

ILLINOIS POLLUTION CONTROL BOARD
March 10, 1988

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R85-20
35 ILL. ADM. CODE 203)

FINAL ORDER ADOPTED RULE

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On September 4, 1985, the Illinois Environmental Protection Agency (Agency) filed proposed amendments to 35 Ill. Adm. Code 203: Major Stationary Source Construction and Modification, more commonly referred to as New Source Review or NSR. The Agency amended that proposal on December 19, 1985, and again on February 5, 1986. Hearings were held to consider the proposal on November 13 and December 10, 1985, and on February 4 and May 28, 1986. On September 29, 1986, the Department of Energy and Natural Resources (DENR) filed a negative declaration indicating that no economic impact study (EcIS) would be performed regarding this proposal, a determination in which the Economic and Technical Advisory Committee concurred by letter filed on October 20, 1986.

First notice was proposed on April 30, 1987, and published at 11 Ill. Reg. 10407, June 5, 1987. The first notice comment period, which would have expired on July 22, 1987, was extended to August 28, 1987, to allow consideration of and comparison with the federal NSR proposal published July 31, 1987 (52 Fed. Reg. 28570). Eight public comments were received during the first notice comment period: three comments from USEPA; two comments from Citizens for a Better Environment (CBE); and one comment each from the Illinois Environmental Protection Agency (Agency), the Illinois Environmental Regulatory Group (IERG), and the Illinois Steel Group. The majority of the public comment addressed the two major issues discussed in the first notice Opinion -- the definition of "source" and vessel emissions. In addition, the Agency submitted detailed responses to the many questions raised in the Board's first notice Opinion. The Board appreciates the Agency's thorough review.

On November 25, 1987 the Board adopted an Opinion and Order sending the proposed amendments to second notice for review by the Joint Committee on Administrative Rules (JCAR). The second notice period commenced on January 19, 1988. During the course of its review, the JCAR staff suggested several non-substantive changes to the second notice proposal which the Board agreed to incorporate into the final order. The changes are noted below. At its February 25, 1988 meeting, JCAR issued a Certificate of No Objection to the proposed rulemaking.

The primary purpose of the proposal is to enable the State to obtain approval of its New Source Review Rules as part of the Illinois State Implementation Plan (SIP). The Clean Air Act provides that unless a state has an approved new source review program as part of its SIP, no major source may be constructed or modified in a non-attainment area. (See Sections 111(a)(2)(D), 111 (a)(2)(I) and 173 of the Clean Air Act).

In April, 1979, the Agency submitted its own NSR rules to the United States Environmental Protection Agency (USEPA) for approval as part of the Illinois SIP, and they were conditionally approved in 1980. (See 45 Fed. Reg. 11472, Feb. 21, 1980). However, in May, 1981, that conditional approval was reversed by the Seventh Circuit in the case of CBE v. USEPA, 649 F.2d 522 (7th Cir., 1981). In turn, the State became subject to a construction moratorium in non-attainment areas. Thereafter, the General Assembly adopted Section 9.1(d) of the Environmental Protection Act (Act) which mandated the Board to adopt regulations establishing a permit program meeting the requirements of Section 173 of the Clean Air Act (42 USC Section 7503) by October 1, 1981. In response to that directive, the Agency submitted an NSR proposal to the Board in April, 1980, which was docketed as R81-16. Final rules were adopted under that docket in July, 1983, which were then submitted to USEPA for approval. On April 9, 1984, USEPA proposed to approve in part and disapprove in part. (49 Fed. Reg. 13893). However, in light of the Seventh Circuit's decision in Bethlehem Steel v. Gorsuch, 742 F.2d 1028 (7th Cir., 1984), USEPA determined that such action was impermissible, and that it was obligated to disapprove the rules in their entirety.

At that point the Agency and USEPA agreed to jointly develop draft NSR rules which would be proposed for promulgation by USEPA and which would be filed with the Board for adoption as state rules. As stated by the Agency

Under the terms of this "parallel processing" agreement, were the Board regulations to be finally adopted before USEPA has completed its promulgation, USEPA would review them for inclusion in the SIP in lieu of the Federally promulgated rules. If USEPA has completed promulgation before final adoption by the Board, upon approval of the Board regulations for inclusion in the SIP USEPA will rescind the Federal regulations. Once NSR rules are in place, whether by Federal promulgation or approval of the State rules, the construction moratorium will be terminated to the extent that the SIP for a particular area and contaminant is not found to be deficient on other grounds.

(Sept. 4, 1985 Statement of Reasons at 3).

Overview of the Proposal

The proposal before the Board is intended to eliminate deficiencies identified by USEPA in the NSR rules, thereby allowing expeditious approval as a SIP revision. It also includes clarification of certain administrative procedures contained in the rules, adjustments to account for changing USEPA guidelines, adjustments necessitated by the Board's decision not to adopt state Prevention of Significant Deterioration of Air Quality (PSD) rules, and minor corrections of the present rules. Finally, the proposal includes some changes which reduce the stringency of currently existing rules to conform to the federal proposal which is required to impose a program which is minimally required under the Clean Air Act. The Agency summarizes the basis for these changes as follows:

The complexity of the present rulemaking and the desire to expedite the process are certainly important, as is the lack of major projects over the last few years to which 35 Ill. Adm. Code Part 203 would apply. Most importantly, however, IEPA believes that the points of greater stringency in the State rules would not result in any significant environmental benefits.

(Sept. 4, 1985 Statement of Reasons at 4).

35 Ill. Adm. Code 203 establishes a permit program which is designed to ensure that the construction of a major new source of air pollution or a large increase of emissions at an existing source does not interfere with the attainment demonstration and does not delay timely achievement of the air quality standards. The rules specify what projects are "major" and the requirements which apply to such projects. There are essentially four such requirements imposed on owners or operators of such projects.

The first of these is the imposition of LAER (Lowest Achievable Emission Rate), which is a hardware based requirement. LAER is the most stringent of feasible emission limits for a particular source and is established on a case-by-case basis in the permitting process. In essence, it is to reflect the state-of-the-art in process or emission control technology.

The second requirement is that a major project must be accompanied by compensating "emission offsets" from other sources in the area or by a demonstration that it is within the allowance for major projects already contemplated in the attainment

demonstration. In other words, the source must either demonstrate that emissions of particular pollutants will not be increased in the general area of the source or that any increase falls within the growth allowance which is built into the attainment demonstration.

The third requirement is present compliance by other sources in the State which are under common ownership or control. Unless this requirement is met, the new source cannot be constructed.

The final requirement applies only to areas which are not in attainment for ozone and carbon monoxide and for which the attainment deadline has been extended to December 31, 1987 pursuant to Section 172(a)(2) of the Clean Air Act, [42 USC Section 7502(a)(2)]. In these areas, an analysis of alternatives to a particular major project must be made which demonstrates that the benefits of the project outweigh the environmental and social costs.

