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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 18 2005

IN THE MATTER OF:

AMENDMENTS TO 35 ILL. ADM. CODE 205,
EMISSIONS REDUCTION MARKET SYSTEM,
AND 35 ILL. ADM. CODE 211

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)
) R05-11
) (Rulemaking-Air)
)

STATE OF ILLINOIS
Pollution Control Board

NOTICE

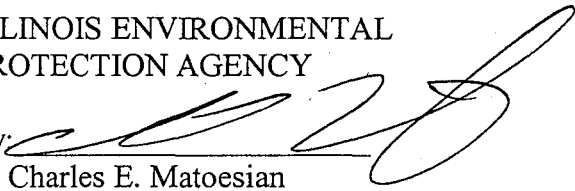
TO: Dorothy Gunn
Clerk
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James R. Thompson Center
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Chicago, IL 60601
(Overnight Mail)

John Knittle
Hearing Officer
Illinois Pollution Control Board
2125 South First Street
Champaign, IL 61820
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SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the TESTIMONY OF DAVID BLOOMBERG IN SUPPORT OF THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL TO AMEND 35 ILL. ADM. CODE 205, AND 35 ILL. ADM. CODE 211 and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST ERRATA SHEET TO ITS PROPOSAL FOR THE AMENDMENTS OF 35 ILL. ADM. CODE 205, AND 35 ILL. ADM. CODE 211, on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Charles E. Matoesian
Assistant Counsel
Division of Legal Counsel

DATED: 1/14/05

1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
217/782-5544

THIS FILING IS SUBMITTED
ON RECYCLED PAPER

RECEIVED
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STATE OF ILLINOIS
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IN THE MATTER OF:)

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R05-11
(Rulemaking – Air)

**TESTIMONY OF DAVID BLOOMBERG IN SUPPORT OF
THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL TO AMEND
35 ILL. ADM. CODE 205 AND 35 ILL. ADM. CODE 211**

Good afternoon. My name is David E. Bloomberg. I am employed by the Illinois Environmental Protection Agency as the Compliance Unit Manager in the Compliance and Enforcement Section within the Division of Air Pollution Control. I have been at the Agency in this capacity for eight months, and was previously an Environmental Protection Engineer in the Air Quality Planning Section for twelve and a half years. My academic credentials include a Bachelor of Science degree in ceramic engineering from the University of Illinois at Champaign-Urbana.

Among my other duties, I am one of the Agency's primary technical contacts for questions dealing with the ERMS rule. I trained ERMS account officers for two years and have written the four ERMS Annual Performance Review Reports published to date. I have provided regulatory language and technical support for this rulemaking. I am here today to provide testimony and to answer questions that might arise regarding this rulemaking.

As discussed in the Statement of Reasons, the 8-hour ozone standard has been in effect in the Chicago area since last June. The 1-hour ozone standard will be revoked on June 15

of this year, meaning the Chicago area will change from a severe ozone nonattainment area to a moderate one. With this change in designation will come a change in the definition of a major source of volatile organic material, or VOM. Major sources in areas classified as severe are those with potential to emit 25 tons of VOM or more per year. Major sources in areas classified as moderate are those with potential to emit 100 tons of VOM or more per year.

Such a change will mean many sources will no longer need CAAPP permits. Currently, the applicability of ERMS is based in part upon a source requiring a CAAPP permit. Thus, the change in classification for the Chicago area would mean numerous sources could drop out of the program, causing an estimated loss of approximately 330 tons of VOM emissions reductions for each seasonal allotment period. The changes proposed in this rulemaking would not affect any new sources nor impose new emission limitations or new control requirements. They are mostly focused on ensuring that the ERMS program remains in place, in its current form, so as to maintain the required VOM emissions reductions in the Chicago area.

In addition, when the Chicago area is redesignated to attainment for ozone, the proposed changes to the ERMS rule would take this into account and continue the program to ensure that emissions reductions already achieved would remain in place.

