

**From:** [McGill, Richard](#)  
**To:** [Brown, Don](#)  
**Subject:** FW: 35 IAC 201 Second Notice  
**Date:** Thursday, May 4, 2023 3:44:08 PM  
**Attachments:** [image001.png](#)

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Good afternoon, Mr. Clerk:

Please docket this email exchange with JCAR staff as a public comment in R23-18.

Thank you.

Richard R. McGill, Jr.  
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Illinois Pollution Control Board  
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**From:** McGill, Richard  
**Sent:** Thursday, May 4, 2023 3:39 PM  
**To:** Eastvold, Jonathan C. <[JonathanE@ilga.gov](mailto:JonathanE@ilga.gov)>  
**Subject:** RE: 35 IAC 201 Second Notice

Good afternoon, Jonathan:

Below are **Board staff responses** to the items you mentioned, which I repeat here for convenience.

**ENFORCEMENT DISCRETION: IERG:** This rulemaking removes the standards by which EPA can grant permission to operate during an SSM event. IERG opposes any change that would solely rely on the State's enforcement discretion as a replacement for the SSM defense currently being provided. **EPA:** Has no intention of changing how it assesses emissions exceedances as a result of this rulemaking. The change is that once EPA brings an enforcement action against an entity that entity would no longer be able to claim SSM as an affirmative defense. Also, EPA should not have to put limits on its enforcement discretion in rule. **PCB: No clear response.** **As detailed in the Board's Second Notice filing (response 9(B)) and the Board staff response (PC 16) to a JCAR staff question (PC 4), the SSM provisions must be removed from Part 201 or else the State of Illinois will face mandatory sanctions under the Clean Air Act, each of which might bring serious economic harm to the State (e.g., loss of federal highway funding). Upon the removal of the SSM provisions, there will be no Part 201 rules providing for IEPA decisions on requests for SSM permissions. Accordingly, as amended, Part 201 will not provide for the IEPA decisions to which any standards could apply. But the Board has opened a sub-docket for the express purpose of considering alternative limits that would apply during SSM events. The Board stated that comments submitted in this rulemaking**

(docket R23-18) will be considered in the sub-docket (docket R23-18(A)).

■ **ENVIRONMENTAL JUSTICE: C23D32:** Using the fast-track process on this rulemaking and only reaching out to industry, environmental organizations, and USEPA means that EPA did not reach out to minority, low-income, English-limited, and other marginalized subsets of the public. **Sierra Club:** EPA should prioritize enforcement of emissions limit violations due to SSM in low-income, minority, and over-burdened communities. **PCB: No clear response.** As detailed in the Board's Second Notice filing (response 9(B)) and the Board staff response (PC 16) to a JCAR staff question (PC 4), for the State of Illinois to avoid mandatory federal sanctions, it was essential for IEPA to use the "fast-track" rulemaking procedures dictated by Section 28.5 of the Environmental Protection Act (415 ILCS 5/28.5). Section 28.5 prescribes, among other things, the subject of each hearing, including the second hearing, which "shall be devoted to presentation of testimony, documents, and comments by affected entities and all other interested parties." 415 ILCS 5/28.5(f)(2). The Board has no authority over IEPA's outreach. In USEPA's 2022 "Finding of Failure to Submit SIP Revisions," USEPA addressed environmental justice considerations, stating its intent that "the actions and deadlines resulting from this notice will promote greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by ensuring that air agencies meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward reducing excess emissions during periods of SSM." 87 Fed. Reg. 1680, 1682 (Jan. 12, 2022). The Board has taken environmental justice into account in its rules when directed to do so by the General Assembly (415 ILCS 22.59(a), (g); 35 Ill. Adm. Code 845.700(g)), but the Board has no authority over how IEPA exercises its discretion in prioritizing enforcement when SSM events violate emission limits.

Thank you.

Best regards,

Richard

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**From:** Eastvold, Jonathan C. <[JonathanE@ilga.gov](mailto:JonathanE@ilga.gov)>

**Sent:** Wednesday, May 3, 2023 9:20 AM

**To:** Bilbruck, Shannon O. <[Shannon.O.Bilbruck@Illinois.gov](mailto:Shannon.O.Bilbruck@Illinois.gov)>; Jcar Public <[Jcar@ilga.gov](mailto:Jcar@ilga.gov)>

**Cc:** McGill, Richard <[Richard.McGill@illinois.gov](mailto:Richard.McGill@illinois.gov)>; Salk, Chloe <[Chloe.Salk@Illinois.gov](mailto:Chloe.Salk@Illinois.gov)>; Fox, Tim <[Tim.Fox@illinois.gov](mailto:Tim.Fox@illinois.gov)>; Tipsord, Marie <[Marie.Tipsord@illinois.gov](mailto:Marie.Tipsord@illinois.gov)>

**Subject:** [External] RE: 35 IAC 201 Second Notice

Thanks so much.

Does the Board have any specific responses to the following sets of comments?:

ENFORCEMENT DISCRETION: **IERG**: This rulemaking removes the standards by which EPA can grant permission to operate during an SSM event. IERG opposes any change that would solely rely on the State's enforcement discretion as a replacement for the SSM defense currently being provided. **EPA**: Has no intention of changing how it assesses emissions exceedances as a result of this rulemaking. The change is that once EPA brings an enforcement action against an entity that entity would no longer be able to claim SSM as an affirmative defense. Also, EPA should not have to put limits on its enforcement discretion in rule. **PCB**: No clear response. ■ ENVIRONMENTAL JUSTICE: **C23D32**: Using the fast-track process on this rulemaking and only reaching out to industry, environmental organizations, and USEPA means that EPA did not reach out to minority, low-income, English-limited, and other marginalized subsets of the public. **Sierra Club**: EPA should prioritize enforcement of emissions limit violations due to SSM in low-income, minority, and over-burdened communities. **PCB**: No clear response.

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