

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(f)(2),
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 Reg. 10, p. 246, effective February 22, 1980; old rules repealed and new rules adopted at 8 Ill.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. _____, effective _____.

SUBPART A: INTRODUCTION

Section 252.101 Purpose

These rules are adopted to:

- a) Specify public participation procedures which ~~must~~ shall accompany the processing of certain air pollution 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 certain proposed air pollution permits ~~for certain sources of air pollution~~ that ~~are~~ may be of public interest.

(Source: Amended at Ill. Reg. _____, effective _____)

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

Section 252.102 Abbreviations and Acronyms

<u>ACS</u>	<u>Alternative Control Strategies</u>
<u>Act</u>	<u>Illinois Environmental Protection Act</u>
<u>Agency</u>	<u>Illinois Environmental Protection Agency</u>
<u>Board</u>	<u>Illinois Pollution Control Board</u>
<u>CAA</u>	<u>Clean Air Act</u>
<u>CAAPP</u>	<u>Clean Air Act Permit Program</u>
<u>HAPs</u>	<u>Hazardous Air Pollutant</u>
<u>MACT</u>	<u>Maximum Achievable Control Technology</u>
<u>MSSCAM</u>	<u>Major Stationary Sources Construction and Modification</u>
<u>NSR</u>	<u>New Source Review</u>
<u>NANSR</u>	<u>Nonattainment Area New Source Review</u>
<u>PSD</u>	<u>Prevention of Significant Deterioration of Air Quality</u>
<u>USEPA</u>	<u>United States Environmental Protection Agency</u>

(Source: Added at Ill. Reg. _____, effective _____)

Section 252.103 Definitions

- a) NANSR means Illinois' rules for MSSCAM at 35 Ill. Adm. Code Part 203.
- b) Other terms in these rules have the same meaning as defined in Sections 3 and 39.5(1) of the Act and the Board Rules and Regulations on Air Pollution, 35 Ill. Adm. Code: Subtitle B, Chapter I, as appropriate to the subject matter of the provisions.

(Source: Added at Ill. Reg. _____, effective _____)

Section 252.10~~42~~ Applicability

- a) This Part applies to all ~~permit~~ applications filed with the Agency for:
- 1) ~~Permits for the construction of new major stationary source or a major modification of a major stationary source pursuant to the Major Stationary Sources Construction and Modification, the New Source Review (NANSR) rules, 35 Ill. Adm. Code Part 203, for major new sources and major modifications;~~
 - 2) ~~Permits for the construction of a new major stationary source or a major modification of a major stationary source pursuant to the federal rules for Prevention of Significant Deterioration of Air Quality (PSD) rules, 35 Ill. Adm. Code Part 20440 CFR 52.21, for construction of major new sources and major modifications;~~
 - 3) ~~Permits for the construction of a sources or a modifications of a source which would constitute major a new major stationary sources or a major modifications of a major stationary source, subject to public notice participation pursuant to subsections (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 by the permit;~~
 - 4) ~~Permits for the use of Alternative Control Strategies (ACS) pursuant to 35 Ill. Adm. Code Part 202;~~
 - 5) ~~Permits to operate sources pursuant to the CAAPP, Section 39.5 of the Environmental Protection Act~~

~~(Act), 415 ILCS 5/39.5, (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 subsections (a)(1), (a)(2), or (a)(5) ~~above~~;

7) Permits for the construction, ~~or 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, ~~415 ILCS 5/9.1(d) and 39(f)~~, and Section 112(g) ~~and Section 112(j)~~ of the ~~Clean Air Act (CAA)~~, ~~42 USC 7412(g) and (j)~~. ~~i~~

8) Permits for the construction of a source of public interest or 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 of the Agency shall determine whether ~~a~~ source or emission units ~~is~~ are of public interest. In making the decision, the Director of the Agency 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 Ill. Reg. _____,
effective _____)~~

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

~~Section 252.103 — Application for a Prevention of Significant
Deterioration Permit~~

~~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.~~
- ~~e) 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

a) For a combined PSD and NANSR permit, the Agency shall consolidate the public participation activities when the operations to be permitted are similar or related.

a)b) For other permits subject to this Part, 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)~~

~~(Source: Amended at Ill. Reg. _____, effective _____)~~

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 252.104 ~~and 2 of this Part~~ and renewal of any operating permit described in Section 252.104 ~~.2 of this Part, and permit actions described in Section 252.103 of this Part.~~

b) The notice shall be sent to:

- 1) The public, at least one time, by display advertisement in a newspaper of general circulation in the area where the source is

located;

- 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 which is contiguous to Illinois or which is within 50 miles of the source;

~~6) Other officials and agencies identified in 40 CFR 51.24(q)(iv) (1983) for PSD sources only;~~

~~7) The permit applicant; and~~

~~8) Persons on the public participation mailing list for the air pollution permit program;~~

~~8) For purposes of PSD permits, in addition to the requirements set forth in subsections (b)(1) through (8), the notice shall also be sent to the USEPA, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Native American Governing Body whose lands may be affected by emissions from the regulated activity. -~~

c) The notice shall include:

1) The name and address of the applicant and the source;

~~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 which may result from the modification;~~

- 35) The preliminary decision of the Agency to grant the permit;
- 46) For the proposed issuance of a PSD permit, the degree of ambient air increment consumed by the project;
- 57) For a case-by-case MACT determination pursuant to Section 112(g) and ~~Section 112~~(j) of the CAA, a description of the emission limitation or work practice standard in the draft permit that constitutes MACT;
- 68) The location of the documents available for public review;
- 79) A request for written comments on the Agency's draft proposed permit;
- 810) The date by which comments ~~must~~ shall be postmarked;
- 911) 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
- 1012) 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 Part 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 project summary, fact sheet or statement of basis or fact sheet required by Section 252.203 ~~of this Part~~.
- e) The notice shall provide for a 30-day public comment period. The Agency may extend the comment period upon 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 Ill. Reg. _____, effective _____)

