



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

FEB 21 2007

(AR-18J)

Laurel Kroack, Chief
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Dear Ms. Kroack:

On December 12, 2006, we transmitted to you the final report of the Title V operating permit program evaluation that took place between August 18, 2004 and August 20, 2004. It is our understanding that several of the intended attachments to the final report were inadvertently left out. We e-mailed the attachments to Michael Reed, of your staff on February 13, 2007. This is the official transmittal of the missing attachments.

If you have any questions, please contact Genevieve Damico, of my staff, at
(312) 353-4761.

Sincerely yours,

A handwritten signature in cursive script that reads "Pamela Blakley".

Pamela Blakley, Chief
Air Permits Section

Enclosures

cc: Ed Bakowski, IEPA

Appendix A
Sample CAAPP Permit

217/782-2113

"RENEWAL"
TITLE V CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMIT
and
TITLE I PERMIT¹

PERMITTEE

Sleepeck Printing Co.
Attn: Steve Highley
815 Twenty-Fifth Avenue
Bellwood, Illinois 60104

Application No.: 95090006

I.D. No.: 031015AAR

Applicant's Designation:

Date Received: July 13, 2001

Operation of: Printing Plant

Date Issued: June 1, 2004

Expiration Date²: June 1, 2009

Source Location: 815 - 25th Avenue, Bellwood, Cook County

Responsible Official: Robert Gardner, Chief Financial Officer

This permit is hereby granted to the above-designated Permittee to operate a printing plant, pursuant to the above-referenced permit application. This permit is subject to the conditions contained herein.

If you have any questions concerning this permit, please call David Hulskotter at 217/782-2113.

Donald E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

DES:DWH:jar

cc: Illinois EPA, FOS, Region 1
USEPA

¹ This permit may contain terms and conditions which address the applicability, and compliance if determined applicable, of Title I of the CAA and regulations promulgated thereunder, including 40 CFR 52.21 - federal PSD and 35 IAC Part 203 - Major Stationary Sources Construction and Modification. Any such terms and conditions are identified within this permit.

² Except as provided in Condition 8.7 of this permit.

TABLE OF CONTENTS

	<u>PAGE</u>
1.0 SOURCE IDENTIFICATION	4
1.1 Source	
1.2 Owner/Parent Company	
1.3 Operator	
1.4 Contact Person	
1.5 General Source Description	
2.0 LIST OF ABBREVIATIONS/ACRONYMS USED IN THIS PERMIT	5
3.0 INSIGNIFICANT ACTIVITIES	6
3.1 Identification of Insignificant Activities	
3.2 Compliance with Applicable Requirements	
3.3 Addition of Insignificant Activities	
4.0 SIGNIFICANT EMISSION UNITS AT THIS SOURCE	8
5.0 OVERALL SOURCE CONDITIONS	9
5.1 Source Description	
5.2 Applicable Regulations	
5.3 Non-Applicability of Regulations of Concern	
5.4 Source-Wide Operational and Production Limits and Work Practices	
5.5 Source-Wide Emission Limitations	
5.6 General Recordkeeping Requirements	
5.7 General Reporting Requirements	
5.8 General Operational Flexibility/Anticipated Operating Scenarios	
5.9 General Compliance Procedures	
6.0 EMISSIONS REDUCTION MARKET SYSTEM (ERMS)	14
6.1 Description of ERMS	
6.2 Applicability	
6.3 Obligation to Hold Allotment Trading Units (ATUs)	
6.4 Market Transactions	
6.5 Emissions Excursion Compensation	
6.6 Quantification of Seasonal VOM Emissions	
6.7 Annual Account Reporting	
6.8 Allotment of ATUs to the Source	
6.9 Recordkeeping for ERMS	
6.10 Exclusions from Further Reductions	
7.0 UNIT SPECIFIC CONDITIONS	21
7.1 Non-Heatset Sheetfed Lithographic Printing Presses	

1.0 SOURCE IDENTIFICATION

1.1 Source

Sleepeck Printing Company
815 - 25th Avenue
Bellwood, Illinois 60104
708/544-8900

I.D. Number: 031015AAR

Standard Industrial Classification: 2752, Printing Publishing and Allied Industries

1.2 Owner/Parent Company

Sleepeck Printing Company
815 - 25th Avenue
Bellwood, Illinois 60104

1.3 Operator

Sleepeck Printing Company
815 - 25th Avenue
Bellwood, Illinois 60104

1.4 Contact Person

Steve Highley
708/544-8900

1.5 General Source Description

Sleepeck Printing Company is located at 815 25th Avenue in Bellwood. The source is a commercial printer operating non-heatset sheetfed offset lithographic printing presses. The main products are brochures, pamphlets, flyers and posters.

2.0 LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS PERMIT

ACMA	Alternative Compliance Market Account
Act	Illinois Environmental Protection Act [415 ILCS 5/1 et seq.]
AP-42	Compilation of Air Pollutant Emission Factors, Volume 1, Stationary Point and Other Sources (and Supplements A through F), USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711
ATU	Allotment Trading Unit
BAT	Best Available Technology
Btu	British thermal unit
CAA	Clean Air Act [42 U.S.C. Section 7401 et seq.]
CAAPP	Clean Air Act Permit Program
CAM	Compliance Assurance Monitoring
CFR	Code of Federal Regulations
ERMS	Emissions Reduction Market System
HAP	Hazardous Air Pollutant
hr	hour
IAC	Illinois Administrative Code
I.D. No.	Identification Number of Source, assigned by Illinois EPA
ILCS	Illinois Compiled Statutes
Illinois EPA	Illinois Environmental Protection Agency
kW	kilowatts
LAER	Lowest Achievable Emission Rate
lb	pound
MACT	Maximum Achievable Control Technology
mmBtu	Million British thermal units
NESHAP	National Emission Standards for Hazardous Air Pollutants
NO _x	Nitrogen Oxides
NSPS	New Source Performance Standards
PM	Particulate Matter
PM ₁₀	Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns as measured by applicable test or monitoring methods
ppm	parts per million
PSD	Prevention of Significant Deterioration
RMP	Risk Management Plan
SO ₂	Sulfur Dioxide
T1	Title I - identifies Title I conditions that have been carried over from an existing permit
T1N	Title I New - identifies Title I conditions that are being established in this permit
T1R	Title I Revised - identifies Title I conditions that have been carried over from an existing permit and subsequently revised in this permit
USEPA	United States Environmental Protection Agency
VOM	Volatile Organic Material

3.0 INSIGNIFICANT ACTIVITIES

3.1 Identification of Insignificant Activities at the Source

The following activities constitute insignificant activities as specified in 35 IAC 201.210 and are present at the source:

- 3.1.1 The following activities proposed by the Permittee and determined by the Illinois EPA to be insignificant activities, pursuant to 35 IAC 201.210(a) and 201.211, as follows:

None

- 3.1.2 The following activities are insignificant activities based upon maximum emissions, pursuant to 35 IAC 202.210(a) (2) or (a) (3), as follows:

None

- 3.1.3 The following activities are insignificant activities based upon their type or character, pursuant to 35 IAC 201.210(a) (4) through (18), as follows:

Direct combustion units designed and used for comfort heating purposes and fuel combustion emission units as follows: (A) Units with a rated heat input capacity of less than 2.5 mmBtu/hr that fire only natural gas, propane, or liquefied petroleum gas; (B) Units with a rated heat input capacity of less than 1.0 mmBtu/hr that fire only oil or oil in combination with only natural gas, propane, or liquefied petroleum gas; and (C) Units with a rated heat input capacity of less than 200,000 Btu/hr which never burn refuse, or treated or chemically contaminated wood [35 IAC 201.210(a) (4)].

- 3.1.4 The Permittee denoted activities that are considered insignificant activities pursuant to 35 IAC 201.210(b) as being present at the source.

3.2 Compliance with Applicable Requirements

Insignificant activities are subject to applicable requirements notwithstanding status as insignificant activities. In particular, in addition to regulations of general applicability, such as 35 IAC 212.301 and 212.123 (Condition 5.2.2), the Permittee shall comply with the following requirements, as applicable:

- 3.2.1 For each cold cleaning degreaser, the Permittee shall comply with the applicable equipment and operating requirements of 35 IAC 215.182, 218.182, or 219.182.

- 3.2.2 For each particulate matter process emission unit, the Permittee shall comply with the applicable particulate matter emission limit of 35 IAC 212.321 or 212.322. For example, the particulate matter emissions from a process emission unit shall not exceed 0.55 pounds per hour if the emission unit's process weight rate is 100 pounds per hour or less, pursuant to 35 IAC 266.110.
- 3.2.3 For each organic material emission unit that uses organic material, e.g., a mixer or printing line, the Permittee shall comply with the applicable VOM emission limit of 35 IAC 215.301, 218.301, or 219.301, which requires that organic material emissions not exceed 8.0 pounds per hour or do not qualify as photochemically reactive material as defined in 35 IAC 211.4690. If no odor nuisance exists this limitation shall apply only to photochemically reactive material.

3.3 Addition of Insignificant Activities

- 3.3.1 The Permittee is not required to notify the Illinois EPA of additional insignificant activities present at the source of a type that is identified in this permit in Condition 3.1, until the renewal application for this permit is submitted pursuant to 35 IAC 201.212(a).
- 3.3.2 The Permittee must notify the Illinois EPA of any proposed addition of a new insignificant activity of a type identified in 35 IAC 201.210(a) and 201.211 other than those identified in Condition 3.1 pursuant to 39.5(12)(b) of the Act.
- 3.3.3 The Permittee is not required to notify the Illinois EPA of additional insignificant activities present at the source of a type identified in 35 IAC 201.210(b).

4.0 SIGNIFICANT EMISSION UNITS AT THIS SOURCE

Emission Unit	Description	Construction Date	Emission Control Equipment
02	Miehle Non-Heatset Sheetfed Lithographic Press 2	1969	None
03	Miehle Non-Heatset Sheetfed Lithographic Press 3	1969	None
04	Miehle Non-Heatset Sheetfed Lithographic Press 4	1972	None
06	Miehle Non-Heatset Sheetfed Lithographic Press 6	1981	None
07	Non-Heatset Sheetfed Lithographic Press 7	1993	None
09	Miehle Non-Heatset Sheetfed Lithographic Press 9	1985	None
10	Miehle Non-Heatset Sheetfed Lithographic Press 10	1969	None
11	Miehle Non-Heatset Sheetfed Lithographic Press 11	1964	None
12	Non-Heatset Sheetfed Lithographic Press 12	1996	None
17	Miehle Non-Heatset Sheetfed Lithographic Press 17	1998	None

5.0 OVERALL SOURCE CONDITIONS

5.1 Source Description

- a. This permit is issued based on the source requiring a CAAPP permit as a major source of VOM emissions.

5.2 Applicable Regulations

In addition, emission units at this source are subject to the following regulations of general applicability:

- 5.2.1 Specific emission units at this source are subject to additional regulations as set forth in Section 7 (Unit - Specific Conditions) of this permit.

5.2.2 Fugitive Emission Requirements

- a. No person shall cause or allow any visible emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally overhead at a point beyond the property line of the source unless the wind speed is greater than 40.2 kilometers per hour (25 miles per hour), pursuant to 35 IAC 212.301 and 212.314.
- b. No person shall cause or allow the emission of smoke or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission unit other than those emission units subject to the requirements of 35 IAC 212.122, pursuant to 35 IAC 212.123(a), except as allowed by 35 IAC 212.123(b) and 212.124.

5.2.3 Fugitive Particulate Matter Operating Program

- a. This source shall be operated under the provisions of the fugitive particulate matter operating program submitted by the Permittee. The purpose of the operating program is to significantly reduce fugitive particulate matter emissions [35 IAC 212.309(a)].
- b. Upon construction or modification of an outside fugitive emission unit, the operating program shall be amended by the owner or operator so that the operating program is current. Such amendments shall be consistent with the requirement set forth by Condition 5.2.2(b) and shall be submitted to the Illinois EPA pursuant to 35 IAC 212.312.
- c. All normal traffic pattern roads and parking facilities located at this source shall be paved or treated with water, oils, or chemical dust

suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program required by Condition 5.2.2(b) [35 IAC 212.306].

- 5.2.4 The Permittee shall comply with the standards for recycling and emissions reduction of ozone depleting substances pursuant to 40 CFR Part 82, Subpart F, except as provided for motor vehicle air conditioners in Subpart B of 40 CFR Part 82:
- a. Persons opening appliances for maintenance, service, repair, or disposal must comply with the required practices pursuant to 40 CFR 82.156.
 - b. Equipment used during the maintenance, service, repair, or disposal of appliances must comply with the standards for recycling and recovery equipment pursuant to 40 CFR 82.158.
 - c. Persons performing maintenance, service, repair, or disposal of appliances must be certified by an approved technician certification program pursuant to 40 CFR 82.161.
- 5.2.5 Should this stationary source, as defined in 40 CFR Section 68.3, become subject to the Accidental Release Prevention regulations in 40 CFR Part 68, then the owner or operator shall submit [40 CFR 68.215(a)(2)(i) and (ii)]:
- a. A compliance schedule for meeting the requirements of 40 CFR Part 68 by the date provided in 40 CFR 68.10(a); or
 - b. A certification statement that the source is in compliance with all requirements of 40 CFR Part 68, including the registration and submission of the Risk Management Plan (RMP), as part of the annual compliance certification required by Condition 9.8.
- 5.2.6 a. Should this stationary source become subject to a regulation under 40 CFR Parts 60, 61, or 63, or 35 IAC after the date issued of this permit, then the owner or operator shall, in accordance with the applicable regulation(s), comply with the applicable requirements by the date(s) specified and shall certify compliance with the applicable requirements of such regulation(s) as part of the annual compliance certification, as required by 40 CFR Part 70.

- b. No later than upon the submittal for renewal of this permit, the owner or operator shall submit, as part of an application, the necessary information to address either the non-applicability of, or demonstrate compliance with all applicable requirements of any potentially applicable regulation which was promulgated after the date issued of this permit.

5.2.7 Episode Action Plan

- a. If the source is required to have an episode action plan pursuant to 35 IAC 244.142, the Permittee shall maintain at the source and have on file with the Illinois EPA a written episode action plan (plan) for reducing the levels of emissions during yellow alerts, red alerts, and emergencies, consistent with safe operating procedures. The plan shall contain the information specified in 35 IAC 244.144.

At the date of the issuance of this permit, the source was not required to submit an Episode Action Plan, due to the source not meeting the criteria of 35 IAC 244.142.

- b. The Permittee shall immediately implement the appropriate steps described in this plan should an air pollution alert or emergency be declared.
- c. If a change occurs at the source which requires a revision of the plan (e.g., operational change, change in the source contact person), a copy of the revised plan shall be submitted to the Illinois EPA for review within 30 days of the change. Such plans shall be further revised if disapproved by the Illinois EPA.
- d. For sources required to have a plan pursuant to 35 IAC 244.142, a copy of the original plan and any subsequent revisions shall be sent to:
 - i. Illinois EPA, Compliance Section; and
 - ii. For sources located in Cook County and outside of the city of Chicago: Cook County Department of Environmental Control; or

5.3 Non-Applicability of Regulations of Concern

None

5.4 Source-Wide Operational and Production Limits and Work Practices

In addition to the source-wide requirements in the Standard Permit Conditions in Section 9, the Permittee shall fulfill the following source-wide operational and production limitations and/or work practice requirements:

None

5.5 Source-Wide Emission Limitations

5.5.1 Permitted Emissions for Fees

The annual emissions from the source, not considering insignificant activities as addressed by Section 3.0, for the purposes of fees shall not exceed the following. The overall source emissions shall be determined by adding all emission unit emissions. Compliance with these limits shall be determined on a calendar year basis. This condition is necessary to establish fees and is not federally enforceable.

Pollutant	Tons/Year
Volatile Organic Material (VOM)	57.9
Sulfur Dioxide (SO ₂)	--
Particulate Matter (PM)	--
Nitrogen Oxides (NO _x)	--
HAP, not included in VOM	--
Total	57.9

5.5.2 Other Source-Wide Emission Limitations

Other source-wide emission limitations are not set for this source pursuant to either the federal rules for Prevention of Significant Deterioration (PSD), 40 CFR 52.21, Illinois EPA rules for Major Stationary Sources Construction and Modification, 35 IAC Part 203, or Section 502(b)(10) of the CAA. However, there may be unit specific emission limitations set forth in Section 7 of this permit pursuant to these rules.

5.6 General Recordkeeping Requirements

5.6.1 Emission Records

The Permittee shall maintain records of the following items for the source to demonstrate compliance with Condition 5.5.1, pursuant to Section 39.5(7)(b) of the Act:

Total annual emissions on a calendar year basis for the emission units covered by Section 7 (Unit Specific Conditions) of this permit.

5.6.2 Retention and Availability of Records

- a. All records and logs required by this permit shall be retained for at least five years from the date of entry (unless a longer retention period is specified by the particular recordkeeping provision herein), shall be kept at a location at the source that is readily accessible to the Illinois EPA or USEPA, and shall be made available for inspection and copying by the Illinois EPA or USEPA upon request.
- b. The Permittee shall retrieve and print, on paper during normal source office hours, any records retained in an electronic format (e.g., computer) in response to an Illinois EPA or USEPA request for records during the course of a source inspection.

5.7 General Reporting Requirements

5.7.1 General Source-Wide Reporting Requirements

The Permittee shall promptly notify the Illinois EPA, Compliance Section, of deviations of the source with the permit requirements as follows, pursuant to Section 39.5(7) (f) (ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

5.7.2 Annual Emissions Report

The annual emissions report required pursuant to Condition 9.7 shall contain emissions information for the previous calendar year.

5.8 General Operational Flexibility/Anticipated Operating Scenarios

N/A

5.9 General Compliance Procedures

5.9.1 General Procedures for Calculating Emissions

Compliance with the source-wide emission limits specified in Condition 5.5 shall be based on the recordkeeping and reporting requirements of this permit, and compliance procedures in Section 7 (Unit Specific Conditions) of this permit.

6.0 EMISSION REDUCTION MARKET SYSTEM (ERMS)

6.1 Description of ERMS

The ERMS is a "cap and trade" market system for major stationary sources located in the Chicago ozone nonattainment area. It is designed to reduce VOM emissions from stationary sources to contribute to further reasonable progress toward attainment, as required by Section 182(c) of the Clean Air Act.

The ERMS addresses VOM emissions during a seasonal allotment period from May 1 through September 30. Once the ERMS begins, participating sources must hold "allotment trading units" (ATUs) for their actual seasonal VOM emissions. Each year participating sources are issued ATUs based on allotments set during initial issuance of the sources' CAAPP permits. These allotments are established from historical VOM emissions or "baseline emissions" lowered to provide the emission reduction from stationary sources required for further progress.

By December 31 of each year, the end of the reconciliation period following the seasonal allotment period, each source shall have sufficient ATUs in its account to cover its actual VOM emissions during the preceding season. An account's balance as of December 31 will include any valid ATU transfer agreements entered into as of December 31 of the given year, provided such agreements are promptly submitted to the Illinois EPA for entry into the account database. The Illinois EPA will then retire ATUs in sources' accounts in amounts equivalent to their seasonal emissions. When a source does not appear to have sufficient ATUs in its account, the Illinois EPA will issue a notice to the source to begin the process for Emissions Excursion Compensation.

In addition to receiving ATUs pursuant to their allotments, participating sources may also obtain ATUs from the market, including ATUs bought from other participating sources and general participants in the ERMS that hold ATUs (35 IAC 205.630) and ATUs issued by the Illinois EPA as a consequence of VOM emission reductions from an Emission Reduction Generator or an Intersector Transaction (35 IAC 205.500 and 205.510). During the reconciliation period, sources may also buy ATUs from a secondary reserve of ATUs managed by the Illinois EPA, the Alternative Compliance Market Account (35 IAC 205.710). Sources may also transfer or sell the ATUs that they holds to other sources or participants (35 IAC 205.630).

6.2 Applicability

This source is considered a "participating source" for purposes of the ERMS, 35 IAC Part 205.

6.3 Obligation to Hold Allotment Trading Units (ATUs)

- a. Pursuant to 35 IAC 205.150(c)(1) and 205.720, and as further addressed by Condition 6.8, as of December 31 of each year, this source shall hold ATUs in its account in an amount not less than its VOM emissions during the preceding seasonal allotment period (May 1 - September 30) not including VOM emissions from the following, or the source shall be subject to "emissions excursion compensation," as described in Condition 6.4.
 - i. VOM emissions from insignificant units and activities as identified in Section 3 of this permit, in accordance with 35 IAC 205.220;
 - ii. Excess VOM emissions associated with startup, malfunction or breakdown of an emission unit as authorized elsewhere in this permit, in accordance with 35 IAC 205.225;
 - iii. Excess VOM emissions to the extent allowed by a Variance, Consent Order, or Compliance Schedule, in accordance with 35 IAC 205.320(e)(3);
 - iv. Excess VOM emissions that are a consequence of an emergency as approved by the Illinois EPA, pursuant to 35 IAC 205.750; and
 - v. VOM emissions from certain new and modified emission units as addressed by Section 6.7(b), if applicable, in accordance with 35 IAC 205.320(f).
- b. Notwithstanding the above condition, in accordance with 35 IAC 205.150(c)(2), if a source commences operation of a major modification, pursuant to 35 IAC Part 203, the source shall hold ATUs in an amount not less than 1.3 times its VOM emissions attributable to such major modification during the seasonal allotment period, determined in accordance with the construction permit for such major modification or applicable provisions in Section 7.0 of this permit.

6.4 Market Transaction

- a. The source shall apply to the Illinois EPA for and obtain authorization for a Transaction Account prior to conducting any market transactions, as specified at 35 IAC 205.610(a).
- b. The Permittee shall promptly submit to the Illinois EPA any revisions to the information submitted for its Transaction Account, pursuant to 35 IAC 205.610(b).

- c. The source shall have at least one account officer designated for its Transaction Account, pursuant to 35 IAC 205.620(a).
- d. Any transfer of ATUs to or from the source from another source or general participant must be authorized by a qualified Account Officer designated by the source and approved by the Illinois EPA in accordance with 35 IAC 205.620 and the transfer must be submitted to the Illinois EPA for entry into the Transaction Account database.

6.5 Emission Excursion Compensation

Pursuant to 35 IAC 205.720, if the source fails to hold ATUs in accordance with Condition 6.3, it shall provide emissions excursion compensation in accordance with the following:

- a. Upon receipt of an Excursion Compensation Notice issued by the Illinois EPA, the source shall purchase ATUs from the ACMA in the amount specified by notice, as follows:
 - i. The purchase of ATUs shall be in an amount equivalent to 1.2 times the emissions excursion; or
 - ii. If the source had an emissions excursion for the seasonal allotment period immediately before the period for the present emission excursion, the source shall purchase ATUs in an amount equivalent to 1.5 times the emissions excursion.
- b. If requested in accordance with paragraph (c) below or in the event that the ACMA balance is not adequate to cover the total emissions excursion amount, the Illinois EPA will deduct ATUs equivalent to the specified amount or any remaining portion thereof from the ATUs to be issued to the source for the next seasonal allotment period.
- c. Pursuant to 35 IAC 205.720(c), within 15 days of receipt of an Excursion Compensation Notice, the owner or operator may request that ATUs equivalent to the amount specified be deducted from the source's next seasonal allotment by the Illinois EPA, rather than purchased from the ACMA.

6.6 Quantification of Seasonal VOM Emissions

- a. The methods and procedures specified in Section 5 and 7 of this permit for determining VOM emissions and compliance with VOM emission limitations shall be used for determining seasonal VOM emissions for purposes of the ERMS, with the following exceptions [35 IAC 205.315(b)]:

No exceptions

- b. The Permittee shall report emergency conditions at the source to the Illinois EPA in accordance with 35 IAC 205.750, if the Permittee intends to deduct VOM emissions in excess of the technology-based emission rates normally achieved that are attributable to the emergency from the source's seasonal VOM emissions for purposes of the ERMS. These reports shall include the information specified by 35 IAC 205.650(a), and shall be submitted in accordance with the following:
 - i. An initial emergency condition report within two days of the time when such excess emissions occurred due to the emergency; and
 - ii. A final emergency condition report, if needed to supplement the initial report, within 10 days after the conclusion of the emergency.

6.7 Annual Account Reporting

- a. For each year in which the source is operational, the Permittee shall submit, as a component of its Annual Emission Report, seasonal VOM emission information to the Illinois EPA for the seasonal allotment period. This report shall include the following information [35 IAC 205.300]:
 - i. Actual seasonal emissions of VOM from the source;
 - ii. A description of the methods and practices used to determine VOM emissions, as required by this permit, including any supporting documentation and calculations;
 - iii. A detailed description of any monitoring methods that differ from the methods specified in this permit, as provided in Section 205.337 of this Subpart;
 - iv. If a source has experienced an emergency, as provided in 35 IAC 205.750, the report shall reference the associated emergency conditions report that has been approved by the Illinois EPA;
 - v. If a source's baseline emissions have been adjusted due to a variance, consent order or CAAPP permit compliance schedule, as provided for in 35 IAC 205.320(e)(3), the report shall provide documentation quantifying the excess VOM emissions during the season that were allowed by the Variance, Consent Order, or Compliance Schedule, in accordance with 35 IAC 205.320(e)(3); and

- vi. If a source is operating a new or modified emission unit for which three years of operational data are not yet available, as specified in 35 IAC 205.320(f), the report shall specify seasonal VOM emissions attributable to the new emission unit or the modification of the emission unit.
- b. This report shall be submitted by October 31 of each year, for the preceding seasonal allotment period.

6.8 Allotment of ATUs to the Source

- a.
 - i. The allotment of ATUs to this source is 291 ATUs per seasonal allotment period.
 - ii. This allotment of ATUs reflects the Illinois EPA's determination that the source's baseline emissions were 32.99 tons.
 - iii. The source's allotment reflects 88% of the baseline emissions (12% reduction) except for the VOM emissions from specific emission unit excluded from such reduction, pursuant to 35 IAC 205.405 including units complying with MACT or using BAT, as identified in Section 7 of this permit.
 - iv. ATUs will be issued to the source's Transaction Account by the Illinois EPA annually. These ATUs will be valid for the seasonal allotment period following issuance and, if not retired in this season, the next seasonal allotment period.
 - v. Condition 6.3(a) becomes effective beginning in the seasonal allotment period following the initial issuance of ATUs by the Illinois EPA into the Transaction Account for the source.

b. Contingent Allotments

There are no contingent allotments for this source.

c. Notwithstanding the above, part or all of the above ATUs will not be issued to the source in circumstances as set forth in 35 IAC Part 205, including:

- i. Transfer of ATUs by the source to another participant or the ACMA, in accordance with 35 IAC 205.630;
- ii. Deduction of ATUs as a consequence of emission excursion compensation, in accordance with 35 IAC 205.720; and

- iii. Transfer of ATUs to the ACMA, as a consequence of shutdown of the source, in accordance with 35 IAC 205.410.

6.9 Recordkeeping for ERMS

The Permittee shall maintain copies of the following documents as its Compliance Master File for purposes of ERMS [35 IAC 205.700(a)]:

- a. Seasonal component of the Annual Emission Report;
- b. Information on actual VOM emissions, as specified in detail in Sections 5 and 7 of this permit and Condition 6.6(a); and
- c. Any transfer agreements for the purchase or sale of ATUs and other documentation associated with the transfer of ATUs.

6.10 Exclusions from Further Reductions

- a. VOM emissions from the following emission units shall be excluded from the VOM emissions reductions requirements specified in 35 IAC 205.400(c) and (e) as long as such emission units continue to satisfy the following [35 IAC 205.405(a)]:
 - i. Emission units that comply with any NESHAP or MACT standard promulgated pursuant to the CAA;
 - ii. Direct combustion emission units designed and used for comfort heating purposes, fuel combustion emission units, and internal combustion engines; and
 - iii. An emission unit for which a LAER demonstration has been approved by the Illinois EPA on or after November 15, 1990.

The source has demonstrated in its ERMS application and the Illinois EPA has determined that the following emission units qualify for exclusion from further reductions because they meet the criteria as indicated above [35 IAC 205.405(a) and (c)]:

None

- b. VOM emissions from emission units using BAT for controlling VOM emissions shall not be subject to the VOM emissions reductions requirement specified in 35 IAC 205.400(c) or (e) as long as such emission unit continues to use such BAT [35 IAC 205.405(b)].

The source has demonstrated in its ERMS application and the Illinois EPA has determined that the following emission units qualify for exclusion from further reductions because these emission units use BAT for controlling VOM emissions as indicated above [35 IAC 205.405(b) and (c)]:

None

7.0 UNIT SPECIFIC CONDITIONS

7.1 Non-Heatset Sheetfed Lithographic Printing Presses

7.1.1 Description

The lithographic printing process is used to produce brochures, pamphlets, flyers and posters. The Permittee operates non-heatset sheetfed offset lithographic printing presses. Emissions of VOM result from the use of printing-related materials such as inks, fountain solutions and cleaning solutions. The conditions of this permit are based on the Permittee not using automatic feed equipment on the printing presses.

Press 07, Press 12 and Press 17 were constructed in 1993, 1996 and 1998 respectively, therefore, specific emission limits and recordkeeping are required pursuant to 35 IAC Part 203 Major Stationary Sources Construction and Modification.

7.1.2 List of Emission Equipment

Emission Unit	Description	Emission Control Equipment
02	Miehle Non-Heatset Sheetfed Lithographic Press 2	None
03	Miehle Non-Heatset Sheetfed Lithographic Press 3	None
04	Miehle Non-Heatset Sheetfed Lithographic Press 4	None
06	Miehle Non-Heatset Sheetfed Lithographic Press 6	None
07	Non-Heatset Sheetfed Lithographic Press 7	None
09	Miehle Non-Heatset Sheetfed Lithographic Press 9	None
10	Miehle Non-Heatset Sheetfed Lithographic Press 10	None
11	Miehle Non-Heatset Sheetfed Lithographic Press 11	None
12	Non-Heatset Sheetfed Lithographic Press 12	None
17	Miehle Non-Heatset Sheetfed Lithographic Press 17	None

7.1.3 Applicable Control Requirements

Each of the non-heatset sheetfed web offset lithographic printing presses shall comply with the following:

- a. The VOM content of the as-applied fountain solution shall be 5 percent or less by volume [35 IAC 218.407(a) (3)].

- b. The cleaning solution shall comply with either (i) or (ii) below [35 IAC 218.407(a)(4)].
 - i. The VOM content of the as-used cleaning solution shall be less than or equal to 30 percent, by weight; or
 - ii. The VOM composite partial vapor pressure of as-used cleaning solution shall be less than 10 mmHg at 20°C (68°F).
- c. VOM containing cleaning materials, including used cleaning towels associated with any lithographic printing line shall be kept, stored and disposed of in closed containers [35 IAC 218.407(a)(5)].
- d. The owner or operator shall not cause or allow the discharge of more than 3.6 Kg/hr (8 lbs/hr) of organic material into the atmosphere from any printing line [35 IAC 218.301]. If no odor nuisance exists this limitation shall apply only to photochemically reactive material.

7.1.4 Non-Applicability of Regulations of Concern

N/A

7.1.5 Operational and Production Limits and Work Practices

N/A

7.1.6 Emission Limitations

In addition to Condition 5.2.2 and the source wide emission limitations in Condition 5.5, the lithographic printing presses are subject to the following:

- a. Ink and coating usage for presses 7, 12, and 17 shall not exceed 20.0 tons/month and 240.0 tons/year (combined).
- b. Emissions of VOM from presses 7, 12, and 17 shall not exceed 2.5 tons/month and 20.0 tons/year (combined).

Compliance with annual limits shall be determined on a monthly basis from the sum of the data for the current month plus the preceding 11 months (running 12 months total).

The above limitations were established in Construction Permit 02080057. These limits ensure that the construction addressed in the aforementioned construction

permit does not constitute a new major source or major modification pursuant to 35 IAC Part 203. [T1]

7.1.7 Testing Requirements

- a. On at least an annual basis the VOM contents of representative inks and other materials used on the affected printing presses shall be tested. These tests shall be determined according to USEPA Reference Methods 24 and 24A of 40 CFR 60 Appendix A and the procedures of 35 IAC 218.105(a).
 - i. If no new materials are used and no changes in formulation occur, the above tests are not required for the current year.
- b. The manufacturer's specifications for VOM content for fountain solution additives, cleaning solutions, and inks may be used to fulfill the testing requirements if such manufacturer's specifications are results of tests of the VOM content conducted in accordance with Method 24.

7.1.8 Monitoring Requirements

Fountain Solution Monitoring Requirements

The following monitoring requirements shall be performed according to 35 IAC 218.410 for the fountain solution. The Permittee shall comply with either (a) or (b) below.

- a. Maintain records of the VOM content of the fountain solution in accordance with Condition 7.1.9(a)(ii) of this permit.
 - i. The fountain solutions and the components of the fountain solutions that contain VOM shall be determined according to USEPA Reference Method 24 based on the procedures of Condition 7.1.7.
- b. Cleaning Solution Vapor Pressure Monitoring

The Permittee shall maintain records of the cleaning solutions as specified in Condition 7.1.9(b)(ii).
- c. Cleaning Materials Work Practice

At least daily, the storage of cleaning materials shall be checked to ensure used cleaning towels and cleaning materials are kept in closed containers.

