

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF RAIN CII CARBON LLC) AS 23-_____
FOR ADJUSTED STANDARD FROM) (Adjusted Standard – Air)
35 Ill. Adm. Code §§ 201.149, 212.123,)
and 212.322, 215.301)

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph St.
Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19267
Springfield, Illinois 62795-9276

PLEASE TAKE NOTICE that on this day, the 14th day of August, 2023, I caused to be filed with the Clerk of the Illinois Pollution Control Board the **PETITION OF RAIN CII CARBON LLC FOR ADJUSTED STANDARD FROM 35 Ill. Adm. §§ 201.149, 212.123, 212.322, and 215.301** and the **APPEARANCES OF DAVID M. LORING and ALEXANDER J. GAREL-FRANTZEN**, copies of which are herewith served upon you.

/s/ Alexander Garel-Frantzen

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14th day of August, 2023, I have electronically served a true and correct copy of **Petition of Rain CII Carbon LLC for Adjusted Standard from 35 Ill. Adm. Code §§ 201.149, 212.123, 212.322, and 215.301** and the **Appearances of David M. Loring and Alexander J. Garel-Frantzen**, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the persons identified on the attached Service List.

My e-mail address is Alex.Garel-Frantzen@afslaw.com.

The number of pages in the e-mail transmission is 303.

The e-mail transmission took place before 5:00 p.m.

 /s/ Alexander J. Garel-Frantzen

Alexander J. Garel-Frantzen

Dated: August 14, 2023

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**APPEARANCE OF DAVID M. LORING
AND CONSENT TO E-MAIL SERVICE**

I, David M. Loring, hereby enter my appearance on behalf of RAIN CII CARBON LLC.

I authorize the service of documents on me by email in lieu of receiving paper documents in the above-captioned proceeding. My email address to receive service is as follows:

David.Loring@afslaw.com.

/s/ David M. Loring

David M. Loring

Dated: August 14, 2023

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PETITION FOR ADJUSTED STANDARD

NOW COMES Rain CII Carbon LLC (“Rain Carbon”), by and through its attorneys, ArentFox Schiff LLP, pursuant to Section 28.1 of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/28.1, and 35 Ill. Adm. Code Part 104, Subpart D, and petitions the Illinois Pollution Control Board (the “Board”) to grant it an adjusted standard during periods of start-up, malfunction, and breakdown (“SMB”) from the Illinois regulatory opacity, particulate matter (“PM”), and volatile organic material (“VOM”) standards applicable to Rain Carbon’s kilns at its coke calcining facility in Robinson, Illinois (the “Facility”). As more fully set forth below, this Petition essentially seeks the Board to reaffirm Rain Carbon’s operating conditions applicable during SMB that were the subject of a stand-alone settlement agreement between Illinois EPA and Rain Carbon in 2017 that is incorporated into the Facility’s current operating permit.

The opacity standards are codified in 35 Ill. Adm. Code §§ 212.123(a), except as allowed by Sections 212.123(b) or 212.124, the PM standard is codified at 35 Ill. Adm. Code § 212.322, and the VOM standard is codified at 35 Ill. Adm. Code § 215.301, except as allowed by Section 215.302. The requirement to comply with those standards during periods of SMB is specifically governed by Section 201.149, 35 Ill. Adm. Code § 201.149.

The applicable emission standards became more stringent as applied to Rain Carbon because of the repeal of Section 212.124(a) (as to opacity) and the amendment of Section 201.149 and the repeal of related provisions in Part 201 (as to opacity, PM, and VOM), which

took effect on July 25, 2023, via *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*, R2023-018 (“SMB Repeal” or “R23-18”). In support of its petition, Rain Carbon states as follows:

A. Introduction

1. Current Procedural Posture Following Promulgation of SMB Repeal

In its July 6, 2023, Order in R23-18(A), the Board established a specific framework by which the parties (including Rain Carbon) were to seek relief during SMB under an expedited review by the Board. In particular, the Board directed “[a]nyone who wishes to file a rulemaking proposal for alternative standards during [SMB]” to do so by August 7, 2023. The expedited filing schedule allows the Board to proceed expeditiously with its review of such proposals. The July 6 Order indicated that the Board intends to issue an order at its August 17 meeting that directs the Clerk to publish the rulemaking proposals for first notice. Rain Carbon also has been informed that the hearings on the rulemaking proposals will take place on September 27 and 28 and November 1, 2023.

Rain Carbon supports the Board’s commitment to proceed swiftly with the sub-docket considering the relief needed by Rain Carbon due to the Board’s repeal of the SMB provisions in R23-18. In accordance with the Board’s July 6 Order, Rain Carbon (along with other parties participating in the sub-docket) timely filed proposed rule amendments that, *if approved*, will provide for specific relief from applicable standards and limitations during SMB events at the Facility as authorized by 35 Ill. Adm. Code § 201.149.¹

¹ See Rain CII Carbon LLC’s Proposal of Regulations, PCB No. R23-18(A), at Section II.E (Aug. 7, 2023) (“Proposed Rulemaking”), attached hereto as **Exhibit A**.

While Rain Carbon believes that its proposed amendments are the appropriate mechanism to obtain relief – and will ultimately be approved by this Board – the seriousness of the relief required by Rain Carbon mandates that it avail itself of all available remedies. Section 28.1(f) of the Act, 415 ILCS 5/28.1(f), and 35 Ill. Adm. Code § 104.412(b) direct a party to submit a petition seeking an adjusted standard within 20 days of the effective date of R23-18 (to avail oneself of the full protections afforded by the adjusted standard). Section 28.1(f) provides that any person who files a timely petition for an adjusted standard following any rulemaking implementing Clean Air Act (“CAA”) provisions will be exempt as to that source from the new provisions while the petition is pending before the Board. The statute further clarifies that in situations where the new regulation replaces a previously adopted regulation (such as in R23-18), the previously adopted regulation will apply during the stay of the new rule.

The revisions to Section 201.149 and the repeal of related SMB provisions in Part 201 took effect on July 25, 2023; thus, the 20-day period under Section 28.1(f) concludes on August 14, 2023. Because it is not possible for the Board to act upon the rulemaking proposals in R23-18(A) in advance of the statutory deadline under Section 28.1(f), Rain Carbon has no choice but to file this Petition for an Adjusted Standard (the “Petition” or “Proposed AS”) as a protective measure while the proposed rulemaking is concurrently under consideration by the Board.

2. The Board Has the Authority to Grant the Proposed AS

This Petition proposes that the Board grant Rain Carbon adjusted standards during SMB to the emission limitations and standards applicable to the emission units at the Facility designated “Kiln 1” and “Kiln 2” under the opacity rule (35 Ill. Adm. Code § 212.123), PM rule (35 Ill. Adm. Code § 212.322), and VOM rule (35 Ill. Adm. Code 215.301), as those emission limitations and standards were effectively revised through the rule repeals and revisions codified

in the SMB Repeal. For simplicity, the opacity, PM, and VOM rules for which Rain Carbon seeks adjusted standards are referred to collectively as the “Applicable Standards.”

The impact of the SMB Repeal is two-fold:

- First, prior to the SMB Repeal, Illinois EPA had flexibility to authorize specific relief from applicable emission limits and standards to sources during periods of SMB. Any such authorization was memorialized in the source’s operating permit (*i.e.*, the CAAPP permit). *The SMB Repeal removed Illinois EPA’s authority to provide source-specific flexibility to demonstrate compliance with the Applicable Standards during SMB.*
- Second, as a consequence of the loss of Illinois EPA’s flexibility, for sources – like Rain Carbon – for whom Illinois EPA had granted such flexibility and authorized alternative emission limits during periods of SMB, the SMB Repeal *had the effect of making the Applicable Standards more stringent for Rain Carbon* by eliminating the authority that authorized those alternative limits during SMB.

The SMB Repeal did *not*, however, eliminate the ability of the Board to now authorize relief during SMB through an adjusted standard. The revisions to Section 201.149 continue to allow a person to exceed an applicable standard or limitation if “specifically provided for by such standard or limitation.” Therefore, Rain Carbon’s Proposed AS provides such specific standard or limitation to authorize appropriate relief during SMB for Kiln 1 and Kiln 2. The Proposed AS is more stringent than what is currently authorized under Rain Carbon’s CAAPP permit, and more stringent than what is authorized by the 2017 Settlement (*see infra* Section A.3).

3. Rain Carbon's Existing Permit Independently Authorizes an SMB Exception

Illinois EPA previously granted Rain Carbon exclusive permission in its CAAPP permit to exceed the opacity, PM, and VOM limits applicable to Kiln 1 and Kiln 2 during SMB conditions. That authorization was absolute, conditioned only upon the Facility's compliance with specific detailed work practice conditions applicable during SMB that are incorporated into the CAAPP permit. Illinois EPA further authorized such relief in a separate, independently enforceable settlement agreement with Rain Carbon in 2017 (the "2017 Settlement").² The 2017 Settlement requires *to this day* that Rain Carbon operate the pollution controls for the kilns above a minimum temperature to ensure proper control of opacity, PM, and VOM *except during SMB events* when it is not possible to maintain the minimum temperature and, therefore, ensure compliance with the applicable opacity, PM, and VOM emission limits.

Accordingly, the SMB Repeal may be interpreted by Illinois EPA as revising the Applicable Standards *as applied to Rain Carbon's Facility*, because it eliminates the relief during SMB events currently authorized by the Facility's CAAPP permit (and protected by the permit's "permit shield"³) and the 2017 Settlement. To the extent the Board views the SMB

² See Stipulation and Proposal for Settlement, *Illinois v. Rain CII Carbon LLC*, PCB No. 04-137 (Jan. 5, 2017), attached hereto as **Exhibit B**.

³ Condition 2.7 (Permit Shield) of the Facility's CAAPP permit granted the Facility a "permit shield." See Rain CII Carbon LLC, CAAPP Permit No. 95120092 (rev. May 16, 2022), attached hereto as **Exhibit C**. That permit shield remains in effect as of the date of this filing. The permit shield states that "compliance with the conditions of this permit shall be deemed compliance with applicable requirements which were applicable as of the date the proposed permit for this source was issued, provided that either the applicable requirements are specifically identified within this permit, or the IEPA, in acting on this permit application, has determined that other requirements specifically identified are not applicable to this source and this determination (or a concise summary thereof) is included in this permit." See Ex. C, CAAPP permit, Condition 2.7(a) (emphasis added). The relief granted under Condition 4.2.4(a)(i) from compliance with the Conditions 4.2.2(a)(i)(A), (b)(i)(A), and (d)(i)(A) during SMB reflect Illinois EPA's determination that the emission limitations and standards for opacity, PM, and VOM,

Repeal to also act as a unilateral termination of the 2017 Settlement and resulting SMB relief provided by its terms as incorporated into the Facility's CAAPP permit (and protected by the CAAPP's permit shield), this Petition seeks an adjusted standard for each of the Applicable Standards (*i.e.*, 35 Ill. Adm. Code §§ 212.123, 212.322, and 215.301). These adjusted standards are consistent with 35 Ill. Adm. Code § 201.149, which, as amended, continues to authorize alternative standards or limitations during start-up or during malfunction or breakdown "as specifically provided for by such standard or limitation."

To be clear, Rain Carbon is not intending to use this Petition to disrupt the Board's expedited consideration of the proposed rulemakings filed in R28-18(A). Rain Carbon will not require an adjusted standard if the Board reaffirms that the 2017 Settlement and the corresponding SMB provisions in the Facility's current CAAPP permit are unaltered by the SMB Repeal, or if the Board does not so reaffirm, then the Board grants Rain Carbon's rulemaking proposal *in full*. Accordingly, this Petition is being filed at this juncture to ensure that Rain Carbon has preserved and exhausted its administrative and adjudicatory remedies available to seek relief during SMB.

B. Description of Standard from Which Relief Is Sought (§ 104.406(a))

As noted above, the SMB Repeal included the repeal of Sections 212.124(a) and 201.261-.265, as well as fundamental revisions to Section 201.149. Each of these changes resulted in an increase in the stringency of the opacity standard (35 Ill. Adm. Code § 212.123), PM standard (35 Ill. Adm. Code § 212.322), and VOM standard (35 Ill. Adm. Code 215.301)

respectively, do not apply to Kiln 1 and Kiln 2 during SMB. Rain Carbon believes that this permit shield continues to allow the Facility to operate as authorized under Condition 4.2.4(a)(i).

during periods of SMB as applied to Kiln 1 and Kiln 2 at Rain Carbon's Facility through its CAAPP permit.

The Facility's CAAPP permit sets forth the opacity, PM, and VOM standards applicable during SMB. Specifically, Condition 4.2.4(a)(i)(A) (Start-up Requirements) states that “[p]ursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to operate [K]iln 1 and [K]iln 2 and their associated pyroscrubbers...in violation of the applicable requirements of Conditions 4.2.2(a)(i)(A) [30% opacity standard pursuant to § 212.123(a)], 4.2.2(b)(i)(A) [PM standard pursuant to § 212.322(a) and (c)], and 4.2.2(d)(i)(A) [VOM standard pursuant to §§ 215.301 and 215.302(c)] during start-up. *See* Ex. C, CAAPP permit, Condition 4.2.4(a)(i)(A). Condition 4.2.4(a)(i)(B) applies a near identical exemption to the same opacity, PM, and VOM standards during malfunction/breakdown. *See id.* at Condition 4.2.4(a)(i)(B) (“Pursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to continue operation⁴ in violation of the applicable requirements of Conditions 4.2.2(a)(i)(A), 4.2.2(b)(i)(A), and 4.2.2(d)(i)(A) during malfunction breakdown”). Section 7.3 and Section 7.4 of the CAAPP permit, in turn, establish specific work practice conditions that must be followed during start-up and during malfunction/breakdown, respectively, in order for the Facility to exceed the opacity, PM, and VOM emission limitations during periods of SMB.

The plain language of the CAAPP permit evidences that the opacity standard, PM standard, and VOM standard are not contained solely within the boundaries of Parts 212 and 215. Those standards were modified – through the CAAPP permit – to allow the Facility to exceed the otherwise applicable emission limits during periods of SMB pursuant to the authority

⁴ While the CAAPP permit does not limit the malfunction/breakdown relief to Kiln 1 and Kiln 2, Rain Carbon is only seeking an adjusted standard as applied to those emission units (and their associated pyroscrubbers).

granted under Sections 201.149, 201.261, and 201.262 (as those rules existed prior to the SMB Repeal).⁵

Critically, the Facility's relief from the opacity, PM, and VOM emission limitations was not – and *is* not – solely based upon the rules subject to the SMB Repeal. Rather, the Facility is *required* under the 2017 Settlement Agreement with Illinois EPA to maintain a minimum temperature of 1800°F at its pyroscrubbers, the pollution controls for the kilns. Illinois EPA included this requirement as a condition of settlement because 1800°F was determined to be the minimum operating temperature needed to control emissions from Kiln 1 and Kiln 2 sufficient to achieve continuous compliance with the opacity, PM, and VOM emission limits. Illinois EPA excluded periods of SMB from the requirement to maintain the 1800°F temperature – meaning, in effect, that the 2017 Settlement relieved the Facility from demonstrating compliance with those limits during SMB when the kilns must heat up during a start-up or restart or temporarily drop below their minimum operating temperature as a result of a malfunction or breakdown. *See* Ex. B, 2017 Settlement, at Section V.D.1.f (“[e]xcept during startup and malfunction/breakdown

⁵ Sections 7.3 and 7.4 of the Facility's CAAPP permit does advise that “authorization in this CAAPP permit for excess emissions during start-up [or continued operation during malfunction or breakdown] does not shield the source from enforcement for any violation of the applicable emission standard(s) that occurs during start-up [malfunction or breakdown] and only constitutes a prima facie defense to such an enforcement action” This statement merely reflects Illinois EPA's interpretation of the SMB relief previously authorized under Sections 201.149, 201.261, and 201.262, which allows the Facility to exceed the applicable emission limits in accordance with the enforceable CAAPP permit condition, Condition 4.2.4(a)(i). Moreover, as earlier noted, the Facility was, and remains, authorized under the 2017 Settlement to exceed the Applicable Standards during SMB.

conditions of either [Kiln 1 or Kiln 2, Rain Carbon] shall at all times operate its pyro scrubbers as follows: . . . (i) [m]aintain a minimum operating temperature of 1800°F. . . .”⁶

The SMB relief authorized by the 2017 Settlement is memorialized in the Facility’s CAAPP permit in two ways. First, under Condition 4.2.2(f)(i)(E), the Facility must maintain the 1800°F minimum pyroscrubber operating temperature except during SMB. *See* Ex. C, CAAPP permit, Condition 4.2.2(f)(i)(E) (“Pursuant to Section 39.5(7)(a) of the Act and Order PCB 04-137 [the 2017 Settlement], *except during start-up and malfunction/breakdown* conditions of either [Kiln 1 or Kiln 2], the Permittee shall operate its pyroscrubbers as follows: (I) [m]aintain a 3-hour rolling average minimum temperature of 1800°F”) (emphasis added). Second, the compliance assurance monitoring (“CAM”) plans for Kiln 1 and Kiln 2 state that the indicator of compliance with the VOM and PM emission limits is operation of the pyroscrubbers above the 1800°F operating temperature. *See id.* at CAM Table 7.5.1, 7.5.2, 7.5.3, and 7.5.4. Read in concert, the Facility has temporary relief from the opacity, PM, and VOM emission limits during periods when the minimum pyroscrubber inlet temperature cannot be achieved – *i.e.*, during periods of SMB.⁷

As the foregoing demonstrates, neither the emission limit for opacity, the emission limit for PM, nor the emission standard for VOM are merely contained in – or the product of – the Applicable Standards. The repeal of Section 212.124(a) (for opacity), and the revisions to

⁶ Rain Carbon also entered into an administrative consent order with U.S. EPA just a few months earlier in February 2023, which acknowledged that its facility had relief from the PM, opacity, and VOM limits during periods of SMB. *See infra* Section E.5.

⁷ By operation of the timely submission of this Petition, in accordance with 415 ILCS 5/28.1(f), the Facility remains subject to the Applicable Standards as they existed prior to the SMB Repeal and as those rules are incorporated into the Facility’s CAAPP permit. The applicability of the pre-SMB Repeal rules is consistent with the relief from compliance with the opacity, PM, and VOM requirements during SMB authorized by the 2017 Settlement.

Section 201.149 and repeal of Sections 201.261-.262, fundamentally changed the stringency of the Applicable Standards as applied to Rain Carbon.⁸ See 35 Ill. Adm. Code § 212.124(a) (applying Sections 212.122 and 212.123 during times of SMB “except provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201”); 35 Ill. Adm. Code §§ 201.261-.262 (removing the regulatory basis (under state law, though not yet under the Illinois SIP) for a source to request and Illinois EPA to grant authorization to operate with opacity above generally applicable standards during periods of SMB).

Through the revisions to Section 201.149, Illinois EPA no longer has the flexibility to grant relief during SMB via Rain Carbon’s CAAPP permit. That relief must now be provided for in a specific standard or limitation, or via an adjusted standard as requested herein. Section 201.149 has been revised as follows:

~~A No person must not shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the applicable standards or limitations stated set forth in Subchapter c of this Chapter except as specifically provided for by such standard or limitation, unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown. A No person must not shall cause or allow violation of the applicable standards or limitations stated set forth in that Subchapter c during startup except as specifically provided for by such standard or limitation, unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup.~~

⁸ To be clear, it is Rain Carbon’s position that the SMB relief afforded by the 2017 Settlement and incorporated into the CAAPP permit *continues* (even after the SMB Repeal) to allow the Facility to operate in excess of the opacity, PM, and VOM emission limits because the settlement terms (i) require that the Facility operate the pyroscrubbers above 1800°F except during SMB, and (ii) that temperature is needed to continuously comply with those emission limits. This Petition would, therefore, *align* the requirements of the 2017 Settlement, Condition 4.2.2(f)(i)(E), and the CAM plans – all of which continue to apply after the SMB Repeal – with the underlying emission standards and limitations found within the Applicable Standards.

By comparison, under the pre-SMB Repeal version of Section 201.149, the Section 201.149 prohibition on operation during SMB if such operation would cause opacity, PM, and/or VOM above the levels specified in Sections 212.123, 212.322, or 215.301, respectively, *did not apply* to Kiln 1 or Kiln 2 to the extent the Facility complied with the SMB authorization provisions in its CAAPP permit (consistent with the conditions under Rain Carbon's 2017 Settlement).

Rain Carbon consequently seeks an adjusted standard from the Illinois opacity standard, PM standard, and VOM standard applicable to the Facility's Kiln 1 and Kiln 2 during periods of SMB, as further specified below.

C. Regulation of General Applicability to Implement the Clean Air Act (§ 104.406(b))

The SMB Repeal, which entailed revisions to Section 201.149 and repeal of Section 212.124(a) and related provisions of Part 201, were promulgated to implement the requirements of the CAA, 42 U.S.C. §§ 7401, *et seq.*, in response to the U.S. EPA's start-up, shutdown, and malfunction state implementation plan ("SIP") call. The SMB Repeal made the Applicable Standards (*i.e.*, Sections 212.123, 212.322, and 215.301) more stringent as applied to Rain Carbon.

As detailed in Sections II.B-D of Rain Carbon's Proposed Rulemaking, Illinois has long afforded relief to sources during periods of SMB, including for the otherwise applicable PM, opacity, and VOM limits. Sections 201.149, 212.123, 212.124, and 201.261-201.265—until the SMB Repeal—collectively authorized the Illinois EPA to allow sources to continue operating during a malfunction or breakdown or to temporarily exceed emission limitations during start-up if the source had requested and demonstrated that it is entitled to such relief in its operating permit application. Section 212.124 afforded relief from otherwise applicable opacity standards during SMB, and Section 201.149 provided relief from otherwise applicable opacity standards

and VOM and PM emission limits if a source's "operating permit granted by the [Illinois EPA] provides for operation during" SMB. In addition, Section 201.265 provided that "[t]he granting of permission to operate during a malfunction or breakdown, or to violate [emission limits] during startup, and full compliance with any terms and conditions connected therewith, shall be a prima facie defense" to an Illinois EPA enforcement action. 35 Ill. Adm. Code § 201.265. U.S. EPA in turn has interpreted Illinois' SMB provisions to be exemptions, contrary to Illinois EPA's position that such provisions were mere affirmative defenses to violations.⁹

Illinois EPA has recognized the unique nature of SMB and the inability of sources to comply with emission limits during those events. In R23-18, the Agency noted that states like Illinois "included provisions in their SIPs providing 'absolute or conditional' exemptions from emission limitations for excess emissions during SSM" "[b]ecause pollution control strategies were not thought to be applicable during SSM." Illinois EPA, Statement of Reasons, PCB No. R23-18, at p. 3 (Dec. 7, 2022). In oral and written testimony, the Agency acknowledged that "limits and standards may at times be exceeded during periods of SMB,"¹⁰ and that "emission standards were established that sources may not be able to comply with at all times, whether that

⁹ See U.S. EPA, *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, 80 Fed. Reg. 33839, 33904 (June 12, 2015) ("2015 Final SIP Call"), attached hereto as **Exhibit D** ("The general-duty provisions that apply as part of the SSM exemption are not alternative emission limitations; they merely define an unlawful exemption to an emission limitation. States have discretion to fix this issue in a number of ways, including by removing the exceptions entirely, by replacing these exceptions with alternative emission limitations including specific control technologies or work practices that do ensure continuous limits on emissions or by reformulating the entire emission limitation." (emphasis added)).

¹⁰ Hearing Transcript, PCB No. R23-18, at 138:12-14 (Jan. 19, 2023).

be during startup, breakdown, or other circumstances that lead to violations.”¹¹ Illinois EPA’s position appropriately recognizes that pollution control equipment, such as the Facility’s, also requires time to start-up in order to reach normal operational functionality.

On June 12, 2015, U.S. EPA issued the 2015 Final SIP Call, requiring 36 states, including Illinois, to submit revised SIPs to correct their SSM provisions.¹² In its 2015 Final SIP Call, U.S. EPA acknowledged that states can employ various regulatory mechanisms, in accordance with the CAA, to address excess emissions that may occur during SSM:

While automatic exemptions and director’s discretion exemptions from otherwise applicable emission limitations for SSM events are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel Similarly, SIPs may, rather than exempt excess emissions, include emission limitations that subject those emissions to alternative numerical limitations or other control requirements during startup and shutdown events or other normal modes of operation, so long as those components of the emission limitations meet applicable CAA requirements and are legally and practically enforceable.

Ex. D, 2015 Final SIP Call at 33978. The U.S. EPA does not “interpret section 110(a)(2) or section 302(k) [of the CAA] to require that an emission limitation in a SIP provision be composed of a single, uniformly applicable numerical emission limitation. The text of section 110(a)(2) and section 302(k) does not require states to impose emission limitations that include a static, inflexible standard.” *Id.* Instead, the SIPs must “impose limits on emissions on a continuous basis, regardless of whether the emission limitation as a whole is expressed numerically or as a combination of numerical limitations, specific control technology requirements and/or work practice requirements applicable during specific modes of operation,

¹¹ Illinois EPA’s Responses to Post-Hearing Questions Submitted by IERG, PCB No. R23-18, at pp. 5-6 (Feb. 14, 2023).

¹² Ex. D, 2015 Final SIP Call, 80 Fed. Reg. at 33844.

and regardless of whether the emission limitation is static or variable.” *Id.* at 33978-79. By way of example, U.S. EPA provided that “so long as the SIP provision meets other applicable requirements, it may impose different numerical limitations for startup and shutdown.” *Id.* at 33979.

In its 2015 Final SIP Call, U.S. EPA also recommended that such alternative standards be narrowly tailored and reflect several considerations, including, that: (1) the alternative standard is “limited to specific, narrowly defined source categories¹³ using specific control strategies”; (2) the use of control strategies, including pollution controls, to avoid the need for an alternative standard “is technically infeasible during startup... periods”; (3) “[t]he alternative emission limitation requires that the frequency and duration of operation in startup [is] ... minimized to the greatest extent practicable” and that the “the facility is operated in a manner consistent with good practice for minimizing emissions”; and (4) the owner/operator properly document the use of the alternative standard. *Id.* at 33980.

Though U.S. EPA originally set a deadline of November 22, 2016, by which Illinois was to respond to the 2015 Final SIP call, *id.* at 33848, the deadline to respond to the SIP call was put on hold amid legal challenges. *Env’t Comm. Fl. Elec. Power Coordinating Grp. v. EPA*, No. 15-1239 (D.C. Cir. Apr. 24, 2017), attached hereto as **Exhibit E**. Years later, on January 12, 2022, U.S. EPA published a final Finding of Failure to Submit SIP Revisions, finding that Illinois and eleven other states had failed to submit SIP revisions required by the CAA in a timely manner.¹⁴ The Finding of Failure took effect on February 11, 2022, and Illinois had 18 months (or until

¹³ The “source category” applicable to Rain Carbon is coke calcining facilities.

¹⁴ U.S. EPA, Finding of Failure to Submit SIP Revisions, 87 Fed. Reg. 1680 (Jan. 12, 2022) (the “Finding of Failure”), attached hereto as **Exhibit F**.

August 11, 2023) to cure the Finding of Failure. *Id.*; 42 U.S.C. § 7509(a), attached hereto as **Exhibit G**. If Illinois EPA failed to submit the required SIP revision by August 11, U.S. EPA would be obligated to impose sanctions in the form of either the loss of highway funds to the State or an increase in the emissions offset ratio for New Source Review, or both. *Id.* § 7509(b)(1), (2). In addition, if an adequate SIP were not submitted, then U.S. EPA would be obligated to implement a Federal Implementation Plan within 24 months of the finding of failure. *Id.* § 7410(c)(1), attached hereto as **Exhibit H**.

Illinois EPA did not file with the Board its proposed rule to respond to the SSM SIP Call until December 7, 2022.¹⁵ Illinois EPA proposed to amend 35 Ill. Adm. Code Parts 201, 202, and 212 to remove the provisions that provided sources with relief as to emission exceedances during periods of SMB, including from otherwise applicable opacity standards and VOM and PM emission limits. *Id.* Despite the years that Illinois EPA has had to respond to the U.S. EPA SSM SIP Call (*see supra* Section C), in recent discussions with Illinois EPA, the Agency did not advise Rain Carbon on the impact of the then-proposed SMB Repeal on its CAAPP permit or the Facility's obligations under the 2017 Settlement. By the time Rain Carbon was aware of, and subsequently appeared in R23-18 and R23-18(A), on June 1, 2023, the public hearings on Illinois EPA's proposed rule had long since passed. The Board adopted Illinois EPA's proposed rule on July 20, 2023, but not before the Joint Committee on Administrative Rules ("JCAR") objected to Illinois EPA's eleventh-hour proposal and lack of stakeholder engagement:

JCAR object to [Illinois EPA's] use of fast-track rulemaking to correct a deficiency the [U.S. EPA] identified on June 12, 2015. . . . [Illinois] EPA had more than enough time to address this situation and engage fully with commenters and their alternative proposals. By waiting to comply with the federal requirements until 2022, the Agency created a situation that could only be

¹⁵ See Illinois EPA's Proposal of Regulation, *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*, No. R22-18 (Dec. 7, 2022).

remedied in time to meet the federal sanctions deadline by using the fast-track process, and prevented the consideration of less costly alternative proposals.

Statement of Objection to Proposed Rulemaking, PCB No. 23-18, at p. 1 (July 19, 2023).

D. Level of Justification Necessary for Adjusted Standard (§ 104.406(c))

Sections 201.149, 212.123,¹⁶ 212.124, 212.322, and 215.301 do not specify a level of justification or other requirements for adjusted standards. Accordingly, the level of justification specified by Section 28.1(c) of the Act applies:

(1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

(2) the existence of those factors justifies an adjusted standard;

(3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

(4) the adjusted standard is consistent with any applicable federal law.

415 ILCS 5/28.1(c). Under Section 27(a), when granting an adjusted standard the Board must also “take into account the [1] existing physical conditions [of the site], [2] the character of the area involved, [including the] surrounding land uses, [3] zoning classifications, [4] the nature of the . . . receiving body of water, . . . and [5] the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.” 415 ILCS 5/27(a); *see also* 415 ILCS 5/28.1(a); 35 Ill. Adm. Code § 104.426(a).

¹⁶ Section 212.126 of the opacity rules does contain an adjusted standard procedure; however, that procedure applies exclusively to “fuel combustion sources” and is inapplicable to Rain Carbon’s kilns, which constitute “process emission units.” *See* 35 Ill. Adm. Code 212.126(a) (noting that the adjusted standard applies to fuel combustion sources); *see also* CAAPP Permit Section 4.2(2)(b)(i)(A) (noting that the Facility’s kilns are process emission units); 35 Ill. Adm. Code §§ 211.5185 and 211.5190 (defining process emission units as a source “other than a fuel combustion emission unit”).

E. Nature of, Location of, and Area Affected by Petitioner's Activity That Is the Subject of This Petition (§ 104.406(d))

1. Facility Operations

As detailed in Section II.E of the Proposal of Regulations, Rain Carbon operates the Facility, a coke calcining facility located at 12187 East 950th Avenue, in Robinson, Illinois, under its CAAPP permit. The Facility was constructed between 1955 and 1959. While the Facility is operating, Rain Carbon typically has approximately 30 personnel working at the Facility. Operations consist of green coke receiving and handling, coke calcining, and handling/load-out of calcined coke. Rain Carbon operates two calcining lines, each utilizing a rotary kiln for calcining. Green coke, a raw material, is fed into the kiln for processing.

For context, green petroleum coke is the carbon by-product of oil refining that is either burned for its BTU value or, as the Facility does, upcycled into a more useful product by converting it into calcined petroleum coke—an essential raw material for the production of aluminum and titanium oxide.¹⁷ The process of calcining coke includes removing moisture and volatile material followed by densifying the coke. The calcined coke leaves the kiln and enters the cooler where it is cooled/quenched with water. After cooling, the calcined coke is transferred to the calcined coke bins to await loading into railcars.

The Facility utilizes two natural gas burners throughout the myriad of operational conditions at the Facility. First, the burners are utilized during the start-up of a kiln to reach a minimum temperature of 400°F at the inlet to the pyroscrubber. Green coke is subsequently introduced into the kiln to provide the majority of additional heat necessary to reach 1800°F (*i.e.*, the minimum optimal temperature for the control of PM and VOM emissions by the

¹⁷ Titanium oxide is used in the production of paints, paper, pharmaceuticals, cosmetics, toothpaste, and sunscreen, among others.

pyroscrubber – the pollution control device for the kilns). The burners are also used as supplemental heat to assist in the stabilization or maintenance of kiln temperatures during various operating conditions, including (i) during start-up to moderate the increase in heat after green coke is introduced; (ii) during normal, steady-state operations to moderate kiln temperatures; and (iii) during periods of malfunction or breakdown to help maintain kiln temperatures when the feed of green coke into the kiln is suspended and to assist in returning the pyroscrubber to optimal operating temperatures after the malfunction/breakdown is resolved.

The kilns have the potential to emit PM and VOM and are subject to the emission limitations of 35 Ill. Adm. Code §§ 212.123, 212.322, and 215.301. Rain Carbon's CAAPP permit does not have an annual limit (in tons per year) for emission of PM or VOM. The forthcoming Technical Support Document ("TSD") prepared by Trinity Consultants ("Trinity") that will support the Proposed AS will provide information related to PM and VOM emissions during SMB at the Facility.

The emissions generated by the kilns are controlled by pyroscrubbers. The pyroscrubbers are operated at a minimum of 1800°F (on a 3-hour rolling average) (except when in start-up, or during malfunction or breakdown events), draw kiln exhaust countercurrent to the flow of coke, and are designed to handle high temperature exhaust while removing VOM and PM from the exhaust gases.

2. Operation of the Pyroscrubbers Below 1800°F Is Unavoidable During SMB

The pyroscrubber is a self-sustaining control device. The coke fines entering the pyroscrubber from the kiln serve as fuel which in turn removes the VOM and PM. As the fuel entering the pyroscrubber reduces, so does the temperature. Similarly, during start-up conditions when green coke is being introduced into the furnace and, thus, little fuel has entered the pyroscrubber, temperature is low.

From time to time, the Facility must go through start-up and, similarly, from time to time the Facility may experience events that result in malfunctions or breakdowns as part of the normal operation and general use of an industrial facility. In either case, such SMB conditions result in temporary operation of the pyroscrubber below 1800°F *because of the lack of fuel entering the pyroscrubber.*

While reduction in pyroscrubber temperature is unavoidable, its use/occurrence is limited to the following scenarios:

- Start-up. During start-up of the kiln from ambient temperature following an outage or other event that causes the kiln to be taken offline and emptied of coke. If the kiln has been cooled to ambient temperature, it will be pre-heated using the kiln's natural gas burners until the respective pyroscrubber has reached a minimum temperature of 400°F. At this point, green coke is introduced to the kiln. Start-up from ambient temperatures with no green coke in the kiln generally takes no more than 24 hours to complete.
- Malfunction/Breakdown. During or in response to a malfunction or breakdown of equipment that results in, or requires, an interruption in the feed of green coke and/or the discharge of calcined coke. A kiln will operate in "slow roll" mode when production needs to be paused (*i.e.*, feed into the kiln is stopped), but the coke in the kiln cannot be or is not discharged from the kiln. During slow roll, the kiln rotation rate is significantly reduced to pause production. When the feed is stopped and the kiln is on slow roll, the temperature reduction is due to the significant reduction in fines entering the pyroscrubber. As a result, the Facility generally tries to maintain temperature in the kiln. This is because returning to normal operations (*i.e.*, when the

pyroscrubber temperature at the inlet exceeds 1800°F) from a slow roll reduces the amount of time that a calcining line takes to achieve a normal pyroscrubber temperature and production rate, maintains higher kiln temperature throughout the process, minimizes emissions, and minimizes the duration of potentially higher-than-normal emission rates during the following start-up. In addition, the kiln's longevity is improved because large temperature fluctuations in a kiln can cause wear on a kiln's refractory or even cause the kiln to warp.

3. Operation of the Pyroscrubbers Below 1800°F Is Very Limited in Frequency and Duration

Rain Carbon operates its Facility in accordance with good air pollution control practices to minimize the generation of emissions. It accomplishes this, in part, by minimizing the number and the duration of start-up events, and minimizing the causes of malfunctions or breakdowns, either of which requires the Facility to operate the pyroscrubbers at temperatures that are not capable of ensuring compliance at all times with the applicable PM, opacity, and VOM limits.

Consequently, relative to normal, steady-state operations, pyroscrubbers operate below 1800°F infrequently. Generally, the Facility experiences on average less than 10 start-ups per kiln per year lasting less than 24 hours in duration for each start-up. Additionally, despite Rain Carbon's best efforts, kiln malfunctions and breakdowns occur periodically at the Facility generally taking the pyroscrubbers below 1800°F for shorter periods of time (*e.g.*, 4-5 hours).

4. The Facility Was Granted Broader Relief by Illinois EPA from Compliance with Opacity, PM, and VOM Emission Limits During All SMB Events

As detailed in Section B *supra*, Rain Carbon has very specific relief during SMB in its CAAPP permit. That relief was memorialized in and enforced by a *prior, separate*, proceeding before this Board requiring that the Facility control opacity, PM, and VOM emissions by

maintaining a minimum operating temperature of 1800°F at its pyroscrubbers.¹⁸ However, this Board, the Illinois EPA (and, subsequently, U.S. EPA) recognized that a necessary condition of that operating requirement was the need for relief during start-up, breakdown, and malfunction events when it is infeasible for the Facility to achieve and maintain the minimum operating temperature determined by Illinois EPA to be necessary to ensure compliance with the opacity, PM, and VOM emission limits.

In R23-18, Illinois EPA claimed that the SMB provisions constituted a “prima facie defense to an enforcement action. . . . should excess emissions result in an enforcement action.” *See, e.g.*, Illinois EPA, Statement of Reasons, PCB No. R23-18, at p. 5 (Dec. 7, 2022). Rain Carbon generally disagrees with Illinois EPA’s position for the reasons identified in Section C *supra*, but as to the Facility, the Agency’s position is incorrect. The relief provided for SMB was *not* a memorialization of Illinois EPA’s exercise of enforcement discretion. Nor was it an authorization of a prima facie defense to enforcement during SMB. Rather, Illinois EPA required Rain Carbon to enter into the 2017 Settlement, as approved by this Board, and mandated that the Facility achieve particular operating temperatures, *except* during SMB. Nowhere in that order is there mention of enforcement discretion or a prima facie defense. The 2017 Settlement’s language setting forth “future compliance” obligations is clear:

Except during startup and malfunction/breakdown conditions of either . . . Kiln #1 or . . . Kiln #2, [Rain Carbon] shall at all times operate its pyro scrubbers as follows: (i) maintain a minimum temperature of 1800°F

See Ex. B, 2017 Settlement, Section V.D.1.f; *see also* Ex. C, CAAPP permit Conditions 4.2(4)(a)(i)(A), (B).

¹⁸ *See* Ex. B, 2017 Agreement.

Illinois EPA could not have entered into—and the Board could not have accepted—the 2017 Settlement if it were contrary to Illinois law. *State of Illinois v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31*, 2016 IL 118422, ¶ 53, attached hereto as **Exhibit I** (“‘[S]tatutes and laws in existence at the time a contract is executed are considered part of the contract,’ and ‘[i]t is presumed that parties contract with knowledge of the existing law.’”). That is, by allowing the Facility to operate its pyroscrubbers below 1800°F during SMB and therefore exceed the opacity, VOM, and PM limits, Illinois EPA and this Board, by matter of law, have deemed this relief to be permissible. *See also* Ex. B, 2017 Settlement at V.D.5 (“This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.”).

It is not just the Illinois EPA and Board who have acknowledged the relief afforded to Rain Carbon; U.S. EPA also has concurred that the 2017 Settlement expressly conditioned the operation of the pyroscrubbers above 1800°F as inapplicable during periods of SMB. In a February 2023 administrative consent order between U.S. EPA and Rain Carbon,¹⁹ U.S. EPA acknowledged that the Facility’s CAAPP permit was modified in 2019 to “reflect the future compliance set forth in the [2017 Settlement]” that requires operation of the pyroscrubbers “[e]xcept during startup and malfunction/breakdown condition.” *See* Ex. J, 2023 U.S. EPA Settlement at ¶¶ 14, 15.

The Board’s Order in R23-18 can be read to directly conflict with the 2017 Settlement’s compliance requirements and relief specific to the Facility to which it remains subject *to this day*. Despite this inherent conflict, and despite the years that Illinois EPA has had to respond to the

¹⁹ *See* Administrative Consent Order, *In the Matter of: Rain CII Carbon LLC Robinson, IL*, EPA-5-23-113(a)-IL-03 (Feb. 21, 2023) (“the 2023 U.S. EPA Settlement”), attached as **Exhibit J**.

U.S. EPA SSM SIP Call (*see supra* Section C), in recent discussions with Illinois EPA, the Agency did not advise Rain Carbon on the impact of the then-proposed SMB Repeal on its CAAPP permit or the Facility's obligations under the 2017 Settlement.

The potential ramifications are significant. Rain Carbon does not know—and, as noted above, Illinois EPA has not informed it—of the implications of SMB Repeal on the terms of the 2017 Settlement. If the implication is that the Facility must maintain at least 1800°F at all times, the Facility obviously cannot operate in compliance with that requirement during start-up or shutdown, or during malfunction or breakdown events when the pyroscrubber temperature decreases while repairs are made (and the introduction of green coke into the kiln is temporarily suspended). *See infra* Section F. Alternatively, if the Board grants the Proposed AS, compliance with the requirements of the 2017 Settlement will be maintained, as Rain Carbon is proposing more stringent and more narrowly tailored limitations than currently permitted in the Facility's CAAPP permit specific to opacity, PM, and VOM applicable during periods of start-up (for opacity and VOM) and SMB (for PM), when 1800°F is not generally achievable at the inlet to the pyroscrubbers.

The relief afforded to the pyroscrubbers during SMB cannot be viewed in isolation. Inherent in Illinois EPA's requirement to operate the pyroscrubbers above 1800°F and to incorporate that obligation into the CAAPP permit's CAM plan is the agreement by the Illinois EPA that the pyroscrubber temperature is an indicator of compliance with the kilns' PM and VOM emission limits.²⁰ Therefore, by excluding the minimum pyroscrubber temperature requirement during SMB, Illinois EPA (and this Board) in the 2017 Settlement recognized that it

²⁰ *See* Ex. C, CAAPP permit at CAM Plan Tables 7.5.1, 7.5.2, 7.5.3, and 7.5.4.

was unreasonable to subject the Facility to PM (and opacity) and VOM limits during those periods when achieving the minimum pyroscrubber temperature is infeasible.

Importantly, too—and further belying Illinois EPA’s position that the SMB provisions provided only a prima facie defense to enforcement—Rain Carbon has never had absolute relief from PM, opacity, and VOM limits during SMB. Rain Carbon’s CAAPP permit contains over four pages of work practice standards that detail requirements applicable during SMB which must be met to be relieved from having to comply with the underlying opacity standard and PM and VOM limits.

While Rain Carbon’s Proposed AS imposes restrictions during SMB that go beyond what presently exists in the Facility’s CAAPP permit, Rain Carbon notes that the CAAPP permit already contains requirements and work practice standards for SMB that comport with U.S. EPA’s recommendations in the 2015 Final SIP Call (*see supra* Section C) to fashion specific, narrowly tailored relief during SMB where the use of control technology in a source category (coke calcining facility) is technically infeasible during SMB, where the frequency and duration of operation in SMB is minimized to the greatest extent practicable, and where the source (the Facility) is operated in a manner consistent with approved work practices for minimizing and documenting emissions during SMB.

In particular, during start-up, Section 7.3 of the CAAPP permit requires the Facility to: (1) adhere to established written start-up procedures, (2) refrain from introducing green coke feed (a) unless the pyroscrubber is operating at a temperature of at least 400°F or (b) if the baghouse controlling that kiln cooler is not operating properly, (3) use natural gas as a supplemental heat source to the kiln in order to reach a pyroscrubber operating temperature of 1800°F, (4) achieve a pyroscrubber operating temperature of 1800°F within 24 hours after

introducing green coke feed to the kiln, and (5) comply with robust monitoring and recordkeeping requirements.

In the event of a malfunction or breakdown of both thermocouples at the inlet of a pyroscrubber, Section 7.4 of the CAAPP permit requires the Facility to: (1) repair or replace at least one of the thermocouples within 24 hours, (2) cease green coke feed to a kiln within 24 hours unless at least one thermocouple at the inlet of that kiln's pyroscrubber functions properly, and (3) comply with robust monitoring and recordkeeping requirements. While Rain Carbon believes that such measures are sufficient, it is proposing further controls and limits during SMB that are more stringent than what is or was previously, as the case may be, required of the Facility.

5. 2023 U.S. EPA Settlement

As noted above, in February 2023—over seven years after U.S. EPA's SSM SIP call and five years after the 2017 Settlement—Rain Carbon and U.S. EPA entered into the 2023 U.S. EPA Settlement. Under that settlement, U.S. EPA affirmed the ability of Rain Carbon to operate under the SMB relief afforded under Illinois law and to continue to operate Kiln 1 and Kiln 2 and their associated pyroscrubbers in violation of applicable emissions limits during SMB. *See* Ex. J, 2023 U.S. EPA Settlement at ¶ 16 (“Section 4.2(4)(a)(i)(A) of the 2019 Permit sets forth that pursuant to 35 IAC 201.149, 201.261, and 201.262, Rain CII Carbon is authorized to operate Kiln 1 and Kiln 2 and their associated pyroscrubbers in violation of the applicable requirements of Condition 4.2(2)(a)(i)(A), 4.2(2)(b)(i)(A), and 4.2(2)(d)(i)(A) during start-up.”); *id.* at ¶ 19 (“Section 4.2(2)(f)(i)(E) of the 2019 Permit sets forth that except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee must maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers, measured at the thermocouples located at the inlet to each pyroscrubber.”).

In addition, the 2023 U.S. EPA Settlement memorializes Rain Carbon's commitment to implement various improvements at the Facility intended to minimize emissions during SMB events. These improvements are reflective of the Facility's dedication in minimizing the duration of start-ups and restarts after malfunctions or breakdowns, in addition to the frequency and occurrence of malfunctions or breakdowns. Among other measures, Rain Carbon is required to: (a) increase each existing kiln burner's natural gas firing capacity, which will reduce the duration that the temperature in the pyroscrubber remains below 1800°F during short-term feed stoppages and start-up events, and (b) make a number of improvements at the Facility to reduce the number and duration of feed chute plugs, thereby reducing the potential duration that the pyroscrubber must operate below 1800°F during a malfunction or breakdown. *See Ex. J, 2023 U.S. EPA Settlement at ¶ 29.*

F. Efforts Necessary for Rain Carbon to Comply with Sections 201.149, 212.123(a), 212.322, and 215.301 (§ 104.406(e))

Rain Carbon cannot comply with the emission limits of Sections 212.123(a) or 215.301 during start-up or Section 212.322 during periods of SMB. As detailed above in Section E, Rain Carbon has limited ability to control opacity and emissions of PM and VOM during SMB. As evidenced by the 2017 Settlement, the principal mechanism for the Facility to improve or reduce those emissions is to maintain a minimum operating temperature of 1800°F at its pyroscrubbers. Thus, Rain Carbon is not seeking an adjusted standard during malfunction and breakdown for opacity and VOM because the inherently higher temperatures in the kilns during such periods negates the need for relief. Under its CAAPP permit and the 2017 Settlement, the Facility is operating in compliance with detailed work practice standards applicable during SMB, which are narrowly tailored to address the technical infeasibility of controlling the Facility's emissions during SMB while ensuring that such emissions are minimized and documented.

Moreover, under the 2023 U.S. EPA Settlement, Rain Carbon is already implementing several additional operational measures that will help reduce malfunction and breakdowns and ensure that the operating temperature increases more quickly following SMB events and, thus, will aid in controlling opacity and emissions of PM and VOM. These measures, which include increasing the burner capacity of the kilns, is expected to cost an estimated \$1,290,000.

Based on a review of U.S. EPA's RACT/BACT/LAER Clearinghouse, Rain Carbon has not identified any pollution control device employed at similarly situated facilities that will ensure compliance at all times with the applicable opacity and VOM limits during start-up and PM limits during SMB. Rain Carbon did identify the installation of new, additional natural gas burners as a potential operational measure that may be technically feasible at the Facility.

However, the burners are *not* pollution control equipment; instead, they are equipment integral to the normal operation of the kilns and would not eliminate the need for the relief requested here for at least two reasons: (1) similar to increasing the capacity of the existing burners (*see supra* Section E.5), adding additional burners would not eliminate time periods when the pyroscrubbers operate below 1800°F, it would merely reduce the length of a start-up, or the length of time it takes for the pyroscrubber to return to 1800°F following a malfunction or breakdown event; and (2) the cost for such incremental improvement is not economically reasonable (the capital cost of installing new burners was estimated to be \$10,027,718 for both kilns).

Moreover, Rain Carbon does not know the extent to which such new burners would control opacity and emissions of PM and VOM. In contrast, Rain Carbon does know that the use of the new burners would not rectify the inability of the Facility to maintain a minimum operating temperature of 1800°F during SMB. For this very reason, Rain Carbon has long been afforded appropriate relief during such events under its CAAPP permit because the Illinois EPA,

this Board, and the U.S. EPA has recognized that it is infeasible for the Facility to achieve and maintain 1800°F, the minimum operating temperature determined by Illinois EPA to be necessary to ensure compliance with the opacity, PM, and VOM emission limits.

G. Proposed Adjusted Standard, Level of Effort Required, Costs (§ 104.406(f))

Rain Carbon proposes that the Board grant three adjusted standards that provide for alternative emission limits during brief periods of SMB that were made more stringent by the SMB Repeal. Rain Carbon notes that an adjusted standard is not specifically requested to Section 201.149, as that section, as revised by the SMB Repeal, authorizes the alternative standards or limitations during periods of SMB that are requested herein.

Specifically, Rain Carbon requests:²¹

(1) An adjusted standard to allow for an alternative averaging period during start-up of Kiln 1 or Kiln 2 to demonstrate compliance with the 30% opacity standard under 212.123. The adjusted standard would state:

During any period of start-up (meaning the period from when green coke feed is introduced into the kiln until the temperature at the pyroscrubber inlet servicing the kiln achieves a minimum operating temperature of 1800°F (based on a three-hour rolling average)) at the emission unit designated Kiln 1 or Kiln 2 at the Rain CII Carbon LLC facility located in Robinson, Illinois, compliance with the opacity limit under Section 212.123(a) may be determined by using Test Method 9 (40 C.F.R. Part 60, Appendix A, incorporated by reference in Section 212.113) opacity readings using the average of non-consecutive opacity readings during a 1-hour period; provided, however, that compliance may be based on the average of up to three, 1-hour average periods, in the event that compliance is not demonstrated during the preceding hour.

²¹ Rain Carbon notes that the Facility would be required to maintain the appropriate recordkeeping and reporting to document the use of the Proposed AS.

(2) An adjusted standard to allow for a limitation on the number of hours per year that Kiln 1 or Kiln 2 can operate in excess of the process weight PM emission limit during SMB under 212.322(c). The adjusted standard would state:

The owner and operator of the Rain CII Carbon LLC facility located in Robinson, Illinois, shall be allowed to emit particulate matter into the atmosphere from the emission unit designated Kiln 1 or Kiln 2 in excess of the allowable emission rates under Section 212.322 during any period of time the temperature of the inlet to the pyroscrubber servicing either emission unit does not achieve a minimum operating temperature of 1800°F (based on a three-hour rolling average) during start-up, malfunction, or breakdown, not to exceed 720 hours in the aggregate per kiln in a calendar year. During any such period of time, the facility shall be allowed to operate the pyroscrubber servicing Kiln 1 or Kiln 2 below the minimum operating temperature of 1800°F.

(3) An adjusted standard to allow for an alternative averaging period during start-up of Kiln 1 or Kiln 2 to demonstrate compliance with the VOM emission limit under 215.301. The adjusted standard would state:

Compliance with the permitted emissions of organic material under Section 215.301 during any period of start-up (meaning the period from when green coke feed is introduced into the kiln until the temperature at the pyroscrubber inlet servicing the kiln achieves a minimum operating temperature of 1800°F (based on a three-hour rolling average)) at the emission unit designated Kiln 1 or Kiln 2 at the Rain CII Carbon LLC facility located in Robinson, Illinois, shall be determined by the average of hourly emissions of organic material during start-up of the emission unit; provided, however, that in no event shall the averaging period of any single start-up exceed twenty-four (24) hours.

With respect to the efforts and costs associated with achieving the Proposed AS, Rain Carbon notes that the Facility is already complying with the Proposed AS, which is more stringent than the relief currently afforded to Kiln 1 and Kiln 2 during SMB in the Facility's current CAAPP permit. Nonetheless, as detailed in Section E *supra*, Rain Carbon is taking several measures pursuant to the 2023 U.S. EPA Settlement that will help ensure compliance with the Proposed AS by minimizing the duration of start-ups and restarts after malfunctions or breakdowns, as well as the frequency and occurrence of malfunctions or breakdowns. Among

other measures, Rain Carbon is committed to: (a) increase each existing kiln burner's natural gas firing capacity, which will reduce the duration that the temperature in the pyroscrubber remains below 1800°F during short-term feed stoppages and start-up events, and (b) make a number of improvements at the Facility to reduce the number and duration of feed chute plugs, thereby reducing the potential duration that the pyroscrubber must operate below 1800°F during a malfunction or breakdown. *See* Ex. J, 2023 U.S. EPA Settlement at ¶ 29. These improvements are estimated to cost Rain Carbon nearly \$1,300,000.

H. Quantitative and Qualitative Impact of Petitioner's Activity on the Environment Under Conditions of Compliance with Sections 201.149, 212.123(a), 212.322, and 215.301 vs. Adjusted Standard (§ 104.406(g))

Rain Carbon is working with Trinity to prepare a TSD that will support the Proposed AS and demonstrate that the Proposed AS will not interfere with Illinois' ability to attain or maintain compliance with the PM and ozone NAAQS and will actually result in less emissions from the Facility than was previously authorized by Sections 201.149, 212.124, and related provisions of Part 201. Rain Carbon notes that while there is no NAAQS for opacity and, therefore, a noninterference demonstration is not required for opacity,²² the TSD will demonstrate that the modeled environmental impact of the Proposed AS is insignificant and will not interfere with the PM or ozone NAAQS.

Rain Carbon's Facility is located in Crawford County, Illinois. Crawford County is in attainment with the 2015 8-hour ozone NAAQS. Similarly, Crawford County is in attainment of

²² The EPA Noninterference Guidance states that changes to opacity regulations can be subject to a Section 110(l) demonstration on a "case-by-case" basis.

the 2012 PM NAAQS (including the annual PM_{2.5} standard, the 1997 24-hour PM_{2.5} standard and the 2006 24-hour PM₁₀ standard).²³

It is significant to note that Crawford County has been in attainment of the PM and ozone NAAQS *prior* to Illinois EPA's SMB Repeal, meaning that the relief during SMB conditions for PM, opacity, and VOM afforded to the Facility under the existing CAAPP permit does not – and has never – caused or resulted in the nonattainment of any NAAQS. Consequently, a Section 110(l) noninterference demonstration is, arguably, unnecessary as Rain Carbon's proposed rule amendments are *more stringent* than the relief afforded to the Facility prior to the SMB Repeal. In other words, Rain Carbon's Proposed AS will result in an *improvement* in air quality as compared to the emissions allowable under its CAAPP permit. U.S. EPA guidance allows, but does not require, air quality modeling to demonstrate noninterference, particularly where there is no degradation in air quality. *See* EPA Noninterference Guidance.

Notwithstanding the forgoing paragraph, in an abundance of caution, air quality modeling was conservatively conducted to demonstrate that the Proposed AS will not interfere with the NAAQS when compared to operations that do not include SMB (*i.e.*, during normal operations). Trinity will use air dispersion modeling to determine the impact to ambient air from the alternative PM and alternative VOM standards proposed for the Facility's Kiln 1 and Kiln 2 sources. As further detailed in the forthcoming TSD, Trinity modeled the impact of the proposed regulations as the impact from emission rates and stack characteristics associated with a kiln start-up, subtracting the impacts from allowable emission rates and stack characteristics

²³ U.S. EPA designates Crawford County as "unclassifiable/attainment" for the PM and Ozone NAAQS. *See* U.S. EPA, Illinois Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants, www3.epa.gov/airquality/greenbook/anayo_ak.html (last visited Aug. 14, 2023).

associated with normal operations. The modeling compares the allowable emissions under normal (*i.e.*, non-start-up, non-malfunction/breakdown) conditions with emissions that occur during worst-case operating conditions – namely, start-up. In this manner, the resulting modeled impacts are representative of the *additional* contribution from operating during limited periods when the pyroscrubber inlet temperature is less than 1800°F.

To demonstrate that the modeled contribution does not interfere with the maintenance of the PM and ozone NAAQS, the TSD will compare the modeling results to the significant impact levels (“SILs”) for PM₁₀, PM_{2.5}, and ozone. *See* U.S. EPA, Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program (Apr. 17, 2018) (“SIL Guidance”), attached hereto as **Exhibit K**. The use of SILs to demonstrate noninterference is appropriate. U.S. EPA has long used SILs in order to “quantify the point below which a new or modified source does not cause, or contribute to, a violation of the NAAQS or PSD increment ... [as sufficient] for the EPA or a state permitting authority to justify the value as a level *below which an impact on air quality may be regarded as not-meaningful or significant.*”²⁴ SILs are generally used for purposes of evaluating the impact of a proposed modification under the PSD permitting program, which requires a demonstration *similar*²⁵ to Section 110(l) of the CAA that emissions from the construction or operation of the source “will not cause, or contribute to” air pollution in excess of a NAAQS. *See* 42 U.S.C. §

²⁴ *See* U.S. EPA, Legal Memorandum: Application of Significant Impact Levels in the Air Quality Demonstration for Prevention of Significant Deterioration Permitting under the Clean Air Act, at pp. 13-14, available at www.epa.gov/sites/default/files/2018-04/documents/legal_memo_randum_final_4-17-18.pdf (emphasis added) (last visited Aug. 7, 2023), attached hereto as **Exhibit L**.

²⁵ Indeed, PSD permitting requirements are specifically incorporated under Section 110 of the CAA. *See* Ex. F, 42 U.S.C. § 7410(a)(2).

7475(a)(3), attached hereto as **Exhibit M**. Accordingly, U.S. EPA has interpreted the PSD program's "cause, or contribute to" to mean that impacts that are "insignificant" (*i.e.*, a "degree of impact that is 'trivial' or 'de minimis' in nature") will not negatively impact the NAAQS. *Id.* See also Ex. K, SIL Guidance, at pp. 4-5.

While Rain Carbon's Proposed AS does not constitute a modification that triggers PSD permitting, the amendments can be modeled in a similar manner in order to account for the "increase" in PM and VOM emissions between the Proposed AS and Illinois EPA's SMB Repeal. By comparing the modeled impacts to the applicable SILs for PM and VOM in U.S. EPA's SIL Guidance, the TSD will demonstrate that the Proposed AS are below the SILs and, therefore, have an insignificant impact on the NAAQS. Insignificant impacts will not interfere with the maintenance of the PM or ozone NAAQS in Illinois and, consequently, satisfy the requirements under Section 110(l) of the CAA.

As noted above, as a result of the extremely limited time period during which Rain Carbon has had to prepare this Proposed AS, Rain Carbon and Trinity are continuing to finalize the TSD. The Proposed AS is based upon the results of the TSD and will be submitted to the Board in support thereof. Consistent with Section 104.418(a), Rain Carbon will submit the TSD in a subsequent submission. The TSD will support the Proposed AS contained herein, and Rain Carbon anticipates that the TSD will neither modify nor amend the Proposed AS described herein.

I. Justification of the Proposed Adjusted Standard (§ 104.406(h))

Consistent with Section 28.1(c) of the Act, Rain Carbon has demonstrated throughout this Petition that the factors relating to the Facility are substantially and significantly different from the factors relied upon by the Board in adopting the SMB Repeal. Consequently, Rain Carbon is entitled to adjusted standards to the emission limitations and standards applicable to Kiln 1 and

Kiln 2 during start-up for the opacity rule (35 Ill. Adm. Code § 212.123) and the VOM rule (35 Ill. Adm. Code 215.301), and during SMB for the PM rule (35 Ill. Adm. Code § 212.322), as those emission limitations and standards were effectively revised through the rule repeals and revisions codified in the SMB Repeal.

