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STATE OF ILLINOIS
Pollution Control Board

PC#2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | |
| CLEAN-UP PART III AMENDMENTS TO 35 |) | R04-20 |
| ILL. ADM. CODE PARTS 211, 218, AND 219 |) | (Rulemaking - Air) |

| | | |
|-----------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | |
| TECHNICAL CORRECTIONS TO |) | R04-12 |
| FORMULAS IN 35 ILL. ADM. CODE 214 |) | (Rulemaking - Air) |
| "SULFUR LIMITATIONS" |) | (Consolidated) |

NOTICE OF FILING

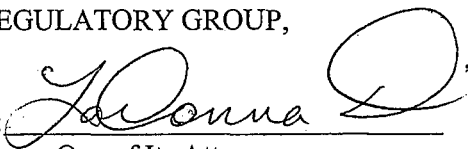
| | |
|----------------------------------|--|
| TO: Ms. Dorothy M. Gunn | Charles E. Matoesian, Esq. |
| Clerk of the Board | Assistant Counsel |
| Illinois Pollution Control Board | Illinois Environmental Protection Agency |
| 100 West Randolph Street | 1021 North Grand Avenue East |
| Suite 11-500 | Post Office Box 19276 |
| Chicago, Illinois 60601 | Springfield, Illinois 62794-9276 |
| (VIA FIRST CLASS MAIL) | (VIA FIRST CLASS MAIL) |

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies each of **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
One of Its Attorneys

Dated: June 18, 2004

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

Robert A. Messina
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4942

IERG:001/R Dockets/Filing/NOF - R04-20 and R04-12 - Comments

CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, certify that I have served the attached **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Charles E. Matoesian, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Jonathan Furr, Esq.
Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, Illinois 62702-1271

Matthew Dunn, Division Chief
Office of the Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on June 18, 2004.


N. LaDonna Driver

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
CLEAN-UP PART III AMENDMENTS TO 35) R04-20
ILL. ADM. CODE PARTS 211, 218, AND 219) (Rulemaking – Air)

IN THE MATTER OF:)
)
TECHNICAL CORRECTIONS TO) R04-12
FORMULAS IN 35 ILL. ADM. CODE 214) (Rulemaking – Air)
“SULFUR LIMITATIONS”) (Consolidated)

COMMENTS OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by one of its attorneys, N. LaDonna Driver of HODGE DWYER ZEMAN, and submits its Comments in the above-captioned matters to the Illinois Pollution Control Board (“Board”), stating as follows:

I. INTRODUCTION

IERG is a not-for-profit Illinois corporation affiliated with the Illinois State Chamber of Commerce. IERG is composed of 65 member companies regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. A number of IERG’s member companies conduct activities governed by the regulations set forth in 35 Ill. Admin. Code Parts 211, 214, 218, and 219.

IERG submits the following comments in response to the proposed rulemaking entitled “In the Matter of: Clean-Up Part III, Amendments to 35 Ill. Adm. Code Part 211,

218, and 219 (R04-20).” IERG would like to thank the Board for the opportunity to ask questions regarding the proposed rulemaking during the May 6, 2004 hearing.¹

A. Capture Efficiency Testing Alternatives

IERG appreciates and supports the proposal’s efforts to provide less burdensome alternatives to the task of establishing capture efficiency. These alternatives include utilizing a statistical approach that may reduce testing time and effort, by meeting the Data Quality Objective (“DQO”) or Lower Confidence Limit (“LCL”), Tr. at 27, 28. The Illinois EPA has proposed revisions to Parts 218 and 219, primarily at Sections 218/219.105, to accommodate the DQO and LCL approach.

