ILLINOIS POLLUTION CONTROL BOARD
APRIL 30, 1987

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

FIRST NOTICE PROPOSED RULE

PROPOSED 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.

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).

HISTORY OF NEW SOURCE REVIEW RULES

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 AND VESSEL EMISSIONS

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 Steel Group has argued that the Board cannot retain the dual definition of "Source" absent an economic impact study addressing that issue. The argument is that at the time the dual definition was adopted in R81-16, it was in essence done on a "pass-through" basis: that is, since USEPA would not approve NSR rules absent inclusion of a dual definition, such a definition would have to be adopted regardless of the economic impact, thereby negating the worth of an economic analysis of the impact of adoption of the dual definition. The argument continues that USEPA no longer requires a dual definition, thereby negating the "pass-through" rationale and reinstituting the necessity of an economic evaluation of that issue. Therefore, the argument concludes, the Board cannot retain the dual definition absent an EcIS analysis.

The Board disagrees. The present proposal before the Board does not contain any modification of the existing definition. While the original proposal did, that has now been withdrawn. Furthermore, no one has contended that the rule was not properly adopted in R81-16. To carry the Steel Group's argument to its logical extreme, whenever the economic considerations underlying a properly adopted existing rule change, the Board would be required to reconsider that rule. The Board does not believe that either the Act or the Administrative Procedure Act requires such a result.

Furthermore, the Steel Group's argument is factually suspect in that it is probably fairer to say that USEPA has taken no position on whether the dual definition would be required in the context of the Illinois rules. While USEPA has indicated that

the rules would not be automatically disapproved if a plant-wide definition were adopted, it is either unwilling or unable to state that such definition would be approved. What USEPA has indicated is that if the plantwide definition were adopted, it would be approvable only to the extent that the State could support a certification that the adoption of such definition would not undermine the State's attainment demonstration. The likelihood that such a showing could be made is uncertain, and the requirement of making such a demonstration would add considerable delay in obtaining approval.

Even if an economic analysis were done (and the DENR has determined that it will not perform an EcIS in this matter), the best that could be hoped for would be a range of possible increased costs from $0 to some upper limit which would be based largely upon conjecture due to the difficulties inherent in estimating how many major new sources would be proposed to be built in non-attainment areas of Illinois in the future. Not even the Steel Group, which may well be the industry most affected by the choice of definition, has made any attempt to quantify the costs associated with that choice, and there is certainly nothing in the record before the Board to indicate that such costs, if any, are unreasonable.

The other major area of contention regards the proposed rules concerns vessel emissions. Representatives of the terminal operators industry have strongly urged that vessel emissions not be included in the NRS program. Under the Agency's proposal, vessels are to be considered to the extent that they are involved with "the transfer of materials ... to or from a building, structure, or facility" and to the extent that they take place "at or adjacent to such building, structure, or facility [and] are associated with such transfer." (See Sections 203.136 and 203.112). This treatment of vessel emissions was worked out between the Agency and USEPA in an attempt to develop an approvable rule.

As with the question of the definition of source, it is difficult to determine how far the State must go in including such emissions since USEPA, at present, has adopted no vessel emission policy to replace the policy which was overturned and remanded to USEPA by the Seventh Circuit Appellate Court on January 17, 1984. NRDC v. EPA, 725 F.2d 761. USPEA has taken the position that the Agency's proposal is sufficiently conservative to be approvable no matter what policy USEPA finally adopts, and that any other treatment may not meet the minimum requirements and, in turn, may not be approvable.

If there were a clear vessel emissions policy to which the Agency proposal could be compared, this would be an easy issue to resolve in that the Agency has taken the position that all that is sought is the minimum stringency required for federal

approval. This is based on the Agency's determination that du to the small amount of vessel emissions in the State, there should be little impact upon air quality regardless of the ves emissions rule which is adopted. That position has not been subject to contrary testimony.

In the absence of a clearly articulated policy, the Board could hope to find guidance in USEPA's proposed NSR rules for Illinois since those rules are required to be no more or less stringent than required for approval. That route to enlightenment, is, however, considerably darkened by USEPA's sidestepping of the issue. The USEPA proposal simply includes "dockside vessel emissions as determined on a case-by-case basis" by the USEPA. [See proposed rule, 40 CFR 52.736(b)(1)(i)(O)]. All that can really be determined from such a rule is that USEPA requires that there be some rule which leaves open the possibility that some dockside vessel emissions be included in the NSR program.