7.1.9 Recordkeeping Requirements

a. Fountain Solution Recordkeeping Requirements

- i. The Permittee shall collect and record the name and identification of each batch of fountain solution prepared for use on one or more lithographic printing lines, the lithographic printing line(s) or centralized reservoir using such batch of fountain solution, and the applicable VOM content limitation for the batch [35 IAC 218.411(c) (2) (A)].
- ii. For each batch of as-applied fountain solution, the following information shall be collected and recorded [35 IAC 218.411(c) (2) (C)]:
 - A. Date and time of preparation and each subsequent modification of the batch;
 - B. Volume and VOM content of each component used in, or subsequently added to, the fountain solution batch;
 - C. Calculated VOM content in terms of volume percent of the as-applied fountain solution; and
 - D. Any other information necessary to demonstrate compliance with the applicable VOM content limits.

b. Cleaning Solution Recordkeeping Requirements

- i. For each batch of cleaning solution for which the owner or operator relies on the VOM content to comply with Condition 7.1.3(b), the Permittee shall collect and record the following information [35 IAC 218.411(d) (2) (B)]:
 - A. The name and identification of each cleaning solution;
 - B. Date and time of preparation, and each subsequent modification, of the batch;
 - C. The VOM content of each cleaning solvent in the cleaning solution;

- D. The total volume of each cleaning solvent and water (or other non-VOM) used to prepare the as-used cleaning solution; and
 - E. The VOM content in weight percent of the as-used cleaning solution, with supporting calculations.
 - ii. For each batch of cleaning solution for which the owner or operator relies on the vapor pressure of the cleaning solution to comply with Condition 7.1.3(b), the Permittee shall collect and record the following information [35 IAC 218.411(d) (2) (C)]:
 - A. The name and identification of each cleaning solution;
 - B. Date and time of preparation, and each subsequent modification, of the batch;
 - C. The molecular weight, density, and VOM composite partial vapor pressure of each cleaning solvent;
 - D. The total amount of each cleaning solvent used to prepare the as-used cleaning solution; and
 - E. The VOM composite partial vapor pressure of each as-used cleaning solution in mmHg at 20°C (68°F).
 - iii. The Permittee shall record the date, time and duration of scheduled inspections performed to confirm the proper use of closed containers to control VOM emissions, and any instances of improper use of closed containers, with descriptions of actual practice and corrective action taken, if any [35 IAC 218.411(d) (2) (D)].
- c. The Permittee shall collect and record the following information for the lithographic presses:
 - i. Total usage of each ink, coating, fountain solution, cleaning solution and any other VOM containing material on an annual basis.
 - ii. The VOM content of each ink, coating, fountain solution, cleaning solution and any other VOM containing materials used with basis, accompanied by a copy of the supporting information, e.g., supplier data sheet or laboratory analysis report.

- iii. The usage of ink, coating, fountain solution, cleaning solution and any other VOM containing materials used, in pounds, on each of lithographic presses 07, 12, and 17 on a monthly basis.
- iv. VOM emissions, calculated in accordance with Condition 7.1.12, as follows:
 - A. VOM emissions from presses 7, 12, and 17 on a monthly basis.
 - B. Total VOM emissions from the presses on an annual basis.
- v. The Permittee shall maintain an operating log that states which method of compliance is being used for the cleaning solutions and the dates each method is used.

7.1.10 Reporting Requirements

a. Report of Deviations

If there is an exceedance of the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedance. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or violation and efforts to reduce emissions and future occurrences [Section 39.5(7)(f)(ii) of the Act].

b. Report for Changing Monitoring/Applicable Limitation

If the Permittee changes the method of demonstrating compliance with the applicable VOM content limitations in 35 IAC 218.407 or changes the method of demonstrating compliance with the VOM content limitations for fountain solutions or cleaning solutions, the Permittee shall certify compliance for such new methods in accordance with the requirements of the certification reports of Condition 9.8 within 30 days after making such change, and perform all tests and calculations necessary to demonstrate that such printing line(s) will be in compliance with the applicable requirements of 35 IAC 218.407 and the requirements of this permit [35 IAC 218.411(c)(4) and (d)(4)].

7.1.11 Operational Flexibility/Anticipated Operating Scenarios

N/A

7.1.12 Compliance Procedures

- a. Compliance with emission limits shall be determined using the emission factors and formulas listed below:

The Permittee may presume 95% retention of ink VOM in the web for non-heat offset lithographic presses, as stated in 35 IAC 218.411(a) (1) (B) (iii).

- b. Emission Calculations for Non-Heatset Offset Lithographic Presses shall be based on the following:

Ink VOM Emissions = VOM Contained in Ink x (0.05)

Fountain Solution VOM Emissions = VOM Contained in Fountain Solution

Cleaning Solution VOM Emissions = VOM Contained in Cleaning Solution

For manual cleaning solution with a VOM composite partial vapor pressure less than 10 mmHg at 20°C the following equation may be used in place of the above cleaning solution emission determination method provided proper handling is performed as stated in Condition 7.1.3(c). This is stated in USEPA's Alternative Control Techniques Document Offset Lithographic Printing (EPA 453/R-94-054, June 1994):

Cleaning Solution VOM Emissions = Cleaning Solution VOM Usage x 0.5

For low vapor pressure coatings that have similar properties to the non-heatset ink, the 95% retention factor may also be used for these type of coatings.

Other VOM Emissions = VOM Contained in Other Materials

Total VOM Emissions = Ink VOM Emissions + Fountain Solution VOM Emissions + Cleaning Solution VOM Emissions + Other VOM Emissions

8.0 GENERAL PERMIT CONDITIONS

8.1 Permit Shield

Pursuant to Section 39.5(7)(j) of the Act, the Permittee has requested and has been granted a permit shield. This permit shield provides that compliance with the conditions of this permit shall be deemed compliance with applicable requirements which were applicable as of the date the proposed permit for this source was issued, provided that either the applicable requirements are specifically identified within this permit, or the Illinois EPA, in acting on this permit application, has determined that other requirements specifically identified are not applicable to this source and this determination (or a concise summary thereof) is included in this permit.

This permit shield does not extend to applicable requirements which are promulgated after January 21, 2004 (the date of issuance of the draft permit) unless this permit has been modified to reflect such new requirements.

8.2 Applicability of Title IV Requirements (Acid Deposition Control)

This source is not an affected source under Title IV of the CAA and is not subject to requirements pursuant to Title IV of the CAA.

8.3 Emissions Trading Programs

No permit revision shall be required for increases in emissions allowed under any USEPA approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for elsewhere in this permit and that are authorized by the applicable requirement [Section 39.5(7)(o)(vii) of the Act].

8.4 Operational Flexibility/Anticipated Operating Scenarios

8.4.1 Changes Specifically Addressed by Permit

Physical or operational changes specifically addressed by the Conditions of this permit that have been identified as not requiring Illinois EPA notification may be implemented without prior notice to the Illinois EPA.

8.4.2 Changes Requiring Prior Notification

The Permittee is authorized to make physical or operational changes that contravene express permit terms without applying for or obtaining an amendment to this permit, provided that [Section 39.5(12)(a)(i) of the Act]:

- a. The changes do not violate applicable requirements;

- b. The changes do not contravene federally enforceable permit terms or conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;
- c. The changes do not constitute a modification under Title I of the CAA;
- d. Emissions will not exceed the emissions allowed under this permit following implementation of the physical or operational change; and
- e. The Permittee provides written notice to the Illinois EPA, Division of Air Pollution Control, Permit Section, at least 7 days before commencement of the change. This notice shall:
 - i. Describe the physical or operational change;
 - ii. Identify the schedule for implementing the physical or operational change;
 - iii. Provide a statement of whether or not any New Source Performance Standard (NSPS) is applicable to the physical or operational change and the reason why the NSPS does or does not apply;
 - iv. Provide emission calculations which demonstrate that the physical or operational change will not result in a modification; and
 - v. Provide a certification that the physical or operational change will not result in emissions greater than authorized under the Conditions of this permit.

8.5 Testing Procedures

Tests conducted to measure composition of materials, efficiency of pollution control devices, emissions from process or control equipment, or other parameters shall be conducted using standard test methods. Documentation of the test date, conditions, methodologies, calculations, and test results shall be retained pursuant to the recordkeeping procedures of this permit. Reports of any tests conducted as required by this permit or as the result of a request by the Illinois EPA shall be submitted as specified in Condition 8.6.

8.6 Reporting Requirements

8.6.1 Monitoring Reports

If monitoring is required by any applicable requirements or conditions of this permit, a report summarizing the required monitoring results, as specified in the conditions of this permit, shall be submitted to the Air Compliance Section of the Illinois EPA every six months as follows [Section 39.5(7)(f) of the Act]:

<u>Monitoring Period</u>	<u>Report Due Date</u>
January - June	September 1
July - December	March 1

All instances of deviations from permit requirements must be clearly identified in such reports. All such reports shall be certified in accordance with Condition 9.9.

8.6.2 Test Notifications

Unless otherwise specified elsewhere in this permit, a written test plan for any test required by this permit shall be submitted to the Illinois EPA for review at least 60 days prior to the testing pursuant to Section 39.5(7)(a) of the Act. The notification shall include at a minimum:

- a. The name and identification of the affected unit(s);
- b. The person(s) who will be performing sampling and analysis and their experience with similar tests;
- c. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative of maximum emissions and the means by which the operating parameters for the source and any control equipment will be determined;
- d. The specific determination of emissions and operation which are intended to be made, including sampling and monitoring locations;
- e. The test method(s) which will be used, with the specific analysis method, if the method can be used with different analysis methods;
- f. Any minor changes in standard methodology proposed to accommodate the specific circumstances of testing, with justification; and

- g. Any proposed use of an alternative test method, with detailed justification.

8.6.3 Test Reports

Unless otherwise specified elsewhere in this permit, the results of any test required by this permit shall be submitted to the Illinois EPA within 60 days of completion of the testing. The test report shall include at a minimum [Section 39.5(7)(e)(i) of the Act]:

- a. The name and identification of the affected unit(s);
- b. The date and time of the sampling or measurements;
- c. The date any analyses were performed;
- d. The name of the company that performed the tests and/or analyses;
- e. The test and analytical methodologies used;
- f. The results of the tests including raw data, and/or analyses including sample calculations;
- g. The operating conditions at the time of the sampling or measurements; and
- h. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the source.

8.6.4 Reporting Addresses

- a. The following addresses should be utilized for the submittal of reports, notifications, and renewals:
 - i. Illinois EPA - Air Compliance Section
Illinois Environmental Protection Agency
Bureau of Air
Compliance Section (MC 40)
P.O. Box 19276
Springfield, Illinois 62794-9276
 - ii. Illinois EPA - Air Regional Field Office
Illinois Environmental Protection Agency
Division of Air Pollution Control
9511 West Harrison
Des Plaines, Illinois 60016

iii. Illinois EPA - Air Permit Section

Illinois Environmental Protection Agency
Division of Air Pollution Control
Permit Section (MC 11)
P.O. Box 19506
Springfield, Illinois 62794-9506

iv. USEPA Region 5 - Air Branch

USEPA (AE - 17J)
Air & Radiation Division
77 West Jackson Boulevard
Chicago, Illinois 60604

- b. Unless otherwise specified in the particular provision of this permit, reports shall be sent to the Illinois EPA - Air Compliance Section with a copy sent to the Illinois EPA - Air Regional Field Office.

8.7 Obligation to Comply with Title I Requirements

Any term, condition, or requirement identified in this permit by T1, T1R, or T1N is established or revised pursuant to 35 IAC Part 203 or 40 CFR 52.21 ("Title I provisions") and incorporated into this permit pursuant to both Section 39.5 and Title I provisions. Notwithstanding the expiration date on the first page of this permit, the Title I conditions remain in effect pursuant to Title I provisions until the Illinois EPA deletes or revises them in accordance with Title I procedures.

9.0 STANDARD PERMIT CONDITIONS

9.1 Effect of Permit

9.1.1 The issuance of this permit does not release the Permittee from compliance with State and Federal regulations which are part of the Illinois State Implementation Plan, as well as with other applicable statutes and regulations of the United States or the State of Illinois or applicable ordinances, except as specifically stated in this permit and as allowed by law and rule [Section 39.5(7)(j)(iv) of the Act].

9.1.2 In particular, this permit does not alter or affect the following:

- a. The provisions of Section 303 (emergency powers) of the CAA, 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 CAA; and
- d. The ability of USEPA to obtain information from a source pursuant to Section 114 (inspections, monitoring, and entry) of the CAA.

9.1.3 Notwithstanding the conditions of this permit specifying compliance practices for applicable requirements, any person (including the Permittee) may also use other credible evidence to establish compliance or noncompliance with applicable requirements.

9.2 General Obligations of Permittee

9.2.1 Duty to Comply

The Permittee must comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of the CAA and the Act, and is grounds for any or all of the following: enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application [Section 39.5(7)(o)(i) of the Act].

The Permittee shall meet applicable requirements that become effective during the permit term in a timely manner unless an alternate schedule for compliance with the applicable requirement is established.

9.2.2 Duty to Maintain Equipment

The Permittee shall maintain all equipment covered under this permit in such a manner that the performance or operation of such equipment shall not cause a violation of applicable requirements.

9.2.3 Duty to Cease Operation

No person shall cause, threaten or allow the continued operation of any emission unit during malfunction or breakdown of the emission unit or related air pollution control equipment if such operation would cause a violation of an applicable emission standard, regulatory requirement, ambient air quality standard or permit limitation unless such malfunction or breakdown is allowed by a permit condition [Section 39.5(6)(c) of the Act].

9.2.4 Disposal Operations

The source shall be operated in such a manner that the disposal of air contaminants collected by the equipment operations, or activities shall not cause a violation of the Act or regulations promulgated thereunder.

9.2.5 Duty to Pay Fees

The Permittee must pay fees to the Illinois EPA consistent with the fee schedule approved pursuant to Section 39.5(18) of the Act, and submit any information relevant thereto [Section 39.5(7)(o)(vi) of the Act]. The check should be payable to "Treasurer, State of Illinois" and sent to: Fiscal Services Section, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, Illinois 62794-9276.

9.3 Obligation to Allow Illinois EPA Surveillance

Upon presentation of proper credentials and other documents, the Permittee shall allow the Illinois EPA, or an authorized representative to perform the following [Section 39.5(7)(a) and (p)(ii) of the Act and 415 ILCS 5/4]:

- a. Enter upon the Permittee's premises where an actual or potential emission unit is located; where any regulated equipment, operation, or activity is located or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

- c. Inspect during hours of operation any sources, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit;
- d. Sample or monitor any substances or parameters at any location:
 - i. At reasonable times, for the purposes of assuring permit compliance; or
 - ii. As otherwise authorized by the CAA, or the Act.
- e. Obtain and remove samples of any discharge or emission of pollutants authorized by this permit; and
- f. Enter and utilize any photographic, recording, testing, monitoring, or other equipment for the purposes of preserving, testing, monitoring, or recording any activity, discharge or emission at the source authorized by this permit.

9.4 Obligation to Comply with Other Requirements

The issuance of this permit does not release the Permittee from applicable State and Federal laws and regulations, and applicable local ordinances addressing subjects other than air pollution control.

9.5 Liability

9.5.1 Title

This permit shall not be considered as in any manner affecting the title of the premises upon which the permitted source is located.

9.5.2 Liability of Permittee

This permit does not release the Permittee from any liability for damage to person or property caused by or resulting from the construction, maintenance, or operation of the sources.

9.5.3 Structural Stability

This permit does not take into consideration or attest to the structural stability of any unit or part of the source.

9.5.4 Illinois EPA Liability

This permit in no manner implies or suggests that the Illinois EPA (or its officers, agents or employees) assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance, or operation of the source.

9.5.5 Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege [Section 39.5(7)(o)(iv) of the Act].

9.6 Recordkeeping

9.6.1 Control Equipment Maintenance Records

A maintenance record shall be kept on the premises for each item of air pollution control equipment. As a minimum, this record shall show the dates of performance and nature of preventative maintenance activities.

9.6.2 Records of Changes in Operation

A record shall be kept describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under this permit, and the emissions resulting from those changes [Section 39.5(12)(b)(iv) of the Act].

9.6.3 Retention of Records

- a. Records of all monitoring data and support information shall be retained 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 this permit [Section 39.5(7)(e)(ii) of the Act].
- b. Other records required by this permit shall be retained for a period of at least 5 years from the date of entry unless a longer period is specified by a particular permit provision.

9.7 Annual Emissions Report

The Permittee shall submit an annual emissions report to the Illinois EPA, Compliance Section no later than May 1 of the following year, as required by 35 IAC Part 254.

9.8 Requirements for Compliance Certification

Pursuant to Section 39.5(7)(p)(v) of the Act, the Permittee shall submit annual compliance certifications. The compliance certifications shall be submitted no later than May 1 or more frequently as specified in the applicable requirements or by permit condition. The compliance certifications shall be submitted to the Air Compliance Section, Air Regional Field Office, and USEPA Region 5 - Air Branch. The addresses for the submittal of the compliance certifications are provided in Condition 8.6.4 of this permit.

- a. The certification shall include the identification of each term or condition of this permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with the conditions of this permit.
- b. All compliance certifications shall be submitted to USEPA Region 5 in Chicago as well as to the Illinois EPA.
- c. All compliance reports required to be submitted shall include a certification in accordance with Condition 9.9.

9.9 Certification

Any document (including reports) required to be submitted by this permit shall contain a certification by a responsible official of the Permittee that meets the requirements of Section 39.5(5) of the Act [Section 39.5(7)(p)(i) of the Act]. An example Certification by a Responsible Official is included as an attachment to this permit.

9.10 Defense to Enforcement Actions

9.10.1 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the 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 [Section 39.5(7)(o)(ii) of the Act].

9.10.2 Emergency Provision

- a. An emergency shall be an affirmative defense to an action brought for noncompliance with the technology-based emission limitations under this permit if the following conditions are met through properly signed, contemporaneous operating logs, or other relevant evidence:

- i. An emergency occurred as provided in Section 39.5(7) (k) of the Act and the Permittee can identify the cause(s) of the emergency. Normally, an act of God such as lightning or flood is considered an emergency;
 - ii. The permitted source was at the time being properly operated;
 - iii. The Permittee submitted notice of the emergency to the Illinois EPA within two 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; and
 - 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 regulations in this permit.
- b. 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.

9.11 Permanent Shutdown

This permit only covers emission units and control equipment while physically present at the indicated source location(s). Unless this permit specifically provides for equipment relocation, this permit is void for the operation or activity of any item of equipment on the date it is removed from the permitted location(s) or permanently shut down. This permit expires if all equipment is removed from the permitted location(s), notwithstanding the expiration date specified on this permit.

9.12 Reopening and Reissuing Permit for Cause

9.12.1 Permit Actions

This permit may be modified, reopened, and reissued, for cause pursuant to Section 39.5(15) of the Act. The filing of a request by the Permittee for a permit modification, revocation, and reissuance, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition [Section 39.5(7) (o) (iii) of the Act].

9.12.2 Reopening and Revision

This permit must be reopened and revised if any of the following occur [Section 39.5(15)(a) of the Act]:

- a. Additional requirements become applicable to the equipment covered by this permit and three or more years remain before expiration of this permit;
- b. Additional requirements become applicable to an affected source for acid deposition under the acid rain program;
- c. The Illinois EPA or USEPA determines that this permit contains a material mistake or inaccurate statement when establishing the emission standards or limitations, or other terms or conditions of this permit; and
- d. The Illinois EPA or USEPA determines that this permit must be revised to ensure compliance with the applicable requirements of the Act.

9.12.3 Inaccurate Application

The Illinois EPA has issued this permit based upon the information submitted by the Permittee in the permit application. Any misinformation, false statement or misrepresentation in the application shall be grounds for revocation under Section 39.5(15)(b) of the Act.

9.12.4 Duty to Provide Information

The Permittee shall furnish to the Illinois EPA, within a reasonable time specified by the Illinois EPA any information that the Illinois EPA may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. Upon request, the Permittee shall also furnish to the Illinois EPA copies of records required to be kept by this permit, or for information claimed to be confidential, the Permittee may furnish such records directly to USEPA along with a claim of confidentiality [Section 39.5(7)(o)(v) of the Act].

9.13 Severability Clause

The provisions of this permit are severable, and should any one or more be determined to be illegal or unenforceable, the validity of the other provisions shall not be affected. The rights and obligations of the Permittee shall be construed and enforced as if this permit did not contain the particular provisions held to be invalid and the applicable requirements underlying these provisions shall remain in force [Section 39.5(7)(i) of the Act].

9.14 Permit Expiration and Renewal

The right to operate terminates on the expiration date unless the Permittee has submitted a timely and complete renewal application. For a renewal to be timely it must be submitted no later than 9 and no sooner than 12 months prior to expiration. The equipment may continue to operate during the renewal period until final action is taken by the Illinois EPA, in accordance with the original permit conditions [Section 39.5(5)(1), (n), and (o) of the Act].

10.0 ATTACHMENTS

10.1 Attachment 1 - Example Certification by a Responsible Official

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Official Title: _____

Telephone No.: _____

Date Signed: _____

10.2 Attachment 2 - Guidance on Revising This Permit

The Permittee must submit an application to the Illinois EPA using the appropriate revision classification in accordance with Sections 39.5(13) and (14) of the Act and 35 IAC 270.302. Specifically, there are currently three classifications for revisions to a CAAPP permit. These are:

1. Administrative Permit Amendment;
2. Minor Permit Modification; and
3. Significant Permit Modification.

The Permittee must determine, request, and submit the necessary information to allow the Illinois EPA to use the appropriate procedure to revise the CAAPP permit. A brief explanation of each of these classifications follows.

1. Administrative Permit Amendment

- Corrects typographical errors;
- 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;
- Requires more frequent monitoring or reporting by the Permittee;
- Allows for a change in ownership or operational control of the source where 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 Illinois EPA. This shall be handled by completing form 272-CAAPP, REQUEST FOR OWNERSHIP CHANGE FOR CAAPP PERMIT; or
- Incorporates into the CAAPP permit a construction permit, provided the conditions of the construction permit meet the requirements for the issuance of CAAPP permits.

2. Minor Permit Modification

- Do not violate any applicable requirement;
- Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

- 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;
- 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:
 - A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA; and
 - An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the CAA.
- Are not modifications under any provision of Title I of the CAA;
- Are not required to be processed as a significant permit modification; and
- Modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches.

An application for a minor permit modification shall include the following:

- A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- The source's suggested draft permit/conditions;
- Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- Information as contained on form 271-CAAPP, MINOR PERMIT MODIFICATION FOR CAAPP PERMIT for the Illinois EPA to use to notify USEPA and affected States.

3. Significant Permit Modification

- Applications that do not qualify as either minor permit modifications or as administrative permit amendments;
- Applications requesting a significant change in existing monitoring permit terms or conditions;
- Applications requesting a relaxation of reporting or recordkeeping requirements; and
- Cases in which, in the judgment of the Illinois EPA, action on an application for modification would require decisions to be made on technically complex issues.

An application for a significant permit modification shall include the following:

- A detailed description of the proposed change(s), including all physical changes to equipment, changes in the method of operation, changes in emissions of each pollutant, and any new applicable requirements which will apply as a result of the proposed change. Note that the Permittee need only submit revised forms for equipment and operations that will be modified.

The Illinois EPA requires the information on the following appropriate forms to be submitted in accordance with the proper classification:

- Form 273-CAAPP, REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT FOR CAAPP PERMIT; or
- Form 271-CAAPP, MINOR PERMIT MODIFICATION FOR CAAPP PERMIT; or
- Form 200-CAAPP, APPLICATION FOR CAAPP PERMIT (for significant modification).

Application forms can be obtained from the Illinois EPA website at <http://www.epa.state.il.us/air/forms>.

Note that the request to revise the permit must be certified for truth, accuracy, and completeness by a responsible official.

Note that failure to submit the required information may require the Illinois EPA to deny the application. The Illinois EPA reserves the right to require that additional information be submitted as needed to evaluate or take final action on applications pursuant to Section 39.5(5)(g) of the Act and 35 IAC 270.305.



Illinois Environmental Protection Agency
Division Of Air Pollution Control – Permit Section
P.O. Box 19506
Springfield, Illinois 62794-9506

Application For Construction Permit (For CAAPP Sources Only)	For Illinois EPA use only
	I.D. number:
	Permit number:
	Date received:

This form is to be used by CAAPP sources to supply information necessary to obtain a construction permit. Please attach other necessary information and completed CAAPP forms regarding this construction/modification project.

Source Information			
1. Source name:			
2. Source street address:			
3. City:		4. Zip code:	
5. Is the source located within city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No			
6. Township name:	7. County:	8. I.D. number:	

Owner Information		
9. Name:		
10. Address:		
11. City:	12. State:	13. Zip code:

Operator Information (if different from owner)		
14. Name		
15. Address:		
16. City:	17. State:	18. Zip code:

Applicant Information	
19. Who is the applicant? <input type="checkbox"/> Owner <input type="checkbox"/> Operator	20. All correspondence to: (check one) <input type="checkbox"/> Owner <input type="checkbox"/> Operator <input type="checkbox"/> Source
21. Attention name and/or title for written correspondence:	
22. Technical contact person for application:	23. Contact person's telephone number:

This Agency is authorized to require and you must disclose this information under 415 ILCS 5/39. Failure to do so could result in the application being denied and penalties under 415 ILCS 5 et seq. It is not necessary to use this form in providing this information. This form has been approved by the forms management center.

Summary Of Application Contents

24.	Does the application address whether the proposed project would constitute a new major source or major modification under each of the following programs: a) Non-attainment New Source Review – 35 IAC Part 203; b) Prevention of Significant Deterioration (PSD) – 40 CFR 52.21; c) Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources – 40 CFR Part 63?	<input type="checkbox"/> Yes <input type="checkbox"/> No
25.	Does the application identify and address all applicable emissions standards, including those found in the following: a) Board Emission Standards – 35 IAC Chapter I, Subtitle B; b) Federal New Source Performance Standards – 40 CFR Part 60; c) Federal Standards for Hazardous Air Pollutants – 40 CFR Parts 61 and 63?	<input type="checkbox"/> Yes <input type="checkbox"/> No
26.	Does the application include a process flow diagram(s) showing all emission units and control equipment, and their relationship, for which a permit is being sought?	<input type="checkbox"/> Yes <input type="checkbox"/> No
27.	Does the application include a complete process description for the emission units and control equipment for which a permit is being sought?	<input type="checkbox"/> Yes <input type="checkbox"/> No
28.	Does the application include the information as contained in completed CAAPP forms for all appropriate emission units and air pollution control equipment, listing all applicable requirements and proposed exemptions from otherwise applicable requirements, and identifying and describing any outstanding legal actions by either the USEPA or the Illinois EPA? Note: The use of "APC" application forms is not appropriate for applications for CAAPP sources. CAAPP forms should be used to supply information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
29.	If the application contains TRADE SECRET information, has such information been properly marked and claimed, and have two separate copies of the application suitable for public inspection and notice been submitted, in accordance with applicable rules and regulations?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable, No TRADE SECRET information in this application

Note 1: Answering "No" to any of the above may result in the application being deemed incomplete.

Signature Block

This certification must be signed by a responsible official. Applications without a signed certification will be returned as incomplete.	
30. I certify under penalty of law that, based on information and belief formed after reasonable inquiry, the statements and information contained in this application are true, accurate and complete. Authorized Signature:	
BY: _____ <div style="text-align: center; margin-top: 5px;"> <small>AUTHORIZED SIGNATURE</small> </div>	_____ <div style="text-align: center; margin-top: 5px;"> <small>TITLE OF SIGNATORY</small> </div>
_____ <div style="text-align: center; margin-top: 5px;"> <small>TYPED OR PRINTED NAME OF SIGNATORY</small> </div>	_____ / _____ / _____ <div style="text-align: center; margin-top: 5px;"> <small>DATE</small> </div>

Note 2: An operating permit for the construction/modification permitted in a construction permit must be obtained by applying for the appropriate revision to the source's CAAPP permit, if necessary.

10.4 Attachment 4 - Guidance on Renewing This Permit

Timeliness - Pursuant to Section 39.5(5)(n) of the Act and 35 IAC 270.301(d), a source must submit to the Illinois EPA a complete CAAPP application for the renewal of a CAAPP permit not later than 9 months before the date of permit expiration of the existing CAAPP permit in order for the submittal to be deemed timely. Note that the Illinois EPA typically sends out renewal notices approximately 18 months prior to the expiration of the CAAPP permit.

The CAAPP application must provide all of the following information in order for the renewal CAAPP application to be deemed complete by the Illinois EPA:

1. A completed renewal application form 200-CAAPP, APPLICATION FOR CAAPP PERMIT.
2. A completed compliance plan form 293-CAAPP, COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE FOR CAAPP PERMIT.
3. A completed compliance certification form 296-CAAPP, COMPLIANCE CERTIFICATION, signed by the responsible official.
4. Any applicable requirements that became effective during the term of the permit and that were not included in the permit as a reopening or permit revision.
5. If this is the first time this permit is being renewed and this source has not yet addressed CAM, the application should contain the information on form 464-CAAPP, COMPLIANCE ASSURANCE MONITORING (CAM) PLAN.
6. Information addressing any outstanding transfer agreement pursuant to the ERMS.
7. a. If operations of an emission unit or group of emission units remain unchanged and are accurately depicted in previous submittals, the application may contain a letter signed by a responsible official that requests incorporation by reference of existing information previously submitted and on file with the Illinois EPA. This letter must also include a statement that information incorporated by reference is also being certified for truth and accuracy by the responsible official's signing of the form 200-CAAPP, APPLICATION FOR CAAPP PERMIT and the form 296-CAAPP, COMPLIANCE CERTIFICATION. The boxes should be marked yes on form 200-CAAPP, APPLICATION FOR CAAPP PERMIT, as existing information is being incorporated by reference.

- b. If portions of current operations are not as described in previous submittals, then in addition to the information above for operations that remain unchanged, the application must contain the necessary information on all changes, e.g., discussion of changes, new or revised CAAPP forms, and a revised fee form 292-CAAPP, FEE DETERMINATION FOR CAAPP PERMIT, if necessary.
8. Information about all off-permit changes that were not prohibited or addressed by the permit to occur without a permit revision and the information must be sufficient to identify all applicable requirements, including monitoring, recordkeeping, and reporting requirements, for such changes.
9. Information about all changes made under 40 CFR 70.4(b)(12)(i) and (ii) that require a 7-day notification prior to the change without requiring a permit revision.

The Illinois EPA will review all applications for completeness and timeliness. If the renewal application is deemed both timely and complete, the source shall continue to operate in accordance with the terms and conditions of its CAAPP permit until final action is taken on the renewal application.

Notwithstanding the completeness determination, the Illinois EPA may request additional information necessary to evaluate or take final action on the CAAPP renewal application. If such additional information affects your allowable emission limits, a revised form 292-CAAPP, FEE DETERMINATION FOR CAAPP PERMIT must be submitted with the requested information. The failure to submit to the Illinois EPA the requested information within the time frame specified by the Illinois EPA, may force the Illinois EPA to deny your CAAPP renewal application pursuant to Section 39.5 of the Act.

Application forms may be obtained from the Illinois EPA website at <http://www.epa.state.il.us/air/forms.html>.

If you have any questions regarding this matter, please contact a permit analyst at 217/782-2113.

Mail renewal applications to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Permit Section (MC 11)
P.O. Box 19506
Springfield, Illinois 62794-9506

Appendix B
E-mail comments from USEPA to IEPA



Stacey Coburn/R5/USEPA/US To

Subject periodic monitoring comments

11/15/2004 04:35 PM

Hi Anatoly,

We have discussed periodic monitoring many times in relation to CAAPP permits, without any successful resolution thus far. Since we are going to try again on the call you're putting together, I thought I should compile a comprehensive summary of our expectations for periodic monitoring in CAAPP permits, and what the basis for our position is, so that you can review it prior to the call. If you have any questions about this, please feel free to let me know.

Here is a summary of our position on periodic monitoring:

- 40 CFR 70.6(a)(3)(i)(B) requires periodic monitoring in Title V permits
- "periodic" means occurring at a specified frequency
- placing a statement that a test may be required upon request of IEPA does not specify a frequency, or assure that testing will occur at all
- placing a statement that testing will be done upon request of IEPA, off-permit, eliminates the ability of the public or EPA to review whether testing will occur at an adequate frequency

Here is further explanation of those bullets:

1. 40 CFR 70.6(a)(3)(i)(B) requires periodic monitoring in Title V permits:

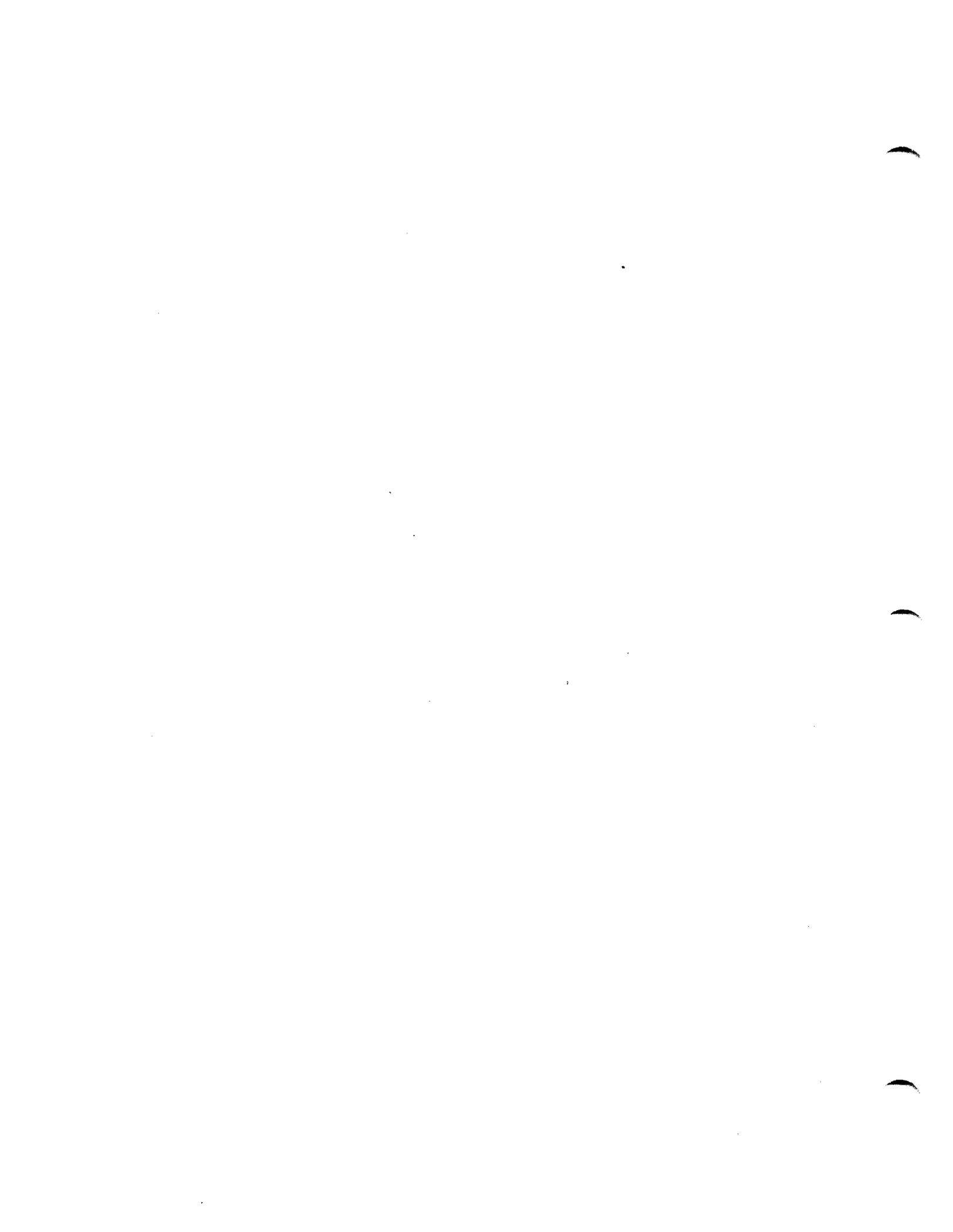
(i) Each permit shall contain the following requirements with respect to monitoring:

(...)

