BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY GENERATING COMPANY, MEREDOSIA POWER STATION,	)	ORIGINAL
Petitioner,	)	
v.	)	PCB 06-69
	)	CAAPP Appeal
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING

To: Division of Legal Counsel
1021 North Grand Avenue
Post Office Box 19276
Springfield, IL 62794-9276

Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
1000 West Randolph Street, Suite 11-500
Chicago, IL 60601

Please take notice that on 11/3, 2005, the undersigned caused to be filed with the Clerk of the Illinois Pollution Control Board, Petitioner's Petition for Review and Motion for Stay, and Appearance, copies of which are herewith served upon you.

By: James T. Harrington
One of its attorneys

James T. Harrington
David L. Rieser
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
Telephone: 312/849-8100
\\REA\286551

CERTIFICATE OF SERVICE

I, James T. Harrington, one of the attorneys for Petitioner, hereby certify that I served copies of:

1. Motion to Allow Filing of Less Than Nine Copies;
2. Notice of Filing;
3. Petition for Review and Motion to Stay; and
4. Appearance;

upon the

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, IL 62794-9276

on November 3, 2005 via Federal Express.

James T. Harrington
One of the Attorneys for Petitioner

McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601
Telephone: 312/849-8100

\\REA\287270.1

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Respondent.	)	

ORIGINAL

MOTION TO ALLOW FILING OF LESS THAN NINE COPIES

Ameren Energy Generating Company ("Ameren"), by and through its attorneys, McGuireWoods LLP, respectfully requests that the Board allow it to file less than nine copies of its Petition for Review of a CAAP Permit. The Petition includes lengthy exhibits, including the Permit. Ameren has attached the original and four copies and submits that submitting five additional copies would be an unnecessary expense and a burden to both Petitioner and the Board.

WHEREFORE, for the reasons stated in this Motion, Ameren respectfully requests that it be allowed to submit an original and four copies of its Petition for Review and Exhibits instead of nine copies otherwise required by Board rules.

AMEREN ENERGY
GENERATING COMPANY

By: _____
One of its Attorneys

James T. Harrington
David L. Rieser
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
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\\REA\286551.1

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Respondent.	)	

ORIGINAL

APPEARANCE

We hereby file our appearances in this proceeding, on behalf of Petitioner, Meredosia Power Station.

Dated: November 3, 2005

James T. Harrington
Attorney ARDC No. 1132806

David L. Rieser
Attorney ARDC No.: 3128590

McGuireWoods LLP
77 West Wacker Drive, Suite 4100
Chicago, IL 60601

Telephone: 312/849-8100

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2006-67 AMER-EDWARDS			
2006-68 AMER-NEWTON			
2006-69 AMEREN-MERIDOSIA			
2006-70 AMEREN TOTAL HUNTSVILLE			

TOTAL $525.00

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

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PETITION FOR REVIEW
AND
MOTION FOR STAY

NOW COMES Petitioner, Ameren Energy Generating Company ("Petitioner" or "Ameren") pursuant to Section 40.2 of Illinois Environmental Protection Act ("Act" or "15 ILCS 5/40.2" and "35 Ill.Adm.Code § 105.300 *et seq.*"). Petitioner petitions for hearing before the Board to contest the decisions of the Illinois Environmental Protection Agency ("Agency") to include certain conditions and make other decisions in the issuance of the permit dated September 29, 2005 ("Permit") and issued under the Clean Air Act Permit Program ("CAAPP") or ("Title V") set forth at Section 39.5 of the Act (415 ILC 5/39.5) for the Meredosia Power Station ("Meredosia"). Petitioner requests that the Board recognize that the Permit is not final and effective as a matter of law or, in the alternative, stay this Permit pursuant to 35 Ill.Adm.Code § 105.304(b) during the pendency of this Petition for Review. In support of this Petition, Petitioner states as follows.

I. BACKGROUND

1. Petitioner owns and operates a coal-fired power plant for the generation of electricity known as the Meredosia Plant located at 800 South Washington Street, Meredosia, Morgan County, Illinois.