The only other guidance, such as it is, comes from the NRDC case, above. In order to understand the import of that case, it is useful to examine the history of the vessel emissions rules. In the preamble of the USEPA's 1980 adoption of NSR rules, USEPA indicated its interpretation that the definition of "Stationary Source" included in these rules encompassed emissions from docked vessels. (See 45 Fed. Reg. 52736). Furthermore, the emissions of those vessels coming to and from the terminal ("to and fro emissions") were determined to be "secondary emissions" which were defined as those emissions that "occur as a result of the construction or operation of a major stationary source or a major modification, but do not come from the major stationary source or major modification itself." (See 45 Fed. Reg. 52737). Such emissions are not used to determine whether the source is major, but are used for other purposes such as the required air quality impact analysis.

On June 25, 1982, USEPA revoked the vessel emissions equirements on the basis that dockside vessels are "Mobile ources" rather than "Stationary Sources" and, therefore, nissions from them should not be included under the NSR program ırsuant to Section 110(a)(5) of the Clean Air Act which ohibits USEPA (although not the states) from considering direct sources under the NSR program.

The Court concluded that while vessels are mobile sources, t does not prevent USEPA from attributing some of their ssions to the terminal. It, therefore, vacated and remanded PA's revocation of the vessel emission rules for consideration which emissions are properly attributable to the terminal. Court did, however, affirm the repeal of the "to and fro sions" rules. Thus, the only conclusions that flow from this are that "to and fro emissions" are not to be included in

the NSR rules and that dockside emissions may or may not be included to some extent.

This case is, if anything, less instructive than USEPA's present policy (if that is an appropriate term to use) that the NSR rules must include some kind of vessel emissions rule, in that the case appears to leave open the possibility that no vessel emissions can be attributable to the terminal. However, the clear implication is that some such emissions are attributable, and USEPA's position is consistent with that implication.

The Board concludes that the NSR rules must allow for the attribution of some vessel emissions to the terminal since the failure to do so would result in a very high likelihood of running counter to the mandate of the Clean Air Act and an even higher likelihood of USEPA disapproval. Additionally, the record supports the finding that the proposed rule is approvable. The remaining question, then, is whether a rule more restrictive than the proposed rule is appropriate and approvable. It is in this area that the Board ventures into a regulatory haze.

Under the proposed rules, only those "pollutant-emitting activities which belong to the same industrial grouping, are located on one or more adjacent properties, and are under control of the same person (or persons under common control)" are attributable to the terminal. The fact that emissions are attributable only to the extent that the terminal owner controls the vessels should substantially alleviate the concerns of the terminal operators that they are at the mercy of the vessels which dock at their terminals: to the extent that the operations of such vessels are beyond the terminal's control, they are not attributable. The Board construes this to mean that if the terminal is determined to be subject to NSR, LAER could not be imposed upon those vessels except to the extent that they are controlled by the terminal, and the terminal operator could not be required to turn away vessels simply because they do not have emission controls which represent LAER.

The question still remains as to what emissions for dockside vessels will be included. Clearly, pursuant to proposed Section 203.122(b)(1) and (2), material transfers and associated activities are covered as long as the control and proximity criteria of subsection (a) are met. It might be argued that subsection (a) allows other emissions to be covered and that (b) simply serves to give examples of some emissions which are covered. However, the Board construes the structure of the definition as it relates to vessels to be limited to those activities delineated in subsection (b). Comment on this interpretation is invited, including suggestions as to how the language might be clarified.

As stated above, it may be that even these limited emissions go beyond what is necessary for approval. However, the Board believes that if any vessel emissions are to be attributable to the terminal, those resulting from material transfer should be. This activity of necessity involves some control by the terminal even if only to specify where the material transfer takes place and what the materials are transferred into or onto. In this activity, the terminal's facilities and operations will have an impact upon the emissions and should be required to comport with LAER requirements. Therefore, the Board believes that this provision should be retained.

The question of whether activities associated with such transfer, such as the operation of engines, is less straightforward, and the record before the Board sheds little light on either the propriety or the necessity of such further regulation. However, the Board believes that the control and proximity requirements of subsection (a) provide a reasonable limitation on these associated activities, and will retain the proposed language.