The most intricate aspect of the NSR rules regards applicability. A project must be evaluated independently for each contaminant for which the area in which the project is located is designated non-attainment. There are several types of projects to be considered;

- 1) The construction of a new major source;
- 2) A "significant" modification to a major source;
- 3) A physical change at a non-major source, that by itself constitutes a major source, and
- 4) Reconstruction of a major source.

Finally, there are specialized applicability provisions concerned with changes in the status of projects and the handling of fugitive emissions.

"Source" Definition

Two major issues have arisen during the course of this proceeding. The first is whether the dual definition of source should be replaced by a plant-wide definition. The other regards whether, and to what extent, vessel emissions should be included in the NSR rules.

The first notice proposal retained the existing dual definition of "source" rather than the plant-wide definition for the reasons articulated therein. The Comments filed by IERG and the Steel Group were directed solely to this issue. USEPA, the Agency and CBE also responded.

IERG and the Steel Group advocated for adoption of the plant-wide definition. To support the view that USEPA can and would approve incorporation of the plant-wide definition in the Board's proposal, both IERG and the Steel Group pointed out that USEPA is presently proposing a plant-wide definition in the parallel federal rulemaking. IERG also stated that USEPA provided clear guidance in the June 26, 1987, Federal Register publication (52 Fed. Reg. 24039) regarding the showing Illinois must make before a plant-wide definition may be federally adopted and that that showing is much less arduous and infinitely more achievable than proving a lack of impact on the State's attainment demonstration. Thus, argued IERG, the "reasoned pragmatism" of the Agency in supporting the dual definition no longer exists. Both IERG and the Steel Group argued that policy considerations favor adoption of the plant-wide definition. They believe that the plant-wide definition would enable facilities to modernize individual emission sources without experiencing the "cost and delays associated with the New Source Review process" (Comments of the Illinois Steel Group, filed July 21, 1987) whereas the dual definition would create a disincentive to modernization in those instances where the action would trigger application of the NSR rules. The plant-wide definition, the argument goes, would therefore result in newer, cleaner-operating equipment, thereby resulting in greater environmental benefit.

The Agency supports retention of the dual definition. The Agency pointed out that USEPA's proposal of the plant-wide definition and statements regarding the less restrictive showing must be read consistently with USEPA's July 14, 1987 (52 Fed. Reg. 26424) Notice of Proposed Rulemaking proposing to disapprove the 1982 Illinois Ozone State Implementation Plan (SIP). The Notice states that USEPA proposes:

to find that the plan as a whole, taking into account the legally adopted control measures, does not adequately demonstrate attainment of the NAAQS by the end of 1987 or any near term fixed date thereafter (or RFP [reasonable further progress] in the interim). Therefore, the plan does not meet the requirements of Part D of the Clean Air Act. 52 Fed. Reg. 26427."

The Agency noted that when USEPA published the NSR proposal on June 26, 1987, it had not yet proposed to disapprove the 1982 ozone SIP. In its comment, the Agency stated that:

[g]iven the proposed findings by USEPA ... that the State will not attain the ozone NAAQS by the end of 1987 and that the State has failed to achieve reasonable further progress (RFP) towards attainment of the

ozone NAAQS, the February 27, 1987, policy on the definition of source ... and the statement in the June 26, 1987, proposal that the State must show it is making reasonable efforts to adopt and submit a complete plan for RFP and timely attainment preclude USEPA from adopting a plant-wide definition in its NSR rules or approving State rules which contain the plant-wide definition.

Finally, the Agency responded to the arguments of the Steel Group and IERG that the dual definition provides a disincentive to modernization by pointing out that the dual definition affects only those changes which involve major pieces of equipment. As a consequence, the Agency believes that the dual definition will have no impact on the great majority of Illinois industry. Thus, the Agency continues to believe that the dual definition is necessary to assure that the rules can be approved so that the construction moratorium can finally be lifted.

The Board is not persuaded to replace the dual definition of source with the plant-wide definition. In light of USEPA's proposed disapproval of the 1982 Illinois ozone SIP, the Board agrees that incorporation of the plant-wide definition may threaten the approvability of the NSR rules.

Vessel Emissions

The Board's first notice Order discussed in detail the issue of vessel emissions. The sole comment on this issue during the first notice period came from the Agency. The Agency believes that the Board's interpretation of Section 203.112 is contrary to the scope and intent of the Agency's proposal and jeopardizes the approvability of the rules. Of specific concern to the Agency is the Board's interpretation of Section 203.112 that only vessels which are under the control of the person who owns the terminal and further which belong to the same industrial grouping as the terminal are covered. The Agency's interpretation of its proposed Section 203.112 is that the emissions of all vessels and conveyances -- irrespective of industrial grouping and ownership or control by the terminal operator -- be attributed to the terminal. The types of emissions which are attributable to the terminal are those which are delineated in Section 203.112(b). To support its interpretation the Agency pointed to the testimony of Mr. Chris Romaine given at the February 4, 1986 hearing (Transcript pp. 184-195). In essence, Mr. Romaine explained that the criteria of location, common ownership and common SIC code do not provide a useful -- or rational -- basis for vessel emission attribution.

The Agency believes that the solution it has fashioned, whereby vessel emissions are attributable on the basis of the

type of activity and its relation to the terminal irrespective of ownership or SIC code provides a predictable, rational and equitable framework for attribution of vessel emissions. Also, the Agency asserts that its solution was developed in consultation with USEPA's Office of Air Quality Planning and Standards and is unquestionably approvable by USEPA. To clarify its intentions, the Agency suggests the inclusion of the language "irrespective of ownership or industrial grouping" into Section 203.112(b)(i).

The Board accepts the Agency's suggested revision of Section 203.112(b)(i) for incorporation into the second notice Order. The Board believes that this additional language clarifies the Agency's intent, as described above. Without the added language a plain reading of the language proposed at first notice would seem to allow for the interpretation that Subsections 203.112(a) and (b) may be read together.

First Notice Revisions

The first notice Opinion noted, section by section, changes to the Agency's proposal and language causing uncertainty in interpretation. The Board here responds, section by section, to comment received during first notice.

Section 203.104: The Board has adopted the Agency's suggested language to clarify that the intent of the section is to establish a presumption that the 2-year period immediately proceeding the "particular date" is representative of normal operations, with an opportunity for the source to rebut the presumption and to demonstrate that another time period is more representative.

Section 203.107: In Subsection (a), the Board has adopted the Agency's suggested clarifying language. Also, the Board noticed that in subsection (1) 40 CFR 60 and 61 were being incorporated by reference. To correctly incorporate material by reference, a specific date must be given and a statement must be made declaring that no future editions or amendments are included. In response to Board inquiry as to which date would be appropriate, the Agency stated that a specific date could not be inserted and still be approvable by USEPA. Apparently, USEPA requires that the standards used to determine allowable emissions be not restricted to a date certain but be flexible enough to include the most recent standard adopted in the CFR. USEPA's requirement of including the most up-to-date standards seems consistent with the general goal of determining the "most stringent" applicable standards for purposes of determining allowable emissions. Therefore the Board has revised the language in subsection (1) to avoid the necessity of directly incorporating the federal regulations by reference thereby triggering the necessity for a specified date. In addition, in subsection (2), the Board

changed the term "subtitle" to "chapter" to clarify the intent of the section. In Subsection (b), the Board has adopted the Agency's revised language making the language consistent with USEPA policy, which does not generally consider limitations based on annual emissions rates to be federally enforceable and, as a practicable matter, probably not enforceable at the State level either because it could take a year to determine compliance. The Board believes the revised language is consistent with USEPA policy and therefore approvable. In Subsection (c), the Board has adopted the Agency's suggested clarifying language.

