

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 2016

IN THE MATTER OF: )  
)  
PERMIT BY RULE FOR BOILERS: ) R17-9  
AMENDMENTS TO: 35 ILL. ADM. CODE ) (Rulemaking – Air)  
PARTS 201 AND 211 )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

On August 23, 2016, the Illinois Environmental Protection Agency (Illinois EPA) proposed to amend the Board’s air pollution regulations. The complete amended rule language that Illinois EPA proposed to the Board for adoption is contained in an addendum to this order.

The proposed rules would allow construction of small boilers under a “permit by rule”: a general permit obviating the need for Illinois EPA to individually grant construction permits for these types of boilers. Illinois EPA also proposed general provisions for permits by rule. (Though the Illinois Environmental Protection Act authorizes the Board to adopt general provisions for permits by rule,<sup>1</sup> no such provisions currently exist.) If adopted, the general permit by rule provisions would apply to future proposed permits by rule for other types of emission units.

The Board accepts Illinois EPA’s proposed rulemaking for hearing. Without commenting on the proposal’s merits, the Board adopts it for first-notice publication in the *Illinois Register* under the Illinois Administrative Procedure Act.<sup>2</sup> The Board also grants Illinois EPA’s motion for waiver of copy requirements for material incorporated by reference.

**PROPOSED PERMIT BY RULE PROVISIONS**

**Statutory Requirements for Permits by Rule**

Section 39.12 of the Illinois Environmental Protection Act authorizes the Board to adopt provisions for granting permits by rule for classes of facilities or equipment, provided that the permits by rule are consistent with federal and state laws and regulations.<sup>3</sup> Under Section 39.12, the Board’s rules must require that an applicant submit a “notice of intent” to be subject to a permit by rule and pay any applicable fees (which shall be the same as those that individual permit applicants pay).<sup>4</sup> The statute specifically states that a permit by rule may include certain package boilers that use only natural gas or refinery gas.<sup>5</sup>

<sup>1</sup> 415 ILCS 5/39.12(b) (2014).

<sup>2</sup> 5 ILCS 100/5-40 (2014).

<sup>3</sup> 415 ILCS 5/39.12(a) (2014).

<sup>4</sup> 415 ILCS 5/39.12(b), (d) (2014).

<sup>5</sup> 415 ILCS 5/39.12(c) (2014).

## **Illinois EPA Proposed General Provisions for Permits by Rule**

Illinois EPA's proposal has two main parts: a set of regulations that generally apply to any subsequently adopted permit by rule and a set of regulations that determine the permit by rule for small boilers. The general provisions proposed for permits by rule are located in a new proposed Subpart M to Part 201 of the Board's air pollution regulations.<sup>6</sup>

Under the proposed general provisions, an applicant may obtain a permit by rule for a new or modified emission unit if: (1) the unit is located at a source permitted under the Clean Air Act Permit Program (CAAPP); (2) the Board has adopted a permit by rule for the specific type of unit; and (3) the unit does not trigger certain other permitting requirements.<sup>7</sup> Under the proposed provisions, obtaining a permit by rule does not exempt or relieve otherwise applicable requirements. For instance, the permitted unit's owner or operator is not exempt from the Clean Air Act or the Illinois Environmental Protection Act, and it must continue to comply with other air pollution permitting requirements.<sup>8</sup>

The proposed rules require an owner or operator to file a notice of intent to be covered by a permit by rule. The notice of intent must include information about the emission unit and application fees.<sup>9</sup> After the owner or operator submits the notice of intent, it may begin constructing the emissions unit.<sup>10</sup> Before modifying an emissions unit covered by a permit by rule, the owner or operator must submit a new notice of intent.<sup>11</sup> The proposed rules also require the unit's owner or operator meet recordkeeping requirements and apply to modify the source's CAAPP permit to reflect the new emissions unit.<sup>12</sup> The proposed rules do not limit the state's enforcement authority.<sup>13</sup>

## **Illinois EPA Proposed a Permit by Rule for Certain Types of Small Package Boilers**

In its proposal, Illinois EPA defined the types of boilers eligible for coverage under the permit by rule. To be eligible to obtain a permit by rule, the boiler must:

- Have a maximum designed heat input capacity less than or equal to 50 million British Thermal Units per hour (mmBtu/hr) or less than or equal to 100 mmBtu/hr and use a low-NO<sub>x</sub> burner;
- Primarily burn pipeline natural gas, butane, propane, or refinery fuel gas;
- Use only certain types of diesel, butane, or propane as backup or reserve fuel; and
- Emit only fuel combustion products.<sup>14</sup>

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<sup>6</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code Part 201, Subpart M (proposed).