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section; and...

As you can see, section 70.6(a)(3)(i)(B) requires that there is periodic monitoring to assure compliance with each applicable requirement. According to merriam-webster.com, the definition of periodic is: "occurring or recurring at regular intervals."

2. Court Decisions



As you are aware, EPA has been sued over periodic monitoring. The Appalachian Power decision, which addressed how periodic monitoring is to be addressed in a Title V permit, can be found at the following link:

<http://pacer.cadc.uscourts.gov/common/opinions/200004/98-1512a.txt>

Here is a summary of the Appalachian power decision, taken from the last paragraph:

"For the reasons stated, we find setting aside EPA's Guidance to be the appropriate remedy. Though petitioners challenge only portions of the Guidance, partial affirmance is not an option when, as here, "there is 'substantial doubt' that the agency would have adopted the severed portion on its own." *Davis County Solid Waste Management v. EPA* , 108 F.3d 1454, 1458 (D.C. Cir. 1997) (quoting *North Carolina v. FERC* , 730 F.2d 790, 795-96 (D.C. Cir. 1984)). In view of the intertwined nature of the challenged and unchallenged portions of the Guidance, the Guidance must be set aside in its entirety. See 42 U.S.C. § 7607. State permitting authorities therefore may not, on the basis of EPA's Guidance or 40 C.F.R. § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test."

As you can see, the decision clearly states that the only time periodic monitoring should be added to a Title V permit is when the underlying applicable requirement does not contain monitoring requirements that are to be performed at a specified frequency (i.e. "periodic" monitoring.) Therefore, the permits must require periodic monitoring with a specified frequency, either from the underlying requirement or as developed in the Title V permit.

3. Petition responses

EPA has objected to Title V permits because they lack periodic monitoring. Please review the following petition responses which contain objections upon this basis, specifically pages 21 and 22 of the order responding to the petition to object to the Motiva Enterprises permit, which may be found at the following link:

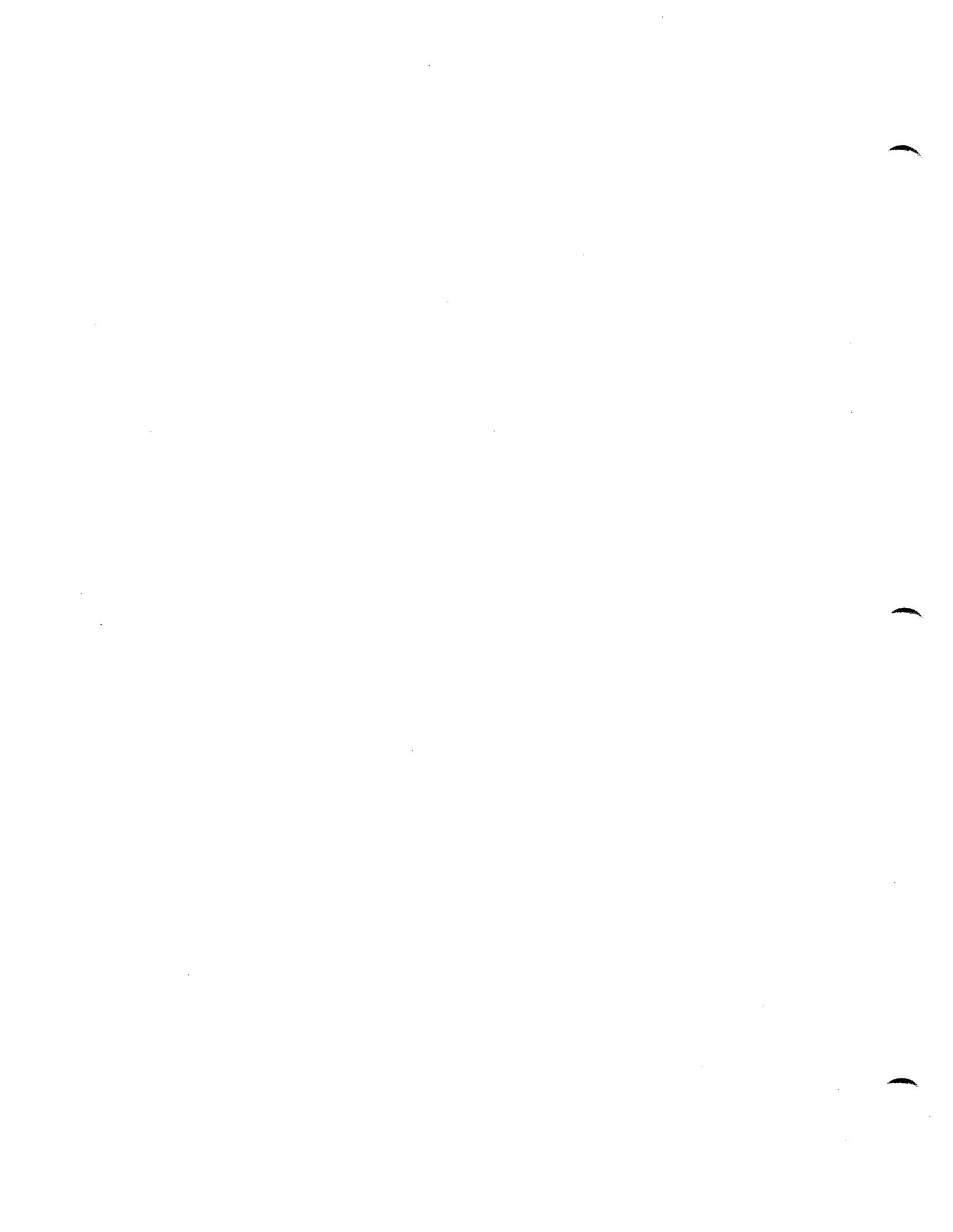
http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/motiva_decision2002.pdf

and also page 34 of the order responding to the petition to object to the Tanagraphics Title V permit, which may be found at the following link:

http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/motiva_decision2002.pdf



Appendix C
White Paper II (March 5, 1996)



March 5, 1996

MEMORANDUM

SUBJECT: White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program

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

TO: Director, Office of Ecosystem Protection, Region I
Director, Environmental Planning and Protection Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air, Pesticides and 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
Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air, Region X

Please find attached White Paper Number 2 for improved implementation of part 70 operating permits programs. This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves. It is intended to supplement, not obviate, the guidance provided in EPA's "White Paper for Streamlined Development of part 70 Permit Applications" (July 10, 1995). This guidance is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

The attached guidance is divided into five sections as follows:

II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

II. B. Development Of Applications And Permits For Outdated SIP Requirements.

II. C. Treatment Of Insignificant Emissions Units.

II. D. Use Of Major Source And Applicable Requirement Stipulation.

II. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Streamlining will lead to substantial reductions in permitting burdens and improved part 70 implementation by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements (which can be an alternative to all those requirements being subsumed). It will also allow various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. Any such streamlining must provide that compliance with the streamlined limit would assure compliance with all applicable requirements. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved State implementation plan, the streamlined treatment of insignificant emissions units, the use of stipulations by sources as to which regulations apply, and the cross referencing rather than repetition of certain existing information.

There is an immediate need for the implementation of this guidance. A large number of sources have filed complete part 70 applications, and increasing numbers of these submittals are being processed for permit issuance. I strongly encourage you to work with your States to effect near-term use of this guidance.

Substantial contributions to this White Paper have come from the California Title V Implementation Working Group. I want to thank you and your staff for your support and Region IX in particular for their leadership and considerable efforts in developing and completing this paper. I invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345, Ginger Vagenas of Region IX at (415) 744-1252, or Roger Powell at (919) 541-5331.

Attachment

cc: M. Trutna (MD-12)

G. Vagenas (Region IX)
R. Powell (MD-12)
A. Schwartz (2344)

WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION
OF THE PART 70 OPERATING PERMITS PROGRAM

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR QUALITY PLANNING AND STANDARDS

March 5, 1996

Contacts: Michael A. Trutna (919) 541-5345
Ginger Vagenas (415) 744-1252
Roger Powell (919) 541-5331

**WHITE PAPER NUMBER 2 FOR IMPROVED IMPLEMENTATION
OF THE PART 70 OPERATING PERMITS PROGRAM**

March 5, 1996

I. OVERVIEW.

This guidance is intended to enable State and local agencies to take further steps to reduce the complexity and preparation costs of part 70 permit applications and of the part 70 permits themselves and to remove unintended barriers and administrative costs. It is also intended to build on and expand the guidance provided in the Environmental Protection Agency's (EPA) "White Paper for Streamlined Development of Part 70 Permit Applications" (July 10, 1995). White Paper Number 2 supplements, not obviates, the first White Paper. Both papers should be consulted for guidance in improving the implementation of title V of the Clean Air Act (Act) (i.e., part 70 operating permits programs). In particular, White Paper Number 2 is designed to simplify the treatment of overlapping regulatory requirements and insignificant emissions units and to clarify the use of citations and incorporation by reference in the part 70 permitting process. This effort is consistent with and furthers the goals of the Presidential initiatives to streamline and reinvent government.

Substantial contributions to this White Paper have come from the California Title V Implementation Working Group (Working Group). The California Air Resources Board and several California air districts and industries which (together with EPA) make up the Working Group have decades of experience with operating permits. These operating permits programs are generally just one component of air programs that, in many districts, also include local emissions standards (often with associated recordkeeping and reporting requirements), monitoring requirements, inspections, source testing, and new source review (NSR). The EPA has found the insights and recommendations of the Working Group extremely useful in integrating these various requirements using the part 70 permitting process. While much of the guidance contained herein addresses situations arising in California, it is available for use nationwide.

This guidance is divided into five sections and two attachments which are generally summarized as follows (the reader is, however, referred to the applicable main sections of the guidance for more detailed information):

Section II. A. Streamlining Multiple Applicable Requirements On The Same Emissions Unit(s).

The EPA and States have developed different and often

overlapping applicable requirements governing the same emissions units to serve the purposes of different air programs. As a result, emissions units at a stationary source may be subject to several parallel sets of requirements. This can result in some of the requirements being redundant and unnecessary as a practical matter, even though the requirements still legally apply to the source. In cases where compliance with a single set of requirements effectively assures compliance with all requirements, compliance with all elements of each of the overlapping requirements may be unnecessary and could needlessly consume resources. For example, a source could be subject to overlapping standards that result in two or more different emissions limits for the same pollutant and two or more source monitoring requirements for instrumentation, recordkeeping, and reporting.

Today's guidance describes how a source may propose streamlining to distill or "streamline" multiple overlapping requirements into one set that will assure compliance with all requirements. According to the guidance, multiple emissions limits may be streamlined into one limit if that limit is at least as stringent as the most stringent limit. (Limitations that apply to the streamlining of acid rain requirements are described in the main section of this guidance.) If no one requirement is unambiguously more stringent than the others, the applicant may synthesize the conditions of all the applicable requirements into a single new permit term that will assure compliance with all requirements. The streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emissions limit, providing they would assure compliance to the same extent as any subsumed monitoring. Thus, monitoring, recordkeeping, or reporting to determine compliance with subsumed limits would not be required where the source implements the streamlined approach.

It is important to emphasize that while streamlining may be initiated by either the applicant or the permitting authority, it can only be implemented where the permit applicant consents to its use.

Section II. B. Development Of Applications And Permits For Outdated SIP Requirements.

Historically, long periods of time have been required to review and approve (or disapprove) SIP revisions. The EPA has undertaken a number of reforms to its SIP approval process and is continuing to make significant progress in

reducing the amount of time required for taking action on SIP revisions. Despite the progress we have made to date, there are many local rules now pending EPA review and approval for inclusion in the SIP. The gap between the approved SIP and the State rules is of concern because States and local agencies enforce their current rules (which are usually more stringent than the approved SIP rules) and often, as a practical matter, no longer enforce the superseded and outdated rules in the SIP. On the other hand, EPA only recognizes and can only enforce the SIP-approved rules. This situation can cause confusion and uncertainty because some sources are effectively subject to two different versions of the same rules. Part 70's application, certification, and permit content requirements highlight this longstanding concern.

The most problematic situation arising from the gap between the approved SIP and the State rules is where a technology-forcing rule that has been approved into the SIP is found by the State to be impossible to meet. Under these circumstances, the State would generally adopt a relaxation of this rule and submit it to EPA as a SIP revision. Until EPA is able to take action on the submitted relaxation, sources remain subject to a rule that is impossible to meet.

This section of the guidance largely addresses the problem by authorizing permitting authorities and their sources to base permit applications on State and local rules that have been submitted for SIP approval, rather than on the potentially obsolete approved SIP provisions that they would replace. Such reliance on pending State and local rules is proper when the permitting authority has concluded that the pending rule will probably be approved, or when the source believes it can show that the pending rule is more stringent than the rule it would replace. However, if the pending rule is not more stringent than the rule it would replace, the permit cannot be issued until the pending rule is approved.

Section II. C. Treatment Of Insignificant Emissions Units.

This section provides for the streamlined treatment of generally applicable requirements that apply to "insignificant" emissions units (IEU's). It is intended to address current concerns that resources will be unnecessarily consumed by matters of trivial environmental importance.

The guidance clarifies that the permitting authority has broad discretion to tailor the permit application and

permit for small equipment and activities as long as compliance with Federal requirements is assured. For both the permit application and the permit, information on IEU's may be generically grouped and listed without emissions estimates, unless emissions estimates are needed for another purpose such as determining the amount of permit fees that are calculated using total source emissions. This approach would utilize standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and its enforcement are clear.

The EPA also believes that for IEU's, a responsible official's initial compliance certification may be based on available information and the latest cycle of required information.

The guidance further provides that the permitting authority can use broad discretion in determining the nature of any required periodic monitoring. The EPA's policy on IEU's is based on the belief that these emissions points are typically associated with inconsequential environmental impacts.

Section II. D. Use Of Major Source And Applicable Requirement Stipulation.

There have been concerns expressed that extensive new emissions data would be needed to verify major source status or the applicability of Federal requirements. White Paper Number 2 clarifies that for applicability purposes, a source familiar to the permitting authority may simply stipulate in its application that it is major or that Federal requirements apply as specified in the application. The paper clarifies that there is no need to prepare and submit extensive information about the source that "proves" it is subject to any requirements that it stipulates are applicable. This does not affect the requirement to provide information that is otherwise required by part 70.

Section II. E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

Concerns have been raised that a source must re-prepare and resubmit information that is readily available, or that the permitting authority already has, to complete part 70 permit applications. In addition, similar concerns have been voiced regarding the large and potentially unnecessary burden of developing permits which repeat rather than reference certain types of regulatory requirements that

apply to the source (e.g., monitoring and testing protocols). The guidance clarifies that, in general, the permitting authority may allow information to be cited or cross-referenced in both permits and applications if the information is current and readily available to the permitting agency and to the public. The citations and references must be clear and unambiguous and be enforceable from a practical standpoint. After permits specify which emissions limits apply to identified emissions units, cross-referencing can be authorized for other requirements (e.g., monitoring, recordkeeping, and reporting).

Attachment A provides guidance on using the part 70 permit process to establish alternative test methods, while Attachment B provides example SIP language that could be used by both part 70 and non-part 70 sources to establish alternative requirements without the need for a prior source-specific SIP revision. This guidance should be particularly useful to those seeking greater certainty or to establish alternative test methods to those now approved by EPA. **[Note that Sections III. and beyond in Attachment B are currently in draft form.]**

Streamlining will lead to substantial reductions in permitting burdens by allowing for the first time multiple applicable emissions limits and work practices expressed in different forms and averaging times to be reduced to a single set of requirements. It will also lower current burden levels by allowing various monitoring, recordkeeping, and reporting requirements that are not critical to assuring compliance with the streamlined (most stringent) limit to be subsumed in the permit. In addition, substantial reductions in burden are expected to result from the reduced confusion and cost where locally adopted rules differ from the EPA-approved SIP, the streamlined treatment of insignificant emissions units, and the use of stipulations and the cross-referencing rather than repetition of certain existing information in part 70 applications and permits.

The EPA believes that the guidance contained herein may be implemented by permitting authorities and sources without revisions to part 70 programs, unless a provision is specifically prohibited by State regulations. In some situations, EPA will be proceeding in parallel to issue clarifying rules. The EPA strongly encourages States to allow sources to take advantage of the streamlining opportunities provided in this guidance. The Agency also suggests the permitting authority develop information about permits issued with successful streamlining and make it available to other similar sources to help avoid repetitive costs.

Sources are advised to consult with their permitting authority to understand how the policies of this White Paper will be implemented. In several situations (particularly those where sources have already filed complete applications), permitting authorities may choose to propose streamlining options and, if mutually agreeable, work with the source to support a draft permit containing a streamlined limit. Where EPA is the permitting authority pursuant to part 71 regulations, the Agency will implement both White Papers to the extent possible and promote similar implementation where EPA delegates responsibility for the part 71 program to a State.

The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

II. ADDITIONAL GUIDANCE ON STREAMLINED DEVELOPMENT OF PART 70 PERMITS AND APPLICATIONS.

A. Streamlining Multiple Applicable Requirements¹ On The Same Emissions Unit(s).²

1. Issue.

Can multiple redundant or conflicting requirements (emissions limits, monitoring, recordkeeping, reporting requirements) on the same emissions unit(s) be streamlined into a

¹Title IV applicable requirements are an exception to this general rule. As set out in § 72.70(b), to the extent that any requirements of part 72 and part 78 are inconsistent with the requirements of part 70, part 72 and part 78 will take precedence and will govern the issuance, denial, revision, reopening, renewal, and appeal of the acid rain portion of an operating permit. The subsequent descriptions of streamlining therefore apply to requirements under parts 72 and 78 only to the extent that such requirements are, at the option of the applicant, used as streamlining requirements because they are the most stringent applicable requirements.

²Emissions unit(s) means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant (as defined in section 70.2) or any pollutant listed under section 112(b) of the Act. It is used in this paper to include specifically a grouping of emissions units at a stationary source that shares the same applicable requirement and compliance demonstration method for a given pollutant.

single set of understandable and enforceable permit conditions? May an applicant propose to minimize or consolidate applicable requirements? May a permitting authority develop such a proposal? How would a permit application with a streamlining proposal satisfy compliance certification requirements?

2. Guidance.

A source, at its option, may propose in its application to streamline multiple applicable requirements into a single set of permit terms and conditions³. The overall objective would be to determine the set of permit terms and conditions that will assure compliance with all applicable requirements for an emissions point or group of emissions points so as to eliminate redundant or conflicting requirements. Otherwise applicable requirements that are subsumed in the streamlined requirements could then be identified in a permit shield. The process would be carried out in conjunction with the submittal and review of a part 70 permit application, as an addendum to an application, or as an application for a significant revision to the part 70 permit (unless EPA in its revisions to part 70 authorizes permitting authorities to use a less extensive permit revision process). The EPA plans to revise part 70 to provide that the compliance certification required with initial application submittals may be based on the proposed streamlined applicable requirement where there is sufficient source compliance information on which to base such a certification.

The permitting authority, at its option, may evaluate multiple applicable requirements for a source category and predetermine an acceptable streamlining approach. Such evaluations should be made readily available to applicants. It is up to the applicant, however, to request in its application that such streamlined requirements be contained in the part 70 permit. Where streamlining would be of mutual interest, the permitting authority and the source could work together during the permit development stage to establish a basis for a streamlined limit prior to the issuance of a draft permit. This

³The EPA recognizes that the described streamlining process may not be allowed by all State regulations or be warranted or desired for all applicable requirements. Similarly, partial streamlining (i.e., the streamlining of some, but not all, applicable requirements that apply to the same emissions units) may be most cost effective where difficult comparisons or correlations are needed for streamlining the other remaining applicable requirements. In addition, there is no barrier to more extensive streamlining occurring in the future.

cooperative activity must result in a record consistent with this guidance which supports the draft permit containing the streamlined requirement. The approach might be particularly useful where a source has already submitted a complete part 70 permit application and the permitting authority does not want to require the source to submit a formal amendment to its application. Any streamlining demonstration must be promptly submitted to EPA upon its availability and in advance of draft permit issuance unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

In addition, general permits could be useful to allow the transfer of streamlined requirements from the first source to be covered by them to other similar sources or emissions units. The information development and review conducted as part of streamlining for an individual source can be used by the permitting authority to generate a general permit for similar sources or portions of sources. If a general permit were used, EPA and public review beyond that needed to issue the general permit would not be necessary when sources subsequently applied for the streamlined permit conditions established under the general permit. Even where a general permit is not issued, the availability of information obtained from the streamlining of one source may be useful as a model for future streamlining actions involving other similar sources.

Streamlined permit terms should be covered by a permit shield. The permit shield will result in an essential degree of certainty by providing that when the source complies with the streamlined requirement, the source will be considered to be in compliance with all of the applicable requirements subsumed under the streamlined requirement. Where the program does not now provide for a permit shield, the permit containing streamlined requirements should clarify this understanding (See section II.A.3. discussion). Permitting authorities without provisions for permit shields are encouraged to add a permit shield provision at the first opportunity, if they wish to realize fully the benefits of streamlining.

Sources that opt for the streamlining of applicable requirements must demonstrate the adequacy of their proposed streamlined requirements. The following principles should govern their streamlining demonstrations:

- a. The most stringent of multiple applicable emissions limitations for a specific regulated air pollutant on a particular emissions unit must be determined taking into

account^{4,5}:

- o Emissions limitation formats (emissions limits in different forms must be converted to a common format and/or units of measure or a correlation established among different formats prior to comparisons);
- o Effective dates of compliance (to the extent different);
- o Transfer or collection efficiencies (to the extent relevant);
- o Averaging times⁶; and
- o Test methods prescribed in the applicable requirements⁷.

⁴Applicable requirements mean those requirements recognized by EPA, as defined in § 70.2. State and local permitting authorities may modify, eliminate, or streamline "State-only" requirements based on existing State or local law and procedures.

⁵Sources may, in the interest of greater uniformity, opt to expand the scope of an applicable requirement to more emissions units so that the same requirements would apply over a larger section of the plant or its entirety, provided compliance with all applicable requirements is assured. Though a permit may through streamlining expand the scope of applicable requirements to include new emissions units, it may not change the basis on which compliance is determined (e.g., emissions unit by emissions unit, if that is the intent of the applicable requirement).

⁶While the streamlining of requirements with varying averaging times is viable under this policy, in no event can requirements which are specifically designed to address a particular health concern (including those with short term averaging times) be subsumed into a requirement which is any less protective.

⁷The predominant case is expected to involve test methods which have been EPA approved either as part of the SIP or as part of a Federal section 111 or 112 standard. If a permitting authority is seeking to base a streamlined limit on an alternative or new test method relative to the ones already approved by EPA for the SIP or a section 111, or section 112 standard, some additional steps are needed to complete the proposed streamlining. As described in more detail in Attachment A, permitting authorities may only implement streamlining which

Limitations for specific pollutants can be subsumed by limitations on classes of pollutants providing the applicant can show that the streamlined limit will regulate the same set of pollutants to the same extent as the underlying applicable requirements. For example, a volatile organic compound (VOC) limitation could effectively subsume an organic hazardous air pollutant (HAP) limitation for a constituent such as hexane, provided the VOC limit is at least as stringent as the hexane limitation. Where a single VOC limit subsumes multiple HAP limits, the permit must be written to assure that each of the subsumed limits will not be exceeded. However, a limit for a single or limited number of compounds cannot be used to subsume a limit for a broader class (e.g., a hexane limit for a VOC limit) because this would effectively deregulate any of the class that are not covered by the more limited group.

b. Work practice requirements must be treated as follows:

o Supporting An Emissions Limit. A work practice requirement directly supporting an emissions limit (i.e., applying to the same emissions point(s) covered by the emissions limit) is considered inseparable from the emissions limit for the purposes of streamlining emissions limits. The proposed streamlined emissions limit must include its directly supporting work practices, but need not include any work practice standards that are associated with and directly support the subsumed limit(s);

o Not Supporting An Emissions Limit. Similar work practice requirements which apply to the same emissions or emissions point but which do not directly support an emissions limit may be streamlined (e.g., different leak detection and repair (LDAR⁸) programs). The

involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority from EPA (where section 111/112 standards are involved). With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for source specific SIP revisions.

⁸For LDAR programs, stringency comparisons likely will be based on the aggregate requirements of each LDAR program (screening levels, frequency of inspection, repair periods, etc.) and the resultant overall actual emissions reduction expected

streamlined work practice requirement may be composed of provisions/elements (e.g., frequency of inspection, recordkeeping) from one or more of the similar work practice requirements, provided that the resulting composite work practice requirement has the same base elements/provisions as the subsumed work practice requirements (e.g. has a frequency of inspection or has recordkeeping if the subsumed work practice requirements have these elements/provisions).

Multiple work practice requirements which apply to different emissions or emissions points cannot be streamlined.

c. Monitoring, reporting, and recordkeeping requirements should not be used to determine the relative stringency of the applicable requirements to which they are applicable.

d. Where the preceding guidance does not allow sufficient streamlining or where it is difficult to determine a single most stringent applicable emissions limit by comparing all the applicable emissions limits with each other, sources may perform any or all the following activities to justify additional or different streamlining:

- o Construct an alternative or hybrid emissions limit⁹

from the affected equipment. In cases where a convincing demonstration cannot be made based on existing information or the regulations themselves have not clearly defined the expected emissions reduction, verifying test data may be required. Alternatively, the applicant, the permitting authority, and EPA can work together to devise a method consistent with the principles of EPA's "Protocol For Equipment Leak Emissions Estimation" (EPA-453/R-95-017, November 1995) for determining relative stringency. Where a demonstration of the relative stringency of LDAR programs as applied to the affected equipment is not feasible, sources may modify elements of a particular LDAR program to produce a program that clearly (i.e., without further analysis) assures compliance with the other applicable LDAR programs.

⁹Title V allows for the establishment of a streamlined requirement, provided that it assures compliance with all applicable requirements it subsumes. However, EPA recognizes that construction of such hybrid or alternative limits can be more complicated than the situation where the streamlined limit is one of the applicable emissions limits. Accordingly, sources and States may need more time to agree on acceptable

that is at least as stringent as any applicable requirement;

o Use a previously "State-only" requirement as the streamlined requirement when it is at least as stringent as any applicable Federal requirement it would subsume (this requirement would then become a federally-enforceable condition in the part 70 permit);

o Use a more accurate and precise test method than the one applicable (see footnote number 7) to eliminate doubt in the stringency determination; or

o Conduct detailed correlations to prove the relative stringency of each applicable requirement.

e. The monitoring, recordkeeping, and reporting requirements associated with the most stringent emissions requirement are presumed appropriate for use with the streamlined emissions limit, unless reliance on that monitoring would diminish the ability to assure compliance with the streamlined requirements.¹⁰ To evaluate this presumption, compare whether the monitoring proposed would assure compliance with the streamlined limit to the same extent as would the monitoring applicable to each subsumed limit. If not, and if the monitoring associated with the subsumed limit is also relevant to and technically feasible for the streamlined limit, then monitoring associated with a subsumed limit (or other qualifying monitoring¹¹) would be included in the permit.¹² The recordkeeping and reporting

demonstrations and may wish to defer such streamlining until after issuance of the initial part 70 permit.

¹⁰Quality assurance requirements pertaining to continuous monitoring systems should be evaluated using the same approach.

¹¹The applicant may propose alternative monitoring of equal rigor. Permitting authorities may only implement streamlining which involves alternative or new monitoring methods within the flexibility granted by the SIP and any delegation of authority from EPA (where section 111/112 standards are involved).

¹²Permitting authorities and sources should presume that existing monitoring equipment [such as continuous emissions monitors (CEMs)] required and/or currently employed at the source should be retained. A permitting authority or applicant would have the opportunity to demonstrate that retention of such

associated with the selected monitoring approach may be presumed to be appropriate for use with the streamlined limit^{13,14,15}.

f. Permitting authorities must include citations to any subsumed requirements in the permit's specification of the origin and authority of permit conditions. In addition, the part 70 permit must include any additional terms and conditions as necessary to assure compliance with the streamlined requirement. In all instances, the proposed permit terms and conditions must be enforceable as a practical matter.

3. Process.

Streamlining may be accomplished through an applicant proposing to streamline multiple requirements applicable to a source, the permitting authority developing streamlining options for sources or source categories that would be subsequently accepted at the election of permittees, or the applicant working in agreement with the permitting authority after filing an

monitoring equipment is inappropriate, such as when the monitoring equipment is no longer relevant or is technically infeasible (e.g., the source has switched to a closed loop process without emissions or the streamlined limit corresponds to levels too low for a monitor to measure, such as SO₂ emissions from a boiler firing pipeline quality natural gas.)

¹³Where recordkeeping is the means of determining compliance (e.g., in the miscellaneous metal parts and products coating rules, the typical role of monitoring is fulfilled by recordkeeping), the appropriate recordkeeping would be determined in the same manner described for monitoring.

¹⁴Where a standard includes recordkeeping associated with a limit in addition to recordkeeping linked to a monitoring device (e.g., a coating facility that has recordkeeping requirements pertaining to coating usage, as well as recordkeeping for monitoring associated with an add-on control), both types of recordkeeping must be incorporated into the permit.

¹⁵The result offers considerable potential to reduce the different reporting burdens associated with different applicable requirements well beyond what was previously available (e.g., synchronizing the required reporting cycles from different applicable requirements to coincide with the most stringent one beginning at the earliest required date). (See also Final General Provisions, § 63.10(a)(5), March 16, 1994.)

initial complete application. The first six of the following actions would be taken by the source or, as appropriate, by the permitting authority. The level of effort to complete these actions will depend on the relative complexity of the streamlining situation. The permitting authority would then perform steps seven and eight.

Step One - Provide a side-by-side comparison of all requirements included in the streamlining proposal that are currently applicable and effective for the specific emissions units of a source¹⁶. Distinguish between requirements which are emissions and/or work practice standards, and monitoring and compliance demonstration provisions.

Step Two - Determine the most stringent emissions and/or performance standard (or any hybrid or alternative limits as appropriate) consistent with the above streamlining principles and provide the documentation relied upon to make this determination. This process should be repeated for each emissions unit pollutant combination for which the applicant is proposing a streamlined requirement.

Step Three - Propose one set of permit terms and conditions (i.e., the streamlined requirements) to include the most stringent emissions limitations and/or standards, appropriate monitoring and its associated recordkeeping and reporting (see section II.A.2.e.), and such other conditions as are necessary to assure compliance with all applicable requirements.

Step Four - Certify compliance (applicant only) with

¹⁶A future applicable requirement (e.g., MACT standard newly promulgated under section 112 with a compliance date 3 years in the future) may be determined to be the most stringent applicable requirement if compliance with it would assure compliance with less stringent but currently applicable requirements. In such a case, the source may propose either a streamlined requirement based on immediate compliance with the future applicable requirement or it may opt for a phased approach where the permit would contain two separate time-sensitive requirements. Under the latter approach, one streamlined requirement addressing all currently applicable requirements would be defined to be effective until the future applicable requirement became effective. The permit would also contain a second streamlined requirement which also addressed the future applicable requirement and would become the new streamlined requirement after expiration of the first streamlined requirement.

applicable requirements. The EPA is planning to revise its part 70 regulations to provide that a source may certify compliance with only the proposed streamlined limit. Until this is accomplished, EPA recommends that a source certifying compliance only with the streamlined limit indicate this in an attachment to the certification, so that it is clear that the certification is being made with respect to a set of terms and conditions that the source believes "assure compliance" with all applicable requirements. In any event, a source may only certify compliance with a streamlined limit if there is source compliance data on which to base such a certification. (Such data should be available where the streamlined requirement is itself an applicable requirement and may be available if the streamlined limit is an alternative limit, e.g., a previously State-only emissions limitation). If there is not, then certifications must instead be made relative to each of the applicable requirements judged to be less stringent and must be based on data otherwise required under them to make this point clear.

Step Five - Develop a compliance schedule to implement any new monitoring/compliance approach relevant to the streamlined limit if the source is unable to comply with it upon permit issuance. The recordkeeping, monitoring, and reporting requirements of the applicable requirements being subsumed would continue to apply in the permit (as would the requirement for the source to operate in compliance with each of its emissions limits) until the new streamlined compliance approach becomes operative.

Step Six - Indicate in the application submittal that streamlining of the listed applicable requirements under a permit shield (where available) is being proposed and propose the establishment of a permit shield which would state that compliance with the streamlined limit assures compliance with the listed applicable requirements. All emission and/or performance standards not subsumed by the streamlined requirements must be separately addressed in the part 70 permit application.

Step Seven - Evaluate the adequacy of the proposal and its supporting documentation. The EPA recommends that the permitting authority communicate its findings to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences before issuance of a draft permit for public review. Where the permitting authority determines that the streamlining proposal is inadequate, the source, to retain its application shield, must expeditiously resolve any

problems identified by the permitting authority or update its prior application based on the individual applicable requirements previously proposed for streamlining.

Step Eight - Note the use of this process in any required transmittal of a part 70 application, application summary, or revised application to EPA and include the streamlining demonstration and supporting documentation in the public record. When the source is required to provide a copy of the application (or summary) directly to EPA, it must note the proposed use of streamlining. A copy of the streamlining demonstration must be submitted promptly to EPA along with the required copy of the application or application summary (where a summary may be submitted to EPA in lieu of the entire part 70 permit application) unless EPA has previously agreed with the permitting authority not to require it (e.g., the proposed streamlining is of a simple and/or familiar type with no new concerns).

4. Enforcement.

All terms and conditions of a part 70 permit are enforceable by EPA and citizens, unless certain terms are designated as being only State (or locally) enforceable. In addition, a source violating a streamlined emissions limitation in the part 70 permit may be subject to enforcement action for violation of one (or more) of the subsumed applicable emissions limits to the extent that a violation of the subsumed emissions limit(s) is documented.

Upon receiving a part 70 permit, a source implementing the streamlined approach would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are subsumed within the streamlined requirement and specified under the permit shield. These requirements would no longer be independently enforceable once the permit has been issued, provided that the source attempts in good faith to implement the monitoring, recordkeeping, and reporting requirements specified in the permit.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit will be reopened and revised.

