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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))

NOTICE OF FILING

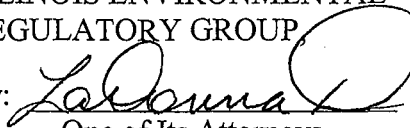
TO: Ms. Dorothy M. Gunn Clerk of the Board Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, Illinois 60601 (VIA FIRST CLASS MAIL)	Ms. Amy Antonioli Hearing Officer Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, Illinois 60601 (VIA FIRST CLASS MAIL)
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(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 GROUP IN SUPPORT OF R05-19**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: 
One of Its Attorneys

Dated: April 1, 2005

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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:

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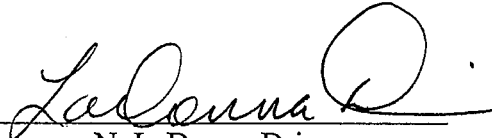
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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
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N. LaDonna Driver

IERG:001/R-Dockets/Fil/R05-19/COS -KDH Testimony

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(35 ILL. ADM. CODE 201.146))
STATE OF ILLINOIS
Pollution Control Board
R05 - 19
(Rulemaking - Air)

**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 "ERG". ERG is an affiliate of the Illinois State Chamber of Commerce. Over the last several years, ERG has worked with the Illinois Environmental Protection Agency ("Illinois EPA") to identify potential areas where innovation and improvements to environmental permitting would assist both the State and the regulated community. While ERG and the Illinois EPA continue to work towards additional changes in the permitting system, our talks to date have led to the proposed rulemaking before the Illinois Pollution Control Board ("Board") today.

II. HISTORICAL OVERVIEW OF THE PROCESS LEADING UP TO THIS RULEMAKING

This proposed rulemaking focuses on air permitting and it contains language agreed to by both parties. I would like to describe for you the background and the research which led to the submittal of today's proposal. Data from Illinois EPA, originally collected in 2000 and 2001, showed that a large number of air permits were issued for projects with low levels of emissions. ERG also collected data from

surrounding Region V states regarding the numbers and types of air permits processed in each state. ERG has recently reviewed and updated this data and has conducted an in-depth analysis of current laws and regulations on air permitting in other Region V states. Our discussions with Illinois EPA and our analysis of the data collected have led ERG to conclude that the proposed changes in the Illinois air permitting scheme are overdue, as discussed below.

III. ANALYSIS OF DATA AND CONCLUSIONS DRAWN FROM THE DATA

Our initial investigation into the nature of air construction permits issued in Illinois uncovered a rather startling fact: approximately 70% of all construction permits issued in 2000 – 2001 were for no emission increases or for emission increases of less than one ton per year. This finding indicated the potential for elimination of a large percentage of such construction permits. (The attached Exhibit #1 provides the referenced 2000-2001 permit data and associated emission increases.)

The major revelation from ERG's research into the permitting schemes in other Region V states is that these states have taken a broad approach to streamlining. (The attached Exhibit #2 summarizes air permit streamlining efforts in other Region V states.) For example, Indiana has *de minimis* emission permit exemptions, categorical permit exemptions, notice-only requirements for certain types of changes, permits by rule, and so forth. Note that the emission thresholds associated with these various streamlining components are far higher than those in today's proposed rulemaking.

Currently, Illinois is the only state in Region V that does not have at least some form of *de minimis* permit exemption. The proposal before the Board today is a very moderate approach to permit streamlining. While we cannot provide a precise figure as

to the number of permits that will be eliminated by this proposal, our prior research, summarized in Exhibit #1, indicated that many permits have the potential to fall within the proposed exemptions.

It is clear from the data and from the progress being made in surrounding Region V states that Illinois must proceed with air permit streamlining. As a first step, ERG and the Illinois EPA have identified a number of minor source permits whose elimination would have little or no environmental impact. This proposal is directed to those sources.

