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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIR. APPEALS BOARD

IN THE MATTER OF:)
CITY OF SPRINGFIELD)

APPEAL NUMBER: PSD 06-08
APPLICATION NUMBER: 04110050
PSD PERMIT NUMBER: 167120AAO

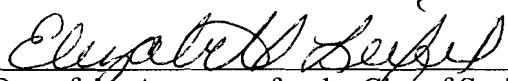
NOTICE

To: Eurika Durr, Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that the City of Springfield has today filed with the Clerk of the Environmental Appeals Board an original and five (5) copies of the **Response to Sierra Club's Petition for Review** of the City of Springfield, a copy of which is herewith served upon you.

Respectfully submitted,

By: 
One of the Attorneys for the City of Springfield, a
municipal corporation

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**CITY OF SPRINGFIELD'S RESPONSE
TO SIERRA CLUB'S PETITION FOR REVIEW**

INTRODUCTION

The City of Springfield, Illinois, owns and operates a municipal utility called City Water, Light & Power ("CWLP"). On August 10, 2006, the Illinois Environmental Protection Agency ("IEPA") issued a construction permit for a new 250MW coal-fired unit to be operated by CLWP. On September 12, 2006, the Sierra Club ("Petitioner") filed a Petition for Review ("Petition") of the construction permit. The Petition raised eight challenges¹ to the permit, primarily focusing on IEPA's Best Available Control Technology ("BACT") analysis.

The Board should deny review of the Petition. Review pursuant to 40 C.F.R. Part 124 should be "sparingly exercised," and the Board should defer to the issuing agency's determinations. 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *accord In re Cardinal FG Co.*, PSD Appeal No. 04-04, slip op. at 10 (EAB Mar. 22, 2005), 12 E.A.D. _____. As the record shows,² IEPA's analysis for all applicable pollutants was appropriate and satisfactorily addressed all of Petitioner's comments raised during the public comment period.

¹ The Petition has arguments numbered I-IX; however, Petitioner skipped VII.

² The IEPA is to file the complete administrative record in this matter; however, because IEPA has requested and received a 60-day extension of time to file its response and the record, the City of Springfield has attached to its response as Exhibit A IEPA's "Project Summary for a Construction Permit Application from City Water Light and Power for Dallman Unit 4" (cited herein as "Project Summary at p. XX"), and as Exhibit B IEPA's "Responsiveness Summary for Public Questions and Comments on the Construction Permit Application from Springfield City Water, Light and Power for Proposed Dallman Unit 4" (cited herein as "Responsiveness Summary at p. XX").

Petitioner has not satisfied its burden under Section 124.19, namely, to “both state the objections to the permit that are being raised and explain why the permit decision maker’s previous response to those objections (i.e. the decision maker’s basis for the decision) is clearly erroneous or otherwise warrants review.” *In re Prairie State Generating Co.*, PSD Appeal No. 05-05, slip op. at 13 (EAB Aug. 27, 2006), 13 E.A.D. _____. Instead, Petitioner merely has restated the objections made during the public comment period and has not introduced any additional facts or advanced any legal arguments that show IEPA’s conclusions were clearly erroneous. *See, e.g., In re Prairie State*, slip op. at 13 (“It is not enough simply to repeat objections made during the comment period.”). For the reasons set forth below, the Board should deny review.

PROJECT DESCRIPTION AND PROCEDURAL HISTORY

CWLP operates two coal-fired electricity generating stations: Lakeside and Dallman. The Dallman Generating Station consists of three existing coal-fired units, with a gross combined capacity of 352MW. In order to replace the older units that make up the Lakeside Generating Station, CWLP proposed to construct a new net 250MW coal-fired boiler, called Dallman Unit 4.

Dallman Unit 4 would have one boiler with a nominal rated heat input capacity of approximately 2,440 MMBtu/hr, which would utilize Illinois coal, pulverized into a powder, as its primary fuel to produce steam. The steam would then be used in a new steam turbine-generator to produce electricity. Illinois coal is a critical feature of Dallman Unit 4, as the three existing Dallman units burn Illinois coal. CWLP would continue to receive deliveries of Illinois coal from its current supplier, ICG Illinois, L.L.C. Dallman Unit 4 would use natural gas as its auxiliary fuel, for use during startup and shutdown.

Dallman Unit 4 would be equipped with add-on equipment to minimize and control emissions. The boiler would be equipped with low NOx burners and use good combustion practices to minimize emissions of nitrogen oxides (“NOx”), carbon monoxide (“CO”), and volatile organic material (“VOM”). The add-on control train for the boiler would include a selective catalytic reduction (“SCR”) system for control of NOx, a fabric filter or baghouse for control of particulate matter (“PM”), wet flue gas desulfurization (“WFGD”) or scrubber for control of sulfur dioxide (“SO2”), and a wet electrostatic precipitator (“WESP”) for control of sulfuric acid mist and condensable particulate matter. The exhaust from the boiler would be vented out through a 450-foot stack. Other emission units to be constructed as part of the project would include: storage, processing and handling equipment for coal, limestone, ash and other materials; a cooling tower; various roads and parking areas; and diesel engines for emergency power needs.

