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FEB 22 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

PROPOSED AMENDMENTS TO)
EXEMPTIONS FROM STATE)
PERMITTING REQUIREMENTS)
(35 ILL. ADM. CODE 201.146))

R05- 19
(Rulemaking - Air)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

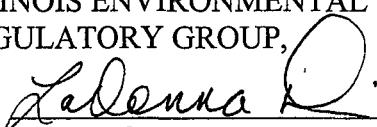
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(VIA FIRST CLASS MAIL)

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies each of **ENTRY OF APPEARANCE OF CHARLES E. MATOESIAN, ENTRY OF APPEARANCE OF ROBERT A. MESSINA, ENTRY OF APPEARANCE OF N. LADONNA DRIVER, ENTRY OF APPEARANCE OF JEANNE B. HEATON, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AND ILLINOIS ENVIRONMENTAL REGULATORY GROUP PROPOSAL OF AMENDMENTS, STATEMENT OF REASONS and A MICROSOFT DISK CONTAINING THE PROPOSED AMENDMENTS** copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
One of Its Attorneys

Dated: February 17, 2005

N. LaDonna Driver
Jeanne B. Heaton
HODGE DWYER ZEMAN
3150 Roland Avenue
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Robert A. Messina
General Counsel
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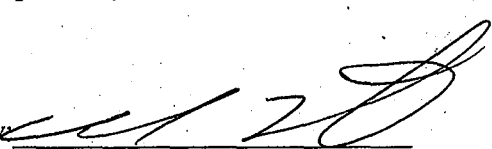
R05-
(Rulemaking - Air)

ENTRY OF APPEARANCE OF CHARLES E. MATOESIAN

NOW COMES CHARLES E. MATOESIAN, and hereby enters his appearance in
this matter on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

By


Charles E. Matoesian

Dated:

2/17/05

Charles E. Matoesian
Illinois Environmental Protection Agency
Division of Legal Counsel
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IERG:001/Fil/EOA for C. Matoesian for Proposed Rulemaking

FEB 22 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

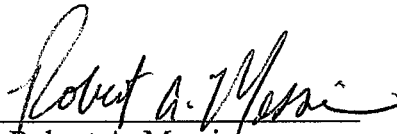
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R05- 19
EXEMPTIONS FROM STATE) (Rulemaking - Air)
PERMITTING REQUIREMENTS)
(35 ILL. ADM. CODE 201.146))

ENTRY OF APPEARANCE OF ROBERT A. MESSINA

NOW COMES ROBERT A. MESSINA, and hereby enters his appearance in this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

By: 
Robert A. Messina

Dated: February 17, 2005

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General Counsel
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IERG:001/Fil/EOA for Alec for Proposed Rulemaking

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED AMENDMENTS TO
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PERMITTING REQUIREMENTS
(35 ILL. ADM. CODE 201.146)

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R05- 19
(Rulemaking - Air)

ENTRY OF APPEARANCE OF N. LADONNA DRIVER

NOW COMES N. LADONNA DRIVER, and hereby enters her appearance in
this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

By: *N. LaDonna Driver*
N. LaDonna Driver

Dated: February 17, 2005

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(217) 523-4900

IERG:001/Fil/EOA for NLD for Proposed Rulemaking

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R05- 19
EXEMPTIONS FROM STATE) (Rulemaking - Air)
PERMITTING REQUIREMENTS)
(35 ILL. ADM. CODE 201.146))

ENTRY OF APPEARANCE OF JEANNE B. HEATON

NOW COMES JEANNE B. HEATON, and hereby enters her appearance in this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

By: Jeanne Heaton *neo*
Jeanne B. Heaton

Dated: February 17, 2005

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IERG:001/Fil/EOA for JBH for Proposed Rulemaking

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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(35 ILL. ADM. CODE 201.146))

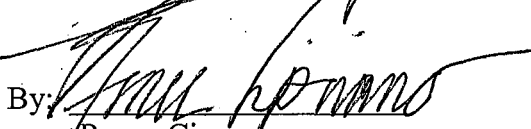
R05- 19
(Rulemaking - Air)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AND ILLINOIS ENVIRONMENTAL REGULATORY GROUP PROPOSAL OF AMENDMENTS

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency" or "Illinois EPA") and ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), pursuant to 35 Ill. Admin. Code 102.202, move that the Board accept for hearing the Agency's and IERG's proposal for amendment of 35 Ill. Admin. Code Part 201.146. This regulatory proposal includes: 1) the proposed amendments; 2) the Statement of Reasons; 3) Appearances for the attorneys representing the Illinois EPA and Illinois Environmental Regulatory Group and 4) a Microsoft Word disk containing the proposed amendments.