Section 203.112: For purposes of clarity the Board replaced "or" with "and" in the series "building, structure and facility."

Section 203.113: The Board's first notice Opinion questioned the appropriateness of the phrase "a reasonable time." The Agency responded that the phrase is appropriate in light of the fact that the time for completion of a project is dependent on the specifics of the particular project which vary depending on the nature of the project, its size, the extent of upfront engineering, the amount of off-site preparation, whether equipment must be fabricated or can be purchased, and many other considerations. Although the Board recognizes that flexibility is necessary in this area, the Board does not believe that the language as written will pass review by the Joint Committee on Administrative Rules (JCAR). Therefore, the Board has included a subsection (c), which sets forth some of the factors to be considered when determining "a reasonable time".

Section 203.123: The word "a" was added to the first line of "emissions unit." Also, "subtitle" was changed to "chapter".

Section 203.124: In the first notice Order, the Board questioned the appropriateness of the phrase "reasonably pass through." The Agency responded that, because of the specific meaning of "fugitive emissions" in the regulatory context, the phrase "reasonably pass through" adequately distinguishes between fugitive and non-fugitive emissions. The Agency further responded that further elaboration would not match the stringency of USEPA requirements. So as not to jeopardize approvability, the Board has retained the language proposed at first notice.

Section 203.127: The Board has, on its own motion, proposed a definition of "non-attainment area". The Board believes it more efficient to define non-attainment area in one place than in several. All of the sections that previously included the definition have accordingly been revised. The Board notes that this is not a substantive change because "non-attainment area" was defined in each section in which it was used. Therefore, the Board views this definition as a matter of efficiency and housekeeping and not as a matter of change.

Section 203.128: The Agency correctly noted that the Board omitted the text of Section 203.128 at first notice: no amendment was proposed to this section. After further review the Board has proposed the capitalization of "Emit" to maintain consistency in capitalization with the other proposed definitions.

Section 203.150: The Board has adopted the Agency's suggested language to clarify the reference to the proposed issuance of the permit.

Section 203.206: The first notice Order questioned the appropriateness of the phrase "approximately half." The Agency responded that the phrase is a direct consequence of the structure of the federal determination of reconstruction. The Agency also noted that this language is unchanged from that in the present rules. The Board notes that subsections (1)-(4) of subsection (c) provide directives for determining whether reconstruction will occur. These directives provide guidance in the determination of "approximately half" of the capital costs. Therefore, the Board has retained the phrase.

Section 203.207: In Subsection (a) the Board has adopted the Agency's suggested clarifying language. In Subsection (c) the Agency responded to Board inquiry that it did not intend to delete the reference to 40 CFR 52.21. The Agency noted that USEPA correctly interpreted such deletion as a relaxation of the rule beyond the federal minimum requirements, and suggested that that reference be reinstated into Section 203.207(c)(5)(A) and (c)(6). The Board has reinstated the reference and has adopted the Agency's suggested language to further clarify Section 203.207(c)(5)(A).

In Section 203.207(c)(5)(B), USEPA indicated that inclusion of permits issued pursuant to 40 CFR 51.21 (PSD) is an unacceptable relaxation as compared to its guidelines at 40 CFR 51.164. The Agency agreed and suggested that the citation to 40 CFR 52.21 in Section 203.207(c)(5)(B) be deleted. The Board has deleted the citation.

Section 203.208: The Agency suggested that, in line 1 of the introductory paragraph, the term "sum" is more appropriate than "total" because determination of whether a modification results in a net emissions increase is essentially a mathematical calculation. The Board has taken out the proposed word "total" and has retained the existing word "sum". In Section 203.208(b)(1), the Board has adopted the Agency's redraft, as the new language better parallels the language in Subsection (c)(4), is less awkward than the federal language, and is identical in substance to the federal language. In Subsection 203.208(c), the Agency responded to Board inquiry concerning the language "approximately the same qualitative significance on public health and welfare". The Agency pointed out USEPA's explanation at 45 Fed. Reg. 52701 which reads:

By this provision [US]EPA seeks mainly to prevent an increase in emissions with considerable health and welfare significance from escaping review merely because of a contemporaneous decrease in less harmful emissions. The health and welfare provisions of the [Clean Air] Act mandates this provision. (Comments of the IEPA, filed August 4, 1987).

The Agency recommended that the language in question be retained in both Sections 203.208(c) and 203.303(b). So as not to jeopardize approvability, the Board has retained the language.

Section 203.301: The Board has added the language "adopted by USEPA pursuant to Section 11 of the Clean Air Act and made applicable to Illinois pursuant to Section 9.1 of the Act" to clarify "applicable new source performance standard."

Section 203.303: The Board has changed "subtitle" to "chapter" in Section 203.303(c)(2), and has amended the language "40 CFR 60 or 61" consistent with the amendments made to Section 203.107 above. Again, the language proposed at first notice may threaten USEPA approval. The Agency responded to Board inquiry concerning Section 203.303(d). The Agency stated that it:

has endeavored to paraphrase this provision from an awkwardly written provision in 40 CFR 51 appendix S referenced in USEPA's NSR guidelines so as to maintain identical stringency. On the one hand, the requirement for analysis in Subsection (d)(1) could be made a mandatory obligation on the applicant and the language in Subsection (d)(3) concerning "broad vicinity" could be removed, considering subsequent language. This was not proposed by the IEPA to avoid excess stringency and maintain any unforeseen benefits to permit applications arising out of USEPA's language. On the other hand, specific analysis methodology could not be specified because this would risk both inadequate or excess stringency. (Comments of the IEPA, filed August 21, 1987).

The Agency also responded that it would construe "appropriate analysis" in the context of the particular sentence.

[I]f the Agency declines to perform the required analysis, the applicant shall perform either atmospheric simulation

modeling or determine effective stack height, as appropriate as explained in preceding sentences, to demonstrate as adequate location for offsets. (Comments of the IEPA, filed August 21, 1987).

So as not to jeopardize approvability, the Board has retained the language as proposed.

Section 203.602: The Board has adopted the Agency's suggestion to delete the commas after "providing" in line 4 and after "Section 203.302" in line 5.

Second Notice Revisions

As previously noted, during its second notice review of the proposed rules, the JCAR staff suggested several non-substantive changes to clarify the text of the proposed rules. The Board agreed to add the suggested language and, pursuant to Section 5.01(a) of the Administrative Procedures Act, incorporates the language into the final order. The second notice changes are as follows:

Section 203.104(A): Add before the last sentence "such demonstration may include, but need not be limited to, operating records or other documentation of events or circumstances indicating that the preceding two years is not representative of normal source operation."

