

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION
AGENCY

PART 252
PUBLIC PARTICIPATION IN THE
AIR POLLUTION CONTROL PERMIT PROGRAM

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AUTHORITY: Implementing and authorized by Sections 4, 9.1(d), 9.1(e), and 39, 39.1(c) and 39.1(d) of the Environmental Protection Act [415 ILCS 5/4, 9.1(d), 9.1(e), 39, 39.1(c) and 39.1(d)].

SOURCE: Adopted at 4 Ill. Reg. 10, p. 246, effective February 22, 1980; old rules repealed and new rules adopted at 8 Ill. Reg. 8197, effective June 1, 1984; amended at 17 Ill. Reg. 9684,

effective June 10, 1993; amended at 22 Ill. Reg. 19253, effective October 13, 1998; amended at 42 Ill. Reg. 15997, effective August 1, 2018.

SUBPART A: INTRODUCTION

Section 252.101 Purpose

These rules are adopted to:

- a) Specify public participation procedures which must accompany the processing of permit applications for certain sources of air pollution by the Illinois Environmental Protection Agency (Agency); and
- b) Provide the public with an opportunity to comment on proposed permits for certain sources of air pollution that are of public interest.

(Source: Amended at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.102 Applicability

- a) This Part applies to all permit applications filed with the Agency for:
 - 1) Permits pursuant to Major Stationary Sources Construction and Modification, the New Source Review (NSR) rules, 35 Ill. Adm. Code 203, for major new sources and major modifications;
 - 2) Permits pursuant to the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR 52.21, for construction of major new sources and major modifications;
 - 3) Permits for the construction of sources or modifications which would constitute major new sources or major modifications, subject to public notice pursuant to subsection(a)(1) or (2) above, if they were not accompanied by contemporaneous emissions decreases or if federally enforceable significant restrictions were not placed on the source or modification;
 - 4) Permits for the use of Alternative Control Strategies (ACS) pursuant to 35 Ill. Adm. Code 202;
 - 5) Permits to operate sources pursuant to Section 39.5 of the Environmental Protection Act (Act) (the Clean Air Act Permit Program (CAAPP)) and significant modifications of any permit issued thereunder;
 - 6) Permits to operate sources which contain federally enforceable conditions

including permits which exclude sources from the applicability of the permitting requirements described in subsection (a)(1), (a)(2), or (a)(5) above;

- 7) Permits for the construction, reconstruction, or modification of major sources of hazardous air pollutants (HAPs) that require a determination of case-by-case Maximum Achievable Control Technology (MACT), pursuant to Sections 9.1(d) and 39(f) of the Act and Section 112(g) and Section 112(j) of the Clean Air Act (CAA) (42 USC 7412(g) and (j)).
 - 8) Permits for the construction of emission units of public interest at a source, the criteria for which are outlined in subsection (b) below; and
 - 9) Revisions to permits described in subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) and (a)(7) above as specified by applicable regulations. This Part shall apply to all revisions which: revise any standard established on a case-by-case basis; alter conditions imposed to meet requirements for emissions offsets; or relax testing, monitoring, recordkeeping, or reporting requirements.
- b) The Director shall determine whether an emission unit is of public interest. In making the decision, the Director shall consider:
- 1) The type of permit for which the application is made;
 - 2) The nature and amount of pollutants which will be emitted by the source;
 - 3) Possible effects of the emissions on health and the environment;
 - 4) The location of the source;
 - 5) The interest in the source exhibited by the public, based on comments and inquiries received by the Agency;
 - 6) Other factors which are distinctive to the source; and
 - 7) The proposed action by the Agency.

(Source: Amended at 22 Ill. Reg. 19253, effective October 13, 1998)

Section 252.103 Application for a Prevention of Significant Deterioration Permit

- a) Applicable procedures of the Consolidated Permit Regulations, 40 CFR 124, shall be followed for the issuance of permits pursuant to the federal PSD rules for new major stationary sources and major modifications.