Specifically, Rain Carbon has demonstrated that the Applicable Standards became more stringent as to Rain Carbon as a result of the SMB Repeal (*see supra* Sections B and C) and that the Facility is unable to comply with these more stringent opacity and VOM limits during start-up and the PM limit during SMB events (*see supra* Section E). Rain Carbon has also shown – and will further demonstrate through the forthcoming TSD – that the Proposed AS will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the SMB Repeal. *See supra* Section H. Moreover, as detailed in Section J *infra*, the Proposed AS is consistent with the CAA. Pursuant to Section 27(a) of the Act, this Petition also sets forth the nature of the Facility (*see supra* Section E) and the technical infeasibility and economic unreasonableness of reducing opacity and VOM emissions during start-up and PM emissions during SMB events so as to comply with the underlying emission limits (*see supra* Section F).

J. Consistency with Federal Law (§ 104.406(i))

The granting of this Petition will be consistent with federal law. In particular, the Proposed AS is consistent with U.S. EPA's recommendations for alternative standards articulated in the 2015 Final SIP Call. *See supra* Section C. First, the Proposed AS are limited to two emissions units – Kiln 1 and Kiln 2. Second, there is no alternative control strategy, including additional pollution control equipment, that eliminates the need for the Proposed AS

during start-up for VOM and opacity, or during SMB for PM.²⁶ *See supra* Section E. Third, the Proposed AS provide for alternative standards that are limited in scope and duration. The relief requested for opacity, for PM, and for VOM are limited in scope and duration to periods when the pyroscrubbers servicing the affected units are operating below a threshold temperature necessary to achieve compliance with applicable emission limits (with the requested relief for PM and VOM placing additional limits on the length of time the adjusted standard can apply). Lastly, the Proposed AS requires appropriate recordkeeping and reporting to document Rain Carbon's use of the Proposed AS. In addition, as demonstrated in the forthcoming TSD, the relief sought will not interfere with the continued attainment of the NAAQS for PM and ozone (*i.e.*, VOM as a precursor) in accordance with Section 110(l) of the CAA.

If the Board grants the Petition, the Agency must submit the adjusted standard to U.S. EPA for inclusion in the SIP. To satisfy the SIP public participation requirements in the CAA, there must be a public hearing on this matter.

K. Request for Hearing (§ 104.406(j))

To satisfy SIP public participation requirements, Rain Carbon requests that the Board hold a hearing on this Petition for Adjusted Standard at a future date as is deemed appropriate by the Board.

²⁶ To be clear, the improvements that Rain Carbon is undertaking pursuant to the 2023 U.S. EPA Settlement will serve to reduce the frequency and duration of start-ups and reduce some of the causes of malfunction and breakdown. *However*, the 2023 U.S. EPA Settlement reflects the Agency's endorsement that while such improvements will not eliminate all occurrences of start-up, malfunction, or breakdown events, the measures agreed to are proper mitigation measures even while the Facility is temporarily operating the pyroscrubbers below 1800°F.

L. Citations to Supporting Documents and Authority (§ 104.406(k))

Rain Carbon has cited to various documents and authorities in support of this Petition. Such citations are embedded in the Petition, and copies have been included among the Exhibits hereto.

M. Additional Information Required in the Regulation of General Applicability (§ 104.406(l))

No additional requirements are included in Sections 201.149, 212.123, 212.124, 212.322, or 215.301.

WHEREFORE, for the reasons set forth above, Rain CII Carbon LLC respectfully requests that the Board grant its Petition for Adjusted Standard from the requirements of the Applicable Standards during periods of start-up (for opacity and VOM) and SMB (for PM) for Kiln 1 and Kiln 2 at the Facility.

Respectfully submitted,

Rain CII Carbon LLC, Petitioner

By: /s/ David M. Loring
David M. Loring

Dated: August 14, 2023

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF RAIN CII CARBON LLC) AS 23-_____
FOR ADJUSTED STANDARD FROM) (Adjusted Standard – Air)
35 Ill. Adm. Code §§ 201.149, 212.123,)
and 212.322, 215.301)

**INDEX OF EXHIBITS FOR RAIN CII CARBON LLC'S
PETITION FOR ADJUSTED STANDARD**

Exhibit A: Rain CII Carbon LLC's Proposal of Regulations, PCB No. R23-18(A) (Aug. 7, 2023) (without exhibits)

Exhibit B: Stipulation and Proposal for Settlement, *Illinois v. Rain CII Carbon LLC*, PCB No. 04-137 (Jan. 5, 2017)

Exhibit C: Rain CII Carbon LLC, CAAPP Permit No. 95120092 (rev. May 16, 2022)

Exhibit D: Excerpts from U.S. EPA, *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, 80 Fed. Reg. 33839 (June 12, 2015)

Exhibit E: *Env't Comm. Fl. Elec. Power Coordinating Grp. v. EPA*, No. 15-1239 (D.C. Cir. Apr. 24, 2017)

Exhibit F: U.S. EPA, Finding of Failure to Submit SIP Revisions, 87 Fed. Reg. 1680 (Jan. 12, 2022)

Exhibit G: 42 U.S.C. § 7509

Exhibit H: 42 U.S.C. § 7410

Exhibit I: *State of Illinois v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31*, 2016 IL 118422

Exhibit J: Administrative Consent Order, *In the Matter of: Rain CII Carbon LLC Robinson, IL*, EPA-5-23-113(a)-IL-03 (Feb. 21, 2023)

Exhibit K: U.S. EPA, Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program (Apr. 17, 2018)

Exhibit L: U.S. EPA, Legal Memorandum: Application of Significant Impact Levels in the Air Quality Demonstration for Prevention of Significant Deterioration Permitting under the Clean Air Act

Exhibit M: 42 U.S.C. § 7475

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 23-18(A)
AMENDMENTS TO)
35 Ill. Adm. Code Parts 212 and 215) (Rulemaking – Air)
)
)

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on this day, the 7th day of August, 2023, I caused to be filed with the Clerk of the Illinois Pollution Control Board **RAIN CII CARBON LLC'S REGULATORY PROPOSAL** entitled **"AMENDMENTS TO 35 ILL. ADM. CODE PARTS 212 AND 215,"** and supporting documents, copies of which are herewith served upon you.

/s/ Alexander Garel-Frantzen

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 23-18(A)
AMENDMENTS TO)
35 Ill. Adm. Code Parts 212 and 215) (Rulemaking – Air)
)
)

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1. Notice of Filing
2. Proposal of Regulations by Rain CII Carbon LLC
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4. Proposed Amendments to 35 Ill. Adm. Code Parts 212 and 215
5. Exhibits

Exhibit A: Stipulation and Proposal for Settlement, *Illinois v. Rain CII Carbon LLC*, PCB No. 04-137 (Jan. 5, 2017)

Exhibit B: Rain CII Carbon LLC, CAAPP Permit No. 95120092 (rev. May 16, 2022)

Exhibit C: Administrative Consent Order, *In the Matter of: Rain CII Carbon LLC Robinson, IL*, EPA-5-23-113(a)-IL-03 (Feb. 21, 2023)

6. Certificate of E-mail Service

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 23-18(A)
AMENDMENTS TO)
35 Ill. Adm. Code Parts 212 and 215) (Rulemaking – Air)
)
)

RAIN CII CARBON LLC'S PROPOSAL OF REGULATIONS

Rain CII Carbon LLC, by and through its attorneys, ArentFox Schiff LLP, moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

Rain CII Carbon LLC

By: /s/ David M. Loring
David M. Loring

Dated: August 7, 2023

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 23-18(A)
AMENDMENTS TO)
35 Ill. Adm. Code Parts 212 and 215) (Rulemaking – Air)
)
)

STATEMENT OF REASONS

I. INTRODUCTION

Rain CII Carbon LLC (“Rain Carbon”), by and through its attorneys, ArentFox Schiff LLP, submits this Statement of Reasons to the Illinois Pollution Control Board (the “Board”) in support of the attached Proposal of Regulations and pursuant to Sections 27 and 28 of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/10, 27 and 28, and 35 Ill. Adm. Code § 102.202, and the July 6, 2023, Order of the Board in R23-18(A) (the “SMB Rulemaking”). The proposed rulemaking would amend the Illinois Administrative Code to provide alternative emission limits and standards for opacity, particulate matter (“PM”), and volatile organic materials (“VOM”) during limited periods of start-up, malfunctions, or breakdowns¹ at Rain Carbon’s coke calcining facility in Robinson, Illinois (the “Facility”). The proposed amendments are narrowly tailored to address periods when the use of available pollution control technology and best pollution control practices are insufficient to ensure compliance with emission limits. As discussed herein, there is no technically feasible or economically reasonable method to ensure compliance with the opacity and VOM standards during start-up, or to ensure

¹ U.S. EPA uses the phrase “start-up, shutdown, and malfunction” or “SSM.” The Board’s rules do not currently address “shutdown” and instead regulate the “start-up, malfunction, or breakdown,” or “SMB,” of stationary sources.

compliance with the PM standard during start-up, malfunction or breakdown events. While SMB events are infrequent relative to normal operations at the Facility, start-up is inherent to the operations at the Facility and periodic malfunction/breakdown events are unavoidable at industrial operations despite best operational and maintenance practices. As such, Rain Carbon requires the relief proposed herein to comply with the Board's regulations as amended by the Board Order in R23-18.

As a result of the Board's elimination of the SMB provisions in R23-18, Rain Carbon proposes amending certain provisions in 35 Ill. Adm. Code Part 212 Subpart B, Visual Emissions, and Subpart K, Particulate Matter Emissions from Process Emission Units; and Part 215, Organic Material Emission Standards and Limitations, Subpart K, Use of Organic Material. These amendments are necessary to ensure the continued operation of the Facility, which manufactures and provides critical product for the aluminum and steel industries.

The Illinois Environmental Protection Agency (the "Illinois EPA") previously authorized specific relief for SMB in the Facility's current Clean Air Act Permit Program ("CAAPP") operating permit. The CAAPP requires adherence to work practice standards applicable during start-up, malfunction, or breakdown events in order for the Facility to temporarily exceed opacity, PM, and VOM limits otherwise applicable during normal operations. Not only has Rain Carbon relied upon that relief, authorized by the sections of the Illinois Administrative Code now repealed by this Board in R23-18, for a substantial period of time, but this Board explicitly authorized such relief as a condition to a Board-approved settlement agreement by and between Rain Carbon and Illinois EPA. As discussed further in Section II.E.4 *infra*, the Facility is subject to the terms of a settlement agreement that *requires* the Facility to control opacity and emissions of PM and VOM by maintaining a minimum operating temperature of 1800°F at its

pyroscrubbers, *except* during SMB. *See Illinois v. Rain CII Carbon LLC*, PCB No. 04-137 (the “2017 IEPA Settlement”), attached as **Exhibit A**. The 2017 IEPA Settlement evidences that Illinois EPA (and this Board) recognized that (i) a minimum pyroscrubber temperature was required to ensure compliance with the applicable opacity, PM, and VOM limits, and (ii) relief from those emission limits was *necessary because* such pyroscrubber temperatures cannot be achieved or maintained at all times during SMB events.

The relief provided to Rain Carbon’s Facility during SMB events does not reflect Illinois EPA’s exercise of enforcement discretion or an authorization of a *prima facie* defense to enforcement during SMB. Rather, the relief is set forth plainly in the 2017 IEPA Settlement as a “future compliance” obligation: “*Except during startup and malfunction/breakdown conditions of either ... Kiln #1 or ... Kiln #2, [Rain Carbon] shall at all times operate its pyro scrubbers as follows: (i) maintain a minimum temperature of 1800°F . . .*” By allowing the Facility to operate its pyroscrubbers below 1800°F during SMB and, therefore, exceed the opacity, PM, and VOM limits, Illinois EPA and this Board, by matter of law, deemed this relief to be permissible under Illinois law. The U.S. Environmental Protection Agency (“U.S. EPA”) concurred with this operational limit and exception for SMB in an administrative consent order entered into with Rain Carbon in February 2023, years after it issued the SSM State Implementation Plan Call (the “SSM SIP Call”) to Illinois and other states and concurrently with Illinois EPA’s work on the SMB Rulemaking.

The Board’s approval of Illinois EPA’s elimination of the SMB provisions from the Illinois Administrative Code in R23-18 directly conflicts with the compliance requirements of the 2017 IEPA Settlement, to which the Facility remains subject *to this day*. Despite this inherent conflict, and despite the many years that Illinois EPA had to address the U.S. EPA SSM

SIP Call, Illinois EPA not once sought outreach to Rain Carbon to discuss the implications of this rulemaking on the Facility's obligations under the settlement.

As demonstrated below, absent relief during SMB, the Facility cannot achieve or maintain 1800°F during start-up, nor when operations are reduced to address a malfunction or breakdown. The proposed amendments to the SMB Rulemaking impose limits upon the Facility's operations during SMB that are *more stringent* than both the work practice standards currently authorized under the Facility's CAAPP permit and the requirements imposed by the 2017 IEPA Settlement. Thus, the requested relief, if approved by the Board, will ensure that the Facility can comply with the 2017 IEPA Settlement and continue operations at its Facility.

Specifically, Rain Carbon seeks the following amendments applicable to the Facility's emission units designated Kiln 1 and Kiln 2 (and the associated pyroscrubber pollution controls):

(i) an amendment under 35 Ill. Adm. Code § 212.124 to allow for up to a 3-hour averaging period (using Test Method 9 of Appendix A to 40 C.F.R. Part 60) to demonstrate compliance with the opacity standard during start-up under 35 Ill. Adm. Code § 212.123;

(ii) an amendment under 35 Ill. Adm. Code § 212.322(d) to establish an annual limit on the number of hours (720 hours) that each kiln may during SMB events exceed the PM standard for process emission units under 35 Ill. Adm. Code § 212.322; and

(iii) an amendment under 35 Ill. Adm. Code § 215.302(b) to establish an averaging period of up to 24 hours during start-up to demonstrate compliance with the VOM standard under 35 Ill. Adm. Code § 215.301.

In support hereof, Rain Carbon provides the following information.

II. STATEMENT OF FACTS

A. PM, Ozone, and VOM Emission Limitations

The federal Clean Air Act (“CAA”) requires the U.S. EPA to set National Ambient Air Quality Standards (“NAAQS”) for six criteria pollutants that specify the maximum permissible concentrations of those pollutants in the ambient air. *See* 42 U.S.C. §§ 7408-09. The CAA requires states to develop a general plan—called a State Implementation Plan (“SIP”)—to attain and maintain the NAAQS, and these plans are submitted to U.S. EPA for approval. A SIP identifies the emission control requirements that the state will rely upon to attain and maintain the NAAQS.

U.S. EPA has set NAAQS for PM (PM₁₀ and PM_{2.5}) and ozone (VOM contributes to the formation of ozone). Through its U.S. EPA-approved SIPs, Illinois EPA has promulgated various emission standards and limitations applicable to stationary sources to meet and maintain the NAAQS for PM and ozone.

1. *PM and Opacity Limits*

As part of its SIP, Illinois EPA established PM and opacity emission limits that are intended to assure attainment and maintenance of the PM standards NAAQS. The Facility is subject to such PM and opacity standards and, until promulgation of the SMB Rulemaking, was exempt from compliance with such standards during SMB events.

First, Section 212.322 prohibits any person from causing or allowing the emission of PM into the atmosphere in any one-hour period from any process emission unit which exceeds the allowable emission rates specified in subsection (c) of the regulation. *See* 35 Ill. Adm. Code § 212.322(a).

Second, Section 212.123 provides that “[n]o person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit other than” fuel combustion emission units. *See* 35 Ill. Adm. Code § 212.123(a). “The emission of smoke or other [PM] from any such emission unit may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such opaque emissions permitted during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft) radius from the center point of any other such emission unit owned or operated by such person, and provided further that such opaque emissions permitted from each such emission unit shall be limited to 3 times in any 24 hour period.” *Id.* § 212.123(b).

Section 201.149, as amended by the SMB Rulemaking, permits the operation of emission sources above generally applicable standards and limitations during SMB events, so long as that permission is “specifically provided for by such standard or limitation.” 35 Ill. Adm. Code § 201.149. This Proposal of Regulations is consistent with that requirement as it provides for specific limitations in the PM emission limit and opacity emission limit applicable to periods of SMB (for PM) and start-up (for opacity) at the Facility. The PM and opacity limitations of Sections 212.322 and 212.123 are collectively referred to herein as the “PM and Opacity Limits.”

2. ***VOM Limits***

VOM is a primary precursor to the formation of ground-level ozone, formed when nitrogen oxide and VOM react in the atmosphere in the presence of sunlight. Illinois EPA set certain emission limits of VOM as part of its SIP. Relevant here, Section 215.301 provides that “[n]o person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic

material into the atmosphere from any emission source.” 35 Ill. Adm. Code § 215.301 (the “VOM Limit”). This Proposal of Regulations is consistent with the SMB Rulemaking requirement as it provides for specific limitations in the VOM Limit applicable to periods of start-up at the Facility.

B. Start-ups, Malfunctions, and Breakdowns

The term “SSM” is defined by U.S. EPA as the “startup, shutdown, or malfunction at a source. It does not include periods of maintenance at such a source. An SSM event is a period of startup, shutdown, or malfunction during which there are exceedances of the applicable emission limitations and thus excess emissions.”² U.S. EPA defines “excess emissions” as “the emissions of air pollutants from a source that exceed any applicable SIP emission limitations.”

Id. When Congress amended the CAA in 1970, “it was widely believed that emission limitations set at levels representing good control of emissions during periods of normal operation could in some cases not be met with the same emission control strategies during periods of [SSM].” *Id.* at 12464. For these reasons, state plans commonly included provisions for “special, more lenient treatment of excess emissions during such periods.” *Id.*

Illinois is one such state that has afforded relief to sources during periods of SMB, including for the otherwise applicable PM and Opacity Limits and VOM Limit. Sections 201.149, 201.261, and 201.262, until promulgation of the SMB Rulemaking, collectively authorized the Illinois EPA to allow sources to continue operating during a malfunction or breakdown or to violate emission limitations during start-up if the source had requested and

² U.S. EPA, *State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction*, 78 Fed. Reg. 12461, 12463 (Feb. 22, 2013).

demonstrated that it is entitled to such relief in its operating permit application for. 35 Ill. Adm. Code §§ 201.149, 201.261, 201.262. Section 201.265 provided that “[t]he granting of permission to operate during a malfunction or breakdown, or to violate [emission limits] during startup, and full compliance with any terms and conditions connected therewith, shall be a prima facie defense” to an Illinois EPA enforcement action. 35 Ill. Adm. Code § 201.265. U.S. EPA in turn has interpreted Illinois’ SMB provisions to be exemptions.³

Illinois EPA has long recognized the unique nature of SMB and the inability of sources to comply with emission limits during those events. In R23-18, the Agency noted that states like Illinois “included provisions in their SIPs providing ‘absolute or conditional’ exemptions from emission limitations for excess emissions during SSM” “[b]ecause pollution control strategies were not thought to be applicable during SSM.” Illinois EPA, Statement of Reasons, PCB No. R23-18, at p. 3 (Dec. 7, 2022). In oral and written testimony, the Agency acknowledged that “limits and standards may at times be exceeded during periods of SMB,”⁴ and that “emission

³ See U.S. EPA, *State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*, 80 Fed. Reg. 33839, 33904 (June 12, 2015) (“2015 Final SIP Call”) (“The general-duty provisions that apply as part of the SSM exemption are not alternative emission limitations; they merely define an unlawful exemption to an emission limitation. States have discretion to fix this issue in a number of ways, including by removing the exceptions entirely, by replacing these exceptions with alternative emission limitations including specific control technologies or work practices that do ensure continuous limits on emissions or by reformulating the entire emission limitation.” (emphasis added)).

⁴ Hearing Transcript, PCB No. R23-18, at 138:12-14 (Jan. 19, 2023).

standards were established that sources may not be able to comply with at all times, whether that be during startup, breakdown, or other circumstances that lead to violations.”⁵

C. The U.S. EPA’s 2015 Final SIP Call

On June 12, 2015, U.S. EPA issued the 2015 Final SIP Call, requiring 36 states, including Illinois, to submit revised SIPs to correct their SSM provisions.⁶ In its 2015 Final SIP Call, U.S. EPA acknowledged that states can employ various regulatory mechanisms, in accordance with the CAA, to address excess emissions that may occur to SSM:

While automatic exemptions and director’s discretion exemptions from otherwise applicable emission limitations for SSM events are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel Similarly, SIPs may, rather than exempt excess emissions, include emission limitations that subject those emissions to alternative numerical limitations or other control requirements during startup and shutdown events or other normal modes of operation, so long as those components of the emission limitations meet applicable CAA requirements and are legally and practically enforceable.

2015 Final SIP Call at 33978. Indeed, the U.S. EPA does not “interpret section 110(a)(2) or section 302(k) [of the CAA] to require that an emission limitation in a SIP provision be composed of a single, uniformly applicable numerical emission limitation. The text of section 110(a)(2) and section 302(k) does not require states to impose emission limitations that include a static, inflexible standard.” *Id.* Instead, the SIPs must “impose limits on emissions on a continuous basis, regardless of whether the emission limitation as a whole is expressed numerically or as a combination of numerical limitations, specific control technology requirements and/or work practice requirements applicable during specific modes of operation,

⁵ Illinois EPA’s Responses to Post-Hearing Questions Submitted by IERG, PCB No. R23-18, at pp. 5-6 (Feb. 14, 2023).

⁶ 2015 Final SIP Call, 80 Fed. Reg. at 33844.

and regardless of whether the emission limitation is static or variable.” *Id.* at 33978-79. By way of example, U.S. EPA provided that “so long as the SIP provision meets other applicable requirements, it may impose different numerical limitations for startup and shutdown.” *Id.* at 33979.

In its 2015 Final SIP Call, U.S. EPA also recommended that such alternative standards be narrowly tailored and reflect several considerations, including, that: (1) the alternative standard is “limited to specific, narrowly defined source categories⁷ using specific control strategies”; (2) the use of control strategies, including pollution controls, to avoid the need for an alternative standard “is technically infeasible during startup... periods”; (3) “[t]he alternative emission limitation requires that the frequency and duration of operation in startup [is] ... minimized to the greatest extent practicable” and that the “the facility is operated in a manner consistent with good practice for minimizing emissions”; and (4) the owner/operator properly document the use of the alternative standard. 80 Fed. Reg. at 33980.

D. Illinois EPA’s Proposal to Eliminate SMB Relief Lacked Sufficient Engagement of the Regulated Community

Though U.S. EPA originally set a deadline of November 22, 2016, by which Illinois was to respond to the 2015 Final SIP call, *id.* at 33848, the deadline to respond to the SIP call was put on hold amid legal challenges. *Env’t Comm. Fl. Elec. Power Coordinating Grp. v. EPA*, No. 15-1239 (D.C. Cir. July 27, 2015). Years later, on January 12, 2022, U.S. EPA published a final Finding of Failure to Submit SIP Revisions, finding that Illinois and eleven other states had

⁷ The “source category” applicable to Rain Carbon is coke calcining facilities.

failed to submit SIP revisions required by the CAA in a timely manner.⁸ The Finding of Failure took effect on February 11, 2022, and Illinois had 18 months (or until August 11, 2023) to cure the Finding of Failure. *Id.*; 42 U.S.C. § 7509(a). If Illinois EPA failed to submit the required SIP revision by August 11, U.S. EPA would be obligated to impose sanctions in the form of either the loss of highway funds to the State or an increase in the emissions offset ratio for New Source Review, or both. *Id.* § 7509(b)(1), (2). In addition, if an adequate SIP were not submitted, then U.S. EPA would be obligated to implement a Federal Implementation Plan within 24 months of the finding of failure. *Id.* § 7410(c)(1).

Illinois EPA did not file with the Board its proposed rule to respond to the SSM SIP Call until December 7, 2022.⁹ Illinois EPA proposed to amend 35 Ill. Adm. Code Parts 201, 202, and 212 to remove the provisions that provided sources with relief as to emission exceedances during periods of SMB. *Id.* It did so without ever engaging in outreach efforts to Rain Carbon and various other stakeholders. By the time Rain Carbon was aware of, and subsequently appeared in R23-18 and this SMB Rulemaking, R23-18(A), on June 1, 2023, the public hearings on Illinois EPA's proposed rule had long since passed.¹⁰ The Board adopted Illinois EPA's proposed rule on July 20, 2023, but not before the Joint Committee on Administrative Rules

⁸ U.S. EPA, Finding of Failure to Submit SIP Revisions, 87 Fed. Reg. 1680 (Jan. 12, 2022) (the "Finding of Failure").

⁹ See Illinois EPA's Proposal of Regulation, *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*, No. R22-18 (Dec. 7, 2022).

¹⁰ Indeed, Rain Carbon entered into an administrative consent order with U.S. EPA just a few months earlier in February 2023, which acknowledged that the Facility had relief from the PM, opacity and VOM limits during periods of SMB. See *infra* Section II.F.

(“JCAR”) objected to Illinois EPA’s eleventh-hour proposal and lack of stakeholder engagement:

JCAR object to [Illinois EPA’s] use of fast-track rulemaking to correct a deficiency the [U.S. EPA] identified on June 12, 2015. . . . [Illinois] EPA had more than enough time to address this situation and engage fully with commenters and their alternative proposals. By waiting to comply with the federal requirements until 2022, the Agency created a situation that could only be remedied in time to meet the federal sanctions deadline by using the fast-track process, and prevented the consideration of less costly alternative proposals.

Statement of Objection to Proposed Rulemaking, PCB No. 23-18, at p. 1 (July 19, 2023).

E. The Robinson Facility

1. Facility Operations

Rain Carbon operates the coke calcining facility located at 12187 East 950th Avenue, in Robinson, Illinois (the “Facility”), under Clean Air Act Program Permit (“CAAPP”) No. 95120092, attached as **Exhibit B**. Operations consist of green coke receiving and handling, coke calcining, and handling/load-out of calcined coke. Rain Carbon operates two calcining lines, each utilizing a rotary kiln for calcining. Green coke, a raw material, is fed into the kiln for processing. The process of calcining coke includes removing moisture and volatile material followed by densifying the coke. The coke leaving the kiln is called calcined coke, which is used by the aluminum and steel industries. The calcined coke leaves the kiln and enters the cooler where it is cooled/quenched with water. After cooling, the calcined coke is transferred to the calcined coke bins to await loading into railcars.

The Facility utilizes two natural gas burners throughout the myriad of operational conditions at the Facility. First, the burners are utilized during the start-up of a kiln to reach a minimum temperature of 400°F at the inlet to the pyroscrubber. Green coke is subsequently introduced into the kiln to provide the majority of additional heat necessary to reach 1800°F (*i.e.*,

the minimum optimal temperature for the control of PM and VOM emissions by the pyroscrubber – the pollution control device for the kilns). The burners are also used as supplemental heat to assist in the stabilization or maintenance of kiln temperatures during various operating conditions, including (i) during start-up to moderate the increase in heat after green coke is introduced; (ii) during normal, steady-state operations to moderate kiln temperatures; and (iii) during periods of malfunction or breakdown to help maintain kiln temperatures when the feed of green coke into the kiln is suspended and to assist in returning the pyroscrubber to optimal operating temperatures after the malfunction/breakdown is resolved.

The kilns have the potential to emit PM and VOM and are subject to the emission limitations of 35 Ill. Adm. Code §§ 212.123, 212.322, and 215.301. The emissions generated by the kilns are controlled by pyroscrubbers.¹¹ The pyroscrubbers are operated at a minimum of 1800°F (except when in start-up, or during malfunction or breakdown events), draw kiln exhaust countercurrent to the flow of coke, and are designed to handle high temperature exhaust while removing VOM and PM from the exhaust gases.

2. ***Operation of the Pyroscrubbers Below 1800°F Is Unavoidable During SMB***

The pyroscrubber is a self-sustaining control device. The coke fines entering the pyroscrubber from the kiln serve as fuel which in turn removes the VOM and PM. As the fuel entering the pyroscrubber reduces, so does the temperature. Similarly, during start-up conditions

¹¹ Baghouses also provide additional control of PM. The baghouses draw the significantly lower temperature exhaust from the rotary coolers in the same direction as the flow of coke in the cooler and then filters PM from the cooler exhaust gases. Emissions from Kiln 2 are also controlled with a multi-clone prior to the baghouse. The baghouses exhaust to the atmosphere through dedicated stacks.

when green coke is being introduced into the furnace and, thus, little fuel has entered the pyroscrubber, temperature is low.

From time to time, the Facility must go through start-up and, similarly, from time to time the Facility may experience events that result in malfunctions or breakdowns as part of the normal operation and general use of an industrial facility. In either case, such SMB conditions result in temporary operation of the pyroscrubber below 1800°F *because of lack of fuel entering the pyroscrubber*.

While reduction in pyroscrubber temperature is unavoidable, its use/occurrence is limited to the following scenarios:

- Start-up. During start-up of the kiln from ambient temperature following an outage or other event that causes the kiln to be taken offline and emptied of coke. If the kiln has been cooled to ambient temperature, it will be pre-heated using the kiln's natural gas burners until the respective pyroscrubber has reached a minimum temperature of 400°F. At this point, green coke is introduced to the kiln. Start-up from ambient temperatures with no green coke in the kiln generally takes no more than 24 hours to complete.
- Malfunction/Breakdown. During or in response to a malfunction or breakdown of equipment that results in, or requires, an interruption in the feed of green coke and/or the discharge of calcined coke. A kiln will operate in "slow roll" mode when production needs to be paused (*i.e.*, feed into the kiln is stopped), but the coke in the kiln cannot be or is not discharged from the kiln. During slow roll, the kiln rotation rate is significantly reduced to pause production. When the feed is stopped and the kiln is on slow roll, the temperature reduction is due to the significant reduction in

finer particles entering the pyroscrubber. As a result, the Facility generally tries to maintain temperature in the kiln. This is because returning to normal operations (*i.e.*, when the pyroscrubber temperature at the inlet exceeds 1800°F) from a slow roll reduces the amount of time that a calcining line takes to achieve a normal pyroscrubber temperature and production rate, maintains higher kiln temperature throughout the process, minimizes emissions, and minimizes the duration of potentially higher-than-normal emission rates during the following start-up. In addition, the kiln's longevity is improved because large temperature fluctuations in a kiln can cause wear on a kiln's refractory or even cause the kiln to warp.

3. ***Operation of the Pyroscrubbers Below 1800°F Is Very Limited in Frequency and Duration***

Rain Carbon operates its Facility in accordance with good air pollution control practices to minimize the generation of emissions. It accomplishes this, in part, by minimizing the number and the duration of start-up events, and minimizing the causes of malfunctions or breakdowns, either of which requires the Facility to operate the pyroscrubbers at temperatures that are not capable of ensuring compliance at all times with the applicable PM and Opacity Limits and the VOM Limit.

Consequently, relative to normal, steady-state operations, pyroscrubbers operate below 1800°F infrequently. Generally, the Facility experiences on average less than 10 start-ups per kiln per year lasting less than 24 hours in duration for each start-up. Additionally, despite Rain Carbon's best efforts, kiln malfunctions and breakdowns occur periodically at the Facility generally taking the pyroscrubbers below 1800°F for shorter periods of time (*e.g.*, 4-5 hours).

4. ***The Facility Was Granted Broader Relief by Illinois EPA from Compliance with Opacity, PM, and VOM Emission Limits During All SMB Events***

Rain Carbon has very specific relief during SMB in its CAAPP permit. That relief, authorized by the sections of the Illinois Administrative Code now repealed by this Board (*see supra* Section II.D), was memorialized in and enforced by a *prior, separate*, proceeding before this Board requiring that the Facility control opacity, PM and VOM emissions by maintaining a minimum operating temperature of 1800°F at its pyroscrubbers.¹² However, this Board, the Illinois EPA (and, subsequently, U.S. EPA) recognized that a necessary condition of that operating requirement was the need for relief during start-up, breakdown, and malfunction events when it is infeasible for the Facility to achieve and maintain the minimum operating temperature determined by Illinois EPA to be necessary to ensure compliance with the opacity, PM, and VOM emission limits.

As discussed above, in the SMB rulemaking, R23-18, Illinois EPA claimed that the SMB provisions constituted a “prima facie defense to an enforcement action. . . . should excess emissions result in an enforcement action.” *See, e.g.*, Illinois EPA, Statement of Reasons, PCB No. R23-18, at p. 5 (Dec. 7, 2022). Rain Carbon generally disagrees with Illinois EPA’s position for the reasons identified in Section II.B and D *supra*, but as to the Facility, the Agency’s position is simply incorrect. The relief provided for SMB was *not* a memorialization of Illinois EPA’s exercise of enforcement discretion. Nor was it an authorization of a prima facie defense to enforcement during SMB. Rather, Illinois EPA required Rain Carbon to enter into the 2017

¹² *See* Ex. A, 2017 IEPA Settlement.

IEPA Settlement, as approved by this Board, and mandated that the Facility achieve particular operating temperatures, *except* during SMB. Nowhere in that order is there mention of enforcement discretion or a prima facie defense. Indeed, the 2017 IEPA Settlement's language setting forth "future compliance" obligations is clear:

Except during startup and malfunction/breakdown conditions of either ... Kiln #1 or ... Kiln #2, [Rain Carbon] shall at all times operate its pyro scrubbers as follows: (i) maintain a minimum temperature of 1800°F

See Ex. A, 2017 IEPA Settlement, Section V.D.1.f; see also Ex. B, CAAPP permit §§ 4.2(4)(a)(i)(A), (B).

Illinois EPA could not have entered into—and the Board could not have accepted—the 2017 IEPA Settlement if it were contrary to Illinois law. *State of Illinois v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31*, 2016 IL 118422, ¶ 53 (“[S]tatutes and laws in existence at the time a contract is executed are considered part of the contract,’ and ‘[i]t is presumed that parties contract with knowledge of the existing law.’”). That is, by allowing the Facility to operate its pyroscrubbers below 1800°F during SMB and therefore exceed the opacity, VOM, and PM limits, Illinois EPA and this Board, by matter of law, have deemed this relief to be permissible. *See also Ex. A, 2017 IEPA Settlement at V.D.5* (“This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.”).

It is not just the Illinois EPA and Board who have acknowledged the relief afforded to Rain Carbon; U.S. EPA also has concurred that the 2017 IEPA Settlement expressly conditioned the operation of the pyroscrubbers above 1800°F as inapplicable during periods of SMB. In a

February 2023 administrative consent order between U.S. EPA and Rain Carbon,¹³ U.S. EPA acknowledged that the Facility's CAAPP permit was modified in 2019 to "reflect the future compliance set forth in the [2017 IEPA Settlement]" that requires operation of the pyroscrubbers "[e]xcept during startup and malfunction/breakdown condition." *See* Ex. C, 2023 U.S. EPA Settlement at ¶¶ 14, 15.

The Board's Order in R23-18, which eliminates SMB provisions from the Illinois Administrative Code, directly conflicts with the 2017 IEPA Settlement's compliance requirements and relief specific to the Facility to which it remains subject *to this day*. Despite this inherent conflict, and despite the years that Illinois EPA has had to respond to the U.S. EPA SSM SIP Call (*see supra* Sections II.C-D), Illinois EPA not once sought outreach to Rain Carbon to discuss the implications of this rulemaking on the Facility's obligations under the 2017 IEPA Settlement.

The potential ramifications are significant. Rain Carbon does not know—and, as noted above, Illinois EPA has not informed it—of the implications of this rulemaking on the terms of the 2017 IEPA Settlement. If the implication is that the Facility must maintain at least 1800°F at all times, the Facility cannot operate in compliance with that requirement. *See infra* Section III. And the Facility will be forced offline each time it needs to reduce temperature to the pyroscrubber due to a malfunction or breakdown, after which it would be unable to start-up as temperatures below 1800°F can persist for up to 24 hours during start-up, as is currently authorized under Condition 7.3(a)(iii)(E) of the CAAPP permit. Alternatively, if the Board grants the amendments proposed herein by Rain Carbon to the SMB Rulemaking, compliance

¹³ *See* Administrative Consent Order, *In the Matter of: Rain CII Carbon LLC Robinson, IL*, EPA-5-23-113(a)-IL-03 (Feb. 21, 2023) ("the 2023 U.S. EPA Settlement"), attached as **Exhibit C**.

with the requirements of the 2017 IEPA Settlement will be maintained, as Rain Carbon is proposing more stringent (and more narrowly-tailored than is currently permitted in the Facility's CAAPP permit) limitations specific to opacity, PM, and VOM applicable during periods of start-up (for opacity and VOM) and SMB (for PM), when 1800°F is not generally achievable at the inlet to the pyroscrubbers.

The relief afforded to the pyroscrubbers during SMB cannot be viewed in isolation. Inherent in Illinois EPA's requirement to operate the pyroscrubbers above 1800°F and to incorporate that obligation into the CAAPP permit's Compliance Assurance Monitoring ("CAM") plan is the agreement by the Illinois EPA that the pyroscrubber temperature is an indicator of compliance with the kilns' PM and VOM emission limits.¹⁴ Therefore, by excluding the minimum pyroscrubber temperature requirement during SMB, Illinois EPA (and this Board) in the 2017 IEPA Settlement recognized that it was unreasonable to subject the Facility to PM (and opacity) and VOM limits during those periods when achieving the minimum pyroscrubber temperature is infeasible.

Importantly, too—and further belying Illinois EPA's position that the SMB provisions provided only a prima facie defense to enforcement—Rain Carbon has never had absolute relief from PM, opacity, and VOM during SMB. In fact, its CAAPP permit contains over four pages of work practice standards that detail requirements applicable during SMB which must be met to be relieved from having to comply with the underlying Opacity and PM Limits and VOM Limit.

While Rain Carbon's proposed amendments to the SMB Rulemaking impose restrictions during SMB that go beyond what presently exists in the Facility's CAAPP permit, Rain Carbon

¹⁴ See Ex. B, CAAPP permit at CAM Plan Tables 7.5.1, 7.5.2, 7.5.3, and 7.5.4.

notes that the CAAPP permit already contains requirements and work practice standards for SMB that comport with U.S. EPA's recommendations in the 2015 Final SIP Call (*see supra* Section II.C, p. 10) to fashion specific, narrowly tailored relief during SMB where the use of control technology in a source category (coke calcining facility) is technically infeasible during SMB, where the frequency and duration of operation in SMB is minimized to the greatest extent practicable, and where the source (the Facility) is operated in a manner consistent with approved work practices for minimizing and documenting emissions during SMB.

In particular, during start-up, Section 7.3 of the CAAPP permit requires the Facility to: (1) adhere to established written start-up procedures, (2) refrain from introducing green coke feed (a) unless the pyroscrubber is operating at a temperature of at least 400°F or (b) if the baghouse controlling that kiln cooler is not operating properly, (3) use natural gas as a supplemental heat source to the kiln in order to reach a pyroscrubber operating temperature of 1800°F, (4) achieve a pyroscrubber operating temperature of 1800°F within 24 hours after introducing green coke feed to the kiln, and (5) comply with robust monitoring and recordkeeping requirements.

In the event of a malfunction or breakdown of both thermocouples at the inlet of a pyroscrubber, Section 7.4 of the CAAPP permit requires the Facility to: (1) repair or replace at least one of the thermocouples within 24 hours, (2) cease green coke feed to a kiln within 24 hours unless at least one thermocouple at the inlet of that kiln's pyroscrubber functions properly, and (3) comply with robust monitoring and recordkeeping requirements. While Rain Carbon believes that such measures are sufficient, evidently Illinois EPA no longer agrees. Thus, Rain Carbon is proposing further controls and limits during SMB that are more stringent than what was previously required of the Facility.

F. 2023 U.S. EPA Settlement

As stated above, in February 2023—over seven years after U.S. EPA’s SSM SIP call and five years after the 2017 IEPA Settlement—Rain Carbon and U.S. EPA entered into the 2023 U.S. EPA Settlement. Under that settlement, U.S. EPA affirmed the ability of Rain Carbon to operate under the SMB relief afforded under Illinois law and to continue to operate Kiln 1 and Kiln 2 and their associated pyroscrubbers in violation of applicable emissions limits during SMB. *See* Ex. C, 2023 U.S. EPA Settlement at ¶ 16 (“Section 4.2(4)(a)(i)(A) of the 2019 Permit sets forth that pursuant to 35 IAC 201.149, 201.261, and 201.262, Rain CII Carbon is authorized to operate Kiln 1 and Kiln 2 and their associated pyroscrubbers in violation of the applicable requirements of Condition 4.2(2)(a)(i)(A), 4.2(2)(b)(i)(A), and 4.2(2)(d)(i)(A) during start-up.”); *id.* at ¶ 19 (“Section 4.2(2)(f)(i)(E) of the 2019 Permit sets forth that except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee must maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers, measured at the thermocouples located at the inlet to each pyroscrubber.”).

In addition, the 2023 U.S. EPA Settlement requires Rain Carbon to implement various improvements at the Facility intended to minimize emissions during SMB events. These improvements are reflective of the Facility’s commitment to minimize the duration of start-ups and restarts after malfunctions or breakdowns, in addition to the frequency and occurrence of malfunctions or breakdowns. Among other measures, Rain Carbon is required to: (a) increase each existing kiln burners’ natural gas firing capacity, which will reduce the duration that the temperature in the pyroscrubber remains below 1800°F during short-term feed stoppages and start-up events, and (b) make a number of improvements at the Facility to reduce the number and duration of feed chute plugs, thereby reducing the potential duration that the pyroscrubber must

operate below 1800°F during a malfunction or breakdown. *See* Ex. C, 2023 U.S. EPA Settlement at ¶ 29.

Together, these extensive improvements, some of which are already underway, are estimated to cost Rain Carbon nearly \$1,300,000:

2023 U.S. EPA Settlement Requirements	Estimated Costs
Increase kiln burner capacity	\$851,000
Install air cannons in green bins and feed chute	\$354,000
Replace green coke bin cone with antifriction coating	\$85,000
Total	\$1,290,000

III. PURPOSE AND EFFECT OF THE PROPOSAL

The purpose and effect of this rule is to amend Title 35, Sections 212.124 and 212.322 and Section 215.302 to establish alternative, specific, emission standards applicable to the Facility for opacity, PM, and VOM, respectively, during periods of time when the Facility is in start-up (for opacity and VOM) and SMB (for PM) and is unable to achieve or maintain an inlet temperature of 1800°F at the inlet to the pyroscrubber servicing either Kiln 1 or Kiln 2. The amendments provide for a specific relief to a standard or limitation, which is required by Section 201.149, 35 Ill. Adm. Code § 201.149, as revised by the SMB Rulemaking.

Rain Carbon’s proposal will allow for limited exceedances of the applicable opacity and VOM limits during start-up, and PM limits during SMB events, at the Facility because there is no air pollution control device or technically or economically feasible operational measure that can ensure compliance with those limits at all times during the variable and transient conditions inherent in start-up, malfunction, and breakdown events. In addition, Rain Carbon’s proposal will allow the Facility to remain in compliance with the 2017 IEPA Settlement, which provides the Facility with relief from the above-referenced standards and from the requirement to

maintain the pyroscrubber temperature above 1800°F during SMB conditions. Stated differently, if the Board grants Rain Carbon's proposal, then there will be no need to modify the 2017 IEPA Settlement because the relief granted by rule will be more stringent than the requirements of the 2017 IEPA Settlement. If the relief requested herein is not granted by the Board, however, the SMB Rulemaking will be in direct conflict with the Board-approved 2017 IEPA Settlement.

Rain Carbon's proposed amendments are consistent with U.S. EPA's recommendations for alternative standards articulated in the 2015 Final SIP Call. *See supra* Section II.C at p. 10. First, the proposed amendments are limited to two emissions units – Kiln 1 and Kiln 2. Second, there is no alternative control strategy, including additional pollution control equipment, that eliminates the need for the proposed alternative standards during SMB.¹⁵ *See infra* Section V. Third, the proposed amendments provide for alternative standards that are limited in scope and duration, as the relief requested for opacity, for PM, and for VOM are limited in scope and duration while the pyroscrubbers servicing the affected units are operating below a threshold temperature. Lastly, each proposed amendment requires appropriate recordkeeping and reporting to document Rain Carbon's use of the alternative standard.

As further discussed below (*see infra* Section VIII.B) and as demonstrated in the modeling presented in the forthcoming technical support document prepared by Trinity Consulting on behalf of Rain Carbon in support of these proposed amendments, the relief sought

¹⁵ To be clear, the improvements that Rain Carbon is undertaking pursuant to the 2023 U.S. EPA Settlement will serve to reduce the duration of start-ups and reduce some of the causes of malfunction and breakdown. *However*, the 2023 U.S. EPA Settlement reflects the Agency's endorsement that while such improvements will not eliminate all occurrences of start-up, malfunction, or breakdown events, the measures agreed to are proper mitigation measures even while the Facility is temporarily operating the pyroscrubbers below 1800°F.

will not interfere with the continued attainment of the NAAQS for PM and ozone (*i.e.*, VOM as a precursor) in accordance with Section 110(l) of the CAA.

IV. GEOGRAPHIC REGIONS AND SOURCES AFFECTED

The geographic area subject to the proposed rule is Crawford County, Illinois, which is not an area designated as Nonattainment or Maintenance for any NAAQS, including the applicable PM and Ozone NAAQS. *See* 40 C.F.R. § 81.314 (Section 107 Attainment Status Designations; Illinois). In addition, the proposed rule will apply only to Rain Carbon's Facility in Robinson, Illinois.

V. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

In promulgating regulations under the Act, the Board "shall take into account" various factors, including "the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a); 35 Ill. Adm. Code 102.202(b).

As explained in Section II.E above, Rain Carbon has very few options or ability to control opacity and emissions of PM and VOM during SMB. As evidenced by the 2017 IEPA Settlement, the principal mechanism for the Facility to improve or reduce those emissions is to maintain a minimum operating temperature of 1800°F at its pyroscrubbers. Thus, Rain Carbon is not seeking alternative standards during malfunction and breakdown for opacity and VOM because the inherently higher temperatures in the kilns during such periods negates the need for relief. Under its CAAPP Permit and the 2017 IEPA Settlement, the Facility is operating in compliance with detailed work practice standards applicable during SMB, which are narrowly tailored to address the technical infeasibility of controlling the Facility's emissions during SMB while ensuring that such emissions are minimized and documented.

Moreover, under the 2023 U.S. EPA Settlement, Rain Carbon is already implementing several additional operational measures that will help ensure that the operating temperature increases more quickly following SMB events and, thus, will aid in controlling opacity and emissions of PM and VOM. These measures, which include increasing the burner capacity of the kilns, is expected to cost an estimated \$1,290,000.

Based on a review of U.S. EPA's RACT/BACT/LAER Clearinghouse, Rain Carbon has not identified any pollution control device employed at similarly situated facilities that will ensure compliance at all times with the applicable opacity and VOM limits during start-up and PM limits during SMB. Rain Carbon did identify the installation of new, additional natural gas burners as a potential operational measure that may be technically feasible at the Facility.

However, the burners are *not* pollution control equipment; instead, they are equipment integral to the normal operation of the kilns and would not eliminate the need for the relief requested here for at least two reasons: (1) similar to increasing the capacity of the existing burners (*see supra* Section II.F), adding additional burners would not eliminate time periods when the pyroscrubbers operate below 1800°F, it would merely reduce the length of a start-up, or the length of time it takes for the pyroscrubber to return to 1800°F following a malfunction or breakdown event; and (2) the cost for such incremental improvement is not economically reasonable (the capital cost of installing new burners was estimated to be \$10,027,718 for both kilns).

Moreover, Rain Carbon does not know the extent to which such new burners would control opacity and emissions of PM and VOM. In contrast, Rain Carbon does know that the use of the new burners would not rectify the inability of the Facility to maintain a minimum operating temperature of 1800°F during SMB. For this very reason, Rain Carbon has long been

afforded relief during such events under its CAAPP permit because the Illinois EPA, this Board, and the U.S. EPA has recognized that it is infeasible for the Facility to achieve and maintain 1800°F, the minimum operating temperature determined by Illinois EPA to be necessary to ensure compliance with the opacity, PM, and VOM emission limits.

VI. SYNOPSIS OF TESTIMONY

At hearing, Rain Carbon anticipates calling the following individuals as witnesses at hearing in support of the proposed rulemaking:

- Dan Fearday, Plant Manager, Rain Carbon, who will testify and answer questions regarding the Facility and the proposed rule.
- Ross Gares, Director of Calcining Operations, Rain Carbon, who will testify and answer questions regarding the Facility and the proposed rule.
- Bryan Higgins, Senior Consultant, Trinity Consultants, who will testify and answer questions regarding the technical justifications for the proposed rule.
- Jeremias Szust, Managing Consultant, Trinity Consultants, who will testify and answer questions regarding the technical justifications, including modeling, for the proposed rule.

VII. A PUBLIC HEARING IS REQUIRED ON RAIN CARBON'S PROPOSAL

Both Section 28(a) of the Illinois Environmental Protection Act, 415 ILCS 5/28(a), and the CAA require the Board to conduct at least one public hearing on Rain Carbon's proposal.¹⁶ See 415 ILCS 5/28(a) ("No substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned."); 40 C.F.R. § 51.102 ("The State must hold a public hearing or provide the public the opportunity to request a public hearing" on "[a]ny [SIP] plan or revision of it."); 42 U.S.C. § 7410(i) ("Each revision to an implementation

¹⁶ Rain Carbon is situated differently from other participants in R23-18(A) who have already presented their proposals at public hearings held in R23-18, which satisfied the requirements of the Act as to those participants' proposals but not as to Rain Carbon's proposal.

plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing”). The January 19 and February 16, 2023, public hearings held in R23-18 do not satisfy the requirements of the Act because Rain Carbon neither participated in those hearings nor submitted its proposal in R23-18, and thus Rain Carbon’s proposal “does not deal with a subject on which a hearing has been held within the preceding six months,” 415 ILCS 5/28(a). For the same reason, the prior hearings in R23-18 do not satisfy the requirements of the CAA with respect to Rain Carbon’s proposal.

To the extent the Board disagrees with Rain Carbon’s interpretation and believes a public hearing is permissible and not required, Rain Carbon requests that a public hearing be held on Rain Carbon’s proposal given the unique issues presented.

As to public notice requirements, at least 20 days prior to the scheduled date of the hearing, the Board must give notice of the hearing by public advertisement in a newspaper of general circulation in the area of the state concerned of the date, time, place, and purpose of the hearing, provide written notice to any person in the area concerned who has submitted a written request for notice of public hearings, and make available to any person upon request copies of the proposed regulations and summaries of the reasons supporting their adoption. 415 ILCS 5/28(a).

VIII. RAIN CARBON’S DEMONSTRATION OF NONINTERFERENCE UNDER CAA 110(L)

Section 110(l), 42 U.S.C. § 7410(l), of the CAA prohibits U.S. EPA from approving any proposed SIP revision that would interfere with the attainment and maintenance of the NAAQS in effect at the time of the revision. In turn, “EPA will approve a SIP revision that removes or modifies control measure(s) in the SIP only after the State has demonstrated that such removal or modification will not interfere . . . with the attainment of the [NAAQS].” U.S.

EPA, *Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan* (June 8, 2005) (draft) (“EPA Noninterference Guidance”). The CAA does not define what constitutes “interference;” however, U.S. EPA has indicated that air quality modeling based on “EPA’s most recent technical guidance” for the particular NAAQS can be used to show that the proposed rule will not interfere with the attainment or maintenance of the NAAQS. *Id.*

Rain Carbon is working with Trinity Consultants (“Trinity”) to prepare a Technical Support Document (“TSD”) that will provide a “noninterference demonstration” that shows that the proposed amendments to 35 Ill. Admin. Code sections 212.322 (PM), 212.124 (opacity), and 215.302 (VOM) will not interfere with Illinois’ ability to attain or maintain compliance with the PM and ozone NAAQS. Rain Carbon notes that while there is no NAAQS for opacity and, therefore, a noninterference demonstration is not required for opacity,¹⁷ the TSD will demonstrate that the modeled environmental impact of the proposed amendments is insignificant and will not interfere with the PM or ozone NAAQS.

Rain Carbon’s Facility is located in Crawford County, Illinois. Crawford County is in attainment with the 2015 8-hour ozone NAAQS. Similarly, Crawford County is in attainment of the 2012 PM NAAQS (including the annual PM_{2.5} standard, the 1997 24-hour PM_{2.5} standard and the 2006 24-hour PM₁₀ standard).¹⁸

¹⁷ The EPA Noninterference Guidance states that changes to opacity regulations can be subject to a Section 110(l) demonstration on a “case-by-case” basis.

¹⁸ U.S. EPA designates Crawford County as “unclassifiable/attainment” for the PM and Ozone NAAQS. See U.S. EPA, Illinois Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants, www3.epa.gov/airquality/greenbook/anayo_ak.html (last visited Aug. 7, 2023).

It is significant to note that Crawford County has been in attainment of the PM and ozone NAAQS *prior* to Illinois EPA's SMB Rulemaking, meaning that the relief during SMB conditions for PM, opacity, and VOM afforded to the Facility under the existing CAAPP permit does not – and has never – caused or resulted in the nonattainment of any NAAQS. Consequently, a Section 110(l) noninterference demonstration is, arguably, unnecessary as Rain Carbon's proposed rule amendments are *more stringent* than the relief afforded to the Facility prior to the SMB Rulemaking. In other words, Rain Carbon's proposed amendments will result in an *improvement* in air quality as compared to the emissions allowable under the CAAPP permit. U.S. EPA guidance allows, but does not require, air quality modeling to demonstrate noninterference, particularly where there is no degradation in air quality. *See* EPA Noninterference Guidance.

Notwithstanding the forgoing paragraph, in an abundance of caution, air quality modeling was conservatively conducted to demonstrate that the proposed amendments will not interfere with the NAAQS when compared to operations that do not include SMB (*i.e.*, during normal operations). Trinity will use air dispersion modeling to determine the impact to ambient air from the alternative PM and alternative VOM standards proposed for the Facility's Kiln 1 and Kiln 2 sources. As further detailed in the forthcoming TSD, Trinity modeled the impact of the proposed regulations as the impact from emission rates and stack characteristics associated with a kiln start-up, subtracting the impacts from allowable emission rates and stack characteristics associated with normal operations. The modeling compares the allowable emissions under normal (*i.e.*, non-start-up, non-malfunction/breakdown) conditions with emissions that occur during worse-case operating conditions – namely, start-up. In this manner, the resulting modeled

impacts are representative of the *additional* contribution from operating during limited periods when the pyroscrubber inlet temperature is less than 1800°F.

In order to demonstrate that the modeled contribution does not interfere with the maintenance of the PM and ozone NAAQS, the TSD will compare the modeling results to the significant impact levels (“SILs”) for PM₁₀, PM_{2.5}, and ozone. *See* U.S. EPA Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Program (Apr. 17, 2018) (“SIL Guidance”). The use of SILs to demonstrate noninterference is appropriate. U.S. EPA has long-used SILs in order to “quantify the point below which a new or modified source does not cause, or contribute to, a violation of the NAAQS or PSD increment ... [as sufficient] for the EPA or a state permitting authority to justify the value as a level *below which an impact on air quality may be regarded as not-meaningful or significant.*”¹⁹ SILs are generally used for purposes of evaluating the impact of a proposed modification under the PSD permitting program, which requires a demonstration *similar*²⁰ to Section 110(l) of the CAA that emissions from the construction or operation of the source “will not cause, or contribute to” air pollution in excess of a NAAQS. *See* 42 U.S.C. § 7475(a)(3). Accordingly, U.S. EPA has interpreted the PSD program’s “cause, or contribute to” to mean that impacts that are “insignificant” (*i.e.*, a “degree of impact that is ‘trivial’ or ‘de minimis’ in nature”) will not negatively impact the NAAQS. *Id.* *See also* SIL Guidance, at pp. 4-5.

¹⁹ *See* U.S. EPA Legal Memorandum: Application of Significant Impact Levels in the Air Quality Demonstration for Prevention of Significant Deterioration (PSD) Permitting under the Clean Air Act,” pp. 13-14, *available at* www.epa.gov/sites/default/files/2018-04/documents/legal_memorandum_final_4-17-18.pdf (emphasis added) (last visited Aug. 7, 2023).

²⁰ Indeed, PSD permitting requirements are specifically incorporated under Section 110 of the CAA. *See* 42 U.S.C. § 7410(a)(2).

While Rain Carbon's proposed amendments do not constitute a modification that triggers PSD permitting, the amendments can be modeled in a similar manner in order to account for the "increase" in PM and VOM emissions between the proposed amendments and Illinois EPA's SMB Rulemaking. By comparing the modeled impacts to the applicable SILs for PM and VOM in U.S. EPA's SIL Guidance, the TSD will demonstrate that the proposed amendments are below the SILs and, therefore, have an insignificant impact on the NAAQS. Insignificant impacts will not interfere with the maintenance of the PM or ozone NAAQS in Illinois and, consequently, satisfy the requirements under Section 110(l) of the CAA.

As noted above, as a result of the extremely limited time period during which Rain Carbon has had to prepare this proposed rulemaking, Rain Carbon and Trinity are continuing to finalize the TSD. The proposed regulatory language under sections 212.322 (PM), 212.124 (opacity), and 215.302 (VOM) are based upon the results of the TSD and will be submitted to the Board in support thereof. *Rain Carbon will submit the TSD in support of this proposal prior to the requested hearing date.*

IX. PETITION SIGNATURE REQUIREMENT

In the Order of the Board dated July 6, 2023, the Board waived the requirement of 35 Ill. Adm. Code § 102.202(g) to obtain a petition signed by at least 200 persons. *See* Order of the Board, R23-18(A), at p. 6. Therefore, the requirement of Section 102.202(g) does not apply to this Proposal.

X. STATEMENT THAT PROPOSAL AMENDS MOST RECENT VERSION OF RULE

Rain CII Carbon LLC certifies in accordance with 35 Ill. Adm. Code 102.202(i) that this proposal for amendments to 35 Ill. Adm. Code 211, 212, and 215 amends the most recent version of the rules as published on the Illinois Pollution Control Board's website.

XI. MATERIALS TO BE INCORPORATED BY REFERENCE

No materials will be incorporated by reference in the Proposal of Amendments.

XII. CONCLUSION

For the reasons set forth above, Rain CII Carbon LLC hereby submits this regulatory proposal and requests that the Board adopt these rules for the State of Illinois.

