ILLINOIS POLLUTION CONTROL BOARD
December 1, 2011

IN THE MATTER OF:	)	
	)	
REGISTRATION OF SMALLER SOURCES	)	R12-10
(ROSS): NEW 35 ILL. ADM. CODE 201.175	)	(Rulemaking - Air)

Adopted Rule. Final Opinion and Order.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook)

The Board today adopts amendments to Part 201 of its air pollution regulations, which addresses permits and general provisions. Specifically, the Board adopts a new Section 201.175 implementing Registration of Smaller Sources (ROSS) under Section 9.14(d) of the Environmental Protection Act (Act). 415 ILCS 5/9.14(d) (2010); *see* Public Act 97-0095, eff. July 12, 2011. The amendments will become final upon filing with the Secretary of State.

In this opinion and order, the Board first provides the procedural history and statutory background of this rulemaking docket before addressing a preliminary matter. Next, the Board summarizes the Agency's original proposal and the final post-hearing comments. The Board then addresses issues including potential affected source, projected impacts on emissions, technical feasibility and economic reasonableness. After reviewing development of the record in support of the rules on a section-by-section basis, the Board reaches its conclusion and directs the Clerk to provide publication of the adopted rules in the *Illinois Register*.

PROCEDURAL HISTORY

On August 15, 2011, the Illinois Environmental Protection Agency (Agency or Illinois EPA or IEPA) filed a rulemaking proposal pursuant to Sections 9.14 and 27 of the Act. 415 ILCS 5/9.14, 27 (2010)); *see* Public Act 97-0095, effective July 12, 2011 (including addition of new Section 9.14). Among the documents accompanying the proposal were a Statement of Reasons (SR), a Technical Support Document (TSD), and testimony on behalf of the Agency by Mr. Jim Ross (Ross Test.) and Mr. Edwin C. Bakowski (Bakowski Test.). In an order dated August 18, 2011, the Board accepted the proposal for hearing and directed the Clerk to publish it in the *Illinois Register* as a proposal for public comment. *See* 35 Ill. Reg. 14616 (Sept. 2, 2011).

In an order dated August 18, 2011, the hearing officer scheduled two hearings: the first on Wednesday, October 5, 2011, in Springfield with a deadline of Wednesday, September 21, 2011, to pre-file testimony; and the second on Thursday, October 27, 2011, in Chicago with a deadline of Thursday, October 13, 2011, to pre-file testimony.

The first hearing took place as scheduled on October 5, 2011, in Springfield, and the Board received the transcript (Tr.1) on October 7, 2011. During the first hearing, the hearing officer admitted into the record four exhibits: the pre-filed testimony of Mr. Ross (Exh. 1); the pre-filed testimony of Mr. Bakowski (Exh. 2); a comment by Mr. Mark Grant representing the

National Federation of Independent Business (NFIB) (Exh. 3); and a comment by Mr. Jeffrey Adkisson representing the Grain & Feed Association of Illinois (GFAI) (Exh. 4). *See* Tr.1 at 8-9, 39-40.

On October 13, 2011, the Board received a public comment filed by the Graphic Arts Coalition (GAC), which includes the following organizations: the Great Lakes Graphic Association, the Flexographic Technical Association, and the Specialty Graphic Imaging Association (PC 1). On October 14, 2011, the Board received a public comment filed by the Illinois Association of Aggregate Producers (IAAP) (PC 2). On October 24, 2011, the Board received comments filed by the Agency in response to questions raised during the first hearing (PC 3).

The second hearing took place as scheduled on October 27, 2011, in Chicago, and the Board received the transcript (Tr.2) on October 27, 2011. During the second hearing, the hearing officer admitted into the record a single exhibit, a disk produced by the Agency on which are listed potentially affected sources (Exh. 5). *See* Tr.2 at 6-7; *see also* Tr.1 at 29-30.

Also on October 27, 2011, the Board received a public comment filed by Mr. Adkisson on behalf of the GFAI (PC 4).

In an order dated October 28, 2011, the hearing officer set a deadline of November 15, 2011, to file post-hearing comments.

On November 15, the Board received comments from the Illinois Environmental Regulatory Group (IERG) (PC 5). On November 16, 2011, the Board received post-second hearing comments from the Agency (PC 6), accompanied by a motion for leave to file *instanter*.

STATUTORY BACKGROUND

Public Act 97-0095 (P.A. 97-0095) became effective on July 12, 2011. Among its provisions, P.A. 97-0095 added to the Act a new Section 9.14 entitled "Registration of smaller sources." P.A. 97-0095 (Section 20). The Agency cites Section 9.14 of the Act as authority for its rulemaking proposal. *See* SR at 1.

Section 9.14(a) provides in pertinent part that, "[a]fter the effective date of rules implementing this Section, the owner or operator of an eligible source shall annually register with the Agency instead of complying with the requirement to obtain an air pollution construction or operating permit under this Act." 415 ILCS 5/9.14(a) (2010). Subsection (a) also provides that "[t]he criteria for determining an eligible source shall include" the following seven listed criteria:

> (1) the source must not be required to obtain a permit pursuant to the Illinois Clean Air Act Permit Program or Federally Enforceable State Operating Permit program , or under regulations promulgated pursuant to Section 111 of 112 of the Clean Air Act;

(2) the USEPA [United States Environmental Protection Agency] has not otherwise determined that a permit is required;

(3) the source emits less than an actual 5 tons per year of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions;

(4) the source emits less than an actual 0.5 tons per year of combined hazardous air pollutant emissions;

(5) the source emits less than an actual 0.05 tons per year of lead air emissions;

(6) the source emits less than an actual 0.05 tons per year of mercury air emissions; and

(7) the source does not have an emission unit subject to a standard pursuant to 40 CFR Part 61 Maximum Achievable Control Technology, or 40 CFR Part 63 Nations Emissions Standards for Hazardous Air Pollutants other than those regulations that the USEPA has categorized as "area source". *Id.*

Section 9.14(c) provides in pertinent part that "[t]he owner or operator of an eligible source shall pay an annual registration fee of $235 to the Agency at the time of registration submittal and each year thereafter." 415 ILC 5/9.14(c) (2010).

Section 9.14(d) addresses the rulemaking authority of the Board and provides in pertinent part that

> [t]he Agency shall propose rules to implement the registration of smaller sources program. Within 120 days after the Agency proposes those rules, the Board shall adopt rules to implement the registration of smaller sources program. These rules may be subsequently amended from time to time pursuant to a proposal filed with the Board by any person, and any necessary amendments shall be adopted by the Board within 120 days after proposal. Such amendments may provide for the alteration or revision of the initial criteria included in subsection (a) of this Section. Subsection (b) of Section 27 of this Act and the rulemaking provisions of the Illinois Administrative Procedure Act do not apply to rules adopted by the Board under this Section. 415 ILCS 5/9.14(d) (2010); *see* 5 ILCS 100/5-5 *et seq.* (2010); 415 ILCS 5/27(b) (2010); Ross Test. at 2-3.

Accordingly, the Board is required to adopt ROSS rules on or before Tuesday, December 13, 2011. *See* 415 ILCS 5/9.14(d) (2010). The last regularly-scheduled Board meeting preceding that date will takes place today, December 1, 2011.

PRELIMINARY MATTER

On November 16, 2011, the Agency filed its post-second hearing comments (PC 6), accompanied by a motion for leave to file *instanter* (Mot.). The motion noted that a hearing officer order on October 28, 2011, set a deadline of November 15, 2011, to file post-hearing comments. Mot. at 1. The Agency stated that, on November 15, 2011, it was still discussing and receiving comments on its rulemaking proposal. *Id*. The Agency added that, "[a]fter receiving comments, it took several hours to redraft the rule and the accompanying comments and comply with administrative requirements for filing." *Id*. The Agency indicated that this additional time enabled it to reach agreements on amending the proposal. *Id*. The Agency cited IERG's post-hearing comment as support for its re-drafted proposal. *Id*. at 2. The Agency argued that "[a]ccepting and considering the Illinois EPA's Post 2nd Hearing comments will not delay the Board's decision in this matter and will provide the Board with regulatory language that has been agreed upon by many of the Representatives of affected sources." *Id*. The Agency concluded by requesting that the Board grant its motion for leave to file *instanter*. *Id*.

Section 101.500(d) of the Board's procedural rules states that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed." 35 Ill. Adm. Code 101.500(d). Section 9.14(d) of the Act requires the Board to adopt rules implementing the ROSS program within 120 days after the Agency's proposal of those rules on August 15, 2011. 415 ILCS 5/9.14(d) (2010); P.A. 97-0095, eff. July 12, 2011. Accordingly, the Board must adopt these rules on or before Tuesday, December 13, 2011, and the last regularly-scheduled Board meeting before that date will take place on Thursday, December 1, 2011. The Board consequently finds that undue delay would result from allowing the 14-day response period to run and proceeds to decide the motion.

Section 9.14(d) of the Act establishes a 120-day deadline for the Board to adopt these rules without making provision for extension or waiver of the deadline. *See* 415 ILCS 5/9/14(d) (2010). The Board has reviewed the substance of the Agency's motion and notes the delay of a single day in the filing of its post-hearing comments. The Agency plainly indicates that the additional day allowed it to re-draft its comments to reflect agreements with various participants. Under these circumstances, the Board grants the Agency's motion for leave to file *instanter*, accepts the Agency's post-second hearing comments into the record, and addresses those comments below in this opinion under "Development of Record in Support of Adopted Rules" (*infra* at 6-34).

SUMMARY OF AGENCY'S ORIGINAL PROPOSAL

The Agency notes that Public Act 97-0095, effective July 12, 2011, includes the adoption of ROSS provisions as new Section 9.14 of the Act. *See* 415 ILCS 5/9.14 (2010); TSD at 4; Ross Test. at 2-3; Bakowski Test. at 2. To implement Section 9.14, the Agency proposes to add a new Section 201.175 to the Board's existing air pollution regulations. *See* 35 Ill. Adm. Code 201 (Permits and General Provisions); SR at 1; TSD at 4.

The Agency states that, after analyzing its operations, it concluded that it dedicates significant resources to permitting and processing annual emissions reports from "a large number

of small sources whose aggregate emissions are small in comparison to the emissions from a small number of large sources." SR at 1; TSD at 4, 6; Ross Test. at 3. The Agency elaborated that its "Bureau of Air permits more than 6,400 air emission sources in Illinois. Of these permitted sources, around 179 sources are responsible for approximately 90% of the emissions of criteria pollutants in Illinois." SR at 1; TSD at 4, 6, 11; Ross Test. at 3. Mr. Ross added that "[t]he largest 2,756 sources are responsible for 99% of these emissions." Ross Test. at 3; *see* SR at 1; TSD at 4, 6, 11. The Agency indicates that "[t]he smallest sources, which number 3,701, account for only 1% of the air pollution in the State." SR at 1; *see* TSD at 4, 6, 11; Ross Test. at 3. The Agency projects that approximately 3,250 sources including grain handling operations, concrete plants, mines, bulk terminals, and dry cleaners would qualify for the ROSS program under the proposed eligibility criteria. TSD at 7, 11. Mr. Ross stated that issuing permits to these smaller sources "requires a significant amount of Agency resources." Ross Test. at 3; *see* TSD at 4, 6; Bakowski Test. at 2. The Agency expresses the belief that, with adoption of a ROSS program, it "could provide greater service and maintain or improve air quality protection by focusing resources toward permitting actions related to the larger emission sources." TSD at 6.

In his pre-filed testimony, Mr. Ross states that after recognizing this allocation of Agency resources to permitting smaller sources, the Agency "conducted a more detailed internal review in search of mechanisms to reprioritize permitting needs to allow a reorganization of workflow." Ross Test. at 3; *see* TSD at 4, 6, 12 . Rather than propose permit exemptions, the Agency developed the ROSS program, which "eliminates the need for around 3,250 smaller sources to obtain and hold a permit yet will allow the Agency to maintain a robust database of emissions sources in the state." *Id.* at 4; *see* SR at 2, 4; TSD at 4, 6; Bakowski Test. at 2. Specifically, Mr. Ross indicated that sources eligible for the proposed ROSS would no longer be required to prepare and file applications for construction or annual operating permits, await Agency review of permit applications, pay permit application fees, or submit annual emission reports. Ross Test. at 3-4; SR at 4; TSD at 4-5, 7, 12-13. The Agency also expects that qualifying sources would receive indirect benefits "in the form of lower staffing needs, and lower or eliminated consulting and legal fees." TSD at 13.

Mr. Ross emphasized that, under the proposed ROSS program, the Agency "would maintain the ability to inspect and enforce against a source, as needed, to ensure compliance with all applicable statutes and regulations." Ross Test. at 4; SR at 4-5; TSD at 5, 7, 13. He expects "no loss in environmental protection" will result from adoption of the ROSS program. Ross Test. at 4; SR at 5; TSD at 5, 13. In his pre-filed testimony, Mr. Bakowski stated that re-directing Agency staff resources to larger sources will enable the Agency to handle construction and operating permits more quickly and accurately. Bakowski Test. at 2; *see* Ross Test. at 4; TSD at 5, 7, 13.