2. This Plant consists of five boilers, Boiler MB1 (a Combustion Engineering Boiler with nominal capacity of 505 mmBTU/hr), Boiler MB2 (a Combustion Engineering Boiler with nominal capacity of 505 mmBTU/hr), Boiler MB3 (a Combustion Engineering Boiler with nominal capacity of 505 mmBTU/hr), Boiler MB4 (a Combustion Engineering Boiler with nominal capacity of 505 mmBTU/hr) and Boiler MB5 (a Combustion Engineering Boiler with nominal capacity of 2,784 mmBTU/hr) as well as Boiler MB6 (a Foster Wheeler Residual Oil-Fired Boiler with nominal heating capacity of 2,052 mmBTU/hr), along with ancillary equipment, including coal handling and coal processing equipment.

3. The Meredosia Plant has a nominal capacity of about 563 megawatts of electricity. It employs approximately 100 people.

4. Meredosia is a major source subject to the Clean Air Act Title V Permit Program. On September 01, 1995, Ameren filed an application for a CAAPP Permit with the Agency. The Agency issued a draft/proposed Permit for the public and USEPA's review on June 28, 2003. That review ended on September 28, 2003. The Agency issued a draft Permit and draft responsiveness summary on July 19, 2005. It provided for a 10 day comment period ending August 1, 2005. The Agency issued a draft Permit for USEPA review on August 15, 2005.

5. Ameren filed comments on various proposed permits on January, 2005 (Exhibit A), and August 1, 2005 (Exhibit B), as well as participating in joint comments filed by the Air Utility Group of Illinois ("AUGI") on September 23, 2003 (Exhibit C).

6. On September 29, 2005, the USEPA Region V posted a document entitled "Clean Air Act Permit Program (CAAPP) Permit" for the Meredosia Power Station dated September 29, 2005 with an expiration date of September 29, 2010, Application No. 95090010; I.D. No. 137805AAA on its website, a copy of which is attached hereto and made a part hereof as Exhibit D.

7. Ameren received the Permit in the mail on October 4, 2005.

8. Ameren hereby petitions for review of the issuance of the Permit and particularly the inclusion of the following identified terms and conditions thereof and asks the Board to reverse and remand the Permit to the Agency specifically for the purpose of removing said conditions or revising the Permit as requested herein.

9. Ameren further requests that the Board enter its order recognizing that the Permit is not final and effective pending a final decision of the Board and the action by the Agency implementing that decision or, in the alternative, issue its Order staying the Permit.

10. Ameren specifically petitions for review of the Permit as a whole and the conditions set forth below for the reasons stated.

II. STAY

11. The Permit is a license within the meaning of the Administrative Procedure Act 5 ILCS 100/10-65.

12. As a license, it is subject to 5 ILCS 100/10-65(b) which provides:

> When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

13. No "final agency decision on the application" on the Permit occurs until the Pollution Control Board rules on this Petition for Review. See *Borg-Warner v. Mauzy*, 100 Ill. App. 3d 862 (1981), 427 N.E.2d 415 (Ill.App.Ct. 1981).

14. Therefore, pending a decision by this Board, the Permit is not in effect or, at a minimum, the contested terms are not in effect.

15. The Board should issue its order finding that the terms of the Permit are not in effect pending its final decision and any final action of the Agency implementing the Board's decision.

16. If the Board does not enter an order as requested, it should enter its own order staying the Permit or, in the alternative, staying the contested terms pending its final decision.

17. As set forth herein, the Permit contains numerous Conditions which are illegal, unsupported in law or fact or otherwise unreasonable. Many of these Conditions are impossible with which to comply or impose an unreasonable burden upon Petitioner. Moreover, a stay would not impose a severe burden on the Agency or the public since this Permit Application has been pending since 1995 and a further delay in imposing these Conditions, to the extent they are valid, will prejudice neither the Agency nor the public. Moreover, Petitioner will remain subject to all requirements of the law and

regulations and prior Permits during the pendency of this Petition. Furthermore, as documented below, Petitioner has a substantial likelihood of success on the merits. Various critical Conditions were imposed in violation of the law, without proper notice and an opportunity to comment, and without basis in law or fact or are otherwise unreasonable.

