From: Steinert, Terry
Sent: Thursday, September 02, 2010 11:16 AM
To: 'George.Kennedy@Illinois.gov'
Subject: KCBX emissions spreadsheets

Attachments: FESOP Renewal 2010-07-14 fuel combustion PTE.xls; FESOP Renewal 2010-08-27 fugitive particulate PTE.xls

George.

Thanks again for meeting with us last week to discuss the FESOP for KCBX Terminals in Chicago. I think Chris Presnall summed it up pretty well when he characterized the meeting as productive. We certainly better understand the Agency point of view on some topics that were confusing us.

As we promised, I am attaching the spreadsheets from which the printouts were made (Attachments C and D) from our July 16, 2010 comments on the draft FESOP submitted to Brad Frost of the Agency. For the PM / PM10 PTE spreadsheet, I added the calculations that would show the emissions from offloading low moisture product (I assumed 0.75% moisture) through 1 drop point on the rail unload system.

Please call me if you have any questions.


FESOP Renewal 2010-07-14 fuel ...


FESOP Renewal 2010-08-27 fugit...

Terry L. Steinert

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Equipment List - Emission Potential Revised: 7/9/2010

Equipment										Date of				Potential to Emit													
			Engine			Capacity								lb/hr							ton/yr						
ID	Name / Description	Power	Type*	Duty	Units	Hourly	Annual	Units	Applicability	Manufacture	Installation	Start Up	Modification	NOx	CO	SOx	PM	PM_{10}	$PM_{2.5}$	VOC	NOx	CO	SOx	PM	PM_{10}	$PM_{2.5}$	VOC
	Fixed Lunch Room Furnace, Armstrong	diesel				0.450	3942	MMBtu	35 IAC 201.146(d)	Pre 1993	Pre 1993	Pre 1993		0.066	0.016	0.023	0.0066	0.0066	0.0066	0.00112	0.29	0.07	0.10	0.029	0.029	0.029	0.0049
	Fixed Diesel Shop Furnace, Armstrong	diesel				0.284	2488	MMBtu	35 IAC 201.146(d)	Pre 1993	Pre 1993	Pre 1993		0.041	0.010	0.015	0.0041	0.0041	0.0041	0.00070	0.18	0.05	0.06	0.018	0.018	0.018	0.0031
	Fixed Wash House Furnace, Weil McLain	diesel				0.298	2610	MMBtu	35 IAC 201.146(d)	Pre 1993	Pre 1993	Pre 1993		0.044	0.011	0.015	0.0044	0.0044	0.0044	0.00074	0.19	0.05	0.07	0.019	0.019	0.019	0.0032
	Fixed Water Heater, Boch Model 71E	diesel				0.138	1205	MMBtu	35 IAC 201.146(c)	2006	2006	2006		0.020	0.0050	0.0071	0.0020	0.0020	0.0020	0.00034	0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015
	Fixed Water Heater, Bock Model 71E	diesel				0.138	1205	MMBtu	35 IAC 201.146(c)	2006	2006	2006		0.020	0.0050	0.0071	0.0020	0.0020	0.0020	0.00034	0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015
1	Portable Air Heater, Dayton	kerosene				0.6	5258	MMBtu	35 IAC 201.146(c), (d)	2005	2005	2005		0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015	0.38	0.096	0.14	0.038	0.038	0.038	0.0065
2	Portable Air Heater, Dayton	kerosene				0.6	5256	MMBtu	35 IAC 201.146(c), (d)	2005	2005	2005		0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015	0.38	0.096	0.14	0.038	0.038	0.038	0.0065
3	Portable Air Heater, Master	kerosene				0.6	5256	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015	0.38	0.096	0.14	0.038	0.038	0.038	0.0065
4	Portable Air Heater, Master	kerosene				0.35	3066	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.051	0.013	0.018	0.0051	0.0051	0.0051	0.00087	0.22	0.056	0.079	0.022	0.022	0.022	0.0038
5	Portable Air Heater, Dayton	kerosene				0.35	3066	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.051	0.013	0.018	0.0051	0.0051	0.0051	0.00087	0.22	0.056	0.079	0.022	0.022	0.022	0.0038
6	Portable Air Heater, Dayton	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
7	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
8	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2006	2006	2006		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
9	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2007	2007	2007		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
10	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2007	2007	2007		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
11	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2007	2007	2007		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
12	Portable Air Heater, Master	kerosene				0.15	1314	MMBtu	35 IAC 201.146(c), (d)	2007	2007	2007		0.022	0.0055	0.0078	0.0022	0.0022	0.0022	0.00037	0.096	0.024	0.034	0.0096	0.0096	0.0096	0.0016
13	Portable Air Heater, Master	kerosene				0.60	5256	MMBtu	35 IAC 201.146(c), (d)	2007	2007	2007		0.088	0.022	0.031	0.0088	0.0088	0.0088	0.0015	0.38	0.096	0.14	0.038	0.038	0.038	0.0065
4831	Power Washer, Landa w/ 5 hp electric engine	kerosene				0.33	2891	MMBtu	35 IAC 201.146(nn)	2000	2000	2000		0.0000	0.0000	0.00000	0.00000	0.00000	0.00000	0.00000	0.000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
5034	Power Washer, MTM w/16 hp engine	gasoline				0.54	4730	MMBtu	35 IAC 201.146(nn)	2000	2000	2000		0.00	0.000	0.0000	0.000	0.000	0.000	0.00	0.00	0.000	0.000	0.000	0.000	0.000	0.0
4822	567 kw Generator	diesel	CI	750	hp				35 IAC 201.146(l)	1996	May-96	May-96		18	4.1	1.7	0.53	0.53	0.53	0.48	79	18	7.4	2.3	2.3	2.3	2.1
4823	560 kw Generator	diesel	CI	780	hp				35 IAC 201.146(l)	1998	Oct-98	Oct-98		18	4.2	1.7	0.53	0.53	0.53	0.49	80	18	7.5	2.3	2.3	2.3	2.1
4825	Welder/Generator, Electric Truck	gasoline	4SRB	9	hp				35 IAC 201.146(l)	2006	2006	2006		0.10	0.0626	0.0053	0.0065	0.0065	0.0065	0.19	0.43	0.274	0.023	0.028	0.028	0.028	0.85
4826	Mechanics Welder/Generator	diesel	CI	9	hp				35 IAC 201.146(l)	2005	2005	2005		0.28	0.060	0.018	0.020	0.020	0.020	0.023	1.2	0.28	0.081	0.087	0.087	0.087	0.10
4826	WD-5 Welder, Miller	gasoline	4SRB	34	hp				35 IAC 201.146(y)	1990	1990	1990		0.37	0.237	0.020	0.025	0.025	0.025	0.73	1.6	1.04	0.088	0.11	0.11	0.11	3.2
-	Battery Starter/Generator, Multiquip	gasoline	4SRB	10	hp				35 IAC 201.146(nn)	1995	1995	1995		0.11	0.0696	0.0059	0.0072	0.0072	0.0072	0.22	0.48	0.305	0.026	0.032	0.032	0.032	0.95
	Spare generator/welder	gasoline	4SRB	9	hp				35 IAC 201.146(y)	2003	2003	2003		0.10	0.0626	0.0053	0.0065	0.0065	0.0065	0.19	0.43	0.274	0.023	0.028	0.028	0.028	0.85
	Mechanics Air Compressor, Kohler	gasoline	4SRB	16	hp				35 IAC 201.146(l)	2001	2001	2001		0.18	0.111	0.0095	0.012	0.012	0.012	0.35	0.77	0.488	0.041	0.051	0.051	0.051	1.5
4824	Water Pump, Cambardini 6"	diesel	CI	32.5	hp				35 IAC 201.146(l)	2007	2007	2007		1.0	0.22	0.067	0.072	0.072	0.072	0.082	4.41	0.95	0.29	0.31	0.31	0.31	0.36
4824	Honda 3" Trash Pump Teal	gasoline	4SRB	9	hp				35 IAC 201.146(l)	1994	1994	1994		0.10	0.0626	0.0053	0.0065	0.0065	0.0065	0.19	0.43	0.274	0.023	0.028	0.028	0.028	0.85
4824	Honda 3" Water Pump on Trailer	gasoline	4SRB	9	hp				35 IAC 201.146(l)	2002	2002	2002		0.10	0.0626	0.0053	0.0065	0.0065	0.0065	0.19	0.43	0.274	0.023	0.028	0.028	0.028	0.85
4824	Briggs & Stratton 4" Trash Pump	gasoline	4SRB	16	hp				35 IAC 201.146(l)	1996	1996	1996		0.18	0.111	0.0095	0.012	0.012	0.012	0.35	0.77	0.488	0.041	0.051	0.051	0.051	1.5
4824	Briggs & Stratton 4" Trash Pump	gasoline	4SRB	16	hp				35 IAC 201.146(l)	2007	2007	2007		0.18	0.111	0.0095	0.012	0.012	0.012	0.35	0.77	0.488	0.041	0.051	0.051	0.051	1.5
														40	9.7	3.9	1.3	1.3	1.3	3.9	174	42	17	5.8	5.8	5.8	16.9

* CI = compression ignition
4SRB = spark ignition 4-stroke, rich-burn
2SLB = spark ignition 2-stroke, lean-burn
4SLB = spark ignition 4-stroke, lean-burn

	Emission Factors (lb/hp-hr)							
Diesel ≤ 600 hp	0.031	0.0067	0.0021	0.0022	0.0022	0.0022	0.0025	Source: AP-42 Table 3.3-1
Gasoline	0.011	0.00696	0.00059	0.00072	0.00072	0.00072	0.022	
Diesel > 600 hp	0.024	0.0055	0.00227	0.00070	0.00070	0.00070	0.00064	Source: AP-42 Table 3.4-1 and footnote f

SO_2 for large diesels assumes a maximum sulfur content of 0.28% as allowed by permit
VOC assumed to be TOC minus methane

	Emission Factors (lb/mmBtu)							
Diesel	4.41	0.95	0.29	0.31	0.31	0.31	0.36	Source: AP-42 Table 3.3-1
Kerosene	4.41	0.95	0.29	0.31	0.31	0.31	0.36	Source: DOE EIIP Vol III page 2
Diesel =	0.137 mmBtu/gal							Source: AP-42 Appendix A
	0.003 mmBtu/hp-hr							

	Emission Factors (lb/gal)							
Fuel Oil	0.02	0.005	0.0071	0.002	0.002	0.002	0.00034	Source: AP-42 Tables 1.3-1 and 1.3-3
Kerosene	0.02	0.005	0.0071	0.002	0.002	0.002	0.00034	Source: DOE EIIP Vol III page 2
Distillate Oil =	0.140 mmBtu/gal							Source: AP-42 Appendix A

Emission Calculations - KCBX Terminals Co. Chicago, IL

Screening Emissions (NSPS Y) @ 7.5% moisture (current FESOP)

1. Material Handling (from AP-42 13.2.4, "Aggregate Handling and Storage Piles", Equation 1, 11/2006)

$EF = k(0.0032)[(U/5)^{1.3}]/[(M/2)^{1.4}]$ where:

	PM_{30}	PM_{10}	$PM_{2.5}$	
k =	0.74	0.35	0.053	
U =	10.3			mph (average wind speed for O'Hare through 2001 - NOAA)
M =	7.5			Current FESOP limit
EF =	0.00095	0.00045	0.00007	lb pollutant/ton transferred
	112.8			ton/hr screening rated capacity (from equipment spec sheet)
	9			maximum drop points in rail unload system to rock chute plus 2 drops for pad transfe
	11			maximum drop points in ship load system plus 2 drops for pad transfers

Emissions = Amount Transfered * Material Handling EF * No. of Drop Points
Control is by watering to maintain moisture at or above the value of M

Potential Emissions - unloading

PM_{30}	PM_{10}	$PM_{2.5}$	
1.0	0.5	0.1	lb/hr
4	2.0	0.3	ton/yr

Potential Emissions - loading assumes blend of 25% reclaim & 75% virgin

PM_{30}	PM_{10}	$PM_{2.5}$	
4.9	2.2	0.3	lb/hr
21	10	1.5	ton/yr

2. Screening (from AP-42, Crushed Stone Processing, Table 11.19.2-2, 08/2004)

	PM	PM_{10}	$PM_{2.5}$	
EF =	**0.0022**	**0.00074**	**0.000050**	lb pollutant/ton screened (controlled)
EF =	**0.025**	**0.0087**	**0.00013**	lb pollutant/ton screened (uncontrolled)
	112.8			ton/hr screening rated capacity (from equipment spec sheet)

Emissions = Amount screened * Screening EF
Controlled emissions are those with material moisture content of at least 2.88 %
(see footnote b to AP42 Table 11.19.2-2)

Potential Controlled Emissions

PM	PM_{10}	$PM_{2.5}$	
0.2	0.08	0.01	lb/hr
1.0	0.4	0.02	ton/yr

3. Storage Piles (AP-42, Chapter 11.9, Western Surface Coal Mining, 1998)

Note: k factors not available for PM_{10} & $PM_{2.5}$, so the ratio of Material Handling k factors from Scenario 1 is applied

Area [redacted] acres of total available storage

Active Piles (from AP-42, Table 11.9-1)

EF = 0.72* u lb PM_{30}/acre/hr (disturbed area)

U = 10.3 mph (average wind speed for O'Hare through 2001 - NOAA)

100 % of storage piles that are active (most conservative estimate)

	PM_{30}	PM_{10}	$PM_{2.5}$	
EF =	1.85	0.88	0.13	lb pollutant/acre/hr (controlled)
EF =	7.42	3.51	0.53	lb pollutant/acre/hr (uncontrolled)

Assume 75% assumed control efficiency from water application

Potential Controlled Emissions

PM_{30}	PM_{10}	$PM_{2.5}$	
[redacted]	[redacted]	[redacted]	lb/hr
[redacted]	[redacted]	[redacted]	ton/yr

Assume Pile remains active (no emissins from an inactive pile) because screening occurs 8760 hrs/yr

4. Vehicle Traffic

Unpaved Roads (AP-42 Section 13.2.2 Unpaved Roads, 2003)

Applicable for 90% of vehicle traffic (estimate)

$EF = k(s/12)^a*(W/3)^b*[(365-P)/365]$ lb/vehicle mile traveled (VMT)

988,128 tons/yr maximum screener throughput

Assume All screened material is moved by truck and loader (worst case)

$W = \frac{\sum (VMT * avg\ vehicle\ wt)}{Total\ VMT}$ Mean Vehicle Fleet Weight for all vehicle types

Vehicle Type	Number	Weight (tons)			Operating			VMT (mi/yr)	
		Loaded	Empty	Average	Distance[1] (mi)	Speed (mi/hr)	Time (hrs/yr)	Unpaved	Paved
End loader/dozer	1	20.0	10.0	15.0	0.03			2,807	0
Water truck[2]	1	20.0	5.0	12.5		5.0	100	500	0

Haul truck	39,525	40.0	15.0	27.5	0.8			31,620	0
[1]round trip							Total =	34,927	0

[2]100 fills/year @ 1 hr each

Where:	PM_{30}	PM_{10}	$PM_{2.5}$	
k =	4.9	1.5	0.15	constant for lb/VMT
a =	0.7	0.9	0.9	
b =	0.45	0.45	0.45	
s =	5.1	5.1	5.1	road surface % silt (AP-42 Table 13.2.2.1 for Plant Road)
W =	26.3	26.3	26.3	Mean weight of vehicles, tons
$P_{uncontrolled}$ =	120	120	120	Figure 13.2.2-1 for days with > 0.01 inches precipitation
$P_{controlled}$ =	215	215	215	1/3 of $P_{uncontrolled}$ (non-sprinkling season) + watering days
E_{ext} =	4.8	1.2	0.1	lb/VMT Uncontrolled
E_{ext} =	2.9	0.8	0.08	lb/VMT Controlled

Emission = Unpaved Road EF (adjusted for local rainfall) * Fleet Weighted Vehicle Miles Traveled

Control assumes P = 175 days of watering (Apr 1 - Nov 31 ~ 35 wks @ 5 days/wk)