The City of Springfield is located within Sangamon County, which has been designated as attainment or unclassifiable for all criteria pollutants. 40 C.F.R. § 81.314. As such, proposed major modifications to be located within the area are subject to the federal Prevention of Significant Deterioration program, 40 C.F.R. § 51.166 (“PSD”). Illinois administers the PSD program through a delegation of authority from the United States Environmental Protection Agency (“U.S. EPA”). *Delegation of Authority to State Agencies*, 46 Fed. Reg. 9580 (Jan. 29, 1981). The City applied to IEPA for a PSD permit on November 18, 2004. IEPA determined that the construction of Dallman Unit 4 would be subject to PSD permitting requirements for PM, CO, and sulfuric acid mist (“SAM”), and exempt from PSD permitting requirements for SO2 and NOx by virtue of a netting analysis taking into account CWLP’s shutdown of the Lakeside Units. (Project Summary at p. 5). After performing a BACT analysis, IEPA issued a draft permit containing emissions limits on February 4, 2006.

The public comment period commenced on the same day. Petitioner Sierra Club submitted two sets of comments, both dated May 22, 2006. IEPA held a public hearing on March 22, 2006, and extended the public comment period through May 22, 2006. On August 10, 2006, IEPA issued the final PSD permit to CWLP.

STANDARD OF REVIEW

Part 124 of the Code of Federal Regulations governs PSD permit appeals. In order to have standing to petition the Board for review, a petitioner must demonstrate one of two bases: (1) the petitioner participated during the public comment period, or (2) the final permit differed materially from the draft permit, and the petition seeks review to the extent of those differences. 40 C.F.R. § 124.19(a).

The Board's review of a PSD permit "should only be sparingly exercised." *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 109 n.1 (EAB 1997). A petitioner must establish that the petition is based on "a finding of fact or conclusion of law which is clearly erroneous," or is "an important policy consideration which the [Board] should, in its discretion, review." 40 C.F.R. § 124.19(a). The burden is on the petitioner to demonstrate that a challenged permit condition is "clearly erroneous." *In re Gelman Servs., Inc.* 2 E.A.D. 460, 462 n.6 (1987). Critically, a petitioner must do more than restate objections raised during the public comment period, and must instead demonstrate that the issuing agency's response to those comments was deficient or erroneous. *In re Zion Energy, L.L.C.*, 9 E.A.D. 701, 705 (EAB 2001).

With respect to conflicts over technical issues, the Board generally defers to the issuing agency, here, the IEPA. *In re Peabody W. Coal Co.*, CAA Appeal No. 04-01, slip op. at 16-17 (EAB Feb. 18, 2005), 12 E.A.D. ____ ("Where a permit decision pivots on the resolution of a genuine technical dispute or disagreement, the Board prefers not to substitute its judgment for

the judgment of the decisionmaker specifically tasked with making such determinations in the first instance.”).

The technical issues raised in the Petition involve IEPA’s BACT analysis. A BACT analysis involves five steps by the permitting authority: 1) the permitting authority identifies all “potentially” available control options; 2) the permitting authority eliminates technically infeasible options from the potentially available control options identified in Step 1; 3) the permitting authority ranks the remaining control options in order of control effectiveness; 4) the permitting authority determines whether the highest ranked (i.e. most effective) control option is appropriate in light of energy, environmental, and/or economic considerations; and 5) the permitting authority selects the highest ranked control option not eliminated in Step 4 and sets an emission limit for each pollutant subject to PSD. *See In re Newmont Nevada Energy Investment, L.L.C.*, PSD Appeal No. 05-04, slip op. at 8-9 (EAB Dec. 21, 2005), 12 E.A.D. ____.

As demonstrated below, Petitioner here has not satisfied its burden of showing that the IEPA’s permitting decision was clearly erroneous. Petitioner has done nothing more than argue against IEPA’s decisions regarding BACT, disagreeing with the agency’s analysis without demonstrating any legal or factual deficiency. Such a showing is insufficient to justify the Board’s review of a petition. *See, e.g., In re Mecklenburg Cogeneration Ltd. P’ship*, 3 E.A.D. 492, 494 n.3 (Adm’r 1990) (“For a remand, there must be a compelling reason to believe that the omissions led to an erroneous permit determination – in other words, that they materially affected the quality of the permit determination.”). IEPA’s permit determinations were based on ample evidence in the record, and the Responsiveness Summary adequately addressed all of Petitioner’s comments raised during the public comment period.

ARGUMENT

I. IEPA properly analyzed a SAM limit of .0050 lb/MMBtu as BACT

Petitioner has alleged that the SAM limit of 0.0050 lb/MMBtu does not reflect a proper BACT analysis, arguing that the appropriate SAM limit is 0.0024 lb/MMBtu. The City notes, as an initial matter, Petitioner has not stated the method for calculating its proposed SAM limit of 0.0024 lb/MMBtu; however, this limit appears to be based on the so-called “Southern Company” method, which was rejected by IEPA as an inappropriate method for calculating SAM emissions. (Responsiveness Summary at p. 45) (“The sulfuric acid mist emission rate calculated by this commenter does not constitute a sound basis upon which to set a BACT limit. This is because it is based upon a calculation method whose purpose is to estimate annual actual emissions of sulfuric acid mist for purposes of annual reporting of emissions under USEPA’s Toxic Release Inventory program. The so-called Southern Company method was not developed for the purpose of setting BACT limits for sulfuric acid mist. Accordingly, it appears unlikely that BACT limits for sulfuric acid mist are routinely calculated using this method.”).