While the proposed modifications are documented in the Statement of Reasons, I will briefly discuss a few of them here. In addition, I will discuss the errata sheet that we have provided to the Board.

The definitions for "Participating Source" and "New Participating Source" are being modified to reflect the change in what constitutes a major source. Specifically, the proposed definition encompasses the same sources that are currently included, but it is worded differently to take into account the changing applicability level for CAAPP permits. In other words, this change is being made simply to make sure that sources already subject to the ERMS – or those that would be subject in the future – will still be subject no matter what happens to the Chicago area's attainment or nonattainment status.

The largest change being made to the rule is the addition of Section 205.316, "Federally Enforceable State Operating Permits for ERMS Sources." Because sources in the ERMS program will not necessarily be "major," they will not all require CAAPP permits.

However, they will still require federally-enforceable conditions, which can be obtained in a FESOP. Thus, all ERMS participants will be required to have either a CAAPP permit or a FESOP, even if they would otherwise be able to obtain a lifetime operating permit.

This new FESOP section also describes how ERMS conditions will be transferred to a FESOP in the case of a source changing from a CAAPP permit to a FESOP, and how new ERMS participants getting FESOPs will be handled by the Illinois EPA. Much of the

language is mirrored from Section 205.315, the section on CAAPP permits for ERMS Sources.

The errata sheet provided by the Illinois EPA to the Board contains minor changes to nine portions of the rule based on recent discoveries both internal to the Illinois EPA and pointed out by IERG.

Several of the changes within the errata sheet are related to a discovery of a minor hole in the ERMS rule related to new participating sources. Specifically, several parts of the rule fail to address that each new participating source may not immediately be in the ERMS program. Rather, it is possible for a source to construct after May 1, 1999, and not be in ERMS until a later date. As such, we made several changes to take this into account.

The correction of this issue relates to Numbers 1, 4, 5, and 9 in the errata sheet. Number 1 addresses Section 205.150(d). Taking into account the situation I just described, we have proposed deleting the phrase referencing the date on which a new participating source commences operation and replacing it with language that indicates the source needs to hold ATUs for the season in which it becomes a new participating source.

The fourth and ninth items listed on the errata sheet simply follow along with the first change, removing reference to a new participating source commencing operation, and instead allowing the reference to Section 205.150(d) to explain the requirements for holding ATUs.

Number 5 is in Section 205.310(a). These changes once again are related to the handling of new participating sources. By making the changes to (a)(2) and (3), and adding (4), we are covering the different possibilities for sources that will need to submit an ERMS application.

Regarding items not related to the new participating source issue, errata sheet Item 2 deals with Section 205.150(f)(2). It was pointed out that the use of the term "new" three times in the final sentence of this paragraph could be confusing. As such, we are proposing a slight modification for clarity. The intention of the sentence is simply to note that if a source or portion of a source had previously been subject to an offset ratio and the offset ratio applicable to the Chicago area changes, the source or portion of the source in question would still be held to the previously-determined ratio, which could be higher or lower than the newly-established ratio. In this way, sources would not be penalized if, for example, the Chicago area were to be bumped up to a higher designation of ozone nonattainment. Similarly, there would be no backsliding if the Chicago area's ozone designation were to be lowered.

The third change appears in Section 205.205(a). The Illinois EPA had originally proposed adding a line noting that participating sources taking the 15 ton-per-season exemption still have to file seasonal emissions reports. We recently noticed that while this subsection implies that such a source also has to have a CAAPP permit or FESOP, it does not expressly require it. To avoid confusion, we are proposing the addition of such a

requirement, keeping 15 ton-per-season exempt sources in line with other participating sources.

The sixth change is in Section 205.310(e). Based upon inquiry from IERG, the Illinois EPA is clarifying that public notice for a draft FESOP will be treated the same as public notice for a draft CAAPP permit in fulfilling the requirement for a preliminary baseline determination.

Items 7 and 8 address Sections 205.315(f) and 205.316(d). In both cases, the regulation discusses transfer of the permit for an ERMS source. We realized that these only addressed participating sources, so we added new participating sources.