Potential Controlled Emissions

PM_{30}	PM_{10}	$PM_{2.5}$	
12	3.0	0.3	lb/hr
51	13	1.3	ton/yr

SUMMARY OF CONTROLLED EMISSIONS

	Pounds/year			Tons/year		
	PM_{30}	PM_{10}	$PM_{2.5}$	PM_{30}	PM_{10}	$PM_{2.5}$
Transfers	49,872	23,588	3,572	25	12	1.8
Screening	2,174	731	49	1.1	0.4	0.0
Storage Piles	64,964	30,726	4,653	32	15	2.3
Vehicle Traffic	102,604	26,469	2,647	51	13	1.3
Site Totals	219,613	81,514	10,921	110	41	5.5

Fluid Coke Receiving Emissions @ 0.75% moisture

Material Handling (from AP-42 13.2.4, "Aggregate Handling and Storage Piles", Equation 1, 11/200

EF = $k(0.0032)[(U/5)^{1.3}]/[(M/2)^{1.4}]$ where:

	PM_{30}	PM_{10}	$PM_{2.5}$	
k =	0.74	0.35	0.053	
U =	10.3			mph (average wind speed for O'Hare through 2001 - NOAA)
M =	0.75			Current FESOP limit
EF =	0.024	0.011	0.0017	lb pollutant/ton transferred
	200			10% fluid coke blend on a 2000 tph belt
	1			drop points in rail unload system

Emissions = Amount Transfered * Material Handling EF * No. of Drop Points

Potential Emissions - unloading

PM_{30}	PM_{10}	$PM_{2.5}$	
4.78	2.26	0.34	lb/hr
21.0	9.9	1.5	ton/yr

The ton/year calculation assumes receiving fluid coke 8760 hours per year
In reality, the facility would not receive fluid coke for 8760 hours per year because the facility cannot bring in that much green delayed coke to use for blend.
200 tpy * 8760 hr/yr = ######## ton fluid coke * 9x blend = ######## tons green delayed coke

KCBX TERMINALS COMPANY

October 13, 2010

CERTIFIED MAIL

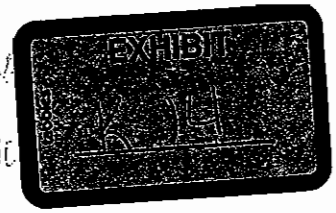
Edwin C. Bakowski, P.E.
Manager, Permit Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Re: August 26, 2010 Meeting Follow-up
Renewal of Federally Enforceable State Operating Permit
KCBX Terminals Company, Chicago, Illinois
I.D. Number 031600AHI
Application Number 95050167

Dear Mr. Bakowski:

This letter is written in follow-up to the August 26, 2010 meeting ("Meeting") between KCBX Terminals Company ("KCBX") and the Illinois Environmental Protection Agency ("Illinois EPA") to discuss issues related to the pending Federally Enforceable State Operating Permit ("FESOP") renewal for the KCBX facility ("Facility") located at 3259 East 100th Street, Chicago, Illinois, 60617, and KCBX's July 16, 2010 letter ("July 16, 2010 Letter"), which included comments regarding the proposed renewal of the FESOP. Present at the Meeting were: Bob Bernoteit, George Kennedy and Chris Pressnall on behalf of Illinois EPA; Terry Steinert, Tom Safley and Pete Rotundo on behalf of KCBX; and Katherine Hodge and Lauren Lurkins of Hodge Dwyer & Driver, on behalf of KCBX. KCBX extends its appreciation to Mr. Pressnall, Mr. Bernoteit and Mr. Kennedy for taking the time to meet to discuss the issues regarding the pending FESOP renewal. KCBX hopes the Meeting provided Illinois EPA with information that clarifies the equipment and potential emissions at the Facility. KCBX benefitted from the Meeting by gaining an understanding of Illinois EPA's point of view on several key issues.

Per the discussion at the Meeting, Mr. Steinert on September 2, 2010 forwarded Mr. Kennedy an electronic copy of the spreadsheets (with calculation formulae) for the screening operations, which were attached in hard copy to KCBX's July 16, 2010 Letter (as Attachments C and D, respectively) and a spreadsheet with calculations for quantifying emissions from offloading low moisture material at the Facility. During the Meeting, Illinois EPA agreed to review this information and provide KCBX with comments regarding the same. KCBX looks forward to receiving those comments.



Also during the Meeting, KCBX agreed to: (1) respond to Illinois EPA regarding whether emissions from material storage and handling, including conveying operations, at the Facility are fugitive in nature (and thus, whether they should be included in determining whether the Facility would be a "major source" based on potential to emit); (2) clarify its intent with regard to its proposed moisture language, as detailed in the July 16, 2010 Letter; and (3) provide additional equipment detail regarding draft permit condition 2q (as contained in the June 16, 2010 revised draft FESOP). KCBX addresses these issues through this correspondence.

Material Transfer Fugitive Emissions

At the Meeting, KCBX and Illinois EPA discussed emissions of particulate matter ("PM") from material storage and handling, including conveying operations, at bulk material operations such as the KCBX Facility, and Illinois EPA raised the question of whether such emissions should be considered fugitive in nature. After the Meeting, KCBX researched this question. In doing so, the following were reviewed:

- Illinois EPA's Lifetime General Operating Permit for Large Aggregate Processing Plants – NSPS Sources ("General Permit"), as suggested by Mr. Bernoteit;
- AP-42, *Compilation of Air Pollutant Emission Factors* ("AP-42");
- Illinois's fugitive PM emissions regulations located at 35 Ill. Admin. Code Part 212, Subpart K (Sections 212.301 through 212.316);
- the regulatory history of 35 Ill. Admin. Code Part 212, Subpart K, as detailed in rulemakings before the Illinois Pollution Control Board ("Board");
- Illinois EPA's Clean Air Act Permit Program ("CAAPP") application form regarding fugitive emissions; and
- United States Environmental Protection Agency ("USEPA") comments regarding the control of fugitive coal dust emissions from open storage piles located at coal preparation and processing plants.

As discussed below, these sources establish that PM emissions from bulk material storage and handling operations such as the KCBX Facility – including emissions from conveyors used to load materials to and unload materials from outdoor storage piles, as well as emissions from those storage piles themselves – are fugitive in nature.

Because of the reference made during the Meeting, KCBX first reviewed Illinois EPA's General Permit. After conducting that review, KCBX has concluded that the language of the General Permit is consistent with KCBX's view that PM emissions from material handling and storage operations at the Facility are fugitive in nature.

Illinois EPA issued the General Permit:

> to limit the emissions [of] particulate matter (PM) and all other pollutants from the source to less than 100 tons per year for the purposes of the Air Pollution Operating Permit Fee under Section 9.6(b)(1) of the Illinois Environmental Protection Act (Act).

General Permit, Finding 6.

Under Section 9.6(b) of the Illinois Environmental Protection Act, after July 1, 2003, the air permitting fee for a site that is permitted to emit "less than 100 tons per year of any combination of regulated air pollutants ... is ... $1,800 per year," while the permitting fee for a site that is permitted to emit "at least 100 tons per year of any combination of regulated air pollutants is ... $3,500 per year." 415 ILCS 5/9.6(b)(2), (3).

To meet its goal of keeping the permitting fee for sites covered by the General Permit at $1,800 rather than $3,500, Illinois EPA included the following in the General Permit: (1) throughput limits for "Crushers," "Screens," and "Conveyors and Bins/Transfer Points" at covered sites; and (2) limits on emissions of PM from "Crushers," "Screens," and "Conveyors and Bins" at covered sites. General Permit Condition 4(a)(ii), (iii). The fact that a permit limit applies to emissions from conveyors at aggregate processing plants, however, does not mean that such emissions are not "fugitive." A permit limit can apply to fugitive emissions – all that is required to establish a permit limit is a means to quantify emissions, and as discussed below, AP-42 includes emission factors for fugitive emissions. (That is not to say that a limit on PM emissions is necessary or appropriate in every situation. As noted above, such a limit was appropriate in the General Permit if PM emissions were to be limited so as to keep the permitting fee for covered sites at $1,800 rather than $3,500. KCBX is not concerned about limiting emissions in order to limit permitting fees.) Further, the General Permit specifically refers to "fugitive" emissions from conveyors, stating:

> Pursuant to 40 CFR 60.672(b), no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any transfer point on belt conveyors, any crusher, at which a capture system is not used, or from any other affected facility any fugitive emissions which exhibit greater opacity [than specified in Part 60 Subpart OOO].

General Permit Condition 2.a.iv. (Emphasis added.) See also General Permit Condition 2.b.ii (addressing the "emission of fugitive particulate matter from any process, including any material handling or storage activity ...").

Consistent with the treatment of such PM emissions as fugitive, the General Permit does not require capture systems for emissions from conveyors. Rather, the General Permit provides:

> In lieu of natural moisture, water sprays are used on the emission units associated with the aggregate processing plant (crushers, conveyors and bins with associated transfer points, and stockpiles) ... in order to control particulate matter emissions, rather than by capture systems and collection devices.

General Permit, Finding 1.a.ii. (Emphasis added.) See also General Permit, Condition 3.c.

KCBX would note that just as an emission limit does not mean that PM emissions are not fugitive, the fact that PM emissions from aggregate processing plants are subject to a control – that is, water sprays – does not mean that such emissions are not fugitive.

In addition, KCBX's operation is distinguishable from that of an aggregate processing plant. Aggregate plants covered by the General Permit process (crush, screen), as well as store and handle aggregate. The primary activities at the KCBX Facility, however, are storage and handling, and KCBX understands that Illinois EPA's question relates to emissions from these material handling activities. As discussed in previous communications with Illinois EPA, the Facility does conduct a very minor amount of processing in the form of screening. However, KCBX has quantified the emissions from storage and handling associated with such screening as a distinct activity. See the July 16, 2010 Letter. The storage and handling, as well as conveying, about which Illinois EPA inquired (which, again, comprises the vast majority of the activity at the Facility) takes place on a separate portion of the Facility. Therefore, in addition to the points above regarding the implications of the General Permit, KCBX does not believe that the Facility as a whole should be treated, for permitting purposes, in the same manner as the aggregate plants covered by the General Permit.

Similarly, AP-42 distinguishes activities that involve the processing of minerals from activities that involve only the handling and storage of materials. Specifically, Chapter 11 of AP-42 covers the "Mineral Products Industry," which includes 31 different production, processing, crushing and screening sources, such as sand and gravel processing (Section 11.19.1) and crushed stone processing and pulverized mineral processing (Section 11.19.2). Chapter 13 of AP-42, on the other hand, covers "Miscellaneous Sources," with Section 13.2 addressing six different types of "Fugitive Dust Sources." The six types of fugitive dust sources include outdoor "aggregate handling and storage piles." While this section covers aggregate, its extension to the coal and petroleum coke handled at the KCBX Facility has been recognized by Illinois EPA in various permit actions, including the existing KCBX FESOP. See AP-42, Section 13.2.4.1.

By placing fugitive dust from aggregate handling and storage piles in a separate section of AP-42, USEPA is acknowledging that the activities associated with storage pile construction and reclamation, including material batch (loader) or continuous (conveyor) drops, create fugitive emissions to be considered apart from the Mineral Products Industry. See AP-42 Section 13.2.4.3. As set forth in the narrative discussion below under the heading "Intent of Proposed Moisture Language," KCBX's storage and handling operations are, for the most part, associated with storage piles (though KCBX also handles some material by conveying it from rail to vessel without the use of storage piles). As Section 13.2.4.1 of AP-42 notes, fugitive emissions result from "material loading onto [a] pile, disturbances by strong wind currents, and load out from the pile," as well as from "the movement of trucks and loading equipment in the storage pile area." See Section 13.2.4.1. AP-42, therefore, demonstrates that emissions from material storage and handling, including conveying operations at the Facility, are fugitive in nature.

The fugitive PM rules at 35 Ill. Admin. Code Part 212, Subpart K also support KCBX's conclusion that PM emissions from material handling and storage are fugitive. Section 212.301 – "Fugitive Particulate Matter" – states the following:

> 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.)

Additionally, Section 212.304 addresses fugitive PM emissions from storage piles, and Section 212.305 addresses fugitive PM emissions from conveyor loading operations. Therefore, the Illinois regulations are structured based on the understanding that the PM emissions from these sources are fugitive in nature.

This conclusion is supported by the regulatory history of 35 Ill. Admin. Code Part 212, Subpart K. In the Board's November 1, 1979 Opinion in In the Matter of: Fugitive Particulate Emissions from Industrial Sources, R78-11, the Board included a summary of the "[t]raditional sources of controllable fugitive particulate matter," which included the following:

1) Material loss from conveyors, which primarily occurs at feeding, transfer and discharge points or from spills;

2) Emissions during loading and unloading of bulk materials into transportation vehicles, which arise mainly from mechanical agitation of the material as it strikes the sides and bottom of the vehicle and from air turbulence created as the material is moved into and out of the vehicle;

3) Load-in (addition) and load-out (removal) operations from storage piles, vehicular traffic around storage piles, and wind erosion of the surficial material from storage piles (R.13);

4) Material handling operations, such as railcar side dumping, motorized car side chute dumping, clam shell bucket loading and material sizing at screening operations (R.20); and

5) Vehicle traffic on dust-laden plant roads, which can lead to dust reentrainment (R.28).

Board Opinion, In the Matter of: Fugitive Particulate Emissions from Industrial Sources, R78-11 at 36-64 (Ill. Pol. Control Bd. Nov. 1, 1979). (Emphasis added.)

Likewise, Illinois EPA has characterized these types of emissions as "fugitive." In Illinois EPA's Statement of Reasons, received by the Board on August 19, 1991, in In the Matter of: PM-10 Emission Limits for McCook and Lake Calumet Areas in Cook County, Illinois and the Granite City Area in Madison County, Illinois, R91-22, Illinois EPA discussed the differences between point sources, process fugitive sources and open fugitive dust emissions. With regard to open fugitive dust emissions, Illinois EPA stated as follows:

> Open fugitive dust emissions result primarily from raw material handling and from reentrainment from vehicular activities on paved and unpaved plant roads. Open fugitive dust sources are generally distributed throughout an industrial facility and are typically located at or near ground level.

Illinois EPA, Statement of Reasons, In the Matter of: PM-10 Emission Limits for McCook and Lake Calumet Areas in Cook County, Illinois and the Granite City Area in Madison County, Illinois, R91-22 (Ill. Pol. Control Bd. Aug. 19, 1991). (Emphasis added.)

Likewise, the Illinois EPA 391-CAAPP form, available on Illinois EPA's website, which is titled "Fugitive Emissions Data and Information" includes "some examples of emissions which are typically considered fugitive," such as:

- Road dust emissions (paved roads, unpaved roads, and lots);
- Storage pile emissions (wind erosion, vehicle dump and load);
- Loading/unloading operation emission;
- Emissions from material being transported in a vehicle;
- Emissions occurring from the unloading and transporting of materials collected by pollution control equipment;

Illinois EPA, 391-CAAPP Form, Fugitive Emissions Data and Information at 1. (Emphasis added.)

Also, because Illinois has been delegated the authority to issue air permits to facilities regulated by NSPS requirements, on behalf of USEPA, therefore referred to as a "delegated State," KCBX reviewed USEPA's prior comments regarding emissions from open storage piles located at coal preparation and processing plants. Specifically, when USEPA promulgated amendments to the NSPS for coal preparation and processing plants, it established work practice standards to control fugitive coal dust emissions from open storage piles located at new coal preparation plants. See 74 Fed. Reg. 51950 (Oct. 8, 2009).

In doing so, USEPA explained it had determined it was not feasible to establish opacity or PM limits for these types of facilities and it believed, at that time, that it was difficult and prohibitively expensive to measure actual PM emissions from individual storage piles. Id. at 51954. Based on that determination, USEPA required owners or operators of open storage piles associated with new coal preparation plants to develop and comply with a fugitive coal dust emissions control plan to control fugitive PM emissions. Id. USEPA stated the following, in pertinent part:

> A fugitive coal dust emissions control plan is required for open storage piles, which include the equipment used in the loading, unloading and conveying operations of the affected facility, constructed, reconstructed or modified after May 27, 2009.
>
> * * *
>
> For open coal storage piles, the fugitive coal dust emissions plan must require that one or more of the following control measures will be used to minimize to the greatest extent practicable fugitive coal dust: locating the source inside a partial enclosure, installing and operating a water spray or fogging system, applying appropriate chemical dust suppression agents on the source (when additional provisions discussed below are met), use of a wind barrier, compaction, or use of a vegetative cover. The owner or operator must select, from the list provided, the control measures that are most appropriate for the site conditions.

Id. (Emphasis added.)