III. EFFECTIVE DATE

18. a. The Permit states that it was issued September 29, 2005. An e-mail dated September 29, 2005, 7:18 PM, stating the Permit was posted on the USEPA website was effectively received by Ameren on the next business day.

b. The Permit is apparently intended to be effective September 29, 2005, the date it was purportedly issued. The Permit itself does not contain any effective date. The USEPA Region V website where it was originally posted states that it was effective September 29, 2005. It contains numerous terms and conditions which are apparently intended to be immediately effective or which require immediate action by Petitioner to come into compliance with very short deadlines. Most of these conditions, whether otherwise contested or not, are not contained in any prior applicable law, regulation or permit and significant conditions were not contained in any prior draft permit issued for public comment. This purportedly immediately effective permit fails to give Petitioner adequate notice of what is required or adequate time to take action to comply. As such, it is unreasonable and contrary to law and a violation of due process. The Permit should be remanded to the Agency in order to provide adequate time to comply with those terms of the Permit that are otherwise found to be valid.

Ameren did not receive the signed Permit until October 4, 2005. Posting on the federal website and e-mail notice of such posting does not constitute delivery to Ameren. The Permit should not be deemed effective prior to its delivery to the Permittee in final form by the Agency. In particular, if the Permit is deemed effective on September 29, 2005, the two days remaining in the third quarter would require Ameren to have taken action on these days and to file reports for the two days of the third quarter when the Permit would be deemed effective. Ameren had no official notice of the Permit, no opportunity to comply with the terms and conditions thereof, and no reason to have created or maintained the records required to file such quarterly report. Furthermore, filing such a quarterly report or other documents for a two-day period would be a useless gesture and impose an unreasonable burden upon Ameren.

IV. GENERAL REPORTING REQUIREMENTS

19. (a) Conditions 5.6.1(a) and (b) require record keeping of emissions of mercury, hydrogen chloride, and hydrogen fluoride.

(b) There is no basis in state or federal law or regulations for requiring reporting of mercury, hydrogen chloride or hydrogen fluoride. These facilities are not subject to federal regulations as Hazardous Air Pollutants and there is therefore no basis for requiring sampling, record keeping or reporting for these substances.

20. (a) Conditions 5.6.2(b) and (c) require Permittee to retain and print, on paper, records retained in an electronic format and further require Permittee, upon request, to submit copies of any electronic records required to be kept under the permit but not otherwise submitted to the Agency.

(b) These conditions impose an unreasonable burden upon Permittee. Paper copies of records retained in electronic format are generally neither useful nor required.

21. (a) Condition 5.6.2(d) provides:

> 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 effectiveness of this permit. Subsequent revisions shall be submitted within 10 days of the date the Permittee begins to rely upon the revised record.

(b) The requirement to submit all records, apparently including forms of records, within 30 days or when created or revised, is overly vague and burdensome, serves no useful purpose and is otherwise unreasonable and unsupported in law.

22. (a) Condition 5.7.1 specifies General Source-Wide Reporting Requirements. It requires that, "[t]he Permittee shall promptly notify the Illinois EPA of deviations of the source with the permit requirements."

(b) The condition does not define either "promptly" or "deviation" and is therefore overly vague and does not give the Permittee fair warning of what is required. Permittee suggested alternatives during the comment period but none have been adopted. Specific reporting requirements for the specific terms of the permit have been provided and should be sufficient for any reasonable purpose.

V. COAL FIRED BOILER

Calculated 95% Upper Tolerance Bound for Opacity

23. (a) Condition 7.1.9(c)(ii) provides the following records are required:

> Records for the affected 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 limit in Condition 7.1.4(b) is assured, with supporting explanation and documentation, including results of historic emission tests. At a minimum, these records shall be reviewed and revised as necessary following performance of each subsequent PM emission tests on the affected boilers. Copies of these records shall be submitted to the Illinois EPA in accordance with Condition 5.6.2(d).

(b) Standing on its own, this provision requires calculation of a statistical limit based on the incorrect assumption that the opacity readings and the particulate emission rate bear a consistent mathematical relationship to each other across a range of operating conditions. The relationship between opacity and particulate mass emissions varies with changes in fuel supply (different coals), the performance of the particulate control equipment (electrostatic precipitator), the fly ash particle size distribution and the refractive index of the fly ash particles. Thus, no direct correlation exists between stack opacity and particulate mass emissions. It also assumes that the data will fit a normal distribution which may not be the case. This requirement is not based on sound science or statistical methods, even if the relationship was established.