5. Discussion.

As sources subject to title V identify all applicable requirements for inclusion in part 70 permit applications, they may find that multiple applicable requirements affect the same pollutant or performance parameter for a particular emissions

unit. Likewise, the requirements of federally-enforceable terms and conditions in preconstruction or operating permits may overlap with the requirements of other federally-enforceable rules and regulations.

In these instances, a source may be in compliance with the overall emissions limit of each of the applicable requirements, but be required to comply with a multitude of redundant or conflicting monitoring, reporting, or recordkeeping requirements. For example, a source owner faced with two emissions limits for the same pollutant at a specific emissions point may be required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emissions limits. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the implementing agency without an associated gain in compliance assurance. Prior to title V there has been no federally-enforceable means to resolve this situation.

The EPA encourages permitting authorities to allow use by the permit applicant of the part 70 permit issuance process to streamline multiple applicable requirements to the extent the conditions of this policy can be met. In this way, the part 70 process with its procedural safeguards can be used to focus all concerned parties on providing for compliance with a single set of permit terms that assure compliance with multiple applicable requirements instead of maintaining the costs of multiple sets of controls, monitoring, recordkeeping, and reporting approaches.

The legal basis for streamlining multiple applicable requirements relies on section 504(a), which requires that title V permits contain emissions limits/standards and other terms as needed to assure compliance with applicable requirements. This section notably does not require repetition of all terms and conditions of an applicable requirement when another applicable requirement or part 70 permit condition (i.e., streamlined requirement) could be fashioned to otherwise assure compliance with that applicable requirement.

Section 504(f) lends additional certainty to permit streamlining. It specifically provides that the permitting authority may authorize that compliance with the permit may be deemed to be compliance with the Act provided that the permit includes all applicable requirements. Thus, this section allows the permitting authority to issue a permit containing a shield which protects a source against a claim that it is violating any applicable requirements listed in the permit shield as being subsumed under the streamlined requirement, provided that the

source meets the permit terms and conditions that implement the streamlined requirement.

Part 70 is also receptive to the issuance of streamlined permits. It contains parallel language to the statute for emissions limits and for permit shields in §§ 70.6(a)(1) and (f). Although language in § 70.6(a)(3) may appear to restrict streamlining by requiring that all "applicable" monitoring, recordkeeping, and reporting requirements be placed in the permit, EPA did not intend for these provisions to preclude streamlining. Instead, the Agency believes that the provisions should be consistent with the flexibility for streamlining provided in section 504(a) of the Act and in § 70.6(a)(1). To require otherwise would be anomalous and could frustrate legitimate streamlining efforts. The EPA intends to revise part 70 to reflect this understanding in a future rulemaking.

Streamlining may be limited in cases where an applicable requirement defines specific monitoring requirements as the exclusive means of compliance with an applicable emissions limit. Some interpret these cases to require that only one set of monitoring requirements may be used to determine compliance and that only these requirements may appear in the part 70 permit. The EPA believes instead that section 504(a) supersedes any need for such exclusive monitoring, but nonetheless recommends that States address any potential concerns by adopting certain SIP language in the future. States that choose to revise their existing SIP's to contain authorizing language to overcome any SIP exclusivity problems may use the example language in Attachment B. The EPA believes that similar flexibility should be provided to non-part 70 sources as well. To that end, Attachment B also provides a SIP process (currently in draft form) which would allow similar flexibility for non-part 70 sources.

With respect to NSR, States can process, in parallel with the part 70 permit issuance process, a revision to an existing NSR permit as necessary to resolve any exclusivity concerns within existing NSR permits (See first White Paper).

Currently the implementing regulations for section 112(1) at 40 CFR part 63, subpart E represent an additional constraint on the streamlining of applicable requirements in part 70 permits but only where a State or local agency has accepted a delegation of authority for a particular maximum achievable control technology (MACT) standard by virtue of its commitment to replace the Federal section 112 emissions standard with the State's own standard or program during the part 70 permit issuance process and using the procedures established in the Subpart E rule at § 63.94.. In § 63.94, EPA has specified the criteria for

approving such alternative limits and controls to meet an otherwise applicable section 112 requirement. These criteria must be satisfied to ensure that, after a State accepts delegation under § 63.94, any change to the Federal rule results in permit requirements that, among other things:

- o Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;
- o Require levels of emissions control for each affected source and emissions point no less stringent than those contained in the Federal standards or requirements;
- o Require compliance and enforcement measures for each affected source and emissions point no less stringent than those in the Federal standards or requirements;
- o Express levels of control and compliance and enforcement measures in the same form and units of measure as the Federal standard or requirement for § 63.94 program substitutions;
- o Assure compliance by each affected source no later than would be required by the Federal standard or requirement.

Thus, when a State or local agency, after receiving § 63.94 delegation, seeks to replace a Federal section 112 emissions standard with requirements arising from its own air toxics standard or program (such as a toxics NSR program) during the part 70 permit issuance process, streamlining must take place by meeting both the criteria of § 63.94 and, except where contradictory, the criteria of this guidance. However, because most States are planning to take straight delegation of Federal emissions standards through subpart E procedures that do not rely on the part 70 permit issuance process, the EPA believes that the subpart E criteria for streamlining applicable requirements will be necessary only in a minority of instances. In the majority of cases, where a State takes delegation of a Federal standard (e.g., through straight delegation), the applicable section 112 requirements could be streamlined by following only the criteria outlined in section A.2., above. Where there are a large number of sources in the same category subject to a MACT standard for which the State has a regulation with equivalent requirements, EPA recommends that the State explore delegation options under § 63.93 to best utilize available resources.

It should be noted that the current subpart E rule may be subject to change as a result of pending litigation. Currently, EPA intends to revise the rule within the parameters of the

Court's decision to allow greater flexibility for approving State air toxics standards and programs and to minimize or remove (as appropriate) any constraint that subpart E might impose on the streamlining of applicable requirements in part 70 permits.

Finally, States are strongly encouraged to adopt regulatory provisions allowing permitting authorities to grant the permit shield where they cannot now do so. The permit shield is an effective means to clarify that for applicable requirements listed as subsumed under the streamlined requirements, compliance with the streamlined requirements is deemed to also be compliance with the subsumed requirements. Such an understanding is essential to support and defend the issuance of any permit which provides for the streamlined treatment of multiple applicable requirements.

If a permit shield is not available, a permittee can still be afforded significant enforcement protection by an explicit agency finding that in its judgment the streamlined permit term indeed provides for full compliance with all the permit limits that it subsumes. In such a case, it is imperative that the permit contain language that lists the applicable requirements being subsumed into the streamlined requirement and states that compliance with the streamlined requirement will be deemed compliance with the listed requirements.

B. Development Of Applications And Permits For Outdated SIP Requirements.

1. Issue.

Can sources file part 70 permit applications on the basis of locally adopted rules pending EPA SIP approval rather than the current SIP requirements? Can sources certify their compliance status on the same basis? Under what circumstances can permitting authorities issue and/or later revise part 70 permits based on such locally adopted rules?

2. Guidance.

a. General. In the first White Paper (section II.B.6.), EPA described a mechanism for simplifying permits where a source is subject to both a State adopted rule that is pending SIP approval and the approved SIP version of that rule. Under that approach, the pending SIP requirements would be incorporated into the State-only portion of the permit and would become federally enforceable upon EPA approval of the SIP. The EPA believes that in most instances, the approach described in the first White Paper adequately addresses the described problem. In some areas (most notably California), however, a sizable backlog of pending

SIP revisions exists, and a more far-reaching solution is needed. In today's guidance, therefore, another approach that may be used by EPA and permitting authorities to address this situation is described.

Under this new alternative, the permitting authority may allow that application completeness initially be based on locally adopted rules including those which would relax current (i.e., federally-approved) SIP requirements, provided that (1) the local rule has been submitted to EPA as a SIP revision, and (2) the permitting authority reasonably believes that the local rule (not the current SIP rule) will be the basis for the part 70 permit.

Where the permitting authority or the source has demonstrated to EPA's satisfaction¹⁷ that the local rule is more stringent and therefore assures compliance with the current SIP for all subject sources, a permit application relying on the local rule may be deemed to be complete and a permit containing the requirements of the local rule rather than the current SIP could be issued for part 70 purposes. That is, consistent with section 504(a) of the Act, the part 70 permit need only contain emissions limits and other terms and conditions (i.e., the more stringent local rule) as needed to assure compliance with the applicable requirement (i.e., the current SIP regulation).

An EPA finding that a submitted rule assures compliance with the approved SIP rule would be a preliminary indication of EPA's belief that a part 70 permit incorporating the terms of the submitted rule would also assure compliance with the approved SIP. Such a finding would not equate to rulemaking, and so would not constitute a revision of the SIP. Therefore, a preliminary finding would not necessarily ensure that the proposed revision would ultimately be approved by EPA, nor would it protect a source from enforcement of the approved SIP.¹⁸ Further, such a finding would not predetermine the outcome of the part 70 permit proceeding. Reviewers would have the ability to evaluate any

¹⁷Where resources allow and the situation calls for it, EPA will go on record with a letter to the permitting authority with a list of rules that it has preliminarily determined will assure compliance with the corresponding SIP approved rule.

¹⁸If a part 70 permit is issued based upon a pending SIP revision and a permit shield is incorporated in the permit, compliance with the permit would be deemed to be compliance with all applicable requirements. If EPA or the permitting authority later discovers that the permit terms do not assure compliance with all applicable requirements, including the applicable SIP, the permit would have to be reopened and revised.

proposed permit terms or conditions based on pending SIP revisions to determine whether the permit assures compliance with applicable requirements, i.e., the approved SIP. However, EPA believes that a finding of this nature should provide the source and the permitting authority sufficient assurance to proceed with the issuance of a permit that reflects the terms of the submitted local rule rather than the approved SIP. Note that a part 70 permit can be based on a local rule even if the local rule is subsequently disapproved by EPA for SIP purposes (e.g., measure is more stringent than the current SIP but fails to meet SIP requirements for reasonably available control technology and/or to make reasonable further progress), provided: (1) a permit based on the local rule would assure compliance with all applicable requirements (including the approved SIP); and (2) the permit meets all part 70 requirements.

Where the local rule submitted to EPA as a SIP revision represents a relaxation of the current SIP requirement (e.g., the local rule would replace an existing technology forcing rule that has been determined to be unachievable in practice), a part 70 source may propose in its permit application to base its permit on the local rule in anticipation of EPA approval. However, a permit based on the local rule could not be issued prior to EPA approval of the rule. This is because a permit based on the relaxed requirements of the local rule could not assure compliance with the more stringent applicable requirement (the approved SIP), as required by section 504 of the Act. Similarly, a part 70 source may be subject to pending SIP revisions that may tighten certain current SIP obligations and relax others for sources in that source category. Here again the permitting authority could allow initial application completeness to be determined relying on the locally adopted rule, but the permit could not be issued without the current SIP requirements unless a source opted to demonstrate that the submitted rule represents, for that specific source, a more stringent requirement than the current SIP. In such a case, the part 70 permit could subsequently be issued for that source on the basis of the local rule, since the permit terms would assure compliance with the approved SIP.

b. Initial actions by EPA and permitting authorities. The EPA is committed to working with States within available resources to assure that the timetable for overall permit issuance is not adversely affected by pending SIP revisions that are not straightforward tightenings. The extent of the problem, however, will vary greatly and, in some cases, may require a specific plan of action between EPA and certain States to expedite SIP processing where the problem is substantial.

In California, where this problem is believed to be most

extensive, EPA, the districts, and the California Air Resources Board are in the process of identifying rules in the SIP backlog that are not straightforward tightenings or are relaxations of the currently approved SIP, and will target them for expeditious processing. These rules will be identified within a specified timeframe, generally within 1 year of the effective date of a district's part 70 program. The EPA's Region IX will enter into formal agreements with affected districts and will commit to take action on this "targeted" portion of the SIP backlog before comprehensive permit issuance for sources affected by the backlog would be required, provided this is consistent with the transition plan¹⁹ (as it may be revised). Other EPA Regional Offices will determine the need and resources available for this type of exercise on a case-by-case basis. Region IX will also commit to process expeditiously any similar rules submitted or identified after the period of the formal agreement, although such processing would not necessarily occur before permits must be issued to sources affected by these rules.

Under Region IX's formal agreements, permitting authorities in the districts need not issue the portion of the part 70 permit covering emissions units affected by the targeted backlog until the rule adoption or change identified in the formal agreement has been acted on by EPA, consistent with the flexibility allowed in the permit issuance transition plan in the permitting authority's program. This should in most cases allow permitting authorities to delay issuing permits to sources to the extent they are affected by the targeted SIP backlog until EPA completes its review action on the pending SIP revisions. Where a transition plan contains a permit issuance schedule that would not allow postponing permit issuance until EPA has acted on the proposed SIP revisions, appropriate changes to the plan can still be made to defer permit issuance until EPA action on the targeted SIP backlog. Such changes would be made following the same approach described for changing application forms in EPA's first White Paper. Within these constraints, a permitting authority may allow for issuance of part 70 permits to the facility in phases such that permits covering those emissions units of the facility affected by the targeted SIP revision are issued later. This result is also consistent with the flexibility contained in § 70.2 (see definition of "Part 70 permit") for the permitting authority to issue multiple permits to one part 70 source if it makes sense to do so. Alternatively, the permitting authority could issue the permit in its entirety based on the current SIP.

The EPA agrees that delays in permit issuance described

¹⁹Transition plan refers to the 3-year transition strategy for initial part 70 permit issuance described in § 70.4(b)(11).

above will not be cause for an EPA finding of failure by the permitting authority to adequately administer or enforce its part 70 program. Any initial permit issued under a phased approach (i.e., the first phase involves all emissions units unaffected by the SIP backlog targeted by EPA), however, does not shield the source from the enforceability of the requirements excluded in the first phase permit and the obligation to obtain permit conditions covering the excluded emissions units after EPA has acted on the relevant SIP rule backlog.

c. Ongoing actions. The preceding guidance should address the most significant problems associated with the development of part 70 permit applications and the subsequent issuance of part 70 permits that result from the existence of a SIP backlog. The EPA recognizes, however, that areas experiencing the most significant start-up problems with respect to pending SIP rules may well require an ongoing program to manage the potential SIP backlog so as to prevent significant problems of this nature from occurring in the future. In some situations it may be appropriate on a continuing basis for EPA to determine preliminarily whether a submitted rule can be listed as one which would assure compliance with the SIP rule it seeks to replace. This would enable the permitting authority to adjust its priorities for requiring application updates and for accomplishing permit issuance and revision.

For post application submittal, a source that has filed a complete application may opt to, or be required to, update its current application as a result of changes or pending changes to the SIP. The likelihood of these changes occurring will vary from area to area, and are most likely to affect sources scheduled later in the transition period for initial permit issuance. For example:

- o A local rule previously relied upon may be amended by the State or district.
- o Where a local rule that was previously listed in the formal agreement for expeditious SIP processing (because the rule is not a straightforward strengthening) is disapproved by EPA and the source has relied on that rule in preparing its application, the applicant must file an application update that either demonstrates that compliance with the local rule would assure compliance with the current SIP or demonstrates direct compliance with the current SIP.
- o The adoption and submission to EPA of a more stringent local rule after an applicant has filed its application may present a new and desired opportunity for streamlining. If so, the applicant could opt to file an application update to

shift the compliance focus of its current application to the newly adopted local rule, which is pending SIP approval, provided it meets the streamlining criteria described in section II.A. above.

For post permit issuance, sources may also encounter changes to rule situations after initial permit issuance that could lead them to request a permit revision. For example, sources may propose a revision to an issued part 70 permit where a newly adopted local rule would present a desirable streamlining opportunity. The significant permit revision process would be required under the current part 70 to accomplish this change. Note that EPA in its revisions to part 70 may authorize permitting authorities to use a less extensive permit revision process.

To initiate the permit revision, the source must file an application to revise the permit to contain the requirements of local rule instead of the current SIP. This application must meet the previously defined and applicable streamlining criteria.

In response, the permitting authority may subsequently revise the permit based on the local rule in lieu of the current SIP where (1) the rule is listed by the EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or (2) the applicant has provided a source specific demonstration consistent with the streamlining criteria in section II.A.2. that assures this result. A permit shield or similar permit condition should be issued for purposes of certainty. In the absence of a shield or similar permit condition, all aspects of the approved SIP remain enforceable, regardless of the source's compliance status with respect to the permit. The EPA encourages permitting authorities currently without provisions for incorporating permit shields to add them at their first opportunity.

3. Process.

a. Initial Applications. An applicant proposing to submit its part 70 permit application based on a local rule that has been submitted for EPA approval rather than the current SIP would take one of two courses of actions depending on the status of the local rule with EPA and/or the permitting authority:

The first course of action would be appropriate for local rules that (1) have been previously demonstrated to EPA's satisfaction to be at least as stringent as the approved SIP rule so as to assure compliance with it for all subject sources, (2) are otherwise authorized by the permitting authority based on its judgement that such rules will likely be the basis for the

part 70 permit (e.g. EPA approval of the rule is imminent), or (3) have been specifically identified in a formal agreement between the permitting authority and EPA for expeditious SIP processing, i.e., the "targeted backlog." Rules listed in a formal agreement will typically involve local rules pending SIP approval which do or could represent full or partial relaxations of the current SIP. Where they choose to use this approach, the permitting authority and EPA will maintain an up-to-date list of local rules which meet any of these criteria.

In preparing initial part 70 permit applications with respect to such local rules the applicant:

Step One - Will indicate in its application that it has opted for this approach, list or cross-reference all requirements from applicable local rules that are eligible for this approach, and refer to the list maintained for this purpose by the permitting authority.

Step Two - Will identify in the permit application the current SIP requirements that the pending SIP revision would replace.

Step Three - May choose to certify compliance with the requirement(s) of the pending local rule in lieu of the current SIP if there is sufficient source compliance data on which to base such a certification. (The EPA is proposing to revise its part 70 regulations to provide that such a certification would meet the requirements of § 70.5(c)(10).)

Step Four - May propose that a permit shield would be in effect upon permit issuance. For those listed local rules which are recognized by EPA as being able to assure compliance with the current SIP rule, the applicant would indicate in the application that a permit shield (or alternatively, other similar language where authority for a permit shield is not available) is being proposed to be incorporated into the permit to confirm this understanding.

The second course of action would be appropriate where the criteria specified above have not been met for a particular rule and an applicant still wants to base its initial part 70 application on such local rules pending SIP approval. In this instance, the process would be essentially the same but the source would have to demonstrate that compliance with the local rule would assure compliance with the current SIP (i.e., make an adequate demonstration consistent with the streamlining criteria described in section II.A.2. above.) and submit it with the permit application in step one. Again, if a part 70 permit application has already been submitted without streamlining but

the source agrees to subsequently pursue this option, the permitting authority may work with the source to support streamlining requirements during the permit development process.

b. Initial Permit Issuance Process. After receiving a complete application, the permitting authority must note where the applicant has proposed use of the approaches described above in section II.B.3.a. The note would be placed in the application summary, the application, or the revised application. Copies of the application summary, the application, or the revised application containing such proposals must be submitted promptly to EPA (unless EPA has agreed that the demonstration is of a type not required for advance submittal to EPA).

Where the rule is listed by EPA as one where compliance with it would assure compliance with the relevant portions of the current SIP, or the applicant has provided a source specific demonstration consistent with the streamlining outlined in section II.A.2., the permitting authority may proceed to issue the permit based on the local rule in lieu of the current SIP. A permit shield or similar permit condition which confirms this understanding should be issued for purposes of certainty.

If an applicant chooses to demonstrate that a local rule assures compliance with the applicable SIP for all affected emissions units, the permitting authority will evaluate this proposal and any supporting documentation. Upon completion of this evaluation and prior to releasing a draft permit public notice, the permitting authority is advised to communicate any concerns to the applicant and provide reasonable opportunity for the applicant to accept the findings or propose a resolution of the differences. This may cause some revisions to the application as originally filed.

If the permitting authority or EPA are not satisfied that the local rule (as it applies to the applicant's facility) assures compliance with the applicable SIP rule, the applicant must revise its application to rely on the SIP rule. All required application updates must be submitted on or before the reasonable deadline required by the permitting authority for the source to maintain its application shield.

Consistent with the flexibility allowed in the permit issuance transition plan (as it may be revised), the permitting authority may delay issuance of those portions of a source's permit that are covered by a rule identified in a Region IX type formal agreement, which targets certain SIP rules for expeditious processing, until EPA has acted on the relevant rule(s). Alternatively, comprehensive permits may be issued to such a source prior to the time that EPA has acted on the rule provided

that they are based on the current SIP (unless the source has provided an adequate streamlining demonstration).

4. Enforcement.

All terms and conditions of the part 70 permit are enforceable by EPA and by citizens. In addition, a source violating the emissions limitation in the part 70 permit is also subject to enforcement action for violation of the current SIP emissions limits if a violation of this limit can be documented.

Upon issuance of a part 70 permit based on the local rule, the permit terms and conditions implementing the local rule would become federally enforceable. A source would not be subject to an EPA enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are required under the currently approved SIP, if such an understanding has been specified in the permit. These requirements would no longer be independently enforceable, provided the source attempts in good faith to implement the monitoring, recordkeeping, and reporting approach required under the local rule.

If subsequently the permitting authority or EPA determines that the permit does not assure compliance with applicable requirements, the permit must be reopened and revised.

5. Discussion.

Sources in California districts currently are subject to several locally adopted rules which are pending before EPA as proposed SIP revisions. The majority of these local rules have been determined by the districts to be more stringent than the SIP rules that they seek to replace, although some of these rules would relax the current SIP requirements for certain affected sources. In some cases, technology-forcing SIP rules have been found to be infeasible to achieve and, instead of seeking to enforce them, districts have adopted achievable local rules. Until the local rules are approved into the SIP, sources are subject to both the local rule and the federally-approved version of the rule.

The resulting "outdated SIP" presents special problems to sources which must file a part 70 permit application. In particular, questions arise as to whether sources must complete their applications and certify compliance based on SIP rules which have been superseded by more stringent local rules or by rules that have been relaxed where, for example, the permitting authority has found the current SIP rules to be unachievable. Those problems, while most apparent in their effect on the start-up of a part 70 program, are also ongoing in nature and may

create a need to update initially complete permit applications and to revise issued permits. The EPA believes that these problems with outdated SIP rules are most extensive in California but are not unique to that State.

The EPA strongly believes that implementation of title V to the extent possible should complement, not complicate, the implementation of other titles, including title I, the purpose of which is to assure adoption of programs that will attain and maintain the national ambient air quality standards (NAAQS).²⁰ Accordingly, the Agency is providing this guidance which will allow sources and permitting authorities to rely on more stringent local rules for permit issuance. The overall strategy for sensitizing the SIP revision process to part 70 concerns presented in this guidance will allow sources to focus more on current air quality requirements in all aspects of part 70 permit application development and update, permit issuance, and permit revision.

The legal basis for recognizing a local rule pending SIP approval in lieu of the current, but less stringent, SIP requirement or for streamlining multiple applicable requirements is identical to the basis for adopting a streamlined emissions limit to replace multiple applicable requirements (see discussion in section II.A.5.). The opportunities for shifting to the more stringent local rule are correspondingly affected by the limitations previously described for the streamlining of applicable requirements.

C. Treatment Of Insignificant Emissions Units.

1. Issue.

How must sources address insignificant emissions units (IEU's) subject to at least one applicable requirement?²¹

²⁰This guidance is designed primarily to alleviate situations where the SIP backlog is both large and longstanding. It is not to be used as a means of anticipating the outcome of pending attainment status redesignations.

²¹An emissions unit can be an IEU for one applicable requirement and not for another. However, such a unit may be eligible for treatment as an IEU only with respect to those pollutants not emitted in significant amounts. The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for

(Insignificant emissions units are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic or facility-wide requirements that apply to all emissions units.) Must the application and the subsequent permit address each IEU individually and require periodic monitoring where it is not otherwise provided by a generically applicable requirement? On what basis can the initial and future compliance certifications be made for IEU's with generally applicable requirements?

2. Guidance.

The EPA interprets part 70 to allow considerable discretion to the permitting authority in tailoring the amount and quality of information required in permit applications and permits as they relate to IEU's. In general, permit applications must contain sufficient information to support the drafting of the part 70 permit (including certain information for IEU's subject to only generally applicable requirements) and to determine compliance status with all applicable requirements. The EPA, however, interprets part 70 to allow permitting authorities considerable discretion as to the format and content of permits, provided that compliance with all applicable requirements, including those for IEU's, is assured. The Agency believes that the clarifications contained herein afford permitting authorities sufficient flexibility to treat IEU's in a manner commensurate with the environmental benefits that may be gained from their inclusion in the permit.

a. Permit Applications - Information. With regard to part 70 requirements to describe and list IEU's in applications and permits, the permitting authority can use the generic grouping approach for emissions units and activities as discussed in the first White Paper. In addition, the requirement to identify all applicable requirements, as it related to IEU's subject to generally applicable requirements, can normally be addressed by standard or generic permit conditions with minimal or no reference to any specific emissions unit or activity. The EPA has reviewed and acquiesced in the issuance of permits wherein generally applicable requirements are incorporated through the use of tables describing a tiered compliance regime for these requirements as they affect different sizes of emissions units, including a distinct and more streamlined compliance regime for IEU's. Different generic permit tables may be necessary to cover the situation for a particular type of IEU which is governed by different applicable requirements. Similarly, the first White Paper provides that no emissions

treatment in the application as an insignificant emissions unit.

estimates need be provided for even regulated emissions streams where it would serve no useful purpose to do so. This should be the case for IEU's where the amount of emissions from a unit is not relevant to determining applicability of, or compliance with, the requirement. Except where the contributions of IEU's would need to be more precisely known to resolve issues of applicability or major source status would the permitting authority need to request emissions estimates for part 70 purposes.

b. Permit Applications - Initial Compliance Certifications. Section 70.5(c)(9) requires complete part 70 applications to contain a certification of compliance with all applicable requirements by a responsible official and a statement of the methods used for determining compliance. This certification must be based on a "reasonable inquiry" by the responsible official. The EPA believes that, for the generally applicable or facility-wide requirements applying to an IEU, reasonable inquiry for initial certifications need only be based on available information, which would include any information required to be generated by the applicable requirement. Regarding the latter, and as is true for any applicable requirement, the initial certification can be based on only the latest cycle of required information (e.g., a source could generally rely on a demonstration of compliance resulting from the most recent required monitoring, notwithstanding the existence of prior monitoring indicating non-compliance at a previous point in time). Where an applicable requirement (generally applicable or otherwise) does not require monitoring, the § 70.5(c)(9) requirement to certify compliance does not itself require that monitoring be done to support a certification. Similarly, there is no need to perform an emissions test to support this compliance certification if none is required by the applicable requirement itself. The EPA interprets § 70.5(c)(9) to allow for a certification of compliance where there is no required monitoring and, despite a "reasonable inquiry" to uncover other existing information, the responsible official has no information to the contrary.

c. Permit Content - Applicable Requirements. With regard to part 70 obligations to include all applicable requirements in the permit, the permitting authority can also use the generic grouping approach for emissions units and activities as discussed in the first White Paper. That is, generally applicable requirements can normally be adequately addressed in the part 70 permit by standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. As noted above, different generic permit provisions may be necessary to cover the situation for which different types of

IEU's are governed by different applicable requirements.

d. Permit Content - Monitoring, Recordkeeping, and Reporting. Section 70.6(a)(3)(i) requires all applicable requirements for monitoring and analysis procedures or test methods to be contained in part 70 permits. In addition, where the applicable requirement does not require periodic testing or monitoring (which may consist of recordkeeping designed to serve as monitoring), the permitting authority must prescribe periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Many of the generically applicable requirements for IEU's have a related test method, but relatively few have a specific regimen of required periodic testing or monitoring.

The EPA believes that the permitting authority in general has broad discretion in determining the nature of any required periodic monitoring. The need for this discretion is particularly evident in the case of generally applicable requirements, which tend to cover IEU's as well as significant emissions units. The requirement to include in a permit testing, monitoring, recordkeeping, reporting, and compliance certification sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emissions units and applicable requirement situations. It does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. In particular, where the establishment of a regular program of monitoring would not significantly enhance the ability of the permit to assure compliance with the applicable requirement, the permitting authority can provide that the status quo (i.e., no monitoring) will meet § 70.6(a)(3)(i). For IEU's subject to a generally applicable requirement for which the permitting authority believes monitoring is needed, a streamlined approach to periodic monitoring, such as an inspection program to assure the proper operation and maintenance of emissions activities (e.g., valves and flanges), should presumptively be appropriate.

The EPA's policy on IEU monitoring needs is based on its belief that IEU's typically are associated with inconsequential environmental impacts and present little potential for violations of generically applicable requirements, and so may be good candidates for a very streamlined approach to periodic monitoring. As EPA noted in the first White Paper, generally applicable requirements typically reside in the SIP. Permitting authorities therefore not only have the best sense of which requirements qualify as generally applicable, but also where it is appropriate to conclude that periodic monitoring is not

necessary for IEU's subject to these requirements. Where the source ascertains that the permitting authority will not require periodic monitoring for IEU's, it can of course omit a periodic monitoring proposal from the application.

e. Permit Content - Compliance Certifications. Section 70.6(c)(5) requires in part that each permitted source submit no less frequently than annually a certification of its compliance status with all the terms and conditions of the permit. This certification will be based on available information, including monitoring and/or other compliance terms required in the permit. Where a particular emissions unit presents little or no potential for violation of a certain applicable requirement, the "reasonable inquiry" required by title V can be abbreviated. Since it can be determined in the abstract that violation of the requirement by these emissions units is highly improbable, it is reasonable in that instance to limit the search for information to what is readily available. As noted above, EPA believes that an IEU subject to a generally applicable requirement typically presents little or no potential for violation of those requirements. It follows that where, for instance, a permit does not require monitoring for IEU's subject to a generally applicable requirement, and there were no observed, documented, or known instances of non-compliance, an annual certification of compliance is presumptively appropriate. Similarly, where monitoring is required, an annual certification of compliance is also appropriate when no violations are monitored and there were no observed, documented, or known instances of non-compliance.

3. Discussion.

Many of the concerns expressed to EPA regarding the treatment of IEU's in the application and permit arise because IEU's are in most cases not directly regulated, and therefore could be left off the permit entirely, were it not for the presence of certain generic requirements that apply to all emissions units. Though the focus of concern is the applicability of the generic requirements to IEU's, response to these concerns derive primarily from the flexibility that exists in part 70 for dealing with generically applicable requirements. In implementing this flexibility, it may be appropriate for the permitting authority to further distinguish between units that have been designated as insignificant and those that have not. This is so because the relative size of a unit can be an important factor in deciding how to fashion permit terms even for a generically applicable requirement, and State-established IEU's normally define the smallest emissions points. However, EPA notes that, as a matter of part 70 interpretation, whether a unit has been designated as insignificant is not necessarily critical to its treatment in the part 70 permit.

Concerns have been expressed that addressing in part 70 permits the relatively trivial portion of emissions attributable to IEU's will consume a disproportionate share of the total resources available to issue part 70 permits. That is, according to their understanding of part 70, applicants and permitting authorities will expend greater resources than warranted to determine the specific applicability of requirements to IEU's, how compliance with them will be assured, and the basis on which the certification of compliance status of the source with respect to these IEU's would be made.

The EPA believes that the policy described for addressing generically applicable requirements in applications and permits as they apply to IEU's allows permitting authorities sufficient flexibility to streamline the required administrative effort commensurate to the environmental significance of the varying types of IEU situations. This should prevent the potentially high but unintended level of costs identified by certain sources and permitting authorities from occurring in the future with respect to IEU's.

D. Use Of Major Source And Applicable Requirement Stipulation.

1. Issue.

When an applicant stipulates that it is a major source and subject to specific applicable requirements, how much, if any, additional information related to applicability is necessary in the part 70 permit application?

2. Guidance.

If an applicant stipulates that it is a major source²² and subject to specific applicable requirements, it need not provide additional information in its application to demonstrate applicability with respect to those requirements, provided that (1) the permitting authority has had previous review experience with a particular source (e.g., issued it a permit), or (2) otherwise has an adequate level of familiarity with the source's operation (e.g., current emissions inventory information). This does not affect the requirement to provide information for other purposes under part 70, such as to support a compliance certification or a request for a permit shield or to describe the emissions activities of its site (see first White Paper).

Accordingly, permitting authorities may allow the applicant

²²If an applicant stipulates it is a major source, it must list all pollutants for which it is major.

to stipulate that:

- o Its facility is a major source and subject to part 70 permitting, without providing any additional information for the applicability determination;
- o It is subject to specific applicable requirements, to be included in its part 70 permit, without providing additional information to establish applicability for stipulated requirements; or
- o It is subject to only portions of an applicable requirement and state that it is not subject to other portions. Such a stipulation must explicitly state which portion of the rule applies and which does not and an explanation must be provided for this conclusion.

Stipulation by a source to major source status or specific applicable requirements in a part 70 application does not preclude the permitting authority from requesting additional information from the applicant for establishing the applicability of non-stipulated requirements or for verifying a stipulation that certain requirements are not applicable.

3. Discussion.

In general, part 70 requires that applications contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit.

In the first White Paper, EPA indicated a substantial degree of discretion for permitting authorities in this area. It indicates that States may adopt different approaches to meet the minimum program requirements established by the part 70 regulations depending on local needs. In many instances, a qualitative description of emissions will satisfy this standard. However, the applicant may need to provide more detailed information for purposes other than determining applicability and to foster efficiency in the permitting program.

For the purpose of determining the applicability of part 70 or other specific requirements, the information required in an application should be streamlined for the mutual benefit of the applicant and the permitting authority. An applicant that stipulates it is a major source subject to part 70 and to other applicable requirements should not be required to provide any additional information to verify those facts in its part 70

application. However, the applicant must provide sufficient information to allow the permitting authority to impose the applicable requirement. In addition, the resulting application streamlining would not relieve the applicant from submitting, or the permitting authority from reviewing, emissions or other data for part 70 purposes other than determining applicability.

In the case where there is no dispute that a stationary source is subject to part 70, and the applicant stipulates that the source is a part 70 source in the application, no further information would be required for applicability determination. An example would be a source which is currently operating under a prevention of significant deterioration permit because it is major for PM-10. Both the source and the permitting authority agree that the source is subject to the State's part 70 program.