In making these determinations regarding both the question of the definition of "Source" and vessel emissions, the Board is mindful of the present construction moratorium and the unfortunate history of these rules. The Board has weighed the very real necessity to adopt approvable rules against the rather vague and, for the most part, theoretical arguments in opposition to these aspects of the proposal and has concluded that the most prudent course is to proceed as proposed by the Agency. The Board cannot find that the proposal is so unreasonable as to counter-balance the need for expeditious adoption of approvable rules. On the contrary, the Board commends the Agency for the work it has done to fashion approvable rules within an ill-defined context.

SECTION BY SECTION ANALYSIS

The Board's proposal is based upon the Agency's recommended changes to its second amended proposal and a draft of the federal NSR program for Illinois. The Board has reviewed these proposals and for the most part has based its proposal on the Agency's proposal. Certain differences between the federal and the Agency proposal are unavoidable due to the difference in the format of the rules and the federal and state environmental structure. Such differences are not noted in the following analysis. The Board has, however, identified some minor differences between the proposals which may be significant and has noted them in its analysis. The Board has also made some changes to the Agency proposal for purposes of clarity. Those changes are not intended to have any substantive affect, but if inadvertent substantive changes have been made, comment is requested. The Board has further asked some questions about language which it believes may be questioned by the Joint Committee on Administrative Rules

(JCAR) and comments on these questions are requested. Finally, in some instances the Board is uncertain of the intended substantive meaning of some rules or the Board has questioned whether the rules accurately state the intent. Comment is also requested regarding such questions. Where "no change" is indicated, the Board means that no change has been made to the Agency's latest proposal.

Section 203.103: No change.

Section 203.104: In line 3, the federal language is "average annual rate;" Agency proposal is "average rate." Some minor language changes have been proposed solely for purposes of clarity. No substantive change is intended. Beyond that, the Board reads this section as meaning that actual emissions are to be determined by the average actual emissions for the previous two years if the Agency has determined that period to be representative of normal operations. Further, under subsection (a) the Agency must allow the use of an alternative period if the applicant demonstrates that the alternative is more representative of normal operations. This appears to leave a gap if the Agency has not determined the previous two years to be representative and the applicant has not demonstrated that an alternative period is more representative. The proposed rule does not appear to allow the Agency to determine actual emissions on any basis other than the previous two year average unless the applicant accepts its burden of demonstrating that an alternative period is more representative. Yet, it would seem that the Agency should have the ability to demonstrate that some other period is more representative and to make its calculation of actual emissions on that basis. The Board would appreciate comments on these issues. It may be that additional language is needed to clarify this section.

Section 203.107: In subsection (a) the federal language is "allowable emissions rate;" Agency proposal is simply "emission rate;" the federal language is "other such enforceable limits;" Agency language is simply "other such limits." In the first instance the Board has proposed the federal language, while in the second instance, it has followed the Agency proposal. In subsection (c) the Agency language is "Chapter" while the Board has proposed "Subtitle."

Sections 203.110 and 203.112: No change.

Section 203.113: In subsections (a) and (b), what would constitute a "substantial loss" and what is a "reasonable time." The Board suspects that JCAR will desire some specification of criteria used to make these determinations.

Sections 203.116 and 203.117: No change other than capitalization in Section 203.117.

Section 203.123: Agency's proposal of "Chapter" has been changed to "Subtitle;" capitalization has been changed.

Section 203.126: Can the words "reasonably pass" be made more specific?

Section 203.125 and 203.126: No change.

Section 203.131: The Board has added the word "adopted" in the last line and modified the capitalization.

Section 203.134: Only change is deletion of the word "otherwise" (consistent with the federal language) which seems redundant. Can the words "reasonably foreseeable" be made more specific? Are they necessary? They are not included in the federal language.

Section 203.136: No change.

Section 203.145: The Board has deleted the clause "The following compounds do not constitute volatile organic compounds:" as redundant.

Section 203.150: What is "notice of the same?" Is it notice of an intent to issue or notice of application, or something else? This appears to refer to "permit application" language which has been deleted. Could it be made more specific?

Section 203.201: No change.

Section 203.202: No change except deletion of "B" after "Subpart."

Section 203.203: Wording changes have been made to subsections (a) and (d) which are intended to be non-substantive.

Section 203.205: No change.

Section 203.206: In subsection (c) what does "approximately half" mean? Why not simply "half." Minor wording changes have been made to subsections (a)(2) and (d) which should not have any substantive effect.