SUMMARY OF FINAL POST-HEARING COMMENTS

IERG (PC 5)

IERG thanked the Agency for working with regulated sources to adopt a ROSS program meeting statutory requirements and simplifying burdens on both smaller sources and the Agency

itself. PC 5 at 1. When IERG filed comments on November 15, 2011, the Agency had not yet submitted its final comments. However, IERG expressed satisfaction that the language expected from the Agency "reflects the outcome of the continuing dialog between the Agency and various stakeholders throughout this process, and encourages the Board to adopt the proposal as reflected in the comments filed by the Agency. . . ." *Id.* IERG supported its position in favor of the Agency's amended proposal by stating that the changes to be submitted

> 1) are necessary to ensure conformity with the underlying statutory authority for the program, 2) ease the transition from registered source to permitted source should changes occur at the facility, and 3) clarify the obligations of both the Agency and the sources subject to these rules. *Id.*

Agency (PC 6)

The Agency noted that it had committed during the second hearing to address a number of questions in post-hearing comments. PC 6 at 1. The Agency added that, after the second hearing, it reviewed its post-first hearing comments, received responses to those comments, and communicated with representatives of GFAI, IAAP, NFIB, IERG, and GAA. *Id.* The Agency stated that its post-second hearing comments incorporate "the content of these comments to the extent possible. . . ." PC 6 at 1 (noting three specific issues on which agreement not reached). Below, the Board addresses the Agency's proposed changes to its initial rulemaking proposal on a section-by-section basis.

The Agency stated that, "[r]ather than incorporate by reference the comments submitted by the Illinois EPA on October 24, 2011" (PC 3), its final comments "discuss all of the changes proposed to the Illinois EPA's initial proposal filed on August 15, 2011." PC 6 at 2. The Agency requested that revisions proposed in its post-first hearing comments, except as re-stated in its final comments, "not be incorporated into the Illinois EPA's proposal for ROSS." *Id.* at 11 (emphasis in original). The Agency's final comments included an Attachment A showing incorporation of its final proposed amendments into its original proposal.

DISCUSSION

Development of Record in Support of Adopted Rules

Section 201.175(a) (Eligibility)

In its proposed Section 201.175(a), the Agency sought to establish ROSS program eligibility criteria reflecting Section 9.14(a) of the Act. SR at 2, 6; TSD at 9; *see* 415 ILCS 5/9.14(a) (2010). Specifically, the Agency proposed a subsection (a) providing in its entirety that:

> An owner or operator of an eligible source may annually register with the Agency instead of complying with the requirement to obtain an air pollution construction or operating permit under the Act. The source must meet all of the following criteria to be an eligible source:

1) Pursuant to Section 9.14 of the Act:

   A) *The source must not be required to obtain a permit pursuant to the Clean Air Act Permit Program, or federally enforceable State operating permit, or under regulations promulgated pursuant to Section 111 or 112 of the Clean Air Act;*

   B) *The USEPA has not otherwise determined that a permit is required;*

   C) *The source emits less than an actual 5 TPY of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material pollutant emissions;*

   D) *The source emits less than an actual 0.5 TPY of combined hazardous air pollutant emissions;*

   E) *The source emits less than an actual 0.05 TPY of mercury air emissions;*

   F) *The source emits less than an actual 0.05 TPY of lead air emissions; and*

   G) *The source does not have an emission unit or source subject to a standard pursuant to 40 CFR Part 61 Maximum Achievable Control Technology, or 40 CFR Part 63 National Emissions Standards for Hazardous Air Pollutants, other than those regulations that the USEPA has categorized as "area source."*

2) Emission units at the source are not used as thermal desorption systems pursuant to 35 Ill. Adm. Code 728.Table F [Alternative Treatment Standards For Hazardous Debris] or as incinerator systems. Prop. at 5; *see* 415 ILCS 5/9.14(a) (2010); SR at 2; TSD at 9.

The Agency noted that the ineligibility of units used for thermal adsorption or incineration "is consistent with the criteria used for portable units in Section 201.170." SR at 3; *see* 35 Ill. Adm. Code 201.170(a)(5).

In its comments filed on October 24, 2011, after the first hearing, the Agency stated that the proposed first sentence of subsection (a) providing that eligible sources "may" annually register is not consistent with Section 9.14(a) of the Act providing that eligible sources "shall" do so. PC 3 at 1, citing 415 ILCS 5/9.14(a) (2010); *see* Prop. at 5. Accordingly, the Agency

recommends amending "may" to "shall" to reflect the statutory language. PC 3 at 1. The Agency acknowledges that this amendment may require registration by sources whose actual annual emission levels fluctuate above and below ROSS eligibility levels or by sources anticipating emissions that will exceed eligibility thresholds. *Id.* Accordingly, the Agency proposed to address this by amending subsection (b) to consider anticipated operations in determining eligibility. *See infra* at 10-16.

Also in those comments, the Agency stated that it intends to exclude from ROSS "any source that could be controversial." PC 3 at 3. The Agency argued that sources subject to local site review under Section 39.2 of the Act "are recognized as controversial and should not be exempt from obtaining applicable permits." *Id.*, citing 415 ILCS 5/39.2 (2010). The Agency argued that it can only deny a permit to develop or construct a facility if the facility fails to submit proof of local approval of the site. PC 3 at 3, citing 415 ILCS 5/39(c) (2010). The Agency claimed that, if ROSS exempts a proposed pollution control facility from having to obtain an air permit, then the facility would not have to obtain local approval of its site. PC 3 at 3. The Agency added that "[a] ROSS source could become ineligible for the ROSS program and subsequently obtain an operating permit without ever seeking a construction permit and avoid obtaining the local siting approval." *Id.* The Agency argued that such a case "is clearly a potential unintended consequence of the ROSS program and does not appear to be consistent with the intent of the law." *Id.* Consequently, the Agency proposed to add as subsection (a)(3) an additional criterion for ROSS eligibility: "[a] source or emission unit must not be subject to Section 39.2 of the Act." *Id.*; *see* 415 ILCS 5/39.2 (2010) (Local siting review).

In comments filed October 27, 2011, on behalf of GFAI, Mr. Adkisson states that he had reviewed the Agency's post-first hearing comments. PC 4 at 1; *see* PC 3. He further stated that the Agency had addressed "nearly all of our concerns." PC 4 at 1. His comment added that "we would like to go on record as supporting the changes they have suggested." *Id.*

Final Agency Comments. The Agency first re-stated its proposal that the term "may" in the first sentence of subsection (a) should be amended to "shall." PC 6 at 2, citing 415 ILCS 5/9.14 (2010); *see* PC 3 at 1.

Next, the Agency stated that its post-first hearing comments had sought to "prevent owners and operators from entering the program only to have to exit shortly afterward. . . ." PC 6 at 2; *see* PC 3 at 1-2. In those previous comments, the Agency had proposed to allow owners and operators projected emissions over a 60-month period to determine whether a source would remain under emissions thresholds. PC 6 at 2; *see* PC 3 at 1-2. The Agency suggested that representatives of some affected entities had rejected this proposal. PC 6 at 2. The Agency noted that representative of some sources had requested that the Agency "reinstate previously issued lifetime operating permits when the source was no longer eligible for the registration program and again required to operate under a permit." *Id.*; *see, e.g.*, Exh 4 (GFAI). The Agency indicated that this alternative approach was also rejected in favor of an approach under which owners and operators holding lifetime permits retain them while registered under ROSS. PC 6 at 2-3, citing 35 Ill. Adm. Code 201.169 (Special Provisions for Certain Operating Permits).

The Agency argued that this approach better reflects the intent of ROSS to reduce administrative burdens both for sources and the Agency itself. PC 6 at 3. The Agency stated that owners and operators of existing smaller sources will retain both lifetime permits and ROSS registration for eligible sources. *Id.* The Agency elaborated that "if these sources become ineligible for the ROSS, but will be able to comply with the terms of their lifetime permit, no new permitting transaction would be required, only notification of the Illinois EPA." *Id.* The Agency indicated that this reflects the requirements of Section 39(a) of the Act and Section 201.169(b)(2) of the Board's regulations, which provides "that a lifetime permit only terminates if the owner or operator withdraws the permit or the permit is superseded by a new permit." *Id.*, citing 415 ILCS 5/39(a) (2010); 35 Ill. Adm. Code 201.169(b)(2). The Agency added that its proposed approach will also benefit owners and operators of new sources and sources that do not now hold a lifetime permit. PC 6 at 3. The Agency stated that, if sources becomes ineligible for ROSS but are eligible for a lifetime permit, and then later become eligible again for ROSS, then these owners and operators would also be able to retain a permit while re-entering ROSS. *See id.*

To avoid any suggestion "that the owner or operator is no longer required to comply with the statutes and regulations that underlie the terms and conditions in the lifetime permits," the Agency also proposed to amend subsection (a) to provide that "[t]he owner and operator of a ROSS source is still subject to all applicable environmental statutes and regulations." PC 6 at 4.

Finally, the Agency re-stated its position that "[s]ources subject to Section 39.2 of the Act (local siting) are recognized as controversial and should not be exempt from obtaining applicable permits." PC 6 at 4-5, citing 415 ILCS 5/9.12(b)(2)(B), 39.2 (2010); *see* PC 3 at 3.

Board Discussion. During the course of this proceeding, the substance of subsection (a) generated a number of comments and proposed amendments. First, the Agency proposed that the phrase "may annually register with the Agency" should be amended to "shall annually register with the Agency." The Board agrees that this amended language is consistent with Section 9.14(a) of the Act and includes it in its order below.

By incorporating statutory language, however, the Agency recognized that some sources may be required to change between permitted and registered status from year to year based on whether they meet ROSS eligibility criteria. The Board agrees that such changes could result in significant administrative and financial burdens for both emissions sources and the Agency, particularly if they occur on a regular basis. These burdens would be contrary to the general intent of the ROSS program. The Agency proposed to address these sources in subsection (g) by having owners and operators retain lifetime permits issued under Section 201.169 while registered under ROSS. Although the Board reviews subsection (g) in more detail below (*infra* at 27-33), the Agency sought to clarify subsection (a) by indicating that owners and operators of ROSS sources would no longer be required either to obtain and comply with construction or operating permits or comply with a permit issued under Section 201.169. In addition, the Agency has proposed to address the applicability of authorities underlying permit requirements by stating that "[t]he owner or operator of a ROSS source is still subject to all applicable environmental statutes and regulations." The Board agrees that these proposed changes clarify changes from permitted to registered status and includes both in its order below.

The Agency also sought to make sources subject to local siting under Section 39.2 of the Act ineligible for ROSS on the basis that they are "controversial." The Agency argued that a pollution control facility eligible for ROSS could, after becoming ineligible, obtain an operating permit without undergoing local siting approval. The Board agrees that such a case appears to circumvent the requirements of Section 39.2 and extend ROSS beyond its intended scope. The Board notes that the record includes no opposition to this proposed language and includes it in its order below.

The Board finds that subsection (a) as proposed in the Agency's final comments both reflects the statutory eligibility criteria for the ROSS program and appropriately addresses the substantive issues raised in the course of this proceeding. During consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

Section 201.175(b) (Emissions Determinations)

In its subsection (b), the Agency proposed criteria for determining whether a source's actual emissions meet the eligibility criteria. SR at 3, 6; *see* TSD at 10. The Agency stated that, instead of a lengthy permit application including supporting documentation, sources would enter the ROSS program by certifying their eligibility based on emissions. SR at 3; TSD at 9. The Agency proposed that new sources lacking air emission records will enter the program based on estimated emissions. SR at 3; TSD at 9; *see* Prop. at 6 (subsection (b)(1)). The Agency also proposed that "[e]xisting sources with air emission records will evaluate their air emissions data over a 24 month period because the emission thresholds for ROSS program eligibility are relatively small, and sources have variability year to year in the emissions due to product demand, the economy, and other factors." SR at 3; *see* TSD at 9; Prop. at 6 (subsection (b)(1)). More specifically, existing sources with two or more years of emissions data can enter the ROSS program if they have any 12 consecutive months of the most recent 24 months that meet the criteria for the pollutants in proposed subsection (a)(1)(C) and meet the other eligibility criteria. TSD at 10; *see* Prop. at 6 (subsection (b)(1)). Existing sources with one year of emissions data can enter the ROSS program if those data meet the eligibility criteria. TSD at 10; *see* Prop. at 6 (subsection (b)(1)). Existing sources with fewer than 12 months of data may use estimated monthly emissions to the extent necessary to obtain a 12-month sum. TSD at 10; *see* Prop. at 6 (subsection (b)(1)).

