 CFR 52.21 pertaining to Clean Units and PCPs, explaining as follows in the accompanying Statement of Reasons:

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) [*New York I*]. (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).

July 2018 Statement of Reasons, pages 47-48. The Illinois EPA's proposal appropriately removed all provisions that were vacated in *New York I*. However, in proposed Section 204.800(d)(1), the Illinois EPA inadvertently included an incorrect cross reference to subsection (e) rather than subsection (f). In this regard, Section 204.800(e) does not have its origins in 40 CFR 52.21, but was proposed for additional clarity given the organization of proposed Part 204.¹ Accordingly, the appropriate reference in proposed Section 204.800(d)(1) would be the same as that in 40 CFR 52.21(a)(2)(iv)(a). In 40 CFR 52.21(a)(2)(iv)(a), USEPA is proposing to refer to 40 CFR 52.21(a)(2)(v). USEPA's proposal would correspond to proposed Section 204.800(f). The Illinois EPA is now proposing to change the cross-reference in Section 204.800(d)(1) from subsection (e) to subsection (f).

Second, USEPA proposes to correct erroneous cross-references it created in a previous rulemaking. As the USEPA explained in its Error Correction Rule:

In 1980, the EPA made significant revisions to the PSD regulations under parts 51 and 52.² One revision deleted existing paragraph (k) and redesignated paragraphs (l) through (s) as (k) through (r). The EPA is proposing to correct incorrect references affected by the 1980 redesignation of paragraphs (l) through (s).

84 Fed. Reg. 700092, 700095. USEPA further indicated that these outdated references were included in 40 CFR 52.21(n)(1), the federal regulation upon which subsection (a) of Section 204.810 is based. In order to memorialize the appropriate cross references in subsection (a), the

¹ 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.

² 48 FR 52676 (August 7, 1980).

Illinois EPA is proposing to amend the cross-references to Sections 204.810, 204.1100, 204.1120 and 204.1200 to Sections 204.1100, 204.1110, 204.1130 and 204.1140, respectively.

Third, the Error Correction Rule proposes to conform certain provisions to changes enacted by the United States Congress in the 1990 CAA Amendments that USEPA did not subsequently memorialize in rulemakings addressing New Source Review. The CAA Amendments of 1990 amended the definition of “major emitting facility” in Section 169(l) as it addressed municipal incinerator by lowered the charging capacity threshold for a municipal incinerator from more than 250 tons of refuse per day to more than 50 tons of refuse per day. As such, the CAA Amendments of 1990 provided that a municipal incinerator with the potential to emit at least 100 tons per year of any regulated NSR pollutant would be a major facility if its charging capacity was more than 50 tons per day. 84 Fed. Reg. 700092, 700096. In response to this change to Section 169(l) of the CAA in 1990, the USEPA recently proposed revising 40 CFR §§52.21(b)(1)(i)(a), 52.21(b)(1)(iii)(h) and 52.21(i)(1)(vii)(h) in its proposed Error Correction Rule. *Id.* As such, the Illinois EPA is proposing to amend similar language that was originally proposed in Sections 204.510(a)(1), 204.510(c)(8) and 204.860(a)(2)(H) that was based upon the historic language in 40 CFR 52.21.

Recognizing that the proposed revisions would generally remove or update outdated or incorrect cross references and conform certain provisions to changes made by the 1990 CAA Amendments and, further, to maintain consistency with 40 CFR 52.21, the Illinois EPA is now proposing to amend the rulemaking proposal as set forth in this Motion. Accordingly, the Illinois EPA recommends the acceptance by the Board of the following amendments to the rulemaking proposal:

Amend proposed new Section 204.510 by amending subsections (a)(1) and (c)(8) to read as follows:

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_x 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.

Amend proposed new Section 204.800 by amending subsection (d)(1) to read as follows:

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 ~~(f)~~ (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.

Amend proposed new Section 204.810 by amending subsection (a) to read as follows:

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~~ 204.1100, 204.1110, 204.1130, and 204.1140 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.

Amend proposed new Section 204.860 by amending subsection (a)(1)(H) to read as

follows:

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.

WHEREFORE, for the reasons set forth above, the Illinois EPA moves that the Board amend proposed new Part 204 to revise Sections 204.510, 204.800, 204.810 and 204.860 as set forth herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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DATED: January 13, 2020

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