ILLINOIS POLLUTION CONTROL BOARD
May 9, 1986

IN THE MATTER OF:	)	
	)	
PARTICULATE EMISSION LIMITATIONS, RULE 203(g)(1) AND 202(b) OF CHAPTER 2	)	R82-1 (Docket B)

PROPOSED RULE. FOURTH SECOND NOTICE.

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

On March 14, 1986, the Board adopted an Interim Order which established this docket to further consider the adoption of 35 Ill. Adm. Code 212.121 and 212.123 concerning visual emissions standards. In response to that order an additional hearing was held on April 28, 1986, at which the Illinois Environmental Protection Agency (Agency) offered two proposals for amendments of the language of those rules. (Exs. 21B and 22). On May 2, 1986, the Agency filed a Statement of Interpretation and Commonwealth Edison filed Public Comment No. 35. On May 5, 1986, the United States Environmental Protection Agency (USEPA) filed Public Comment No. 36, and the transcript of the April 28 hearing was also filed on that date.

The Agency continues to urge the Board to adopt the rules as proposed in the Second First Notice Order adopted May 16, 1985, with minor changes. However, the Agency urges that if the Board does not adopt rules in substantial conformity with the May 16, 1985 Order, it should adopt the proposed amendments. Those amendments:

1. Establish an exceedance of the 30% opacity limitation as prima facie evidence of a particulate violation and a subsequent performance test demonstrating compliance with the particulate limitation under similar operating conditions as a defense to a particulate violation based upon that prima facie evidence [Section 212.124(c)(1)];

2. Provide that a subsequent performance test can be used to establish a defense to an opacity violation [Section 212.124(c)(2)]; and

3. Establish a mechanism for obtaining an adjusted standard for opacity [Section 212.126].

In its comment USEPA states that Region V (which includes Illinois) "feels that Section 212.123, as proposed by IEPA, together with IEPA's proposed Sections 212.124 and 212.126, would

provide enforceable opacity limitations without penalizing sources that are in compliance with the applicable mass emission limitations."* USEPA had earlier indicated that the language as proposed in the Third Second Notice Order was not federally approvable. (See Exs. 25A & b).

In Public Comment No. 35 Commonwealth Edison raised issues concerning proposed Sections 212.124(c) and 212.126.

Section 212.121

This section has remained unchanged throughout this proceeding. The proposed amendment simply deletes the Board Note which cites the Supreme Court case which had previously invalidated this rule. Since the Board believes that upon repromulgation the rule will have been properly adopted and validated, this note will no longer be necessary. Since no one has commented or testified adversely regarding this proposed amendment, the Board has not made any changes to the proposal.

Section 212.123

Section 212.123(a) is the text as proposed in the Board's Second First Notice Order adopted on May 16, 1985, with minor changes recommended by the Agency in its October 8, 1985 comments. The changes are non-substantive and simply are intended to make the language clearer. This amendment does, however, delete the last clause of the language proposed in the Third Second Notice Order adopted on February 6, 1986, which precluded the imposition of a cease and desist order or a monetary penalty for a violation of the opacity rules. This language has been deleted due to the clear statements by USEPA that the proposed Third Second Notice language is federally unapprovable. While the Board continues to believe that the rule should be federally approvable as discussed in the February 6 Order, the Board finds that the Agency's proposed Sections 212.124 and 212.126 (as discussed below) provide alternative mechanisims to address the concerns which lead to the Third Second Notice proposal. Furthermore, USEPA has indicated that the Agency's proposal is federally approvable. Section 212.123(b) is proposed as in every other order issued by the Board in this proceeding.

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* Also, in that comment USEPA offers alternative language for the introductory clause of Section 212.126(e)(4). However, at hearing the Agency amended its proposal to delete that clause in its entirety. (R. __).

Section 212.124

The Agency proposed Section 212.124(c) to establish that an exceedance of the opacity standard is prima facie evidence of a particulate violation and that a facility in apparent violation of either standard can establish a defense to such violations through a subsequent performance test conducted under similar operating conditions which demonstrates compliance with the particulate mass emission limitations. Section 212.124(c)(1) applies to particulate violations while Section 212.124(c)(2) applies to opacity violations. The only difference in establishing a defense under those provisions is that under Section 212.124(c)(2) the subsequent test must result in visual emissions greater than or equal to the original exceedance.

Commonwealth Edison believes that the difference between the provisions may make it difficult to establish an opacity defense "because of the vagaries of visual emissions," due to "some deviation in an operating parameter, coal quality or fineness, ambient temperatures and humidity, etc." (P.C. No. 35). It, therefore, proposed the deletion of that requirement and the merger of Section 212.124(c)(1) and (c)(2).

