

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:                    )  
  )  
EXEMPTIONS FROM STATE            )     R96 -17  
PERMIT REQUIREMENTS,            )     (Rulemaking)  
AMENDMENTS TO 35 ILL.            )  
ADM. CODE 201 AND 211            )  
  )

Illinois Pollution Control Board hearing taken on     July 23, 1996 at 10:00  
a.m. in Collinsville, Illinois.

Appearances:

Marie E. Tipsord, Esq.  
Illinois Pollution Control Board

G. Tanner Girard  
Illinois Pollution Control Board

Sheila G. Kolbe, Esq.  
Illinois Environmental Protection Agency

Mark W. Homer, Esq.  
Chemical Industry Council of Illinois

HEARING OFFICER: Good morning. My name is Marie Tipsord and I've been appointed by the Illinois Pollution Control Board to serve as Hearing Officer for rulemaking number R96 -17 entitled: In The Matter Of Exemptions From State Permit Requirements, Amendments To 35 Ill. Adm. Code 201 And 211. On May 10, 1996 the board received this proposal filed by the Illinois Environmental Protection Agency and on May 16th the board accepted this matter and directed the matters. This is the first of two scheduled hearings on this matter. The second hearing is scheduled for August 16, 1996 at 10:00 a.m. in Chicago, Illinois. With me is the attending board member G. Tanner Girard. Before we begin, I received in the mail yesterday in Jerseyville an appearance by Ms. Sheila Kolbe with the agency a motion for leave to file pre -filed testimony, instanter and the pre -filed testimony of William D. Marr. The filings also received in the Chicago office just yesterday. Is there anyone here who wishes to object to the motion for leave to file pre -filed testimony, instanter? Okay, seeing none, I will grant the motion for leave to file pre-filed testimony, instanter, and we will deal with the housekeeping on pre-filed testimony later on. I would note that a second hearing is scheduled for August 16th so anyone that has not had an opportunity to fully review this testimony will have another opportunity to a hearing to the Agency. At this time I would ask if the Agency has an opening statement?

MS. KOLBE: Yes. I am Sheila Kolbe, Assistant Counsel with the Illinois Environmental Protection Agency, and I have been assigned to represent the Agency in the matter of Exemptions from State Permit Requirements, Amendments to 35 Ill. Adm. Code 201 and 211.

With me today are two of the Agency's technical experts from the Permits Section: Bill Marr, who will testify for this rulemaking and Chris Romaine, a P.E. and manager from the Permits Section, who will also assist in answering technical questions.

This rulemaking has been proposed under Sections 27 and 28 of the Illinois Environmental Protection Act. The proposed rule amends the current list of emission units and activities under 35 Ill. Adm. Code 201.146 that are exempt from the state permitting requirements under 35 Ill. Adm. Code,

Sections 201.142 (Construction Permit Requirements), 201.143 (Operating Permit Requirements for New Sources), and 201.144 (Operating Permit Requirements for Existing Sources) in order to expand the list to include categories of activities or emission units for nonmajor sources from which emissions are very minimal and no informational need has been furthered by requiring such a permit.

These proposed amendments to expand the list of exemptions under Section 201.146, also include emission units or activities that have been deemed insignificant under the Clean Air Act Permitting Program, CAAPP, as specified in 35 Ill. Adm. Code 201.210, for which the Agency pursuant to its discretion under CAAPP has determined merit such an exemption. That is, under the CAAPP program, the Agency is allowed to evaluate insignificant emission units and activities. For those insignificant activities that are listed as exempt under Section 201.146, no permit application will be required by the Agency.

Some of the proposed amendments to Section 201.146 are intended to merely clarify the types of activities or emission units that are covered by an exemption category.

