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JUL 19 2005

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE 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) )

**NOTICE OF FILING**

*PC#2*

TO: Ms. Dorothy M. Gunn Ms. Amy Antonioli  
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 of the **POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP IN SUPPORT OF R05-19**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

By: *LaDonna Driver*  
One of Its Attorneys

Dated: July 14, 2005

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**CERTIFICATE OF SERVICE**

I, N. LaDonna Driver, the undersigned, certify that I have served the attached  
POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP IN SUPPORT OF R05-19 upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield,  
Illinois, on July 14, 2005.

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N. LaDonna Driver

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 19 2005  
R05-19  
STATE OF ILLINOIS  
Pollution Control Board

**POST-HEARING COMMENTS OF  
THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP  
UPON PROPOSED AMENDMENTS TO 35 ILL. ADMIN. CODE 201.146**

NOW COMES HODGE DWYER ZEMAN, on behalf of the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), and provides the following comments on the proposed amendments to 35 Ill. Admin. Code § 201.146.

**I. INTRODUCTION**

IERG is a not-for-profit Illinois corporation comprised of 58 member companies engaged in industry, commerce, manufacturing, agriculture, trade, transportation or other related activities regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. IERG was organized to promote and advance the interests of its members before governmental agencies such as the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Pollution Control Board ("Board"). IERG is also an affiliate of the Illinois State Chamber of Commerce, which has more than 5,000 members in the State. A number of IERG member companies conduct activities governed by the regulations set forth in 35 Ill. Admin. Code § 201.146.

IERG would like to thank the Board for the opportunity to participate in the April 12, 2005, and June 14, 2005, hearings<sup>1</sup> held on the proposed rulemaking. IERG also appreciates this opportunity to make the following additional comments upon the proposed amendments to 35 Ill. Admin. Code § 201.146.

## **II. SUMMARY OF PROPOSAL**

The proposed rulemaking seeks to add four categories to the permit exemptions in 35 Ill. Admin. Code § 201.146. The requirements for obtaining state construction and operating permits are extremely broad. See 35 Ill. Admin. Code § 201.142 and § 201.143. Sources sometimes wait for months for construction permits. 35 Ill. Admin. Code § 201.146 provides state permit exemptions on a category basis only. There is no permit exemption for projects that have emissions below a certain level. Also, there is no permit exemption for pollution control equipment or for insignificant activities under the Title V program. The provisions in this proposal seek to address these problems with Section 201.146. IERG has worked closely with Illinois EPA to formulate these additional permit exemptions. The parties believe that the proposed permit exemptions will eliminate unnecessary permitting burdens for Illinois EPA and regulated sources while being protective of the environment.

Proposed subsection (hhh) would allow the replacement or addition of air pollution control equipment in certain limited circumstances, such as where the existing unit being replaced is already permitted by Illinois EPA, has operated in compliance, will provide equal or better emission control and will have the required monitoring equipment, etc.

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<sup>1</sup> All references to "Tr. at \_\_\_" refer to the transcript for the April 12, 2005, hearing.

The second and third new categories of permit exemptions are proposed subsection (iii), pertaining to Federally Enforceable State Operating Permits (“FESOP”) sources and proposed subsection (jjj), pertaining to Lifetime Operating Permit sources. These provisions allow permit exemptions in similar circumstances. The replacement, addition or modification of new emission units would be allowed when a series of criteria are satisfied, including when the potential emissions from the project are less than a very low threshold amount, when there is no change to the source’s status as a nonmajor source under Title V, when specified federal requirements are not triggered, and when there are no outstanding specified compliance and enforcement matters. Both subsections (iii) and (jjj) have other source-specific restrictions, such as the hazardous air pollutant limit for the FESOP source exemption in subsection (iii) and the prior notification requirement for emissions increases of certain levels for Lifetime Operating Permit sources in subsection (jjj).

Finally, the fourth proposed exemption, subsection (kkk), pertains to Clean Air Act Permit Program (“CAAPP”) sources. The proposal will allow CAAPP sources to construct or modify an emission unit or activity that is an insignificant activity without a construction permit. The exemption clarifies that the source must still satisfy existing notification and compliance requirements.

