BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

THE CITY OF SPRINGFIELD,	)	
a municipal corporation,	)	
Petitioner,	)	
	)	**PCB** 06-75
v.	)	**(Permit Appeal – Air)**
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING

To: Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

Robert P. Messina
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Please take notice that on November 3, 2005, we filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and 5 copies of the following: **PETITION FOR HEARING TO REVIEW CLEAN AIR ACT PERMIT PROGRAM PERMIT ISSUANCE AND MOTION FOR LEAVE TO WAIVE REQUIREMENT TO SUBMIT AN ORIGINAL AND NINE COPIES,** copies of which are served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By ______________________
One of its Attorneys

Dated: November 3, 2005

Cynthia A. Faur
Mary A. Gade
Elizabeth A. Leifel
Sonnenschein Nath & Rosenthal LLP
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THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

THE CITY OF SPRINGFIELD, **a municipal corporation,** **Petitioner,** **v.** **ILLINOIS ENVIRONMENTAL** **PROTECTION AGENCY,** **Respondent.**	)))))))))))	**PCB** 06-18 **(Permit Appeal – Air)**

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STATE OF ILLINOIS
Pollution Control Board

MOTION FOR LEAVE TO WAIVE
REQUIREMENT TO SUBMIT AN ORIGINAL AND NINE COPIES

The City of Springfield owns and operates an electric generation and transmission company commonly known as City Water, Light & Power ("CWLP"). The City of Springfield, hereinafter referred to as CWLP, by its attorneys, Cynthia A. Faur, Mary A. Gade, Elizabeth A. Leifel, and Sonnenschein Nath & Rosenthal LLP, hereby requests leave of the Illinois Pollution Control Board (the "Board") to waive the requirement to submit an original and nine copies of its Petition for Hearing to Review Clean Air Act Permit Program Permit Issuance ("Petition") and supporting documents.

In support of this motion, CWLP states as follows:

1. In accordance with 35 Ill. Admin. Code § 101.320(h), all documents filed with the Board must be filed with a signed original and nine duplicate copies (10 total). To this instance, CWLP's Petition and supporting Exhibits are voluminous. Submitting 10 copies of the Petition and its Exhibits would unduly burden the Board's files and use an extraordinary amount of paper.

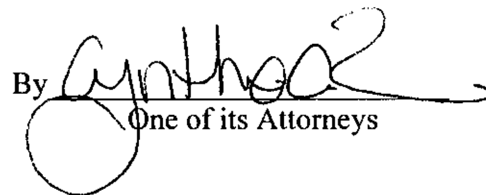
2. Moreover, ten copies of the Petition and supporting documents may be unnecessary, and accordingly, would only place an undue administrative burden on the Board.

3. Therefore, CWLP requests that the Board accept one original and five copies each of the Petition and Exhibits.

WHEREFORE, CWLP respectfully requests the Board to waive the requirement to submit an original and nine copies of the Petition and Exhibits and allow CWLP to file an original and five copies of these documents.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: November 3, 2005

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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

THE CITY OF SPRINGFIELD, **a municipal corporation**	)))	
Petitioner,	))	**PCB __________**
v.	))	**(Permit Appeal – Air)**
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)))	
Respondent.	)	

PETITION FOR HEARING TO REVIEW CLEAN AIR ACT PERMIT PROGRAM PERMIT ISSUANCE

The City of Springfield owns and operates an electric generation and transmission utility commonly known as City Water, Light & Power ("CWLP"). The City of Springfield, hereinafter referred to as CWLP, by its attorneys, Cynthia A. Faur, Mary A. Gade, Elizabeth A. Leifel, and Sonnenschein Nath & Rosenthal LLP, hereby petitions the Illinois Pollution Control Board (the "Board") for hearing to review certain provisions of the Clean Air Act Permit Program ("CAAPP" or "Title V") permit issued by the Illinois Environmental Protection Agency (the "Agency") on September 29, 2005 (the "Permit").[1] This Permit is being appealed pursuant to § 40.2 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40.2, and 35 Ill. Admin. Code § 105.102. In addition to filing this Petition, CWLP has filed today a Motion for Stay of its CAAPP Permit. In the alternative, CWLP requests that the Board stay the conditions

[1] A copy of the Permit is attached as Exhibit A.

of its Permit that are being contested in this Petition. In support of its Petition, CWLP states as follows:

BACKGROUND

1. CWLP operates the Dallman and Lakeside Generating Stations, as well as a water purification plant, at 3100 Stevenson Drive, Springfield, Illinois. At this facility, CWLP generates electricity and potable water for the residents and businesses located in and around Springfield, Illinois. CWLP serves approximately 68,000 electric retail customers. It also provides full requirements wholesale electric service to the Villages of Chatham and Riverton for distribution by their own electric distribution systems.

2. CWLP employs approximately 186 persons at the Dallman and Lakeside Stations and an additional 19 persons at the water purifications plant. The three facilities are staffed 24 hours per day, seven days per week.

3. The Dallman Station is comprised of three coal-fired units (Units 31, 32, and 33) and has a total electric generating capacity of 352 MW. Each unit consists of a cyclone boiler, except for Dallman Unit 33, which is tangentially-fired. All the boilers provide steam to a separate turbine generator. These units were placed into service in 1968, 1972, and 1978, respectively.

4. The Lakeside Station has two generating units which are also cyclone coal-fired units (Units 7 and 8) with a total electric generating capacity of 76 MW. These units were placed into service in 1959 and 1964, respectively.

5. CWLP burns coal obtained from the Viper Coal Company in Elkhart, Illinois. CWLP's contract with Viper Coal began in 1980, and the first coal shipment to CWLP was made in late 1981. The Dallman and Lakeside Stations currently consume approximately 1,136,000 tons of Illinois coal per year.

6. All units at both generating stations are equipped with electrostatic precipitators (ESPs) for particulate removal. Units 31-33 at the Dallman Station are equipped with flue gas desulfurization systems (also referred to as "wet scrubbers" or "FGDs"). The wet scrubbers produce a byproduct of commercial-grade synthetic gypsum. These three units are also equipped with selective catalytic reduction systems ("SCR") for control of nitrogen oxide ("NOx") emissions during the ozone season.

7. On September 7, 1995, CWLP submitted to the Agency its application for an initial Title V permit in accordance with 415 ILCS 5/39.5 and 35 Ill. Admin. Code Part 270.

8. On June 9, 2003, the Agency provided CWLP with a draft CAAPP permit for the Dallman and Lakeside Stations. This draft CAAPP permit was published for public comment on June 28, 2003. On September 29, 2003, CWLP provided the Agency with its comments on the draft permit of June 9, 2003.[2] No public hearing was held to discuss CWLP's draft permit.

[2] A copy of CWLP's comments on the June 9, 2003 draft permit are attached as Exhibit B.

9. The Agency issued the first proposed permit for CWLP on October 6, 2003. This proposed permit was reviewed by the United States Environmental Protection Agency ("U.S. EPA"). U.S. EPA did not object to the proposed permit.

10. Although U.S. EPA did not object to CWLP's proposed permit, due to proceedings held in connection with another power company's CAAPP permit, the Agency further revised CWLP's permit. On December 18, 2004, the Agency provided CWLP and interested members of the public with a further revised draft permit. CWLP provided comments on this version of its draft permit on January 17, 2005.[3]

11. The draft permit was revised by the Agency in July 2005. Once again, CWLP and interested members of the public were provided an opportunity to review and comment on the draft document. CWLP submitted comments on the July 2005 version of the draft permit on August 1, 2005.[4]

12. The Agency then further revised the July 2005 draft and submitted the new draft permit, which became essentially, the second "proposed" permit, to U.S. EPA in August 2005 for U.S. EPA's 45-day review. The Agency did not solicit comments from CWLP and interested members of the public on this second "proposed" permit.

13. On September 29, 2005, the Agency issued the final Permit to CWLP's Dallman and Lakeside Stations, as well as a Responsiveness Summary addressing all

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[3] A copy of these comments is attached as Exhibit C.
[4] A copy of these comments is attached as Exhibit D.

coal-fired power plants in the state for which CAAPP permits were issued.[5] The final Permit integrated some of the comments CWLP provided to the Agency throughout the permit process. Several of CWLP's comments, however, were not integrated into the Permit. Several permit conditions in the issued Permit are inconsistent with applicable state law and regulations, and CWLP is appealing those conditions for the reasons outlined below.

14. This Permit is timely appealed within 35 days of permit issuance. *See* 415 ILCS 5/40.2; 35 Ill. Admin. Code § 105.102. CWLP requests that the Board review the Permit, remand it to the Agency, and order the Agency to correct and reissue the Permit without further public proceedings, as appropriate.

INADEQUACY OF THE STATEMENT OF BASIS

15. Under Illinois law, the Agency is required to prepare "a statement that sets forth the factual and legal basis for the draft CAAPP permit conditions, including references to applicable statutory and regulatory provisions." 415 ILCS 5/39.5(8)(b). In its Responsiveness Summary, the Agency claims that "each CAAPP permit, together with the initial project summary, adequately describe the coal fired power plant and address operational flexibility, the permit shield, applicable and non-applicable provisions, monitoring and Title I requirements." *See* Responsiveness Summary at p. 14. Additionally, the Agency claims that the Responsiveness Summary supports the terms and conditions of the Permit. *Id.*

[5] A separate Responsiveness Summary was not prepared for CWLP's Permit, despite the fact that CWLP differs from other power plants in the State due to its size, location and other factors. A copy of the Responsiveness Summary is attached as Exhibit E.

16. CWLP does not believe that the Statement of Basis provided with its Permit sufficiently sets forth the basis for the conditions in the Permit. As evidenced by this Petition, CWLP does not understand the Agency's basis for the inclusion of numerous permit conditions. CWLP consistently commented on many of these provisions throughout the draft permit process. To the extent that the Agency had provided a sufficient statement of basis for the permit as required by § 39.5(8)(b) of the Act, CWLP may have been able to better understand the permit conditions prior to issuance of a final permit. CWLP also notes that the Responsiveness Summary cannot be considered part of the Statement of Basis as it was not provided as part of the permit package initially sent for public comment. While CWLP does not believe that the failure of the Agency to prepare an adequate Statement of Basis has resulted in an invalid permit, it does believe that some of the confusion concerning the conditions in the issued permit could have been avoided if the Agency had provided an adequate Statement of Basis.[6]

AGENCY'S UNLAWFUL "GAP-FILLING" PRACTICES

17. Before addressing the conditions that it contests in detail, CWLP believes that a general discussion is needed of the Agency's unlawful practice of including as permit conditions certain monitoring, testing, recordkeeping and reporting requirements that are not otherwise required under applicable law or regulation or necessary to ensure compliance with applicable requirements.

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[6] Similarly, CWLP believes that some confusion regarding the final permit conditions could have been avoided if a Responsiveness Summary had been prepared for its individual permit.

18. CAAPP permits must contain emission limitations and standards and other enforceable terms and conditions that are required to accomplish the purposes and provisions of the Act and to assure compliance with all applicable requirements. 415 ILCS 5/39.5(a). Section 39.5(7)(b) of the Act provides that the Agency "shall include among such conditions applicable monitoring, reporting, record keeping and compliance certification requirements as authorized by paragraphs d, e, and f of this subsection that the Agency deems necessary to assure compliance with the Clean Air Act, the regulations promulgated thereunder, this Act and applicable Board regulations." 415 ILCS 5/39.5(7)(b).

19. Subsections (d), (e), and (f) of § 39.5(7) contain specific requirements for monitoring, recordkeeping and reporting terms, respectively. With regard to monitoring and testing, § 39.5(7)(d) of the Act states that the permit shall:

> i) Incorporate and identify all applicable emissions monitoring and analysis procedures or test methods required under the Clean Air Act, regulations promulgated thereunder, this Act, and applicable Board regulations, including any procedures and methods promulgated by U.S. EPA pursuant to Section 504(b) or Section 114 (a)(3) of the Clean Air Act.
>
> ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), require periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this subsection. The Agency may determine that recordkeeping requirements are sufficient to meet the requirements of this subparagraph.
>
> iii) As necessary, specify requirements concerning the use, maintenance, and when appropriate, installation of monitoring equipment or methods.

415 ILCS 5/39.5(7)(d).

20. The recordkeeping provisions of § 39.5(7)(e) generally provide that the permit shall incorporate and identify all applicable recordkeeping requirements and require records of monitoring information. *See* 415 ILCS 5/39.5(7)(e). The reporting requirements similarly provide that the permit shall incorporate and identify all applicable reporting requirements and require the submittal of reports for any required monitoring at least every 6 months and prompt reports of deviations. *See* 415 ILCS 5/39.5(7)(f).

21. As discussed in detail in this Petition, the Agency has overstepped the bounds of its statutory authority throughout CWLP's Permit by imposing unlawful monitoring, testing, recordkeeping and reporting conditions. The purpose of the CAAPP permit is to identify all applicable requirements and to include any periodic monitoring, which includes the periodic testing, recordkeeping and/or reporting requirements, necessary to ensure compliance with applicable requirements. Where an applicable state or federal requirement does not include a specific monitoring method, or frequency for conducting specified monitoring, like a periodic stack testing requirement, the Agency is authorized, pursuant to §§ 39.5(7)(b) and (d) to include "periodic monitoring" as necessary to determine compliance with the permit terms. *See* 415 ILCS 5/39.5(7)(d). This requirement, which mirrors the federal periodic monitoring rule found at 40 C.F.R. § 70.6(a)(iii)(B), is referred to as "gap-filling."

22. While §§ 39.5(7)(b) and (d) of the Act allow the Agency to fill certain gaps in the regulations by proposing additional monitoring requirements, the scope of the Agency's authority under the Illinois CAAPP program and the federal Title V program is not without bounds. The bounds of this authority was discussed in the federal court case,

Appalachian Power Co. v. Envtl. Prot. Agency, 208 F.3d 1015 (D.C. Cir. 2000).[7] The court in *Appalachian Power Co.* found that state permitting authorities, including the Agency, may not require in Title V permits that sources conduct more frequent monitoring of emissions than is provided in the applicable state or federal standard, unless the standard requires no periodic testing at all, specifies no testing frequency, or requires only a one-time test. *Id.* at 1028. The court further noted that nothing in EPA's regulatory history for the periodic monitoring rule provided "State authorities a roving commission to pore over existing State and Federal standards, to decide which are deficient and to use the permit system to amend, supplement, alter or expand the extent and frequency of testing already provided." *Id.* at 1026.