The NSPS requirement to develop a fugitive coal dust emissions control plan does not apply to the KCBX Facility, as it was not constructed, reconstructed, or modified after May 27, 2009. Regardless, USEPA's language in promulgating the control plan requirement for new facilities illustrates that USEPA treats the emissions associated with open storage piles – including "loading, unloading and conveying operations of the affected facility" – as fugitive and identifies several control measure options for such piles. Clearly the fact that controls are required for such piles does not mean that emissions from the piles are not fugitive in nature. Further, as noted above, USEPA considers "operating a water spray or fogging system" to be an appropriate control measure for some site conditions, and states that the owner or operator of the site is responsible for the selection of the most appropriate control measure(s) for the specific conditions of the site. USEPA understands that emissions can be controlled by methods other than venting through a control device. KCBX believes that controls on varied and spatially dispersed sources, such as conveyors, roads and loading/unloading product into trucks, trailers and railcars, are best achieved by keeping the material moist and by regular treatment of roads (e.g., sweeping paved roads or wetting unpaved roads).

Overall, based on the review of the above-detailed information, KCBX believes that the emissions from the material storage and handling, including conveying operations, at the Facility are fugitive in nature. Therefore, because the emissions are fugitive in nature, they should not be considered when making the determination of whether the Facility is a "major source." Instead, only the fugitive emissions of PM and PM with an aerodynamic diameter of less than or equal to 10 micrometers ("PM_{10}") from the screener, equipment used to convey coal to or remove coal and refuse from the screener, and stockpiles of screened coal should be included in the determination of "major source" status for Prevention of Significant Deterioration ("PSD") purposes, and only PM_{10} for purposes of Title V (see discussion at p. 2-3 of KCBX's correspondence to Illinois EPA dated August 7, 2009, and USEPA's October 16, 1995 memorandum enclosed therewith).

Intent of Proposed Moisture Language

With regard to the moisture content of materials handled at the Facility, as discussed during the Meeting, through its suggested revisions to the FESOP as contained in the July 16, 2010 Letter, KCBX's intent was to propose less complex language that would: 1) allow receipt of low moisture material; 2) streamline compliance demonstration and recordkeeping activities; 3) use performance-based results (i.e., moisture content) in lieu of surrogate measures (i.e., water application rate and equipment inspections); 4) clarify how moisture analysis results collected at the Facility will be used in calculating emissions; and 5) clarify the fugitive emissions that count toward Title V and PSD applicability.

KCBX provides the following narrative to summarize how it intends to manage bulk solid materials of any moisture content that are received at the Facility. As under the Facility's last FESOP, KCBX proposes to record the moisture content of the bulk solid material that is provided by the supplier for the "as received" moisture content. If the "as received" moisture content of a bulk solid material received at the Facility is less than 3% by weight (as documented by the supplier), then KCBX will increase the moisture content of that material by either: 1) adding water or applying chemical to the material before it is stockpiled or discharged from the first conveyor (whichever comes first); or 2) blending the material with a higher-moisture material before it is stockpiled or discharged from the first conveyor (whichever comes first). KCBX will continue to add water/apply chemical or continue to add higher-moisture material to the subject low-moisture material, until three consecutive weekly tests of the subject material show moisture content of 3% or greater by weight.

For bulk solid materials with a moisture content of 3% or greater (as provided by the supplier), KCBX will not be required to analyze the moisture content, but KCBX may test the moisture content of the material at any time. For particulate emission calculation purposes, where KCBX does analyze moisture, KCBX's most recent moisture analyses for the material shall supersede all previous moisture analyses for that material, including the analyses documented by the supplier with the exception of the initial receipt of the low-moisture material. In this one case, KCBX will use the weighted average of the moisture contents (as provided by the supplier) to calculate emissions for the initial material transfer (material drop) and all subsequent material

transfers upstream and before the addition of water or chemical or blending with a higher-moisture material.

For purposes of quantifying emissions of bulk solid material with moisture content of 3% or greater (as provided by the supplier), KCBX will use the weighted average moisture content provided by the supplier of the material or as otherwise superseded by moisture contents obtained from samples collected by KCBX. KCBX wishes to emphasize the importance of running separate weighted average calculations for the moisture content of "as received" low-moisture material and the other bulk solid material received at the Facility.

Additional Equipment Detail Regarding Draft Permit Condition 2q

During the Meeting, KCBX agreed to provide Illinois EPA with additional equipment detail regarding draft permit condition 2q (as contained in the June 16, 2010 revised draft FESOP). KCBX proposes to list the equipment at the Facility that is subject to the draft permit condition and also proposes to add two conditions (hereafter referred to as draft permit conditions 2o and 2p) for equipment that is not subject to draft permit condition 2q.

Draft permit condition 2q references 35 Ill. Admin. Code §§ 212.321(a) and 212.321(c). Section 212.321 was written specifically for equipment constructed or modified on or after April 14, 1972. KCBX has equipment at the Facility with the potential to emit PM that was constructed before this applicability date. This equipment has undergone routine maintenance and worn parts have been replaced, but the equipment has not been modified as that term is defined in 35 Ill. Admin. Code § 201.102, and therefore, should be regulated under 35 Ill. Admin. Code §§ 212.322(a) and 212.322(c).

Equipment constructed or modified prior to April 14, 1972, at the Facility includes the following:

- The South Rail Unloading Hoppers in the Shaker Building
- The South Collector Belt
- The South Incline Belt
- The South Highline
- The South Transfer Tower
- The South Shiploader

Because this list of equipment is shorter than the list of equipment subject to draft permit conditions 2o and 2p, KCBX proposes that draft permit condition 2q be reworded as follows:

> 2q Pursuant to 35 Ill. Adm. Code 212.321(a) and except as further provided in 35 Ill. Adm. Code 212, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new process emission unit which, either alone or in combination with the emission of particulate matter from all other similar process emission units for which construction or modification commenced on or after April 14, 1972, at a source or premises, exceeds the allowable emission rates specified in 35 Ill.

Adm. Code 212.321(c). For this source, the emission units subject to the process emission rates of 35 Ill. Adm. Code 212.321(c) are those emission units that are not named specifically in Condition 2o.

Draft permit conditions 2o and 2p are proposed for addition to include the requirements for these emission units with proposed wording as follows:

2o Pursuant to 35 Ill. Adm. Code 212.322(a) and except as further provided in 35 Ill. Adm. Code 212, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any process emission unit for which construction or modification commenced prior to April 14, 1972, which, either alone or in combination with the emission of particulate matter from all other similar process emission units at a source or premises, exceeds the allowable emission rates specified in 35 Ill. Adm. Code 212.322(c). For this source, the emission units subject to the process emission rates of 35 Ill. Adm. Code 212.321(c) are:

1. The South Rail Unloading Hoppers in the Shaker Building,
2. The South Collector Belt,
3. The South Incline Belt,
4. The South Highline,
5. The South Transfer Tower, and
6. The South Shiploader

2p Pursuant to 35 Ill. Adm. Code 212.322(b), interpolated and extrapolated values of the data in 35 Ill. Adm. Code 212.322(c) shall be determined by using the equation:

$$E = C + A (P)^{B10}$$

where

P = Process weight rate; and
E = Allowable emission rate; and,

i. For process weight rates up to 27.2 MG/hour (30 T/hour):

	Metric	English
P	Mg/hr	T/hr
E	kg/hr	lbs/hr
A	1.985	4.10
B	0.67	0.67
C	0	0

ii. For process weight rates in excess of 27.2 Mg/hour (30 T/hour):

	Metric	English
P	Mg/hr	T/hr
E	kg/hr	lbs/hr
A	25.21	55.0
B	0.11	0.11
C	-18.4	-40.0

Additional Follow-up Issues

Further, KCBX would like to detail its understanding with regard to the constituents that should be limited in the FESOP in order to avoid classification as a "major source." KCBX believes that the FESOP should include only limitations for Nitrogen Oxides. Limitations on emissions of PM and PM_{10} are not necessary because of the exclusion of fugitive emissions, as discussed above. (Note that emissions of PM_{10} (and $PM_{2.5}$) from screening operations and associated storage and handling are genuinely minor.) Additionally, limitations on emissions of Carbon Monoxide, Sulfur Dioxide, and Volatile Organic Material are not necessary because the Facility is genuinely minor for these pollutants.

During the Meeting, Mr. Bernoteit and Mr. Kennedy agreed to discuss internally and determine whether they concur that KCBX is not a "major source" for PM_{10} for purposes of Title V and PSD. Mr. Bernoteit also acknowledged that Illinois EPA was comfortable that KCBX was not a "major source" of PM for PSD. As noted above, Mr. Kennedy agreed to review the calculation formulae for screening operations, and provide comments regarding the same to KCBX.

Additionally, during the Meeting, there was a brief discussion regarding those regulations which are referenced in the draft renewal FESOP (specifically, the June 16, 2010 revised draft), but which do not apply to the Facility, and thus, should be deleted. As discussed in the July 16, 2010 Letter, the following provisions should be deleted from the draft renewal FESOP because they do not apply to the Facility:

- Draft permit conditions 2d, 2e and 2f;
- Draft permit condition 2g;
- Draft permit conditions 2h.i and 2h.ii;
- Draft permit condition 2l;
- Draft permit condition 2t;
- Draft permit condition 4b;
- Draft permit conditions 6b and 6c;
- Draft permit condition 8f; and
- Draft permit condition 14b.

Likewise, there was also a brief discussion during the Meeting regarding the provisions of the draft renewal FESOP (specifically, the June 16, 2010 revised draft) that do not reflect the exact language of the regulation cited therein, and thus, should be edited to do so. As discussed in the July 16, 2010 Letter, the following provisions of the draft renewal FESOP should be so edited:

- Draft permit condition 2c;
- Draft permit condition 2h;
- Draft permit condition 2m;
- Draft permit condition 6a;
- Draft permit condition 7b;
- Draft permit condition 8e; and
- Draft permit condition 13b.ii.

In addition, KCBX would like to note that, because of Illinois EPA's clarification during the Meeting regarding the term "process emission source," as contained in draft permit condition 4c (as numbered in the June 16, 2010 revised draft), KCBX's discussion of the term in the July 16, 2010 Letter is no longer relevant.

Also, as discussed during the Meeting, there is a typographical error contained in the formula at KCBX renumbered condition 9a (as numbered in Attachment B to KCBX's July 16, 2010 Letter). Specifically, KCBX proposes the following revised formula:

$$E = [(T \times Fm) + (S \times Fs) + (C \times Fc) + (H \times Z \times F_F) + (R/1000 \times F1)]/2000$$

Where:

E = Total PM10 or PM emissions, (tons);

T = Amount of bulk material transferred, (tons);

Fm = $(k * 0.0032 * N) * [((U/5)^{1.3}) / ((M/2)^{1.4})]$;

Where:
k = 0.35 for PM10;
= 0.74 for PM;

N = Number of bulk material Transfers (drop points);

U = mean wind speed, (miles/hour);

M = material moisture content as determined from Condition 8, (percent);

S = Amount of bulk material Screened, (tons);

Fs = 0.0022 lb PM/ton;
= 0.00074 lb PM10/ton;

C = Amount of bulk material Crushed, (tons);

Fc = 0.0012 lb PM/ton;
= 0.00054 lb PM10/ton;

H = Cumulative operations of engines in each size class (hours);

Z = Cumulative size of engines in each size class (horsepower)

F_F = 0.000721 lb/(hp-hr) for gasoline engines ≤250 hp;
= 0.00220 lb/(hp-hr) for diesel engines ≤600 hp;
= 0.0007 lb/(hp-hr) for diesel engines > 600 hp;

R = Gallons of kerosene use;

Fl = 1.3 lb/1000 gallons for diesel*;

*The use of diesel emission factors conservatively includes kerosene since the heat content of kerosene is slightly lower than diesel.

Finally, during the Meeting, KCBX agreed that it would hold the construction permit appeal matter currently before the Board (KCBX Terminals Company v. Illinois EPA, PCB No. 10-110) until the issues with the FESOP renewal are resolved. Counsel for KCBX intends to continue to participate in discussions with the Illinois Attorney General's Office regarding the same.

Conclusion

KCBX appreciates the opportunity to provide this additional information to ensure the issuance of an accurate FESOP for the KCBX Facility. If you have any questions concerning this information, please contact Mr. Terry Steinert, Environmental Compliance Manager, at 316.828.7847.

Sincerely,

Jim Simmons
Terminal Manager

Cc: Mr. Robert W. Bernoteit (via U.S. Mail)
Mr. George M. Kennedy (via U.S. Mail)
Christopher R. Pressnall, Esq. (via U.S. Mail)
Katherine D. Hodge, Esq. (via U.S. Mail)

KCBX:003/Corr/Bakowski 02 Ltr – 8 26 10 meeting follow up

415 ILCS 5/39.5

*** STATUTES CURRENT THROUGH PUBLIC ACTS 96-1555, EXCEPT P.A. 96-1551 OF THE 2010 LEGISLATIVE SESSION ***
*** ANNOTATIONS CURRENT TO STATE CASES THROUGH FEBRUARY 2, 2011 ***

CHAPTER 415. ENVIRONMENTAL SAFETY
ENVIRONMENTAL PROTECTION ACT
TITLE X. PERMITS

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

415 ILCS 5/39.5 (2011)

§ 415 ILCS 5/39.5. Clean Air Act Permit Program

Sec. 39.5. Clean Air Act Permit Program. 1. Definitions.

For purposes of this Section:

"Administrative permit amendment" means a permit revision subject to subsection 13 of this Section.

"Affected source for acid deposition" means a source that includes one or more affected units under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

"Affected States" for purposes of formal distribution of a draft CAAPP permit to other States for comments prior to issuance, means all States:

(1) Whose air quality may be affected by the source covered by the draft permit and that are contiguous to Illinois; or

(2) That are within 50 miles of the source.

"Affected unit for acid deposition" shall have the meaning given to the term "affected unit" in the regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

"Applicable Clean Air Act requirement" means all of the following as they apply to emissions units in a source (including regulations that have been promulgated or approved by USEPA pursuant to the Clean Air Act [42 U.S.C. § 7401 et seq.] which directly impose requirements upon a source and other such federal requirements which have been adopted by the Board. These may include requirements and

regulations which have future effective compliance dates. Requirements and regulations will be exempt if USEPA determines that such requirements need not be contained in a Title V permit):

(1) Any standard or other requirement provided for in the applicable state implementation plan approved or promulgated by USEPA under Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.] that implement the relevant requirements of the Clean Air Act [42 U.S.C. § 7401 et seq.], including any revisions to the state Implementation Plan promulgated in 40 CFR Part 52, Subparts A and O and other subparts applicable to Illinois. For purposes of this subsection (1) of this definition, "any standard or other requirement" shall mean only such standards or requirements directly enforceable against an individual source under the Clean Air Act [42 U.S.C. § 7401 et seq.].

(2)(i) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated by USEPA under Title I of the Clean Air Act [42 U.S.C. § 7470 et seq.], including Part C or D of the Clean Air Act [42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq.].

(ii) Any term or condition as required pursuant to Section 39.5 of any federally enforceable State operating permit issued pursuant to regulations approved or promulgated by USEPA under Title I of the Clean Air Act [42 U.S.C. § 7470 et seq.], including Part C or D of the Clean Air Act [42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq.].

(3) Any standard or other requirement under Section 111 of the Clean Air Act [42 U.S.C. § 7411], including Section 111(d).

(4) Any standard or other requirement under Section 112 of the Clean Air Act [42 U.S.C. § 7412], including any requirement concerning accident prevention under Section 112(r)(7) of the Clean Air Act [42 U.S.C. § 7412].

(5) Any standard or other requirement of the acid rain program under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Clean Air Act [42 U.S.C. § 7661 or 42 U.S.C. § 7414].

(7) Any standard or other requirement governing solid waste incineration, under Section 129 of the Clean Air Act [42 U.S.C. § 7429].

(8) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Clean Air Act [42 U.S.C. § 7511b].

(9) Any standard or other requirement for tank vessels, under Section 183(f) of the Clean Air Act [42 U.S.C. § 7511b].

(10) Any standard or other requirement of the program to control air pollution from Outer Continental Shelf sources, under Section 328 of the Clean Air Act [42 U.S.C. § 7627].

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act [42 U.S.C. § 7671 et seq.], unless USEPA has determined that such requirements need not be contained in a Title V permit.

(12) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act [42 U.S.C. § 7470 et seq.], but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Clean Air Act [42 U.S.C. § 7661c].