Petitioner argues that the permit’s SAM limit should be lower for four reasons: (1) IEPA allegedly failed to consider the use of low-sulfur coal; (2) IEPA allegedly failed to consider the use of a wet scrubber as technology to control SAM emissions; (3) IEPA allegedly failed to identify a control efficiency for WESP; and (4) IEPA allegedly failed to consider a combination of control options, such as low-sulfur coal, a wet scrubber, and a WESP. As demonstrated below, none of these assertions demonstrates “clear error” by IEPA, or a deficiency in its response sufficient to warrant review by the Board. Many of Petitioner’s arguments were addressed and dismissed in the recent Board decision in *In re Prairie State Generating Co.*, PSD Appeal No. 05-05, slip op. at 13 (EAB Aug. 27, 2006), 13 E.A.D. ___, and should be dismissed here.

A. IEPA properly considered and rejected low sulfur coal

Petitioner alleges that IEPA erred by failing to consider low-sulfur coal as an alternative to the Illinois coal that would be used as the primary fuel source for Dallman Unit 4. Petitioner claims that neither the City nor IEPA offered any explanation as to why low-sulfur coal was not an available option. The record clearly shows, however, that IEPA considered the use of low-sulfur coal and rejected it as an alternative fuel.

The record in this case demonstrates that IEPA thoroughly considered low-sulfur coal and rejected it, in part, on the basis that the project was designed to burn Illinois coal, and that to require low-sulfur coal would fundamentally redefine the design of the project. Specifically, IEPA relied on two key operational elements in rejecting low-sulfur coal as an option: (1) the lack of space for CWLP to accept shipments of two different types of coal, and (2) the use of Illinois coal at the existing Dallman units.

The structure and location of the CWLP plant prevents the use of low-sulfur coal to fuel Dallman Unit 4. The existing Dallman units were built to use Illinois coal as their primary fuel. Thus, for Dallman Unit 4 to burn low-sulfur coal would require modifications to the existing plant to enable it to accept multiple deliveries of other types of coal. The CWLP plant is located adjacent to Lake Springfield and lacks sufficient existing space to accommodate deliveries of multiple types of coal from multiple suppliers. Low-sulfur (western) coal would have to be delivered to CWLP from Wyoming via train; the plant lacks sufficient space to accept rail deliveries, and all coal deliveries must be made by truck. Trucking low-sulfur coal to the plant is both logistically and economically infeasible. The landlocked location of the plant also makes it expansion to accommodate rail shipments. (Project Summary at pp. 6-7).

The IEPA's Project Summary further adds that "[u]se of low-sulfur coal would not result in meaningful reductions in emissions of pollutants from the project that are subject to PSD."

(Project Summary at p. 7). In response to Petitioner's comment that IEPA should consider low-sulfur coal, IEPA reiterated the minimal SAM emissions reduction that would result from the use of low-sulfur coal:

The key factor affecting the significance of fuel selection in the BACT determination for sulfuric acid mist is the low emissions of sulfuric acid mist from the project with the selected coal supply, i.e. potential emissions of only about 50 tons per year. Even if one assumes that use of low-sulfur coal could eliminate all sulfuric acid mist emissions, the emission reduction would not be large enough to justify the additional cost and other impacts entailed in using low-sulfur coal for Dallman 4.

(Responsiveness Summary at pp. 40-41). Thus, contrary to Petitioner's assertion that "neither IEPA nor the City have offered a reasoned explanation why the proposed coal plant could not use exclusively low-sulfur coal or blend in a portion of such coal as one strategy to reduce overall SAM emissions" (Petition at pp. 6-7), IEPA has sufficiently explained why using low-sulfur coal would not result in sufficient SAM emissions to justify the added operational costs.

In addition, Board precedent clearly refutes the claim that CWLP should be required to use low-sulfur coal to fuel Dallman Unit 4. In *In re Prairie State*, the Board rejected a similar argument by Petitioner, holding that a BACT analysis cannot be used to redefine the scope of a proposed project. In the Prairie State permitting process, IEPA analyzed the low-sulfur coal issue in a similar manner, concluding that the project had been designed to utilize Illinois coal, and that using Illinois coal had operational advantages because the coal would come from an adjacent mine. *In re Prairie State*, slip op. at 31. The Board upheld IEPA's analysis in *In re Prairie State*: "We see no fundamental conflict in looking to a facility's basic 'purpose' or to its 'basic design' in determining the proper scope of BACT review, nor do we believe that either approach is at odds with past Board precedent." *In re Prairie State*, slip op. at pp. 20-27.

