

Board Adopts Clean Air Act “Fast-Track” Amendments

On July 20, 2023, the Board adopted final amendments to its air pollution control rules. The amendments removed provisions that had allowed the Illinois Environmental Protection Agency (IEPA) to grant emission sources advance permission to continue operating during a malfunction or breakdown or violate emission standards during startup. Under those provisions, compliance with IEPA’s advance permission gave the source a “prima facie” defense to an enforcement action resulting from exceeding emission limits during a startup, malfunction, or breakdown. The United States Environment Protection Agency (USEPA) found the provisions inconsistent with the Clean Air Act.

The adopted amendments impact three Parts of the Board’s air pollution rules, *i.e.*, Parts 201, 202, and 212 of Title 35 of the Illinois Administrative Code. IEPA filed the proposal under the “fast-track” procedures of Section 28.5 of the Environmental Protection Act, which required the Board to proceed toward adoption by meeting a series of specific deadlines. During the rulemaking, the Board held two public hearings, heard testimony, and received public comment.

At its June 13, 2023 meeting, the Joint Committee on Administrative Rules (JCAR) considered the Board’s second-notice proposal but, with the Board’s concurrence, extended the second-notice period. At its July 18, 2023 meeting, JCAR issued [Statements of Objection](#) to the proposed amendments. The Board submitted [responses](#) to JCAR’s objections and respectfully declined to withdraw or modify its proposal.

The final amendments adopted by the Board at its July 20, 2023 meeting became effective on July 25, 2023. To avoid mandatory sanctions against the State of Illinois under the Clean Air Act, IEPA must, by August 11, 2023, submit to USEPA an approvable State Implementation Plan revision that includes the final amendments.

The rulemaking is captioned Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, docket R23-18. Here is a link to the Board’s [final opinion and order](#), which includes the text of the adopted amendments. On an expedited basis in the sub-docket rulemaking captioned Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, docket [R23-18\(A\)](#), the Board will consider alternative standards for startup, shutdown, and malfunction (SSM) events. For more information, please contact Chloe Salk at chloe.salk@illinois.gov.