This concludes my prepared testimony. I am now available to answer any questions on this rulemaking.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

AMENDMENTS TO 35 ILL. ADM. CODE 205,)
EMISSIONS REDUCTION MARKET SYSTEM,)
AND 35 ILL. ADM. CODE 211)

R05-11
(Rulemaking – Air)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST ERRATA SHEET TO ITS PROPOSAL FOR THE AMENDMENTS OF 35 ILL. ADM. CODE 205, AND 35 ILL. ADM. CODE 211

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney Charles Matoesian, and submits this First Errata Sheet to its proposal for amendments to 35 Ill. Adm. Code 205 and 35 Ill. Adm. Code 211. The Illinois EPA proposes the following amendment to the text of the rules submitted in its proposal to the Board dated November 19, 2004:

1. Amend Section 205.150(d) to read:

- d) ~~At the end of each reconciliation period, on and after the date on which the source commences operation beginning with the reconciliation period immediately following the seasonal allotment period in which the source first becomes a new participating source, as specified in Section 205.210 of this Part, each new participating source shall:~~
- 1) Except as provided in subsection (f) of this Section, if ~~If~~ the new participating source is a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than 1.3 times its VOM emissions during the preceding seasonal allotment period; or
 - 2) If the new participating source is not a new major source pursuant to 35 Ill. Adm. 203, hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225 and 205.750 of this Part.

2. Amend new Section 205.150(f)(1) to read:

- f) 1) If the nonattainment classification of the Chicago area for ozone is changed such that the required offset ratio is no longer 1.3 to 1 and a new offset ratio applies, as specified in 35 Ill. Adm. Code 203.302, that ratio shall then apply in lieu of the 1.3 to 1 ratio set forth in subsections (c)(2), (d)(1), and (e) of this Section. Such new ratio shall not apply to any part of a source or any modification already subject to the 1.3 to 1 ratio or other previously-effective offset ratio established prior to the effective date of the new ratio.

3. Amend Section 205.205(a) to read.

Section 205.205 Exempt Source

- a) Any source that otherwise meets the criteria for participating sources shall be exempt from the requirements of this Part, except that any such source shall be required to obtain a CAAPP permit or FESOP and submit the seasonal emissions component of the Annual Emissions Report as specified in Section 205.300 of this Part, if the source accepts a 15 tons per seasonal allotment period limit on its VOM emissions in its CAAPP permit or FESOP for each seasonal allotment period in which the source would be required to participate in the ERMS in accordance with the following:
- 1) If the source would be required to participate in the ERMS beginning with the 1999 seasonal allotment period in accordance with Section 205.200(b)(1)(a) of this Subpart, such source shall apply for the applicable permit limitation by March 1, 1998; or
 - 2) If the source is required to participate in the ERMS in any seasonal allotment period after 1999 because its VOM emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999 in accordance with Section 205.200(b)(2) of this Subpart, such source shall apply for the applicable permit limitation by December 1 of the first year in which its seasonal emissions are at least 10 tons.

4. Amend Section 205.210(b) to read:

- b) Each new participating source shall hold ATUs, as specified in Section 205.150(d) of this Part, upon commencing operation.

5. *Amend Section 205.310(a) to read:*

Section 205.310 ERMS Applications

- a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:
- 1) For a participating source with baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Subpart, by March 1, 1998;
 - 2) For any source that first becomes a participating source or new participating source because its VOM emissions increase to 10 tons or greater during any seasonal allotment period beginning with 1999, on or before December 1 of the year of the first seasonal allotment period in which its VOM emissions are at least 10 tons, provided that this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203-~~02~~;
 - 3) For a ~~new participating source or for a major modification of any source existing prior to May 1, 1999, that~~ first becomes a participating source or new participating source due to a major modification is subject to 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is submitted or due for the ~~source or modification, whichever occurs first;~~ or
 - 4) For a source that will be a new participating source when it commences construction and that is also a major new source under 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is submitted or due for the source, whichever occurs first.