In addition, particulate emission testing pursuant to USEPA Method 5 is done under very controlled conditions not necessarily representative of a normal range of operating conditions. Such testing has generally been performed under normal operating conditions rather than at maximum allowable particulate emission rates typically resulting in emission rates which are a fraction of the allowable emissions. Opacity data

representing opacity readings taken when the particulate emissions are at or near compliance limits are not available. Therefore, even assuming that there was a realistic mathematical relationship between opacity and particulate mass emissions and that this relationship is properly characterized, the confidence limit that would be calculated for opacity would represent a mass emission rate that is a fraction of the emission limit and not in any meaningfully correlation to the allowable particulate emissions under the permit.

24. (a) Condition 7.1.9(c)(ii) further provides that the records required by that section "shall be submitted to the Illinois EPA in accordance with Condition 5.6.2(d)." Section 5.6.2(d) provides, *inter alia*, "[f]or this purpose, the initial record shall be submitted within 30 days of the effectiveness of this permit."

(b) In essence the two sections together require the Permittee to calculate the upper bound of the 95% confidence interval for opacity for each boiler under the Permit, maintain the records, and submit them to the Agency within 30 days of the effective date. This is not possible. In order to attempt the mandated calculation and develop the records, there would need to be a current valid particulate emission test, including correlated opacity data, reflecting current operating conditions. Such tests are not presently available for all facilities subject to this requirement and could not be done within the 30 day period. To obtain such data for all the facilities subject to the identical requirements could require several years depending upon the availability of the generating units, the availability of qualified stack testing teams and Agency personnel to observe the tests. If the requirements of Condition 7.1.9(c)(ii) are to be retained in some form, it or Condition 5.6.2(d) must be modified to provide that what ever calculations

must be done, will be done 180 days following the report of the next stack test for particulate matter required under the permit.

25. (a) Condition 7.1.9(c)(iii)(B) provides that for each hour when the upper bound specified in Condition 7.1.9(c)(ii) is exceeded a record must be made indicating the date, time, operating condition occurring at that time and "whether particulate matter emissions may have exceeded [the applicable limit.]" Moreover Condition 7.1.10-2(a)(i)(E) requires that all records pursuant to Condition 7.1.9(c)(iii)(B) be submitted with the quarterly report.

(b) As set forth above, exceeding the upper bound specified in Condition 7.1.9(c)(ii) cannot reasonably be correlated to consistent particulate emission rates and therefore maintaining these records will not provide any useful information and merely impose an unreasonably burden upon the Permittee. Moreover, there is no basis on which Permittee can estimate whether the particulate emission limits may have been exceeded other than by looking at operating records and determining whether equipment is significantly malfunctioning. Condition 7.1.9(c)(iii)(B) is therefore unreasonable and contrary to law.

26. (a) Conditions 7.1.10-1(a)(ii) and 7.1.10-3(a)(i) require immediate notification by telephone "for each incident in which ... the opacity from an affected boiler exceeds 20 percent for five or more 6-minute averaging periods unless the Permittee has begun the shutdown... ."

(b) As originally proposed, this condition applied to five or more consecutive readings in excess of 20 percent. As written it is overly vague and

burdensome. It would appear to apply to five or more such readings over any period of time including days, weeks or months.

Additionally, the use of the term "immediately" is inappropriate and vague. Without the benefit of a more thorough definition, it could be claimed that the notification must take place the exact moment after the event occurs. This would compromise resources that should, at that critical moment, be performing a number of other tasks to remedy the situation. Further, the review necessary to determine whether or not the reporting is necessary must be performed by those who may not always be on the premises. This standard of "immediate" notice also fails to recognize that the Agency is not always available for notification.

27. (a) In addition to the foregoing condition-by-condition objections, there are numerous conditions in the permit that are overly vague and do not provide fair notice of what is required or even a method by which Permittee could provide the requested information.

i. Condition 7.1.10-2(a)(i)(E) requires Permittee to report instances when a condition "may have exceeded the PM limit...." Similar conditions appear elsewhere.

ii. Condition 7.1.10-2(d)(v) requires information "for each type of recurring opacity exceedance" including elaborate analysis of the possible causes and also requires information of "any new type(s) of opacity exceedances...."

