

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:

PROPOSED AMENDMENTS TO R05-19  
EXEMPTIONS FROM STATE (Rulemaking - Air)  
PERMITTING REQUIREMENTS  
(35 ILL. ADM. CODE 201.146)

Proceedings held on June 14th, 2005, at 10 a.m., at the offices of the Illinois Pollution Control Board, 1021 North Grand Avenue East, North Entrance, Springfield, Illinois, before Amy Antonioli, Chief Hearing Officer.

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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
(312) 814-3956

BY: MS. AMY C. ANTONIOLLI, Hearing Officer  
MR. NICHOLAS J. MELAS, Board Member  
MR. THOMAS E. JOHNSON, Board Member  
MR. ANAND RAO, Technical Unit

Illinois ENVIRONMENTAL REGULATORY GROUP  
3150 Roland Avenue  
Springfield, Illinois 62703  
(217) 523-4942

BY: MS. KATHERINE D. HODGE, Executive Director  
HODGE, DWYER & ZEMAN  
3150 Roland Avenue  
Springfield, Illinois 62705  
(217) 523-4900

BY: MS. N. LADONNA DRIVER, Co-counsel  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
1021 North Grand Avenue East  
Springfield, Illinois 62794

BY: MR. CHARLES E. MATOESIAN, Counsel  
MR. DONALD E. SUTTON, Permit Section  
MR. ROBERT W. BERNOTEIT, FESOP

1 HEARING OFFICER ANTONIOLLI: Good morning and  
2 welcome to the Illinois Pollution Control Board Springfield  
3 offices. My name is Amy Antoniolli and I've been assigned as the  
4 hearing officer in this rulemaking. The Board has captioned this  
5 proceeding: Proposed Amendments to Exceptions from State  
6 Permitting Requirements, Amendments to 35 Illinois Administrative  
7 Code 201.146, which the Board has docketed R05-19.

8 In this proceeding the Agency, the proponents are asking to  
9 add four more categories to determine exemptions to state air  
10 permitting requirements in Section 201.146 of the Board's air  
11 rules. The joint proponents of this rulemaking are the Illinois  
12 Environmental Protection Agency and the Illinois Environmental  
13 Regulatory Group. The Board accepted the proposal for hearing of  
14 March 17, 2005, and today is the second hearing. The first  
15 hearing was held on April 12, 2005, in the Board's offices in  
16 Chicago.

17 The purpose of today's hearing is two-fold. First, this  
18 rulemaking is subject to Section 27(b) of the Environmental  
19 Protection Act. Section 27(b) requires the Board to request the  
20 Department of Commerce and Economic Opportunity to conduct an  
21 economic impact study on certain proposed rules prior to adoption  
22 of those rules. If DCEO chooses to conduct the impact study,  
23 then the DCEO has 30 to 45 days after such request to produce the  
24 study of the economic impact. The Board must then make the

1 impact study, or lack thereof, available to the public at least  
2 20 days before a public hearing on the economic impact of the  
3 rule. As required to 27(b) of the Act, the Board requested by a  
4 letter dated March 28th, 2005, that DCEO conduct an impact study  
5 of this rulemaking. DCEO did not respond and the Board has  
6 docketed the request with no response on May 16, 2005. The  
7 second purpose of today's hearing is to allow the proponents to  
8 again testify and allow any members of the public who happen to  
9 come -- I'll just note for the record there are no members of the  
10 public here at this time. But if any arrive during the process  
11 of the hearing, then they can -- they'll have the opportunity to  
12 testify or to ask questions of the proponents. Today's  
13 proceeding is governed by the Board's procedural rules. All  
14 information that is relevant and not repetitious or privileged  
15 will be admitted to the record.

16 To my left is Member Nicholas Melas, the board member that  
17 is assigned to this rulemaking. And seated to my far right is  
18 Member Johnson. Also present from the Board's technical unit  
19 today is Anand Rao.

20 The Board has received pre-filed testimony from one  
21 witness, Mrs. Katherine Hodge, on behalf of the proponents. Mrs.  
22 Hodge will testify on behalf of the proponents.