Additionally, in several instances an existing exemption category is being modified so that emission units subject to certain requirements will require permits. Permitting these activities is appropriate in order to assure compliance with the underlying applicable requirements. Specifically, some previously exempted emission units are subject to new requirements under 35 Ill. Adm. Code Parts 215, 218, and 219. Also, an amendment for clarification purposes has been included in this proposal to state that exemptions from permitting requirements do not apply to emission units that are subject to federal requirements for New Source Performance Standards, NSPS, pursuant to 40 CRF 60.

In addition to the proposed changes in Part 201 for this rulemaking, the Agency proposes to add a definition for "feed mill" in Part 211 at Section 211.2285. This is necessary because the term "feed mill" is used in one of the accompanying proposed amendments to Section 201.146.

In a nutshell, the purpose of this rulemaking is to update the list of

exempt units or activities under Section 201.146 and "clean -up" Section 201.146 in order to eliminate conflicts or confusion between exemptions from permitting requirements for non -major sources, the CAAPP program, other Parts of 35 Ill. Adm. Code, and federal permit requirements.

At this time, I would like to introduce William D. Marr, who is the Agency's technical expert on the proposed exemptions. His testimony, in this matter, has been pre -filed. Because of a slight error regarding a Technical Support Document --that is, there is not one--I requested the Hearing Officer to allow him to read his statement into the record with the appropriate correction.

HEARING OFFICER: Okay. Before I answer this, would anyone else like to make an opening statement?

MR. HOMER: No.

MR. GIRARD: No.

HEARING OFFICER: Okay. Let's first have Mr. Marr sworn and let's go ahead and swear Mr. Romaine in case he wants to add anything.

(Witnesses sworn)

HEARING OFFICER: I grant your request Ms. Kolbe so you can proceed. Go ahead, yes, he may read it in.

MS. KOLBE: Go ahead, Bill.

THE WITNESS: Good morning. My name is William D. Marr, I am employed by the Illinois Environmental Protection Agency--which I will refer to as " Agency"--in the Permit Section of the Division of Air Pollution Control in the Bureau of Air. I have been employed by the Agency as an Air Pollution Permit Analyst since May 1992. My educational background includes a Bachelor of Science Degree in Mechanical Engineering from Southern Illinois University at Carbondale.

The proposal before you today would affect exemptions from state air permit requirements, and I was involved in the development of the Agency's proposal. I personally prepared the Technical Support information for the Statement Of Reasons, filed by the Agency.

This proposal would amend 35 Ill. Administration Code 201.146 which

referred to section to expand, clarify, and modify the list of emission units and activities that are exempt from state air pollution control construction and operating permits, as specified in 35 Ill. Administration Code 201.142, 201.143, and 201.144. The proposal would also amend Section 201.146 to establish greater consistency between the exemptions from state air permit requirements and the insignificant activity provisions of the Clean Air Act Permit Program, CAAPP, for major sources of air pollution, as specified at 35 Ill. Administration Code 201.210.

The primary effect of this proposal is to expand the list of activities and emission units that would qualify for exemption from state air permitting requirements by either adding categories of activities or emission units or by loosening the threshold for the exemption. The activities and emission units that are proposed for exemption are based on the Agency's historical experience that such emission units do not merit permitting. Associated emissions are very minimal and there are no applicable rules or a unit readily complies with applicable rules. Individual information on these activities has not been needed for purposes of air quality planning.

In this respect, the Agency believes that many of the emission units or activities that have been deemed insignificant under the CAAPP, as specified in 35 Ill. Administration Code 201.210, can also be exempt from state air permitting requirements. The Agency does not believe, however, that all of the activities and emission units listed as insignificant under the CAAPP merit exemption from the state air permit requirements. This is because the Agency retains discretion under the CAAPP to determine if a specific emission unit should be treated as significant. This discretion is appropriate for insignificant activities under the CAAPP as it applies to sources that are otherwise required to submit permit applications, thereby allowing the Agency the opportunity to evaluate proposed insignificant emission units. If an emission unit or activity qualifies for exemption from state air permitting requirements pursuant to Section 201.146; however, no permit application is required to be submitted to the Agency, thereby allowing the Agency no opportunity to evaluate the nature and significance of such emission units.

