

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

**AMENDMENTS TO 35 ILL. ADM. CODE
PART 203: MAJOR STATIONARY SOURCES
CONSTRUCTION AND MODIFICATION,
35 ILL. ADM. CODE PART 204: PREVENTION
OF SIGNIFICANT DETERIORATION, AND
PART 232: TOXIC AIR CONTAMINANTS**

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NOTICE


TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO CLARIFY** a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:


Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: April 30, 2025

2520 W Iles Ave.
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

**AMENDMENTS TO 35 ILL. ADM. CODE 203:
MAJOR STATIONARY SOURCES
CONSTRUCTION AND MODIFICATION,
35 ILL. ADM. CODE PART 204: PREVENTION
OF SIGNIFICANT DETERIORATION, AND
35 ILL. ADM. CODE PART 232: TOXIC AIR
CONTAMINANTS**

R22-7
(Rulemaking – Air)

The Illinois Environmental Protection Agency (Agency), by its attorney and pursuant to 35 Ill. Adm. Code 101.500, hereby moves the Illinois Pollution Control Board (Board) to clarify a statement that the amendments to 35 Ill. Adm. Code Part 203 and 204¹ would take effect upon filing with the Secretary of State as otherwise provided by 5 ILCS 100/5-40(d) (2022). In support of this Motion, the Agency states as follows:

2. Section 40(d) of the Illinois Administrative Procedure Act provides that “[e]ach rule hereafter adopted under this Section is effective upon filing unless a later effective date is required by statute or is specified in the rulemaking.” The definition of “Nonattainment New Source Review (NA NSR) permit” in the Illinois Environmental Protection Act (Act) provides that a state NA NSR permit may only be issued once the state NA NSR permit program has been

¹ As part of the amendments to Parts 203 and 204, the Board also amended 35 Ill. Adm. Code 201.169, Special Provisions for Certain Operating Permits; 35 Ill. Adm. Code 201.175, Registration of Smaller Sources (ROSS); 35 Ill. Adm. Code 202, Alternate Control Strategies; and 35 Ill. Adm. Code Part 232, Toxic Air Contaminants. These amendments were not required to satisfy either 40 CFR 51.165 or 40 CFR 51.166 and these rules are not and need not be part of Illinois' SIP.

approved as part of Illinois' SIP.² See, 42 U.S.C. §§ 7407(a), 7410(a)(1) & (2), (l), 7502(c)(5) &

(6). Section 3.298 of the Act, 415 ILCS 5/3.298 (2022), states as follows:

“Nonattainment New Source Review (NA NSR) permit” or “NA NSR permit” means a permit or a portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 173 of the Clean Air Act and 40 CFR 51.165.

(emphasis added). This definition comports with the mandate of the Clean Air Act (CAA) that requires states to develop and submit for USEPA approval state implementation plans (SIPs).

The CAA's NA NSR requirements are among the requirements that must be addressed in a state SIP. 42 U.S.C. § 7410(a)(2)(C) & (I).

3. Consistent with this statutory definition, a later effective date was also specified in the rulemaking in Section 203.100, Effective Dates, which provides as follows:

- a) Subparts I through R of this Part do not apply until the effective date of the full approval of all of those Subparts by the United States Environmental Protection Agency (USEPA) as a revision to the Illinois State Implementation Plan.

4. The Act provides a similar definition of “Prevention of Significant Deterioration (PSD) permit” stating that a PSD permit may only be issued once the state PSD permit program has been approved as part of Illinois' SIP. See, 42 U.S.C. §§ 7407(a), 7410(a)(1) & (2), (l),

7475(a)(3). Section 3.363 of the Act, 415 ILCS 5/3.363 (2022), states as follows:

“Prevention of Significant Deterioration (PSD) permit” or “PSD permit” means a permit or a portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved


² The practical effect of Illinois' definition of “NA NSR permit” is that the proposed revisions to Part 203 would not replace existing Part 203 until these new rules have been SIP-approved by the USEPA. In the interim, NA NSR permitting in Illinois would continue to be administered by the Illinois EPA pursuant to existing Part 203 as it has been historically done.

by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 165 of the Clean Air Act and 40 CFR 51.166.

*(emphasis added).*³

WHEREFORE, for the reasons set forth above, the Illinois Environmental Protection Agency respectfully requests that the Board clarify that the amendments to Parts 203 and 204 would only take effect upon their full SIP approval by USEPA.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: April 30, 2025

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³ This definition, as well, comports with the mandate of the CAA that requires states to develop and submit for USEPA approval SIPs that contain emission limitations and other control measures to ensure that each of the relevant NAAQS is achieved and maintained. The CAA's PSD requirements are among those that must be addressed in a state SIP. 42 U.S.C. §7410(a)(2)(C), (D).

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following: I have electronically served the attached, **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO CLARIFY** on April 30, 2025, to the following:

Don Brown – Clerk
Illinois Pollution Control Board
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Chicago, IL 60601-3218
Don.Brown@illinois.gov

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I have electronically served and deposited said document in the United States Mail, proper postage prepaid, in Springfield, and upon:

Renee Snow
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Illinois Department of Natural Resources
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Springfield, IL 62702-1271
renee.snow@illinois.gov

My e-mail address is sally.carter@illinois.gov.

The number of pages in the e-mail transmission is 6.

The e-mail transmission and depositing said document in the United States Mail took place before 5:00 p.m. on April 30, 2025.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Dated: April 30, 2025

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