- b) Applicable procedures of this Part shall also be followed for issuance of such permits.
- c) The following shall apply regarding denials of PSD permit applications:
 - 1) The procedures of this Part shall also apply if the Agency proposes to deny an application for a PSD permit if the reasons for denial are those for which appeal to the Administrator of the United States Environmental Protection Agency (USEPA) would be necessary. Such reasons may relate to requirements of the PSD rules which have been subject to interpretation by USEPA, including but not limited to the methodology for performing air quality analyses, the need for gathering site-specific ambient air quality data, the procedures for evaluating Best Available Control Technology (BACT), and the criteria used to establish BACT.
 - 2) For those PSD permits for which public comment is required for a proposed denial of a permit pursuant to subsection (1) above, the following shall apply:
 - i) Where the procedures of this Part refer to a draft permit, they shall also apply to a draft permit denial letter; and
 - ii) Where the procedures of this Part refer to a notice of intent to issue, they shall also apply to a notice of intent to deny.
 - 3) Following a public comment period on the proposed denial of the permit, if the Agency determines that a permit should be issued, a public comment period shall be held on the proposed issuance of the permit.

(Source: Section repealed, new Section added at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.104 Definitions

Terms in these rules have the same meaning as defined in Section 3 of the Act and the Pollution Control Board Rules and Regulations on Air Pollution, 35 Ill. Adm. Code: Subtitle B, Chapter I, as appropriate to the subject matter of the permit.

(Source: Amended at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.105 Consolidation

The Agency may consolidate the public participation activities for two or more permits subject to these rules when the operations to be permitted are similar, related, or in close geographical

proximity, where practicable.

(Source: Amended at 17 Ill. Reg. 9684, effective June 10, 1993)

SUBPART B: PROCEDURES FOR PUBLIC REVIEW

Section 252.201 Notice and Opportunity to Comment

- a) The Agency shall issue a notice for the issuance of any permit described in Section 252.102 of this Part and renewal of any operating permit described in Section 252.102 of this Part, and permit actions described in Section 252.103 of this Part.
- b) The notice shall be given to:
 - 1) The public, by prominent placement at a dedicated page on the Agency's website. The notice shall remain on the Agency's website for the duration of the public comment period. If the Agency's website is unavailable for a prolonged period of time, the comment period will be extended for an equivalent amount of time. Notice shall also be by advertisement in a newspaper of general circulation in the area where the source is located if either:
 - A) The Director of the Agency or his/her designee determines, for a particular permit, that additional notice would serve the interests of the public or of the Agency. In making this determination, the Agency shall consider public interest; or
 - B) Pursuant to the Act or other applicable law, notice is required to be published in a newspaper for the type of permit at issue;
 - 2) Local government air pollution control offices within Illinois that are in the area affected by the source;
 - 3) The chief executives of the municipality and county in which the source is to be located, including the mayor or president, clerk, county board chairman, county clerk, and state's attorney;
 - 4) Members of the General Assembly from the legislative district in which the source is located;
 - 5) Any state whose air quality may be affected and that is contiguous to Illinois or is within 50 miles of the source;
 - 6) Other officials and agencies identified in 40 CFR 51.24(g)(iv) (1983), for

PSD sources only;

- 7) The permit applicant; and
 - 8) Persons on the public participation mailing list for the air pollution control permit program.
- c) The notice shall include:
- 1) The name and address of the applicant and the source, and the name and address of the Agency;
 - 2) The location of the source if different from the applicant's address;
 - 3) The activity or activities involved in the permit action;
 - 4) For a proposed significant modification, a description of the change in the amount or character of the emissions that may result from the modification;
 - 5) The preliminary decision of the Agency to grant the permit;
 - 6) For the issuance of a PSD permit, the degree of ambient air increment consumed by the project;
 - 7) For a case-by-case MACT determination pursuant to section 112(g) and (j) of the CAA, a description of the emission limitation or work practice standard in the draft permit that constitutes MACT;
 - 8) The location of the documents available for public review;
 - 9) A request for written comments on the Agency's draft proposed permit;
 - 10) The date the comment period closed;
 - 11) Instructions on how to request a public hearing if a decision to hold a hearing has not already been made pursuant to Section 252.205(a) or (b); and
 - 12) The name, address, and telephone number of the Agency contact person from whom the public may obtain additional information.