The Agency also proposed that, "[t]o remain in the ROSS program, the sources will need to annually certify that they meet the eligibility criteria. . . ." SR at 3; *see* Prop. at 6 (subsection (b)(2)). The Agency stated that a source becomes ineligible if emissions of the pollutants in proposed subsection (a)(1)(C) in the prior calendar year exceed 7.0 tons or in the two prior calendar years data exceed 10.0 tons. SR at 3; TSD at 10; Prop. at 6 (proposed subsection (b)(2)). The Agency claimed that, "[b]y using this two year review and one year cap, the DAPC [Division of Air Pollution Control] believes that sources with relatively minor variability in emissions will be able to maintain ROSS program eligibility." TSD at 10. The Agency further claimed that sources with more significant variability will be eliminated from the program and required to obtain an operating permit. *See id.* The Agency stated that a source becomes ineligible if emissions fail to meet the thresholds in proposed subsections (a)(1)(D), (a)(1)(E), or

(a)(1)(F), or the source fails to meet criteria that are not based on emissions. SR at 3; *see* TSD at 10; Prop. at 6 (subsection (b)(2)). Sources becoming ineligible for the ROSS program on these bases would be required to apply for an operating permit. SR at 3; TSD at 10; Prop. at 6 (subsection (b)(2)).

Specifically, the Agency proposed a subsection (b) providing in its entirety that:

> For the purposes of determining whether the actual emissions from the source meet the criteria of subsections (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(F) of this Section, the owner or operator of a source shall only use emissions from units that are not exempt from the requirement to obtain a permit pursuant to Section 201.146, as follows:
>
> 1) Initial registration or reentry into ROSS: the owner or operator must sum the actual emissions from all units associated with the source for any 12 consecutive months within the most recent 24 months. If the source is new, or has been operating less than 12 months, projected estimated emissions may be used for all or the remaining months, respectively.
>
> 2) Annual renewal of registration:
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> A) For the purposes of determining compliance with subsection (a)(1)(C) of this Section, the owner or operator must sum the actual emissions from all units associated with the source for the prior calendar year, and if the summed actual emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide ad volatile organic material air pollutant emissions for the prior calendar year are greater than 7 tons, or if the total sum of actual emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide ad volatile organic material air pollutant emissions from the prior two calendar years are greater than 10 tons, the owner or operator must apply for the applicable operating permit under the Act pursuant to subsection (g) of this Section.
>
> B) For the purposes of determining compliance with subsections (a)(1)(D), (a)(1)(E) and (a)(1)(F) of this Section, the owner or operator must sum the actual emissions from all units at the source for the prior calendar year, and if the summed emissions of HAPs, mercury or lead are equal to or exceed the 0.5 TPY, 0.05 TPY, or 0.05 TPY for the prior calendar year, respectively, the owner or operator must apply for the applicable operating permit

> under the Act pursuant to subsection (g) of this Section.
> Prop. at 6; *see* SR at 3, 6; TSD at 9-10.

In his comment on behalf of NFIB offered during the first hearing, Mr. Grant noted that the Agency intends ROSS to reduce the administrative burden of recordkeeping and reporting on smaller sources of air emissions. *See* Exh. 3 at 1; Tr.1 at 41. He argued that, in order to allow additional flexibility for these smaller sources, subsection (b)(2)(A) should be amended to provide that, "[f]or the purposes of determining continued eligibility under subsection (a)(1)(C) of this Section, the owner or operator must certify the sum of all actual emissions from all units associated with the source for the prior calendar year. . . ." Exh. 3 at 1; Tr.1 at 42. His comment did not otherwise seek to amend the Agency's original proposal. *See* Exh. 3 at 1; Tr.1 at 42.

Mr. Grant's comment also argued that subsection (b)(2)(B) should be amended to provide that, "[f]or the purposes of determining continued eligibility with subsections (a)(1)(D), (a)(1)(E), and (a)(1)(F) of this Section, the owner or operator must certify the sum of all actual emissions from all units at the source for the prior calendar year. . . ." Exh. 3 at 1; *see* Tr.1 at 42-43. Again, his comment did not otherwise seek to amend the Agency's original proposal. *See* Exh. 3 at 1; Tr.1 at 42-43. Mr. Grant claimed that these amendments could reduce a source's recordkeeping and reporting burdens by providing "the flexibility for those sources with no significant change in operation or increase in production from having to conduct annual calculations and have them on file." Exh. 3 at 2. He added that this amended language "would not preclude the agency from requesting additional information from a facility including calculation of actual emissions. . . ." *Id*.

In its comments, the GAC also noted that the Agency intends ROSS to reduce various burdens on smaller sources. PC 2 at 2. GAC noted, however, that the Agency's proposal "may require sources to calculate emissions annually in order to demonstrate compliance with the rule." *Id*. GAC argued that annual re-calculation is not necessary "if the source has determined in their original application that actual emissions are below 5 tons, and no significant changes have occurred in their operation." *Id*. GAC suggested that data such as material use could document eligibility more simply. *See id*. GAC argued that subsections (b)(2)(A) and (b)(2)(B) "should clarify that sources are required to certify that their emissions are below the threshold, not sum their actual emissions." *Id*. at 2-3.

Also in its comments, GAC addressed the "safety factor" in the emissions thresholds in subsection (b)(2). GAC noted that subsection (b)(2)(A) allows "a fluctuation of 2 tons in any given 12 month period, during which [a] source remains eligible for the ROSS." PC 2 at 3. GAC stated that, because the two-year emissions threshold is 10 tons, "any source with emissions in a single year of 7 tons would have to compensate for this fluctuation by reducing emissions to 3 tons in the following year." *Id*. GAC argued that, after emissions fluctuate to 7 tons in one year, a source should be able to resume normal operations below five tons in the following year and maintain eligibility for ROSS. *Id*. GAC favored increasing the two -year emission threshold to 12 tons. *Id*.; *see* Tr.2 at 13. GAC also favored amending subsection (b)(2)(B) to compensate for fluctuations in yearly and 24-month emissions of HAPs, mercury, and lead. PC 2 at 3.

In its comments filed on October 24, 2011, after the first hearing, the Agency proposed to amend the first sentence of subsection (a) to reflect statutory language and provide that eligible sources "shall" annually register. PC 3 at 1; *see* 415 ILCS 5/9/14(a) (2010); Prop. at 5. The Agency acknowledged that this amendment may require registration by sources whose actual annual emission levels fluctuate above and below ROSS eligibility levels or by sources anticipating emission levels that will exceed eligibility thresholds. PC 3 at 1. The Agency foresaw that such sources may in a short period of time be required to register, then become ineligible for ROSS, and then re-enter ROSS. *Id*. at 1-2. The Agency stated that these situations would generate a large administrative burden both for the affected sources and for the Agency, a result contrary to the intent of the ROSS program. *Id*. at 2. The Agency proposed amending subsection (b)(1) to consider "anticipated future operation when determining whether or not a source is eligible. . . ." *Id*. at 1. Specifically, the Agency recommended addition of a new subsection (b)(1)(B) providing in its entirety that, "[i]f the projected emissions for any 12 consecutive months within the next 60 month period will exceed the emissions criteria pursuant to subsection (a)(1) of this Section, then the source is not required to enter or reenter the ROSS." *Id*. at 2. The Agency argued that such an amendment is permissible under Section 9.14(d) of the Act, which "authorizes the Agency to propose alteration or revision of the initial criteria included in Section 9.14. . . ." *Id*., citing 415 ICLS 9.14(d) (2010).

During the second hearing, the hearing officer asked the Agency to "explain the specific basis for proposing a 60-month period in this language." Tr.2 at 8. Mr. Ross responded that "[t]he 60-month period was chosen because it allows the company to look forward at their operations over a period of time and if they're going to exceed the amount of the criteria to enter the ROSS, then they wouldn't need to." *Id*. at 8-9. He added that this 5-year period is found in United States Environmental Protection Agency programs and in the Agency's own permit cycles. *Id*.

In post-first hearing comments, the Agency noted that its proposed rule required sources annually to calculate emissions "and then certify that emissions levels allow the source to continue to meet the eligibility for ROSS." PC 3 at 4. The Agency also noted the suggestion that sources should be allowed simply to certify that they have not changed equipment or operations in a manner that increases emissions. *Id*. The Agency responded by stating that it "agrees with the concept of streamlining records and reports that an owner or operator needs to keep to assure compliance with the ROSS" but requires "assurance that emission levels have not increased beyond those that keep the source eligible for ROSS." *Id*. at 5. The Agency agreed that, as an alternative to calculating emissions annually, it is sufficient for an owner or operator to certify that no change in operations or equipment has results in increased emissions. *Id*. Consequently, the Agency proposed to amend subsection (b)(2)(A) and (b)(2)(B) as follows:

2) Annual renewal of registration

A) For the purposes of determining continued compliance with subsection (a)(1)(C) of this Section, the owner or operator must:

i) Sum the actual emissions from all units associated with the source for the prior calendar year, and if the summed actual

emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions for the prior calendar year are greater than 7 tons, or if the total sum of actual emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions from the prior two calendar years are greater than 10 tons, the owner or operator must apply for the applicable operating permit under the Act pursuant to subsection (g) of this Section; or

ii) Certify that no changes in operation or equipment have resulted in an increase in emissions and that emissions have not increased.

B) For the purposes of determining continued compliance with subsection (a)(1)(D), (a)(1)(E), and (a)(1)(F) of this Section, the owner or operator must:

i) Sum the actual emissions from all units at the source for the prior calendar year, and if the summed emissions of HAPs, mercury or lead are equal to or exceed the 0.5 TPY, 0.05 TPY, or 0.05 TPY for the prior calendar year, respectively, the owner or operator must apply for the applicable operating permit under the Act pursuant to subsection (g) of this Section; or

ii) Certify that no changes in operation or equipment have resulted in an increase in emissions and that emissions have not increased. *Id.*

The Agency indicated that its ROSS renewal registration form will "allow the owner or operator to either certify the source remains eligible based on emissions calculations or that the source remains eligible based on no change in operations or equipment resulting in an increase in emissions and that emissions have not increased." *Id.*

In comments filed October 27, 2011, on behalf of GFAI, Mr. Adkisson stated that he had reviewed the Agency's post-first hearing comments. PC 4 at 1; *see* PC 3. He further stated that the Agency had addressed "nearly all of our concerns." PC 4 at 1. His comment added that "we would like to go on record as supporting the changes they have suggested." *Id.*

Final Agency Comments. The Agency first indicated that its proposed subsection (b)(1) appears to require a source "to calculate emissions each month to determine if it is exceeding criteria on a rolling 12 month basis." PC 6 at 5. The Agency stated that it wished to reduce the burden of calculating a source's eligibility and reduce the number of "borderline sources." *Id.* The Agency proposed to amend this subsection "by only requiring a source to determine if its

emissions have increased above ROSS applicability criteria once at the end of the calendar year." *Id.*

Second, the Agency noted that its original proposal required sources to calculate emissions each year "and then certify that emissions levels allow the source to continue to meet the eligibility for ROSS." PC 6 at 5. The Agency proposed to amend subsection (b)(2) to allow verification of eligibility "where there have been no changes in operation or equipment that resulted in an increase in emissions." *Id.*

Third, the Agency noted that subsections (b)(2)(A)(ii) and (b)(2)(B)(ii) employed "if, then" phrasing, "which can be confusing." PC 6 at 6. The Agency proposed to amend these subsections to clarify their intent and "emphasize that emissions must be below certain thresholds for sources to remain in the ROSS program." *Id.*

Finally, the Agency noted that comments had requested an amendment to subsection (b)(2) "to increase the ceiling for emissions of lead, mercury and hazardous air pollutants ("HAPs") for determining compliance." PC 6 at 6; *see, e.g.*, PC 1 at 2-3 (GAA). The Agency indicated that it did not propose to agree to that request because of the nature of HAP emissions, "including the higher risk associated with local impacts as compared to criteria pollutants." *Id.* The Agency argued that "[s]mall increases can have a disproportional risk increase to public health and the environment." *Id.* Although the Agency asked that the Board not adopt this requested increase, it notes "that it will continue discussions with the commenters on this issue." *Id.*

Board Discussion. In subsection (b)(1) addressing initial registration or re-entry into ROSS, the Agency sought to amend its original proposal by allowing sources to sum or project emissions on the basis of the prior calendar year. The Agency noted that its original proposal appeared to require sources to calculate emissions each month and then determine whether they exceed eligibility criteria on a rolling 12-month basis. The Board agrees that this revision will reduce the burden of determining eligibility and may reduce the number of sources required to change between permitted and registered status. The Board incorporates this revision in its order below.

Regarding subsection (b)(2) addressing annual renewal of registration, the Agency noted that its original proposal required sources to re-calculate emissions each year and then certify that those emissions meet the ROSS eligibility criteria. Representatives of various sources suggested that this language would be more flexible if it allowed sources simply to certify that their emissions remain below the thresholds, particularly for sources that had not significantly changed operations or increased production. In its final comments, the Agency proposed that ROSS sources renewing registration may verify that the source still meets the various eligibility criteria in addition to calculating emissions. The Board concurs in this amendment and incorporates it in its order below.

