

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
REGISTRATION OF SMALLER)	R12-10
SOURCES: NEW SECTION:)	(Rulemaking - Air)
35 ILL. ADM. CODE PART 201,)	
SECTION 201.175)	

POST 1st HEARING COMMENTS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by one of attorneys, Rachel L. Doctors, and hereby submits comments in the above rulemaking proceeding. The Illinois EPA indicated in the hearing held on October 5, 2011, that it would address several questions raised concerning the proposal in post-hearing comments.

RESPONSE TO QUESTIONS RAISED DURING THE OCTOBER 5, 2011 HEARING

Issue: It has come to the Illinois EPA’s attention that the language in Section 201.175(a) is inconsistent with the language in Section 9.14(a) of the Illinois Environmental Protection Act (“Act”). 415 ILCS 5/9.14 (2011). Subsection (a) states that owners and operators “may” register with the Agency, while Section 9.14 of the Act states that owners and operators “shall” register with the Agency.

Response: The Illinois EPA recommends that language in Subsection (a) be amended to reflect the statutory language.

- a) An owner or operator of an eligible source ~~shall~~^{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:

The change from “may” to “shall” could have the effect of inappropriately requiring sources to register that have fluctuating annual actual emission levels near ROSS eligibility levels or that anticipate their future emissions will exceed ROSS eligibility levels. Therefore, the Illinois EPA is recommending that subsection (b)(1) be amended to include the consideration of anticipated future operation when determining whether or not a source is eligible to enter the ROSS. Sources that cannot, or anticipate that they will not, maintain emission levels consistent with ROSS eligibility should not register. This amendment would reduce the number of sources that are required to register only to quickly become ineligible and thereby incur the obligation to obtain a new operating permit, then a short time later again be

required to register, only to then again become ineligible the next year or so and again have to obtain a permit, and then eligible again, and so on. Under this scenario and without the recommended changes to subsection (b)(1), there exists the potential for a large administrative burden to both the sources and the Agency due to the potential need for a source to repeatedly address the changing requirements to be registered, then obtain a permit, back to registration, and so on. This increase in the administrative burdens is contrary to the primary intent of the ROSS to reduce such burdens. Furthermore, the Agency does not desire the ROSS program to result in any increase in the use of compliance and enforcement resources that potentially could result from the Agency having to seek out sources that are not properly registered or permitted due to repeated changing requirements and the confusion and/or time lag associated with meeting such requirements, or sources required to register but who have instead kept their permit. The requested amendment would eliminate or minimize this need. This amendment is permissible under subsection (d) of Section 9.14 of the Act, that authorizes the Agency to propose alteration or revision of the initial criteria included in Section 9.14 of the Act.

- 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, as follows:
 - A) 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; and
 - B) If 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 ROSS.

In order to avoid a loophole for new sources that are accepted into the ROSS program based on unreasonably low emissions projections, the Illinois EPA believes that the following amendment to subsection (g) would address this issue:

- 4) If 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.

Issue: At the hearing and in written comment, a request was made that the Illinois EPA provide for the electronic implementation of ROSS, e.g. filing of electronic applications and payment of fees.

Response: It is the Illinois EPA's intent 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. The development of further

electronic access is provided for in Public Act 097—0095/House Bill 1297, however, such development was not a precondition for the implementation of ROSS as provided for in Section 9.14 of the Act. It is important to note that issues regarding the availability of forms, electronic submittal of such forms, and the development of other related information technology (IT) services are outside of the direct control of the Illinois EPA and depend on the Illinois Department of Central Management Services. As currently proposed, the ROSS rule would allow for electronic implementation once available with no further amendments to the proposal. The proposal requires the submittal of information but does not specify that it be in paper form.

Issue: It is the Illinois EPA's intent to exclude any source that could be controversial from ROSS. Consistent with the intent in Section 9.12(b)(2)(B) of the Act. Sources subject to Section 39.2 of the Act (local siting) are recognized as controversial and should not be exempt from obtaining applicable permits.

Response: The Illinois EPA recommends that Section 201.175 (a) be amended to add new subsection (3):

3) A source or emission unit must not be subject to Section 39.2 of the Act.

Section 39.2 is Illinois' siting law for pollution control facilities that manage waste. It is common for air permit requirements, in addition to land pollution permits, at waste management facilities to be a concern during the siting application process with the local governing body. If these facilities were to be exempt from air permits then, it would circumvent the need for them to obtain any local siting approval in the air permit context, because the Agency is only precluded from issuing a permit for development or construction when they do not submit proof of approval of local siting pursuant to Section 39(c) of the Act. 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. This is clearly a potential unintended consequence of the ROSS program and does not appear to be consistent with the intent of the law.

Issue: How will applicants know if their registration has been accepted and how timely will the registration process be?