Section 203.125: Add at end of sentence "including, but not limited to, boilers, furnaces, reactors, dryers, incinerators, heaters and coating lines."

Section 203.145: "Metallic carbonic acid" was deleted. "Metallic carbide" was changed to "metal carbides." "Metallic carbonate" was changed to "metal carbonates." Finally, a sentence was added to define standard conditions."

Section 203.208(d): "only after a reasonable shakedown period, not to exceed 180 days" was amended to read "only after a shakedown period not to exceed 180 days."

Section 203.211: "As evidenced by 35 Ill. Adm. Code 201.122" was added after "quantifiable." The citation to Section 203.206(c) was corrected to Section 203.206(d).

Section 203.302: In subsection (a), "as set forth in Section 173 of the Clean Air Act" was added after "reasonable further progress." In subsection (b), "show" was changed to "evidence", and "reasonably" was deleted.

Section 203.303: In subsection (b)(2), "a demonstration" was changed to "evidence." In subsection (b)(4), the last two lines were amended to read "source must be a replacement for the shutdown or curtailment." In subsection (d)(1), the following two sentences were added "Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practices as determined pursuant to 40 CFR 51.100, the creditable stack height shall be used." Also, "appropriate analysis" was amended to "analysis." In subsection (c)(1) and (2) citations to Section 9.1 of the Environmental Protection Act were added.

ORDER

The Clerk of the Pollution Control Board is hereby directed to submit the following adopted amendments to 35 Ill. Adm. Code 203 to the Secretary of State for final notice:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 203
MAJOR STATIONARY SOURCES CONSTRUCTION AND MODIFICATION

SUBPART A: GENERAL PROVISIONS

Section	
203.101	Definitions
203.103	<u>Actual Construction</u>
203.104	<u>Actual Emissions</u>
203.107	Allowable Emissions
203.110	Available Growth Margin
203.112	<u>Building, Structure and Facility</u>
203.113	Commence
203.116	Construction
203.117	<u>Dispersion Enhancement Techniques</u>
203.119	<u>Emission Baseline</u>
203.122	Emission Offset
203.123	<u>Emissions Unit</u>
203.124	<u>Fugitive Emissions</u>
203.125	<u>Installation</u>
203.125 125 126	LAER
203.127	<u>Nonattainment Area</u>
203.128	<u>Potential to Emit</u>
203.131	Reasonable Further Progress
203.134	Secondary Emissions
203.136	<u>Stationary Source</u>
203.145	<u>Volatile Organic Compound</u>
203.150	Public Participation
203.155	Severability (<u>Repealed</u>)

SUBPART B: MAJOR STATIONARY EMISSIONS
SOURCES IN NONATTAINMENT AREAS

Section	
203.201	Prohibition
203.202	<u>Coordination With Preeconstruction Permit Requirement and Application Pursuant to 35 Ill. Adm. Code 201</u>
203.203	Construction Permit Requirement and Application
203.204	Duration of Construction Permit <u>(Repealed)</u>
203.205	Effect of <u>Preeconstruction and Permits</u>
203.206	Major Stationary Emission Source
203.207	Major Modification of a Source
203.208	Net Emission Determination
203.209	Significant Emissions Determination
203.210	Relaxation of a Source-Specific Limitation
<u>203.211</u>	<u>Permit Exemption Based on Fugitive Emissions</u>

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY
SOURCES IN NONATTAINMENT AREAS

Section	
203.301	Lowest Achievable Emission Rate
203.302	Maintenance of Reasonable Further Progress and Emission Offsets
203.303	Baseline and Emission Offsets Determination
203.304	Exemptions from Emissions Offset Requirement <u>(Repealed)</u>
203.305	Compliance by Existing Sources
203.306	Analysis of Alternatives

SUBPART F: OPERATION OF A MAJOR STATIONARY SOURCE
OR MAJOR MODIFICATION

Section	
203.601	Lowest Achievable Emission Rate Compliance Requirement
203.602	Emission Offset Maintenance Requirement
203.603	Ambient Monitoring Requirement <u>(Repealed)</u>

SUBPART G: GENERAL MAINTENANCE OF EMISSION OFFSETS

Section	
<u>203.701</u>	<u>General Maintenance of Emission Offsets</u>

AUTHORITY: Implementing Section 9.1 and authorized by Sections 5 and 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1005, 1009.1 and 1027).

SOURCE: Adopted and codified at 7 Ill. Reg. 9344, effective July 22, 1983; codified at 7 Ill. Reg. 13588; amended in R85-20 at ____ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 203.103 Actual Construction

"Actual Construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and erection of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.104 Actual Emissions

"Actual Emissions" means the actual rate of annual emissions of a pollutant from an operational emissions source unit for as of a particular date. Actual emissions are equal to the mean average rate, in tons per year, at which the emissions source unit actually emitted the pollutant during the two-year period which immediately precedes the particular date and or such other period which is determined by the Illinois Environmental Protection Agency (Agency) to be representative of normal emission source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period; however:

- a) The Agency shall allow the use of a different time period upon a determination demonstration by the applicant to the Agency that it the time period is more representative of normal emission source operation. Such demonstration may include, but need not be limited to, operating records or other documentation of events or circumstances indicating that the preceding two years is not representative of normal source operations. The burden shall be on the applicant to demonstrate that another time period is more representative. Actual emissions shall be calculated using the emission source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- b) If the Agency determines that there is inadequate information to determine actual emissions as indicated in the preceding paragraphs, the Agency shall use the potential to emit of the emission source.

- b) The Agency may presume in the absence of reliable data on actual emissions that the source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the emissions unit.
- c) For any emissions unit which has not begun normal operations on the particular date, the Agency shall presume that the potential to emit of the emissions unit is equivalent to the actual emissions on that date.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.107 Allowable Emissions

- a) "Allowable Emissions" means the emission rate of an ~~emission~~ a stationary source calculated using the maximum rated capacity of the ~~emission~~ source (unless the ~~emission~~ source is subject to enforceable permit conditions or other such enforceable limits which restrict the operating rate, or hours of operation, or both) and the ~~more~~ most stringent of the following:
 - 1) Any applicable standards adopted by USEPA pursuant to Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7401, et seq.) and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1001 et seq.);
 - 2) The applicable emission standards or limitations contained in this Chapter and approved by the United States Environmental Protection Agency (USEPA) pursuant to Section 110(a)(2) or 110 (a)(3) of the Clean Air Act, including those standards or limitations with a future compliance date and any other emission standard or limitation enforceable under the Environmental Protection Act or by the USEPA under Section 113 of the Clean Air Act; or
 - 3) The emissions rate specified as an enforceable permit condition including those emissions rates with a future compliance date.
- b) The allowable emissions may be based on expressed as a an enforceable permit condition limiting annual emissions or material or fuel throughput.
- c) Allowable emissions shall include a reasonable estimate of emissions in excess of applicable standards during start-up, malfunction, or breakdown, as appropriate, only if the provisions of 35 Ill. Adm. Code 201 have been complied with.