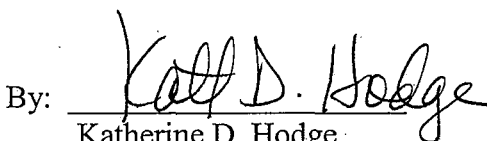
Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Renee Cipriano
Director

Dated: February 17, 2005

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: 
Katherine D. Hodge
Executive Director

Dated: February 17, 2005

FEB 22 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Air Pollution Control Board

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	R05- 19
EXEMPTIONS FROM STATE)	(Rulemaking – Air)
PERMITTING REQUIREMENTS)	
(35 ILL. ADM. CODE 201.146))	

STATEMENT OF REASONS

The Illinois Environmental Regulatory Group (“IERG”) and the Illinois Environmental Protection Agency (“Illinois EPA”) hereby submit this Statement of Reasons to the Illinois Pollution Control Board (“Board”) pursuant to Sections 27 and 28 of the Environmental Protection Act (“Act”) (415 ILCS 5/27 and 28) and 35 Ill. Admin. Code § 102.202(b), in support of the attached proposed revisions to 35 Ill. Admin. Code § 201.146.

I. STATEMENT OF FACTS AND PURPOSE AND EFFECT OF PROPOSAL

35 Ill. Admin. Code Part 201, Subpart C, contains the requirements for air construction and operating permits. Pursuant to 35 Ill. Admin. Code § 201.142, a construction permit is required when constructing a new emission source or new air pollution control equipment. A construction permit is also required when modifying existing emission sources or air pollution control equipment. The definition of

“modification,” at Section 201.102, encompasses:

any physical change in, or change in the method of operations of, an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted.

Notwithstanding any other provisions of this definition, for purposes of permits issued pursuant to Subpart D, the Illinois Environmental Protection Agency (Agency) may specify conditions under which an emission source or air pollution control equipment may be operated without causing a modification as herein defined, and normal cyclical variations, before the date operating permits are required, shall not be considered modifications.

35 Ill. Admin. Code § 201.102.

The requirements for obtaining a construction permit are extremely broad. In addition, pursuant to 35 Ill. Admin. Code § 201.143, a state operating permit is required for a new emission source or item of air pollution control equipment that is of a type for which a construction permit is required. This permitting scheme can create a situation where a source must wait months for a construction permit and then perhaps wait an additional period of time for operating authority.

A deliberate permitting process is appropriate for significant emission units or complicated permitting projects. However, there are also several instances when the delays of permitting are not worthwhile. Indeed, 35 Ill. Admin. Code § 201.146 recognizes that there are certain categories of emission units that do not require state construction or operating permits. Yet, it is noteworthy that a sizeable portion of the construction permits Illinois EPA issues are for very minor projects that have little environmental or regulatory impact. Further, where projects may have significant environmental benefit, such as with the addition or replacement of air pollution control equipment, the permitting process delays implementation of the air pollution control equipment.

This proposed rulemaking would seek to add four more categories to the permit exemptions in Section 201.146. Illinois EPA and IERG have worked closely to develop

these additional permit exemptions. These exemptions do not threaten the public health or welfare. Additionally, allowing the four additional categories of permit exemptions will allow more efficient allocation of Illinois EPA resources during a time of budget concerns. The proposed additions to Section 201.146 are discussed further below.

a. Replacement or Addition of Air Pollution Control Equipment for Existing Emission Units – Proposed Section 201.146(hhh)

Proposed Section 210.146(hhh) would remove the requirement to obtain a state construction or operating permit for replacement or addition of air pollution control equipment at existing emission units, if certain criteria are met. Such a permit exemption will enable sources to install air pollution control devices without waiting several months for a construction permit, and then perhaps waiting an additional amount of time to operate the control device while an operating permit application is being processed. The current permitting hurdles can unnecessarily delay the air quality benefit that may be realized by installing and operating air pollution control equipment.