23. Throughout CWLP's Permit, the Agency has inserted "monitoring" requirements that are not required by applicable regulations. Some of these requirements, like periodic stack testing for PM, CO, SO2 and NOx are lawful exercises of its gap-filling authority. The Agency, however, has included additional "monitoring" or compliance requirements that are not required by applicable regulations and are not necessary to ensure compliance with applicable requirements because other lawful permit terms already fulfill that function. Examples of where the Agency has exceeded its gap-filling authority include the use of opacity readings as a surrogate for PM compliance, and the requirement to conduct "combustion evaluations" for CO compliance.[8] *See*

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[7] *Appalachian Power Co.* concerns the scope of the periodic monitoring requirements of the federal Title V regulations found at 40 C.F.R. § 70.6(a)(iii)(B), but since the basis for the monitoring provisions contained in 415 ILCS 5/39.5(7)(d) was 40 C.F.R. § 70.6(a)(iii)(B), the case is relevant to this matter. A copy of this case is attached as Exhibit F.

[8] These examples are discussed in detail in this Petition. *See* Paragraphs 70-75 (discussing Conditions 7.1.6 and 7.2.6) and 86-93 (discussing Conditions 7.1.9(c)(ii) and 7.2.9(c)(ii)), *infra*.

Conditions 7.1.9(c)(ii), 7.2.9(c)(ii), 7.1.6, and 7.2.6. CWLP does not understand the basis for these conditions. Based on the evidence discussed in this Petition, CWLP can only assume that the Agency has deemed the Board's rules deficient in these instances and has unilaterally expanded and supplemented them in CWLP's Permit without proposing to the Board revisions to existing rules. Such actions are beyond the Agency's authority. *See* 5 ILCS 100/5-40 (setting forth the proper procedures for amending a regulation).

24. In addition to imposing "monitoring" requirements in excess of its authority under the Act, the Agency has also included certain recordkeeping and reporting requirements related to these monitoring requirements that are similarly unlawful. These requirements are discussed in detail in this Petition.

25. Given the number of instances in CWLP's Permit where the Agency has exceeded its lawful gap-filling authority, CWLP requests that the Board incorporate CWLP's objection to the Agency's use of its gap-filling authority as set forth above into those sections of the Petition where CWLP identifies unlawful gap-filling as a basis for contesting a permit condition.

PERMIT CONDITIONS APPEALED

26. As noted above, CWLP operates five boilers at its Dallman and Lakeside Generating Stations. These five boilers have been divided into two separate sections in the CAAPP permit based on the applicability of the New Source Performance Standards ("NSPS") for Steam Electric Generating Units (40 C.F.R. 60.40 *et seq.*). In addition, CWLP has coal handling, coal processing, fly ash handling and limestone and gypsum handling operations. CWLP also has at its generating stations engines used for the start-

up of the boilers and gasoline storage tanks. Many of the conditions appealed in this Petition are common across several different emission units. Where issues under appeal are common to certain units, CWLP has grouped its comments on these conditions. As a general matter, comments are addressed by unit type and permit condition, though some comments are addressed by issue where numerous conditions are involved. In certain instances, CWLP has objected to permit conditions because the conditions refer to or require compliance with other contested conditions. Where this occurs, CWLP has raised its objections to these conditions in its discussion of the conditions to which CWLP principally objects.

27. CWLP notes that it may not have commented specifically on certain contested conditions during the comment periods for the various draft permits. The Act, however, does not require a permittee to have participated in the public comment process in order to appeal. *See* 415 ILCS 5/40.2(a). To the extent allowed by the Agency, CWLP was an active participant in the public comment process. There are, however, conditions in the Permit that, in the context of the overall final permit, CWLP has only recently come to conclude are unacceptable. CWLP, therefore, may not have commented previously on all these conditions. In other instances, contested conditions were included in later drafts of the CAAPP permit upon which CWLP did not have an adequate opportunity to submit comments, or even to review fully. This Petition is the only means available to CWLP to address inappropriate conditions. Accordingly, while CWLP may not have commented previously on all the contested conditions, the issues appealed are appropriately before the Board.

I. EFFECTIVE DATE OF PERMIT

28. As noted in Paragraph 13, the Permit was issued on September 29, 2005. Within the Permit itself, however, no date is specified as the effective date. According to the U.S. EPA's website, the date of issuance, September 29, 2005, is also the effective date.[9]

29. The Agency sent an email to P.J. Becker, of CWLP's Environmental, Health and Safety Office, at 7:18 p.m. on September 29, 2005, which informed CWLP of the issuance of its Permit. *See*, Affidavit of William Murray ("Murray Affidavit"), attached as Exhibit H. Since Mr. Becker was out of the office from September 20, 2005, until October 3, 2005, CWLP did not receive the email until October 3, 2005. *Id.* CWLP believes a mailed copy of the Permit was delivered to the City of Springfield Department of Public Works on Monday, October 3, 2005. *Id.* Based upon these facts, CWLP cannot be deemed to have received notice of the Permit until October 3, 2005, at the earliest.

30. Many permit conditions, including recordkeeping and reporting requirements, are dependent upon the effective date of the Permit. Given the numerous iterations of the Permit over the previous 2 years, CWLP could not be certain what conditions would be included in the final Permit. For example, the August 2005 version of the Permit contained numerous revisions from the draft permit provided by the Agency in July 2005.[10] Given this uncertain atmosphere and the fact that CWLP received a

[9] A print-out from U.S. EPA's website is attached hereto as Exhibit G.
[10] A document setting forth the differences between the July 2005 permit and the August 2005 draft is attached hereto as Exhibit I.

revised draft permit more than a year after U.S. EPA review of CWLP's first proposed permit, CWLP could not have anticipated the type of recordkeeping system necessary to comply with the Permit's conditions until it actually received the final, issued Permit.

31. Once the Permit became effective, CWLP became obligated to comply with its terms. Because CWLP could not have anticipated its obligations under the Permit before it was received, it would be unreasonable for the Board to consider September 29, 2005, the date of issuance, as the effective date. At a minimum, equity requires that CWLP be given a reasonable period of time following the issuance of the Permit to review the permit conditions and implement required operational changes, including changes to recordkeeping systems. CWLP believes that a reasonable time period to implement any such changes would be at least 60 days from the date of issuance.

32. Additionally, CWLP objects to the effective date to the extent that such date has resulted in a violation of CWLP's right to due process. As discussed in further detail below, certain contested conditions of the Permit require CWLP to submit certain records to the Agency within 30 days of the effective date of the Permit. Pursuant to § 40.2(a) of the Act and 35 Ill. Admin. Code § 105.302(e), CWLP has 35 days to appeal the inclusion of certain conditions in its permit. To the extent the Permit requires the submittal of information prior to the appeal deadline, CWLP's right to appeal and request a stay of certain conditions is prejudiced. *See infra* Paragraph 48. For all the above reasons, CWLP requests that the Board find that the date of issuance is not the effective date and remand the Permit to the Agency for revision of the date.

II. SECTION 5: GENERAL PERMIT CONDITIONS

A. Conditions 5.6.1(a), 5.6.1(b), and 5.7.2: Recordkeeping/Reporting of HAP Emissions

33. CWLP is appealing Conditions 5.6.1(a), 5.6.1(b), and 5.7.2, which contain requirements for record retention and submission. Specifically, Condition 5.6.1(a) requires CWLP to maintain "[r]ecords of annual emissions from the emission units that are covered by Section 7 (Unit Specific Conditions) of this permit, including emissions of mercury, hydrogen chloride, and hydrogen fluoride, to prepare its Annual Emissions Report." Condition 5.6.1(b) contains procedures for estimating mercury emissions for annual reporting purposes. Condition 5.7.2 provides that "[t]he annual emissions report required pursuant to Condition 9.7 shall contain emissions information for the previous calendar year including information for emissions of mercury, hydrogen chloride, hydrogen fluoride, and other hazardous air pollutants ("HAPs"), as specified by 35 Ill. Admin. Code Part 254."

34. CWLP objects to these conditions to the extent that they require the inclusion of certain HAPs in the annual emissions reports submitted for the Dallman and Lakeside Stations. Under 35 Ill. Admin. Code § 254.120, annual emissions reports are not required to include HAPs if the source is not subject to a National Emissions Standard for Hazardous Air Pollutants ("NESHAPs") or maximum achievable control technology ("MACT") standards. None of CWLP's units are subject to MACT standards. *See* 69 Fed. Reg. 15,994 (March 29, 2005) (withdrawing U.S. EPA's listing of coal-fired power plants from facilities subject to MACT standards).

35. Additionally, there are no applicable requirements that would allow the Agency to require recordkeeping and reporting of mercury emissions. While U.S. EPA has recently promulgated the Clean Air Mercury Rule ("CAMR"), *see* 70 Fed. Reg. 28,605 (May 18, 2005), Illinois has not yet promulgated any corresponding regulations implementing these requirements.

36. In the Responsiveness Summary accompanying the Permit, the Agency acknowledged that it cannot add substantive requirements through a CAAPP permit or through an oblique reference to the CAMR. *See* Responsiveness Summary at p. 20. Moreover, the Agency's equally oblique citation to §§ 4(b) and 39.5(7)(a), (b), and (e) of the Act does not constitute an adequate statutory or regulatory basis for these conditions. While § 4(b) of the Act allows the Agency the authority to gather data, it does not authorize the Agency to gather the specific type of data on an ongoing annual basis as contemplated under Conditions 5.6.1(a), 5.6.1(b), and 5.7.2. CWLP believes that under § 4(b) of the Act, the Agency is authorized to make a specific request to CWLP to provide it with certain emissions data not otherwise required by applicable regulations, but § 4(b) of the Act does not allow the Agency to request this data to be submitted in perpetuity. Such a provision would essentially change the requirements of a Board rule outside of a proper rulemaking proceeding.

37. Additionally, the Agency's citation to §§ 39.5(7)(a), (b), and (f) does not support the inclusion of the annual reporting requirements for mercury and other HAPs. As stated above, there is no regulatory basis for their inclusion in these conditions. Without a specific regulatory basis, the Agency is only allowed to "gap-fill" to include applicable "monitoring" requirements in a Title V permit. *See* 415 ILCS 5/39.5(7)(a),

(b), (f). The CAAPP reporting provisions of the Act do not authorize the Agency to impose additional reporting that is not necessary to demonstrate compliance with otherwise applicable requirements. *Id.* Specifically, § 39.5(7)(f) provides the following:

> To meet the requirements of this subsection with respect to reporting, the permit shall incorporate and identify all applicable reporting requirements and require the following:
>
> i) Submittal of reports of any required monitoring every 6 months. More frequent submittals may be requested by the Agency *if such submittals are necessary to assure compliance with this Act or regulations promulgated by the Board thereunder.* All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subsection 5 of this Section.
>
> ii) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.

415 ILCS 5/39.5(7)(f) (emphasis added). The above-cited regulation provides no basis for reporting HAP emissions not otherwise subject to reporting requirements where there is no underlying applicable requirement in the law.

38. Moreover, the requirement under the Permit regarding the reporting of HAP emissions is duplicative of CWLP's existing obligations under the Toxic Release Inventory ("TRI") reporting requirements. *See generally*, 40 C.F.R. § 372.1 *et seq.* Any data regarding the emission of HAPs are already provided to the Agency as part of CWLP's annual TRI reports, and since the Agency has access to this information, CWLP should not be required to resubmit it to the Agency in a different format. Accordingly, the inclusion of this annual reporting requirement is not necessary.

39. Under the plain language of Part 254, CWLP is not required to report HAP emissions on its annual emissions reports, and information concerning HAP emissions is not necessary to demonstrate compliance with any other applicable requirement. Accordingly, these conditions are arbitrary, capricious and unduly burdensome, and they exceed the Agency's authority under applicable law and regulations. Any references in these conditions to the maintenance of records concerning HAP emissions for purposes of annual emissions reporting and the reporting of HAP emissions in the annual emissions report should be deleted.

B. Condition 5.6.2(b) Retention and Availability of Records - Retrieval and Printing of Records

40. Condition 5.6.2(b) requires CWLP to "retrieve and print, on paper during normal source office hours, any records retained in an electronic format (e.g. computer) in response to an Illinois EPA or U.S. EPA request for specific records during the course of a source inspection."

41. CWLP objects to this condition as unduly burdensome and unnecessary for the purpose of demonstrating compliance with applicable requirements. CWLP maintains a vast amount of electronic information, including continuous monitoring data from its continuous emission monitors ("CEMs") and continuous opacity monitors ("COMs"). This data will be available for review by the Agency during an inspection; however, the Agency already has access to much of this information through its own, or through U.S. EPA's, databases, and providing such a massive amount of data in hard copy form would be largely duplicative.

42. Moreover, while the Responsiveness Summary indicates that "on-site inspection of records and written or verbal requests for copies of records will *generally* occur at reasonable times and be reasonable in scope in nature," the qualifier, "generally," means that CWLP may receive a request for information with which it cannot comply during the span of an inspector's visit. *See* Responsiveness Summary at p. 18 (emphasis added). This is of particular concern where the records requested are in electronic format, given the vast amounts of data involved. For example, opacity data is collected on a six-minute basis, and every six minutes a new line of data is generated. Records for one COM for one year would include 84,480 lines of data. CWLP does not believe that this amount of data could reasonably be generated in paper form during the course of an inspection.

43. CWLP does not object to providing hard copies of its electronic data, provided that the request for such data is reasonable in scope and gives CWLP adequate time to provide the documents. CWLP would suggest that Condition 5.6.2(b) be revised so that all requests for printed materials would be submitted in writing in accordance with Condition 5.6.2(c). Such a revision would allow CWLP to respond to an information request within 30 days of the request unless it requests additional time.

C. Condition 5.6.2(d): Retention and Availability of Records - Submittal of Information Within 30 Days

44. Condition 5.6.2(d) provides as follows:

> For certain records required to be kept by this permit as specifically identified in the recordkeeping provisions in Section 7 of this permit, which records are a basis for control practices or other recordkeeping required by this permit, the Permittee shall promptly submit a copy of the

> record to the Illinois EPA when the record is created or revised. For this purpose, the initial record shall be submitted within 30 days of the issuance of this permit. Subsequent revisions shall be submitted within 10 days of the date the Permittee begins to rely upon the revised record.