23 And before we begin, I'd like to note that since the first  
24 hearing, we've received a couple of filings. One I'll note that

1 the Agency has filed an errata of corrections to the proposed  
2 rule language. There has also been filed corrections to the  
3 transcript of the first hearing and answers by Mr. Don Sutton who  
4 testified at the first hearing on behalf of the Agency to  
5 questions that were raised at the first hearing.

6 Please note that any questions that may be posed by the  
7 board members or board staff today are to help develop a more  
8 complete record and do not reflect any bias. After Mrs. Hodge  
9 has testified, anyone else may testify, again, regarding the  
10 proposal. And like all witnesses who wish to testify, they will  
11 be sworn and may be asked questions about their testimony. And  
12 we'll conclude today's -- and we'll conclude today's hearing with  
13 a few procedural items. Member Melas, before we begin, would  
14 you like to add anything?

15 BOARD MEMBER MELAS: No. Just welcome everybody here today  
16 and we look forward to some interesting information. Thank you.

17 HEARING OFFICER ANTONIOLLI: And for the court reporter who  
18 is transcribing today's proceedings, and especially in light of  
19 the request for corrections that the Agency submitted, let's  
20 please speak up when we testify and ask questions, speak slowly  
21 and clearly and please don't speak over one another so that we  
22 can produce a clear transcript. With that, are there any  
23 questions about the procedures that we will follow today? If  
24 there are none, then we can turn it over to the proponents for an

1 opening statement, if any.

2 MR. MATOESIAN: I would just -- Charles Matoesian with the  
3 Illinois Environmental Protection Agency. I would just like to  
4 state that with me today I have Mr. Don Sutton available to  
5 answer questions. Mr. Bob Bernoteit if necessary to answer  
6 questions.

7 This rulemaking is very narrow and direct focused. It has  
8 four exemptions to the long list of existing exemptions under 35  
9 Illinois Administrative Code Part 201-146. These all involved  
10 minimal activities with little or no admission increases. In  
11 every case the proponent, that is the member of industry, the  
12 odis (phonetic) is on them to correctly identify the amount of  
13 emissions and they are responsible if there are any -- if they  
14 miscalculate or they misstate the amount of emission in order to  
15 try to take advantage of an exemption. Compliance is not at  
16 issue in any way. This is very focused. We do not believe that  
17 this is a major rulemaking in the sense. Issues involving PM  
18 2.5, particulate matter, or the eight-hour ozone standard is  
19 simply not relevant, neither are incinerators or coal fired power  
20 plants so I would just simply state this is a very minor focused,  
21 narrow rulemaking. And I will leave it at that at this point.  
22 Thank you.

23 HEARING OFFICER ANTONIOLLI: Okay. Mrs. Driver.

24 MS. DRIVER: Donna Driver, outside counsel for the Illinois

1 Environmental Regulatory Group. Kathy Hodge, who is the  
2 executive director of the group, will be presenting her pre-filed  
3 testimony today. She will be reading that into the record as  
4 filed. Again, we're just pleased to be before the Board and  
5 pleased to be coming before the Board with this rulemaking with  
6 the Illinois Environmental Protection Agency and looking forward  
7 to answering any questions you may have.

8 HEARING OFFICER ANTONIOLLI: Thank you. Is there anyone  
9 else? And if not, at this time we can go ahead and swear in the  
10 witness.

11 (The witness was sworn by the reporter.)

12 HEARING OFFICER ANTONIOLLI: You're free to start with your  
13 testimony.

14 MS. HODGE: Thank you very much. And before I go over my  
15 pre-filed testimony, just -- just a follow-up to the Agency's  
16 comments. We concur that, you know, it's minor but -- but also I  
17 want to assure the Board that -- that these are still very  
18 important exemptions for our member companies. You know, we  
19 would like to see the Board move ahead expeditiously to implement  
20 exemptions.