Respectfully submitted,

Rain CII Carbon LLC

By: /s/ David M. Loring
David M. Loring

Dated: August 7, 2023

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**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY
SOURCES**

**PART 212
VISIBLE AND PARTICULATE MATTER EMISSIONS**

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Section

212.100	Scope and Organization
212.107	Measurement Method for Visible Emissions
212.108	Measurement Methods for PM-10 Emissions and Condensable PM-10 Emissions
212.109	Measurement Methods for Opacity
212.110	Measurement Methods For Particulate Matter
212.111	Abbreviations and Units
212.112	Definitions
212.113	Incorporations by Reference

SUBPART B: VISIBLE EMISSIONS

Section

212.121	Opacity Standards (Repealed)
212.122	Visible Emissions Limitations for Certain Emission Units For Which Construction or Modification Commenced On or After April 14, 1972
212.123	Visible Emissions Limitations for All Other Emission Units
212.124	Exceptions
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SUBPART D: PARTICULATE MATTER EMISSIONS FROM INCINERATORS

Section

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**SUBPART E: PARTICULATE MATTER EMISSIONS FROM FUEL COMBUSTION
EMISSION UNITS**

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- 212.201 Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively Located in the Chicago Area
- 212.202 Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively Located Outside the Chicago Area
- 212.203 Controlled Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972, Using Solid Fuel Exclusively
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- 212.208 Aggregation of Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972
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Section

- 212.301 Fugitive Particulate Matter
- 212.302 Geographical Areas of Application
- 212.304 Storage Piles
- 212.305 Conveyor Loading Operations
- 212.306 Traffic Areas
- 212.307 Materials Collected by Pollution Control Equipment
- 212.308 Spraying or Choke-Feeding Required
- 212.309 Operating Program
- 212.310 Minimum Operating Program
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SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

Section

- 212.321 Process Emission Units For Which Construction or Modification Commenced On or After April 14, 1972
- 212.322 Process Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972
- 212.323 Stock Piles
- 212.324 Process Emission Units in Certain Areas

SUBPART N: FOOD MANUFACTURING

Section

- 212.361 Corn Wet Milling Processes
- 212.362 Emission Units in Certain Areas

SUBPART O: PETROLEUM REFINING, PETROCHEMICAL AND CHEMICAL MANUFACTURING

Section

- 212.381 Catalyst Regenerators of Fluidized Catalytic Converters

SUBPART Q: STONE, CLAY, GLASS AND CONCRETE MANUFACTURING

Section

- 212.421 Portland Cement Processes For Which Construction or Modification Commenced On or After April 14, 1972
- 212.422 Portland Cement Manufacturing Processes
- 212.423 Emission Limits for the Portland Cement Manufacturing Plant Located in LaSalle County, South of the Illinois River
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- 212.425 Emission Units in Certain Areas

SUBPART R: PRIMARY AND FABRICATED METAL PRODUCTS AND MACHINERY MANUFACTURE

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- 212.441 Steel Manufacturing Processes

212.442	Beehive Coke Ovens
212.443	Coke Plants
212.444	Sinter Processes
212.445	Blast Furnace Cast Houses
212.446	Basic Oxygen Furnaces
212.447	Hot Metal Desulfurization Not Located in the BOF
212.448	Electric Arc Furnaces
212.449	Argon-Oxygen Decarburization Vessels
212.450	Liquid Steel Charging
212.451	Hot Scarfing Machines
212.452	Measurement Methods
212.455	Highlines on Steel Mills
212.456	Certain Small Foundries
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212.458	Emission Units in Certain Areas

SUBPART S: AGRICULTURE

Section

212.461	Grain-Handling and Drying in General
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212.464	Sources in Certain Areas

SUBPART T: CONSTRUCTION AND WOOD PRODUCTS

Section

212.681	Grinding, Woodworking, Sandblasting and Shotblasting
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SUBPART U: ADDITIONAL CONTROL MEASURES

Section

212.700	Applicability
212.701	Contingency Measure Plans, Submittal and Compliance Date
212.702	Determination of Contributing Sources
212.703	Contingency Measure Plan Elements
212.704	Implementation
212.705	Alternative Implementation

212.Appendix A	Rule into Section Table
212.Appendix B	Section into Rule Table

212.Appendix C	Past Compliance Dates
212.Illustration A	Allowable Emissions From Solid Fuel Combustion Emission Sources Outside Chicago (Repealed)
212.Illustration B	Limitations for all New Process Emission Sources (Repealed)
212.Illustration C	Limitations for all Existing Process Emission Sources (Repealed)
212.Illustration D	McCook Vicinity Map
212.Illustration E	Lake Calumet Vicinity Map
212.Illustration F	Granite City Vicinity Map

AUTHORITY: Implementing Section 10 and authorized by Section 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rules 202 and 203: Visual and Particulate Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-15, 32 PCB 403, at 3 Ill. Reg. 5, p. 798, effective February 3, 1979; amended in R78-10, 35 PCB 347, at 3 Ill. Reg. 39, p. 184, effective September 28, 1979; amended in R78-11, 35 PCB 505, at 3 Ill. Reg. 45, p. 100, effective October 26, 1979; amended in R78-9, 38 PCB 411, at 4 Ill. Reg. 24, p. 514, effective June 4, 1980; amended in R79-11, 43 PCB 481, at 5 Ill. Reg. 11590, effective October 19, 1981; codified at 7 Ill. Reg. 13591; amended in R82-1 (Docket A), at 10 Ill. Reg. 12637, effective July 9, 1986; amended in R85-33 at 10 Ill. Reg. 18030, effective October 7, 1986; amended in R84-48 at 11 Ill. Reg. 691, effective December 18, 1986; amended in R84-42 at 11 Ill. Reg. 1410, effective December 30, 1986; amended in R82-1 (Docket B) at 12 Ill. Reg. 12492, effective July 13, 1988; amended in R91-6 at 15 Ill. Reg. 15708, effective October 4, 1991; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R91-22 at 16 Ill. Reg. 7880, effective May 11, 1992; amended in R91-35 at 16 Ill. Reg. 8204, effective May 15, 1992; amended in R93-30 at 18 Ill. Reg. 11587, effective July 11, 1994; amended in R96-5 at 20 Ill. Reg. 7605, effective May 22, 1996; amended in R23-18(A) at Ill. Reg. _____, effective _____.

BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

SUBPART B: VISIBLE EMISSIONS

Section 212.124 Exceptions

- a) Sections 212.122 and 212.123 of this Subpart shall apply during times of startup, malfunction and breakdown except as provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201.
- b) Sections 212.122 and 212.123 of this Subpart shall not apply to emissions of water or water vapor from an emission unit.

- c) An emission unit which has obtained an adjusted opacity standard pursuant to Section 212.126 of this Subpart shall be subject to that standard rather than the limitations of Section 212.122 or 212.123 of this Subpart.
- d) Compliance with the particulate regulations of this Part shall constitute a defense.
 - 1) For all emission units which are not subject to Chapters 111 or 112 of the CAA and Sections 212.201, 212.202, 212.203 or 212.204 of this Part but which are subject to Sections 212.122 or 212.123 of this Subpart: the opacity limitations of Sections 212.122 and 212.123 of this Subpart shall not apply if it is shown that the emission unit was, at the time of such emission, in compliance with the applicable particulate emissions limitations of Subparts D through T of this Part.
 - 2) For all emission units which are not subject to Chapters 111 or 112 of the CAA but which are subject to Sections 212.201, 212.202, 212.203 or 212.204 of this Part:
 - A) An exceedance of the limitations of Section 212.122 or 212.123 of this Subpart shall constitute a violation of the applicable particulate limitations of Subparts D through T of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the unit and the control devices, and in accordance with Method 5, 40 CFR part 60, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the particulate emission limitations.
 - B) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions of the emission unit and the control devices, and in accordance with Method 5, 40 CFR part 60, Appendix A, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.
- e) During any period of start-up at the emission unit designated Kiln 1 or Kiln 2 at the Rain CII Carbon LLC facility located in Robinson, Illinois, when average opacity exceeds 30 percent for a six-minute period, as applicable pursuant to

Section 212.123(a) of this Subpart, compliance with Section 212.123(a) may alternatively be demonstrated for that six-minute period as follows.

- 1) Compliance with that six-minute period may be determined based on Test Method 9 (40 C.F.R. Part 60, Appendix A, incorporated by reference in Section 212.113) opacity readings the average of non-consecutive opacity readings during a 1-hour period; provided, however, that compliance may be based on the average of up to three, 1-hour average periods, in the event that compliance is not demonstrated during the preceding hour. For purposes of this subsection (e), "start-up" is defined as the duration from when green coke feed is introduced into the kiln until the temperature at the pyroscrubber inlet servicing the kiln achieves a minimum operating temperature of 1800°F (based on a three-hour rolling average).

(Source: Amended at 20 Ill. Reg. 7605, effective May 22, 1996; Amended at Ill. Reg. _____, effective _____)

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION UNITS

Section 212.322 Process Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972

- a) Except as further provided in this Part, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any process emission unit for which construction or modification commenced prior to April 14, 1972, which, either alone or in combination with the emission of particulate matter from all other similar process emission units at a source or premises, exceeds the allowable emission rates specified in subsection (c) of this Section.
- b) Interpolated and extrapolated values of the data in subsection (c) of this Section shall be determined by using the equation:

$$E = C + A(P)^{B10}$$

where:

P = process weight rate; and
E = allowable emission rate; and,

- 1) For process weight rates up to 27.2 Mg/hr (30 T/hr):

	Metric	English
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P	Mg/hr	T/hr
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E	kg/hr	lbs/hr
A	1.985	4.10
B	0.67	0.67
C	0	0

2) For process weight rates in excess or 27.2 Mg/hr (30 T/hr):

	Metric	English
P	Mg/hr	T/hr
E	kg/hr	lbs/hr
A	25.21	55.0
B	0.11	0.11
C	-18.4	-40.0

c) Limits for Process Emission Units For Which Construction or Modification Commenced Prior to April 14, 1972

P	Metric		English	
	Mg/hr	E kg/hr	P T/hr	E lbs/hr
0.05	0.27	0.05	0.55	
0.1	0.42	0.10	0.87	
0.2	0.68	0.20	1.40	
0.3	0.89	0.30	1.83	
0.4	1.07	0.40	2.22	
0.5	1.25	0.50	2.58	
0.7	1.56	0.75	3.38	
0.9	1.85	1.00	4.10	
1.8	2.9	2.00	6.52	
2.7	3.9	3.00	8.56	
3.6	4.7	4.00	10.40	
4.5	5.4	5.00	12.00	
9.	8.7	10.00	19.20	
13.	11.1	15.00	25.20	
18.	13.8	20.00	30.50	
23.	16.2	25.00	35.40	
27.2	18.15	30.00	40.00	
32.0	18.8	35.00	41.30	
36.0	19.3	40.00	42.50	
41.0	19.8	45.00	43.60	
45.0	20.2	50.00	44.60	
90.0	23.2	100.00	51.20	
140.0	25.3	150.00	55.40	

180.0	26.5	200.00	58.60
230.0	27.7	250.00	61.00
270.0	28.5	300.00	63.10
320.0	29.4	350.00	64.90
360.0	30.0	400.00	66.20
400.0	30.6	450.00	67.70
454.0	31.3	500.00	69.00

where:

P = Process weight rate in Mg/hr or T/hr, and
E = Allowable emission rate in kg/hr or lbs/hr.

d) Alternative Standard

- 1) The owner and operator of the Rain CII Carbon LLC facility located in Robinson, Illinois, shall be allowed to emit particulate matter into the atmosphere in excess of the allowable emission rates specified in subsection (c) applicable to the emission unit designated Kiln 1 or Kiln 2 during any period of time that the temperature of the inlet to the pyroscrubber servicing either emission unit does not achieve a minimum operating temperature of 1800°F during start-up, malfunction, or breakdown (based on a three-hour rolling average).
- 2) Use of the alternate standard in subsection (d)(1) shall not to exceed 720 hours in the aggregate per kiln in a calendar year. It shall not be a violation of this Part to operate the pyroscrubber servicing Kiln 1 or Kiln 2 below the minimum operating temperature in subsection (d)(1) during this time.
- 3) During any time that Kiln 1 or Kiln 2 is operated while the pyroscrubber servicing that emission unit is not achieving the minimum operating temperature in subsection (d)(1), the owner and operator must: (i) minimize emissions to the extent reasonably practicable; (ii) not introduce green coke into the kiln unless or until a minimum operating temperature of 400°F measured at the inlet to the pyroscrubber is achieved; and (iii) operate the natural gas-fired burners to minimize the duration that a kiln operates below 1800°F, consistent with technological limitations, manufacturer specifications, and good air pollution control practices for minimizing emissions.
- 4) The owner and operator must keep and maintain all records necessary to demonstrate compliance with this subsection, including, but not limited to, records of each hour that the pyroscrubber operated below the minimum operating temperature specified in this subsection.

(Source: Amended at 20 Ill. Reg. 7605, effective May 22, 1996; Amended at Ill. Reg. _____, effective _____)

**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**

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215.102	Testing Methods
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**SUBPART B: ORGANIC EMISSIONS FROM STORAGE
AND LOADING OPERATIONS**

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215.121	Storage Containers
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215.123	Petroleum Liquid Storage Tanks
215.124	External Floating Roofs
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**SUBPART C: ORGANIC EMISSIONS FROM
MISCELLANEOUS EQUIPMENT**

Section

215.141	Separation Operations
215.142	Pumps and Compressors
215.143	Vapor Blowdown
215.144	Safety Relief Valves

SUBPART E: SOLVENT CLEANING

Section

- 215.181 Solvent Cleaning in General
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- 215.185 Compliance Plan

SUBPART F: COATING OPERATIONS

Section

- 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)
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SUBPART H: SPECIAL LIMITATIONS FOR SOURCES IN MAJOR URBANIZED AREAS WHICH ARE NONATTAINMENT FOR OZONE

Section

- 215.240 Applicability
- 215.241 External Floating Roofs
- 215.245 Flexographic and Rotogravure Printing
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SUBPART I: ADJUSTED RACT EMISSIONS LIMITATIONS

Section

- 215.260 Applicability
- 215.261 Petition
- 215.263 Public Hearing
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SUBPART K: USE OF ORGANIC MATERIAL

Section

- 215.301 Use of Organic Material
- 215.302 Alternative Standard
- 215.303 Fuel Combustion Emission Sources
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SUBPART N: VEGETABLE OIL PROCESSING

Section

- 215.340 Hexane Extraction Soybean Crushing
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- 215.344 Recordkeeping for Vegetable Oil Processes
- 215.345 Compliance Determination
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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
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- 215.408 Heatset Web Offset Lithographic Printing
- 215.409 Testing Methods for Volatile Organic Material Content
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**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
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- 215.427 Alternative Program for Leaks
- 215.428 Compliance Dates
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215.430	General Requirements
215.431	Inspection Program Plan for Leaks
215.432	Inspection Program for Leaks
215.433	Repairing Leaks
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SUBPART R: PETROLEUM REFINING AND RELATED INDUSTRIES; ASPHALT MATERIALS

Section

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215.442	Vacuum Producing Systems
215.443	Wastewater (Oil/Water) Separator
215.444	Process Unit Turnarounds
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Section

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Section

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215.APPENDIX E	Reference Methods and Procedures
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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 R19-1 at 44 Ill. Reg. 15032, effective September 4, 2020; amended in R23-18(A) at Ill. Reg. _____, effective _____.

SUBPART K: USE OF ORGANIC MATERIALS

Section 215.302 Alternative Standard

- a) Emissions of organic material in excess of those permitted by Section 215.301 are allowable if such emissions are controlled by one of the following methods:
- 1a) Flame, thermal or catalytic incineration so as either to reduce such emissions to 10 ppm equivalent methane (molecular weight 16) or less, or to convert 85 percent of the hydrocarbons to carbon dioxide and water; or,
 - 2b) A vapor recovery system which adsorbs and/or condenses at least 85 percent of the total uncontrolled organic material that would otherwise be emitted to the atmosphere; or,
 - 3e) Any other air pollution control equipment approved by the Agency capable of reducing by 85 percent or more the uncontrolled organic material that would be otherwise emitted to the atmosphere.

b) Compliance with the permitted emissions of organic material under subsection (a) during any period of start-up at the emission unit designated Kiln 1 or Kiln 2 at the Rain CII Carbon LLC facility located in Robinson, Illinois, shall be determined by the average of hourly emissions of organic material during start-up of the emission unit; provided, however, that in no event shall the averaging period of any single start-up exceed twenty-four (24) hours. For purposes of the alternative standard in subsection (b), "start-up" is defined as the duration from when green coke feed is introduced into the kiln until the temperature at the pyroscrubber inlet servicing the kiln achieves a minimum operating temperature of 1800°F (based on a 3-hour rolling average). During any period of start-up, the owner and operator must: (i) minimize emissions to the extent reasonably practicable; (ii) not introduce green coke into the kiln until a minimum operating temperature of 400°F measured at the inlet to the pyroscrubber is achieved; and (iii) operate the natural gas-fired burners to minimize the duration of start-up, consistent with technological limitations, manufacturer specifications, and good air pollution control practices for minimizing emissions. The owner and operator must keep and maintain all records necessary to demonstrate compliance with this subsection, including, but not limited to, records of the duration and frequency of each start-up period.

(Source: Amended at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; Amended at Ill. Reg. _____, effective _____)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO) R 23-18(A)
35 Ill. Adm. Code Parts 212 and 215) (Rulemaking – Air)
)
)

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 7th day of August, 2023, I have electronically served a true and correct copy of **Rain CII Carbon LLC’s Regulatory Proposal entitled “Amendments to 35 Ill. Adm. Code Parts 212 and 215,”** by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the persons identified on the attached Service List.

My e-mail address is Alex.Garel-Frantzen@afslaw.com.

The number of pages in the e-mail transmission is 171.

The e-mail transmission took place before 5:00 p.m.

/s/ Alexander J. Garel-Frantzen

Alexander J. Garel-Frantzen

Dated: August 7, 2023

David M. Loring
Alexander J. Garel-Frantzen
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EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 04-137
)	(Enforcement - Air)
RAIN CII CARBON LLC,)	
(formerly known as)	
Robinson Carbon, Inc.))	
a foreign limited liability company,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and RAIN CII CARBON LLC (formerly known as “Robinson Carbon, Inc.”) (“Respondent”) (together, “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2014), the Pollution Control Board Air Pollution Regulations (“Board Air Pollution Regulations”), and the Illinois EPA Air Pollution Regulations (“Illinois Air Pollution Regulations”), Respondent’s revised air operating permit, #75110042 issued on January 17, 1997 (“Operating Permit”), and Clean Air Act Permit Program Permit Number 95120092, issued on

September 4, 2003, which was subsequently reissued on May 6, 2006, and reissued again on January 2, 2014 (“CAAPP Permit”), as alleged in the Third Amended Complaint, except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Procedural History

1. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014).

2. Respondent, RAIN CII CARBON LLC is a foreign limited liability company authorized to do business in Illinois. Its registered agent is C. T. Corporation System, 208 South LaSalle Street, Suite 814, Chicago, Illinois. The original complaint was filed February 2, 2004, naming Robinson Carbon, Inc. as Respondent. On March 10, 2004 Respondent filed a motion to in part correct its name from Robison Carbon, Inc. to CII Carbon LLC. This motion was never acted upon. Complainant has subsequently used CII Carbon LLC as the Respondent in its amended complaints. In August 2007, CII Carbon LLC changed its name to Rain CII Carbon LLC. This Stipulation is made between the State of Illinois and Rain CII Carbon LLC.

3. At all times relevant to the Complaint, Respondent has owned and operated a plant that produces calcined coke for the aluminum industry and which is located at 12187 East 950th Avenue, Robinson, Crawford County, Illinois (“Facility”). The calcined coke is produced on two lines, Line #1 and Line #2, respectively. Each line has a kiln controlled by a pyro scrubber and a cooler that is normally controlled by a bag house.

4. On September 3, 1998, the Illinois EPA issued Violation Notice A-1998-00230 to

the Respondent for exceeding particulate and sulfur dioxide (“SO²”) emissions standards and thereby causing or allowing air pollution.

5. On October 8, 1999, the Illinois EPA issued Violation Notice A-1999-00298 to the Respondent for failure to comply with its Operating Permit, failing to report a malfunction, and failing to provide compliance records.

6. On January 10, 2000, the Illinois EPA issued Violation Notice A-1999-00491 to the Respondent for operating the Facility’s #2 Kiln and #2 Cooler in violation of the particulate emissions limits established under Section 212.321 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.321.

7. On February 2, 2004, a Complaint was filed on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, against the Respondent and alleging violations contained in Violation Notices A-1998-00230, A-1999-00298, A-1999-00491, as Counts I and II, respectively, of the Complaint.

8. On April 7, 2004, the Illinois EPA issued Violation Notice A-2004-00093 to the Respondent for its failure to record certain data and keep required records.

9. On April 26, 2004, the Illinois EPA issued Violation Notice A-2004-00110 to the Respondent for failure to properly maintain equipment, operating equipment in a manner inconsistent with its CAAPP Permit and failure to timely submit incident reports.

10. On May 3, 2005, the Illinois EPA issued Violation Notice A-2005-00107 to the Respondent for failing to keep adequate records.

11. On January 20, 2006, a First Amended Complaint was filed on behalf of the

People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, against the Respondent which added the additional violations contained in Violation Notices A-2004-00093, A-2004-00110, and A-2005-00107, as Counts III, IV and V, respectively, of the First Amended Complaint.

12. On September 5, 2008, the Illinois EPA issued Violation Notice A-2008-00086 to the Respondent for failure to minimize emissions during a shutdown, exceeding process weight rate limits on particulate emissions, failure to promptly notify Illinois EPA of deviations from its CAAPP Permit, and failure to maintain records.

13. On March 4, 2010, the Illinois EPA issued Violation Notice A-2009-00187 to the Respondent for failure to properly monitor the Facility's emissions.

14. On March 19, 2010, a Second Amended Complaint was filed on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, against the Respondent which added the additional violations contained in Violation Notice A-2008-00086, in Counts VI and VII of the Second Amended Complaint.

15. On September 12, 2012, the Illinois EPA issued Violation Notice A-2012-00057 to the Respondent for failing to properly perform emissions monitoring, timely submit its 2011 Annual Emissions Report, submit true and complete annual compliance certifications for 2010 and 2011, and for failing to report deviations from its CAAPP Permit.

16. On March 17, 2015, the People filed a motion for leave to file their Third Amended Complaint. On April 6, 2015, the Board granted the People's motion and accepted the

Third Amended Complaint for filing.

B. Allegations of Non-Compliance

- Count I: Air Pollution**
Violations of Section 9(a) of the Act, 415 ILCS 5/9(a), and Sections 201.141 and 212.321 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141 and 212.321;
- Count II: Permit Condition Violations**
Violations of Section 9(b) of the Act, 415 ILCS 5/9(b), and Standard Conditions 7, 9 and 9(a) of Respondent's Operating Permit #7511042;
- Count III: Reporting and Recordkeeping Violations**
Violations of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a), and Conditions 5.6.6, 7.1.9, 7.2.5, 7.2.9(c)-(d), 7.3.9(c)-(d), and 7.2.10 of its CAAPP Permit;
- Count IV: Maintenance and Notification Violations**
Violations of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a), and Conditions 7.2.3, 7.2.10, and 9.2.2 of its CAAPP Permit;
- Count V: Recordkeeping Violations**
Violations of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a), and Conditions 5.6.1, 5.6.6, 7.1.9, 7.2.9, 7.4.9, and 9.6.1 of its CAAPP Permit;
- Count VI: Operation and Notification Violations**
Violations of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a), and Conditions 7.2.3(h)(ii)(D)(2) and 7.2.6 of its CAAPP Permit;
- Count VII: Failure to Timely Submit Annual Emissions Reports**
Violations of Section 9(a) of the Act, 415 ILCS 5/9(a), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a); and,

Count VIII: Failure to Submit True and Accurate Compliance Certifications for 2010 and 2011

Violations of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a), and Condition 9.8 of its CAAPP Permit.

C. Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaints filed in this matter and referenced within Section I.B above but does not contest these allegations for purposes of settling this matter.

D. Compliance Activities to Date

As of the date of the filing of this Stipulation, the Respondent represents that it has undertaken the following compliance measures:

1. On January 2, 2014, Illinois EPA issued CAAPP Permit Number 96120092 to Respondent, with an expiration date of January 2, 2019, in response to its December 6, 2007 application for a renewal of CAAPP permit #95120092;
2. On or about July 10, 1999, repaired the hole in the archway ceiling of the pyro scrubber;
3. Undertaken the following improvements relative to Kiln #2:
 - a. In August 1999, equipped the kiln with a new gas-fired burner;
 - b. In February 2008, replaced thirty feet of shell and refractory brick at the back of the kiln;
 - c. On or about August 2010, modified the construction of the dam at the feed end of the kiln, so as to prevent spillage of coke and to

decrease air infiltration into the kiln and installed catch chutes (May 2011 for kiln 2, and June 2012 for Kiln 1) to contain any coke that might spill; and,

- d. Continued to periodically repair the walls of the kiln as necessary;
4. Based on an engineering study which it caused to be conducted, Respondent performed a series of process enhancements to the Facility's particulate controls system, including:
 - a. In February 2001, completed the revamping of the internal portions of the #2 Cooler by installing thicker, more uniform refractory lining at the cooler inlet, in order to improve material cooling rates and reduce the effect of coke slides;
 - b. In December 2001, completed overhauling the quench systems for the #1 and #2 Coolers by installing additional pressure gauges, new piping, and a dedicated pump for each cooler quench water system, in order to improve quenching; and,
 - c. In October 2001, installed an independent secondary air fan for Kiln #2;
 5. On or before October 27, 1999, began maintaining a reserve of replacement bags for each of the Facility's bag houses, specifically a reserve of at least 525 replacement bags for Bag House #1 and at least 351 replacement bags for Bag House #2, by initiating the reorder process for new replacement bags whenever the inventory of replacement bags

reached 50% of this reserve number in order to again have the required number on hand;

6. Starting in January 2003, began implementing a more thorough inspection of each bag house during the shutdowns. These more thorough inspections involve entering the bag house when bags are being replaced and inspecting the area above and below the tubesheet and making any required repairs. Plant personnel attended training seminars in the late 1990's to better understand baghouse maintenance and operations. Inspections have continued and new personnel (engineers and maintenance personnel) have been attending training as hired;
7. Beginning in 2000, began keeping a log for each bag house that records breakdowns and repairs and lists work orders for maintenance activities;
8. Also beginning in 2000 and continuing to the present day, implemented quarterly vibration analysis inspections of key Facility equipment, including conveyors, kilns and bag house fans ("Vibration Analysis Program"). When inspections and/or vibration data indicates possible issues with the proper operation of Facility equipment, appropriate measures are taken to rectify any problems observed during quarterly vibration inspections. The Vibration Analysis Program has been and continues to be performed by a third party consulting firm, which provides quarterly reports to Respondent of its inspections and findings;

9. Beginning in June 2006, began monitoring each unit's kiln cooler exhaust temperatures so as to ensure the bags are not exposed to excessive temperatures, the data was assimilated into the Facility's IHISTORIAN system, (data logging system for the plant) and the PLC (Programmable Logic Controller – which is the computer that controls the process) was programmed with a baghouse trip setting to shut down the bag house if/when temperatures become too high for the bags (i.e., temperatures above 700° F for which the current bags are rated);
10. In November 1999 created a malfunction and breakdown reporting form which was filled out and then faxed to Illinois EPA whenever a breakdown or malfunction of longer than thirty minutes occurs and that form was used until the new CAAPP Permit was issued which now requires that such breakdowns/malfunctions be recorded and subsequently reported in semiannual monitoring reports;
11. On April 13, 2004, completed emissions testing demonstrating compliance with particulate emissions limits that allowed for higher production rates to be authorized in a Construction Permit issued in 2006;
12. In approximately June 2004, began maintaining a hard copy of the cooler gas diversion log sheet until it began to maintain an electronic copy on a secure backup server and, beginning in November 2009, began maintaining an electronic copy of the gas diversion log sheet;

13. On March 12, 2004, replaced the #2 Dust Collector exhaust fan and the cooler exhaust ductwork and continues to monitor and make repairs as necessary;
14. Repaired inlet ductwork on September 11, 2008 to #1 and #2 Dust Chambers and continue to monitor and make repairs as necessary;
15. Developed and implemented an internal procedure for visible emission readings when Method 22 was required by the previous CAAP Permit on April 4, 2004. Then implemented procedure for opacity readings that complies with Method 9 for both pyroscrubbers and both rotary cooler bag houses associated with Kiln #1 and Kiln #2 as per the current CAAP Permit;
16. Updated visible emissions testing inspection forms to include start and end times and to more accurately reflect the language of Method 22 and Condition 7.2.5 of its former current CAAPP Permit. The present CAAPP permit requires that such inspections are done in accordance with the requirements and specifications of USEPA Method 9;
17. On July 10, 2010, submitted its Annual Emissions Report to Illinois EPA for calendar year 2011;
18. In June 2004, revised reporting and recordkeeping system and updated internal policies to ensure proper maintenance of records and reporting of deviations as required by its then existing CAAPP Permit and revised again in January of 2012 to respond to the Illinois EPA;

19. In January 2012, implemented routine internal training of all personnel regarding:
 - a. Notification requirements and procedures;
 - b. Recordkeeping and records access;
 - c. Opacity monitoring;
 - d. Proper coke feed rate; and,
 - e. Bypass operations, including emissions minimization; and,
20. In August 2016, Respondent updated its log for tracking malfunctions and breakdowns such that the log now links work orders for corresponding repairs for malfunctions and breakdowns. Respondent also trained all of its Control Board Operators and Back-Up Control Board Operators in the use of, and new procedures for, the updated log ("Updated Log System").

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Third Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2014).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest. The requirements of this Applicability Section shall not apply with respect to the proposed gas easement and proposed temporary construction easements described in the "Easement Description" which is attached to this Stipulation as Exhibit 1. The Applicability Section shall not apply to either the proposed gas easement or the proposed temporary construction easements depicted or otherwise described in the "Easement Sketch," which is Exhibit 2 to this Stipulation.

This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's ability to gather information regarding the compliance status of the Facility was hindered by the Respondent's violations;
2. There is social and economic benefit to the Facility;
3. Operation of the Facility was suitable for the area in which it occurred;
4. Compliance with the terms of the Respondent's CAAPP Permit and the

particulate matter emissions limits is both technically practicable and economically reasonable; and,

5. Respondent has taken steps to come into compliance with the Act, the Board Air Pollution Regulations, Illinois EPA Air Pollution Regulations, Operating Permit and the CAAPP Permit.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and

7. whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Respondent’s initial violations began on or around April 1998 and the Illinois EPA continued to cite the Respondent for various violations of the Act, the Board Air Pollution Regulations, Illinois EPA Air Regulations, and the Respondent’s CAAPP Permit up through September 12, 2012.

2. The Complainant alleges and Respondent denies that Respondent demonstrated an absence of due diligence in attempting to comply with the Act, the Board Air Pollution Regulations, Illinois EPA Air Regulations, and, initially, with the terms and conditions of its Operating Permit, and, subsequently, with the terms and conditions of its CAAPP Permit, as evidenced by its failure to properly operate and maintain the #2 Kiln and #2 Cooler and Respondent’s serious recalcitrance in record maintenance.

3. The Respondent realized an economic benefit as the result of its alleged failure to properly operate and maintain the Facility, through its failure to comply with applicable particulate regulations, and its failure to keep and maintain the required records related to its operation of the Facility.

4. The Complainant has determined, based upon the specific facts of this matter that a penalty of Two Hundred and Thirty-Five Thousand Dollars (\$235,000.00) will serve to deter the Respondent from committing any further violations of the Act, the Board Air Pollution Regulations, the Illinois EPA Air Pollution Regulations, and its CAAPP Permit, and will aid in

enhancing voluntary compliance with the aforementioned requirements in the future.

5. To the Complainant's knowledge, the Respondent has no previously adjudicated violations of the Act.

6. The Respondent failed to self-disclose any of the violations that are alleged in the Second Amended Complaint or the 2009 Violation Notice. Additionally, the Respondent failed to notify the Illinois EPA of certain malfunctions at the Facility and, further, of its operational deviations from the terms and conditions contained in its CAAPP Permit.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Two Hundred and Thirty-Five Thousand Dollars (\$235,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$500.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All

stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check or money order.

A copy of the certified check or money order and any transmittal letter shall be sent to:

Evan J. McGinley
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Immediately, upon adoption of this Stipulation by the Pollution Control Board, the Respondent shall:

- a. Perform one USEPA Method 9 reading each day, pursuant to the terms and conditions set forth in Respondent's current CAAPP Permit;
- b. Continue to monitor kiln cooler exhaust temperatures of each unit, so as to ensure that the bags are not exposed to excessive temperatures (i.e., temperatures above 700° F);
- c. Continue to conduct its quarterly Vibration Analysis Program;
- d. Continue to use its Updated Log System;
- e. Ensure that at least one replacement fan is always on-site for each bag house, except when a fan has been replaced. Respondent shall begin the procurement process for a new fan immediately following the replacement of an existing bag house fan, for whatever reason;
- f. Except during startup and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), Respondent shall at all times operate its pyro scrubbers as follows:

- i. Maintain a minimum temperature of 1800°F, measured at the thermocouple(s) located at the inlet to each pyro scrubber, using a 3-hour rolling average as per current Compliance Assurance Monitoring Plan (“CAM Plan”) and current CAAPP Permit; Monitor the pyro scrubber inlet temperatures of each unit, so as to ensure that the minimum temperature is maintained; and,
 - ii. Utilize the inlet temperature of each pyro scrubber as the CAM indicator and develop a CAM indicator range;
 - g. Maintain all records which Respondent is required to keep as a term or condition of its current CAAPP Permit, as may subsequently be amended, available for review by Illinois EPA personnel, when requested, at all reasonable times;
 - h. Continue to maintain a reserve of at least 525 replacement bags for Bag House 1 and at least 351 bags for Bag House 2 by immediately initiating the procurement process when a bag change is scheduled; and,
 - i. Continue to maintain an electronic log of cooler gas diversions.

2. Within sixty (60) days following the Board’s acceptance of this Stipulation, Respondent shall install and then operate a redundant thermocouple at each pyro scrubber inlet. Upon completion of the installation of these redundant thermocouples, Respondent shall thereafter monitor the inlet temperature in each pyro scrubber by using the redundant thermocouple in parallel with the corresponding existing thermocouple for temperature and possible thermocouple failure.

3. Within thirty (30) days following Respondent's installation of the redundant thermocouples required under Section V.D.2 of this Stipulation, above, Respondent shall submit to Complainant in writing, in accordance with the notice procedures specified under Section V.G, below:

- a. A detailed inspection procedure which Respondent shall use when either of the Facility's bag houses are shut down for internal maintenance or bag replacement; and,
- b. An application for Significant Modification to the CAAPP Permit issued on January 2, 2014. This Significant Modification shall request to incorporate the items specified under Section V.D.1 and 2 of this Stipulation.

4. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

5. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

6. The Respondent shall cease and desist from future violations of the Act, the Board Air Pollution Regulations, the Illinois EPA Air Pollution Regulations, and CAAPP Permit that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the Two Hundred and Thirty-Five Thousand Dollars (\$235,000.00) penalty, its commitment to cease and desist as contained in Section V.D.6, above, its completion of all the requirements herein, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act, Board Air Pollution Regulations, the Illinois EPA Air Pollution Regulations, Respondent's now-expired Operating Permit and its CAAPP Permit that were the subject matter of the Third Amended Complaint. The release set forth above does not extend to any matters other than those expressly specified in the Third Amended Complaint. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
 - b. liability for future violation of state, federal, local, and common laws and/or regulations;
 - c. liability for natural resources damage arising out of the alleged violations;
- and,
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.G. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

G. Notices and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Stipulation, shall be delivered to the following designated representatives:

As to the Complainant

Evan McGinley
Assistant Attorney General
Illinois Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60601

Crystal Myers-Wilkins
Assistant Counsel
Division of Legal Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Mike Reed
Manager of CAAPP Unit
Bureau of Air
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Yasmine Kepner
Manager, Compliance Unit
Bureau of Air
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Daniel Fearday
Plant Manager
Rain CII Carbon LLC
12187 E. 950th Avenue
Robinson, Illinois 62454

Roy M. Harsch
Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, IL 60606-1698

H. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this

Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


AGREED:

PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

ALEC MESSINA, Acting Director
Illinois Environmental Protection Agency

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 12/29/16

DATE: 12/23/16

RAIN CII CARBON, LLC

BY: _____

Name: _____

Title: _____

DATE: _____

Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

ALEC MESSINA, Acting Director
Illinois Environmental Protection Agency

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

RAIN CII CARBON, LLC

BY: _____

Name: GERARD SWEENEY

Title: PRESIDENT & CEO

DATE: January 5, 2017

EXHIBIT "B" SHEET 1

PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER & PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 6 NORTH, RANGE 12 WEST, SECOND PRINCIPAL MERIDIAN CRAWFORD COUNTY, ILLINOIS

A permanent gas main easement being a part of the Southwest Quarter of the Southwest Quarter and part of the Southeast Quarter of the Southwest Quarter Section 2, Township 6 North, Range 12 West of the Second Principal Meridian, Crawford County, State of Illinois, described as follows:

Commencing at 5/8" Iron Rod at the southwest corner of said Southwest Quarter of the Southwest Quarter of Section 2; thence, along the south line of said Southwest Quarter of the Southwest Quarter, North 89 degrees 40 minutes 51 seconds East a distance of 1265.17 feet to the west line of the former Big Four/C.C.C. & St. Louis Railroad right of way; thence, along said west line, North 30 degrees 36 minutes 50 seconds West a distance of 32.46 feet to the point of beginning.

From said point of beginning; thence, continuing on last said west line, North 30 degrees 36 minutes 50 seconds West a distance of 23.20 feet; thence North 89 degrees 50 minutes 33 seconds East a distance of 204.34 feet to the east line former Big Four/C.C.C. & St. Louis Railroad right of way; thence, along last said east line, South 37 degrees 41 minutes 37 seconds East a distance of 25.22 feet; thence South 89 degrees 50 minutes 33 seconds West a distance of 207.94 feet to the point of beginning.

Said easement contains 0.095 acres, more or less.

Also a 20 foot temporary construction easement lying north of and being parallel and adjacent to the above described permanent gas main easement and a 16 foot temporary construction easement lying south of and being parallel with and adjacent to the above described permanent gas main easement. Said temporary construction easement lines to be extended or shortened to terminate at the east and west lines of the subject parcel.

Said temporary construction easements containing 0.170 acres, more or less.

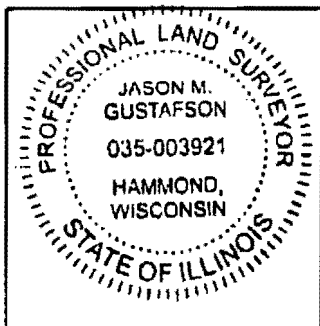
Subject to any and all easements, conditions and restrictions of record.

As shown on Exhibit B Sheet 2 attached hereto and made a part hereof.

NOTES:

1. THE OWNERSHIP OF THE SUBJECT TRACT, SHOWN HEREON, IS BASED UPON ABSTRACTOR'S LIMITED TITLE CERTIFICATE DATED 8/18/2016 AND DOCUMENTS RECEIVED FROM REPRESENTATIVES OF G&P LAND COMPANY. NO OTHER RESEARCH WAS PERFORMED BY THE UNDERSIGNED SURVEYOR.
2. SEE SHEET 2 FOR SKETCH OF EASEMENT AREA DESCRIBED HEREON.
3. THIS DESCRIPTION AND SKETCH DOES NOT CONSTITUTE A BOUNDARY SURVEY PER ILLINOIS MINIMUM STANDARDS ADMINISTRATIVE RULES SECTION 1270.56.

IF THIS EXHIBIT WITH DESCRIPTION IS NOT STAMPED AND SIGNED BY THE P.L.S. WHOSE SIGNATURE APPEARS HEREON, IT SHOULD BE CONSIDERED A COPY AND NOT THE ORIGINAL.



I, Jason M. Gustafson, Illinois Professional Land Surveyor No. 035-003921, do hereby certify that these easement exhibits were prepared by me or under my direct supervision and that they are true and correct to the best of my knowledge and belief.

Jason M. Gustafson 9/22/2016
Signature Date

Jason M. Gustafson, PLS
License Number 035-003921
License expiration date: November 30, 2016.
Pages or sheets covered by this certification: 1 & 2

RAIN CII CARBON LLC
PIN: 05-3-02-000-004-001

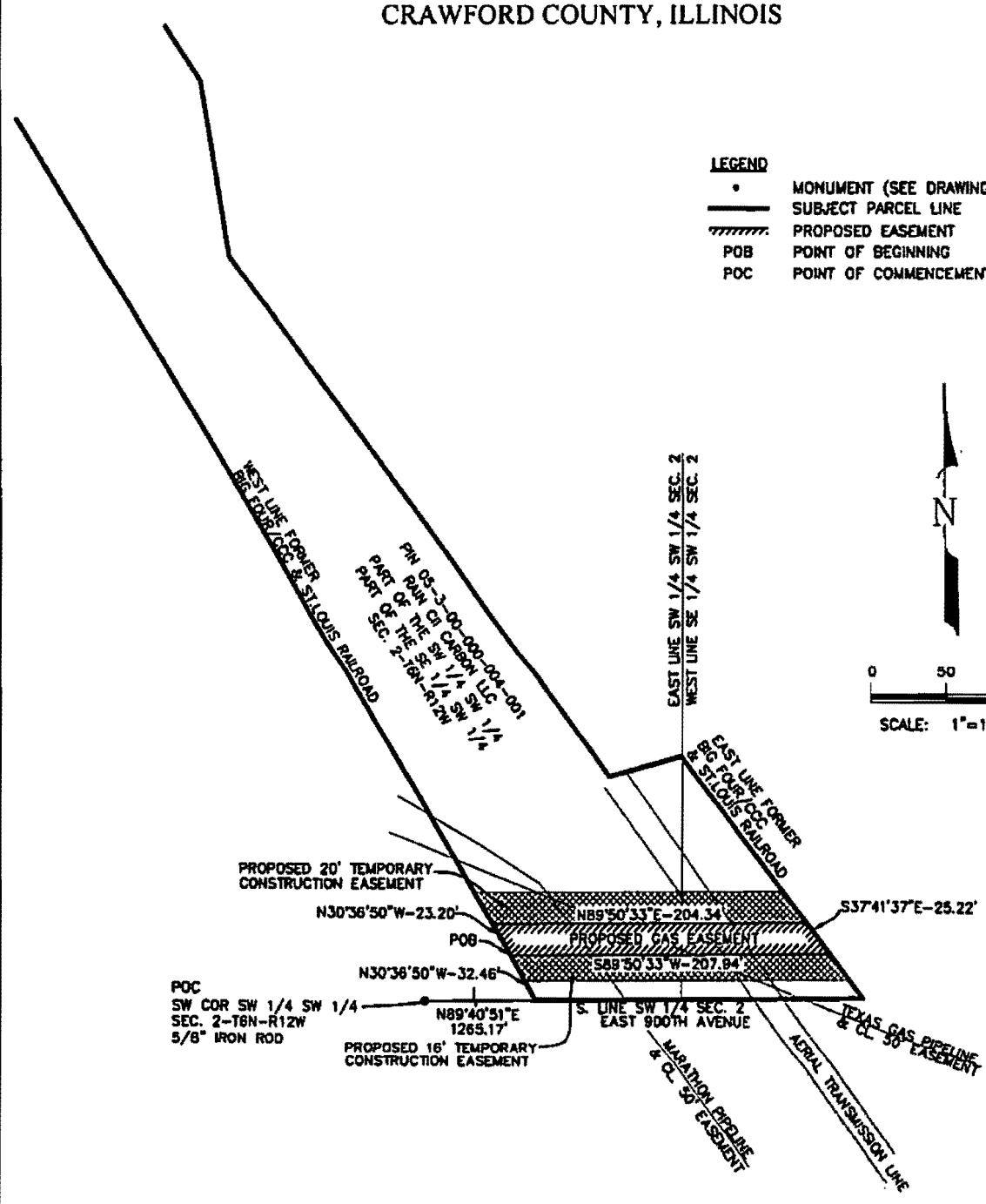
REVISIONS

	PREPARED BY: UniversalPegasus INTERNATIONAL 4848 LOOP CENTRAL DR. Suite 100 HOUSTON, TX. 77081 PH. 713-877-7770	JOB NO. 23359 DATE: 9/22/2016 DRAWN: JMG APPROVED: JMG SCALE: NA	EASEMENT DESCRIPTION EAS FOR <div style="border: 2px solid black; padding: 5px; display: inline-block;"> EXHIBIT 1 </div>	PAGE 1 OF 2 DOC.	REV 0
	PREPARED FOR:		-81.1-18		
	AMEREN ILLINOIS		REV 0		
	LT_BRD.DWG 8.5x11		CADD DRAWING: DO NOT MAKE MANUAL REVISIONS		

EXHIBIT "B" SHEET 2

PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER &
 PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF
 SECTION 2, TOWNSHIP 6 NORTH, RANGE 12 WEST, SECOND PRINCIPAL MERIDIAN
 CRAWFORD COUNTY, ILLINOIS

- LEGEND**
- MONUMENT (SEE DRAWING)
 - SUBJECT PARCEL LINE
 - ▨ PROPOSED EASEMENT
 - POB POINT OF BEGINNING
 - POC POINT OF COMMENCEMENT



REVISIONS


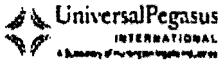
PREPARED FOR: 	PREPARED BY:  4848 LOOP CENTRAL DR. Suite 100 HOUSTON, TX. 77081 PH. 713-877-7770	JOB NO. 23359 DATE: 9/22/2016 DRAWN: JMG APPROVED: JMG SCALE: 1"=100'	EASEMENT SKETCH		
			<div style="border: 2px solid black; padding: 5px; display: inline-block;"> EXHIBIT 2 </div>		
			PAGE 2 OF 2	DOC	REV 0
			P-81.1-19		

EXHIBIT C

Bureau of Air Permit Section

File Organization Cover Sheet

Source Name:	Rain CII Carbon LLC
ID No.:	033025AAJ
Application No.:	95120092
Category:	03K Air Permit - Final
Item Date:	5/16/2022
Keyword:	Choose an item. *
Comment:	Administrative Amendment *
Part:	Choose an item. of Choose an item. *

* If applicable

JUL 20 2022

REVIEWER: SAB

Attention:

Rain CII Carbon LLC
Attn: Daniel Fearday, Plant Manager
12187 East 950th Avenue
Robinson, Illinois 62454

State of Illinois

**CLEAN AIR ACT PERMIT
PROGRAM (CAAPP) PERMIT**

Source:

Rain CII Carbon LLC
12187 East 950th Avenue
Robinson, Illinois 62454

I.D. No.: 033025AAJ
Permit No.: 95120092

IEPA-DIVISION OF RECORDS MANAGEMENT
RELEASABLE

JUL 20 2022

REVIEWER: SAB

Permitting Authority:

Illinois Environmental Protection Agency
Bureau of Air, Permit Section
217/785-1705



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMIT

Type of Application: Administrative Amendment (AA)
Purpose of Application: Revise Existing CAAPP Permit to reflect a change in the permitted emissions for fee purposes

ID No.: 033025AAJ
Permit No.: 95120092
Statement of Basis No.: 95120092-1903

Date Application Received: March 26, 2018
Date Issued: May 13, 2019

Date Revision Received: May 12, 2022
Date Revision Issued: May 16, 2022

Expiration Date: May 13, 2024
Renewal Submittal Date: 9 Months Prior to May 13, 2024

Source Name: Rain CII Carbon LLC
Address: 12187 East 950th Avenue.
City: Robinson
County: Crawford
ZIP Code: 62454

This permit is hereby granted to the above-designated source authorizing operation in accordance with this CAAPP permit, pursuant to the above referenced application. This source is subject to the conditions contained herein. For further information on the source see Section 1 and for further discussion on the effectiveness of this permit see Condition 2.3(g).

If you have any questions concerning this permit, please contact Norman Lowrey at 217/785-1705.

William D. Marr
Manager, Permit Section
Bureau of Air

WDM:RWC:NAL:tan

cc: IEPA, Permit Section
IEPA, FOS, Region 3

IEPA DIVISION OF RECORDS MANAGEMENT
RELEASABLE

JUL 20 2022

REVIEWER: SAB

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

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Rain CII Carbon LLC
I.D. No.: 033025AAJ
Permit No.: 95120092

Date Received: 03/26/2018
Date Issued: 05/13/2019
Date Revised: 05/16/2022

Section 1 - Source Information

1. Addresses

<p><u>Source</u> Rain CII Carbon LLC 12187 East 950th Avenue Robinson, IL 62454</p> <p><u>Operator</u> Rain CII Carbon LLC 12187 East 950th Avenue Robinson, IL 62454</p>	<p><u>Owner</u> Rain CII Carbon LLC 1330 Greengate Drive Covington, LA 70433</p> <p><u>Permittee</u> The Owner or Operator of the source as identified in this table.</p>
---	---

2. Contacts

Certified Officials

The source shall submit an Administrative Permit Amendment for any change in the Certified Officials, pursuant to Section 39.5(13) of the Act.

	<i>Name</i>	<i>Title</i>
<i>Responsible Official</i>	Daniel Fearday	Plant Manager
<i>Delegated Authority</i>	N/A	N/A

Other Contacts

	<i>Name</i>	<i>Phone No.</i>	<i>Email</i>
<i>Source Contact</i>	Daniel Fearday	618-546-6201	Dan.Fearday@raincarbon.com
<i>Technical Contact</i>	David Anderson	985-635-3412	David.Anderson@raincarbon.com
<i>Correspondence</i>	Daniel Fearday	618-546-6201	Dan.Fearday@raincarbon.com
<i>Billing</i>	Daniel Fearday	618-546-6201	Dan.Fearday@raincarbon.com

3. Single Source

The source identified in Condition 1.1 above shall be defined to include all the following additional source(s):

<i>I.D. No.</i>	<i>Permit No.</i>	<i>Single Source Name and Address</i>
N/A	N/A	N/A

Rain CII Carbon LLC
I.D. No.: 033025AAJ
Permit No.: 95120092

Date Received: 03/26/2018
Date Issued: 05/13/2019
Date Revised: 05/16/2022

Section 2 - General Permit Requirements

1. Prohibitions

- a. It shall be unlawful for any person to violate any terms or conditions of this permit issued under Section 39.5 of the Act, to operate the CAAPP source except in compliance with this permit issued by the IEPA under Section 39.5 of the Act or to violate any other applicable requirements. All terms and conditions of this permit issued under Section 39.5 of the Act are enforceable by USEPA and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in this permit pursuant to Section 39.5(7)(m) of the Act. [Section 39.5(6)(a) of the Act]
- b. After the applicable CAAPP permit or renewal application submittal date, as specified in Section 39.5(5) of the Act, the source shall not operate this CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the IEPA. [Section 39.5(6)(b) of the Act]
- c. No Owner or Operator of the CAAPP source shall cause or threaten or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the standards or limitations applicable to the source, unless this CAAPP permit granted to the source provides for such operation consistent with the Act and applicable Illinois Pollution Control Board regulations. [Section 39.5(6)(c) of the Act]
- d. Pursuant to Section 39.5(7)(g) of the Act, emissions from the source are not allowed to exceed any allowances that the source lawfully holds under Title IV of the Clean Air Act or the regulations promulgated thereunder, consistent with Section 39.5(17) of the Act and applicable requirements, if any.

2. Emergency Provisions

Pursuant to Section 39.5(7)(k) of the Act, the Owner or Operator of the CAAPP source may provide an affirmative defense of emergency to an action brought for noncompliance with technology-based emission limitations under this CAAPP permit if the following conditions are met through properly signed, contemporaneous operating logs, or other relevant evidence:

- a.
 - i. An emergency occurred and the source can identify the cause(s) of the emergency.
 - ii. The source was at the time being properly operated.
 - iii. The source submitted notice of the emergency to the IEPA within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
 - iv. During the period of the emergency the source took all reasonable steps to minimize levels of emissions that exceeded the emission limitations, standards, or requirements in this permit.
- b. For purposes of Section 39.5(7)(k) of the Act, "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, such as an act of God, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under this permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operation error.

Rain CII Carbon LLC
I.D. No.: 033025AAJ
Permit No.: 95120092

Date Received: 03/26/2018
Date Issued: 05/13/2019
Date Revised: 05/16/2022

- c. In any enforcement proceeding, the source seeking to establish the occurrence of an emergency has the burden of proof. This provision is in addition to any emergency or upset provision contained in any applicable requirement. This provision does not relieve the source of any reporting obligations under existing federal or state laws or regulations.

3. General Provisions

a. **Duty to Comply**

The source must comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of the CAA and the Act and is grounds for any or all of the following: enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [Section 39.5(7)(o)(i) of the Act]

b. **Need to Halt or Reduce Activity is not a Defense**

It shall not be a defense for the source in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. [Section 39.5(7)(o)(ii) of the Act]

c. **Duty to Maintain Equipment**

The source shall maintain all equipment covered under this permit in such a manner that the performance or operation of such equipment shall not cause a violation of applicable requirements. [Section 39.5(7)(a) of the Act]

d. **Disposal Operations**

The source shall be operated in such a manner that the disposal of air contaminants collected by the equipment operations, or activities shall not cause a violation of the Act or regulations promulgated there under. [Section 39.5(7)(a) of the Act]

e. **Duty to Pay Fees**

- i. The source must pay fees to the IEPA consistent with the fee schedule approved pursuant to Section 39.5(18) of the Act and submit any information relevant thereto. [Section 39.5(7)(o)(vi) of the Act]
- ii. The IEPA shall assess annual fees based on the allowable emissions of all regulated air pollutants, except for those regulated air pollutants excluded in Section 39.5(18)(f) of the Act and insignificant activities in Section 6, at the source during the term of this permit. The amount of such fee shall be based on the information supplied by the applicant in its complete CAAPP permit application. [Section 39.5(18)(a)(ii)(A) of the Act]
- iii. Fee payment shall be made electronically at <https://magic.collectorsolutions.com/magic-ui/Login/illinois-epa> or by check or money order payable to "Illinois Environmental Protection Agency" and sent to: Fiscal Services #2, Illinois EPA, P.O. Box 19276, Springfield, IL, 62794-9276. Include on the check: ID #, Permit #, and "CAAPP Operating Permit Fees". [Section 39.5(18)(e) of the Act]

f. **Obligation to Allow IEPA Surveillance**

Pursuant to Sections 4(a), 39.5(7)(a), and 39.5(7)(p)(ii) of the Act, inspection and entry requirements that necessitate that, upon presentation of credentials and other documents as may be required by law and in accordance with constitutional limitations,

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the source shall allow the IEPA, or an authorized representative to perform the following:

- i. Enter upon the source's premises where the emission unit(s) are located or emissions-related activity is conducted, or where records must be kept under the conditions of this permit.
- ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- iii. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit.
- iv. Sample or monitor any substances or parameters at any location at reasonable times:
 - A. As authorized by the Clean Air Act or the Act, at reasonable times, for the purposes of assuring compliance with this CAAPP permit or applicable requirements; or
 - B. As otherwise authorized by the Act.
- v. Enter and utilize any photographic, recording, testing, monitoring, or other equipment for the purposes of preserving, testing, monitoring, or recording any activity, discharge or emission at the source authorized by this permit.

g. Effect of Permit

- i. Pursuant to Section 39.5(7)(j)(iv) of the Act, nothing in this CAAPP permit shall alter or affect the following:
 - A. The provisions of Section 303 (emergency powers) of the CAA, including USEPA's authority under that Section.
 - B. The liability of the Owner or Operator of the source for any violation of applicable requirements prior to or at the time of permit issuance.
 - C. The applicable requirements of the acid rain program consistent with Section 408(a) of the Clean Air Act.
 - D. The ability of USEPA to obtain information from the source pursuant to Section 114 (inspections, monitoring, and entry) of the Clean Air Act.
- ii. Notwithstanding the conditions of this permit specifying compliance practices for applicable requirements, pursuant to Sections 39.5(7)(j) and (p) of the Act, any person (including the Permittee) may also use other credible evidence to establish compliance or noncompliance with applicable requirements. [35 IAC 201.122 and Section 39.5(7)(a) of the Act]

h. Severability Clause

The provisions of this permit are severable. In the event of a challenge to any portion of this permit, other portions of this permit may continue to be in effect. Should any portion of this permit be determined to be illegal or unenforceable, the validity of the other provisions shall not be affected and the rights and obligations of the source shall be construed and enforced as if this permit did not contain the particular provisions held to be invalid and the applicable requirements underlying these provisions shall remain in force. [Section 39.5(7)(i) of the Act]

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4. Testing

- a. Tests conducted to measure composition of materials, efficiency of pollution control devices, emissions from process or control equipment, or other parameters shall be conducted using standard test methods if applicable test methods are not specified by the applicable regulations or otherwise identified in the conditions of this permit. Documentation of the test date, conditions, methodologies, calculations, and test results shall be retained pursuant to the recordkeeping procedures of this permit. Reports of any tests conducted as required by this permit or as the result of a request by the IEPA shall be submitted as specified in Condition 7.1 of this permit. [35 IAC Part 201 Subpart J and Section 39.5(7)(a) of the Act]
- b. Pursuant to Section 4(b) of the Act and 35 IAC 201.282, every emission source or air pollution control equipment shall be subject to the following testing requirements for the purpose of determining the nature and quantities of specified air contaminant emissions and for the purpose of determining ground level and ambient air concentrations of such air contaminants:
- i. Testing by Owner or Operator: The IEPA may require the Owner or Operator of the emission source or air pollution control equipment to conduct such tests in accordance with procedures adopted by the IEPA, at such reasonable times as may be specified by the IEPA and at the expense of the Owner or Operator of the emission source or air pollution control equipment. All such tests shall be made by or under the direction of a person qualified by training and/or experience in the field of air pollution testing. The IEPA shall have the right to observe all aspects of such tests.
- ii. Testing by the IEPA: The IEPA shall have the right to conduct such tests at any time at its own expense. Upon request of the IEPA, the Owner or Operator of the emission source or air pollution control equipment shall provide, without charge to the IEPA, necessary holes in stacks or ducts and other safe and proper testing facilities, including scaffolding, but excluding instruments and sensing devices, as may be necessary.

5. Recordkeeping**a. Control Equipment Maintenance Records**

Pursuant to Section 39.5(7)(b) of the Act, a maintenance record shall be kept on the premises for each item of air pollution control equipment. At a minimum, this record shall show the dates maintenance was performed and the nature of preventative maintenance activities.

b. Retention of Records

- i. Records of all monitoring data and support information shall be retained for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records, original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit. [Section 39.5(7)(e)(ii) of the Act]
- ii. Pursuant to Section 39.5(7)(a) of the Act, other records required by this permit including any logs, plans, procedures, or instructions required to be kept by this permit shall be retained for a period of at least 5 years from the date of entry unless a different period is specified by a particular permit provision.

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c. Availability of Records

- i. Pursuant to Section 39.5(7)(a) of the Act, the Permittee shall retrieve and provide paper copies, or as electronic media, any records retained in an electronic format (e.g., computer) in response to an IEPA or USEPA request during the course of a source inspection.
- ii. Pursuant to Section 39.5(7)(a) of the Act, upon written request by the IEPA for copies of records or reports required to be kept by this permit, the Permittee shall promptly submit a copy of such material to the IEPA. For this purpose, material shall be submitted to the IEPA within 30 days unless additional time is provided by the IEPA or the Permittee believes that the volume and nature of requested material would make this overly burdensome, in which case, the Permittee shall respond within 30 days with the explanation and a schedule for submittal of the requested material. (See also Condition 2.9(d))

6. Certification**a. Compliance Certification**

- i. Pursuant to Section 39.5(7)(p)(v)(C) of the Act, the source shall submit annual compliance certifications by May 1 unless a different date is specified by an applicable requirement or by a particular permit condition. The annual compliance certifications shall include the following:
 - A. The identification of each term or condition of this permit that is the basis of the certification.
 - B. The compliance status.
 - C. Whether compliance was continuous or intermittent.
 - D. The method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with the conditions of this permit.
- ii. Pursuant to Section 39.5(7)(p)(v)(D) of the Act, all compliance certifications shall be submitted to the IEPA Compliance Section. Address is included in Attachment 3.
- iii. Pursuant to Section 39.5(7)(p)(i) of the Act, all compliance reports required to be submitted shall include a certification in accordance with Condition 2.6(b).

b. Certification by a Responsible Official

Any document (including reports) required to be submitted by this permit shall contain a certification by the responsible official of the source that meets the requirements of Section 39.5(5) of the Act and applicable regulations. [Section 39.5(7)(p)(i) of the Act]. An example Certification by a Responsible Official is included in Attachment 4 of this permit.

7. Permit Shield

- a. Pursuant to Section 39.5(7)(j) of the Act, except as provided in Condition 2.7(b) below, the source has requested and has been granted a permit shield. This permit shield provides that compliance with the conditions of this permit shall be deemed compliance with applicable requirements which were applicable as of the date the proposed permit for this source was issued, provided that either the applicable requirements are specifically identified within this permit, or the IEPA, in acting on this permit application, has determined that other requirements specifically identified are not applicable to this

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source and this determination (or a concise summary thereof) is included in this permit. This permit shield does not extend to applicable requirements which are promulgated after March 27, 2019 (date USEPA notice started), unless this permit has been modified to reflect such new requirements.

- b. Pursuant to Section 39.5(7)(j) of the Act, this permit and the terms and conditions herein do not affect the Permittee's past and/or continuing obligation with respect to statutory or regulatory requirements governing major source construction or modification under Title I of the CAA. Further, neither the issuance of this permit nor any of the terms or conditions of the permit shall alter or affect the liability of the Permittee for any violation of applicable requirements prior to or at the time of permit issuance.
- c. Pursuant to Section 39.5(7)(a) of the Act, the issuance of this permit by the IEPA does not and shall not be construed as barring, diminishing, adjudicating or in any way affecting any currently pending or future legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the IEPA or the USEPA may have against the applicant including, but not limited to, any enforcement action authorized pursuant to the provision of applicable federal and state law.