45. CWLP objects to this condition on the grounds that the term "initial record," as used in this condition, is vague and ambiguous. As CWLP reads the term "initial record" in this context, it refers to the initial submittal of the records required to be reported pursuant to the following Conditions: 7.1.9(c)(ii), 7.2.9(c)(ii), 7.3.9(b), 7.4.9(b)(iii), 7.5.9(b)(iii), 7.6.9(b)(iii) and 7.7.9(d)(ii). Another possible interpretation is that the term "initial record" refers to blank forms that would be used to record the information required to be reported pursuant to the above-referenced conditions.

46. To the extent that CWLP's interpretation of the term "initial record" is correct, CWLP objects to this condition because the requirement in this condition that CWLP submit an "initial record" within 30 days of the effective date of the permit would be unduly burdensome and would violate CWLP's due process rights.

47. Pursuant to CWLP's interpretation of Condition 5.6.2(d), CWLP would be required to provide the Agency within 30 days of the Permit's effective date the following records: (1) records of established control measures for its coal handling, coal processing, fly ash handling and limestone and gypsum handing equipment; (2) detailed records demonstrating compliance with emission limitations for the engines at the facility; and (3) records demonstrating the upper bound of the 95% confidence interval (using a normal distribution and 1-minute averages) for opacity measurements from each of the boilers. *See* Conditions 7.1.9(c)(ii), 7.2.9(c)(ii), 7.3.9(b), 7.4.9(b)(iii), 7.5.9(b)(iii),

7.6.9(b)(iii) and 7.7.9(d)(ii). As discussed further below, CWLP objects to the recordkeeping requirements for opacity for other reasons. Even if CWLP did not object to these recordkeeping requirements, however, Condition 5.6.2(d) would be unduly burdensome given the amount of material requested and the short time period.[11]

48. CWLP also objects to this condition because it violates CWLP's right to due process in that it requires action to be taken before CWLP has had the opportunity to exercise its statutory right to appeal. 415 ILCS 5/40.2. The Act and the Board's rules allow permittees 35 days in which to appeal conditions of a permit to which they object, and that period may be extended to 90 days under certain circumstances. *See* 35 Ill. Admin. Code § 105.302(e). The requirement to submit an "initial record" within 30 days of the Permit's effective date impairs CWLP's ability to exercise its right to appeal, ostensibly forcing CWLP to violate this condition and the conditions which reference it in order to seek review of the Permit through this Petition.

49. Moreover, because the effective date of the Permit appears to be contemporaneous with the date of issuance, CWLP had no opportunity to seek relief from this condition prior to its taking effect. *See supra* Paragraph 28.

50. For all the above reasons, Condition 5.6.2(d) denies CWLP due process and is therefore unconstitutional, unlawful, and an arbitrary and capricious exercise of the Agency's permitting authority. CWLP requests, therefore, that the definition of "initial record" be clarified and Condition 5.6.2(d) be revised to either delete the 30-day

[11] In this instance, the timeframe in which CWLP must submit the requested material is even shorter given that CWLP did not receive notice that the Permit had been issued until four days after the issuance date. *See* Murray Affidavit (Exhibit H).

reporting requirement or to provide a reasonable time period for submittal of information to the Agency. CWLP further contests Conditions 7.1.9(c)(ii), 7.2.9(c)(ii), 7.3.9(b), 7.4.9(b)(iii), 7.5.9(b)(iii), 7.6.9(b)(iii) and 7.7.9(d)(ii) to the extent they require reporting pursuant to Condition 5.6.2(d).

III. SECTIONS 7.1 AND 7.2: BOILERS

A. Conditions 7.1.3(b)(iii), 7.2.3(b)(iii), 7.1.9(f) and 7.2.9(f):[12] Applicability Provisions - Start-up Related Recordkeeping Provisions

51. Conditions 7.1.3(b) and 7.2.3(b) set forth start-up requirements for Units 7, 8, 31 and 32 and Unit 33, respectively, and Conditions 7.1.9(f) and 7.2.9(f) set forth the respective recordkeeping requirements for start-ups. CWLP objects Conditions 7.1.3(b)(iii) and 7.2.3(b)(iii) to the extent that these conditions required CWLP to comply with the recordkeeping requirements of 7.1.9(g) and 7.2.9(g), respectively. Conditions 7.1.9(g) and 7.2.9(g) are not applicable recordkeeping requirements for start-ups. These recordkeeping requirements apply to malfunctions and breakdowns. The recordkeeping provisions applicable to start-up are set forth in 7.1.9(f) and 7.2.9(f).

52. CWLP also objects to portions of Conditions 7.1.9(f) and 7.2.9(f). Specifically, CWLP objects to Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) and to Conditions 7.1.9(f)(i) and 7.2.9(f)(i). Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) respectively provide that additional recordkeeping requirements are triggered when the

[12] The boilers at CWLP's Stations have been separated into two Permit sections because Unit 33 is the only unit subject to the New Source Performance Standards ("NSPS") for Fossil Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971, (40 C.F.R. § 60.40 *et. seq.*). Where CWLP objects to conditions that are common to the Units 7, 8, 31 and 32, which are addressed in Section 7.1, and Unit 33, which is addressed in Section 7.2, CWLP has addressed those objections in a single comment. In some cases, CWLP's comments are unique to Units 7, 8, 31 and 32 or Unit 33. In those instances, the comments are addressed separately.

start-up of a boiler exceeds four hours for Units 7, 8, 31 and 32 and eight hours for Unit 33. Conditions 7.1.9(f)(i) and 7.2.9(f)(i) require CWLP to maintain records of each boiler's start-up procedures, including an estimate of both total and excess opacity and emissions of PM and CO during typical start-ups. CWLP addresses each of these objections in turn.

53. First, CWLP objects to Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C), as the periods of time allowed before the start-up triggers additional recordkeeping requirements, four and eight hours, respectively, are unreasonable, impractical, and an arbitrary and capricious exercise of the Agency's authority. In drafts of the Permit, the Agency had included longer periods of time for start-up of the boilers before the additional recordkeeping requirements of Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C), respectively, are triggered. The draft permit dated June 9, 2003 included periods of 16 hours for Units 7, 8, 31, and 32, and 11 hours for Unit 33; the July 2005 draft and the final Permit reduced those periods further to four hours for Units 7, 8, 31, and 32, and eight hours for Unit 33. CWLP objected to the time periods in the draft permits on the basis that they provided an insufficient time for start-up of a cold boiler, which can take 36 hours. Thus, the additional recordkeeping requirements, presumably intended to take effect only in extraordinary circumstances, would be triggered by most, if not all, ordinary start-ups. CWLP initially proposed in its comments that the time period triggering additional recordkeeping requirements under both Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) be set at 27 hours. When the Agency further reduced the time period in the July 2005 draft, CWLP, in an effort to arrive at a reasonable permit term, suggested

that the Agency require additional recordkeeping after 16 hours into a start-up for Units 7, 8, 31 and 32, and 11 hours for Unit 33.

54. In issuing the final Permit, the Agency ignored these comments, as well as the operating realities of coal-fired boilers, offering no explanation for the reduction of the allowable start-up period. In the Responsiveness Summary, the Agency stated that "if start-up does not progress in a timely manner to operation *in compliance with applicable standards* (generally, four hours for boilers rated at 200 MW or less, six hours for boilers rated at 200 MW to 400 MW, and eight hours for boilers rated at 400 MW or greater)...further records are required." *See* Responsiveness Summary at p. 7 (emphasis added). There are, however, no "applicable standards" for boiler start-up times contained in the Board's rules, and there is no basis in applicable law or regulation for establishing different times for start-up and for the maintenance of records following an unusual start-up based on the size of a particular boiler. Therefore, Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) should be deleted on the grounds that they are arbitrary, capricious and unduly burdensome.

55. Moreover, these conditions should be deleted from the Permit because the Agency did not have the authority to include them in the Permit in the first place. The provisions in the Board's rules allowing for operation of a CAAPP source during start-up are located at 35 Ill. Admin. Code Part 201, Subpart I. These provisions, specifically § 201.149, give the permittee the ability to request certain standards and conditions that, if followed, provide an affirmative defense against enforcement actions in the event that an otherwise applicable emission limitation is exceeded during start-up. Although CWLP did request such standards and conditions in its CAAPP permit applications, as stated

above, the rules do not limit the length of time allowed for start-up. The Agency cited 35 Ill. Admin. Code § 201.263 as the regulatory basis for Conditions 7.1.9(f) and 7.2.9(f); yet, this section does not address start-up at all. Instead, it is limited in its scope to records and reports required for operation during malfunction and breakdown, where there are excess emissions. The additional statutory provisions cited as the basis for these Conditions are §§ 39.5(7)(a) and (b), which also do not contain specific provisions concerning records to be maintained during start-up. Therefore, one must conclude that the records required under Conditions 7.1.9(f) and 7.2.9(f) are the result of gap-filling and are limited to what is necessary to assure compliance with emissions limits. *See Appalachian Power Co.*, 208 F.3d at 1028.

56. If the inclusion of the respective four hour and eight hour time periods before additional recordkeeping is required is a result of the Agency's gap-filling authority, it is an invalid exercise of that authority. CWLP does not believe that there is any basis for requiring additional recordkeeping for start-ups where the start-up is being undertaken in accordance with CWLP's procedures. CWLP is already required to provide information regarding start-ups, including when they occur and how long they last, in Conditions 7.1.9(f)(ii)(A) and 7.2.9(f)(ii)(A). In addition, Conditions 7.1.9(f)(ii)(B) and 7.2.9(f)(ii)(B) require information relating to start-up, including SO2, NOx, and opacity during start-up. The additional information required under Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) add nothing that would aid in enforcement or further the purposes of the Act. Therefore, these conditions are unlawful.

57. CWLP also objects to Conditions 7.1.9(f)(i) and 7.2.9(f)(i) to the extent those conditions require CWLP to provide estimates of PM and CO emissions.

Specifically, both these conditions require CWLP to provide "an estimate of both total and excess opacity and emissions of PM and CO during typical start-up(s) of each boiler, with supporting information and calculations," and Conditions 7.1.9(f)(ii)(C)(V) and 7.2.9(f)(ii)(C)(V) both require CWLP to provide "estimates of the magnitude of emissions of PM and CO during the start-up, including whether emissions may have exceeded any applicable hourly standard, as listed in [Condition 7.1.4 or 7.2.4, as appropriate.]" Compliance with these conditions is impossible, and therefore, these conditions are arbitrary and capricious. Neither CWLP, nor any other source, has the ability to measure the magnitude of PM or CO emissions at any time other than during stack testing. Obviously it would be unreasonable to require CWLP to engage in continuous stack testing to record PM and CO emissions; yet, this is precisely what the Agency appears to require in Conditions 7.1.9(f)(i) and 7.2.9(f)(i).

58. For all of the above reasons, CWLP requests that the contested recordkeeping provisions of Conditions 7.1.9(f)(i), 7.2.9(f)(i), 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) be deleted.

59. CWLP also objects to Conditions 7.1.10-2(a)(i)(D) and 7.2.10-2(a)(i)(D), which address the contents of quarterly reports for the respective units, to the extent that the quarterly reports must include records required by Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C). As noted above, Conditions 7.1.9(f)(ii)(C) and 7.2.9(f)(ii)(C) are unlawful permit conditions; therefore, the reporting requirements in Conditions 7.1.10-2(a)(i)(D) and 7.2.10-2(a)(i)(D) are also unlawful to the extent they refer back to and require compliance with the contested reporting requirements.

B. Conditions 7.1.3(c), 7.2.3(c), 7.1.9(g), 7.2.9(g), 7.1.10-3(a), and 7.2.10-3(a): Applicability Provisions - Malfunction and Breakdown

60. Conditions 7.1.3(c) and 7.2.3(c) contain the requirements applicable to operations during a malfunction or breakdown. Conditions 7.1.9(g) and 7.2.9(g) contain the associated recordkeeping requirements. CWLP objects to Condition 7.1.3(c)(iii) and 7.2.3(c)(iii) to the extent that these conditions require compliance with the recordkeeping provisions of 7.1.9(h) and 7.2.9(h), respectively. Condition 7.1.9(h) and 7.2.9(h), however, contain Acid Rain requirements. The recordkeeping requirements applicable to malfunctions and breakdowns are contained in 7.1.9(g) and 7.2.9(g).

61. CWLP objects to the reporting requirements contained in Conditions 7.1.10-3(a) and 7.2.10-3(a) and to portions of the recordkeeping provisions in Conditions 7.1.9(g) and 7.2.9(g). CWLP addresses each of these objections in turn.

62. Conditions 7.1.10-3(a)(i) and (ii) and 7.2.10-3(a)(i) and (ii) provide as follows:

> i) The Permittee shall immediately notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) for each incident in which the applicable PM emission standard [Condition 7.1.4(b) or 7.2.4(b), as applicable] could be exceeded or in which the opacity from a unit exceeds 30 percent for five or more 6-minute averaging periods unless the Permittee has begun the shutdown of the affected boiler by such time. (Otherwise, as related to opacity, if opacity during an incident only exceeds 30 percent for no more than five 6-minute averaging periods, the Permittee need only report the incident in the quarterly report, in accordance with [Condition 7.1.10-1(b) and 7.1.10-2(d) or Condition 7.2.10-1(b) and 7.2.10-2(d), as appropriate]).
>
> ii) Upon conclusion of each incident in which the applicable PM emission standard may have been exceeded or in which exceedances of the opacity standard is two hours or more in duration, the Permittee shall submit a follow-up report to the Illinois EPA, Compliance Section and Regional Office, within 15 days that includes: a detailed description of the incident and its cause(s); an explanation why continued operation of an

affected boiler was necessary; the length of time during which operation continued under such conditions, until repairs were completed or the boiler was taken out of service; a description of the measures taken to minimize and correct deficiencies with chronology; and a description of the preventative measures that have been and are being taken.

63. As noted in Paragraph 57, *supra*, there is no proven or certified methodology for measuring PM emissions other than through stack testing. Accordingly, the Agency, through these permit conditions, is essentially requiring CWLP to guess whether an incident could cause a PM exceedance, immediately report the incident even though CWLP has no proof that there has been an exceedance of an emission standard, and submit a detailed follow-up report 15 days later. This is an arbitrary and capricious requirement, as CWLP cannot be expected to determine whether there has been a PM exceedance if there is no way to determine accurately the magnitude of PM emissions.