Section 203.207: Minor, non-substantive language changes have been made to paragraphs (c)(5) and (c)(6). The Board notes that in (c)(5)(A) and (c)(6), "40 CFR 52.21" has been deleted, but not in (c)(5)(B). Is this intended?

Section 203.208: In line 1 of the introductory paragraph, "sum" has been replaced with "total." In the last line of that paragraph, what does it mean that "an increase or decrease in

emissions is available." That term should be further explained or rephrased. Is there any distinction between that term and the term "creditable" in subsections (b) and (c) and in the introductory paragraph? If not, can the final sentence of the introductory paragraph be deleted or rephrased? Paragraph (b)(1) is confusing and should be reworded. The proposed replacement of "in effect" with "permitted" adds to the confusion. The essence of the paragraph ("only if no other permit has been issued for the source ... which relied on the same increase or decrease in actual emissions") is clear, but the middle clause, as proposed, is not. Must the "other permit" have been in effect when the change occurred, or at the time "credit" is attempted to be taken, or both? The tenses are confusing and the sentence does not appear to be grammatically correct. In paragraph (c)(1), what does "approximately the same qualitative significance for public health and welfare" mean? Would it be appropriate to reword this as follows: "It offsets any threat to the public health and welfare which may be attributed to ..."?

Section 203.209: Federal language includes a significance level for lead. The Agency's proposal does not. Since lead is a criteria pollutant, the Board has followed the federal language.

Sections 203.110 and 203.111: The only changes are that "this Part 203" has been replaced with "this Part" for consistency of format with other rules. This change has been made at several points in the proposal.

Sections 203.301 and 203.302: No change.

Section 203.303: In subsection (b) the same "qualitative significance" language appears as in Section 203.208(c)(2) and the same comment applies. In paragraph (d)(1), what constitutes an "appropriate analysis"? Also, how will the Agency determine whether to "decline" to make an analysis? In paragraph (d)(3), could the language "be in the broad vicinity of the proposed new or modified source" be deleted? How is it to be determined which "other areas ... may be contributing to the ozone problem"? Finally, minor, non-substantive language changes have been made throughout this section.

Section 203.305: No change.

Section 203.601: No change.

Section 203.602, 203.603 and 203.701: Minor, non-substantive language changes. The Board is concerned, however, that the changes to Section 203.602 may inadvertently affect the meaning. Comment is requested on this point.

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

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Section
203.701 General Maintenance of Emission Offsets

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, 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.

Section 203.104 Actual Emissions

"Actual Eemissions" 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 at which the emissions ~~source~~ unit actually emitted the pollutant during the two-year period which immediately precedes the particular date ~~and~~ if that 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 by the Agency that it is more representative of normal ~~emission~~ source operation. 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.

Section 203.107 Allowable Emissions

a) "Allowable Eemissions" 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) The applicable standards set forth in 40 CFR 60 or 40 CFR 61.

~~1)~~2) The applicable emission standard or limitation contained in the Illinois State Implementation Plan, as described at 40 CFR 52, Subpart O, ~~this Chapter,~~ including those with a future compliance date (generally the applicable standards or limitations contained in this Subtitle); or

~~2)~~3) The emissions rate specified as an enforceable permit condition including those with a future compliance date.

b) The allowable emissions may be expressed as a 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.~~

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

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 USC 7502(b)(5) for a particular pollutant and area.

Section 203.112 Building, Structure or Facility

a) The terms "building", "structure", or "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).

b) The terms "building", "structure", or "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 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.

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.

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.

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 51.1 or 51.12 pursuant to Section 123 of the Clean Air Act (42 U.S.C. 7423).

Section 203.123 Emissions Unit

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

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.

Section 203.125 Installation

"Installation" means an identifiable piece of equipment.

Section ~~203.125~~ 203.126 LAER

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

Section 203.131 Reasonable Further Progress

"Reasonable F~~f~~urther P~~p~~rogress" 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 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.

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.

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 Clean Air Act (42 U.S.C. 7401 et seq.).

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, metallic carbonic acid, metallic carbide, metallic carbonates, ammonium carbonate, 1,1,1 trichloroethane (methylchloroform), methylene chloride, trichlorotrifluorenthane (Freon 113), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115).

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 and a comment period pursuant to the Agency public participation procedures found at 35 Ill. Code 166.

~~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.~~

SUBPART B: MAJOR STATIONARY EMISSIONS SOURCES IN NONATTAINMENT AREAS

Section 203.201 Prohibition

In any area designated nonattainment, as defined at Section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)), 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 deisgnated nonattainment ~~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.