8. Title I Conditions

Pursuant to Sections 39(a), 39(f), and 39.5(7)(a) of the Act, as generally identified below, this CAAPP permit may contain certain conditions that relate to requirements arising from the construction or modification of emission units at this source. These requirements derive from permitting programs authorized under Title I of the Clean Air Act (CAA) and regulations thereunder, and Title X of the Illinois Environmental Protection Act (Act) and regulations implementing the same. Such requirements, including the New Source Review programs for both major (i.e., PSD and nonattainment areas) and minor sources, are implemented by the IEPA.

- a. This permit may contain conditions that reflect requirements originally established in construction permits previously issued for this source. These conditions include requirements from preconstruction permits issued pursuant to regulations approved or promulgated by USEPA under Title I of the CAA, as well as requirements contained within construction permits issued pursuant to state law authority under Title X of the Act. Accordingly, all such conditions are incorporated into this CAAPP permit by virtue of being either an "applicable Clean Air Act requirement" or an "applicable requirement" in accordance with Section 39.5 of the Act. These conditions are identifiable herein by a designation to their origin of authority.
- b. This permit may contain conditions that reflect necessary revisions to requirements established for this source in preconstruction permits previously issued under the authority of Title I of the CAA. These conditions are specifically designated herein as "TIR".
 - i. Revisions to original Title I permit conditions are incorporated into this permit through the combined legal authority of Title I of the CAA and Title X of the Act. Public participation requirements and appeal rights shall be governed by Section 39.5 of the Act.
 - ii. Revised Title I permit conditions shall remain in effect through this CAAPP permit, and are therefore enforceable under the same, so long as such conditions do not expire as a result of a failure to timely submit a complete renewal application or are not removed at the applicant's request.
- c. This permit may contain conditions that reflect new requirements for this source that would ordinarily derive from a preconstruction permit established under the authority of Title I of the CAA. These conditions are specifically designated herein as "TIN".
 - i. The incorporation of new Title I requirements into this CAAPP permit is authorized through the combined legal authority of Title I of the CAA and Title X of the Act.

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Public participation requirements and appeal rights shall be governed by Section 39.5 of the Act.

- ii. Any Title I conditions that are newly incorporated shall remain in effect through this CAAPP permit, and are therefore enforceable under the same, so long as such conditions do not expire as a result of a failure to timely submit a complete renewal application or are not removed at the applicant's request.

9. Reopening and Revising Permit

a. Permit Actions

This permit may be modified, revoked, reopened and reissued, or terminated for cause in accordance with applicable provisions of Section 39.5 of the Act. The filing of a request by the source for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition. [Section 39.5(7) (o) (iii) of the Act]

b. Reopening and Revision

Pursuant to Section 39.5(15) (a) of the Act, this permit must be reopened and revised if any of the following occur:

- i. Additional requirements become applicable to the equipment covered by this permit and three or more years remain before expiration of this permit;
- ii. Additional requirements become applicable to the source for acid deposition under the acid rain program;
- iii. The IEPA or USEPA determines that this permit contains a material mistake or that an inaccurate statement was made in establishing the emission standards or limitations, or other terms or conditions of this permit; or
- iv. The IEPA or USEPA determines that this permit must be revised or revoked to ensure compliance with the applicable requirements.

c. Inaccurate Application

Pursuant to Sections 39.5(5) (e) and (i) of the Act, the IEPA has issued this permit based upon the information submitted by the source in the permit application referenced on page 1 of this permit. Any misinformation, false statement or misrepresentation in the application shall be grounds for revocation or reopening of this CAAPP under Section 39.5(15) of the Act.

d. Duty to Provide Information

The source shall furnish to the IEPA, within a reasonable time specified by the IEPA any information that the IEPA may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. Upon request, the source shall also furnish to the IEPA copies of records required to be kept by this permit. [Section 39.5(7) (o) (v) of the Act]

10. Emissions Trading Programs

No permit revision shall be required for increases in emissions allowed under any USEPA approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for elsewhere in this permit and that are authorized by the applicable requirement. [Section 39.5(7) (o) (vii) of the Act]

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11. Permit Renewal

- a. Upon the expiration of this permit, if the source is operated, it shall be deemed to be operating without a permit unless a timely and complete CAAPP application has been submitted for renewal of this permit. However, if a timely and complete application to renew this CAAPP permit has been submitted, the terms and all conditions of the most recent issued CAAPP permit will remain in effect until the issuance of a renewal permit. [Sections 39.5(5)(l) and (o) of the Act]
- b. For purposes of permit renewal, a timely application is one that is submitted no less than 9 months prior to the date of permit expiration. [Section 39.5(5)(n) of the Act]

12. Permanent Shutdown

Pursuant to Section 39.5(7)(a) of the Act, this permit only covers emission units and control equipment while physically present at the source location(s). Unless this permit specifically provides for equipment relocation, this permit is void for the operation or activity of any item of equipment on the date it is removed from the permitted location(s) or permanently shut down. This permit expires if all equipment is removed from the permitted location(s), notwithstanding the expiration date specified on this permit.

13. Start-Up, Shutdown, and Malfunction

Pursuant to Section 39.5(7)(a) of the Act, in the event of an action to enforce the terms or conditions of this permit, this permit does not prohibit a Permittee from invoking any affirmative defense that is provided by the applicable law or rule.

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Section 3 - Source Requirements

1. Applicable Requirements

Pursuant to Sections 39.5(7)(a), 39.5(7)(b), and 39.5(7)(d) of the Act, the Permittee shall comply with the following applicable requirements. These requirements are applicable to all emission units (including insignificant activities unless specified otherwise in this Section) at the source.

a. Fugitive Particulate Matter

i. Pursuant to 35 IAC 212.301 and 35 IAC 212.314, no person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the source unless the wind speed is greater than 25 mph.

ii. Compliance Method (Fugitive Particulate Matter)

On an annual basis or upon request by the IEPA, the Permittee shall conduct observations at the property line of the source for visible emissions of fugitive particulate matter from the source to address compliance with 35 IAC 212.301. For this purpose, daily observations shall be conducted for a work week (e.g., Monday through Friday) for particular area(s) of concern at the source, as deemed as representative area to demonstrate compliance with the applicable regulations or as specified in a request from the Agency. Any requested observations shall begin either within one day or three days of receipt of a written request from the IEPA, depending, respectively, upon whether observations will be conducted by employees of the Permittee or a third-party observer hired by the Permittee to conduct observations on its behalf. The Permittee shall keep records for these observations, including identity of the observer, the date and time of observations, the location(s) from which observations were made, and duration of any fugitive emissions event(s).

b. Ozone Depleting Substances

Pursuant to 40 CFR 82.150(b), the Permittee shall comply with the standards for recycling and emissions reduction of ozone depleting substances pursuant to 40 CFR Part 82, Subpart F, except as provided for motor vehicle air conditioners in Subpart B of 40 CFR Part 82:

- i. Pursuant to 40 CFR 82.156, persons opening appliances for maintenance, service, repair, or disposal must comply with the required practices.
- ii. Pursuant to 40 CFR 82.158, equipment used during the maintenance, service, repair, or disposal of appliances must comply with the standards for recycling and recovery equipment.
- iii. Pursuant to 40 CFR 82.161, persons performing maintenance, service, repair, or disposal of appliances must be certified by an approved technician certification program.
- iv. Pursuant to 40 CFR 82 Subpart B, any person performing service on a motor vehicle for consideration when this service involves the refrigerant in the motor vehicle air conditioner shall comply with 40 CFR 82 Subpart B, Servicing of Motor Vehicle Air Conditioners.
- v. Pursuant to 40 CFR 82.166, all persons shall comply with the reporting and recordkeeping requirements of 40 CFR 82.166.

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c. Asbestos Demolition and Renovation

- i. Asbestos Fees. Pursuant to Section 9.13(a) of the Act, for any site for which the Owner or Operator must file an original 10-day notice of intent to renovate or demolish pursuant to Condition 3.1(c)(ii) below and 40 CFR 61.145(b), the owner or operator shall pay to the IEPA with the filing of each 10-day notice a fee of \$150.
- ii. Pursuant to 40 CFR 61 Subpart M, Standard of Asbestos, prior to any demolition or renovation at this facility, the Permittee shall fulfill notification requirements of 40 CFR 61.145(b).
- iii. Pursuant to 40 CFR 61.145(c), during demolition or renovation, the Permittee shall comply with the procedures for asbestos emission control established by 40 CFR 61.145(c).

d. Future Emission Standards

Pursuant to Section 39.5(15) (a) of the Act, this source shall comply with any new or revised applicable future standards of 40 CFR 60, 61, 62, or 63; or 35 IAC Subtitle B after the date issued of this permit. The Permittee shall, in accordance with the applicable regulation(s), comply with the applicable requirements by the date(s) specified and shall certify compliance with the applicable requirements of such regulation(s) as part of the annual compliance certification, as required by Condition 2.6(a). This permit may also have to be revised or reopened to address such new regulations in accordance to Condition 2.9.

2. Applicable Plans and Programs.

Pursuant to Sections 39.5(7) (a), 39.5(7) (b), and 39.5(7) (d) of the Act, the Permittee shall comply with the following applicable requirements. These requirements are applicable to all emission units (including insignificant activities unless specified otherwise in this Section) at the source.

a. Fugitive PM Operating Program

Should this source become subject to 35 IAC 212.302, the Permittee shall prepare and operate under a Fugitive PM Operating Program consistent with 35 IAC 212.310 and submitted to the IEPA for its review. The Fugitive PM Operating Program shall be designed to significantly reduce fugitive particulate matter emissions, pursuant to 35 IAC 212.309(a). Any future Fugitive PM Operating Program made by the Permittee during the permit term is automatically incorporated by reference provided the Fugitive PM Operating Program is not expressly disapproved, in writing, by the IEPA within 30 days of receipt of the Fugitive PM Operating Program. In the event that the IEPA notifies the Permittee of a deficiency with any Fugitive PM Operating Program, the Permittee shall be required to revise and resubmit the Fugitive PM Operating Program within 30 days of receipt of notification to address the deficiency pursuant to Section 39.5(7) (a) of the Act.

b. PM₁₀ Contingency Measure Plan

Should this source become subject to 35 IAC 212.700, then the Permittee shall prepare and operate under a PM₁₀ Contingency Measure Plan reflecting the PM₁₀ emission reductions as set forth in 35 IAC 212.701 and 212.703. The Permittee shall, within 90 days after the date this source becomes subject to 35 IAC 212.700, submit a request to modify this CAAPP permit in order to include a new, appropriate PM₁₀ Contingency Measure Plan.

c. Episode Action Plan

- i. Pursuant to 35 IAC 244.141, the Permittee shall have on file with the IEPA an Episode Action Plan for reducing the levels of emissions during yellow alerts, red

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alerts, and emergencies, consistent with safe operating procedures. The Episode Action Plan shall contain the information specified in 35 IAC 244.144.

- ii. The Permittee shall immediately implement the appropriate steps described in the Episode Action Plan should an air pollution alert or emergency be declared, as required by 35 IAC 244.169, or as may otherwise be required under 35 IAC 244, Appendix D.
- iii. Pursuant to 35 IAC 244.143(d), if an operational change occurs at the source which invalidates the Episode Action Plan, a revised Episode Action Plan shall be submitted to the IEPA for review within 30 days of the change and is automatically incorporated by reference provided the revision is not expressly disapproved, in writing, by the IEPA within 30 days of receipt of the revision. In the event that the IEPA notifies the Permittee of a deficiency with any revision to the Episode Action Plan, the Permittee shall be required to revise and resubmit the Episode Action Plan within 30 days of receipt of notification to address the deficiency pursuant to Section 39.5(7)(a) of the Act.
- iv. The Episode Action Plan, as submitted by the Permittee on June 13, 2018, is incorporated herein by reference. The document constitutes the formal Episode Action Plan required by 35 IAC 244.142, addressing the actions that will be implemented to reduce SO₂, PM₁₀, NO₂, CO and VOM emissions from various emissions units in the event of a yellow alert, red alert or emergency issued under 35 IAC 244.161 through 244.165.
- v. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall keep a copy of the Episode Action Plan, any amendments or revisions to the Episode Action Plan (as required by Condition 3.2(c)), and the Permittee shall also keep a record of activities completed according to the Episode Action Plan.

d. Risk Management Plan (RMP)

Should this stationary source, as defined in 40 CFR 68.3, become subject to the federal regulations for Chemical Accident Prevention in 40 CFR Part 68, then the Permittee shall submit a compliance schedule for meeting the requirements of 40 CFR Part 68 by the date provided in 40 CFR 68.10(a); or submit a certification statement that the source is in compliance with all requirements of 40 CFR Part 68, including the registration and submission of the Risk Management Plan, as part of the annual compliance certification required by Condition 2.6(a). This condition is imposed in this permit pursuant to 40 CFR 68.215(a)(2)(i) and (ii).

3. Title I Requirements

As of the date of issuance of this permit, there are no source-wide Title I requirements that need to be included in this Condition.

4. Synthetic Minor Limits

As of the date of issuance of this permit, there are no source-wide synthetic minor limits that need to be included in this Condition.

5. Reporting Requirements

The Permittee shall submit the following information pursuant to Section 39.5(7)(f) of the Act. Addresses are included in Attachment 3.

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a. Prompt Reporting

- i. A. Pursuant to Section 39.5(7)(f)(ii) of the Act, the Permittee shall promptly notify the IEPA, Air Compliance Section, within 30 days of deviations from applicable requirements as follows:
 - I. Requirements in Conditions 3.1(a)(i), 3.1(b), 3.1(c), and 3.1(d).
 - II. Requirements in Conditions 3.2(a), 3.2(b), 3.2(c), and 3.2(d).
- B. All such deviations shall be summarized and reported as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- ii. The Permittee shall notify the IEPA, Air Compliance Section, of all other deviations as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- iii. The deviation reports shall contain at a minimum the following information:
 - A. Date and time of the deviation.
 - B. Emission unit(s) and/or operation involved.
 - C. The duration of the event.
 - D. Probable cause of the deviation.
 - E. Corrective actions or preventative measures taken.
- iv. All deviation reports required in this Permit shall be identified, summarized, and reported as part of the Semiannual Monitoring Report required by Condition 3.5(b).

b. Semiannual Reporting

- i. Pursuant to Section 39.5(7)(f)(i) of the Act, the Permittee shall submit a Semi-Annual Monitoring Report to the Illinois EPA, Air Compliance Section, summarizing required monitoring and identifying all instances of deviation from the permit, every six months as follows, unless more frequent reporting is required elsewhere in this Permit.

<u>Monitoring Period</u>	<u>Report Due Date</u>
January through June	July 31
July through December	January 31

- ii. The Semiannual Monitoring Report must be certified by a Responsible Official consistent with Condition 2.6(b).

Note: Required monitoring includes all applicable monitoring, testing, recordkeeping, and reporting requirements. This may include monitoring requirements not addressed within the Compliance Method Sections of this Permit.

c. Annual Emissions Reporting

Pursuant to 35 IAC Part 254, the Source shall submit an Annual Emission Report to the Air Quality Planning Section, due by May 1 of the year following the calendar year in which the emissions took place. All records and calculations upon which the verified and reported data are based must be retained by the source.

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Section 4 - Emission Unit Requirements

4.1 Material Handling and Processing Operations

1. Emission Units and Operations

Operation	Emission Units	Pollutants Being Regulated	Original Construction Date	Modification/ Reconstruction Date	Air Pollution Control Devices or Measures	Monitoring Devices
Green Coke Receiving and Storage	Green Coke Screening	PM	Pre-1972	N/A	None	None
	Green Coke Crushing	PM	Pre-1972	N/A	None	None
	Green Coke Stacking	PM	Pre-1972	N/A	Enclosures	None
	Green Coke Conveying	PM	Pre-1972	N/A	Enclosures	None
	Green Coke Feed Bins	PM	Pre-1972	N/A	None	None
	Unloading Excavator Engine (187 hp)	PM, SO ₂ , NO _x , VOM, CO	2007*	N/A*	None	None
Calcined Coke Load-out and Storage	Calcined Coke Conveying	PM	Pre-1972	N/A	Oscillating Conveyor	None
	Calcined Coke Storage Bins 1 & 2	PM	Pre-1972	N/A	Bin Vent Filters 1 & 2	None
	Calcined Coke Storage Bins 3 & 4	PM	Pre-1972	N/A	None	None
	Calcined Coke Railcar Load-out	PM	Pre-1972	N/A	Dedust Oil	None

* In 2007, the source installed a Tier 2 diesel engine (2005 model year). In 2013, the source replaced the engine with a rebuilt Tier 2 replacement engine.

2. Applicable Requirements

For the emission units in Condition 4.1.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7)(a), 39.5(7)(b), and 39.5(7)(d) of the Act. In addition, the material handling and processing operations units shall comply with the applicable inspection procedure plans in Section 7.6.

a. i. Opacity Requirements

A. Pursuant to 35 IAC 212.123(a), no person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit.

ii. Compliance Method (Opacity Requirements)

Monitoring

A. Pursuant to Sections 39.5(7)(b) and (d) of the Act, at a minimum, the Permittee shall perform observations of each emission unit listed in Condition 4.1.1, except for the Calcined Coke Storage Bins 1 & 2, in accordance with Method 22 for visible emissions at least once per month during the operation of these emission units. If visible emissions are observed, the Permittee shall take corrective action within 2 hours of such observation. Corrective action may include, but is not limited to, shut

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down of the emission unit, maintenance and repair, and/or adjustment of the equipment. If corrective action was taken, the Permittee shall perform a follow up observation for visible emissions in accordance with Method 22. If visible emissions continue, then measurements of opacity in accordance with Method 9 shall be conducted within one week in accordance with Condition 2.4.

- B. Pursuant to Sections 39.5(7)(b) and (d) of the Act, at a minimum, the Permittee shall perform observations for opacity on Calcined Coke Storage Bins 1 & 2, in accordance with Method 22 for visible emissions at least once per week during the operation of these emission units. If visible emissions are observed, the Permittee shall take corrective action within 2 hours of such observation. Corrective action may include, but is not limited to, shut down of the emission unit, maintenance and repair, and/or adjustment of the equipment. If corrective action was taken, the Permittee shall perform a follow up observation for visible emissions in accordance with Method 22. If visible emissions continue, then measurements of opacity in accordance with Method 9 shall be conducted within one week in accordance with Condition 2.4.

Recordkeeping

- C. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall keep records for each opacity observation (Method 22) performed. These records shall include, at a minimum: date and time the observation was performed, name(s) of observing personnel, identification of which equipment was observed, whether or not the equipment was running properly, the findings of the observation including the presence of any visible emissions, and a description of any corrective action taken including if the corrective action took place within 4 hours of the observation.
- D. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall keep records for all opacity observations made in accordance with Method 9. These methods shall include, at a minimum: the date and time the observation was performed, the name(s) of observing personnel, identification of the equipment observed, an indication of whether the equipment was running properly, and the findings of the observation including the opacity values obtained from the Method 9 observations.

b. i. Particulate Matter Requirements (PM)

- A. Pursuant to 35 IAC 212.322(a), no person shall cause or allow the emission of PM into the atmosphere in any one hour period from any process emission unit for which construction or modification commenced prior to April 14, 1972, which, either alone or in combination with the emission of PM from all other similar process emission units at a source or premises, exceeds the allowable emission rates specified in 35 IAC 212.322(c). (See Condition 7.2(b)). This requirement does not apply to the unloading excavator engine.

ii. Compliance Method (PM Requirements)

Monitoring

- A. Work practice requirements in Section 4.1.2(d) monitor compliance with Condition 4.1.2(b)(i)(A).

Recordkeeping

- B. Pursuant to Sections 39.5(7)(b) and (d) of the Act, the Permittee shall maintain records, with supporting documentation and calculations, to

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demonstrate compliance with the PM emission rate limits in Condition 4.1.2(b) (i) (A).

- C. Pursuant to Sections 39.5(7) (b) and (d) of the Act, every month, the Permittee shall keep records of PM emissions (tons/month and tons/year) from each emission unit, with supporting documentation and calculations. The annual PM emissions shall be calculated from the 12-month rolling sum of monthly PM emissions.

c. i. **Sulfur Dioxide Requirements (SO₂)**

- A. Pursuant to 35 IAC 214.301, no person shall not cause or allow the emission of sulfur dioxide into the atmosphere from the unloading excavator engine to exceed 2000 ppm.
- B. Pursuant to 35 IAC 214.305(a) (2), the sulfur content of all distillate fuel oil used by the unloading excavator engine shall not exceed 15 ppm.

ii. **Compliance Method (SO₂ Requirements)**

Monitoring

- A. Sulfur content recordkeeping requirements in Condition 4.1.2(c) (ii) (B) and inspection requirements in Condition 4.1.2(d) (ii) (F) monitor compliance with Condition 4.1.2(c) (i) (A).

Recordkeeping

- B. Pursuant to 35 IAC 214.305(a) (3) (A) and Section 39.5(7) (b) of the Act, the Permittee shall maintain records, such as records from the fuel supplier indicating the sulfur content of the fuel oil, demonstrating that the diesel fuel used by the unloading excavator engine complies with the 15-ppm maximum sulfur content requirement. For each supplier, the records shall be updated at least once each calendar year with no more than 18 months passing between successive record updates.
- C. Pursuant to Sections 39.5(7) (b) and (d) of the Act, every month, the Permittee shall keep records of SO₂ emissions (tons/month and tons/year) from the unloading excavator engine, with supporting documentation and calculations. The annual SO₂ emissions shall be calculated from the 12-month rolling sum of monthly SO₂ emissions.

d. i. **Work Practice Requirements**

- A. Pursuant to Section 39.5(7) (a) of the Act, the Permittee shall maintain and operate each emission unit according to manufacturer specifications and in a manner consistent with safety and good air pollution control practice for minimizing emissions.

ii. **Compliance Method (Work Practice Requirements)**

Monitoring

- A. Pursuant to Section 39.5(7) (b) of the Act, at least once per month, the Permittee shall conduct external inspections of the Green Coke Stacking, Green Coke Conveying, Calcined Coke Conveying, and Calcined Coke Railcar Load-out processes in accordance with the requirements specified in Condition 7.6(g) (i).

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- B. Pursuant to Sections 39.5(7)(b) of the Act, at least once per month, the Permittee shall conduct external inspections of Green Coke Screening areas, Green Coke Crushing areas, Green Coke Conveying areas, Green Coke Feed Bins, and Calcined Coke Storage Bins 3 & 4 in accordance with the requirements specified in Condition 7.6(g)(ii).
- C. Pursuant to Section 39.5(7)(b) of the Act, at least once per 30 months during major turnarounds, the Permittee shall conduct inspections of the Green Coke Feed Bins in accordance with the requirements specified in Condition 7.6(c).
- D. Pursuant to Section 39.5(7)(b) of the Act, at least once per 30 months during major turnarounds, the Permittee shall conduct inspections of Calcined Coke Storage Bins 1 & 2 and Calcined Coke Storage Bins 3 & 4 in accordance with the requirements specified in Condition 7.6(d).
- E. Pursuant to Section 39.5(7)(b) of the Act, at least once per 30 months during major turnarounds, the Permittee shall conduct inspections of Bin Vent Filters 1 & 2 in accordance with the requirements specified in Condition 7.6(e).
- F. Pursuant to Section 39.5(7)(b) of the Act, at least once per month, the Permittee shall conduct inspections of the unloading excavator engine and associated auxiliary equipment.

Recordkeeping

- G. Pursuant to Sections 39.5(7)(b) and (d) of the Act, the Permittee shall keep records of inspection, maintenance, and repair activities in accordance with the requirements specified in Condition 7.6(h).
- H. Pursuant to Sections 39.5(7)(b) and (d) of the Act, in addition to the information in Condition 7.6(h), records of Bin Vent Filter 1 & 2 inspections shall specifically contain the following information:
 - I. The inspection findings required by Condition 7.6(h)(iii) shall note the condition of each filter;
 - II. The repair and maintenance activity information required by Condition 7.6(h)(vi) includes replacing a filter.
 - III. If a filter does not need to be replaced, the inspection record shall include a note explaining why the filter did not need to be replaced.
- I. Pursuant to Sections 39.5(7)(b) and (d) of the Act, the Permittee shall keep records of each inspection, along with associated maintenance and repair activities, conducted on the unloading excavator engine. These records shall include, at a minimum, the following:
 - I. Date and time inspections were performed;
 - II. Identification of equipment being inspected;
 - III. Findings of the inspections on a detailed checklist;
 - IV. Printed name(s) of the inspection personnel;
 - V. Signature(s) of the inspection personnel;

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- VI. Description of all maintenance and repair activities performed including if the activity resulted in a modification or reconstruction of the piece of equipment.

3. Non-Applicability Determinations

- a. The Green Coke Screening, Green Coke Crushing, Green Coke Feed Bins, Calcined Coke Storage Bins 3 & 4, the Calcined Coke Railcar Load-out, the Calcined Coke Conveying, and the Unloading Excavator Engine are not subject to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, because these emission units do not use add-on control devices to achieve compliance with any emission limitations or standards.
- b. The Green Coke Stacking, Green Coke Conveying, the Calcined Coke Storage Bins 1 & 2 are not subject to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, because these emission units use a passive control measure, such as a seal, lid, or roof, that is not considered a control device because it acts to prevent the release of pollutants.
- c. The unloading excavator engine is not subject to 35 IAC 212.321 or 212.322 because based on 35 IAC 212.323, those requirements shall not apply to emission units to which a process weight rate cannot be determined.
- d. The unloading excavator engine is not subject to 35 IAC 215.301, because the engine does not use organic material that would make it subject to 35 IAC 215.301.
- e. The unloading excavator engine is not subject to 35 IAC 216.121 because that regulation applies only to fuel combustion emission sources and the engine fails to meet the fuel combustion emission unit definition provided by 35 IAC 211.2470.
- f. The unloading excavator engine is not subject to 35 IAC 217, subpart Q because it fails to meet the applicability criteria stated in 35 IAC 217.386(a). The engine is not specifically included in the Appendix G list of engines referenced by 35 IAC 217.386(a)(1), and it is in Crawford County rather than any of the areas mentioned in 35 IAC 217.386(a)(2).

4. Other Requirements

For the emission units in Condition 4.1.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7)(a), 39.5(7)(b), and 39.5(7)(d) of the Act.

- a. **MACT and NSPS Requirements involving the Unloading Excavator Engine**
- i. 40 CFR 63 Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines
- A. Pursuant to 40 CFR 63.6590(c), because the unloading excavator engine is a new or reconstructed compression ignition (CI) stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, the engine shall meet the requirements of 40 CFR 63 Subpart ZZZZ by meeting the requirements of 40 CFR 60 Subpart IIII. No further requirements apply for such engines under 40 CFR 63 Subpart ZZZZ.
- ii. 40 CFR 60 Subpart IIII, Stationary Compression Ignition Internal Combustion Engines
- A. Pursuant to 40 CFR 60.4200(a)(4), because the Permittee owns or operates stationary compression ignition (CI) internal combustion engines (ICE) that commence construction after July 11, 2005, the Permittee shall comply with the provisions of 40 CFR 60.4208.
- B. Pursuant to 40 CFR 60.1(a), the Permittee shall comply with the provisions of 40 CFR 60 Subpart A. See Section 7.6(a).

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5. Reporting Requirements

The Permittee shall submit the following information pursuant to Section 39.5(7)(f) of the Act. Addresses are included in Attachment 3.

a. Prompt Reporting

- i. A. Pursuant to Section 39.5(7)(f)(ii) of the Act, the Permittee shall promptly notify the IEPA, Air Compliance Section, within 30 days of deviations from applicable requirements as follows unless a different period is specified by a particular permit provision, i.e., NSPS or NESHAP requirement:
 - I. Requirements in Conditions 4.1.2(a)(i), 4.1.2(b)(i), 4.1.2(c)(i), and 4.1.2(d)(i).
 - II. Requirements in Condition 4.1.4(a) and 4.1.4(b).
 - III. Requirements in Section 7.6.
- B. All such deviations shall be summarized and reported as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- ii. The Permittee shall notify the IEPA, Air Compliance Section, of all other deviations as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- iii. The deviation reports shall contain at a minimum the following information:
 - A. Date and time of the deviation.
 - B. Emission unit(s) and/or operation involved.
 - C. The duration of the event.
 - D. Probable cause of the deviation.
 - E. Corrective actions or preventative measures taken.

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4.2 Petroleum Coke Calcining Operations

1: Emission Units and Operations

Emission Units		Pollutants Being Regulated	Original Construction Date	Modification/ Reconstruction Date	Air Pollution Control Devices or Measures*	Monitoring Devices
Petroleum Coke Calcining Line 1	Kiln 1 (37 mmBtu/hr)	PM, SO ₂ , and VOM	Pre 1972	N/A	Pyroscrubber 1	Thermocouples 1A & 1B at Pyroscrubber 1 inlet
	Rotary Cooler 1	PM	Pre 1972	N/A	Baghouse 1	Pressure Gauge and Inlet Temp. Monitor on Baghouse
Petroleum Coke Calcining Line 2	Kiln 2 (37 mmBtu/hr)	PM, SO ₂ , and VOM	Pre 1972	N/A	Pyroscrubber 2	Thermocouples 2A & 2B at Pyroscrubber 2 inlet
	Rotary Cooler 2	PM	Pre 1972	N/A	Multiclone and Baghouse 2	Pressure Gauge and Inlet Temp. Monitor on Baghouse

* The control device configuration noted in Table 4.2.1 depicts the standard operational modes for calcining lines 1 & 2. See Section 4.2.4(b) for alternative operational modes.

2. Applicable Requirements

For the emission units in Condition 4.2.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7) (a), 39.5(7) (b), and 39.5(7) (d) of the Act. In addition, the petroleum coke calcining operations units shall comply with the applicable inspection procedure plans in Section 7.6.

a. i. Opacity Requirements

A. Pursuant to 35 IAC 212.123(a), no person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit.

ii. Compliance Method (Opacity Requirements)

Monitoring

A. Pursuant to Sections 39.5(7) (b) and (d) of the Act and Order PCB 04-137, at a minimum, the Permittee shall monitor the opacity on pyroscrubbers 1 and 2 and baghouses 1 and 2 during representative operating conditions and weather conditions determined by a qualified observer, using Reference Method 9 like visible emission observations (6-minute opacity observations with readings at 15-second intervals), at least once per operating day.

Recordkeeping

B. Pursuant to Section 39.5(7) (b) of the Act, the Permittee shall keep records for each opacity observation required by Condition 4.2.2(a) (ii) (A). These records shall, at a minimum, contain the following:

- I. Identification of the equipment for which the observation was conducted.
- II. Date and time of the observation.

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- III. Name of observer(s) with documentation that the individual(s) was qualified to make such an observation.
- IV. Description of the observations that were made.
- V. Description of the operating conditions of the equipment during the observation.
- VI. The weather condition at the time of the scheduled observations, and if the observations could not be completed due to weather conditions at the time of the scheduled observations, the record shall state the reason(s) why.
- VII. The raw data sheets for the observations.
- VIII. The observed opacity.
- IX. Conclusion.

b. i. Particulate Matter Requirements (PM)

- A. Pursuant to 35 IAC 212.322(a), for the kilns and rotary coolers, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any process emission unit for which construction or modification commenced prior to April 14, 1972, which, either alone or in combination with the emission of particulate matter from all other similar process emission units at a source or premises, exceeds the allowable emission rates specified in 35 IAC 212.322(c) (See Condition 7.2(b)).

ii. Compliance Method (PM Requirements)

- A. Pursuant to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, the kilns are subject to 40 CFR Part 64. The Permittee shall comply with the monitoring requirements of the CAM Plan described in Condition 7.5 and Tables 7.5.2 and 7.5.4, pursuant to 40 CFR Part 64 as submitted in the Permittee's CAM plan application. At all times, the Owner or Operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment, pursuant to 40 CFR 64.7(a) and (b).
- B. Pursuant to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, the rotary coolers are subject to 40 CFR Part 64. The Permittee shall comply with the monitoring requirements of the CAM Plan described in Condition 7.5 and Tables 7.5.5 and 7.5.6, pursuant to 40 CFR Part 64 as submitted in the Permittee's CAM plan application. At all times, the Owner or Operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment, pursuant to 40 CFR 64.7(a) and (b).
- I. Pursuant to Section 39.5(7)(b) of the Act, for up to 12 hours following baghouse maintenance, the Permittee shall use the opacity indicator to monitor baghouse performance until the pressure drop reaches 2" of H₂O. While the pressure drop is less than 2" of H₂O, opacity shall be measured using USEPA Method 9 visual observations according to the following schedule:
 - 1. At least once within the initial 30 minutes;
 - 2. At least once every hour for the next two hours; and

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3. At least once every two hours thereafter.
- II. Pursuant to Section 39.5(7)(b) of the Act, after the pressure drop reaches 2" of H₂O, the Permittee shall use the baghouse pressure drop indicator to monitor baghouse performance.

Testing

- C. Pursuant to Section 39.5(7)(c) of the Act, the Permittee shall conduct tests of PM emissions from each calcining line. The Permittee shall conduct these tests according to the following specifications:
 - I. Measurements of PM shall be made in accordance with Condition 7.1 of this permit and applicable USEPA Test Method(s), specifically Method 5.
 - II. The Permittee shall conduct tests for PM emissions into the atmosphere from either rotary cooler after the emissions are controlled by Baghouse 1. As long as at least one calcining line is operational, this test shall occur by no later than six months after issuance of this renewal permit. If both calcining lines are shut down, this test shall occur within 90 days after a line resumes operation.
 - III. The Permittee shall conduct tests for PM emissions into the atmosphere from either rotary cooler after the emissions are controlled by Baghouse 2. As long as at least one calcining line is operational, this test shall occur by no later than six months after issuance of this renewal permit. If both calcining lines are shut down, this test shall occur within 90 days after a line resumes operation.
 - IV. For the standard operational modes indicated in Table 4.2.1, the Permittee shall conduct tests for PM emissions from each kiln no later than May 31, 2022. Subsequent tests shall be conducted at least once every five years. No more than 60 months shall pass between successive tests. If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.
 - V. Upon request by IEPA or USEPA, the Permittee shall conduct tests for PM emissions from each calcining line for the alternative operational modes permitted by Conditions 4.2.4(b)(i)(C & D). If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.

Recordkeeping

- D. Pursuant to Sections 39.5(7)(b) and (d) of the Act, the Permittee shall maintain records, with supporting documentation and calculations, to demonstrate compliance with the PM emission rate limits in Condition 4.2.2(b)(i)(A).
- E. Pursuant to Sections 39.5(7)(b) and (d) of the Act, every month, the Permittee shall keep records of PM emissions (tons/month and tons/year) from each kiln and rotary cooler, with supporting documentation and calculations. The annual PM emissions shall be calculated from the 12-month rolling sum of monthly PM emissions.

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c. i. Sulfur Dioxide Requirements (SO₂)

- A. Pursuant to 35 IAC 214.301, for the kilns, no person shall cause or allow the emission of sulfur dioxide into the atmosphere from any process emission unit to exceed 2000 ppm.

ii. Compliance Method (SO₂ Requirements)

Monitoring

- A. Pursuant to Section 39.5(7)(b) of the Act, each week, the Permittee shall sample and analyze calcined coke to determine actual sulfur content.

Testing

- B. Pursuant to Section 39.5(7)(c) of the Act, the Permittee shall conduct tests for SO₂ emissions from each calcining line. The Permittee shall conduct these tests according to the following specifications:
- I. Measurements of SO₂ emissions shall be made in accordance with Condition 7.1 of this permit and applicable USEPA Test Method(s), specifically Method 6 and/or 6C.
 - II. For the standard operational modes indicated in Table 4.2.1, the Permittee shall conduct tests for SO₂ emissions from each kiln no later than May 31, 2022. Subsequent tests shall be conducted at least once every five years. No more than 60 months shall pass between successive tests. If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.
 - III. Upon request by IEPA or USEPA, the Permittee shall conduct tests for SO₂ emissions from each calcining line for the alternative operational modes permitted by Conditions 4.2.4(b)(i)(C & D). If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.

Recordkeeping

- C. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall maintain the following records:
- I. Calculations of the concentration of SO₂ emissions from each kiln, calculated weekly;
 - II. Data used in the calculations;
 - III. A file, with supporting data, documenting the methodology used for the calculations;
 - IV. A file comparing the concentration of SO₂ emissions measured during each stack test to the concentration of SO₂ emissions obtained using the documented methodology.
- D. Pursuant to Sections 39.5(7)(b) and (d) of the Act, every month, the Permittee shall keep records of SO₂ emissions (tons/month and tons/year) from each kiln, with supporting documentation and calculations. The annual SO₂ emissions shall be calculated from the 12-month rolling sum of monthly SO₂ emissions.

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d. i. Volatile Organic Material Requirements (VOM)

- A. I. Pursuant to 35 IAC 215.301, no person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere from the kilns, except as provided in Condition 4.2.2(d) (i) (A) (II), below.
- II. Pursuant to 35 IAC 215.302(c), for the kilns, emissions of organic material in excess of those permitted by 35 IAC 215.301 are allowable if VOM emissions are controlled by air pollution control equipment capable of reducing by 85 percent or more the uncontrolled organic material that would be otherwise emitted to the atmosphere.

ii. Compliance Method (VOM Requirements)

- A. Pursuant to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, the kilns are subject to 40 CFR Part 64. The Permittee shall comply with the monitoring requirements of the CAM Plan described in Condition 7.5 and Tables 7.5.1 and 7.5.3, pursuant to 40 CFR Part 64 as submitted in the Permittee's CAM plan application. At all times, the Owner or Operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment, pursuant to 40 CFR 64.7(a) and (b).

Testing

- B. I. Pursuant to Section 39.5(7)(c) of the Act, the Permittee shall conduct tests for VOM emissions from each calcining line. The Permittee shall conduct these tests according to the following specifications:
1. Measurements of VOM shall be made in accordance with Condition 7.1 of this permit and applicable USEPA Test Method(s), specifically Method 25 and/or 25A.
 2. Upon request by IEPA or USEPA, the Permittee shall conduct tests for VOM emissions from each kiln for the standard operational modes listed in Table 4.2.1. If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.
 3. Upon request by IEPA or USEPA, the Permittee shall conduct tests for VOM emissions from each calcining line for the alternative operational modes permitted by Conditions 4.2.4(b) (i) (C & D). If a test deadline date occurs while a calcining line is shut down, the test involving that line shall be conducted within 90 days after that line resumes operations.
- II. Pursuant to Section 39.5(7)(c) of the Act, if results from the tests required by Condition 4.2.2(d) (ii) (B) (I) indicate VOM emissions greater than 8 lb/hr from Calcining Line 1, the Permittee shall conduct follow-up tests to determine the VOM destruction efficiency of Pyroscrubber 1. The Permittee shall conduct these tests according to the following specifications:
1. Measurements of VOM destruction efficiency for Pyroscrubber 1 shall be made in accordance with Condition 7.1 of this permit and applicable USEPA Test Method(s), specifically Method 25 and/or 25A.

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2. The Permittee shall measure the VOM destruction efficiency for Pyroscrubber 1 during the standard operational mode indicated in Table 4.2.1.
 3. The Permittee shall measure the VOM destruction efficiency for Pyroscrubber 1 during the alternative operational mode permitted by Condition 4.2.4(b) (i) (C).
 4. The follow-up testing shall be conducted no later than 180 days after conducting the tests required by Condition 4.2.2(d) (ii) (B) (I).
- III. Pursuant to Section 39.5(7) (c) of the Act, if results from the tests required by Condition 4.2.2(d) (ii) (B) (I) indicate VOM emissions greater than 8 lb/hr from Calcining Line 2, the Permittee shall conduct follow-up tests to determine the VOM destruction efficiency of Pyroscrubber 2. The Permittee shall conduct these tests according to the following specifications:
1. Measurements of VOM destruction efficiency for Pyroscrubber 2 shall be made in accordance with Condition 7.1 of this permit and applicable USEPA Test Method(s), specifically Method 25 and/or 25A.
 2. The Permittee shall measure the VOM destruction efficiency for Pyroscrubber 2 during the standard operational mode indicated in Table 4.2.1.
 3. The Permittee shall measure the VOM destruction efficiency for Pyroscrubber 2 during the alternative operational mode permitted by Condition 4.2.4(b) (i) (D).
 4. The follow-up testing shall be conducted no later than 180 days after conducting the tests required by Condition 4.2.2(d) (ii) (B) (I).

Recordkeeping

- C. Pursuant to Sections 39.5(7) (b) and (d) of the Act, the Permittee shall maintain records for at least one of the following involving VOM emissions from each calcining line:
- I. The method used, including supporting documentation, to determine the VOM emission rate from each kiln (lb/hr).
 - II. The destruction efficiency, including supporting documentation, of each pyroscrubber.
- D. Pursuant to Sections 39.5(7) (b) and (d) of the Act, every month, the Permittee shall keep records of VOM emissions (tons/month and tons/year) from each kiln, with supporting documentation and calculations. The annual VOM emissions shall be calculated from the 12-month rolling sum of monthly VOM emissions.

e. i. Operational and Production Requirements

- A. Pursuant to Section 39.5(7) (a) of the Act, pipeline quality natural gas shall be the only supplemental heat source fired in each kiln and/or pyroscrubber.

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- B. Pursuant to Construction Permit #04080044 and Permit #75110042, kiln 1 and kiln 2 shall not exceed the following green coke feed rate limits: [T1]

Green Coke Feed Rate Limit
(Tons/Hr)

Kiln 1	28
Kiln 2	28

- C. Pursuant to Permit #75110042, operation of the coolers shall not exceed the following limits: [T1]

Process Weight Rate
(Tons/Hr)

Rotary Cooler 1	29.9
Rotary Cooler 2	29.9

ii. Compliance Method (Operational and Production Requirements)

Recordkeeping

- A. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall maintain the following records:

- I. Hours of operation for each kiln, hr/day, hr/mo, and hr/yr.
- II. Hours of operation for each rotary cooler, hr/mo and hr/yr.
- III. Throughput of green coke, T/day, T/mo, and T/yr, method used to determine the throughput.
- IV. Green coke feed rate to each kiln, T/hr, with supporting calculations.
- V. Operation of each rotary cooler, T/hr, with supporting calculations.

- B. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall maintain the following records related to the natural gas fired at the facility:

- I. Natural gas fuel usage (scf/mo and scf/yr, and/or mmBtu/mo and mmBtu/yr).
- II. If fuel usage records are maintained using scf/mo and scf/yr, the heat content of the natural gas (Btu/ft³), with supporting documentation, on a quarterly basis.

- C. Compliance with annual limits shall be determined from a running total of 12 months of monthly data.

f. i. Work Practice Requirements

- A. Pursuant to Section 39.5(7)(a) of the Act, the Permittee shall maintain and operate all equipment associated with the Petroleum Coke Calcining Operations according to manufacturer specifications and in a manner consistent with safety and good air pollution control practice for minimizing emissions.

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- B. Pursuant to Section 39.5(7)(a) of the Act, before restarting operations involving any equipment, the Permittee shall repair the equipment whenever associated inspections reveal conditions inconsistent with either safety or good air pollution control practices for minimizing emissions. If the equipment is operating at the time an inspection reveals the inconsistent conditions, the Permittee shall immediately initiate protocols so repairs may take place. This requirement applies to the equipment in the following list, but the list does not restrict the equipment to which the requirement applies:
- I. The walls of the kilns;
 - II. Cooler exhaust ductwork;
 - III. Dust chamber inlet ductwork; and
 - IV. The dust collector exhaust fans.
- C. Pursuant to Section 39.5(7)(a) of the Act and Order PCB 04-137, the Permittee shall ensure that at least one replacement fan is always on-site for each baghouse, except when a fan has been replaced. Immediately following the replacement of an existing baghouse fan, for whatever reason, the Permittee shall begin the procurement process for a new fan.
- D. Pursuant to Section 39.5(7)(a) of the Act and Order PCB 04-137, the Permittee shall maintain a reserve of at least 525 replacement bags for Baghouse 1 and at least 351 bags for Baghouse 2 by immediately initiating the procurement process when a bag change is scheduled.
- E. Pursuant to Section 39.5(7)(a) of the Act and Order PCB 04-137, except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee shall operate its pyroscrubbers as follows:
- I. Maintain a 3-hour rolling average minimum temperature of 1800°F, measured at the thermocouples located at the inlet to each pyroscrubber. See Section 7.5.
- F. Pursuant to Section 39.5(7)(a) of the Act and Order PCB 04-137, the Permittee shall operate a redundant thermocouple at each pyroscrubber inlet. See Section 7.5.
- ii. Compliance Method (Work Practice Requirements)

Monitoring

- A. Pursuant to Section 39.5(7)(b) of the Act, at a minimum, the Permittee shall conduct weekly external inspections, in accordance with the requirements specified in Section 7.6(g)(iii), of the following equipment for both lines: Pyroscrubber, Dust Chamber, Kiln, Cooler, Baghouse, and Multiclone.
- B. Pursuant to Section 39.5(7)(b) of the Act, at least once every 30 months, in accordance with the requirements specified in Condition 7.6(b), the Permittee shall conduct general internal refractory inspections of the stacks, pyroscrubbers, dust chambers, kilns, and coolers.
- C. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall conduct annual inspections of the baghouses according to the requirements specified in Condition 7.6(a).

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- D. Pursuant to Section 39.5(7)(b) of the Act, at least once every 30 months, the Permittee shall conduct inspections of the multiclone according to the requirements specified in Condition 7.6(f).
- E. I. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, the Permittee shall monitor kiln cooler exhaust temperatures of each unit so as to ensure that the bags are not exposed to excessive temperatures (i.e., temperatures above 700°F).
- II. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall utilize controls, such as a Programmable Logic Controller, that automatically reroutes cooler exhaust to the associated pyroscrubber and shuts down the baghouse if the temperature of the cooler exhaust exceeds the temperature at which the bags are rated. Such controls shall alert the operators to initiate appropriate maintenance protocols
- F. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall follow the detailed inspection procedure submitted to IEPA when either of the facility's baghouses are shut down for internal maintenance or bag replacement. See Section 7.6(a).
- G. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall monitor dust collector exhaust fans and cooler exhaust ductwork. See Section 7.6.
- H. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall monitor pyroscrubber inlet ductwork. See Section 7.6.
- I. I. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, the Permittee shall continue to conduct its quarterly Vibration Analysis Program.
- II. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, when inspections and/or vibration data indicate possible issues with the proper operation of equipment, the Permittee shall take appropriate measures to rectify the issues.
- III. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, the Vibration Analysis Program shall be performed by a third-party consulting firm which provides quarterly reports to the Permittee.
- J. Pursuant to Sections 39.5(7)(a) & (b) of the Act and Order PCB 04-137, except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee shall monitor its pyroscrubbers as follows:
- I. Monitor the pyroscrubber inlet temperatures of each unit, so as to ensure that the minimum temperature is maintained. See Condition 4.2.2(f)(i)(G) and Section 7.5.
- II. Utilize the inlet temperature of each pyroscrubber as the CAM indicator. See Section 7.5.
- K. Pursuant to Sections 39.5(7)(a) & (b) of the Act and Order PCB 04-137, the Permittee shall monitor the inlet temperature in each pyroscrubber by using the redundant thermocouple in parallel with the corresponding existing thermocouple for temperature and possible thermocouple failure. See Condition 4.2.2(f)(i)(H) and Section 7.5.

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- I. Pursuant to Section 39.5(7)(b) of the Act, the source shall repair or replace a malfunctioning thermocouple within 15 days. During the time interval in which the thermocouple is being repaired or replaced, the source may monitor the temperature at the inlet of the associated pyroscrubber with a single thermocouple.

Recordkeeping

- L. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall keep records of each inspection performed along with a maintenance and repair log according to the requirements in Condition 7.6(i).
- M. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, the Permittee shall utilize its updated log system for tracking malfunctions and breakdowns such that the log links work orders for the corresponding repairs.
- N. I. Pursuant to Section 39.5(7)(b) of the Act and Order PCB 04-137, the Permittee shall maintain an electronic log of cooler gas diversions.
- II. Pursuant to Section 39.5(7)(b) of the Act, these records shall include, at a minimum, the following:
1. The date and time of the diversion;
 2. Reason for the diversion; and
 3. Either an explanation for why no action was taken if no maintenance or repair activities occurred due to the diversion or a reference linking the diversion to the corresponding maintenance or repair activities.
- O. I. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall maintain records of the number of baghouse replacement bags onsite for each baghouse. These records shall be updated whenever the number for either baghouse changes.
- II. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall maintain records of baghouse bag procurement processes. Such records shall include the date each process was initiated and the number of replacement bags ordered.

13.8.1 Non-Applicability Determinations

- a. The petroleum coke calcining lines are not subject to the New Source Performance Standards (NSPS) for Calciners and Dryers in Mineral Industries, 40 CFR Part 60 Subpart UUU, because the petroleum coke calcining lines are not located at a mineral processing plant as defined by 40 CFR 60.731.
- b. The Kilns 1 & 2 are not subject to 40 CFR Part 63 Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, because the kilns by definition are not boilers or process heaters as defined by 40 CFR 63.7575.
- c. The kilns associated with the Petroleum Coke Calcining Operations are not subject to 35 IAC 214.122 because the kilns are not by definition "new emission sources" pursuant to 35 IAC 201.102.

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- d. The kilns are not subject to 35 IAC 216.121, emissions of carbon monoxide from fuel combustion emission units, because the kilns are not fuel combustion emission units as defined by 35 IAC 211.2470.
- e. The kilns are not subject to 35 IAC 217.141, emissions of nitrogen oxides from existing fuel combustion emission sources, because the kilns are not fuel combustion emission units as defined by 35 IAC 211.2470.
- f. The kilns are not subject to 40 CFR Part .64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, for SO₂, because the kilns do not use an add-on control device to achieve compliance with an emission limitation or standard associated with SO₂.

4. Other Requirements

For the emission units in Condition 4.2.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7)(a), 39.5(7)(b), and 39.5(7)(d) of the Act.

a. Start-up, Shutdown, and Malfunction Breakdown Requirements

i. Authorization for State Requirements

A. Start-up Requirements

Pursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to operate kiln 1 and kiln 2 and their associated pyroscrubbers (i.e., pyroscrubber 1 and pyroscrubber 2) in violation of the applicable requirements of Conditions 4.2.2(a)(i)(A), 4.2.2(b)(i)(A), and 4.2.2(d)(i)(A) during start-up. The start-up time shall be no more than 24 hours. For this purpose, the start-up time is defined as the duration from when green coke feed is introduced to the kiln until the temperature at the pyroscrubber inlet achieves the minimum operating temperature indicated in the CAM plan. The Permittee shall comply with all applicable requirements in Section 7.3 of this permit.

B. Malfunction Breakdown Requirements

Pursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to continue operation in violation of the applicable requirements of Conditions 4.2.2(a)(i)(A), 4.2.2(b)(i)(A), and 4.2.2(d)(i)(A) during malfunction breakdown. The Permittee shall comply with all applicable requirements in Section 7.4 of this permit.

b. Operational Flexibility Requirements

- i. Pursuant to Section 39.5(12)(a) of the Act, the Permittee is allowed to operate the Petroleum Coke Calcining Operation using the following operational methods:

- A. If Kiln 1 operates while Kiln 2 is not operating, emissions from Cooler 1 may be vented through Baghouse 2 rather than Baghouse 1 if Baghouse 2 is in working condition.
- B. If Kiln 2 operates while Kiln 1 is not operating, emissions from Cooler 2 may be vented through Baghouse 1 rather than Baghouse 2 if Baghouse 1 is in working condition.
- C. For Baghouse 1 maintenance lasting up to thirty minutes, emissions from Cooler 1 may be vented through Pyroscrubber 1.
- D. For Baghouse 2 maintenance lasting up to thirty minutes, emissions from Cooler 2 may be vented through Pyroscrubber 2.

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5. Reporting Requirements

The Permittee shall submit the following information pursuant to Section 39.5(7)(f) of the Act. Addresses are included in Attachment 3.

a. Prompt Reporting

- i. A. Pursuant to Section 39.5(7)(f)(ii) of the Act, the Permittee shall promptly notify the IEPA, Air Compliance Section, within 30 days of deviations from applicable requirements as follows unless a different period is specified by a particular permit provision, i.e., NSPS or NESHAP requirement:
 - I. Requirements in Conditions 4.2.2(a)(i), 4.2.2(b)(i), 4.2.2(c)(i), 4.2.2(d)(i), 4.2.2(e)(i), and 4.2.2(f)(i).
 - II. Requirements in Conditions 4.2.4(a) and 4.2.4(b).
 - III. Requirements in Section 7.6.
- B. All such deviations shall be summarized and reported as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- ii. The Permittee shall notify the IEPA, Air Compliance Section, of all other deviations as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- iii. The deviation reports shall contain at a minimum the following information:
 - A. Date and time of the deviation.
 - B. Emission unit(s) and/or operation involved.
 - C. The duration of the event.
 - D. Probable cause of the deviation.
 - E. Corrective actions or preventative measures taken.

b. Operational Flexibility Reporting

- i. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall summarize and report cooler gas diversions leading to operation according to the alternative methods listed in Conditions 4.2.4(b)(i)(A - D) as part of the Semiannual Monitoring Report required by Condition 3.5(b). These summaries shall include the following information, at a minimum, for each such cooler gas diversion that occurred during the reporting period:
 - A. The date, time, and duration of the diversion;
 - B. The reason for the diversion;
 - C. For diversions which led to maintenance or repair actions, descriptions of the actions taken; and
 - D. For diversions which did not lead to any maintenance or repair actions, brief explanations for why no action was taken.

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4.3 Fugitive Dust

1. Emission Units and Operations

Emission Unit	Description	Pollutants Being Regulated	Original Construction Date	Modification/ Reconstruction Date	Air Pollution Control Devices or Measures	Monitoring Devices
Fugitive Emissions	Vehicular Traffic on Roadways, Parking Lots, and Other Open Areas Unloading Operations (Uncontrolled) Storage Piles and Associated Activities (Green Coke Storage Piles, Etc.)	PM	N/A	N/A	Moisture Content	None

2. Applicable Requirements

For the emission units in Condition 4.3.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7) (a), 39.5(7) (b), and 39.5(7) (d) of the Act.

a. i. Opacity Requirements

A. Pursuant to 35 IAC 212.123(a), no person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit.

ii. Compliance Method (Opacity Requirements)

Monitoring

A. At least once each year or if requested by the Illinois EPA, pursuant to Section 39.5(7) (a) and Section 39.5(7) (d) of the Act, as provided by 35 IAC 212.107, for both fugitive and non-fugitive particulate matter emissions, a determination as to the presence or absence of visible emissions from emission units shall be conducted in accordance with Method 22, 40 CFR Part 60, Appendix A, except that the length of the observing period shall be at the discretion of the observer, but not less than one minute. This test method shall be used to determine compliance with 35 IAC 212.123. If visible emissions are observed, the Permittee shall conduct a Method 9 in accordance with Condition 4.3.2(a) (ii) (B), below.

B. Pursuant to Section 39.5(7) (a) and Section 39.5(7) (d) of the Act, upon reasonable request by the Illinois EPA or following an observation as described in Condition 4.3.2(a) (ii) (A), above, in which visible emissions were observed the Permittee shall conduct a Method 9 in accordance with the following, as provided by 35 IAC 212.109, measurements of opacity shall be conducted in accordance with Method 9, 40 CFR Part 60, Appendix A, except that for roadways and parking areas the number of readings required for each vehicle pass will be three taken at 5-second intervals. The first reading shall be at the point of maximum opacity and second and third readings shall be made at the same point, the observer standing at right angles to the plume at least 15 feet away from the plume and observing 4 feet above the surface of the roadway or parking area. After four vehicles have passed, the 12 readings will be averaged.

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Recordkeeping

- C. Pursuant to Section 39.5(7)(b) of the Act, for Condition 4.3.2(a)(ii)(A), the Permittee shall keep records for each opacity observation performed. These records shall include, at a minimum: date and time the observation was performed, name(s) of observing personnel, identification of what was observed, whether the findings of the observation including the presence of any visible emissions, and a description of any corrective action taken including if the corrective action took place within 4 hours of the observation.
- D. Pursuant to Section 39.5(7)(b) of the Act, for Condition 4.3.2(a)(ii)(B), the Permittee shall keep records for all opacity measurements made in accordance with Method 9. These records shall include, at a minimum: date and time the Method 9 was performed, name(s) of observing personnel, identification of which equipment, roadway, or parking lot was observed, whether or not the equipment was running properly, and the opacity readings observed.

b. i. Particulate Matter Requirements (PM)

- A. The affected operations shall comply with the standard in Condition 3.1(a)(i), which addresses visible emissions of fugitive particulate matter, as defined by 35 IAC 211.2490. Specifically, 35 IAC 212.301.

ii. Compliance Method (PM Requirements)

The source shall comply with the monitoring and recordkeeping in Condition 3.1(a)(ii).

c. i. Work Practice Requirements

- A. Pursuant to Section 39.5(7)(a) of the Act, the Permittee shall maintain and operate all equipment, roadways, parking lots, and storage piles in a manner consistent with safety and good air pollution control practice for minimizing emissions.

ii. Compliance Method (Work Practice Requirements)

Monitoring

- A. Pursuant to Sections 39.5(7)(a) & (b) of the Act, at a minimum, the Permittee shall perform monthly inspections of the unloading hopper, the load-out spouts, and associated auxiliary equipment.

Recordkeeping

- B. Pursuant to Section 39.5(7)(b) of the Act, the Permittee shall keep records of each inspection performed along with a maintenance and repair log. These records shall include, at a minimum: date and time inspections were performed, name(s) of inspection personnel, identification of equipment being inspected, findings of the inspections, operation and maintenance procedures, and a description of all maintenance and repair activities performed including if the activity resulted in a modification or reconstruction of the piece of equipment.

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3. Non-Applicability Determinations

- a. Fugitive emissions at the source are not subject to the requirements of 35 IAC 212.302, therefore, 35 IAC 212.304 through 212.310 and 35 IAC 212.312 do not apply, because the source is not located in a geographical area as listed in 35 IAC 212.302.
- b. Pursuant to 35 IAC 212.323, fugitive emissions at the source are not subject to the requirements of 35 IAC 212.321 or 212.322, Process Weight Rate, because due to the disperse nature of such emission units, such rules cannot reasonably be applied.
- c. The fugitive emissions at the facility are not subject to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, because there are no add-on control devices used to achieve compliance with an emission limitation or standard.

4. Other Requirements

As of the date of issuance of this permit, there are no other requirements that need to be included in this Condition.

5. Reporting Requirements

The Permittee shall submit the following information pursuant to Section 39.5(7)(f) of the Act. Addresses are included in Attachment 3.

a. Prompt Reporting

- i. A. Pursuant to Section 39.5(7)(f)(ii) of the Act, the Permittee shall promptly notify the IEPA, Air Compliance Section, within 30 days of deviations from applicable requirements as follows unless a different period is specified by a particular permit provision, i.e., NSPS or NESHAP requirement:
 - I. Requirements in Conditions 4.3.2(a)(i), 4.3.2(b)(i), and 4.3.2(c)(i).
- B. All such deviations shall be summarized and reported as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- ii. The Permittee shall notify the IEPA, Air Compliance Section, of all other deviations as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- iii. The deviation reports shall contain at a minimum the following information:
 - A. Date and time of the deviation.
 - B. Emission unit(s) and/or operation involved.
 - C. The duration of the event.
 - D. Probable cause of the deviation.
 - E. Corrective actions or preventative measures taken.

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4.4 Storage Tanks

1. Emission Units and Operations

<i>Emission Units</i>	<i>Pollutants Being Regulated</i>	<i>Original Construction Date</i>	<i>Modification/ Reconstruction Date</i>	<i>Air Pollution Control Devices or Measures</i>	<i>Monitoring Devices</i>
15,000 Gallon Dedust Oil Storage Tank	VOM	1996	N/A	Submerged Loading Pipe	None

2. Applicable Requirements

For the emission units in Condition 4.4.1 above, the Permittee shall comply with the following applicable requirements pursuant to Sections 39.5(7) (a), 39.5(7) (b), and 39.5(7) (d) of the Act.

a. i. Volatile Organic Material Requirements (VOM)

A. Pursuant to 35 IAC 215.122(b), for the dedust oil tank, no person shall cause or allow the loading of any organic material into any stationary tank having a storage capacity of greater than 946 liters (250 gal), unless such tank is equipped with a permanent submerged loading pipe.

ii. Compliance Method (VOM Requirements)

Monitoring

A. Pursuant to Sections 39.5(7) (a) of the Act, at a minimum, the Permittee shall perform an annual inspection of the dedust oil storage tank and its associated auxiliary equipment. During the inspection, the Permittee shall ensure the presence of submerged loading pipe in the tank that is in working condition.