Response: The Illinois EPA intends to mail out a postcard or letter to owners and operators notifying them of ROSS program acceptance or rejection. The Illinois EPA anticipates that the review of a registration will be extremely streamlined, e.g. signed form, fee payment, appropriate boxes checked on form, and quick records check of emissions for eligibility. Hence, the Illinois EPA anticipates that these mailings will occur within one to four weeks of receipt of the registration information, depending on the number of registrations received during a given period. A source may also look to see if their check has been cashed by the Agency, which would indicate their acceptance into the ROSS program. As discussed below, eventually, the mailing will be supplemented and/or replaced by a website maintained by the Illinois EPA. On this website, owners and operators will be able to check the status of registration, the Agency's activity on the registration, and pay fees. The Illinois EPA does not anticipate that any change to the regulatory language is necessary to address this issue. If

such language is added, it could result in a substantial administrative burden and act as a limitation on the Illinois EPA's ability to act in a timely manner. Additional requirements could defeat the primary principle behind the ROSS program to reduce the administrative burdens to both the Illinois EPA and affected sources.

Issue: A related question was asked concerning the commencement of ROSS and the requirement to submit information 90 days in advance. Owners and operators of new sources want to know when they may commence construction and operation.

Response: The Illinois EPA reevaluated the requirement in subsection (d)(1)(B) of Section 201.175 that required owners and operators to register 90 days before commencing operation and believe that 10 days advance notice is sufficient. If amended, owners and operators of new sources may commence operation 10 days after the Illinois EPA has received their registration form. Since no construction permit is required for sources that register, a source may commence construction at any time. Like in most programs, it is the source's obligation to ensure that they meet the eligibility requirements and comply with the programs requirements regarding construction and operating. The Illinois EPA is recommending the following amendment:

- B) Owners and operators of new sources shall register at least 10~~90~~ days before commencing operation and may commence operation 10 days after the Agency has received the registration request.

Issue: Owners and operators of an existing source would like to know when the existing permit has been withdrawn and the source is operating under the terms of ROSS.

Response: The Illinois EPA will withdraw the permit of a ROSS applicant only upon acceptance into ROSS. As 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 thereby requests to withdraw their operating permit. Withdraw of the operating permit will allow the source to avoid paying a fee for both registration and an operating permit. As discussed above, applicants, at this time, will be notified by mail that they are now registered in the ROSS and that, if applicable, any permits have been withdrawn. In the future, it is anticipated that there will be a website where an applicant can review their status.

Issue: The rule requires that sources calculate their emissions for each year and then certify that emissions levels allow the source to continue to meet the eligibility for ROSS. A suggestion was made to allow certification in scenarios where there have been no changes in operation or equipment that resulted in an increase in emissions. Such an amendment would increase flexibility for recordkeeping and reporting, while reducing the burden on owners and operators to comply with ROSS.

Response: The Illinois EPA agrees with the concept of streamlining the records and reports that an owner or operator needs to keep to assure compliance with the ROSS. The proposal currently requires that sources calculate emissions for each year and then certify that emissions are such that the source continues to meet the criteria for inclusion in the ROSS.

The Illinois EPA needs some level of assurance that emission levels have not increased beyond those that keep the source eligible for the ROSS. An alternate to calculating emissions will suffice, if the owner or operator is willing to certify that no changes in operations or equipment have occurred that have resulted in an increase in emissions. Hence, the Illinois EPA is proposing amendments to subsections (b)(2) and (e)(3) & (4), respectively, below. In addition, the Illinois EPA will provide checkboxes on the renewal registration form that 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.

b)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) Ssum 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 subsections (a)(1)(D), (a)(1)(E) and (a)(1)(F) of this Section, the owner or operator must:

i) Ssum 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.

- e)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, this may include but is not limited to, annual material usage, annual throughput, purchase records, or emission rates; and

- e)4) 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.

Issue: Questions were asked about the handling of sources that become ineligible for ROSS due to increase of emissions with or without new construction. Would these ineligible sources become responsible for past construction and or operating fees? What is the process for obtaining a new permit?

Response: It is the Illinois EPA's position that the legislation adopted in Section 9.14 of the Act exempts legitimately registered sources from the requirements to obtain construction and/or operating permits. Hence, a source that constructs or increases emissions 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. However, there are numerous scenarios that could occur that would make a source ineligible for the ROSS, e.g., depending on whether or not the source is a new source or an existing source and the degree that emissions increased. For 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. In such cases the Agency could readily re-issue the previous permit with very little review necessary. If, however, the owner or operator desired a permit which allowed emissions above those previously permitted, 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. For an owner or operator that lawfully constructed a new source under ROSS, and later became ineligible, the Illinois EPA would not look backwards and require a construction permit, it would only look at events that occurred later in determining the applicable permitting and fee requirements. The exception to the no-look back policy is if a new source exceeds the emission limitations in either its first or second year of operation or for existing sources if there has been evidence of unlawful participation in ROSS.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached POST 1ST HEARING COMMENTS of the Illinois Environmental Protection Agency upon the following persons:

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ILLINOIS ENVIRONMENTAL
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/s/

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Dated: October 24, 2011

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