6. *Amend Section 205.310(e) to read:*

- e) Within 120 days after receipt of an ERMS application, the Agency shall provide written notification to the source of a preliminary baseline emissions determination. Public notice of a draft CAAPP permit or FESOP in accordance with Section 39.5(8) of the Act [415 ILCS 5/39.5(8)] shall fulfill this requirement for a preliminary baseline emissions determination if issued within 120 days.

7. *Amend Section 205.315(f) to read:*

- f) When a CAAPP permit for a participating source or new participating source is transferred from the current permittee to another person:
- 1) In the case of a name change of the participating source or new participating source where ownership is not altered, appropriate documentation shall be submitted to revise the Transaction Account to reflect the name change; or
 - 2) In the case of an ownership change of the participating source or new participating source, the allotment shall also be transferred by the owner or operator of the permitted source to the new owner or operator, or the new owner or operator shall submit a statement to the Agency certifying that such transfer is not occurring and demonstrating that necessary ATUs are or will be available by other means for the intended operation of the source.

8. *Amend new Subsection 205.316(d) to read:*

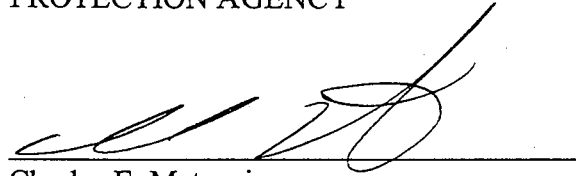
- d) When a FESOP for a participating source or new participating source is transferred from the current permittee to another person:
- 1) In the case of a name change of the participating source or new participating source where ownership is not altered, appropriate documentation shall be submitted to revise the Transaction Account to reflect the name change; or
 - 2) In the case of an ownership change of the participating source or new participating source, the allotment shall also be transferred by the owner or operator of the permitted source to the new owner or operator, or the new owner or operator shall submit a statement to the Agency certifying that such transfer is not occurring and demonstrating that necessary ATUs are or will be available by other means for the intended operation of the source.

9. *Amend Section 205.400(f) to read:*

- f) Except as provided in subsection (h) of this Section, any new participating source shall not be issued ATUs by the Agency, but shall be required to hold ATUs at the end of the reconciliation period as specified in Section 205.150(d) of this Part ~~for each seasonal allotment period in which it is operational.~~

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

A handwritten signature in black ink, appearing to read 'C. Matoesian', is written over a horizontal line.

Charles E. Matoesian

DATED: 1/14/05
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS
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PROOF OF SERVICE

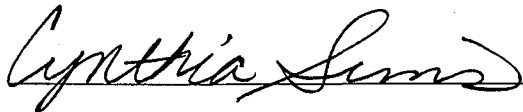
I, the undersigned, on oath state that I have served the attached TESTIMONY OF DAVID BLOOMBERG IN SUPPORT OF THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL TO AMEND 35 ILL. ADM. CODE 205, AND 35 ILL. ADM. CODE 211 and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST ERRATA SHEET TO ITS PROPOSAL FOR THE AMENDMENTS OF 35 ILL. ADM. CODE 205, AND 35 ILL. ADM. CODE 211 upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn
Clerk
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James R. Thompson Center
100 West Randolph, Suite 11-500
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(Overnight Mail)

John Knittle
Hearing Officer
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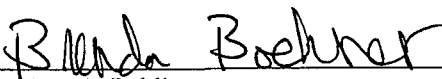
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and mailing it from Springfield, Illinois on January 14, 2005 with sufficient postage affixed as indicated above.

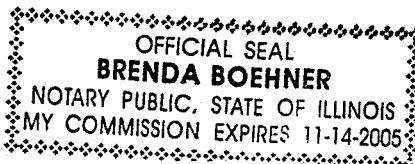


SUBSCRIBED AND SWORN TO BEFORE ME

this Fifteenth day of January, 2005



Notary Public



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