Certain of the proposed amendments to Section 201.146 are intended to clarify the types of activities or emission units that are covered by a particular exemption. For example, the exemptions for fuel combustion equipment would be reworded to make clear that they apply on an individual basis, to each fuel burning emission unit. The proposal also explains that if an emission unit is exempt, associated air pollution control equipment is also exempt.

In a few instances in the proposal, an existing exemption is being modified so that emission units subject to certain state requirements will require permits. An example is coating operations located at a source that are subject to the limitations or control requirements of 35 Illinois Administrative Codes 215, 218, or 219, Subpart F. The current exemption level for coating operations is the use of less than 5000 gallons of coating at a source per year. The applicability level for the coating rules in the ozone nonattainment areas is now such that coating lines that are exempt from permit requirements are subject to control requirements. The Agency believes permitting for these emission units is appropriate to facilitate compliance with the applicable rules.

Additionally, in a few instances, an existing exemption is being revised to clarify that an emission unit that is subject to a federal New Source Performance Standard, NSPS, under 40 CFR Part 60 requires a permit. These revisions are merely intended to clarify that permitting exemptions do not apply to emission units subject to an NSPS, as such emission units are required to obtain permits pursuant to Section 9.1(d)(2) of the Environmental Protection Act.

Finally, the proposal also includes revisions to update terminology, such as using the term "emission unit" to describe an individual item of equipment or activity, rather than "emission source." The proposed amendments also provide a definition for one term, "feed mill," used in the proposed amendments.

As the proposed amendments deal with and generally expand the list of exemptions from state air permit requirements, these revisions do not impose

new emission limitations or control requirements on affected sources. Therefore, this proposal does not pose any issues with respect to technical feasibility. As previously stated, the additional exemptions will not significantly affect the effectiveness of the permit program. If anything, they will help focus attention on the more important emission units.

As an economic matter, the proposal will reduce costs. The amendments significantly expand the list of exemptions and many affected sources will be relieved of the requirement to obtain state air permits. Also, the affected sources will be relieved of other requirements resulting from a permit, such as the obligation to annually report emissions data for permitted emission units. As a consequence, the affected sources will realize a cost savings because they will be relieved of the need to collect data, prepare permit applications, submit reports, and pay permit fees. The savings in permit fees would likely be the minimum fee associated with state air operating permits, which is \$100 per year for sources with total permitted emissions of less than 25 tons per year. The loss of revenue to the Agency would be matched by the savings from eliminating permitting of these sources. Many other sources will still be required to have permits because they still have emission units that are not exempt. However, these permits and related activity will be simplified as additional emission units are considered exempt and can be dropped from existing permits. New and revised permits will not be needed as these newly exempt units are added or replaced at a source. The only sources that may be required to obtain a state permit for the first time based on this proposal are sources with coating operations that are subject to compliance requirements under 35 Illinois Administrative Codes 215, 218, or 219, Subpart F, and that use less than 5000 gallons of coatings including thinner at the source annually. Most, if not all of these sources, will also be small sources that would only be required to pay the \$100 fee. These sources are already subject to data collection and to reporting requirements.

In conclusion, this proposal amends Section 201.146 to expand, clarify, and modify the list of emission units and activities that are exempt from state air permit requirements. The overall effect would be to reduce the

effort expended by smaller sources in air permitting without any significant deterioration in the effectiveness of the air pollution control program. Accordingly, the Agency requests that the Pollution Control Board adopt these amendments to Parts 201 and 211 for the State of Illinois.

HEARING OFFICER: Ms. Kolbe, did you then want to mark the pre -filed testimony as an exhibit or do you want to go with what was just read in the record.

MS. KOLBE: Why don't I go with what was read in the record, why don't I have that marked as Exhibit 1 because the other one was already pre -filed.