Recordkeeping

B. Pursuant to Section 39.5(7) (b) of the Act, the Permittee shall keep records of each inspection performed along with a maintenance and repair log. These records shall include, at a minimum, the following:

- I. Date and time inspections were performed;
- II. Name(s) of inspection personnel;
- III. Identification of equipment being inspected;
- IV. Findings of the inspections, which shall specifically note the presence of a submerged loading pipe;
- V. Operation and maintenance procedures; and
- VI. A description of all maintenance and repair activities performed including if the activity resulted in a modification or reconstruction of the piece of equipment.

C. Pursuant to Section 39.5(7) (b) of the Act, the Permittee shall maintain the following records:

- I. 1. Emissions from tanks shall be calculated in accordance with AP-42 Chapter 7.1.

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2. Emissions of VOM from the dedust oil tank, tons/mo and ton/yr (12-month rolling average, calculated monthly), with supporting calculations;
 - II. Design information for the dedust oil tank showing the presence of a permanent submerged loading pipe;
 - III. The type of liquid stored in the dedust tank and throughput of the dedust oil tank, gal/month and gal/yr.

3. Non-Applicability Determinations

- a. The dedust oil storage tank is not subject to the New Source Performance Standards (NSPS) for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels), 40 CFR Part 60 Subpart Kb, because it does not have design capacities that are equal to or greater than 75 m³ (19,800 gallons)..
- b. The dedust oil storage tank is not subject to 40 CFR Part 64, Compliance Assurance Monitoring (CAM) for Major Stationary Sources, because the dedust oil storage tank uses a passive control measure, such as a seal, lid, or roof, that is not considered a control device because it acts to prevent the release of pollutants.

4. Other Requirements

As of the date of issuance of this permit, there are no other requirements that need to be included in this Condition.

5. Reporting Requirements

The Permittee shall submit the following information pursuant to Section 39.5(7)(f) of the Act. Addresses are included in Attachment 3.

a. Prompt Reporting

- i. A. Pursuant to Section 39.5(7)(f)(ii) of the Act, the Permittee shall promptly notify the IEPA, Air Compliance Section, within 30 days of deviations from applicable requirements as follows unless a different period is specified by a particular permit provision, i.e., NSPS or NESHAP requirement:
 - I. Requirements in Conditions 4.4.2(a)(i).
 - B. All such deviations shall be summarized and reported, as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- ii. The Permittee shall notify the IEPA, Air Compliance Section, of all other deviations as part of the Semiannual Monitoring Report required by Condition 3.5(b).
- iii. The deviation reports shall contain at a minimum the following information:
 - A. Date and time of the deviation.
 - B. Emission unit(s) and/or operation involved.
 - C. The duration of the event.
 - D. Probable cause of the deviation.
 - E. Corrective actions or preventative measures taken.

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Section 5 - Additional Title I Requirements

This Section is reserved for Title I requirements not specified in Sections 3 or 4. As of the date of issuance of this permit, there are no Title I requirements that need to be separately addressed in this Section.

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Section 6 - Insignificant Activities Requirements

1. Insignificant Activities Subject to Specific Regulations

Pursuant to 35 IAC 201.210 and 201.211, the following activities at the source constitute insignificant activities. Pursuant to Sections 9.1(d) and 39.5(6)(a) of the Act, the insignificant activities are subject to specific standards promulgated pursuant to Sections 111, 112, 165, or 173 of the Clean Air Act. The Permittee shall comply with the following applicable requirements:

<i>Insignificant Activity</i>	<i>Number of Units</i>	<i>Insignificant Activity Category</i>
Gas turbines and stationary reciprocating internal combustion engines < 112 kW (150 hp) power output. - Kiln Aux. Engine 1 (89.9 hp, non-emergency, 2010) - Kiln Aux. Engine 2 (89.9 hp, non-emergency, 2010) - Aux. Water Pump Engine 3 (50 hp, emergency, 1998)	3	35 IAC 201.210(a) (15)

a. Applicable Requirements

Pursuant to Sections 39.5(7)(a), 39.5(7)(b), and 39.5(7)(d) of the Act, the Permittee shall comply with the following applicable requirements in addition to the applicable requirements in Condition 6.4:

i. New Source Performance Standard Requirements (NSPS)

Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (40 CFR 60 Subpart JJJJ)

A. Pursuant to 40 CFR 60.4230(a)(4)(iii), for Kiln Auxiliary Engines 1 & 2, the Permittee shall comply with the applicable requirements of 40 CFR 60 Subpart JJJJ, which include, but is not be limited to, the following:

- I. Pursuant to 40 CFR 60.4233(d), the Permittee shall comply with the emission standards for field testing in 40 CFR 1048.101(c) for their non-emergency stationary spark ignition (SI) internal combustion engines (ICE). Owners and operators of stationary SI ICE with a maximum engine power greater than 19 kW (25 hp) and less than 75 kW (100 hp) manufactured prior to January 1, 2011, that were certified to the standards in Table 1 to 40 CFR 60 Subpart JJJJ applicable to engines with a maximum engine power greater than or equal to 100 hp and less than 500 hp, may optionally choose to meet those standards.
- II. Pursuant to 40 CFR 60.4243(b), the Permittee shall demonstrate compliance with the emission standards specified in 40 CFR 60.4233(d) according to one of the methods specified in 40 CFR 60.4243(b)(1) and (2).
- III. Pursuant to 40 CFR 60.4245(a), the Permittee shall keep records of the information in 40 CFR 60.4245(a)(1) through (4).
- IV. Pursuant to 40 CFR 60.4246, the Permittee shall comply with the applicable General Provisions in 40 CFR 60.1 through 60.19, as specified in 40 CFR 60 Subpart JJJJ, Table 3.

ii. National Emission Standards for Hazardous Air Pollutants (NESHAP)

Standards of Performance for Stationary Reciprocating Internal Combustion Engines (40 CFR 60 Subpart ZZZZ)

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- A. Pursuant to 40 CFR 63.6590(c), for Kiln Auxiliary Engines 1 & 2, the Permittee shall meet the requirements of 40 CFR 63 Subpart ZZZZ by meeting the requirements of 40 CFR 60 Subpart JJJJ. No further requirements apply for Kiln Auxiliary Engines 1 & 2 under 40 CFR 63 Subpart ZZZZ.
- B. Pursuant to 40 CFR 63.6585, for Auxiliary Water Pump Engine 3, the Permittee shall comply with the applicable requirements of 40 CFR 63 Subpart ZZZZ which include, but are not limited to, the following:
- I. Pursuant to 40 CFR 63.6602, the Permittee shall comply with the applicable requirements in 40 CFR Part 63, Subpart ZZZZ Table 2c.
- II. Pursuant to 40 CFR 63.6640(a), the Permittee shall demonstrate continuous compliance with the applicable requirements in Table 2c to 40 CFR 63 Subpart ZZZZ according to one of the following methods specified in Table 6 to 40 CFR 63 Subpart ZZZZ:
1. Operating and maintaining the stationary reciprocating internal combustion engine (RICE) according to the manufacturer's emission-related operation and maintenance instructions; or
2. Develop and follow a maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.
- III. Pursuant to 40 CFR 63.6640(f), the Permittee shall either operate the emergency stationary RICE according to the requirements in 40 CFR 63.6640(f)(1) through (4) or comply with the applicable requirements of 40 CFR 63 Subpart ZZZZ for non-emergency engines.
- IV. Pursuant to 40 CFR 63.6655(a), the Permittee shall keep the applicable records described in 40 CFR 63.6655(a)(1) through (a)(5).
- V. Pursuant to 40 CFR 63.6655(d), the Permittee shall keep the records required in Table 6 of 40 CFR 63 Subpart ZZZZ.
- VI. Pursuant to 40 CFR 63.6655(e), the Permittee shall keep records of the maintenance conducted on the stationary RICE.
- VII. Pursuant to 40 CFR 63.6655(f), the Permittee shall keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The Permittee shall document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.
- VIII. Pursuant to 40 CFR 63.6665, the Permittee shall comply with the applicable General Provisions of 40 CFR 63 Subpart A as shown in Table 8 to 40 CFR 63 Subpart ZZZZ.

2. Insignificant Activities in 35 IAC 201.210(a)

In addition to any insignificant activities identified in Condition 6.1, the following additional activities at the source constitute insignificant activities pursuant to 35 IAC 201.210 and 201.211:

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Insignificant Activity	Number of Units	Insignificant Activity Category
Direct combustion units designed and used for comfort heating purposes and fuel combustion emission units as further detailed in 35 IAC 201.210(a)(4). - space heaters (natural gas, less than 2.5 mmBtu/hr)	9	35 IAC 201.210(a)(4)
Storage tanks as further detailed in 35 IAC 201.210(a)(10). - T1FS (diesel, 8000 gal, horizontal fixed roof AST) - T2FS (diesel, 8000 gal, horizontal fixed roof AST) - T3FS (gasoline, 250 gal, submerged loading) - T4FS (diesel, 300 gal, horizontal fixed roof AST) - T5FS (used oil, 300 gal, horizontal fixed roof AST) - T6FS (kerosene, 300 gal, horizontal fixed roof AST)	6	35 IAC 201.210(a)(10)

3. Insignificant Activities in 35 IAC 201.210(b)

Pursuant to 35 IAC 201.210, the source has identified insignificant activities as listed in 35 IAC 201.210(b)(1) through (28) as being present at the source. The source is not required to individually list the activities.

4. Applicable Requirements

Insignificant activities in Conditions 6.1 and 6.2 are subject to the following general regulatory limits notwithstanding status as insignificant activities. The Permittee shall comply with the following requirements, as applicable:

- a. Pursuant to 35 IAC 212.123(a), no person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit other than those emission units subject to 35 IAC 212.122, except as provided in 35 IAC 212.123(b).
- b. Pursuant to 35 IAC 212.321 or 212.322 (see Conditions 7.2(a) and (b)), no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any process emission unit which, either alone or in combination with the emission of particulate matter from all other similar process emission units at a source or premises, exceed the allowable emission rates specified 35 IAC 212.321 or 212.322 and 35 IAC Part 266.
- c. Pursuant to 35 IAC 214.301, no person shall cause or allow the emission of sulfur dioxide into the atmosphere from any process emission source to exceed 2,000 ppm, except as provided in 35 IAC Part 214.
- d. Pursuant to 35 IAC 214.305(a)(2), the sulfur content of all distillate fuel oil used by any process emission unit shall not exceed 15 ppm.
- e. Pursuant to 35 IAC 215.301, no person shall cause or allow the discharge of more than 8 lbs/hr of organic material into the atmosphere from any emission source, except as provided in 35 IAC 215.302, 215.303, 215.304 and the following exception: If no odor nuisance exists the limitation of 35 IAC 215 Subpart K shall apply only to photochemically reactive material.
- f. Pursuant to 35 IAC 215.122(b), no person shall cause or allow the loading of any organic material into any stationary tank having a storage capacity of greater than 250 gal, unless such tank is equipped with a permanent submerged loading pipe, submerged fill, or an equivalent device approved by the IEPA according to 35 IAC Part 201 or unless such tank is a pressure tank as described in 35 IAC 215.121(a) or is fitted with a recovery system as described in 35 IAC 215.121(b)(2). Exception as provided in 35 IAC 215.122(c): If no odor nuisance exists the limitations of 35 IAC 215.122 shall only apply to the loading of volatile organic liquid with a vapor pressure of 2.5 psia or greater at 70°F.

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5. Compliance Method

Pursuant to Section 39.5(7)(b) of the Act, the source shall maintain records of the following items for the insignificant activities in Conditions 6.1 and 6.2:

- a. List of all insignificant activities, including insignificant activities added as specified in Condition 6.6, the categories the insignificant activities fall under, and supporting calculations as needed.
- b. Potential to emit emission calculations before any air pollution control device for each insignificant activity listed in Condition 6.2.
- c. For each storage tank of organic liquids, except gasoline and gasoline/ethanol blend fuel tanks, records of the throughput (gal/yr).
- d. Records demonstrating that the fuel oil used by any process emission source complies with the applicable standard for maximum sulfur content.

6. Notification Requirements for Insignificant Activities

The source shall notify the IEPA accordingly to the addition of insignificant activities:

a. Notification 7 Days in Advance

- i. Pursuant to 35 IAC 201.212(b), for the addition of an insignificant activity that would be categorized under 35 IAC 201.210(a)(1) and 201.211 and is not currently identified in Conditions 6.1 or 6.2, a notification to the IEPA Permit Section 7 days in advance of the addition of the insignificant activity is required. Addresses are included in Attachment 3. The notification shall include the following pursuant to 35 IAC 201.211(b):
 - A. A description of the emission unit including the function and expected operating schedule of the unit.
 - B. A description of any air pollution control equipment or control measures associated with the emission unit.
 - C. The emissions of regulated air pollutants in lb/hr and ton/yr.
 - D. The means by which emissions were determined or estimated.
 - E. The estimated number of such emission units at the source.
 - F. Other information upon which the applicant relies to support treatment of such emission unit as an insignificant activity.
- ii. Pursuant to 35 IAC 201.212(b), for the addition of an insignificant activity that would be categorized under 35 IAC 201.210(a)(2) through 201.210(a)(18) and is not currently identified in Conditions 6.1 or 6.2, a notification to the IEPA Permit Section 7 days in advance of the addition of the insignificant activity is required. Addresses are included in Attachment 3.
- iii. Pursuant to Sections 39.5(12)(a)(i)(b) and 39.5(12)(b)(iii) of the Act, the permit shield described in Section 39.5(7)(j) of the Act (see Condition 2.7) shall not apply to any addition of an insignificant activity noted above.

b. Notification Required at Renewal

Pursuant to 35 IAC 201.212(a) and 35 IAC 201.146(kkk), for the addition of an insignificant activity that would be categorized under 35 IAC 201.210(a) and is currently

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identified in Conditions 6.1 or 6.2, a notification is not required until the renewal of this permit.

c. **Notification Not Required**

Pursuant to 35 IAC 201.212(c) and 35 IAC 201.146(kkk), for the addition of an insignificant activity that would be categorized under 35 IAC 201.210(b) as described in Condition 6.3, a notification is not required.

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Section 7 - Other Requirements**1. Testing**

- a. Pursuant to Section 39.5(7)(a) of the Act, a written test protocol shall be submitted at least sixty (60) days prior to the actual date of testing, unless it is required otherwise in applicable state or federal statutes. The IEPA may at the discretion of the Compliance Section Manager (or designee) accept protocol less than 60 days prior to testing provided it does not interfere with the IEPA's ability to review and comment on the protocol and does not deviate from the applicable state or federal statutes. The protocol shall be submitted to the IEPA, Compliance Section and IEPA, Stack Test Specialist for its review. Addresses are included in Attachment 3. This protocol shall describe the specific procedures for testing, including as a minimum:
- i. The name and identification of the emission unit(s) being tested.
 - ii. Purpose of the test, i.e., permit condition requirement, IEPA or USEPA requesting test.
 - iii. The person(s) who will be performing sampling and analysis and their experience with similar tests.
 - iv. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative of maximum emissions and the means by which the operating parameters for the emission unit and any control equipment will be determined.
 - v. The specific determinations of emissions and operation which are intended to be made, including sampling and monitoring locations.
 - vi. The test method(s) that will be used, with the specific analysis method, if the method can be used with different analysis methods. Include if emission tests averaging of 35 IAC 283 will be used.
 - vii. Any minor changes in standard methodology proposed to accommodate the specific circumstances of testing, with detailed justification. This shall be included as a waiver of the test procedures. If a waiver has already been obtained by the IEPA or USEPA, then the waiver shall be submitted.
 - viii. Any proposed use of an alternative test method, with detailed justification. This shall be included as a waiver of the test procedures. If a waiver has already been obtained by the IEPA or USEPA, then the waiver shall be submitted.
 - ix. Sampling of materials, QA/QC procedures, inspections, etc.
 - x. Notwithstanding conditions 7.1 above, a test plan need not be submitted under the following circumstances:
 - A. Where the Permittee intends to utilize a test plan previously submitted. However, the Permittee must submit a notice containing the following:
 - I. The purpose of the test;
 - II. Date the previously submitted test plan was submitted; and
 - III. A statement that the source is relying on a previously submitted test plan.

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- B. Where the source intends to use a standard test method or procedure. However, the Permittee must submit a notice containing the following:
 - I. The purpose of the test; and
 - II. The standard test method or procedure to be used.
- b. The IEPA, Compliance Section shall be notified prior to these tests to enable the IEPA to observe these tests pursuant to Section 39.7(a) of the Act as follows:
 - i. Notification of the expected date of testing shall be submitted in writing a minimum of thirty (30) days prior to the expected test date, unless it is required otherwise in applicable state or federal statutes.
 - ii. Notification of the actual date and expected time of testing shall be submitted in writing a minimum of five (5) working days prior to the actual date of the test. The IEPA may at its discretion of the Compliance Section Manager (or designee) accept notifications with shorter advance notice provided such notifications will not interfere with the IEPA's ability to observe testing.
- c. Copies of the Final Report(s) for these tests shall be submitted to the IEPA, Compliance Section within fourteen (14) days after the test results are compiled and finalized but no later than ninety (90) days after completion of the test, unless it is required otherwise in applicable state or federal statutes or the IEPA may at the discretion of the Compliance Section Manager (or designee) agree upon an alternative date in advance pursuant to Section 39.7(a) of the Act. The Final Report shall include as a minimum:
 - i. General information including emission unit(s) tested.
 - ii. A summary of results.
 - iii. Discussion of conditions during each test run (malfunction/breakdown, start-up/shutdown, abnormal processing, etc.).
 - iv. Description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule.
 - v. Detailed description of test conditions, including:
 - A. Process information, i.e., mode(s) of operation, process rate, e.g. fuel or raw material consumption.
 - B. Control equipment information, i.e., equipment condition and operating parameters during testing.
 - C. A discussion of any preparatory actions taken, i.e., inspections, maintenance and repair.
 - vi. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.
 - vii. An explanation of any discrepancies among individual tests or anomalous data.
 - viii. Results of the sampling of materials, QA/QC procedures, inspections, etc.
 - ix. Discussion of whether protocol was followed and description of any changes to the protocol if any occurred.
 - x. Demonstration of compliance showing whether test results are in compliance with applicable state or federal statutes.

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d. Copies of all test reports and other test related documentation shall be kept on site as required by Condition 2.5(b) pursuant to Section 39.5(7)(e)(ii) of the Act.

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2. PM Process Weight Rate Requirements

a. New Process Emission Units - 35 IAC 212.321

New Process Emission Units for Which Construction or Modification Commenced on or After April 14, 1972. [35 IAC 212.321]

- i. No person shall cause or allow the emission of PM into the atmosphere in any one hour period from any new process emission unit which, either alone or in combination with the emission of PM from all other similar process emission units for which construction or modification commenced on or after April 14, 1972, at a source or premises, exceeds the allowable emission rates specified in 35 IAC 212.321(c). See Condition 7.2(a)(iii) below. [35 IAC 212.321(a)]
- ii. Interpolated and extrapolated values of the data in 35 IAC 212.321(c) shall be determined by using the equation: [35 IAC 212.321(b)]

$$E = A(P)^B$$

Where:

P = Process weight rate (T/hr)
E = Allowable emission rate (lbs/hr)

A. Process weight rates of less than 450 T/hr:

A = 2.54
B = 0.53

B. Process weight rates greater than or equal to 450 T/hr:

A = 24.8
B = 0.16

iii. Limits for New Process Emission Units: [35 IAC 212.321(c)]

<u>P</u> <u>(T/hr)</u>	<u>E</u> <u>(lbs/hr)</u>	<u>P</u> <u>(T/hr)</u>	<u>E</u> <u>(lbs/hr)</u>
0.05	0.55	25.00	14.00
0.10	0.77	30.00	15.60
0.20	1.10	35.00	17.00
0.30	1.35	40.00	18.20
0.40	1.58	45.00	19.20
0.50	1.75	50.00	20.50
0.75	2.40	100.00	29.50
1.00	2.60	150.00	37.00
2.00	3.70	200.00	43.00
3.00	4.60	250.00	48.50
4.00	5.35	300.00	53.00
5.00	6.00	350.00	58.00
10.00	8.70	400.00	62.00
15.00	10.80	450.00	66.00
20.00	12.50	500.00	67.00

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b. Existing Process Emission Units - 35 IAC 212.322

Existing Process Emission Units for Which Construction or Modification Commenced Prior to April 14, 1972. [35 IAC 212.322]

- i. No person shall cause or allow the emission of PM into the atmosphere in any one hour period from any process emission unit for which construction or modification commenced prior to April 14, 1972, which, either alone or in combination with the emission of PM from all other similar process emission units at a source or premises, exceeds the allowable emission rates specified in 35 IAC 212.322(c). See Condition 7.2(b)(iii) below. [35 IAC 212.322(a)]
- ii. Interpolated and extrapolated values of the data in 35 IAC 212.322(c) shall be determined by using the equation: [35 IAC 212.322(b)]

$$E = C + A(P)^B$$

Where:

P = Process weight rate (T/hr)
E = Allowable emission rate (lbs/hr)

A. Process weight rates of less than 30 T/hr:

A = 4.10
B = 0.67
C = 0

B. Process weight rates greater than or equal to 30 T/hr:

A = 55.0
B = 0.11
C = -40.0

iii. Limits for Existing Process Emission Units: [35 IAC 212.322(c)]

<u>P</u> <u>(T/hr)</u>	<u>E</u> <u>(lbs/hr)</u>	<u>P</u> <u>(T/hr)</u>	<u>E</u> <u>(lbs/hr)</u>
0.05	0.55	25.00	35.40
0.10	0.87	30.00	40.00
0.2	1.40	35.00	41.30
0.30	1.83	40.00	42.50
0.40	2.22	45.00	43.60
0.50	2.58	50.00	44.60
0.75	3.38	100.00	51.20
1.00	4.10	150.00	55.40
2.00	6.52	200.00	58.60
3.00	8.56	250.00	61.00
4.00	10.40	300.00	63.10
5.00	12.00	350.00	64.90
10.00	19.20	400.00	66.20
15.00	25.20	450.00	67.70
20.00	30.50	500.00	69.00

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3. Start-Up Requirements**a. Start-Up Provisions**

Pursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to operate in violation of the applicable requirements (as referenced in Section 4.2.4(a)(i)(A) of this CAAPP permit) during start-up. The source has applied for such authorization in its application, generally describing the efforts that will be used "...to minimize start-up emissions, duration of individual starts, and frequency of start-ups." As provided by 35 IAC 201.265, authorization in this CAAPP permit for excess emissions during start-up does not shield the source from enforcement for any violation of applicable emission standard(s) that occurs during start-up and only constitutes a prima facie defense to such an enforcement action provided that the source has fully complied with all terms and conditions connected with such authorization.

- i. This authorization does not relieve the source from the continuing obligation to demonstrate that all reasonable efforts are made to minimize start-up emissions, duration of individual starts, and frequency of start-ups.
- ii. The source shall conduct start-ups in accordance with written start-up procedures prepared by the source and maintained at the source, that are specifically developed to minimize start-up emissions, duration of individual starts, and frequency of start-ups.
- iii. The authorization provided by Condition 4.2.4(a)(i)(A) is subject to the following:
 - A. Implementation of established start-up procedures;
 - B. Neither kiln shall begin green coke feed if the baghouse controlling that kiln cooler is not operating properly unless the other kiln is not in service and its baghouse is available for control of PM emissions.
 - C. Neither kiln shall begin green coke feed unless the temperature at the pyroscrubber inlet is at least 400°F.
 - D. Natural gas shall be used as a supplemental heat source to the kiln in order to reach sufficient pyroscrubber operating temperature at a rate in accordance with the refractory manufacturer's guidelines. Sufficient pyroscrubber operating temperature corresponds to the inlet pyroscrubber temperature indicator range in the CAM plan. See Tables 7.5.1 - 7.5.4.
 - E. Sufficient pyroscrubber operating temperature shall be achieved within 24 hours after introducing green coke feed to the kiln.

b. Monitoring - Recordkeeping

Pursuant to Section 39.5(7)(b) of the Act, the source shall maintain the following records for start-up:

- i. Records for each individual start-up that contains at a minimum:
 - A. Date, time, duration, and description of the start-up.
 - B. Whether the most recent start-up procedures were followed. If not followed, an explanation as to what procedures were not followed and why these procedures were not followed.
 - C. Whether normal operation was achieved in the allowed duration (as referenced in Section 4.2.4(a)(i)(A) of this CAAPP permit). If not achieved, an explanation why normal operation was not achieved in the allowed duration.

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c. Monitoring - Reporting

Pursuant to Sections 39.5(7)(b) and (f) of the Act, the source shall submit the following reports:

i. Prompt Reporting

A Deviation Report shall be submitted to the IEPA, Compliance Section (address is included in Attachment 3) within five (5) days if a start-up exceeded the emission estimates in the start-up procedures or emissions exceeded any applicable standard or limit not authorized to be violated during start-up.

ii. Semiannual Reporting

As part of the required Semiannual Monitoring Reports, the source shall submit a start-up report including the following at a minimum: a list of the start-ups including the date, duration, and description of each start-up where the start-up exceeded any applicable standard or limit accompanied by an explanation where the applicable start-up procedures were not performed and where normal operation was not achieved in the allowed duration.

4. Malfunction Breakdown Requirements**a. Malfunction Breakdown Provisions**

Pursuant to 35 IAC 201.149, 201.261, and 201.262, the source is authorized to continue operation in violation of the applicable requirements (as referenced in Section 4.2.4 of the CAAPP permit) during malfunction or breakdown. The source has applied for such authorization in its application, generally describing "such continued operation is necessary to prevent injury to persons or severe damage to equipment; or that such continued operation is required to provide essential services; provided, however, that continued operation solely for the economic benefit of the source shall not be sufficient for granting of permission." As provided by 35 IAC 201.265, authorization in this CAAPP permit for continued operation during malfunction or breakdown does not shield the source from enforcement for any violation of applicable emission standard(s) that occurs during malfunction or breakdown and only constitutes a prima facie defense to such an enforcement action provided that the source has fully complied with all terms and conditions connected with such authorization.

- i. Upon continued operation in violation of the applicable requirements during malfunction or breakdown, the source shall as soon as practical, remove from service and repair the emission unit(s) or undertake other measures as described in the application so that any violation of the applicable requirements cease.
- ii. For continued operation in violation of the applicable requirements during malfunction or breakdown, the time shall be measured from the start of a particular incident and ends when violation of the applicable requirements ceases. The absence of a violation of the applicable requirements for a short period shall not be considered to end the incident if a violation of the applicable requirements resume. In such circumstances, the incident shall be considered to continue until corrective measures are taken so that a violation of the applicable requirements cease or the source takes the emission unit(s) out of service.
- iii. Following notification to the IEPA of continued operation in violation of the applicable requirements during malfunction or breakdown, the source shall comply with all reasonable directives of the IEPA with respect to such incident, pursuant to 35 IAC 201.263.
- iv. In the event of a malfunction or breakdown of a baghouse leading to conditions in which the source cannot operate according the alternative operational methods listed in Conditions 4.2.4(b) (i) (A - D), the Permittee shall comply with the following procedures to minimize emissions that may result from the malfunction or breakdown:
 - A. During a malfunction or breakdown event of Baghouse 1, the Permittee shall divert the exhaust from Rotary Cooler 1 to Pyroscrubber 1 for up to 24 hours.
 - B. During a malfunction or breakdown event of Baghouse 2, the Permittee shall divert the exhaust from Rotary Cooler 2 to Pyroscrubber 2 for up to 24 hours.
 - C. If baghouse repairs cannot be completed within 24 hours, the Permittee shall shut down green coke feed to one or both kilns. Green coke feed to one kiln may continue only if a baghouse is available to control emissions from the cooler. If neither baghouse is available, the Permittee shall shut down green coke feed to both kilns.
- v. In the event of a malfunction or breakdown of both thermocouples at the inlet of a pyroscrubber, the Permittee shall comply with the following procedures to minimize emissions that may result from the malfunction or breakdown:

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- A. Repair or replace at least one of the thermocouples within 24 hours.
- B. Green coke feed to a kiln shall cease within 24 hours unless at least one thermocouple at the inlet of that kiln's pyroscrubber functions properly.

b. Monitoring - Recordkeeping

Pursuant to Section 39.5(7)(b) of the Act and 35 IAC 201.263, the source shall maintain records of continued operation in violation of the applicable requirements during malfunction or breakdown. The records shall include at a minimum:

- i. Date and duration of the malfunction or breakdown.
- ii. A detailed explanation of the malfunction or breakdown.
- iii. An explanation why the emission unit(s) continued operation.
- iv. The measures used to reduce the opacity and quantity of emissions and the duration of the event.
- v. The steps taken to prevent similar malfunctions or breakdowns and reduce their frequency and severity.

c. Monitoring - Reporting

Pursuant to Sections 39.5(7)(b) and (f) of the Act and 35 IAC 201.263, the source shall provide the following notification and reports to the IEPA, Compliance Section and Regional Field Office (addresses are included in Attachment 3) concerning continued operation in violation of the applicable requirements during malfunction or breakdown:

i. Prompt Reporting

When continued operation in violation of the applicable requirements during malfunction or breakdown:

- A. The source shall notify the IEPA's regional office by telephone and/or electronic mail as soon as possible during normal working hours, but no later than three (3) days, upon the occurrence of noncompliance due to malfunction or breakdown.
- B. Upon achievement of compliance, the source shall give a written follow-up notice within 15 days to the IEPA, Air Compliance Section and Regional Field Office, providing a detailed explanation of the event, an explanation why continued operation was necessary, the length of time during which operation continued under such conditions, the measures taken by the source to minimize and correct deficiencies with chronology, and when the repairs were completed or when the unit(s) was taken out of service.
- C. If compliance is not achieved within 5 working days of the occurrence, the source shall submit interim status reports to the IEPA, Air Compliance Section and Regional Field Office, within 5 days of the occurrence and every 14 days thereafter, until compliance is achieved. These interim reports shall provide a brief explanation of the nature of the malfunction or breakdown, corrective actions accomplished to date, actions anticipated to occur with schedule, and the expected date on which repairs will be complete or the emission unit(s) will be taken out of service.

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ii. Semiannual Reporting

As part of the required Semiannual Monitoring Reports, the source shall submit a semiannual malfunction breakdown report including the following at a minimum:

- A. A listing of all malfunctions and breakdowns where the malfunction breakdown exceeded any applicable standard or limit, in chronological order, that includes: the date, time, and duration of each incident; and identity of the affected operation(s) involved in the incident.
- B. Dates of the notices and reports required by Prompt Reporting requirements of 7.4(c)(i) above.
- C. If there have been no such incidents during the reporting period where the malfunction breakdown exceeded any applicable standard or limit, this shall be stated in the report.

5. Compliance Assurance Monitoring (CAM) Requirements**a. CAM Provisions****i. Proper Maintenance**

Pursuant to 40 CFR 64.7(b), at all times, the source shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

ii. Continued Operation

Pursuant to 40 CFR 64.7(c), except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the source shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit (PSEU) is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of 40 CFR Part 64, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The source shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

iii. Response to Excursions or Exceedances

A. Pursuant to 40 CFR 64.7(d)(1), upon detecting an excursion or exceedance, the source shall restore operation of the PSEU (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any start-up, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused start-up or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

B. Pursuant to 40 CFR 64.7(d)(2), determination of whether the source has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

b. Monitoring - Monitoring

Pursuant to 40 CFR 64.7(a), the source shall comply with the monitoring requirements of the CAM Plans as described in 7.5(e) below, pursuant to 40 CFR Part 64 as submitted in the source's CAM plan application.

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c. Monitoring - Recordkeeping

Pursuant to 40 CFR 64.9(b) (1), the source shall maintain records of the monitoring data, monitor performance data, corrective actions taken, monitoring equipment maintenance, and other supporting information related to the monitoring requirements established for CAM.

d. Monitoring - Reporting

Pursuant to Sections 39.5(7) (b) and (f) of the Act, the source shall submit the following reporting requirements:

i. Semiannual Reporting

As part of the required Semiannual Monitoring Reports, the source shall submit a CAM report including the following at a minimum:

- A. Summary information on the number, duration, and cause of excursions or exceedances, and the corrective actions taken pursuant to 40 CFR 64.6(c) (3) and 64.9(a) (2) (i).
- B. Summary information on the number, duration, and cause for monitoring equipment downtime incidents, other than downtime associated with calibration checks pursuant to 40 CFR 64.6(c) (3) and 64.9(a) (2) (ii).

e. CAM Plans

The following tables contain the CAM Plans in this CAAPP permit:

Table	Emission Unit Section	PSEU Designation	Pollutant
7.5.1	4.2	Kiln 1	VOM
7.5.2	4.2	Kiln 1	PM
7.5.3	4.2	Kiln 2	VOM
7.5.4	4.2	Kiln 2	PM
7.5.5	4.2	Cooler 1	PM
7.5.6	4.2	Cooler 2	PM

Table 7.5.1 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Kiln 1
Pollutant:	VOM

Indicators:	#1) Pyroscrubber No. 1 Inlet Temperature	#2) Pyroscrubber No. 1 Inlet Temperature
General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Thermocouple 1A	Thermocouple 1B
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum of 1,800°F	Minimum of 1,800°F
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time
Operational Requirements		
The Specifications for Obtaining Representative Data:	Thermocouple 1A on inlet of Pyroscrubber 1, installed per manufacture's specifications	Thermocouple 1B on inlet of Pyroscrubber 1, installed per manufacture's specifications
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installation, calibration, and start-up operation	Manufacture's specifications for installation, calibration, and start-up operation
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of Thermocouple 1A per manufacture's specifications	Calibration of Thermocouple 1B per manufacture's specifications
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	Minimum of four or more data values equally spaced over each hour
The Data Collection Procedures That Will Be Used:	Temperature logged via facility's process control system	Temperature logged via facility's process control system
The Data Averaging Period for Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Three-hour average, when in operation

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Table 7.5.2 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Kiln 1
Pollutant:	PM

Indicators:	#1) Pyroscrubber No. 1 Inlet Temperature	#2) Pyroscrubber No. 1 Inlet Temperature
General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Thermocouple 1A	Thermocouple 1B
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum of 1,800°F	Minimum of 1,800°F
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time
The Specifications for Obtaining Representative Data:	Thermocouple 1A on inlet of Pyroscrubber 1, installed per manufacture's specifications	Thermocouple 1B on inlet of Pyroscrubber 1, installed per manufacture's specifications
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installation, calibration, and start-up operation	Manufacture's specifications for installation, calibration, and start-up operation
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of Thermocouple 1A per manufacture's specifications	Calibration of Thermocouple 1B per manufacture's specifications
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	Minimum of four or more data values equally spaced over each hour
The Data Collection Procedures That Will Be Used:	Temperature logged via facility's process control system	Temperature logged via facility's process control system
The Data Averaging Period For Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Three-hour average, when in operation

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Table 7.5.3 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Kiln_2
Pollutant:	VOM

Indicators:	#1) Pyroscrubber No. 2 Inlet Temperature	#2) Pyroscrubber No. 2 Inlet Temperature
General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Thermocouple 2A	Thermocouple 2B
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum of 1,800°F	Minimum of 1,800°F
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time
The Specifications for Obtaining Representative Data:	Thermocouple 2A on inlet of Pyroscrubber 2, installed per manufacture's specifications	Thermocouple 2B on inlet of Pyroscrubber 2, installed per manufacture's specifications
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installation, calibration, and start-up operation	Manufacture's specifications for installation, calibration, and start-up operation
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of Thermocouple 2A per manufacture's specifications	Calibration of Thermocouple 2B per manufacture's specifications
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	Minimum of four or more data values equally spaced over each hour
The Data Collection Procedures That Will Be Used:	Temperature logged via facility's process control system	Temperature logged via facility's process control system
The Data Averaging Period for Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Three-hour average, when in operation

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Table 7.5.4 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Kiln 2
Pollutant:	PM

Indicators:	#1) Pyroscrubber No. 2 Inlet Temperature	#2) Pyroscrubber No. 2 Inlet Temperature
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General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Thermocouple 2A	Thermocouple 2B
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum of 1,800°F	Minimum of 1,800°F
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of unit's operating time
The Specifications for Obtaining Representative Data:	Thermocouple 2A on inlet of Pyroscrubber 2, installed per manufacture's specifications	Thermocouple 2B on inlet of Pyroscrubber 2, installed per manufacture's specifications
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installation, calibration, and start-up operation	Manufacture's specifications for installation, calibration, and start-up operation
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of Thermocouple 2A per manufacture's specifications	Calibration of Thermocouple 2B per manufacture's specifications
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	Minimum of four or more data values equally spaced over each hour
The Data Collection Procedures That Will Be Used:	Temperature logged via facility's process control system	Temperature logged via facility's process control system
The Data Averaging Period for Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Three-hour average, when in operation

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Table 7.5.5 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Rotary Cooler 1
Pollutant:	PM

Indicators:	#1) Baghouse Pressure Drop	#2) Opacity
General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Pressure Drop Gauge	Opacity
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum pressure drop of 2" H ₂ O, Maximum pressure drop of 8" of H ₂ O	Opacity ≤30%.
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of the unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of the unit's operating time
Performance Criteria		
The Specifications for Obtaining Representative Data:	Pressure gauge across Baghouse, installed per manufacture's specifications	Opacity at the baghouse stack
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installations, calibration, and start-up operation	USEPA Method 9
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of pressure gauge per manufacture's specifications	Certified observer
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	As needed following baghouse maintenance
The Data Collection Procedures That Will Be Used:	Pressure Drop logged via facility's process control system	Recordkeeping
The Data Averaging Period for Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Six-minute periods

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Table 7.5.6 - CAM Plan

Emission Unit Section:	4.2
PSEU Designation:	Rotary Cooler 2
Pollutant:	PM

Indicators:	#1) Baghouse Pressure Drop	#2) Opacity
General Criteria		
The Monitoring Approach Used to Measure the Indicators:	Pressure Drop Gauge	Opacity
The Indicator Range Which Provides a Reasonable Assurance of Compliance:	Minimum pressure drop of 2" H ₂ O, Maximum pressure drop of 8" of H ₂ O	Opacity ≤30%.
Quality Improvement Plan (QIP) Threshold Levels:	Accumulation of exceedances or excursions exceeding 5% duration of the unit's operating time	Accumulation of exceedances or excursions exceeding 5% duration of the unit's operating time
Performance Criteria		
The Specifications for Obtaining Representative Data:	Pressure gauge across Baghouse, installed per manufacture's specifications	Opacity at the baghouse stack
Verification Procedures to Confirm the Operational Status of the Monitoring:	Manufacture's specifications for installations, calibration, and start-up operation	USEPA Method 9
Quality Assurance and Quality Control (QA/QC) Practices that Ensure the Validity of the Data:	Calibration of pressure gauge per manufacture's specifications	Certified observer
The Monitoring Frequency:	Minimum of four or more data values equally spaced over each hour	As needed following baghouse maintenance
The Data Collection Procedures That Will Be Used:	Pressure Drop logged via facility's process control system	Recordkeeping
The Data Averaging Period for Determining Whether an Excursion or Exceedance Has Occurred:	Three-hour average, when in operation	Six-minute periods

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6. Inspection Procedure Plan Requirements

a. Baghouse Inspection Requirements:

- i. Check the interior and exterior of the baghouse for damage, corrosion, and wear.
- ii. Check baghouse doors, airlines, seals, and housing for leaks.
- iii. Check bag conditions looking at the cages and the bags for damage, corrosion, deterioration, and wear.
- iv. Check differential pressure gauges and lines for damage, corrosion, deterioration, and wear.
- v. Check motor and gear boxes for any damage, corrosion, deterioration, and wear.
- vi. Check fan, ductwork, and all housing for damage, corrosion, deterioration, and wear.

These inspection requirements are found in the Internal Inspection Baghouse #1 and #2 PM work orders in the maintenance electronic data system.

b. General Internal Refractory Inspection Requirements:

- i. The internal inspection conducted on the stack, pyroscrubber, dust chamber, kiln, and cooler includes inspecting the refractory and structure of the equipment.
- ii. Refractory inspections include checking the following:
 - A. Inspect refractory for visible failures, exposed anchors, and/or excessive gaps (not normal gapping from contraction due to cool down), significant spalling, or visible evidence that the anchor system has failed.
 - B. Where possible, check the refractory liner's thickness.
 - C. Areas to inspect are:
 - I. Cooler liner, thimble, and transfer chute
 - II. Kiln liner, hood, and nose ring
 - III. Dust chamber thimble, walls, roof, floor, and bullnoses
 - IV. Pyroscrubber walls, roof, floor, and bullnoses
 - V. Stack breach and stack liner

c. Green Bin Inspection Requirements:

- i. Inspect the exterior and interior of the Green Bin for any damage, corrosion, or wear.

d. Calcinated Bin Inspection Requirements:

- i. Inspect the exterior and interior of Calcinated Bin for any damage, corrosion, or wear.

e. Calcined Bin Vent Inspection Requirements:

- i. Check the bin vents for leaks, bag condition, pulse jet alignment, corrosion, damage, or wear.

f. Multiclone Inspection Requirements:

- i. Inspect the exterior and interior of the multiclone.
- ii. Inspect the seals, tubes, vanes, hoppers, and airlines for any leaks, damage, corrosion, or wear.

g. External Inspections:

- i. Monthly external inspections are required for the Green Coke Stacking, Green Coke Conveying, Calcined Coke Conveying, and Calcined Coke Railcar Loadout processes to ensure PM emission control measures (i.e., enclosures, conveyors, and dedust oil operation) are in place and properly implemented to ensure compliance.
- ii. Monthly external inspections are required on the following equipment for both lines: Green Coke Screening areas, Green Coke Crushing areas, Green Coke Conveying areas, Green Coke Storage Bins, and Calcined Coke Storage Bins 3 & 4. The following items need to be included on the inspection:
 - A. Check the areas for leaks;
 - B. Verify control equipment is in working order and in good condition; and
 - C. Check for damage and corrosion.
- iii. Weekly external inspections are required on the following equipment for both lines: Pyroscrubber, Dust Chamber, Kiln, Cooler, Baghouse, and Multiclone. The following items need to be included on the inspection:
 - A. Check the areas for leaks;
 - B. Verify control equipment is in working order and in good condition; and
 - C. Check for damage and corrosion.

h. Monitoring - Recordkeeping

Pursuant to Sections 39.5(7)(b) and (f) of the Act, the source shall maintain records of the monitoring data, monitor performance data, corrective actions taken, monitoring equipment maintenance, and other supporting information related to the monitoring requirements established for inspection procedure plans. At a minimum, the following items are required when conducting an inspection:

- i. Date and time of the inspection;
- ii. Equipment inspected;
- iii. Inspection findings;
- iv. Printed name of the person conducting the inspection;
- v. Signature of the person conducting the inspection; and

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- vi. Whether any repairs or maintenance were conducted and what was done to repair the damaged areas. Record the maintenance electronic data system notification numbers and completed work order numbers for reference.

i. **Monitoring - Reporting**

Pursuant to Sections 39.5(7)(b) and (f) of the Act, the source shall submit the following reporting requirements:

i. **Semiannual Reporting**

As part of the required semiannual monitoring reports, the source shall submit an inspection procedure plan report including the following, at a minimum:

- A. Summary information on the number, duration, and cause of excursions or exceedances, and the corrective actions taken.
- B. Summary information on the number, duration, and cause for monitoring equipment downtime incidents, other than downtime associated with calibration checks.

Section 8 - State Only Requirements

1. Permitted Emissions for Fees

- a. The annual emissions from the source solely for purposes of "Duty to Pay Fees" of Condition 2.3(e), not considering insignificant activities as addressed by Section 6, shall not exceed the following: [Section 39.5(18) (a) (ii) of the Act]

<i>Pollutant</i>		<i>Tons/Year</i>
Volatile Organic Material	(VOM)	3.00
Sulfur Dioxide	(SO ₂)	2719.00
Particulate Matter	(PM)	163.80
Nitrogen Oxides	(NO _x)	183.00
HAP, not included in VOM or PM	(HAP)	25.00
Total		3093.80

- b. The overall source emissions shall be determined by adding emissions of the above pollutants from all emission units (not including insignificant activities) on a calendar year basis. The Permittee shall maintain records of annual emissions for fee purposes. [Section 39.5(18) (a) (ii) of the Act]

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Attachment 1 - List of Emission Units at This Source

Section	Emission Units	Description
4.1	Green Coke Screening	The Coke passes the green coke screening operation when it is unloaded and prior to entering the green coke crusher.
4.1	Green Coke Crushing	Green coke crushing uses a single roller crusher to reduce the size of the oversized coke, or the coke that is larger than 4 inches. The crusher is used to prepare the oversized coke for the kilns.
4.1	Green Coke Stacking	Green coke stacking uses an enclosed conveyor to transport excess properly sized coke to storage piles, where the stockpiled green coke is eventually reclaimed and conveyed to the green coke storage bins. The conveyor essentially "stacks" or piles the green coke.
4.1	Green Coke Conveying	Green coke conveying uses an enclosed conveyor to transport the green coke from the green coke crusher or the stockpiles to the green coke feed bins.
4.1	Green Coke Feed Bins	The green coke feed bins are the final storage place for green coke that is prepared and ready to enter the kilns.
4.1	Unloading Excavator Engine	Powers unloading excavator
4.1	Calcined Coke Conveying	Calcined coke exits one of the rotary coolers and is transferred using an oscillating covered conveyor to an elevator. The elevators take the calcined coke that was conveyed from the rotary cooler, and they load it into one of four overhead calcined coke storage bins.
4.1	Calcined Coke Storage Bins	There are four overhead calcined coke storage bins at the source. Two of the bins use bin vent filters to reduce PM emissions. All of the bins use good operating practices to minimize emissions. The overhead storage bins hold the finished product to eventually be unloaded.
4.1	Calcined Coke Railcar Load-out	The calcined coke leaves the overhead calcined coke storage bins via load-out spouts. The finished product is loaded into railcars for distribution to commercial markets. The calcined coke railcar load-out uses a heavy naphthlenic petroleum distillate, referred to as dedust oil, to control the PM emissions during railcar loading.

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Section	Emission Units	Description
4.2	Petroleum Coke Calcining Line 1 and Petroleum Coke Calcining Line 2	<p>Petroleum Coke Calcining Lines 1 and 2 consist of a rotary kiln, a pyroscrubber, a rotary cooler, and a baghouse. The kiln for each line can process 28 T/hr of green coke feed. The calcining process reduces VOM and moisture content of the green petroleum coke and chemically reforms the carbon content of the material to produce a final product, referred to as calcined coke. Calcined coke is a high-purity carbon compound used primarily by the aluminum and steel industries. Natural gas is used during start-up of the kilns to reach optimum operating temperature (about 2,400°F) and simultaneously during operation to maintain the optimum operation temperature. The combustion of VOM from the green coke feed and the consumption of green coke provide the primary source of heat for the calcining process. The heating process consumes approximately 20% of the green coke feed, with the remaining material forming the final product, calcined coke.</p>
4.3	Fugitive Dust	<p>Emissions caused by moving vehicles that creates particulate matter (road dust) emissions on paved and unpaved roadways. Particulate Matter is also emitted from loading/unloading operations and storage piles at the source. Emissions of fugitive dust from storage piles at the facility are controlled by the quality and moisture content of materials as received and application of dust suppressants if needed to prevent emissions.</p>
4.4	Dedust Oil Storage Tank	<p>The dedust oil storage tank is a 15,000 gallon tank used to store a dedust oil used at the source to limit PM emissions associated with the calcined coke load-out operation.</p>

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Attachment 2 - Acronyms and Abbreviations

acfm	Actual cubic feet per minute
ACMA	Alternative Compliance Market Account
Act	Illinois Environmental Protection Act [415 ILCS 5/1 et seq.]
AP-42	Compilation of Air Pollutant Emission Factors, Volume 1, Stationary Point and Other Sources (and Supplements A through F), USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711
ATU	Allotment trading unit
BACT	Best Available Control Technology
BAT	Best Available Technology
BTU	British Thermal Units
CAA	Clean Air Act [42 U.S.C. Section 7401 et seq.]
CAAPP	Clean Air Act Permit Program
CAIR	Clean Air Interstate Rule
CAM	Compliance Assurance Monitoring
CEMS	Continuous Emission Monitoring System
CFR	Code of Federal Regulations
CISWI	Commercial Industrial Solid Waste Incinerator
CO	Carbon monoxide
CO ₂	Carbon dioxide
COMS	Continuous Opacity Monitoring System
CPMS	Continuous Parameter Monitoring System
dscf	Dry standard cubic foot
dscm	Dry standard cubic meter
EAF	Electric arc furnace
ERMS	Emissions Reduction Market System
°F	Degrees Fahrenheit
GHG	Greenhouse gas
gr	Grains
HAP	Hazardous air pollutant
Hg	Mercury
HMIWI	Hospital medical infectious waste incinerator
HP	Horsepower
hr	Hour
H ₂ S	Hydrogen sulfide
I.D. No.	Identification number of source, assigned by IEPA
IAC	Illinois Administrative Code
ILCS	Illinois Compiled Statutes
IEPA	Illinois Environmental Protection Agency
KW	Kilowatts
LAER	Lowest Achievable Emission Rate

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lb	Pound
m	Meter
MACT	Maximum Achievable Control Technology
mm	Million
mon	Month
MSDS	Material Safety Data Sheet
MSSCAM	Major Stationary Sources Construction and Modification (Non-attainment New Source Review)
MW	Megawatts
NESHAP	National Emission Standards for Hazardous Air Pollutants
NO _x	Nitrogen oxides
NSPS	New Source Performance Standards
NSR	New Source Review
PM	Particulate matter
PM ₁₀	Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns as measured by applicable test or monitoring methods
PM _{2.5}	Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns as measured by applicable test or monitoring methods
ppm	Parts per million
ppmv	Parts per million by volume
PSD	Prevention of Significant Deterioration
PSEU	Pollutant-Specific Emission Unit
psia	Pounds per square inch absolute
PTE	Potential to emit
RACT	Reasonable Available Control Technology
RMP	Risk Management Plan
scf	Standard cubic feet
SCR	Selective catalytic reduction
SIP	State Implementation Plan
SO ₂	Sulfur dioxide
T1	Title I - identifies Title I conditions that have been carried over from an existing permit
T1N	Title I New - identifies Title I conditions that are being established in this permit
T1R	Title I Revised - identifies Title I conditions that have been carried over from an existing permit and subsequently revised in this permit
USEPA	United States Environmental Protection Agency
VOM	Volatile organic material

Rain CII Carbon LLC
I.D. No.: 033025AAJ
Permit No.: 95120092

Date Received: 03/26/2018
Date Issued: 05/13/2019
Date Revised: 05/16/2022

Attachment 3 - Contact and Reporting Addresses

<p>IEPA Compliance Section</p> <p>IEPA Stack Test Specialist</p> <p>IEPA Air Quality Planning Section</p> <p>IEPA Air Regional Field Operations Regional Office #3</p> <p>IEPA Permit Section</p>	<p>Illinois EPA, Bureau of Air Compliance & Enforcement Section (MC 40) 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 Phone No.: 217/782-2113</p> <p>Illinois EPA, Bureau of Air Compliance Section Source Monitoring - Third Floor 9511 Harrison Street Des Plaines, Illinois 60016 Phone No.: 847/294-4000</p> <p>Illinois EPA, Bureau of Air Air Quality Planning Section (MC 39) 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 Phone No.: 217/782-2113</p> <p>Illinois EPA, Bureau of Air Regional Office #3 2009 Mall Street Collinsville, Illinois 62234 Phone No.: 618/346-5120</p> <p>Illinois EPA, Bureau of Air Permit Section (MC 11) 1021 North Grand Avenue East P.O. Box 19506 Springfield, Illinois 62794-9506 Phone No.: 217/785-1705</p>
<p>USEPA Region 5 - Air Branch</p>	<p>USEPA (AR - 17J) Air and Radiation Division 77 West Jackson Boulevard Chicago, Illinois 60604 Phone No.: 312/353-2000</p>

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Attachment 4 - Example Certification by a Responsible Official

SIGNATURE BLOCK	
NOTE: THIS CERTIFICATION MUST BE SIGNED BY A RESPONSIBLE OFFICIAL. APPLICATIONS WITHOUT A SIGNED CERTIFICATION WILL BE DEEMED AS INCOMPLETE.	
I CERTIFY UNDER PENALTY OF LAW THAT, BASED ON INFORMATION AND BELIEF FORMED AFTER REASONABLE INQUIRY, THE STATEMENTS AND INFORMATION CONTAINED IN THIS APPLICATION ARE TRUE, ACCURATE AND COMPLETE. ANY PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR FRAUDULENT MATERIAL STATEMENT, ORALLY OR IN WRITING, TO THE ILLINOIS EPA COMMITS A CLASS 4 FELONY. A SECOND OR SUBSEQUENT OFFENSE AFTER CONVICTION IS A CLASS 3 FELONY. (415 ILCS 5/44(H))	
AUTHORIZED SIGNATURE:	
BY: _____	_____
AUTHORIZED SIGNATURE	TITLE OF SIGNATORY
_____	_____/_____/_____
TYPED OR PRINTED NAME OF SIGNATORY	DATE

Rain CII Carbon LLC
I.D. No.: 033025AAJ
Permit No.: 95120092

Date Received: 03/26/2018
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EXHIBIT D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2012-0322; FRL-9924-05-OAR]

RIN 2060-AR68

State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a petition for rulemaking filed by the Sierra Club (Petitioner) that concerns how provisions in EPA-approved state implementation plans (SIPs) treat excess emissions during periods of startup, shutdown or malfunction (SSM). Further, the EPA is clarifying, restating and revising its guidance concerning its interpretation of the Clean Air Act (CAA or Act) requirements with respect to treatment in SIPs of excess emissions

that occur during periods of SSM. The EPA evaluated existing SIP provisions in a number of states for consistency with the EPA's interpretation of the CAA and in light of recent court decisions addressing this issue. The EPA is issuing a finding that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus is issuing a "SIP call" for each of those 36 states. Further, the EPA is establishing a due date for states subject to this SIP call action to submit corrective SIP revisions. Finally, this final action embodies the EPA's updated SSM Policy as it applies to SIP provisions. The SSM Policy provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events.

DATES: This final action shall become applicable on May 22, 2015. The deadline for each affected state to submit its corrective SIP revision is November 22, 2016.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2012-0322. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some

information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, U.S. EPA, Office of Air Quality Planning and Standards, State and Local Programs Group (C539-01), Research Triangle Park, NC 27711, telephone number (919) 541-3450, email address: sutton.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: For information related to a specific SIP, please contact the appropriate EPA Regional Office:

EPA Regional Office	Contact for Regional Office (person, mailing address, telephone number)	State
I	Alison Simcox, Environmental Scientist, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, (617) 918-1684.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island and Vermont.
II	Karl Mangels, Chief, Air Planning Section, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4078.	New Jersey, New York, Puerto Rico and Virgin Islands.
III	Amy Johansen, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2156.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia and West Virginia.
IV	Joel Huey, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303-8960, (404) 562-9104.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
V	Mary Portanova, Air and Radiation Division (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 353-5954.	Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.
VI	Alan Shar (6PD-L), EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6691.	Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
VII	Lachala Kemp, EPA Region 7, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, KS 66219-9601, (913) 551-7214. Alternate contact is Ward Burns, (913) 551-7960.	Iowa, Kansas, Missouri and Nebraska.
VIII	Adam Clark, Air Quality Planning Unit (8P-AR) Air Program, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-7104.	Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
IX	Andrew Steckel, EPA Region 9, Air Division, 75 Hawthorne Street (AIR-4), San Francisco, CA 94105-3901, (415) 947-4115.	Arizona, California, Hawaii, Nevada and the Pacific Islands.
X	Dave Bray, Office of Air, Waste and Toxics (AWT-150), EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101-3140, (206) 553-4253.	Alaska, Idaho, Oregon, and Washington.

the EPA had not until the February 2013 proposal initiated a broader effort to require a larger number of states to remove impermissible provisions from their SIPs and to adopt other, approvable approaches for addressing excess emissions when appropriate. Public interest in the issue of SSM provisions in SIPs is evidently high, on the basis of the large number of public submissions made to the rulemaking docket in response to the February 2013 proposal (representing approximately 69,000 unique commenters) and the SNPR (over 20,000 commenters, some of whom had also made submissions in response to the earlier proposal). The EPA has attempted to further count commenters according to general categories (state and local governments, industry commenters, public interest groups and individual commenters), as described in section V.D.1 of this document. Public interest groups, including the Petitioner, have sued the EPA in several state-specific cases concerning SIP issues, and they have been urging the EPA to give greater priority generally to addressing the issue of SSM provisions in SIPs. In one of these SIP cases, the EPA entered into a settlement agreement requiring it to respond to the Petition from the Sierra Club. A copy of the settlement agreement is provided in the docket for this rulemaking.⁵

The EPA emphasizes that there are other approaches that would be consistent with CAA requirements for SIP provisions that states can use to address emissions during SSM events. While automatic exemptions and director's discretion exemptions from otherwise applicable emission limitations are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel. Similarly, SIPs may, rather than exempt emissions during SSM events, include emission limitations that subject those emissions to alternative numerical limitations or other technological control requirements or work practice requirements during startup and shutdown events, so long as those components of the emission limitations meet applicable CAA requirements. In this action, the EPA is again articulating

its interpretation of the CAA in the SSM Policy that reflects these principles and is applying this interpretation to issue a SIP call for specific existing provisions in the SIPs of 36 states. In some cases, the EPA's review involved a close reading of the provision in the SIP and its context to discern whether it was in fact an exemption, a statement regarding exercise of enforcement discretion by the air agency or an affirmative defense. Each state will ultimately decide how to address the SIP inadequacies identified by the EPA in this final action. The EPA acknowledges that for some states, this rulemaking entailed the EPA's evaluation of SIP provisions that may date back several decades. Aware of that fact, the EPA is committed to working closely with each of the affected states to develop approvable SIP submissions consistent with the guidance articulated in the updated SSM Policy in this final action. Section IX of this document presents the EPA's analysis of each specific SIP provision at issue in this action. The EPA's review also involved interpretation of several relevant sections of the CAA. While the EPA has already developed and has been implementing the SSM Policy that is based on its interpretation of the CAA for SIP provisions, this action provides the EPA an opportunity to update the SSM Policy and its basis in the CAA through notice and comment. To that end, section XI of this document contains a restatement of the EPA's SSM Policy for SIP provisions as revised and updated for 2015. Also, supplementary to the February 2013 proposal, the EPA provided a background memorandum to summarize the legal and administrative context for this action which is available in the docket for this rulemaking.⁶ This final document is intended to clarify how states can resolve the identified deficiencies in their SIPs as well as to provide all air agencies guidance as they develop SIPs in the future.

In summary, the EPA is agreeing with the Petitioner that many of the identified SIP provisions are not permissible under the CAA. However, in some cases the EPA is instead concluding that an identified SIP provision is actually consistent with CAA requirements. In addition, the EPA notes, this final action does not include

a final finding of substantial inadequacy and SIP call for specific SIP provisions included in the February 2013 proposal for several air agencies, because of SIP revisions made subsequent to that proposal. The state of Kentucky has already submitted, and the EPA has approved, SIP revisions that corrected the problematic provisions applicable in the Jefferson County (Louisville, Kentucky) area.⁷ The state of Wyoming has already submitted, and the EPA has approved, SIP revisions that corrected the problematic provisions applicable statewide.⁸ The state of North Dakota has likewise already submitted, and the EPA has approved, SIP revisions that corrected a portion of the problematic provisions applicable statewide.⁹

Of the 41 states for which SIP provisions were identified by the Petition or identified independently by the Agency in the SNPR, the EPA is issuing a SIP call for 36 states. The EPA is aware of other SSM-related SIP provisions that were not identified in the Petition but that may be inconsistent with the EPA's interpretation of the CAA. For SIP provisions that have potential defects other than an impermissible affirmative defense, the EPA elected to focus on the provisions specifically raised in the Petition. The EPA may address these other provisions later in a separate notice-and-comment action. States are encouraged to consider the updated SSM Policy laid out in this final action in reviewing their own SIP provisions. With respect to affirmative defense provisions, however, the EPA elected to identify some additional provisions not included in the Petition. This is necessary to minimize potential confusion relating to other recent rulemakings and court decisions that pertain generally to affirmative defense provisions. Therefore, in order to give updated and comprehensive guidance with respect to affirmative defense provisions, the EPA has also addressed additional affirmative defense provisions in 17 states in the SNPR and in this final action. See section V.D.3 of this document for further explanation as to which SSM-related SIP provisions the

⁵ See Settlement Agreement executed November 30, 2011, in the rulemaking docket at EPA-HQ-OAR-2012-0322-0039, to address a lawsuit filed by Sierra Club and WildEarth Guardians in the United States District Court for the Northern District of California: *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal.). A subsequent Modification to the Settlement Agreement specifies a deadline of May 22, 2015, for signature on the final action to respond to the Petition.