A source may also streamline the part 70 permit process by stipulating that specific applicable requirements apply. This does not relieve the source of its obligation to identify all applicable requirements or preclude the permitting authority from requesting additional information, including information pertaining to the applicability of requirements not covered in the stipulation. For example, a stationary source may stipulate it is subject to a SIP rule. However, the permitting authority may suspect that the source is also subject to a New Source Performance Standard (NSPS), but may need more information for confirmation. In this case, the permitting authority would request additional information related to the applicability of the NSPS.

Similarly, an applicant may stipulate that it is subject to only portions of an applicable requirement and state that it is not subject to other portions. In such case, the permitting authority may request the applicant to provide additional information to demonstrate that it is not subject to requirements in question. However, if a source requests a permit shield, additional information to demonstrate the non-applicability of these requirements must be submitted.

E. Referencing Of Existing Information In Part 70 Permit Applications And Permits.

1. Issue.

Can an applicant in its permit application, and can the permit itself, reference existing information that is available at the permitting authority? Also, can the permit application and the permit reference applicable requirements through citation rather than by a complete reprinting of the requirements themselves in the part 70 permit application or permit?

2. Guidance.

a. General. Information that would be cited or cross referenced in the permit application and incorporated by reference into the issued permit must first be currently applicable and available to the permitting authority and public²³. The information need not be restated in the part 70 application. Standardized citation formats should be established by the permitting authority to facilitate appropriate use of this mechanism.

Referenced documents must also be specifically identified. Descriptive information such as the title or number of the document and the date of the document must be included so that there is no ambiguity as to which version of which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.

b. Permit Applications. The applicant and the permitting authority should work together to determine the extent to which part 70 permit applications may cross reference agency-issued rules, regulations, permits, and published protocols, and existing information generated by the applicant. To facilitate referencing existing information, permitting authorities should identify the general types of information available for this purpose. To the extent that such information exists and is readily available to the public, the following types of information may be cited or cross referenced (as allowed by the permitting authority)²⁴:

²³Referenced documents must be made available (1) as part of the public docket on the permit action or (2) as information available in publicly accessible files located at the permitting authority, unless they are published or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent).

²⁴Use of cross-referencing does not shift any burden of reproducing or otherwise acquiring information to the permitting authority.

- o Rules, regulations, and published protocols.
- o Criteria pollutant and HAP emission inventories and supporting calculations.
- o Emission monitoring reports, compliance reports, and source tests.
- o Annual emissions statements.
- o Process and abatement equipment lists and descriptions.
- o Current operating and preconstruction permit terms.
- o Permit application materials previously submitted.
- o Other materials with the approval of the permitting authority.

Applicants are obligated to correct and supplement inaccurate or incomplete permitting authority records relied upon for the purposes of part 70 permit applications. The responsible official must certify, consistent with § 70.5(d), to the truth, accuracy, and completeness of all information referenced.

c. Permits. Incorporation by reference in permits may be appropriate and useful under several circumstances. Appropriate use of incorporation by reference in permits includes referencing of test method procedures, inspection and maintenance plans, and calculation methods for determining compliance. One of the key objectives Congress hoped to achieve in creating title V, however, was the issuance of comprehensive permits that clarify how sources must comply with applicable requirements. Permitting authorities should therefore balance the streamlining benefits achieved through use of incorporation by reference with the need to issue comprehensive, unambiguous permits useful to all affected parties, including those engaged in field inspections.

Permitting authorities may, after listing all applicable emissions limits for all applicable emissions units in the part 70 permit, provide for referencing the details of those limits, rather than reprinting them in permits to the extent that (1) applicability issues and compliance obligations are clear, and (2) the permit includes any additional terms and conditions sufficient to assure compliance with all applicable requirements²⁵.

²⁵In the case of a merged permit program, i.e., where a State has merged its NSR and operating permits programs, previous

Where the cited applicable requirement provides for different and independent compliance options (e.g., boilers subject to an NSPS promulgated under section 111 may comply by use of low sulfur fuel or through add-on of a control device), the permitting authority generally should require that the part 70 permit contain (or incorporate by reference) the specific option(s) selected by the source. Alternatively, the permit could incorporate by reference the entire applicable requirement provided that (1) such reference is unambiguous in its applicability and requirements, (2) the permit contains obligations to certify compliance and report compliance monitoring data reflecting the chosen control approach, and (3) the permitting authority determines that the relevant purposes of title V would be met through such referencing. The alternative approach would not be allowable if changing from one compliance option to another would trigger the need for a prior review by the permitting authority or EPA (e.g. NSR), unless prior approval is incorporated into the part 70 permit (i.e., advance NSR).

The EPA does not recommend that permitting authorities incorporate into part 70 permits certain other types of information such as the part 70 permit application (see first White Paper).

3. Discussion.

Title V and part 70 do not define when citation or cross-referencing in permit applications would be appropriate, although it obviously would not be allowed where such citations or cross-references would not support subsequent development of the part 70 permit. The EPA's first White Paper states that a permitting authority may streamline part 70 applications by allowing the applicant to cross-reference a variety of documents including permits and Federal, State, and local rules. This guidance further provides that where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory) the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Permitting authorities' files and databases often include information submitted by the applicant which can also be required by part 70. Development and review of part 70 permit applications could be streamlined if information already held by

NSR permits expire. This leaves the part 70 permit as the sole repository of the relevant prior terms and conditions of the NSR permit. Under these circumstances, it is not possible to incorporate by reference the expired NSR permits.

the permitting authority and the public is referenced or cited in part 70 permit applications rather than restated in its entirety. Similarly, specific citations to regulations that are unambiguous in their applicability and requirements as they apply to a particular source will reduce the burden associated with application development.

Incorporation by reference can be similarly effective in streamlining the content of part 70 permits. The potential benefits of permit development based on an incorporation by reference approach include reduced cost and administrative complexity, and continued compliance flexibility as enforceably allowed by the underlying applicable requirements.

Expectations for referencing with respect to permit content are somewhat better defined than for permit applications. Section 504(a) states that each permit "shall include enforceable emissions limitations and standards" and "such other conditions as are necessary to assure compliance with the applicable requirements." In addition, section 504(c) requires each permit to "set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." Analogous provisions are contained in §§ 70.6(a)(1) and (3). The EPA interprets these provisions to place limits on the type of information that may be referenced in permits. Although this material may be incorporated into the permit by reference, that may only be done to the extent that its manner of application is clear.

Accordingly, after all applicable emissions limits are placed in the part 70 permit and attached to the emissions unit to which they apply, the permitting authority may allow referencing where it is specific enough to define how the applicable requirement applies and where using this approach assures compliance with all applicable requirements. This approach is a desirable option where the referenced material is unambiguous in how it applies to the permitted facility, and it provides for enforceability from a practical standpoint. On the other hand, it is generally not acceptable to use a combination of referencing certain provisions of an applicable requirement while paraphrasing other provisions of that same applicable requirement. Such a practice, particularly if coupled with a permit shield, could create dual requirements and potential confusion.

Even where the referenced requirement allows for compliance options, the permitting authority may issue the permit with incorporation of the applicable requirement provided that the compliance options of the source are enforceably defined under available control options, appropriate records are kept and

reports made, and any required revisions to update the permit with respect to specific performance levels are made. This treatment would be analogous to the flexibility provided to sources through the use of alternative scenarios.

Attachment A

Approval of Alternative Test Methods

The part 63 general provisions, as well as other EPA air regulations implementing sections 111 and 112 of the Act, allow only EPA-approved test methods to implement emissions standards that are established by States to meet Federal requirements. Accordingly, streamlining cannot result in any requirement relying on a State-only test method unless and until EPA, or the permitting authority acting as EPA's delegated agency, approves it as an appropriate method for purposes of complying with that streamlined standard. Currently, all States may be delegated authority to make decisions regarding minor revisions to EPA approved test methods (i.e., minor changes are those that have isolated consequences, affect a single source, and do not affect the stringency of the emissions limitation or standard). The EPA is exploring options for defining where delegation to States is appropriate for reviewing major revisions or new test methods, and for expediting the approval process where the Agency retains final sign-off authority. The EPA recognizes that its approval must generally occur in a timeframe consistent with the time constraints of the part 70 permit issuance process. Until further guidance on this subject is issued, States must obtain EPA approval for all State-only test methods which represent major changes or alternatives to EPA-approved test methods prior to or within the 45-day EPA review period of the proposed permit seeking to streamline requirements.

With respect to SIP requirements, the ability for a permitting authority to authorize use of a different test method depends on the governing language contained in the SIP. For example, some SIP's expressly connect a test method with a particular emissions limit but allow for the use of an equally stringent method. Other SIP's contain a more exclusive linkage between an emissions limit and its required test method (i.e., limit A as measured by test method B). The SIP-approved test method can be changed only through a SIP revision unless the SIP contains provisions for establishing alternative test methods. Attachment B contains example SIP language which provides a mechanism that can establish an alternative applicable requirement in such cases without the need for a source-specific SIP revision.

Permitting authorities may implement streamlining which involves alternative or new test methods within the flexibility granted by the SIP and any delegation of authority granted by EPA (where section 111/112 standards are involved). Permit applications containing a request for a streamlined requirement based on an alternative or new test method must, to be complete,

demonstrate that the alternative or new test method would determine compliance at the same or higher stringency as the otherwise applicable method. The EPA expects to receive expeditiously (i.e., well in advance of any draft permit issuance) those portions of an application dealing with a proposal for streamlining, including any demonstration of test method adequacy. Any required EPA approval of an alternative or new test method need not be obtained as a precondition for filing a complete application, but it must be secured before the final part 70 permit can be issued. As mentioned previously, EPA intends to structure its approval process to comport reasonably with the timelines for part 70 permit issuance.

Attachment B

SIP Provisions For Establishing Alternative Requirements

I. Overview.

States may revise their SIP's to provide for establishing equally stringent alternatives to specific requirements set forth in the SIP without the need for additional source-specific SIP revisions. To allow alternatives to the otherwise-applicable SIP requirements (i.e., emissions limitations, test methods, monitoring, and recordkeeping) the State would include language in SIP's to provide substantive criteria governing the State's exercise of the alternative requirement authority.

II. Example Language For Part 70 Sources To Establish Alternative SIP Requirements.

The following is an example of enabling language that could be used to provide flexibility in the SIP for allowing alternative requirements to be established for part 70 sources.

In lieu of the requirements imposed pursuant to (reference specific applicable sections(s) or range of sections to be covered), a facility owner may comply with alternative requirements, **provided** the requirements are established pursuant to the part 70 permit issuance, renewal, or significant permit revision process and are consistent with the streamlining procedures and guidelines set forth in section II.A. of White Paper Number 2.

For sources subject to an approved part 70 program, an alternative requirement is approved for the source by EPA if it is incorporated in an issued part 70 permit to which EPA has not objected. Where the public comment period precedes the EPA review period, any public comments concerning the alternative shall be transmitted to EPA with the proposed permit. If the EPA and public comment periods run concurrently, public comments shall be transmitted to EPA no later than 5 working days after the end of the public comment period. The Director's [permitting authority's] determination of approval is not binding on EPA.

Noncompliance with any provision established by this rule constitutes a violation of this rule.

III. Example Language For Non-Part 70 Sources To Establish Alternative SIP Requirements.

[NOTE: This section is a draft that EPA expects to finalize after appropriate revisions in the near future.]

For sources not subject to an approved part 70 program, the following is an example of enabling language that States may use to revise/submit SIP rules which would provide flexibility in the SIP for allowing alternative requirements to be established.

A. Procedures.

1. General. In lieu of the requirements imposed pursuant to [reference applicable sections] of this plan, a source owner may comply with an alternative requirement, provided that the Director approves it consistent with the procedures of this paragraph and the criteria of paragraph B.

2. State Review Procedure. The Director may establish an alternative requirement in [a review process defined by the State], provided that the requirements of this paragraph are met for EPA and public review and for notification and access are met. The Director's determination of approval is not binding on EPA.

3. Public Review. The Director shall subject any proposed alternative to adequate public review but may vary the procedures for, and the timing of, public review in light of the environmental significance of the action. For the following types of changes [add list of de minimis actions subject to EPA review], no public review shall be necessary for the approval of the alternative.

4. EPA Review. The Director shall submit any proposed alternative to the Administrator through the appropriate Regional Office, except for the following types of changes [add list of de minimis actions subject to EPA review] no EPA review shall be necessary for the approval of the alternative. Until the specific alternative SIP requirement has completed EPA review, the otherwise applicable SIP provisions will continue to apply.

5. Periodic Notification And Public Access. For all actions taken by the State to establish an alternative requirement, the Director shall provide in a general manner for periodic notification to the public on at least a quarterly basis and for public access to the records regarding established alternatives and relevant supporting documentation.

6. Enforcement. Noncompliance with any alternative established by this provision constitutes a violation of this rule. The EPA and the public may challenge such an alternative limit on the basis that it does not meet the criteria contained in the SIP for establishing such an

alternative. In addition, EPA and the public can take enforcement action against a source that fails to comply with an applicable alternative requirement.

B. General Criteria for Evaluating Alternatives.

1. Applicability. The unit(s) to which the requirements apply must be specified in the underlying SIP and in the permit/alternative. If percentage reductions are required from the source, the baseline must be clearly set. The SIP must require the submission of all the information necessary to establish the baseline, and the alternative requirement must achieve the reduction called for in the SIP.

2. Time. The alternative must specify the effective date of the alternative requirement. The underlying requirement of the SIP shall remain in effect until the effective date of the alternative. The alternative must clearly specify any future-effective dates or any compliance schedules that apply to the source under regulations in effect at the time of issuance. For instance, a source may be due to comply with requirements promulgated before the permit/alternative was issued, but which are effective prior to the expiration of the permit/alternative.

3. Effect of changed conditions. If alternative emissions limitations or other requirements are allowed in the underlying SIP, the associated documentation with the changed conditions must clearly demonstrate the alternative requirement is no less stringent than the original SIP requirement.

4. Standard of conduct. The alternative proposal must clearly state what requirements the source must meet. For example, the SIP must specify the emissions limit and what alternatives are acceptable. The alternative proposal must contain limits, averaging times, test methods, etc., that are no less stringent and must address how they are no less stringent than the underlying SIP requirements. The alternative proposal must also show whether it applies on a per-source or per-line basis or is facility-wide.

5. Transfer Efficiency. Any SIP allowing alternative emissions limits and using transfer efficiency in determining compliance must explicitly state the circumstances under which a source may use improved transfer efficiency as a substitute for meeting the SIP limit. The improvement should be demonstrated through testing and an

appropriate baseline and test method should be specified.¹ See draft "Guidelines for determining capture efficiencies" for criteria for evaluating alternative capture efficiency requirements.

6. Averaging Time. Both the SIP and the alternative proposal must explicitly contain the averaging time associated with each emissions limit (e.g., instantaneous, three hour average, daily, monthly, or longer). The time must be sufficient to protect the applicable NAAQS. The alternative proposal must demonstrate that the averaging time and the emissions limit in the alternative are as stringent as those in the original SIP requirements.

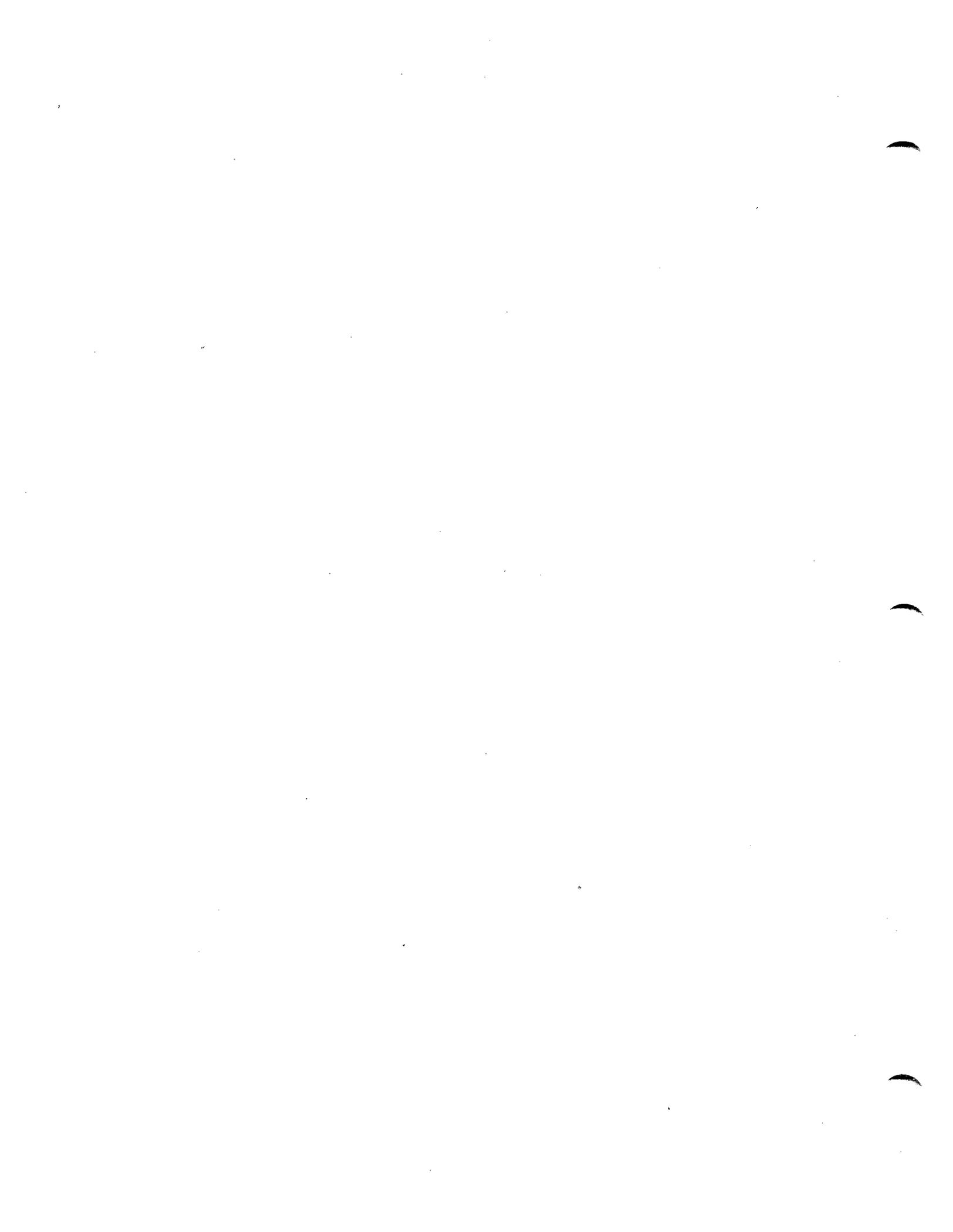
7. Monitoring and Recordkeeping. The alternative proposal must state how the source will monitor compliance with the emissions requirement, and detail how the proposed method compares in accuracy, precision, and timeliness to the SIP-approved method. Records and monitoring data must be retained for at least the same period of time as required by the SIP. The method must enable compliance determinations consistent with the averaging time of the emissions standard.

8. Test Methods. The alternative proposal must detail how the proposed test method in association with its particular emissions requirement (or rule) is at least as stringent as the approved method in association with its emissions limit (or rule) considering the accuracy, reliability, reproducibility, and timeliness of each test method taken in combination with its emissions limit. The application or proposal must also address how the change affects measurement sensitivity and representativeness, describe the need for the change, and indicate if the change is needed for unique conditions related only to the source in question. The method must enable a compliance determination consistent with the averaging time of the emissions standard associated with it.

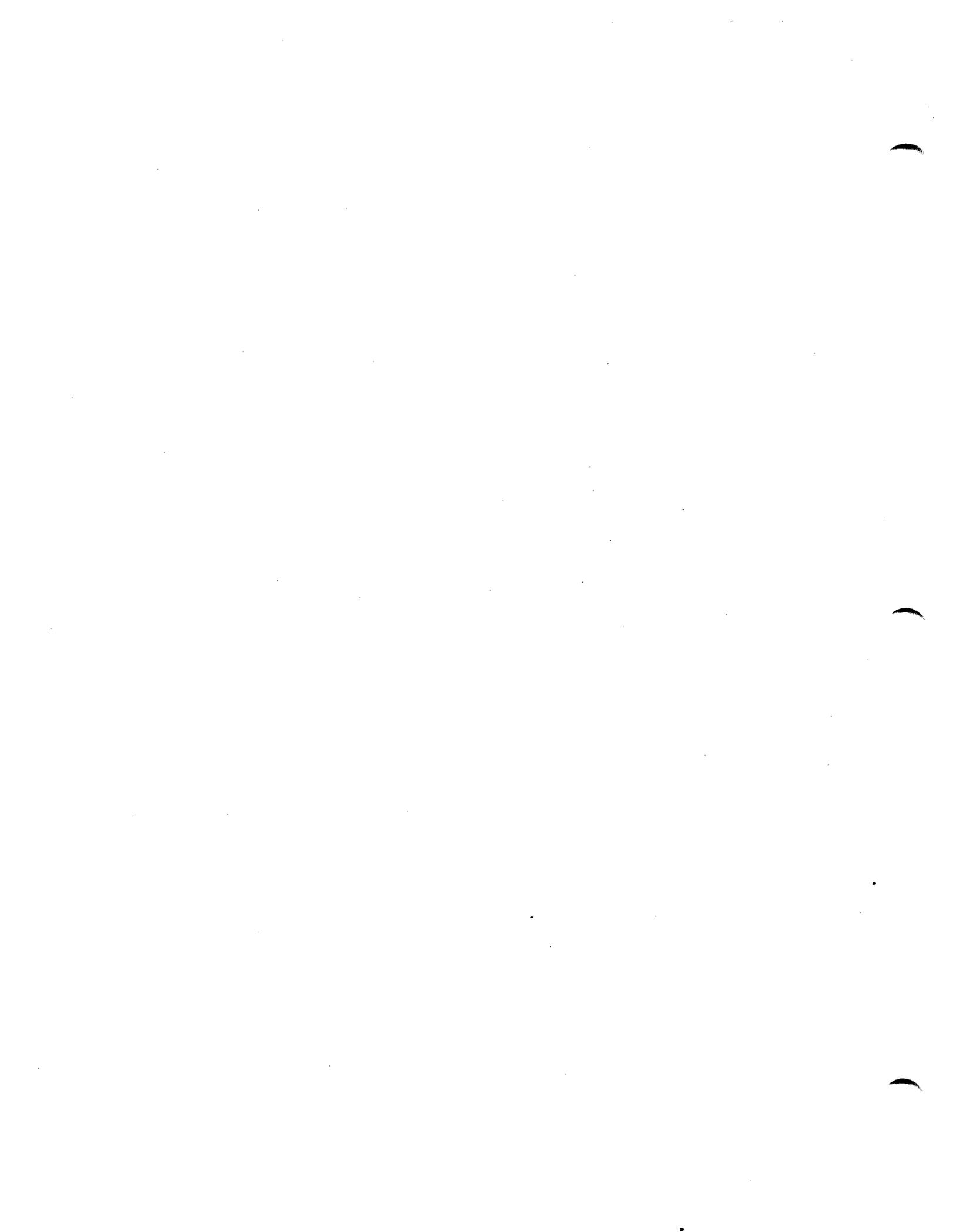
9. Act Requirements. The alternative must meet the all applicable Act requirements (e.g., for reasonably available control technology, 15% VOC reduction, etc.) and must not interfere with any requirements of the Act, including any regarding the SIP's attainment demonstration and requirements for reasonable further progress.

¹Implied improvements noted by the NSPS auto coating transfer efficiency table cannot be accepted at face value.

10. Production Level. The emissions are no greater than the SIP allowable emissions at the same production level. Pre-1990 production/operation scenarios cannot be used as part of any demonstration that the alternative requirements are as stringent as those in the SIP. Also, the demonstration must be performed using an EPA-approved test methods.



Appendix D
Title V renewal form and instructions (200-CAAPP)





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
 DIVISION OF AIR POLLUTION CONTROL -- PERMIT SECTION
 P.O. BOX 19506
 SPRINGFIELD, ILLINOIS 62794-9506

FOR APPLICANT'S USE

Revision #: _____
 Date: ____ / ____ / ____
 Page _____ of _____
 Source Designation: _____

APPLICATION FOR CAAPP PERMIT (CHECK ONLY ONE) <input type="checkbox"/> INITIAL APPLICATION <input type="checkbox"/> RENEWAL APPLICATION <input type="checkbox"/> SIGNIFICANT MODIFICATION	FOR AGENCY USE ONLY
	ID NUMBER:
	PERMIT #:
DATE:	

SOURCE INFORMATION		
1) SOURCE NAME:	2) DATE FORM COMPLETED:	
3) SOURCE STREET ADDRESS:		
4) CITY:	5) ZIP:	
6) IS THE SOURCE LOCATED WITHIN CITY LIMITS? <input type="checkbox"/> YES <input type="checkbox"/> NO		
7) TOWNSHIP NAME:	8) COUNTY:	9) TYPICAL NO. OF EMPLOYEES AT THE SOURCE:
10) ILLINOIS AIR POLLUTION SOURCE ID NO. (IF KNOWN):	11) FEDERAL EMPLOYER IDENTIFICATION NO. (FEIN):	
12) TYPE OF SOURCE AND PRODUCTS PRODUCED:		
13) PRIMARY STANDARD INDUSTRIAL CLASSIFICATION (SIC) CATEGORY:		14) PRIMARY SIC NO.:
15a) LATITUDE (DD:MM:SS):		b) LONGITUDE (DD:MM:SS):
16a) UTM ZONE:	b) UTM VERTICAL (KM):	c) UTM HORIZONTAL (KM):
17a) COORDINATE METHOD:	b) REFERENCE LOCATION:	c) COORDINATE ACCURACY:
18) SOURCE ENVIRONMENTAL CONTACT PERSON:		19) CONTACT PERSON'S TELEPHONE NO.:

THIS AGENCY IS AUTHORIZED TO REQUIRE THIS INFORMATION UNDER ILLINOIS REVISED STATUTES, 1991, AS AMENDED 1992, CHAPTER 111 1/2, PAR. 1039.5. DISCLOSURE OF THIS INFORMATION IS REQUIRED UNDER THAT SECTION. FAILURE TO DO SO MAY PREVENT THIS FORM FROM BEING PROCESSED AND COULD RESULT IN THE APPLICATION BEING DENIED. THIS FORM HAS BEEN APPROVED BY THE FORMS MANAGEMENT CENTER.

APPLICATION PAGE _____

Printed on Recycled Paper
 200-CAAPP

FOR APPLICANT'S USE

OWNER INFORMATION		
20) NAME:		
21) ADDRESS:		
22) CITY:	23) STATE:	24) ZIP:
25) OWNER'S AGENT (IF APPLICABLE):		

OPERATOR INFORMATION		
26) NAME:		
27) ADDRESS:		
28) CITY:	29) STATE:	30) ZIP:

BILLING INFORMATION		
31) NAME:		
32) ADDRESS:		
33) CITY:	34) STATE:	35) ZIP:
36) CONTACT PERSON:		37) CONTACT PERSON'S TELEPHONE NO.:

APPLICANT INFORMATION	
38) WHO IS THE PERMIT APPLICANT? (CHECK ONE): <input type="checkbox"/> OWNER <input type="checkbox"/> OPERATOR	39) ALL CORRESPONDENCE TO: (CHECK ONE) <input type="checkbox"/> OWNER <input type="checkbox"/> SOURCE <input type="checkbox"/> OPERATOR
40) ATTENTION NAME AND/OR TITLE FOR WRITTEN CORRESPONDENCE:	
41) TECHNICAL CONTACT PERSON FOR APPLICATION:	42) CONTACT PERSON'S TELEPHONE NO.:

SUMMARY OF APPLICATION CONTENTS

NOTE: ITEMS 43 TO 62 WILL BE USED FOR APPLICATION COMPLETENESS DETERMINATION.

43) DOES THE APPLICATION INCLUDE A TABLE OF CONTENTS?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
44) DOES THE APPLICATION INCLUDE A LIST OF ALL ITEMS AND ACTIVITIES FOR WHICH A PERMIT IS BEING SOUGHT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
45) DOES THE APPLICATION INCLUDE A PLOT PLAN AND/OR MAP DEPICTING THE AREA WITHIN ONE-QUARTER MILE OF THE SOURCE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
46) DOES THE APPLICATION INCLUDE A PROCESS FLOW DIAGRAM(S) SHOWING ALL EMISSION UNITS AND CONTROL EQUIPMENT, AND THEIR RELATIONSHIP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
47) DOES THE APPLICATION INCLUDE A COMPLETE PROCESS DESCRIPTION FOR THE SOURCE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
48a) DOES THE APPLICATION INCLUDE THE APPROPRIATE, COMPLETED FORMS FOR ALL INDIVIDUAL EMISSION UNITS AND AIR POLLUTION CONTROL EQUIPMENT, LISTING ALL APPLICABLE REQUIREMENTS AND PROPOSED EXEMPTIONS FROM OTHERWISE APPLICABLE REQUIREMENTS?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
b) DOES THE APPLICATION ADDRESS OTHER MODES OF OPERATION FOR WHICH A PERMIT IS BEING SOUGHT?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
*NOTE: NOT APPLICABLE		
c) DOES THE APPLICATION INCLUDE ALL REASONABLY ANTICIPATED OPERATING SCENARIOS FOR WHICH A PERMIT IS BEING SOUGHT?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
*NOTE: NOT APPLICABLE		
49) DOES THE APPLICATION INCLUDE A COMPLETED "FUGITIVE EMISSION" FORM 391-CAAPP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
50) DOES THE APPLICATION INCLUDE A COMPLETED "FEE DETERMINATION FOR CAAPP PERMIT" FORM 292-CAAPP? (NOTE: ANNUAL FEES WILL BE BASED UPON INFORMATION CONTAINED IN THIS FORM.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
51) DOES THE APPLICATION INCLUDE A COMPLETED "HAZARDOUS AIR POLLUTANT EMISSION SUMMARY" FORM 215-CAAPP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
52) DOES THE APPLICATION INCLUDE THE CALCULATIONS ON WHICH THE FOLLOWING, TO THE EXTENT THEY ARE RELATED TO AIR EMISSIONS, WERE BASED: <ul style="list-style-type: none"> • POLLUTANT EMISSION RATES, • FUELS AND RAW MATERIALS USAGE, AND • CONTROL EQUIPMENT EFFICIENCY? 	<input type="checkbox"/> YES	<input type="checkbox"/> NO
53) DOES THE APPLICATION INCLUDE A COMPLETED "COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE FOR CAAPP PERMIT" FORM 293-CAAPP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
54) DOES THE APPLICATION INCLUDE A COMPLETED "COMPLIANCE CERTIFICATION" FORM 296-CAAPP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
55) DOES THE APPLICATION INCLUDE A COMPLETED "COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE-ADDENDUM FOR NONCOMPLYING EMISSION UNITS" FORM 294-CAAPP FOR ONE OR MORE NONCOMPLIANT EMISSION UNITS FOR WHICH ISSUANCE OF A CAAPP PERMIT IS REQUESTED?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
*NOTE: NOT APPLICABLE		

56) HAS THE APPLICANT RETAINED A COPY OF THIS APPLICATION AT THE SOURCE? (NOTE: IF TRADE SECRET INFORMATION IS NOT BEING SUBMITTED, THEN ONLY THE ORIGINAL APPLICATION NEED BE INITIALLY SUBMITTED, HOWEVER, THE ILLINOIS EPA MAY REQUEST UP TO 4 COPIES OF THE FINAL APPLICATION PRIOR TO PUBLIC NOTICE.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
57a) DOES THE APPLICATION CONTAIN TRADE SECRET INFORMATION?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
b) IF YES, HAS SUCH INFORMATION BEEN PROPERLY MARKED AND CLAIMED, AND TWO SEPARATE COPIES OF THE APPLICATION SUITABLE FOR PUBLIC INSPECTION BEEN SUBMITTED, IN ACCORDANCE WITH APPLICABLE REGULATIONS?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
58) DOES THE APPLICATION INCLUDE AN EARLY REDUCTION DEMONSTRATION FOR HAZARDOUS AIR POLLUTANTS (HAP) PURSUANT TO SECTION 112(i)(5) OF THE CLEAN AIR ACT AS AMENDED IN 1990?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
	*NOTE: NOT APPLICABLE	
59) DOES THE APPLICATION INCLUDE A PROPOSED DETERMINATION OF MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT) FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO SECTION 112 OF THE CLEAN AIR ACT AS AMENDED IN 1990?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
	*NOTE: NOT APPLICABLE	
60) HAS THE APPLICANT REGISTERED A RISK MANAGEMENT PROGRAM FOR ACCIDENTAL RELEASES PURSUANT TO SECTION 112(r) OF THE CLEAN AIR ACT AS AMENDED IN 1990 OR INTENDS TO COMPLY WITH THIS REQUIREMENT IN ACCORDANCE WITH ITS COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
	*NOTE: NOT APPLICABLE	
61a) FOR CAAPP PERMIT RENEWALS, DOES THE APPLICATION INCLUDE A COMPLIANCE ASSURANCE MONITORING PLAN (FORM 464-CAAPP) PURSUANT TO 40 CFR PART 64?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
	*NOTE: NOT APPLICABLE	
b) FOR SIGNIFICANT MODIFICATIONS AND INITIAL CAAPP APPLICATIONS SUBMITTED AFTER APRIL 20, 1998, DOES THE APPLICATION INCLUDE A COMPLIANCE ASSURANCE MONITORING PLAN (FORM 464-CAAPP) PURSUANT TO 40 CFR PART 64 FOR EMISSION UNITS WITH POST-CONTROL EMISSIONS GREATER THAN OR EQUAL TO THE MAJOR SOURCE THRESHOLD?	<input type="checkbox"/> *NA	<input type="checkbox"/> YES <input type="checkbox"/> NO
	*NOTE: NOT APPLICABLE	
62) FOR SIGNIFICANT MODIFICATIONS, DOES THE APPLICATION INCLUDE A DESCRIPTION OF THE PROPOSED CHANGE(S), INCLUDING ALL PHYSICAL CHANGES IN EQUIPMENT, CHANGES IN THE METHOD OF OPERATION, CHANGES IN EMISSIONS, AND ANY NEW APPLICABLE REQUIREMENTS WHICH WILL APPLY AS A RESULT OF THE PROPOSED CHANGE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

NOTE: ANSWERING "NO" TO ANY OF THE ABOVE (ITEMS 43-62, EXCEPT ITEM 57a) MAY RESULT IN THE APPLICATION BEING DEEMED INCOMPLETE.