"Applicable requirement" means all applicable Clean Air Act [42 U.S.C. § 7401 et seq.] requirements and any other standard, limitation, or other requirement contained in this Act or regulations promulgated under this Act as applicable to sources of air contaminants (including requirements that have future effective compliance dates).

"CAAPP" means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.].

"CAAPP application" means an application for a CAAPP permit.

"CAAPP Permit" or "permit" (unless the context suggests otherwise) means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.].

"CAAPP source" means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

"Clean Air Act" means the Clean Air Act, as now and hereafter amended, 42 U.S.C. 7401, et seq.

"Designated representative" shall have the meaning given to it in Section 402(26) of the Clean Air Act [42 U.S.C. § 7641] and the regulations promulgated thereunder which states that the term 'designated representative' shall mean a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in all matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft CAAPP permit" means the version of a CAAPP permit for which public notice and an opportunity for public comment and hearing is offered by the Agency.

"Effective date of the CAAPP" means the date that USEPA approves Illinois' CAAPP.

"Emission unit" means any part or activity of a stationary source that emits or has the potential to emit any air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

"Federally enforceable" means enforceable by USEPA.

"Final permit action" means the Agency's granting with conditions, refusal to grant, renewal of, or revision of a CAAPP permit, the Agency's determination of incompleteness of a submitted CAAPP application, or the Agency's failure to act on an application for a permit, permit renewal, or permit revision within the time specified in paragraph 5(j), subsection 13, or subsection 14 of this Section.

"General permit" means a permit issued to cover numerous similar sources in accordance with subsection 11 of this Section.

"Major source" means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph 2(c) of this Section.

"Maximum achievable control technology" or "MACT" means the maximum degree of reductions in emissions deemed achievable under Section 112 of the Clean Air Act [42 U.S.C. § 7412].

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

"Permit modification" means a revision to a CAAPP permit that cannot be accomplished under the provisions for administrative permit amendments under subsection 13 of this Section.

"Permit revision" means a permit modification or administrative permit amendment.

"Phase II" means the period of the national acid rain program, established under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.], beginning January 1, 2000, and continuing thereafter.

"Phase II acid rain permit" means the portion of a CAAPP permit issued, renewed, modified, or revised by the Agency during Phase II for an affected source for acid deposition.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to

emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act [42 U.S.C. § 7401 et seq.], or the term "capacity factor" as used in Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or the regulations promulgated thereunder.

"Preconstruction Permit" or "Construction Permit" means a permit which is to be obtained prior to commencing or beginning actual construction or modification of a source or emissions unit.

"Proposed CAAPP permit" means the version of a CAAPP permit that the Agency proposes to issue and forwards to USEPA for review in compliance with applicable requirements of the Act and regulations promulgated thereunder.

"Regulated air pollutant" means the following:

(1) Nitrogen oxides (NOx) or any volatile organic compound.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act [42 U.S.C. § 7411].

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act [42 U.S.C. § 7671 et seq.].

(5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Clean Air Act [42 U.S.C. § 7412], including Sections 112(g), (j) and (r).

(i) Any pollutant subject to requirements under Section 112(j) of the Clean Air Act [42 U.S.C. § 7412]. Any pollutant listed under Section 112(b) [42 U.S.C. § 7412] for which the subject source would be major shall be considered to be regulated 18 months after the date on which USEPA was required to promulgate an applicable standard pursuant to Section 112(e) of the Clean Air Act [42 U.S.C. § 7412], if USEPA fails to promulgate such standard.

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Clean Air Act [42 U.S.C. § 7412] have been met, but only with respect to the individual source subject to Section 112(g)(2) [42 U.S.C. § 7412] requirement.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $ 25 million (in second quarter 1980 dollars), or (ii) the delegation of authority to such representative is approved in advance by the Agency.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or in the case of a partnership in which all of the partners are corporations, a duly authorized representative of the partnership if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $ 25 million (in second quarter 1980 dollars), or (ii) the delegation of authority to such representative is approved in advance by the Agency.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of USEPA).

(4) For affected sources for acid deposition:

(i) The designated representative shall be the "responsible official" in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or the regulations promulgated thereunder are concerned.

(ii) The designated representative may also be the "responsible official" for any other purposes with respect to air pollution control.

"Section 502(b)(10) changes" means changes that contravene express permit terms. "Section 502(b)(10) changes" do not include changes that would violate applicable requirements or contravene federally enforceable permit terms or conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term does not include incinerators or other units required to have a permit under Section 3005 of the Solid Waste Disposal Act [42 U.C.S. § 6925]. The term also does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18) (B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard waste and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the USEPA by rule.

"Source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act [42 U.S.C. § 7412].

"Support facility" means any stationary source (or group of stationary sources) that conveys, stores, or otherwise assists to a significant extent in the production of a principal product at another stationary source (or group of stationary sources). A support facility shall be considered to be part of the same source as the stationary source (or group of stationary sources) that it supports regardless of the 2-digit Standard Industrial Classification code for the support facility.

"USEPA" means the Administrator of the United States Environmental Protection Agency (USEPA) or a person designated by the Administrator.

1.1. Exclusion From the CAAPP.

a. An owner or operator of a source which determines that the source could be excluded from the CAAPP may seek such exclusion prior to the date that the CAAPP application for the source is due but in no case later than 9 months after the effective date of the CAAPP through the imposition of federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph 2(c) of this Section, within a State operating permit issued pursuant to Section 39(a) of this Act [415 ILCS 5/39]. After such date, an exclusion from the CAAPP may be sought under paragraph 3(c) of this Section.

b. An owner or operator of a source seeking exclusion from the CAAPP pursuant to paragraph (a) of this subsection must submit a permit application consistent with the existing State permit program which specifically requests such exclusion through the imposition of such federally enforceable conditions.

c. Upon such request, if the Agency determines that the owner or operator of a source has met the requirements for exclusion pursuant to paragraph (a) of this subsection and other applicable requirements for permit issuance under Section 39(a) of this Act [415 ILCS 5/39], the Agency shall issue a State operating permit for such source under Section 39(a) of this Act [415 ILCS 5/39], as amended, and regulations promulgated thereunder with federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph 2(c) of this Section.

d. The Agency shall provide an owner or operator of a source which may be excluded from the CAAPP pursuant to this subsection with reasonable notice that the owner or operator may seek such exclusion.

e. The Agency shall provide such sources with the necessary permit application forms.

2. Applicability.

a. Sources subject to this Section shall include:

i. Any major source as defined in paragraph (c) of this subsection.

ii. Any source subject to a standard or other requirements promulgated under Section 111 (New Source Performance Standards) or Section 112 (Hazardous Air Pollutants) of the Clean Air Act [42 U.S.C. § 7411 or 42 U.S.C. § 7412], except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Clean Air Act [42 U.S.C. § 7412].

iii. Any affected source for acid deposition, as defined in subsection 1 of this Section.

iv. Any other source subject to this Section under the Clean Air Act [42 U.S.C. § 7401 et seq.] or regulations promulgated thereunder, or applicable Board regulations.

b. Sources exempted from this Section shall include:

i. All sources listed in paragraph (a) of this subsection which are not major sources, affected sources for acid deposition or solid waste incineration units required to obtain a permit pursuant to Section 129 (e) of the Clean Air Act [42 U.S.C. § 7429], until the source is required to obtain a CAAPP permit pursuant to the Clean Air Act [42 U.S.C. § 7401 et seq.] or regulations promulgated thereunder.

ii. Nonmajor sources subject to a standard or other requirements subsequently promulgated by USEPA under Section 111 or 112 of the Clean Air Act [42 U.S.C. § 7411 or 42 U.S.C. § 7412] which are determined by USEPA to be exempt at the time a new standard is promulgated.

iii. All sources and source categories that would be required to obtain a permit solely because they are subject to Part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters (40 CFR Part 60).

iv. All sources and source categories that would be required to obtain a permit solely because they are subject to Part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145 (40 CFR Part 61).

v. Any other source categories exempted by USEPA regulations pursuant to Section 502(a) of the Clean Air Act [42 U.S.C. § 7661a].

c. For purposes of this Section the term "major source" means any source that is:

i. A major source under Section 112 of the Clean Air Act [42 U.S.C. § 7412], which is defined as:

A. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Clean Air Act [42 U.S.C. § 7412], 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as USEPA may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such stations are major sources.

B. For radionuclides, "major source" shall have the meaning specified by the USEPA by rule.

ii. A major stationary source of air pollutants, as defined in Section 302 of the Clean Air Act [42 U.S.C. § 7602], that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by USEPA). For purposes of this subsection, "fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Clean Air Act [42 U.S.C. § 7602], unless the source belongs to one of the following categories of stationary source:

A. Coal cleaning plants (with thermal dryers).

B. Kraft pulp mills.

C. Portland cement plants.

D. Primary zinc smelters.

E. Iron and steel mills.

F. Primary aluminum ore reduction plants.

G. Primary copper smelters.

H. Municipal incinerators capable of charging more than 250 tons of refuse per day.

I. Hydrofluoric, sulfuric, or nitric acid plants.

J. Petroleum refineries.

K. Lime plants.

L. Phosphate rock processing plants.

M. Coke oven batteries.

N. Sulfur recovery plants.

O. Carbon black plants (furnace process).

P. Primary lead smelters.

Q. Fuel conversion plants.

R. Sintering plants.

S. Secondary metal production plants.

T. Chemical process plants.

U. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

V. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

W. Taconite ore processing plants.

X. Glass fiber processing plants.

Y. Charcoal production plants.

Z. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

AA. All other stationary source categories, which as of August 7, 1980 are being regulated by a standard promulgated under Section 111 or 112 of the Clean Air Act [42 U.S.C. § 7411 or 42 U.S.C. § 7412].

BB. Any other stationary source category designated by USEPA by rule.

iii. A major stationary source as defined in part D of Title I of the Clean Air Act [42 U.S.C. § 7511 et seq.] including:

A. For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate", 50 tons or more per year in areas classified as "serious", 25 tons or more per year in areas classified as "severe", and 10 tons or more per year in areas classified as "extreme"; except that the references in this clause to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which USEPA has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act [42 U.S.C. § 7511a], that requirements otherwise applicable to such source under Section 182(f) of the Clean Air Act [42 U.S.C. § 7511a] do not apply. Such sources shall remain subject to the major source criteria of paragraph 2(c)(ii) of this subsection.

B. For ozone transport regions established pursuant to Section 184 of the Clean Air Act [42 U.S.C. § 7511c], sources with the potential to emit 50 tons or more per year of volatile organic compounds (VOCs).

C. For carbon monoxide nonattainment areas (1) that are classified as "serious", and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by USEPA, sources with the potential to emit 50 tons or more per year of carbon monoxide.

D. For particulate matter (PM-10) nonattainment areas classified as "serious", sources with the potential to emit 70 tons or more per year of PM-10.

3. Agency Authority To Issue CAAPP Permits and Federally Enforceable State Operating Permits.

a. The Agency shall issue CAAPP permits under this Section consistent with the Clean Air Act [42 U.S.C. § 7401 et seq.] and regulations promulgated thereunder and this Act and regulations promulgated thereunder.

b. The Agency shall issue CAAPP permits for fixed terms of 5 years, except CAAPP permits issued for solid waste incineration units combusting municipal waste which shall be issued for fixed terms of 12 years and except CAAPP permits for affected sources for acid deposition which shall be issued for initial terms to expire on December 31, 1999, and for fixed terms of 5 years thereafter.

c. The Agency shall have the authority to issue a State operating permit for a source under Section 39 (a) of this Act [415 ILCS 5/39], as amended, and regulations promulgated thereunder, which includes federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph 2(c) of this Section, thereby excluding the source from the CAAPP, when requested by the applicant pursuant to paragraph 5(u) of this Section. The public notice requirements of this Section applicable to CAAPP permits shall also apply to the initial issuance of permits under this paragraph.

d. For purposes of this Act, a permit issued by USEPA under Section 505 of the Clean Air Act [42 U.S.C. § 7661d], as now and hereafter amended, shall be deemed to be a permit issued by the Agency pursuant to Section 39.5 of this Act.

4. Transition.

a. An owner or operator of a CAAPP source shall not be required to renew an existing State operating permit for any emission unit at such CAAPP source once a CAAPP application timely submitted prior to expiration of the State operating permit has been deemed complete. For purposes other than permit renewal, the obligation upon the owner or operator of a CAAPP source to obtain a State operating permit is not removed upon submittal of the complete CAAPP permit application. An owner or operator of a CAAPP source seeking to make a modification to a source prior to the issuance of its CAAPP permit shall be required to obtain a construction and/or operating permit as required for such modification in accordance with the State permit program under Section 39(a) of this Act, as amended [415 ILCS 5/39], and regulations promulgated thereunder. The application for such construction and/or operating permit shall be considered an amendment to the CAAPP application submitted for such source.

b. An owner or operator of a CAAPP source shall continue to operate in accordance with the terms and conditions of its applicable State operating permit notwithstanding the expiration of the State operating permit until the source's CAAPP permit has been issued.

c. An owner or operator of a CAAPP source shall submit its initial CAAPP application to the Agency no later than 12 months after the effective date of the CAAPP. The Agency may request submittal of initial CAAPP applications during this 12 month period according to a schedule set forth within Agency procedures, however, in no event shall the Agency require such submittal earlier than 3 months after such effective date of the CAAPP. An owner or operator may voluntarily submit its initial CAAPP application prior to the date required within this paragraph or applicable procedures, if any, subsequent to the date the Agency submits the CAAPP to USEPA for approval.

d. The Agency shall act on initial CAAPP applications in accordance with subsection 5(j) of this Section.

e. For purposes of this Section, the term "initial CAAPP application" shall mean the first CAAPP application submitted for a source existing as of the effective date of the CAAPP.

f. The Agency shall provide owners or operators of CAAPP sources with at least three months advance notice of the date on which their applications are required to be submitted. In determining which sources shall be subject to early submittal, the Agency shall include among its considerations the complexity of the permit application, and the burden that such early submittal will have on the source.

g. The CAAPP permit shall upon becoming effective supersede the State operating permit.

h: The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

5. Applications and Completeness.

a. An owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Act and applicable regulations.

b. An owner or operator of a CAAPP source shall submit a single complete CAAPP application covering all emission units at that source.

c. To be deemed complete, a CAAPP application must provide all information, as requested in Agency application forms, sufficient to evaluate the subject source and its application and to determine all applicable requirements, pursuant to the Clean Air Act [42 U.S.C. § 7401 et seq.], and regulations thereunder, this Act and regulations thereunder. Such Agency application forms shall be finalized and made available prior to the date on which any CAAPP application is required.

d. An owner or operator of a CAAPP source shall submit, as part of its complete CAAPP application, a compliance plan, including a schedule of compliance, describing how each emission unit will comply with all applicable requirements. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

e. Each submitted CAAPP application shall be certified for truth, accuracy, and completeness by a responsible official in accordance with applicable regulations.

f. The Agency shall provide notice to a CAAPP applicant as to whether a submitted CAAPP application is complete. Unless the Agency notifies the applicant of incompleteness, within 60 days of receipt of the CAAPP application, the application shall be deemed complete. The Agency may request additional information as needed to make the completeness determination. The Agency may to the extent practicable provide the applicant with a reasonable opportunity to correct deficiencies prior to a final determination of completeness.

g. If after the determination of completeness the Agency finds that additional information is necessary to evaluate or take final action on the CAAPP application, the Agency may request in writing such information from the source with a reasonable deadline for response.

h. If the owner or operator of a CAAPP source submits a timely and complete CAAPP application, the source's failure to have a CAAPP permit shall not be a violation of this Section until the Agency takes final action on the submitted CAAPP application, provided, however, where the applicant fails to submit the requested information under paragraph 5(g) within the time frame specified by the Agency, this protection shall cease to apply.

i. Any applicant who fails to submit any relevant facts necessary to evaluate the subject source and its CAAPP application or who has submitted incorrect information in a CAAPP application shall, upon becoming aware of such failure or incorrect submittal, submit supplementary facts or correct information to the Agency. In addition, an applicant shall provide to the Agency additional information as necessary to address any requirements which become applicable to the source subsequent to the date the applicant submitted its complete CAAPP application but prior to release of the draft CAAPP permit.

j. The Agency shall issue or deny the CAAPP permit within 18 months after the date of receipt of the complete CAAPP application, with the following exceptions: (i) permits for affected sources for acid deposition shall be issued or denied within 6 months after receipt of a complete application in accordance with subsection 17 of this Section; (ii) the Agency shall act on initial CAAPP applications within 24 months after the date of receipt of the complete CAAPP application; (iii) the Agency shall act on complete applications containing early reduction demonstrations under Section 112(i)(5) of the Clean Air Act [42 U.S.C. § 7412] within 9 months of receipt of the complete CAAPP application.