IV. PHASE I OF THE ILLINOIS AIR PERMIT STREAMLINING EFFORT

Today's proposal begins the process of improving the Illinois air permitting system. The proposal adds to the already established list of construction and operating permit exemptions, by establishing new permitting exemptions for:

- A. New or replacement air pollution control equipment in specified situations. (Proposed 35 Ill. Admin. Code § 201.146 (hhh).);
- B. Emission units which are replaced, added or modified at FESOP facilities where the potential to emit of the new unit or the increase in potential to emit from the modification of an existing unit is less than .01 pound per hour or 0.44 tons per year, in specific circumstances. (Proposed 35 Ill. Admin. Code § 201.146 (iii).);
- C. Emission units which are replaced, added or modified at non-major and non-FESOP sources where the potential to emit of the new unit or the increase in potential to emit from the modification of an existing unit is less than 0.1 pound per hour or 0.44 tons per year; or less than 0.5 pound per hour with prior notice to Illinois EPA, in specific circumstances. (Proposed 35 Ill. Admin. Code § 201.146 (jjj).); and,

D. CAAPP source insignificant activities as already defined by current CAAPP permitting rules. (Proposed 35 Ill. Admin. Code § 201.146 (kkk).)

V. RATIONALE FOR AND BENEFITS OF THE PROPOSAL

The benefits from adoption of this rulemaking for Illinois citizens, government and the business community are many and varied. The first benefit is that the rulemaking could actually lead to improvements in the state's air quality by freeing up the regulators to concentrate on permit actions involving something more than minimal emissions. During our earlier discussions with Illinois EPA, Illinois EPA noted that of the nearly 7,000 sources permitted by the Division of Air Pollution Control, less than 5% of those sources are responsible for a great majority of Illinois' total emissions. These figures make it obvious that the regulators should focus on these facilities to achieve the greatest environmental benefits.

Adopting the proposed air permitting exemptions will allow better allocation of Illinois EPA resources, which are currently permitting many minor emission projects. At the least, reducing the number of permit applications required to be reviewed by the Illinois EPA should help the Illinois EPA more efficiently and more quickly handle the remaining permit applications. This reallocation of Illinois EPA resources is especially crucial during the current period of state budget constraints.

Because the emissions targeted by this rulemaking for exemption are minor, there will be little or no environmental impact from the change. Projects that involve more than approximately 0.5 ton of emissions, or 2 tons where prior notification is given, will not be impacted by this rulemaking. Also, the proposal contains constraints on utilizing the exemptions where such requirements as New Source Performance Standards, New

Source Review and National Emission Standards for Hazardous Air Pollutants would be triggered.

The business community in Illinois will also benefit from adoption of this proposal. Improvements to the permitting process in Illinois will allow businesses to start operation or change production methods more efficiently, allowing them to stay more competitive in today's global market. Delays in permitting issuance frequently result in financial losses. The streamlining of today's proposal will allow businesses to make more timely improvements, eliminating idle time and waste involved in waiting on permit issuance, without reducing environmental protection.

VI. CONCLUSION

For the reasons discussed above, we urge the Illinois Pollution Control Board to move forward expeditiously with the proposed rulemaking. Although ERG hopes to return with additional air permit streamlining proposals in the near future, today's proposed rule is a good first step in bringing Illinois in line with neighboring Region V states and with the times.

Exhibit 1

Summary of Permitting Actions by Illinois Environmental Protection Agency, Bureau of Air (2000 and 2001)

2000			
Type	Operating Permits	Total Construction Permits	Construction Permits for Increases <1.0 Ton
FESOP	552	121	92
State	6000	886	595
Title V	882	673	466
2001			
Type	Operating Permits*	Total Construction Permits	Construction Permits for Increases <1.0 Ton
FESOP	550	132	111
State	6000	749	506
Title V	880	527	331
* Numbers are approximate			

EXHIBIT 2

INDIANA AIR PERMITTING

Streamlining Focus

I. De Minimis Emissions Exemption -- A minor source exemption from permitting and registration for any new emission unit or modification of an existing source at PTE levels less than¹:

- 10 tons per year of SO₂, NO_x, or VOC
- 5 tons of PM or PM₁₀, hydrogen sulfide, total reduced sulfur, reduced sulfur compounds, fluorides; or VOC for sources that require the use of air pollution control equipment to comply with the applicable VOC provisions
- 25 tons of CO
- 0.2 ton of lead; and
- 1 ton of any single HAP or 2.5 tons of any combination of listed HAPs.