Petitioner has pointed obliquely to other coal-fired plants required to use low-sulfur coal as BACT to show error in IEPA's analysis. Once again, in *In re Prairie State*, the Board rejected

the same kind of argument from Petitioner. The Board found that while the type of coal used is not always a fundamental part of a plant's design, the structural and operational features that are designed around the type of coal used are part of the design of the plant. It is beyond the purview of a BACT analysis to alter these structural and operational elements by prescribing a different type of coal. *In re Prairie State*, slip op. at p. 36. Here, IEPA's analysis clearly recognized the operational and structural differences between Dallman Unit 4 and other plants that have been required to use low-sulfur coal.

IEPA's analysis is supported by the record and fits squarely within that upheld in *In re Prairie State*. Petitioner has failed to show "clear error" sufficient to warrant the Board's review of this issue and has demonstrated nothing more than that it disagrees with IEPA's reasoning, failing to take the necessary additional step of putting before the Board evidence that the facts are contrary to the reasoning stated in IEPA's narrative analysis. *In re Prairie State*, slip op. at 58.

B. IEPA did not err by declining to consider continuous operation of a wet gas scrubber to control SO₂ emissions in setting the control efficiency for the WESP.

Petitioner argues that IEPA committed clear error by failing to assume continuation of the plant's wet gas scrubber ("WGS") in setting the control efficiency for the WESP used to control SAM emissions. IEPA, however, has supported its reasoning fully for declining to adopt this assumption. Moreover, the setting of a control efficiency is precisely the type of technical determination entitled to deference by the Board. Therefore, the Board should decline to review this issue.

In its analysis, IEPA determined that SO₂ emissions from Dallman Unit 4 would not be subject to a BACT analysis because those emissions would be below PSD thresholds after taking into account SO₂ emissions decreases from the shutdown of the Lakeside units. (Project

Summary at p. 4). Petitioner asserts that because SAM is a derivative of SO₂ emissions, SO₂ emissions and SAM emissions can be controlled by the same technology. Petitioner argues, the control efficiency established for the WESP, used to control SAM emissions, must take into account technologies used to control SO₂ emissions. (Petition at pp. 9-10).

Petitioner's argument disregards the express acknowledgment of the difference between SO₂ and SAM emissions and the types of control technologies which are most effective, as outlined in IEPA's Project Summary:

There are three basic options for control of sulfuric acid mist emissions from a coal-fired boiler: co-removal with SO₂ scrubbing, sorbent injection, and use of a . . . WESP. Scrubbing for SO₂ also provides control of sulfuric acid mist by absorbing the mist in the alkaline scrubbant. However, scrubbers are not as effective for sulfuric acid mist as for SO₂. This is because the sulfuric acid mist is present as very fine droplets, rather than as a gas. Accordingly, only a moderate level of control can be relied upon.

(Project Summary at p. 11).

In responding to Petitioner on this issue, IEPA reiterated the relative ineffectiveness of scrubber technology on SAM emissions, determining that the most effective method of controlling SAM emissions is through a WESP. (Responsiveness Summary at pp. 41-43). Clearly, IEPA determined that the use of the WGS was unrelated to the control efficiency used for the WESP. The two technologies are separate and do not depend on one another. Moreover, because SO₂ emissions are not subject to a BACT analysis (*see* Section VIII *infra*), it is inappropriate to require or presume BACT-type requirements for the scrubber in setting a BACT limit for another pollutant. *See* 40 C.F.R. § 51.166 (limiting applicability of PSD requirements, including BACT, to "major modifications" that result in a "significant net emissions increase" of a particular criteria pollutant).

Board precedent supports the IEPA's WESP control efficiency here. In *In re Prairie State*, the Board rejected Petitioner's argument that the control efficiency set for the plant's wet flue gas desulfurization ("WFGD") did not represent BACT. There, IEPA justified the control efficiency in response to Petitioner's comments. *In re Prairie State*, slip op. at 74-75. IEPA specifically considered and rejected higher control efficiency limits for the WFGD, and the Board upheld the analysis:

[W]hen the Board is presented with conflicting expert opinions or data, we look to see if the record demonstrates that the permitting agency duly considered the issues raised in the comments and if the approach ultimately selected is rational in light of all the information in the record, including the conflicting opinions and data.

In re Prairie State at p. 75. See also *In re Cardinal FG Co.*, PSD Appeal No. 04-04. Moreover, in *In re Prairie State*, the Board upheld IEPA's determination that a WESP was the appropriate technology for controlling SAM emissions: "Absent proof of error in a permitting authority's decision to analyze [SO₂ and SAM emissions] together, this is 'the kind of technical determination that is best left to the State to decide.'" *In re Prairie State* at pp. 82-83; see also *In re Genee Power Station L.P.*, 4 E.A.D. 832, 851 (EAB 1993). Here, IEPA has concluded that consideration of SO₂ control technology is irrelevant to the control efficiency set for the WESP used to control SAM emissions. The Board should defer to the IEPA's determination and decline to review this issue.

C. *Petitioner has not challenged IEPA's consideration of control efficiencies for the WESP with sufficient specificity.*

Petitioner asserts that IEPA erred by failing to consider a range of control efficiencies for the WESP used for controlling SAM emissions. (Petition at pp. 11-12). Petitioner provides no support for this conclusory statement. The Board should decline to review this claim on the basis that Petitioner has failed to satisfy the preliminary requirement that a petition for review

“clearly identify the issue being raised and . . . provide some supportable reason why review is warranted.” *In re Knauf Fiber Glass GmbH*, 8 E.A.D. 1, 6 (EAB 2000) (declining to review a permit because the petitions did not raise issues with sufficient specificity).