- c) If a an emission source is not subject to an emission standard under described in subsection (a) and is not conditioned pursuant to subject to a permit condition described in subsection (b), the allowable emissions shall be the source's potential to emit.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.110 Available Growth Margin

"Available growth margin" means the difference between total allowable emissions consistent with reasonable further progress and projected actual emissions in a nonattainment area.

"Available Growth Margin" means the portion which remains of any emission allowance for new or modified major stationary sources expressly identified in the attainment demonstration approved by the U.S. Environmental Protection Agency (USEPA) under Section 172(b)(5) of the Clean Air Act (42 U.S.C. 7502(b)(5)) for a particular pollutant and area.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.112 Building, Structure and Facility

- a) The terms "building", "structure", and "facility" include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively) incorporated by reference in 35 Ill. Adm. Code 720.111.
- b) The terms "building", "structure", and "facility" shall also include
- 1) the transfer of materials, including but not limited to grain, gasoline, petroleum liquids, coal, fertilizer, crushed stone and ore, from vessels, motor vehicles or other conveyances, irrespective of ownership or industrial grouping, to or from a building, structure, or facility as defined in subsection (a), and

- 2) activities at or adjacent to such building, structure or facility which are associated with such transfer, including but not limited to idling of propulsion engines, the operation of engines to provide heat, refrigeration or lighting, operation of auxiliary engines for pumps or cranes, and transfer of materials from hold to hold or tank to tank during onloading or offloading operations.

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.113 Commence

As applied to construction of a major stationary source or major modification "commence" means that the owner or operator has obtained all necessary preconstruction approvals or permits and either has:

- a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within eighteen months after the date the permit is granted; a reasonable time; or
- b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
- c) For purposes of this Section, a "reasonable time" shall be determined considering but not limited to the following factors: The nature and size of the project, the extent of design engineering, the amount of off-site preparation, whether equipment can be fabricated or can be purchased, when the project begins (considering both the seasonal nature of construction activity and the existence of other projects competing for construction labor at the same time, the place of the environmental permit in the sequence of corporate and overall governmental approval), and the nature of the permittee (private, public, regulated, etc).

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.116 Construction

"Construction" means any physical change or change in the method of operation, including but not limited to fabrication, erection, installation, demolition, or modification of an emissions ~~source~~ unit, which would result in a change in actual emissions.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.117 Dispersion Enhancement Techniques

"Dispersion Enhancement Techniques" mean so much of the stack height of any source as exceeds good engineering practice or any other dispersion technique, determined by regulations at 40 CFR 51.100 (1987) (no future amendments or editions are included).

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.123 Emissions Unit

"Emissions Unit" means any part of a stationary source which emits or has the potential to emit any pollutant subject to regulation under the Act or this Chapter or by USEPA under the Clean Air Act (42 U.S.C. 7401 the Act or et seq.).

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.124 Fugitive Emissions

"Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.125 Installation

"Installation" means an identifiable piece of equipment, including, but not limited to, boilers, furnaces, reactors, dryers, incinerators, heaters, and coating lines.

(Source: Section 203.125 renumbered to Section 203.126, New Section 203.125 adopted at 12 Ill. Reg. _____, effective _____)

Section 203.~~125~~126 LAER

"LAER" is an abbreviation for lowest achievable emission rate.

(Source: Section 203.126 renumbered from Section 203.125 at 12 Ill. Reg. _____, effective _____)

Section 203.127 Nonattainment Area

An area designated by USEPA as nonattainment for a given pollutant pursuant to Section 107 of the Clean Air Act (42 U.S.C. 7407).

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.128 Potential to Emit

"Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.131 Reasonable Further Progress

"Reasonable Further Progress" means the annual incremental reductions in the emissions of the applicable air pollutant sufficient to provide for attainment of the National Ambient Air Quality Standards as expeditiously as practicable, in accordance with as determined by USEPA pursuant to Part D of the Clean Air Act (42 U.S.C. 7501 et seq.) and 40 CFR 51.15 as amended at 44 FR 27569, May 10, 1979; federal regulations adopted pursuant thereto.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.134 Secondary Emissions

"Secondary Emissions" means the emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Part, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to, emissions from any ~~reasonably foreseeable~~ off-site support facility which would not ~~otherwise~~ be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.136 Stationary Source

"Stationary Source" means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Act or this Chapter or by USEPA under the Clean Air Act (42 U.S.C. 7401 et seq.).

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.145 Volatile Organic Compound

"Volatile Organic Compound" means any chemical compound of carbon, released to or present in the atmosphere in a gaseous state, including compounds which are liquids at standard conditions, but excluding the following compounds: methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metal carbides, metal carbonates, ammonium carbonate, 1,1,1-trichloroethane (methylchloroform), methylene chloride, trichlorotrifluoroethane (Freon 113), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115). Standard conditions means a temperature of 70 F and a pressure of 14.7 pounds per square inch absolute (psia).

(Source: Added at 12 Ill. Reg. _____, effective _____)

Section 203.150 Public Participation

At the initiation of a permit application Prior to the initial issuance of a permit pursuant to Subpart B, the Agency shall provide at a minimum, notice of the same proposed issuance of a permit and a comment period pursuant to the Agency public participation procedures found at 35 Ill. Adm. Code 166.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.155 Severability (Repealed)

Notwithstanding 35 Ill. Adm. Code 201.125, if any provision of Part 203 is stayed or declared invalid by a final order, no longer subject to appeal, of any court of competent jurisdiction, then the entirety of Part 203 shall be deemed stayed or invalidated until the stay is lifted or the Board acts to revalidate the Part.

(Source: Repealed at 12 Ill. Reg. _____, effective _____)

SUBPART B: MAJOR STATIONARY EMISSIONS
SOURCES IN NONATTAINMENT AREAS

Section 203.201 Prohibition

In any nonattainment area, nNo person shall cause or allow the construction of a new major stationary source or major modification in an area designated as that is major for the pollutant for which the area is designated a nonattainment area as defined at Section 171(2) of the Clean Air Act (42 U.S.C.

7501(2) with respect to that pollutant, except as in compliance with this Part for that pollutant.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.202 Coordination With Preconstruction Permit Requirement and Application Pursuant to 35 Ill. Adm. Code 201

For new major sources and major modifications, the fulfillment of the requirements of 35 Ill. Adm. Code 201 related to construction, including the permit requirements of 35 Ill. Adm. Code 201.142, shall be combined with the requirements of this Subpart.

- a) Applications for preconstruction permits shall contain sufficient information to demonstrate that the source constitutes or does not constitute a new major source or major modification pursuant to this Subpart.
- b) A preconstruction permit designating the proposed construction as a new major source or major modification is required prior to:
 - 1) Entering into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of a source to be completed within a reasonable time;
 - 2) Initiating physical on-site construction activities which are permanent in nature including but not limited to installation of building supports and foundations, laying underground pipework and construction of permanent storage structures; or
 - 3) Initiating a change in operations which may be subject to this Subpart or Subpart C.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.203 Construction Permit Requirement and Application

- a) A construction permit is required prior to having begun or having caused to begin a continuous program of actual on-site construction of a major new source or major modification, or change in operations of the source. Such permit shall contain enforceable conditions satisfying the requirements of Subparts B and C.