Proposed subsection (hhh) has certain applicability criteria, beginning with the premise that the exemption only applies to existing emission units. Air pollution control equipment for new emission units continues to be included in the current permit scheme, where there is no other applicable permit exemption. In addition, the existing emission unit must be permitted and must have operated in compliance for the past year (subsection (hhh)(1)). This will prohibit utilizing the subsection (hhh) exemption at emission units that are not complying with regulatory or emission standards. Further, the subsection (hhh) exemption will not be available at emission units that have not received state construction or operating permits, where such permits are required.

The new pollution control equipment must provide equal or better control of the target pollutants and the new pollution control device may not be accompanied by a net increase in emissions of any collateral pollutant. These criteria (subsection (hhh)(2) and (3)) will allow use of the permit exemption only where the new or replacement control equipment will maintain or improve air pollution control over the prior levels. It is the responsibility of the owner or operator of the new air pollution equipment to make the correct decision regarding whether the equipment will provide equal or better control of the target pollutants, while not resulting in a net increase in emissions of any collateral pollutant. The owner or operator assumes the permitting, regulatory and enforcement risks of any later determination that the owner or operator's conclusions were incorrect.

Subsection (hhh) will only be available where different regulatory requirements or proposed regulatory requirements will not apply to the unit. For example, if the installation or operation of the new or replacement pollution controls would trigger or change applicability of a New Source Performance Standard, the permit exemption does not apply.

Finally, where the control equipment is replacing equipment that has a required monitoring device, the replacement pollution control equipment must be equipped with the instrumentation and monitoring devices that are typically installed on new control equipment of such type. This will ensure that required monitoring equipment is carried over to the replacement control device and that such monitoring devices are of current technology. This provision does not, however, require that any monitoring device be installed with technological capabilities beyond what is required by the underlying monitoring requirement. The Board note points out that CAAPP sources are not relieved

of the obligation to seek permit modifications for necessary changes to compliance determination methods.

b. New Emission Units and Modifications to Existing Emission Units at Facilities with Federally Enforceable State Operating Permits - Proposed Section 201.146(iii)

Some sources in Illinois have federally enforceable state operating permits (“FESOP”) limiting their potential to emit. These sources are subject to the state construction and operating permit requirements discussed above. In addition, the Section 201.146 permit exemptions would apply for both construction and operating authority at FESOP sources.

While the Section 201.146 exemption list helps to reduce the permitting burden and delays for relatively minor projects at FESOP sources, the exemption list is strictly comprised of certain specific categories of emission units, e.g., certain types of storage tanks or fuel combustion emission units. Yet, there can be projects at FESOP sources that do not precisely fit the categories of permit exemptions in Section 201.146, but are nevertheless relatively insignificant from an overall permitting standpoint. Therefore, Illinois EPA and IERG propose a “de minimis” permitting exemption for projects at FESOP sources, meeting certain criteria explained further below.

New emission units or modifications to existing emission units at FESOP sources would be exempt from permitting under proposed subsection (iii) as long as the potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit or modification to an existing emission unit is less than 0.1 pound per hour or 0.44 tons per year. Such a low hourly or annual rate of emissions ensures that the new emission unit or modification to an existing emission unit will only

add a small amount of emissions to the atmosphere. Assuming that the new unit or modification would operate at the maximum rate (8760 hours per year), the additional emissions from the hourly permit exemption would only be 876 pounds per year or 0.44 tons per year. This permit exemption threshold corresponds with an insignificant activity designation for CAAPP sources (35 Ill. Admin. Code § 201.210(a)(2) and (a)(3)) discussed further below. As explained in the preceding section, the owner or operator assumes the responsibility and the risk for an inaccurate determination regarding the de minimis emissions threshold.

Another applicability criterion for this permit exemption is that the raw materials and fuels used or present in the emission unit that cause or contribute to emissions, based on the information contained in Material Safety Data Sheets for those materials, do not contain a hazardous air pollutant equal to or greater than 0.01 percent by weight. Again, this requirement follows the corresponding insignificant activity regulations for CAAPP sources and ensures permitting will still occur when HAPs are involved.

