

ILLINOIS POLLUTION CONTROL BOARD

November 7, 2002

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R02-10
GENERAL PERMITTING PROVISIONS) (Rulemaking - Air)
FOR PORTABLE EMISSION UNITS)
AMENDMENTS TO 35 ILL. ADM.CODE)
201)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by M.E. Tristano):

This matter comes before the Board on a proposal for rulemaking filed by the Illinois Environmental Protection Agency (Agency) on November 30, 2001. The Agency proposed that the Board amend its permitting rules for the control of air pollution section 201.142 and add section 201.170 (35 Ill. Adm. Code 201.142). As these rules are not required by the Clean Air Act, the Agency proposed the rules under the regular rulemaking provision of Section 27 of the Environmental Protection Act (Act), rather than the fast track procedures of Section 28.5 (415 ILCS 5/27, 285).

The proposal seeks to exempt certain smaller emissions sources from the requirement for owners and operators to obtain new construction permits that are currently required by Section 39 of the Act (415 ILCS 5/39 (2000)) each time the site of small emission units are changed.

The Board adopted its first notice opinion and order on July 11, 2002. The proposed rules were published at 26 *Illinois Register* 12537 (Aug. 16, 2002). No comments were received during the 45-day first notice comment period, which expired September 30, 2002.

The Board today proposes this rulemaking for second-notice review by the Joint Committee on Administrative Rules. The proposed rule is identical to the first notice. The following opinion will explain the procedural history, proposal development, proposal overview, and discuss economic considerations.

PROCEDURAL HISTORY

The Board has held two hearings in this matter. The first was held in Springfield, Illinois on March 20, 2002, and the second in Chicago on April 9, 2002. At the first hearing two Agency employees presented testimony in support of the proposal. Included was the testimony of Rachel Doctors, Assistant Counsel and Mr. Harish B. Desai, Unit Manager of the State Operating Permit Unit of the Permit Section of the Illinois Environmental Protection Agency.

At the second hearing the Agency offered additional testimony and additional questions were asked by the Board.

Three exhibits were admitted at hearing: Exhibit 1. ERRATA Sheet by proponents; Exhibit 2. testimony of Mr. Harish Desai; Exhibit; and Exhibit 3. Addendum to the testimony of Mr. Harish Desai.

There were no members of the public in attendance at the hearings. The Board received no public comments regarding the proposed rule.

The Board adopted its first notice opinion and order on July 11, 2002. The proposed rules were published at *26 Illinois Register* 12537 (Aug. 16, 2002). Since first notice there have been no comments.

PROPOSAL DEVELOPMENT

In 1997, Section 39 of the Act (415 ILCS 5/et. seq.) was amended to establish a *lifetime* permit program. Pursuant to P.A. 90-367, eff. June 17, 1998, the Board adopted revised rules providing that emission sources not subject to Section 39.5 of the Act or required to have a federally enforceable state operating permit (FESOP) shall have operating permits that are required to be renewed only upon request by the Agency or if circumstances warrant a revised permit. Amendments to General Permitting Provisions to Require Perpetual Permits for Certain Sources: Amendment to 35 Ill. Adm. Code 201, R98-13 (June 17, 1998). Circumstances requiring a revised operating permit or construction permit include change in ownership, construction or modification of an emission unit at a source pursuant to Section 201.169(c). "Construction" is defined as "commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment." 35 Ill. Adm. Code 201.102.

The Agency has identified a subset of emission units that despite having a *lifetime* operating permit, are required to repeatedly apply and obtain new construction and *lifetime* operating permits solely because of a change in location of the emission unit or units. The Agency believes that the new permit applications for portable emission units contain essentially the same information as previously submitted only modifying the address to the new location or site. The Agency has stated that there are approximately 500 emission units that could change sites at least once annually without increasing their emissions or changing their operations. Stat. of Reas. at 2. The Agency expects 15 to 20% of the eligible units will take advantage of this rulemaking. The amendments are intended to cover rock crushers, concrete batch plants, debris grinders, and portable generators as well as certain solvent recovery or tank cleaning operations. Stat. of Reas. at 7.

Pursuant to Section 39 of the Act, the Agency has 90 days to take final action on a permit application. This timeframe has caused problems for some owners or operators inhibiting them from accepting a contract or completing a contractual activity within the dates

specified. The Agency suggests this is an unnecessary administrative burden on both parties. Stat. of Reas. at 2-3.