(Agency Note: Material properly claimed as trade secret or confidential pursuant to Sections 7 and 7.1 of the Act and 2 Ill. Adm. Code 1827 will not be subject to public disclosure under this Part. An applicant claiming

a trade secret shall provide, in addition to the complete application, a copy of the application for public notice in which the material claimed as trade secret has been deleted.)

- d) The notice to the permit applicant shall also include the draft permit and fact sheet or statement of basis required by Section 252.203.
- e) The notice shall provide for a 30-day public comment period. The Agency may extend the comment period on written request if any applicable statutory period for the Agency decision, as prescribed in Section 39 of the Act, allows for an extension.

(Source: Amended at 42 Ill. Reg. 15997, effective August 1, 2018)

Section 252.202 Draft Permit

The Agency shall prepare for public review a draft permit with findings and proposed conditions.

(Source: Amended at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.203 Fact Sheet and Statement of Basis

- a) The Agency shall prepare a fact sheet to accompany the draft permit for a major new source, major existing source, or major modification. The fact sheet shall describe the basis of the Agency's decision to grant the permit including an explanation of the source's effect on ambient air quality.
- b) The Agency shall prepare a statement of basis for every draft permit for which a fact sheet is not prepared.

(Source: Section repealed, new Section added at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.204 Availability of Documents

- a) Copies of the following documents shall be made available for public inspection during the public comment period:
 - 1) The public notice;
 - 2) The fact sheet or statement of basis;
 - 3) The draft permit;
 - 4) The permit application, including any compliance plans.

- b) Copies of the documents shall be placed in:
 - 1) The Division of Air Pollution Control's offices at 1340 North Ninth Street, Springfield, Illinois 62794; and
 - 2) The Division of Air Pollution Control's regional or district office closest to the location of the source.
- c) All documents listed in subsection (a) above shall be available in accordance with procedures of the Agency and of the Pollution Control Board adopted pursuant to 35 Ill. Adm. Code 120, and Sections 7 and 7.1 of the Act.

(Source: Section repealed, new Section added at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.205 Opportunity for Public Hearing

- a) A public hearing shall be held on any action subject to these rules where applicable law or rule provides the applicant opportunity for hearing and the applicant makes a written request for a hearing.
- b) The Director or his/her designee shall order that a hearing be held on a permit application subject to these rules when the Agency has determined that a hearing would serve the interests of the public or of the Agency. In making this determination, the Agency shall consider:
 - 1) The level of public interest as indicated by the inquiries and comments received by the Agency on the draft permit;
 - 2) The opportunity to increase public understanding of the project and of the Agency's proposed decision by means of public hearing;
 - 3) Receipt by the Agency of a written request for a hearing citing material issues with respect to the terms and conditions of the draft permit from:
 - A) A significant number of persons, to be determined by the Director, either individually or in a petition;
 - B) A member of the General Assembly representing the district in which the source is located; or
 - C) A chief executive officer from a county or municipality in which the source is located as described in Section 252.201(b)(3) of this Part.