The Board agrees with the Agency that its proposed language is preferable to the current language which requires the facility to demonstrate that it was in compliance with the mass emission limitations at the time of the opacity exceedance in order to establish a defense to that exceedance. Such proof may not be readily available. The Board also agrees with Edison, however, that there is no need to require a subsequent test to result in an exceedance of the opacity standard greater than that at the time of the alleged violation. To preclude such a defense where the facility has done everything in its power to recreate the original operating conditions makes little sense: what else can be done? Certainly, if the visual emissions are much lower, the Agency can use that fact to attempt to rebut the defense. The Board will, therefore, proposed the language suggested by Edison.

Section 212.126

Proposed Section 212.126 sets out a mechanism whereby a facility can qualify for an adjusted standard from the general visible emission limitations pursuant to Section 28.1 of the Act. For the most part the Board is proposing this Section as offered by the Agency. The format of the rule has been changed considerably to correspond more closely with the format of the exception procedure established for combined sewer overflows at 35 Ill. Adm. Code 306.350, et seq. Additional procedures have been specified, a disclaimer has been added to clarify that the adjusted standard procedure is in addition to, rather than in lieu of, other existing relief, and a provision has been added to clarify that an owner or operator who desires to file a petition

for an adjusted standard may do so regardless of Agency concurrence. However, the Agency must still accept the performance test conditions before such a test can form the basis of a petition for an adjusted standard. Further, the failure to accept the test conditions is non-reviewable. However, the owner or operator may file a petition for a site-specific rule in any case.

ORDER

The Board hereby proposes the following amendments for second notice:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES
PART 212: VISUAL AND PARTICULATE MATTER EMISSIONS
SUBPART B: VISUAL EMISSIONS

Section 212.121 Opacity Standards

For the purposes of this Subpart, all visual emission opacity standards and limitations shall be considered equivalent to corresponding Ringelmann Chart readings, as described under the definition of opacity (35 Ill. Adm. Code 211.122).

~~(Board Note: This subpart as it applies to sources regulated by subpart b has been ruled invalid by the Illinois Supreme Court, Celotex v. IPCB et al. 68 Ill. Dec. 108, 445 ne2d 752)~~

Section 212.123 Limitations for All Other Sources

a) No person shall cause or allow the emission of smoke or other particulate matter, ~~from any other emission source into the atmosphere of~~ with an opacity greater than 30 percent, into the atmosphere from any emission source other than those sources subject to Section 212.122.

b) Exception: The emission of smoke or other particulate matter from any such emission source may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such such more opaque emissions permitted during any 60 minute period shall occur from only one such emission source located within a 305 m (1000 ft) radius from the center point of any other such emission source owned or operated by

such person, and provided further that such more opaque emissions permitted from each such emission source shall be limited to 3 times in any 24 hour period.

Section 212.124 Exceptions

a) Startup. Sections 212.122 and 212.123 shall apply during times of startup except as provided in the operating permit in 35 Ill. Adm. Code 201.

b) Emissions of water and water vapor. Sections 212.122 and 212.123 shall not apply to emissions of water or water vapor from an emission source.

c) Compliance with the particulate regulations of this Part a defense. ~~Sections 212.122 and 212.123 shall not apply if it is shown that the emission source was, at the time of such emission, in compliance with the applicable mass emission limitations of this Part.~~

An exceedance of the 30% limitation of Section 212.123 is prima facie evidence of a violation of the applicable particulate limitations of this Part. It shall be a defense to a violation of the applicable particulate limitations, as well as to a violation of Section 121.213 if, during a subsequent performance test conducted within a reasonable time, under similar operating conditions, and in accordance with Section 212.110, the owner or operator shows that the source is in compliance with the mass emission limitations.

Section 212.126 Adjusted Opacity Standards Procedures

a) Pursuant to Section 28.1 of the Act adjusted visible emissions standards for emission sources subject to either Section 212.201, 212.202, 212.203 or 212.204 and either Section 212.122 or 212.123 shall be granted by the Board based upon a demonstration by such a source that the results of a performance test conducted pursuant to this Section and Section 212.110 show that the source meets the applicable particulate mass emission limitations at the same time that the visual emissions exceed the otherwise applicable standards. Such adjusted opacity limitations:

1) Shall be specified as a condition in operating permits issued pursuant to 35 Ill. Adm. Code 201;

2) Shall substitute for that limitation otherwise prescribed by Section 212.123(a);

3) Shall not allow an opacity grater than 60 percent at any time; and

4) Shall allow opacity for one six-minute averaging period in any 60 minute period to exceed the adjusted opacity standard.

b) For the purpose of establishing an adjusted opacity standard, any owner or operator of an emission source which meets the requirements of subsection (a), above, may request the Agency to determine the average opacity of the emissions from the emission source during any performance test(s) conducted pursuant to Section 212.110. The Agency may refuse to accept the results of emissions tests conducted pursuant to this Section which are conducted without prior review and approval of the test specifications and procedures by the Agency.