Regarding subsection (b)(2)(B), the Agency noted that it had been asked to include a "safety factor" or increase the limits on emissions of lead, mercury, and HAPs for purposes of determining eligibility. The Board foresees that this proposed change may reduce the number of

sources required to change between permitted and registered status. However, the Agency opposed this request, distinguishing these pollutants from those addressed in subsection (b)(2)(A). The Agency noted the risk that small increases in emissions of lead, mercury, and HAPs may pose to public health and the environment. For the purposes of establishing the initial eligibility criteria for the ROSS program in this proceeding, the Board declines to include this change and adopts the proposal in the Agency's final comments. The Board notes that Agency has committed to continue discussion on this issue with those who raised it.

Finally, the Agency sought to clarify subsection (b)(2)(A)(ii) and (b)(2)(B)(ii) to avoid the use of "if, then" phrasing because it can be confusing. The Board agrees that the Agency's changes simplify and clarify these subsections and incorporates them in its order below. During consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

The Board finds that subsection (b) as proposed in the Agency's final comments appropriately implements the statutory eligibility criteria for the ROSS program and addresses the substantive issues raised in the course of this proceeding.

Section 201.175(c) (Registration Materials)

Under subsection (c), the Agency sought to list information that must be included in each registration and renewal under the ROSS program. SR at 3, 6. The Agency stated that, although new sources must submit a statutory fee with initial registration, "owners and operators of existing sources will need to pay the registration fee on their next billing date." SR at 3; *see* Prop. at 7 (subsection (c)(4)). Specifically, the Agency proposed a subsection (c) providing in its entirety that:

> The following must be included in each registration and each renewal of registration:
>
> 1) The name, address, and telephone number of the source, and of the person responsible for submitting and retaining copies of the registration information and the records;
>
> 2) A statements that the source meets the requirements of this Section;
>
> 3) A certification that the information submitted in subsection (c)(1) and (c)(2) of this Section is correct or submit corrected information; and
>
> 4) Fees:
>
> A) Initial registration by owners and operators of permitted sources is not required to include a fee, unless the submittal

of registration coincides with the source's annual billing date.

B) Initial registration by owners and operators of new sources must include the applicable fee pursuant to Section 9.14 of the Act.

C) Renewal of registration must include the applicable fee pursuant to Section 9.14 of the Act. Prop. at 7.

In its comment, GAC acknowledged that proposed subsection (c)(4) cites Section 9.14 of the Act, which sets the annual registration fee for eligible sources at $235. PC 2 at 3; *see* 415 ILCS 5/9.14(c) (2010). GAC argued that this amount "is the same as the annual fee for sources with permit limits below 25 tons per year. . . ." PC 2 at 3, citing 415 ILCS 5/9.6 (2010). GAC argued that, "[t]o provide an economic incentive for sources who would qualify for registration, there should be no fee associated with registration and renewal for small sources." PC 2 at 3. Accordingly, GAC supported revision of Section 9.14 of the Act to eliminate application and renewal fees from the ROSS program. *Id*. During the second hearing, Mr. Ross on behalf of the Agency stated that the registration fee of $235 is established by Section 9.14(c) of the Act. Tr.2 at 14; *see* 415 ILCS 5/9.14(c) (2010).

During the second hearing, the Board noted that proposed subsection (c)(1) refers to "the person responsible for submitting and retaining copies of the registration information and the records." Tr. 2 at 16. The Board asked whether this language allowed "anyone other than the owner or operator to submit a registration application?" *Id*. On behalf of the Agency, Mr. Bakowski responded that either the owner or operator or his or her designee could submit an application. *Id*. at 17. However, the Board noted that subsection (d) refers to submission of registration by the owner or operator. *Id*.; *see* Prop. at 7.

Final Agency Comments. The Agency first proposed to amend the initial phrase of subsection (c) "to limit its applicability to initial [registration] and re-entry of registrants." PC 6 at 7.

Below under subsection (d), the Agency proposed "new registration timelines that coincide either with the submittal of a registration for a new source, or the fee payment date for an existing source." PC 6 at 7; *see infra* at 18-23. Consequently, the Agency proposed to amend subsection (c)(4) addressing fees in order "to be consistent with the new registration timelines." PC 6 at 7.

Board Discussion. The Board agrees that the amendments to subsection (c) proposed in the Agency' final comments will clarify the application of these rules. The Board finds that the Agency's amended subsection (c) appropriately implements the ROSS program and incorporates the amended proposal in its order below.

Section 201.175(d) (Registration Timing)

In proposed subsection (d), the Agency proposed timing for owners or operators to submit registration and renewal. SR at 6. Specifically, the Agency proposed a subsection (d) providing in its entirety that:

> The owner or operator of an eligible source shall submit the registration as required by subsection (c) of this Section as follows:
>
> 1) Initial Registration:
>
> A) Owners and operators of sources holding permits may register after the effective date of this Section.
>
> B) Owners and operators of new sources shall register 90 days before commencing operation.
>
> 2) Renewal of registration. Owners and operators must renew registration annually on or before the source's billing date. Prop. at 7-8; *see* SR at 3 (registration fee).

During the first hearing, Mr. Grant asked whether sources failing to register on a timely basis would be subject to a penalty or barred from participating in ROSS. Tr.1 at 13-14. Mr. Ross suggested that the Agency is attempting to encourage compliance by identifying sources in order to notify them that they may be eligible for ROSS. *Id.* at 15-16, 27-29. He stated that the Agency is not performing this identification "to pursue some kind of enforcement action or penalty for not having registered or obtained a permit." *Id*. at 16. Although he suggested that sources failing to register may risk a penalty, he stated that the Agency reviewed enforcement matters on a case-by-case basis considering factors including environmental harm and intent. *See id*. at 14-16. He emphasized that the intent of ROSS "is to ease the regulatory burden to industrial sources while at the same time allowing the Agency to appropriately realign its resources to focus on the largest emitters." *Id*. at 14.

Also during the first hearing, Mr. Adkisson asked whether permits held by ROSS sources automatically become inactive or whether registration would have some other effect on those permits. Tr.1 at 17. Indicating that his response was a preliminary one, Mr. Ross stated that, "once a source has registered, their requirement to hold a permit is gone." *Id*. He continued that no further action by the source would be required to deactivate the previous permit. *Id*. Mr. Bakowski added that the Agency would consider making approval of registration "an automatic request to withdraw the previous permits." *Id*. at 18.

Also during the first hearing, Mr. Adkisson asked how sources will be able to confirm that the Agency has received registrations. Tr.1 at 18. Suggesting that the Agency continued to consider this question, Mr. Ross stated that the Agency had not initially intended to send sources notification of registration and would notify sources only if the registration had been rejected. *Id*. at 18-20. He indicated that this reflected the Agency's wish to minimize paperwork and mail volume, but he acknowledged that sources may prefer explicit notification. *Id*. at 19. IAAP favored language requiring notification and named electronic mail as "a very inexpensive way to

let us know we're in compliance with the law." Tr.1 at 51. Mr. Ross also referred to the expected development of on-line functions allowing sources to perform tasks including checking registration status and renewing. *Id*. at 18, 26-27; *see* Tr.2 at 10-11. He added that sources can also contact Agency analysts reviewing registrations or determine whether the Agency had cashed the check paying registration fees. *Id* at 21, 25-26.

In its comment, GAC noted that subsection (d) does not indicate whether "there is a penalty for sources that fail to register timely under the ROSS program." PC 1 at 4. GAC asked whether a new source missing the 90-day deadline in subsection (d)(1)(B) is "excluded from ROSS and required to get a permit." *Id*. GAC also asked whether a source that is required to register but does not do so initially "will be subject to a penalty or be required to pay permit fees for the time they should have been registered." *Id*., citing 415 ILCS 5/9.6(g), (h) (2010). To accommodate sources that were not aware of permitting requirements or lacked the resources to apply for a permit, GAC favored "a grace period of at least a year, during which any source that qualifies for the ROSS program is given the opportunity to register without facing penalties." PC 1 at 4; *see* Tr.2 at 14.. In his comments on behalf of IAAP, Mr. Henriksen favored language establishing a "grandfathering clause or some sort of flexibility" in order to avoid penalizing smaller sources for inadvertent failure to register. Tr.1 at 49-50.

Also in its comment, GAC stated that subsection (d) does not clearly indicate how either new or existing sources will be notified that the Agency has accepted registration. PC 1 at 4. GAC also stated that this subsection does not clearly indicate how long "new sources must wait to begin operations until their ROSS has been approved." *Id*. GAC further stated that this subsection does not clearly indicate how long it will take the Agency to review ROSS registrations, although it acknowledges that this may stem from uncertainty about the number of applications to be filed. *Id*. GAC argued that "[i]t is essential that sources that apply for the ROSS be notified that their registration has been received and accepted, so they can be assured of their compliance status." *Id*. Accordingly, "GAC recommends that once a facility has submitted a registration to the Agency, they receive a notification that the registration has been approved." *Id*.

GAC also noted that, although ROSS allows sources holding current permits to register, it does not clearly indicate whether those permits will be automatically rescinded or whether sources will have to initiate a separate process to withdraw them. PC 1 at 4. Accordingly, "GAC recommends that any source that applies for and receives a ROSS have any existing permits automatically deactivated, and that the source receive notification along with their registration approval that the permits have been deactivated." *Id*.

Finally, GAC noted that the Public Act authorizing establishment of ROSS "also provided for electronic filing of fees and permits." PC 1 at 6; *see* 415 ILCS 5/39(q) (2010); Public Act 97-0095, eff. July 12, 2011. GAC argued that the Agency's proposal does not clearly indicate whether sources eligible for ROSS "will be able to electronically register, renew, update facility information, submit changes, and pay fees." PC 1 at 6. GAC recommended that the Agency implement ROSS so that eligible sources have "the option to complete all necessary actions electronically as well as on paper." *Id*.

In its comments filed on October 24, 2011, after the first hearing, the Agency addressed the timing and manner of notification to sources that have submitted registrations. The Agency stated that it expects its review of registrations "will be extremely streamlined." PC 3 at 3; *see* Tr.1 at 22. At the conclusion of this streamlined review, the Agency "intends to mail out a postcard or letter to owners and operators notifying them of ROSS program acceptance or rejection." PC 3 at 3. The Agency anticipated that this mail will be sent "within one to four weeks of receipt of the registration information, depending on the number of registrations received during a given period." *Id.*; *see* Tr.1 at 22. The Agency added that, if the Agency has cashed the check paying the annual registration fee, then the owner or operator has indication that the Agency has accepted the application for registration. PC 3 at 3.

In the same comments, the Agency stated that it intends "to operate and maintain a website in the future where owners and operators will be able to use online tools. It is expected in the future that all aspects of the registration and renewal may be done online." PC 3 at 2; *see id*. at 3; Tr.1 at 11-12; Tr.2 at 10-11. The Agency adds that, "[o]n this website, owners and operators will be able to check the status of registration, the Agency's activity on the registration, and pay fees." PC 3 at 3. During the second hearing, Mr. Ross indicated that the Agency intended to establish those functions "as soon as possible" (Tr.2 at 10) but noted that the Act established a two-year deadline. *Id*. at 11; *see* 415 ILCS 5/39(q) (2010); Public Act 97-0097, eff. July 12, 2011.

During the first hearing, Mr. Henriksen on behalf of the IAAP applauded the Agency's intention to develop electronic registration, renewal, payment, and notification. Tr.1 at 49. However, he favored placing electronic permitting functions "in the rules so that the Agency has strong impetus to work with us and get this done." *Id.* The Agency argued that, although the General Assembly has provided for this electronic access, developing that access is "not a precondition for the development of ROSS. . . ." PC 3 at 3; *see* 415 ILCS 5/39(q) (2010); Public Act 97-0095, eff. July 12, 2011. The Agency added that the proposed Section 201.175 does not require paper submission of information and would allow electronic implementation of ROSS without further amendment. PC 3 at 3; *see* Tr.1 at 13. The Agency claimed that amending rules to address the issue of online registration "could result in a substantial administrative burden and act as a limitation on the Illinois EPA's ability to act in a timely manner." PC 3 at 4. The Agency further claimed that such amendments could burden affected sources and be inconsistent with the basic intent of the ROSS program. *Id.*

Also in its comments filed on October 24, 2011, the Agency addressed the proposed requirement that "[o]wners and operators of new sources shall register 90 days before commencing operation." Prop. at 7 (subsection (d)(1)(B)). The Agency stated that it had re-evaluated this proposed requirement and believes "that 10 days advance notice is sufficient." PC 3 at 4. The Agency proposed to amend subsection (d)(1)(B) to provide in its entirety that "[o]wners and operators of new sources shall register at least 10 days before commencing operation and may commence operation 10 days after the Agency has received the registration request." *Id.*; *see* Tr.1 at 20-21, 51. The Agency elaborated that, "[s]ince no construction permit is required for sources that register, a source may commence construction at any time." *Id.* The Agency added that "it is the source's obligation to ensure that they meet the eligibility requirements regarding construction and operating." PC 3 at 4.