63) DOES THE APPLICATION REQUEST TO UTILIZE THE OPERATIONAL FLEXIBILITY PROVISIONS AND INCLUDE THE INFORMATION REQUIRED FOR SUCH USE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
64a) DOES THE APPLICANT HEREBY REQUEST A PERMIT SHIELD FOR THE ENTIRE SOURCE?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
b) IF NO, DOES THE APPLICATION CONTAIN A REQUEST FOR A PERMIT SHIELD FOR SPECIFIC ITEMS ONLY, IN ACCORDANCE WITH THE INSTRUCTIONS FOR A CAAPP PERMIT?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
65) DOES THE APPLICATION INCLUDE A COMPLETED "LISTING OF INSIGNIFICANT ACTIVITIES" FORM 297-CAAPP?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
66) DOES THE APPLICATION INCLUDE A DRAWING PROVIDING THE SOURCE LAYOUT? IF NO, PLEASE NOTE THAT THE ILLINOIS EPA MAY REQUEST SUCH A DRAWING UPON DETAILED REVIEW OF THE APPLICATION.	<input type="checkbox"/> YES	<input type="checkbox"/> NO

67) WHY IS THE APPLICANT APPLYING FOR A CAAPP PERMIT (CHECK ALL THAT APPLY)?

- THE POTENTIAL TO EMIT ONE OR MORE AIR POLLUTANTS FOR THE SOURCE IS 100 TONS/YEAR OR GREATER.
- THE SOURCE IS AN AFFECTED SOURCE FOR ACID RAIN DEPOSITION.
- THE POTENTIAL TO EMIT VOM IS 25 TONS/YEAR OR MORE AND THE SOURCE IS LOCATED IN ONE OF THE FOLLOWING CHICAGO AREA COUNTIES OR TOWNSHIPS:
 - COOK COUNTY
 - DUPAGE COUNTY
 - KANE COUNTY
 - LAKE COUNTY
 - McHENRY COUNTY
 - WILL COUNTY
 - AUX SABLE TOWNSHIP, GRUNDY COUNTY
 - GOOSE LAKE TOWNSHIP, GRUNDY COUNTY
 - OSWEGO TOWNSHIP, KENDALL COUNTY

NOTE: THE U. S. EPA HAS APPROVED AN EXEMPTION ON NITROGEN OXIDES (NO_x) EMISSIONS AS AN OZONE PRECURSOR IN THE CHICAGO OZONE NON-ATTAINMENT AREA. THEREFORE THE MAJOR SOURCE THRESHOLD FOR NO_x EMISSIONS IS 100 TONS/YEAR UNTIL THIS EXEMPTION IS NO LONGER EFFECTIVE. SHOULD THE CURRENT NO_x EXEMPTION BE NO LONGER EFFECTIVE, THE MAJOR SOURCE THRESHOLD FOR NO_x EMISSIONS WILL BE 25 TONS/YEAR IN THE ABOVE CHICAGO AREA COUNTIES AND TOWNSHIPS.

- THE POTENTIAL TO EMIT AN INDIVIDUAL HAZARDOUS AIR POLLUTANT IS 10 TONS/YEAR OR MORE, OR THE POTENTIAL TO EMIT ALL SOURCE WIDE HAZARDOUS AIR POLLUTANTS IS 25 TONS/YEAR OR MORE, OR MEETS AN APPLICABLE LOWER THRESHOLD.
- THE SOURCE CONTAINS EQUIPMENT OR OPERATIONS SUBJECT TO CERTAIN USEPA EMISSION STANDARDS (NSPS AND NESHAP) FOR WHICH USEPA REQUIRES A CAAPP PERMIT.

68a) ARE ACTUAL EMISSIONS OF THE SOURCE BELOW THE APPLICABILITY LEVELS FOR A CAAPP PERMIT?

YES NO

b) DOES THE APPLICATION CONTAIN PROPOSED PERMIT LIMITATIONS THAT WILL CONSTRAIN THE EMISSIONS AND PRODUCTION OR OPERATION OF THE SOURCE SUCH THAT POTENTIAL EMISSIONS OF THE SOURCE WILL FALL BELOW THE LEVELS FOR WHICH A CAAPP PERMIT IS REQUIRED?

YES NO

c) DOES THE APPLICANT HEREBY REQUEST A FEDERALLY ENFORCEABLE STATE OPERATING PERMIT (FESOP) CONSTRAINING THE EMISSIONS AND PRODUCTION OR OPERATION OF THE SOURCE SUCH THAT POTENTIAL EMISSIONS WOULD FALL BELOW APPLICABILITY LEVELS AND THEREBY EXCLUDE THE SOURCE FROM REQUIRING A CAAPP PERMIT?

YES NO

SIGNATURE BLOCK

NOTE: THIS CERTIFICATION MUST BE SIGNED BY A RESPONSIBLE OFFICIAL. APPLICATIONS WITHOUT A SIGNED CERTIFICATION WILL BE RETURNED AS INCOMPLETE.

69) I CERTIFY UNDER PENALTY OF LAW THAT, BASED ON INFORMATION AND BELIEF FORMED AFTER REASONABLE INQUIRY, THE STATEMENTS AND INFORMATION CONTAINED IN THIS APPLICATION ARE TRUE, ACCURATE AND COMPLETE.

AUTHORIZED SIGNATURE:

BY:

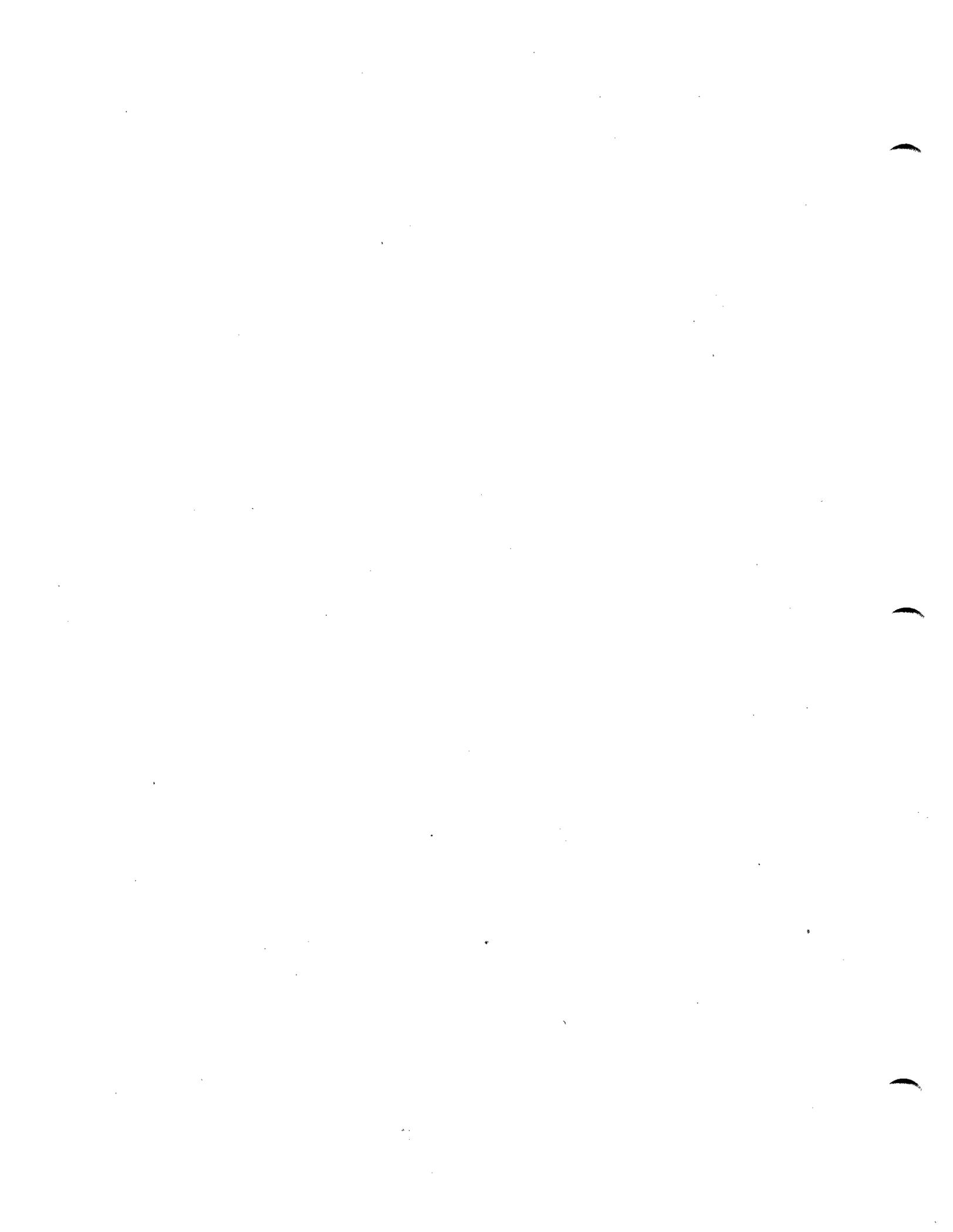
AUTHORIZED SIGNATURE

TITLE OF SIGNATORY

TYPED OR PRINTED NAME OF SIGNATORY

_____/_____/_____

DATE



**GENERAL INSTRUCTIONS
FOR
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) APPLICATIONS**

Before completing a CAAPP application, please read the following carefully.

The owner or operator of a CAAPP source is required to submit to the Illinois Environmental Protection Agency (Illinois EPA) an application for a permit covering all emission units and air pollution control equipment at the source, which includes all emission generating activities (e.g., fugitive road traffic dust).

COMPLETE APPLICATION

A complete application will contain the following items (a) through (p):

- a. Form 200-CAAPP - APPLICATION FOR CAAPP PERMIT.
- b. Table of Contents which provides the designation and page numbers of the application contents including all forms, requests, and attachments.
- c. Plot plan/map.
- d. Process flow diagram(s).
- e. Process description(s).
- f. List of the emission units and air pollution control equipment, including all emission generating activities, for which a permit is being sought.
- g. Form 297-CAAPP - LISTING OF INSIGNIFICANT ACTIVITIES, if applicable.
- h. The appropriate form for each emission unit, in accordance with the following:
 - I. Except as noted in II. below, one of the following forms must be completed and submitted for each emission unit at the source:
 - 220 - CAAPP - PROCESS EMISSION UNIT (see item III below)
 - 240 - CAAPP - FUEL COMBUSTION EMISSION UNIT
 - 250 - CAAPP - INCINERATOR
 - 270 - CAAPP - STATIONARY INTERNAL COMBUSTION ENGINE OR TURBINE

These forms are referred to as the "*EMISSION UNIT FORMS*".

- II. An emission unit form must be completed for each emission unit at the source except for the following operations for which only the indicated form need be submitted:
 - 232 - CAAPP - STORAGE TANK
 - 234 - CAAPP - HOT MIX ASPHALT PLANT
 - 235 - CAAPP - AGGREGATE CRUSHING PLANT
 - 236 - CAAPP - GRAIN HANDLING AND GRAIN DRYING
(must be accompanied by form 236A - CAAPP)
 - 237 - CAAPP - PERCHLOROETHYLENE DRY CLEANING
 - 358 - CAAPP - SOLVENT CLEANING - OPEN TOP VAPOR DEGREASER
 - 366 - CAAPP - SOLVENT CLEANING - CONVEYORIZED DEGREASER
 - 367 - CAAPP - SOLVENT CLEANING - COLD CLEANING DEGREASER

These forms are referred to as the "*STAND ALONE FORMS*".

- III. For the following operations, in addition to a form CAAPP-220, the appropriate form below must be completed:
 - 301 - CAAPP - COATING OPERATION
 - 302 - CAAPP - PRINTING AND PUBLISHING
 - 303 - CAAPP - PAINT AND INK MANUFACTURING
 - 336 - CAAPP - ELECTROPLATING TANK
 - 236A - CAAPP - GRAIN HANDLING AND GRAIN DRYING EMISSION CALCULATION SHEET

These forms are referred to as the "*SUPPLEMENTAL FORMS*".

For example;

- If an applicant has an electric arc furnace, form 220-CAAPP is the appropriate form to be completed for this furnace.
- If an applicant has a boiler, form 240-CAAPP is the appropriate form.
- If an applicant has a storage tank, form 232-CAAPP is the appropriate form.
- For a coating line, both form 220-CAAPP and form 301-CAAPP need to be completed and submitted.
- A grain handling operation must supply both forms 236-CAAPP and 236A-CAAPP.

Note:

Fugitive emission activities are by definition emission units. However, applicants with emission activities that emit fugitive emissions may complete form 391-CAAPP in lieu of an emission unit form. This form allows the grouping together of several fugitive emitting activities on one form. Refer to form 391-CAAPP for eligible emissions activities (e.g., storage pile emissions, road traffic dust, equipment leaks, etc.).

- i. Form 260-CAAPP - AIR POLLUTION CONTROL EQUIPMENT for each control device at the source.
- j. Form 391-CAAPP - FUGITIVE EMISSIONS.
- k. Form 215-CAAPP - HAZARDOUS AIR POLLUTANT EMISSION SUMMARY.
- l. Form 293-CAAPP - COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE FOR CAAPP PERMIT.
- m. Form 294-CAAPP - COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE-ADDENDUM FOR NONCOMPLIANT EMISSION UNITS, if applicable.
- n. Form 296-CAAPP - COMPLIANCE CERTIFICATION.
- o. Form 292-CAAPP - FEE DETERMINATION FOR CAAPP PERMIT.
- p. Any additional forms, documentation, or required attachments specified in the forms or necessary to evaluate rule applicability and the compliance methods and status of the source.

NOTE:

If emissions during startup of equipment will exceed either the allowable emissions pursuant to a specific rule or a proposed permit condition, then form 203-CAAPP - REQUEST TO OPERATE WITH EXCESS EMISSIONS DURING STARTUP OF EQUIPMENT must be completed **and attached to the corresponding emission unit or stand alone form.**

If the applicant seeks continued operation of equipment during malfunction or breakdown of the unit or the associated air pollution control equipment, then form 204-CAAPP - REQUEST TO CONTINUE TO OPERATE DURING MALFUNCTION OR BREAKDOWN must be completed **and attached to the corresponding emission unit or stand alone form.**

When completing the application forms, if an item is not applicable then put "NA" in the appropriate location.

SPECIAL NOTES:

- With the exception of information required on forms 293-CAAPP, 294-CAAPP, and 296-CAAPP, if the same information would be provided for a single emission unit on several forms, the applicant may provide such information on the first form which appears in the application for the emission unit and thereafter reference such response on the other forms instead of entering the same information again.

- When completing the forms, the applicant may provide information on typical operating parameters in the operating information section (i.e., operating hours, annual throughput, and fuel consumption) in terms of ranges, rather than as single numbers. An example of a range of fuel use data for a natural gas boiler used for space heating might be "1,000 - 1,500 million ft³ per year, average = 1,250 million ft³", to provide annual usage data for typical cold and warm winters and an average year.

- The maximum operating schedule of an emission unit is the greatest hours the unit is ever expected to operate, entered in hours per day, days per week, and weeks per year. If other limitations on the operating schedule of an emission unit are requested to set the permitted emissions of the unit, they should be entered in the "Limitations on Source Operation" section. For example, if a unit may operate 24 hours per day, 7 days per week, and 52 weeks per year, but is also never expected to operate for more than 6,000 hours in any 12 month period and the applicant wants to base permitted emissions on an operating schedule of 6,000 hours per year, then "Maximum Operating Schedule = 6,000 hrs/yr" should be entered in item 17 of form 220-CAAPP.

- An application must provide accurate data portraying the operation of the source as related to maximum and typical emissions. Nevertheless, an applicant cannot rely on the operating data provided in the application to set permitted emissions for an emission unit or the source unless the data to be relied upon and included in the CAAPP permit by the Illinois EPA is clearly identified in the application. In particular, the maximum limitations on the operation of an emission unit must be provided in the "Limitations on Operations" section of the forms (e.g., item 17 of form 220-CAAPP) or in an attachment. These limitations must be consistent with the "Permitted Emission Rate" for a unit as proposed by an applicant, as entered as part of the emissions data.

- When completing an application form, if additional space is needed to supply the required information (i.e., sufficient space is not provided on the form) or a narrative would be useful to explain a situation, the applicant may attach additional pages directly to the form. Such attachments should be clearly labeled to identify the item on the form which such pages address.

- When completing form 292-CAAPP for the fee determination, the emissions information should be consistent with the emissions information on the other forms submitted within the application. Emissions from insignificant activities, as listed on form 297-CAAPP must not be included on form 292-CAAPP. If appropriate, it is recommended to report emissions to at least two decimal places on form 292-CAAPP.

Form 209-CAAPP - REQUEST FOR CAAPP FORMS may be used to order forms or copies of Illinois rules and regulations for air pollution. A copy of form 209-CAAPP is on the back page of this form.

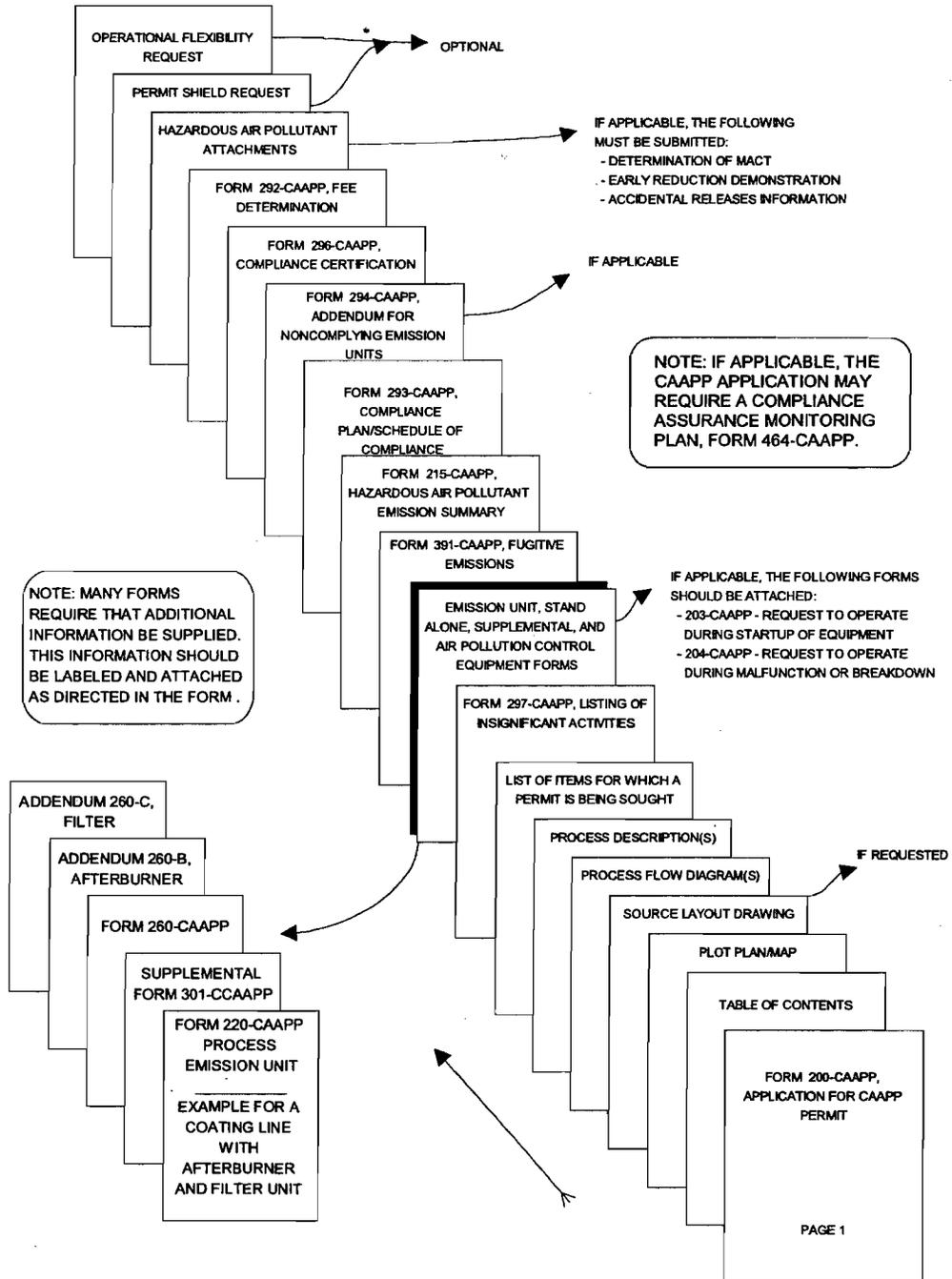
For questions regarding applications or Illinois air pollution rules and regulations call (217) 782-2113 or write to:

Illinois EPA - Bureau of Air
Division of Air Pollution Control - Permit Section
P.O. Box 19506
Springfield, IL. 62794-9506
Fax # (217) 524-5023

All completed applications should be sent to the above address. Please do not FAX in CAAPP applications.

Please include the source name and ID number on any correspondence to the Illinois EPA regarding this source.

GUIDE FOR ARRANGEMENT AND CONTENT OF CAAPP APPLICATIONS



NOTE: GUIDE TO APPLICANT SUBMITTAL. APPLICANT MAY SUBMIT APPLICATION IN A MANNER MOST CONDUCTIVE TO ITS TYPE OF OPERATION.

INSTRUCTIONS FOR FORM 200-CAAPP

The following provides assistance in the completion of form 200-CAAPP. This form is to be completed and submitted for initial CAAPP applications, significant modifications of a CAAPP source, and for the renewal of a CAAPP permit. Note that items which are self-explanatory are not addressed.

Special note for Significant Modifications and Renewals

For applications for a significant modification, the applicant need only supply revised forms for equipment and operations that will be subject to new applicable requirements or undergo a physical change, change in the method of operation and/or change in emissions as a result of the proposed modification. Otherwise, equipment and operations for which revised forms are not received will be considered unchanged and accurate. When completing form 200-CAAPP, if a previous form was submitted and the information supplied on that form will not change as a result of the proposed modification, then "YES" may be indicated when asked if the application contains that information.

Applications for the renewal of a CAAPP permit must include all forms submitted with the original application for which a signature is required.

The two boxes titled "FOR APPLICANT'S USE" on page one of each application form are provided solely for the applicant's convenience. They may be left blank.

SOURCE INFORMATION

The required information must be completed for the source for which an application is being submitted.

1) **SOURCE NAME:** The company name, or specific plant name if different from company name, must be provided here.

2) **DATE FORM COMPLETED:** For initial applications this should be the date that the entire application is submitted to the Illinois EPA. If this form is being submitted apart from the initial application, such as for additional information, then enter the actual date this form is completed.

3) **SOURCE STREET ADDRESS:** This must be the actual street address of the source. P.O. boxes are not allowed in this field.

9) **TYPICAL NO. OF EMPLOYEES:** This should be the typical number of employees at the source for the previous calendar year, or the anticipated number of employees for a source not yet constructed.

10) **ILLINOIS AIR POLLUTION SOURCE ID NO.:** This is the 9-digit code (6 numeric and 3 alphabetic) assigned to the source by the Illinois EPA's Division of Air Pollution Control (DAPC). This number can be found at the top of the first page of any Illinois air pollution permit. This number is unique to air pollution and should not be confused with water or land pollution ID numbers.

11) **FEIN NO.:** The FEIN number is a 9-digit number assigned to the source by the Federal Government. This number can be obtained from or verified with your firm's business or accounting department or can be found on the appropriate Federal tax form. Do not contact the Illinois EPA for this number.

12) **TYPE OF SOURCE AND PRODUCTS PRODUCED:** Examples of type of source are - Metal Furniture Manufacturer, Integrated Steel Mill, etc. The applicant should be

as specific as possible. A list of the primary final product(s) produced (e.g., painted metal chairs, rolled steel sheets) must also be provided here.

13 & 14) PRIMARY SIC CATEGORY AND NUMBER: The applicant must provide the primary SIC category and number for the main activity at the source. These are a designation and a 4-digit code that classify sources according to the economic activity in which they are engaged. SIC categories and codes are devised by the federal Office of Management and Budget. Do not contact the Illinois EPA for SIC information.

NOTE: The applicant only needs to provide either item 15 or 16 on the application form, not both. Given one, the Illinois EPA will calculate the other.

15) a) LATITUDE AND b) LONGITUDE: The latitude and longitude of a point at the center of the source should be provided here. These parameters can be determined from several methods, including topographic maps provided by the United States Geological Survey. Specific maps for your area are available at many public libraries and are for sale from the Illinois State Geological Survey. Enter the latitude and longitude in the format - degrees:minutes:seconds.decimal (e.g., 90:33:25.22). Do not contact the Illinois EPA to obtain these parameters.

16) UTM: The Universal Transverse Mercator Zone and horizontal and vertical coordinates of a point at the center of the source must be provided if the latitude and longitude were not provided. UTM was developed by the Army Map Service. This coordinate system, which has units of kilometers, divides the globe into 60 north-south zones each covering six degrees of longitude. Do not contact the Illinois EPA to obtain the UTM coordinates of your source.

16a) UTM ZONE: The State of Illinois is covered by two zones (15 & 16). Sources west of 90 degrees are in Zone 15 while sources east of 90 degrees are in Zone 16.

16b) UTM VERTICAL: (also known as Northing) Is the "Y" coordinate of the center of the source. Sources in Illinois may only have a vertical coordinate ranging from 4094.000 - 4719.000 kilometers.

16c) UTM HORIZONTAL: (also known as Easting) Is the "X" coordinate of the center of the source. The allowable range of horizontal values is 616.000 - 767.000 kilometers for Zone 15 and 233.000 - 459.000 kilometers for Zone 16.

17a) COORDINATE METHOD: This space must contain one of the following letters to indicate the method used to determine the coordinates of your source:

A - Address matching	O - Other
D - Digital or manual raw photo extraction	P - Aerial photography
G - Global positioning system-geodetic quality	R - Remote sensing
I - Map interpolation	S - Cadastral survey
L - Loran-C navigational device quality	U - Unknown
M - Map interpolation (scale = 1:24,000)	Z - Zip code centroid
N - Global positioning system-navigation quality	

17b) REFERENCE LOCATION: The single reference point from which the required coordinates were measured must be provided here (e.g., center of plant, southwest corner).

17c) COORDINATE ACCURACY: Accuracy is an estimate of the uncertainty in measurement, e.g., how close the reported latitude and longitude are to the true coordinates. The accuracy estimate must be in the format 0.0000XXX. The numeric portion must be greater than zero and XXX must be "DEG", "MIN", or "SEC". As an

example, an accuracy of +/- 1 second (approximately 30 meters) would be entered as 1.0000SEC.

18 & 19) SOURCE ENVIRONMENTAL CONTACT PERSON AND TELEPHONE NUMBER: Provide the name and phone number of a knowledgeable individual who is employed full-time at the source and who can be contacted for Illinois EPA inspections of the source and questions regarding the application and/or source operations. This should be a person very familiar with operations and emission activities at the source.

OWNER INFORMATION

20) NAME: The company name, person or other entity which is the owner of the source must be provided here.

25) OWNER'S AGENT: The name of the owner's agent, if applicable, must be provided here. Agent is defined as the person who is authorized to act on behalf of the owner in matters relevant to the source.

OPERATOR INFORMATION

26) NAME: The company name, person or other entity which is the operator of the source must be provided here.

BILLING INFORMATION

31) NAME: The party to be billed for all permit fees must be provided here.

36 & 37) CONTACT PERSON AND TELEPHONE NUMBER: The name and telephone number of a knowledgeable individual who can be contacted for questions concerning billing and fee payment must be provided here.

APPLICANT INFORMATION

38) WHO IS THE PERMIT APPLICANT: The permit will be issued in the name of whichever party is indicated.

39) ALL CORRESPONDENCE TO: The permit and any correspondence regarding the application will be sent to the address of the party indicated.

41 & 42) TECHNICAL CONTACT PERSON FOR APPLICATION AND TELEPHONE NUMBER: The name and telephone number of a knowledgeable individual who can be contacted for questions regarding the application must be provided here. This can be the same as the source contact person or may be a consultant or other person who has been designated by the source to handle questions and issues regarding the application.

SUMMARY OF APPLICATION CONTENTS

43) TABLE OF CONTENTS: Each application must contain a Table of Contents which clearly outlines the contents of the application and references page numbers. The contents of the application should be clearly numbered in their order of appearance.

44) LIST OF ITEMS AND ACTIVITIES TO BE PERMITTED: Each application must contain a list of all emission units and control equipment, including all emission generating activities, for which a permit is being sought. The permit will only be issued for items on this list.

45) PLOT PLAN/MAP: The plot plan/map should show the following:

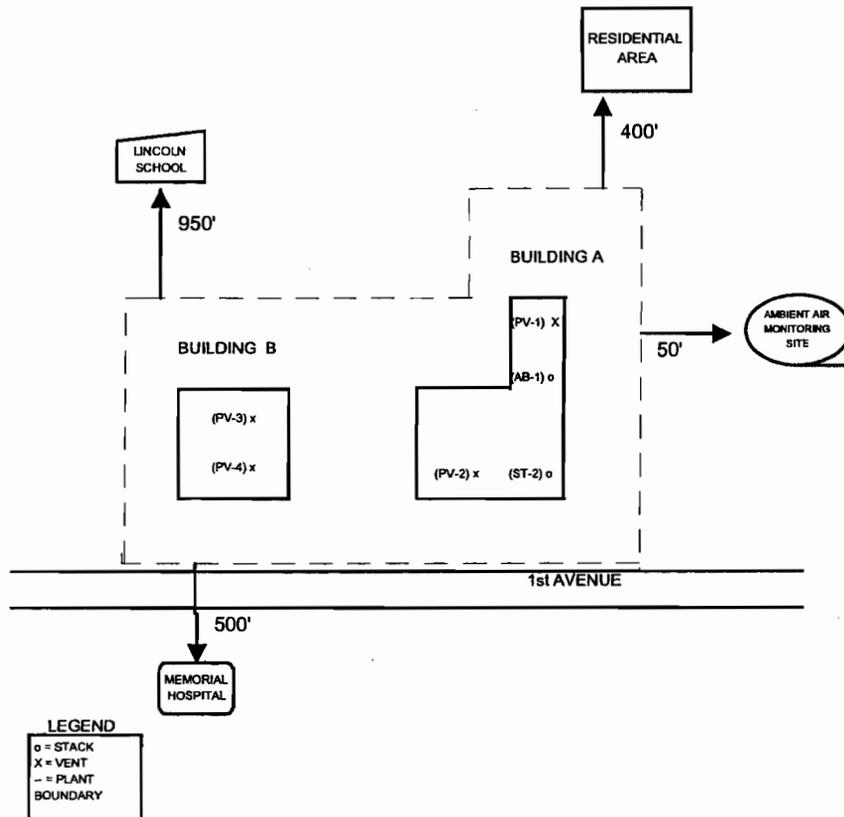
- i) location of all buildings of significant size at the source (e.g., small storage sheds, etc., need not be shown),
- ii) each stack and vent at the source,
- iii) the source boundary, and
- iv) the distance from the source boundary to the nearest residences, lodgings, nursing homes, hospitals, schools, commercial and manufacturing establishments, and known ambient air monitoring sites within one-quarter mile of the source.

NOTE:

- Each building should be labeled, and each stack and vent should be identified and designated to correlate with the rest of the application.
- A sketch with the required notation, and prepared in a legible manner is sufficient for the plot plan/map. Alternatively, the required information may be inserted on existing plans or maps of a reasonable size.
- The plot plan/map must be clearly labeled and referenced in the table of contents.

EXAMPLE:

PLOT PLAN/MAP



46) **PROCESS FLOW DIAGRAM(S):** A process flow diagram must be provided and should show the following:

- i) source processes from start to finish (e.g., from the unloading of raw materials on-site to the shipment of finished products off-site),
- ii) all emission units and air pollution control equipment, including all emission generating activities, and their exhaust points (e.g., stacks or vents),
- iii) the relationship(s) and/or connection(s) (e.g., duct work and hooding) between the emission units, control equipment, and exhaust points,
- iv) process flow (solid line) and the flow of air contaminant(s) emissions (dashed line) identified by lines and arrows denoting the direction and destination of the flow.

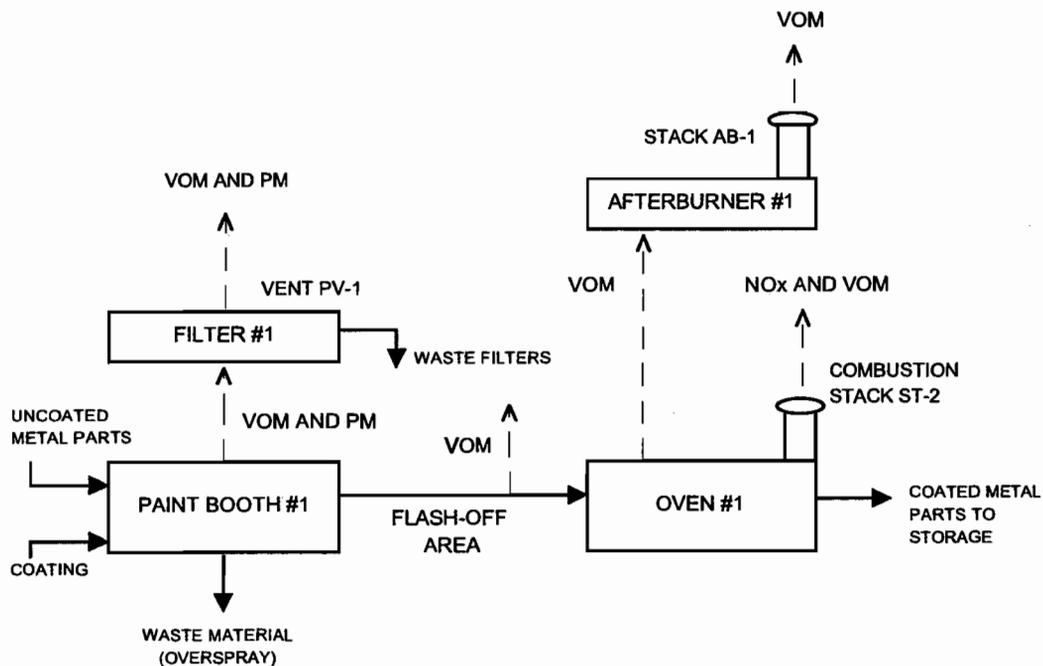
NOTE:

- The applicant may elect to provide several individual process flow diagrams in lieu of a single diagram. These diagrams depicting an individual process are referred to as intermediate process flow diagrams. For example, there may be one process flow diagram which shows the overall process at the source and the relationship between the intermediate processes (i.e., source-wide process flow diagram), and several separate diagrams which depict the intermediate processes.
- Each item on the diagram must be labeled by a name and a unique identifier which correlates with the rest of the application.
- A sketch drawing or a block diagram with the required notations, prepared in a legible manner, is usually sufficient for this diagram.
- Each diagram must be clearly labeled and referenced in the table of contents.