c) Any request for the determination of the average opacity of emissions shall be made in writing, including all test specifications and procedures, and submitted to the Agency at least thirty days before the proposed test date.

d) The Agency will advise the owner or operator of an emission source which has requested an opacity determination of any deficiencies in the proposed test specifications and procedures as expeditiously as practicable but no later than 20 days prior to the proposed test date so as to minimize any disruption of the proposed testing schedule.

e) The owner or operator shall give written notice to the Agency of the time and place of the performance test at least 10 days prior to the date of that test and shall allow Agency personnel to be present during that test.

f) The method for determining an adjusted opacity standard is a follows:

1) A minimum of 60 consecutive minutes of opacity readings obtained in accordance with USEPA Test Method 9, (35 Ill. Adm. Code 230, Appendix A), shall be taken during each sampling run. Therefore, for each performance test (which normally consists of three sampling runs), a total of three sets of opacity readings totaling three hours or more shall be obtained.

2) After the results of the performance tests are received from the emission source, the status of compliance with the applicable mass emission limitation shall be determined by the Agency. In accordance with USEPA Test Method 5 (35 Ill. Adm. Code 230, Appendix A), the average of the results of the three sampling runs must be less than the allowable mass emission rate in order for the source to be considered in compliance. If compliance is demonstrated, then only those test runs with results which are less than the allowable mass emission rate shall be considered as acceptable test runs for the purpose of establishing an adjusted opacity standard.

3) The opacity readings for each acceptable sampling run shall be divided into sets of 24 consecutive readings. The average opacity for each set shall be determined by dividing the sum of the 24 readings within each set by 24.

4) The second highest six-minute average shall be selected as the adjusted opacity standard.

g) The owner or operator shall submit a written report of the results of the performance test to the Agency at least 30 days prior to filing a petition for an adjusted standard with the Board

h) If, upon review of such owner's or operator's written report of the results of the performance test(s), the Agency determines that the emission source is in compliance with all applicable emission limitations for which the performance tests were conducted, but fails to comply with the requirements of Section 212.122 or 212.123, the Agency shall notify the owner or operator as expeditiously as practicable but no later than 20 days after receiving the written report that it will support the owner or operator in a petition to the Board to establish an adjusted opacity standard for the emission source.

i) The owner or operator may petition the Board for an adjusted visible emission standard either jointly with the Agency or singly. Ten copies of such petition shall be filed with the Clerk of the Board. The petition shall include the following information:

1) A description of the business or activity of the petitioner, including its location and relevant pollution control equipment;

2) The quantity and type of materials discharged from the process or activity for which the adjusted standard is requested;

3) A copy of any correspondence between the petitioner and the Agency regarding the performance test(s) which form the basis of the adjusted standard request;

4) A copy of the written report submitted to the Agency pursuant to subsection (g) above;

5) A statement that the performance test(s) were conducted in accordance with the conditions and procedures accepted by the Agency pursuant to Section 212.110;

6) A statement regarding the specific limitation requested; and

7) A statement as to whether the Agency supports the requested adjusted standard.

j) The Clerk shall give notice of the petition and shall schedule a hearing in accordance with 35 Ill. Adm. Code 103. The hearing shall be held in accordance with 35 Ill Adm. Code 103.

k) In order to qualify for an adjusted standard the owner or operator must prove in an adjudicative hearing before the Board:

1) That the performance test(s) were conducted in accordance with the conditions and procedures accepted by the Agency pursuant to Section 212.110;

2) That the emission source and associated air pollution control equipment were operated and maintained in a manner so as to minimize the opacity of the emissions during the performance test(s); and

3) That the proposed adjusted opacity standard was determined in accordance with subsection (f).

l) In considering the proposed petition for an adjusted standard and the hearing record, the Board shall take into account the factors contained in Section 27(a) of the Act. The Board shall issue and enter a written opinion stating the facts and reasons leading to its decision on the petition for an adjusted standard.

m) The Board shall issue and enter such orders concerning the petition for an adjusted standard as are appropriate for the reasons stated in its written opinion. Such appropriate orders may include but are not limited to orders accepting or rejecting the requested limitation, directing that further hearings be held to develop further information or to cure any procedural defects, or remanding the petition to the petitioner with suggested revisions. Another hearing shall be held on any revised petition.

n) Nothing in this Section shall impair any rights authorized by the Act or Board Regulations that the owner or operator or any other person may have to initiate or participate in any proceeding before the Board including general or site-specific regulartory, variance, or permit proceedings. However, Agency determinations made pursuant to Section 212.126(b) may not be appealed to the Board.

IT IS SO ORDERED.

Board Member B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9th day of May, 1986 by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board