

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1997

IN THE MATTER OF:)
)
AMENDMENTS TO GENERAL) R98-13
PERMITTING PROVISIONS TO REQUIRE) (Rulemaking - Air)
PERPETUAL PERMITS FOR CERTAIN)
SOURCES: AMENDMENTS TO 35 ILL.)
ADM. CODE 201)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

On October 10, 1997, the Illinois Environmental Protection Agency (Agency), pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (1996)), filed a rulemaking proposal to amend the Board's regulations concerning air permits (35 Ill. Adm. Code 201, Permits and General Provisions). Specifically, the Agency's proposal requests that the Board amend certain sections of Part 201 to provide for perpetual permits for sources that emit 25 tons or more per year and are not subject to Section 39.5 of the Act (415 ILCS 5/39.5 (1996)) or required to obtain a federally enforceable State operating permit. On October 16, 1997, the Board adopted an order accepting the Agency's proposal for hearing and granting the Agency's motion to expedite proceedings. Due to stringent timeframes for adopting these proposed rules, the Board today sends this matter to first notice under the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-5 *et seq.* (1996)) without commenting on the merits of the proposal.

Section 39(a) of the Act (415 ILCS 5/39(a)) was amended by P.A. 90-367, effective August 10, 1997, to add the following paragraph:

After June 30, 1998, operating permits issued under this Section by the Agency for sources of air pollution that are not subject to Section 39.5 of this Act and are not required to have a federally enforceable State operating permit shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and its rules. Such operating permits shall expire 180 days after the date of such a request. Before July 1, 1998, the Board shall revise its rules for the existing State air pollution operating permit program consistent with this paragraph and shall adopt rules that require a source to demonstrate that it qualifies for a permit under this paragraph.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER a: PERMITS AND
GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

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AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg.30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21,

1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June _____, 1997; amended in R98-13 at ___ Ill. Reg. _____, effective _____.

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.152 Contents of Application for Construction Permit

An application for a construction permit shall contain, as a minimum, the following data and information: the nature of the emission ~~unitsource~~ and air pollution control equipment, including the expected life and deterioration rate; information concerning processes to which the emission ~~unitsource~~ or air pollution control equipment is related; the quantities and types of raw materials to be used in the emission ~~unitsource~~ or air pollution control equipment; the nature, specific points of emissionsources and quantities of uncontrolled and controlled air contaminant emissions at the sourcefacility ~~thatwhich~~ includes the emission ~~unitsource~~ or air pollution control equipment; the type, size, efficiency and specifications (including engineering drawings, plans and specifications certified to by a registered Illinois professional engineer) of the proposed emission ~~unitsource~~ or air pollution control equipment; maps, statistics and other data reasonably sufficient to describe the location of the emission ~~unitsource~~ or air pollution control equipment. The Agency may waive the submission by the applicant of such engineering drawings, plans, specifications or such other portions of the above data or information as it shall deem inappropriate or unnecessary to the construction permit application, ~~provided that any such waiver by the Agency shall be given in writing to the applicant.~~ The Agency may adopt procedures ~~thatwhich~~ require data and information in addition to and in amplification of the matters specified in the first sentence of this Sectionparagraph, ~~thatwhich~~ are reasonably designed to determine compliance with this Chapter, and ambient air quality standards, or thatand ~~which~~ set forth the format by which all data and information shall be submitted.

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

Section 201.153 Incomplete Applications (Repealed)

~~An application shall not be deemed to be filed until the applicant has submitted all information and completed all application forms required by Section 201.152 and procedures adopted and effective pursuant thereto. Provided, however, that if the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and of the reasons the Agency deems it incomplete, the application shall be deemed to have been filed as of the date of such purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

Section 201.154 Signatures (Repealed)

~~All applications and supplements thereto shall be signed by the owner and operator of the emission source or air pollution control equipment, or their authorized agent, and shall be accompanied by evidence of authority to sign the application.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

Section 201.155 Standards for Issuance (Repealed)

~~No construction permit shall be granted unless the applicant submits proof to the Agency that:~~

- ~~a) — The emission source or air pollution control equipment will be constructed or modified to operate so as not to cause a violation of the Act or of this Chapter; and~~
- ~~b) — If subject to a future compliance date, the applicant has an approved compliance program and project completion schedule in accordance with the provisions of Subpart H.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