Where the Agency does not take final action on the permit within the required time period, the permit

shall not be deemed issued; rather, the failure to act shall be treated as a final permit action for purposes of judicial review pursuant to Sections 40.2 and 41 of this Act [415 ILCS 5/40.2 and 415 ILCS 5/41].

k. The submittal of a complete CAAPP application shall not affect the requirement that any source have a preconstruction permit under Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.].

l. Unless a timely and complete renewal application has been submitted consistent with this subsection, a CAAPP source operating upon the expiration of its CAAPP permit shall be deemed to be operating without a CAAPP permit. Such operation is prohibited under this Act.

m. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and federal review and objection, that apply to original permit issuance.

n. For purposes of permit renewal, a timely application is one that is submitted no less than 9 months prior to the date of permit expiration.

o. The terms and conditions of a CAAPP permit shall remain in effect until the issuance of a CAAPP renewal permit provided a timely and complete CAAPP application has been submitted.

p. The owner or operator of a CAAPP source seeking a permit shield pursuant to paragraph 7(j) of this Section shall request such permit shield in the CAAPP application regarding that source.

q. The Agency shall make available to the public all documents submitted by the applicant to the Agency, including each CAAPP application, compliance plan (including the schedule of compliance), and emissions or compliance monitoring report, with the exception of information entitled to confidential treatment pursuant to Section 7 of this Act [415 ILCS 5/7].

r. The Agency shall use the standardized forms required under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and regulations promulgated thereunder for affected sources for acid deposition.

s. An owner or operator of a CAAPP source may include within its CAAPP application a request for permission to operate during a startup, malfunction, or breakdown consistent with applicable Board regulations.

t. An owner or operator of a CAAPP source, in order to utilize the operational flexibility provided under paragraph 7(1) of this Section, must request such use and provide the necessary information within its CAAPP application.

u. An owner or operator of a CAAPP source which seeks exclusion from the CAAPP through the imposition of federally enforceable conditions, pursuant to paragraph 3(c) of this Section, must request such exclusion within a CAAPP application submitted consistent with this subsection on or after the date that the CAAPP application for the source is due. Prior to such date, but in no case later than 9 months after the effective date of the CAAPP, such owner or operator may request the imposition of federally enforceable conditions pursuant to paragraph 1.1(b) of this Section.

v. CAAPP applications shall contain accurate information on allowable emissions to implement the fee provisions of subsection 18 of this Section.

w. An owner or operator of a CAAPP source shall submit within its CAAPP application emissions information regarding all regulated air pollutants emitted at that source consistent with applicable Agency procedures. Emissions information regarding insignificant activities or emission levels, as determined by the Agency pursuant to Board regulations, may be submitted as a list within the CAAPP application. The Agency shall propose regulations to the Board defining insignificant activities or emission levels, consistent with federal regulations, if any, no later than 18 months after the effective date of this amendatory Act of 1992 [P.A. 92-24], consistent with Section 112(n)(1) of the Clean Air Act [42 U.S.C. § 7412]. The Board shall adopt final regulations defining insignificant activities or emission levels no later than 9 months after the date of the Agency's proposal.

x. The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent

with this subsection within 12 months after commencing operation of such source. The owner or operator of an existing source that has been excluded from the provisions of this Section under subsection 1.1 or subsection 3(c) of this Section and that becomes subject to the CAAPP solely due to a change in operation at the source shall submit its complete CAAPP application consistent with this subsection at least 180 days before commencing operation in accordance with the change in operation.

y. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary to implement this subsection.

6. Prohibitions.

a. It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under this Section are enforceable by USEPA and citizens under the Clean Air Act [42 U.S.C. § 7401 et seq.], except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph 7(m) of this Section.

b. After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

c. No owner or operator of a CAAPP source shall cause or threaten or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the standards or limitations applicable to the source, unless the CAAPP permit granted to the source provides for such operation consistent with this Act and applicable Board regulations.

7. Permit Content.

a. All CAAPP permits shall contain emission limitations and standards and other enforceable terms and conditions, including but not limited to operational requirements, and schedules for achieving compliance at the earliest reasonable date, which are or will be required to accomplish the purposes and provisions of this Act and to assure compliance with all applicable requirements.

b. 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. When monitoring, reporting, record keeping, and compliance certification requirements are specified within the Clean Air Act [42 U.S.C. § 7401 et seq.], regulations promulgated thereunder, this Act, or applicable regulations, such requirements shall be included within the CAAPP permit. The Board shall have authority to promulgate additional regulations where necessary to accomplish the purposes of the Clean Air Act [42 U.S.C. § 7401 et seq.], this Act, and regulations promulgated thereunder.

c. The Agency shall assure, within such conditions, the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emission limitations, standards, and other requirements contained in the permit.

d. To meet the requirements of this subsection with respect to monitoring, the permit shall:

i. Incorporate and identify all applicable emissions monitoring and analysis procedures or test methods required under the Clean Air Act [42 U.S.C. § 7401 et seq.], regulations promulgated thereunder, this Act, and applicable Board regulations, including any procedures and methods promulgated by USEPA pursuant to Section 504(b) or Section 114 (a)(3) of the Clean Air Act [42 U.S.C. § 7661c or 42 U.S.C. § 7414].

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.

e. To meet the requirements of this subsection with respect to record keeping, the permit shall incorporate and identify all applicable recordkeeping requirements and require, where applicable, the following:

i. Records of required monitoring information that include the following:

A. The date, place and time of sampling or measurements.

B. The date(s) analyses were performed.

C. The company or entity that performed the analyses.

D. The analytical techniques or methods used.

E. The results of such analyses.

F. The operating conditions as existing at the time of sampling or measurement.

ii. Retention of records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records, original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

f. 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.

g. Each CAAPP permit issued under subsection 10 of this Section shall include a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or the regulations promulgated thereunder, consistent with subsection 17 of this Section and applicable regulations, if any.

h. All CAAPP permits shall state that, where another applicable requirement of the Clean Air Act [42 U.S.C. § 7401 et seq.] is more stringent than any applicable requirement of regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.], both provisions shall be incorporated into the permit and shall be State and federally enforceable.

i. Each CAAPP permit issued under subsection 10 of this Section shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

j. The following shall apply with respect to owners or operators requesting a permit shield:

i. The Agency shall include in a CAAPP permit, when requested by an applicant pursuant to paragraph 5(p) of this Section, a provision stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements which are applicable as of the date of release of the proposed permit, provided that:

A. The applicable requirement is specifically identified within the permit; or

B. The Agency in acting on the CAAPP application or revision determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes that determination or a concise summary thereof.

ii. The permit shall identify the requirements for which the source is shielded. The shield shall not extend to applicable requirements which are promulgated after the date of release of the proposed permit unless the permit has been modified to reflect such new requirements.

iii. A CAAPP permit which does not expressly indicate the existence of a permit shield shall not provide such a shield.

iv. Nothing in this paragraph or in a CAAPP permit shall alter or affect the following:

A. The provisions of Section 303 (emergency powers) of the Clean Air Act [42 U.S.C. § 7603], including USEPA's authority under that section.

B. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

C. The applicable requirements of the acid rain program consistent with Section 408(a) of the Clean Air Act [42 U.S.C. § 7651g].

D. The ability of USEPA to obtain information from a source pursuant to Section 114 (inspections, monitoring, and entry) of the Clean Air Act [42 U.S.C. § 7414].

k. Each CAAPP permit shall include an emergency provision providing an affirmative defense of emergency to an action brought for noncompliance with technology-based emission limitations under a CAAPP permit if the following conditions are met through properly signed, contemporaneous operating logs, or other relevant evidence:

i. An emergency occurred and the permittee can identify the cause(s) of the emergency.

ii. The permitted facility was at the time being properly operated.

iii. The permittee submitted notice of the emergency to the Agency within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

iv. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitations, standards, or requirements in the permit.

For purposes of this subsection, "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, such as an act of God, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operation error.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. This provision is in addition to any emergency or upset provision contained in any applicable requirement. This provision does not relieve a permittee of any reporting obligations under existing federal or state laws or regulations.

1. The Agency shall include in each permit issued under subsection 10 of this Section:

i. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application. The permit terms and conditions for each such operating scenario shall meet all applicable requirements and the requirements of this Section.

A. Under this subparagraph, the source must record in a log at the permitted facility a record of the scenario under which it is operating contemporaneously with making a change from one operating scenario to another.

B. The permit shield described in paragraph 7(j) of this Section shall extend to all terms and conditions under each such operating scenario.

ii. where requested by an applicant, all terms and conditions allowing for trading of emissions increases and decreases between different emission units at the CAAPP source, to the extent that the applicable requirements provide for trading of such emissions increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

A. Shall include all terms required under this subsection to determine compliance;

B. Must meet all applicable requirements;

C. Shall extend the permit shield described in paragraph 7(j) of this Section to all terms and conditions that allow such increases and decreases in emissions.

m. The Agency shall specifically designate as not being federally enforceable under the Clean Air Act [42 U.S.C. § 7401 et seq.] any terms and conditions included in the permit that are not specifically required under the Clean Air Act [42 U.S.C. § 7401 et seq.] or federal regulations promulgated thereunder. Terms or conditions so designated shall be subject to all applicable state requirements, except the requirements of subsection 7 (other than this paragraph, paragraph q of subsection 7, subsections 8 through 11, and subsections 13 through 16 of this Section. The Agency shall, however, include such terms and conditions in the CAAPP permit issued to the source.

n. Each CAAPP permit issued under subsection 10 of this Section shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

o. Each CAAPP permit issued under subsection 10 of this Section shall include provisions stating the following:

i. Duty to comply. The permittee must comply with all terms and conditions of the CAAPP permit. Any permit noncompliance constitutes a violation of the Clean Air Act [42 U.S.C. § 7401 et seq.] and the Act, and is grounds for any or all of the following: enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

ii. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

iii. Permit actions. The permit may be modified, revoked, reopened, and reissued, or terminated for cause in accordance with the applicable subsections of Section 39.5 of this Act [415 ILCS 5/39.5]. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

iv. Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

v. Duty to provide information. The permittee shall furnish to the Agency within a reasonable time

specified by the Agency any information that the Agency may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Agency copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to USEPA along with a claim of confidentiality.

vi. Duty to pay fees. The permittee must pay fees to the Agency consistent with the fee schedule approved pursuant to subsection 18 of this Section, and submit any information relevant thereto.

vii. Emissions trading. No permit revision shall be required for increases in emissions allowed under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit and that are authorized by the applicable requirement.

p. Each CAAPP permit issued under subsection 10 of this Section shall contain the following elements with respect to compliance:

i. Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a CAAPP permit shall contain a certification by a responsible official that meets the requirements of subsection 5 of this Section and applicable regulations.

ii. Inspection and entry requirements that necessitate that, upon presentation of credentials and other documents as may be required by law and in accordance with constitutional limitations, the permittee shall allow the Agency, or an authorized representative to perform the following:

A. Enter upon the permittee's premises where a CAAPP source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit.

B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.

C. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

D. Sample or monitor any substances or parameters at any location:

1. As authorized by the Clean Air Act [42 U.S.C. § 7401 et seq.], at reasonable times, for the purposes of assuring compliance with the CAAPP permit or applicable requirements; or

2. As otherwise authorized by this Act.

iii. A schedule of compliance consistent with subsection 5 of this Section and applicable regulations.

iv. Progress reports consistent with an applicable schedule of compliance pursuant to paragraph 5(d) of this Section and applicable regulations to be submitted semiannually, or more frequently if the Agency determines that such more frequent submittals are necessary for compliance with the Act or regulations promulgated by the Board thereunder. Such progress reports shall contain the following:

A. Required dates for achieving the activities, milestones, or compliance required by the schedule of compliance and dates when such activities, milestones or compliance were achieved.

B. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

v. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

A. The frequency (annually or more frequently as specified in any applicable requirement or by the Agency pursuant to written procedures) of submissions of compliance certifications.

B. A means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

C. A requirement that the compliance certification include the following:

1. The identification of each term or condition contained in the permit that is the basis of the certification.

2. The compliance status.

3. Whether compliance was continuous or intermittent.

4. The method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with subsection 7 of Section 39.5 of the Act [415 ILCS 5/39.5].

D. A requirement that all compliance certifications be submitted to USEPA as well as to the Agency.

E. Additional requirements as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Clean Air Act [42 U.S.C. § 7414 and 42 U.S.C. § 7661c].

F. Other provisions as the Agency may require.

q. If the owner or operator of CAAPP source can demonstrate in its CAAPP application, including an application for a significant modification, that an alternative emission limit would be equivalent to that contained in the applicable Board regulations, the Agency shall include the alternative emission limit in the CAAPP permit, which shall supersede the emission limit set forth in the applicable Board regulations, and shall include conditions that insure that the resulting emission limit is quantifiable, accountable, enforceable, and based on replicable procedures.

8. Public Notice; Affected State Review.

a. The Agency shall provide notice to the public, including an opportunity for public comment and a hearing, on each draft CAAPP permit for issuance, renewal or significant modification, subject to Sections 7(a) and 7.1 of this Act [415 ILCS 5/7 and 415 ILCS 5/7.1].

b. The Agency shall prepare a draft CAAPP permit and a statement that sets forth the legal and factual basis for the draft CAAPP permit conditions, including references to the applicable statutory or regulatory provisions. The Agency shall provide this statement to any person who requests it.

c. The Agency shall give notice of each draft CAAPP permit to the applicant and to any affected State on or before the time that the Agency has provided notice to the public, except as otherwise provided in this Act.

d. The Agency, as part of its submittal of a proposed permit to USEPA (or as soon as possible after the submittal for minor permit modification procedures allowed under subsection 14 of this Section), shall notify USEPA and any affected State in writing of any refusal of the Agency to accept all of the recommendations for the proposed permit that an affected State submitted during the public or affected State review period. The notice shall include the Agency's reasons for not accepting the recommendations. The Agency is not required to accept recommendations that are not based on applicable requirements or the requirements of this Section.

e. The Agency shall make available to the public any CAAPP permit application, compliance plan (including the schedule of compliance), CAAPP permit, and emissions or compliance monitoring report. If an owner or operator of a CAAPP source is required to submit information entitled to protection from disclosure under Section 7(a) or Section 7.1 of this Act [415 ILCS 5/7 or 415 ILCS 5/7.1], the owner or operator shall submit such information separately. The requirements of Section 7(a) or Section 7.1 of this Act [415 ILCS 5/7 or 415 ILCS 5/7.1] shall apply to such information, which shall not be included in a CAAPP permit unless required by law. The contents of a CAAPP permit shall not be entitled to

protection under Section 7(a) or Section 7.1 of this Act [415 ILCS 5/7 or 415 ILCS 5/7.1].

f. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

9. USEPA Notice and Objection.

a. The Agency shall provide to USEPA for its review a copy of each CAAPP application (including any application for permit modification), statement of basis as provided in paragraph 8(b) of this Section, proposed CAAPP permit, CAAPP permit, and, if the Agency does not incorporate any affected State's recommendations on a proposed CAAPP permit, a written statement of this decision and its reasons for not accepting the recommendations, except as otherwise provided in this Act or by agreement with USEPA. To the extent practicable, the preceding information shall be provided in computer readable format compatible with USEPA's national database management system.

b. The Agency shall not issue the proposed CAAPP permit if USEPA objects in writing within 45 days of receipt of the proposed CAAPP permit and all necessary supporting information.

c. If USEPA objects in writing to the issuance of the proposed CAAPP permit within the 45-day period, the Agency shall respond in writing and may revise and resubmit the proposed CAAPP permit in response to the stated objection, to the extent supported by the record, within 90 days after the date of the objection. Prior to submitting a revised permit to USEPA, the Agency shall provide the applicant and any person who participated in the public comment process, pursuant to subsection 8 of this Section, with a 10-day period to comment on any revision which the Agency is proposing to make to the permit in response to USEPA's objection in accordance with Agency procedures.