In the same comments, the Agency addressed the issue of permits held by ROSS applicants and when eligible sources seeking registration begin operating under the terms of ROSS. The Agency stated that it "will withdraw the permit of a ROSS applicant only upon acceptance into ROSS." PC 3 at 4. The Agency added that, "[a]s part of the registration form, owners and operators will have a box to check if the source is currently permitted and where if checked, the source requests to withdraw their operating permit." *Id.* The Agency stated that withdrawal allows a source to avoid payment of fees for both an operating permit and for registration. *Id.*

In comments filed October 27, 2011, on behalf of GFAI, Mr. Adkisson stated that he has reviewed the Agency's post-first hearing comments. PC 4 at 1; *see* PC 3. He further stated that, the Agency has addressed "nearly all of our concerns." PC 4 at 1. His comment added that "we would like to go on record as supporting the changes they have suggested." *Id.* However, he noted that the Agency had not fully responded to questions about penalties that might apply to sources who do not register on a timely basis or whether failure to register would later bar a source from the program. GFAI claimed that sources will require time to adapt to a new program such as ROSS. PC 4 at 3. GFAI argued that the Agency should not impose penalties on sources that have not registered. *Id.* GFAI's comment added that the Agency "needs to work with those sources to bring them into the ROSS Program and not preclude them from participation." *Id.*

Final Agency Comments. Above under subsection (a), the Agency proposed to allow owners and operators holding lifetime permits to retain them while registered under ROSS. *Supra* at 6-10; *see* PC 6 at 2-3; *see also* 35 Ill. Adm. Code 201.169. The Agency elaborated that "if these sources become ineligible for the ROSS, but will be able to comply with the terms of their lifetime permit, no new permitting transaction would be required, only notification of the Illinois EPA." PC 6 at 3. In addition to amending subsection (a), the Agency also proposed to make corresponding amendments to subsection (d)(1)(A) addressing the initial registration permitted sources. *Id.*

To avoid any suggestion "that the owner or operator is no longer required to comply with the statutes and regulations that underlie the terms and conditions in the lifetime permits," the Agency also proposed to amend subsection (d) to provide that "[t]he owner and operator of a ROSS source is still subject to all applicable environmental statutes and regulations." PC 6 at 4.

Above under subsection (b) addressing eligibility, the Agency noted that its original proposal required sources to calculate emissions each year "and then certify that emissions levels allow the source to continue to meet the eligibility for ROSS." PC 6 at 5. The Agency proposed to amend subsection (b)(2) to allow verification of eligibility "where there have been no changes in operation or equipment that resulted in an increase in emissions." *Id.* The Agency also proposed to amend subsection (d)(2) so that annual registration is consistent with verification of eligibility. PC 6 at 6. The Agency noted that it annually sends "a bill to owners and operators of existing source in advance of a source's fee payment date." *Id.* Under the amended subsection (d)(2), "[p]ayment of the ROSS fee is considered to be verification by the owner or operator that the source continues to meet the criteria for ROSS." *Id.*

Next, the Agency stated that, because ROSS is mandatory and calculates emissions on a calendar year basis, it proposed "a date certain for initial registration of sources." PC 6 at 7. Under subsection (d)(1)(A), the Agency proposed "that owners and operators of existing sources register no later than their annual fee payment date in fiscal year 2013." *Id*. The Agency indicates that it will "notify potentially affected owners and operators with their next billing statement." *Id*. Under subsection (d)(1)(B), the Agency proposed to establish a registration deadline of July 1, 2012, "for owners and operators who should have obtained permits under Section 201.169, but failed to do so, and are now required to register with ROSS." *Id*. Under subsection (d)(1)(C), the Agency addressed the registration deadline for the owner or operator of a new source. *Id*. The Agency proposed "that an owner or operator of a new source be allowed to commence construction and/or operation of the source 10 days after registration is submitted to the Agency." *Id*; *see* PC 3 at 4. In a new subsection (d)(3), the Agency proposed to establish a "timeline for an owner or operator of a source reentering the ROSS program." PC 6 at 8. The Agency stated the "[r]e-entry will also be tied to a source's annual fee payment date." *Id*.

Finally, the Agency indicated "that there is some confusion" about the relationship between subsection (a) and subsections (b)(1) and (b)(2). PC 6 at 8. The Agency sought to clarify that "[s]ubsection (a) sets forth the criteria for eligibility for the ROSS program, including emissions limitations. Subsection (b) sets forth the criteria for whether a source has met the emissions limitations.'' *Id*.; *see* Prop. at 5-6. The Agency elaborated that "[s]ubsection (b)(1) applies to determinations made by the owner or operator at the time a source is entering ROSS or re-entering ROSS. . . . Subsection (b)(2) applies to the owner or operator when they are determining whether or not their source continues to meet the emissions limitations in subsection (a)." PC 6 at 8. Accordingly, when subsections (d)(2) and (d)(3)[1] require owners or operators to meet criteria in subsection (a), the Agency proposed "to clarify the requirement by specifying whether the provisions of (b)(1) or (b)(2) should be used when making the determination." *Id*. at 9.

<u>Board Discussion.</u> In its final comments, the Agency noted that ROSS would be mandatory under subsection (a) and would be based upon calendar year emissions under subsection (b). The Agency thus sought to provide specific dates for initial registration.

For existing sources holding a permit, the Agency proposed in subsection (d)(1)(A) to require registration no later than their annual fee payment date in fiscal year 2013. The Agency indicated that it will inform potentially affected sources of the ROSS program through their next billing statements. The Board expects that this statement will effectively provide notification of ROSS and reduce the risk of inadvertent non-compliance by existing sources. The Agency also sought to include language clarifying that, once a permitted source registers, a permit issued under Section 201.169 will not apply while the source remains registered. The Board agrees that

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[1] The Agency's final comment actually refers to subsections (b)(2), which refers to subsection (a) only in its subsections, and (b)(3), which the Agency's proposal does not include. PC 6 at 9; *see* Attachment A. Based on the Agency's reference to its line-numbered attachment, the substance and organization of proposed subsection (d), and the clarifying intent of the Agency's proposed amendment, the Board construes the comment to refer instead to subsection (d).

this language simplifies the transition of permitted sources into the ROSS program. The Board above has concurred in adopting language clarifying the continued applicability of all statutes and regulations that may underlie the permit and agrees that the same language is appropriate in subsection (d)(1)(A).

For existing sources not holding a permit, the Agency proposed a deadline of July 1, 2012, for initial registration. The Board believes that this deadline establishes a suitable amount of time for the Agency and various business organizations to provide information about ROSS, again reducing the risk of inadvertent non-compliance. Although the Agency had originally proposed that new sources must register 90 days before commencing construction or operation, the Agency had previously reviewed that requirement and proposed a deadline 10 days in advance of construction or operation. The Board agrees that this 10-day period provides greater flexibility for new sources and also sufficient notice to the Agency. The Agency also addressed sources re-entering ROSS by linking re-entry to the source's annual fee payment date. The Agency has indicated that it annually sends bills to sources in advance of the applicable date. The Board concludes that this billing process will reduce instances of non-compliance.

Under subsection (d)(2) addressing annual registration, the Agency proposed that ROSS sources pay their annual fee on or before their annual billing date. The Board concludes that the Agency's billing process noted above will reduce instances of non-compliance. The Agency also proposed that "[a]nnual payment of the fee is verification by the owner or operator that the source continues to meet" the ROSS eligibility criteria. Comments during the consideration of this proposal favored verification as a flexible alternative to calculating emissions, and the Board concludes that the Agency's proposed language suitably implements that recommendation.

The Agency's final comment also proposed amendments addressing the applicability of subsection (b)(1) and (b)(2), which the Board incorporates in its order in the interest of clarity. Also, during consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

The Board finds that subsection (d) as proposed in the Agency's final comments appropriately implements the ROSS program and addresses the substantive issues raised in the course of this proceeding.

Section 201.175(e) (Recordkeeping)

In subsection (e), the Agency sought to require owners or operators of ROSS sources to maintain specified records. SR at 3-4, 6. Proposed subsection (e) provides in its entirety that

> The following records shall be kept and available for inspection by the Agency for at least 5 calendar years:
>
> 1) A description of the emission units associated with the source and their associated control devices;

2) A description of control efficiency or emission rates of any control devices that are relied upon to meet the criteria for ROSS in subsections (a) and (b) of this Section;

3) Documentation of the source's actual emissions and calculations demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section; and

4) A copy of the source's initial registration and annual renewal of registration. Prop. at 8.

In his comment on behalf of NFIB offered during the first hearing, Mr. Grant noted that the Agency intends ROSS to reduce the administrative burden of recordkeeping and reporting on smaller sources of air emissions. *See* Exh. 3 at 1; Tr.1 at 41. He argued that, in order to allow additional flexibility for these smaller sources, subsection (e)(3) should be amended to provide that sources keep records including "[d]ocumentation supporting that the source is eligible for ROSS pursuant to the criteria in subsection (a) and (b) of this Section; this may include but are not limited to; annual material usage, annual throughput, purchase records, emission rates etc." Exh. 3 at 2; *see* Tr.1 at 43.

Mr. Grant's comment also argued that subsection (e)(4) should be amended to provide that sources keep records including "[a] copy of the source's initial registration including documentation of the source's actual emissions and calculations demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section and annual renewal of registration." Exh. 3 at 2; *see* Tr.1 at 43. Mr. Grant claimed that these amendments could reduce a source's recordkeeping and reporting burdens because ROSS "targets a large variety of small sources and some of the less complex source categories or industries may be able to determine compliance easily through standard throughputs or usage thresholds." Exh. 3 at 2; *see* Tr.1 at 43. He added that this amended language "would not preclude the agency from requesting additional information from a facility including calculation of actual emissions. . . ." Exh. 3 at 2.

In its comment, GAC noted that subsection (e)(3) "requires sources to calculate emissions annually and maintain records of these emissions calculations for 5 years." PC 1 at 4. GAC argued that these obligations make "ROSS recordkeeping nearly as time consuming and complex as recordkeeping for the Lifetime operating permit." *Id.* Accordingly, GAC favored alternatives for sources to demonstrate that emissions remain below subsection (b) thresholds. *Id.* GAC argued that "[o]ptions should include certifying that no significant changes in operations have occurred that would increase emissions from their original emission determination, certifying that material use or other throughput data remains below a threshold equivalent to the emissions thresholds for the rule, or certifying that they have calculated that their emissions remain below the threshold." *Id.* at 5. GAC proposed to amend subsection (e)(3) as follows:

> Documentation supporting that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section. This may include:

i) A copy of the source's initial registration including documentation of the source's actual emissions demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section and a copy of annual renewal of registration.

ii) Material use, throughput, or other production records that demonstrate that emissions are below the thresholds in subsection (a) and (b).

iii) Calculations that demonstrate that actual emissions are below he thresholds in subsections (a) and (b). PC 1 at 5.

Addressing proposed subsection (b) above (*see supra* at 10-16), the Agency agreed that, as an alternative to requiring sources to calculate emissions annually, it is sufficient for an owner or operator to certify that no change in operations or equipment has resulted in increased emissions. *Id*. To reflect this proposed amendment to subsection (b), the Agency sought to amend subsection (e)(3) to require that sources maintain records including "[d]ocumentation of the source's actual emissions and calculations demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section, this may include but is not limited to, annual material usage, annual throughput, purchase records, or emission rates . . ." PC 3 at 6. The Agency also sought to amend subsection (e)(4) to require that the records include "[a] copy of the source's initial registration, including documentation of the source's actual emissions and calculations demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a) and (b) of this Section and annual renewal of registration."

Final Agency Comments. The Agency sought to clarify "which records need to be retained as long as the source is in the ROSS program, and which records need to be retained for five years." PC 6 at 8. The Agency proposed that "[r]ecords concerning a description of the source, control efficiency or emission rates, documentation of actual emissions and calculations, and initial registration need to be retained as long as the source is a ROSS source." *Id*. The Agency also proposed in subsection (e)(5) that"[r]ecords concerning fee payment and annual verification only need to be retained for five years. *Id*.

Also, the Agency noted that its post-first hearing comment sought to streamline recordkeeping by listing records that may document actual emissions and calculations demonstrating eligibility. PC 6 at 7; *see* PC 3 at 6. Those records included, but were not limited to, annual material usage, annual throughput, purchase records, or emission rates. PC 6 at 7; *see* PC 3 at 6. The Agency stated that, "while owner and operators keep records of annual throughput and purchase, they may view this information as proprietary." PC 6 at 7. The Agency struck these records from its proposed subsection (e)(3). *Id*.