- b) Applications for construction permits required under this Section shall contain sufficient information to demonstrate compliance with 35 Ill. Adm. Code 201 and the requirements of this Subchapter including, but not limited to, Subpart C.
- c) The permit shall include conditions specifying the manner in which the requirements of Subparts B and C of this Part are satisfied.
- d) No permittee shall violate any condition contained in a construction permit issued for a new major stationary source or major modification which is subject to this Part.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.204 Duration of Construction Permit (Repealed)

A permit to construct shall become invalid if the permittee has not commenced construction within 18 months after receipt of such permit, or construction is discontinued for a period of 18 consecutive months or more. However, this provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must begin actual construction within 18 months of the dates contained in the permit application.

(Source: Repealed at 12 Ill. Reg. _____, effective _____)

Section 203.205 Effect of Preconstruction and Construction Permits

The issuance of neither a preconstruction nor a construction a permit for a source subject to the requirements of this Part shall not relieve any person of the responsibility to comply fully with applicable provisions of the Environmental Protection Act (Act) (Ill. Rev. Stat. 19815, ch. 111^{1/2}, pars. 1001 et seq.), the regulations contained in this Chapter, the Clean Air Act (42 U.S.C. 7401 et seq.) and federal regulations adopted thereunder and any other applicable requirements under local, state or federal law. through the effective date of this Subpart.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.206 Major Stationary Emission Source

A major stationary emission source that is major for organic material shall be considered major for ozone.

- a) The following constitutes a major stationary emission source:

- 1) Any stationary emission source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant, for which pollutant the area is a nonattainment area.
 - 2) Any physical change that would occur at a stationary emission source not qualifying under paragraph 1 subsection (a) as a major stationary emission source, if the change would constitute a major stationary emission source by itself.
- b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.
- c) The reconstruction of a major stationary emission source will be treated as the construction of a new major stationary source if the fixed capital cost of new components exceeds approximately half of the fixed capital cost of an entirely new stationary source. Determining whether reconstruction will occur is based on the following:
- 1) Fixed capital cost shall mean the capital needed to provide all the depreciable components;
 - 2) The fixed capital cost for the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;
 - 3) The estimated life of the source after the replacements compared to the life of a comparable entirely new source; and
 - 4) The extent to which the components being replaced cause or contribute to the emissions from the source.
- d) For purposes of this Part, the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
- 1) Coal cleaning plants (with thermal dryers);
 - 2) Kraft pulp mills;
 - 3) Portland cement plants;
 - 4) Primary zinc smelters;
 - 5) Iron and steel mills;
 - 6) Primary aluminum ore reduction plants;
 - 7) Primary copper smelters

- 8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 9) Hydrofluoric, sulfuric, or nitric acid plants;
- 10) Petroleum refineries;
- 11) Lime plants;
- 12) Phosphate rock processing plants;
- 13) Coke oven batteries;
- 14) Sulfur recovery plants;
- 15) Carbon black plants (furnace process);
- 16) Primary lead smelters;
- 17) Fuel conversion plants;
- 18) Sintering plants;
- 19) Secondary metal production plants;
- 20) Chemical process plants;
- 21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million Btu per hour heat input;
- 22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 23) Taconite ore processing plants;
- 24) Glass fiber processing plants;
- 25) Charcoal production plants;
- 26) Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
- 27) Any other stationary source category which was regulated as of August 7, 1980, by USEPA under Section 111 or 112 of the Clean Air Act (42 U.S.C. 7411, 7412).

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.207 Major Modification of a Source

- a) Any Except as provided in Subsection (c), a physical change, or change in the method of operation of a major stationary emission source that would result in a significant net emissions increase of any pollutant, for which the area is designated a nonattainment area, that a physical change or change in the method of operation shall not include any activity listed below, shall constitute a major modification of a source.
- b) Any net emissions increase that is significant for volatile organic compounds organic material shall be considered significant for ozone.
- c) A physical change or change in the method of operation shall not include:
 - 1) Routine maintenance, repair, and replacement of components which does not constitute reconstruction pursuant to Section 203.206(c).

- 2) Use of an alternative fuel or raw material by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791, et seq.)
- 3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act (42 U.S.C. 7425).
- 4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- 5) Use of an alternative fuel or raw material by a stationary source which:
 - A) ~~It~~ was capable of accommodating such alternative fuel or raw material before December 21, 1976, and which has continuously remained capable of accommodating such fuels or materials unless such change would be prohibited under any enforceable permit condition which was established after that date December 21, 1976, pursuant to 40 CFR 52.21, as amended at 45 FR 52735, August 7, 1980, or this Chapter Part, or 35 Ill. Adm. Code 201.142 or 201.143, or
 - B) Is approved for use under any permit issued pursuant to 40 CFR 52.21, as amended at 45 FR 52735, August 7, 1980 or this Chapter Part or 35 Ill. Adm. Code 201.142 or 201.143.
- 6) An increase in the hours of operation or in the production rate, unless such change would be is prohibited under any enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21, as amended at 45 FR 52735, August 7, 1980, this Part, or 35 Ill. Adm. Code 201.142 or 201.143. or this Chapter
Any increase in emissions of organic material due to the temporary shutdown of a control device during seasonal periods as allowed by 35 Ill. Adm. Code 215.
- 7) Any change in ownership at a stationary source.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.208 Net Emission Determination

A net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a an emission source, and any other increases and decreases in actual emissions at the emission source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. The following steps determine whether the increase or decrease in emissions is available.

- a) An increase or decrease in actual emissions is contemporaneous only if it occurs between the date that an increase from a particular change occurs and the date five years before a timely and complete application is submitted for the particular change. ~~In the case of an increase, it~~ must also occur after either April 24, 1979, or the date the area is designated by the United States Environmental Protection Agency (USEPA) as a nonattainment area for the pollutant, whichever is more recent;
- b) An increase or decrease in actual emissions is creditable:
 - 1) Only if there is not in effect no other permit has been issued, and for the source is still in effect at the time when the particular change occurs a permit which relied on the same increase or decrease in actual emissions; and
In the case of a shutdown of an emission source, only to the extent that it is being replaced by a similar source; and
 - 2) Only to the extent the new and old levels differ.
- c) A decrease in actual emissions is creditable to the extent that:
 - 1) It is enforceable at and after the time that actual construction on the particular change begins;
 - 2) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;
 - 3) ~~That~~ The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; and

4) It is demonstrated by the Agency not to have been previously relied on in issuing any permit pursuant to this Part or 35 Ill. Adm. Code 201.142 or 201.143 or for demonstrating attainment or reasonable further progress in the nonattainment area which the physical particular change will impact.

d) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a shakedown period not to exceed 180 days.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.209 Significant Emissions Determination