⁶ See Memorandum, "Statutory, Regulatory, and Policy Context for this Rulemaking," February 4, 2013, in the rulemaking docket at EPA-HQ-OAR-2012-0322-0029. The EPA notes that with respect to the legal basis for affirmative defense provisions in SIPs, the Agency has revised its views as a result of a court decision, as explained in more detail in the SNPR. Thus, the portions of that background memorandum that concern affirmative defense provisions are no longer germane to this action.

⁷ See "Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions," 79 FR 33101 (June 10, 2014).

⁸ See "Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations," 79 FR 62859 (October 21, 2014).

⁹ See "Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules," 79 FR 63045 (October 22, 2014).

broader section addressing “Exceptions to violations of emission limitations.”²²⁹ By exempting sources from compliance with “the emission standard,” these exemptions render the SIP emission limitation noncontinuous, contrary to section 302(k).²³⁰

The consequences for failing to satisfy the preconditions for an exemption further bolster the conclusion that these preconditions are not themselves part of an emission limitation. Failure to meet the “general duty” preconditions for an SSM exemption means that the source remains subject to the otherwise applicable emission limitation during the SSM event and is thus liable for violating the emission limitation. If those general duties were independent parts of an emission limitation (rather than merely preconditions for an exemption), then one would expect that periods of time could exist when the source was liable for violating those general duties rather than the default emission limitation.

The general-duty provisions that apply as part of the SSM exemption are not alternative emission limitations; they merely define an unlawful exemption to an emission limitation. States have discretion to fix this issue in a number of ways, including by removing the exceptions entirely, by replacing these exceptions with alternative emission limitations including specific control technologies or work practices that do ensure continuous limits on emissions or by reformulating the entire emission limitation.

In addition to the EPA’s fundamental disagreement with commenters that these general-duty provisions are actually components of emission limitations, the EPA has additional concerns about whether many of these provisions could operate as stand-alone emission limitations even if they were properly identified as portions of the overall emissions limitations in the SIP.²³¹ Furthermore, some of these general-duty provisions do not meet the level of stringency required to be an “emission limitation” compliant with specific substantive provisions of the CAA applicable to SIP provisions.²³² Accordingly, while states are free to include general-duty provisions in their

SIPs as separate additional requirements, for example, to ensure that owners and operators act consistent with reasonable standards of care, the EPA does not recommend using these background standards to bridge unlawful interruptions in an emission limitation.²³³

The NSPS and NESHAP emission standards and limitations that the EPA has issued since *Sierra Club* demonstrate the distinct roles played by emission limitations and general-duty provisions. The emission limitations themselves are clear and legally and functionally enforceable, and they are composed of obviously integrated requirements that limit emissions on a continuous basis during all modes of source operation. Crucially, the general-duty provisions in these post-*Sierra Club* regulations merely supplement the integrated emission limitation; they do not supplant the emission limitation, which independently requires continuous limits on emissions. As discussed elsewhere in this document, the fact that the EPA is in the process of updating its own regulations to comply with CAA requirements does not alter the legal requirements applicable to SIPs.

n. Comments that EPA’s action on the petition is a “change of policy.”

Comment: A number of commenters claimed that the EPA’s action on the Petition is illegitimate because it is based upon a “change of policy.” Some commenters claimed that the EPA’s reliance on the definition of “emission limitation” in section 302(k) and the requirements for SIP provisions in section 110(a)(2) as barring automatic exemptions are “new.” These commenters claimed that the EPA has historically relied on the fact that NAAQS are ambient-standard-based and that the EPA has relied also on the fact that SSM exemptions had potential adverse air quality impacts as the basis for interpreting the CAA to preclude exemptions. The commenters argued that this basis for the SSM Policy is evidenced by the fact that EPA itself historically included SSM exemptions in NSPS and NESHAP rules, which establish emission limitations that should be governed by section 302(k) as well.

Other commenters claimed that the EPA is changing its SSM Policy by seeking to revoke “enforcement discretion” exercised on the part of states, which the EPA specifically recognized as an acceptable approach in the 1983 SSM Guidance. A commenter asserted that “fairness principles” mean that the EPA cannot require a state to modify its SIP without substantial justification. The commenter further contended that the EPA’s claim that it has a longstanding interpretation of the CAA that automatic exemptions are not allowed in SIP provisions is false; otherwise, the commenter argued, the EPA would not have approved some of the provisions at issue in the SIP call long after 1982. As evidence for this argument, the commenter pointed to the West Virginia regulations that provide an automatic exemption.

Finally, other commenters argued that the EPA’s changed interpretation of the CAA requires an acknowledgement that the SSM Policy is being changed and a rational explanation for such change. These commenters noted that the EPA previously argued in a brief for the type of exemption provisions that it is now claiming are deficient, citing *Sierra Club v. Johnson*, No. 02–1135 (D.C. Cir. March 14, 2008). The commenters claimed that the EPA has provided no rational basis for its change in interpretation of the CAA concerning exemptions for emissions during SSM events.

Response: The EPA’s longstanding position, at least since issuance of the 1982 SSM Guidance, is that SIP provisions providing an exemption from emission limitations for emissions during SSM events are prohibited by the CAA. The EPA’s guidance documents issued in 1982 and 1983 expressly recognized that in place of exemptions, states should exercise enforcement discretion in determining whether to pursue a violation of an emission limitation. In the 1983 SSM Guidance, the EPA made recommendations for states that elected to adopt specific SIP provisions affecting their own exercise of enforcement discretion, so long as those provisions do not apply to enforcement discretion of the EPA or other parties under the citizen suit provision of the CAA. More than 15 years ago, in the 1999 SSM Guidance, the EPA reiterated its longstanding position that it is inappropriate for SIPs to exempt SSM emissions from compliance with emission limitations and repeated that instead of incorporating exemptions, enforcement discretion could be an appropriate tool. In addition, EPA clarified at that time that a narrowly tailored affirmative

²²⁹ *Id.* at 335–3–14–.03(h) (emphasis added).

²³⁰ See CAA section 302(k) (defining “emission limitation” and “emission standard”).

²³¹ See *Sierra Club*, 551 F.3d at 1026 (discussing the EPA’s prior determinations that “compliance with the general duty on its own was insufficient to prevent the SSM exemption from becoming a ‘blanket’ exemption”).

²³² See, e.g., *Sierra Club v. Johnson*, 551 F.3d at 1027–28 (so holding with respect to section 112).

²³³ For example, the EPA has concerns the some of these general-duty provisions, if at any point relied upon as the sole requirement purportedly limiting emissions, could undermine the ability to ensure compliance with SIP emission limitations relied on to achieve the NAAQS and other relevant CAA requirements at all times. See section 110(a)(2)(A), (C); *US Magnesium, LLC v. EPA*, 690 F.3d 1157, 1161–62 (10th Cir. 2012).

emissions during SSM events, thereby negating any possibility of enforcement for what would be violations of the otherwise applicable emission limitation. With respect to such director's discretion provisions in SIPs, the EPA interprets the CAA to prohibit these if they provide unbounded discretion to allow what would amount to a case-specific revision of the SIP without meeting the statutory requirements of the CAA for SIP revisions. In particular, the EPA interprets the CAA to preclude SIP provisions that provide director's discretion authority to create discretionary exemptions for violations when the CAA would not allow such exemptions in the first instance.

If an air agency elects to have SIP provisions that contain a director's discretion feature, then to be consistent with CAA requirements the provisions must be structured so that any resulting variances or other deviations from the emission limitation or other SIP requirements have no federal law validity, unless and until the EPA specifically approves that exercise of the director's discretion as a SIP revision. Barring such a later ratification by the EPA through a SIP revision, the exercise of director's discretion is only valid for state (or tribal) law purposes and would have no bearing in the event of an action to enforce the provision of the SIP as it was originally approved by the EPA.

Adoption of the EPA's NSPS or NESHAP that have not yet been revised. The EPA has recently begun revising and will continue to revise NSPS and NESHAP as needed, to make the EPA's regulations consistent with CAA requirements by removing exemptions and affirmative defense provisions applicable to SSM events, and generally on the same legal basis as for this action. A state should not submit an NSPS or NESHAP for inclusion into its SIP as an emission limitation (whether through incorporation by reference or otherwise) unless either: (i) That NSPS or NESHAP does not include an exemption or affirmative defense for SSM events; or (ii) the state takes action as part of the SIP submission to render such exemption or affirmative defense inapplicable to the SIP emission limitation. Because SIP provisions must apply continuously, including during SSM events, the EPA can no longer approve SIP submissions that include any emission limitations with such exemptions, even if those emission limitations are NSPS or NESHAP regulations that the EPA has not yet revised to make consistent with CAA requirements. Alternatively, states may elect to adopt an existing NSPS or

NESHAP as a SIP provision, so long as the SIP provision excludes the exemption or affirmative defense applicable to SSM events.⁴⁰⁷ States may also wish to replace the SSM exemption in NSPS or NESHAP regulations with appropriately developed alternative emission limitations that apply during startup and shutdown in lieu of the SSM exemption. Otherwise, the EPA's approval of the deficient SSM exemption provisions into the SIP would contravene CAA requirements for SIP provisions and would potentially result in misinterpretation or misapplication of the standards by regulators, regulated entities, courts and members of the public. The EPA emphasizes that the inclusion of an NSPS or NESHAP as an emission limitation in a state's SIP is different and distinct from reliance on such standards indirectly, such as reliance on the NSPS or NESHAP as a source of emission reductions that may be taken into account for SIP planning purposes in emissions inventories or attainment demonstrations. For those uses, states may continue to rely on the EPA's NSPS and NESHAP regulations, even those that have not yet been revised to remove inappropriate exemptions, in accordance with the requirements applicable to those SIP planning functions.

Other modes of normal operation. SIPs also may not create automatic or discretionary exemptions from otherwise applicable emission limitations during periods such as "maintenance," "load change," "soot-blowing," "on-line operating changes" or other similar normal modes of operation. Like startup and shutdown, the EPA considers all of these to be modes of normal operation at a source, for which the source can be designed, operated and maintained in order to meet an applicable emission limitations and during which the source should be expected to control and minimize emissions. Excess emissions that occur during planned and predicted periods should be treated as violations of applicable emission limitations. Accordingly, exemptions for emissions during these periods of normal source operation are not consistent with CAA requirements.

⁴⁰⁷ Under CAA section 116, states have the explicit general authority to regulate more stringently than the EPA. Indeed, under section 116 states can regulate sources subject to EPA regulations promulgated under section 111 or section 112 so long as they do not regulate them less stringently. According, the EPA believes that states may elect to adopt EPA regulations under section 111 or section 112 as SIP provisions and expressly eliminate the exemptions for emissions during SSM events.

It may be appropriate for an air agency to establish an alternative numerical limitation or other form of control measure that applies during these modes of source operation, as for startup and shutdown events, but any such alternative emission limitation should be developed using the same criteria that the EPA recommends for alternative emission limitations applicable during startup and shutdown. Similarly, any SIP provision that includes an emission limitation for sources that includes alternative emission limitations applicable to modes of operation such as "maintenance," "load change," "soot-blowing" or "on-line operating changes" must also meet the applicable level of stringency for that type of emission limitation and be practically and legally enforceable.

C. Emission Limitations in SIPs May Contain Components Applicable to Different Modes of Operation That Take Different Forms, and Numerical Emission Limitations May Have Differing Levels and Forms for Different Modes of Operation

There are approaches other than exemptions that would be consistent with CAA requirements for SIP provisions that states can use to address excess emissions during certain events. While automatic exemptions and director's discretion exemptions from otherwise applicable emission limitations for SSM events are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel, as described in section XI.E of this document. Similarly, SIPs may, rather than exempt excess emissions, include emission limitations that subject those emissions to alternative numerical limitations or other control requirements during startup and shutdown events or other normal modes of operation, so long as those components of the emission limitations meet applicable CAA requirements and are legally and practically enforceable.

The EPA does not interpret section 110(a)(2) or section 302(k) to require that an emission limitation in a SIP provision be composed of a single, uniformly applicable numerical emission limitation. The text of section 110(a)(2) and section 302(k) does not require states to impose emission limitations that include a static, inflexible standard. The critical aspect for purposes of section 302(k) is that the SIP provision impose limits on emissions on a continuous basis, regardless of whether the emission

limitation as a whole is expressed numerically or as a combination of numerical limitations, specific control technology requirements and/or work practice requirements applicable during specific modes of operation, and regardless of whether the emission limitation is static or variable. Thus, emission limitations in SIP provisions do not have to be composed solely of numerical emission limitations applicable at all times. For example, so long as the SIP provision meets other applicable requirements, it may impose different numerical limitations for startup and shutdown. Also, for example, SIPs can contain numerical emission limitations applicable only to some periods and other forms of controls applicable only to some periods, with certain periods perhaps subject to both types of limitation. Thus, SIP emission limitations: (i) Do not need to be numerical in format; (ii) do not have to apply the same limitation (*e.g.*, numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation. In practice, it may be that numerical emission limitations are the most appropriate from a regulatory perspective (*e.g.*, to be legally and practically enforceable) and thus the emission limitation would need to be established in this form to meet CAA requirements. It is important to emphasize, however, that regardless of how the state structures or expresses a SIP emission limitation—whether solely as one numerical limitation, as a combination of different numerical limitations or as a combination of numerical limitations, specific technological control requirements and/or work practice requirements that apply during certain modes of operation such as startup and shutdown—the emission limitation as a whole must be continuous, must meet applicable CAA stringency requirements and must be legally and practically enforceable.⁴⁰⁸

Startup and shutdown are part of the normal operation of a source and should be accounted for in the design and

operation of the source.⁴⁰⁹ It should be possible to determine an appropriate form and degree of emission control during startup and shutdown and to achieve that control on a regular basis. Thus, sources should be required to meet defined SIP emission limitations during startup and shutdown. However, the EPA interprets the CAA to permit SIP emission limitations that include alternative emission limitations specifically applicable during startup and shutdown. Regarding startup and shutdown periods, the EPA considers the following to be the correct approach to creating an emission limitation: (i) The emission limitation contains no exemption for emissions during SSM events; (ii) the component of any alternative emission limitation that applies during startup and shutdown is clearly stated and obviously is an emission limitation that applies to the source; (iii) the component of any alternative emission limitation that applies during startup and shutdown meets the applicable stringency level for this type of emission limitation; and (iv) the emission limitation contains requirements to make it legally and practically enforceable. Section XI.D of this document contains more specific recommendations to states for developing alternative emission limitations.

In contrast to startup and shutdown, a malfunction is unpredictable as to the timing of the start of the malfunction event, its duration and its exact nature. The effect of a malfunction on emissions is therefore unpredictable and variable, making the development of an alternative emission limitation for malfunctions problematic. There may be rare instances in which certain types of malfunctions at certain types of sources are foreseeable and foreseen and thus are an expected mode of source operation. In such circumstances, the EPA believes that sources should be expected to meet the otherwise applicable emission limitation in order to encourage sources to be properly designed, maintained and operated in order to prevent or minimize any such malfunctions. To the extent that a given type of malfunction is so foreseeable and foreseen that a state considers it a

normal mode of operation that is appropriate for a specifically designed alternative emission limitation, then such alternative should be developed in accordance with the recommended criteria for alternative emission limitations. The EPA does not believe that generic general-duty provisions, such as a general duty to minimize emissions, is sufficient as an alternative emission limitation for any type of event including malfunctions.

States developing SIP revisions to remove impermissible exemption provisions from emissions limitations may choose to consider reassessing particular emission limitations, for example to determine whether limits originally applicable only during non-SSM periods can be revised such that well-managed emissions during planned operations such as startup and shutdown would not exceed the revised emission limitation, while still protecting air quality and meeting other applicable CAA requirements. Such a revision of an emission limitation will need to be submitted as a SIP revision for EPA approval if the existing limitation to be changed is already included in the SIP or if the existing SIP relies on the particular existing emission limitation to meet a CAA requirement.

Some SIPs contain other generic regulatory requirements frequently referred to as “general duty” type requirements, such as a general duty to minimize emissions at all times, a general duty to use good engineering judgment at all times or a general duty not to cause a violation of the NAAQS at any time. To the extent that such other general-duty requirement is properly established and legally and practically enforceable, the EPA would agree that it may be an appropriate separate requirement to impose upon sources in addition to the (continuous) emission limitation. The EPA itself imposes separate general duties of this type in appropriate circumstances. The existence of these generic provisions does not, however, legitimize exemptions for emissions during SSM events in a SIP provision that imposes an emission limitation.

General-duty requirements that are not clearly part of or explicitly cross-referenced in a SIP emission limitation cannot be viewed as a component of a continuous emission limitation. Even if clearly part of or explicitly cross-referenced in the SIP emission limitation, however, a given general-duty requirement may not be consistent with the applicable stringency requirements for SIP provisions that should apply during startup and

⁴⁰⁸ The EPA notes that CAA section 123 explicitly prohibits certain intermittent or supplemental controls on sources. In a situation where an emission limitation is continuous, by virtue of the fact that it has components applicable during all modes of source operation, the EPA would not interpret the components that applied only during certain modes of operation, *e.g.*, startup and shutdown, to be prohibited intermittent or supplemental controls.

⁴⁰⁹ Every source is designed, maintained and operated with the expectation that the source will at least occasionally start up and shut down, and thus these modes of operation are “normal” in the sense that they are to be expected. The EPA uses this term in the ordinary sense of the word to distinguish between such predictable modes of source operation and genuine “malfunctions,” which are by definition supposed to be unpredictable and unforeseen events that could not have been precluded by proper source design, maintenance and operation.

shutdown. In general, the EPA believes that a legally and practically enforceable alternative emission limitation applicable during startup and shutdown should be expressed as a numerical limitation, a specific technological control requirement or a specific work practice applicable to affected sources during specifically defined periods or modes of operation. Accordingly, while states are free to include general-duty provisions in their SIPs as separate additional requirements, for example, to ensure that owners and operators act consistent with reasonable standards of care, the EPA does not recommend using these background standards to bridge unlawful interruptions in an emission limitation.⁴¹⁰

D. Recommendations for Development of Alternative Emission Limitations Applicable During Startup and Shutdown

A state can develop special, alternative emission limitations that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation in the SIP. SIP provisions may include alternative emission limitations for startup and shutdown as part of a continuously applicable emission limitation when properly developed and otherwise consistent with CAA requirements. However, if a non-numerical requirement does not itself (or in combination with other components of the emission limitation) limit the quantity, rate or concentration of air pollutants on a continuous basis, then the non-numerical standard (or overarching requirement) does not meet the statutory definition of an emission limitation under section 302(k).

In cases in which measurement of emissions during startup and/or shutdown is not reasonably feasible, it may be appropriate for an emission limitation to include as a component a control for startup and/or shutdown periods other than a numerically expressed emission limitation.

The federal NESHAP and NSPS regulations and the technical materials in the public record for those rules may provide assistance for states as they develop and consider emission limitations and alternative emission limitations for sources in their states,

⁴¹⁰ For example, the EPA has concerns the some general-duty provisions, if at any point relied upon as the sole requirement purportedly limiting emissions, could undermine the ability to ensure compliance with SIP emission limitations relied on to achieve the NAAQS and other relevant CAA requirements at all times. See section 110(a)(2)(A), (C); *US Magnesium, LLC v. EPA*, 690 F.3d 1157, 1161–62 (10th Cir. 2012).

and definitions of startup and shutdown events and work practices for them found in these regulations may be appropriate for adoption by the state in certain circumstances. In particular, the NSPS regulations should provide very relevant information for sources of the same type, size and control equipment type, even if the sources were not constructed or modified within a date range that would make them subject to the NSPS. The EPA therefore encourages states to explore these approaches.

The EPA recommends that, in order to be approvable (*i.e.*, meet CAA requirements), alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown. The EPA recommends the following seven specific criteria as appropriate considerations for developing emission limitations in SIP provisions that apply during startup and shutdown:

(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (*e.g.*, cogeneration facilities burning natural gas and using selective catalytic reduction);

(2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods;

(3) The alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable;

(4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation;

(5) The alternative emission limitation requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

(6) The alternative emission limitation requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence.

If a state elects to create an emission limitation with different levels of

control applicable during specifically defined periods of startup and shutdown than during other normal modes of operation, then the resulting emission limitation must meet the substantive requirements applicable to the type of SIP provision at issue, meet the applicable level of stringency for that type of emission limitation and be legally and practically enforceable. Alternative emission limitations applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible *de facto* exemptions for emissions during certain modes of operation.

E. Enforcement Discretion Provisions

One approach other than exemptions that would be consistent with CAA requirements for SIP provisions that states can use to address excess emissions during SSM events is to include in the SIP criteria and procedures for the use of enforcement discretion by air agency personnel. SIPs may contain such provisions concerning the exercise of discretion by the air agency's own personnel, but such provisions cannot bar enforcement by the EPA or by other parties through a citizen suit.

Pursuant to the CAA, all parties with authority to bring an enforcement action to enforce SIP provisions (*i.e.*, the state, the EPA or any parties who qualify under the citizen suit provision of section 304) have enforcement discretion that they may exercise as they deem appropriate in any given circumstances. For example, if the event that causes excess emissions is an actual malfunction that occurred despite reasonable care by the source operator to avoid malfunctions, then each of these parties may decide that no enforcement action is warranted. In the event that any party decides that an enforcement action is warranted, then it has enforcement discretion with respect to what remedies to seek from the court for the violation (*e.g.*, injunctive relief, compliance order, monetary penalties or all of the above), as well as the type of injunctive relief and/or amount of monetary penalties sought.⁴¹¹

As part of state programs governing enforcement, states can include regulatory provisions or may adopt policies setting forth criteria for how they plan to exercise their own

⁴¹¹ The EPA notes that only the state and the Agency have authority to seek criminal penalties for knowing and intentional violation of CAA requirements. The EPA has this explicit authority under CAA section 113(c).

EXHIBIT E

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1166

September Term, 2016

**EPA-80FR33839
EPA-80FR33840**

Filed On: April 24, 2017

Walter Coke, Inc.,

Petitioner

v.

Environmental Protection Agency,

Respondent

Citizens for Environmental Justice, et al.,
Intervenors

Consolidated with 15-1216, 15-1239,
15-1243, 15-1256, 15-1265, 15-1266,
15-1267, 15-1268, 15-1270, 15-1271,
15-1272, 15-1300, 15-1301, 15-1302,
15-1308

BEFORE: Garland, Chief Judge; Millett and Wilkins, Circuit Judges

ORDER

Upon consideration of respondent EPA's motion to continue oral argument, the response in support and the opposition to the motion; and Environmental Intervenors' motion to strike, in whole or in part, petitioners' "response" or, in the alternative, for leave to file supplemental response, and the lodged supplemental response, it is

ORDERED that the motion for leave to file supplemental response be granted. The Clerk is directed to file the lodged document. It is

FURTHER ORDERED that EPA's motion to continue oral argument be granted, and these consolidated cases are hereby removed from the May 8, 2017 oral argument calendar. It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1166

September Term, 2016

FURTHER ORDERED that these consolidated cases be held in abeyance pending further order of the court. EPA is directed to file status reports on the agency's review of the SSM Action at 90-day intervals beginning 90 days from the date of this order. Within 30 days of the agency notifying the court and the parties what action it has or will be taking with respect to the SSM Action, the parties are directed to file motions to govern future proceedings in these consolidated cases. It is

FURTHER ORDERED that Environmental Intervenors' motion to strike be dismissed as moot.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

EXHIBIT F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2021-0863; FRL-9250-01-OAR]

Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that 12 States and local air pollution control agencies failed to submit State Implementation Plan (SIP) revisions required by the Clean Air Act (CAA) in a timely manner to address EPA's 2015 findings of substantial inadequacy and "SIP calls" for provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). This action triggers certain CAA deadlines for the EPA to impose sanctions if a State does not submit a complete SIP revision addressing the outstanding requirements and to promulgate a Federal Implementation Plan (FIP) if the EPA does not approve the State's submission as a SIP revision.

DATES: This action is effective February 11, 2022.

FOR FURTHER INFORMATION CONTACT:

General questions concerning this notice should be addressed to, Erin Lowder, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone (919) 541-5421; or by email at lowder.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How is the preamble organized?

The information presented in this preamble is organized as follows:

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 - I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority and Low Income Populations
 - L. Congressional Review Act (CRA)
 - M. Judicial Review

B. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by

the Clean Air Act (CAA), where states have made no submissions to meet the requirement. As is discussed in further detail later, pursuant to CAA section 110(k)(1)(B), the EPA "shall determine" no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). EPA exercises no significant judgment in making a determination that a state failed to make a submission and subsequently issuing a finding of failure to submit. Thus, notice and public procedures are unnecessary to take this action. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

C. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0863. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

D. Where do I go if I have specific air agency questions?

For questions related to specific air agencies mentioned in this notice, please contact the appropriate EPA Regional Office:

Regional offices	Air agencies
EPA Region 1: Mr. John Rogan, Chief, Air Program Branch, EPA Region 1, 5 Post Office Square, Boston, MA 02109. rogan.john@epa.gov .	Rhode Island.
EPA Region 3: Mr. Mike Gordon, Chief, Planning and Implementation Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. gordon.mike@epa.gov .	District of Columbia.

Regional offices	Air agencies
EPA Region 4: Ms. Lynorae Benjamin, Chief, Air Planning and Implementation Branch, EPA Region 4, 61 Forsyth Street SW, Atlanta, GA 30303. <i>benjamin.lynorae@epa.gov</i> .	Alabama; North Carolina—Forsyth; Tennessee—Shelby (Memphis).
EPA Region 5: Mr. Doug Aburano, Manager, Air Program Branch, EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. <i>aburano.douglas@epa.gov</i> .	Illinois; Ohio.
EPA Region 6: Mr. Guy Donaldson, Chief, Air Program Branch, EPA Region 6, 1201 Elm Street, Dallas, TX 75270. <i>donaldson.guy@epa.gov</i> .	Arkansas.
EPA Region 8: Mr. Scott Jackson, Chief, Air Quality Planning Branch, EPA Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, CO 80202. <i>jackson.scott@epa.gov</i> .	South Dakota.
EPA Region 9: Ms. Doris Lo, Manager, Rules Office, Air and Radiation Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. <i>lo.doris@epa.gov</i> .	California—San Joaquin Valley Air Pollution Control District (APCD).
EPA Region 10: Ms. Debra Suzuki, Chief, Air Program Branch, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. <i>suzuki.debra@epa.gov</i> .	Washington—Energy Facility Site Evaluation Council (EFSEC); Washington—Southwest Clean Air Agency (SWCAA).

II. Background

On June 12, 2015, the EPA finalized an action (2015 SSM SIP Action), which clarified, restated, and updated EPA’s national policy regarding SSM provisions in SIPs (2015 Policy).¹ The 2015 Policy explained the EPA’s interpretation of certain CAA requirements, affirming that SSM exemption provisions (e.g., automatic exemptions, discretionary exemptions, and overly broad enforcement discretion provisions) and affirmative defense SIP provisions are generally viewed as inconsistent with CAA requirements. At the same time, pursuant to CAA section 110(k)(5), the EPA issued findings of substantial inadequacy for SIP provisions applying to excess emissions during SSM periods for 36 states that were applicable in 45 statewide and local jurisdictions (air agencies).² As part of the 2015 SSM SIP Action, the EPA also issued a “SIP call” (2015 SIP Call) to each of those 45 air agencies. The 2015 SIP Call required air agencies to adopt and submit revisions to the EPA to correct identified SSM-related deficiencies in their SIPs by November 22, 2016. The 2015 SSM SIP Action also responded to a petition for rulemaking alleging specific deficiencies related to SSM provisions in existing SIPs. On July 27, 2015, the 2015 SSM SIP Action was challenged in the United States

Court of Appeals for the District of Columbia Circuit.³ In 2017, the EPA requested that the pending litigation on the final 2015 SSM SIP Action be held in abeyance to allow the new administration time to review the action. In 2020, Regions 4, 6, and 7 took final actions that were inconsistent with the 2015 Policy and the EPA withdrew the corresponding SIP calls previously issued to Texas, North Carolina, and Iowa. These state-specific actions are the subject of pending litigation.⁴ Moreover, in alignment with the SIP call withdrawals for Texas, North Carolina, and Iowa, the EPA issued a Memorandum in October 2020 (2020 Memorandum), which established a new national policy that permitted the inclusion of certain provisions governing SSM periods in SIPs, including those related to exemptions and affirmative defenses. Importantly, the 2020 Memorandum was not a regulatory action and did not alter or withdraw the 2015 SIP Call for any of the 45 air agencies identified in the 2015 SSM SIP Action. The 2020 Memorandum did, however, indicate the EPA’s intent at the time to review the remaining SIP calls that were issued in the 2015 SSM SIP Action to determine whether the EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, the EPA issued a Memorandum (2021 Memorandum) that announced a withdrawal of the 2020 Memorandum and EPA’s intent to return to the 2015 Policy and implement it fully. As previously articulated in the 2015

Policy, the 2021 Memorandum states that SSM exemption provisions and affirmative defense provisions included in SIPs will generally be viewed as inconsistent with CAA requirements.

As part of the reinstatement of the 2015 Policy, the EPA intends to implement the pending SIP calls, which remain in place from the 2015 SSM SIP Action. Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria, or has not submitted a SIP at all, as a “finding of failure to submit.”

For the 2015 SIP Call, as previously discussed, SIP submissions were due by November 22, 2016. The EPA’s determinations of whether air agencies made submittals were therefore due on May 22, 2017. The EPA has neither made such determinations nor issued findings of failure to submit. Accordingly, the EPA is now issuing findings of failure to submit to the 12 air agencies that, as of the date of this action, had not submitted SIPs responding to the SIP call: Alabama, Arkansas, California—San Joaquin Valley Air Pollution Control District (APCD), District of Columbia, Illinois, Ohio, North Carolina—Forsyth County, Rhode Island, South Dakota, Tennessee—Shelby County, Washington—Energy Facility Site Evaluation Council (EFSEC), and Washington—Southwest Clean Air Agency (SWCAA). The EPA also notes that on September 8, 2021, a group of non-governmental organizations filed suit in the Northern District of

¹ State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

² For convenience, the EPA refers to “air agencies” in this action collectively when meaning to refer in general to states, the District of Columbia, and local air permitting authorities that are currently administering, or may in the future administer, EPA-approved implementation plans.

³ *Environ. Comm. Fl. Elec. Power v. EPA, et al.*, No. 15–1239 (D.C. Cir.) (and consolidated cases).

⁴ *Sierra Club, et al. v. EPA, et al.*, No. 20–1115 (D.C. Cir. Apr. 7, 2020); *Sierra Club, et al. v. EPA, et al.*, No. 20–1229 (D.C. Cir. June 29, 2020); *Sierra Club, et al. v. EPA, et al.*, No. 21–1022 (D.C. Cir. January 2021).

California alleging that the EPA is in violation of its mandatory duty to issue findings of failure to submit for those states that have not yet responded to the 2015 SIP Call.⁵

III. Consequences of Findings of Failure To Submit

If the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, after a period of time, including the imposition of mandatory sanctions under CAA section 179(b) for the affected areas or states. The two applicable sanctions enumerated in CAA section 179(b) are: (1) The 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment NSR program, and (2) restrictions on highway funding. Additionally, a finding that a state has failed to submit a complete SIP triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years after issuance of the finding of failure to submit if the affected state has not submitted, and the EPA has not approved, the required SIP submittal.

With respect to mandatory sanctions, if the EPA has not affirmatively determined that a state has made the required complete SIP submittal within 18 months⁶ of the effective date of this final action, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area or state. If the EPA has not affirmatively determined that the state has made the required complete SIP submittal within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area(s), in accordance with CAA section 179(b)(1) and 40 CFR 52.31.⁷ The sanctions will not take effect if, within 18 months after the effective date of these findings, the EPA affirmatively determines that the state has made a complete SIP submittal addressing the deficiency for which the finding was made. Additionally, if the state makes the required SIP submittal and the EPA takes final action to approve the submittal within 2 years of the effective date of these findings, the EPA is not required to promulgate a FIP.

⁵ *Sierra Club et al. v. Regan et al.*, No. 4:21-cv-06956 (N.D. Cal. Sept 8, 2021).

⁶ C.A.A. 110(k)(5).

⁷ Such highway sanctions would only apply in nonattainment areas. If a state jurisdictional area does not contain any nonattainment areas, then the highway sanctions would not apply in that state.

IV. Findings of Failure To Submit for Air Agencies That Failed To Make a SIP Submittal in Response to EPA's 2015 SIP Call for Provisions Applying to Excess Emissions During SSM Periods

Based on a review of SIP submittals received and deemed complete as of the date of signature of this action, the EPA finds that 12 air agencies have failed to submit SIP revisions in response to the 2015 SSM SIP Call that were statutorily due no later than November 22, 2016. These affected air agencies are Alabama, Arkansas, California—San Joaquin Valley APCD, District of Columbia, Illinois, Ohio, North Carolina—Forsyth County, Rhode Island, South Dakota, Tennessee—Shelby County, Washington—EFSEC, and Washington—SWCAA.

V. Environmental Justice Considerations

The purpose of this action is to make findings that the named air agencies failed to provide the identified SIP submissions to the EPA that are required under the CAA. As such, this action, in and of itself, does not adversely affect the level of protection provided for human health or the environment. Moreover, it is intended that the actions and deadlines resulting from this notice will promote greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by ensuring that air agencies meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward reducing excess emissions during periods of SSM.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final action does not establish any new information

collection requirement apart from what is already required by law. This action relates to the requirement in the CAA for states to submit SIPs in response to findings of substantial inadequacy under section 110(k)(5).

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The action is a finding that the named air agencies have not made the necessary SIP submission in response to findings of substantial inadequacy under section 110(k)(5) of the CAA.

E. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action finds that several air agencies have failed to submit SIP revisions in response to findings of substantial inadequacy under section 110(k)(5) of the CAA. No tribe is subject to the requirement to submit an implementation plan under the findings of inadequacy relevant to this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that several air agencies failed to submit SIP revisions

in response to findings of substantial inadequacy under section 110(k)(5) of the CAA and does not directly or disproportionately affect children.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This final action does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that several air agencies have failed to submit SIP revisions in response to findings of substantial inadequacy under section 110(k)(5) of the CAA, this action does not directly affect the level of protection provided to human health or the environment.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

M. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, but "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." For locally or regionally applicable final actions, the CAA reserves the EPA complete discretion whether to invoke the exception in (ii).

This final action is "nationally applicable" within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable,

the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of "nationwide scope or effect" within the meaning of CAA section 307(b)(1).⁸ This final action consists of findings of failure to submit required SIPs from areas within 10 states and the District of Columbia, located in 8 of the 10 EPA regions, and in 8 different federal judicial circuits.⁹ This final action is also based on a common core of factual findings concerning the receipt and completeness of the relevant SIP submittals. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

Janet G. McCabe,

Deputy Administrator.

[FR Doc. 2022-00138 Filed 1-11-22; 8:45 am]

BILLING CODE 6560-50-P

⁸ In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

⁹ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the "nationwide scope or effect" exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95-294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402-03.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0438; FRL-8773-02-R9]

Limited Approval and Limited Disapproval of California Air Quality Implementation Plan Revisions; Amador Air District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Amador Air District's (AAD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or "Act"). Under the authority of the CAA, this action simultaneously approves a local rule that regulates these emission sources and directs the District to correct rule deficiencies.

DATES: This rule is effective February 11, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2021-0438. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to batchelder.amber@epa.gov.

EXHIBIT G

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)

42 U.S.C.A. § 7509

§ 7509. Sanctions and consequences of failure to attain

Currentness

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in [section 7410\(k\)\(5\)](#) of this title), if the Administrator--

(1) finds that a State has failed, for an area designated nonattainment under [section 7407\(d\)](#) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under [section 7410\(k\)](#) of this title,

(2) disapproves a submission under [section 7410\(k\)](#) of this title, for an area designated nonattainment under [section 7407](#) of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under [section 7410\(k\)\(1\)\(A\)](#) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in

this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under [section 7405](#) of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under Title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following--

- (i)** capital programs for public transit;
- (ii)** construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;
- (iii)** planning for requirements for employers to reduce employee work-trip-related vehicle emissions;
- (iv)** highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;
- (v)** fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;
- (vi)** programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;
- (vii)** programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and
- (viii)** such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

(2) Offsets

In applying the emissions offset requirements of [section 7503](#) of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of [section 7410](#) of this title and [section 7502](#) of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of [section 7502\(a\)\(2\)](#) of this title, except that in applying such provisions the phrase “from the date of the notice under [section 7509\(c\)\(2\)](#) of this title” shall be substituted for the phrase “from the date such area was designated nonattainment under [section 7407\(d\)](#) of this title” and for the phrase “from the date of designation as nonattainment”.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 179, as added [Pub.L. 101-549, Title I, § 102\(g\)](#), Nov. 15, 1990, 104 Stat. 2420.)

[Notes of Decisions \(7\)](#)

42 U.S.C.A. § 7509, 42 USCA § 7509

Current through P.L.118-10. Some statute sections may be more current, see credits for details.

End of Document

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EXHIBIT H

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7410

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

Currentness

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under [section 7409](#) of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of [sections 7426](#) and [7415](#) of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under [section 7428](#) of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator--

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in [section 7603](#) of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of [section 7421](#) of this title (relating to consultation), [section 7427](#) of this title (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for--

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. [Pub.L. 101-549, Title I, § 101\(d\)\(1\)](#), Nov. 15, 1990, 104 Stat. 2409

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this

section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under [section 7418](#) of this title (relating to Federal facilities), enforcement orders under [section 7413\(d\)](#) of this title, suspensions under subsection (f) or (g) (relating to temporary energy or economic authority), orders under [section 7419](#) of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under [section 7413\(e\)](#) of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub.L. 101-549, Title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term “indirect source” means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term “indirect source review program” means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations--

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term “transportation control measure” does not include any measure which is an “indirect source review program”.

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under [section 7413\(d\)](#) of this title or [section 7419](#) of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator--

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409

(D) For purposes of this paragraph--

(i) The term “parking surcharge regulation” means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term “management of parking supply” shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term “preferential bus/carpool lane” shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d), (e) Repealed. Pub.L. 101-549, Title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that--

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under [section 7651j](#) of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under [section 7651j](#) of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that--

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under [section 1857c-10](#) of this title, as in effect before August 7, 1977, or [section 7413\(d\)](#) of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines--

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under [section 1857c-10](#) of this title as in effect before August 7, 1977, or under [section 7413\(d\)](#) of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under [section 7419](#) of this title, a suspension under subsection (f) or (g) (relating to emergency suspensions), an exemption under [section 7418](#) of this title (relating to certain Federal facilities), an order under [section 7413\(d\)](#) of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in [section 7506a](#) of this title or [section 7511c](#) of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [section 7501](#) of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in [section 7509\(b\)](#) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of [section 7509\(a\)](#) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in [section 7509\(a\)](#) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in [section 7509\(a\)](#) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State--

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of [section 7502\(b\)\(6\)](#) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of [section 7502\(c\)\(5\)](#) of this title (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to [section 7601\(d\)](#) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to [section 7601\(d\)\(2\)](#) of this title. When such plan becomes effective in accordance with the regulations promulgated under [section 7601\(d\)](#) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development¹ effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 110, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1680; amended [Pub.L. 93-319](#), § 4, June 22, 1974, 88 Stat. 256; S.Res. 4, Feb. 4, 1977; [Pub.L. 95-95](#), Title I, §§ 107, 108, Aug. 7, 1977, 91 Stat. 691, 693; [Pub.L. 95-190](#), § 14(a)(1) to (6), Nov. 16, 1977, 91 Stat. 1399; [Pub.L. 97-23](#), § 3, July 17, 1981, 95 Stat. 142; [Pub.L. 101-549](#), Title I, §§ 101(b) to (d), 102(h), 107(c), 108(d), Title IV, § 412, Nov. 15, 1990, 104 Stat. 2404 to 2408, 2422, 2464, 2466, 2634.)

[Notes of Decisions \(396\)](#)

Footnotes

¹ So in original. Probably should be followed by a comma.

42 U.S.C.A. § 7410, 42 USCA § 7410

Current through P.L.118-10. Some statute sections may be more current, see credits for details.

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EXHIBIT I

2016 IL 118422
Supreme Court of Illinois.

The STATE of Illinois (The DEPARTMENT OF
CENTRAL MANAGEMENT SERVICES), Appellant,

v.

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 31, Appellee.

No. 118422

|
March 24, 2016.

|
Rehearing Denied May 23, 2016.

Synopsis

Background: State brought action seeking to vacate arbitrator's award in favor of union of state employees. The Circuit Court, Cook County, [Richard Billik, Jr.](#) and [Rodolfo Garcia, JJ.](#), vacated award in part and ordered State to pay employees amounts due under union agreements. Parties appealed. The Appellate Court, [385 Ill.Dec. 931, 19 N.E.3d 1127](#), reversed. State petitioned for leave to appeal.

Holdings: The Supreme Court, [Theis, J.](#), held that:

arbitrator did not apply his own personal notion of fairness and justice in lieu of giving effect to terms of CBA, but

State's public policy provided that wage increases set forth in CBA were subject to State's appropriation power.

Reversed.

[Kilbride, J.](#), concurred in part and dissented in part and filed opinion.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***740** Lisa Madigan, Attorney General, of Springfield ([Carolyn E. Shapiro](#), Solicitor General, and [Richard S. Huszagh](#), Assistant Attorney General, of Chicago, of counsel), for appellant.

[Stephen A. Yokich](#), of Dowd, Block, Bennett, Cerrone, Auerbach & Yokich, of Chicago, for appellee.

[Joel Abbott D'Alba](#), of Asher, Gittler & D'Alba, Ltd., of Chicago, for amicus curiae Illinois AFL-CIO.

OPINION

Justice [THEIS](#) delivered the judgment of the court, with opinion.

****909 ¶ 1** This case arises out of the entry of an arbitration award directing the State of Illinois to pay a 2% wage increase to state employees covered by a multiyear collective bargaining agreement between the State of Illinois, Department of Central Management Services (the State), and the American Federation of State, County and Municipal Employees, Council 31 (AFSCME).

¶ 2 For the reasons discussed below, we hold that the arbitration award violates Illinois public policy, as reflected in the appropriations clause of the Illinois Constitution (Ill. Const.1970, art. VIII, § 2(b)), and section 21 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/21 (West 2014)). Accordingly, we reverse the judgments of the appellate court (2014 IL App (1st) 130262, 385 Ill.Dec. 931, 19 N.E.3d 1127) and the circuit court of Cook County, and vacate the arbitration award.

¶ 3 BACKGROUND

¶ 4 AFSCME is the exclusive bargaining representative for approximately 40,000 state employees working in more than 50 departments, authorities, boards, and commissions under the authority of the Governor (collectively, executive agencies). In 2008, AFSCME and the State negotiated a multiyear collective bargaining agreement governing those employees' wages, hours, and conditions of employment. The agreement was effective September 5, 2008, through June 30, 2012, spanning almost four fiscal years.¹ Article XXXII of the agreement provided for a general wage increase on January 1, 2009, and thereafter on every July 1 and January 1, with the final increase on January 1, 2012. The individual wage increases varied in amount, but over the life of the agreement the wage increases totaled 15.25%. The underlying dispute in the present case involves the 4% wage increase that was scheduled to go into effect on July 1, 2011.

¶ 5 In addition to the wage increases, the parties agreed, pursuant to article V of the collective bargaining agreement, to resolve certain disputes, including contract interpretation disputes, through binding arbitration. The parties also agreed, as set forth in article XXXIV, that the provisions of the collective bargaining agreement “cannot supersede law.”

¶ 6 In January 2010, in the face of declining state revenues owing to the Great Recession, and the potential layoff of 2,500 state employees, AFSCME and the State agreed to \$300 million in cost savings measures. The parties' written agreement limited the number of employees subject to layoff, limited facility closures during fiscal year 2011, deferred a portion of the wage increases scheduled to go into effect during fiscal year 2011, and set a target date for agreement on a voluntary furlough program.

*741 **910 ¶ 7 In the fall of 2010, in recognition of the yet ongoing fiscal crisis facing the State, the parties entered into two cost savings agreements that established a \$100 million savings goal for fiscal year 2012. Among other things, AFSCME agreed to a partial deferral of the wage increase scheduled to go into effect on July 1, 2011. Rather than the 4% increase reflected in the collective bargaining agreement, a 2% increase would be implemented on July 1, 2011, with the remaining 2% increase to be implemented on February 1, 2012. The State, in turn, agreed that no layoffs or facility closures would occur through the end of fiscal year 2012. The cost savings agreements expressly provided that arbitrator Edwin Benn would be retained to decide any disputes relative to the agreements.²

¶ 8 The Governor's proposed budget for fiscal year 2012, submitted to the General Assembly in February 2011, sought appropriations that would have fully funded the wage increases reflected in the CBA. The General Assembly's subsequent appropriation bills were, in fact, sufficient for that purpose with respect to the vast majority of executive agencies. As to 14 agencies, however, the Governor's Office of Management and Budget (GOMB) determined that the legislative appropriations were insufficient to pay the 2% wage increase.³

¶ 9 On July 1, 2011, immediately after adoption of the fiscal year 2012 budget, the acting director of the Department of Central Management Services (CMS) issued a memorandum advising agency directors, personnel and payroll managers, and labor relations administrators that, due to insufficient

appropriations, the wage increase could not be implemented in those 14 agencies. The memorandum explained:

“Pursuant to the Illinois Constitution, the General Assembly possesses the sole authority to make appropriations for all expenditures of public funds by the State. Additionally, [section 21 of] the Illinois Public Labor Relations Act * * * states, ‘[s]ubject to the appropriation power of the employer, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this Act.’

The Governor's proposed budget to the General Assembly sought to fully fund all collective bargaining contracts. However, the budget that was passed by the General Assembly and sent to the Governor DOES NOT contain appropriation authority to implement * * * increases for employees [in 14 agencies] covered by [the CBA].” (Emphasis in original.)

¶ 10 AFSCME thereafter initiated a labor arbitration before the parties' designated arbitrator. The arbitrator directed the parties to brief the effect of section 21 of the Act on their dispute.

¶ 11 The State argued that section 21 mandates that expenditures by the executive branch pursuant to a collective bargaining agreement are contingent on the existence of corresponding appropriations by the General Assembly, and that this **911 *742 provision simply restates the mandate contained in the appropriations clause of the Illinois Constitution. The State further argued that section 21 of the Act was incorporated into the CBA by virtue of the parties' express agreement, set forth in article XXXIV of the CBA, that “the provisions of this contract cannot supersede law.”

¶ 12 AFSCME argued that the very purpose of the Act was to expand the collective bargaining rights of public employees. Thus, section 21 should not be read to “cut back” on such rights by making collective bargaining agreements subject to the approval of the General Assembly.

¶ 13 On July 19, 2011, the arbitrator issued an award in favor of AFSCME. Based strictly on the four corners of the CBA, the arbitrator found that the State violated the CBA when it failed to pay the 2% wage increase on July 1, 2011. The arbitrator directed the State to begin paying the wage increase immediately and, within 30 days from the date of the award, “to make whole” those employees who did not receive the

wage increase on July 1, 2011.⁴ As to section 21 of the Act, the arbitrator determined that he was without authority to interpret this statutory provision, that being a matter for the courts. The arbitrator also declined to consider the State's constitutional and public policy arguments, again citing his lack of authority.

¶ 14 The State filed a complaint in the circuit court of Cook County to vacate the arbitration award. AFSCME, in turn, filed a counterclaim to confirm the award. The parties stipulated that during the pendency of the case, the GOMB had determined that, “as a result of attrition, lower than anticipated overtime, and the shifting of some staff payroll from the General Revenue Fund to other funding sources,” 4 of the 14 agencies now had sufficient appropriations to pay the wage increases for fiscal year 2012 retroactive to July 1, 2011. Thus, the parties' dispute focused on the remaining 10 agencies.

¶ 15 On July 9, 2012, the circuit court entered its order vacating the arbitration award in part. Although the circuit court agreed with the arbitrator that the State was under a contractual obligation to pay the wage increase, the circuit court determined that section 21 of the Act, when considered in conjunction with the appropriations clause, is indicative of a well-defined and dominant public policy that prohibits the expenditure of public funds where authority to do so, *i.e.*, a sufficient appropriation, is lacking. The circuit court also determined that the applicability of this public policy was fact-dependent. That is, in order to excuse the State's obligation under the CBA to pay the wage increase, the State must establish that the appropriations to the remaining 10 executive agencies were, in fact, insufficient. The circuit court remanded the matter to the arbitrator for such fact-finding. The arbitrator, however, declined to consider the matter further, and the parties agreed to proceed before the circuit court. Thereafter, four more agencies determined that they were able to pay the wage increase with their remaining appropriations. Accordingly, the parties proceeded to trial on the issue of whether the appropriations to the six remaining agencies were sufficient to pay the 2% wage increase.⁵

*743 **912 ¶ 16 The State offered testimony from Robert Brock, budget director for the Department of Human Services; Rob Craddock, deputy director over the labor relations function for CMS; Marc Staley, associate director of the GOMB; and Bryan Geckler, chief financial officer for the Department of Corrections. Additionally, the parties filed

326 joint stipulations, and numerous exhibits related to the legislative appropriations to the subject agencies.

¶ 17 After considering the evidence, the circuit court entered its written ruling on December 10, 2012. The circuit court found that the State had established that it “cannot pay the full amount of the wage increases at this time, but has not established that it cannot pay a lesser amount of the wage increases pursuant to its contractual obligations to do so.” The circuit court reinstated and confirmed the arbitrator's award, with the exception that the State was “not required to pay all of the wage increases within 30 days.” The circuit court ordered that, to the extent expiring appropriations for fiscal year 2012 were not adequate to pay the wage increases in total, the State's “contractual obligation remains unsatisfied and continues until paid in full.” The circuit court expressly stated that state employees who did not receive the 2% wage increase may file back wage claims from the “back wage fund” under applicable law.⁶

¶ 18 The State appealed, seeking vacatur of the arbitration award; AFSCME cross-appealed seeking confirmation of the award *in toto*.

¶ 19 The appellate court held that the arbitrator's award drew its essence from the CBA, rejecting the State's argument that under section 21 of the Act, the CBA was subject to the appropriation power of the General Assembly. 2014 IL App (1st) 130262, ¶¶ 30–34, 385 Ill.Dec. 931, 19 N.E.3d 1127. The appellate court also held:

“[T]he arbitrator's award comports with the overriding public policy of permitting the State to negotiate enforceable multiyear collective bargaining agreements with unions of state employees, and the award furthers the express constitutional policy forbidding the General Assembly from passing any acts, including insufficient appropriation bills, that impair the obligation of contracts.” *Id.* ¶ 40.

¶ 20 The appellate court reversed the circuit court's judgment insofar as the circuit court vacated the arbitration award in part and modified the arbitration award. The appellate court remanded the matter to the circuit court with directions to confirm the award. *Id.* ¶ 42.

¶ 21 We allowed the State's petition for leave to appeal (Ill. S.Ct. R. 315 (eff. Jan. 1, 2015)), and allowed Illinois AFL–

CIO to file a brief *amicus curiae* in support of AFSCME's position (Ill. S.Ct. R. 345 (eff.Sept.20, 2010)).

¶ 22 ANALYSIS

¶ 23 I

¶ 24 Preliminarily, we address an issue raised *sua sponte* by the appellate court, namely, a potential conflict of interest. According to the appellate court:

“Staff members working for all of the judges in this case belong to AFSCME, **913 *744 and the CBA at issue governs their relationship with the State. However, all judges in the state face the same conflict of interest. In this case, as in *Jorgensen v. Blagojevich*, 211 Ill.2d 286, 298–99 [285 Ill.Dec. 165, 811 N.E.2d 652] (2004), ‘[w]ere we to recuse ourselves, the parties would therefore be left without a forum in which to review the circuit court’s judgment. Their right to appeal would be lost. Under these circumstances, the common law “rule of necessity” obligates us to proceed.’ ” 2014 IL App (1st) 130262, ¶ 21, 385 Ill.Dec. 931, 19 N.E.3d 1127.

¶ 25 The appellate court’s concerns about a conflict of interest were unfounded. Judicial branch state employees working in the appellate court, as well as this court, are not members of AFSCME, and the CBA at issue here does not govern their relationship with the State. Thus, appellate court review was not dependent upon the rule of necessity.

¶ 26 With this correction, we turn to the substantive issues before this court.

¶ 27 II

¶ 28 Judicial review of an arbitrator’s award is “ ‘extremely limited.’ ” *Griggsville–Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18, 368 Ill.Dec. 494, 984 N.E.2d 440 (quoting *American Federation of State, County & Municipal Employees v. State*, 124 Ill.2d 246, 254, 124 Ill.Dec. 553, 529 N.E.2d 534 (1988) (hereinafter *AFSCME v. State*)); *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill.2d 299, 304, 219 Ill.Dec. 501, 671 N.E.2d 668 (1996) (hereinafter *AFSCME v. CMS*). Under this limited form of review, “a

court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties’ collective-bargaining agreement.” *AFSCME v. CMS*, 173 Ill.2d at 304–05, 219 Ill.Dec. 501, 671 N.E.2d 668. This standard respects the parties’ decision to have disputes settled by an arbitrator rather than a judge (*Griggsville–Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 18, 368 Ill.Dec. 494, 984 N.E.2d 440), and gives effect to the intent of the legislature in enacting the Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2014)), namely, “to provide finality for labor disputes submitted to arbitration” (*AFSCME v. CMS*, 173 Ill.2d at 304, 219 Ill.Dec. 501, 671 N.E.2d 668). Whether an arbitrator’s decision fails to draw its essence from the collective bargaining agreement presents an issue of law. *Griggsville–Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 20, 368 Ill.Dec. 494, 984 N.E.2d 440.

¶ 29 The State argues that the arbitrator’s award did not draw its essence from the CBA because the arbitrator refused to give any effect to the parties’ express agreement that the provisions of the CBA “cannot supersede law.” The State posits that this provision limited the parties’ contractual obligations to what is permitted by Illinois law, and necessarily embraced principles relating to the General Assembly’s appropriation power, as set forth in section 21 of the Act and the appropriations clause. According to the State, the arbitrator improperly applied his own personal notion of fairness and justice in lieu of giving effect to the terms of the CBA.

¶ 30 AFSCME counters that the arbitrator based his decision upon well-established contract principles: the language in the CBA clearly set forth the wage increases that were required for fiscal year **914 *745 2012; that language contained no contingencies based upon legislative appropriations; and, in the past, when the parties intended their agreement to be contingent on legislative appropriations, they had said so expressly.

¶ 31 To establish that the arbitrator strayed from his duty to interpret and apply the CBA and, instead, imposed his own notions of right and wrong, the State must clear “ ‘a high hurdle.’ ” *Griggsville–Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 20, 368 Ill.Dec. 494, 984 N.E.2d 440 (quoting *Stolt–Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010)). The State must do more than demonstrate that the arbitrator committed an error, or even

a “serious error.” *Id.* Rather, the State must show that “there is no ‘interpretive route to the award, so a noncontractual basis can be inferred and the award set aside.’ ” *Id.* (quoting *Chicago Typographical Union No. 16 v. Chicago Sun–Times, Inc.*, 935 F.2d 1501, 1506 (7th Cir.1991)). We agree with AFSCME that the State has not cleared this high hurdle.

¶ 32 In crafting his award, the arbitrator relied on what he described as the “mandatory, clear, and simple terms” of the collective bargaining agreement: “Effective July 1, 2011, the pay rates * * * shall be increased by 4.00%.” (Emphasis added.) “Shall,” the arbitrator stated, means “must” or “obliged to.” The arbitrator indicated that the cost savings agreements reduced the 4% wage increase to 2%, but did not change the mandatory nature of the State's obligation to pay the increase. The arbitrator determined that in order to find that the State can avoid paying the 2% increase, he would have to amend the language in the agreement from “shall” to “may,” or add language making the State's payment of the wage increase contingent on legislative appropriation. Under article V of the CBA, however, “[t]he arbitrator shall neither amend, modify, nullify, ignore, add or subtract from the provisions” of the agreement. The arbitrator stated that “[w]hen parties to collective bargaining agreements agree that wage increases are contingent upon the existence of sufficient appropriations, they say so,” but “[t]here is no language here to that effect.”

¶ 33 With respect to section 21, the arbitrator noted that no reported case had interpreted this statutory provision, and this was a matter for the courts. His only authority, the arbitrator explained, was to interpret the parties' agreement, and the parties had not specifically incorporated section 21 of the Act into the CBA. The arbitrator opined that even if he could interpret section 21, to do so in a fashion that would change the State's obligation to pay the 2% wage increase would violate article V of the CBA expressly prohibiting him from amending the parties' agreement.

¶ 34 The arbitrator also considered the “cannot supersede law” language on which the State relied. This language, the arbitrator began, was part of a larger section in article XXXIV of the CBA titled “Partial Invalidity.” This section provides:

“Should any part of this Agreement or any provisions contained herein be Judicially determined to be contrary to law, such invalidation of such part or provision shall not invalidate the remaining portions hereof and they shall remain in full force and effect. The parties shall attempt to renegotiate the invalidated part or provisions.

The parties recognize that the provisions of this contract cannot supersede law.” (Emphasis added.)

¶ 35 The arbitrator observed that it had not been “[j]udicially determined” that the **915 *746 2% wage increase was “contrary to law,” and:

“That is what the State is asking me to do. But I am not a judge. I am an arbitrator bound by the negotiated terms of the Agreement and the Cost Savings Agreements which require the State to pay the 2% increase and prohibit me as an arbitrator from changing that obligation.”

¶ 36 Putting aside the lack of a judicial determination, the arbitrator next observed that, “[t]here is a fundamental rule of contract construction that specific language governs general language.” Although the arbitrator cited no authority for this rule, “[c]ourts and legal scholars have long recognized that, where both a general and a specific provision in a contract address the same subject, the more specific clause controls.” *Grevas v. United States Fidelity & Guaranty Co.*, 152 Ill.2d 407, 411, 178 Ill.Dec. 419, 604 N.E.2d 942 (1992). The arbitrator found that under this rule, the specific language in article V of the CBA, providing that he “shall neither amend, modify, nullify, ignore, add or subtract from the provisions” of the CBA, governs the general language that the provisions of the agreement “cannot supersede law.”

¶ 37 Finally, the arbitrator concluded that he was without authority to consider the State's constitutional and public policy arguments:

“Questions of public policy—like statutory and Constitutional interpretations—are for the courts and not arbitrators. And that makes sense. As an arbitrator, I am a private citizen who holds no elected or appointed authority by the citizens of this state. Our elected and appointed officials including lawmakers, administrators and judges—and not me—should make public policy decisions.”

We note that although an arbitrator must respect public policy concerns implicated by his remedy, “[q]uestions of public policy, of course, are ultimately left for resolution by the courts.” *AFSCME v. CMS*, 173 Ill.2d at 318, 219 Ill.Dec. 501, 671 N.E.2d 668.

¶ 38 Based on our review of the arbitration award, we conclude that the arbitrator acted within the scope of his authority, and that his award was guided by contract principles and not his own notions of fairness and justice. Accordingly,

we reject the State's initial challenge to the arbitration award and hold, as a matter of law, that the award “drew its essence” from the CBA.

¶ 39 III

¶ 40 The State next argues that the arbitration award must yet be vacated because it violates the public policy of this state.