In order to qualify for the proposed exemption at subsection (iii), the emission unit or modification must not be subject to an emission standard or other regulatory requirement pursuant to Section 111 of the federal Clean Air Act. This will ensure that any projects that would trigger applicability of New Source Performance Standards will undergo pre-construction review with Illinois EPA. Note that because proposed subsection (iii)(2) prohibits the use of the exemption where HAPs are involved, Section 112 of the Clean Air Act would not be affected by this provision.

In addition, the permit exemption will not apply where potential emissions of regulated air pollutants from the emission unit, in combination with emissions from

existing units or other proposed units, trigger permitting requirements under Section 39.5, permitting requirements under Sections 165 or 173 of the federal Clean Air Act, or the requirement to obtain a revised federally enforceable state operating permit limiting the source's potential to emit. This provision is designed to require pre-construction review with Illinois EPA where the project would trigger New Source Review (Sections 165 and 173 of the Clean Air Act), or would require the taking of federally enforceable emission limits to avoid New Source Review. This provision also would require permitting where the additional emissions from the project could change the source's status with respect to its potential to emit.

Finally, the permit exemption at proposed subsection (iii) would not apply if the source is the subject of certain specified compliance or enforcement matters related to the air emissions of the source. This would ensure that the permit exemption would not be used when there are outstanding compliance or enforcement issues.

c. New Emission Units or Modifications to Existing Emission Units at Permitted Sources That Are Not Major Sources or FESOPs - Proposed Section 201.146(iii)

The majority of permitted sources in Illinois are not major sources subject to section 39.5 (CAAPP) and do not have a federally enforceable state operating permit limiting their potential to emit. These are truly minor sources where the addition of emissions from small projects will not change the facility's source status. Yet, in recent years, approximately half of the construction permits issued each year by Illinois EPA are to minor sources. Further, a good portion of these construction permits are for modifications resulting in less than one ton per year of increased emissions.

There is great potential here for reducing the burden of permitting, both for regulated minor sources and for Illinois EPA. Illinois EPA and IERG have developed proposed subsection (jjj), to provide construction and operating permit exemptions for minor sources, in certain circumstances.

First, the exemption will only apply to sources that are permitted, typically with lifetime operating permits. Second, new emission units or modifications to existing emission units at minor sources would be exempt from permitting under proposed subsection (jjj) as long as the potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit or modification to an existing emission unit is less than 0.1 pound per hour or 0.44 tons per year. Such a low hourly or annual rate of emissions ensures that the addition of the new emission unit or modification to an existing emission unit will only add a small amount of emissions to the atmosphere. Assuming that the new unit or modification would operate at the maximum rate (8760 hours per year), the additional emissions from the hourly permit exemption would only be 876 pounds per year or 0.44 tons per year. This permit exemption threshold corresponds with an insignificant activity designation for CAAPP sources (35 Ill. Admin. Code § 201.210(a)(2) and (a)(3)) discussed further below. As explained in the preceding section, the owner or operator assumes the responsibility and the risk for an inaccurate determination regarding the de minimis emissions threshold.

Illinois EPA and IERG have studied the permitting requirements and exemptions in other states included in USEPA Region V. Most of these states have higher emission thresholds for permitting than are being proposed in this rulemaking. Further, some Region V states utilize a notification approach, in lieu of applying for and issuing

permits, for certain projects. IERG and Illinois EPA have developed a notification option for projects at minor sources that may entail potential emissions slightly higher than the 0.1 lb/hr permit exemption. This would allow Illinois EPA to be apprised of the project, without delaying the project for permitting.

Under this notification approach, new emission units or modifications to existing emission units at minor sources would be able to be constructed or installed immediately after the facility provides notification to the Agency of the intent to construct or install the new emission unit or modification, as long as the potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit or modification to an existing emission unit is less than 0.5 pound per hour. Such a low hourly rate of emissions ensures that the addition of the new emission unit or modification to an existing emission unit will only add a small amount of emissions to the atmosphere. Assuming that the new unit or modification would operate at the maximum rate (8760 hours per year), the additional emissions from the permit exemption would only be approximately two tons per year.