Finally, the Agency indicated "that there is some confusion" about the relationship between subsection (a) and subsections (b)(1) and (b)(2). PC 6 at 8. The Agency sought to clarify that "[s]ubsection (a) sets forth the criteria for eligibility for the ROSS program, including emissions limitations. Subsection (b) sets forth the criteria for whether a source has met the

emissions limitations.'' *Id.*; *see* Prop. at 5-6. The Agency elaborated that "[s]ubsection (b)(1) applies to determinations made by the owner or operator at the time a source is entering ROSS or re-entering ROSS. . . . Subsection (b)(2) applies to the owner or operator when they are determining whether or not their source continues to meet the emissions limitations in subsection (a)." PC 6 at 8. Accordingly, when subsections (e)(2) and (e)(3) require owners or operators to meet criteria in subsection (a), the Agency proposed "to clarify the requirement by specifying whether the provisions of (b)(1) or (b)(2) should be used when making the determination." *Id.* at 9.

Board Discussion. During the course of this proceeding, comments suggested amended recordkeeping requirements providing greater flexibility to ROSS sources. The Agency proposed that documentation of a source's emissions may include "annual material usage or emission rates." The Agency also clarified which records that must be kept a long as a source is registered under ROSS and those which must be kept for at least five calendar years. The Board finds that these changes provide clarification and greater flexibility.

The Agency's final comment also proposed amendments addressing the applicability of subsection (b)(1) and (b)(2), which the Board incorporates in its order in the interest of clarity. Also, during consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

The Board finds that subsection (e) as proposed in the Agency's final comments appropriately implements the ROSS program and addresses the substantive issues raised in the course of this proceeding.

Section 201.175(f) (Reporting Changes)

In proposed subsection (f), the Agency sought to provide a deadline by which an owner or operator must notify the Agency of a specified change at the source. SR at 3-4, 6. Specifically, the proposed subsection provided in its entirety as follows: "Changes to an eligible source requiring notification: The owner or operator of the source must notify the Agency in writing within 45 days of the change to the source, if the information in subsection (c)(1) of this Section changes." Prop. at 8; *see* SR at 3-4, 6. Proposed subsection (c)(1) provided that each registration and each renewal must include "[t]he name, address, and telephone number of the source, and of the person responsible for submitting and retaining copies of the registrations and the records." Prop. at 7.

Board Discussion. Originally, the Agency sought to require submission of specified information "in each registration and each renewal of registration." Prop. at 7 (proposed subsection (c)); *see* Attachment A. The Agency's final comments proposed to amend subsection (c) by limiting the requirement to "each initial registration and each re-entry registration." Attachment A; *see* PC 6 at7. However, subsection (c)(1) continues to require submission of the "[t]he name, address, and telephone number of the source, and of the person responsible for submitting and retaining copies of the registrations and the records."

The Agency's final comments proposed only to amend the heading of this subsection by referring to "a ROSS source" instead of "an eligible source." Attachment A. Neither the Agency nor any other participant has proposed to amend the substantive requirement that an owner or operator notify the Agency of a change in the information listed in subsection (c)(1). During consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

The Board finds that subsection (f) as proposed in the Agency's final comments appropriately implements the ROSS program and addresses the substantive issues raised in the course of this proceeding.

Section 201.175(g) (Permit Requirements)

In proposed subsection (g), the Agency addressed changes at a source that will require the owner or operator to obtain a construction or operating permit. SR at 3, 6; TSD at 10. The proposed subsection provides in its entirety as follows:

> Changes to the source requiring a permit:
>
> 1) If the source fails to meet the criteria in subsections (a) and (b) of this Section due to a change in operation, the owner or operator must apply for a permit within 90 days of the source's annual registration date.
>
> 2) If the owner or operator modifies the equipment or constructs new equipment associated with the source, such that the source is no longer eligible for ROSS pursuant to the requirements in subsection (a) and (b) of this Section, the owner or operator must comply with the applicable permitting requirements under the Act and 35 Ill. Adm. Code Parts 201 and 203.
>
> 3) If the source fails to meet the criteria in subsection (a) of this Section, because of a change in a regulation or statutory requirement or a new regulation or statutory requirement, the owner or operator must apply for a permit within 90 days of the source's annual registration date or the date required by new regulation or statute, whichever is earlier. Prop. at 8-9.

In his comment on behalf of GFAI offered during the first hearing, Mr. Adkisson noted that the Agency had intended ROSS to ease administrative burdens on smaller sources that may become eligible for the program. Exh. 4 at 1. However, he argued that, because

> most eligible permitted sources are under Lifetime or General Lifetime permits which already afford some flexibility to avoid additional construction fees, there is limited value and perhaps negative financial impacts to withdrawing an existing

> permit in favor of registration as there is the possibility that the facility may be forced to re-acquire a permit by future regulation or business changes. *Id*.

Mr. Adkisson argued that the ROSS program should encourage registration and eliminate the disincentive of assessing construction permit fees. Specifically, he proposed adding the following language as subsection (g)(4) and (g)(5):

> (4) Emission units previously covered by a lifetime operating permit or by a lifetime general operating permit that are no longer eligible for ROSS, pursuant to subsections (a) and (b) of this Section, may reinstate such permits if these emission units:
>
> (A) still comply with the terms and conditions of their previously held permits; and
>
> (B) submit the requisite annual permit fees to the Agency.
>
> (5) Emission units participating in the ROSS program who have not previously held a lifetime operating permit or a lifetime general operating permit that are no longer eligible for ROSS, pursuant to subsection (a) and (b) of this Section, shall not be charged fees for submitting a construction permit application. However, they shall submit the requisite annual permit fees to the Agency. Exh. 4 at 1.

In its comment, GAC stated that many sources likely to be eligible for ROSS now operate under lifetime or general lifetime permits, "which afford some flexibility to avoid additional construction fees." PC 1 at 5. GAC claimed that, if a source with a lifetime permit registers under ROSS but later exceeds the ROSS emission thresholds, the source "would have to reapply for a permit and repay the fee." *Id*. GAC suggested that the possibility of reapplication and repayment would deter sources from registering under ROSS and withdrawing a permit. *Id*. Accordingly, GAC favored removing "the requirement to pay construction fees again if the facility needs to apply for a Lifetime permit after switching to a ROSS." *Id*. GAC proposed to add a subsection (g)(4) providing that "[e]missions units previously covered by a source's permit prior to the effective date of this section will not be subject to construction fees under part (1) and (3) of this subsection; however, the owner or operator must comply with all other applicable permitting fees and requirements under the Act and 35 Ill. Adm. Code Parts 201 and 203." *Id*. at 6; *see* Tr.2 at 12-13.

In comments filed on October 14, 2011, after the first hearing, IAAP noted that aggregate producers are required to obtain permits from the Agency to control air emissions from their activities. PC 2 at 1. IAAP stated that aggregate processing plants may be able to operate under lifetime general operating permits, which "eliminate the need to apply for construction permits, as well as revised operating permits, when operators make plant modifications within specified limitations." *Id*. Because of the opportunity to obtain these streamlined permits, IAAP argued that its members would enjoy only negligible administrative benefits from registering under ROSS. *Id*. at 2. IAAP elaborated by claiming that subsection (b)(2)(A) "requires an emissions

source that no longer qualifies for the ROSS program to apply for a new operating permit if actual annual emissions exceed 7 tons for the prior calendar year." *Id*. at 3. IAAP suggested that the costs associated with application for a new operating permit would deter aggregate producers from participating in the ROSS program. *Id*. To encourage those sources to participate in ROSS, IAAP proposed to add the following language to subsection (g):

> 4) Emission units previously covered by a lifetime operating permit or by a lifetime general operating permit that are no longer eligible for ROSS, pursuant to subsection (a) and (b) of this Section, may reinstate permits if these emission units still comply with the terms and conditions of their previously held permits and submit the requisite annual permit fees to the Agency. PC 2 at 3; *see* Tr.2 at 12.

IAAP added that, by allowing the Agency to reinstate previously-issued permits instead of reviewing applications for new operating permits, this proposed language would ease the Agency's administrative workload. PC 2 at 3.

In its comments filed on October 24, 2011, after the first hearing, the Agency sought to add language to subsection (g) in order to avoid accepting sources into ROSS on the basis of "unreasonably low emissions projections." PC 3 at 2. Specifically, the Agency proposed to add a subsection providing in its entirety that, "[i]f a source that is new, not previously operated, at the time of initial registration has actual emissions in excess of the eligibility levels during the first or second year of operation as determined in subsection (b)(2), the owner or operator of the source shall apply for an operating permit and pay the avoided construction permit application fees." *Id*. During the second hearing, the hearing officer asked whether the "terms 'new' and 'not previously operated' have different meanings or does that language just refer to sources that are relying exclusively on projected admissions for their initial registration under subsection (b)(1)?" Tr.2 at 10. Mr. Ross responded that "those would, in fact, be new sources that have no historic operational data and don't currently have a permit. So they would be relying on projected emissions only because as it says they hadn't previously operated." *Id*.

In the same comments, the Agency addressed "sources that become ineligible for ROSS due to increase of emissions with or without new construction." PC 3 at 6. Such sources present issues including the possibility of fees for previous construction and operating activities and the process for obtaining a permit after becoming ineligible for ROSS. *See id*. The Agency first responded by taking the position that Section 9.14 of the Act "exempts legitimately registered sources from the requirements to obtain construction and/or operating permits." *Id*. The Agency further stated that "a source that constructs or increases emission properly under ROSS is not required to obtain a permit for these past activities, even if in the future the source becomes ineligible for ROSS." *Id*.

The Agency expanded on this position by addressing the various ways in which a source may become ineligible. The Agency stated that, "[f]or an existing source that had a lifetime permit, the owner or operator could be required to do as little as submitting a letter requesting that previously submitted information be used to issue a lifetime permit with the same terms and conditions as the prior lifetime permit." *Id*. If the owner or operator sought to increase

emissions above the requirements of the prior permit, "they would need to submit new information, and, under certain circumstances where the source is no longer eligible for the lifetime permit program, a new operating and/or construction permit application would need to be submitted." *Id*. If the owner or operator lawfully constructs a new source under ROSS but later becomes ineligible, the Agency "would not look backwards and require a construction permit." *Id*. Under those circumstances, the Agency "would only look at events that occurred later in determining the applicable permitting and fee requirements." *Id*. However, the Agency listed exceptions to what it describes as this "no-look back policy." *Id*. The Agency stated that it may look back to determine permit and fee requirements if a new source exceeds the emission limitations in its first or second year of operation or if an existing source shows evidence of unlawful participation in ROSS. *Id*.; *see id* at 2 (addressing low projections of emission in first or second year of new operations in proposed new subsection (d)(1)(B)).

In comments filed October 27, 2011, on behalf of GFAI, Mr. Adkisson stated that he has reviewed the Agency's post-first hearing comments. PC 4 at 1; *see* PC 3. Although he indicated that the Agency's comments "address nearly all of our concerns and we would like to go on record as supporting the changes they have suggested," he added that the Agency did not propose language addressing "sources that become ineligible for ROSS due to increase of emissions with our (sic) without new construction." PC 4 at 1.

GFAI stated that the Agency "has provided a well-reasoned response to this issue." PC 4 at 2. It added that the Agency's re-issuance of a lifetime operating permit or a lifetime general operating permit to these sources is "both flexible and simple." *Id*. However, GFAI argued that "the rules should clearly state provisions for doing this." *Id*. GFAI further added that re-issuance could be initiated by a simple letter or accomplished through the online system under development. *Id*. Accordingly, GFAI proposed addition of the following language as subsection (g)(4):

> [t]he IEPA shall re-issue permits for emission units previously covered by a lifetime operating permit or a lifetime general operating permit that are no longer eligible for ROSS, pursuant to subsection (a) and (b) of this Section, if these emission units still comply with the terms and conditions of their previously held permits and submit a request for re-issuance to the Agency along with the requisite annual permit fees. *Id*.

GFAI noted that the Agency also addressed the issue of permitting and fees for "owners and operators who have lawfully constructed a new source under ROSS and later become ineligible." PC 4 at 2. The Agency's comment had indicated that it would follow a "no-look back policy" unless sources exceed emission limitations in the first or second year of operation. PC 3 at 6. GFAI stated that "[w]e support this idea and believe it should be incorporated in to the rules." PC 4 at 3. GFAI proposed the following language as subsection (g)(5):

> [e]missions sources participating in the ROSS program who have not previously held a lifetime operating permit or a lifetime general operating permit that are no longer eligible for ROSS, pursuant to subsection (a) and (b) of this Section, shall not be required to obtain a construction permit or pay construction permit fees for

emissions sources built while in the ROSS program unless the emissions limitations are exceeded during the first two years of operation. *Id.*

Final Agency Comments. The Agency stated that subsection (g) of its original proposal "addressed sources that became ineligible for ROSS due to increase of emissions with or without new construction." PC 6 at 9. The Agency indicated that this proposed subsection generated numerous questions addressing numerous issues such as the permits that would have to be obtained and the fees that would have to be paid by such sources. *See id.* The Agency effectively struck the language it had originally filed and proposed a new subsection (g). *See* Attachment A.