Section 203.202 Coordination With ~~Preconstruction~~ Permit Requirement and Application Pursuant to Part 201

For new major sources and major modifications, the fulfillment of the requirements of Part 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 constitutes 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.~~

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 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.

~~Section 203.204 Duration of Construction Permit~~

~~A permit to construct shall become invalid if the permittee has not commenced construction within 18 months after receipt of such permit, 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.~~

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 (Ill. Rev. Stat. 1985, ch. 111½, pars. 1001 et seq.), the regulations contained in this ~~Chapter~~ Part, the Clean Air Act (42 U.S.C. 7401 et seq.) and federal regulations adopted thereunder including the Illinois State Implementation Plan, and or other applicable requirements under local, state and federal law. ~~through the effective date of this Subpart.~~

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:

~~a)~~ 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~~.~~ subject to regulation under the Clean Air Act for which the area is designated nonattainment pursuant to Section 107 of the Clean Air Act (42 U.S.C. 7407).

~~b)~~ 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 scource that is major for volatile organic compounds shall be considered major for ozone.

c) The reconstruction of a 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 is being regulated, as of August 7, 1980, under Section 111 or 112 of the Clean Air Act (42 USC 7411, 7412).

Section 203.207 Major Modification of a Source

a) Any 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 nonattainment pursuant to Section 107 of the Clean Air Act (42 U.S.C. 7407), except as provided in subsection (c). ~~that a physical change or change in the method of operation shall not include any activity listed below:~~

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:

~~a)~~ 1) Routine maintenance, repair, and replacement ~~of components~~ which does not constitute reconstruction pursuant to Section 203.206(c).

~~b)~~ 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.)

~~e)~~ 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).

~~d)~~ 4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

~~e)~~ 5) Use of an alternative fuel or raw material by a stationary source which:

~~1)~~ A) ~~It~~ Was capable of accommodating such alternative fuel or raw material before December 21, 1976 and 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 pursuant to ~~40 CFR 52.21 as amended at 45 FR 52735, August 7, 1980~~ or this Part or 35 Ill Adm. Code 201.142 or 201.143.

~~2)~~ 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..

~~f)~~ 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, 35 Ill. Adm. Code 201.142 or 201.143. ~~or this Chapter~~

~~g) 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.~~

~~h)~~ 7) Any change in ownership at a stationary source.

Section 203.208 Net Emission Determination

A net emissions increase is the amount by which the ~~sum~~ total 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 no other permit has been issued~~,~~ ~~and~~ for the source, which is still ~~in effect~~ permitted when the particular change occurs, which relied on the same increase or decrease in actual emissions; and

~~2)~~ ~~In the case of a shutdown of an emission source, only to the extent that it is being replaced by a similar source, and~~

~~3)~~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 ~~on~~ 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 reasonable shakedown period, not to exceed 180 days.

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~~

~~o) Reduced sulfur compounds (including H2S): 10 tpy~~

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.

Section 203.211 Permit Exemption Based on Fugutive 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, 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 Subsection 203.206(c).

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.

~~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.

Section 203.302 Maintenance of Reasonable Further Progress and Emission Offsets

a) ~~For particulate matter, sulfur dioxide, nitrogen oxides, or carbon monoxide emissions t~~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.

~~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 show that the possible sources of emission offsets were investigated and none were reasonably available at that time.

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 B 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)~~ ~~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 a demonstration 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 by the U.S. Environmental Protection Agency (USEPA) as a nonattainment area for the pollutant, whichever is more recent, and the proposed new or modified source must be replaced for the shutdown or curtailment;

~~3)~~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 (SO_2), 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) 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 Subtitle or 40 CFR 60 and 40 CFR 61, except as provided in subsection (2).

2) If the demonstration of reasonable further progress and attainment of ambient air quality standards approved by the U.S. Environmental Protection Agency (USEPA) as part of the Illinois SIP is based on the applicable emission limitations this Subtitle or 40 CFR 60 and 40 CFR 61, 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, SO_2, 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 premisses 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 appropriate analysis to demonstrate the acceptability of the location of an offset, if the Agency declines to make such analysis.

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.

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 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 period of time less than two years.

c) Section 203.302(a) shall not apply to a major stationar 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 impac

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

Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO2	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.

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.

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.

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.

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.

~~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.~~

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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion and Order was adopted on the 30th day of April, 1987 by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board