d. Any USEPA objection under this subsection, according to the Clean Air Act [42 U.S.C. § 7401 et seq.], will include a statement of reasons for the objection and a description of the terms and conditions that must be in the permit, in order to adequately respond to the objections. Grounds for a USEPA objection include the failure of the Agency to: (1) submit the items and notices required under this subsection; (2) submit any other information necessary to adequately review the proposed CAAPP permit; or (3) process the permit under subsection 8 of this Section except for minor permit modifications.

e. If USEPA does not object in writing to issuance of a permit under this subsection, any person may petition USEPA within 60 days after expiration of the 45-day review period to make such objection.

f. If the permit has not yet been issued and USEPA objects to the permit as a result of a petition, the Agency shall not issue the permit until USEPA's objection has been resolved. The Agency shall provide a 10-day comment period in accordance with paragraph c of this subsection. A petition does not, however, stay the effectiveness of a permit or its requirements if the permit was issued after expiration of the 45-day review period and prior to a USEPA objection.

g. If the Agency has issued a permit after expiration of the 45-day review period and prior to receipt of a USEPA objection under this subsection in response to a petition submitted pursuant to paragraph e of this subsection, the Agency may, upon receipt of an objection from USEPA, revise and resubmit the permit to USEPA pursuant to this subsection after providing a 10-day comment period in accordance with paragraph c of this subsection. If the Agency fails to submit a revised permit in response to the objection, USEPA shall modify, terminate or revoke the permit. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

h. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

10. Final Agency Action.

a. The Agency shall issue a CAAPP permit, permit modification, or permit renewal if all of the following conditions are met:

i. The applicant has submitted a complete and certified application for a permit, permit modification, or permit renewal consistent with subsections 5 and 14 of this Section, as applicable, and applicable regulations.

ii. The applicant has submitted with its complete application an approvable compliance plan, including a schedule for achieving compliance, consistent with subsection 5 of this Section and applicable regulations.

iii. The applicant has timely paid the fees required pursuant to subsection 18 of this Section and applicable regulations.

iv. The Agency has received a complete CAAPP application and, if necessary, has requested and received additional information from the applicant consistent with subsection 5 of this Section and applicable regulations.

v. The Agency has complied with all applicable provisions regarding public notice and affected State review consistent with subsection 8 of this Section and applicable regulations.

vi. The Agency has provided a copy of each CAAPP application, or summary thereof, pursuant to agreement with USEPA and proposed CAAPP permit required under subsection 9 of this Section to USEPA, and USEPA has not objected to the issuance of the permit in accordance with the Clean Air Act [42 U.S.C. § 7401 et seq.] and 40 CFR Part 70.

b. The Agency shall have the authority to deny a CAAPP permit, permit modification, or permit renewal if the applicant has not complied with the requirements of paragraphs (a)(i)-(a)(iv) of this subsection or if USEPA objects to its issuance.

c.i. Prior to denial of a CAAPP permit, permit modification, or permit renewal under this Section, the Agency shall notify the applicant of the possible denial and the reasons for the denial.

ii. Within such notice, the Agency shall specify an appropriate date by which the applicant shall adequately respond to the Agency's notice. Such date shall not exceed 15 days from the date the notification is received by the applicant. The Agency may grant a reasonable extension for good cause shown.

iii. Failure by the applicant to adequately respond by the date specified in the notification or by any granted extension date shall be grounds for denial of the permit.

For purposes of obtaining judicial review under Sections 40.2 and 41 of this Act [415 ILCS 5/40.2 and 415 ILCS 5/41], the Agency shall provide to USEPA and each applicant, and, upon request, to affected States, any person who participated in the public comment process, and any other person who could obtain judicial review under Sections 40.2 and 41 of this Act [415 ILCS 5/40.2 and 415 ILCS 5/41], a copy of each CAAPP permit or notification of denial pertaining to that party.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

11. General Permits.

a. The Agency may issue a general permit covering numerous similar sources, except for affected sources for acid deposition unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

b. The Agency shall identify, in any general permit, criteria by which sources may qualify for the general permit.

c. CAAPP sources that would qualify for a general permit must apply for coverage under the terms of the general permit or must apply for a CAAPP permit consistent with subsection 5 of this Section and

applicable regulations.

d. The Agency shall comply with the public comment and hearing provisions of this Section as well as the USEPA and affected State review procedures prior to issuance of a general permit.

e. When granting a subsequent request by a qualifying CAAPP source for coverage under the terms of a general permit, the Agency shall not be required to repeat the public notice and comment procedures. The granting of such request shall not be considered a final permit action for purposes of judicial review.

f. The Agency may not issue a general permit to cover any discrete emission unit at a CAAPP source if another CAAPP permit covers emission units at the source.

g. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

12. Operational Flexibility.

a. An owner or operator of a CAAPP source may make changes at the CAAPP source without requiring a prior permit revision, consistent with subparagraphs (a) (i) through (a) (iii) of this subsection, so long as the changes are not modifications under any provision of Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.] and they do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the owner or operator of the CAAPP source provides USEPA and the Agency with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless otherwise provided by the Agency in applicable regulations regarding emergencies. The owner or operator of a CAAPP source and the Agency shall each attach such notice to their copy of the relevant permit.

i. An owner or operator of a CAAPP source may make Section 502 (b) (10) [42 U.S.C. § 7661a] changes without a permit revision, if the changes are not modifications under any provision of Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.] and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

A. For each such change, the written notification required above shall include a brief description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

B. The permit shield described in paragraph 7(j) of this Section shall not apply to any change made pursuant to this subparagraph.

ii. An owner or operator of a CAAPP source may trade increases and decreases in emissions in the CAAPP source, where the applicable implementation plan provides for such emission trades without requiring a permit revision. This provision is available in those cases where the permit does not already provide for such emissions trading.

A. Under this subparagraph (a)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed changes will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions in the applicable implementation plan with which the source will comply and provide for the emissions trade.

B. The permit shield described in paragraph 7(j) of this Section shall not apply to any change made pursuant to this subparagraph (a) (ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to the requirements of the applicable implementation plan authorizing the emissions trade.

iii. If requested within a CAAPP application, the Agency shall issue a CAAPP permit which contains

terms and conditions, including all terms required under subsection 7 of this Section to determine compliance, allowing for the trading of emissions increases and decreases at the CAAPP source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The owner or operator of a CAAPP source shall include in its CAAPP application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permit shall also require compliance with all applicable requirements.

A. Under this subparagraph (a)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

B. The permit shield described in paragraph 7(j) of this Section shall extend to terms and conditions that allow such increases and decreases in emissions.

b. An owner or operator of a CAAPP source may make changes that are not addressed or prohibited by the permit, other than those which are subject to any requirements under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or are modifications under any provisions of Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.], without a permit revision, in accordance with the following requirements:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the Agency and USEPA of each such change, except for changes that qualify as insignificant under provisions adopted by the Agency or the Board. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield described in paragraph 7(j) of this Section; and

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable Clean Air Act [42 U.S.C. § 7401 et seq.] requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

c. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary to implement this subsection.

13. Administrative Permit Amendments.

a. The Agency shall take final action on a request for an administrative permit amendment within 60 days of receipt of the request. Neither notice nor an opportunity for public and affected State comment shall be required for the Agency to incorporate such revisions, provided it designates the permit revisions as having been made pursuant to this subsection.

b. The Agency shall submit a copy of the revised permit to USEPA.

c. For purposes of this Section the term "administrative permit amendment" shall be defined as a permit revision that can accomplish one or more of the changes described below:

i. Corrects typographical errors;

ii. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

iii. Requires more frequent monitoring or reporting by the permittee;

iv. Allows for a change in ownership or operational control of a source where the Agency determines

that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Agency;

v. Incorporates into the CAAPP permit the requirements from preconstruction review permits authorized under a USEPA-approved program, provided the program meets procedural and compliance requirements substantially equivalent to those contained in this Section;

vi. (Blank); or

vii. Any other type of change which USEPA has determined as part of the approved CAAPP permit program to be similar to those included in this subsection.

d. The Agency shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in paragraph 7(j) of this Section for administrative permit amendments made pursuant to subparagraph (c)(v) of this subsection which meet the relevant requirements for significant permit modifications.

e. Permit revisions and modifications, including administrative amendments and automatic amendments (pursuant to Sections 408(b) and 403(d) of the Clean Air Act [42 U.S.C. § 7651g and 42 U.S.C. § 7651b] or regulations promulgated thereunder), for purposes of the acid rain portion of the permit shall be governed by the regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.]. Owners or operators of affected sources for acid deposition shall have the flexibility to amend their compliance plans as provided in the regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

f. The CAAPP source may implement the changes addressed in the request for an administrative permit amendment immediately upon submittal of the request.

g. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

14. Permit Modifications.

a. Minor permit modification procedures.

i. The Agency shall review a permit modification using the "minor permit" modification procedures only for those permit modifications that:

A. Do not violate any applicable requirement;

B. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

C. Do not require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;

D. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying requirement and which avoids an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

1. A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Clean Air Act [42 U.S.C. 7401 et seq.]; and

2. An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Clean Air Act [42 U.S.C. § 7412];

E. Are not modifications under any provision of Title I of the Clean Air Act [42 U.S.C. § 7401 et seq.]; and

F. Are not required to be processed as a significant modification.

ii. Notwithstanding subparagraphs (a)(i) and (b)(ii) of this subsection, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by USEPA.

iii. An applicant requesting the use of minor permit modification procedures shall meet the requirements of subsection 5 of this Section and shall include the following in its application:

A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

B. The source's suggested draft permit;

C. Certification by a responsible official, consistent with paragraph 5(e) of this Section and applicable regulations, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

D. Completed forms for the Agency to use to notify USEPA and affected States as required under subsections 8 and 9 of this Section.

iv. Within 5 working days of receipt of a complete permit modification application, the Agency shall notify USEPA and affected States of the requested permit modification in accordance with subsections 8 and 9 of this Section. The Agency promptly shall send any notice required under paragraph 8(d) of this Section to USEPA.

v. The Agency may not issue a final permit modification until after the 45-day review period for USEPA or until USEPA has notified the Agency that USEPA will not object to the issuance of the permit modification, whichever comes first, although the Agency can approve the permit modification prior to that time. Within 90 days of the Agency's receipt of an application under the minor permit modification procedures or 15 days after the end of USEPA's 45-day review period under subsection 9 of this Section, whichever is later, the Agency shall:

A. Issue the permit modification as proposed;

B. Deny the permit modification application;

C. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

D. Revise the draft permit modification and transmit to USEPA the new proposed permit modification as required by subsection 9 of this Section.

vi. Any CAAPP source may make the change proposed in its minor permit modification application immediately after it files such application. After the CAAPP source makes the change allowed by the preceding sentence, and until the Agency takes any of the actions specified in a subparagraphs (a) (v) (A) through (a) (v) (C) of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. If the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions which it seeks to modify may be enforced against it.

vii. The permit shield under subparagraph 7(j) of this Section may not extend to minor permit modifications.

viii. If a construction permit is required, pursuant to Section 39(a) of this Act [415 ILCS 5/39] and regulations thereunder, for a change for which the minor permit modification procedures are

applicable, the source may request that the processing of the construction permit application be consolidated with the processing of the application for the minor permit modification. In such cases, the provisions of this Section, including those within subsections 5, 8, and 9, shall apply and the Agency shall act on such applications pursuant to subparagraph 14(a)(v). The source may make the proposed change immediately after filing its application for the minor permit modification. Nothing in this subparagraph shall otherwise affect the requirements and procedures applicable to construction permits.

b. Group Processing of Minor Permit Modifications.

i. Where requested by an applicant within its application, the Agency shall process groups of a source's applications for certain modifications eligible for minor permit modification processing in accordance with the provisions of this paragraph (b).

ii. Permit modifications may be processed in accordance with the procedures for group processing, for those modifications:

A. Which meet the criteria for minor permit modification procedures under subparagraph 14(a)(i) of this Section; and

B. That collectively are below 10 percent of the emissions allowed by the permit for the emissions unit for which change is requested, 20 percent of the applicable definition of major source set forth in subsection 2 of this Section, or 5 tons per year, whichever is least.

iii. An applicant requesting the use of group processing procedures shall meet the requirements of subsection 5 of this Section and shall include the following in its application:

A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

B. The source's suggested draft permit.

C. Certification by a responsible official consistent with paragraph 5(e) of this Section, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

D. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subparagraph (b)(ii)(B) of this subsection.

E. Certification, consistent with paragraph 5(e), that the source has notified USEPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

F. Completed forms for the Agency to use to notify USEPA and affected states as required under subsections 8 and 9 of this Section.

iv. On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set forth within subparagraph (b)(ii)(B) of this subsection, whichever is earlier, the Agency shall promptly notify USEPA and affected States of the requested permit modifications in accordance with subsections 8 and 9 of this Section. The Agency shall send any notice required under paragraph 8(d) of this Section to USEPA.

v. The provisions of subparagraph (a)(v) of this subsection shall apply to modifications eligible for group processing, except that the Agency shall take one of the actions specified in subparagraphs (a)(v)(A) through (a)(v)(D) of this subsection within 180 days of receipt of the application or 15 days after the end of USEPA's 45-day review period under subsection 9 of this Section, whichever is later.

vi. The provisions of subparagraph (a)(vi) of this subsection shall apply to modifications for group processing.

vii. The provisions of paragraph A(j) of this Section shall not apply to modifications eligible for group processing.

c. Significant Permit Modifications.

i. Significant modification procedures shall be used for applications requesting significant permit modifications and for those applications that do not qualify as either minor permit modifications or as administrative permit amendments.

ii. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping requirements shall be considered significant. A modification shall also be considered significant if in the judgment of the Agency action on an application for modification would require decisions to be made on technically complex issues. Nothing herein shall be construed to preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.

iii. Significant permit modifications must meet all the requirements of this Section, including those for applications (including completeness review), public participation, review by affected States, and review by USEPA applicable to initial permit issuance and permit renewal. The Agency shall take final action on significant permit modifications within 9 months after receipt of a complete application.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

15. Reopenings for Cause by the Agency.

a. Each issued CAAPP permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. Such revisions shall be made as expeditiously as practicable. A CAAPP permit shall be reopened and revised under any of the following circumstances, in accordance with procedures adopted by the Agency:

i. Additional requirements under the Clean Air Act [42 U.S.C. § 7401 et seq.] become applicable to a major CAAPP source for which 3 or more years remain on the original term of the permit. Such a reopening shall be completed not later than 18 months after the promulgation of the applicable requirement. No such revision is required if the effective date of the requirement is later than the date on which the permit is due to expire.

ii. Additional requirements (including excess emissions requirements) become applicable to an affected source for acid deposition under the acid rain program. Excess emissions offset plans shall be deemed to be incorporated into the permit upon approval by USEPA.

iii. The Agency or USEPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations, or other terms or conditions of the permit.

iv. The Agency or USEPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

b. In the event that the Agency determines that there are grounds for revoking a CAAPP permit, for cause, consistent with paragraph a of this subsection, it shall file a petition before the Board setting forth the basis for such revocation. In any such proceeding, the Agency shall have the burden of establishing that the permit should be revoked under the standards set forth in this Act and the Clean Air Act [42 U.S.C. § 7401 et seq.]. Any such proceeding shall be conducted pursuant to the Board's procedures for adjudicatory hearings and the Board shall render its decision within 120 days of the filing of the petition. The Agency shall take final action to revoke and reissue a CAAPP permit consistent with the Board's order.

c. Proceedings regarding a reopened CAAPP permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

d. Reopenings under paragraph (a) of this subsection shall not be initiated before a notice of such intent is provided to the CAAPP source by the Agency at least 30 days in advance of the date that the permit is to be reopened, except that the Agency may provide a shorter time period in the case of an emergency.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS § 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

16. Reopenings for Cause by USEPA.

a. When USEPA finds that cause exists to terminate, modify, or revoke and reissue a CAAPP permit pursuant to subsection 15 of this Section, and thereafter notifies the Agency and the permittee of such finding in writing, the Agency shall forward to USEPA and the permittee a proposed determination of termination, modification, or revocation and reissuance as appropriate, in accordance with paragraph b of this subsection. The Agency's proposed determination shall be in accordance with the record, the Clean Air Act [42 U.S.C. § 7401 et seq.], regulations promulgated thereunder, this Act and regulations promulgated thereunder. Such proposed determination shall not affect the permit or constitute a final permit action for purposes of this Act or the Administrative Review Law [735 ILCS 5/3-101 et seq.]. The Agency shall forward to USEPA such proposed determination within 90 days after receipt of the notification from USEPA. If additional time is necessary to submit the proposed determination, the Agency shall request a 90-day extension from USEPA and shall submit the proposed determination within 180 days of receipt of notification from USEPA.