64. CWLP also objects to these conditions to the extent that they require "immediate" reporting. In its Responsiveness Summary, the Agency states that the term "immediately" embodies a sense of importance to the Agency, "which is to require reporting but not to the detriment of actions to respond to a malfunction/breakdown incident." Responsiveness Summary at p. 27. Even with the Agency's explanation, CWLP still believes that the use of the term "immediately" in this condition is vague, and the requirement that incidents be reported "immediately" is arbitrary, capricious and unduly burdensome. Immediate reporting would not enable CWLP to fully investigate an incident to determine if there is just a monitoring malfunction. It has been CWLP's experience that opacity monitors can and do sometimes report erroneous data. For example, monitor misalignment caused by duct expansion or condensation buildup on the lens can result in erroneous readings.

65. Moreover, as written, these conditions exceed the Agency's authority to gap-fill. Because there is no reasonable way to determine, outside of stack testing, whether a PM exceedance has occurred, Conditions 7.1.10-3(a)(i) and (ii) and 7.2.10-3(a)(i) and (ii) do not provide any additional information necessary to assure compliance with the Permit. As the court stated in *Appalachian Power Co.*, an agency's authority to gap-fill in Title V permits is limited to what is necessary to assure compliance with emissions limits. *See Appalachian Power Co.*, 208 F.3d at 1028. The Agency has not provided any basis for requiring CWLP to report potential excess PM emissions when it is unknown whether an emission exceedance has actually occurred. Indeed, in the Responsiveness Summary, the Agency stated that power plants "routinely operate for long periods of time without excess emissions due to malfunctions/breakdowns" and "readily correct incidents in which excess emissions occur." *See* Responsiveness Summary at p. 24. Given the Agency's pronouncements, it is unclear why the reporting requirements in these conditions are necessary to ensure compliance.

66. CWLP further objects to Conditions 7.1.10-3(a)(i) and 7.2.10-3(a)(i). In both of these conditions, the Agency has deleted the word "consecutive" as a trigger for reporting opacity and potential PM exceedances during an "incident" in the final version of the Permit. In the versions of the draft permit prior to the July 2005 draft, CWLP was required to notify the Agency if "the opacity from a unit exceeds 30 percent for five or more *consecutive* 6-minute averaging periods" (emphasis added). The word "consecutive" is critical in the context of these conditions, and its deletion changes their scope and applicability. Random, intermittent exceedances of the opacity limitation do not necessarily constitute a malfunction or breakdown "incident," while a prolonged

period of opacity exceedance could possibly indicate such an "incident." Despite this clear distinction, the Agency provided no explanation for the deletion of the word "consecutive" from these conditions. Indeed, the Agency in its Responsiveness Summary suggests that the term consecutive should be included in these conditions. *See* Responsiveness Summary at p. 8 ("In the case of a malfunction/breakdown, sources shall notify the Agency where the applicable PM emissions standard could be exceeded or where the opacity from the boiler exceeds or may have exceeded the applicable limit for more than five consecutive 6-minute averaging periods."). CWLP requests that the word "consecutive" be added back into these conditions.

67. CWLP also objects to Conditions 7.1.3(c)(iii) and 7.2.3(c)(iii) to the extent that these conditions require compliance with Conditions 7.1.10-3(a) and 7.2.10-3(a), respectively, and to Conditions 7.1.9(g) and 7.2.9(g) to the extent that these conditions require maintenance of records demonstrating compliance with Conditions 7.1.10-3(a) and 7.2.10-3(a), respectively. CWLP further objects to Condition 7.1.10-1(a)(i)-(ii), 7.2.10-1(a)(i)-(ii), 7.1.10-2(d)(iii) and 7.2.10-2(d)(iii)(F)-(G) to the extent that these conditions reference notification and reporting required by 7.1.10-3(a) and 7.2.10-3(a). As noted above, Conditions 7.1.10-3(a) and 7.2.10-3(a) are unlawful permit conditions; therefore, requirements in Conditions 7.1.3(c)(iii), 7.2.3(c)(iii), 7.1.9(g), 7.2.9(g), 7.1.10-1(a)(i)-(ii), 7.2.10-1(a)(i)-(ii), 7.1.10-2(d)(iii), and 7.2.10-2(d)(iii)(F)-(G) are also unlawful to the extent they refer back to and require compliance with the contested requirements.

68. CWLP also objects to Conditions 7.1.9(g)(ii)(D)(III) and 7.2.9(g)(ii)(D)(III) to the extent that they require "estimates of the magnitude of

emissions of PM and CO during the incident, as emissions may have exceeded any applicable hourly standard." Compliance with these conditions is impossible, and therefore, these conditions are arbitrary and capricious. As noted in Paragraphs 57 and 63, *supra*, neither CWLP, nor any other source, has the ability to measure the magnitude of PM or CO emissions at any time other than during stack testing. Obviously it would be unreasonable to require CWLP to engage in continuous stack testing to record PM emissions; yet, this is precisely what the Agency appears to require in Conditions 7.1.9(g)(ii)(D)(III) and 7.2.9(g)(ii)(D)(III).

C. Conditions 7.1.9(b)(i), 7.2.9(b)(i), 7.1.9(g)(i), and 7.2.9(g)(i): Maintenance and Repair Logs

69. Conditions 7.1.9(b)(i), 7.2.9(b)(i), 7.1.9(g)(i) and 7.2.9(g)(i) require CWLP to keep repair and maintenance logs for each of the operations included in the Permit. CWLP objects to the conditions to the extent that the term "log" is vague and ambiguous. CWLP notes that in other permit conditions the term "log" is used in conjunction with the terms "records" or "files." *See, e.g.*, Condition 7.3.9(a). The absence of such flexibility in these terms suggests that a specific log book is required. CWLP maintains maintenance and repair records for its pollution control equipment and boilers. These records, however, are not maintained in a notebook. Some of these records are maintained electronically. It is arbitrary and capricious for the Agency to require maintenance of a log book when similar records are maintained in a different format. Accordingly, CWLP requests that these conditions be revised to replace the term "log" with "records" or to add the term "records."

D. Conditions 7.1.6(a) and 7.2.6(a): Work Practices

70. Conditions 7.1.6(a) and 7.2.6(a) provide as follows:

> As part of its operation and maintenance of the affected boilers, the Permittee shall perform formal "combustion evaluation" on each boiler on at least a semi-annual basis, pursuant to Section 39.5(7)(d) of the Act. These evaluations shall consist of diagnostic measurements of the concentration of CO in the flue gas of the affected boiler, with adjustments and preventative and corrective measures for the boiler's combustion systems to maintain combustion.

71. CWLP objects to these conditions on several grounds. First, CWLP objects to these conditions because the conditions are not required by applicable regulations and are not necessary to determine compliance with applicable requirements. With the inclusion of these conditions in the Permit, compliance with the CO standard is now not only linked to the approved Reference Method, but to the periodic combustion tune-ups as well. The Title V Permit Program was never intended to create new regulatory requirements, but to clarify existing ones. The compliance method for CO is a stack test. The Board's rules do not include a schedule for CO testing, but that does not authorize the Agency to require combustion tune-ups for CO emissions. The appropriate response would be to require regular stack testing for CO emissions - which the Permit does. *See* Conditions 7.1.7(a)(iv), 7.2.7(a)(iv). *See Appalachian Power Co.*, 208 F.3d at 1028. Moreover, maintaining compliance with the CO limitation has historically been a work practice of maintaining good combustion practices. The design of the boiler and the control systems are programmed to operate the boiler for the most efficient burning of coal and, therefore, serve to minimize CO emissions. If the boiler is operating efficiently, CO emissions should never even reach the emission limitation contained in the Illinois

rules. Indeed, the highest 1-hour ambient measure of CO in Springfield in 2003 was 5.1 ppm; and the highest eight-hour ambient measure in Springfield was 2.5 ppm. Illinois Environmental Protection Agency, *Illinois Annual Air Quality Report 2003*, Table B7, p. 57. The one-hour standard is 35 ppm, and the eight-hour ambient standard is 9 ppm. 35 Ill. Admin. Code § 243.123. As evidenced by the CO levels reported above, it is a remote possibility at best that CWLP could contribute to an exceedance of a CO ambient standard. When looking at the magnitude of the difference between observed CO concentrations in the Springfield area and the ambient standards for CO, there is no basis for requiring combustion tune-ups in the permit. As the court stated in *Appalachian Power Co.*, a state authority's power to gap-fill in Title V permits is limited to what is necessary to assure compliance with emissions limits. *See Appalachian Power Co.*, 208 F.3d at 1028. Accordingly, these conditions exceed the Agency's authority under the Act.

72. Second, CWLP objects to these conditions because compliance with them would be unduly burdensome. In order to comply with the "work practice" of performing "diagnostic testing" that yields a concentration of CO, CWLP would be required to purchase and install or operate some sort of portable monitoring devices on its boilers. As evidenced by CO emissions from the facility, there is no rational reason for requiring this expenditure.

73. Third, CWLP objects to these conditions because they are vague and ambiguous. The term "combustion evaluation" is not defined. Because this term is not defined, it is unclear how these diagnostic tests are to be performed and what equipment will be required. CWLP believes that it will be required at a minimum to purchase

portable CO monitors, but even then, it is not sure of how this evaluation is to be performed.[13]

74. Fourth, the Agency provided no reasonable basis for including these conditions in the final Permit. These conditions were not included in the initial draft permit dated June 9, 2003. Instead, these conditions were arbitrarily added to the draft permit, dated July 2005. With no rational basis for including these conditions, they should be deleted on the grounds that they are an arbitrary and capricious exercise of the Agency's authority.

75. Finally, CWLP also objects to Conditions 7.1.9(a)(vi) and 7.2.9(a)(i)(B) to the extent that they require maintenance of records demonstrating compliance with Conditions 7.1.6 and 7.2.6, respectively. Additionally, CWLP objects to Conditions 7.1.12(d) and 7.2.12(d) to the extent that they state that compliance with the CO emission limitation is addressed by the required work practices of Conditions 7.1.6(a) and 7.2.6(a). CWLP also objects to Conditions 7.1.12(f) and 7.2.12(f) to the extent that they state that compliance with the work practices required by Conditions 7.1.6(a) and 7.2.6(a) are satisfied by the recordkeeping requirements of Conditions 7.1.9 and 7.2.9. As noted above, Conditions 7.1.6 and 7.2.6 are unlawful permit conditions; therefore, the recordkeeping requirements in Conditions 7.1.9(a)(vi) and 7.2.9(a)(i)(B) and the compliance procedures provided in Conditions 7.1.12(f) and 7.2.12(f) are also unlawful to the extent they refer back to and require compliance with the contested requirements.

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[13] In its Responsiveness Summary, the Agency stated that it believes that these tune-ups are occurring at most if not all plants. Responsiveness Summary at p. 33. CWLP, however, does not routinely conduct such tune-ups pursuant to a procedure that measures CO emissions.

E. Conditions 7.1.7(a)(ii) and 7.2.7(a)(ii): Testing Requirements and Related Recordkeeping and Reporting Requirements: Additional PM Testing

76. Conditions 7.1.7(a)(ii) and 7.2.7(a)(ii) contain certain PM testing requirements applicable to Units 7, 8, 31 and 32 and Unit 33, respectively. These conditions provide as follows:

> PM emission measurements shall be made within 90 days of operating an affected boiler for more than 30 hours total in a calendar quarter at a load* that is more than 2 percent higher than the greatest load on the boiler, during the most recent set of PM tests on the affected boiler in which compliance is shown [refer to Condition 7.1.7(e)(iii)(D) or 7.2.7(e)(iii)(D), as applicable], provided, however, that the Illinois EPA may upon request of the Permittee provide more time for testing (if such time is reasonably needed to schedule and perform testing or coordinate testing with seasonal conditions).
>
> * For this purpose, load shall be expressed in terms of either gross megawatt output or steam flow, consistent with the form of the records kept by the Permittee pursuant to [Condition 7.1.9(a) or 7.2.9(a), as applicable].

77. CWLP objects to these conditions to the extent that they require PM testing when a boiler operates for a period of time when the load is "more than 2 % higher than the greatest load on the boiler during the most recent stack test." Not only is this testing requirement arbitrary, capricious and unduly burdensome, but it also exceeds the Agency's gap-filling authority as defined under *Appalachian Power Co. See Appalachian Power Co.*, 208 F.3d at 1028. The Agency has provided no basis for this testing requirement, and it has included different testing thresholds for other coal-fired boilers. *See,* CAAPP Permit issued to Southern Illinois Power Cooperative, Application No. 95090125, Condition 7.1.7(a)(ii) at p. 39 (containing a testing threshold of more than

5 percent higher than the greatest load on the boiler during the most recent set of PM tests).[14]

78. Additionally, this testing requirement is not necessary to ensure compliance with PM emissions limitations. There are many factors, both mechanical and climatic, such as wet coal from heavy rains, that influence the maximum generation of a unit on a given day. As these units can be considered small in relation to other coal-fired units within the industry, any adverse condition at the time of the initial PM stack testing could restrict, albeit temporarily, the maximum gross generation by more than 2% of its potential maximum generation. This has a more pronounced effect on the smaller units operated by CWLP. For example, the 2% deviation from the Lakeside units at maximum generation is less than 1 MW, which is easily within the normal fluctuation of the units' maximum available generation depending on conditions. When discussing this condition in its Responsiveness Summary, the Agency states that these "extra" tests are required if the boiler is operated at "significantly greater load" than the load during the previous PM test. Responsiveness Summary at p. 29. The Agency further states: "where emissions are well within the applicable emissions limit and the boiler operates at only a slightly higher load such extra testing may not be worthwhile, but that determination would be best made on a case-by-case basis." Given that a 2% increase in load at CWLP's plants may only be a 1 MW difference, it is difficult to understand why such testing is necessary, especially since the Permit already requires periodic stack tests for PM emissions (Conditions 7.1.7(a)(i) and (iii); 7.2.7(a)(i) and (iii)). As the court stated in

[14] The cover page and Section 7.1.7 from Southern Illinois Power Cooperative's CAAPP permit is attached hereto as Exhibit J.