At the May 6, 2004 hearing, Illinois EPA provided an Errata Sheet that contained a revision to the language proposed for Section 218/219.105(c)(2). Illinois EPA deleted the sentences that stated: “[I]n enforcement cases, LCL can not be used to establish compliance. Sufficient tests must be performed to satisfy the DQO.” Illinois EPA revised what is now proposed to be the last sentence in Section 218/219.105(c)(2), to state: “[f]or purposes of establishing emission credits for offsets, shutdowns, trading, and compliance demonstrations arising in enforcement matters, the DQO must be satisfied.” IERG has two main concerns with this provision, as set forth below.

First, at the May 6, 2004, hearing, Gary Beckstead, of the Illinois EPA, testified regarding this change in proposed Section 218/219.105(c)(2). Mr. Beckstead stated that the “onus is on the source to demonstrate, in an enforcement case, to demonstrate that they are in compliance. They would have to do so to the DQO level.” Tr. at 18, 19.

IERG’s concern with this statement is that it could be read to improperly shift the burden of proof in an enforcement case to the respondent source to prove that it is in

¹ All references to “Tr. at ___” refer to the transcript for the May 6, 2004 hearing.

compliance. Under questioning by IERG, Mr. Beckstead stated that the complaining party in an enforcement case would have to prove a source's noncompliance to the DQO level and that the LCL would not be sufficient in that regard. Tr. at 33, 34.

IERG requests that the Board consider removing the enforcement language in Section 218/219.105(c)(2) as set forth in the Illinois EPA's errata sheet, and insert an additional sentence to the end of that section, which would state: "[I]n enforcement cases, LCL can not be used to establish noncompliance, as sufficient tests must be performed to satisfy the DQO." IERG supplies its proposed revision to the entire section later in this comment.

Second, IERG continues to have concerns with the language in Section 218/219.105(c)(2) that requires meeting the DQO in order to establish emission credits for offsets, shutdowns and trading. Under questioning by IERG, Mr. Beckstead confirmed that even with the streamlining that the DQO can provide, physical testing is still required. Tr. at 29. Therefore, a requirement to satisfy the DQO in order to establish emission credits for offsets, shutdowns and trading, necessarily requires that physical testing occur before those credits can be granted by Illinois EPA.

IERG raised its concern in this regard at the May 6, 2004 hearing. Illinois EPA representatives seemed to imply, in response, that Illinois EPA was not intending to require all sources, in all circumstances where capture efficiency is involved, to establish emission credits via physical testing and satisfaction of DQO. Tr. at 31. Yet, Mr. Beckstead stated that where a source has used DQO or LCL to establish its emissions and capture efficiency, DQO criteria would have to be satisfied in order to establish emission credits. Tr. at 31.

IERG's concern with this apparent approach can be illustrated with an example of a unit that, when originally permitted, was required to establish capture efficiency via testing, and the testing was conducted according to the DQO. For years afterward, the source would report actual emissions based upon the capture efficiency results from the original testing. Now, testing would again have to be conducted when the unit is shut down to establish emission credits, without regard for how historical emissions had been calculated and reported.

IERG believes that such additional testing at the time of shutdown has not been uniformly required in the past and is even inconsistent with historical practice. For instance, 35 Ill. Admin. Code 203 specifies how emission offsets are to be determined, at Section 203.303. There is no mention of a testing requirement for Volatile Organic Material ("VOM") in Section 203.303. Similarly, Part 205, which contains the regulations for the VOM Emission Reduction and Market System, specifies at Section 205.500(d) that the appropriate demonstration for tradable VOM emission reductions include calculations and such supporting information as material usage. Testing is noticeably absent from the requirements for emission reduction demonstrations in Section 205.500(d).