(b) Each of these conditions is overly vague and burdensome. They do not provide fair notice of what is required; they use terms which are not defined in the

permit or in practice; and provide no guidance as to how they are to be met. As such they violate Due Process.

28. (a) Condition 7.1.9(g)(ii)(C)(V) requires records of estimates of the magnitude of emissions of PM and CO during startups in exceedence of certain time limits and whether these emissions may have exceeded applicable limits. Condition 7.1.9(h)(ii)(D)(III) requires that the same records and estimates be made during malfunctions and breakdowns.

(b) There is no reasonable basis in law or fact for making these determinations, either in the amount of emissions or whether they violated any applicable conditions. There may be some basis of making general estimates of CO under some circumstances, but there is no way to make accurate, reliable measurements that could be the basis of determinations of exceedences. There is no accurate method for making realistic estimates of PM and CO emissions during startups or during malfunctions and breakdowns, including no test data or emission factors.

29. (a) Condition 7.1.10-2(d)(iii) contains a note which states in part:

> "Because the Permittee is subject to the reporting requirements of the NSPS, 40 C.F.R. 60.7(c) and (d) for an affected boiler... ."

(b) This facility is not subject to the NSPS, 40 C.F.R. Part 60, and this reference and any requirements or conditions expressly or impliedly based on it are contrary to law.

30. (a) Condition 7.1.10-3(a)(i) requires opacity reading exceeding 20% must be reported to the Agency.

(b) The proper opacity limit for these boilers MB-1 and MB-4 is 30% and not 20%, because it is not subject to NSPS, and the Condition should be corrected accordingly.

31. (a) Condition 7.1.12(b) provides: "Compliance with PM emission limits of Condition 7.1.4(b) is addressed by continuous opacity monitoring in accordance with Condition 7.1.8(a), PM testing in accordance with Condition 7.1.7, and the recordkeeping required by Condition 7.1.9."

(b) Condition 7.1.10-2(d)(iv) under the general caption "Reporting of Opacity and PM Emissions" requires quarterly reports "for periods when PM emissions were in excess of the limitation in Condition 7.1.4(b)," including a detailed reporting of opacity measurements for each six minute period during the exceedances, "[t]he means by which the exceedance was indicated or identified, in addition to the level of opacity," "a detailed explanation of the cause," and a detailed explanation of the corrective measures taken. When read together with the other conditions in the permit set forth above, these sections clearly indicate that there is at least a presumption that the PM limit was violated when the opacity readings exceed the 95% upper tolerance bound calculated pursuant to the permit and that the Agency will expect the opacity reading to be reported as such. In essence, it appears that the 95% upper tolerance bound becomes a surrogate for a new PM limit if not the enforceable limit itself. Moreover, as discussed above, this new limit will not bear any necessary relationship to the limit established in Illinois regulations for PM emissions from the boilers. This is in fact contrary to the statements made in the September 29 Agency Responsiveness Summary (found in Record) which

stated that such limits could not be established. This new limit is not based on any legally applicable requirements and is therefore not a legally defensible requirement.

Furthermore, this new limit will be established without any consideration of its reasonableness or achievability under the normal range of operating conditions for the boilers, normal fuel supply variability and the normal range of control equipment performance and fly ash characteristics designed to achieve consistent compliance with the State's duly established emission limits.

VI. CARBON MONOXIDE

32. (a) Condition 7.1.6 provides:

> As part of its operation and maintenance of the affected boilers, the Permittee shall perform formal "combustion evaluation" [sic] on each boiler on at least a quarterly basis, pursuant to Section 39.5(7)(d) of the Act. These evaluation [sic] 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 efficient combustion.