Even if the Board determines that Petitioner has satisfied the preliminary specificity requirement, the Board should decline to review this issue on the grounds that IEPA adequately justified its decision to use the WESP as the appropriate add-on control for SAM emissions, stating that a “control efficiency” for the WESP is an inexact calculation based on consideration of limits at other similar plants as opposed to a strict mathematical calculation. (Responsiveness Summary at p. 44).

D. IEPA properly determined WESP technology as BACT for SAM

Petitioner argues that IEPA should have considered a combination of control technologies in determining BACT for SAM. Petitioner further asserts that this “combination” should have included low-sulfur coal, an option already rejected by IEPA based on operational and design requirements. In response to Petitioner’s comments on this point , IEPA stated:

The BACT analysis focused on the add-on control devices for control of sulfuric acid mist, as those add-on control techniques are more effective than operating measurements that serve to minimize the level of uncontrolled sulfuric acid mist emissions leaving the boiler. BACT for emissions of sulfuric acid mist from Dallman 4 has been determined to be the use of a . . . WESP. This is considered to be the most effective add-on control device available for additional benefit as it provides a final control device, located after the scrubber, for particulate emissions from the proposed unit.

(Responsiveness Summary at p. 41).

II. IEPA properly analyzed a Total PM limit of 0.035 lb/MMBtu as BACT

Petitioner argues that because other coal-fired power plant permits have received Total PM limits of 0.018 lb/MMBtu, these lower limits should be taken presumptively as BACT, and IEPA’s failure to recognize these lower limits for other plants was clear error. (Petition at pp.

12-13). The record shows that IEPA adequately considered and rejected such other Total PM limits as not achievable in practice. IEPA did not commit clear error in its analysis of Total PM.

Petitioner does not actually reference any specific coal plant with a lower limit; instead, it vaguely refers to “other permits and emission data from other coal plants” addressed in Petitioner’s comments. (Petition at p. 12-13). The Board repeatedly has found that a petitioner may not simply restate its comments in a petition for review, and must instead demonstrate that the issuing agency’s treatment of its comments was clearly erroneous. *In re Prairie State*, slip op. at 13. Petitioner’s mere reference to its comments does not demonstrate clear error by IEPA.

IEPA’s analysis of Petitioner’s comments relating to other plants’ Total PM limits is thorough and complete. IEPA rejected other plants’ Total PM limits as BACT for a number of well-supported reasons. First, data on Total PM emissions from coal-fired boilers in general, and from coal-fired boilers that use WESP technology as the final control step in particular, is scarce. (Project Summary at pp. 9-11). Because of the lack of data, IEPA determined that it would “proceed cautiously” in setting Total PM limits. (*Id.*). The Board supported a similar rationale in *In re Prairie State*: “the permit issuer may take into account the absence of long-term data, or the unproven long-term effectiveness of the technology, in setting the emissions limitation that is BACT for the facility.” *In re Prairie State*, slip op. at 71. Second, IEPA determined that there was no adequate basis to set a Total PM limit of 0.018 lb/MMBtu for CWLP simply because plants in other states had such a limit. (Project Summary at pp. 9-11). IEPA found that the plants to which Petitioner referred in its comments were not yet built or operational, and that a Total PM limit of 0.018 lb/MMBtu had not been shown to be achievable in practice.

Further, IEPA referred Petitioner to the Total PM limit it set in the Prairie State permit, which was identical to the limit in CWLP’s permit. (Project Summary at pp. 9-11). The same Petitioner raised the same issue in seeking review of the Prairie State permit, and the Board

correctly dismissed the argument. In upholding IEPA's justification for rejecting other plants' Total PM limits, the Board stated:

IEPA's response to comments demonstrates that it considered [other] facilities' limits, but was not confident that the limits are, in fact, achievable for Prairie State's Facility. *See* Response to Comments at 83 (responding to a public comment referencing Longview, Thoroughbred, and Elm Road). Where a permitting authority has responded to public comments demonstrating that it, in fact, considered technical issues raised in the public comments, we will normally not substitute our judgment for the technical expertise of the permitting authority, particularly where the petition demonstrates only disagreement among experts.

In re Prairie State, slip op. at 107-08, citing *In re Cardinal FG Co.*, PSD Appeal No. 04-04, slip op. at 19-20 (EAB Mar. 22, 2005).

Further, the Board in *In re Prairie State* supported IEPA's consideration of the absence of data in its BACT analysis: "The BACT analysis . . . must be solidly grounded on what is presently known about the selected technology's effectiveness at controlling pollutant emissions" *In re Prairie State*, slip op. at 70 (internal citations omitted). The Board's decision in *In re Prairie State* is highly instructive here, and Petitioner's request for review of CWLP's Total PM limit should be rejected.