21 And with that I'll go directly to my pre-filed testimony.  
22 Thank you for the opportunity to offer testimony in this  
23 proceeding. My name is Katherine Hodge, and I'm the executive  
24 director of the Illinois Environmental Regulatory Group, which I

1 will refer to as IERG. IERG is an affiliate of the Illinois  
2 State Chamber of Commerce. As I stated during the prior hearing  
3 in this matter, over the last several years, IERG has worked with  
4 the Illinois EPA to identify potential areas where innovation and  
5 improvements to environmental permitting would assist both the  
6 State and the regulated community. In my testimony today, I  
7 would like to highlight some important points about the air  
8 permitting improvements before the Board in this proceeding.

9 First, I'd like to summarize the nature of the proposed air  
10 permit exemptions. Proposed subsection (hhh) would allow the  
11 replacement or addition of air pollution control devices in  
12 certain limited circumstances, such as where the emission unit  
13 being controlled is already permitted by Illinois EPA and has  
14 operated in compliance, the new control equipment will provide  
15 better equal emission control and will have the required  
16 monitoring equipment, etc.

17 Proposed subsection (iii) pertains to Federally Enforceable  
18 State Operating Permit, or "FESOP," sources and a similar  
19 provision, subsection (jjj), applies to Lifetime Operating Permit  
20 sources. These provisions allow replacement, modification or  
21 addition of new emission units at such sources and certain  
22 circumstances. These circumstances are limited to potential  
23 emissions from the project being less than a very low threshold  
24 amount, no change to the sources "nonmajor" status under Title V,



1 no applicability of certain federal requirements (such as under  
2 the New Source Performance Standards) and no outstanding  
3 specified compliance and enforcement matters. Each of these  
4 provisions also has its own restrictions, such as the hazardous  
5 air pollutant limit for the FESOP exemption and the notification  
6 provision for emission increases of certain levels for Lifetime  
7 Operating Permit sources.

8 Finally, proposed subsection (kkk) pertains to Clean Air  
9 Act Permit Program, or "CAAPP," sources. This provision would  
10 allow CAAPP sources to construct or modify insignificant  
11 activities without a construction permit.

12 I would now like to discuss the benefits of the proposed  
13 exemptions, as well as how protective the proposed permit  
14 exceptions are. First, the proposed permit exemptions were  
15 developed to help reduce the resources the Illinois EPA must  
16 devote to permit projects that have relatively inconsequential  
17 emissions. At the same time, these proposed permit exemptions  
18 would reduce the delay facilities must incur in initiating such  
19 minor projects while the permitting process takes place.

20 There's little question that Illinois EPA would routinely  
21 issue permits for the projects that qualify for these proposed  
22 permit exemptions. Even though there could be emission increases  
23 involved, Illinois EPA would ultimately issue permits for these  
24 types of projects. Thus, putting a permit exemption in place

1 does not change what occurs, with respect to emissions to the  
2 environment, when a project is instituted. Rather, these permit  
3 exemptions simply remove the requirement to obtain a permit  
4 before the project begins and a minor -- and a minor emissions  
5 increase, if any, occurs.

6 Second, the four exemptions at issue here are only for the  
7 requirements to obtain a state construction or operating permit.  
8 These exemptions have absolutely no bearing whatsoever on  
9 compliance with any substantive regulatory requirement. Assuming  
10 that a proposed activity, such as a new emission unit, would fit  
11 one of these permit exemptions, compliance would still be  
12 required with, for example, the Board's particulate matter  
13 provisions at 35 Illinois Administrative Code Part 212, or the  
14 volatile organic material provisions at 35 Illinois  
15 Administrative Code Part 218.

16 Furthermore, as I just mentioned, applicability of  
17 substantive regulatory requirement, such as New Source  
18 Performance Standards, could mean that a proposed permit  
19 exemption is not even available for a particular project under  
20 the proposed permitting amendments. I would add that the first  
21 paragraph of Section 201.146 currently prohibits the use of any  
22 of the permit exemptions where the project at issue is regulated  
23 by Nonattainment New Source Review, Prevention of Significant  
24 Deterioration, New Source Performance Standards or National

1 Emission Standards for Hazardous Air Pollutants. Thus, where  
2 these federal regulatory schemes are at issue, these exemptions  
3 will be unavailable and the permit process will still occur.

