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JUN 03 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))

NOTICE OF FILING


TO: Ms. Dorothy M. Gunn Ms. Amy Antonioli
Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street 100 West Randolph Street
Suite 11-500 Suite 11-500
Chicago, Illinois 60601 Chicago, Illinois 60601
(VIA FIRST CLASS MAIL) **(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 of the **PRE-FILED TESTIMONY OF KATHERINE D. HODGE ON BEHALF OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP IN SUPPORT OF R05-19**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP.

By: 
One of Its Attorneys

Dated: June 1, 2005

N. LaDonna Driver
Jeanne B. Heaton
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

Robert A. Messina
General Counsel
Illinois Environmental Regulatory Group
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4942

CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, certify that I have served the attached

TESTIMONY OF KATHERINE D. HODGE ON BEHALF OF THE ILLINOIS

ENVIRONMENTAL REGULATORY GROUP IN SUPPORT OF R05-19 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
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Rosemarie Cazeau, Esq.
Office of the Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Heidi E. Hanson, Esq.
H.E. Hanson, Esq. P.C.
4721 Franklin Avenue
Suite 1500
Western Springs, Illinois 60558-1720

Amy Antonioli
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

A.D. Volz
OSF Healthcare Systems
800 N.E. Glen Oak Avenue
Peoria, Illinois 61603-3200

Mr. Christopher Newcomb
Kavagonis, White & Mogel, Ltd.
414 North Orleans
Suite 810
Chicago, Illinois 60610

Howard Chinn, C.E.
Environmental Bureau
Illinois Attorney General's Office
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Mr. Rodney Harper
Rush Oak Park Hospital
520 South Maple Avenue
Oak Park, Illinois 60304

Ms. Patricia F. Sharkey
Mayer, Brown, Rowe & Maw, LLP
190 South LaSalle Street
Chicago, Illinois 60603

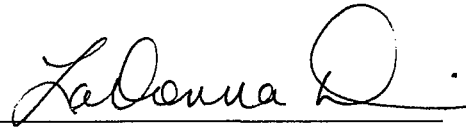
Mr. Michael Severns
Bodine Environmental Services, Inc.
5350 E. Firehouse Road
Decatur, Illinois 62521

Mr. Bruce Nilles
Sierra Club
214 North Henry
Suite 203
Madison, Wisconsin 53703

Roy M. Harsch, Esq.
Gardner, Carton & Douglas, LLP
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698

Steven J. Murawski, Esq.
Gardner, Carton & Douglas, LLP
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois, on June 1, 2005.



N. LaDonna Driver

IERG:001/R-Dockets/Fil/R05-19/KDH Testimony for 2nd hearing

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**PRE-FILED TESTIMONY OF
KATHERINE D. HODGE ON BEHALF OF THE ILLINOIS
ENVIRONMENTAL REGULATORY GROUP IN SUPPORT OF R05-19**

I. INTRODUCTION

Thank you for the opportunity to offer testimony in this proceeding. My name is Katherine D. Hodge, and I am the Executive Director of the Illinois Environmental Regulatory Group, which I will refer to as "IERG". IERG is an affiliate of the Illinois State Chamber of Commerce. As I stated during the prior hearing in this matter, over the last several years, IERG has worked with the Illinois EPA to identify potential areas where innovation and improvements to environmental permitting would assist both the State and the regulated community. In my testimony today, I would like to highlight some important points about the air permitting improvements before the Board in this proceeding.

II. SUMMARY OF PROPOSAL

First, I would like to summarize the nature of the proposed air permit exemptions. Proposed subsection (hhh) would allow replacement or addition of air pollution control devices in certain limited circumstances, such as where the emission unit being controlled is already permitted by Illinois EPA and has operated in compliance, the new control

equipment will provide better or equal emission control and will have the required monitoring equipment, etc.

Proposed subsection (iii) pertains to Federally Enforceable State Operating Permit, or "FESOP," sources and a similar provision, subsection (jjj), applies to Lifetime Operating Permit sources. These provisions allow replacement, modification or addition of new emission units at such sources in certain circumstances. These circumstances are limited to potential emissions from the project being less than a very low threshold amount, no change to the source's "nonmajor" status under Title V, no applicability of certain federal requirements (such as under the New Source Performance Standards) and no outstanding specified compliance and enforcement matters. Each of these provisions also has its own restrictions, such as the hazardous air pollutant limit for the FESOP exemption and the notification provision for emission increases of certain levels for Lifetime Operating Permit sources.