Finally, the Board should give no credence to Petitioner's argument that the City's voluntary acceptance of a lower limit for Total PM should bind the City to the voluntary limit as BACT. No such conditions are before the Board on the subject permit. Moreover, that an emission rate may be believed technically achievable does not automatically mean that the rate constitutes BACT. *In re Prairie State*, slip op. at 72. The Board has "long recognized that permit writers must retain discretion to set BACT levels that 'do not necessarily reflect the highest possible control efficiencies but, rather, will allow permittees to achieve compliance on a consistent basis.'" *In re Prairie State*, slip op. at 72 (internal citations omitted).

III. IEPA properly analyzed a Filterable PM limit of 0.012 lb/MMBtu as BACT

Petitioner claims that the Filterable PM limit of 0.012 lb/MMBtu contained in CWLP's permit does not constitute BACT. Specifically, Petitioner claims that the Prairie State permit, issued 18 months prior to the City's permit, contained the same Filterable PM limit. Petitioner refers generally to its comments regarding "other permits and emission data for other coal plants showcasing why a lower limit is readily achievable." (Petition at p. 13). Petitioner's argument again fails on its face, as the Petition has presented no evidence why IEPA's reasoning constitutes clear error.

In response to Petitioner's comments regarding lower Filterable PM limits in other facilities' permits, IEPA stated that the limit contained in CWLP's permit was the "result of further review of the limits set for other new coal-fired generating units, notably the permit recently issued in 2005 to Newmont Nevada Energy's 'TS Power Plant.'" (Responsiveness Summary at pp. 29-30). IEPA found the Nevada plant's Filterable PM limit appropriate for CWLP, as the Nevada plant involved a boiler "similar in type, pulverized coal boiler, and size . . . to proposed Dallman 4." (*Id.*). Addressing lower limits for other facilities such as Trimble County and Indeck-Elwood, IEPA stated that "[a]t best, the cited limits show a range of limits for PM emissions in the permits for new coal-fired generating units." (*Id.*).

Further addressing the Filterable PM limit, IEPA stated that the limit of 0.015 lb/MMBtu includes a safety factor, providing "an appropriate margin of compliance to address the normal variability in performance of a baghouse, as shown by the variation in tested emissions." (Project Summary at pp. 8-9). The use of such a safety factor was upheld in *In re Prairie State*: "[W]here the technology's efficiency at controlling pollutant emissions is known to fluctuate, 'setting the emissions limitation to reflect the highest control efficiency would make violations of the permit unavoidable' Further, '[d]ue to characteristics of individual plant processes,

we recognize that application of identical technology may not yield identical emission limits.”
In re Prairie State, slip op. at 72 (internal citations omitted).

Petitioner argues that the City’s voluntary acceptance of lower Filterable PM limits should be taken presumptively as BACT. Again, however, this argument is irrelevant. Moreover, as shown above, IEPA is not bound to accept the absolute highest control efficiency as BACT; rather, in the interest of ensuring consistent compliance, a BACT analysis may consider higher limits that sources can achieve consistently. *See, e.g.*, 40 C.F.R. 52.21(b)(12) (defining BACT as being based on “the maximum degree of reduction . . . which the permitting authority . . . determines is achievable . . .”).

IV. Because opacity is not a pollutant, IEPA did not err by declining to establish visible emissions limits for PM and SAM

Petitioner argues that IEPA was required to establish a visible emissions (*i.e.* opacity) limit as part of BACT for all criteria pollutants. Petitioner cites the definition of BACT under 40 C.F.R. 52.21(b)(12), which provides that BACT is defined as “an emissions limitation (including a visible emission standard) . . .”, claiming that the parenthetical phrase “including a visible emission standard,” means that such a standard is required, in addition to an emission rate limit, in a BACT limit. Petitioner claims that IEPA erred by not setting a visible emissions limit for PM and SAM lower than the level required under the New Source Performance Standard. (Petition at p. 14).

Opacity is not a criteria pollutant; it is simply an indicator of pollutants like PM. *See* 40 C.F.R. § 51.852 (defining “criteria pollutant”). In response to Petitioner’s comment on this issue, IEPA stated that because opacity is not a criteria pollutant, an opacity limit is not required to be set as BACT. While the parenthetical phrase in Section 52.21(b)(12) allows the permitting authority to set an opacity limit as BACT, it does not require a visible emission limit.

(Responsiveness Summary at pp. 39-40); *see, e.g., In re Amerada Hess Corp. Port Reading*

Refinery, PSD Appeal No. 04-03, slip op. at 14-16 (EAB Feb. 1, 2005), 12 E.A.D. ____ (accepting an argument from the New Jersey Department of Environmental Protection that the opacity limits contained in a PSD permit were state requirements and that opacity limits are not required under the PSD program). IEPA reasonably interpreted the parenthetical phrase as a “clarifying action” on U.S. EPA’s part listing one type of emission standard that could constitute BACT. (*Id.*); *see also United States v. Monjaras-Castaneda*, 190 F.3d 326, 329 (5th Cir. 1999) (interpreting a parenthetical phrase in a statute as descriptive, rather than restrictive, based on the context of the parenthetical). IEPA further explained that because BACT is not required for opacity, opacity requirements are better characterized as compliance assurance requirements, not as BACT requirements.