### **III. JUSTIFICATION**

IERG has stated its support for this proposed rulemaking in its previous filings and testimony before the Board in this matter. However, IERG would like to re-emphasize its rationale for supporting this important first step in the process of improving the Illinois air permitting system.

A. **Supporting Data**

Data provided by the Illinois EPA in its “Answers to Questions Raised at the April 12, 2005 Hearing” confirms our prior analysis of earlier data by showing that the vast majority of all construction permits issued by the Illinois EPA in 2003 and 2004 went to facilities where there was no emissions increase or an emissions increase of less than one ton per year. This finding confirms our earlier conclusion that there is a significant need to eliminate a large percentage of such construction permits.

Additionally, analysis of air permitting data from surrounding states reveals that many states are recognizing the benefits of exempting minor emission increases from the traditional permitting review system. In fact, all other Region V states, except Illinois, have some form of a *de minimis* permitting exemption and many of those states have established classes of permits for similar sources, sometimes called general permits, and streamlined permitting review processes for sources with low emissions, sometimes called registration-only permits. (See Exhibit #2 from “Pre-Filed Testimony of Katherine D. Hodge on Behalf of the Illinois Environmental Regulatory Group in Support of R05-19” filed with the Board on April 4, 2004.)<sup>2</sup>

It is clear from the changes occurring in other states that a much needed shift is occurring—a shift from a system that takes the same approach to permitting all types of activities, to a system that targets permitting resources to a level that is more appropriate

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<sup>2</sup> In preparation of this comment, IERG has reviewed the status of the state provisions in this exhibit, to ensure that all information there is still current. All information in the exhibit remains current except for footnote 2 for the Ohio provisions. We have been informed by personnel at Ohio EPA that the proposal at issue in that footnote has been put on hold. In addition, IERG investigated Sierra Club’s reference to USEPA’s concerns with Act 118, referenced at Section III of the Wisconsin information in Exhibit 2. Our discussions with Wisconsin DNR revealed that while USEPA had initial questions and/or concerns with the statute, Wisconsin DNR has been working with USEPA to resolve those issues and the rulemaking implementing Act 118 is scheduled to be finalized in September.

to the regulatory or emissions consequence of a proposed activity. Because USEPA has approved the permit streamlining initiatives in other Region V states, which in some cases, involve much higher emission thresholds, USEPA should certainly approve the provisions at issue in this proceeding.

**B. Benefits**

By the elimination of full permitting review for minor projects, more Illinois EPA resources will be freed up to concentrate on permit actions involving something more than minimal emissions. This would allow reallocation of Agency resources away from merely processing routine permits, to a greater focus on projects with greater emission and regulatory ramifications.

Additionally, facilities eligible to proceed with minor projects under the proposed exemptions will be freed from burdensome and costly delays that often occur in the lengthy permitting process. This will provide greater operational flexibility for facilities, with little or no cost to the environment, due to the minimal nature of the emissions involved.

Further, the environment would benefit from proposed subsection (hhh). This provision would allow a facility to replace or add air pollution control equipment quickly, rather than waiting for full permit review. Thus, this proposal eliminates permit hurdles that can unnecessarily delay the air quality benefit that may be realized by installing and operating air pollution control equipment.

**C. Safeguards**

Although some questions have been raised by Sierra Club about the proposed amendments, the safeguards in the proposed regulatory language counteract these



concerns. First, it should be emphasized that the exemptions themselves would not cause increased emissions of any pollutants. Even without the availability of these permit exemptions, there is little question that for a facility seeking to accomplish one of the activities covered by the proposed exemptions, Illinois EPA would, upon review of a permit application, routinely issue a permit. So, with or without the permit exemption, the project would be done with a potential consequence of very little or no emissions increase. The proposed exemptions would simply remove the requirement to secure the permit before the project begins; thus, the impact on the environment is the same with or without the exemption.

Additionally, the four proposed exemptions are narrowly directed to circumstances when a state construction or operating permit will not be required. The permit exemptions are in no way exemptions from other substantive regulatory requirements. For example, although a new emission unit may qualify for one of the proposed exemptions, compliance would still be required with substantive provisions that target particular pollutants at Parts 212-219 of the Board's regulations.