Appalachian Power Co., a state authority's power to gap-fill in Title V permits is limited to what is necessary to assure compliance with emissions limits. *See Appalachian Power Co.*, 208 F.3d at 1028. In this instance, the additional testing requirements of Conditions 7.1.7(a)(ii) and 7.2.7(a)(ii) are not necessary to assure compliance with the PM limitations. Accordingly, these conditions exceed the Agency's authority under the Act.

79. If these conditions were to remain unchanged, there would exist the very real possibility that attempts to schedule stack tests at the maximum possible generation would be unsuccessful, and the resulting retest of the units (as gross generation inches above the recorded test load during the quarter due to normal fluctuations) would not indicate increased emissions.

80. Due to the small size of the units covered by this condition, CWLP requests that both of these conditions be revised such that additional PM testing would only be required in the event of a generation increase of greater than 4 MW.

81. CWLP also objects to Conditions 7.1.7(a)(iv)(B) and 7.2.7(a)(iv)(B), which require CO testing in conjunction with PM testing conducted in accordance with 7.1.7(a)(ii) or (iii) and 7.2.7(a)(ii) or (iii), respectively. As noted above, Conditions 7.1.7(a)(ii) and 7.2.7(a)(ii) are unlawful permit conditions; therefore, the references to those respective conditions in 7.1.7(a)(iv)(B) and 7.2.7(a)(iv)(B), respectively, are also unlawful to the extent they refer back to and require testing in conjunction with the contested PM testing requirements.

F. Conditions 7.1.7(b)(iii) and 7.2.7(B)(iii): Testing Requirements and Related Recordkeeping and Reporting Requirements: Method 202 Testing

82. In addition to Conditions 7.1.7(a)(ii) and 7.2.7(a)(ii), CWLP also objects to Conditions 7.1.7(b)(iii) and 7.2.7(b)(iii). These conditions contain a listing of the test methods and procedures to be used in stack tests. Included in this list of test methods is Method 202 for PM10 testing. These conditions also include the following note:

> Measurements of condensable PM are also required by U.S. EPA Method 202 (40 C.F.R. Part 51, Appendix M) or other established test method approved by the Illinois EPA, except for a test conducted prior to issuance of this permit.

CWLP objects to the inclusion of a requirement in the Permit that it test PM10 condensables. Such a requirement is beyond the scope of the Agency's authority pursuant to § 39.5(7)(a), (b) and (d) of the Act, as such testing is not an "applicable requirement."

83. As stated above, CWLP does not contest the Agency's ability to collect technical data pursuant to § 4(b) of the Act.[15] *See supra* Paragraph 36. CWLP, however, disagrees with the Agency's statement in the Responsiveness Summary that "the requirement for using both Methods 5 and 202 is authorized by § 4(b) of the Environmental Protection Act." Responsiveness Summary at p. 18. CWLP does not believe that this section makes testing for PM10 condensables an "applicable

[15] § 4(b) provides that "[t]he Agency shall have the duty to collect and disseminate such information, acquire such technical data, and conduct such experiments as may be required to carry out the purposes of this Act, including ascertainment of the quantity and nature of discharges from any contaminant source and data on those sources, and to operate and arrange for the operation of devices for the monitoring of environmental quality." 415 ILCS 5/4(b).

requirement" for CAAPP purposes. While under § 4(b) of the Act, the Agency could request that CWLP conduct an emission test for PM10 condensables on one or more of its units, the scope of § 4(b) does not extend to requiring emission testing for condensables in perpetuity pursuant to a CAAPP permit.

84. The purpose of a CAAPP permit is to incorporate all of the requirements applicable to a source in one place. The applicable requirements for CWLP's Units 7, 8, 31, 32, and Unit 33 are found in 35 Ill. Admin. Code Part 212, Subpart E, entitled "Particulate Matter Emissions from Fuel Combustion Emission Units." In addition to the PM requirements contained in 35 Ill. Admin. Code Part 212, Subpart E, Unit 33 is also subject to the NSPS, entitled "Standards of Performance for Fossil Fuel Fired Generators for Which Construction is Commenced after August 17, 1971." 40 C.F.R. § 60.40 *et seq.* The measurement method for PM, referencing only Method 5 or derivatives of Method 5, is found at 35 Ill. Admin. Code § 212.110. This section of the Board's rules applies to CWLP's plant. Additionally, the NSPS standard applicable to Unit 33 lists Method 5 and its derivatives as the applicable test method for testing PM under the NSPS. 40 C.F.R. § 60.46(b)(2).

85. The Board's PM regulations are structured such that PM10 requirements apply to identified sources located in the PM10 nonattainment areas. The measurement method for PM10 is found at 35 Ill. Admin. Code § 212.108, entitled "Measurement Methods for PM10 Emissions and Condensible PM10 Emissions."[16] This section

[16] The term "condensable" is spelled differently in the Permit and in the Board's rules. To be consistent with the permit, CWLP has incorporated the spelling used in the Permit in its Petition.

references both Methods 5 and 202, among others; however, no such requirements apply now or have ever applied to the CWLP's Dallman or Lakeside Stations, as the Stations are not located in a PM10 nonattainment area.[17] In its Responsiveness Summary, the Agency attempted to expand the applicability of testing using Method 202, stating: "Significantly, the use of Reference Method 202 is not limited by geographic area or regulatory applicability." Responsiveness Summary at p. 18. The Agency, however, conceded in the Responsiveness Summary that Method 202 is not an applicable requirement:

> The inclusion of this requirement in these CAAPP permits, which relates to full and complete quantification of emissions, does not alter the test measurements that are applicable for determining compliance with PM emissions standards and limitations, which generally do not include condensable PM emissions. In addition, since condensable PM emissions are not subject to emission standards . . . .

Responsiveness Summary at p. 19. While the Agency is correct that Method 202 is not geographically limited, it is patently incorrect to state that the use of Method 202 is not limited by applicable regulations. The applicable regulations clearly constrain the use of Method 202 to PM nonattainment areas. Therefore, there is no basis for the Agency to require that CWLP's units be tested pursuant to Method 202, and any attempt to do so exceeds the Agency's gap-filling authority under the Act. *See Appalachian Power Co.*, 208 F.3d at 1028.

[17] In fact, as of September 2005, there are no more nonattainment areas for PM10 in the state of Illinois. *See*, 70 Fed. Reg. 55,541 and 55,545 (redesignating the McCook and Lake Calumet nonattainment areas to attainment status).

G. Conditions 7.1.9(c)(ii), 7.2.9(c)(ii), 7.2.9(c)(iii),7.1.9(c)(iii), 7.1.10-2(a)(i)(E), 7.2.10-2(a)(i)(E), 7.1.10-2(d)(v), 7.2.10-2(d)(v), 7.1.10-3(a)(ii), 7.2.10-3(a)(ii); 7.1.12(b) and, 7.2.12(b): Opacity as a Surrogate for PM Emissions

86. Conditions 7.1.9(c)(ii) and 7.2.9(c)(ii) both require CWLP to maintain records for its boilers that

> "Identify the upper bound of the 95% confidence interval (using a normal distribution and 1 minute averages) for opacity measurements from the boilers, considering an hour of operation, within which compliance with [the applicable PM limitations] is assured, with supporting explanation and documentation, including results of historic emission tests."

These conditions further require CWLP to review and revise these records as necessary following performance of each subsequent PM emission test on the affected boiler. Copies of these records are to be submitted to the Agency in accordance with Condition 5.6.2(d).[18]

87. CWLP objects to these conditions for numerous reasons. First, CWLP objects to these conditions because they are vague, ambiguous and unduly burdensome. As an initial matter, the Permit does not provide specific, clear instructions on how the 95% confidence level is to be determined. In the Responsiveness Summary, the Agency stated that sources are not to determine a "theoretical" value for the level of opacity that might correlate with compliance/noncompliance with the PM standard. *See* Responsiveness Summary at p. 42. Instead, the Agency stated that sources are to "undertake a more pragmatic task to evaluate the range of opacity in which a boiler normally operates." *Id.* However, based on a review of its existing opacity data and PM

[18] CWLP has all ready objected to the submittal of the "initial record" in accordance with Condition 5.6.2(d). *See supra* Paragraph 44-50.

stack testing data, CWLP has been unable to find any correlation between its PM emissions and opacity. Because the data reviewed by CWLP do not show any correlation between opacity levels and PM emissions from CWLP's units, any approach used to determine the opacity level that correlates to the PM emissions standard would be, at best, "theoretical," and at worst, completely arbitrary. Furthermore, because there is no correlation between PM emissions levels and opacity, CWLP believes it would be impossible to comply with Conditions 7.1.9(c)(ii) and 7.2.9(c)(ii), which require CWLP to determine the level at which they correlate. This impossibility of compliance makes these conditions unduly burdensome, and they should be deleted from the Permit.

88. Second, the inclusion of a condition requiring CWLP to use opacity as a surrogate for PM emissions levels is arbitrary and capricious. As noted above, CWLP has found no correlation between PM emissions and opacity. Furthermore, relying on opacity as a surrogate for PM emissions levels has the perverse result of penalizing the best operating units. If, for example, stack testing on a unit results in PM emissions of 0.02 lb/mmBtu and the opacity during the test at the 95th percentile confidence interval is 2%, CWLP would be required to submit reports stating that the unit may have exceeded the PM limit every time opacity exceeds 2%. This result is clearly unreasonable. Moreover, for this reason, to the extent that the sources are not allowed to determine a "theoretical" opacity threshold based on existing stack testing, the conditions create the absurd need to perform stack testing under abnormal operating conditions in order to generate results that approach PM emissions limits. In essence, CWLP would have to "detune" the units, or, in other words, operate the boilers at less than optimal levels, in order to push the bounds of compliance with the PM limit. As the Agency states in its

Responsiveness Summary, there are a number of factors that can influence PM emissions. *See* Responsiveness Summary at p. 43. Varying these factors can exponentially increase the possible number of non-optimal testing conditions beyond all reasonable bounds. Although this is counter-intuitive, it appears that this testing at non-optimal conditions is necessary to comply with conditions treating opacity as a surrogate for PM emissions.

89. Finally, the inclusion of these conditions exceeds the Agency's authority under applicable law. In the first instance, these conditions effectively create a falsely low opacity limitation. In order to avoid the implication that there may have been an exceedance of the PM limit, the opacity limit becomes the level that is the upper bound at the 95th percentile confidence interval in the PM testing. By including these conditions, the Agency has created a new, substantive limitation without having complied with the Board's rulemaking procedures. As the court noted in *Appalachian Power Co.*, the periodic monitoring requirements of the Title V program, incorporated in § 39.5(7) of the Act, do not provide the Agency with "a roving commission to pore over existing State and Federal standards, to decide which are deficient and to use the permit system to amend, supplement, alter or expand the extent and frequency of testing already provided." *Appalachian Power Co.*, 208 F.3d at 1028. To the extent that the Agency believes that the opacity requirements contained in 35 Ill. Adm. Code Part 212 are insufficient, they should propose a revision of those rules to the Board.

90. Absent a revised rule, there is no basis for this condition in the permit. The CAAPP permit already contains sufficient conditions to demonstrate compliance with applicable PM limitations. The permit contains periodic testing requirements for PM. *See* Conditions 7.1.7(a)(i) and (iii) and 7.2.7(a)(i) and (iii). Periodic stack testing

according to the schedule in Condition 7.1.7(a)(iii) is sufficient to assure compliance with the PM limit and satisfy the periodic monitoring requirements of § 39.5(7)(d)(ii) of the Act.

91. Additionally, the permit requires CWLP to maintain certain records concerning operation, repair and maintenance of the ESPs on its units. The ESPs on CWLP's units are sized such that PM emissions are well controlled and well below the regulatory limitation. The records maintained pursuant to Condition 7.1.9(b)(iii) and 7.2.9(b)(iii) allow the Agency to gauge whether the ESPs are in good operating order. In its Responsiveness Summary, the Agency dismissed the use of records concerning operation of the ESPs as a method of ensuring compliance with PM limitations. The Agency cited the fact that the ESPs are comprised of multiple fields and are affected by electrical parameters (voltages) as well as "the buildup of ash on the collecting plates, reentrainment of ash during rapping, variation in resistivity of the fly ash, gradual deterioration of the collecting plates and breakage of discharge wires" as a reason essentially to discount the continued operation of the ESPs as a basis for ensuring compliance with the PM emissions limitations. *See* Responsiveness Summary at p. 43. The Agency's dismissal of this supposition is unfounded and in apparent contradiction of the requirements of the CAAPP permit issued by the Agency. Indeed, Conditions 7.1.12(b) and 7.2.12(b) both provide that compliance with applicable PM emission limitations is ensured by the recordkeeping required by 7.1.9 and 7.2.9. This required recordkeeping includes the maintenance of records concerning operation of the ESPs. CWLP believes that the current permit conditions requiring periodic stack testing and the

maintenance of records concerning the operation and repair of the ESPs are sufficient to demonstrate compliance with PM limitations.

92. For the reasons set forth above, Conditions 7.1.9(c)(ii) and 7.2.9(c)(ii), requiring CWLP to use opacity as an unreliable indication of PM concentrations, are unnecessary. Moreover, the Agency has not provided any evidence that such stringent conditions are necessary to demonstrate compliance with applicable PM limitations on CWLP's boilers. Indeed, the Agency in its Responsiveness Summary states that historic emission tests indicate that PM emissions from coal-fired boilers are well below applicable standards and that there is no evidence of noncompliance with PM emission limitations. *See* Responsiveness Summary at p. 16. Based on the Agency's statements, it is difficult to understand why these apparently unnecessary conditions are included in this permit.

93. The Permit also contains numerous conditions that reference Conditions 7.1.9(c)(ii) or 7.2.9(c)(ii) or which would implicitly require compliance with those conditions. Specifically, Conditions 7.1.9(c)(iii) and 7.2.9(c)(iii) require maintenance of records of :

> [E]ach hour when the measured opacity of the affected boiler was above the upper bound, as specified above in Condition 7.1.9(c)(ii) or 7.2.9(ii) (as applicable), with date, time, operating condition if start-up, malfunction, breakdown, or shutdown, further explanation of the incident, and whether particulate matter emissions may have exceeded the limit of applicable PM limits with explanation.