The Agency proposal would exempt an owner or operator from the requirements to obtain a new construction/operating permit for certain portable emission units solely based on location change. This concept of issuing a single permit to an emission unit that may operate at multiple sites is consistent with provisions for temporary sources under the Clean Air Act Permit Program (CAAPP). Section 39.5(231) of the Act provides: The Agency may issue a single permit authorizing emission from similar operations by the same source owner or operator at multiple temporary locations, except for sources which are affected sources for acid deposition under Title IV of the Clean Air Act. 415 ILCS 39.5(21)(a). Stat. of Reas. at 3.

PROPOSAL OVERVIEW

Section 201.142 – Construction Permit Required

Currently, this Section prohibits persons from constructing or modifying emission units without first obtaining a construction permit from the Agency, unless the emission unit or units is exempt pursuant to Section 210.146. When an owner or operator changes the site of an emission unit or units, the owner or operator is required to obtain a new or revised permit. The Agency is proposing to amend Section 201.142 to reference the proposed new Section 201.170 exempting portable emission units from this requirement under certain circumstances.

Section 201.170 – Portable Emission Units

The Agency is proposing to add Section 201.170 which specifies conditions under which an owner/operator holding a lifetime permit for an emission unit may be exempted from obtaining a new construction or operating permit each time the location of the unit or units is changed or modified.

Section 201.170(a) outlines the criteria which must be met to be eligible for exemption. These criteria are:

1. Emissions from the unit(s) are temporary in nature, less than one year at any one site;
2. Emission unit(s) are subject to the requirements of the “Lifetime Permit Program” pursuant to Section 201.169;
3. Emission unit(s) must be permitted to emit less than 25 tons per year (TPY) of any combination of regulated pollutants;

4. Emission unit(s) must be portable as demonstrated by being mounted on chassis or skids designed to move; and
5. Emission unit(s) must not be used as a thermal desorption or incinerator system pursuant to 35 Ill. Adm. Code 728. Table F.

Section 201.170(b) specifies conditions under which the owner or operator may change the site of an emission unit without obtaining a new construction or operating permit pursuant to Sections 201.142, 201.143, and 201.169. There are six conditions to qualify:

1. The owner/operator has obtained a *lifetime* construction/operating permit for the emission unit or units or is exempt from that requirement;
2. All units contained in the *lifetime* permit must relocate as a group;
3. The owner/operator may not move the emission unit(s) to a site that has a source subject to the CAAPP pursuant to Section 39.5 of the Act or that would become subject to the CAAPP if the emissions from the portable emission unit(s) are included;
4. The portable emissions unit(s) may not be modified in any way so as to make the unit(s) subject to New Source Review pursuant to 35 Ill. Adm. Code 203 or to Prevention of Significant Deterioration pursuant to Section 9.1(a) of the Act;
5. The owner or operator must formally notify the Agency prior to site relocation; and
6. The owner or operator is required to have a copy of the permit on-site where the portable emission unit(s) operate.

At the second hearing, the Agency offered an amendment to Section 201.170(b)(5) which included a three day pre-relocation notification and clarifying language. Tr. 2 at 10-11. The Agency rejected the usage of E-Mail and alternative private delivery services because of processing concerns. Tr. 2 at 14-16.

Section 201.170(c) requires owners or operators of portable emission unit or units to obtain new or amended construction and operating permits containing special conditions for changing the site pursuant to Sections 201.142, 201.143, and 201.169 prior to the initial site change. It, also, mandates a yearly relocation of said portable emission unit or units to remain eligible for consideration under Section 201.170.

Another issue raised at hearing was whether the proposed rule should include a reference to 35 Adm. Code, Section 201.144 for existing units constructed or modified prior to April 14, 1972. The Agency rejected the need to offer such a reference inclusion. The Agency's rationale was that the portable emissions unit or units subject to these proposed rule

revisions would not be subject to review under 35 Adm. Code, Section 201.144. Rather, the permit application would be reviewed instead under 35 Adm. Code, Sections 201.142 and 201.143 for the *new* emission unit rules. The *existing* emission unit becomes subject to the “new” emission unit rules by virtue of its change in location. Tr. 2 at 10-11.

ECONOMIC CONSIDERATIONS

At first notice, the Board found that the rule was economically reasonable and technically feasible. The only economic evidence currently in the record is that adoption of the proposed amendments would have a beneficial economic impact on both the Agency and owner/operators of portable emission unit or units. The Agency estimated savings to the State of \$150,000 per year. Stat. of Reas. at 8. Owners and operators would still be required to pay a site fee of \$100 for each location pursuant to Section 9.6(b) of the Environmental Protection Act. Prefiled Testimony of Desai at 6. No estimate was given as to savings benefiting the owner or operator due to more efficient permit processing for the portable emission units.