As a second safeguard, the existing introductory language in Section 201.146 will also be applicable to the proposed amendments. That language specifically states that the permitting exemptions do not relieve the source from obligations to comply with any other applicable requirements, including obligations for obtaining permits as required by nonattainment New Source Review ("NSR"), Prevention of Significant Deterioration ("PSD"), New Source Performance Standards ("NSPS") or National Emission Standards for Hazardous Air Pollutants ("NESHAP"). Applicability for these federal requirements may trigger from the project's potential emission increases, or applicability can be

emissions-neutral in that a certain activity in a project will bring about compliance and permit requirements. When these federal obligations exist, traditional permitting procedures apply and the exemptions will be unavailable for the project.<sup>3</sup>

Similarly, the proposed permit exemptions themselves contain provisions that prevent their use where federal obligations would ultimately be triggered, including by cumulative emissions increases at the facility. For example, proposed subsection (hhh)(4) prohibits use of the pollution control equipment exemption where different regulatory requirements would apply (e.g., NSPS). Also, subsection (jjj)(2) prohibits use of the permit exemption where NESHAP requirements apply (e.g., potential HAP emissions at the facility reach major source thresholds). Subsection (iii)(4) prohibits use of the permit exemption at FESOP sources where the project would, in addition to other emissions at the facility, trigger nonattainment NSR or PSD requirements, or the need for a revised FESOP limiting potential to emit. Subsection (jjj)(3) prohibits use of the permit exemption at Lifetime Operating Permit sources where the project would, in addition to other emissions at the facility, trigger Title V permit requirements, either for a CAAPP permit or a FESOP. Thus, triggers for federal regulatory and permit requirements, including for cumulative emissions, are more than adequately provided for in the permit exemptions.

A third safeguard of the proposal is the compliance requirement in subsections (hhh), (iii) and (jjj). Unlike other currently existing exemptions in Section 201.146, the proposed exemptions prevent the use of the exemption if there is a pending specified air

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<sup>3</sup> Notably, the industries raised by Sierra Club repeatedly in the April hearing, medical waste incinerators and utilities, are regulated by NSPS, and would, of course, have potential coverage for a given project under nonattainment NSR or PSD.

emissions compliance inquiry or enforcement action involving the source, even if the compliance inquiry or enforcement action is completely unrelated to the emission unit at issue in the proposed project. This requirement sets a particularly high standard for using the exemption, certainly more stringent than that placed on currently existing exemptions in Section 201.146.

Another safeguard is the prior notice requirement of proposed subsection (jjj)(1)(b) for Lifetime Operating Permit sources. When emissions are projected to be more than 0.1 pound per hour but less than 0.5 pound per hour, before initiating the proposed project, the facility must notify the Illinois EPA. Again, this is a more stringent requirement than is currently found in any of the existing exemptions in Section 201.146.

There was a concern voiced by Sierra Club at the April hearing that Illinois EPA might not know whether a project qualifies for a permit exemption until after the project is completed. IERG would like to re-emphasize that this approach is standard across all of the current permit exemptions, because Illinois EPA does not typically inspect a facility prior to issuing a permit. The burden of determining proper use of a permit exemption and the risk that the Illinois EPA will later disagree with that determination are on the facility using the exemption. As Mr. Sutton stated in his testimony, the use of the exemption does not shield the facility from future enforcement, if in fact, the facility is incorrect about project emissions and use of the permit exemptions. Tr. at 110.

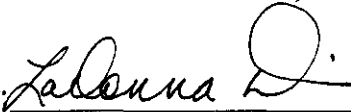
Clearly, the safeguards drafted into the proposed amendments to Section 201.146 are more than adequate to address the concerns that have been raised. The proposal is narrowly crafted to capture those minor emission projects that do not rise to the level of needing full permit review.

V. **CONCLUSION**

For the reasons discussed above, IERG urges the Board to adopt the proposed amendments to 35 Ill. Admin. Code § 201.146. As discussed extensively in the filings and testimony, IERG believes this proposal to begin the Illinois air permit streamlining process will greatly benefit both industry and the Illinois EPA with little or no negative impact on the environment. A significant number of safeguards have been inserted into the proposed amendments to allay concerns about compliance, emission increases, etc. Additionally, the proposal will begin to move the Illinois air permitting system in a direction more consistent with the air permitting systems of neighboring Region V states.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
\_\_\_\_\_  
One of Its Attorneys

Dated: July 14, 2005

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