

APR 04 2005

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R 05-19
EXEMPTIONS FROM STATE) (Rulemaking -Air)
PERMITTING REQUIREMENTS)
35 ILL.ADM. CODE 201.146)

NOTICE

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

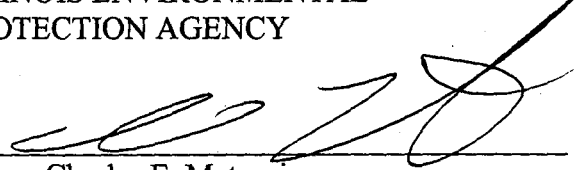
Amy Antonioli
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board the TESTIMONY OF DONALD E. SUTTON IN SUPPORT OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S AND THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PROPOSAL TO AMEND 35 ILL. ADM. 201.146 on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Date: April 1, 2005

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
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Division of Legal Counsel

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THIS FILING IS SUBMITTED ON
RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO)
EXEMPTIONS FROM STATE)
PERMITTING REQUIREMENTS)
(35 ILL. ADM. CODE 201.146))

R05-19
(Rulemaking - Air)

RECEIVED
CLERK'S OFFICE
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STATE OF ILLINOIS
Pollution Control Board

**TESTIMONY OF DONALD E. SUTTON IN SUPPORT OF
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S AND THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PROPOSAL TO
AMEND 35 ILL. ADM. CODE 201.146**

I am Donald E. Sutton, P.E. I have been manager of the Division of Air Pollution Control Permit Section since July 1991. The following is my testimony that provides Agency support for this proposed rulemaking.

PROPOSAL DEVELOPMENT

In 1996, the Board adopted revised rules providing to expand, clarify and modify the list of emission units and activities that are exempt from state air permitting requirements specified at 35 Ill. Adm. Code 201.142, 201.143, and 201.144. *Exemptions From State Permit Requirements, Amendments to 35 Ill. Adm. Code 201 and 211*, R96-17 (effective July 31, 1998). These amendments updated terminology and certain amendments and were intended to clarify the types of activities or emission units that are covered by particular exemptions, such as the exemption for fuel combustion equipment.

In 1997, Section 39 of the Environmental Protection Act ("Act") (415 ILCS 5/et. seq.) was amended to establish a *lifetime* permit program. Pursuant to P.A. 90-367, effective June 17, 1998, the Board adopted revised rules providing that emission sources not

subject to Section 39.5 of the Act or required to have a federally enforceable state operating permit ("FESOP") shall have operating permits that are required to be renewed only upon request by the Agency or if circumstances warrant a revised permit.

Amendments to General Permitting Provisions to Require Perpetual Permits for Certain Sources: Amendment to 35 Ill. Adm. Code 201, R98-13 (June 17, 1998). Circumstances requiring a revised operating permit or construction permit include change in ownership and construction or modification of an emission unit at a source pursuant to Section 201.169(c). "Construction" is defined as "commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment." 35 Ill. Adm. Code 201.102.

In 2003, the Board adopted rules to amend its permitting regulations for the control of air pollution in section 201.142 and add section 201.170 (35 Ill. Adm. Code 201.142). The adopted rules exempted certain smaller emissions sources from the requirement that owners and operators obtain new construction permits as required by Section 39 of the Act (415 ILCS 5/39 (2000)) each time the site of a small emission unit is changed.

Proposed Amendments to General Permitting Provisions for Portable Emission Units: Amendments to 35 Ill. Adm. Code 201, R02-10 (February 6, 2003).

PROPOSAL

This proposed rulemaking would seek to add four more categories to the permit exemptions in Section 201.146. These exemptions do not threaten the public health or welfare. Moreover, allowing the four additional categories of permit exemptions will

allow more efficient allocation of Illinois EPA resources during a time of budget

concerns. The proposed additions to Section 201.146 are below:

- a. Replacement or Addition of Air Pollution Control Equipment for Existing Emission Units – Proposed Section 201.146(hhh).
- b. New Emission Units and Modifications to Existing Emission Units at Facilities with Federally Enforceable State Operating Permits - Proposed Section 201.146(iii).
- c. New Emission Units or Modifications to Existing Emission Units at Permitted Sources That Are Not Major Sources or FESOPs - Proposed Section 201.146(jjj).
- d. Insignificant Activities at Clean Air Act Permit Program Sources - Proposed Section 201.146(kkk).

The Agency understands that the primary effect of the proposed amendments is to expand the list of activities and emission units that would qualify for exemption from state air permitting requirements by either adding categories of activities or emission units or by altering the threshold for the exemptions. The activities and emission units, which are proposed for exemption, are based on the historical experience of the Agency indicating that such emissions units do not merit permitting as the emissions from the units or activities are minimal. Further, individual information on these activities has not been needed for purposes of air quality planning.

The amendments to Section 201.146 exempt from state construction permitting the addition of new air pollution control equipment or the replacement of existing air pollution control equipment with a like kind unit. The proposal also sets de minimis levels of emissions for activities or emission units that will be exempt from state permitting requirements depending on the type of operating permit the source is or will

be required to have. The Agency is also proposing to clarify language which will make clear that an emission unit that is subject to a federal New Source Performance Standard ("NSPS") under 40 CFR 60 or subject to a federal National Emission Standard for Hazardous Air Pollutants ("NESHAP") under 40 CFR 61 or 63 will be required to have a state permit.

The Agency also believes that the emissions units or activities that have been deemed insignificant under the Clean Air Act Permit Program (CAAPP) can also be exempt from state permitting. Other than excusing the owner or operator of a CAAPP source from the requirement to obtain an air pollution control construction permit for such emission units or activities, the proposed amendments do not alter or affect the liability of the CAAPP source for compliance with emission standards and other requirements that apply to such emission units or activities, either individually or in conjunction with other emission units or activities constructed, modified, or located at the source.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

It is the Agency's opinion that as the proposed amendments expand the list of exemptions from state air permit requirements, the amendments do not impose new emission limitations or control requirements on affected sources. Thus, this proposal does not pose any issues with respect to technical feasibility. The additional exemptions will not significantly impact the effectiveness of the permit program and may help focus attention on the more "important emission units".

As an economic matter the proposal will reduce costs as the amendments expand the list of exemptions and many affected sources will be relieved of the requirement to obtain a state permit. A cost savings will result as those sources which no longer require permits will be relieved of the need to collect data, prepare permit applications and submit permit fees. The loss of permit fees should not affect the Agency, as the loss of revenue from eliminating permitting of these sources will be matched by the savings from eliminating the cost of reviewing such permit applications. The sources most affected by this proposed rulemaking currently pay the minimum amount of air pollution operating permit fees or the minimum construction permit application fees yet the processing of applications for such proposed activities or emission units covered by this proposed amendments may take as long to process as the projects for activities or emission units that will remain subject to the construction and operating permit requirements.

The Agency is willing to answer any questions about these proposed amendments or address any comments you may have.