A net emission increase in the pollutant emitted is significant if the rate of emission is equal to or in excess of the following:

- a) Carbon monoxide: 100 tons per year (tpy)
- b) Nitrogen oxides: 40 tpy
- c) Sulfur dioxide: 40 tpy
- d) Particulate matter: 25 tpy
- e) Ozone: 40 tpy of organic material volatile organic compounds
- f) Lead: 0.6 tpy
- g) Asbestos: 0.007 tpy
- h) Beryllium: 0.0004 tpy
- i) Mercury: 0.1 tpy
- j) Vinyl chloride: 1 tpy
- k) Fluorides: 3 tpy
- l) Sulfuric acid mist: 7 tpy
- m) Hydrogen sulfide (H₂S): 10 tpy
- n) Total reduced sulfur (including H₂S): 10 tpy

e) Reduced sulfur compounds (including H₂S): 10 tpy

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.210 Relaxation of a Source-Specific Limitation

Except those modifications exempted pursuant to Section 203.207, at such time that a particular source or modification becomes a major stationary source or major modification by virtue of a relaxation in any enforceable limitation which establishes a specific standard for that source to emit a pollutant, this Subpart shall apply to the source or modification as though construction had not yet commenced.

a) No person shall cause or allow the operation of a source so as to exceed any enforceable limitation which affects or defines the applicability of the requirements of this Part to a stationary source or modification by specifying the permissible emission rate, operating hours, the type or amount of material processed, stored or combusted, or other aspects of source operation.

b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in, or expiration of, any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Part shall apply as though construction had not yet commenced on the source or modification.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.211 Permit Exemption Based on Fugitive Emissions

The provisions of this Part shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable as evidenced by 35 Ill. Adm. Code 201.122, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the categories enumerated in Section 203.206(d).

(Source: Added at 12 Ill. Reg. _____, effective _____)

SUBPART C: REQUIREMENTS FOR MAJOR STATIONARY
SOURCES IN NONATTAINMENT AREAS

Section 203.301 Lowest Achievable Emission Rate

- a) For any source, lowest achievable emission rate (LAER) will be the more ~~most~~ stringent rate of emissions based on the following:
- 1) The ~~lowest~~ most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless it is demonstrated that such limitation is not achievable; or
 - 2) The ~~lowest~~ most stringent emission limitation which is achieved in practice ~~or is achievable~~ by such a class or category of stationary source. ~~† or~~ This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard adopted by USEPA pursuant to Section 111 of the Clean Air Act and made applicable in Illinois pursuant to Section 9.1 of the Act.
 - 3) ~~The applicable new source performance standard contained in 35 Ill. Adm. Code 230.~~
- b) The owner or operator of a new major stationary source shall demonstrate that the control equipment and process measures applied to the source will produce LAER.
- c) The owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to at each emissions source unit at which a net significant increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation.
- d) The owner or operator shall provide a detailed showing that the proposed emission limitations constitute LAER. Such demonstration shall include:
- 1) A description of the manner in which the proposed emission limitation was selected, including a detailed listing of information resources,
 - 2) Alternative emission limitations, and

- 3) Such other reasonable information as the Agency may request as necessary to determine whether the proposed emission limitation is LAER.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.302 Maintenance of Reasonable Further Progress and Emission Offsets

- a) For particulate matter, sulfur dioxide, nitrogen oxides, or carbon monoxide emissions the owner or operator of a new major source or major modification shall provide emission offsets equal to or greater than the allowable emissions from the source or the net increase in emissions from the modification sufficient to allow the Agency to determine demonstrate that the source or modification will not interfere with reasonable further progress as set forth in Section 173 of the Clean Air Act. by meeting one of the following requirements:
 - 1) Providing equal or greater emission offsets for the allowable emissions from the source or the net increase in emissions from the modification, and demonstrating that actual average air quality will be improved in the nonattainment area and that at no location will the impact exceed the significant air quality impact levels contained in Section 203-304(d);
 - 2) Demonstrating that air quality in the nonattainment area will be improved at every location affected by the new major source or modification, barring the use of dispersion enhancement techniques; or
 - 3) Providing in the immediate vicinity of the source or modification actual emission offsets at a ratio of 1-25:1 or greater (i.e., for each ton of new allowable emissions, there shall be at least 1-25 tons of actual emission offsets) provided that stack or emission parameters do not indicate a significant adverse effect on air quality in accordance with Section 203-304(d), due to the operation of the source or modification.
- b) For organic material emissions, the owner or operator of a new major source or major modification shall demonstrate that it does not interfere with reasonable further progress by providing actual emission offsets in excess of the allowable emissions from the new source or the net increase in emissions from the modification.

- b) The Agency shall allow the use of all or some portion of the available growth margin to satisfy subsection (a) if the owner or operator can evidence that the possible sources of emission offsets were investigated and none were available at that time.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.303 Baseline and Emission Offsets Determination

- a) An emission offset must be obtained from a source in operation prior to the permit application for the new or modified source. Emission offsets can be obtained from stationary or fugitive sources. Emission offsets must be effective prior to start-up of the new or modified source.
- b) The emission offsets provided must:
- 1) Must be of the same pollutant and further be of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase from in a particular change;
 - 2) Must, in the case of a shutdown, have occurred since April 24, 1979 or the date the area is designated by the USEPA as a nonattainment area for the pollutant, whichever is more recent, and the shutdown source is being replaced by a similar new source; and must, in the case of a fuel combustion source, be based on the type of fuel being burned at the time the permit application is filed, and, if offset is to be produced by a future switch to a cleaner fuel, be accompanied by evidence that long-term supplies of the clean fuel are available and a commitment to a specified alternative control measure which would achieve the same degree of emission reduction if return of the dirtier fuel is proposed;
 - 3) Must, in the case of a shutdown of a source or permanent curtailment of production or operating hours occurring on or after the date a permit application is filed for a new or modified source, have been made known to the affected work force;
 - 4) Must, in the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated a nonattainment area for the pollutant, whichever is more recent, and

the proposed new or modified source must be a replacement for the shutdown or curtailment;

- 5) Must Bbe enforceable by permit; ; and
 - 6) Must not have been previously relied on, as demonstrated by the Agency, in issuing any permit pursuant to 35 Ill. Adm. Code 201.142 or 201.143 or this Part, or for demonstrating attainment or reasonable further progress.
- c) The baselines for determining emission offsets are as follows:
- 1) For particulate matter (TSP), sulfur dioxide (SO₂), nitrogen oxide (NO_x) and carbon monoxide (CO), the applicable emission limit contained in this Chapter. If this rate is greater than the uncontrolled emission rate, the baseline shall be the uncontrolled rate.
 - 2) Except for organic material, if no emission rate is contained in this Chapter, the baseline shall be the actual emission rate.
 - 1) Except as provided in subsection (2), the baseline for determining the extent to which emission reductions are creditable as offsets shall be the actual emissions of the source from which the offset is to be obtained, to the extent they are within any applicable emissions limitations of this Chapter or the Act or any applicable standards adopted by USEPA pursuant to Section 111 and 112 of the Clean Air Act, and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act.
 - 2) If the demonstration of reasonable further progress and attainment of ambient air quality standards approved by USEPA pursuant to Section 110(a)(2) or 110(a)(3) of the Clean Air Act is based on the applicable emission limitations of this Chapter or the Act or any applicable standards adopted by USEPA pursuant to Section 111 and 112 of the Clean Air Act and made applicable in Illinois pursuant to Section 9.1 of the Environmental Protection Act for sources within an area, and the source from which the offset is to be obtained is subject to such limitations, the baseline for offsets shall be the lesser of such limitation or the potential to emit of the source.