Finally, proposed subsection (kkk) pertains to Clean Air Act Permit Program, or "CAAPP," sources. This provision would allow CAAPP sources to construct or modify insignificant activities without a construction permit.

III. BENEFITS AND PROTECTIONS OF THE PROPOSED PERMIT EXEMPTIONS

I would now like to discuss the benefits of the proposed permit exemptions, as well as how protective the proposed permit exemptions are. First, the proposed permit exemptions were developed to help reduce the resources the Illinois EPA must devote to permit projects that have relatively inconsequential emissions. At the same time, these

proposed permit exemptions would reduce the delay facilities must incur in initiating such minor projects while the permitting process takes place.

There is little question that Illinois EPA would routinely issue permits for the projects that qualify for these proposed permit exemptions. Even though there could be emissions increases involved, Illinois EPA would ultimately issue permits for these types of projects. Thus, putting a permit exemption in place does not change what occurs, with respect to emissions to the environment, when a project is instituted. Rather, these permit exemptions simply remove the requirement to obtain a permit before the project begins and a minor emissions increase (if any) occurs.

Second, the four exemptions at issue here are only for the requirement to obtain a state construction or operating permit. These exemptions have absolutely no bearing whatsoever on compliance with any substantive regulatory requirement. Assuming that a proposed activity, such as a new emission unit, would fit one of these permit exemptions, compliance would still be required with, for example, the Board's particulate matter provisions at 35 Illinois Administrative Code Part 212, or the volatile organic material provisions at 35 Illinois Administrative Code Part 218.

Furthermore, as I just mentioned, applicability of substantive regulatory requirements, such as New Source Performance Standards, could mean that a proposed permit exemption is not even available for a particular project under the proposed permitting amendments. I would add that the first paragraph of Section 201.146 currently prohibits the use of any of the permit exemptions where the project at issue is regulated by Nonattainment New Source Review, Prevention of Significant Deterioration, New Source Performance Standards or National Emission Standards for

Hazardous Air Pollutants. Thus, where these federal regulatory schemes are at issue, these exemptions will be unavailable and the permit process will still occur.

Third, the approach for the proposed permit exemptions will be the same, if not more stringent, than the current permit exemptions at 35 Illinois Administrative Code Section 201.146. The facility must evaluate the permit exemptions and make its own determination, at its own risk, as to whether the exemptions apply to a particular project. This is precisely how the permit exemption scheme has worked, under Section 201.146, in the past. However, unlike current permit exemptions, there is a compliance requirement for proposed subsections (hhh), (iii) and (jjj). This requirement sets a particularly high bar for new, modified or replacement units at Lifetime Operating Permit sources and Federally Enforceable State Operating Permit sources, in that a pending specified compliance inquiry or enforcement action prevents use of the permit exemption, even if the compliance inquiry or enforcement action is completely unrelated to the emission unit at issue in the proposed project. There is no similar restriction for any of the current permit exemptions in Section 201.146. Thus, these proposed provisions contain more than adequate safeguards for compliance.

In addition, in the case of proposed subsection (jjj)(1)(b), the facility will be required to provide prior notification to Illinois EPA before initiating the proposed project. There is no similar requirement in any of the current permit exemptions in Section 201.146. Also, in the case of major sources, Illinois EPA will be informed of the projects upon application for renewal of the facility's operating permit, as required by Section 201.212.

Finally, the current permit exemptions in Section 201.146 are only for certain specified categories of projects. Thus, if a proposed project does not fit neatly within one of those exemption categories, but has virtually no emissions, a permit is required, even though that project may have much fewer emissions than would occur from projects that fit the current categorical exemptions. This is an impractical result when considering impacts to the environment, Illinois EPA resources required to issue such permits and the time delays involved for such projects while the permit is applied for and issued.

We have surveyed surrounding states within USEPA Region V and have determined that Illinois is the only state that does not have a permit exemption for projects that emit below a certain threshold amount. Further, the thresholds we are proposing here are extremely low when compared to similar provisions in other Region V states. Accordingly, as USEPA has approved higher permit exemption thresholds in other states, the modest levels proposed here should easily pass muster with USEPA.

IV. CONCLUSION

For the reasons I have discussed, the proposed permit exemptions would benefit Illinois EPA in better allocating its permitting resources, while allowing very minor projects to proceed without the delay of permitting. Significant safeguards have been instituted in these proposed exemptions for emissions impact, compliance and triggers of federal programs. In the limited situations posed in these exemptions, permitting would provide no added benefit to the air permitting or regulatory scheme. We urge the Illinois Pollution Control Board to move forward expeditiously with the proposed rulemaking.