

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

**TO: SEE ATTACHED PROOF OF SERVICE**

PLEASE TAKE NOTICE that I have today submitted the Grain and Feed Association of Illinois Post Hearing Comments, copies of which are served upon you.

By: \_\_\_\_\_  
Jeffrey D. Adkisson, Executive Director  
Grain and Feed Association of Illinois  
3521 Hollis Drive  
Springfield, IL 62711  
217.787.2417

Date: October 27, 2011

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The following comments are submitted on behalf of the Grain and Feed Association of Illinois, the state-wide trade association for the grain and feed industry in Illinois. The Association represents an industry with approximately \$13 billion in annual sales. Over 90% of the commercial grain storage space in the State of Illinois is represented by members of the Grain and Feed Association of Illinois. Our membership of 210 country and terminal grain elevator companies ranges in size from multi-national organizations with multiple facilities to small, single facility operations. In addition, we have grain brokers, feed dealers, feed manufacturers, truckers, ethanol plants, and both corn and soybean processors as members. The industry directly employs just over 5,000 people full-time and approximately 4,900 part-time.

According to information from IEPA, grain elevators (SIC 5153) make up approximately 9.2% of the sources who will qualify for the ROSS program as their emissions are below the established threshold of 5 tons per year. Because our industry makes up the largest percentage of similar sources, we have a very high level of interest in this rule and look forward to providing comments.

Our members handle large volumes of corn, soybeans and wheat and as a result are required to have operating permits. Several years ago, we worked with IEPA to create lifetime general operating permits for various sizes of facilities with varying degrees of emissions controls. The lifetime general operating permits provide a high degree of flexibility and eliminate construction fees as long as the facility holding the permit stays within specified limitations.

I attended the hearing on October 5, 2011 held in Springfield, Illinois and provided public comment. Subsequent to that, I have reviewed the POST 1<sup>st</sup> HEARING COMMENTS filed by the Illinois EPA.

The POST 1<sup>st</sup> HEARING COMMENTS address nearly all of our concerns and we would like to go on record as supporting the changes they have suggested; however the agency failed to provide suggested regulatory language in their response for the following issue:

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

The Illinois EPA provided the following response:

“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.”

The agency has provided a well-reasoned response to this issue, however has not suggested any language be included in the rules.

Of specific concern is the impact ROSS will have on emissions sources who currently have lifetime operating permits or lifetime general operating permits. The Act and the proposed rules clearly indicate a ROSS eligible emissions source holding one of these types of lifetime permits will need to enter the ROSS Program. Should any of these emissions sources grow to the point they need to “roll back” to the previous lifetime permit, the rules should clearly state provisions for doing this. The Agency’s idea that the previous lifetime operating permit or lifetime general operating permit be re-issued seems to be both flexible and simple.

Therefore, we would suggest a new subsection (g)(4) reading as follows:

(g)(4). The IEPA shall re-issuse permits for 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, 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.

As the IEPA has suggested, the request could be as simple as a letter asking the previous permit be re-issued. This could also be accomplished through the online system being developed for use with the ROSS Program. What is critical is that the IEPA's proposed ROSS rules include a clear process allowing lifetime permit holders to roll back into their prior permits without a lot of work by either these small sources or by the Agency.

In the Agency’s response they also discuss the implications for owners or operators who have lawfully constructed a new source under ROSS and later became ineligible. The agency discusses a no-look back policy except if the source exceeds the emissions limitations in either

its first or second year of operation. We support this idea and believe it should be incorporated in to the rules. Following is proposed language as a new subsection (g)(5):

(g)(5). Emissions 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.

The language suggested above will capture the intent of the agency and create a clear understanding for anyone who enters the ROSS program as a new business, then later finds their operation has grown to the point of needing a larger emissions permit.

The final point does not relate to the issue the Illinois EPA responded to above but relates to a question posed at the October 5 hearing. The question was what the penalty would be for those who fail to register in a timely fashion and would failure to register preclude the operation from being in the ROSS program?

Like many new programs, this will take several years for businesses in Illinois adopt. We would encourage the agency to take an approach of not imposing penalties on those businesses who have not registered and, as small businesses, can least afford it. The Illinois EPA needs to work with those sources to bring them into the ROSS Program and not preclude them from participation.

We appreciate the work the agency has done to streamline and simplify the permitting process.

Respectfully,

Jeffrey D. Adkisson, CAE  
Executive Vice President  
Grain & Feed Association of Illinois

**PROOF OF SERVICE**

I, Jeffrey D. Adkisson, certify that I have served the attached Grain and Feed Association of Illinois Post-Hearing Comments by first class mail, postage prepaid, on October 27, 2011, to the following:

Timothy J. Fox, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph St., Suite 11-500 Chicago, IL 60601	John Therriault, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, IL 60601
Rachel L. Doctors, Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276	Matthew J. Dunn, Chief Environmental Enforcement Office of the Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602
Illinois Environmental Regulatory Group Brenda Carter - Project Manager 215 East Adams Street Springfield, IL 62701	USEPA - Region 5 Cheryl L. Newton - Director/Air and Radiation 77 West Jackson Blvd. Chicago, IL 60604-3590
Illinois Environmental Council Virginia Scott - Executive Director 230 Broadway, Suite 150 Springfield IL 62706	Environmental Law and Policy Center 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601
Sierra Club 70 E. Lake Street, Suite 1500 Chicago, IL 60601-7447	Illinois Manufacturers Assn 220 E. Adams Springfield, IL 62701
Respiratory Health Association of Metro Chicago Brian Urbaszewski - Dir. Environmental Health 1440 W. Washington Chicago, IL 60607	Virginia Yang, Deputy Legal Counsel Illinois Department of Natural Resources One Natural Resources Way Springfield, IL 62702-1271
Illinois Chamber of Commerce 215 E. Adams St. Springfield, IL 62701	Environment Illinois 328 S. Jefferson Street, Ste. 620 Chicago, IL 60661
American Council of Engineering Companies of Illinois 5221 South Sixth Street Road, Suite 120 Springfield, IL 62703	Great Lakes Graphic Association Joseph E. Lyman – President W232 N2950 Roundy Circle E Pewaukee, WI 53072

Specialty Graphic Imaging Association Marcia Y. Kinter – VP Government and Business Information 10015 Main Street Fairfax, VA 22034	Flexographic Technical Association Doreen Monteleone – Director, Environmental Health and Safety 3920 Veterans Memorial Highway, Suite 9 Fairfax, VA 22031
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Jeffrey D. Adkisson