EXAMPLES:

EXAMPLE 1 - PROCESS FLOW DIAGRAM - INTERMEDIATE PROCESS

COATING LINE #1



47) **PROCESS DESCRIPTION:** There must be a description of the overall source-wide production process and of each intermediate process at the source. The source-wide description should include an explanation of the relationship between each process step within the source from start to finish. The following items should be addressed in the description of each intermediate process:

- i) operations being performed at each step in the process,
- ii) the intermediate or final product of the process,
- iii) operating and emission parameters such as:
 - a) time between each step,
 - b) how emission rates vary throughout each step of the process,
 - c) the different contaminants emitted throughout each step of the process,
 - d) any other parameters which affect emissions,
- iv) whether the process is operated in batch mode or continuous mode, and
- v) the interrelationship of this intermediate process to other processes at the source.

NOTE:

- Also provide information on all reasonably anticipated operating scenarios of each process. For example, if production of various products occur in the same item(s) of equipment, then provide information about each production process.
- Explain any other pertinent operating practices which affect emissions. For example, if during the production of a certain product emissions normally ducted to control equipment are instead exhausted directly to the atmosphere, this should be clearly identified and addressed.
- The process description(s) must be clearly labeled and referenced in the table of contents.

48a) **FORMS:** Each emission unit and air pollution control equipment must be represented by the appropriately completed form(s). If the applicant wishes to provide the required information in a format other than that on the applicable form, then the required information may be provided on separate page(s) which are attached to the applicable form. Refer to pages 2 and 3 of these instructions for more information.

48b) **MULTIPLE MODES:** If an emission unit or air pollution control equipment is to be operated in more than a single mode of operation, then a separate form must be submitted for each mode of operation. A mode of operation may be thought of as a "method" of operation of an emission unit or control equipment. For example, if a boiler fires both natural gas and fuel oil, then these are considered two separate modes of operation and a form 240-CAAPP must be submitted for each mode of firing. If the boiler also fired oil and gas simultaneously, then this would be a third mode and an additional form 240-CAAPP must be submitted. Each mode of operation of equipment must be represented by the appropriate, individual form.

48c) **REASONABLY ANTICIPATED OPERATING SCENARIOS:** The application must describe in detail all reasonably anticipated operating scenarios of the processes at the source in order to switch from one operating scenario to another without obtaining a revision to the permit. For example, if a coating line uses solvent-based paint for a percentage of the time and water-based paint the rest of the time, then these are two separate operating scenarios which need to be described in the application. This is important so that the permit can be issued to insure sufficient flexibility to the Permittee. Owners or operators of sources who must respond quickly to changing economic conditions and market opportunities should make sure that "worst case" emission scenarios are addressed. Only those operating scenarios which are applied for and approved by the Illinois EPA will be permitted. Different operating scenarios of individual equipment may be addressed by submitting an individual form for each mode of operation and/or by attaching an addendum describing in detail the different operating scenarios. For different operating scenarios of a process line or production

line the applicant may elect to describe the different scenarios by attaching an addendum providing a detailed description of the different operating scenarios. The addendum must provide sufficient information for the Illinois EPA to evaluate rule applicability and demonstration of compliance. The addendum should also be clearly labeled as "REASONABLY ANTICIPATED OPERATING SCENARIOS" and referenced in the table of contents.

49) FUGITIVE EMISSIONS: The application must contain information about fugitive emissions (those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening) at the source. Accounting for fugitive emissions in an application presents a unique problem since both the activity generating the fugitive emissions and the method used to estimate the quantity of the emissions are often different than those for a typical process. Presenting fugitive emissions in the application may best be accomplished by completing form 391-CAAPP. Form 391-CAAPP groups certain emission activities together in lieu of completing a separate emission unit form for each activity and is provided as a convenience to the applicant. For a list of typical fugitive emission activities, refer to form 391-CAAPP.

50) FEE DETERMINATION: The application must contain a properly completed form 292-CAAPP - FEE DETERMINATION FOR CAAPP PERMIT. **The annual permit fee for the source will be determined from the information supplied on this form.**

51) HAZARDOUS AIR POLLUTANTS: The application must contain a properly completed form 215-CAAPP - HAZARDOUS AIR POLLUTANT EMISSION SUMMARY.

52) CALCULATIONS: The application must contain the calculations, to the extent they are air emissions related, on which information provided in the application was based. In general, these calculations are required in the individual forms and should be attached to the forms as directed therein.

53) COMPLIANCE PLAN: The application must contain a properly completed form 293-CAAPP - COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE FOR CAAPP PERMIT for the source. Form 293-CAAPP describes the compliance status of all emission units at the source with respect to all applicable requirements.

54) COMPLIANCE CERTIFICATION: The application must contain a properly completed form 296-CAAPP - COMPLIANCE CERTIFICATION for the source. Form 296-CAAPP states methods used to determine compliance, certifies compliance via a responsible official's signature, and proposes a schedule for compliance certification submissions during the permit term.

55) ADDENDUM FOR NONCOMPLIANT EMISSION UNITS: For each emission unit that is not in compliance with an applicable regulation the application must contain a completed form 294-CAAPP - COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE-ADDENDUM FOR NONCOMPLIANT EMISSION UNITS. Form 294-CAAPP includes a schedule of remedial measures leading to compliance with applicable requirements and a schedule of certified progress reports.

56) COPIES: Except for applications which include trade secret information, the Illinois EPA requires that only the original application be submitted initially. The Illinois EPA may request that up to four copies of the application be submitted prior to public notice. These copies of the application must be updated in accordance with any information submitted during the review of the application.

57) TRADE SECRET INFORMATION: If the application contains any information for which trade secret or confidential status is being claimed, then "YES" should be

checked. All claims must be filed in accordance with, and contain the information specified in Illinois Pollution Control Board rules.

58) EARLY REDUCTION DEMONSTRATION: If applicable, an application must contain a demonstration that the source has achieved a reduction of 90% or more in the emissions of HAP's (95% in the case of HAP's which are particulates) from the source, to meet an alternative emission limitation promulgated under Section 112(i)(5) of the Clean Air Act as amended in 1990 for a period of 6 years from the compliance date for otherwise applicable standard, provided that the reduction is achieved before the otherwise applicable standard under Section 112(d) of the Clean Air Act as amended in 1990 is first proposed. The source must include the complete Early Reduction Demonstration with the application. Label as "EARLY REDUCTION DEMONSTRATION" and reference this in the table of contents.

59) MACT: If applicable, an application must contain a Maximum Achievable Control Technology (MACT) determination for affected emission units. If the application is for permitting a modification that requires a case-by-case determination under section 112(g), a proposed MACT must be included. If a MACT standard has not been promulgated within 18 months after an official U.S. EPA due date, the Permittee must attach a proposed MACT emission limitation as required by section 112(j). Label as "DETERMINATION OF MACT" and reference this in the table of contents.

60) ACCIDENTAL RELEASES: A source that manages any of the substances listed by the U.S. EPA under Subsection 112(r) of the Clean Air Act as amended in 1990 in greater than threshold quantities must identify hazards which may result from accidental releases. Using appropriate hazard assessment techniques, the source must design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Those sources that require a CAAPP permit and must comply with section 112(r) must indicate in the appropriate box that a Risk Management Program (RMP) under 112(r) is filed at the source site. If an RMP is not on file at the source, the owner/operator must submit a compliance schedule certifying the date of 112(r) compliance. Such a compliance schedule should be labeled "ACCIDENTAL RELEASES INFORMATION" and referenced in the table of contents.

61) COMPLIANCE ASSURANCE MONITORING: The Compliance Assurance Monitoring (CAM) rule is intended to provide a reasonable assurance of compliance with applicable requirements under the Clean Air Act for large emission units that rely on pollution control device equipment to achieve compliance. The CAM rule requires sources to monitor the operation and maintenance of their control equipment so that they can evaluate the performance of their control devices and report whether or not their facilities meet established emission standards. Generally, sources subject to the CAM rule are required to submit a CAM plan upon renewal of their CAAPP permit, although in certain circumstances the plan is required with an initial CAAPP application or for a significant modification of a CAAPP permit. Form 464-CAAPP - COMPLIANCE ASSURANCE MONITORING PLAN should be used in completing a CAM plan for the purposes of this application. If a source is subject to the CAM rule and does not submit a CAM plan at the appropriate time, then the CAAPP application may be deemed incomplete.

62) SIGNIFICANT MODIFICATION: In addition to other required information, such as addressing any new applicable requirements, applications for significant modifications must contain a detailed description of the proposed change, including;

- i) all physical changes to equipment,
- ii) any changes in the method of operation,
- iii) the change in the emissions of each pollutant resulting from the proposed modification.

This information should be attached to the application, labeled as "SIGNIFICANT MODIFICATION SUMMARY" and referenced in the table of contents.

63) OPERATIONAL FLEXIBILITY: This box should indicate whether the application contains a written request and the required information to allow for the trading between emission units of emissions increases and decreases at the source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit, without first obtaining a permit revision. Such emissions trading may be allowed provided that information and notification is provided 7 days in advance and that no emissions allowed under the permit are exceeded. The application must contain proposed monitoring, reporting, and recordkeeping procedures and permit conditions that can be placed on the permit to ensure that any proposed emissions trades are quantifiable and enforceable. Such a request, along with the required information, must be clearly labeled as "OPERATIONAL FLEXIBILITY REQUEST" and referenced in the table of contents.

64) PERMIT SHIELD: A CAAPP application may include a request for a "permit shield" in the permit whereby compliance with the condition(s) of the permit shall be deemed equivalent to compliance with the applicable requirement(s) which is/are applicable as of the date of the release of the proposed permit in accordance with 40 CFR 70 and any amendments thereunder. Checking "YES" under a) of this box indicates that the applicant requests a permit shield for the entire source. Checking "YES" under b) of this box indicates that the applicant requests a permit shield only for specific items identified in the application. The request must identify the specific requirement(s) for which a permit shield is requested. Such a request should be clearly labeled as "PERMIT SHIELD REQUEST" and referenced in the table of contents.

65) INSIGNIFICANT ACTIVITIES: If the source has insignificant activities or emission levels as defined pursuant to Illinois Pollution Control Board Regulations then form 297-CAAPP - LISTING OF INSIGNIFICANT ACTIVITIES should be completed in lieu of other forms for these activities or emission units.

66) SOURCE LAYOUT DRAWING: The applicant may provide a source layout drawing. If provided the drawing should show the following:

- i) basic geometric shape of each building or structure at the source which contains an emission unit which is by itself a major CAAPP source.
- ii) building dimensions (length, width, height),
- iii) the major emission unit(s) in the building, and
- iv) each stack and vent of the building or structure.

If not provided, the Illinois EPA may request that this drawing be provided upon detailed review of the application.

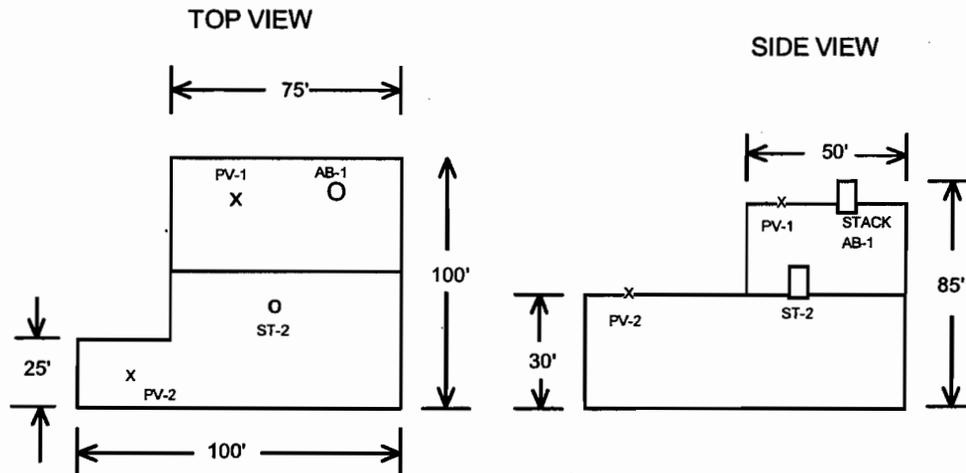
NOTE:

- Each stack and vent should be identified and designated to correlate with the rest of the application.
- A sketch with the required notations, prepared in a legible manner is sufficient.
- The source layout must be clearly labeled and referenced in the table of contents.

EXAMPLE:

SOURCE LAYOUT DRAWING

BUILDING "A". CONTAINS COATING LINE #1, WHICH IS A MAJOR SOURCE BY ITSELF UNDER THE CAAPP.



67) CAAPP APPLICABILITY: Check all that apply.

68a) This box should be checked "YES" only if the sum of actual annual emissions of all regulated air pollutants from the source for at least the last two years did not exceed CAAPP applicability thresholds.

68b) Check "YES" if the application contains proposed permit conditions which could be placed on the permit to effectively and enforceably constrain emissions to levels below CAAPP applicability status. Such permit conditions should be in the form that limits operation or production, and emissions. Proposed limits should follow at least (i) and (ii) below:

- i) Operations and/or Production Capacity.
 - a. Operation limits are restrictions on the manner in which an emission unit is run, including hours of operation, amount of raw material used, fuel combusted, etc., or conditions which specify that an air pollution control system will achieve a specified control efficiency.
 - b. Production limits are restrictions on the amount of final product which can be manufactured or otherwise produced.
- ii) Emissions
 - a. Emission limits are restrictions over a given period of time on the amount of an air contaminant which may be emitted into the atmosphere. Typically, limits are in the form of both monthly and annual maximum levels.

EXAMPLE (limitations for an uncontrolled printing line could be as follows):

Operations and emissions of heatset web offset printing line #1 shall not exceed the following limits:

Item	Usage		VOM Content	VOM Emissions	
	(lb/mo)	(ton/yr)	(weight %)	(lb/mo)	(ton/yr)
Ink	5,000	30	20	1,000	6.0
fountain solution	500	3.0	10	50	0.3
press wash	50	0.3	50	25	0.15

68c) This box should only be checked "YES" if the applicant wishes to enter the Federally Enforceable State Operating Permit (FESOP) program. This is possible only if *potential* emission levels require a CAAPP permit, and *actual* levels are below CAAPP applicability levels. Sources which receive a FESOP permit will have permit limits that constrict the source to non-major status. Such limitations in a FESOP permit would be in the form of production, operation, and emission limitations. These limits would be accompanied by adequate recordkeeping conditions as well as possible monitoring and reporting conditions.

SIGNATURE BLOCK

69) The application must be signed and dated by a responsible official of the source. In general, a responsible official is as follows:

- i) For a Corporation:
 - a) Corporate officer
 - b) Other person in charge of a principal business function
 - c) Duly authorized representative responsible for overall operation of a source (plant manager) if either:
 - 250 persons employed or \$25 million in sales or expenditures
 - Delegation of authority approved in advance (form 500-CAAPP - DELEGATION OF AUTHORITY FOR RESPONSIBLE OFFICIAL TO A REPRESENTATIVE may be used for this purpose)
- ii) For a partnership: A general partner
- iii) For a sole proprietorship: The proprietor
- iv) For a government agency:
 - a) Principal executive officer
 - b) Ranking elected official

Note:

On the back of this page is form 209-CAAPP - REQUEST FOR CAAPP FORMS.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
 DIVISION OF AIR POLLUTION CONTROL -- PERMIT SECTION
 P.O. BOX 19506
 SPRINGFIELD, ILLINOIS 62794-9506

REQUEST FOR CAAPP FORMS

SEND FORMS INDICATED
 BELOW TO --

COMPANY NAME: _____
ATTENTION: _____
ADDRESS: _____
CITY, STATE, ZIP: _____
PHONE #: (_____) _____ - _____ **EXT:** _____ **DATE:** ____ / ____ / ____

**CHECK FORMS
 REQUESTED**

(PLEASE DO NOT REQUEST THAT FORMS BE FAXED)

- _____ 209-CAAPP REQUEST FOR CAAPP FORMS (REVISED 10/11/2000)
- _____ 199-CAAPP APPLICATION FOR CONSTRUCTION PERMIT (For CAAPP Sources Only)
- _____ 200-CAAPP **APPLICATION FOR CAAPP PERMIT*** (REVISED 10/11/2000)
- _____ 202-CAAPP GENERAL INSTRUCTIONS FOR CAAPP APPLICATIONS (REVISED 10/11/2000)
- _____ 260-CAAPP **AIR POLLUTION CONTROL EQUIPMENT** (REVISED 11/16/1994)
 - _____ A. ADSORBER
 - _____ B. AFTERBURNER
 - _____ C. FILTER
 - _____ D. CYCLONE
 - _____ E. CONDENSER
 - _____ F. ELECTROSTATIC PRECIPITATOR
 - _____ G. PACKED SCRUBBER
 - _____ H. SCRUBBER
 - _____ I. NOx CONTROL
 - _____ J. FLARE
 - _____ K. OTHER

EMISSION UNIT FORMS

- _____ 220-CAAPP PROCESS EMISSION UNIT (REVISED 11/16/1994)
- _____ 240-CAAPP FUEL COMBUSTION EMISSION UNIT (REVISED 11/16/1994)
- _____ 250-CAAPP INCINERATOR (REVISED 11/16/1994)
- _____ 270-CAAPP STATIONARY INTERNAL COMBUSTION ENGINE OR TURBINE (REVISED 11/16/1994)

STAND ALONE FORMS

- _____ 232-CAAPP STORAGE TANK (REVISED 11/16/1994)
- _____ 234-CAAPP HOT MIX ASPHALT PLANT (REVISED 11/16/1994)
- _____ 235-CAAPP AGGREGATE CRUSHING PLANT (REVISED 11/16/1994)
- _____ 236-CAAPP GRAIN HANDLING AND GRAIN DRYING (REVISED 11/16/1994)
- _____ 237-CAAPP PERCHLORETHYLENE DRY CLEANING (REVISED 11/16/1994)
- _____ 358-CAAPP SOLVENT CLEANING - OPEN TOP VAPOR DEGREASER (REVISED 11/16/1994)
- _____ 366-CAAPP SOLVENT CLEANING - CONVEYORIZED DEGREASER (REVISED 11/16/1994)
- _____ 367-CAAPP SOLVENT CLEANING - COLD CLEANING (REVISED 11/16/1994)

SUPPLEMENTAL FORMS

- _____ 301-CAAPP COATING OPERATION (REVISED 11/16/1994)
- _____ 302-CAAPP PRINTING AND PUBLISHING (REVISED 11/16/1994)
- _____ 336-CAAPP ELECTROPLATING TANK (REVISED 11/16/1994)
- _____ 236A-CAAPP GRAIN HANDLING AND GRAIN DRYING EMISSION CALCULATION SHEET (REVISED 11/16/1994)

VARIOUS FORMS

- _____ 297-CAAPP LISTING OF INSIGNIFICANT ACTIVITIES (REVISED 11/16/1994)
- _____ 391-CAAPP FUGITIVE EMISSIONS (REVISED 11/16/1994)
- _____ 215-CAAPP HAZARDOUS AIR POLLUTANT EMISSION SUMMARY (REVISED 11/16/1994)
- _____ 293-CAAPP COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE FOR CAAPP PERMIT (REVISED 11/16/1994)
- _____ 294-CAAPP COMPLIANCE PLAN/SCHEDULE OF COMPLIANCE-ADDENDUM FOR NONCOMPLIANT EMISSION UNITS -
- _____ 296-CAAPP COMPLIANCE CERTIFICATION* (REVISED 11/16/1994) - (REVISED 11/16/1994)
- _____ 292-CAAPP FEE DETERMINATION FOR CAAPP PERMIT (REVISED 11/16/1994)
- _____ 295-CAAPP CERTIFIED PROGRESS REPORT* (REVISED 11/16/1994)
- _____ 203-CAAPP REQUEST TO OPERATE WITH EXCESS EMISSIONS DURING STARTUP OF EQUIPMENT (REVISED 11/16/1994)
- _____ 204-CAAPP REQUEST TO CONTINUE TO OPERATE DURING MALFUNCTION OR BREAKDOWN (REVISED 11/16/1994)
- _____ 271-CAAPP MINOR PERMIT MODIFICATION FOR CAAPP PERMIT* (REVISED 11/16/1994)
- _____ 272-CAAPP REQUEST FOR OWNERSHIP CHANGE FOR CAAPP PERMIT* (REVISED 11/16/1994)
- _____ 273-CAAPP REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT FOR CAAPP PERMIT* (REVISED 11/16/1994)
- _____ 400-CAAPP COMPLIANCE AND GENERAL REPORTING FORM* (REVISED 11/16/1994)
- _____ 405-CAAPP EXCESS EMISSIONS, MONITORING EQUIPMENT DOWNTIME, AND MISC. REPORTING FORM* -
- _____ 464-CAAPP COMPLIANCE ASSURANCE MONITORING PLAN - (REVISED 11/16/1994)
- _____ 161-CAAPP STANDARD CONDITIONS (REVISED 11/16/1994)
- _____ 500-CAAPP DELEGATION OF AUTHORITY FOR RESPONSIBLE OFFICIAL TO A REPRESENTATIVE* (REVISED 11/16/1994)
- _____ 505-CAAPP SUPPLEMENT TO CAAPP APPLICATION* (REVISED 11/16/1994)

REGULATIONS

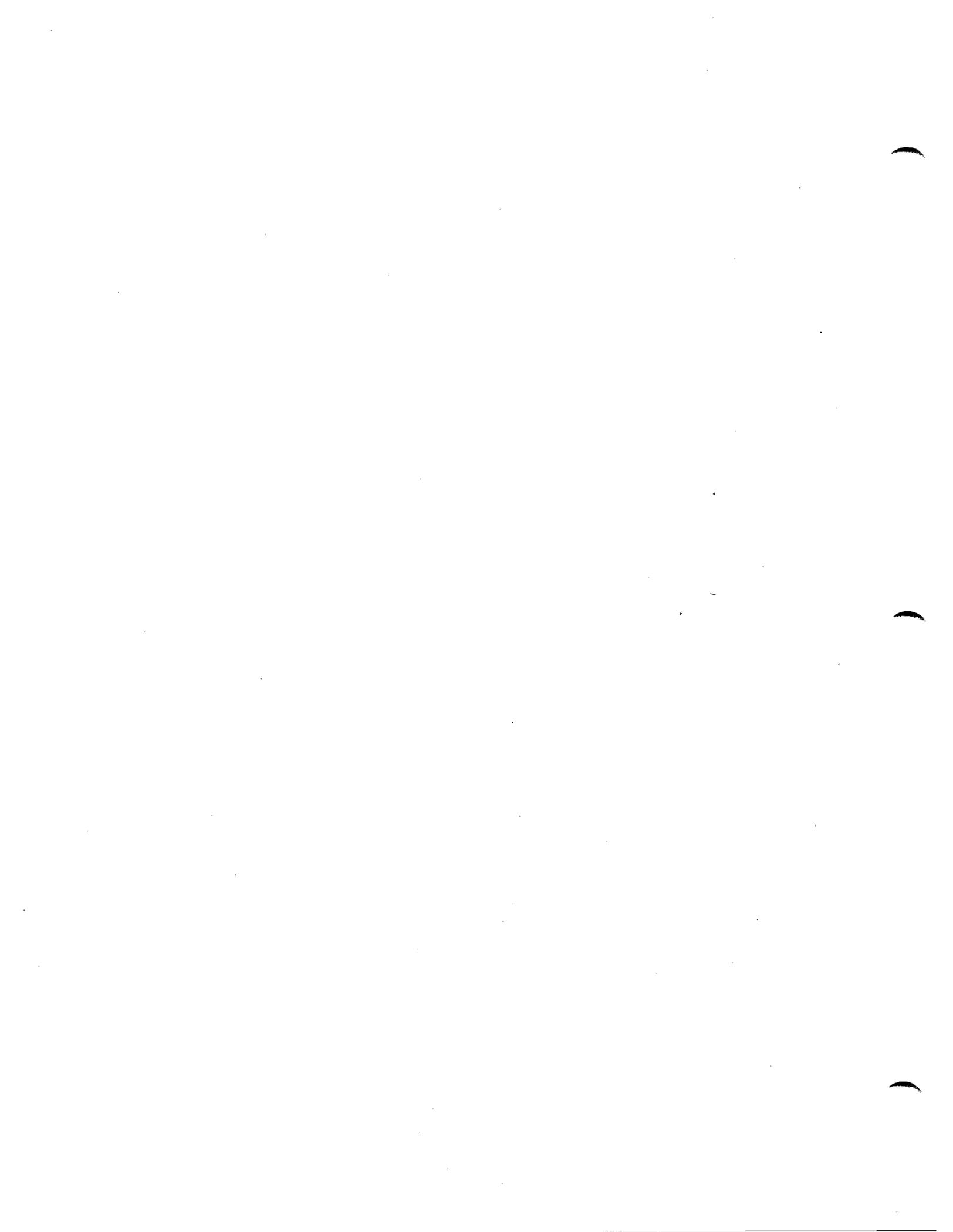
- _____ STATE OF ILLINOIS RULES AND REGULATIONS (AIR POLLUTION)
- _____ ILLINOIS ENVIRONMENTAL PROTECTION ACT

COPIES OF FEDERAL RULES MAY BE OBTAINED FROM U.S. EPA - REGION V, 77 WEST JACKSON BOULEVARD,
 CHICAGO, IL. 60604 - (312) 353-2000.

*SIGNATURE REQUIRED ON FORM

FORMS MAY BE COPIED BY THE APPLICANT AS NECESSARY

Appendix E
Summary of IPCB appeals in which IEPA did not
respond to petitioner's motion for stay of permit





www.ipc

Rod R. Blagoje

Board Links

Home
 About The Board
 Statutes,
 Legislation, and
 Regulations
 E-Library
 Clerk's Office
 Rulemakings
 Pending Before
 the Board
 Calendar of
 Events
 Current Meeting
 Agenda
 News
 Privacy Notice
 Site Map
 Search Board
 Cases

State Links

Search Illinois

 [Search
 Tips]

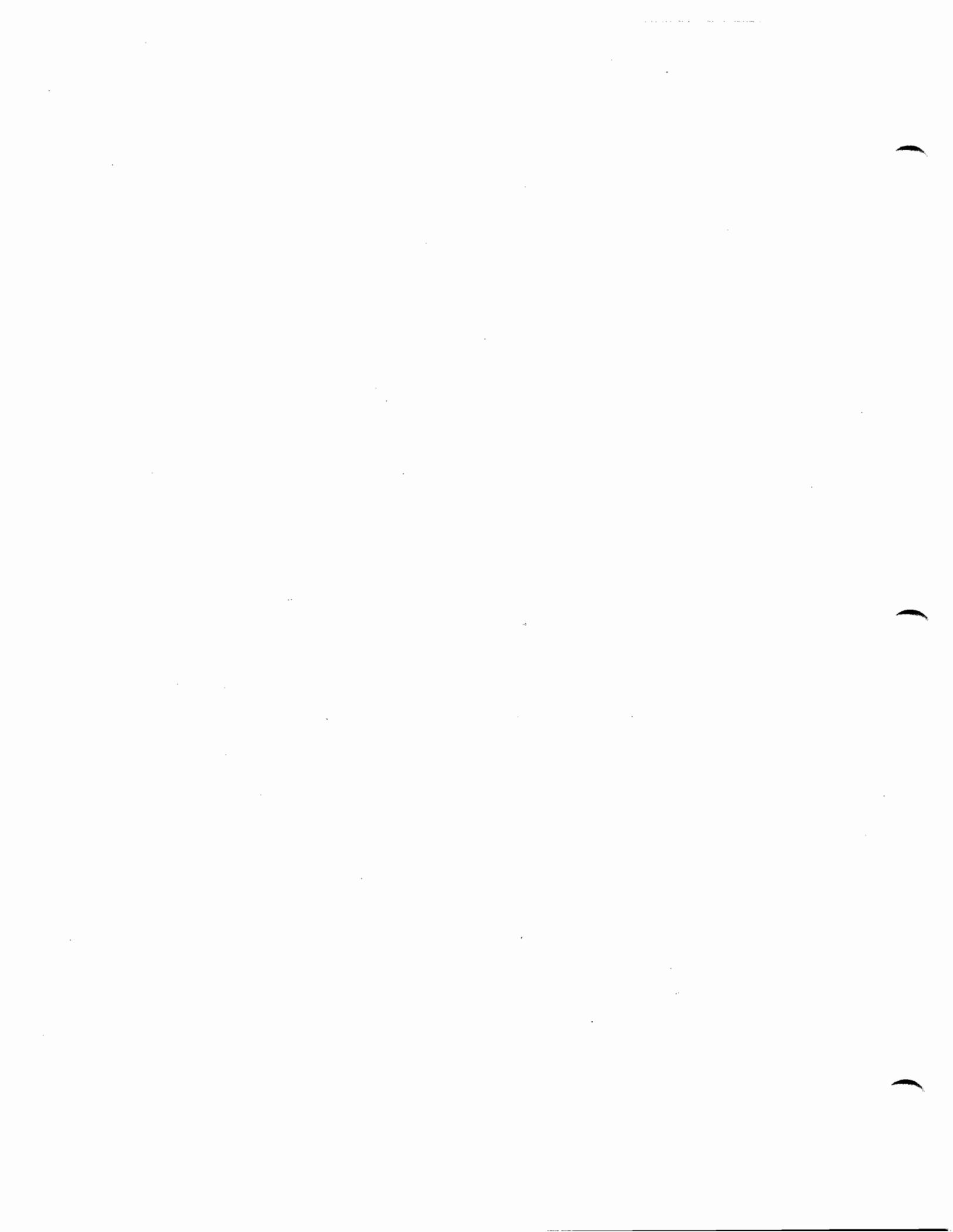
Illinois
 Environmental
 Protection Agency
 Illinois
 Department of
 Natural Resources
 Illinois
 Department of
 Agriculture
 Illinois State Fire
 Marshal
 The Illinois
 Register
 Illinois Small
 Business Advisor

**View Search Results****Search Parameters****Case
 Number:****Case
 Type:** Permit Appeal**Case
 Subtype:** (Any Subtype)**County:** (Not Specified)**Case
 Name:****Media
 Type:** Air**Status:** All Closed Open

Display 10 Results Per Page

Search Results - Click Individual Case For Details

Case Number	Case Type	Media	Case Name
PCB 2004-114	Permit Appeal	Air	Archer Daniel Midland Company (Peoria Dry Corn Mill and Ethanol Plant Title V Permit) v. IEPA
PCB 2004-113	Permit Appeal	Air	Afton Chemical Corporation v. IEPA
PCB 2004-110	Permit Appeal	Air	Board of Trustees of Eastern Illinois University v. IEPA
PCB 2004-108	Permit Appeal	Air	Midwest Generation, LLC - Collins Generating Station v. IEPA
PCB 2004-102	Permit Appeal	Air	Noveon, Inc. v. IEPA
PCB 2004-065	Permit Appeal	Air	Champion Laboratories, Inc. v. IEPA
PCB 2004-047	Permit Appeal <i>Operating</i>	Air	Saint-Gobain Containers, Inc. v. IEPA
PCB 2004-017	Permit Appeal <i>90-Day Extension</i>	Air	Koch Pipeline Company, L.P. - Hartford Terminal v. IEPA
PCB 2003-146	Permit Appeal	Air	North Shore Sanitary District v. IEPA
PCB	Permit Appeal	Air	Henry Pratt Company v. IEPA