Section 201.157 Contents of Application for Operating Permit

An application for an operating permit shall contain, as a minimum, the data and information specified in Section 201.152. Each application shall list all individual emission unitsources and air pollution equipment for which a permit is sought. Any applicant may seek to obtain from the Agency a permit for each emission unitsource, or such emission unitsources as are similar in design or principle of operation or function, or for all emission unitsources encompassed in an identifiable operating unit, unless subject to the provisions of Section 201.169 of this Subpart or required to obtain an operating permit with federal enforceable conditions pursuant to Section 39.5 of the Act. To the extent that the above specified data and information has previously been submitted to the Agency pursuant to this Subpart, the data and information need not be resubmitted; provided, however, that the applicant must certify that the data and information previously submitted remains true, correct and current. An application for an operating permit shall contain a description of the startup procedure for each emission unitsource, the duration and frequency of startups, the types and quantities of emissions during startup, and the applicant's efforts to minimize any such startup emissions, duration of individual startups, and frequency of startups. If applicable, pursuant to the requirements of Subpart I of this Part, an application for a permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups and quantities of emissions during startup in excess of emissions during operations, and the applicant's efforts to minimize any such startup emissions. The Agency may adopt procedures thatwhich require data and information in addition to and in amplification of the matters specified in the first sentence of this Section, thatwhich are reasonably designed to determine compliance with this Chapter, and ambient air quality standards, and thatwhich set forth the format by which all data and information shall be submitted.

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

Section 201.158 Incomplete Applications

An application shall not be deemed to be filed until the applicant has submitted all information and completed application forms required by Section 201.152 or 201.157 of this Subpart, whichever is applicable, and procedures adopted and effective pursuant hereto. Provided, however, that if the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and of the reasons the Agency deems it incomplete, the application shall be deemed to have been filed as of the date of such purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review, pursuant to Section 40 of the Act [415 ILCS 5/40].

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

Section 201.159 Signatures

All applications and supplements thereto shall be signed by the owner and operator of the ~~emission source or air pollution control equipment~~, or their authorized agent, and shall be accompanied by evidence of authority to sign the application.

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

Section 201.160 Standards for Issuance

- a) No construction permit shall be granted unless the applicant submits proof to the Agency that:
- 1) The emission unit or air pollution control equipment will be constructed or modified to operate so as not to cause a violation of the Act or of this Chapter; and
 - 2) If subject to a future compliance date, the applicant has an approved compliance program and project completion schedule in accordance with the provisions of Subpart H of this Part.
- b) No operating permit shall be granted unless the applicant submits proof to the Agency that:
- 1a) The emission ~~unit~~source or air pollution control equipment has been constructed or modified to operate so as not to cause a violation of the Act or of this Chapter, or has been granted a variance therefrom by the Board and is in full compliance with such variance; and
 - 2b) The emission ~~unit~~source or air pollution control equipment has been

constructed or modified in accordance with all conditions in the construction permit, where applicable; and

- 3e) The emission ~~units~~~~source~~ or air pollution control equipment has been shown by tests in accordance with the provisions of Subpart J of this Part, applicable regulations, and permit conditions to operate in accordance with the emission limitations set forth in this Chapter, provided that the Agency may waive the requirement for actual tests where sufficient standard testing information is available; and
- 4d) The applicant has taken all technically feasible measures, including changes in work rules, to minimize the duration and frequency of startups and to reduce the quantity of emissions during startup; and
- 5e) If subject to a future compliance date, the applicant has an approved compliance program and project completion schedule in accordance with the provisions of Subpart H of this Subpart; and
- 6f) If required, the applicant has an approved episode action plan in effect in accordance with the provisions of 35 Ill. Adm. Code 244.

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

Section 201.162 Duration

No operating permit shall be valid longer than five years or such shorter period as the Agency may specify in the operating permit as necessary to accomplish the purposes of the Act and this Chapter unless the source is subject to Section 201.169 of this Subpart E of this Part. Applications for renewal of an operating permit shall be submitted to the Agency at least 90 days prior to the expiration of the prior permit, and shall conform to Sections 201.157, 201.158 and 201.159. The standards for issuance of renewal of operating permits shall be as set forth in Section 201.160.