In subsection (g)(1), the Agency proposed to address a change in law or regulation that would require obtaining a permit." PC 6 at 9. The Agency sought to establish that "[t]he owner or operator must apply for a permit by the date required by the new regulation or statute if there is a change in a regulation or statutory requirement or a new regulation or statutory requirement that makes a source ineligible for ROSS. . . ." The Agency referred to a comment claiming that "an owner or operator should not be required to obtain a permit until notified by the Illinois EPA." *Id.* The Agency responded that, although "it attempts to conduct outreach to owners and operators of all types of sources by going to numerous trade meetings and updating its website, [it] cannot know all the activities and nuances of the operation of thousands of emissions sources located in Illinois." *Id.* at 9-10. While the Agency stated that "[i]t will continue to discuss this issue with representatives," it cannot agree to make notification by the Agency the trigger for applying permitting requirements. *Id.* at 10; *see id.* at 1 (listing as one of three issues on which agreement not reached).

Proposed subsection (g)(2)(A) addressed "changes at a source that did not have a lifetime permit." PC 6 at 10. In proposed subsection (g)(2)(A)(i), the Agency sought to establish that, "[i]f a source is eligible for a lifetime permit, it must apply within 90 days of its annual fee payment date." *Id.* Under proposed subsection (g)(2)(A)(ii), the requirements of New Source Review, the Clean Air Act Permit Program, or a federally enforceable state operating permit would apply to sources that are not eligible for lifetime permits. *Id.* The Agency stated that the Act and the Board's regulations set deadlines for these permitting programs, so it "cannot offer an adjustment to the applicable permitting deadlines." *Id.*, citing 35 Ill. Adm. Code 201, 203. Proposed subsection (g)(2)(A)(iii) provided in its entirety that, "[i]f the source was not constructed or operated at the time of initial registration and has actual emissions in excess of the eligibility levels during the first or second year of operations as determined in subsection (b)(2), the owner or operator must apply for an operating permit and pay construction permit application fees." Attachment A. The Agency characterized this language as reiterating "that there can be no avoidance of construction fees by new sources." PC 6 at 10; *see* PC 3 at 6 (stating exception to "no look-back" policy).

Proposed subsection (g)(2)(B) addressed owners and operators that held a lifetime permit before registration under ROSS. PC 6 at 10, citing 35 Ill. Adm. Code 201.169. In proposed subsection (g)(2)(B)(i), the Agency sought to establish that sources that fail to meet ROSS eligibility criteria but comply with their lifetime permit must merely "notify the Illinois EPA that they are now operating under the terms and conditions of the permit." PC 6 at 10. The Agency

proposed to require this notification "no later than the source's annual fee payment date of the calendar year following the change in status from a ROSS eligible source to a permitted source." Attachment A; *see* PC 6 at 10. Proposed subsection (g)(2)(B)(ii) addressed sources eligible for a lifetime permit but not complying with their current permit. The Agency proposed to require the owner or operator of such a source to "apply for a new or revised permit within 90 days of the source's annual fee payment date." Attachment A; *see* PC 6 at 10. Finally, proposed subsection (g)(2)(B)(iii) provided that, if a source s not eligible for a lifetime permit, its "owner or operator must comply with the applicable permitting requirements under the Act and 35 Ill. Adm. Code Parts 201 and 203." Attachment A; *see* PC 6 at 11. The Agency stated that this requirement reflects proposed subsection (g)(2)(A)(ii) which also addressed sources ineligible for a lifetime permit. PC 6 at 11; *see id*. at 10; Attachment A.

The Agency emphasized that its proposed subsection (g) does not address fees and stated that owners and operators will be required to applicable fees under the Act and the Board's regulations. PC 6 at 11, citing 35 Ill. Adm. Code 201, 203. The Agency noted a comment that it "should credit any fee paid under the registration program toward any owed construction fees." PC 6 at 11. The Agency responded that it "does not believe that it has the authority to do this. The requirement for payment of a construction application fee is a separate requirement under the Act." *Id*.

Board Discussion. During the course of this proceeding, the Agency's original proposal generated a number of comments and questions about sources that become ineligible for ROSS. In its final comments, the Agency effectively re-drafted subsection (g) and requested that the Board consider only the amended language. *See* PC 6 at 11; Attachment A. Accordingly, the Board confines this discussion to the amendments proposed in the Agency's post-second hearing comments. *See* PC 6; Attachment A.

The Agency has first addressed changes in statutes or regulations making sources ineligible for ROSS. The Agency seeks to require such sources to apply for a permit according to the deadline in the new or amended authority. The Board concurs that this is the appropriate deadline under these circumstances and includes it in its order below. The Agency noted a comment that, if a source becomes ineligible for ROSS as the result of a new or amended statute or regulation, Agency notification would be necessary to trigger any requirement to apply for a permit. The Agency suggests that, in spite of its various communication and public information activities, it is not well-prepared to determine the specific evolving permit requirements for each of thousands of sources in the state. For the purposes of establishing the initial ROSS program requirements, the Board concurs with the Agency and declines to make permitting requirements contingent solely upon Agency notification. In this regard, the Board notes the Agency's suggestion that it will continue both to conduct its communication and educational programs and discuss this issue with affected sources.

The Agency's subsection (g)(2)(A) addressed sources that did not have a permit under Section 201.169 before ROSS registration. Subsection (i) effectively requires such sources to apply for a permit under Section 210.169 if eligible. If not, subsection (ii) requires sources to apply for a permit as required by the Act and the Board's air pollution regulations. The Board

concurs that these provisions appropriately address existing sources that must change from registered to permitted status.

In addition, the Agency proposed to address that "was not constructed or operated at the time of initial registration and has actual emissions in excess of the eligibility levels during the first or second year of operations. . . ." The Agency sought to require that, under these circumstances, the owner or operator must apply for an operating permit and pay construction permit application fees. In post-first hearing comments, the Agency had described this as an exception to a "no-look back policy" on the assessment of these fees. The Board concurs that this would generally discourage ROSS registration based upon unrealistically low emission projections. The Board also agrees that the two-year period appropriately limits the effect this exception. The Agency noted a comment that sources owing construction fees should receive a credit for any registration fees paid. The Agency suggests that it lacks authority to apply a payment required under one program to offset a subsequent payment requirement under another program. For the purposes of establishing the initial ROSS program requirements, the Board concurs and declines to draft language of this nature to include in the adopted rules.

The Agency's subsection (g)(2)(B) addressed sources that held a lifetime permit under Section 201.169 before registration. Subsection (i) allows a source complying with its permit to return to permitted status simply by notifying the Agency. If the source does not comply with the permit but remains eligible under Section 201.169, subsection (ii) requires application for a new or revised lifetime permit. If a source no longer eligible for a lifetime permit, then the owner of operator must apply for a permit as required by the Act and the Board's air pollution regulations. The Board concurs that this language will clarify and simplify transitions between permitted and registered status and incorporates it in its order below.

The Board finds that subsection (g) as proposed in the Agency's final comments appropriately implements the ROSS program and addresses the substantive issues raised in the course of this proceeding.

<u>Section 201.175(h) (Re-Entry to ROSS)</u>

In proposed subsection (h), the Agency provided criteria for a source that has obtained an operating permit to re-enter the ROSS program. SR at 3, 6. The Agency stated that "[a] source can re-enter the ROSS program if after being out of the program they have one calendar year of emissions that meet the eligibility criteria." TSD at 10; *see* SR at 3. The proposed subsection provides as follows: "Reentry into ROSS: the owner or operator of a source that obtained an operating permit pursuant to subsection (g) of this Section may register for ROSS, if the source meets the criteria in subsections (a) and (b)(1) of this Section in the prior calendar year." Prop. at 9.

The Board finds that the Agency's amended subsection (g) appropriately implements the ROSS program and addresses the substantive issues raised in the course of this proceeding. During consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

Final Agency Comments. The Agency noted that subsection (a) of its original proposal providing that sources "may" register was inconsistent with Section 9.14(a) of the Act providing that sources "shall" register. PC 6 at 2; *see* PC 3 at 1. Accordingly, the Agency's comments sought to change "may" to "shall" both in subsection (a) and in this subsection (h) addressing re-entry into ROSS by a source that had changed status to become a permitted source. PC 6 at 2. The Agency also proposed "minor clarifying amendments." *Id.* at 11.

Board Discussion. The Board concurs that the Agency's proposed amendment of "may" to "shall" is consistent with Section 9.14(a) of the Act and that the Agency's additional proposed amendments are clarifying in nature. The Board incorporates subsection (h), as amended by the Agency's final comment, in its order below. During consideration and adoption of this subsection, the Board has included minor non-substantive changes, which do not merit discussion in this opinion.

Request for Economic Impact Study Not Required

Section 27(b)(1) of the Act provides that, before adopting rules that are not administrative in nature, the Board must "request that the Department of Commerce and Economic Opportunity [DCEO] conduct a study of the economic impact of the proposed rules. The Department may within 30 to 45 days of such request produce a study of the economic impact of the proposed rule." 415 ILCS 5/27(b)(1) (2010). However, Section 9.14(d) of the Act provides in pertinent part that, "[s]ubsection (b) of Section 27 of this Act . . . do[es] not apply to rules adopted by the Board under this Section." 415 ILCS 5/9.14(d) (2010). Consequently, the Board has not requested and does not intend to request that DCEO conduct an economic impact study of this rulemaking proposal.

Geographic Regions and Sources Affected

The Agency stated that its proposed ROSS program would apply throughout the State of Illinois. SR at 4. The Agency projected that, of the more than 6,400 permitted emission sources in the state, "approximately 3,250 small emission sources in Illinois will qualify for the ROSS program." *Id.*; *see* TSD at 7, 11; Exh. 5 (listing potentially affected sources). The Agency foresaw that source categories including grain handling, concrete plants, mining and quarrying, bulk terminals, and dry cleaners will particularly benefit from the proposed ROSS program. SR at 4; TSD at 11; *see* Exh. 5.

Projected Impact on Emissions

The Agency estimated that its proposed ROSS program "will have a negligible impact on emissions from eligible emission sources." TSD at 15. The Agency also projected that "there might be a possible slight reduction in emissions from small sources that are not initially eligible for the ROSS program that realize if they reduce their emissions they would become eligible for the ROSS program." *Id.* The Agency also projected that registered ROSS sources wishing to expand may install "pollution control equipment in order to keep total emissions for the source below the ROSS eligibility criteria thresholds." *Id.*

In his testimony pre-filed on behalf of the Agency, Mr. Ross expected that "no loss in environmental protection" will result from adoption of the ROSS program. Ross Test. at 4; SR at 5; TSD at 5, 13. He stated that, under the proposed program, the Agency "would maintain the ability to inspect and enforce against a source, as needed, to ensure compliance with all applicable statutes and regulations." Ross Test. at 4; SR at 4-5; TSD at 5, 7, 13. He emphasized that the Agency will maintain its database of emission sources including ROSS sources. Ross Test. at 4; SR at 5; TSD at 5, 7, 13.

<u>Technical Feasibility</u>

The Agency argued that that the proposed ROSS program is technically feasible because it "is intended to reduce the administrative burdens and associated costs for small air emission sources." SR at 5; *see* TSD at 8. The Agency suggested that its proposal may have indirect technical consequences. The Agency stated that a source that is not initially eligible for the ROSS program may reduce its emissions in order to become eligible. *See* TSD at 15. The Agency also stated that registered sources wishing to expand may install pollution control equipment on their expanded production "in order to keep actual total emissions for the source below the ROSS eligibility criteria thresholds." *Id.* However, the Agency did not suggest that these considerations undermine the technical feasibility of the proposal. *See id.*

The Agency has suggested that its proposal is chiefly administrative and financial in nature. The record does not persuasively dispute this characterization, and the Board foresees that ROSS registration may be technically simpler for sources than meeting various permitting requirements. The Board finds that the Agency's proposal, as amended by its final comments, is technically feasible. The Agency has suggested that compliance with the ROSS program may only indirectly pose technical issues. While sources wishing to become or remain eligible for ROSS may confront technical requirements, the Board finds that such indirect effects do not compromise the technical feasibility of the adopted rules.

<u>Economic Reasonableness</u>

The Agency considers its proposal to be economically reasonable "because ROSS is intended to reduce the administrative burdens and associated costs for small air emissions sources." SR at 5. Specifically, the Agency claims that its proposal is cost-effective for the Agency itself by reducing the number of sources requiring permits. TSD at 7, 14. The Agency also claims that it is cost-effective for eligible sources by reducing their compliance costs including staffing expenses and consulting and legal fees. TSD at 7.

The Agency reports that it has experienced a reduction in the size of its staff during a time of increasing responsibilities. TSD at 12. It further reports that the remaining staff members have worked fewer hours as a result of "employee furloughs and significant restrictions on overtime." *Id.* In reviewing its own operations, the Agency determined that it dedicated a disproportionate share of resources "toward the permitting of a large number of smaller sources whose aggregate emissions are small in comparison to the emissions from a small number of large sources." *Id.* The Agency concluded that it "could provide greater service and maintain or

improve air quality by directing more resources toward permitting action related to the larger emission sources." *Id*.