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

Section 252.202 Draft Permit

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

~~(Source: Amended at Ill. Reg. _____, effective _____)~~

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

Section 252.203 ~~Project Summary, Fact Sheet and~~ Statement of Basis ~~or Fact Sheet~~

- a) The Agency shall prepare a ~~project summary or statement of basis fact sheet~~ to accompany the draft permit for a ~~new major stationary new~~ source, ~~major existing source, or~~ major modification of a major stationary source, ~~operation of a source pursuant to CAAPP or a significant modification of a CAAPP permit.~~ The ~~fact sheet project summary or statement of basis~~ 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 ~~fact sheet statement of basis~~ for every draft permit for which a ~~project summary or statement of basis fact sheet~~ is not prepared.

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

~~(Source: Amended at Ill. Reg. _____, effective _____)~~

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 ~~project summary, fact sheet or~~ statement of basis ~~or fact sheet~~;
 - 3) The draft permit;
 - 4) The permit application, including any compliance

plans;

5) For purposes of a draft PSD permit, this shall also include any additional supporting data furnished by the applicant and other information the Agency relied upon in making its proposed decision.

b) Copies of the documents shall be placed in ~~the~~ Bureau of Division of Air's ~~Pollution Control's~~ offices at 1021340 North Ninth Street Grand Avenue East, Springfield, Illinois 62794-9276. ~~and~~

c) For purposes of PSD permits, copies of documents shall also be placed in the Division Bureau of Air's Pollution Control's regional ~~or district~~ office closest to the location of the source.

de) 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 Part 130 ±20, and Sections 7 and 7.1 of the Act.

(Source: Amended at Ill. Reg. _____, effective _____)

(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 of the Agency 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 of the Agency, 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)~~
~~(Source: Amended at Ill. Reg. _____, effective _____)~~

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 Part 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 Part 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 Part 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 Part 166: Subpart A).

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

1998)
(Source: Amended at Ill. Reg. _____,
effective _____)

Section 252.207 Obligation to Raise Issues and Provide
Information During the Public Comment Period
for PSD Permits

All persons, including applicants, who believe any condition of a draft PSD permit is inappropriate or that the Agency's tentative decision to prepare a draft PSD permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period. Any supporting materials which are submitted shall be submitted in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, USEPA documents of general applicability, or other generally available reference materials.

(Source: Added at Ill. Reg. _____,
effective _____)

Section 252.208 Reopening of the Public Comment Period for
PSD Permits

- a) The Agency may order the public comment period reopened. The public notice of any comment period under this paragraph shall be issued under Section 252.201, and shall define the scope of the reopening including an identification of those issues to which the requirements of this Section apply.
- b) Comments filed during the reopened comment period shall be limited to the issues that are the subject of the reopened public comment period as set forth in the notice that caused its reopening. When the public comment period is reopened under this Section, all persons, including the applicant, who believe any relevant condition of a draft permit is inappropriate or that the Agency's decision to prepare a draft permit is inappropriate, shall submit all reasonably available factual grounds supporting their position, including all supporting material, by the close of the public comment period.

(Source: Added at Ill. Reg. _____,
effective _____)

Section 252.209 Issuance of a Final PSD Permit Decision

After the close of the public comment period on a draft PSD permit under Section 252.201 or 252.208, the Agency shall provide notice of the final PSD permit decision to the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on the final PSD permit under Section 40.3 of the Act and 35 Ill. Adm. Code 105. For purposes of this Section, a final permit decision means a final decision to issue or modify a PSD permit.

(Source: Added at Ill. Reg. _____, effective _____)

Section 252.210 Response to Comments for a Final PSD Permit Decision

- a) By the date that any final PSD permit decision is issued, the Agency shall issue a response to comments. This response shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. The Agency may group related comments together and provide one unified response for each issue raised; and
- b) Any documents, excluding statutory or regulatory references, cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the Agency may, in addition to formally providing a written response to comments, document its response to those matters by adding new materials to the administrative record.

(Source: Added at Ill. Reg. _____, effective _____)

Section 252.211 Administrative Record for a Final PSD Permit Decision

- a) The Agency shall base final PSD permit decisions on the administrative record as defined in this Section.
- b) The administrative record for any final permit decision shall consist of the administrative record for the draft permit and:
 - 1) All comments received during the public comment period under Section 252.201 (including any reopening under Section 252.208);
 - 2) The transcript of any hearing held under Section

252.205;

- 3) Any written materials submitted at such a hearing;
- 4) The response to comments required by Section 252.210 and any new material placed in the record under that Section;
- 5) Any other information the Agency relied upon in making its final decision; and
- 6) The final permit.

(Source: Added at Ill. Reg. _____, effective _____)

SUBPART C: USEPA REVIEW OF CAAPP PERMITS AND OBJECTION PROCEDURES

Section 252.301 USEPA Review of and Objection to Proposed CAAPP Permits

- ~~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.~~
- ab) 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.
- be) 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 ~~CAAClean Air Act~~ as amended (42 USC 17401 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)(~~121~~) ~~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.
- ce) 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 ~~CAA~~Clean Air Act as amended, the Agency shall issue the proposed permit as the CAAPP permit without further change.

- ~~de~~) 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 ~~CAA~~Clean Air Act.
- ~~ef~~) 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 (~~be~~)~~-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.
- ~~fg~~) 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 (~~be~~)~~-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 ~~CAA~~Clean Air Act as amended.

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

~~(Source: Amended at 39 Ill. Reg. _____, effective _____)~~

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)

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