CONCLUSION

The Board today proposes this rulemaking for second-notice review by the Joint Committee on Administrative Rule. The Board is adopting the proposed second-notice rule with no changes from the first-notice proposal.

ORDER

The Board directs that the following rule be filed with the Joint Committee on Administrative Rules for second notice review.

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	<u>Portable Emission Units</u>

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

Appendix A	Rule into Section Table
Appendix B	Section into Rule Table
Appendix C	Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 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 _____ Ill. Reg _____, effective _____.

SUBPART C: PROHIBITIONS

Section 201.142 Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 201.170(b) of this Part.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.170 Portable Emission Units

- a) An emission unit or units is portable provided that the emission unit or units meets the following criteria.
- 1) Emissions from the emission unit or units are expected to occur for less than one year at any one site.
 - 2) The emission unit or units of air pollution is subject to the requirements of Section 201.169 of this Subpart.
 - 3) The emission unit or group of emission units that will be changing sites is permitted to emit less than 25 tons per year of any combination of regulated air pollutants.
 - 4) The emission unit or units is mounted on a chassis or skids and is designed to be moveable.
 - 5) The emission unit or units is not used as a thermal desorption system pursuant to 35 Ill. Adm. Code 728. Table F or as an incinerator system.
- b) An owner or operator of a portable emission unit or units meeting the requirements of subsection (a) of this Section may change the site of such unit or units without obtaining a new construction or operating permit pursuant to

Section 201.142, 201.143, or 201.169 of this Part, provided that the owner or operator meets the following requirements:

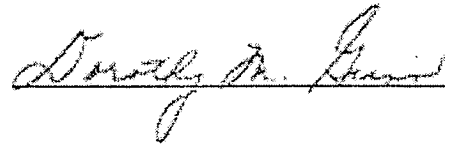
- 1) The owner or operator has obtained a construction and operating permit containing special conditions as required by subsection (c) of this Section for such emission unit or units, or is exempt pursuant to subsection (d) of this Section.
- 2) If a permit issued pursuant to subsection (c) of this Section includes more than one emission unit, the owner or operator shall move all emission units covered by the permit to the new site.
- 3) The owner or operator does not locate the emission unit or units on a site with a source:
 - A) That is subject to the requirements of Section 39.5 of the Act; or
 - B) That would become subject to the requirements of Section 39.5 of the Act if the emissions of all regulated pollutants from the portable emission unit or units were included in such source's potential to emit.
- 4) The owner or operator does not modify the operation of the emission unit or units in such a way so as to:
 - A) Make the emission unit or units subject to New Source Review (NSR) requirements pursuant to 35 Ill. Adm. Code 203 or to Prevention of Significant Deterioration (PSD) pursuant to Section 9.1(a) of the Act; or
 - B) Make the emission unit or units a support facility of a source that is subject to Section 39.5 of the Act.
- 5) At least three days prior to moving the emission unit or units to a new site, the owner or operator shall notify the Agency by certified mail. The notification shall include the items listed below, unless the emission unit or units is exempt pursuant to subsection (d) of this Section:
 - A) The location of the new site;
 - B) The estimated emissions of all regulated air pollutants while located at the new site; and
 - C) That the operation for such emission unit or units will be consistent with its construction and operating permits.

- 6) The owner or operator shall keep a copy of the construction and operating permits for that emission unit or units on the site where the emission unit or units are in operation.
- c) Permit Requirements.
- 1) The owner or operator of an emission unit or units must obtain a new or amended construction and operating permit containing special conditions for changing the site of the portable emission unit or units pursuant to the requirements of Sections 201.142, 201.143 and 201.169 of this Subpart prior to an initial change in site of an emission unit or units. The permit application, in addition to the information required pursuant to Section 201.152, 201.157 and 201.169 of this Part, must contain the following information:
- A) The initial site of the emission unit or units;
- B) A permanent address where correspondence may be sent to the owner or operator; and
- C) The permanent site of any required operating records.
- 2) If the portable emission unit or units has a permit pursuant to this subsection, but has not changed sites within the prior twelve months at least once, the owner or operator shall obtain a revised permit prior to changing the site of the emission unit or units.
- d) The owner or operator of a portable emission unit or units that is included in more than one operating permit and meets the requirements of subsections (a)(2) through (a)(5), (b)(3), (b)(4) and (b)(6) of this Section may change the site of such unit or units without obtaining a new construction or operating permit pursuant to Section 201.142, 201.143 or 201.169 of this Part when such unit or units is moved to a site covered by such permit.

(Source: Added at _____ Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board