<sup>7</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.505(a)(2) (proposed).

<sup>8</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.505(b) (proposed).

<sup>9</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.510 (proposed).

<sup>10</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.515 (proposed).

<sup>11</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.520 (proposed).

<sup>12</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.525, 201.530 (proposed).

<sup>13</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.540 (proposed).

<sup>14</sup> Notice of Proposed Amendments, 35 Ill. Adm. Code 201.600 (proposed).

The proposed rules also require applicants to submit additional information about the boiler in its notice of intent.<sup>15</sup> The owner or operator must also comply with other requirements concerning opacity, diesel and refinery fuel use, carbon monoxide emissions, nitrogen oxide emissions, and recordkeeping.<sup>16</sup> The owner or operator must also comply with applicable federal regulations.<sup>17</sup>

### **FIRST-NOTICE PUBLICATION AND PUBLIC COMMENT**

The Board adopts the proposed rule amendments for first notice without commenting on the proposal's merits.<sup>18</sup>

Anyone may comment to the Board on this proposal within 45 days of first-notice publication in the *Illinois Register*. Any comments should include this rulemaking's docket number (R17-9). Comments must be filed with the Clerk of the Board. The Board accepts comments through the Clerk's Office On-Line (COOL) on the Board's website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). Questions about filing comments may be directed to the Clerk's Office, who may be reached by phone at 312-814-3629.

All filings in this docket, including public comments, must be served on this rulemaking's hearing officer and on any party on the rulemaking's service list (available online).

### **MOTION FOR WAIVER OF COPY REQUIREMENTS GRANTED**

The Board's procedural rules require Illinois EPA to submit material incorporated by reference in a proposed rule.<sup>19</sup> Illinois EPA's proposed rules incorporate several federal regulations by reference.<sup>20</sup> However, federal regulations are readily available online.<sup>21</sup> Furthermore, under the Illinois Administrative Procedure Act, the Board may incorporate federal regulations without publishing the material in full, provided that the Board maintain a copy of the material in its office and makes it available to the publish upon request.<sup>22</sup> The Board maintains a copy of all federal environmental regulations.

The Board therefore grants Illinois EPA's motion to waive the procedural requirement to submit a copy of the documents it proposes to incorporate by reference.

### **ORDER**

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<sup>15</sup> Notice of Proposed Amendments , 35 Ill. Adm. Code 201.605 (proposed).

<sup>16</sup> Notice of Proposed Amendments , 35 Ill. Adm. Code 201.615, 201.620, 201.625, 201.630, 201.635 (proposed).

<sup>17</sup> Notice of Proposed Amendments , 35 Ill. Adm. Code 201.610 (proposed).

<sup>18</sup> See Illinois Administrative Procedure Act, 5 ILCS 100/5-40 (2014).

<sup>19</sup> 35 Ill. Adm. Code 102.202.

<sup>20</sup> Motion for Waiver (listing 40 CFR 52.21 (2015); 40 CFR Part 60, Subpart A, Subpart Dc, Appendix A-4, Reference Method 10, Subpart Ja (2015); 40 CFR 63 Suparts A, DDDDD, JJJJJ (2015)).

<sup>21</sup> See U.S. Government Publishing Office, <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

<sup>22</sup> 5 ILCS 100/5-75(a), (c) (2014).

1. The Board accepts Illinois EPA's rulemaking proposal for hearing.
2. The Board adopts the rulemaking proposal for first notice without commenting on its merits.
3. The Board directs this rulemaking's hearing officer to proceed to hearing.
4. The Board grants Illinois EPA's motion for waiver of copy requirements for material proposed to be incorporated by reference.
5. The Board directs the Clerk to cause first-notice publication in the *Illinois Register* of the proposed rule amendments in the addendum to this order.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 8, 2016, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board