(b) This condition purportedly requires a quarterly formal "Combustion Evaluation" tied to CO measurements in the flue gas to maintain efficient combustion. "Combustion Evaluation" is not a term of art or science in the coal fired boiler industry and is not defined in the permit and is therefore overly vague. It is well known that CO levels in a boiler vary continuously over the normal range of operating conditions. It is not feasible to make boiler adjustments for CO at a single load point that will thereafter be maintained throughout the entire range of boiler operation. Moreover, tuning a boiler to minimize CO may have the effect of increasing NO_X emissions which are more tightly regulated and of greater environmental concern. There is no evidence that the CO emissions exceed or even approach their allowable limits. Furthermore, there

is no regulatory requirement or basis for inclusion of this requirement in the permit. As set forth in this Condition, these evaluations require periodic testing of CO in the exhaust. Such tests are not necessary or useful for compliance or operation. CO concentrations in the exhaust during stack tests are a small fraction of ambient limits. This requirement would require installation and operation of unspecified monitoring equipment at considerable cost. It is unreasonable and not supported by law or fact.

VII. START UP

33. (a) Condition 7.1.9(g)(ii)(C) states:

> If this elapsed time is more than 4 hours for Boilers MB1 - MB4 or 6 hours for MB5 or if the Permittee's startup procedures are not followed:
>
> I. A detailed explanation why startup of the boiler was not completed sooner or startup procedures were not followed.
>
> II. Documentation for the startup procedures that were followed.
>
> III. The elapsed time from initial firing of auxiliary fuel until firing of the principal fuel was begun.
>
> IV. The flue gas temperature at which the ESP was energized, if coal was fired before the ESP was energized.
>
> V. Estimates of the magnitude of emissions of PM and CO during the startup, including whether emissions may have exceeded any applicable hourly standard, as listed in Condition 7.1.4.

(b) In essence, this requirement treats any startup exceeding 4 or 6 hours at this facility as being out of the ordinary and requiring extensive explanation. On the contrary, as repeatedly pointed out to the Agency on the record, in excess of 16 hours is far more typical of startups as both the boiler and turbine generator are brought to appropriate temperatures and coal is gradually added to the fuel mix. There is no basis for

requiring the substantially greater records required by this condition or creating an impression that startups over 4 or 6 hours are out of the ordinary.

VIII. TESTING

34. (a) Condition 7.1.7(a)(ii) provides 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)), 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)."

(b) This condition requires retesting the boiler if it operates for 30 hours in a calendar quarter at a load that is more than 2% greater than that during its most recent PM test. As the Agency is well aware and as has been pointed out in comments, there are periods of peak demand on the electric grid including periods when the grid may be in danger of collapse because of loading or loss of other generating capacity that it may be necessary to operate boilers over their rated capacity to protect the integrity of the electric grid. Furthermore, a 90 day window for conducting stack tests is not reasonable because arranging for tests, scheduling with the Agency and conducting such tests cannot generally be accomplished in that time frame. This condition penalizes the owner/operator for responding to potential emergency situations and otherwise fulfilling its legal obligations.

35. (a) Condition 7.1.7(b)(iii) provides that USEPA Methods 5 and 202 from 40 CFR 60 Appendix A must be used for sampling Particulate Matter. In the note it provides:

> "Measurements of condensable PM are also required by USEPA Method 202 (40 CFR 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."

(b) Method 202 and similar methods are designed to test for "condensable particulates," i.e., materials that are not particulates as emitted from the stack but which may later condense to form particulates. These "condensable particulates" are not governed by any applicable emission limitation in law, regulation or permit. The test is expensive and complicated. It is also not reliable. Alternative methods are being developed. There is no basis in law for requiring Method 202 testing and it is not necessary or useful in demonstrating compliance with applicable regulations or the permit itself.

IX. COAL HANDLING EQUIPMENT – coal receiving, coal transfer, coal storage operations

Opacity

36. (a) Condition 7.2.4(b) provides that coal handling operations including coal receiving, coal transfer and coal storage are subject to the 30 percent opacity limitations recited in Condition 5.2.2(b) pursuant to 35 IAC 212.123.

Condition 7.2.7 provides that the same operations shall be subject to USEPA Method 9 for opacity on the schedule and methodology set forth in this condition.

Condition 7.2.9(g) requires records of the opacity measurements to be kept.

Condition 7.2.12(a) provides that compliance with 7.2.4 is addressed by, *inter alia,* 7.2.6(a), 7.2.7 and 7.2.9.

