

ILLINOIS POLLUTION CONTROL BOARD  
May 6, 2010

IN THE MATTER OF: )  
)  
10-YEAR FEDERALLY ENFORCEABLE ) R10-21  
STATE OPERATING PERMITS (FESOP): ) (Rulemaking -Air)  
AMENDMENTS TO 35 ILL. ADM. CODE )  
201.162 )

ORDER OF THE BOARD (by C.K. Zalewski):

On April 20, 2010, the Illinois Environmental Protection Agency (Agency or IEPA) filed a proposal for amendments to the Board’s air rules pursuant to the general rulemakings provisions of Section 27 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/27 (2008) and the Boards procedural rules at 35 Ill. Adm. Code 102.

In the Statement of Reasons (SR) accompanying the proposal, the Agency stated that this proposal would extend from five years to ten years the maximum term that the Agency could issue a Federally Enforceable State Operating Permit (FESOP). SR at 1-2. The sole provision of the air rules to be amended is Section 201.162, codified at 35 Ill. Adm. Code 201.162.

For the reasons stated below, the Board accepts the proposal for hearing.

**THE PROPOSAL**

By way of background, the Agency explains that on December 17, 1992, the United States Environmental Protection Agency (USEPA) approved the provisions of the Illinois (FESOP) program as part of the State Implementation Plan (SIP) for meeting the goals of the Federal Clean Air Act (CAA). USEPA found that Illinois’ FESOP program met all five criteria for approving a state operating permit program as part of a SIP. Among other things, these criteria require that

terms of the (FESOP) permit and its renewal must be legally enforceable; the terms and conditions of the permit must be at least as stringent as any other applicable limitation or requirement contained in the SIP or enforceable by the SIP or waive any requirements that are federally enforceable (*e.g.*, standards established under section 111 or 112 of the Clean Air Act); the limitations, controls and requirements in the permit must be permanent, quantifiable and otherwise enforceable as a practical matter; and the permits must be issued pursuant to public participation. *Id.*

USEPA restated its approval . . . when it approved the Clean Air Act Permit Program (“CAAPP”) pursuant to Section 39.5 of the Act. Subsection 3.3(c) of Section 39.5 of the Act, gives the Illinois EPA the authority to issue FESOPs for

the purposes of limiting a sources potential to emit pursuant to the Illinois EPA's general authority to issue state permits under Section 39(a) of the Act. SR at 1-2.

Board rules for issuance of state air pollution control permits are codified at 35 Ill. Adm. Code 201. Section 201.162 specifies the duration that permits can be issued as either subject to Section 201.169 (perpetual permits) or five years. This proposal seeks to extend the term of State operating permits from five to ten years. This proposal does not change the term of perpetual permits issued pursuant to Section 201.169 or CAAPP permits issued pursuant to Section 39.5 of the Act. SR at 2.

The Agency relates that two other states have adopted or are in the process of adopting rules extending the term of FESOPs from five to 10 years; final USEPA approval for Indiana's rule was published at 74 *Fed.Reg.* 51240 (Oct. 6, 2009). S. R. at 3, and Att. A.

The Agency explains that FESOP sources are located throughout the state, and that the proposed rules will affect approximately 800 sources that that have applied for or obtained FESOPs. SR at 4 and Att. B. The Agency explains that IEPA has averaged 61 new FESOP applications each year since the year 2000 and 66 FESOP renewal applications each year over the last ten years. If the proposal is adopted,

when these applications come in and are reviewed, at the discretion of the Illinois EPA, the permits will be granted for a term of 10 years. The Illinois EPA may choose to issue a FESOP for a term shorter than ten years. FESOPs that are issued for a term shorter than ten years include situations in which the source may have been out of compliance with the applicable requirements prior to issuance of the FESOP and need to perform additional performance testing to demonstrate or confirm compliance with the applicable requirements. SR at 3.

The Agency explains that the amendments are "expected to reduce administrative costs of the permitting process for both the affected sources and the Illinois EPA." SR. at 5. The Agency states that its outreach to affected sources included e-mail in January 2010, as well as a notice on its website. The Agency states that in response, it received three oral comments. Two of these supported the proposal, while one expressed a concern.

### **CONCLUSION**

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.202. The Board accepts the petition for hearing. In the interests of administrative economy, the Board encourages its hearing officer to make every effort to coordinate hearings in this matter with hearings in other dockets. But, in so saying, the Board does not intend that this proceeding be unduly delayed awaiting pending activity in other dockets.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 6, 2010 by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board