HEARING OFFICER: Right. But traditionally we mark pre -filed testimony, that's my question. If you want to substitute that testimony for the pre-filed testimony, we won't mark it as an exhibit, we'll just leave it pre-filed testimony and not include it as an exhibit to the transcript here. Off the record.

**(An off-the-record discussion was held)**

MS. KOLBE: Yes, if we could mark that as Exhibit 1.

HEARING OFFICER: All right. We will mark the pre -filed testimony of William D. Marr as Exhibit 1. Okay, are there any questions of Mr. Marr?

MR. HOMER: Yeah, I have a few. My name is Mark Homer, I'm with the Chemical Industry Council of Illinois. The questions I'm going to ask you are directed toward the coating operation that are going to be not exempt under 215, 218, and 219, Subpart F. If this proposal is adopted as it is proposed today under the current Subpart F regulations, do you, the Agency, receive sufficient information to determine compliance for the sources that are subject to those regulations?

WILLIAM MARR: As far as if there is any permit applications?

MR. HOMER: No. Currently do the regulations give you enough information that you can determine the compliance for sources that are subject to the regulations?

CHRIS ROMAINE: I will volunteer to take this one. As a matter of regulation sources subject to Subpart F and Parts 218 and 219 are required to certify whether or not they are in compliance. They are also to send us



prompt reports when they're out of compliance so there is in fact regulatory requirements that exist for those code in operations that in a very broad sense work to a short compliance. However, we have not received to my knowledge any kind of registrations or certification from those sources and we believe in fact they are not aware of those rules necessarily and are operating out of compliance in ignorance of the agreement.

MR. HOMER: Is there any reason that the Agency believes that they would be anymore apt to know that this regulation was in place versus the other regulations that they already are subject to?

CHRIS ROMAINE: I don't think there's any reason to believe that in the developments that there would be any change in the level of knowledge but there are other activities going on that would generally work to bringing these facilities to light. We have a small business office now, we have an amnesty program. We've had a limited trial basis and it looks like it's going to be for a statewide program. So our expectation is that in the future we will be more involved with those smaller sources and we will have to deal with them one way or another simply in complying with the certification and notification of under the rule or addressing those requirements plus other operations at those sources through a broader permit?

MR. HOMER: Okay. That's all I have.

MR. GIRARD: Yes, I have a question. Bill or Chris, whoever's going to answer this, please look at 201.146, this deals with grain drying operations. You've added some language which says that for certain driers constructed after 1978 which have a capacity of either say 2.5 million bushels or 1 million bushels, they will need a permit to comply with certain federal regulation at 40 CFR 60. Now this seems to be specific to those two capacities, 2.5 million bushels or 1 million bushels. Should it read something like greater than or equal to 1 million bushels and less than or equal to 2.5 million bushels? Do you understand my question?

WILLIAM MARR: You're right.

MS. KOLBE: The agency agrees with your suggestion. It would agree to changes to the proposal in that regard.

MR. GIRARD: Okay, thank you.

HEARING OFFICER: Okay. I have several questions that involve the language also in the rule and some of these I point out to you now and we can talk about them at the next hearing or if you want to address them with a public comment. The first one goes to provision of 201.146. At the very beginning, there is a statement that begins the permitting exemptions in this section do not relieve the owner -operator of any source from any obligation to comply and then it goes on to talk about other applicable requirements. This seems to be more of a grab your attention than a rule per say. I mean, if they have an obligation to comply with the rules, they have an obligation to comply and I guess this didn't seem to since this starts out as exemptions from state permits and the first statement is you're not exempt--which seems to be what that first statement says--it seemed a little contradictory and confusing to me so I guess my first question would be what exactly do you mean by that phrase or that correction cautionary language I guess is a good way to put it?

CHRIS ROMAINE: I think you are correct that it is an exception to the exemptions. I respond to experience that we have had over the years where people believe that these exemptions from the state permit requirement also carry over into those federally mandated programs. To avoid any confusion about that, we thought it was appropriate to include the cautionary language for the people which initially is a matter of knowledge anyway but to remind them of the fact that there are other federal programs out there that those specific exemptions do not effect.