The Agency argues that the General Assembly "recognized the imbalance of resources under existing regulations versus actual emissions. . . ." TSD at 14. The Agency suggests that the General Assembly has restored balance by establishing a new fee structure including the ROSS program. *See id*. The Agency claims that the $235 registration fee for ROSS sources "is in some cases lower than the current annual operating permit fee being paid." *Id*. The Agency adds that registered sources will not be required to pay construction permit fees, which recently have averaged $1,000 per construction project. *Id*. The Agency stresses that its rulemaking proposal is required by the recent Public Act addressing Agency fees. 415 ILCS 5/9.14(d) (2010); *see* P.A. 97-0095, eff. July 12, 2011.

As noted above under "Technical Feasibility," the Agency has suggested that its proposal is chiefly administrative and financial in nature. Specifically, the Agency expected that adoption of its proposal would limit administrative requirements and various permitting costs for eligible sources. The Agency added that the proposal would streamline its own functions. The Board concludes that the Agency's amended proposal has successfully addressed various comments and questions about the economic reasonableness of the original proposal. Specifically, by clarifying provisions including the determination of continued eligibility, recordkeeping, and transitions between permitted and registered status, the Agency has made its proposal administratively and financially simpler. Accordingly, the Board finds that the Agency's proposal, as amended by its final comments, is economically reasonable.

CONCLUSION

Section 9.14(d) of the Act provides that the rulemaking provisions of the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq*. (2010)) "do not apply to rules adopted by the Board under this Section." 415 ILCS 5/9.14(d) (2010). Section 9.14(d) also requires the Board to adopt rules within 120 days after the Agency proposes them, or by December 13, 2011. *Id*.

Having examined the entire record in this proceeding and as explained in the opinion above, the Board today finds that the proposed ROSS program is both technically feasible and economically reasonable. The Board adopts a new Section 201.175 implementing Registration of Smaller Sources (ROSS) under Section 9.14 of the Act. In its order below, the Board directs the Clerk to provide publication of the adopted rules in the *Illinois Register*.

ORDER

The Board directs the Clerk to provide publication of the following adopted rules in the *Illinois Register*.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section
201.101 Other Definitions
201.102 Definitions
201.103 Abbreviations and Units
201.104 Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section
201.121 Existence of Permit No Defense
201.122 Proof of Emissions
201.123 Burden of Persuasion Regarding Exceptions
201.124 Annual Report
201.125 Severability
201.126 Repealer

SUBPART C: PROHIBITIONS

Section
201.141 Prohibition of Air Pollution
201.142 Construction Permit Required
201.143 Operating Permits for New Sources
201.144 Operating Permits for Existing Sources
201.146 Exemptions from State Permit Requirements
201.147 Former Permits
201.148 Operation Without Compliance Program and Project Completion Schedule
201.149 Operation During Malfunction, Breakdown or Startups
201.150 Circumvention
201.151 Design of Effluent Exhaust Systems

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section
201.152 Contents of Application for Construction Permit
201.153 Incomplete Applications (Repealed)
201.154 Signatures (Repealed)
201.155 Standards for Issuance (Repealed)
201.156 Conditions

201.157 Contents of Application for Operating Permit
201.158 Incomplete Applications
201.159 Signatures
201.160 Standards for Issuance
201.161 Conditions
201.162 Duration
201.163 Joint Construction and Operating Permits
201.164 Design Criteria
201.165 Hearings
201.166 Revocation
201.167 Revisions to Permits
201.168 Appeals from Conditions
201.169 Special Provisions for Certain Operating Permits
201.170 Portable Emission Units
201.175 Registration of Smaller Sources (ROSS)

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN SMALLER SOURCES

Section

201.180 Applicability (Repealed)
201.181 Expiration and Renewal (Repealed)
201.187 Requirement for a Revised Permit (Repealed)

SUBPART F: CAAPP PERMITS

Section

201.207 Applicability
201.208 Supplemental Information
201.209 Emissions of Hazardous Air Pollutants
201.210 Categories of Insignificant Activities or Emission Levels
201.211 Application for Classification as an Insignificant Activity
201.212 Revisions to Lists of Insignificant Activities or Emission Levels

SUBPART G: EXPERIMENTAL PERMITS
(Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

Section

201.241 Contents of Compliance Program
201.242 Contents of Project Completion Schedule
201.243 Standards for Approval
201.244 Revisions
201.245 Effects of Approval
201.246 Records and Reports

201.247 Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section
201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup
201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup
201.263 Records and Reports
201.264 Continued Operation or Startup Prior to Granting of Operating Permit
201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

SUBPART J: MONITORING AND TESTING

Section
201.281 Permit Monitoring Equipment Requirements
201.282 Testing
201.283 Records and Reports

SUBPART K: RECORDS AND REPORTS

Section
201.301 Records
201.302 Reports

SUBPART L: CONTINUOUS MONITORING

Section
201.401 Continuous Monitoring Requirements
201.402 Alternative Monitoring
201.403 Exempt Sources
201.404 Monitoring System Malfunction
201.405 Excess Emission Reporting
201.406 Data Reduction
201.407 Retention of Information
201.408 Compliance Schedules

201.APPENDIX A Rule into Section Table
201.APPENDIX B Section into Rule Table
201.APPENDIX C Past Compliance Dates

AUTHORITY: Implementing ~~by~~ Sections 9.14, 10, 39 and 39.5 and authorized by Section 27~~9.14~~ of the Environmental Protection Act [415 ILCS 5/9.14, 10, 27, 39 and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg.30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 33 Ill. Reg. 11965, effective August 6, 2009; amended in R10-21 at 34 Ill. Reg. 19575, effective December 1, 2010; amended in R12-10 at 35 Ill. Reg. _________, effective __________.

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.175 Registration of Smaller Sources (ROSS)

a) An owner or operator of an eligible source shall annually register with the Agency instead of complying with the requirement to obtain an air pollution construction or operating permit under the Act or complying with a permit issued under Section 201.169. The owner and operator of a ROSS source are still subject to all applicable environmental statutes and regulations. The source must meet all of the following criteria to be an eligible source:

1) Pursuant to Section 9.14 of the Act:

A) The source must not be required to obtain a permit pursuant to the Clean Air Act Permit Program, or federally enforceable State operating permit program, or under regulations promulgated pursuant to Section 111 or 112 of the Clean Air Act;

B) USEPA has not otherwise determined that a permit is required;

C) The source emits less than an actual 5 tons per year of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions;

D) The source emits less than an actual 0.5 tons per year of combined hazardous air pollutant emissions;

E) The source emits less than an actual 0.05 tons per year of lead air emissions;

F) The source emits less than an actual 0.05 tons per year of mercury air emissions; and

G) The source does not have an emission unit or source *subject to a standard pursuant to 40 CFR 61 (Maximum Achievable Control Technology) or 40 CFR 63 (National Emissions Standards for Hazardous Air Pollutants), other than those regulations that USEPA has categorized as "area source."*

2) Emission units at the source are not used as thermal desorption systems pursuant to 35 Adm. Code 728.Table F or as incinerator systems.

3) The source or its emission units must not be subject to local siting under Section 39.2 of the Act.

b) For the purposes of determining whether the actual emissions from the source meet the criteria of subsections (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(F) of this Section, the owner or operator of a source shall only use emissions from units that are not exempt from the requirement to obtain a permit pursuant to Section 201.146, as follows:

1) Initial registration or reentry into ROSS: the owner or operator must sum the actual emissions from all units associated with the source for the prior calendar year. If the source is new, or has been operating less than one calendar year, projected estimated emissions may be used for all of the remaining months in the prior calendar year, respectively.

2) Annual renewal of registration:

A) For the purposes of determining compliance with subsection (a)(1)(C) of this Section, the owner or operator must:

i) Verify that the source still meets the eligibility criteria in subsection (a)(1)(C); or

ii) Calculate emissions by summing all actual emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions from all units associated with the source for the prior calendar year. The total sum of actual emissions of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions for the prior calendar year must be less than or equal to 7 tons, or the total sum of actual emissions of combined particulate

matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions from the prior two calendar years must be less than or equal to 10 tons.

B) For the purposes of determining compliance with subsections (a)(1)(D), (a)(1)(E) and (a)(1)(F) of this Section, the owner or operator must:

i) Verify that the source still meets the eligibility criteria in subsections (a)(1)(D), (a)(1)(E), and (a)(1)(F) of this Section; or

ii) Calculate emissions by summing all actual emissions from all units at the source for the prior calendar year. Summed emissions of HAPs, mercury or lead must be less than or equal to 0.5 tons per year, 0.05 tons per year, or 0.05 tons per year, for the prior calendar year, respectively.

c) The following must be included in each initial registration and each re-entry registration:

1) The name, address, and telephone number of the source and of the person responsible for submitting and retaining copies of the registration information and the records;

2) A statement that the source meets the requirements of this Section;

3) A certification that the information submitted in subsections (c)(1) and (c)(2) of this Section is correct or a correction of the information; and

4) The applicable fee pursuant to Section 9.14 of the Act.

d) The owner or operator of an eligible source shall submit the registration required by subsection (c) of this Section as follows:

1) Initial registration:

A) The owner or operator of a source holding a permit may register after the effective date of this Section and no later than their annual fee payment date in fiscal year 2013 (July 1, 2012 through June 30, 2013). The terms and conditions of a permit issued pursuant to Section 201.169 do not apply during the period the source is registered. The owner and operator of a ROSS source are still subject to all applicable environmental statutes and regulations.

B) The owner or operator of an operating source not holding a permit shall register no later than July 1, 2012.

C) The owner or operator of a new source shall register at least 10 days before commencing construction or operation and may commence construction or operation 10 days after submittal to the Agency.

2) Annual registration. The owner or operator of a ROSS source must pay an annual fee on or before their annual fee payment date. Annual payment of the fee is verification by the owner or operator that the source continues to meet the criteria in subsection (a), as determined by subsection (b)(2), as applicable.

3) Re-entry into ROSS under subsection (h). The owner or operator of a source that re-enters ROSS based on the criteria in subsection (a), as determined by subsection (b)(1), must register and pay an annual fee on or before their annual fee payment date.

e) The owner or operator shall keep the following records and make them available for inspection by the Agency:

1) A description of the emission units associated with the source and their associated control devices;

2) A description of control efficiency or emission rates of any control devices that are relied upon to meet the criteria for ROSS in subsection (a), as determined by subsection (b)(1) or (b)(2), as applicable;

3) Documentation of the source's actual emissions and calculations demonstrating that the source is eligible for ROSS pursuant to the criteria in subsections (a), as determined by subsection (b)(1) or (b)(2), as applicable. This documentation may include, but is not limited to, annual material usage or emission rates;

4) A copy of the source's initial registration; and

5) A copy of the owner's or operator's annual fee payment for at least the most recent 5 calendar years.

f) Changes to a ROSS source requiring notification: The owner or operator of the source must notify the Agency in writing within 45 days after the change to the source, if the information provided in subsection (c)(1) of this Section changes.

g) Changes requiring a new or modified construction or operating permit, or compliance with conditions in an existing permit issued pursuant to Section 201.169:

1) The owner or operator must apply for a permit by the date required by the new regulation or statute if there is a change in a regulation or statutory requirement or a new regulation or statutory requirement that makes a source ineligible for ROSS under the criteria in subsection (a), as determined in subsection (b)(2), as applicable.

2) If the source no longer meets the criteria in subsection (a), as determined by subsection (b)(2), as applicable:

A) The owner or operator of a source that did not have a permit under Section 201.169 prior to registration must apply and comply with the applicable requirements of the Act and 35 Ill. Adm. Code Parts 201 and 203, as follows:

i) If the source is eligible for a permit under Section 201.169, the owner or operator must apply for a permit within 90 days of the source's annual fee payment date.

ii) If the source is not eligible under Section 201.169, the owner or operator must apply for a permit as provided for under the Act and 35 Ill. Adm. Code Parts 201 and 203.

iii) If the source was not constructed or operated at the time of initial registration and has actual emissions in excess of the eligibility levels during the first or second year of operations as determined in subsection (b)(2), the owner or operator must apply for an operating permit and pay construction permit application fees.

B) The owner or operator of a source that had a permit under Section 201.169 prior to registration:

i) If the source is in compliance with the terms and conditions of the permit, the owner or operator shall notify the Agency no later than the source's annual fee payment date of the calendar year following the change in status from a ROSS eligible source to a permitted source.

ii) If the source is not in compliance with the terms and conditions of the permit, but is still eligible for a permit pursuant to Section 201.169, the owner or operator must

apply for a new or revised permit within 90 days of the source's annual fee payment date.

iii) If the source is not eligible for a permit pursuant to Section 201.169, the owner or operator must comply with the applicable permitting requirements under the Act and 35 Ill. Adm. Code Parts 201 and 203.

h) Reentry into ROSS: the owner or operator of a source that changed status to become a permitted source pursuant to subsection (g) of this Section shall submit a registration for ROSS if the source meets the criteria in subsections (a), as determined in subsection (b)(1), in the prior calendar year.

(Source: Added at 35 Ill. Reg. ______, effective ________)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 1, 2011, by a vote of 5-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board