(Source: Added at 17 Ill. Reg. 9684, effective June 10, 1993)

Section 252.206 Procedures for Public Hearings

- a) Except as provided in subsection (b) below, hearings shall be conducted in accordance with the Agency's "Procedures for Permit and Closure Plan Hearings" (35 Ill. Adm. Code 166: Subpart A, Informational Permit and Closure Plan Hearings).
- b) The following types of hearings shall be conducted in accordance with the Agency's "Procedures for Permit and Closure Plan Hearings" (35 Ill. Adm. Code 166: Subpart B, Contested Case Permit Hearings):
 - 1) Hearings requested by the applicant pursuant to Section 39(f)(3) of the Act on a proposed action which includes the Agency's determination with respect to BACT or LAER or case-by-case MACT;
 - 2) Hearings requested by the ACS permit applicant pursuant to Section 39.1(d) of the Act.
- c) Notwithstanding subsection (b) above, persons requesting hearings subject to the Contested Case Permit Hearings (35 Ill. Adm. Code 166: Subpart B) may waive their rights to the procedures of the Contested Case Permit Hearings by notifying the hearing officer to that effect. Where persons waive their rights to Contested Case Permit Hearings, such hearings shall be held in accordance with the procedures of Informational Permit and Closure Plan Hearings (35 Ill. Adm. Code 166: Subpart A).

(Source: Added at 22 Ill. Reg. 19253, effective October 13, 1998)

SUBPART C: USEPA REVIEW AND OBJECTION
PROCEDURES

Section 252.301 USEPA Review and Objection

- a) Notice shall be provided to USEPA at the same time it is provided to the public pursuant to Section 252.201 of this Part.
- b) For draft CAAPP permits subject to review under Section 39.5 of the Act, following the public notice and comment period provided for by Section 252.201 of this Part, the Agency shall consider all comments received, and determine the contents of a proposed CAAPP permit. The proposed CAAPP permit shall be provided to USEPA for review and comment for a period of 45 days unless USEPA waives review.

- c) If USEPA objects to the contents of a proposed CAAPP permit in writing and with a justification for its objections as provided in Title V of the Clean Air Act as amended (42 USC '7401 et seq.) and regulations promulgated thereunder, the Agency shall respond to USEPA's objection. The Agency shall provide the applicant and any person who participated in the public comment process under this Part 10 days to submit written comments to the Agency contact person described at Section 252.201(c)(11) of this Part regarding any revisions which the Agency is proposing to make in response to USEPA's objections. The Agency may then revise and resubmit the proposed CAAPP permit without any further public participation within 90 days after the date of the objection.
- d) If USEPA does not object to the contents of a proposed CAAPP permit in writing and with a justification for its objections in accordance with procedures established under Title V of the Clean Air Act as amended, the Agency shall issue the proposed permit as the CAAPP permit without further change.
- e) If USEPA does not object in writing to issuance of a proposed CAAPP permit, any person may petition USEPA within 60 days after expiration of the 45-day review period to make such objection in accordance with applicable procedures established under Title V of the Clean Air Act.
- f) If the CAAPP permit has not yet been issued and USEPA objects to the proposed permit as a result of a petition, the Agency shall not issue the permit until USEPA's objection has been resolved. The Agency shall provide for a 10-day comment period as set forth in subsection (c) above. A petition does not, however, stay the effectiveness of a permit or its requirements if the permit was issued after expiration of the 45-day review period and prior to a USEPA objection.
- g) If the Agency has issued a CAAPP permit after expiration of the 45-day review period and prior to receipt of a USEPA objection, the Agency may, after receiving an objection from USEPA, revise and resubmit the permit to USEPA after providing for 10-day comment period as set forth in subsection (c) above. If the Agency fails to submit a revised permit in response to the objection, USEPA shall modify, terminate or revoke the permit, pursuant to the Clean Air Act as amended.

(Source: Added at 17 Ill. Reg. 9684, effective June 10, 1993)

SUBPART D: AGENCY ACTION

Section 252.401 Final Permit Action

After the close of the comment period including the period for USEPA's review of a proposed permit, the Agency shall take final action. The Agency shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

(Source: Added at 17 Ill. Reg. 9684, effective June 10, 1993)