4 Third, the approach for the proposed permit exemptions will  
5 be the same, if not more stringent, than the current permit  
6 exemptions at 35 Illinois Administrative Code Section 201.146.  
7 The facility must evaluate the permit exemptions and make its own  
8 determination, at its own risk, as to whether the exemptions  
9 apply to a particular project. This is precisely how the permit  
10 exemption scheme has worked, under Section 201.146, in the past.  
11 However, unlike current permit exemptions, there is a compliance  
12 requirement for proposed subsections (hhh), (iii) and (jjj).  
13 This requirement sets a particularly high bar for new, modified  
14 or replacement units at Lifetime Operating Permit sources and  
15 Federally Enforceable State Operating Permit sources, in that a  
16 pending specified compliance inquiry or enforcement action  
17 prevents use of the permit exemption, even if the compliance  
18 inquiry or enforcement action is completely unrelated to the  
19 emission unit at issue in the proposed project. There is no  
20 similar restriction for any of the current permit exemptions in  
21 Section 201.146. Thus, these proposed provisions contain more  
22 than adequate safeguards for compliance.

23 In addition, in the case of proposed subsection  
24 (jjj) (1) (b), the facility will be required to provide prior

1 notification to Illinois EPA before initiating the proposed  
2 project. There is no similar requirement in any of the current  
3 permit exemptions in Section 201.146. Also, in the case of major  
4 sources, Illinois EPA will be informed of the projects upon  
5 application for renewal for the facility's operating permit, as  
6 required by Section 201.212.

7 Finally, the current permit exemptions in Section 201.146  
8 are only for certain specified categories of projects. Thus, if  
9 a proposed project does not fit neatly within one of those  
10 exemption categories, but has virtually no emissions, a permit is  
11 required, even though that project may have much fewer emissions  
12 than would occur from projects that fit the current categorical  
13 exemptions. This is an impractical result when considering  
14 impacts to the environment, Illinois EPA, resources required to  
15 issue such permits and the time delays involved for such projects  
16 while the permit is applied for and issued.

17 We have surveyed surrounding states within USEPA Region V  
18 and have determined that Illinois is the only state that does not  
19 have a permit exemption for projects that emit below a certain  
20 threshold amount. Further, the thresholds we are proposing here  
21 are extremely low when compared to similar provisions in the  
22 other Region V states. Accordingly, as USEPA has approved higher  
23 permit exemption thresholds in other states, the modest levels  
24 proposed here should easily pass muster with USEPA.

1           For the reasons I have discussed, the proposed permit  
2 exemptions would benefit Illinois EPA in better allocating its  
3 permitting resources, while allowing very minor projects to  
4 proceed without the delay of permitting. Significant safeguards  
5 have been instituted in these proposed exemptions for emissions  
6 impact, compliance and triggers of federal programs. In the  
7 limited situations posed in these exemptions, permitting would  
8 provide no added benefit to the air permitting or regulatory  
9 scheme. We urge the Illinois Pollution Control Board to move  
10 forward expeditiously with the proposed rulemaking. I would be  
11 happy to answer any questions that the Board may have.

12           HEARING OFFICER ANTONIOLLI: Okay. Thank you.

13           MS. DRIVER: If I could I'd just like to move that the  
14 pre-filed testimony of Kathy Hodge that was filed on June 1st be  
15 entered into the record as an exhibit.

16           HEARING OFFICER ANTONIOLLI: Okay. Are there any  
17 objections? There are no objections, I will enter the pre-filed  
18 testimony of Katherine D. Hodge on behalf of the Illinois  
19 Environmental Regulatory Group in support of R05-19 as Exhibit 1.  
20 Okay. And we can move onto questions if there are any? Any  
21 questions of Mrs. Hodge right now? Okay.