¶ 41 An arbitration award which otherwise derives its essence from the collective bargaining agreement is not enforceable if the award contravenes paramount considerations of public policy. *AFSCME v. CMS*, 173 Ill.2d at 306–07, 219 Ill.Dec. 501, 671 N.E.2d 668; *AFSCME v. State*, 124 Ill.2d at 260, 124 Ill.Dec. 553, 529 N.E.2d 534. This public policy exception to the enforcement of arbitration awards finds its historical roots in the common law. *AFSCME v. CMS*, 173 Ill.2d at 307, 219 Ill.Dec. 501, 671 N.E.2d 668. “[J]ust as we will not enforce a private agreement which is repugnant to established norms of public policy, we may not ignore the same public policy concerns when they are undermined through the process of arbitration.” *Board of Trustees of Community College District No. 508, County of Cook v. Cook County College Teachers Union, Local 1600*, 74 Ill.2d 412, 424, 24 Ill.Dec. 843, 386 N.E.2d 47 (1979). **916 *747 To vacate an arbitration award on this basis, a court first determines “whether a well-defined and dominant public policy can be identified” and, if so, “whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy.” *AFSCME v. CMS*, 173 Ill.2d at 307–08, 219 Ill.Dec. 501, 671 N.E.2d 668.

¶ 42 Because Illinois public policy finds expression, first and foremost, in our state constitution, we begin our analysis there, turning our attention to the appropriations clause. Set forth in the finance article, the appropriations clause provides in relevant part: “The General Assembly by law shall make appropriations for all expenditures of public funds by the State.” Ill. Const.1970, art. VIII, § 2(b). “An appropriation involves ‘the setting apart from public revenue a certain sum of money for a specific object.’ ” *Board of Trustees of Community College District No. 508 v. Burriss*, 118 Ill.2d 465, 477, 113 Ill.Dec. 937, 515 N.E.2d 1244 (1987) (quoting *Illinois Municipal Retirement Fund v. City of Barry*, 52 Ill.App.3d 644, 646, 10 Ill.Dec. 439, 367 N.E.2d 1048 (1977)). The power to appropriate for the expenditure of public funds is vested exclusively in the General Assembly; no other branch of government holds such power. *McDunn*

v. Williams, 156 Ill.2d 288, 308, 189 Ill.Dec. 417, 620 N.E.2d 385 (1993). In the state budget-making process, for example, although the Governor is constitutionally required to set forth in his proposed budget “the estimated balance of funds available for appropriation” (Ill. Const.1970, art. VIII, § 2(a)), and statutorily required to set forth “the amounts recommended * * * to be appropriated to the respective departments, offices, and institutions” (15 ILCS 20/50–5(a) (West 2014)), the General Assembly alone has the authority to make any such appropriations (Ill. Const.1970, art. VIII, § 2(b)).

¶ 43 In addition to our state constitution, Illinois public policy is shaped by our statutes, through which the General Assembly speaks. *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 19 n. 2, 389 Ill.Dec. 575, 27 N.E.3d 67. Indeed, as between the judicial branch and the General Assembly, the latter “ ‘occupies a superior position in determining public policy.’ ” *Id.* (quoting *Reed v. Farmers Insurance Group*, 188 Ill.2d 168, 174–75, 242 Ill.Dec. 97, 720 N.E.2d 1052 (1999)).

¶ 44 The Act reflects the public policy of this state, as determined by the General Assembly, “to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection.” 5 ILCS 315/2 (West 2012). This broad statement of public policy, however, is tempered by section 21 of the Act. 5 ILCS 315/21 (West 2012). Section 21, which has been a part of the Act since its adoption in 1983 (Pub. Act 83–1012, § 21 (eff. July 1, 1984)), states in its entirety:

“ § 21. *Subject to the appropriation power of the employer*, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this Act.” (Emphasis added.) 5 ILCS 315/21 (West 2012).

¶ 45 The term “employer,” as used in section 21, has always been expressly defined to include “the State of Illinois.” Compare Pub. Act 83–1012, § 3(n) (eff. July 1, 1984), with 5 ILCS 315/3(o) (West 2014). Because, as discussed above, the appropriation power of the State resides with the General Assembly, under the **917 *748 plain language of section 21, multiyear collective bargaining agreements negotiated with the State, *i.e.*, the “ employer,” are subject to the State's appropriation power, as exercised by the General Assembly. Section 21 is thus consistent with the appropriations clause

of the Illinois Constitution, and reinforces the public policy of this state under which the power to appropriate for the expenditure of public funds is unique to the General Assembly.

¶ 46 The appellate court held, however, that because the statutory definition of “employer” expressly excludes the General Assembly (5 ILCS 315/3(o) (West 2014)), multiyear collective bargaining agreements with the State are not subject to the General Assembly's appropriation power. 2014 IL App (1st) 130262, ¶¶ 32–33, 385 Ill.Dec. 931, 19 N.E.3d 1127. We disagree. This court has already recognized that the General Assembly's appropriation authority does not make that body an employer of executive branch employees. *Orenic v. Illinois State Labor Relations Board*, 127 Ill.2d 453, 481, 130 Ill.Dec. 455, 537 N.E.2d 784 (1989). Accordingly, exclusion of the General Assembly from the definition of “employer” under the Act does not take collective bargaining agreements with the State outside of the reach of section 21.

¶ 47 Moreover, when the legislature amended the Act in 1988 to exclude the General Assembly from the definition of “employer,” the legislature made plain its intent: “to specify that employees of the General Assembly of the State of Illinois * * * are excluded from the Illinois Public Labor Relations Act” (Pub. Act 85–1032, § 2 (eff. July 1, 1988)), and thus excluded from the right of self-organization and collective bargaining (*id.* § 1 (amending Ill.Rev.Stat.1987, ch. 48, ¶ 1606)). Although AFSCME argues that section 21 should apply only to collective bargaining agreements with local governmental employers such as municipalities and counties, no such limiting language appears in the statute.

¶ 48 Despite the clear expression of public policy set forth in the appropriations clause and section 21 of the Act, AFSCME urges this court to hold that the CBA was not subject to the appropriation power of the General Assembly. AFSCME argues that if funding for wage increases in collective bargaining agreements is ultimately dependent on the spending decisions of the General Assembly, collective bargaining with the State is rendered meaningless.

¶ 49 AFSCME's argument is belied by its own bargaining history with the State. As AFSCME admits, some collective bargaining agreements have made wage increases expressly contingent on legislative appropriations. Thus, it is not the case that collective bargaining is rendered meaningless where the agreement is subject to the appropriation power of the General Assembly. The only difference between AFSCME's

prior agreements and the present one is that the appropriation contingency in the prior agreements was express, whereas the appropriation contingency in the CBA was implied by virtue of section 21 of the Act.

¶ 50 We disagree with AFSCME that collective bargaining will be rendered meaningless if the CBA is subject to the General Assembly's appropriation power for the additional reason that this argument overlooks the difference between collective bargaining in the public sector versus the private sector. As our appellate court explained:

“The courts have noted one important difference between collective bargaining in the public sector, as opposed to the private sector, is that in the public sector, it is often necessary for a labor *918 *749 union to, in effect, obtain approval of a proposed contract by a legislative body through appropriation of the funds required to provide the wage and salary increases called for by the contract, in addition to obtaining the assent of the employing governmental agency or department to the terms of the contract. Thus, public employee unions, as a part of their collective-bargaining duties, must often engage in political activities in order to achieve what most private sector unions are able to achieve solely at the bargaining table.” *Antry v. Illinois Educational Labor Relations Board*, 195 Ill.App.3d 221, 270–71, 141 Ill.Dec. 945, 552 N.E.2d 313 (1990) (citing *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)).

¶ 51 This court has similarly recognized that when labor representatives bargain with executive agencies, they do so with the knowledge that any agreement reached will be affected by the General Assembly's appropriation power. *Orenic*, 127 Ill.2d at 481, 130 Ill.Dec. 455, 537 N.E.2d 784 (citing Jan W. Henkel & Norman J. Wood, *Collective Bargaining by State Workers: Legislatures Have the Final Voice in the Appropriation of Funds*, 11 J. Collective Negotiations 215, 217 (1982)); see also *State v. Florida Police Benevolent Ass'n*, 613 So.2d 415, 417–20 (Fla.1993) (recognizing differences between public and private collective bargaining, and holding that public sector agreement was subject to appropriation power of the legislature). Thus, giving effect to the General Assembly's appropriation authority does not render collective bargaining with the State meaningless; rather, giving effect to the General Assembly's role recognizes an inherent feature of collective bargaining in the public sector.

¶ 52 The appellate court expressed concern that recognizing the appropriation contingency in this case “would allow the General Assembly in every appropriation bill to impair the State's obligations under its contracts,” in violation of the contracts clause of the Illinois Constitution (Ill. Const.1970, art. I, § 16). 2014 IL App (1st) 130262, ¶ 39, 385 Ill.Dec. 931, 19 N.E.3d 1127. The partial concurrence and partial dissent (dissent) shares the appellate court's concern, suggesting that under today's decision, the State may now avoid its contractual obligations simply by not making the necessary appropriations. *Infra* ¶ 69. This case, however, does not involve every species of contract with the State. Rather, this case involves a multiyear collective bargaining agreement that is, by statute, “[s]ubject to the appropriation power of the employer.” 5 ILCS 315/21 (West 2014). Accordingly, the pay raises in the CBA were always contingent on legislative funding, and the failure of that contingency to occur cannot “impair” AFSCME's agreement with the State.

¶ 53 The appellate court acknowledged that a contract with the State could be subject to legislative appropriation without offending the contracts clause. The appellate court concluded, however, that such a contingency must be explicit. 2014 IL App (1st) 130262, ¶ 39, 385 Ill.Dec. 931, 19 N.E.3d 1127. But under general principles of contract law, “statutes and laws in existence at the time a contract is executed are considered part of the contract,” and “[i]t is presumed that parties contract with knowledge of the existing law.” *Braye v. Archer–Daniels–Midland Co.*, 175 Ill.2d 201, 217, 222 Ill.Dec. 91, 676 N.E.2d 1295 (1997); see also *Local 165, International Brotherhood of Electrical Workers v. Bradley*, 149 Ill.App.3d 193, 211, 102 Ill.Dec. 20, 499 N.E.2d 577 (1986). Here, section 21 of the Act, which sets ****919 *750** forth the appropriation contingency, has been in effect continuously since the Act's adoption, and is thus part of AFSCME's agreement with the State. That this is so is made all the more plain by article XXXIV of the CBA which expressly states that its provisions “cannot supersede law.”

¶ 54 Finally, we disagree with the dissent that our decision creates uncertainty as to the State's obligations, generally, under its contracts. We reiterate that this case involves a particular contract: a multiyear collective bargaining agreement. Whether other state contracts with different provisions and different controlling law could also be subject to legislative appropriation without offending the contracts clause is not before us. The dissent's attempt to address those issues is ill-advised. See *People v. White*, 2011 IL 109689, ¶ 153, 353 Ill.Dec. 517, 956 N.E.2d 379 (courts of

review should exercise judicial restraint, particularly when constitutional issues are involved, and not make unnecessary law).

¶ 55 CONCLUSION

¶ 56 For all the reasons discussed above, we hold that section 21 of the Act, when considered in light of the appropriations clause, evinces a well-defined and dominant public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. We further hold that the arbitrator's award, which ordered immediate payment of the 2% wage increase without regard to the existence of corresponding appropriations by the General Assembly, violated this public policy. Accordingly, we reverse the judgments of the appellate court and circuit court, and vacate the arbitration award.

¶ 57 Judgments reversed.

Chief Justice **GARMAN** and Justices **FREEMAN**, **THOMAS**, **KARMEIER**, and **BURKE** concurred in the judgment and opinion.

Justice **KILBRIDE** concurred in part and dissented in part, with opinion.

Justice **KILBRIDE** dissented upon denial of rehearing, without opinion.

¶ 58 Justice **KILBRIDE**, concurring in part and dissenting in part.

¶ 59 I concur in parts I and II of the majority opinion. I disagree, however, with part III of the majority opinion. I would reverse the judgment of the appellate court and affirm the judgment of the circuit court. I would hold that the state employees' contractual rights to raises continues under the contract clause of the Illinois Constitution (Ill. Const.1970, art. I, § 16), even if that obligation cannot immediately be enforced because of lack of appropriations, and that public policy strongly favors holding the State to its contractual obligations.

¶ 60 The State seeks to extinguish completely state employees' contractual rights to their raises and not merely to establish that the contractual rights may only be enforced

with sufficient legislative appropriation. I do not believe the appropriations clause of the Illinois Constitution (Ill. Const.1970, art. VIII, § 2(b)) may be used by the State to frustrate its contractual obligations.

¶ 61 The circuit court held that the State had put forth a potential valid defense to the contract: the Governor lacked the power to pay the wage increases unless the General Assembly appropriated the necessary funds. The circuit court heard evidence on the issue of the sufficiency of state appropriations for the wage increases in question and held that the State had ****920 *751** proved it did not have sufficient funds available to provide all wage increases due under the contract. The circuit court, therefore, reinstated and confirmed the arbitrator's award, with the exception that the State was “not required to pay all of the wage increases within 30 days.”

¶ 62 The circuit court ruled that the State had a continuing obligation to pay the wage increases under the contract and that it was required to pay those increases when it was able. The circuit court ordered that, to the extent the expiring appropriations for fiscal year 2012 were not adequate to pay the wage increases in total, the State's “contractual obligation remains unsatisfied and continues until paid in full.” The circuit court expressly stated that state employees who did not receive the 2% wage increase may file back wage claims from the “back wage fund” under applicable law. Significantly, the parties later stipulated that the expiring appropriations were sufficient to pay the wage increases to certain state employees. I agree with the circuit court's determination that the State's obligation to pay the raises is a continuing contractual obligation, even if it is not immediately enforceable.

¶ 63 The majority opinion ignores the circuit court's specific factual findings and the parties' stipulations. The majority opinion allows the State to extinguish state employees' contractual rights to the raises, while ignoring AFSCME's argument that the right to recover the negotiated raises at issue in this case is protected by the contract clause of the Illinois Constitution (Ill. Const.1970, art. I, § 16).

¶ 64 This court has made clear that the contract clause provides a high level of protection to those who contract with and work for the State. See *In re Pension Reform Litigation*, 2015 IL 118585, ¶¶ 64–65, 392 Ill.Dec. 1, 32 N.E.3d 1 (hereinafter *Heaton*). In *Heaton*, this court recognized “that particular scrutiny of legislative action is warranted when, as

here, a State seeks to impair a contract to which it is itself a party and its interest in avoiding the contract or changing its terms is financial” and that “it is manifest that the State could not, as a matter of law, clear the threshold imposed under contemporary contract clause jurisprudence.” *Heaton*, 2015 IL 118585, ¶¶ 63, 65, 392 Ill.Dec. 1, 32 N.E.3d 1. As this court pointed out in *Heaton*:

“The circumstances presented by this case are not unique. Economic conditions are cyclical and expected, and fiscal difficulties have confronted the State before. In the midst of previous downturns, the State or political subdivisions of the State have attempted to reduce or eliminate expenditures protected by the Illinois Constitution * * *. Whenever those efforts have been challenged in court, we have clearly and consistently found them to be improper.” *Heaton*, 2015 IL 118585, ¶ 53, 392 Ill.Dec. 1, 32 N.E.3d 1.

¶ 65 As AFSCME points out in its brief, if the legislature simply refused to appropriate funds to pay pension benefits to state employees, this court would presumably not conclude that the right of state employees to receive their full pensions had been eliminated by the General Assembly. Rather, the right to undiminished pensions would continue, and the obligation of the State to pay those pensions would continue, even if that obligation could not immediately be enforced.

¶ 66 Accordingly, I would find that the General Assembly's failure to appropriate sufficient funds to pay all of the salary increases did not erase the underlying obligation of the State. I would hold that state employees' contractual rights to raises continues under the contract clause, ****921 *752** even if that obligation cannot immediately be enforced because of insufficient appropriations.

¶ 67 Many courts have recognized that while the lack of legislative appropriation may prevent enforcement of contractual rights against the government, the lack of appropriation does not eliminate the government's underlying contractual obligation. See *Salazar v. Ramah Navajo Chapter*, 567 U.S. —, 132 S.Ct. 2181, 183 L.Ed.2d 186 (2012); *Newman Marchive Partnership, Inc. v. City of Shreveport*, 979 So.2d 1262 (La.2008); *White v. Davis*, 30 Cal.4th 528, 133 Cal.Rptr.2d 648, 68 P.3d 74 (2003); *AFSCME/Iowa Council 61 v. State*, 484 N.W.2d 390 (Iowa 1992); *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976); *Campbell Bldg. Co. v. State Road Comm'n*, 95 Utah 242, 70 P.2d 857 (1937); *State v. Woodruff*, 170 Miss. 744, 150 So. 760 (1933).

¶ 68 Moreover, public policy strongly favors holding the State to its contractual obligations. *AFSCME/Iowa Council 61*, 484 N.W.2d 390, is instructive and persuasive on this point. In *AFSCME/Iowa Council 61*, the Iowa Supreme Court faced a similar argument on the need for appropriations for enforcement of a collective bargaining agreement. In that case, the legislature passed the necessary appropriations, but the governor struck the appropriation funding. The Iowa Supreme Court recognized that the State is bound by its contracts and that the State cannot use the lack of appropriation to frustrate its contractual obligations. *AFSCME/Iowa Council 61*, 484 N.W.2d at 392–94. The Iowa Supreme Court determined that, although the governor's veto was valid, “the veto did not serve to erase the underlying obligation of the State.” *AFSCME/Iowa Council 61*, 484 N.W.2d at 395. The Iowa Supreme Court aptly stated:

“It would be no favor to the State to exonerate it from contractual liability. To do so would seriously impair its ability to function. A government must finance its affairs, must contract for buildings, highways, and a myriad of other public improvements and services. It would lead to untenable results if a government, after having contracted for needed things, did not have to pay for them.” *AFSCME/Iowa Council 61*, 484 N.W.2d at 394.

¶ 69 Similarly, when the State of Illinois does not fulfill its contracts, both employees and vendors suffer. There are sound fiscal reasons for holding the State to its contractual

obligations. Stability in fulfilling state contracts benefits the citizens of this state. Indeed, allowing the State to extinguish contractual obligations by failing to appropriate funds is fiscally dangerous. I do not believe the majority does the State any favor in exonerating it from contractual liability by simply failing to appropriate sufficient funds. This is especially true given the current budget crisis.

¶ 70 Today's decision may, in fact, further impair the State's ability to function. The State of Illinois must finance its affairs, purchase products and supplies, contract for public improvements, infrastructure and various services but, apparently, under the majority's approach, the State has no obligation to pay for those products, improvements, and services. Unfortunately, I believe the majority opinion interjects uncertainty into the State's responsibility for its contracts and will likely impair its ability to secure future contracts with its employees and vendors. Ultimately, the citizens, businesses, and taxpayers of the State will suffer the consequences.

¶ 71 For the foregoing reasons, I respectfully concur in part and dissent in part from the majority opinion.

All Citations

2016 IL 118422, 51 N.E.3d 738, 401 Ill.Dec. 907, 205 L.R.R.M. (BNA) 3629, 166 Lab.Cas. P 61,694

Footnotes

- 1 The State's fiscal year runs from July 1 through June 30. Thus, the 2012 fiscal year, for example, would run from July 1, 2011, through June 30, 2012.
- 2 For ease of discussion, we will refer to the collective bargaining agreement, together with the cost savings agreements, as simply the “CBA.”
- 3 These agencies were: the Department of Corrections, the Department of Juvenile Justice, the Department of Human Services, the Department of Revenue, the Department of Human Rights, the Department of Public Health, the Department of Labor, the Department of Natural Resources, the Human Rights Commission, the Criminal Justice Information Authority, the Deaf and Hard of Hearing Commission, the Guardianship and Advocacy Commission, the Prisoner Review Board, and the Historic Preservation Agency.
- 4 The State estimated that the cost of paying the wage increase to employees in the 14 affected agencies was \$75 million.

- 5 The six remaining agencies were: the Department of Human Services, the Department of Corrections, the Department of Juvenile Justice, the Department of Public Health, the Department of Natural Resources, and the Human Rights Commission.
- 6 The parties later stipulated that expiring appropriations were sufficient to pay the wage increases to employees in the Human Rights Commission, but that wage increases totaling \$52.8 million in the other five agencies remained unpaid.

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EXHIBIT J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) EPA-5-23-113(a)-IL-03
)
Rain CII Carbon LLC) Proceeding Under Sections 113(a)(1)(3) and
Robinson, IL) 114(a)(1) of the Clean Air Act, 42 U.S.C.
) §§ 7413(a)(1)(3) and 7414(a)(1)
)

Administrative Consent Order

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Rain CII Carbon LLC (you or Rain CII Carbon) under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

3. On May 31, 1972, EPA approved 35 Illinois Administrative Code (“Ill. Adm. Code” or “IAC”) Title (tit.) 201, “Permits and General Conditions,” into the federally enforceable SIP of Illinois. 37 Fed. Reg. 10,862 (May 31, 1972) (codified at 40 C.F.R. 52.722). Since then, EPA has approved several revisions of 35 IAC tit. 201 into the federally enforceable SIP. *See, e.g.*, 82 Fed. Reg. 30,363 (June 30, 2017).

4. 35 Ill. Adm. Code 201.144 states that “[n]o person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an operating permit from the [Illinois Environmental Protection] Agency (“Agency” or “IEPA”), except as provided in Section 201.146.”

5. On December 17, 1992, EPA approved the incorporation of the Illinois state operating permit program into the federally enforceable SIP of Illinois as 40 C.F.R. § 52.737. 57 Fed. Reg. 59,935 (Dec. 17, 1992).

6. 40 C.F.R § 52.737 states that “[e]mission limitation and other provisions contained in operating permits issued by the State in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved Illinois SIP for the purpose of section 113 of the Clean Air Act and shall be enforceable by USEPA and by any person in the same manner as other requirements of the SIP.”

7. Under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413 (a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP.

8. The Administrator of EPA may require any person who owns or operates an emission source under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

Findings

9. Rain CII Carbon owns and operates a petroleum and coal products manufacturing facility at 12187 E 950th Avenue, Robinson, IL 62454.

10. On January 2, 2014, the IEPA issued Permit No. 95120092 (2014 Permit) to Rain CII Carbon.

11. Section 4.2(2)(f)(i)(A) of the 2014 Permit sets forth that pursuant to Section 39.5(7)(a) of the Illinois Environmental Protection Act (“Act”), Rain CII Carbon “shall maintain

and operate all equipment associated with the Petroleum Coke Calcining Operations in a manner consistent with safety and good air pollution control practice for minimizing emissions.”

12. Section 4.2(2)(d)(i)(A)(II) of the 2014 Permit sets forth that pursuant to 35 IAC 215.302(c), for the kilns, emissions of organic material in excess of those permitted by 35 IAC 215.301 are allowable if Volatile Organic Materials (“VOM”) emissions are controlled by air pollution control equipment capable of reducing by 85 percent or more the uncontrolled organic material that would be otherwise emitted to the atmosphere.

13. On March 17, 2015, the Office of the Attorney General, on behalf of the People of the State of Illinois (“People”), filed a third amended complaint against Rain CII Carbon, LLC (Respondent). *See* Third amended compl., People v. Rain CII Carbon LLC, PCB No. 04-137 (Mar. 17, 2015).

14. On January 10, 2017, Rain CII Carbon electronically received the Stipulation and Settlement Agreement in the case referenced in item 13 above. In the terms of settlement, the “future compliance” section sets forth that:

- a. “Except during startup and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), Respondent shall operate its pyro scrubbers as follows:
- b. Maintain a minimum temperature of 1800°F, measured at the thermocouple(s) located at the inlet to each pyro scrubber, using a 3-hour rolling average as per current Compliance Assurance Monitoring Plan (“CAM Plan”) and current CAAPP Permit; Monitor the pyro scrubber inlet temperatures of each unit, so as to ensure that the minimum temperature is maintained; and,

- c. Utilize the inlet temperature of each pyro scrubber as the CAM indicator and develop a CAM indicator range.”

15. On May 13, 2019, the IEPA issued Permit No. 95120092 to Rain CII Carbon (“2019 Permit”). This permit reflects the future compliance set forth in the January 10, 2017 Stipulation and Settlement Agreement.

16. Section 4.2(4)(a)(i)(A) of the 2019 Permit sets forth that pursuant to 35 IAC 201.149, 201.261, and 201.262, Rain CII Carbon is authorized to operate kiln 1 and kiln 2 and their associated pyroscrubbers in violation of the applicable requirements of Condition 4.2(2)(a)(i)(A), 4.2(2)(b)(i)(A), and 4.2(2)(d)(i)(A) during start-up. The start-up time shall be no more than 24 hours. For this purpose, the start-up time is defined as the duration from when green coke feed is introduced to the kiln until the temperature at the pyroscrubber inlet achieves the minimum operating temperature indicated in the CAM plan.

17. Pursuant to 40 C.F.R. 64.7(a) and Section 7.5(b). of the 2019 Permit, Rain CII Carbon shall comply with the monitoring requirements of the CAM Plans described in Section 7.5(e) of the 2019 Permit.

18. Section 4.2(2)(f)(i)(A) of the 2019 Permit sets forth that the Permittee shall maintain and operate all equipment associated with the Petroleum Coke Calcining Operations according to manufacturer specifications and in a manner consistent with safety and good air pollution control practice for minimizing emissions.

19. Section 4.2(2)(f)(i)(E) of the 2019 Permit sets forth that except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee must maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers, measured at the thermocouples located at the inlet to each pyroscrubber.

20. Section 4.2(4)(b)(i)(C)-(D) of the 2019 Permit sets forth that for baghouse maintenance lasting up to thirty minutes, emissions from Cooler 1 may be vented through Pyroscrubber 1, and emissions from Cooler 2 may be vented through Pyroscrubber 2.

21. Rain CII Carbon owns or operates an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Rain CII Carbon is subject to the requirements of Section 114(a)(1).

22. On September 9th, 2021, EPA issued to Rain CII Carbon a Notice of Violation alleging that it violated the SIP provisions for federally enforceable operating permit limitations and provisions by failing to maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers and repeat cooler gas diversions for non-maintenance offline baghouse cleanouts.

23. On November 3, 2021, representatives of Rain CII Carbon and EPA discussed the September 9th, 2021, Notice of Violation.

24. Rain CII Carbon violated 35 IAC 215.302(c), Section 39.5(7)(a) of the Act, and Section 4.2(2)(d)(i)(A)(II) of the 2014 Permit by failing to maintain the pyroscrubbers at a 3-hour rolling average minimum temperature of 1800°F for four events where coke was in the kiln.

25. Rain CII Carbon violated Section 4.2(2)(f)(i)(E) of the 2019 Permit by failing to maintain a 3-hour rolling average minimum temperature of 1800°F, measured at the thermocouples located at the inlet to each pyroscrubber for seven events where coke was in the kiln.

26. Rain CII Carbon violated Section 4.2(2)(f)(i)(A) of the 2019 Permit by diverting cooler gas through pyroscrubbers during 449 offline baghouse cleanouts between May 14, 2019, and February 12, 2020. In particular, for 155 of those 449 offline baghouse cleanouts, multiple offline baghouse cleanouts occurred within a 24-hour period on 62 days.

Compliance Program

27. By the effective date of this Order, Rain CII Carbon must achieve, demonstrate and maintain compliance with the SIP at its Robinson, IL facility.

28. Within 60 days of the effective date of this Order, to ensure compliance with record keeping requirements, Rain CII must revise the Programmable Logic Controller so that it only records feed entering the kiln and not all coke going across the weighfeeder as the kiln feedrate.

29. Within one year of the effective date of this Order, to ensure compliance with the minimum pyroscrubber temperature requirement at all times when coke is in the kiln, Rain CII Carbon must:

- a. Increase each existing kiln burners' natural gas firing capacity to help maintain temperature in the pyroscrubber during short-term feed stoppages;
- b. Install an air cannon in each green coke feed chute to assist in clearing feed chute plugs more quickly;
- c. Replace each green coke bin inverted cone with an upgraded model with antifriction coating to reduce frictional forces and help reduce plugs; and,
- d. Engineer and manufacture a green bin plug dislodging device to help clear plugs in the green coke bins.

30. Within one year of the effective date of this Order, to minimize cooler gas diversions through a pyroscrubber, Rain CII Carbon must:

- a. Install bin level indicators at each baghouse, with the bin level data tied into the DCS system and available to the operators;
- b. Upgrade each baghouse's rotary airlock to more efficiently remove baghouse fines and improve functioning of the bags;
- c. Install hopper devices for each baghouse to reduce bridging and allow the evacuation system to operate more efficiently; and,
- d. Revise and improve baghouse procedures to: (1) address the new equipment and requirements; and (2) provide guidance on handling baghouse issues, and (3) state that cooler gas diversions should be minimized.

31. Rain CII Carbon must submit a certification of completion by no later than 30 days after completing all actions in subparagraphs 28, 29, and 30 above.

32. Within 60 days of the effective date of this Order, in order to minimize and address repeat cooler gas diversions through a pyroscrubber, Rain CII Carbon must create and adhere to a new written procedure for carrying out various checks and repairs for a given baghouse if there are more than sixty minutes of cooler gas diversions at a single (i.e., the same) kiln through a pyroscrubber in a 24-hour period. Rain CII Carbon shall submit this procedure to EPA for review and approval within 60 days of the effective date of this Order. If Rain CII Carbon has more than ninety minutes of cooler gas diversions at a single (i.e., the same) kiln through a pyroscrubber in a 24-hour period, it must shut down that kiln and not resume operation until an inspection of the affected equipment is completed, the cause(s) of the repeated cooler gas diversions is determined, and corrective action(s), if any, have been completed to address the cause(s) of the repeated cooler gas diversions. The above requirements are not intended to affect the provisions of Section 7.4(4)(a) of the 2019 Permit.

33. Rain CII Carbon must submit to EPA semiannual reports under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). For each timeframe, these reports shall include:

- a. The start and end date and time of each instance where the 3-hour average pyroscrubber temperature was not maintained at 1800°F while coke was in the kiln; the reason for the excursion, and actions taken to address the excursion;
- b. Start and end date and time of all cooler gas diversions;
- c. Brief narrative explanation of cause and reason for cooler gas diversions through a pyroscrubber;
- d. Maintenance activities performed during cooler diversions through a pyroscrubber;
- e. Date and time of any kiln startup or shutdown;
- f. Corrective action(s), if any, taken to address the cause of the repeat offline cooler gas diversions through a pyroscrubber; and,
- g. Date(s) corrective action(s), if any, were completed.

The report covering the January 1 to June 30 period must be submitted by July 31; the report covering the July 1 to December 31 period must be submitted by January 31. The first report will cover the period from the effective date of this Order until June 30, 2023, and be submitted on July 31, 2023.

34. Rain CII Carbon must send all reports required by paragraph 32 of this Order by electronic mail to r5aireinforcement@epa.gov, Virginia Galinsky at galinsky.virginia@epa.gov, Karyn Defranco at defranco.karyn@epa.gov, and Robert H. Smith at smith.roberth@epa.gov. If you are unable to send a report to these addresses due to email size restrictions or other problems, use these email addresses to make additional arrangements for transmission of the report.

General Provisions

35. Rain CII Carbon admits to the jurisdictional allegations in this Order, and neither admits nor denies the factual allegations and conclusions of law in this Order.

36. Rain CII Carbon consents to the transmission of this Order by e-mail at the following e-mail address(es): Dan Fearday, Plant Manager (dan.fearday@raincarbon.com) with copies to Randy McCaskill, General Counsel (randy.mccaskill@raincarbon.com) and Todd Silliman, Dentons US, LLP (todd.silliman@dentons.com).

37. This Order does not affect Rain CII Carbon's responsibility to comply with other federal, state, and local laws.

38. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

39. Failure to comply with this Order may subject Rain CII Carbon to penalties of up to \$109,024 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

40. The terms of this Order are binding on Rain CII Carbon, its assignees and successors. Rain CII Carbon must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

41. Rain CII Carbon may assert a claim of business confidentiality under 40 C.F.R.

Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Rain CII Carbon fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

42. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

43. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

44. Rain CII Carbon agrees to the terms of this Order. Rain CII Carbon waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

45. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. This Order will terminate two years from the effective date, provided that Rain CII Carbon has complied with all terms of the Order throughout its duration.

Rain CII Carbon LLC

13FEB23

Date

Dan Fearday Digitally signed by Dan
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Dan Fearday
Plant Manager
Rain CII Carbon LLC

United States Environmental Protection Agency

**MICHAEL
HARRIS**

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Date: 2023.02.21 10:51:36
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Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

EXHIBIT K




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 17 2018

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program

FROM: Peter Tsirigotis
Director 

TO: Regional Air Division Directors, Regions 1-10

The purpose of the attached document is to provide guidance on compliance demonstration tools for use with ozone and fine particles (PM_{2.5}) in the Prevention of Significant Deterioration (PSD) permitting program. The Environmental Protection Agency (EPA) has developed a new analytical approach and has used it to identify a significant impact level (SIL) for each ozone and PM_{2.5} National Ambient Air Quality Standard (NAAQS) and for the PM_{2.5} PSD increments. Permitting authorities may use these values to help determine whether a proposed PSD source causes or contributes to a violation of the corresponding NAAQS or PSD increments. Separately, we have developed a technical document that provides a detailed discussion of the technical analysis used in the development of these values and a legal memorandum that provides further detail on the legal basis that permitting authorities may choose to adopt to support using SILs to show that requirements for obtaining a PSD permit are satisfied.¹ This guidance provides a summary of the results of the technical analysis and information on the particular points in the PSD air quality analysis at which permitting authorities may decide to use these values on a case-by-case basis in the review of PSD permit applications. This guidance, and the technical and legal documents, are not final agency actions and do not create any binding requirements on permitting authorities, permit applicants or the public.

Please share this guidance with permitting authorities in your Region. If you have questions regarding the guidance, please contact Raj Rao at rao.raj@epa.gov or (919) 541-5344. For questions regarding the technical document, please contact Tyler Fox at fox.tyler@epa.gov or (919) 541-5562. For questions regarding the legal document, please contact Brian Doster at doster.brian@epa.gov or (202) 564-1932.

Attachment

¹ "Technical Basis for the EPA's Development of Significant Impact Thresholds for PM_{2.5} and Ozone," EPA-454/R-18-001, April 2018; "Legal Memorandum: Application of Significant Impact Levels in the Air Quality Demonstration for Prevention of Significant Deterioration Permitting under the Clean Air Act," April 2018.

Attachment

Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program

I. INTRODUCTION

When a Prevention of Significant Deterioration (PSD) permit applicant has shown through air quality modeling that the projected air quality impact from a proposed source for a particular pollutant is not significant or meaningful, the EPA believes there is a valid analytical and legal basis in most cases for the permitting authority to conclude that the proposed source will not cause or contribute to a violation of a National Ambient Air Quality Standard (NAAQS) or PSD increment for that pollutant. To show that the proposed source will not have a significant or meaningful impact on air quality, permit applicants and permitting authorities may elect to use these Significant Impact Level (SIL) values (air quality concentration values) as a compliance demonstration tool. In this guidance and accompanying documents, the EPA has provided policy, technical and legal analyses that permitting authorities may choose to adopt in supporting the use of the SILs to make the required demonstration in particular PSD permitting actions. The use of SILs can help satisfy PSD requirements while expediting the permitting process and conserving resources for permit applicants and permitting authorities.

The EPA has previously issued guidance describing particular uses of SILs.^{1,2,3,4} The EPA has also recognized that permitting authorities have the discretion to apply SILs on a case-by-case basis in the review of individual permit applications, provided such use is justified in the permitting record.⁵ In an effort to reduce the need for case-by-case justification by permitting authorities, the EPA finalized a rule in 2010 to codify, among other things, particular PM_{2.5} SIL values and specific

¹ Memorandum from Stephen D. Page, EPA OAQPS, to EPA Regional Air Division Directors, "Guidance Concerning the Implementation of the 1-hour SO₂ NAAQS for the Prevention of Significant Deterioration Program," August 23, 2010.

² Memorandum from Stephen D. Page, EPA OAQPS, to EPA Regional Air Division Directors, "Guidance Concerning the Implementation of the 1-hour NO₂ NAAQS for the Prevention of Significant Deterioration Program," June 29, 2010.

³ Memorandum from Stephen D. Page, EPA OAQPS, to OAQPS Personnel and EPA Regional Modelers, "Modeling Procedures for Demonstrating Compliance with PM_{2.5} NAAQS," March 23, 2010.

⁴ Memorandum from Gerald A. Emison, EPA OAQPS, to Thomas J. Maslany, EPA Air Management Division, EPA Region 3, "Air Quality Analysis for Prevention of Significant Deterioration (PSD)," July 5, 1988.

⁵ Order Responding to Petitioner's Request that the Administrator Object to Issuance of a State Operating Permit, *In the Matter of CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel*, Petition Number VIII-2011-01, at 15-17 (May 31, 2012) ("*Rocky Mountain Steel Order*"); *In re: Mississippi Lime Company*, 15 E.A.D. 349, 375-379 (Environmental Appeals Board (EAB) 2011).

applications of those values (“2010 rulemaking”).⁶ However, in the course of subsequent litigation over this rule, the EPA conceded the regulation was flawed because it did not preserve the discretion of permitting authorities to require additional analysis in certain circumstances, and the court granted the EPA’s request to vacate and remand the rule so that the EPA could address the flaw.⁷

Following the litigation, the EPA began developing a new rule to address the flaw identified in the 2010 rulemaking.⁸ However, after further evaluation and the identification of a revised set of SIL values based on the technical and legal analyses described below, the EPA believes it should first obtain experience with the application of these values in the permitting program before establishing a generally applicable rule.⁹ Thus, the EPA intends at this point to take a two-step approach.

First, the EPA is providing non-binding guidance so that we may gain valuable experience and information as permitting authorities use their discretion to apply and justify the application of the SIL values identified below on a case-by-case basis in the context of individual permitting decisions. We will be seeking to learn generally about permitting agencies’ experiences in applying SILs in particular PSD permitting decisions. We will also be seeking more specific information, including how often and in what types of settings the application of a SIL at the single-source assessment and cumulative assessment stages of the PSD air quality analysis has made a critical difference in whether a conclusion was reached that the proposed source will not cause or contribute to a NAAQS or PSD increment violation. The EPA intends to obtain this information through its own PSD permitting activities in states that do not have SIP-approved PSD programs, regular discussions between our Regional offices and air agencies, regular conference calls with the permitting committees of national organizations of air agencies, and technical conferences of air quality modelers and others interested in permitting activities.

Second, the EPA will use this experience and information to assess, refine and, as appropriate, codify SIL values and specific applications of those values in a future, potentially binding rulemaking. During this second step, to assess whether it is appropriate to codify particular SIL

⁶ 75 FR 64864 (October 20, 2010).

⁷ *Sierra Club v. EPA*, 705 F.3d 458, 463-66 (D.C. Cir. 2013). In its litigation brief at n. 10, the EPA stated an intent to issue guidance in the near future concerning PM_{2.5} values remaining in 40 CFR 51.165(b)(2). The EPA issued such guidance in May 2014. Memorandum from Stephen D. Page, EPA OAQPS, to EPA Regional Air Division Directors, “Guidance for PM_{2.5} Permit Modeling,” May 20, 2014.

⁸ Fall 2015 Regulatory Agenda, USEPA, 80 FR 78024, December 15, 2015. Ozone and Fine Particulate Matter (PM_{2.5}) Significant Impact Levels (SILs) for Prevention of Significant Deterioration (PSD), RIN: 2060-AR28. <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=2060-AR28>.

⁹ See *SEC v. Chenery Corp.*, 332 U.S. 194, 199-203 (1947) (recognizing that some principles may warrant further development before they are ready to be codified in a rule of general applicability).

values for ozone and PM_{2.5}, the EPA will consider whether permitting experience has confirmed that the recommended SIL values are suitable in all circumstances to show that an increase in air quality concentration below the value does not cause or contribute to a violation of the NAAQS or PSD increments.

Permitting authorities retain discretion to use or not to use these EPA-derived SILs in particular PSD permitting actions. If a permitting authority chooses to use these SIL values to support a case-by-case permitting decision, it must justify the values and their use in the administrative record for the permitting action.¹⁰ Permitting authorities also have discretion to develop their own SIL values, provided that such values are properly supported in the record for permitting actions or decisions in which the values are used to make the required showing. Detailed technical guidance on the development of alternative SIL values is beyond the scope of this document; however, we provide a limited discussion later in this document (*see, e.g.*, page 12). This guidance (including the legal and technical documents) supporting the EPA's recommended SIL values may be viewed as a model for permitting authorities that seek to develop alternative SIL values. Permitting authorities may elect to utilize alternative "confidence intervals" as well as regional or local factors in developing their own SIL values.¹¹

Since the 2010 rulemaking, the EPA has examined the legal basis for using SIL values in PSD air quality impact analyses. In addition, the EPA has sought to develop a stronger analytical foundation for the EPA recommended SIL values. This guidance and supporting documents are the products of this effort. They identify specific SIL values for ozone and PM_{2.5} and provide a supporting justification that permitting authorities may choose to apply on a case-by-case basis. The values and supporting justification are designed so that permitting authorities can choose to apply the SIL values to demonstrate that a proposed source does not cause or contribute to a violation of NAAQS or PSD increments. In contrast to the 2010 rulemaking, we have developed separate SIL values for the PM_{2.5} NAAQS and PSD increments, and we have developed SILs for the ozone NAAQS. Since there are no PSD increments for ozone, the EPA has not developed SILs for ozone.

The EPA believes that the application of these SILs in the manner described below would be sufficient in most situations for a permitting authority to conclude that a proposed source will not cause or contribute to a violation of an ozone or PM_{2.5} NAAQS or PM_{2.5} PSD increments. However, this guidance is not a final agency action and does not reflect a final determination by the EPA that any particular proposed source with a projected impact below the recommended SIL value does not cause or contribute to a violation. A determination that a proposed source does not cause or contribute to a violation can only be made by a permitting authority on a permit-specific basis after consideration of the permit record. This guidance is not legally binding and does not affect the rights or obligations of permit applicants, permitting authorities, or others. The SIL

¹⁰ *Rocky Mountain Steel Order* at 16-18, *supra* footnote 5. Such a justification may incorporate the information compiled by the EPA to support the SILs recommended in this memorandum.

¹¹ A description of the "confidence interval" is provided at page 12 of this document and in the technical document at section 2.2 (Statistical Methods and Assessing Significance Using Confidence Intervals).

values identified by the EPA have no practical effect unless and until permitting authorities decide to use those values in particular permitting actions. The experience of permitting authorities using these SILs on a case-by-case basis, or in choosing to limit or forego their use in specific situations, will be valuable information for the EPA to consider in a future rulemaking. Permitting authorities retain the discretion to apply and justify different approaches and to require additional information from the permit applicant to make the required air quality impact demonstration, consistent with the relevant PSD permitting requirements.

II. BACKGROUND

A PSD permit applicant 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.¹² The EPA has reflected this requirement in its PSD regulations.¹³ The Clean Air Act (Act) does not specify how a permit applicant or permitting authority is to make this demonstration, but section 165(e) authorizes the EPA to determine how the analysis is to be conducted, including the use of air quality models. In accordance with this authority, the EPA has promulgated regulations that identify such models and the conditions under which they may be used in the PSD program to make the demonstration required under the Act.¹⁴

Using the models identified in the EPA’s regulations, there are two basic ways that a PSD permit applicant can demonstrate that the proposed source’s emissions will not cause or contribute to a violation of a NAAQS or PSD increment. One way is to demonstrate that no such violation is occurring or projected to occur in the area affected by the emissions from the proposed source.¹⁵ A second way is to demonstrate that the emissions from the proposed source do not cause or contribute to any identified violation of the NAAQS or PSD increments.¹⁶

The Act does not define “cause” or “contribute.” Reading these terms in context, the EPA has historically interpreted this provision in section 165(a)(3) of the Act and associated regulations to mean that a source must have a “significant impact” on ambient air quality in order to cause or contribute to a violation.¹⁷ Thus, the EPA and other permitting authorities have concluded that a

¹² 42 U.S.C. 7475(a)(3) (section 165(a)(3) of the Act). The EPA interprets the phrase “in excess of” to mean a violation, not the exceedance described in 40 CFR 50.1(l).

¹³ 40 CFR 51.166(k); 40 CFR 52.21(k).

¹⁴ The PSD regulations at 40 CFR 51.166(l) and 52.21(l) require the use of “applicable models, data bases, and other requirements” specified in 40 CFR part 51, Appendix W, also known as the *Guideline on Air Quality Models (Guideline)*.

¹⁵ 1990 Draft New Source Review (NSR) Workshop Manual at C.51.

¹⁶ 40 CFR part 51, App. W, § 9.2.3; 1990 Draft NSR Workshop Manual at C.52.

¹⁷ *In re: Prairie State Generating Co.*, 13 E.A.D. 1, 105 (EAB 2006). This EAB opinion includes a long discussion of the EPA’s prior guidance with other examples.

proposed source may meet the requirements in section 165(a)(3) and the EPA's PSD regulations by showing that its projected impact on air quality at the site of a modeled violation is below a level of air quality impact considered to be significant.¹⁸

Historic Use of SILs

In the context of section 165(a)(3), the EPA has historically used pollutant-specific concentration levels known as "significant impact levels" to identify the degree of air quality impact that "causes, or contributes to" a violation of a NAAQS or PSD increment.¹⁹ Consistent with the EPA guidance, proposed sources have met the requirement to demonstrate that they do not cause or contribute to a violation by showing that the ambient air quality impacts resulting from the proposed source's emissions would be below these concentration levels.²⁰ The SIL values have served as a compliance demonstration tool to make the required demonstration in the PSD program. They have helped to reduce the burden on permitting authorities and permit applicants to conduct often time-consuming and resource-intensive air dispersion modeling where such modeling was unnecessary to demonstrate that a permit applicant meets the requirements of section 165(a)(3), consistent with the procedures set forth originally in 1977 in the "Guidelines for Air Quality Maintenance Planning and Analysis, Volume 10 (Revised) and Procedures for Evaluating Air Quality Impact of New Stationary Sources."²¹

Recent Status of SILs for Ozone and PM_{2.5}

Since the inception of the PSD program, the EPA has faced technical challenges with providing compliance demonstration tools for those pollutants that are not directly emitted by sources (ozone and secondarily-formed PM_{2.5}) and which form through chemical reactions of precursor pollutants. In July 2010, the Sierra Club petitioned the EPA to initiate rulemaking regarding the establishment of air quality models for ozone and PM_{2.5} for use by PSD permit applicants. In January 2012, the EPA granted the petition and committed to engage in rulemaking to evaluate whether updates to the *Guideline* are warranted and, as appropriate, incorporate new analytical techniques or models for ozone and secondarily-formed PM_{2.5}. In granting the petition, the EPA explained that the "complex chemistry of ozone and secondary formation of PM_{2.5} are well-documented and have historically presented significant challenges to the designation of particular models for assessing

¹⁸ 1990 Draft NSR Workshop Manual at C.52.

¹⁹ 61 FR 38250, 38293 (July 23, 1996); 72 FR 54112, 54139 (September 21, 2007).

²⁰ 1990 Draft NSR Workshop Manual at C.51-C.52.

²¹ October 1977, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. The 1977 document did not discuss SILs, but did identify procedures for air quality analyses pursuant to the PSD program.

the impacts of individual stationary sources on the formation of these air pollutants”²² Because of these considerations, the EPA’s past judgment had been that it was not technically sound to designate with particularity specific models that must be used to assess the impacts of a single source on ozone and secondarily-formed PM_{2.5} concentrations. Instead, the EPA established a consultation process with permitting authorities for determining (on a permit-specific basis) the analytical techniques that should be used for single-source analyses for both ozone and secondarily-formed PM_{2.5}.

The EPA has responded to the Sierra Club petition by finalizing revisions to the EPA’s *Guideline*.²³ As discussed in the preamble to the *Guideline*, recent technical advances have made it reasonable for the EPA to provide more specific guidelines that identify appropriate analytical techniques or models that may be used in compliance demonstrations for the ozone and PM_{2.5} NAAQS and PM_{2.5} PSD increments. The revisions to the *Guideline* include criteria and process steps for choosing single-source analytical techniques or models to estimate ozone impacts from precursor nitrogen oxide (NO_x) and volatile organic compound (VOC) emissions and to assess concentrations of direct and secondarily-formed PM_{2.5}. The ozone and PM_{2.5} SIL values recommended in this guidance are intended to complement the *Guideline* updates by providing thresholds that may be used to determine whether an increase in air pollutant concentration (impact) predicted by the chosen technique or model causes or contributes to a violation.

In the 2010 rulemaking, the EPA established SIL values for PM_{2.5} in paragraph (k)(2) of the PSD regulations at 40 CFR 51.166 and 52.21. In January 2013, the U.S. Court of Appeals for the District of Columbia Circuit granted the EPA’s request to vacate and remand the paragraph (k)(2) provision in both PSD regulations so the EPA could correct them.²⁴ Paragraph (k)(2) as promulgated in 2010 included numerical values of PM_{2.5} SILs and statements about their role in completing an air quality impact analysis with regard to the PM_{2.5} NAAQS and PSD increments. Specifically, the 52.21(k)(2) rule text stated that if the impact of a proposed source seeking a federal PSD permit was below the relevant SIL value(s), then the proposed source would be deemed to not cause or contribute to a violation. The 51.166(k)(2) rule text stated that a state’s PSD rules could contain a similar provision. The EPA asked the court to vacate and remand the (k)(2) paragraphs of both PSD regulations so that the EPA could correct an inconsistency between (1) that rule text, which left no discretion for the permitting authority, and (2) our statements in the preamble to the 2010 rulemaking, which identified certain circumstances where it may not be

²² Letter from Gina McCarthy, Assistant Administrator, EPA Office of Air and Radiation, to Robert Ukeiley, Sierra Club, January 4, 2012.

²³ 82 FR 5182 (January 17, 2017).

²⁴ *Sierra Club v. EPA*, 705 F.3d 458, 466 (D.C. Cir. 2013).

appropriate for a permitting authority to rely solely on the PM_{2.5} SILs as a basis for concluding that a proposed source does not cause or contribute to a violation.²⁵

The court left intact the PM_{2.5} NAAQS significance levels separately promulgated at 40 CFR 51.165(b)(2), because the regulatory text in that section did not say that a proposed source that has an impact less than the significance level is always deemed to not cause or contribute to a violation. The regulatory text at 40 CFR 51.165(b)(2) says that a major source or major modification with a projected impact greater than the listed significance level at any location that does not or would not meet the applicable NAAQS will be considered to cause or contribute to a violation, but this provision does not compel the opposite conclusion for projected impacts equal to or below that level.²⁶

III. RECOMMENDED SIL VALUES FOR USE IN AIR QUALITY IMPACT DEMONSTRATION REQUIRED TO OBTAIN A PSD PERMIT

As discussed above, the EPA has interpreted the phrase “cause, or contribute to” in section 165(a)(3) of the Act to mean that a proposed source will have a “significant impact” on air pollutant concentrations that violate the standards. In this context, the EPA believes permitting authorities may read the phrase “cause, or contribute to” in section 165(a)(3) to be inapplicable to an air quality impact that is insignificant. This interpretation is more fully explained in the legal memorandum. In the context of this section of the Act, the EPA believes an insignificant impact is an impact on air quality concentrations that is small and not meaningful (e.g., the EPA has often described such an impact as “trivial” or “*de minimis*”).

As discussed in more detail in the legal memorandum, a permitting authority may conclude that a PSD permit applicant will “cause” a modeled violation of a NAAQS when the increased emissions from construction or modification of the proposed source are the reason for, responsible for, or the “but for” cause of the violation. However, a permitting authority must also consider whether emissions “contribute” to a violation in circumstances where a violation of the NAAQS is present before considering the proposed increase in emissions from a PSD construction project, or when

²⁵ These preamble statements were the following: “[N]otwithstanding the existence of a SIL, permitting authorities should determine when it may be appropriate to conclude that even a *de minimis* impact will ‘cause or contribute to’ an air quality problem and to seek remedial action from the proposed new source or modification.” See 75 FR 64864, 64892. “[T]he use of a SIL may not be appropriate when a substantial portion of any NAAQS or increment is known to be consumed.” See 75 FR 64864, 64894. “[W]e earlier provided an example of when it might be appropriate to require a modified source to mitigate its contribution to a violation of a NAAQS or increment even when the predicted ambient impact of the proposed emissions increase would result in what is normally considered to be *de minimis*.” See 75 FR 64864, 64894.

²⁶ 40 CFR 51.165(b)(2) is phrased such that an impact equal to the listed value is treated the same as impacts below the listed value. This contrasts to the approach in former 40 CFR 51.166(k)(2) and 52.21(k)(2), and, in this guidance, that an impact equal to the SIL is treated the same as impacts above the SIL.

emissions from multiple sources may impact a particular area. In the absence of specific language in section 165(a)(3) regarding the degree of contribution that is required (such as the term “significantly”), a permitting authority has the discretion under this provision to exercise its judgment to determine the degree of impact that contributes to adverse air quality conditions based on the particular context in which the term contribute is used. A permitting authority may also identify criteria or factors that may be used to determine whether something contributes, including qualitative or quantitative criteria that are appropriate to the particular context.²⁷

For purposes of implementing section 165(a)(3) of the Act, the EPA has found it more expedient and practical to use a quantitative threshold (expressed as a level of change in air quality concentration) to determine whether increased emissions from proposed construction or modification of a source will cause or contribute to air quality concentrations in violation of applicable standards. One of the goals of the development of SILs as a compliance demonstration tool is to ensure an appropriate balance between maintenance of air quality and PSD permit process streamlining. The EPA believes that the permitting process can be streamlined without compromising air quality if the EPA and permitting authorities are able to identify a quantitative threshold or dividing line between an insignificant and a significant impact on air pollutant concentrations. Using a quantitative threshold for this purpose is permissible as long as the EPA or the appropriate permitting authority provides a reasoned explanation for why impacts below that value do not cause or contribute to a violation in a particular context.

Historical Approach for Developing SILs

To determine what is (and is not) a significant impact in the context of section 165(a)(3) of the Act, the EPA has previously supported using the levels in 40 CFR 51.165(b)(2).²⁸ The EPA has

²⁷ See *Catawba County, N.C. v. EPA*, 571 F.3d 20, 39 (D.C. Cir. 2009). In this case interpreting the term “contributes” in section 107(d) of the Act, the court held that the EPA is not required to establish a quantitative or objective, bright-line test to define a contribution by sources to adverse air quality conditions in a nearby area in the context of designations with respect to attainment of a NAAQS. The court recognized that the EPA has the discretion to use a totality-of-the-circumstances test if the Agency defines and explains the criteria that it is applying. While this opinion said that a quantified threshold is not required to define “contribution” in the context of section 107(d), the court’s reasoning does not preclude PSD permitting authorities from choosing to use a quantitative level of impact to represent a contribution to a violation of the NAAQS or PSD increment when implementing section 165(a)(3) of the Act.

²⁸ The Emison Memo, *supra* footnote 5, references 40 CFR 51.165(b)(2) for the purpose of defining “significant” in this context. The NSR Workshop Manual at C.26-C.28 lists values from 40 CFR 51.165(b)(2) for the purpose of defining the area of “significant ambient impact.”

described these levels as “significance levels.”²⁹ 40 CFR 51.165(b)(2) was originally promulgated by the EPA in 1987 as part of an offset provision permitting authorities could apply after it was determined that construction at a stationary source was predicted to cause or contribute to a violation of the NAAQS.³⁰ This regulation provides that a proposed source planning to locate in an attainment area will be considered to “cause or contribute to” a violation of the NAAQS if its impact would exceed specific values identified in the regulation. For example, 40 CFR 51.165(b)(2) states that a proposed source impact that is greater than 5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for the 24-hour sulfur dioxide (SO_2) NAAQS causes or contributes to a violation of that NAAQS. The section refers to these values as “significance levels.” Values are not provided for every NAAQS, particularly ozone (and not for $\text{PM}_{2.5}$ until the 2010 rulemaking), but for those NAAQS covered in this regulation, the application is the same. Over time, these air quality concentration significance levels in 40 CFR 51.165(b)(2) have become known as “significant *impact* levels”³¹ [emphasis added] in order to distinguish them from the significant *emissions rates* reflected in the definition of the term “significant,” which serve a different function in the PSD program.³² The EPA has also issued guidance memoranda that have provided recommended SIL values for the 1-hour nitrogen dioxide (NO_2) and SO_2 NAAQS, to be used for the purpose of determining what are (and are not) significant impacts for these pollutants in the context of the 1-hour standards.³³

As referenced above, the EPA’s values contained in 40 CFR 51.165(b)(2) originally were related to the level of protection afforded by the PSD increments that Congress established for Class I areas.³⁴ The EPA generally relied on that approach in 2010 by using the ratio of the $\text{PM}_{2.5}$ NAAQS

²⁹ The EPA initially promulgated these same concentration values in 1978 and described them as the “minimum amount of ambient impact that is significant.” 43 FR 26380, 26398 (June 19, 1978). In the 1979 Emissions Offset Interpretative Ruling (Appendix S to 40 CFR part 51), the EPA used these values as the “significance levels” under which a source locating in the “clean” portion of a nonattainment area may be exempt from the preconstruction review requirements. 44 FR 3274, 3283 (January 16, 1979). Under Appendix S, as revised in 1980, the EPA considered a source to “cause or contribute to” a violation if the impact of the source or modification would exceed these significance levels at any locality that does not meet the NAAQS. 45 FR 31307, 31311 (May 13, 1980).

³⁰ 52 FR 24672, 24713 (July 1, 1987).

³¹ The first reference to “significant impact levels” is in the 1980 NSR Workshop Manual, which the EPA subsequently updated in the 1990 draft. It is worth noting that the 1977 comments to the proposed Appendix W rule (45 FR 58543) addressed whether a single-source screening technique should be used to determine if a cumulative modeling analysis would be required in a preconstruction review; industry and state agency comments indicated both groups favored some use of a tool to alleviate resource burden.

³² 40 CFR 52.21(b)(23) defines the term “significant” and applies discrete values for determining if the emissions increase from a proposed source will be significant. This regulation states that an increase in emissions of each ozone precursor (VOC and NO_x) is significant if it equals or exceeds 40 tons per year (tpy) and, for direct emissions of $\text{PM}_{2.5}$ the significance level is 10 tpy. For $\text{PM}_{2.5}$ precursor emissions, the significance level is 40 tpy for SO_2 and 40 tpy for NO_x .

³³ Page memoranda, *supra* footnotes 1 and 2 of this attachment.

³⁴ 43 FR 26380, 26398.

to the particulate matter 10 micrometers or less in diameter (PM₁₀) NAAQS as a multiplier to add PM_{2.5} values to 40 CFR 51.165(b)(2) and to establish PM_{2.5} SIL values in 40 CFR 51.166(k)(2) and 52.21(k)(2).³⁵ However, given limitations in the rationale supporting them, the EPA recognized in the preamble to the 2010 rulemaking that a permitting authority may not be able to apply the SIL values derived through this approach in every situation to show that proposed construction does not cause or contribute to a violation of standards. The EPA acknowledged that “the use of a SIL may not be appropriate when a substantial portion of any NAAQS or increment is known to be consumed.” The EPA also said that “notwithstanding the existence of a SIL, permitting authorities should determine when it may be appropriate to conclude that even a *de minimis* impact will ‘cause or contribute to’ an air quality problem and to seek remedial action from the proposed new source or modification.”³⁶ To guard against the improper use of the 2010 SILs for PM_{2.5} in such circumstances, the EPA later recommended that permitting authorities use those SILs only where they could establish that the difference between background concentrations in a particular area and the NAAQS was greater than those SIL values.³⁷ This approach was intended to guard against misuse of the SILs in situations where the existing air quality was already close to the NAAQS.

Analytical Foundation for Recommended SILs

Since the May 2014 PM_{2.5} modeling guidance was issued, the EPA has conducted a statistical analysis that provides an improved analytical foundation for the EPA’s selection, based on the policy considerations described below, of a degree of change in concentration that permitting authorities may use to represent an insignificant impact on air pollutant concentrations for ozone and PM_{2.5} in the context of PSD permitting. This technical method, referred to as the air quality variability approach, is described in the technical document. Given the improvements reflected in this method, the EPA does not see a need for permitting authorities to show that the difference between background concentrations and the relevant NAAQS is greater than the SIL value before applying one of the recommended PM_{2.5} SIL values. The EPA’s intention with this new method was to derive SIL values that are more universally applicable to a range of conditions, including those where a substantial portion of the NAAQS or PSD increment is known to be consumed. However, permitting authorities retain discretion whether to apply SILs as a general matter, or in particular permitting actions, based on information in the permit record.