II. Categories for Streamlined Permitting (Construction Permit Emphasis)

A. Exemptions. (326 IAC 2-1.1-3) Exemption from registration and permitting requirements, etc., if the source is under designated emissions thresholds or included in extensive list of named categories of equipment and activities.

B. Registration.

1. Available where PTE is above exemption levels but below listed PTE (generally below 25 tons per year). (326 IAC 2-5.1-2 and 326 IAC 2-5.5-1.)
2. Notice-only changes (make the change and notify DEQ within 30 days) at a registered source for a list of changes specified in 326 IAC 2-5.5-6(d). For example, in 326 IAC 2-5.5-6(d)(10) modification is notice-only where:
 - PTE for a single HAP is between one ton per year and 10 tons per year
 - PTE for a combination of HAPs is between 2.5 tons per year and less than 25 tons per year unless as specified.

C. Permit By Rule. (326 IAC 2-10-1, et. seq.) Sources may operate under this category, without a MSOP, FESOP, SSOA or Title V permit, if total source actual emissions are less than 20% of any major source threshold without use of air pollution control equipment and if not otherwise subject to federal requirements. Changes are allowed without review if the source will stay within the qualifying emissions parameters of less than 20% of any major source threshold without use of air pollution control equipment.

¹326 IAC 2-1.1-3(d)(4) and (e)(1). Exemption is not applicable where NSR is implicated.

D. Source Specific Operating Agreement (SSOA). (326 IAC 2-9). 23 types of SSOAs covering 13 specific types of activities. Changes to SSOA allowed without notice, if PTE stays within applicable restrictions and conditions pre-established by the rule and if not subject to federal requirements.

E. Interim Operating Permit Revision. (326 IAC 2-23-1). Available to non-major sources already permitted but seeking a permit revision. Requires \$500 filing fee and applicant's agreement to proceed at its own risk. Notice requirements may apply. DEQ shall act on the petition for interim approval within a specified shortened review time--ranging from 19 days to 31 days. Approval is effective until final permit revision is approved or denied.

F. Sources with Minor Source Operating Permits (MSOPs). (326 IAC 2-6.1).
Categories for Permit Revisions are:

1. Exemptions from permitting requirements. (326 IAC 2-6.1-1).
2. Notice-only changes--make the change and notify DEQ within 30 days. (326 IAC 2-6.1-6(d)). Allowed changes include, among others,
 - a. PTE for a single HAP between one ton per year and 10 tons per year.
 - b. PTE for a combination of HAPs between 2.5 tons per year and less than 25 tons per year.
3. Minor permit revisions--require approval prior to construction and operation. 326 IAC 2-6.1-6(g) and (h). DEQ must act within 45 days of receipt.
4. Significant Permit Revisions--full DEQ review process required. 326 IAC 2-6.1-6(i).

G. Sources with Federally Enforceable State Operating Permits (FESOPS).

1. Administrative Permit Amendments--Require approval prior to construction and operation. DEQ must act within 60 days of receipt. 326 IAC 2-8-10.
2. Minor Permit Revisions--require approval prior to construction and operation. Such revisions fall within specified categories or PTE ranges. 326 IAC 2-8-11.1(d) and (e). DEQ must act within 45 days of receipt.
3. Significant Permit Revisions--full DEQ review process required. 326 IAC 2-8-11.1(f).