b.i. Prior to the Agency's submittal to USEPA of a proposed determination to terminate or revoke and reissue the permit, the Agency shall file a petition before the Board setting forth USEPA's objection, the permit record, the Agency's proposed determination, and the justification for its proposed determination. The Board shall conduct a hearing pursuant to the rules prescribed by Section 32 of this Act [415 ILCS 5/32], and the burden of proof shall be on the Agency.

ii. After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with the requirements for final orders as set forth in Section 33 of this Act [415 ILCS 5/33]. Issuance of an interim order by the Board under this paragraph, however, shall not affect the permit status and does not constitute a final action for purposes of this Act or the Administrative Review Law [735 ILCS 5/3-101 et seq.].

iii. The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's Interim Order within 180 days after receipt of the notification from USEPA.

c. USEPA shall review the proposed determination to terminate, modify, or revoke and reissue the permit within 90 days of receipt.

i. When USEPA reviews the proposed determination to terminate or revoke and reissue and does not object, the Board shall, within 7 days of receipt of USEPA's final approval, enter the interim order as a final order. The final order may be appealed as provided by Title XI of this Act. The Agency shall take final action in accordance with the Board's final order.

ii. When USEPA reviews such proposed determination to terminate or revoke and reissue and objects, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee. The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of this Act [415 ILCS 5/32 and 415 ILCS 5/33]. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order.

iii. When USEPA reviews such proposed determination to modify and objects, the Agency shall,

within 90 days after receipt of the objection, resolve the objection and modify the permit in accordance with USEPA's objection, based upon the record, the Clean Air Act [42 U.S.C. § 7401 et seq.], regulations promulgated thereunder, this Act, and regulations promulgated thereunder.

d. If the Agency fails to submit the proposed determination pursuant to paragraph a of this subsection or fails to resolve any USEPA objection pursuant to paragraph c of this subsection, USEPA will terminate, modify, or revoke and reissue the permit.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

17. Title IV; Acid Rain Provisions.

a. The Agency shall act on initial CAAPP applications for affected sources for acid deposition in accordance with this Section and Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.] and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act [5 ILCS § 100/1-1 et seq.] and regulations promulgated thereunder. The Agency shall issue initial CAAPP permits to the affected sources for acid deposition which shall become effective no earlier than January 1, 1995, and which shall terminate on December 31, 1999, in accordance with this Section. Subsequent CAAPP permits issued to affected sources for acid deposition shall be issued for a fixed term of 5 years. Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and regulations promulgated thereunder, including but not limited to 40 C.F.R. Part 72, as now or hereafter amended, are applicable to and enforceable under this Act.

b. A designated representative of an affected source for acid deposition shall submit a timely and complete Phase II acid rain permit application and compliance plan to the Agency, not later than January 1, 1996, that meets the requirements of Titles IV and V of the Clean Air Act [42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq.] and regulations. The Agency shall act on the Phase II acid rain permit application and compliance plan in accordance with this Section and Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.] and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and regulations promulgated thereunder. The Agency shall issue the Phase II acid rain permit to an affected source for acid deposition no later than December 31, 1997, which shall become effective on January 1, 2000, in accordance with this Section, except as modified by Title IV [42 U.S.C. § 7651 et seq.] and regulations promulgated thereunder; provided that the designated representative of the source submitted a timely and complete Phase II permit application and compliance plan to the Agency that meets the requirements of Title IV and V of the Clean Air Act [42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq.] and regulations.

c. Each Phase II acid rain permit issued in accordance with this subsection shall have a fixed term of 5 years. Except as provided in paragraph b above, the Agency shall issue or deny a Phase II acid rain permit within 18 months of receiving a complete Phase II permit application and compliance plan.

d. A designated representative of a new unit, as defined in Section 402 of the Clean Air Act [42 U.S.C. § 7641], shall submit a timely and complete Phase II acid rain permit application and compliance plan that meets the requirements of Titles IV and V of the Clean Air Act [42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq.] and its regulations. The Agency shall act on the new unit's Phase II acid rain permit application and compliance plan in accordance with this Section and Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.] and its regulations, except as modified by Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and its regulations. The Agency shall reopen the new unit's CAAPP permit for cause to incorporate the approved Phase II acid rain permit in accordance with this Section. The Phase II acid rain permit for the new unit shall become effective no later than the date required under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and its regulations.

e. A designated representative of an affected source for acid deposition shall submit a timely and complete Title IV NOx permit application to the Agency, not later than January 1, 1998, that meets the requirements of Titles IV and V of the Clean Air Act [42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq.] and its regulations. The Agency shall reopen the Phase II acid rain permit for cause and incorporate the approved NOx provisions into the Phase II acid rain permit not later than January 1, 1999, in accordance with this Section, except as modified by Title IV of the Clean Air Act [42 U.S.C. §

7651 et seq.] and regulations promulgated thereunder. Such reopening shall not affect the term of the Phase II acid rain permit.

f. The designated representative of the affected source for acid deposition shall renew the initial CAAPP permit and Phase II acid rain permit in accordance with this Section and Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.] and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and regulations promulgated thereunder.

g. In the case of an affected source for acid deposition for which a complete Phase II acid rain permit application and compliance plan are timely received under this subsection, the complete permit application and compliance plan, including amendments thereto, shall be binding on the owner, operator and designated representative, all affected units for acid deposition at the affected source, and any other unit, as defined in Section 402 of the Clean Air Act [42 U.S.C. § 7641], governed by the Phase II acid rain permit application and shall be enforceable as an acid rain permit for purposes of Titles IV and V of the Clean Air Act [42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq.], from the date of submission of the acid rain permit application until a Phase II acid rain permit is issued or denied by the Agency.

h. The Agency shall not include or implement any measure which would interfere with or modify the requirements of Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or regulations promulgated thereunder.

i. Nothing in this Section shall be construed as affecting allowances or USEPA's decision regarding an excess emissions offset plan, as set forth in Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] or regulations promulgated thereunder.

i. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

ii. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

iii. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

j. To the extent that the federal regulations promulgated under Title IV [42 U.S.C. § 7651 et seq.], including but not limited to 40 C.F.R. Part 72, as now or hereafter amended, are inconsistent with the federal regulations promulgated under Title V [42 U.S.C. § 7661 et seq.], the federal regulations promulgated under Title IV [42 U.S.C. § 7651 et seq.] shall take precedence.

k. The USEPA may intervene as a matter of right in any permit appeal involving a Phase II acid rain permit provision or denial of a Phase II acid rain permit.

l. It is unlawful for any owner or operator to violate any terms or conditions of a Phase II acid rain permit issued under this subsection, to operate any affected source for acid deposition except in compliance with a Phase II acid rain permit issued by the Agency under this subsection, or to violate any other applicable requirements.

m. The designated representative of an affected source for acid deposition shall submit to the Agency the data and information submitted quarterly to USEPA, pursuant to 40 CFR 75.64, concurrently with the submission to USEPA. The submission shall be in the same electronic format as specified by USEPA.

n. The Agency shall act on any petition for exemption of a new unit or retired unit, as those terms are defined in Section 402 of the Clean Air Act [42 U.S.C. § 7641], from the requirements of the acid rain program in accordance with Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.] and its regulations.

o. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary to implement this subsection.

18. Fee Provisions.

a. For each 12 month period after the date on which the USEPA approves or conditionally approves the CAAPP, but in no event prior to January 1, 1994, a source subject to this Section or excluded under subsection 1.1 or paragraph 3(c) of this Section, shall pay a fee as provided in this part (a) of this subsection 18. However, a source that has been excluded from the provisions of this Section under subsection 1.1 or paragraph 3(c) of this Section because the source emits less than 25 tons per year of any combination of regulated air pollutants shall pay fees in accordance with paragraph (1) of subsection (b) of Section 9.6 [415 ILCS 5/9.6].

i. The fee for a source allowed to emit less than 100 tons per year of any combination of regulated air pollutants shall be $ 1,800 per year.

ii. The fee for a source allowed to emit 100 tons or more per year of any combination of regulated air pollutants, except for those regulated air pollutants excluded in paragraph 18(f) of this subsection, shall be as follows:

A. The Agency shall assess an annual fee of $ 18.00 per ton for the allowable emissions of all regulated air pollutants at that source during the term of the permit. These fees shall be used by the Agency and the Board to fund the activities required by Title V of the Clean Air Act [42 U.S.C. § 7661 et seq.] including such activities as may be carried out by other State or local agencies pursuant to paragraph (d) of this subsection. The amount of such fee shall be based on the information supplied by the applicant in its complete CAAPP permit application or in the CAAPP permit if the permit has been granted and shall be determined by the amount of emissions that the source is allowed to emit annually, provided however, that no source shall be required to pay an annual fee in excess of $ 250,000. The Agency shall provide as part of the permit application form required under subsection 5 of this Section a separate fee calculation form which will allow the applicant to identify the allowable emissions and calculate the fee for the term of the permit. In no event shall the Agency raise the amount of allowable emissions requested by the applicant unless such increases are required to demonstrate compliance with terms of a CAAPP permit.

Notwithstanding the above, any applicant may seek a change in its permit which would result in increases in allowable emissions due to an increase in the hours of operation or production rates of an emission unit or units and such a change shall be consistent with the construction permit requirements of the existing State permit program, under Section 39(a) of this Act [415 ILCS 5/39] and applicable provisions of this Section. Where a construction permit is required, the Agency shall expeditiously grant such construction permit and shall, if necessary, modify the CAAPP permit based on the same application.

B. The applicant or permittee may pay the fee annually or semiannually for those fees greater than $ 5,000. However, any applicant paying a fee equal to or greater than $ 100,000 shall pay the full amount on July 1, for the subsequent fiscal year, or pay 50% of the fee on July 1 and the remaining 50% by the next January 1. The Agency may change any annual billing date upon reasonable notice, but shall prorate the new bill so that the permittee or applicant does not pay more than its required fees for the fee period for which payment is made.

b. (Blank).

c. (Blank).

d. There is hereby created in the State Treasury a special fund to be known as the "CAA Permit Fund". All Funds collected by the Agency pursuant to this subsection shall be deposited into the Fund. The General Assembly shall appropriate monies from this Fund to the Agency and to the Board to carry out their obligations under this Section. The General Assembly may also authorize monies to be granted by the Agency from this Fund to other State and local agencies which perform duties related to the CAAPP. Interest generated on the monies deposited in this Fund shall be returned to the Fund.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary to implement

this subsection.

f. For purposes of this subsection, the term "regulated air pollutant" shall have the meaning given to it under subsection 1 of this Section but shall exclude the following:

i. carbon monoxide;

ii. any Class I or II substance which is a regulated air pollutant solely because it is listed pursuant to Section 602 of the Clean Air Act [42 U.S.C. § 7671a]; and

iii. any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Clean Air Act [42 U.S.C. § 7412] based on the emissions allowed in the permit effective in that calendar year, at the time the applicable bill is generated.

19. Air Toxics Provisions.

a. In the event that the USEPA fails to promulgate in a timely manner a standard pursuant to Section 112(d) of the Clean Air Act [42 U.S.C. § 7412], the Agency shall have the authority to issue permits, pursuant to Section 112(j) of the Clean Air Act [42 U.S.C. § 7412] and regulations promulgated thereunder, which contain emission limitations which are equivalent to the emission limitations that would apply to a source if an emission standard had been promulgated in a timely manner by USEPA pursuant to Section 112(d) [42 U.S.C. § 7412]. Provided, however, that the owner or operator of a source shall have the opportunity to submit to the Agency a proposed emission limitation which it determines to be equivalent to the emission limitations that would apply to such source if an emission standard had been promulgated in a timely manner by USEPA. If the Agency refuses to include the emission limitation proposed by the owner or operator in a CAAPP permit, the owner or operator may petition the Board to establish whether the emission limitation proposal submitted by the owner or operator provides for emission limitations which are equivalent to the emission limitations that would apply to the source if the emission standard had been promulgated by USEPA in a timely manner. The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act [42 U.S.C. § 7412], or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act [42 U.S.C. § 7412].

b. Any Board proceeding brought under paragraph (a) or (e) of this subsection shall be conducted according to the Board's procedures for adjudicatory hearings and the Board shall render its decision within 120 days of the filing of the petition. Any such decision shall be subject to review pursuant to Section 41 of this Act [415 ILCS 5/41]. Where USEPA promulgates an applicable emission standard prior to the issuance of the CAAPP permit, the Agency shall include in the permit the promulgated standard, provided that the source shall have the compliance period provided under Section 112(i) of the Clean Air Act [42 U.S.C. § 7412]. Where USEPA promulgates an applicable standard subsequent to the issuance of the CAAPP permit, the Agency shall revise such permit upon the next renewal to reflect the promulgated standard, providing a reasonable time for the applicable source to comply with the standard, but no longer than 8 years after the date on which the source is first required to comply with the emissions limitation established under this subsection.

c. The Agency shall have the authority to implement and enforce complete or partial emission standards promulgated by USEPA pursuant to Section 112(d) [42 U.S.C. § 7412], and standards promulgated by USEPA pursuant to Sections 112(f), 112(h), 112(m), and 112(n) [42 U.S.C. § 7412], and may accept delegation of authority from USEPA to implement and enforce Section 112(l) [42 U.S.C. § 7412] and requirements for the prevention and detection of accidental releases pursuant to Section 112(r) of the Clean Air Act [42 U.S.C. § 7412].

d. The Agency shall have the authority to issue permits pursuant to Section 112(i)(5) of the Clean Air Act [42 U.S.C. § 7412].

e. The Agency has the authority to implement Section 112(g) of the Clean Air Act [42 U.S.C. § 7412] consistent with the Clean Air Act and federal regulations promulgated thereunder. If the Agency refuses to include the emission limitations proposed in an application submitted by an owner or operator for a case-by-case maximum achievable control technology (MACT) determination, the owner

or operator may petition the Board to determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for a level of control required by Section 112 of the Clean Air Act [42 U.S.C. § 7412], or to otherwise establish an appropriate emission limitation under Section 112 of the Clean Air Act [42 U.S.C. § 7412].

20. Small Business.

a. For purposes of this subsection:

"Program" is the Small Business Stationary Source Technical and Environmental Compliance Assistance Program created within this State pursuant to Section 507 of the Clean Air Act [42 U.S.C. § 7661f] and guidance promulgated thereunder, to provide technical assistance and compliance information to small business stationary sources;

"Small Business Assistance Program" is a component of the Program responsible for providing sufficient communications with small businesses through the collection and dissemination of information to small business stationary sources; and

"Small Business Stationary Source" means a stationary source that:

1. is owned or operated by a person that employs 100 or fewer individuals;

2. is a small business concern as defined in the "Small Business Act" [15 U.S.C. § 631 et seq.];

3. is not a major source as that term is defined in subsection 2 of this Section;

4. does not emit 50 tons or more per year of any regulated air pollutant; and

5. emits less than 75 tons per year of all regulated pollutants.

b. The Agency shall adopt and submit to USEPA, after reasonable notice and opportunity for public comment, as a revision to the Illinois state implementation plan, plans for establishing the Program.

c. The Agency shall have the authority to enter into such contracts and agreements as the Agency deems necessary to carry out the purposes of this subsection.

d. The Agency may establish such procedures as it may deem necessary for the purposes of implementing and executing its responsibilities under this subsection.

e. There shall be appointed a Small Business Ombudsman (hereinafter in this subsection referred to as "Ombudsman") to monitor the Small Business Assistance Program. The Ombudsman shall be a nonpartisan designated official, with the ability to independently assess whether the goals of the Program are being met.

f. The State Ombudsman Office shall be located in an existing Ombudsman office within the State or in any State Department.

g. There is hereby created a State Compliance Advisory Panel (hereinafter in this subsection referred to as "Panel") for determining the overall effectiveness of the Small Business Assistance Program within this State.

h. The selection of Panel members shall be by the following method:

1. The Governor shall select two members who are not owners or representatives of owners of small business stationary sources to represent the general public;

2. The Director of the Agency shall select one member to represent the Agency; and

3. The State Legislature shall select four members who are owners or representatives of owners of small business stationary sources. Both the majority and minority leadership in both Houses of the

Legislature shall appoint one member of the panel.

i. Panel members should serve without compensation but will receive full reimbursement for expenses including travel and per diem as authorized within this State.

j. The Panel shall select its own Chair by a majority vote. The Chair may meet and consult with the Ombudsman and the head of the Small Business Assistance Program in planning the activities for the Panel.

