

ILLINOIS POLLUTION CONTROL BOARD
August 18, 2011

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

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by A.S. Moore)

On August 15, 2011, the Illinois Environmental Protection Agency (Illinois EPA or Agency) filed a rulemaking proposal¹ pursuant to Sections 9.14 and 27 of the Environmental Protection Act (Act) (415 ILCS 5/9.14, 27 (2010)). The Agency proposes to establish a program for Registration of Smaller Sources (ROSS). Among the documents accompanying the petition 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.). See 415 ILCS 5/27(a) (2008), 35 Ill. Adm. Code 102.200, 102.202. For the reasons stated below, the Board accepts the Agency's rulemaking proposal for hearing. The Board directs the Clerk to publish the proposal in the *Illinois Register* as a proposal for public comment.

STATUTORY AUTHORITY

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 lists criteria for determining the eligibility of a source. *Id.*

Section 9.14(d) addresses the rulemaking authority of the Board and provides in its entirety 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

¹ In the interest of clarity, the Board has slightly revised the Agency's caption for this rulemaking. The Board requests that the participants use the caption above in future filings.

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* 415 ILCS 5/27(b) (2010).

Accordingly, the Board is required to adopt rules on or before Tuesday, December 13, 2011. The last scheduled Board meeting preceding that date will take place on Thursday, December 1, 2011.

SUMMARY OF AGENCY PROPOSAL

The Agency states that, after analyzing its operation, it concluded that it dedicates a significant proportion of its 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. 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. The smallest sources, which number 3,701, account for only 1% of the air pollution in the State.” *Id.*

The Agency states that it developed the ROSS concept in order to reduce the number of sources requiring a permit in a manner consistent with its mission to protect the environment. SR at 2. 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). To implement Section 9.14, the Agency proposes to add a new Section 201.175 to the Board’s existing air pollution regulations. 35 Ill. Adm. Code 201 (Permits and General Provisions). The Agency projects that, based on the criteria included in its proposal, “an estimated 3,230 small emission sources, or roughly 50% of the currently permitted emission sources, will no longer have direct permitting obligations to the Illinois EPA.” SR at 4; *see* TSD at 4.

In its proposed Section 201.175(a), the Agency seeks to establish eligibility criteria for the ROSS program. SR at 2, 6; *see* 415 ILCS 5/9.14(a) (2010). Subsection (b) proposes criteria to determine whether a source’s actual emissions meet the eligibility criteria. SR at 3, 6. Under subsection (c), the Agency seeks to list materials and information that must be included in each registration and renewal under the ROSS program. *Id.* at 3, 6. Proposed subsection (d) “provides when the owner or operator must submit such registration” and renewal. *Id.* at 6. In subsection (e), the Agency seeks to require owners or operators of ROSS sources to maintain specified records. *Id.* at 3-4, 6. Proposed subsection (f) provides a deadline by which an owner or operator must notify the Agency of a change at the source. *Id.* at 3-4, 6. Proposed subsection (g) addresses changes at a source that will require the owner or operator to obtain a construction or operating permit. *Id.* at 3, 6. Finally, subsection (h) provides criteria for a source that has obtained an operating permit to re-enter the ROSS program. *Id.* at 3, 6.

DISCUSSION

Rulemaking Proposal

The Board finds that the Agency's rulemaking proposal meets the content requirements of the Board's procedural rules and accepts the petition for hearing. *See* 35 Ill. Adm. Code 102.202.

Board Procedure

Above, the Board accepted the Agency's proposal for hearing. Because Section 9.14 of the Act (415 ILCS 5/9.14 (2010)) requires the Board to adopt rules within 120 days of receiving the Agency's proposal, the Board will submit the proposal to publication in the *Illinois Register* as a proposal for public comment without commenting on its substantive merits. The assigned hearing officer will establish a deadline for filing public comments.

Under Section 28 of the Act (415 ILCS 5/28 (2010)), the Board will hold at least two hearings on the proposal. The assigned hearing officer will establish dates and locations for the hearings. After considering the issues raised at the hearings and in public comments, the Board will issue a final opinion and order and publish adopted rules in the *Illinois Register*.

Under Section 9.14(d) of the Act (415 ILCS 5/9.14(d) (2010)), Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) and the rulemaking provisions of the 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). Accordingly, the Board will not request that the Department of Commerce and Economic Opportunity conduct an economic impact study of this rulemaking proposal. The Board will also not submit the proposal to first or second notice pursuant to Section 5-40 of the Administrative Procedure Act. (5 ILCS 100/5-40 (2010)). The Board will, however conduct hearings and solicit comment as described above.

CONCLUSION

For the reasons stated above, the Board accepts the Agency's rulemaking proposal for hearing. The Board directs the Clerk to provide publication of the proposal in the *Illinois Register* as a proposal for public comment. Finally, the Board directs its hearing officer to take any necessary steps to avoid delay in completing the record so that the Board may meet its 120-day deadline for adopting rules.

ORDER

The Board directs the Clerk to provide publication of the following proposal in the *Illinois Register* as a proposal for public comment.

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
<u>201.175</u>	<u>Registration of Smaller Sources (ROSS)</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

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

AUTHORITY: Implementing and authorized by Section 9.14 of the Environmental Protection Act [415 ILCS 5/9.14].

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. 11999, effective August 6, 2009; amended in R10-21 at 34 Ill. Reg.19575, effective December 1, 2010; amended in R12-10 at 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 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 air 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 Adm. Code 728. Table F or as incinerator systems.
- 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 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:
 - 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, 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.
 - 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.

- c) 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 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 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.
- d) 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.
- e) 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.
- f) 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 provided in subsection (c)(1) of this Section changes.
- g) 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 subsections (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.
- h) 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.

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

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 18, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board