

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: FW: PCB Responses to JCAR Objections re 35-201, 202, 212 (docket R23-18)
Date: Thursday, July 20, 2023 3:09:28 PM
Attachments: [PCB Response to JCAR Objection re 35-201.pdf](#)
[image001.png](#)
[PCB Response to JCAR Objection re 35-202.pdf](#)
[PCB Response to JCAR Objection re 35-212.pdf](#)

Good afternoon, Mr. Clerk:

Please docket in R23-18 this forwarded email message and three attachments. The docket entry should read: "Board's Responses to JCAR's Objections on rulemakings 35 Ill. Adm. Code 201, 202, and 212".

Thank you.

Richard R. McGill, Jr.
Senior Attorney for Research & Writing
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, Illinois 60605
richard.mcgill@illinois.gov (312) 814-6983



From: McGill, Richard
Sent: Thursday, July 20, 2023 3:07 PM
To: jcar@ilga.gov
Subject: PCB Responses to JCAR Objections re 35-201, 202, 212 (docket R23-18)

Good afternoon:

In compliance with 1 Ill. Adm. Code 220.1200, I attach the Board's Responses to JCAR's Objections on rulemakings 35 Ill. Adm. Code 201, 202, and 212 (Board docket R23-18).

If JCAR has any questions concerning these attachments, please let me know. Thank you.

Respectfully,

Richard R. McGill, Jr.
Senior Attorney for Research & Writing
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, Illinois 60605
richard.mcgill@illinois.gov (312) 814-6983



State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

July 20, 2023

Agency: Pollution Control Board
Heading of Part: Permits and General Provisions
Code Citation: 35 Ill. Adm. Code 201
Register Citation: 46 Ill. Reg. 20627 (Dec. 30, 2022)

Agency Response to Specific Joint Committee Objections:

At its meeting on July 18, 2023, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt amendments to remove provisions that allow the Illinois Environmental Protection Agency (IEPA) to give advance permission to facilities to continue operating during a malfunction or breakdown or to violate emission standards during startup.

First, JCAR objected to this proposal because the Board did not adequately consider the economic reasonableness of the proposal.

The Board considered the economic reasonableness of the rules when it proposed them to JCAR for second notice. The Board found that the amendments are economically reasonable because they "do not impose any new or additional obligations such as emission limits or control requirements on affected sources." IEPA's Statement of Reasons at 15. The proposal does not change emission limits or a source's obligation to comply with them; it only affects a source's ability to request and obtain a "prima facie" defense (meaning a rebuttable, not an absolute, defense) that it may use if an enforcement action results from exceeding emission limits during a startup, malfunction, or breakdown event.

IEPA has always had authority to initiate an enforcement action against a source that exceeds emission limits during such an event. IEPA will continue considering these exceedances on a case-by-case basis as it has done in the past.


The Board assures JCAR that it has carefully considered JCAR's first objection. Because the rules only remove a prima facie defense and do not add any obligations, the Board determined that its proposal is economically reasonable. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Second, JCAR objected to this proposal because the Board failed to consider less costly alternatives. The proposal was filed as a "fast-track" rulemaking under Section 28.5 of the Environmental Protection Act (Act). Section 28.5(a) of the Act restricts the use of fast-track procedures to adopting rules that are "required to be adopted" by the federal Clean Air Act (CAA). Because the alternative standards proposed by industry in this rulemaking are not "required to be adopted" by the CAA, the Board could not consider them in this rulemaking. However, the Board did find it appropriate to consider alternative standards and therefore opened

a sub-docket dedicated to addressing them. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Third, JCAR objected to IEPA's late use of Section 28.5 fast-track procedures and IEPA's late stakeholder outreach in addressing a rule deficiency identified by the United States Environmental Protection Agency in June 2015. These JCAR concerns appear to be with IEPA. The Board can only respond for itself. IEPA filed the proposed amendments with the Board under the fast-track procedures in December 2022. The proposed amendments are required to comply with the CAA. Under these circumstances, Section 28.5(c) of the Act required the Board to conduct the rulemaking using the fast-track procedures. The Board did not receive any motions to remove the rulemaking from those procedures. And the Board has no authority over IEPA outreach to stakeholders. The Board therefore respectfully declines to modify or withdraw its proposal on these bases. The Board has, however, placed JCAR's objection on the Board's website where it is publicly available for IEPA and others to review.

Finally, JCAR asked the Board and IEPA to report back to JCAR at its August meeting in Springfield on the progress of the sub-docket for the alternative standard proposals. The Board agrees to attend JCAR's August meeting and report on the sub-docket's progress.



Barbara Flynn Currie, Chair

July 20, 2023

Agency: Pollution Control Board
Heading of Part: Alternative Control Strategies
Code Citation: 35 Ill. Adm. Code 202
Register Citation: 46 Ill. Reg. 20638 (Dec. 30, 2022)

Agency Response to Specific Joint Committee Objections:

At its meeting on July 18, 2023, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt amendments to remove provisions that allow the Illinois Environmental Protection Agency (IEPA) to give advance permission to facilities to continue operating during a malfunction or breakdown or to violate emission standards during startup.

First, JCAR objected to this proposal because the Board did not adequately consider the economic reasonableness of the proposal.