H. Title V Permits. (326 IAC 2-7-1 through 2-7-24).

1. Exempt Title V Source Modification
2. Title V Minor Source Modifications
3. Title V Significant Source Modifications

MICHIGAN AIR PERMITTING
Streamlining Focus

I. De Minimis Emissions Exemptions -- Permits to install are not required for specified emissions ranging from 120 lbs per year up to 6 tons per year depending on particle size, whether the contaminant is a carcinogen, whether the contaminant contributes appreciably to the formation of ozone. (Mich. Admin. Code r. 336.1290 (2004)).

II. Permits to Install

- A. Required to install, construct, reconstruct, relocate or modify any process or process equipment which may emit any air pollutant or air contaminant (Mich. Admin. Code r. 336.1201 (2004)), with the following **exceptions**:
1. Waiver -- If Permit to Install requirement will create an "undue hardship" applicant may apply for and may be granted a waiver. Applicant may then proceed with construction at his or her own risk. The waiver is not available to certain specified federal Clean Air Act regulated activities. (Mich. Admin. Code r. 336.1202 (2004)).
 2. Categorical Exemptions -- For specific types of equipment and activities, listed by rule. (Mich. Admin. Code r. 336.1278 - r. 336.1290 (2004)).
- B. General Permits to Install -- For similar stationary sources or emission units as determined by the Michigan Department of Environmental Quality (DEQ), the applicant may apply for a general permit to install and the DEQ shall grant the general permit to install, if it qualifies, within 30 days of receipt of a complete application.

MINNESOTA AIR PERMITTING

Streamlining Focus

I. Permit Exemptions for “Insignificant Activities” including *De Minimis* Emission Units. Minn. R. 7007.0300 exempts from permitting any stationary source which consists solely of emission units which are listed as “insignificant activities” in Minn. R. 7007.1300. Minn. R. 7007.1300 includes categories of specific equipment and activities and de minimis emission units with PTE of less than:

- 2 tons per year of CO
- 1 ton per year of NOx, SO₂, PM, PM-10, VOC (including hazardous air pollutant-containing VOCs) and ozone.

II. Construction Type Permits --Individual Permits--For changes in the permit, a graduated series of procedures that are more streamlined the smaller the change involved. Minn. R. 7007.1150-7007.1500.

A. Insignificant Modifications--Allowed without getting a permit amendment in specified instances. Notice not generally required. Minn. R. 7007.1250.

1. The unit or activity is on the insignificant activities list; or
2. The modification will result in an increase less than the threshold of:
 - 2.28 pounds per hour for NOx, SO₂, VOCs;
 - 0.855 pounds per hour for PM-10;
 - 5.70 pounds per hour for CO;
 - 0.025 pounds per hour for Lead; or
3. The increase in a regulated air pollutant in not one of the air pollutants listed above.
4. Certain exclusions apply to this provision. Record keeping required.

B. 7-Day Written Notice Only--Available for a permitted source making a change that is not a modification and that does not increase emissions of any regulated air pollutant, if the change is only installing pollution control equipment, replacing a unit identified in the permit or replacing control equipment with equivalent or better control equipment. Minn. R. 7007.1150.

C. Administrative amendment--by written request of permittee or MN PCA. Must be acted upon within 60 days. Minn. R. 7007.1400.

D. Minor Amendment--Minn. R. 7007.1450--Allowed 7 days after the application is received by MN air quality division for an increase in emissions no greater than:

- 9.13 pounds per hour for NOx, SO₂, VOCs
- 3.42 pounds per hour for PM-10
- 22.80 pounds per hour for CO
- .11 pounds per hour for Lead

E. Moderate Amendment--For changes above the minor amendment thresholds, but below major permit amendment requirements. Change may occur after applicant's receipt of MN PCA letter of approval. Minn. R. 7007.1450.

F. Control Equipment Rule -- Emission reduction requirements and compliance demonstration requirements by rule for certain common types of control equipment. Allows modification without full permitting process review. Minn. R. 7011.0060-7011.0080.