Proposed subsection (jjj) would not apply if the new emission unit or modification is subject to an emission standard or other regulatory requirement under Section 111 or 112 of the federal Clean Air Act. This will ensure that any projects that would trigger applicability of New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants will undergo pre-construction review with Illinois EPA.

In addition, the permit exemption will not apply where potential emissions of regulated air pollutants from the emission unit, in combination with emissions from existing units or other proposed units, trigger permitting requirements under Section 39.5,

permitting requirements under Sections 165 or 173 of the federal Clean Air Act, or the requirement to obtain a revised federally enforceable state operating permit limiting the source's potential to emit. This provision is designed to require pre-construction review with Illinois EPA where the project would trigger New Source Review (Sections 165 and 173 of the Clean Air Act), or would require the taking of federally enforceable emission limits to avoid New Source Review. This provision also would require permitting where the additional emissions from the project could change the source's status with respect to its potential to emit.

Finally, the permit exemption at proposed subsection (jjj) would not apply if the source is the subject of certain specified compliance or enforcement matters related to the air emissions of the source. This would ensure that the permit exemption would not be used when there are outstanding compliance or enforcement issues.

d. Insignificant Activities at Clean Air Act Permit Program Sources - Proposed Section 201.146(kkk)

35 Ill. Admin. Code § § 201.210 and 201.211 provide categories or criteria for insignificant activities at CAAPP sources. Section 201.212 provides that when a CAAPP source adds insignificant activities it does not need to seek a CAAPP permit modification, but must simply notify the Illinois EPA of the added insignificant activity at the time of permit renewal, or according to the procedures of Section 39.5(12)(b) of the Act, depending on the type of insignificant activity being added. This allows the CAAPP source to promptly add a minor emission unit without waiting for a revised CAAPP permit to be issued.

However, nothing in Sections 201.210, 201.211 or 201.212 obviates the need to obtain a construction permit prior to the addition or modification of an insignificant

emission unit. The state permit exemption list at Section 201.146 is very similar to the insignificant activity list at Section 201.210, but there are some important differences. For example, an emission unit that emits less than 0.1 pounds per hour of a non-HAP regulated pollutant, without considering control equipment, is an insignificant activity under Section 201.210(a)(2). Thus, the addition of such an emission unit could be conducted via the procedures of Section 201.212 without CAAPP permit modification. There is no state permit exemption, however, for emission units that emit less than 0.1 pounds per hour of non-HAP regulated pollutants. Therefore, a construction permit would be required before such an emission unit could be added at a CAAPP source, even though the regulations are clear that the Illinois EPA only requires notification of the unit's addition for purposes of the CAAPP permit.

The owner or operator of a CAAPP source should not be required to obtain an air pollution control construction permit for the construction or modification of an emission unit or activity that is an insignificant activity under Sections 201.210 or 201.211. Thus, Illinois EPA and IERG propose an addition to the permit exemptions at Section 201.146 that would do away with such a requirement. Proposed subsection (kkk) makes clear that the notification procedures of Section 201.212 must still be followed. This proposed provision also states that the permit exemption does not obviate the need for compliance with otherwise applicable emission standards or other substantive regulatory requirements.

II. GEOGRAPHIC REGIONS AND SOURCES AFFECTED

The geographic areas affected by this proposal are the sources within the State of Illinois that are subject to the permitting requirements of 35 Ill. Admin. Code § 201.146. Proposed Section 201.146 (hhh) would apply to any permitted emission source. Proposed Section 201.146(iii) would apply to sources that have FESOPs. Proposed Section 201.146(jjj) would apply to permitted sources that are not CAAPP sources and that do not have FESOPs. Proposed Section 201.146(kkk) would apply to CAAPP sources.

III. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS/IMPACT

The revisions to 35 Ill. Admin. Code § 201.146 do not impose any new requirements. Instead, the proposed provisions are intended to streamline permitting for both regulated sources and the Illinois EPA. Therefore, an analysis of technical feasibility and economic reasonableness is not appropriate or required.