IERG believes that it is unnecessary and confusing to even reference the requirements for establishment of emission credits in Parts 218 and 219, which Parts are focused on setting emission limits and standards. It would be advisable to let the issues concerning emission credits remain with the regulatory Parts that deal specifically with those issues. Thus, IERG urges the Board to amend the Illinois EPA's proposed errata sheet revisions to Section 218/219.105(c)(2) by deleting the sentence concerning the

establishment of emission credits and adding the sentence referenced earlier in this comment as to enforcement, to state as follows:

2) Capture Efficiency Protocols

The capture efficiency of an emission unit shall be measured using one of the protocols given below. Appropriate test methods to be utilized in each of the capture efficiency protocols are described in Appendix M of 40 CFR Part 51 incorporated by reference at 218.112. Any error margin associated with a test method or protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then an alternative capture efficiency protocol may be used, pursuant to the provisions of Section 218.108(b) of this Part. For purposes of determining capture efficiency using an alternative protocol, sources shall satisfy the data quality objective (DQO) or the lower confidence level (LCL) statistical analysis methodologies as presented in USEPA's "Guidelines for Determining Capture Efficiency" incorporated by reference at Section 218.112 of this Part. LCL can be used to establish compliance with capture efficiency requirements. ~~For purposes of establishing emission credits for offsets, shutdowns, trading, and compliance demonstrations arising in enforcement matters, the DQO must be satisfied. In enforcement cases, LCL can not be used to establish compliance. Sufficient tests must be performed to satisfy the DQO. In enforcement cases, LCL can not be used to establish noncompliance as sufficient tests must be performed to satisfy the DQO.~~

B. Definition of Carbon Adsorber

Finally, the proposal, as drafted, has revised the definition of "carbon adsorber" at Section 211.953. The first sentence of the revised definition would state that a carbon adsorber is a "control device designed to remove and, if desired, recover volatile organic material (VOM) from process emissions." This sentence would encompass many more control devices than carbon adsorbers, including condensers, flares, oxidizers, etc. IERG believes that the next sentence in the definition properly restricts the intent of the definition. Thus, IERG suggests that the two sentences be joined to state that a carbon adsorber is:

a control device designed to remove and, if desired, recover volatile organic material (VOM) from process emissions, via rRemoval of VOM is accomplished through the adherence of the VOM onto the surface of highly porous adsorbent particles such as activated carbon.

IERG also pointed out, at the May 6, 2004 hearing, that the definition of “carbon adsorber” is being expanded, in the last sentence of the proposed revised definition, to include other media besides carbon, such as oxides of silicon and aluminum. While IERG appreciates Illinois EPA’s desire to encompass all relevant media, IERG voiced its concern that the title of the definition “carbon adsorber” could be deceptive as to the types of devices covered by the definition.

As was then discussed by Illinois EPA and Board personnel, the term “carbon adsorber” is utilized throughout the Part 218/219 rules to impose substantive requirements. Tr. at 37-39. For example, *see* Section 218/219.105(d), which requires continuous monitoring of VOM concentration from carbon adsorber bed exhaust; Section 218/219.434(d)(3), which requires steam flow monitoring and carbon bed temperature monitoring (Subpart Q leaks); Section 218/219.481, which requires 90% VOM emission reduction for carbon adsorbers (Subpart T, Pharmaceutical); and Section 218/219.505(c), which requires monitoring of steam flow, monitoring of carbon bed temperature and monitoring of duration of carbon bed steaming cycle for carbon adsorbers (Subpart V, Batch Operations and Oxidation).

IERG wonders whether sources, reviewing monitoring requirements for “carbon adsorbers” in Subparts Q, T, and V, would understand that such requirements would also extend to adsorbers with media containing oxides of silica and aluminum. IERG requests that the Board consider the need to readily understand and follow the Part 218/219 requirements. Thus, IERG suggests that if the Illinois EPA insists upon expanding the


adsorber definition, the title of the definition should be changed to more generally represent the media covered by the definition. While this may involve revising uses of the term "carbon adsorber" in other subparts, this effort would result in much more straightforward regulatory requirements.

II. CONCLUSION

In the event that the Board adopts the proposed rulemaking, IERG requests that it be amended consistent with the above comments. IERG appreciates this opportunity to participate in this rulemaking.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
One of Its Attorneys

Dated: June 18, 2004

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

Robert A. Messina
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4942

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