(b) These conditions are improper. Emissions for coal handling equipment not exhausted through a stack or control device are strictly fugitive in nature in that they are not emitted from stacks or other similar confined openings suitable for controls. As such these emissions are subject to the fugitive emission standard in 35 IAC 212.301. There is no basis in the law or regulations to subject these emissions to opacity limitations, testing or monitoring.

Inspection Requirements

37. (a) Condition 7.2.8(a) provides that monthly inspections of the operations including control measures must be monitored by "personnel not directly involved in the day-to day [sic] operations of the affected operations."

Condition 7.2.12(a) provides that compliance with 7.2.4 is addressed by 7.2.8.

(b) There is no reasonable basis for requiring inspection by persons not involved in the operation. Only those people involved in the operations have the detailed knowledge of the equipment and processes to adequately carry out such an inspection safely. To require third parties lacking such familiarity with the process would defeat the purpose of the inspection.

38. (a) Condition 7.2.8(b) requires detailed inspection of the dust collection equipment at least every 15 months while the operation is out of service and further requires an inspection before and after any maintenance and repair.

Condition 7.2.12(b) provides that compliance with 7.2.6(a) is addressed by 7.2.8.

(b) Requiring the equipment to be out of service imposes a severe burden on operations and requiring an inspection before and after each repair is unnecessary and wasteful. Inspections and maintenance should be carried out in accordance with the manufacturer's recommendations or industry experience. Moreover, requiring the facility to be taken out of service for such inspections and to require an inspection before and after any repair or maintenance is unnecessary, unreasonable and it does not bear a reasonable relationship to environmental compliance. These requirements are overly burdensome and serve no valid purpose.

39. (a) Condition 7.2.9(e)(ii) provides that the Permittee must maintain records of estimates of the magnitude of PM emissions "for each incident when any affected operation operated without the established control measures."

(b) The determination of the magnitude of PM emissions as attempted to be enforced here does not correlate with other relevant conditions or common industry practices. PM emissions from this operation are generally fugitive. There is no reasonable basis for making estimates of emissions during malfunctions or breakdowns. They cannot be measured and there are no applicable emission factors on which to base such estimates.

40. (a) Condition 7.2.10(b)(i)(A) provides that during continued operation of an affected process during malfunction or breakdown the Permittee must "immediately notify" the Agency "for each incident in which the opacity from an affected operation exceeds or may have exceeded the applicable opacity standard for five or more 6-minute averaging periods."

(b) Emissions from coal handling are typically fugitive. As set forth herein opacity limitations do not apply to fugitive emissions and there is no reasonable basis for measuring opacity under these circumstances. Moreover, there is no basis for counting the "five or more" exceedences, if they could be measured, unless they are continuous or within a certain period of time.

Additionally, the use of the term "immediately" is inappropriate and vague. Without the benefit of a more thorough definition, it could be claimed that the notification must take place the exact moment after the event occurs. This would compromise resources that should, at that critical moment, be performing a number of other tasks to remedy the situation. Further, the review necessary to determine whether or not the reporting is necessary must be performed by those who may not always be on the premises. This standard of "immediate" notice also fails to recognize that the Agency is not always available for notification.

41. (a) Condition 7.2.10(a)(ii) states that "[n]otification within 30 days for operation of an affected operation that was not in compliance with applicable requirements in Condition 7.2.6(a) that continued for more than 12 operating hours from the time that it was identified."

Condition 7.2.6(a) deals with the implementation of emission control measures and the accompanying work practices and operational limits.

(b) The nature of fugitive emissions compliance measures required by Condition 7.2.6(a) makes such reporting meaningless. For example, many such measures are periodic, i.e., every so many days or as needed, (e.g., one need not spray water on coal handling when it is raining). Certain such measures may not be needed for compliance with applicable requirements.

42. (a) Condition 7.2.10(b)(ii)(C) requires the Permittee to submit with the quarterly reports the aggregate duration of all incidents during the quarter in which affected operations continued to operate with excess emissions during malfunction or breakdown.

(b) The determination of the magnitude of PM emissions, as attempted to be enforced here, does not correlate with other relevant conditions or common industry practices. PM emissions are generally fugitive. Under Condition 7.2.8(a), the Permittee is only required to make monthly inspections of affected operations and associated control measures. There are a number of reasons why monthly inspections, rather than continuous inspections, are enforced, and it is well-established that this monthly standard is reasonable, sufficient, effective, and fair. Therefore, it does not correlate that the Permittee should be asked to make estimates of emissions during each instance when operations continue without control measures.

