

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 13 2005

STATE OF 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)

PC#8

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Richard McGill
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(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: *LaDonna Driver*
One of Its Attorneys

Dated: July 11, 2005

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IERG:001/R Dockets/Filing/NOF – R04-20 and R04-12 – Comments 07-11-05

THIS FILING SUBMITTED ON RECYCLED PAPER

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
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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on July 11, 2005..


N. LaDonna Driver

IN THE MATTER OF:)		JUL 13 2005
)		
CLEAN-UP PART III AMENDMENTS TO 35)	R04-20	STATE OF ILLINOIS
ILL. ADM. CODE PARTS 211, 218, AND 219)	(Rulemaking – Pollution Control Board)	
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“SULFUR LIMITATIONS”)	(Consolidated)	

**FIRST NOTICE 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 58 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 participated in the May 6, 2004, hearing in this matter, and filed post-hearing comments. On April 21, 2005, the Board issued its First Notice Opinion and Order in this proceeding (hereinafter referred to as “First Notice”). On May 27,

2005, the First Notice amendments in this proceeding were published in the Illinois Register. IERG submits the following comments on the First Notice Opinion and Order.

II. DISCUSSION

A. Capture Efficiency Testing Alternatives

As stated at hearing and in its post-hearing comments, IERG appreciates and supports the rulemaking'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").

IERG had two main concerns with the different versions of the DQO and LCL language proposed by Illinois Environmental Protection Agency ("Illinois EPA") in its rulemaking proposal, errata sheet and post-hearing comments. First, IERG believed that the language could be read to improperly shift the burden of proof in an enforcement case to the respondent source to prove that it is in compliance. Second, IERG believed that the language imposed a new requirement to conduct testing in order to establish emission credits for offsets, shutdowns and trading.

The Board satisfactorily addressed IERG's concerns in the language it ultimately utilized in the First Notice Opinion and Order. However, the Board sought additional comment from the parties, particularly on the issue of testing for emission credits. IERG has discussed this issue with Illinois EPA. IERG understands, from those discussions, that, barring any other reason to require additional testing:

- where a source had originally performed testing at an emission unit using standard methods, and then later seeks emission credits for that emission unit, no additional testing will be required by this rulemaking to establish credits for that emission unit;

- where a source had originally performed testing at an emission unit using the DQO, and then later seeks emission credits for that emission unit, no additional testing will be required by this rulemaking to establish credits for that emission unit;
- where a source has not been required to perform testing at an emission unit, and then later seeks emission credits for that emission unit, no additional testing will be required by this rulemaking to establish credits for that emission unit;
- where a source had originally performed testing at an emission unit, has relied upon the LCL, and then later seeks emission credits for that emission unit, additional testing will be required for that emission unit.

Thus, testing to establish emission credits will only be required when the source had previously conducted testing and relied upon the LCL. IERG suggests that a Board note be included on this point, and has provided one below.

IERG also understands, through its discussions with Illinois EPA on the testing issue, that Illinois EPA would prefer that the full federal guidance language be utilized in the rule, as to the enforcement issue originally raised by IERG. This would provide for meeting the DQO in showing non-compliance in an enforcement case. Illinois EPA apparently would also like to provide for utilizing standard test methods in such situations. IERG had included the full federal guidance language in its post-hearing comment and is still supportive of that language. IERG also does not object to including use of standard test methods as an option in this situation. IERG's suggested revisions to the Board's First Notice language is:

Where capture efficiency testing is done to determine emission reductions for the purpose of establishing emission credits for offsets, shutdowns, and trading, the LCL protocol cannot be used for these applications. In enforcement cases, the LCL protocol cannot confirm non-compliance; sufficient tests must be performed to satisfy the DQO; failure to satisfy the DQO shall require capture efficiency to be determined using one of the standard protocols described in subsection (c)(2)(A), (B), (C) or (D) above.

(Board note: Sources should be aware that where LCL was utilized in testing emission units that are the subject of later requests for establishing emission credits for offsets, shutdowns and trading, prior LCL results may not be relied upon in determining the appropriate amount of credits, such that additional testing at the DQO or standard method level may be required to establish the appropriate amount of credits.)

B. Definition of Carbon Adsorber

Finally, the First Notice rulemaking contains a definition of “carbon adsorber” at Section 211.953. IERG appreciates the Board’s resolution of IERG’s concerns with the first sentence of the proposed definition. However, IERG remains concerned that the definition of “carbon adsorber” includes other media besides carbon, such as oxides of silicon and aluminum. Thus, the title of the definition “carbon adsorber” could be deceptive as to the types of devices covered by the definition.

The term “carbon adsorber” is utilized throughout the Part 218/219 rules to impose substantive requirements. 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 is concerned that sources, when reviewing monitoring requirements for “carbon adsorbers” in Subparts Q, T, and V, would not understand that such requirements would also extend to adsorbers with media containing oxides of silica and aluminum. The Board responded to this concern by stating that the term “carbon

adsorber” is “commonly understood to refer to adsorbent technology generally.” First Notice at 13. Yet, the Board also refers to Illinois EPA’s statements regarding its enforcement difficulties with parties believing that non-carbon adsorber technologies are not subject to requirements for carbon adsorbers. Id. While a definition that is inclusive of all media seems to “close that unforeseen loop hole,” it does so at the expense of regulatory requirements that are readily understood.

The Board has, in its First Notice Opinion, requested that Illinois EPA propose an omnibus rulemaking to replace the term “carbon adsorber” with a “more accurate term” if the First Notice Opinion and Order approach “does not work as intended.” IERG suspects that such a trigger will only occur after some sources have suffered the enforcement consequences of not understanding that “carbon adsorber” refers to “adsorbent technology generally.” IERG believes that the better approach is to avoid such a situation and make the regulations clear from the outset.

IERG does not seek, in this proceeding, to reopen all regulatory provisions that carry requirements for “carbon adsorbers.” Rather, the simplest approach at this time is simply to amend the “carbon adsorber” definition, until such time as another rulemaking can be conducted to change the title and scope of the definition and the corresponding references in the substantive regulatory requirements. Thus, IERG proposes that the First Notice definition of “carbon adsorber” be revised as follows:

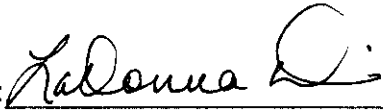
~~“Carbon adsorber” means a control device designed to remove and, if desired, recover volatile organic material (VOM) from process emissions where removal of VOM is accomplished through the adherence of the VOM onto the surface of highly porous adsorbent particles, such as activated carbon. The term “carbon adsorber” describes any adsorber technology used as a control device even though media other than carbon may be used as the adsorbent, such as oxides of silicon and aluminum.~~

III. CONCLUSION

IERG requests that the rulemaking in this proceeding 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: July 11, 2005

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