IV. COMMUNICATION WITH INTERESTED PARTIES

IERG and Illinois EPA have had several discussions as to how permitting requirements may be streamlined in a fashion that would not interfere with any state or federal regulatory concerns, and that would provide a more practical permitting framework for regulated sources, as well as conserve Illinois EPA's resources for reviewing and acting upon permit applications. IERG and Illinois EPA have reached agreement as to the benefit of the provisions contained in this rulemaking proposal.

V. SYNOPSIS OF TESTIMONY

IERG plans to present testimony from its Executive Director, Katherine Hodge, as well as from a representative of one of its member companies. This testimony will focus on the development and potential utilization of the proposed permit exemptions as well as

IERG's analysis of permitting requirements and exemptions in other Region V states. Illinois EPA plans to present testimony from Don Sutton, who manages the Permits Section within the Bureau of Air. Mr. Sutton will testify regarding the volume and types of permits issued by the Bureau of Air, as well as how the proposed regulatory amendments would improve the permit system.

VI. MATERIALS INCORPORATED

No material is to be incorporated by reference within the subsections proposed for addition to Section 201.146.

VII. CERTIFICATION OF MOST RECENT REGULATION

The provisions that are proposed for addition to 35 Ill. Admin. Code § 201.146 in this rulemaking would be new subsections to 35 Ill. Admin. Code § 201.146. Illinois EPA and IERG certify, by their counsels' signatures below, that the portion of 35 Ill. Admin. Code § 201.146 cited in this proposal is the most recent version of 35 Ill. Admin. Code § 201.146, as published on the Illinois Pollution Control Board's Web site.

VIII. CONSISTENCY WITH FEDERAL LAW

The proposed regulatory revisions will affect Illinois' State Implementation Program ("SIP"). Therefore, if the proposed regulatory amendments are approved, Illinois EPA will submit a SIP revision to USEPA. To meet the hearing requirements for SIP revisions, a public hearing must be held in this rulemaking proceeding. See 40 C.F.R. §§ 51.102 and 51.104.

IX. CONCLUSION

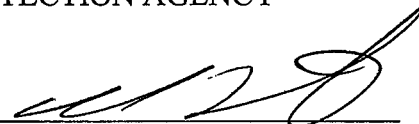
IERG has discussed with Illinois EPA measures that would simplify, streamline, and eliminate unnecessary permitting requirements. Illinois EPA and IERG are proposing streamlining initiatives that would better serve regulated sources, as well as benefit the Illinois EPA, with no detrimental impact to the environment. Illinois EPA and IERG believe these provisions will provide a more practical permitting framework in Illinois.

WHEREFORE, for the reasons stated above, Illinois EPA and IERG hereby submit this regulatory proposal and request the Board adopt these proposed additions to 35 Ill. Admin. Code § 201.146.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY


Dated: 2/17/05

By: 
Charles E. Matoesian

Charles E. Matoesian
Illinois Environmental Protection Agency
Division of Legal Counsel
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ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: 2/17/05

By: 
One of their Attorneys

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Jeanne B. Heaton
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
PART 201
PERMITS AND GENERAL PROVISIONS

Section
201.146 Exemptions from State Permit Requirement

Construction or operating permits, pursuant to Sections 201.142, 201.143, and 210.144 of this Part, are not required for the classes of equipment and activities listed below in this Section. The permitting exemptions in this Section do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements, including the obligation to obtain a permit pursuant to Sections 9.1(d) and 39.5 of the Act, Sections 165, 173, and 502 of the Clean Air Act or any other applicable permit or registration requirements.

* * *

hhh) To replace or add air pollution control equipment for existing emission units in circumstances where:

- 1) The existing emission unit is permitted and has operated in compliance for the past year;
- 2) The new control equipment will provide equal or better control of the target pollutants;
- 3) The new control device will not be accompanied by a net increase in emissions of any collateral pollutant;
- 4) Different regulatory requirements or newly proposed regulatory requirements will not apply to the unit; and
- 5) Where the existing air pollution control equipment had required monitoring equipment, the new air pollution control equipment will be equipped with the instrumentation and monitoring devices that are typically installed on the new equipment of such type. (Board note: For major sources subject to Section 39.5 of the Act, where the new air pollution control equipment will require a different compliance determination method in the facility's CAAPP permit, the facility may need a permit modification to address the changed compliance determination method.)