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

Section 201.163 Joint Construction and Operating Permits

In cases where the Agency determines that an emission ~~units~~~~source~~ or air pollution control equipment is sufficiently standard so as to obviate the need for separate construction and operating permits, the Agency may issue a joint construction and operating permit. The Agency may adopt procedures ~~that~~~~which~~: set forth the circumstances under which joint construction and operating permits may be issued; require data and information designed to determine compliance with this Chapter; and ambient air quality standards; and ~~that~~~~which~~ set forth the format by which all data and information shall be submitted. The standards for issuance of joint construction and operating permits shall be as set forth in Sections ~~201.155 and~~ 201.160. Except as herein

provided, nothing in this Chapter shall be deemed to limit the power of the Agency in this regard. ~~No joint construction and operating permit shall be valid for longer than five years or such shorter period as the Agency may specify the joint construction and operating permit as necessary to accomplish the purposes of this Chapter unless the source is subject to Subpart E of this Part. Applications for renewal of a permit shall be submitted to the Agency at least 90 days prior to the expiration of the prior permit, and shall conform to such procedures as may have been adopted by the Agency; and the standards for issuance of renewal permits shall be as set forth in Sections 201.155 and 201.160. The term "operating permit" as used elsewhere in this Chapter shall be deemed to include a joint construction and operating permit.~~

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

Section 201.164 Design Criteria

- a) The Agency may adopt procedures ~~that~~^{which} set forth criteria for the design, operation or maintenance of emission ~~units~~^{sources} and air pollution control equipment. These procedures shall be revised from time to time to reflect current engineering judgment and advances in the state of the art.
- b) Before adopting new criteria or making substantive changes to any criteria adopted by the Agency, the Agency shall:
 - 1) Publish a summary of the proposed changes in the Environmental Register or a comparable publication at the Agency's expense; and
 - 2) Provide a copy of the full text of the proposed changes to any person who in writing so requests; and
 - 3) Defer adoption of the changes for 45 days from the date of publication to allow submission and consideration of written comments on the proposed changes.

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

Section 201.169 Special Provisions for Certain Operating Permits

- a) Applicability:
 - 1) Operating permits issued pursuant to Section 39 of the Act for sources of air pollution that are not subject to the requirements of Section 39.5 of the Act and are not required to have a federally enforceable State operating permit are that subject to the provisions of this Section.
 - 2) This Section only applies to sources that meet the requirements of subsection (a)(1) above and whose permit has not expired pursuant to a

renewal request under subsection (b)(1) of this Section. If this Section no longer applies to a source and its permit has not expired pursuant to a renewal request under subsection (b)(1) of this Section, the terms and conditions of the permit shall remain in effect until the permit is superseded by a new or revised permit or it is withdrawn.

- 3) Nothing in this Subpart shall be construed as exempting persons with permits issued pursuant to this Section from the requirements of Section 201.142 of this Part requiring a construction permit or from review under Part 203 procedures for new and modified emission units.
- 4) Unless specifically stated otherwise in this Section, all rules in this Part apply.

b) Expiration and Renewal:

- 1) Notwithstanding Section 201.162 of this Subpart, an operating permit subject to this Section shall expire 180 days after the Agency sends a written request for renewal of the permit. A permit shall terminate if it is withdrawn upon written request by the permittee or is superseded by a revised permit issued for the source.
- 2) The Agency may request the renewal of an operating permit subject to this Section for reasons including, but not limited to, a change in the requirements applicable to the source; an indication that the information on the source's application is inaccurate; or information that the source may not be in compliance with the Act, a Board regulation or an existing permit condition.
- 3) In its request for renewal pursuant to subsection (b)(1) above, the Agency may include a request for any supplemental information that the Agency may need to determine the continued applicability of this Section or the ability of the source to comply with any requirement.
- 4) An owner or operator may appeal to the Board only a final determination by the Agency to deny a permit or to include conditions as provided by Section 40 of the Board only a final determination by the Agency to deny a permit or to include conditions as provided by Section 40 of the Act and Section 201.168 of this Subpart, or a determination that a permit application is incomplete based upon, but not limited to, a failure to submit information requested under subsection (b)(3) above or Section 201.158 of this Subpart.

c) Requirement for a Revised Permit:

- 1) Persons with operating permits subject to this Section must obtain a revised permit prior to any of the following changes at the source:
 - A) An increase in emissions above the amount the emission unit or the source is permitted to emit; or
 - B) A modification; or
 - C) A change in operations that will result in the source's noncompliance with a condition in the existing permit; or
 - D) A change in ownership, company name, or address, so that the application or existing permit is no longer accurate.
- 2) If changes in the source's emission units or control equipment remove a source from the applicability of this Section, an owner or operator shall apply for a construction permit under Section 201.152 of this Subpart, if applicable, and either a federally enforceable State operating permit or a Clean Air Act Permit Program (CAAPP) permit pursuant to Section 39.5 of the Act.