21. Temporary Sources.

a. The Agency may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations, except for sources which are affected sources for acid deposition under Title IV of the Clean Air Act [42 U.S.C. § 7651 et seq.].

b. The applicant must demonstrate that the operation is temporary and will involve at least one change of location during the term of the permit.

c. Any such permit shall meet all applicable requirements of this Section and applicable regulations, and include conditions assuring compliance with all applicable requirements at all authorized locations and requirements that the owner or operator notify the Agency at least 10 days in advance of each change in location.

22. Solid Waste Incineration Units.

a. A CAAPP permit for a solid waste incineration unit combusting municipal waste subject to standards promulgated under Section 129(e) of the Clean Air Act [42 U.S.C. § 7429] shall be issued for a period of 12 years and shall be reviewed every 5 years, unless the Agency requires more frequent review through Agency procedures.

b. During the review in paragraph (a) of this subsection, the Agency shall fully review the previously submitted CAAPP permit application and corresponding reports subsequently submitted to determine whether the source is in compliance with all applicable requirements.

c. If the Agency determines that the source is not in compliance with all applicable requirements it shall revise the CAAPP permit as appropriate.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], as the Agency deems necessary, to implement this subsection.

HISTORY:
Source: P.A. 87-1213, § 50; 88-464, § 5; 88-668, § 10; 89-79, § 5; 90-14, § 3-130; 90-367, § 5; 90-773, § 5; 92-24, § 5; 93-32, § 75-52; 94-580, § 5.

NOTES:
ILLINOIS ADMINISTRATIVE CODE.
See 35 Illinois Administrative Code, §§ 101.202, 106.414, 106.416, 106.514, 106.910, 106.920.

EFFECTIVE DATE.
Section 65 of P.A. 87-1213 made this section effective upon becoming law. The Act was approved September 26, 1992.

EFFECT OF AMENDMENTS.
The 1994 amendment by P.A. 88-668, effective September 16, 1994, in subdivision 5.x., in the first sentence substituted "within" for "at least" and substituted "after" for "prior to" and added the second sentence; and in subsection 18, in the introductory language, in the first sentence, substituted "as provided in this part (a) of this subsection 18" for "in accordance with the following" and added the second sentence.
The 1995 amendment by P.A. 89-79, effective June 30, 1995, in subdivision 18.a.ii.A., in the second

sentence, inserted "and the Board", deleted "provided that $400,000 shall be made available to the Board" preceding "pursuant to" and substituted "(d)" for "(b)".

The 1997 amendment by P.A. 90-14, effective July 1, 1997, in subdivision 7.q. substituted "supersede" for "supercede".

The 1997 amendment by P.A. 90-367, effective August 10, 1997, in subdivision 7.q. substituted "supersede" for "supercede"; in subdivision 17.a. added the fourth sentence; in subdivision 17.j. inserted "including but not limited to 40 C.F.R. Part 72, as now or hereafter amended"; in subdivision 18.b., in the first sentence, substituted "1999" for "1996".

The 1998 amendment by P.A. 90-773, effective August 14, 1998, incorporated the amendments by P.A. 90-14 and P.A. 90-367; in subsection 1., in the definition of "source" inserted "major" before "industrial grouping" and "located" before "on contiguous", substituted "properties and under common control belong" for "property belong", and added the language beginning ", or such pollutant emitting activities" at the end of the first sentence and added the second sentence; and added the definition of "support facility".

The 2001 amendment by P.A. 92-24, effective July 1, 2001, deleted the text from item (vi) of paragraph 13(c), which related to limitations on or requirements for administrative permit amendments; rewrote item 18a.ii.B; deleted paragraph 18b, which related to permit fees for fiscal year 1999 and each fiscal year thereafter; deleted item 18f.iv., which related to permit fees for the years 1995 through 1999; and made stylistic changes.

The 2003 amendment by P.A. 93-32, effective July 1, 2003, in subsection 18(a)(i) substituted "$1,800" for "$1,000"; in subsection 18(a)(ii)(A) substituted "$18.00" for "$13.50" and "$250,000" for "$100,000"; deleted the text from subsection 18(c), which concerned the CAA Fee Panel; and deleted the former last sentence from subsection 18(d), concerning appropriations for the CAA Fee Panel.

The 2005 amendment by P.A. 94-580, effective August 12, 2005, in 2.c.ii.AA added "which as of August 7, 1980 are being" and deleted "but only with respect to those air pollutants that have been regulated for that category" from the end.

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CASE NOTES

STANDARD INDUSTRIAL CLASSIFICATION

A plain reading of this statute is that if several stationary sources do not have the same two digit Standard Industrial Classification number, they do not belong to the same industrial grouping. Color Communications, Inc. v. Illinois Pollution Control Bd., 288 Ill. App. 3d 527, 223 Ill. Dec. 783, 680 N.E.2d 516 (4 Dist. 1997), appeal denied, 174 Ill. 2d 557, 227 Ill. Dec. 3, 686 N.E.2d 1159 (1997).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Environment", see 22 S. Ill. U.L.J. 879 (1998).

USER NOTE: For more generally applicable notes, see notes under the first section of this level or chapter.

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October 16, 1995

MEMORANDUM

SUBJECT: Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V

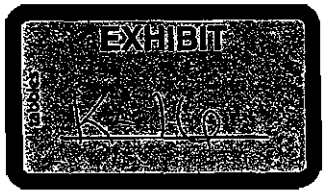
FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: See Addressees

In a guidance memorandum dated April 26, 1993, the Agency clarified its interpretation of the term "regulated air pollutant" as defined in the operating permit rule (see 40 CFR 70.2). Recently, many discussions have been held concerning the application of this definition to sources of particulate matter under the title V operating permit program. Today's memorandum provides additional guidance to assist permitting authorities in determining which sources of particulate matter are subject to the requirements of title V.

There are different forms of particulate matter for which controls are required by various regulations. The April 26, 1993 memorandum listed PM-10 and total suspended particulates as regulated forms of particulate matter and, consequently, regulated air pollutants. The EPA has recently reevaluated this finding and has concluded that its definition of regulated air pollutant under title V applies only to emissions of PM-10. A detailed discussion of the basis for this conclusion is attached.

Today's guidance should be used to determine which sources of particulate matter are subject to minimum title V requirements and fee calculations. The Federal minimum for applicability of title V to sources of particulate matter should be based on the amount of emissions of PM-10, not particulate matter, that the source has the potential to emit. Some sources [such as country grain elevators, aggregate (rock, gravel, and sand) handling operations, and some mining operations] may not be major



sources of PM-10 even though they would have been considered major sources of particulate matter.

This guidance does not change any requirements for sources to comply with emission limitations or work practice standards as described in State implementation plans (SIPs) and new source performance standards (NSPS). For example, the required procedures for determining compliance with NSPS continue to be based on in-stack measurements of particulate emissions or visible emissions observations (i.e., Test Methods 5, 9, 17, and 22, and Performance Specification 1). The Federal minimum is that if sources are major, then they must obtain title V operating permits which include all applicable requirements. Therefore, if a source is major for particulate matter, but not for PM-10, the Federal minimum would be that a title V operating permit would not be required if the only pollutant that would make the source major is particulate matter. Any requirements to comply with NSPS or SIPs would remain in effect, however.

This clarification of PM-10's status as the regulated pollutant will cause some difficulties in estimating emissions; however, tools are available for many source categories. For example, although some 1900 particulate matter emission factors can be found in the document referred to as "AP-42," there are also over 1200 PM-10 factors. In addition, category specific particle-size distributions are available for a number of other categories on EPA's data bases.

This revision of previous guidance constitutes a change only with regard to the title V operating permit program. It does not change any other interpretations or requirements that have been previously provided for implementing the Clean Air Act.

The policies set forth in this memorandum are intended solely as guidance and not final Agency action. This guidance cannot be relied upon to create any rights enforceable by any party. For further information on the title V aspects of this guidance, please contact Leo Stander at 919-541-2402, and for further information on emissions estimation techniques, please contact David Mobley at 919-541-4676.

Attachment

Addressees:
Director, Office of Ecosystem Protection, Region I
Director, Air & Waste Management Division, Region II
Director, Air, Radiation & Toxics Division, Region III
Director, Air, Pesticide & Toxics Management Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division, Region VI
Director, Air, RCRA and TSCA Division, Region VII
Director, Office of Pollution Prevention, State and Tribal, Region VIII
Director, Air & Toxics Division, Region IX
Director, Office of Air, Region X

cc: Chief, Air Branch, Regions I-X
Operating Permits Program Contact, Regions I-X
OAQPS Division Directors

REGULATED AIR POLLUTANT: PARTICULATE MATTER

This document explains the Environmental Protection Agency (EPA) policy that, at this time, PM-10 is considered to be the only regulated form of particulate matter. Today's policy supersedes prior EPA statements which indicated that a second regulated form of particulate matter existed. As explained further below, such prior statements were based on the fact that EPA had established specific compliance methods for sources of particulate matter under the new source performance standards (NSPS). The immediate consequence of this policy is that under the title V operating permits program only PM-10 is considered by EPA to be the regulated form of particulate matter for applicability and fee purposes. This policy does not affect (1) existing requirements under the NSPS that a source comply with applicable performance standards for particulate matter emissions or (2) provisions contained in State implementation plans for particulate matter, including existing particulate emissions limitations, which have been approved by EPA and are relied upon to attain or maintain the national ambient air quality standards (NAAQS) for particulate matter.

Background

The part 70 regulations for State title V operating permit programs define "regulated air pollutant" at 40 CFR 70.2. This definition is intended to ensure that permitting authorities receive appropriate information on all pollutants which are "regulated" under the Clean Air Act (Act) and emitted by a source. The term "regulated air pollutant" is intended to reflect all pollutants subject to a standard, regulation, or requirement by including in the definition five specific categories of pollutants which would be considered regulated air pollutants.[1] Questions have arisen, based on an EPA-issued memorandum on April 26, 1993, entitled "Definition of Regulated Air Pollutant for Purposes of Title V," concerning how many regulated forms of particulate matter the definition includes. The memorandum identified two regulated indicators--PM-10 and total suspended particulate (TSP). The PM-10 was considered regulated because it was a pollutant for which a NAAQS had been

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[1] The five categories of pollutants included (1) nitrogen oxides and volatile organic compounds, (2) any pollutant for which NAAQS have been established, (3) any pollutant that is subject to an NSPS under section 111, (4) certain ozone depleting substances, and (5) any pollutant subject to national emission standard for hazardous air pollutants (NESHAP) under section 112.

promulgated. The TSP was listed as a pollutant regulated under the NSPS.[2]

Implied in the April 1993 memorandum (though not explicitly stated therein) was the interpretation that the NSPS for particulate matter--which measures a different form of particulate than PM-10--automatically constituted a separate regulated indicator for particulate matter. The EPA has reevaluated this interpretation and has concluded that it is no longer appropriate. It is EPA's current position that different indicators for particulate matter may be used as surrogate measures where appropriate for controlling ambient concentrations of PM-10 without specifically requiring such surrogates themselves to be regarded as regulated pollutants. The EPA further believes that the basis for determining what the regulated pollutant or indicator is for particulate matter should focus on EPA's intent as evidenced primarily by the underlying statutory authority used by EPA to subject the relevant air pollutant to a standard, regulation or requirement, and by statements made by EPA in connection with its promulgation. This interpretation does not preclude EPA from specifically choosing to regulate a different indicator for particulate matter under the authority of section 111 of the Act. However, as explained below, it was not EPA's intent to do so for any of the NSPS promulgated to date for particulate matter.

Section 109 authority

To date, EPA's efforts to regulate particulate matter have relied primarily upon the joint authorities of sections 108 and 109 of the Act. Section 108 directs the Administrator to identify pollutants which may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for those pollutants. Section 109 of the Act then governs the establishment and revision of NAAQS for criteria pollutants. On April 30, 1971, EPA promulgated the original NAAQS for particulate matter. The NAAQS defined ambient concentrations of particulate matter measured as TSP (ambient compliance sampling achieved by "high volume" samplers which collect particulate matter up to a nominal size of 25 to 45 micrometers). On July 1, 1987, EPA revised the NAAQS for particulate matter, replacing the TSP indicator with the new PM-10 indicator.

The EPA subsequently acknowledged that the correct description of the indicator considered to be regulated under the NSPS was "particulate emissions" as measured by in-stack test methods, e.g., Federal Reference Method 5.

Section 111 authority

The control of particulate matter is also required by various NSPS under section 111 of the Act. Section 111 generally requires EPA to promulgate NSPS for any category of stationary sources that "...causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA promulgated numerous NSPS specifically to address the criteria pollutant, particulate matter, during the period of time when the NAAQS for particulate matter were measured as TSP. While EPA indicated that particulate matter was a criteria pollutant for which NAAQS had been promulgated, EPA compliance tests used to meet the specific NSPS for particulate matter did not use the same indicator as the indicator for the NAAQS for particulate matter. Instead, such compliance tests typically involved measures of particulate matter in the stack using emissions testing procedures (e.g., Method 5) that do not take into account particle size. Nevertheless, preamble discussions to certain of these NSPS show that EPA regarded the pollutant of concern to be the criteria pollutant for which NAAQS had been promulgated. See e.g., NSPS for Phosphate Rock Plants (9/21/79), Nonmetallic Mineral Processing Plants (8/1/85), and Calciners and Dryers in Mineral Industries (9/28/92).

With the promulgation of PM-10 NAAQS in 1987, EPA considered the issue of whether to revise the NSPS with respect to particulate matter. In a July 1, 1987 Federal Register notice, EPA acknowledged that the indicator for particulate matter used to measure compliance with the NSPS was different from both TSP and PM-10 (52 FR 24710). The EPA stated, therein, that the existing NSPS "that reflect the best demonstrated control technology for particulate matter have the effect of controlling PM-10." The EPA later decided that, at least until further studies could be accomplished, the existing NSPS for particulate matter would serve as adequate surrogates for limiting ambient amounts of PM-10, the intended "regulated air pollutant." The NSPS promulgated after 1987 have continued to base compliance on in-stack emissions test methods which measure particulate emissions. Based on this regulatory history, it is EPA's position that the use of particulate matter emissions as the measure of compliance under various NSPS for particulate matter does not, in itself, constitute a new regulated air pollutant, but is simply designed as a surrogate measure of particulate matter to establish effective performance standards which limit the emissions of the regulated indicator, PM-10.

While the EPA contends that the control of a pollutant under an NSPS does not automatically result in that pollutant being considered regulated if the intended pollutant is already being regulated under separate legal authority, the EPA does specifically rely upon the NSPS to regulate certain pollutants. A case in point is the NSPS for kraft pulp mills at 40 CFR 60 subpart BB, which includes limitations for emissions of total reduced sulfur compounds. This and other specific non-criteria pollutants are considered "regulated air pollutants" by virtue of the fact that EPA intended for them to be regulated by the NSPS, since they are not regulated elsewhere.

Other examples of surrogate measures

The EPA has used the measurement of particulate matter emissions for compliance purposes as the surrogate for controlling the pollutant intended to be regulated in the section 112 context as well. Examples of such situations are the NESHAP for arsenic and asbestos at 40 CFR 61.140 and 61.170, respectively. The EPA listed asbestos and arsenic as hazardous pollutants under section 112 of the Act. Subsequently, the EPA promulgated standards for several sources of asbestos and for inorganic arsenic emissions from primary copper smelters which require compliance with a particulate matter emissions limit using Method 5 and opacity monitoring (51 FR 27956, August 4, 1986 at 27981.) Nevertheless, the EPA considers arsenic and asbestos, as listed in accordance with section 112 of the Act, to be regulated pollutants in these instances.

Other implications

Nothing stated in this current policy is intended to negate, void or otherwise affect limits expressed as particulate matter emissions under any NSPS, or the enforceability of existing standards contained in State control strategies for PM-10 which may actually require compliance with other indicators for particulate matter. The EPA historically has allowed States to rely upon their original SIPs based on the control of particulate matter emissions to demonstrate attainment with the PM-10 NAAQS. The EPA continues to consider these plans to be adequate so as to remain in effect and be enforceable as long as they continue to be used to demonstrate attainment of the regulated indicator for particulate matter, PM-10.