22           MR. MATOESIAN: None for me.

23           HEARING OFFICER ANTONIOLLI: And the Agency, would you like  
24 to add anything?

1 MR. MATOESIAN: No, not really.

2 BOARD MEMBER RAO: What is an errata sheet?

3 HEARING OFFICER ANTONIOLLI: An errata sheet, it's filed as  
4 part of the record. Okay. Well, let's go off the record for one  
5 minute.

6 BOARD MEMBER MELAS: Oh, I have --

7 HEARING OFFICER ANTONIOLLI: You do have one?

8 BOARD MEMBER MELAS: One.

9 HEARING OFFICER ANTONIOLLI: Well, continue.

10 BOARD MEMBER MELAS: I presume that it would probably be  
11 the Agency that might answer this better. Throughout your  
12 testimony and throughout the whole period we've been talking  
13 about these minor increases, that word de minimis come in several  
14 times. Without necessarily making this a joke, how many de  
15 minimises, not to do the de maximus, or is this -- or is this  
16 like asking how many angels can dance on a pin and --

17 MR. SUTTON: And do I need to swear --

18 HEARING OFFICER MELAS: Yes.

19 MR. SUTTON -- in? I'm Don Sutton. I'm the manager from  
20 the permit section.

21 HEARING OFFICER ANTONIOLLI: Let's swear you in.

22 (The witness was sworn by the reporter.)

23 BOARD MEMBER MELAS: What I'm asking is what might -- what  
24 in your estimation might be the cumulative effect of a whole

1 number of these because --

2 MR. SUTTON: Well, that's a decent question. And there are  
3 regulatory schemes that would kick in that this doesn't avoid.  
4 So your determination whether you're a major source under USEPA  
5 regulations will require to have a federal operating permit are  
6 based on your allowable emissions regardless --

7 BOARD MEMBER MELAS: Right.

8 MR. SUTTON: -- of whether you have a permit or not. So  
9 there would be a point in time if you had enough of these, that  
10 you could actually trigger then a higher level requirement. And  
11 so these are existing sources and they have to tell us what they  
12 currently have and, I mean, if they since are getting close, they  
13 will contact us. If we happen to be doing a field inspection and  
14 note they seem to have an inordinate number of these things, you  
15 can get there. But keep in mind we're talking somewhere --  
16 anywhere between a half a ton to two tons at most and most  
17 regulatory triggers, besides hazardous pollutants, will start  
18 after June 15th will be the 100 ton level. So you could add  
19 quite a few before you get there. Most of our Lifetime Emission  
20 sources in aggregate have less than 25 tons of total of all  
21 pollutants and that's what they're allowed to emit, and actual  
22 emissions range two to five tons a year. So there is a lot of  
23 room for growth before they actually get into regulatory scheme  
24 to require a higher permit.

1           BOARD MEMBER MELAS: What is the order of magnitude of the  
2 number of emission sources in the State of Illinois that could  
3 possibly be implementing these exemptions?

4           MR. SUTTON: Well, to a certain degree all the sources in  
5 the State of Illinois could take advantage of it, and we have  
6 6,800 roughly sources. Thus, true smaller guys are in -- I was  
7 actually, I think, provided numbers in the record, we have about  
8 roughly 4,900 sources that have less -- have a permit that keeps  
9 them less than 2,500.

10          BOARD MEMBER MELAS: Less than 25.

11          MR. SUTTON: 25 tons a year. So the vast majority of the  
12 sources are smaller sources. We'd like to say the largest 250  
13 sources emit 95 percent of the air pollutions in the State of  
14 Illinois.

15          BOARD MEMBER MELAS: So if -- without putting words in your  
16 mouth, actually there are enough permits, excuse me, enough  
17 provisions made, enough safeguards so that if it were to go  
18 beyond a certain point, there are provisions with which the  
19 Agency can then act?

20          MR. SUTTON: Right. There are ball bat provisions on the  
21 federal requirement that would make -- yeah, that would kick them  
22 into a higher regulatory scheme. We as a state do not have a  
23 right to write a federal requirement, so those exist of  
24 regardless what we do.