- iii) To replace, add or modify emission units at facilities with federally enforceable state operating permits limiting their potential to emit in circumstances where:
- 1) The potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit, or the increase in the potential to emit resulting from the modification of any existing emission unit, is less than 0.1 pound per hour or 0.44 tons per year;
 - 2) The raw materials and fuels used or present in the emission unit that cause or contribute to emissions, based on the information contained in Material Safety Data Sheets for those materials, do not contain equal to or greater than 0.01 percent by weight of any hazardous air pollutant as defined under Section 112(b) of the federal Clean Air Act;
 - 3) The emission unit or modification is not subject to an emission standard or other regulatory requirement pursuant to Section 111 of the federal Clean Air Act;
 - 4) Potential emissions of regulated air pollutants from the emission unit or modification will not, in combination with emissions from existing units or other proposed units, trigger permitting requirements under Section 39.5, permitting requirements under Sections 165 or 173 of the federal Clean Air Act, or the requirement to obtain a revised federally enforceable state operating permit limiting the source's potential to emit; and
 - 5) The source is not currently the subject of a Non-compliance Advisory, Clean Air Act Section 114 Request, Violation Notice, Notice of Violation, Compliance Commitment Agreement, Administrative Order, or Civil or Criminal Enforcement Action, related to the air emissions of the source.
- iii) To replace, add or modify emission units at permitted sources that are not major sources subject to Section 39.5 and that do not have a federally enforceable state operating permit limiting their potential to emit, in circumstances where:
- 1) The potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit, or the increase in the potential to emit resulting from the modification of any existing emission unit is either:
 - a. Less than 0.1 pound per hour or 0.44 tons per year; or
 - b. Less than 0.5 pound per hour, and the Permittee provides prior notification to the Agency of the intent to construct or install the unit. The unit may be constructed, installed or modified immediately after the notification is filed;

- 2) The emission unit or modification is not subject to an emission standard or other regulatory requirement under Section 111 or 112 of the federal Clean Air Act;
 - 3) Potential emissions of regulated air pollutants from the emission unit or modification will not, in combination with the emissions from existing units or other proposed units, trigger permitting requirements under Section 39.5 or the requirement to obtain a federally enforceable permit limiting the source's potential to emit; and
 - 4) The source is not currently the subject of a Non-compliance Advisory, Clean Air Act Section 114 Request, Violation Notice, Notice of Violation, Compliance Commitment Agreement, Administrative Order, or Civil or Criminal Enforcement Action, related to the air emissions of the source.
- kkk) The owner or operator of a CAAPP source is not required to obtain an air pollution control construction permit for the construction or modification of an emission unit or activity that is an insignificant activity as addressed by 35 Ill. Admin. Code § 201.210 or § 201.211. Section 201.212 must still be followed, as applicable. Other than excusing the owner or operator of a CAAPP source from the requirement to obtain an air pollution control construction permit for such emission units or activities, nothing in this provision shall alter or affect the liability of the CAAPP source for compliance with emission standards and other requirements that apply to such emission units or activities, either individually or in conjunction with other emission units or activities constructed, modified or located at the source.

CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, certify that I have served the attached **ENTRY OF APPEARANCE OF CHARLES E. MATOESIAN, ENTRY OF APPEARANCE OF ROBERT A. MESSINA, ENTRY OF APPEARANCE OF N. LADONNA DRIVER, ENTRY OF APPEARANCE OF JEANNE B. HEATON, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AND ILLINOIS ENVIRONMENTAL REGULATORY GROUP PROPOSAL OF AMENDMENTS, STATEMENT OF REASONS and A MICROSOFT DISK CONTAINING THE PROPOSED AMENDMENTS** upon:

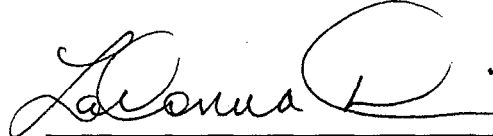
Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Charles E. Matoesian
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Matthew Dunn, Chief
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Office of the Attorney General
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on February 17, 2005.



N. LaDonna Driver