

My name is Bob Bernoteit. I have been manager of the manager of the Federally Enforceable State Operating Permit Unit in the Division of Air Pollution Control Permit Section since February, 2004.

PROPOSAL DEVELOPMENT

On December 17, 1992, the United States Environmental Protection Agency (“USEPA”) approved the provisions of the Illinois EPA’s Federally Enforceable State Operating Permit (“FESOP”) program. USEPA stated that Illinois EPA’s FESOP program met all five criteria for approving a state operating permit program as part of a State Implementation Plan (“SIP”). Specifically, the Illinois EPA must submit its permit program to USEPA for approval; terms of the 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 (“CAA”)); 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.

USEPA restated its approval of the Illinois EPA’s FESOP program 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.

The Board adopted regulations for implementation of issuing state air pollution control permits in 35 Ill. Adm. Code 201. Section 201.162 specifies the duration that permits can be issued as either subject to Section 201.169 (lifetime 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.

PROPOSAL

This proposal extends the maximum term that a FESOP may be issued from five to ten years. Currently, State operating permits, except for lifetime permits, may only be issued for five years or less. Under the proposal, the term that a FESOP could be issued would be extended from five to ten years at the discretion of the Illinois EPA. The Illinois EPA retains the discretion that it currently has under Section 201.162 to issue permits for a term that is shorter than the maximum. The term for CAAPP permits issued pursuant to Section 39.5 of the Act, except for sources exempted from CAAPP pursuant to subsection 1.1 of Section 39.5 of the Act, would remain five years as required by statute. 415 ILCS 5/39.5(1.1). Owners or operators of sources not subject to CAAPP or requiring a FESOP would remain subject to the requirements of Section 201.169, which grants permits indefinitely. That Section requires that State permits only be renewed at the request of the Illinois EPA or if the circumstances underlying the permit change.

Two other states have adopted or are in the process of adopting rules extending the term of FESOPs from five to 10 years. The State of Indiana received final approval of their rule on October 6, 2009. 74 Fed.Reg. 51240.

IMPLEMENTATION

The Illinois EPA has averaged 61 new FESOP applications each year since the year 2000 and 66 FESOP renewal applications each year over the last ten years. 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.

It is important to note that granting FESOPs for a longer term will not affect the implementation of air pollution control programs or enforcement of air quality standards in the State of Illinois. Sources must comply with all applicable requirements of the Board's rules or the Act, regardless of the length of a FESOP's term or the timing of its issuance. FESOPs generally contain limits on the operations of the source, (e.g., materials used and hours or operation), which effectively restrict the source's potential to emit. The Illinois EPA's program requires the permits to undergo public notice and be subject to public comments. A FESOP does not impact any previously or newly applicable substantive requirements of the Act, the Board's rules or the Clean Air Act ("CAA"), such as a new maximum achievable control technology standard under Section 112 of the CAA. Such requirements remain independently enforceable. Similarly, owners and operators of FESOP sources will still need to meet all applicable requirements under the Act, including those related to new construction. Therefore, an extension of the term for an initial or a renewal of a FESOP from five to ten years does not delay an owner or operator's obligation to comply with all applicable requirements.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

The entire State of Illinois will be affected, as no single region contains all FESOP sources. The proposed regulations will affect all of the approximately 800 sources in Illinois that have either applied for or have obtained a FESOP.

The purpose of this proposal is to extend the maximum term that a FESOP may be issued from five to ten years. Currently, State operating permits, except for lifetime permits, may only be issued for five years or less. Under the proposal, the permit term would be extended up to ten

Electronic Filing - Received, Clerk's Office, June 29, 2010

years at the discretion of the Illinois EPA. The term for CAAPP permits issued pursuant to Section 39.5 of the Act, except for sources exempted from CAAPP pursuant to subsection 1.1 of Section 39.5 of the Act would remain 5 years as required by statute. 415 ILCS 5/39.5(1.1).

This proposal will have a positive economic impact on affected sources by reducing time spent on permit renewal applications. This proposal will also reduce the costs to the Illinois EPA associated with the time and effort required for processing these permit renewal applications. While sources with FESOP permits represent only a small amount of emissions in Illinois, they require a large proportion of the Illinois EPA's permitting resources. The reduced frequency of these renewals will provide a significant time savings for the Illinois EPA. Within five years of adoption of this proposal, it would be anticipated that the workload of FESOP renewals would decrease by approximately ten percent.

As discussed above, the proposal imposes no new regulatory requirements on affected sources. The amendments to Section 201.162 merely extend the duration of FESOPs. The amendments are expected to reduce administrative costs of the permitting process for both the affected sources and the Illinois EPA. As this proposal imposes no new requirements or costs on affected sources, the proposal is both technically and economically feasible.