Petitioner’s argument that the opacity limit to which the City agreed in negotiations with Petitioner should be taken presumptively to be the BACT limit also fails. Again, opacity is not subject to BACT requirements because it is merely an indicator of a pollutant, not a pollutant itself. That the City agreed to a lower opacity limit in the context of negotiating a private agreement is immaterial.

Petitioner has pointed to no authority supporting its interpretation of Section 52.21, or any authority refuting IEPA’s interpretation. Without evidence showing that IEPA erred in its interpretation and application of Section 52.21, the Board should deny review of this issue and uphold IEPA’s opacity limits for PM and SAM.

V. **IEPA properly analyzed a PM limit of 0.01 g/dscf for CWLP’s bulk handling operations as BACT**

IEPA set a PM limit of 0.01 grams/dry standard cubic feet for emissions from CWLP’s bulk material handling operations such as limestone and coal storage facilities. Petitioner claims that this limit does not represent BACT. (Petition at p. 16-17). Petitioner’s argument, once again, relies almost exclusively on lower limits for bulk material handling operations contained

in other permits. IEPA adequately addressed the differences between CWLP and these other facilities, and had a reasonable basis for setting different limits.

In response to Petitioner's comments, IEPA set forth a detailed analysis and explanation of the differences between CWLP's limit and the limits for other plants. Specifically, IEPA pointed to three components of the CWLP BACT determination for bulk materials handling operations: "1) Operations be enclosed to prevent visible fugitive emissions; 2) Collected dust from the operations be exhausted through properly designed and operated control devices (which shall be filter-type devices unless the Illinois EPA concurs that another type of device is preferable due to safety considerations); and 3) The control devices shall be designed to achieve an emission rate of 0.01 gr/scf." (Responsiveness Summary at pp. 48-49). According to IEPA, the first two components of this analysis are consistent with the BACT determinations for similar operations located within other new generating units.

Further explaining, IEPA indicated that differences in control technology, particularly a baghouse, accounted for the difference in the PM limits among various coal plants across the country. IEPA observed that PM limits for bulk materials handling operations at other plants is treated inconsistently; some permits contain lower PM limits for bulk materials handling operations, and other permits contain no such limit at all. IEPA reasoned that the limit of 0.01 g/dscf in CWLP's permit is appropriate because it represents "the performance that is reliably and consistently achievable, and which is commonly guaranteed by suppliers of baghouses for use in material handling service" (Responsiveness Summary at pp. 48-49).

Finally, Petitioner asserts that IEPA erred in rejecting the PM limit for bulk materials handling operations contained in the Indeck-Elwood PSD permit. (Petition at p. 17). IEPA explained the key differences between Dallman Unit 4 and Indeck-Elwood as follows:

[T]he circumstances of the plant are significantly different from those of the proposed project. The Indeck-Elwood plant is located

on a relatively small piece of property, immediately adjacent to the Midewin National Tallgrass Prairie and a rail-to-truck intermodal center at which new cars and light-duty trucks are transferred from railcars to transport trucks for distribution throughout the greater Chicago area. Because of the presence of these facilities next to the proposed Indeck-Elwood plant and general concerns expressed by these facilities about windblown dust, Indeck committed to control measures that it did, as reflected in the permit. These circumstances are not present for the proposed project.

(Responsiveness Summary at pp. 48-49). IEPA approached the bulk handling operations as a category, explaining that prescribing a limit for each individual unit was unnecessary. Petitioner has not asserted any facts that show that IEPA's reasoning is flawed. Similarly, Petitioner has asserted no facts refuting IEPA's conclusion that Indeck-Elwood is distinguishable due to concerns over dust affecting the adjacent prairie and intermodal center. Thus, Petitioner "has not taken the additional step that they are required to do, which is to put before the Board evidence that the facts are contrary to the reasoning stated in IEPA's narrative analysis." *In re Prairie State*, slip op. at 58.

VI. IEPA did not err by considering an endangered species evaluation outside of the public comment period.

Petitioner claims that IEPA failed to complete an Endangered Species Act ("ESA") analysis before the public comment period ended, thereby denying the public the opportunity to review and submit meaningful comments on the conclusions. Petitioner's argument that the public comment period should be reopened for consideration of the ESA analysis fails in light of the recent Board decision in the Indeck-Elwood PSD Appeal, and the Board should decline to review this issue further.

Petitioner argues that because the ESA applies to the issuance of federal PSD permits under the Clean Air Act, the ESA consultation must be completed before the public comment period closes. While the Board's decision in *Indeck* clearly shows that the ESA requirements apply to the PSD permitting process, nothing supports Petitioner's leap to the next step, *i.e.* that

the ESA consultation must be completed before the close of the public comment period.

Petitioner contends that the “framework” of the Clean Air Act and the corresponding regulations create a temporal relationship between an ESA analysis and requires the ESA analysis to be undertaken within the public comment process.

Under the *Indeck-Elwood* decision, this argument fails. The Board expressly stated that while an ESA analysis should be completed prior to the date a PSD permit becomes final, nothing in the ESA or the Clean Air Act requires public notice and comment on ESA materials. *In re Indeck-Elwood*, slip op. at 115. Further explaining the temporal relationship between an ESA analysis and the PSD permitting process, the Board recognized that a permit pending an appeal before the Board is not a “final” permit; thus, even now, during the pendency of the present appeal, the ESA analysis need not have been completed. *In re Indeck-Elwood*, slip op. at 111, n. 150.