Conditions 7.1.10-2(a)(i)(E) and 7.2.10-2(a)(i)(E) require records maintained in accordance with Conditions 7.1.9(c)(iii) and 7.2.9(c)(iii), the requirements of which are

set forth immediately above, be submitted with the quarterly reports for the respective units. Conditions 7.1.10-2(d)(v)(C) and (D) and 7.2.10-2(d)(v)(C) require CWLP to provide summary information concerning opacity and PM exceedances with the quarterly reports, which through inference would concern compliance with Conditions 7.1.9(c)(ii) or 7.2.9(c)(ii). Conditions 7.1.10-3(a)(ii) and 7.2.10-3(a)(ii) require reporting within 15 days following operation during a malfunction or breakdown where the PM standard may have been exceeded, which through inference would concern compliance with Conditions 7.1.9(c)(ii) or 7.2.9(c)(ii). Finally, Conditions 7.1.12(b) and 7.2.12(b) state that compliance with the PM limitations contained in the Permit will be met through the recordkeeping requirements of Conditions 7.1.9 and 7.2.9, which again through inference would concern compliance with Conditions 7.1.9(c)(ii) and 7.2.9(c)(ii), respectively. CWLP objects to the above-listed conditions to the extent these conditions reference or infer compliance with Conditions 7.1.9(c)(ii) and 7.2.9 (c)(ii) respectively. As evidenced above, Conditions 7.1.9(c)(ii) and 7.2.9 (c)(ii) are unlawful permit conditions; therefore, the references to those conditions in the recordkeeping, reporting and compliance conditions listed in this paragraph are also unlawful to the extent they refer back to and either explicitly or implicitly require compliance with the contested conditions.

H. Conditions 7.1.5(b), 7.1.10-2(b)(i), 7.1.10-2(c)(i), 7.1.10-2(d)(i), and 7.1.10-2(d)(iii)(Note): Monitoring and Reporting Pursuant to NSPS Requirement for Units 7, 8, 31 and 32

94. Condition 7.1.5(b) of the Permit provides as follows:

> Pursuant to 35 Ill. Admin. Code Part 201.403(a), the Permittee is not subject to the requirements of 35 Ill. Admin. Code Part 201, Subpart L for opacity monitoring because the Permittee must conduct opacity monitoring on

> the affected boiler in accordance with the NSPS pursuant to the federal Acid Rain program.

While it is atypical for a source to appeal a condition that identifies a regulation as non-applicable, CWLP believes that this condition is in error because CWLP's Units 7, 8, 31, and 32 are not subject to an NSPS. Therefore, these boilers are subject to 35 Ill. Admin. Code Part 201, Subpart L. Condition 7.1.5(b) states that CWLP is required to conduct opacity monitoring in accordance with the NSPS pursuant to the federal Acid Rain program. The Acid Rain program, however, does not subject these non-NSPS boilers to the NSPS program. Specifically, 40 C.F.R. § 75.21(b) states that continuous opacity monitoring shall be conducted according to procedures set forth in state regulations where they exist. Recordkeeping for the Acid Rain Program is addressed at 40 C.F.R. § 75.57(f), and reporting for the Acid Rain Program is addressed at 40 C.F.R. § 75.65. None of these regulations reference the NSPS contained in 40 C.F.R. Part 60. Accordingly, CWLP requests that this condition be deleted.

95. The Agency's mistaken belief that CWLP's Units 7, 8, 31, and 32 are subject to the NSPS was carried into the reporting requirements of Condition 7.1.10-2. Specifically, Conditions 7.1.10-2(b)(i), 7.1.10-2(c)(i), and 7.1.10-2(d)(i) require summary information on the performance of the SO2 and NOx CEMS and COMs, including the information for a "Summary Report" specified by 40 C.F.R. §60.7(d). Additionally, Condition 7.1.10-2(d)(iii) includes the following note:

> Because the Permittee is subject to the reporting requirements of the NSPS, 40 C.F.R. § 60.7(c) and (d) for the affected boiler for opacity, pursuant to the federal Acid Rain Program, as included above, the Permittee is not subject to reporting pursuant to 35 Ill. Admin. Code 201.405 (35 Ill. Admin. Code 201.403(a)).

As discussed above, CWLP's Units 7, 8, 31, and 32 are not subject to the NSPS requirements of 40 C.F.R. § 60.7 through the federal Acid Rain Program. Accordingly, there is no applicable summary reporting requirement for the NOx and SO2 CEMs. CWLP requests that Conditions 7.1.10-2(b)(i) and 7.1.10-2(c)(i) be deleted. CWLP notes that it is currently submitting quarterly excess emission reports for opacity in accordance with 35 Ill. Admin. Code § 201.405. CWLP requests that the citation in Condition 7.1.10-2(d)(i) be revised to cite 35 Ill. Admin. Code § 201.405 as the applicable requirement for accuracy and that the note included at the end of Condition 7.1.10-2(d)(iii) be deleted.

I. Conditions 7.1.10-2(a)(iii) and 7.2.10-2(a)(iii): Quarterly Operating Reports

96. Conditions 7.1.10-2(a) and 7.2.10-2(a) concern the submittal of quarterly operating reports. Specifically, Conditions 7.1.10-2(a)(iii) and 7.2.10-2(a)(iii) contain a schedule for submittal of these reports. CWLP objects to both of these conditions on the grounds that they would require submittal of a quarterly report for the quarter ending September 30, 2005, essentially only one full day after issuance of the Permit. As stated in Paragraph 29, *supra*, CWLP did not even have notice that the Permit had been issued until October 3, 2005, several days after the end of the third quarter of 2005. Because CWLP had no notice that a quarterly report would be due, it did not have the opportunity to collect and compile the information required to be included in the report. Thus, compliance with these conditions is impossible.

97. CWLP further objects to Condition 7.2.10-2(a)(iii) to the extent that it requires CWLP to submit a quarterly report for Unit 33 by October 30, 2005. This

requirement violates CWLP's right to due process in that it requires action to be taken before CWLP has had the opportunity to exercise its statutory right to appeal. 415 ILCS 5/40.2. The Act allows permittees 35 days in which to appeal conditions of the permit to which it objects, and that period may be extended to 90 days under certain circumstances. The requirement to submit a quarterly report within 30 days of the Permit's effective date impairs CWLP in exercising its right to appeal, ostensibly forcing CWLP to violate this condition in order to seek review of the Permit through this petition.

98. Moreover, because the effective date of the Permit appears to be contemporaneous with the date of issuance. *See supra* Paragraph 28. CWLP had no opportunity to seek relief from these conditions prior to them taking effect. Accordingly, these conditions, to the extent that they require the submittal of a quarterly report for the quarter ending September 30, 2005, are unconstitutional.

J. Conditions 7.1.12(a)(ii)(D) and 7.2.12(a)(ii)(D): Notification of Reliance on Section 212.123(b)

99. Condition 7.1.12(a)(ii) contains the requirements that would apply to Units 7, 8, 31, and 32 if CWLP were to elect to rely on 35 Ill. Admin. Code § 212.123(b). This Section allows sources to have:

> An opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period, provided that such opaque emissions permitted during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft.) radius from the center point of any other such emission unit owned or operated by such person, and provided further that such opaque emissions permitted from each such emission unit shall be limited to 3 times in any 24 hour period.

Specifically, Condition 7.1.12(a)(ii)(E) requires CWLP to "notify the Illinois EPA at least 15 days prior to changing its procedures associated with reliance on 35 Ill. Admin. Code § 212.123(b), to allow the Illinois EPA to review the new recordkeeping and data handling practices planned by the Permittee." Condition 7.2.12(a)(ii) contains similar language applicable to Unit 33, namely the requirements that would apply to Unit 33 if it were to rely on 35 Ill. Admin. Code § 212.122(b), which allows sources to have:

> An opacity greater than 20 percent but not greater than 40 percent for a period or periods aggregating 3 minutes in any 60 minute period, provided that such opacity emission during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft.) radius from the center point of any other such emission unit owned or operated by such person and provided further that such opaque emissions permitted from each such fuel combustion emission unit shall be limited to 3 times in any 24 hour period.

100. CWLP objects to Conditions 7.1.12(a)(ii)(D) and 7.2.12(a)(ii)(D) to the extent they require 15-day notification of an intention to demonstrate compliance with the applicable opacity requirements in accordance with 35 Ill. Admin. Code § 212.123(b) and § 212.122(b), respectively. Neither § 212.123(b) nor § 212.122(b) contain any requirement that a source seeking to comply with either section submit the 15-day notification required by Conditions 7.1.12(a)(ii)(E) and 7.2.12(a)(ii)(E). Additionally, the Agency provides no rational reason why such a notification is necessary. The CAAPP permit contains recordkeeping and reporting requirements for opacity. To the extent that there is an opacity deviation, whether from § 212.122(a), § 212.122(b), § 212.123(a), or § 212.123(b), it will be timely reported pursuant to Conditions 7.1.10-1 for Units 7, 8, 31 and 32 and 7.2.10-1 for Unit 33. Given these requirements, the Agency has

more than sufficient ability to evaluate CWLP's compliance with opacity limitations, particularly since CWLP's units are equipped with COMs.

101. For the above reasons, CWLP requests that the Conditions 7.1.12(a)(ii)(D) and 7.2.12(a)(ii)(D) be deleted. CWLP additionally notes that as of the permit issuance date, it was already relying on 35 Ill. Adm. Code § 212.123(b) for Units 7, 8, 31 and 32 and 35 Ill. Adm. Code § 212.122(b) for Unit 33. Therefore, to the extent that these conditions are not deleted from the Permit, CWLP believes that it is not required to submit notifications in accordance with Conditions 7.1.12(a)(ii)(D) and 7.2.12(a)(ii)(D) because it has not changed its procedures associated with reliance on §§ 212.123(b) and 212.122(b).

IV. SECTIONS 7.3, 7.4, 7.5, AND 7.6: COAL HANDLING EQUIPMENT, COAL PROCESSING EQUIPMENT, FLY ASH EQUIPMENT, AND LIMESTONE AND GYPSUM HANDLING EQUIPMENT[19]

A. Conditions 7.3.4(c), and 7.3.6(a)(iii): Applicability of Emission Standards (NSPS)

102. Condition 7.3.4(c) provides that CWLP's coal handling operations that "are subject to the NSPS, 40 C.F.R. 60, Subpart Y, shall not exhibit 20 percent opacity or greater into the atmosphere, pursuant to 40 C.F.R. 60.252(c), except during periods of start-up, shutdown and malfunction, as defined in 40 C.F.R. 60.2, pursuant to 40 C.F.R. 60.11(c) and 60.252(c)."

[19] Sections 7.3, 7.4, 7.5, and 7.6 of the Permit address coal handling, coal processing, fly ash, and limestone and gypsum handling equipment. The conditions applicable to these operations are similar, and the majority of CWLP's objections to Permit conditions common to these units are the same. Accordingly, where objections to permit conditions are the same across these emissions units, CWLP addresses the objections together. CWLP has also noted unique objections to unit-specific conditions in this section.

103. CWLP objects to the inclusion of this condition in the Permit because its coal handling operations are not subject to 40 C.F.R. Part 60, Subpart Y. The coal handling operations addressed in Section 7.3 of the Permit do not fall under the definition of a "Coal Preparation Plant" set forth in 40 C.F.R. § 60.252. Under § 60.252, the term "Coal Preparation Plant" is defined as "any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying." CWLP's coal handling equipment does not break, crush, or screen coal, but only hoists coal from the unloading areas to the respective boiler bunkers. Accordingly, the NSPS contained in 40 C.F.R. Part 60, Subpart Y does not apply to the coal handling equipment and should be deleted from the permit.

104. In addition to Condition 7.3.4(c), Condition 7.3.6(a)(iii) also applies only to equipment to which the NSPS in 40 C.F.R. Part 60, Subpart Y apply. That condition prescribes work practices based on the NSPS regulations. *See* 40 C.F.R. § 60.11(d). As noted above, 40 C.F.R. Part 60, Subpart Y does not apply to CWLP's coal handling equipment; therefore, the work practices derived from that Subpart are not applicable to the coal handling equipment and should be deleted from the Permit.

105. CWLP further objects to Condition 7.3.8(a), which contains inspection requirements which reference compliance with 7.3.6(a); Condition 7.3.9(b), which requires records be maintained for the control methods being implemented pursuant to Condition 7.3.6(a); and Condition 7.3.10(a)(ii), which requires notification of the Agency within 30 days where the requirements of Condition 7.3.6(a) were not fulfilled for more than 12 hours after discovery. CWLP objects to these conditions to the extent that they

require compliance with the requirements of Condition 7.3.6(a)(iii), which are not applicable to the coal handling operations.

B. Conditions 7.3.4(b), 7.4.4(b), 7.5.4(b), 7.6.4(b): Applicability of Emission Standards for Opacity

106. Conditions 7.3.4(b), 7.4.4(b), 7.5.4(b), and 7.6.4(b) require the coal handling, coal processing, fly ash, and limestone and gypsum handling operations, respectively, to comply with the standard for opacity set forth in Condition 5.2.2(b). Condition 5.2.2(b) generally addresses the opacity due to the emission of smoke or other particulate matter pursuant to 35 Ill. Admin. Code § 212.123. Specifically, Condition 5.2.2(b) allows up to 30% opacity from an emission unit. Such application is improper because it is inconsistent with the Board's regulatory structure addressing PM emissions and opacity.

107. CWLP objects to Conditions 7.3.4(b), 7.4.4(b), 7.5.4(b) and 7.6.4(b) to the extent that these conditions identify § 212.123 of the Board's rules as an applicable requirement for each of the respective emission sources. The 30% opacity limitation contained in 35 Ill. Admin. Code § 212.123(a) does not apply to sources of fugitive emissions, such as the coal handling, coal processing, fly ash and limestone and gypsum handling equipment.

108. In its Responsiveness Summary, the Agency claims that:

> Nothing in the State's air pollution control regulations states that the opacity limitation does not apply to fugitive emission units. The regulations at issue broadly apply to "emission units." Moreover, while not applicable to these power plants, elsewhere in the State's air pollution control regulations, opacity limitations are specifically set for

> fugitive particulate matter emissions at marine terminals, roadway, parking lots, and storage piles.