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

~~SUBPART E: SPECIAL PROVISIONS FOR
OPERATING PERMITS FOR CERTAIN
SMALLER SOURCES~~

Section 201.180 Applicability (Repealed)

- ~~a) Persons required to obtain operating permits under Part 201 are subject to this Subpart if:~~
 - ~~1) The total emissions of all regulated air pollutants, as defined by 35 Ill. Adm. Code 211.5500(b), that the source is permitted to emit on an annual basis are less than 25 tons; and~~
 - ~~2) The source is not subject to the operating permit requirements under Section 39.5 of the Act.~~
- ~~b) This Subpart only applies to sources which meet the requirements of subsection (a) above and whose permit has not expired pursuant to a renewal request under Section 201.181(a) of this Subpart. If this Subpart no longer applies to a source and its permit has not expired pursuant to a renewal request under Section~~

201.181(a) of this Subpart, the terms and conditions of the permit shall remain in effect until the permit is superseded by a new or revised permit or it is withdrawn.

- ~~e) Nothing in this Subpart shall be construed as exempting persons with permits issued pursuant to this Subpart from the requirements of Section 201.142 of this Part requiring a construction permit or from review under Part 203 procedures for new and modified emission units.~~
- ~~d) Unless specifically stated otherwise in this Subpart, all rules in this Part apply.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

Section 201.181 Expiration and Renewal (Repealed)

- ~~a) Notwithstanding Section 201.162 of this part, an operating permit subject to this Subpart shall expire 180 days after the Agency sends a written request for renewal of the permit. A permit shall terminate if it is withdrawn upon written request by the permittee or is superseded by a revised permit issued for the source.~~
- ~~b) The Agency may request the renewal of an operating permit subject to this Subpart for reasons including, but not limited to, a change in the requirements applicable to the source; an indication that the information on the source's application is inaccurate; or information that the source may not be in compliance with the Act, a Board regulation or an existing permit condition.~~
- ~~c) In its request for renewal pursuant to subsection a above, the Agency may include a request for any supplemental information that the Agency may need to determine the continued applicability of this Subpart or the ability of the source to comply with any requirement.~~
- ~~d) An owner or operator may appeal to the Board only a final determination by the Agency to deny a permit or to include conditions as provided by Section 40 of the Board only a final determination by the Agency to deny a permit or to include conditions as provided by Section 40 of the Act and Section 201.210 of this Part, or a determination that a permit application is incomplete based upon, but not limited to, a failure to submit information requested under subsection (c) above or Section 201.158 of this Part.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

Section 201.187 Requirement for a Revised Permit (Repealed)

- ~~a) Persons with operating permits subject to this Subpart must obtain a revised permit prior to any of the following changes at the source:~~

- 1) ~~An increase in emissions above the amount the emission unit or the source is permitted to emit; or~~
 - 2) ~~A modification; or~~
 - 3) ~~A change in operations which will result in the source's noncompliance with a condition in the existing permit; or~~
 - 4) ~~A change in ownership, company name, or address, so that the application or existing permit is no longer accurate.~~
- b) ~~If changes in the source's emission units or control equipment remove a source from the applicability of this Subpart, an owner or operator shall apply for a revised permit under Subpart D of this Part or under Section 39.5 of the Act.~~

(Source: Repealed at ___ Ill. Reg. _____, effective _____)

SUBPART F: CAAPP PERMITS

Section 201.207 Applicability

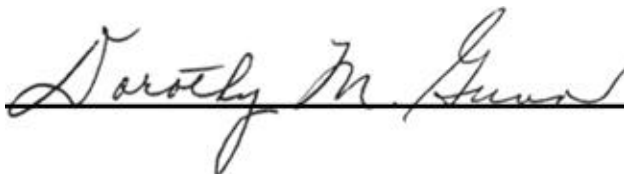
This Subpart shall apply only to sources subject to Section 39.5 of the Act. The requirements of Sections 201.143 through 201.148 of Subpart C, Sections 201.157 through 201.165 and 201.169 of Subpart D, and Subparts ~~E, G,~~ and H of this Part shall not apply to a source subject to the requirements of Section 39.5 of the Act.

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

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of November 1997, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board