In order for a specific change in air quality concentrations to be used to show that a proposed source does not cause or contribute to a violation of the NAAQS, the concentration change must

³⁵ 75 FR 64890.

³⁶ 75 FR 64864, 64892.

³⁷ Memorandum from Stephen D. Page, EPA OAQPS, to EPA Regional Air Division Directors, “Guidance for PM_{2.5} Permit Modeling,” May 20, 2014.

represent a level of impact on ambient air quality that is not significant or meaningful. The EPA's judgment is that values representing such a level can be selected from a statistical analysis of the variability of air quality, using data from the U.S. ambient monitoring network for ozone and PM_{2.5}. Due to fluctuating meteorological conditions and changes in day-to-day operations of all air pollution sources in an area, there is an inherent variability in the air quality in the area surrounding a monitoring site. This variability can be characterized through the application of a well-established statistical framework for quantifying uncertainty.^{38,39} The analysis described in the technical document quantifies the inherent variability in pollutant concentrations (as measured by design values) and informs the EPA's choice of a value for a change in concentrations that the EPA does not consider significant or meaningful because changes of this magnitude are well within the inherent variability of observed design values.⁴⁰ Once the precautionary choices described below are built into the calculation, this degree of change in concentration is, thus, indistinguishable from the inherent variability in the measured atmosphere and may be observed even in the absence of the increased emissions from a new or modified source. Therefore, a permitting authority can reasonably conclude that emissions of a proposed source that have a projected impact below the SIL values provided in this memorandum are not the reason for, responsible for, or the "but for" cause of a NAAQS violation. Likewise, this indicates that changes in air quality within this range are not meaningful, and, thus, do not contribute to a violation of the NAAQS.

Before delving in detail into the technical and policy considerations that inform the EPA's choice of the SILs recommended in this document, it is important to point out that the discretion of the EPA and other permitting authorities is limited by the 2010 rulemaking. Specifically, since the EPA has established by regulation that a PM_{2.5} impact greater than a certain value will be considered to cause or contribute to a violation of the relevant NAAQS, permitting authorities may not use a value higher than 1.2 µg/m³ for the 24-hour PM_{2.5} NAAQS or a value higher than 0.3 µg/m³ for the annual PM_{2.5} NAAQS. Because ozone is not addressed in 40 CFR 51.165(b)(2), permitting authorities are not precluded from developing a higher ozone NAAQS SIL value than recommended in this guidance. Likewise, 40 CFR 51.165(b)(2) does not address PSD increments and, thus, does not constrain the discretion of a permitting authority to develop a higher SIL value and use it for PSD increment purposes.

³⁸ Efron, B. (1979); "Bootstrap methods: Another look at the jackknife". *The Annals of Statistics* 7 (1): 1–26. doi:10.1214/aos/1176344552.

³⁹ Efron, B. (2003); *Second Thoughts on the Bootstrap*. *Stat. Sci.*, 18, 135-140.

⁴⁰ The EPA conducted an external peer review of the technical document containing the statistical analysis used for developing the SILs for ozone and PM_{2.5}. The peer review comments were supportive of the air quality variability method as being appropriate for application for SILs. The comments also suggested several considerations for improvements to the technical document and analyses to better support the application of the analysis to determine specific SIL values. Therefore, the EPA made a number of revisions to the technical document, including conducting new analyses to investigate issues raised by the reviewers, edits to a number of sections for clarity and accuracy, and updating the analysis to include the most recent data. A peer review report that outlines the subsequent changes to the technical analysis is available from the U.S. EPA library, library number EPA 454/S-18-001.

Basis for Development of Recommended SILs for Ozone and PM_{2.5}

In developing the recommended SILs for ozone and PM_{2.5}, we assessed the variability in pollutant concentrations, as determined by the national monitoring network, from the design value at each monitor (i.e., baseline value). The technical analysis uses traditional statistical techniques based on statistical significance testing to characterize the variability in air quality. The conceptual underpinnings of the analysis are an application of the concept of “statistical significance” to inform a policy decision regarding what represents an insignificant impact and, therefore, may serve as the basis for developing a SIL for use in the air quality impact analyses required for PSD permitting. More specifically, traditional statistics is based on the concept of identifying what constitutes a statistically significant change from a baseline value where the “baseline” is the statistic of interest, such as the mean or, in this case, the design value. Rather than focusing on statistically significant changes, the purpose of the analysis was to calculate changes in the design values that, once precautionary choices are applied, may be considered not significant or meaningful. To identify recommended SILs for the desired application in the PSD program, the EPA determined that the findings of the statistical analysis can be used to identify a change in the design value (i.e., an air quality impact) below which a permitting authority may reasonably conclude that the impact does not cause or contribute to a violation of a NAAQS. The principles of statistical significance testing do not by themselves provide a single, unique threshold for determining the statistical significance of a change in the design value. Statistical significance testing provides a range of concentration values that can be considered to represent a statistically significant change in air quality or, in this application, a change in air quality that is not statistically significant. Therefore, it is necessary to consider the function and application of SIL values in the context of the PSD program and to select a change in air quality that is reasonably representative of the showing that a proposed source will not cause or contribute to a NAAQS violation, as required by the Act and PSD regulations.

In making a recommendation for an appropriate SIL value, the EPA balanced two considerations: 1) the usefulness of the SIL as a compliance demonstration tool in the PSD permitting program, and 2) the likelihood of a SIL value representing an impact that is not significant. In balancing these considerations, the EPA made policy decisions concerning the confidence interval (CI) to represent the inherent variability for purposes of the NAAQS compliance demonstration, the approach used to scale local variability to the level of the NAAQS, the geographic extent of each summary value, and the design value year or years from which to use the variability results. As described below, for each of these factors, the EPA chose options that are precautionary, leading to SILs designed to ensure the protection of air quality.

Through the statistical analysis, we calculated CIs, which represent different assessments of the level of change in air quality based on the inherent variability in the air quality of an area. We then selected the recommended SIL values as a function of the CIs, the baseline value, and policy considerations. The selection of a CI in defining a particular SIL value required an exercise of judgment based on the technical and policy considerations (as described below) such that the selected value represents a level of change in air quality concentration that can be considered not significant or meaningful in the context of evaluating the impact of emissions from a proposed

source. These policy considerations work in conjunction with the statistical analysis, to provide a rational basis to select values derived from the statistical analysis that can be applied as a tool for making the PSD compliance demonstration required by the Act and PSD regulations. For more information on the design and results of the technical analysis, please refer to the technical document.

The technical analysis relies upon data from the national ambient monitoring network for ozone and PM_{2.5}. Because these data generally are the basis for determining NAAQS attainment, they are an appropriate basis to characterize air quality, with the statistical analysis evaluating the variation in the design value at each monitoring site across the nation. This variability in air quality concentrations is described by the different CIs computed from the statistical analysis. The CIs identify a statistically significant deviation from the baseline value. As described in the technical document (Section 3.0), the EPA has calculated CIs at the 25 percent, 50 percent, 68 percent, 75 percent, and 95 percent intervals for consideration in defining SIL values for ozone and PM_{2.5}. The smallest CI that might be used to identify a statistically significant change would be a 68 percent CI, which corresponds to one standard deviation from the baseline value. Thus, any change in the design value larger than the variation represented by the 68 percent CI could be considered to be a statistically significant change. However, for purposes of the PSD program, we are seeking to identify a concentration value that constitutes an insignificant impact, meaning a change in the design value that does not reflect a meaningful difference in air quality based on the introduction of a new source. Thus, from a statistical perspective, the EPA believes that the CIs used in determining an appropriate SIL value should be below 68 percent, corresponding to a change of less than one standard deviation.

Very small SIL values would have limited use to permitting authorities (i.e., would lead to “false positives”), while larger values (closer to the air quality change represented by the 68 percent CI) would lead to “false negatives.” In weighing these competing considerations to select an appropriate SIL value, the EPA believes that air quality change represented by a 50 percent CI represents a protective approach for a SIL value because it is sufficiently within the 68 percent CI, while still being sufficiently higher than zero such that it can be a useful compliance demonstration tool for the PSD permitting process. Of the available choices, the 50 percent CI has more utility as a screening tool under the permitting program, while providing a value that adequately reflects a change in air quality concentrations that is not significant or meaningful.

The EPA chose to use the relative variability rather than the absolute variability in calculating the SILs because the technical analysis (Section 4.0) showed that the relative variability is fairly consistent across the range of design values, suggesting a commonality in the relative variability across a wide range of geographic regions, chemical regimes, and baseline air quality levels in the development of the SILs.

In order to promote national consistency, the EPA has historically provided national SIL values rather than regional or local values. The EPA considered whether a SIL value should be informed by the statistical analysis at the particular site of the proposed source or the central tendency across all monitored sites in the U.S., regardless of the proposed source’s planned location. The EPA

continues to recommend using a national SIL value based on the variability aggregated across the nation rather than developing regional or local values. Findings from the statistical analysis indicate that while there are local spatial correlations, there are few instances of large scale (e.g., region-to-region) trends in ambient air variability. Thus, national numbers are supported by the spatial analysis and suitable for use here. Because NAAQS and PSD increments are set on a national basis, the EPA and permitting authorities have historically used national SILs in the PSD program. National SIL values are designed to be used for any location subject to PSD requirements and eliminate the need to determine local or regional approaches for developing a SIL value, including addressing the status of local air quality monitoring (which would be needed if regional or local SILs were to be determined). However, as noted above, local permitting authorities have the discretion to develop alternate SILs.⁴¹ Having a national SIL value promotes consistency in implementation and prevents possible confusion or arbitrary choices that may arise with highly localized SIL values (i.e., determining which monitors to use for computations and other possible deviations from national protocol). Given these considerations, the EPA recommends continuing the practice of using national SIL values. Furthermore, as shown in the technical analysis (Section 4.0), because the median statistic is less influenced by high variability areas, the median statistic is preferred for use in selecting a SIL. Therefore, using the median statistic of the relative variability from the 50 percent CIs from the entire U.S. ambient monitoring network satisfies the policy needs for a SIL and is congruent with the physical and chemical processes that result in this variability.

Next, the EPA chose to use the most recently available years of ambient monitoring data (2012-2016) in the technical analysis to derive the recommended SILs. The SILs should reflect the most recent and representative state of the nation's atmosphere. In assessing the historical trends in ozone and PM_{2.5} air quality levels across the nation, there are observable downward trends in concentrations that indicate more recent data are most appropriate. To have more confidence that the resulting values would not be unduly influenced by temporary circumstances or episodic events, the EPA's recommended SILs are based on an average of the most recent three design value years as a basis for ozone and PM_{2.5} SIL development (i.e., 2012-2014, 2013-2015, 2014-2016).

⁴¹ In the cases where a permitting authority is considering an alternative SIL(s) due to the characteristics of regional variability (e.g., if, based on the analysis presented in the technical document, a specific area appears to have more localized variability than the national average), it is important to understand the factors driving that apparent variability to fully support the application of alternative SIL(s). For example, the results presented in section 4.3 of the technical document show some areas with regional variability for the 24-hour PM_{2.5} standard, though no regional trends were apparent for the annual PM_{2.5} standard and the ozone standard. Furthermore, these regional trends for the 24-hour PM_{2.5} standard were not apparent in the other data years shown in the appendix of the technical document. Additionally, the discussion in the technical document highlights potential causes for some of the variability in these regions (e.g., lower sampling frequency, that can lead to apparently higher variability than would otherwise be shown with higher sampling frequency). Similar issues are discussed in the technical document and can have important consequences for the results and conclusions drawn from more localized analyses of the ambient data and should be thoroughly vetted when considering alternative SILs.

SILs for NAAQS

Using the method described above, the EPA developed SIL values for the 8-hour ozone NAAQS and the annual and 24-hour PM_{2.5} NAAQS. Table 1 lists these SIL values for the NAAQS. Each of these SIL values is based on the level, averaging period and statistical form of its corresponding NAAQS. For the reasons discussed in this guidance and supporting documents, we recommend that PSD permitting authorities use the following values as SILs on a case-by-case basis in the manner described in the next section.

Table 1. Recommended SIL Values for Ozone and PM_{2.5} NAAQS

Criteria Pollutant (NAAQS level)	NAAQS SIL concentration
Ozone 8-hour (70 ppb)	1.0 ppb
PM _{2.5} 24-hour (35 µg/m ³)	1.2 µg/m ³ *
PM _{2.5} annual (12 µg/m ³ or 15 µg/m ³)	0.2 µg/m ³

* The table accounts for the significance level for the 24-hour PM_{2.5} NAAQS in 40 CFR 51.165(b)(2). Refer to the guidance discussion for details.

For the 8-hour ozone NAAQS, the SIL value we recommend is 1.0 part per billion (ppb). Consistent with the form of the NAAQS, this value is based on the annual 4th highest daily maximum 8-hour concentration, averaged over 3 years. The recommended SIL value for ozone is the same as the derived value from the air quality variability analysis.

For the 24-hour PM_{2.5} NAAQS, the SIL value we recommend is 1.2 µg/m³. The derived value from the air quality variability analysis is 1.5 µg/m³ and is based on an analysis of the 98th percentile 24-hour concentrations averaged over 3 years. However, 40 CFR 51.165(b)(2) still lists 1.2 µg/m³ as the significance level for the 24-hour PM_{2.5} NAAQS. In the 2010 rulemaking, the EPA determined that an impact above this value will be considered to cause or contribute to a violation of the 24-hour PM_{2.5} NAAQS at any location that does not meet this standard. In the same rule, the EPA also sought to establish that an impact below this value would not cause or contribute to a violation of this NAAQS but acknowledged that there could be circumstances where this conclusion was not always valid. Even though the ambient air quality variability approach indicates that an impact below 1.5 µg/m³ is not significant, significance levels for PM_{2.5} remain in the EPA's regulations at 40 CFR 51.165(b)(2) and the EPA is presently bound by its prior conclusion (that an impact above 1.2 µg/m³ is significant and will cause or contribute to a violation of the 24-hour PM_{2.5} NAAQS). Thus, the EPA cannot conclude at this time that an impact between 1.2 µg/m³ and 1.5 µg/m³ is an insignificant impact or an impact that will not cause or contribute to a violation of the NAAQS. However, based on the ambient air quality variability

approach, the EPA can conclude that impacts below $1.2 \mu\text{g}/\text{m}^3$ are insignificant at any location and will not cause or contribute to a violation of the NAAQS.⁴²

For the annual $\text{PM}_{2.5}$ NAAQS, we recommend $0.2 \mu\text{g}/\text{m}^3$ as the SIL value, which is the value based on a 3-year average of annual average concentrations. This value is lower than the value of $0.3 \mu\text{g}/\text{m}^3$ listed in 40 CFR 51.165(b)(2). Since 40 CFR 51.165(b)(2) does not address whether an impact below $0.3 \mu\text{g}/\text{m}^3$ causes or contributes to a violation of the NAAQS, the EPA and other permitting authorities retain the discretion under this provision to determine on a case-by-case basis whether an impact between $0.2 \mu\text{g}/\text{m}^3$ and $0.3 \mu\text{g}/\text{m}^3$ will cause or contribute to a violation of the annual $\text{PM}_{2.5}$ NAAQS. However, based on the ambient air quality variability approach, the EPA's judgment is that an impact below $0.2 \mu\text{g}/\text{m}^3$ is not significant and should be considered to not cause or contribute to any violation of the annual $\text{PM}_{2.5}$ NAAQS that is identified.

We recommend that these SIL values apply to the NAAQS everywhere, regardless of the class of the airshed.⁴³ For $\text{PM}_{2.5}$, this recommendation is different than what was provided in the vacated (k)(2) paragraphs, where the SIL value that would be used for NAAQS purposes was different for Class I areas than for Class II and III areas. The EPA recognizes that, historically, Congress has provided special protections to Class I areas, as described below in the discussion of SILs for PSD increments. The EPA believes that because each ozone and $\text{PM}_{2.5}$ NAAQS is uniform throughout the class areas, no class-specific protection via SILs is necessary when assessing whether a source causes or contributes to a violation of the NAAQS.

SILs for PSD Increments

There are no PSD increments established for ozone and, thus, no ozone SIL values are needed for PSD increment compliance purposes. We used the air quality variability approach to develop PSD increment SILs for the $\text{PM}_{2.5}$ PSD increments (*see* Table 2), but in an indirect way. The SIL values

⁴² 40 CFR 51.165(b)(2) provides that a source impact higher than one of the listed significance levels is to be considered significant. A source impact exactly equal to a significance level need not be considered significant. In contrast, in this guidance, consistent with past guidance, we are recommending that a value exactly equal to a recommended SIL be considered significant. Thus, these two approaches treat a value equal to the stated level differently. In practice, we do not expect this to be a practical difference because it will be very unusual for a source's impact to exactly equal one of the recommended SIL values.

⁴³ When Congress established the PSD program requirements under the 1977 Act Amendments, it included specific numerical PSD increment levels for SO_2 and particulate matter (expressed at that time as "total suspended particulate") for Class I, II and III areas. Congress designated Class I areas (including certain national parks and wilderness areas) as areas of special national concern, where the need to prevent deterioration of air quality is the greatest. Consequently, the PSD increments are the smallest in Class I areas. The PSD increments of Class II areas are larger than those of Class I areas and allow for a moderate degree of emissions growth. Class III areas have the largest PSD increments, but to date no Class III areas have been designated. The EPA subsequently defined Class I, II and III PSD increments for NO_2 and PM_{10} , and $\text{PM}_{2.5}$ in multiple rulemakings.

for the PM_{2.5} PSD increments are derived from the recommended NAAQS SIL values and reflect that, under the PSD regulations, the allowable PSD increment values are different for Class I, II and III areas. For Class II areas (which comprise most of the U.S.) and Class III areas (of which there are currently none), we recommend that the values of the NAAQS SILs also be used for PSD increment SILs. For Class I areas, we are recommending annual and 24-hour PSD increment SIL values that are lower than the NAAQS SIL values. This is because the EPA recognizes that Congress intended to establish special protection for Class I areas, as observed by the more stringent statutory Class I PSD increments, as well as provisions for use of air quality related values (including protection against visibility impairment).⁴⁴ To help reflect this additional protection, we applied the ratios of the Class I and Class II allowable PSD increments to the NAAQS SIL values derived in our technical analysis.⁴⁵ The EPA believes these values for Class I areas will continue to reflect this higher level of protection through the PSD increment SILs.

Table 2. Recommended SIL Values for PM_{2.5} PSD Increments

Criteria Pollutant (averaging period)	PSD increment SIL concentration		
	Class I	Class II	Class III
PM _{2.5} (24-hour)	0.27 µg/m ³	1.2 µg/m ³	1.2 µg/m ³
PM _{2.5} (annual)	0.05 µg/m ³	0.2 µg/m ³	0.2 µg/m ³

IV. APPLICATION OF SILS

The EPA recommends that permitting authorities consider using these SIL values for ozone and PM_{2.5} 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, as described below, with one exception regarding defining the spatial extent for modeling.

First, permitting authorities may elect to use the SIL values reflected in this guidance in a preliminary (single-source) analysis that considers only the impact of the proposed source in the permit application on air quality to determine whether a full (or cumulative) impact analysis is necessary before reaching a conclusion as to whether the proposed source would (or would not) cause or contribute to a violation.⁴⁶ A modeled result predicting that a proposed source's maximum impact will be below the corresponding SIL value recommended above generally may be considered to be a sufficient demonstration that the proposed source will not cause or contribute to a violation of the applicable NAAQS or PSD increment. If the single-source analysis shows that a proposed source will not have a significant impact on air quality, permitting authorities may

⁴⁴ Section 165(d)(2) of the Act sets forth procedures affording special protection against adverse air quality impacts in Class I areas. Also, section 169A of the Act declares a national goal of preventing future and remedying any existing impairment of visibility in Class I areas. 42 U.S.C. 7475 and 7491.

⁴⁵ To derive the Class I PSD increment SIL values, we started with the corresponding NAAQS SIL value as the base number and adjusted it by the ratio of the associated Class I and II PSD increments. For the annual PM_{2.5} increment, we reduced the NAAQS SIL value by the ratio of 1:4, because the Class I PSD increment is 1 µg/m³ and the Class II PSD increment is 4 µg/m³. We used the ratio of 2:9 for the 24-hour PM_{2.5} increment. For the 24-hour increment, we used the 40 CFR 51.165(b)(2) value of 1.2 µg/m³ as our base number.

⁴⁶ 1990 Draft NSR Workshop Manual at C.24-C.25, C.51.

generally conclude there is no need to conduct a cumulative impact analysis to assess whether there will be any violations of the NAAQS or PSD increment. However, upon considering the permit record in an individual case, if a permitting authority has a basis for concern that a demonstration that a proposed source's impact is below the relevant SIL value at all locations is not sufficient to demonstrate that the proposed source will not cause or contribute to a violation, then the permitting authority should require additional information from the permit applicant to make the required air quality impact demonstration.

Second, where the preliminary analysis described in the prior paragraph shows a significant impact, permitting authorities may choose to use the recommended SIL values in a cumulative impact analysis for a NAAQS, which, in addition to the proposed new major stationary source or major modification, includes the impact of existing sources (onsite with the proposed major modification, as well as other existing sources), and the appropriate background concentration. The EPA has described this application of a SIL as a "culpability analysis."⁴⁷ Where a cumulative impact analysis predicts a NAAQS violation, the permitting authority may further evaluate whether the proposed source will cause or contribute to the violation by comparing the proposed source's modeled contribution to that violation to the corresponding SIL value. If the modeled impact is below the recommended SIL value at the violating receptor during the violation, the EPA believes this will be sufficient in most cases for a permitting authority to conclude that the source does not cause or contribute to (is not culpable for) the predicted violation. This demonstration would, thus, allow the permit to be issued if all other PSD requirements are satisfied. If the proposed source's modeled impact is higher than or equal to the recommended SIL value at the violating receptor during a violation, then a permit should not be issued unless (1) further modifications are made to the proposed source to reduce the proposed source's impact to a not significant level at the affected receptor during the violation, or (2) the proposed source obtains sufficient emissions reductions from other sources to compensate for its contribution to the violation.⁴⁸

Third, permitting authorities may decide to use the SIL values recommended above in a cumulative impact analysis for a PSD increment. According to 40 CFR 51.166(c)(1) and 52.21(c), an allowable PSD increment based on an annual average may not be exceeded, and the allowable PSD increment for any other time period may be exceeded once per year at any one location. In either case, the PSD increment SILs recommended above may be used to determine if the proposed source will cause or contribute to that exceedance. If the cumulative impact analysis shows an annual average PM_{2.5} PSD increment exceedance or a 24-hour PSD increment exceedance at a location, then the comparison of the proposed source's impact at that location during the exceedance to the corresponding SIL value may be used to determine whether the proposed source will cause or contribute to the exceedance(s) at that receptor. If the modeled impact is below the SIL for the relevant pollutant, then the permitting authority may conclude that the source does not cause or contribute to a violation of the PSD increment for that pollutant.

⁴⁷ *Prairie State*, 13 E.A.D. at 100; *Mississippi Lime*, 15 E.A.D. at 374.

⁴⁸ 1990 Draft NSR Workshop Manual at C.52-C.53; this latter alternative is referred to as a PSD offset, and state implementation plans may include an offset program based on federal regulations at 40 CFR 51.165(b).

In the past, SILs have been used in defining the spatial extent of the modeling domain for a cumulative impact analysis. Because an impact from a proposed source below a SIL value is considered not to cause or contribute to a violation, the EPA has previously recognized that there was no informational value in placing modeling receptors farther from the proposed source than the most distant point at which the proposed source's impact is equal to or greater than the applicable SIL value. Streamlining the modeling demonstration to reduce the number of receptors to those of value in determining if the proposed source will cause or contribute to a violation of the applicable NAAQS or PSD increment has enabled permit applicants to complete the required modeling with a reasonable effort. As discussed earlier, the EPA recently updated its *Guideline*. The revisions include providing an appropriate, revised basis for determining the modeling domain for NAAQS and PSD increment assessments. Thus, the revised *Guideline* should be used when considering the extent of the modeling domain.

The SILs identified in this guidance should not influence Air Quality Related Values analyses in Class I areas, which are independent reviews by the Federal Land Managers during the application review process.

Subject to limitations described in this guidance, permitting authorities may use the values in the above tables on a case-by-case basis to support air quality analyses and demonstrations required for issuance of PSD permits. Since this guidance is neither a final determination nor a binding regulation, permitting authorities retain the discretion not to use SILs as described here, either in specific cases or programmatically.

The case-by-case use of SIL values should be justified in the record for each permit. To ensure an adequate record, any PSD permitting decision that is based on this guidance (including the technical and legal documents) should incorporate the information contained in them. The permitting authority should also consider any additional information in the record that is relevant to making the required demonstration.

Permitting authorities also retain the discretion to use other values that may be justified separately from this guidance as levels of insignificant impact, subject to one limitation for the PM_{2.5} NAAQS. Since the EPA has established by regulation that a PM_{2.5} impact greater than certain values will cause or contribute to a violation of the relevant NAAQS, permitting authorities may not use a value higher than 1.2 µg/m³ for the 24-hour PM_{2.5} NAAQS or a value higher than 0.3 µg/m³ for the annual PM_{2.5} NAAQS. Because the 2010 rulemaking constrains the discretion of state and local permitting authorities, the EPA is committed to reassessing 40 CFR 51.165(b)(2) through a future rulemaking process that will begin within 18 months.

Because ozone is not addressed in 40 CFR 51.165(b)(2), permitting authorities are not precluded from developing a higher ozone NAAQS SIL value than recommended in this guidance. Likewise, 40 CFR 51.165(b)(2) does not address PSD increments and, thus, does not constrain the discretion of a permitting authority to use a higher SIL value that a permitting authority may develop for PSD increment purposes. Permitting authorities are also not precluded from developing and using lower SIL values than recommended in this guidance. Permitting authorities may elect to utilize

alternative CIs, based on regional or local factors, in developing their own SIL values. The case-by-case use of a SIL value should be supported by a comparable record in each instance that shows that the value represents a level below which a proposed source does not cause or contribute to a violation of the NAAQS or PSD increment.

EXHIBIT L

Legal Memorandum
Application of Significant Impact Levels in the Air Quality Demonstration for
Prevention of Significant Deterioration Permitting under the Clean Air Act

Introduction

Under section 165(a)(3) of the Clean Air Act (Act), an applicant for a preconstruction permit under the Prevention of Significant Deterioration (PSD) program must “demonstrate ... that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any” National Ambient Air Quality Standard (NAAQS) or PSD increment. 42 U.S.C. § 7475(a)(3). The law is clear that such a demonstration must be made to obtain a PSD permit. *Sierra Club v. EPA*, 705 F.3d 458, 465 (D.C. Cir. 2013). However, the Act does not specify how a PSD permit applicant or permitting authority is to determine whether a proposed new or modified source will (or will not) cause or contribute to a violation of a NAAQS or applicable PSD increment. *Id.*

The language of section 165(a)(3) of the Act supports two basic approaches that a PSD permit applicant may use to demonstrate that the proposed source’s emissions will not cause or contribute to a violation of a NAAQS or PSD increment. One approach is to demonstrate that no such violation is occurring or projected to occur in the area potentially affected by the emissions from the proposed source. A second approach is to demonstrate that the emissions from the proposed source do not cause or contribute to any violation of a NAAQS or PSD increment that has been identified prior to preparation of a permit application or that is identified or projected in the course of preparing and reviewing a permit application.¹ Considering the relevant terms of the Act and other factors discussed below, when applying this second approach, permitting authorities may elect to read section 165(a)(3) of the Act to be satisfied when a permit 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 at any location where a violation of the NAAQS or PSD increment is occurring or may be projected to occur. This reading may be

¹ See NSR Workshop Manual at C.51-52. The EPA has described both of these approaches as elements of an overall “second approach” that the Agency has recommended applying since 1988. See Memorandum from Gerald A. Emison, EPA OAQPS, to Thomas J. Maslany, EPA Air Management Division, EPA Region 3, “Air Quality Analysis for Prevention of Significant Deterioration (PSD)” (July 5, 1988), at 2 (“Emison Memo”). The EPA did not favor the “first approach” described in the 1988 memorandum -- to automatically consider a source to cause or contribute to any modeled violation that would occur within its impact area.

based solely on an interpretation of the phrase “cause, or contribute to,” as specifically used in the context of section 165(a)(3) of the Act, without relying on the inherent authority to establish exemptions for *de minimis* circumstances.

Analysis

Two aspects of the Act reflect congressional intent to leave a gap for the EPA to fill in determining the precise meaning of the phrase “cause, or contribute to” in the context of section 165(a)(3) of the Act. First, the phrase “cause, or contribute to” and the included terms “cause” and “contribute” are not specifically defined in the Act itself. Second, section 165(e) of the Act directs the EPA to define the nature of the analysis that is necessary to make the demonstration required under section 165(a)(3) of the Act.

The phrase “cause, or contribute to” and the included terms “cause” and “contribute” are not defined in section 169, section 302, or any other section of the Act. Courts have observed that the absence of a statutory definition does not by itself establish that a term is ambiguous. *NRDC v. EPA*, 489 F.3d 1250, 1258 (D.C. Cir. 2007). In the absence of a definition, the ordinary meaning of a term should govern. *Petit v. Dep’t of Education*, 675 F.3d 769, 781 (D.C. Cir. 2012). But courts have also observed that the meaning of a statutory term depends on the context in which it is used. *Bell Atlantic Telephone Co. v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997).

To discern the ordinary meaning of the term “cause,” one can look to dictionary definitions. For example, according to the Merriam-Webster dictionaries, when used as a verb (as in section 165(a)(3) of the Clean Air Act), the word “cause” means “to compel by command, authority, or force.” <<https://www.merriam-webster.com/dictionary/cause>>. The American Heritage Dictionary includes a similar meaning when “cause” is used as a verb, but adds “to be the cause or reason for” and “result in.” <<https://ahdictionary.com/word/search.html?q=cause>>. The term “cause” may also be used as a noun. The Merriam-Webster definition for this usage of “cause” includes “a reason for an action or condition” and “something that brings about an effect or a result.” The American Heritage definition of “cause” includes “the producer of an effect, result, or consequence” and “a person, event, or condition, that is responsible for an action or result.” Thus, based on these definitions of “cause,” emissions from a proposed PSD source that will be responsible for, be the reason for, or result in a violation of the NAAQS may be considered to cause that violation.

Under principles of common law, behavior is generally not considered to be the cause of an injury unless that injury would not have occurred “but for” the behavior. *See* 57A Am. Jur. 2d Negligence § 415. Applying this classic understanding of the concept of causation, a permitting authority may conclude that a PSD permit applicant will “cause” a modeled violation of a NAAQS if the modeled violation would not be projected to occur “but for” the increased emissions from construction or modification of the proposed source.² However, it is clear from the “cause, or contribute to” language in section 165(a)(3) of the Act that Congress did not intend for this provision to apply only when emissions from a proposed source are a “but for” cause of a violation of the NAAQS or PSD increment. This is because the term “cause” is followed by the phrase “or contribute to.” Given the addition of this phrase, section 165(a)(3) should be read to apply not only where a proposed source would be a “but for” cause of a new modeled violation but also where a proposed source would “contribute” to a violation that might be modeled even without the impact of the proposed source. This could include circumstances where a NAAQS violation is present before considering the proposed increase in emissions from a PSD construction project, or when emissions from multiple sources may impact a particular area.

While the use of “contribute” conveys this meaning in the context of section 165(a)(3) of the Act, one federal appeals court has recognized, based in part on competing dictionary definitions, that the term “contribute” does not itself have a consistent, ordinary meaning. *See Catawba County, N.C. v. EPA*, 571 F.3d 20, 39 (D.C. Cir. 2009). In two different contexts under the Act, the United States Court of Appeals for the District of Columbia Circuit has observed that the term “contribute” is ambiguous with respect to the degree of air quality effect to which it applies. *Id.* at 38-39; *EDF v. EPA*, 82 F.3d 451, 459, amended by 92 F.3d 1209 (D.C. Cir. 1996). In the absence of an ordinary meaning for the term, the EPA and other PSD permitting authorities may reasonably infer that Congress’s silence “is meant to convey nothing more than a refusal to tie the agency’s hands” as to the degree of air quality impact necessary to “contribute

² In the April 2018 memorandum titled “Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program,” the EPA explains how a permitting authority may conclude that increased emissions from a proposed PSD source that would result in changes in air quality concentration that are less than a statistical level of variability are not responsible for, the reason for, or the “but for” cause of a NAAQS violation.

to” air pollution in excess of air quality standards under section 165(a)(3) of the Act. *See Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 222 (2009).

In the *Catawba County* case, the court considered the use of “contribute” in section 107(d) of the Act, which governs EPA actions to designate specific areas as in attainment or nonattainment with the NAAQS. Under this provision, a nonattainment area must include any area that does not meet the NAAQS or “that contributes to ambient air quality in a nearby area that does not meet” the NAAQS. The Petitioners argued that the EPA was required to interpret the word “contribute” in this context to require a “significant causal relationship” in order to include a nearby area in a nonattainment area. The Petitioners also argued that the EPA must establish a quantified amount of impact that qualifies as a contribution before the EPA could include a nearby area in a nonattainment area. *Id.* The court held that “section 107(d) is ambiguous as to how the EPA should measure contribution and what degree of contribution is sufficient to deem an area nonattainment.” In doing so, the court noted the Petitioners’ citation of one dictionary definition and the EPA’s citation of other dictionary definitions of the term “contribute” and concluded that “[t]his alone suggests an ambiguity.” *Catawba County*, 571 F.3d at 39. Consequently, the Court held that the EPA was not compelled to apply the Petitioners’ preferred meaning of the term “contribute” in the context of section 107(d). The court recognized that the EPA had the discretion to interpret the term “contribute” in section 107(d) of the Act to mean “sufficiently contribute” and that the EPA could use a multi-factor test, rather than a quantified threshold, to determine when a nearby area contributed to a NAAQS violation. Likewise, in the *EDF* case, the court reasoned that “contribute to” in section 176(c) of the Act is ambiguous and “leaves wide open the question of how large a reduction in emissions must be to constitute a contribution.” 82 F.3d at 459.

Similar to sections 107(d) and 176(c) of the Act, section 165(a)(3) uses the ambiguous term “contribute” without specifying the degree of air quality impact that is necessary to conclude that increased emissions from an individual source will “contribute to” a violation of a NAAQS or PSD increment. In the absence of specific language in section 165(a)(3) regarding the degree of contribution that is required (such as the term “significantly”), the reasoning of the *Catawba County* opinion supports the view that the EPA or another PSD permitting authority has the discretion under this provision to exercise its judgment to determine the degree of impact that “contributes” to adverse air quality conditions based on the particular context in which the term

“contribute” is used. *See* 571 F.3d at 39.³ Furthermore, this opinion supports a permitting authority’s discretion in implementing section 165(a)(3) to identify criteria or factors that may be used to determine whether something “contributes” (including qualitative or quantitative criteria), as long as the agency provides a reasoned basis to justify using such criteria to represent a “contribution.”

In the particular context where contribute is used in the PSD permitting program, this part of the Act does not prohibit all proposed construction that increases emissions. Rather, the program contemplates that increased emissions resulting from construction or modification of major stationary sources may be authorized after verifying that the proposed construction will incorporate state-of-the-art pollution controls and that the operation of the new or modified major source will not result in or exacerbate unhealthy levels of air pollution (or significantly increase air pollutant concentrations) in the affected area. The PSD program required by Congress is specifically designed to prevent “significant” deterioration of air quality, not all deterioration of air quality, in areas that do not violate the NAAQS. Further, two goals of the PSD program are to “insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources” and to “assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision-making process.” 42 U.S.C. § 7470(3), (5); *see also NRDC v. EPA*, 937 F.2d 641, 645-46 (D.C. Cir. 1991) (quoting section 160(3) and (5) of the Act and inferring that “Congress believed that its PSD provisions should balance the values of clean air, on the one hand, and economic development and productivity, on the other other”). Thus, the PSD program strikes a balance that allows construction and modification of major stationary sources that will result in increased emissions in areas meeting air quality standards, but only after appropriate safeguards are in place to prevent the source from causing or contributing to significant deterioration of existing clean air resources.

In light of these considerations, the inclusion of the phrase “cause, or contribute to” in section 165(a)(3) of the Act indicates that Congress intended for the reviewing authority to

³ *See also Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561 (2007) (where the term “modification” and its definition appear, by cross-reference, in two places in the CAA, the EPA may interpret the term differently in the two contexts, so long as it does so in a reasonable manner consistent with the statutory definition).

exercise some judgment in the course of reviewing a permit application. Section 165(a)(3) of the Act does not say a source must show it has “no impact” when a violation of the NAAQS is predicted or pre-existing. Instead, this provision says the source must show it does not “cause, or contribute to” a NAAQS violation. This choice by Congress militates against reading section 165(a)(3) to mean that any degree of a source’s projected impact on an area with a predicted or pre-existing violation of a NAAQS or PSD increment must be considered by the permitting authority to cause or contribute to such a violation (without any consideration of whether that degree of impact is meaningful). Under such a reading, a permitting authority could issue a permit only where the applicant has shown either (a) there would be no violation of the NAAQS or PSD increment in the area affected by the source or (b) increased emissions from the source would have no projected impact whatsoever in any area where the NAAQS or PSD increment is already or projected to be violated. This reading of the Act would not allow a permitting authority to exercise any judgment, and thus would fail to give meaning to the terms “cause, or contribute” that Congress used.

This legislative intent for the reviewing authority to exercise judgment in the PSD program is also supported by a comparison of the PSD provisions to the preconstruction permitting requirements applicable in areas that have been designated as nonattainment. Under this program, known as Nonattainment New Source Review (NNSR), sections 173(a)(1) and 173(c) of the Act require increased emissions from a proposed major source or major modification located in a designated nonattainment area to be offset by an equal or greater reduction in actual emissions from other sources. 42 U.S.C. § 7503(a)(1)(A), (c). There is no requirement in this part of the Act (like section 165(e) in the PSD provisions) to examine air quality in the affected area or the level or degree of air quality impact from the proposed emissions increase. The Act does not direct permitting authorities to determine whether emissions offsets are necessary to mitigate the air quality impact of the proposed construction. Rather, when a proposed source will be located in a nonattainment area, the Act in effect conclusively presumes that emissions from the source “cause” or “contribute to” the nonattainment condition because the Act requires the source to offset its emissions increase. In contrast, under the PSD program, when the proposed source will be located in an area that is designated attainment or unclassifiable for the NAAQS for that pollutant, the permitting authority must conduct an analysis of the ambient air quality impact of the source and then

determine whether the increased emissions from that source “cause, or contribute to” a violation that may be projected to occur in the attainment area or occurring in an adjacent nonattainment or unclassifiable area. 42 U.S.C. § 7475(a)(3), (e). Thus, in the NNSR program, the Act’s emissions offset provisions afford no discretion to the permitting authority and require every NNSR permit applicant to fully offset its emissions increase – in effect, a conclusive, *per se* presumption that an NNSR source will cause or contribute to a nonattainment problem and therefore must provide mitigation in the form of emissions offsets. By contrast, in the PSD program, the Act provides discretion to the permitting authority to determine, through the use of modeling and other analytical tools as identified by EPA, whether the emissions increase from a proposed PSD source will “cause, or contribute to” a violation, before the source would find it necessary to mitigate its ambient impact (to avoid having its permit denied where its emissions are projected to cause or contribute to a violation). This exercise of discretion by permitting authorities in assessing a proposed source’s ambient impact is appropriate in light of the context and purpose of the PSD provisions of the Act, including the contrast to the lack of discretion provided to permitting authorities in the NNSR emissions offset provisions.

In addition, Congress explicitly recognized that air quality models would be needed to make the showing required under section 165(a)(3) to obtain a PSD permit, and directed the EPA to specify such models in regulations. 42 U.S.C. § 7475(e)(3). Section 165(e) of the Act requires an analysis of “ambient air quality at the proposed site and in areas which may be affected by emissions from such facility” and directs the EPA to issue regulations that define the nature of this analysis. 42 U.S.C. § 7475(e). The regulations must “specify with reasonable particularity each air quality model or models to be used under specified sets of conditions” for purposes of the PSD program. 42 U.S.C. § 7475(e)(3)(D). In accordance with this authority, the EPA has promulgated regulations which identify such models and the conditions under which they may be used in the PSD program to make the demonstration required under section 165(a)(3) of the Act. 40 CFR 51.166(l); 40 CFR 52.21(l); 40 CFR Part 51, Appendix W (Guideline on Air Quality Models). Thus, in section 165(e)(3) of the Act, Congress gave the EPA responsibility for determining the methods to be used by PSD permit applicants to show that proposed construction does not cause or contribute to a NAAQS or PSD increment violation. This is evidence of legislative intent for the EPA to exercise its judgment to determine the degree of impact that “contributes to” a violation of the NAAQS and thereby fill a gap in the statutory scheme. While

section 165(e)(3) addresses the promulgation of EPA rules, this provision of the statute may inform a permitting authority's interpretation of section 165(a)(3) of the Act in the context of a decision on an individual permit, because it underscores Congressional intent that the air quality impact analysis required for the issuance of PSD permits be conducted in a manner informed by EPA expertise with air quality modeling. This expertise may also be communicated by EPA in the form of nonbinding guidance to permitting authorities.

Furthermore, given their mathematical nature, the models used to make the showing required by section 165(a)(3) under the PSD program are capable of predicting increases in air pollutant concentrations that are small in relation to the level of the NAAQS. In order to give meaning to the "cause or contribute" language in section 165(a)(3) as calling for an exercise of judgment by the permitting authority, it is reasonable to conclude that Congress understood there would be a point at which a small projected air quality impact from a proposed new or modified source becomes so inconsequential⁴ that PSD permitting authorities may reasonably conclude that such an impact does not cause, or contribute to, an existing or projected violation of air quality standards.

Furthermore, the PSD permitting requirements in part C of Title I of the Act are one of many required elements of a State Implementation Plan (SIP) under section 110 of the Act. *See generally* 42 U.S.C. § 7410(a)(2). The PSD permitting requirements are specifically incorporated under sections 110(a)(2)(C) and (J) of the Act. The focus of the PSD program is on controlling increased emissions from the construction and modification of large stationary sources, while some other provisions under section 110(a)(2) require states to target emissions from existing sources. Where air quality concentrations are high in a specific area because of sources already in operation, section 110 and other provisions of the Act provide tools for addressing this existing pollution through a SIP. In this context, where existing sources have already caused air quality to very nearly approach or even violate a NAAQS, it is not necessary to construe the PSD provisions to prohibit any increase in air pollutant emissions from a source located in an attainment area or to require that such a source offset its emissions increase as in the nonattainment NSR program. The goals of the PSD program are achieved by demonstrating that

⁴ As discussed herein, this conclusion can be grounded on the statutory language and its context, without invoking an agency's inherent authority to establish a *de minimis* exception from a statutory requirement under the doctrine reflected in *Alabama Power v. Costle*, 636 F.2d 323, 361-63 (D.C. Cir. 1980).

increased emissions from construction or modification of the source will be controlled to the point that these emissions will not have a meaningful impact on air quality in the affected area, while looking to other aspects of a SIP to address emissions from existing sources that bear responsibility for the existing elevated levels of air pollution in the area.

Recognizing this, the EPA has previously supported the use of concentration values,⁵ called “ambient air quality significance levels” or “significant impact levels” (SILs) in the PSD program, to represent the point below which the impact of increased emissions from a new or modified major source on ambient air quality does not cause or contribute to a violation of the NAAQS or PSD increment. 61 Fed. Reg. 38250, 38293 (July 23, 1996);⁶ NSR Workshop Manual, C.24-C.31 (Oct. 1990). For example, EPA has supported using such values in a preliminary (single-source) analysis that considers only the air quality impact from the construction proposed in a permit application to determine whether a full (or cumulative) impact analysis that also considers background concentrations and the impact of other sources in the

⁵ The historic use of a quantified threshold for this purpose in the PSD program differs from the EPA’s practice of using a multi-factor test to define “contribution” in the context of designations under section 107(d) of the Act. *See Catawba County, N.C. v. EPA*, 571 F.3d 20, 38-39 (D.C. Cir. 2009). While this case held that a quantified threshold is not required to define contribution in the context of section 107(d), the court’s reasoning does not preclude PSD permitting authorities from choosing to use a quantitative level of impact to represent a contribution to a violation of the NAAQS or PSD increment when implementing section 165(a)(3) of the Act. For purposes of implementing section 165(a)(3) of the Act, the EPA has found it more expedient and practical to use a quantitative threshold (expressed as a level of change in air quality concentration) to determine whether increased emissions from proposed construction or modification of a source will contribute to air quality concentrations in excess of applicable standards. Under the reasoning of *Catawba County*, using a quantified threshold for this purpose is permissible as long as the EPA or the appropriate permitting authority provides a reasoned explanation for why impacts below that threshold do not constitute a contribution to a violation in this context.

⁶ In this rulemaking notice, the EPA proposed to revise 40 CFR 51.166(k) and 52.21(k) to clarify that the emissions from an individual source seeking a PSD permit must make a “significant contribution” to a violation to support denial of a PSD permit, but this rule was not completed. In the EPA’s explanation of its proposed action, the EPA used the term “significantly contribute” to mean essentially the same thing as the term “significant impact.” However, the term “contribute” is used in various ways in different parts of the Clean Air Act, sometimes before or after the term “significantly.” There is also ambiguity in these statutory provisions regarding the degree of impact that “contributes” to a particular air quality condition specified in each provision. Thus, the EPA and other permitting authorities should exercise more care in the future with regard to their usage of these terms in particular contexts under the Clean Air Act. With these considerations in mind, this memorandum intentionally uses the term “significant impact” and does not use the term “significant contribution.” The former is used in this memorandum to describe a degree of impact on air quality concentrations that is meaningful (more than “inconsequential” or “negligible”) and thus amounts to a “contribution” for purposes of section 165(a)(3) of the Act. The latter phrase (“significant contribution”) is not used in this memorandum because that is not the language used in section 165(a)(3) of the Act. In circumstances where Congress has used the term “significant” or “significantly” to modify the term “contribute” or “contribution” elsewhere in the Clean Air Act, EPA should endeavor to read the Act in a way that gives meaning to this modifying language. Depending on the statutory context, one approach may be to construe the use of “significant” or “significantly” in other provisions of the Act to call for a higher degree of contribution than required under section 165(a)(3) of the Act.

area is necessary before reaching a conclusion as to whether the proposed source would (or would not) cause or contribute to a violation. 40 CFR Part 51, App. W, § 9.2.3; NSR Workshop Manual at C.24-C.25, C.51. In reviewing an individual permit decision by the EPA based on this approach, the United States Court of Appeals for the First Circuit rejected an argument that a source with an impact below a significant impact level for sulfur dioxide should have been required to conduct further analysis. *Sur Contra La Contaminacion v. EPA*, 202 F.3d 443, 446-48 (1st Cir. 2000). The court observed that EPA's decision not to require a cumulative analysis to show that emissions from a source did not cause or contribute to a violation of the NAAQS was "within its discretion, under the regulations." *Id.* at 448. EPA has also supported using these values to demonstrate that a source does not cause or contribute to a violation of the NAAQS in the area that is predicted after a cumulative impact analysis is conducted. NSR Workshop Manual at C.52. At the same time, where such a violation is nevertheless identified in the course of the PSD permitting process, the EPA has emphasized the need to address the source of such air pollution problem through a SIP under section 110 of the Act, rather than preventing construction that will not meaningfully add to the adverse conditions. *See* Memorandum from Gerald A. Emison, EPA OAQPS, to Thomas J. Maslany, EPA Air Management Division, EPA Region 3, "Air Quality Analysis for Prevention of Significant Deterioration (PSD)" (July 5, 1988) ("Emison Memo"); NSR Workshop Manual at C.52.

This practice in the PSD program has been based, in part, on an interpretation by the EPA that the phrase "cause, or contribute to" in section 165(a)(3) does not apply to an "insignificant" impact. In this context, the EPA has used the term "insignificant" to describe a degree of impact that is "trivial" or "*de minimis*" in nature. Conversely, in this context, the EPA has described an impact that is greater than "trivial" or "*de minimis*" as a "significant impact," which the EPA has represented quantitatively using the values called "significant impact levels." As expressed by the EPA's Environmental Appeals Board (EAB), "EPA has long interpreted the phrase 'cause, or contribute to' to refer to significant, or non-*de minimis*, emission contributions." *In re Prairie State Generating Co.*, 13 E.A.D. 1, 105 (EAB 2006). Based on a review of the plain terms of the Act in context, the EAB reasoned in this case that "the requirement of an owner or operator to demonstrate that emissions from a proposed facility will not 'cause, or contribute to' air pollution in excess of a NAAQS standard must mean that some non-zero emission of a NAAQS parameter is permissible." *Id.* at 104. The EAB also illustrated how this historic interpretation of

section 165(a)(3) of the Act “is reflected in both applicable EPA regulations and in long-standing EPA guidance.” *Id.*

One example of such an EPA regulation was the former section 10.2.3.2(a) of an earlier version of the EPA’s Guideline on Air Quality Models (40 CFR Part 51, Appendix W).⁷ This provision of Appendix W addressed proposed sources “predicted to have a significant ambient impact” and called for permitting authorities, in evaluating whether the source will cause or contribute to an air quality violation, to consider “the significance of the spatial and temporal contribution to any modeled violation.” The EPA recently revised and reorganized the Guideline on Air Quality Models, and an examination of whether a proposed source has a “significant ambient impact” is still reflected in the Guideline. 82 Fed. Reg. 5182 (January 17, 2017) (*see, e.g.*, sections 4.2(c) and 8.1.2(a)).

In a 1988 guidance memorandum, the EPA explained that its position has been that “a PSD source will not be considered to cause or contribute to a predicted NAAQS or PSD increment violation if the source’s estimated air quality impact is insignificant (i.e. at or below defined de minimis levels).” Emison Memo at 1. Extending this logic, in 1990, the EPA also said that a permit applicant may demonstrate that it will not cause or contribute to air pollution in violation of any NAAQS or PSD increment by showing that the “proposed source will not result in a significant ambient impact anywhere.” NSR Workshop Manual at C.51. More specifically, the EPA has generally considered it sufficient for an applicant to demonstrate that the source’s emissions alone have an insignificant impact on air quality in the area outside a facility fence line that is defined as “ambient air.” *See In the Matter of Hibbing Taconite Co.*, 2 E.A.D. 838 (Adm’r 1989); NSR Workshop Manual at C.42, C.52.

In this context, the EPA has often equated an insignificant impact with one that is trivial or *de minimis* in nature. In a series of actions between 2006 and 2012, EPA sought to justify the use of SILs as an exemption to the requirement in section 165(a)(3) of the Act based on the agency’s inherent authority to exempt *de minimis* circumstances from regulation. *See Alabama Power v. Costle*, 636 F.2d 323, 361-63 (D.C. Cir. 1980). The EPA proposed a regulation based on this rationale in 2007 for only the PM_{2.5} pollutant and finalized that rule in 2010. 75 Fed. Reg.

⁷ 40 CFR Part 51, App. W, § 10.2.3.2(a) (2006); 70 Fed. Reg. 68218, 68248-49 (Nov. 9, 2005).

64864 (Oct. 20, 2010).⁸ In that rule, the EPA said that “the concept of a SIL is grounded on the *de minimis* principles described by the court in *Alabama Power*.” *Id.* at 64891. The EPA repeated this statement in a subsequent administrative order where the EPA also said that the Agency “has interpreted the *de minimis* doctrine to generally support use of SILs ... for purposes of determining whether a proposed source or modification contributes to predicted violation of a NAAQS.” Order Responding to Petitioner’s Request that the Administrator Object to Issuance of a State Operating Permit, *In the Matter of CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel*, Petition Number VIII-2011-01, at 15 (May 31, 2012) (“*Rocky Mountain Steel Order*”). This order referenced two prior opinions of the EAB that referenced the discussion of the *de minimis* doctrine in the D.C. Circuit’s opinion in *Alabama Power*. In the first of these opinions, the EAB observed that “Courts have long recognized that the EPA has discretion under the Clean Air Act to exempt from review some emissions increases on the grounds of *de minimis* or administrative necessity.” *Prairie State*, 13 E.A.D. at 104 (internal quotations omitted).

However, considering the interpretation of the phrase “cause, or contribute to” in section 165(a)(3) described above and the intended role and function of SILs, it is not necessary for permitting authorities to cite inherent *de minimis* exemption authority to justify the conclusion that a proposed source with an insignificant impact on air quality does not cause or contribute to

⁸ In response to a challenge to the 2010 rulemaking in the District of Columbia Circuit, the EPA requested that the court remand and vacate two of the EPA’s SILs regulations for PM_{2.5} so that the EPA could correct an inconsistency between the inflexible terms of the regulation and EPA’s exhortation in the record that permitting authorities should exercise discretion before using these values in some circumstances to justify the conclusion that a source does not cause or contribute to a violation of the NAAQS. *Sierra Club*, 705 F.3d at 463-64. The court noted the EPA’s statement in its brief that “the regulatory text it adopted does not allow permitting authorities the discretion to require a cumulative impact analysis, notwithstanding that the source’s impact is below the SIL, where there is information that shows the proposed source would lead to a violation of the NAAQS or increments.” *Id.* at 464. The court then vacated the two PM_{2.5} SIL provisions “because they allow permitting authorities to automatically exempt sources with projected impacts below the SILs from having to make the demonstration required under 42 U.S.C. § 7475(a)(3) even in situations where the demonstration may require a more comprehensive air quality analysis.” *Id.* at 465. The court said that “[o]n remand, the EPA may promulgate regulations that do not include SILs or do include SILs that do not allow the construction or modification of a source to evade the requirement of the Act as do the SILs in the current rule.” Although a rulemaking has not been conducted to date, as discussed below, a permitting authority has discretion to conclude that a proposed source does not cause or contribute to a violation if its predicted impact on air quality concentrations for the relevant pollutant is not significant or meaningful. A permitting authority also has discretion to require other appropriate modeling analyses or information from the permit applicant to make the demonstration required under 42 U.S.C. § 7475(a)(3).

a violation of the NAAQS or PSD increment within the meaning of section 165(a)(3) of the Act.⁹ The air quality concentration levels that the EPA has identified as SILs do not function to exempt a source from making the demonstration required by section 165(a)(3) of the Act. Rather, these concentration levels provide a streamlined means of making the air quality impact demonstration required by section 165(a)(3). To determine that its increased emissions will not exceed these concentration values, a new or modified source must conduct air quality modeling to determine the degree of impact the source will have on air pollutant concentrations. If the applicant thereby shows that its increased emissions do not have a significant impact on air pollutant concentrations in the ambient air, the permitting authority may conclude that the applicant has made a demonstration that its increased emissions will not cause or contribute to any air pollutant concentrations that violate the relevant NAAQS or PSD increment. In many circumstances this demonstration can be made by showing through modeling that projected air quality impacts from emissions from the proposed source will fall below the relevant SIL, but permitting authorities have the discretion to require further information or a cumulative impact analysis.

As discussed above, the phrase “cause, or contribute to” in section 165(a)(3) of the Act is reasonably read in context to not apply to impacts on air quality that are not meaningful or significant. In order to show that a particular degree of change in concentration is not meaningful or significant in this context, it is not necessary to make the showing required to establish a *de minimis* exception from a statutory requirement – that the burdens of regulation yield a gain of trivial or no value. Rather, when a concentration value (which may be described as a SIL) is used to quantify the point below which a new or modified source does not cause, or contribute to, a

⁹ Although the EPA emphasized its inherent authority to establish a *de minimis* exception to a statutory requirement in several actions on the topic of SILs between 2006 and 2012, EPA also continued to recognize in these actions that phrase “cause or contribute” could be construed to exclude insignificant impacts and that a demonstration that the impacts of a source are insignificant can be used to satisfy (rather than avoid) the statutory requirement in section 165(a)(3) of the Act. In its *Prairie State* opinion, the EAB described how the EPA has interpreted the phrase “cause, or contribute to” in section 165(a)(3) to refer to significant emission contributions. *Id.* at 105. In its 2007 proposal of the PM_{2.5} SILs rule, the EPA said that when “a source can show that its emissions alone will not increase ambient concentrations by more than the SILs, EPA considers this to be a sufficient demonstration that a source will not cause or contribute to a violation of the NAAQS or increment.” 72 Fed. Reg. 54112, 54139 (Sept. 21, 2007). The EPA expressed similar thoughts in a guidance memorandum. *See* Memorandum from Acting Director of Air Quality Policy Division to Regional Air Division Directors, General Guidance for Implementing the 1-hour NO₂ National Ambient Air Quality Standards in Prevention of Significant Deterioration Permits, Including an Interim 1-hour NO₂ Significant Impact Level, at 11 (June 28, 2010) (“2010 NO₂ Guidance”). In the 2012 *Rocky Mountain Steel* Order, the EPA observed that a “SIL was a means of demonstrating through modeling that the source’s impact at the time and place of the predicted violation will be sufficiently low that such impact will not contribute to that violation.”

violation of the NAAQS or PSD increment, it is sufficient for the EPA or a state permitting authority to justify the value as a level below which an impact on air quality may be regarded as not meaningful or significant. In general terms, a trivial or *de minimis* impact on air quality may be considered “meaningless” or “insignificant,” but the use of a SIL to identify such a level in the PSD program need not be based on inherent agency authority to establish a *de minimis* exception to section 165(a)(3) of the Act.

Nevertheless, any value used as a SIL must be supported by an appropriate record showing that impacts below that level will not cause, or contribute to, a violation. Given the statutory considerations discussed above, a permitting authority is not required to conclude that any level of ambient impact from a source located in an attainment area automatically “causes or contributes” to a violation. A permitting authority has discretion to conclude that a proposed source does not cause or contribute to a violation if its predicted impact on air quality concentrations for the relevant pollutant is not meaningful or significant. Thus, in the context of a case-by-case decision by a permitting authority to issue a PSD permit and to use a specific SIL value in making the demonstration required in section 165(a)(3) of the Act, such permit must be supported by a record showing that the SIL value used by the permitting authority is representative of a level below which the projected impact of a proposed new or modified stationary source is not meaningful or significant. *See Rocky Mountain Steel Order* at 18; 2010 NO₂ Guidance at 11. Where SIL values developed by EPA are used to show that a source does not cause or contribute to a violation, this permit-specific record can incorporate the information and technical analysis provided by the EPA to show that a source with a projected impact below the relevant SIL value will not cause or contribute to a violation of the NAAQS or PSD increment. If a permitting authority elects to apply its own SIL value to support a permitting decision, the permitting record should reflect information independently compiled by a permitting authority to make the same showing with respect to that value.

EXHIBIT M

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part C. Prevention of Significant Deterioration of Air Quality
Subpart I. Clean Air (Refs & Annos)

42 U.S.C.A. § 7475

§ 7475. Preconstruction requirements

Currentness

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless--

- (1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;
- (2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;
- (3) the owner or operator of such facility demonstrates, as required pursuant to [section 7410\(j\)](#) of this title, that emissions from construction or operation of such facility 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, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;
- (4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;
- (5) the provisions of subsection (d) with respect to protection of class I areas have been complied with for such facility;
- (6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under [section 7411](#) of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4), will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under [section 7410](#) of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner

or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such facility will not cause or contribute to concentrations of such pollutant which exceed the following maximum allowable increases over the baseline concentration for such pollutants:

	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean.....	19
Twenty-four-hour maximum.....	37
Sulfur dioxide:	
Annual arithmetic mean.....	20
Twenty-four-hour maximum.....	91
Three-hour maximum.....	325

(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four 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 will 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 grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph 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 such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE

[In micrograms per cubic meter]

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum.....	36	62
3-hr maximum.....	130	221

(iv) For purposes of clause (iii), the term “high terrain area” means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term “low terrain area” means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

(1) The review provided for in subsection (a) shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this chapter which will be emitted from such facility.

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations--

(A) shall not require the use of any automatic or uniform buffer zone or zones,

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

(D) shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 165, as added [Pub.L. 95-95, Title I, § 127\(a\)](#), Aug. 7, 1977, 91 Stat. 735; amended [Pub.L. 95-190, § 14\(a\)\(44\)-\(51\)](#), Nov. 16, 1977, 91 Stat. 1402.)

Notes of Decisions (80)

42 U.S.C.A. § 7475, 42 USCA § 7475

Current through P.L.118-10. Some statute sections may be more current, see credits for details.