

## Alerts

### More Than 3,000 Illinois Small Sources Get Air Permit Break From the State

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*Hinshaw Alert*

In a rulemaking finalized in December 2011, and expected to be officially effective in early 2012, the Illinois Pollution Control Board (IPCB) has implemented an [air-pollution-enforcement-reform law](#) that was adopted by the Illinois General Assembly in mid-2011. The new rules will require that a substantial number of small sources of air emissions register annually with the Illinois Environmental Protection Agency (IEPA) and pay a fee, rather than continue to be governed by construction and operating permit rules. These small sources will need to keep track of their emissions, and there will be an annual certification requirement that the source is operating below the small source limits. The IEPA estimates that approximately 3,250 sources will be eligible for the program. Registration will be required in mid-2012.

#### Eligibility Criteria

Eligible sources are those sources meeting small source emission limits and that heretofore were required to have an Illinois construction and operating permit from the IEPA, but which are exempt from the definition of “major source” so as to need a Clean Air Act operating permit on account of either conventional or hazardous emissions, or a federally enforceable state operating permit (FESOP), and which have not otherwise been required to have a permit by the U.S. Environmental Protection Agency (USEPA). The small source emission limits that qualify a source for registration are as follows:

- the source emits less than an actual five tons per year of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions;
- the source emits less than an actual .5 tons per year of combined hazardous air pollutant emissions;
- the source emits less than an actual .05 tons per year of lead air emissions;
- the source emits less than an actual .05 tons per year of mercury air emissions; and
- the source does not have an emission unit subject to a standard pursuant to 40 CFR Part 61 Maximum Achievable Control Technology, or 40 CFR Part 63 National Emissions Standards for Hazardous Air Pollutants other than those regulations that the USEPA has categorized as “area source.”

#### Service Areas

Environmental



## Registration Details and Fees

The annual fee will be \$235, and the annual certification will continue to carry serious penalties for failure to file or for filing incorrect information.

The status of being a small source that must register does not appear to be optional, inasmuch as the law establishing the registration program requires registration, and the IPCB specifically changed the originally permissive language of the proposed rules to state that the eligible sources “shall annually register with the [IEPA] instead of complying with the requirement to obtain an air pollution construction or operating permit under the Act or complying with a permit issued under Section 201.169.” This means that sources that presently have regular Illinois operation permits or lifetime operation permits will need to examine their emissions to determine if they must register. Typically, the IEPA says that such sources include grain-handling operations, concrete plants, mines, bulk terminals and dry cleaners. However, it is probable that some other small manufacturing or commercial sources would qualify for the Registration of Smaller Sources (ROSS) program under the proposed eligibility criteria.

The new section indicates that it applies to sources whose owner or operator would have to otherwise obtain an Illinois air-emission-related construction or operation permit. Thus, it appears that the list of sources exempt from air permitting in Illinois would not have their status change on account of this rule, because they were expressly exempt at the time of passage of the new Section 9.14 of the Illinois Environmental Protection Act that includes the registration rule.

Sources concerned about the need to register or seeking to determine if they are eligible should consult with air law counsel on their eligibility. Initial registrations will be required any time after the rules are published in the Illinois Register as final (likely by February 2012) and until July 1, 2012. Given possible repercussions for false registrations, it is prudent that a registering source also have technically qualified in-house personnel or a qualified consultant or engineer determine if they are within the emission limits for a 12-month period. The rules prescribe that emissions calculations must be made and retained to show compliance status.

The ROSS rules are not as clear or uncomplicated as the general assembly, the IPCB or the IEPA likely would have hoped. For example, a possible complication for ROSS sources is that a source may be “in one year and out the next.” In other words, if emissions might or do vary above and below the eligibility thresholds from year to year, a source will need to track its emissions and register in some years but not in others. The IPCB rules anticipate that very possibility and provide a method for switching back and forth. Most sources affected will have state permits that were issued as long-term or lifetime permits, as described by 35 Ill. Admin. Code § 201.169. They will have to document compliance with that state permit in years when they do not qualify as “eligible sources” for the registration rule. Sources that operate at or around the annual limitation level might practically prefer to remain “permitted” rather than “registered” sources; however, it does not seem that the rules allow that. Additional questions may arise because the IPCB has not clarified the somewhat ambiguous and lengthy Clean Air Act-derived definition of “source” for the special purposes of this registration rule. Thus a company with emissions from equipment that is in different major industrial categories at a given location or contiguous locations might conceivably claim to be a small source for one category but a standard or major source for another.

For further information, please contact [Harvey M. Sheldon](#) or your regular [Hinshaw attorney](#).

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