G. Major--For federally enforceable changes and other specified changes. Minn. R. 7007.1500.

III. Operating Type Permits

Four Classes of Rule Based Registration Permits--For specified minor sources that have air emissions less than 50% of federal thresholds. Requirements for changes in a Registration Permit specified by rule. Minn. R. 7007.1110-7007.1130.

OHIO AIR PERMITTING

Streamlining Focus

I. De Minimis Air Contaminant Source Exemption -- Any air contaminant source is exempt from air pollution laws and regulations unless the potential emissions exceed ten pounds per day with the exception of certain situations. (ORC 3704.011, OAC 3745-15-05(B)).

II. Permits to Install -- Required for a new source of air pollutants or a modification of an air contaminant source (OAC 3745-31-02).

A. Exemptions to Permits to Install (OAC 3745-31-03)

- 1) Permanent Exemptions --for about 40 specifically listed processes and equipment² that do not trigger NSPS or NESHAPS.
- 2) Federal Based Exemptions that do not trigger NSPS or NESHAPS.
- 3) Discretionary Exemptions.
- 4) Permit-by-Rule Exemptions - by source type.³

B. General Permits to Install--a new category of permit to install for both Title V and non-Title V sources. Based on a model general permit developed by the Ohio EPA for specific categories of air contamination sources (OAC 3745-31-29 adopted 10-17-03).

III. Permits to Operate -- After obtaining a permit to install, and within one year after construction, a facility must obtain a permit to operate to continue operating the air contaminant source.⁴ Permits to operate are required, unless exempted under Permit to Install rules or other exemptions listed (OAC 3745-35-02). Categories include:

A. Exemptions for five specified sources (OAC 3745-35-05)

B. Registration Status--After applying for a permit to operate the EPA may grant registration status for certain minor sources to operate without a permit to operate or a variance.

C. General Permits to Operate -- a new category of permit to operate for non Title V sources. Based on a model general permit developed by the Ohio EPA for specific categories of minor air contamination sources (OAC 3745-35-08 adopted 10-17-03.)

² Ohio has recently proposed adoption of a permanent Emissions Threshold Exemption, designed to exempt small, insignificant air pollution sources from the need to obtain a permit to install, if the sources meet certain qualifying criteria. For such exemption, each air contaminant source as part of an air contaminant source project must have an uncontrolled annual potential to emit or actual annual emissions of less than certain thresholds (typically 10 tons per year).

³ Ohio is currently in the process of adopting additional exemptions under this provision of the rule for specific types of low-emitting air pollution sources or facilities.

⁴ Ohio is currently undertaking a process and rule change to combine the permit to install and permit to operate. Ohio EPA is also seeking a legislative change to extend the renewal period for the new PTIO from 5 to 10 years.

WISCONSIN AIR PERMITTING
Streamlining Focus

I. Construction Permit Exemptions for Categories of Sources

II. De Minimis Minor Source Permitting Exemption -- Qualifying criteria are established by rule in WIS. ADMIN. CODE § NR 406.04 and § NR 407.03. and state: Neither construction nor operating permits are required for sources if the facility, taken as a whole, has maximum theoretical emissions of less than the thresholds stated in the rule and NSPS and NESHAPs do not apply. Those thresholds include:

- A. 9.0 lbs per hour for SO₂ or CO (39.4 tons per year).
- B. 5.7 lab per hour for PM, NO_x or VOC (24.9 tons per year).
- C. 3.4 lbs per hour for PM₁₀ (14.9 tons per year).
- D. 0.13 lab per hour for lead (0.6 tons per year).
- E. Various emission rates listed for specified air contaminants.

III. New Permit Streamlining Required by Law -- Effective January 2004 (2003 Wisconsin Act 118) -- Established new exemptions and new categories of permits including registration permits, general permits and waiver of construction permit requirements. Requires rulemaking, which is underway, to implement the changes. (WIS. STAT. § 285.60 (2004))

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