1 BOARD MEMBER MELAS: Thank you.

2 HEARING OFFICER ANTONIOLLI: So then in your research has  
3 either the Agency, or either seen in other states, any limit to  
4 them a number times one facility could -- one source could take  
5 advantage of exemptions -- threshold exemptions?

6 MS. HODGE: We're not aware of that kind of limitation in  
7 the rules in the other states but I've not reviewed specifically  
8 for that point. But in our prior review, we don't think there's  
9 anything there.

10 HEARING OFFICER ANTONIOLLI: Okay.

11 BOARD MEMBER RAO: Asking clarification for Mrs. Hodge, on  
12 page 3 and 4 you refer to some of the federal programs and state  
13 that these federal regulatory schemes are at issue these  
14 exemptions would not be, you know, available and the permit  
15 process would still take place. And Mr. Sutton just mentioned  
16 that all the 6,900 permitted sources may take advantage of this.  
17 I was just wanting to know if this is a federal permit involved  
18 then can they use this exemption for minor modifications and  
19 things like that or not?

20 MS. HODGE: Is your question whether a Title V source could  
21 --

22 BOARD MEMBER RAO: Yes, yes.

23 MS. HODGE: -- could rely upon that? Well, there are  
24 limitations and you have to look at each exemption independently.

1 The one that I think Title V resource will rely upon the most, of  
2 course, is the one for the insignificant activity. And right now  
3 under Title V operating permits, these sources are allowed to  
4 make these changes without updating their operating -- their  
5 Title V operating permit, some require notice, some do not. This  
6 would just simply allow them to make the changes without going  
7 through the construction permit process. But again, as I said,  
8 in my testimony, you know, there would be notification to the  
9 Agency for some and the Agency would be notified of all the  
10 changes at the time of renewal.

11 BOARD MEMBER RAO: Thank you.

12 HEARING OFFICER ANTONIOLLI: Is there anything further?

13 Okay. Then let's go off the record.

14 (A discussion was held off the record.)

15 HEARING OFFICER ANTONIOLLI: For the record the Board will  
16 accept public comment on this proposal until July 14th, 2005.  
17 There will be an additional public comment period of at least 45  
18 days after the Board adopts these rules for first notice.  
19 Today's hearing concludes the hearing scheduled by the Board in  
20 this matter but any party may request an additional hearing  
21 pursuant to Section 102.412(b) of the Board's procedural rules.

22 We expect to have the transcript of today's hearing by  
23 approximately eight business days which brings it to June 24th,  
24 2005. Soon after we receive the transcript, the Board will post

1 it to our website, which is [www.ipcb.state.il.us](http://www.ipcb.state.il.us), there the  
2 transcript, as well as the proponents' proposal, and all of the  
3 Board orders throughout this proceeding will be viewable and  
4 downloadable at no charge. Alternatively, you can order a copy  
5 of the transcript from the Clerk of the Board at 75 cents per  
6 page.

7           Anyone can file a public comment in this proceeding with  
8 the Clerk of the Board but please note that when filing a public  
9 comment, you serve all the people on the service list and please  
10 call the Board for the most recent version of the service list.  
11 Today we have brought copies of the current service list with us  
12 today. If there's nothing further, I wish to thank you all for  
13 your comment and testimony and questions and this hearing is  
14 adjourned. Thank you.

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STATE OF ILLINOIS  
COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 19 pages comprise a true, complete and correct transcript of the proceedings held on the 14th day of June A.D., 2005, at the Illinois Pollution Control Board, 1021 North Grand Avenue East, North Entrance, Springfield, Illinois, in the matter of: Proposed Amendments to Exemptions From State Permitting Requirements (35 Ill. Adm. Code 201.146) in proceedings held before Hearing Officer Amy Antonioli, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 20th day of June A.D., 2005.



*Beverly S Hopkins*

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Beverly S. Hopkins  
Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

CSR License No. 084-004316

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