HEARING OFFICER: So an exemption pursuant to this part does not exempt them from air permitting requirements in general, right?

CHRIS ROMAINE: That is correct.

HEARING OFFICER: Okay. So these are not necessarily--those are more specific exemptions? Let me rephrase that, that didn't come out very well. I guess what I'm getting at then is wouldn't it be better to state clearly that these are exemptions for this program and this program only and then go ahead and say something along the lines of this does not relieve your obligation

under other programs. Now I mean that's just kind of a shot in the dark sort of thing but it would seem to me that you would start what those are exemptions to and then say the cautionary language but they are not exemptions for other broader categories. It would just seem to be a little less confusing.

MS. KOLBE: I agree. At the end of that paragraph well it basically explains that these are exemptions from Sections 201.142, 201.143, and 201.144 so I guess we can kind of flip flop those parts of that paragraph.

HEARING OFFICER: Take a look at it and see what you think. It just seemed to me that these was somewhat confusing when you start out by saying you're not exempt. And then you have--there are several places throughout the rules that I'm going to ask this same basic question and that is in 201.146 C, there's a reference to an emission unit with the designed heat input capacity with at least 10 million British thermal units per hour that is constructed, reconstructed, and modified after June 9, 1989. Could you explain what that date is and why that date was included in that?

WILLIAM MARR: That date is the applicability date for that specific NSPS requirement.

HEARING OFFICER: And that requirement's already been adopted, is that not correct, by the board? That provision does not make that rule retroactive in any way?

WILLIAM MARR: No.

HEARING OFFICER: Okay, thank you. And then that would be the same basic question about Subsection I talks about a source of after October 3, 1977 and could you again tell me what that date is?

WILLIAM MARR: Okay. October 3, 1977 is the applicability date for the NSPS requirement for Subpart GG.

HEARING OFFICER: Okay. And it would be the same thing that those regulations have already been adopted and this is not a new requirement?

WILLIAM MARR: That is correct.

HEARING OFFICER: Thank you. Subsection N, you have storage tanks and then you have listed 1, 2, and 3. After Subsection 2, you have an "and," and

my question should that be an or? Is it suppose to mean any one of those three, not all of those three?

CHRIS ROMAINE: That is correct.

HEARING OFFICER: Thank you. Again the same question regarding date with regard to Subsection T after August 3, 1978. What is that date?

WILLIAM MARR: August 3, 1978 is the applicability date for that new source performance standard requirements for Subpart DD.

HEARING OFFICER: And they have been adopted by the board and currently in effect in Illinois?

WILLIAM MARR: That is correct.

CHRIS ROMAINE: They are effective in Illinois as a matter of pursuant to 9.1VI.

HEARING OFFICER: They were not formally adopted, they were effective through the statute?

CHRIS ROMAINE: Yes.

HEARING OFFICER: Thank you. In subsection X, you've changed consuming to consume, I think that should be consumes, source consumes?

CHRIS ROMAINE: I agree, that is correct.

HEARING OFFICER: In Subsection D under the phrase cafeterias, kitchens, and other equipment, cafeterias and kitchens aren't equipment. You might want to take a look at that and be a little more specific and instead of saying other equipment, I mean they have equipment in them but they in themselves are not generally considered equipment.

MR. GIRARD: Do you have a suggestion?

HEARING OFFICER: Either take out the word or, depends on what you meant by equipment there. You know, I assume you meant like baking ovens or since we're getting to the smoke houses and things like that, I wasn't sure what you meant by equipment. That's why I suggest you take a look down at it.

CHRIS ROMAINE: I do recall at the time we wanted to make sure that people would not be responsible for getting permits for coffee pots and microwaves. We consider facilities perhaps suffice as a more generic term for these type of food preparation areas.