The Board’s decision in *In re Prairie State* similarly disposes of Petitioner’s request to remand to IEPA to reopen the public comment period. As here, the Petitioner in *In re Prairie State* argued that the public comment period should be reopened for the consideration of issues presented in the ESA analysis. *In re Prairie State*, slip op., at p. 66. In order to support an instruction by the Board to the issuing agency that the public comment period should be reopened, a petitioner must show that post-comment information raises “substantial new questions concerning a permit . . .” *In re Prairie State*, slip op. at 65. Where a petitioner “simply assert[s] that reopening the record might produce some speculative body of evidence,” the Board held that there is no sufficient basis to direct IEPA to reopen the public comment period. *In re Prairie State*, slip op. at 66. Here, as in *In re Prairie State*, Petitioner has done nothing more than assert that new facts regarding the ESA analysis might be introduced if the public comment period were to be reopened. This assertion does not raise substantial new

environmental questions concerning the permit and therefore does not satisfy Petitioner's burden in challenging IEPA's conclusions. 40 C.F.R. § 124.14(a)(1); *In re Prairie State*, slip op. at 64-65.

VII. IEPA adequately considered alternatives to Dallman Unit 4

Petitioner claims that IEPA erred by not undertaking an extensive analysis of alternatives to the construction of Dallman Unit 4. Petitioner argues that because of IEPA's "long-standing legal position" that it lacks the authority to undertake an extensive alternatives analysis, Petitioner believed it would be fruitless to submit an alternatives analysis for IEPA's consideration. *In re Prairie State* holds that IEPA's obligation to consider alternatives to the project extends only to the analysis supplied in public comments. *In re Prairie State*, slip op. at 39. IEPA did consider all the alternatives presented below, namely renewable resources and demand side management. IEPA's obligation extends no further, and Petitioner's request for remand for further consideration of alternatives cannot stand in light of *In re Prairie State*.

Contrary to Petitioner's assertion that IEPA somehow ignored any alternatives to the construction of Dallman Unit 4, the record is replete with IEPA's consideration of alternatives. For example, IEPA considered renewable energy resources such as solar and wind power, finding that these resources did not present viable options to coal-fired units at the present time due to cost or availability: "[F]or a city like Springfield, residential solar panels are not yet an economical alternative to a central fossil fuel-fired power plant. This is because of the dramatic difference in capital costs, which the subsequent savings in fuel costs with solar panels can never make up." (Responsiveness Summary at p. 14).

IEPA further found that CWLP had conducted an alternatives analysis and that despite ongoing programs for demand-side management, demand for electricity in the city of Springfield has surpassed the capacity of CWLP's existing facilities. IEPA recognized that the construction

of coal-fired units to meet electricity demand is not incongruent with the long-range objective of relying on renewable resources, as Dallman Unit 4 is necessary to meet present demand.

The Board upheld a similar rationale in *In re Prairie State*: “IEPA did not simply accept Prairie State’s business objective; IEPA also concluded that Prairie State’s business objective is consistent with the state’s public interest. The level of detail in IEPA’s analysis on this issue is sufficient given the nature and extent of comments submitted by the public.” *In re Prairie State*, slip op. at 40. The Board further held that while IEPA has the authority to consider alternatives to a proposed project, it is under no obligation to do so. *In re Prairie State*, slip op. at 42. Here, too, IEPA did not simply accept CWLP’s business justification for constructing Dallman Unit 4; rather, IEPA evaluated renewable alternatives and stated a sufficient level of detail as to why Dallman Unit 4 is necessary to meet present demand levels. Thus, as in *In re Prairie State*, Petitioner has shown no clear error in IEPA’s alternatives analysis.

VIII. IEPA properly used the shutdown of Lakeside units to offset emissions increases.

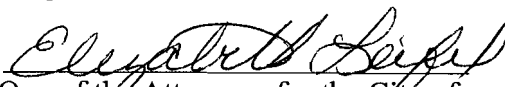
Petitioner claims that IEPA erred by using CWLP’s decision to close the Lakeside units to net CWLP out of PSD permitting requirements for NOx and SO2. Petitioner argues that due to economic and technical forces, shutting down the Lakeside unit was not voluntary for purposes of allowing the corresponding emission reduction to offset emissions from Dallman Unit 4. IEPA determined that although CWLP’s decision to shutdown the Lakeside units was “driven by economic considerations,” shutdown of the Lakeside units was nonetheless voluntary and appropriate for a netting exercise. (Responsiveness Summary at pp. 67-68). Petitioner has pointed to no authority supporting its position that economic pressures negate voluntariness. IEPA’s summary supports this notion, and Petitioner has not shown that IEPA’s conclusion was clearly erroneous.

CONCLUSION

For all of the foregoing reasons, the City of Springfield respectfully requests that the Board deny review of the Petition.

Dated October 18, 2006

Respectfully submitted,

By: 
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