Responsiveness Summary at p. 41. CWLP disagrees with the Agency's statement that the requirements of § 212.123 apply to its fugitive emission sources. The fact that the Agency specifically established fugitive emissions limitations for certain fugitive emission sources indicates that the regulatory structure does not admit to the application of opacity limitations in § 212.123 to fugitive sources.

109. Fugitive emissions are fundamentally different from point source emissions. Point source emissions are emitted through a discrete location (i.e. a stack or a vent), and fugitive emissions are not emitted through any discrete point. This distinction is recognized in the Board's rules, which establish a different standard for fugitive emissions. The opacity standards that generally apply to fugitive particulate matter sources are found at 35 Ill. Admin. Code § 212.301, which provides:

> No person shall cause or allow the emission of fugitive particulate matter from any process, *including any material handling or storage activity*, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the source.

35 Ill. Admin. Code § 212.301 (emphasis added). This requirement, along with its exception in the event wind speed exceeds 25 miles per hour, 35 Ill. Admin. Code § 212.314, are subsumed in Condition 5.2.2(a). CWLP believes that the visible emission standard contained in § 212.301, not § 212.123, is applicable to its operations. Accordingly, it requests that Conditions 7.3.4(b), 7.4.4(b), 7.5.4(b), 7.6.4(b) be deleted from its Permit.

110. Conditions 7.3.9(f), 7.4.9(e), 7.5.9(e), and 7.6.9(e) require maintenance of records for all opacity measurements made in accordance with Method 9, which is the test method used to demonstrate compliance with § 212.123, and Conditions 7.3.12(a), 7.4.12(a), 7.5.12(a), and 7.6.12(a) refer to the compliance procedures required to demonstrate compliance with Conditions 7.3.4, 7.4.4, 7.5.4 and 7.6.4, respectively. To the extent that these conditions refer to compliance with § 212.123, CWLP objects to these conditions. As noted above, Conditions 7.3.4, 7.4.4., 7.5.4 and 7.6.4 are unlawful permit conditions; therefore, the recordkeeping requirements in Conditions 7.3.9(f), 7.4.9(e), 7.5.9(e), and 7.6.9(e) and the compliance procedures provided in Conditions 7.3.12(a), 7.4.12(a), 7.5.12(a), and 7.6.12(a) are also unlawful to the extent they refer back to and require compliance with the contested requirements.

C. Conditions 7.3.7(a), 7.5.7(a), and 7.6.7(a): Applicability Method 9 Testing Requirements for Opacity Testing for Fugitive Emission Sources

111. Conditions 7.3.7(a), 7.5.7(a), and 7.6.7(a) specifically require the use of Method 9 to measure opacity from CWLP's coal handling, fly ash and limestone and gypsum handling equipment. CWLP objects to the use of Method 9 to determine opacity from this equipment.[20]

112. There are no test methods prescribed in the Board's regulations for determining visible emissions from fugitive emission sources. Indeed, § 212.301, which as discussed above contains the emission limitations applicable to sources of fugitive particulate matter, is *specifically exempted* from the requirements of 35 Ill. Admin. Code

[20] As a general matter, CWLP does not object to use of Method 9 testing for certain equipment in its coal processing operations because the coal processing operations are subject to the NSPS for Coal Preparation plants. CWLP does, however, object to the opacity testing conditions for this emission unit for other reasons. Those reasons are set forth below in Paragraphs 115-120, *infra*.

Part 212, Subpart A, which prescribes the measurement methods for opacity – specifically, Method 9. *See* 35 Ill. Admin. Code § 212.107. CWLP notes that § 212.109 of the Board's rules requires Method 9 testing, with certain modifications, to be used for opacity readings from roadways and parking areas. *See also* 35 Ill. Admin. Code § 212.109. CWLP, however, believes that absent a specific reference, other sources of fugitive particulate matter that are subject to § 212.301 are exempt from the requirements of Subpart A. Accordingly, with the exception of roadways and parking lots, the Agency is precluded from applying Method 9 monitoring to fugitive emissions under the Board's rules, leaving no manner for monitoring opacity from fugitive sources other than the visual method set forth in § 212.301.

113. Since Method 9 is not applicable to opacity testing on the fugitive emissions from CWLP's coal handling, fly ash, and limestone and gypsum handling equipment, the inclusion of the Method 9 testing requirements in Conditions 7.3.7(a), 7.5.7(a) and 7.6.7(a) is unlawful and should be deleted. Additionally, there is no likelihood that visible emissions from the operations permitted under these conditions will reach the property line. Therefore, these conditions are unnecessary to demonstrate compliance with applicable requirements.

114. Finally, Conditions 7.3.12(a), 7.5.12(a), and 7.6.12(a) refer to the compliance procedures required to demonstrate compliance with Conditions 7.3.4, 7.5.4, 7.6.4, including the requirements of § 212.123. To the extent that these conditions require CWLP to use Method 9 to measure opacity from fugitive sources in order to demonstrate compliance with § 212.123(a), they are unlawful and should also be deleted from the Permit.

D. Condition 7.4.7(a): Method 9 Opacity Testing Requirements for Coal Processing Operations

115. Condition 7.4.7(a) contains the requirements for conducting Method 9 opacity testing for CWLP's coal processing operations. While similar testing requirements were unlawful for CWLP's coal handling, fly ash and limestone and gypsum handling equipment, Method 9 testing is required for certain equipment in CWLP's coal processing operations because those operations are subject to the NSPS for Coal Preparation Plants. 40 C.F.R. § 60.250 *et seq.* Specifically, CWLP's coal processing and conveying equipment shall not exhibit 20% opacity or greater. 40 C.F.R. § 60.252(c). Compliance with this opacity limitation is demonstrated through Method 9 testing. *See* 40 C.F.R. § 60.254(b)(2).

116. While CWLP believes that Method 9 testing is applicable to this emission source, CWLP objects to certain provisions in Condition 7.4.7(a). First, CWLP objects to Condition 7.4.7(a)(i) to the extent that it relies on § 39.5(7)(d) of the Act. CWLP believes that Method 9 opacity testing is only required pursuant to the NSPS for coal preparation plants. Therefore, the basis for this requirement is 40 C.F.R. §60.242(c), not § 39.5(7)(d) of the Act.

117. Additionally, as set forth in Paragraphs 106-110, *supra*, CWLP objects to Condition 7.4.4(b) which states that § 212.123(a) is applicable to its coal processing operations. Accordingly, CWLP objects to 7.4.7(a) to the extent that it suggests that Method 9 opacity testing is required for this emission source to demonstrate compliance with § 212.123(a). Accordingly, CWLP requests that this condition be revised to clarify

that these emission testing requirements are solely due to the applicability of 40 C.F.R. § 60.242(c) to the coal processing operations.

118. CWLP also objects to Condition 7.4.7(a)(i)(A) to the extent that this condition is vague. Condition 7.4.7(a)(i)(A) provides:

> If stack or fugitive emissions are normally visible during the operation of an affected process, testing for the affected process shall be conducted at least annually. For this purpose, testing shall first be conducted within three months after the effective date of this Condition 7.3.7(a).

119. It is unclear from this condition whether an initial Method 9 test is required for this operation to the extent that fugitive emissions are not normally visible during the operation of the coal processing and conveying equipment, because the language of this condition suggests that the initial test must be performed within 3 months of the effective date of this Permit. This condition should be clarified to provide that an initial test is only performed if necessary due to the presence of visible emissions.

120. Finally, Condition 7.4.12(a) refers to the compliance procedures required to demonstrate compliance with Conditions 7.4.4. One of those compliance procedures is compliance with 7.4.7(a). CWLP objects to Condition 7.4.12(a) to the extent that it requires CWLP to comply with those portions of Condition 7.4.7 which are unlawful. To the extent Condition 7.4.7 is unlawful, Condition 7.4.12(a) is unlawful as well.

E. Conditions 7.4.7(b), 7.5.7(b), and 7.6.7(b): Stack Testing for PM Emissions

121. Conditions 7.4.7(b), 7.5.7(b), and 7.6.7(b) contain particulate testing requirements for CWLP's coal processing, fly ash, and limestone and gypsum equipment, respectively. Specifically, these conditions provide that:

> Within 90 days of a written request from the Illinois EPA, the Permittee shall have the PM emissions at the stacks or vents of the affected processes, as specified in such request, measured during representative operating conditions, as set forth below, pursuant to Section 39.5(7)(d) of the Act.

122. None of the affected processes covered by Conditions 7.4.7(b), 7.5.7(b), and 7.6.7(b) have stacks or vents. Accordingly, compliance with these conditions is impossible. CWLP requests that these conditions be deleted.

F. Conditions 7.3.8, 7.4.8, 7.5.8 and 7.6.8: Inspection Requirements

123. Conditions 7.3.8, 7.4.8, 7.5.8 and 7.6.8 contain the inspection requirements for CWLP's coal handling, coal processing, fly ash and limestone and gypsum handling equipment, respectively. CWLP has several objections to these requirements as they apply to different processes.

124. First, Condition 7.5.8(a) requires weekly inspections of the fly ash handling operations, and Condition 7.6.8(a) requires bi-weekly inspections of the limestone and gypsum handling operations. CWLP objects to the timing of these inspections. The Agency provides no basis for requiring such frequent inspections for these operations. As noted above, the fly ash and limestone and gypsum operations do not result in visible emissions at the property line, and they are in compliance with applicable requirements. Thus, there is no basis for including such frequent inspections under Illinois law. Additionally, the Agency has not provided any rationale for requiring a different frequency of inspections for fly ash operations (weekly) and limestone and gypsum operations (bi-weekly). Accordingly, requiring different frequencies for the inspections is arbitrary and capricious. CWLP requests that the frequency of inspections for both types of operations be monthly.

125. Second, CWLP objects to Conditions 7.3.8(a), 7.4.8(a), 7.5.8(a), and 7.6.8(a) to the extent that these conditions specify that monthly inspections be undertaken by personnel "not directly involved in the day-to-day operation" of the particular operation. The Agency apparently believes independence from day-to-day operations is an "appropriate qualification" for persons conducting the monthly inspections; however, the Agency provides no reason for its conclusion. *See* Responsiveness Summary at p. 19. The Agency acknowledges that these inspections require no special skill because they consist of observing visible emissions. *Id.* It is not clear why operational personnel cannot make these observations. It appears from the Responsiveness Summary that the Agency assumes that operational personnel are making observations and taking appropriate actions on a regular basis. *Id.* ("[T]hese inspections supplement and corroborate the observations and actions of the employees who operate these facilities on a daily basis"). These conditions are apparently intended to provide a "check" on the regular inspections and observations of operational personnel. The Agency, however, has not provided any reason why this "check" is necessary. CWLP believes that the requirement that inspections be undertaken by personnel not involved in the day-to-day operation of the facility is arbitrary and capricious, and it exceeds the gap-filling authority under 415 ILCS 39.5(7)(a) and (b). *See Appalachian Power Co.*, 208 F.3d at 1028.

126. Third, CWLP objects to Conditions 7.5.8(b) and 7.6.8(b), which require detailed inspections of the dust collection equipment every nine months for the fly ash and limestone and gypsum handling equipment, respectively. CWLP objects to these conditions because the timing of the inspection requirement is arbitrary and capricious,

particularly because the timeframe for detailed inspections of the dust collection equipment in the coal handling and coal processing equipment is every 15 months. *See* Conditions 7.3.8(b) and 7.4.8(b). The Agency has provided no basis for the need for more frequent inspections of the dust collection equipment. Accordingly, the timing for inspections in these Conditions is arbitrary and capricious and exceeds the Agency's gap-filling authority under 415 ILCS 39.5(7)(a) and (b). *See Appalachian Power Co.*, 208 F.3d at 1028. CWLP requests that Conditions 7.5.8(b) and 7.6.8(b) be revised to require detailed inspections of dust collection equipment every 15 months.

127. Finally, CWLP objects to Conditions 7.3.9(d), 7.4.9(c), 7.5.9(c) and 7.6.9(c) to the extent that these conditions contain recordkeeping requirements for inspections required by Conditions 7.3.8, 7.4.8, 7.5.8, and 7.6.8, and to Conditions 7.3.12, 7.4.12, 7.5.12 and 7.6.12 to the extent that these conditions contain compliance procedures that would require compliance with the contested portions of Conditions 7.3.8, 7.4.8, 7.5.8, and 7.6.8. With regard to the recordkeeping provisions, CWLP objects to Conditions 7.5.9(c)(i) and 7.6.9(c)(i) to the extent that these conditions require maintenance of records from weekly or bi-weekly inspections rather than monthly inspections.[21] CWLP objects to Conditions 7.3.9(d)(i), 7.4.9(c)(i), 7.5.9(c)(i), and 7.6.9(c)(i), to the extent that these conditions relate to the requirement that inspectors who are not involved in the day to day operations of the facility conduct inspections pursuant to Conditions 7.3.8(a), 7.4.8(a), 7.5.8(a) and 7.6.8(a)[22] and CWLP objects to Condition 7.5.9(c)(ii), and 7.6.9(c)(ii), to the extent that these conditions require records

[21] *See* Paragraph 124, *supra*.
[22] *See* Paragraphs 125, *supra*.

for inspections conducted every nine months rather than every 15 months.[23] As noted above, Conditions 7.3.8, 7.4.8, 7.5.8 and 7.6.8 are unlawful permit conditions; therefore, the recordkeeping requirements in Conditions 7.3.9(d)(i), 7.4.9(c)(i), 7.5.9(c)(i) and (ii) and 7.6.9(c)(i) and (ii) and the compliance procedures set forth in Conditions 7.3.12, 7.4.12, 7.5.12, and 7.6.12 are unlawful to the extent they refer back to and require compliance with the contested requirements.

G. Conditions 7.3.9, 7.4.9, 7.5.9, and 7.6.9: Recordkeeping Requirements

128. Conditions 7.3.9, 7.4.9, 7.5.9, and 7.6.9 contain the recordkeeping requirements applicable to the coal handling, coal processing, fly ash, and limestone and gypsum processing equipment. CWLP objects to these conditions for several reasons.