HEARING OFFICER: In subsection BB, you have feed mills produce no more than 10,000 tons of feed per calendar year provided that a permit is not otherwise required for the source. I mean I assume you mean an air permit and not necessarily a permit for something else?

MS. KOLBE: That's correct.

HEARING OFFICER: Could you perhaps clarify that or take a look at it and see if it needs to be clarified since there are so many exemptions, they maybe subject to it. I thought you might want to put it to air permits.

CHRIS ROMAINE: I think definitely again your concerns about other federal requirements.

HEARING OFFICER: Then in Subsection CC, this seemed to be a very confusing subsection to me and I think it's because of the linkings you used. You have an "and" and then an "or" and then a third "or" and I'd ask you to take a look at it and see if perhaps it might work better to break it out with further subsections like a Subsection 1, 2, and 3 to make it clear. It seems to me you lose track of what the actual exemption is for with all of those in there. Thank you. Okay. Then there are several places back beginning at--actually occurred earlier in the definition of coating--but occasionally throughout here it's like subsection NN, GG, RR, YY, triple C, and triple F that you sometimes used the phrase "at the source" and sometimes you used the phrase "at a source." That phrase would seem to be appropriate for all of those pieces of equipment or activities that are being exempt and I was wondering if you could explain to me or if it's necessary to keep that phrase in those subsections?

MS. KOLBE: Actually for some of them I guess there were reasons for it. So we'd like to respond on that at a later time but Chris, you just want to elaborate. For example why in NN keeping that "at the source" may have been necessary.

CHRIS ROMAINE: With regard to the exemption of NN given with general vehicle maintenance and servicing activities at the source other than gasoline, fuel handling, we certainly intended to clear exemption for onsite vehicle maintenance. There are provisions dealing with asbestos, dealing with

asbestos break pads and of vehicle processing of break pads and of manufacturing plant to not be entitled to this exemption so that may be the plot behind putting "at the source" as you look at it to be clearly conveyed.

HEARING OFFICER: Thank you.

CHRIS ROMAINE: There may be several issues with regard to the other exemptions. Immediately coming to mind, for example, RR. We'd want to make point that housekeeping activities for cleaning purposes including collecting spilled and accumulated materials at the source should be exempt. Somebody's in the business of collecting clean and spilled materials and that is their manufacturing or activity, that exemption may be appropriate, it may not be a clear distinction but we'll have to go back through it and examine each of those usages to decide.

HEARING OFFICER: Thank you. And I just have one last question. It's triple F. Also again you have, it's a long section with several things linked together by commas that sound very confusing. I want you to take another look at it and perhaps also consider breaking it out into some subsections as well. I tend to lose track of what the actual exemption is for with the use of some of the connecting phrases.

MS. KOLBE: We will do that before the next hearing.

HEARING OFFICER: Thank you, that was all I had. Did anyone have anything else while I was looking through? Okay. I have not set a date for pre-filing of testimony for the second hearing. Given the way this hearing has gone, I'm not sure that it's necessary to do so. But certainly if the Agency would like to pre -file, I can set a d ate. It's up to you, Ms. Kolbe, would you like to pre -file and if so what date would seem convenient with you with the hearing scheduled for August 16th?

MS. KOLBE: Yes, we would like to pre -file. How about Wednesday the 7th?

HEARING OFFICER: That's acceptable to me. I will put out a hearing officer order to the members and people on the notice list noting the pre-filed testimony is due Wednesday August 7th in case anyone else would like

to pre-file for that second hearing just scheduled for the 16th in Chicago, August 16th at 10:00 a.m. in Chicago.

MS. KOLBE: Also at that time after we look over those rules for those parts you wanted us to break down or amend, when I file the pre-filed testimony I'll include that also.

HEARING OFFICER: Thank you, that would be very good. At this time, is there anything else, any other housekeeping matter? Seeing no further discussion at this point in time, we'll close this hearing and I'll see you all August 16th. Thank you very much for coming today.