- 3) The baseline for organic material shall be the lesser of the actual or allowable emission rate.
- d) The location of emission sources providing the emission offsets:
- 1) For TSP, SO₂, NO_x or CO, must be significant contributors to or located in the nonattainment area affected by the new or modified source, or
 - 1) Must, for particulate matter, sulfur dioxide and carbon monoxide, be such that, relative to the site of the proposed new or modified source, the location of the offset, together with its effective stack height, ensures a positive net air quality benefit. This shall be demonstrated by atmospheric simulation modeling, unless the sources providing the offset are on the same premises or in the immediate vicinity of the new or modified source and the pollutants disperse from substantially the same effective stack height. In determining effective stack height, credit shall not be given for dispersion enhancement techniques. The owner or operator of a proposed new or modified source shall perform the analysis to demonstrate the acceptability of the location of an offset, if the Agency declines to make such analysis. Effective stack height means actual stack height plus plume rise. Where actual stack height exceeds good engineering practices, as determined pursuant to 40 CFR 51.100 (1987) (no future amendments or editions are included), the creditable stack height shall be used.
 - 2) For organic material, must be located within 100 miles of the new or modified source. If the applicant can demonstrate using generally accepted air quality models, that the effect of the proposed offsets on air quality is at least as great as if the source of the offsets was within the 100 mile radius, these offsets shall be acceptable. Must, for nitrogen oxides, be in the general vicinity of the proposed new or modified source.
 - 3) Must, for volatile organic compounds, be in the broad vicinity of the proposed new or modified source; that is, offsets must be obtained from within the Air Quality Control Region of the new or modified source, or from other areas which may be contributing to the ozone problem at the site of the new or modified source.

- e) Replacement of one volatile organic compound with another of lesser reactivity does not constitute an emission reduction.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.304 Exemptions from Emissions Offset Requirement
(Repealed)

- a) The Agency shall allow the use of all or some portion of the available growth margin to satisfy Section 203.302 if:
- 1) The owner or operator can show that possible sources of emission offsets were investigated and none were reasonably available at that time; and
 - 2) The owner or operator agrees to accept permit conditions on all future permits for the source or modification designed to provide the required emission offset at the earliest future time such offsets become reasonably available.
- b) Section 203.302 shall not apply to a major stationary source or major modification if the emissions from the source, or the net emissions increase from the modification would be temporary, that is, existing for a period of time less than two years.
- c) Section 203.302(a) shall not apply to a major stationary source or major modification if an air quality analysis shows it is located in a portion of a given nonattainment area where the air quality standards are not being violated and it will not cause an impact in the area in which air quality standards are being violated greater than the significant air quality impact levels in subsection (d). Such an analysis shall be based upon dispersion modeling and air quality monitoring performed by the Agency or in accordance with Agency procedures pursuant to "Rules for the Performance of Air Quality Impact Analyses to be Used in Support of Permit Application" and "Rules Regarding Submission of Ambient Air Quality Information Obtained from Ambient Air Quality Monitors under the Control of Permit Applicants" as filed with the Secretary of State in December, 1977. The date when the emission offset requirements may be restricted to a limited part of the nonattainment area is the date that such analysis is completed by the Agency or the date such analysis is approved by the Agency, and redesignation of the area where the major source or major modification is to be located is under federal review.

- d) If the emissions from a major stationary source or major modification are demonstrated to be greater than the following levels, exemption pursuant to subsection (c) is not available for the major stationary source or major modification.

SIGNIFICANCE LEVELS

<u>Pollutant</u>	<u>Annual</u>	<u>24-Hour</u>	<u>8-Hour</u>	<u>3-Hour</u>	<u>1-Hour</u>
S02	1.0 ug/m3	5 ug/m3		25 ug/m3	
TSP	1.0 ug/m3	5 ug/m3			
NOx	1.0 ug/m3				
CO				0.5 mg/m3	2 mg/m3

- e) Section 203.302(a) shall not apply to a major stationary source or major modification for particulate matter if it will be located in an area which meets the following criteria:
 - 1) The area is an attainment area for the primary total suspended particulate air quality standard;
 - 2) The area is lacking reasonably available emission offsets;
 - 3) The air quality of the area is dominated by agricultural and related fugitive pollutant sources;
 - 4) The area lacks major industrial development; and
 - 5) The area is of a low urban population density.

(Source: Repealed at 12 Ill. Reg. _____, effective _____)

Section 203.305 Compliance by Existing Sources

The owner or operator shall demonstrate that all major stationary sources which he or she owns or operates (or which are owned or operated by any entity controlling or controlled by, or under common control, with the owner or operator) in Illinois are in compliance, or on a schedule for compliance, with all applicable state and federal air pollution control requirements. For purposes of this Section, a schedule for compliance must be federally enforceable or contained in an order of the Illinois Pollution Control Board or a court decree.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.306 Analysis of Alternatives

For emission of volatile organic compounds ~~organic material~~ or carbon monoxide, the owner or operator shall demonstrate that benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification, based upon an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

SUBPART F: OPERATION OF A MAJOR STATIONARY SOURCE
OR MAJOR MODIFICATION

Section 203.601 Lowest Achievable Emission Rate Compliance Requirement

No person shall cause or allow the operation of a new major stationary source or major modification subject to the ~~construction~~ requirements of Subpart C, except as in compliance with applicable LAER provisions established pursuant to Section 203.301 for such source or modification.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.602 Emission Offset Maintenance Requirement

No person shall cause or allow the operation of a new major stationary source or major modification where the owner or operator has which is required to demonstrated that it would not interfere with reasonable further progress, by providing, or which must include emission offsets in a demonstration pursuant to Sections 203.302 and ~~203-303~~ without maintaining those emission offsets or other equivalent offsets.

(Source: Amended at 12 Ill. Reg. _____, effective _____)

Section 203.603 Ambient Monitoring Requirement (Repealed)

The owner or operator of a new stationary source or major modification shall conduct such ambient monitoring as the Agency determines is reasonably necessary to establish the effect of the emissions from the source or modification on ambient air quality in the area.

(Source: Repealed at 12 Ill. Reg. _____, effective _____)

SUBPART G: GENERAL MAINTENANCE OF
EMISSION OFFSETS

Section 203.701 General Maintenance of Emission Offsets

No person shall cease to maintain emission offsets which were provided for a source or modification which is subject to this Part.

(Source: Added at 12 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10th day of March, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board