129. First, Conditions 7.5.9(a) and 7.6.9(a) both require the maintenance of "logs." CWLP objects to these conditions to the extent that the term "log" is vague and ambiguous. CWLP notes that in other permit conditions, the term "log" is used in conjunction with the terms "records" or "files." *See, e.g.,* Condition 7.3.9(a). The absence of such flexibility in these conditions suggests that a specific log book is required. To CWLP, the term "log" means a notebook with handwritten entries. CWLP keeps maintenance and repair records for its pollution control equipment and operations. These records, however, are not maintained in a notebook. Some of these records are maintained electronically. It is arbitrary and capricious for the Agency to require maintenance of a log book when similar records are maintained in a different format.

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[23] *See* Paragraphs 126, *supra.*

Accordingly, CWLP requests that these conditions be revised to replace the term "log" with "records" or add the term "records."

130. Second, Conditions 7.4.9(a)(ii), 7.5.9(a)(ii) and 7.6.9(a)(ii) require CWLP to maintain operating logs. These logs would have to include information concerning any incident where operations continued during a malfunction and breakdown. CWLP objects to these conditions because they are duplicative of the information required to be maintained pursuant to Conditions 7.4.9(d), 7.5.9(d), and 7.6.9(d). As the Agency's principal concern is maintaining records of source compliance during malfunction and breakdown, CWLP believes that the requirements of Conditions 7.4.9(d), 7.5.9(d), and 7.6.9(d) would satisfy the Agency's concern.[24] Accordingly, CWLP requests that Conditions 7.4.9(a)(ii), 7.5.9(a)(ii), and 7.6.9(a)(ii) be deleted as they are unduly burdensome and unnecessary to demonstrate compliance with applicable requirements.

131. Third, CWLP objects to Conditions 7.3.9(d)(i)(D), 7.4.9(c)(i)(D), 7.5.9(c)(i)(D), and 7.6.9(c)(i)(D), which require CWLP to maintain "[a] summary of the observed implementation or status of actual control measures, as compared to the established control measures." CWLP does not understand what information the Agency is seeking under these conditions. Accordingly, these conditions are vague and ambiguous and should be deleted from the Permit.

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[24] CWLP has proposed revisions to conditions 7.4.9(d), 7.5.9(d), and 7.6.9(d). *See* Paragraph 132 *infra*. CWLP believes the revisions it has proposed are consistent with the Agency's purposes in requiring records of source compliance during malfunction and breakdown.

132. Fourth, CWLP objects to Conditions 7.3.9(e)(ii), 7.4.9(d)(ii), 7.5.9(d)(ii), and 7.6.9(d)(ii) to the extent that these conditions require CWLP to record the magnitude of PM emissions during the incident and record whether any applicable emission standard may have been violated during the incident. CWLP also objects to conditions 7.3.9(e)(vii), 7.4.9(d)(vii), 7.5.9(d)(vii), and 7.6.9(d)(vii). These conditions require "a discussion whether any applicable emission standards . . . may have been violated during the incident, with supporting explanation." As discussed in detail in CWLP's objections as to Conditions 7.1.9(f), 7.2.9(f) and 7.1.9(g)(ii)(D)(III) and 7.2.9(g)(ii)(D)(III), CWLP cannot accurately determine the magnitude of PM emissions without conducting a stack test. As noted in CWLP's comments on Conditions 7.4.7(b), 7.5.7(b), and 7.6.7(b), stack tests cannot be performed on these operations because there are no stacks or vents. *See* Paragraph 122, *supra*. Thus, CWLP cannot ascertain whether an otherwise applicable requirement may have been violated during the incident. Accordingly, these conditions are arbitrary and capricious, and CWLP requests that they be revised to delete the requirement that CWLP determine the magnitude of the PM emissions during the incident.

133. Finally, Conditions 7.3.12, 7.4.12, 7.5.12 and 7.6.12 contain compliance procedures for the emission standards and work practices that apply to these respective emission sources. These conditions provide that compliance with the respective emission standards and work practices is ensured through the respective recordkeeping requirements contained in Conditions 7.3.9, 7.4.9, 7.5.9 and 7.6.9. CWLP objects to Conditions 7.3.12, 7.4.12, 7.5.12 and 7.6.12 to the extent that these conditions require compliance with the contested portions of Conditions 7.3.9, 7.4.9, 7.5.9 and 7.6.9 as set

forth above. As outlined in Paragraphs 130-132, *supra*, portions of Conditions 7.3.9, 7.4.9, 7.5.9 and 7.6.9 are unlawful permit conditions; therefore, the compliance procedures set forth in Conditions 7.3.12, 7.4.12, 7.5.12, and 7.6.12 are unlawful to the extent they refer back to and require compliance with the contested requirements.

H. Conditions 7.3.10 ,7.4.10 7.5.10, and 7.6.10: Reporting Requirements

134. Conditions 7.3.10, 7.4.10, 7.5.10, and 7.6.10 contain the reporting requirements applicable to the coal handling, fly ash handling, and limestone and gypsum handling operations, respectively. Specifically, Conditions 7.3.10(a)(i), 7.4.10(a)(i), 7.5.10(a)(i), and 7.6.10(a)(i) contain reporting requirements for incidents that resulted in excess emissions, including continued operation during malfunction and breakdown.

135. CWLP objects to these conditions to the extent that they are arbitrary and capricious and exceed the Agency's gap-filling authority under §§ 39.5(a), (b) and (f) of the Act. CWLP notes that these reporting requirements were not included in CWLP's draft Permit until the July 2005 draft. Indeed, in the December 2004 draft of the Permit, CWLP was to notify the Agency within 30 days if an operation was not in compliance with an applicable requirement for more than 12 hours after such non-compliance was identified. *See* Exhibit C at pp. 96-97, 104-105, 113-114, and 121-122. Other deviations were to be reported in the quarterly reports. The July 2005 draft of the Permit included substantially increased reporting requirements for these operations. The Agency, however, has not provided any basis for this increased reporting. As stated above, there are no visible emissions at the property line from any of these operations, and there is no evidence that deviations of applicable requirements are frequent for these emission sources. CWLP believes that the reporting requirements initially proposed by the

Agency and included in every draft permit until July 2005 are sufficient. The increased reporting contained in Conditions 7.3.10, 7.4.10, 7.5.10, and 7.6.10 is not only arbitrary and capricious, but it exceeds the Agency's gap-filling authority under § 39.5(a), (b) and (f) of the Act. *See Appalachian Power Co.*, 208 F.3d at 1028. Accordingly, Conditions 7.3.10, 7.4.10, 7.5.10, and 7.6.10 should be revised consistent with the requirements contained in the draft permits prior the July 2005 draft.

V. SECTION 7.6: ENGINES

A. Condition 7.7.6: Work Practices, Operational and Production Limits, and Emission Limitations

136. Condition 7.7.6 contains the work practices that are applicable to the engines. Specifically, Condition 7.7.6(d)(i) requires:

> If an affected engine is routinely operated or exercised to confirm that the engine will operate when needed, the operation and opacity of the engine shall formally be observed by operating personnel for the engine or a member of the Permittee's environmental staff on a regular basis to assure that the engine is operating properly, which observations shall be made at least every six months.

Condition 7.7.6(d)(ii) contains the observation requirements for the engines when they are not operated for six months. Both of these conditions require observations by "operating personnel for the engine or a member of Permittee's environmental staff."

137. CWLP objects to Conditions 7.7.6(d)(i) and (ii) to the extent that the Agency is requiring inspections to be conducted by a certain person. There is no applicable requirement that specifies that the engine operator or the environmental staff must be the personnel who observe opacity and operation of the engines. Specifically identifying which personnel may perform these activities is not within the scope of the

Agency's gap-filling authority under §§ 39.5(7)(a), (b) and (f), as it is not necessary to ensure compliance with applicable requirements. Therefore, this requirement is arbitrary and capricious and should be deleted.

B. Condition 7.7.10-1: Reporting Requirements (Opacity)

138. Condition 7.7.10-1 contains deviation reporting requirements applicable to the engines. More specifically, Condition 7.7.10-1(a) contains reporting requirements for incidents that resulted in excess opacity from the engines. CWLP objects to condition 7.7.10-1(a) on several grounds.

139. First, CWLP objects to Condition 7.7.10-1(a)(i) because it requires reporting when the applicable opacity limitation *may* have been violated. The condition is not premised on an *actual* exceedance of an opacity limitation. There is no regulatory provision that would require CWLP to report a "potential" violation of the opacity standard. CWLP believes that this provision is arbitrary and capricious and exceeds the Agency's gap-filling authority under §§ 39.5(7)(a), (b) and (f) of the Act.

140. Further, CWLP objects to Condition 7.7.10-1(a)(i) to the extent that the trigger for immediate reporting of opacity exceedances does not include the concept that the averaging periods for which opacity has been exceeded must be *consecutive*. Versions of the Permit prior to July 2005 include the word "consecutive." As noted in Paragraph 66, *supra*, CWLP believes the inclusion of the word "consecutive" is critical because the actual opacity exceedance alone could constitute the "incident." In reality, random, intermittent exceedances of the opacity limitation do not necessarily constitute a malfunction/breakdown incident, whereas a prolonged period of opacity exceedance

could potentially indicate a malfunction/breakdown "incident." For this reason, CWLP requests that Condition 7.7.10-1(a)(i) be revised to include the word "consecutively."

VI. CONCLUSION

In conclusion, CWLP contests the effective date of the Permit and subsections of the following conditions of its Permit because they are arbitrary, capricious, vague, contrary to law, unreasonable and/or inconsistent with applicable requirements:

Condition 5.6.1 - Records of Emissions

Condition 5.6.2 - Retention and Availability of Records

Condition 5.7.2 - Annual Emissions Reports

Condition 7.1.3 - Applicability Provisions - Units 7, 8, 31 and 32

Condition 7.1.5 - Non-Applicability of Regulations of Concern - Units 7, 8, 31 and 32

Condition 7.1.6 - Work Practices - Units 7, 8, 31 and 32

Condition 7.1.7 - Testing Requirements - Units 7, 8, 31 and 32

Condition 7.1.9 - Recordkeeping Requirements - Units 7, 8, 31 and 32

Condition 7.1.10-1 - Reporting of Deviations - Units 7, 8, 31 and 32

Condition 7.1.10-2 - Periodic Reporting - Units 7, 8, 31 and 32

Condition 7.1.10-3 - Notifications - Units 7, 8, 31 and 32

Condition 7.1.12 - Compliance Procedures - Units 7, 8, 31 and 32

Condition 7.2.3 - Applicability Requirements - Unit 33

Condition 7.2.6 - Work Practices - Unit 33

Condition 7.2.7 - Testing Requirements - Unit 33

Condition 7.2.9 - Recordkeeping Requirements - Unit 33

Condition 7.2.10-1 - Reporting of Deviations - Unit 33

Condition 7.2.10-2 - Periodic Reporting - Unit 33

Condition 7.2.10-3 - Notifications - Unit 33

Condition 7.2.12 - Compliance Procedures - Unit 33

Condition 7.3.4 - Applicable Emission Standards - Coal Handling Equipment

Condition 7.3.6 - Work Practices - Coal Handling Equipment

Condition 7.3.7 - Testing Requirements - Coal Handling Equipment

Condition 7.3.8 - Inspection Requirements - Coal Handling Equipment

Condition 7.3.9 - Recordkeeping - Coal Handling Equipment

Condition 7.3.10 - Reporting - Coal Handling Equipment

Condition 7.4.4 - Applicable Emission Standards - Coal Processing Equipment

Condition 7.4.7 - Testing Requirements - Coal Processing Equipment

Condition 7.4.8 - Inspection Requirements - Coal Processing Equipment

Condition 7.4.9 - Recordkeeping Requirements - Coal Processing Equipment

Condition 7.4.10 - Reporting Requirements - Coal Processing Equipment

Condition 7.4.12 - Compliance Procedures - Coal Processing Equipment

Condition 7.5.4. - Applicable Emission Standards - Fly Ash Equipment

Condition 7.5.7 - Testing Requirements - Fly Ash Equipment

Condition 7.5.8 - Inspection Requirements - Fly Ash Equipment

Condition 7.5.9 - Recordkeeping Requirements - Fly Ash Equipment

Condition 7.5.10 - Reporting Requirements - Fly Ash Equipment

Condition 7.5.12 - Compliance Procedures - Fly Ash Equipment

Condition 7.6.4 - Applicable Emission Standards - Limestone and Gypsum Handling Equipment

Condition 7.6.7 - Testing Requirements - Limestone and Gypsum Handling Equipment

Condition 7.6.8 - Inspection Requirements - Limestone and Gypsum Handling Equipment

Condition 7.6.9 - Recordkeeping Requirements - Limestone and Gypsum Handling Equipment

Condition 7.6.10 - Reporting Requirements - Limestone and Gypsum Handling Equipment

Condition 7.6.12 - Compliance Procedures - Limestone and Gypsum Handling Equipment

Condition 7.7.4 - Applicable Emission Standards - Engines

Condition 7.7.6 - Work Practices - Engines

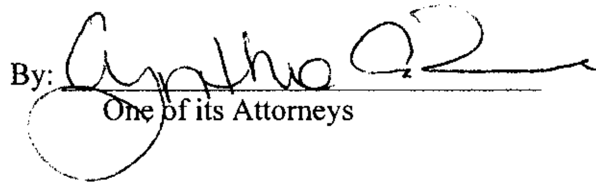
Condition 7.7.9 - Recordkeeping Requirements - Engines

Condition 7.7.10-1 - Reporting of Deviations - Engines

In a Motion for Stay which accompanies this Petition, CWLP has requested a stay of its entire Permit or in the alternative, a stay of the contested conditions set forth in this Petition.

WHEREFORE, for the reasons set forth in this Petition and the Motion for Stay that accompanies this Petition, CWLP respectfully requests that the Board stay the Permit or, in the alternative, the contested conditions set forth in the Petition. CWLP further requests that the Board vacate the imposition of these contested permit conditions and revise CWLP's permit consistent with the requested revisions contained in this Petition for Review.

Respectfully submitted,
THE CITY OF SPRINGFIELD

By: 
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THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

The undersigned, an attorney, certify that I have served upon the individuals named on the attached Notice of Filing true and correct copies of the **PETITION FOR HEARING TO REVIEW CLEAN AIR ACT PERMIT PROGRAM PERMIT ISSUANCE AND MOTION FOR LEAVE TO WAIVE REQUIREMENT TO SUBMIT AN ORIGINAL AND NINE COPIES,** by Messenger and First Class Mail, postage prepaid on November 3, 2005.