ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
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JB PRITZKER, GOVERNOR JAMES JENNINGS, INTERIM DIRECTOR

July 31, 2024

Kimberly Schultz, Executive Director
Joint Committee on Administrative Rules
Illinois General Assembly
700 Stratton Building
Springfield, IL 62706
*Sent via email only: KimberlyS@ilga.gov, jcar@ilga.gov*

Subject: Comments Regarding Illinois Pollution Board Rulemaking R2023-18(A), In the Matter of Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212

Ms. Schultz:

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") respectfully submits these comments regarding the Illinois Pollution Control Board's ("Board") rulemaking proposal, R2023-18(A), currently being considered by the Joint Committee on Administrative Rules in Second Notice.

First, in the version of its rule proposal that the Board adopted for Second Notice, the Board added the phrase "after the Agency's written notification of violation" to the existing 35 Ill. Adm. Code 212.124(c)(2)(A) and (B), as follows:

> Section 212.124 Exceptions
>
> .....
>
> c) Compliance with Particulate Emissions Limitations as a Defense.
>
> .....
>
> 2) For all emission units that are not subject to Section 111 or 112 of the CAA but are subject to Section 212.201, 212.202, 212.203, or 212.204:
>
> A) An exceedance of the limitations of Section 212.122 or 212.123 will constitute a violation of the applicable particulate limitations of Subparts D through T. It will 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 <u>after the Agency's written notification of violation</u>, under the same operating conditions for the unit and the control devices, and in accordance with Method 5, 40 CFR 60, incorporated by reference in Section 212.113, the owner or operator shows

> that the emission unit is in compliance with the particulate emission limitations.
>
> B) It will 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 after the Agency's written notification of violation, 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, 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.

These proposed revisions appear to have been added by the Board at the Second Notice stage of the rulemaking, as they were not in the First Notice version of the proposal and were not in rule proponents' draft rule language.

The Agency opposes these changes. The intent behind the amendments is unclear, but they do not appear to be mere clarifications, as they change the substantive meaning of these provisions. Currently, existing Section 212.124(c)(2)(A) and (B) provide that owners or operators of subject emission units will have a defense to a violation of the applicable particulate matter emissions limitations or an exceedance of the applicable opacity limit if they conduct a performance test within 60 days after the violation/exceedance that demonstrates compliance. Under the Board's proposed revisions, however, a defense would only arise if owners or operators conduct a performance test within 60 days after "the Agency's written notification of violation." A violation of an emissions or opacity standard is a violation regardless of whether the Agency issues a formal notice to that effect. The owner or operator of the emission unit is in the best position to know close in time to when a violation has occurred, and a performance test should be conducted soon thereafter as it must be "under the same operating conditions for the unit and the control devices." Further, the Agency is not the only entity that can enforce the applicable standards; USEPA and the Illinois Attorney's General Office may enforce, and citizens can file lawsuits under the Clean Air Act against violating entities. This is the case even if the Illinois EPA has not issued a violation notice (which, under the Board's proposed changes, would be required before a defense under these provisions is available). The added language should therefore be removed.

Second, the Board's Second Notice version of the rule proposal changes the language in the proposed 35 Ill. Code 212.124(d)(2)(D) from the First Notice version of the rule. The First Notice version required that certain events be reported to the Agency "by telephone, facsimile, electronic mail, or such other method as constitutes the fastest available alternative, except if otherwise provided in the operating permit." The Board now proposes to require reporting to a specified phone number, as set forth below:

> Section 212.124 Exceptions
>
> .....

(d) .....

(2) .....

D) Any person who causes or allows the continued operation of a coal-fired boiler during a malfunction or breakdown of the coal-fired boiler or related air pollution control equipment when that continued operation would require compliance with the alternative averaging period in subsection (d)(1) must immediately report the incident to the Agency by telephone at 217-782-3397 and as otherwise provided in the operating permit. After that, this person must comply with all lawful directives of the Agency regarding the incident.

The Agency opposes this change. It does not support limiting the reporting mechanisms available to sources in this regard, particularly as email notification is often the most efficient. Also though, from a practical standpoint, telephone numbers change so should not be specified in regulations that cannot be easily or quickly altered. The Agency therefore requests that the telephone number be removed and that the original language referenced above be reinserted.

Sincerely,

Dana Vetterhoffer

Dana Vetterhoffer
Deputy General Counsel
Division of Legal Counsel