

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2005

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

ORDER OF THE BOARD (by N.J. Melas):

This rulemaking proposes revisions to the Board’s regulations for air construction and operating permits. The proposal seeks to add four categories to the existing list of permit exemptions in Section 201.146. According to the proponents, the purpose of the proposal is to eliminate permitting delays for minor projects having little environmental or regulatory impact. This rulemaking is a joint collaboration by the Illinois Environmental Protection Agency (Agency) and the Illinois Environmental Regulatory Group (IERG). The Board describes each of the proposed exemptions in more detail below. Today the Board accepts the proposal for hearing.

On February 22, 2005, the parties filed this proposal for rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 102.202(b).¹ The Board finds that the Agency’s rulemaking satisfies the content requirements of Section 102.202 of the Board’s procedural rules. 35 Ill. Adm. Code 102.202.

In this opinion, the Board discusses the proposed amendments, accepts the rulemaking for hearing, and provides information on the hearing dates and public comment period for this proceeding.

PROPOSED NEW PERMIT EXEMPTION CATEGORIES

According to the proponents, the following proposed exemptions to Section 201.146 of the Board’s regulations do not threaten the public health or welfare. Statement at 3. Under the following proposed exemptions, claim the proponents, the owner or operator assumes the responsibility and risk for inaccurate determinations regarding qualifications.

Replacement or Addition of Control Equipment at Existing Emission Units

The proponents state that under the first exemption, proposed subsection (hhh), owners or operators replacing or adding air pollution control equipment at existing units would be exempt from obtaining a state construction or operating permit if certain criteria are met. First, the exemption would only apply to existing units, and the existing unit must be permitted and have operated in compliance for the past year. Statement at 3.

¹ The proponents’ statement of reasons will be cited to as “Statement at _.”

The new pollution control equipment must maintain or improve air pollution control over the prior levels of target pollutants, and not result in a net increase in emissions of any collateral pollutant. Statement at 4. This exemption would not apply if the installation or operation of the new or replacement pollution controls would trigger or change applicability of different regulatory requirements. Finally, required monitoring equipment must be carried over to the replacement control device and must incorporate current technology. *Id.*

**“De Minimis” Exemption for New Units or Modifications to Existing Units
at FESOP Sources**

According to the proponents, some Illinois sources have federally enforceable state operating permits (FESOP) limiting their potential to emit. Statement at 5. The proponents claim that there can be some projects at FESOP sources that do not fit under any of the existing listed exemptions under Section 201.146 and that are still insignificant from a permitting standpoint. Under this second exemption, proposed subsection (iii), the Agency and IERG propose a “de minimis” permitting exemption for projects at truly minor FESOP sources that meet certain criteria.

The proponents state that this exemption is limited to sources with a low potential to emit any regulated air pollutant absent air pollution equipment from the new or modified unit. Statement at 5. Also, the proposal requires that raw materials and fuels that cause or contribute to emissions must not contain a hazardous air pollutant equal to or greater than 0.01 percent by weight. Statement at 6. The proponents state this exemption is limited by the applicability of New Source Performance Standards and New Source Review, both permitting requirements under the Clean Air Act. Statement at 7. Further, the exemption would not apply if outstanding compliance or enforcement issues exist.

Exemption for New Units or Modifications to Existing Units at Minor Sources

The Agency and IERG state this exemption, proposed subsection (jjj), would only apply to permitted sources that are not major sources and do not have FESOPs. Statement at 8. The proponents state that this exemption, like in subsection (iii), would be limited to sources with the same low potential to emit any regulated air pollutant absent air pollution equipment from the new or modified unit. The proponents state the exemption would also be available for minor sources that have a slightly greater potential to emit, so long as the facility notifies the Agency of its intent to construct or install a new emissions unit or modification. Only after notification can the facility begin construction, installation, or modification. Statement at 9.

The proponents state this exemption is also limited by the applicability of New Source Performance Standards and New Source Review, both permitting requirements under the Clean Air Act. This provision, state the Agency and IERG, would require permitting if the additional emissions from the project could change the sources’s status with respect to its potential to emit. Further, the exemption would not apply if outstanding compliance or enforcement issues exist.

Statement at 10.

Insignificant Activities Exemptions

According to the proponents, the proposed subsection (kkk) creates a list of insignificant activities similar to the list of insignificant activities at CAAPP sources exempt from requiring a CAAPP permit modification found at Section 201.210. Like in Section 201.210 and 201.211, owners or operators must notify the Agency when it adds insignificant activities. For example, the proponents state that under the proposed revisions, the insignificant activities exemptions for state permit modifications would match those existing exemptions from CAAPP permit modifications. Statement at 11. Notwithstanding this exemption, facilities must comply with otherwise applicable emission standards or other regulatory requirements.

PUBLIC HEARING AND PUBLIC COMMENTS

The Board has scheduled two public hearings in this rulemaking. Hearing information follows:

First Hearing:

10:00 a.m., Tuesday, April 12, 2005
 James R. Thompson Center
 Illinois Pollution Control Board Hearing Room 11-512
 100 West Randolph Street
 Chicago, IL 60601

Second Hearing:

10:00 a.m., Tuesday, June 14, 2005
 Illinois Pollution Control Board Hearing Room
 1021 North Grand Avenue East, North Entrance
 Springfield, Illinois 62794

Both hearings will be conducted to allow the proponent and all other interested parties the opportunity to present testimony on the merits and economic impact of the rulemaking proposal. Anyone who plans to testify must prefile their testimony. Please note that all filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with Ms. Sandy Wiley at (312) 814-3623 or wileys@ipcb.state.il.us, the hearing officer, or the Clerk's Office for the most recent version of the Service List. The hearing officer assigned to this rulemaking is Amy Antonioli (312-814-3665, antonioa@ipcb.state.il.us). All testimony for the first hearing must be submitted no later than Friday, April 1, 2005. The prefiling deadline for the second hearing will be established at the first hearing.

The Board invites public comment on the proposed amendments. The proposal (R05-19), including the statement of reasons and proposed amendatory language, may be obtained on the Board's website through the Clerk's Office On-Line (COOL) at www.ipcb.state.il.us. The Board will receive public comments until at least 45 days after a notice of these proposed amendments appears in the *Illinois Register*. Anyone may file a public comment with the Board at:

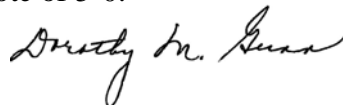
Office of the Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

This rulemaking's docket number (R05-19) should be indicated on the public comment. As part of the Board's voluntary electronic filing pilot project, public comments in this rulemaking may also be filed through COOL at www.ipcb.state.il.us. Questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

As mentioned above, all filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Again, please check with Ms. Wiley, the hearing officer, or the Clerk's Office for the most recent version of the Service List.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 17, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board