The Board considered the economic reasonableness of the rules when it proposed them to JCAR for second notice. The Board found that the amendments are economically reasonable because they "do not impose any new or additional obligations such as emission limits or control requirements on affected sources." IEPA's Statement of Reasons at 15. The proposal does not change emission limits or a source's obligation to comply with them; it only affects a source's ability to request and obtain a "prima facie" defense (meaning a rebuttable, not an absolute, defense) that it may use if an enforcement action results from exceeding emission limits during a startup, malfunction, or breakdown event.

IEPA has always had authority to initiate an enforcement action against a source that exceeds emission limits during such an event. IEPA will continue considering these exceedances on a case-by-case basis as it has done in the past.

The Board assures JCAR that it has carefully considered JCAR's first objection. Because the rules only remove a prima facie defense and do not add any obligations, the Board determined that its proposal is economically reasonable. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Second, JCAR objected to this proposal because the Board failed to consider less costly alternatives. The proposal was filed as a "fast-track" rulemaking under Section 28.5 of the Environmental Protection Act (Act). Section 28.5(a) of the Act restricts the use of fast-track procedures to adopting rules that are "required to be adopted" by the federal Clean Air Act (CAA). Because the alternative standards proposed by industry in this rulemaking are not "required to be adopted" by the CAA, the Board could not consider them in this rulemaking. However, the Board did find it appropriate to consider alternative standards and therefore opened

a sub-docket dedicated to addressing them. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Third, JCAR objected to IEPA's late use of Section 28.5 fast-track procedures and IEPA's late stakeholder outreach in addressing a rule deficiency identified by the United States Environmental Protection Agency in June 2015. These JCAR concerns appear to be with IEPA. The Board can only respond for itself. IEPA filed the proposed amendments with the Board under the fast-track procedures in December 2022. The proposed amendments are required to comply with the CAA. Under these circumstances, Section 28.5(c) of the Act required the Board to conduct the rulemaking using the fast-track procedures. The Board did not receive any motions to remove the rulemaking from those procedures. And the Board has no authority over IEPA outreach to stakeholders. The Board therefore respectfully declines to modify or withdraw its proposal on these bases. The Board has, however, placed JCAR's objection on the Board's website where it is publicly available for IEPA and others to review.

Finally, JCAR asked the Board and IEPA to report back to JCAR at its August meeting in Springfield on the progress of the sub-docket for the alternative standard proposals. The Board agrees to attend JCAR's August meeting and report on the sub-docket's progress.



Barbara Flynn Currie, Chair

July 20, 2023

Agency: Pollution Control Board
Heading of Part: Visible and Particulate Matter Emissions
Code Citation: 35 Ill. Adm. Code 212
Register Citation: 46 Ill. Reg. 20644 (Dec. 30, 2022)

Agency Response to Specific Joint Committee Objections:

At its meeting on July 18, 2023, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt amendments to remove provisions that allow the Illinois Environmental Protection Agency (IEPA) to give advance permission to facilities to continue operating during a malfunction or breakdown or to violate emission standards during startup.

First, JCAR objected to this proposal because the Board did not adequately consider the economic reasonableness of the proposal.

The Board considered the economic reasonableness of the rules when it proposed them to JCAR for second notice. The Board found that the amendments are economically reasonable because they "do not impose any new or additional obligations such as emission limits or control requirements on affected sources." IEPA's Statement of Reasons at 15. The proposal does not change emission limits or a source's obligation to comply with them; it only affects a source's ability to request and obtain a "prima facie" defense (meaning a rebuttable, not an absolute, defense) that it may use if an enforcement action results from exceeding emission limits during a startup, malfunction, or breakdown event.

IEPA has always had authority to initiate an enforcement action against a source that exceeds emission limits during such an event. IEPA will continue considering these exceedances on a case-by-case basis as it has done in the past.

The Board assures JCAR that it has carefully considered JCAR's first objection. Because the rules only remove a prima facie defense and do not add any obligations, the Board determined that its proposal is economically reasonable. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Second, JCAR objected to this proposal because the Board failed to consider less costly alternatives. The proposal was filed as a "fast-track" rulemaking under Section 28.5 of the Environmental Protection Act (Act). Section 28.5(a) of the Act restricts the use of fast-track procedures to adopting rules that are "required to be adopted" by the federal Clean Air Act (CAA). Because the alternative standards proposed by industry in this rulemaking are not "required to be adopted" by the CAA, the Board could not consider them in this rulemaking. However, the Board did find it appropriate to consider alternative standards and therefore opened

a sub-docket dedicated to addressing them. Accordingly, the Board respectfully declines to modify or withdraw its proposal on this basis.

Third, JCAR objected to IEPA's late use of Section 28.5 fast-track procedures and IEPA's late stakeholder outreach in addressing a rule deficiency identified by the United States Environmental Protection Agency in June 2015. These JCAR concerns appear to be with IEPA. The Board can only respond for itself. IEPA filed the proposed amendments with the Board under the fast-track procedures in December 2022. The proposed amendments are required to comply with the CAA. Under these circumstances, Section 28.5(c) of the Act required the Board to conduct the rulemaking using the fast-track procedures. The Board did not receive any motions to remove the rulemaking from those procedures. And the Board has no authority over IEPA outreach to stakeholders. The Board therefore respectfully declines to modify or withdraw its proposal on these bases. The Board has, however, placed JCAR's objection on the Board's website where it is publicly available for IEPA and others to review.

Finally, JCAR asked the Board and IEPA to report back to JCAR at its August meeting in Springfield on the progress of the sub-docket for the alternative standard proposals. The Board agrees to attend JCAR's August meeting and report on the sub-docket's progress.



Barbara Flynn Currie, Chair