X. COAL PROCESSING EQUIPMENT

43. (a) Condition 7.3.4(b) provides that coal processing operations will be subject to the opacity limitation referenced in Condition 5.2.2(b) pursuant to 35 IAC 212.123.

Condition 7.3.6 requires work practices and other methods to assure compliance with Condition 7.3.4.

Condition 7.3.9(g) requires records of opacity readings to be maintained.

Condition 7.3.12(a) provides compliance with 7.3.4 be assured by applications of Condition 7.3.6(a).

Condition 7.3.7(a)(i) requires that opacity be determined pursuant to USEPA Test Method 9.

(b) As set forth above with respect to coal handling equipment, those emissions from coal processing which are fugitive in nature and do not exit through a stack or other confined opening are not subject to the opacity limitations but are subject to the fugitive dust rule 35 IAC 212.301. As such they are not subject to the opacity limitations of 35 IAC 212.123.

44. (a) Condition 7.3.7(b) requires USEPA Method 5 sampling of all "stacks or vents" from the coal processing operations upon request from the Agency.

Condition 7.3.12(b) requires that compliance with Condition 7.3.6(b) be assured by Condition 7.3.7.

(b) USEPA Method 5 is not applicable to testing of vents or even stacks that do not have regular flow conditions. This requirement is therefore improper

(b) These conditions are unreasonable and unsupported in law and fact for the reasons stated with respect to 7.3.6.

48. (a) Condition 7.3.9(e)(ii) provides that the Permittee must maintain records of the magnitude of PM emissions "for each incident when any affected process operated without the established control measures."

(b) The determination of the magnitude of PM emissions as attempted to be enforced here does not correlate with other relevant conditions or common industry practices. PM emissions from this operation are generally fugitive. There is no reasonable basis for making estimates of emissions during malfunctions. They cannot be measured and there are no applicable emission factors on which to base such estimates.

49. (a) Condition 7.3.10(b)(i)(A) provides that during continued operation of an affected process during malfunction or breakdown the Permittee must "immediately notify" the Agency "for each incident in which the opacity from an affected process exceeds or may have exceeded the applicable opacity standard for five or more 6-minute averaging periods."

(b) Emissions from coal processing equipment are typically fugitive. As set forth herein opacity limitations do not apply to fugitive emissions and there is no reasonable basis for measuring opacity under these circumstances. Moreover, there is no basis for counting the "five or more" exceedences, if they could be measured, unless they are continuous or within a certain period of time.

Additionally, the use of the term "immediately" is inappropriate and vague. Without the benefit of a more thorough definition, it could be claimed that the notification must take place the exact moment after the event occurs. This would

quarter. Petitioner has no objection to submitting such information within thirty days as required by federal regulations. However, the quarterly reports required under Condition 7.4.10-2(a)(iii) require substantially more information than 40 C.F.R. 60.45(g) which will require substantial additional time and effort to compile. Other CAAPP Permits for this industry allow sixty days to submit such reports for the first four quarters and allow forty-five days thereafter. It is unreasonable to allow less time in permits which also must file reports pursuant to 40 C.F.R. 60.45(g).

55. Petitioner also objects to any other Condition of the Permit related to or incorporating the Conditions objected to herein.

56. Furthermore, many of the Conditions were included in the Permit in violation of Section 39.5(q) of the Act 415 ILCS 5/39.5(q), as well as 40 C.F.R. § 70.7(a)(5) in that the Agency failed to provide notice to the public, including an opportunity for public comments and a hearing on these conditions of the Permit; failed to "prepare a draft permit and a statement that sets forth the legal and factual basis for the draft CAAPP permit conditions, including references to the statutory or regulator provisions..." and also failed to give notice of a draft CAAPP permit including these conditions to the applicant. Inclusion of these conditions without the notice and opportunity to comment provided by law deprives the Permittee of Due Process of Law in violation of the Illinois and United States Constitutions. This failure is so pervasive that the entire Permit should be remanded for proper notice and comment in accordance with the Board's findings.