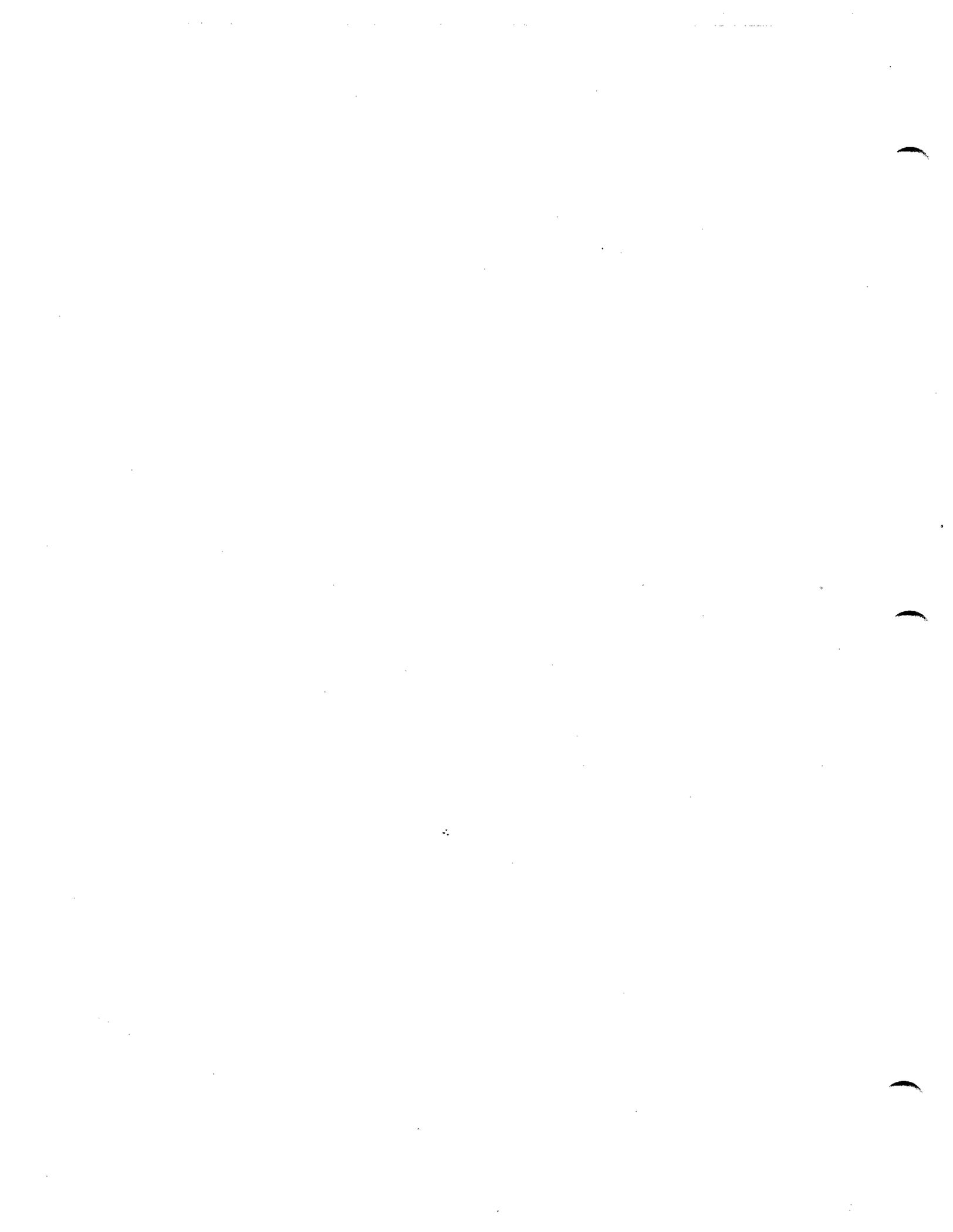


2003-142 *90-Day
Extension*

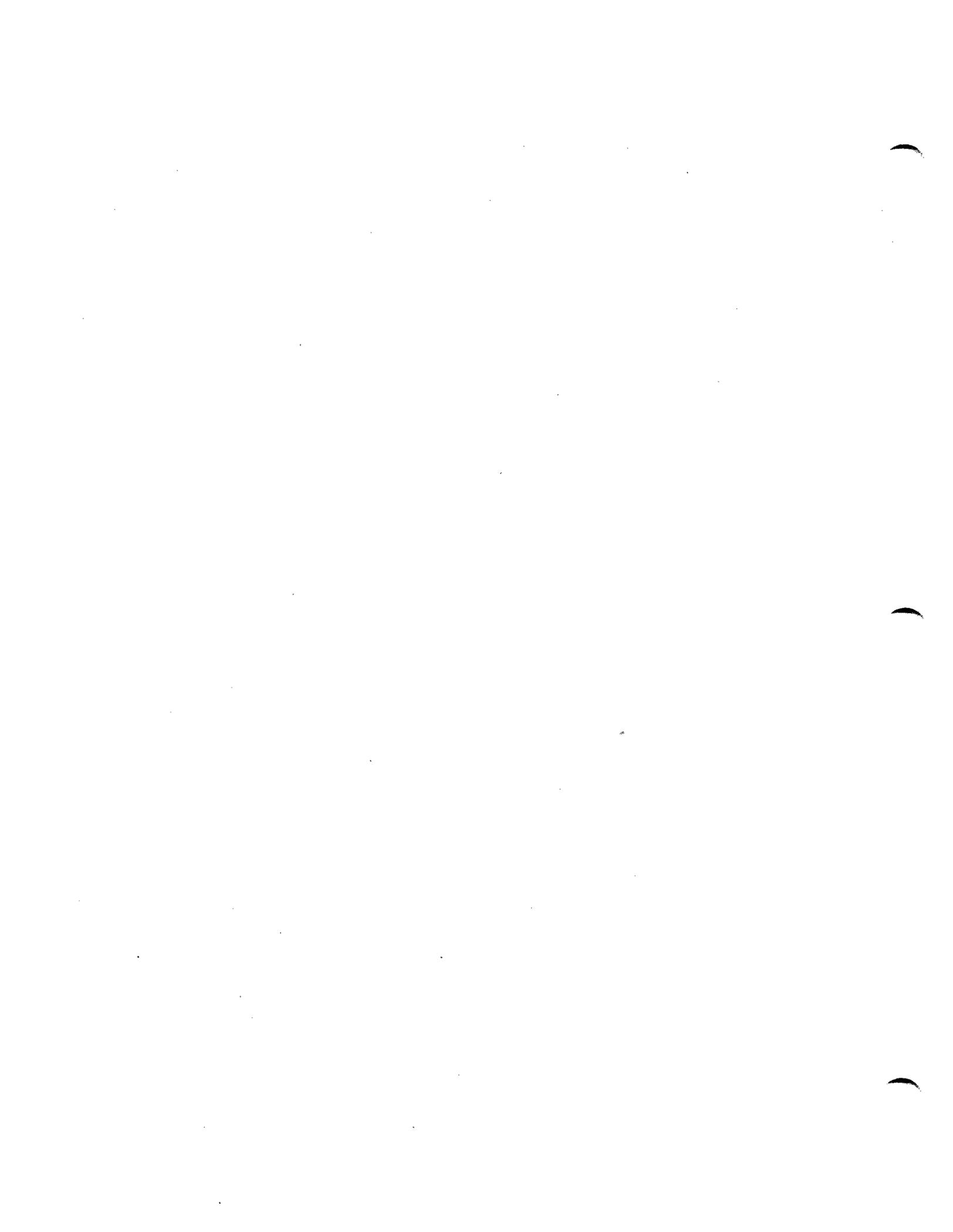
[<< First Page](#) [< Previous 10](#) Cases 41-50 of 359 [Next 10 >](#)
[Last Page >>](#)

Copyright © 2005
[IPCB](#)

[Board Site Map](#) | [Illinois Privacy Information](#) | [Kids Privacy](#) | [Web Accessibility](#) | [Board Webmaster](#)



Appendix F
Title I/Title V Implementation Agreement



Memorandum of Understanding
between
Region V of the U.S. Environmental Protection Agency
and the
Illinois Environmental Protection Agency

I. Scope

This Memorandum of Understanding (MOU) provides a framework under which the Illinois Environmental Protection Agency (Illinois EPA) may, at its discretion,¹ issue combined permits under both Title I² and Title V of the Federal Clean Air Act³, applicable United States Environmental Protection Agency (USEPA) regulations and corresponding Illinois programs ("combined Title I/Title V permits"). The Illinois EPA may issue such permits (1) to sources that failed to obtain a Title I construction permit prior to construction and must obtain both Title I and Title V permits; and (2) to sources that obtained Title I construction permits prior to construction which seek to revise Title I permit conditions and have such revised conditions reflected in a combined Title I/Title V permit.

II. Terms

In the situations covered in the Scope section, above, Illinois EPA will issue combined Title I/Title V permits in accordance with the following:

A. Permit Language Requirements

1. Combined Title I/Title V permits will be titled or labeled to reflect that they are issued under both Title I and Title V of the Clean Air Act, the Illinois State Implementation Plan (SIP), and

¹ This MOU does not alter existing Federal or State law or affect the scope of Illinois EPA's authority under Federal and State law. This MOU is intended merely to set forth Illinois EPA's and the United States Environmental Protection Agency's (EPA's) understanding and agreement about how combined Title I/Title V permits will be issued.

² In this MOU, the term "Title I permit" includes minor and major New Source Review (NSR) permits, and Prevention of Significant Deterioration (PSD) permits.

³ For purposes of this MOU, "Title I" means Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7401-7515, and "Title V" means Subchapter V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f.

corresponding State laws and regulations, including Illinois' Clean Air Act Permit Program (CAAPP).

2. Combined Title I/Title V permits will state that the combined permit serves as both a Title V, or CAAPP, permit, pursuant to Illinois Code 415 ILCS 5/39.5 and a Title I permit (specifying minor NSR or major NSR, PSD as appropriate), pursuant to Illinois Code 415 ILCS 5/39 for identified conditions. The permit 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.
3. To the extent that a combined permit does not serve as the Title I permit for one or more emissions units at a source, Illinois EPA will maintain separate Title I permits for these units.
4. The Illinois EPA 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. Illinois EPA shall provide this statement to any persons who request it.
5. Combined Title I/Title V permits will reference the status of each Title I permit term or condition as follows:
 - a. ("T1") may be placed next to each condition initially established in a previously issued Title I permit and carried over from such permit without change;
 - b. ("T1R") will be placed next to each condition initially established in a previously issued Title I permit, but revised in the combined Title I/Title V permit;
 - c. ("T1N") will be placed next to each condition established under Title I of the Clean Air Act and set forth for the first time in the combined Title I/Title V permit.

The "T1R" or "T1N" indicators, together with the statements required in point 8b, below, establish the permanency of the Title I conditions.

6. For each new Title I permit term or condition, or revised Title I permit term or condition originally issued under the PSD or major NSR program, Illinois EPA will indicate in the combined Title I/Title V permit under which program the term or condition was issued. Any new or revised Title I term or condition not specifically identified as major NSR or PSD will be considered developed in a State minor NSR permit to avoid major NSR or PSD.
7. The Illinois EPA will identify in the combined Title I/Title V permit any previously established applicable requirements that it is deleting, and the basis for the deletions.
8. Combined Title I/Title V permits will indicate that:
 - a. For purposes of Title V and corresponding State law, terms and conditions in a combined permit expire on the earlier of the date specified in the permit or in five years unless renewed pursuant to regulations governing Title V permit renewal; and
 - b. For purposes of Title I and corresponding State law, terms and conditions in the combined permit that were established or revised pursuant to Title I, whether previously in a separate Title I permit, or initially in the combined Title I/Title V permit, do not expire.

B. Process Requirements

1. The issuance, renewal or revision of terms and conditions in combined Title I/Title V permits must satisfy the substantive and procedural requirements of both Title I and Title V, corresponding State law and the Illinois SIP, as applicable.

2. The public notice shall state that both a Title V and Title I action is occurring. A Project Summary or other technical support document will accompany the Title I/Title V permit at public notice. The Project Summary or technical support document will state that the combined Title I/Title V permit serves as both the Title V, or CAAPP, permit and the Title I permit. It also will state that the Title I/Title V permit may include new or revised Title I conditions.
3. The Illinois EPA's use of a combined permit shall not affect the ability of any person to appeal a PSD permit to EPA's Environmental Appeals Board (EAB) in accordance with 40 C.F.R. Part 124. Appeal to the EAB of a PSD permitting action may result in a stay of the effectiveness of the permit for purposes of Title I, as provided by 40 C.F.R. 124.19. Appeal of the permit for purposes of Title I, and review and objection of the permit for purposes of Title V shall follow the procedures at 40 C.F.R. Part 124 and the procedures at Illinois review and objection rules and 40 C.F.R. Part 70, respectively.
4. Where a Title I permit already exists for emission units at a source, and the conditions established in the existing Title I permit for the unit are not revised in the combined permit, the status of the Title I permit is not altered by this MOU or by issuance of the combined Title I/Title V permit.

III. Authority

The Illinois EPA has undertaken a thorough review of existing Illinois laws and regulations and has concluded that it has the authority to enter into this MOU and to have a combined Title I/Title V permit serve as a Title I permit under 415 ILCS 5/39, the Illinois SIP, and 40 CFR Part 52 and a Title V permit under 415 ILCS 5/39.5 and 40 CFR Part 70. Illinois EPA has provided EPA with a written legal opinion setting forth these conclusions. The USEPA has reviewed Illinois EPA's legal opinion and agrees with its conclusions.

IV. Approval

Region V of the USEPA and the Illinois EPA hereby agree to the terms of this MOU.

/s/

/s/

Cheryl L. Newton
Associate Director
Air and Radiation Division
Region V, EPA

Dennis Lawler
Manager
Division of Air
Pollution Control
Illinois EPA

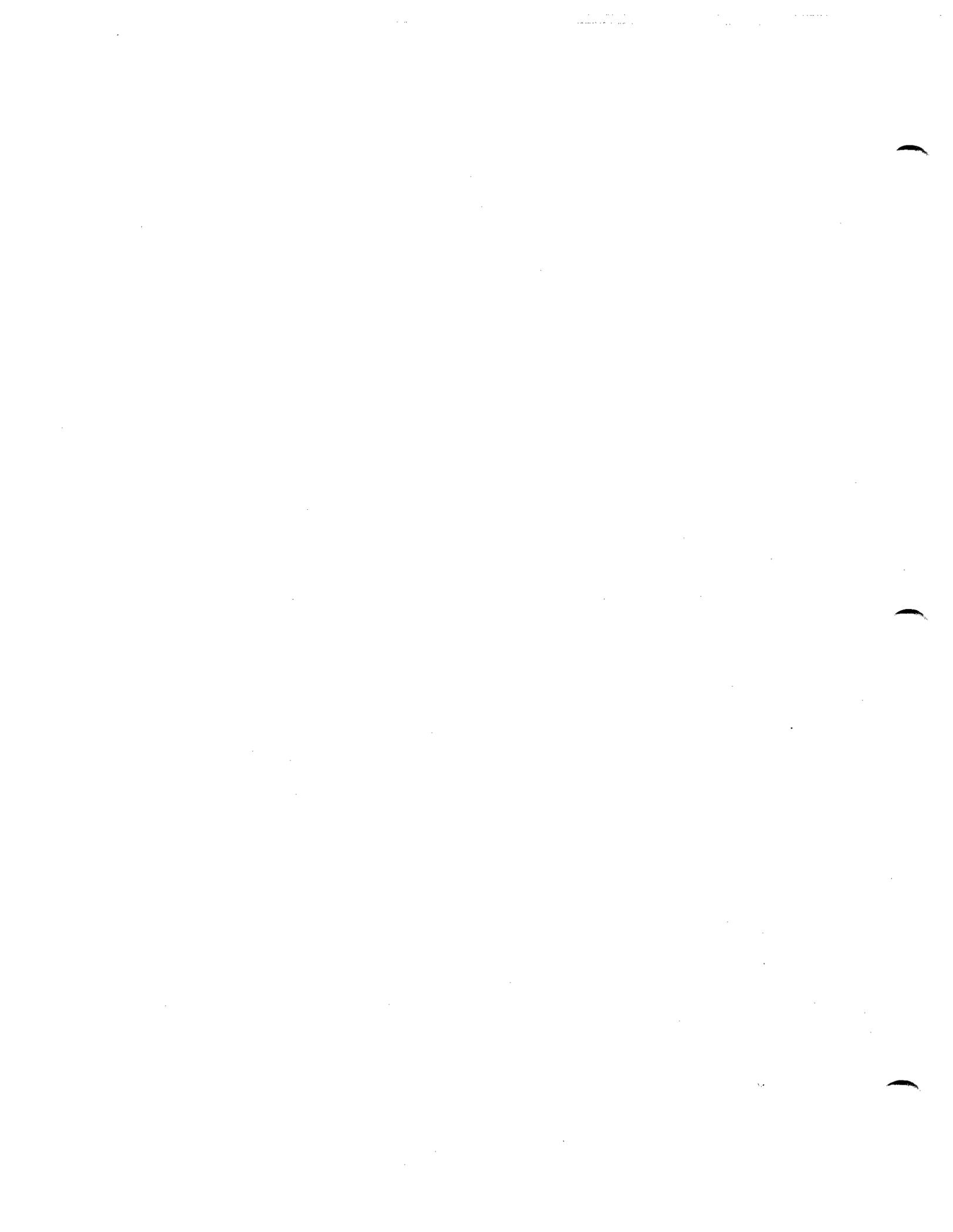
2/14/00

2/8/00

[Date]

[Date]

Appendix G
Title V fee matrix



July 21, 1994

MEMORANDUM

SUBJECT: Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants

FROM: Mary D. Nichols /s/
Assistant Administrator
for Air and Radiation

TO: Regional Administrators
Regions I - X

I expect that during FY 1995 we will give interim or final approval to many of the state and local operating permit programs required by Title V of the Clean Air Act. The fees that result from implementation of the permit programs will significantly alter how, and to what degree, state and local agencies use federal grant funds awarded under section 105 of the Act. The agencies will no longer be able to use federal grant funds for permit program activities. Also, the agencies cannot use Title V fees to provide the nonfederal matching funds required by section 105.

In many instances regional offices will need to negotiate state and local grant workplans and award grants for FY 1995 well in advance of the Title V program approvals. EPA and grant recipients will need to develop operating procedures that will facilitate a smooth transition from programs that now are funded largely by federal grants and state and local general revenue funds to programs with major components that are funded with Title V fees. I have summarized below general guidance to facilitate this program transition. I have also attached a series of questions and answers that provide additional clarification on certain aspects of the guidance including when grant funds can no longer be used for Title V-related purposes.

Relationship of Title V Fees and Section 105 Grants

After a thorough review, EPA's General Counsel concluded that Title V operating permit fees cannot be used to meet the cost-sharing requirements of the section 105 air grant program.

- Section 502 of the Clean Air Act requires that sources subject to Title V permit requirements pay an annual fee, or the equivalent over some other period, to the applicable permitting authority. The fees the permitting authority collects must be sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V operating permit program.
- Any fee required to be collected under Title V must be utilized solely to cover the reasonable (direct and indirect) costs of the Title V program.
- Since section 502 requires that Title V program costs be funded solely from the fees collected and that the fees collected be used only for that purpose, Title V permit program costs cannot be funded through a section 105 grant and these costs are not allowable section 105 grant costs.
- In order to qualify for cost-sharing, the costs incurred must be allowable costs under the EPA grant. Since Title V program costs are not allowable section 105 grant costs, the fees used to pay for them cannot be used to meet the cost-sharing requirements of section 105.

Differentiation of Program Activities

Although the Clean Air Act outlines expected Title V program activities, a state or local agency has some flexibility in how it designs its Title V program and fee schedule. As a result, the specific activities that are grant-eligible and those that are fee-eligible may vary among jurisdictions. EPA issued clarifying fee guidance on August 4, 1993 and a grant-fee matrix of activities on May 31, 1994. I have attached a copy of the matrix.

- Regional offices and grant recipients should use the matrix as an information document and general guide and not as a prescriptive checklist for differentiating between grant-eligible and fee eligible activities. In some

instances, the same activity could fall in either category, depending on the design of the state or local Title V program. Further, the nature and extent of Title V and section 105 program activities can be expected to change over time.

- Until a state or local agency's Title V program is approved by EPA, that agency has the option of using section 105 grant funds to assist in the development of its Title V program.

When Can Section 105 Grants No Longer be Used for Title V-Related Purposes?

Once EPA has given interim or final approval to the Title V operating permit program of a state or local agency:

- The agency may no longer use section 105 funds for direct or indirect Title V activities included in the EPA-approved Title V program.
- The agency must clearly identify in its grant workplan which air program activities will continue to be funded with section 105 funds.
- If a section 105 grant has been awarded that provides funding for activities that are part of the approved Title V program and no longer grant-eligible, the agency must revise its grant workplan to eliminate the Title V activities and, if appropriate, reinvest the freed-up grant funds in other grant-eligible program areas.

Defining Acceptable Content and Procedures for the FY 1995 Grant Workplan

Many regional offices and section 105 grant applicants have expressed some uncertainty about the contents of grant workplans for FY 1995 where the state or local agency expects approval of a Title V program during the fiscal year. In these instances, regional offices may follow one of several acceptable approaches.

Approach A- Status Quo

- The grant applicant develops a grant workplan that shows the full range of air

program activities planned during the course of the year. All sources and amounts of funding are identified including the agency's operating permit fees.

- Upon approval (or in anticipation of approval) of its Title V program, an agency differentiates its Title V-related activities from the balance of its air program and negotiates their removal from the grant. Regions and recipients also identify the revised level of nonfederal support remaining for matching the federal grant as a result of the removal of Title V-related resources.

Approach B- Expanded Program

- As in approach A, a full activity workplan is developed. This approach, however, expands the initial workplan submission to identify non-Title V program activities for reinvestment or increased investment once the Title V program is approved, the Title V activities removed, and grant funds are freed.
- Investments and reinvestments would be subject to negotiation with the Region. If the workplan has identified the changes in activities and the retargeting of resources explicitly and accurately, a renegotiation of the grant may not be necessary.

Approach C- Incremental

- Where early Title V program approval is anticipated, the applicant submits a grant workplan which reflects only those air program activities which are clearly section 105 eligible. EPA would provide an incremental award reflecting support for only those activities.
- Upon approval (or in anticipation of approval) of its Title V program, the applicant renegotiates its award (or an additional award) with EPA to identify supplemental areas of new or increased investment.

In all of the above approaches, every grant awarded to agencies with existing or potential Title V responsibilities must be conditioned to provide that no activities that are part of an approved Title V program will be funded with section 105 funds.

Recomputing the Maintenance of Effort

The Clean Air Act requires that all section 105 grantees must provide at least the same level of nonfederal contribution as for the previous year. This "maintenance-of-effort" or MOE level may include funding for activities that will become part of the Title V program, upon EPA approval. Once an agency has accounted for the removal of its Title V activities and resources from its section 105 grant workplan and agreement:

- The agency may request the establishment of a new MOE level based upon all the remaining air program activities that are recurrent in nature. I have attached an opinion from the Office of General Counsel that provides the basis for allowing a revised MOE level.
- For requests that would lower the MOE, EPA will consider only those revisions that are directly attributable to the impact of Title V.
- However, an agency may still request an adjustment of its MOE because of a nonselective reduction in state or local funding (i.e., a reduction that applies to all state or local programs, not just to the air program).

Satisfying the Nonfederal Match Requirement

Some state and local agencies anticipated using Title V fees to provide the nonfederal matching funds for section 105 grants and have no alternative sources of funds to meet the required 40 percent nonfederal matching requirement. For those instances where an agency is no longer able to provide the nonfederal contribution level for a section 105 grant:

- The agency may request a temporary waiver of the match requirement under rules currently under development by EPA. I anticipate that these rules will be issued before EPA's approval of the Title V programs.
- EPA may reduce the level of the federal award accordingly.

Treatment of Ramp-Up Fees

Many jurisdictions have increased their existing fees in order to cover the costs of developing an approvable Title V program. (EPA has also been supporting and

encouraging these efforts since FY 1991 through the award of section 105 grants.) Fees generated in advance of Title V program approval but used for development of the Title V program are generally termed "ramp-up" fees. Depending on the circumstances, in individual cases this revenue may be used towards grant match or to subsidize an agency's post-approval Title V fee schedule. Specifically-

- Ramp-up fees that are generated as part of a grant agreement should be counted towards an agency's grant matching and MOE requirements.
- Ramp-up fees that are generated apart from a grant agreement but in advance of Title V approval may, at the discretion of the jurisdiction, be used to subsidize an agency's approved Title V fee schedule if certain criteria are met- the permitting authority must assure that the fees were obtained from sources subject to Title V requirements; were collected or were to have been collected over for a period subsequent to enactment of the 1990 amendments to the Clean Air Act; are identifiable and available for unrestricted use; and are to be quantified and incorporated in the agency's four-year demonstration of Title V fee adequacy. This revenue cannot be used for grant cost-sharing purposes.
- At its discretion, a jurisdiction may also use ramp-up revenue which was generated apart from a grant agreement, and has been accumulated prior to Title V approval, for grant matching purposes. Such funds, if used for grant matching, can only be expended on activities allowable in the grant workplan. Further, these same funds cannot also be used to cover the costs of an approved Title V program.

Treatment of Additional Fee Revenue

The August 4, 1993 guidance on state fee schedules for operating permits programs under Title V notes that fee revenue needed to cover the reasonable direct and indirect costs of the Title V permits program may not be used for any purpose except to fund the Title V permits program. The guidance further notes, however, that Title V does not limit a jurisdiction's discretion to collect fees pursuant to independent state authority beyond the minimum amount required by Title V. Such funds may, at the discretion of the jurisdiction, be used for grant matching purposes. These funds, if used for grant matching, can be expended only on activities allowable in the grant workplan.

Ensuring the Fiscal Integrity of Grant Operations

Permitting authorities and grant recipients will need to ensure the fiscal integrity of their grant and fee operations in order to avoid an inappropriate commingling of funds. For grants, EPA will rely upon the provisions in 40 CFR 31 which covers standards for grantee financial management systems including:

- requirements that procedures for expenditure and accounting of funds be well documented and enable the clear tracing of funds. This includes adequate financial reporting, accounting records, internal controls, and budget controls.
- The recipient's workplan must comply with all applicable federal statutes and regulations.

EPA expects that each agency, if it has not already done so, will update and maintain a financial management system to accomplish the objectives noted above. This includes the necessary differentiation of air grant-eligible activities and expenditures from those related to Title V. This should occur no later than at the time of approval of the Title V program.

As I noted above, I have attached a series of questions and answers to provide additional, more detailed guidance on some of the issues outlined above. I also will provide guidance on any additional transition issues that may arise. I am committed to ensuring a smooth transition as state and local agency Title V programs are approved and to providing, to the extent possible, the funding that these agencies need to implement the Clean Air Act. For further information on this guidance please contact either Bill Houck in the Office of Air and Radiation at 202-260-1754 or Susanne Lee in the Office of the General Counsel at 202-260-1484.

Attachments

GRANT-FEE TRANSITION:
QUESTIONS and ANSWERS

Office of Air and Radiation
July 21, 1994

GRANT-FEE TRANSITION: QUESTIONS and ANSWERS

105/ Title V Programmatic Relationship

Q. What is the programmatic relationship between section 105 and Title V?

A. Section 105 air grants have been appropriated by Congress annually since 1963 to assist air pollution control agencies (as defined in section 302(b)) in implementing programs for the prevention and control of air pollution and in meeting national ambient air quality standards.

However, Title V of the 1990 Clean Air Act created an operating permit program applicable to stationary sources of regulated air pollutants. It requires the owners of affected sources to pay fees to the permitting agency to cover all reasonable direct and indirect costs of the operating permit program.

Title V operating permit program costs will likely constitute a major portion, though not necessarily all, of a jurisdiction's stationary source program expenses. The operating permit program will be an integral component of an overall air quality maintenance and attainment strategy. This strategy will also encompass activities related to non-Title V stationary sources, area sources and mobile sources.

Since an important distinction has been made in the Act that Title V activities can only be supported by Title V fees, significant changes will need to be made in how air pollution control agencies fund a large portion of their air programs.

Title V Fees (General)

Q. How are Title V operating permit program expenses to be covered?

A. Section 502(b)(3) directs that all affected sources pay an annual fee, or equivalent over some other period, to the appropriate permitting authority. In most cases this will be the traditional section 105 air pollution control agency. The permitting authority is to recover fees in an aggregate amount sufficient to recover all reasonable (direct and indirect) expenses related to developing and administering the permit program. While Congress set a presumptive minimum fee rate for permitting authorities to meet (\$25 per ton adjusted annually per the CPI), a jurisdiction may collect less than this amount if it provides a detailed cost justification.

Section 105 (General)

- Q. What are the nonfederal contribution requirements that a grantee must meet in order to obtain or retain a section 105 grant?**
- A. There are two major requirements that state and local agencies must meet in order to receive section 105 funds: (a) each agency must expend annually for recurrent program expenses at least the level of nonfederal funds that it expended in the previous year (i.e., its **maintenance of effort**), and (b) pursuant to 1990 CAA changes, each agency must cover at least 40% of the total recurring expenses of its section 105 air pollution control program (i.e., the **40% match**).

105/ Title V Fiscal Relationship

- Q. Can Title V operating permit fees be used towards the nonfederal matching requirements of the section 105 air grant program?**
- A. After a thorough review, EPA's General Counsel concluded that Title V operating permit fees cannot be used to meet the cost-sharing requirements of the section 105 air grant program.

Section 502 of the Clean Air Act requires that sources subject to Title V permit requirements pay an annual fee, or the equivalent over some other period, to the applicable permitting authority. The fees the permitting authority collects must be sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V operating permit program. Since section 502 requires that Title V program costs be funded solely from required Title V fees and these fees be used only for that purpose, Title V permit program costs cannot be funded through a section 105 grant and these costs are not allowable section 105 grant costs.

In order to qualify for cost-sharing, the costs incurred must be allowable costs under the EPA grant. Since Title V program costs are not allowable section 105 grant costs, the fees used to pay for them cannot be used to meet the cost-sharing requirements of section 105.

- Q. If an agency already had an operating permit program in place which charged affected sources a fee, is the Title V fee only that portion which represents the**

incremental change (i.e., the increase)? Can the original fee level be used as a basis for matching purposes?

A. Many of the activities and costs associated with a jurisdiction's existing stationary source control program effort will become a part of its Title V program once that program is approved by EPA. Title V requirements will, in and of themselves, likely generate new expenses. The Title V fee must be based upon the entire range of Title V-related expenses and not just the incremental change. No portion of the fees necessary to cover the full range of Title V-related program costs can be used for grant matching purposes.

Q. Does this mean that a jurisdiction cannot charge a Title V source a separate fee to cover other than Title V-related air program expenses?

A. No. A jurisdiction is free to charge a Title V source a separate fee to cover air program expenses other than those which are Title V-related (e.g., for state-only requirements). A jurisdiction may choose to collect this fee along with the Title V-related fee but the fees must be clearly be differentiated for administrative purposes.

Q. Can fee revenue in excess of that required to meet Title V needs be used towards the grant matching requirement?

A. The August 4, 1993 fee guidance for state Title V operating permit programs notes that Title V does not limit a jurisdiction's discretion to collect fees pursuant to independent state authority beyond the minimum amount required by Title V. Such funds may, at the discretion of the jurisdiction, be used for grant matching purposes. These funds, if used for grant matching, can only be expended on activities allowable in the approved grant workplan. These funds should also be clearly differentiated from fees required to cover Title V activities.

Q. How should permit fees which are collected in advance of Title V program approval be treated?

A. Permit fees generated in advance of Title V program approval but used for the development of the Title V program are generally termed "ramp-up" fees. Depending upon how the fee provisions were structured, this revenue may be used towards grant match or to subsidize an agency's post-approval Title V fee schedule. Specifically:

- Ramp-up fees that are generated as part of a grant agreement (i.e., used to support

allowable grant activities) should be counted towards an agency's grant cost-sharing requirements (matching and maintenance of effort).

- Ramp-up fees that are generated apart from a grant agreement but in advance of Title V approval may, at the discretion of the jurisdiction, be used to subsidize an agency's approved Title V fee schedule if certain criteria are met. The permitting authority must assure that the fees: were obtained from sources subject to Title V requirements; were collected or were to have been collected over a period subsequent to enactment of the 1990 amendments to the Clean Air Act; are identifiable and available for unrestricted use; and are, or will be, quantified and incorporated in the agency's four-year demonstration of Title V fee adequacy. These fees may not be used for grant matching purposes.

Applicable Activities

Q. What air program activities are eligible for fee coverage and what activities are eligible for continued receipt of grants? Does there need to be a clear differentiation?

A. Activities eligible for Title V permit fees are delineated in section 502(b)(3)(A) of the Act and in 40 CFR 70.9, the final Title V operating permit program rule. Although the Clean Air Act outlines expected Title V program activities, a state or local agency has some flexibility in how it designs its Title V program and fee schedule. As a result, the specific activities that are grant-eligible and those that are fee-related may vary among jurisdictions. Generally, Title V program activities are those which are necessary for the issuance and implementation of the Title V permits. EPA issued clarifying fee guidance on August 4, 1993 and a grant-fee matrix of activities on May 31, 1994. Since air grants cannot be used to pay for Title V-related activities a clear differentiation will need to be made.

Q. How should the Grant-Fee Matrix be used?

A. Regional offices and grant recipients should use the matrix as an information document and general guide and not as a prescriptive checklist for differentiating between grant-eligible and fee eligible activities. In some instances, the same activity could fall in either category, depending on the design of the state or local Title V program. The matrix can be expected to change over time as the nature of sources subject to Title V changes and

as new grant initiatives emerge.

- Q. Can section 105 air grants be used to cover the development of a state's Title V operating permit program prior to its approval by EPA?**
- A.** Yes. Section 105 grants can be used to assist in the 'ramp-up' or development of the permitting agency's prospective Title V program prior to its approval by EPA. To be an grants-eligible activity, of course, the Title V ramp-up activity must be included as part of the recipient's approved section 105 grant workplan. (Note: EPA has been awarding agencies air grants since FY 1991 to encourage the development of the Title V program and supporting fee provisions.) Until EPA takes action to either approve (including interim approval) or disapprove an agency's Title V program, that agency has the option of using its section 105 grant funds to develop its Title V program.

Section 105/ Title V Threshold

- Q. When can air grants no longer be used to fund Title V-related program activities?**
- A.** Once EPA has given interim or final approval to the Title V operating permit program of a state or local agency, the agency may no longer use section 105 grant funds to cover the reasonable direct and indirect costs of its Title V program activities except under specific circumstances as delineated in EPA guidance.

If a section 105 grant has been awarded that provides funding for activities that are part of the approved Title V program and no longer grant-eligible, the agency must amend or revise its grant workplan to eliminate the Title V activities and, if appropriate, reinvest the freed-up grant funds in other grant-eligible program areas.

Appropriate Procedures and Timing for Grant Workplan Submission and Adjustment

- Q. What are acceptable grant workplan content and procedures for FY 1995 where a state or local agency expects Title V program approval subsequent to approval of its grant workplan (but during the FY 1995 grant budget period)?**
- A.** In these circumstances, a regional office may use any one of the following approaches:

Approach A- Status Quo

- The grant applicant develops a grant workplan that shows the full range of air program activities planned during the course of the year. All sources and amounts of funding are identified including the agency's operating permit fees.

- Upon approval (or upon anticipation of approval) of its Title V program, an agency differentiates its Title V-related activities from the balance of its air program and negotiates their removal from the grant. Regions and recipients also identify the revised level of nonfederal support remaining for matching the federal grant as a result of the removal of Title V-related resources.

Approach B- Expanded Program

- As in approach A, a full activity workplan is developed. This approach, however, expands the initial workplan submission to identify non-Title V program activities for reinvestment or increased investment once the Title V program is approved, the Title V activity removed, and grant funds are freed.

- Investments and reinvestments would be subject to negotiation with the Region. Depending upon how explicitly and accurately the recipient has identified the changes in its activities and the retargeting of resources, a renegotiation of the grant may not be necessary.

Approach C- Incremental

- Where early Title V program approval is anticipated, the applicant submits a grant workplan which reflects only those air program activities which are clearly section 105 eligible. EPA would provide an incremental award reflecting support for only those activities.

- Upon approval (or upon anticipation of approval) of its Title V program, the applicant renegotiates its award (or an additional award) with EPA to identify supplemental areas of new or increased investment.

In all of the above approaches, every grant awarded to agencies with existing or potential Title V responsibilities must be conditioned to provide that no activities that are part of an approved Title V program will be funded with section 105 funds.

Impact on Nonfederal Contribution Requirements

Q. How is a recipient agency's cost-sharing (match) requirement affected by approval of its Title V program?

- A. In those instances where an agency is no longer able to provide the necessary 40% nonfederal contribution level for a section 105 grant as a result of the transfer of air

program resources to the Title V program, the agency would be able to request a temporary waiver of the match requirement under rules currently under development by EPA.

Alternatively, if a recipient is not able to meet any of its match obligation because of the removal of all of its nonfederal resources to Title V-- but the recipient anticipated that it would be able to secure additional funding to return to at least the 40% level during the course of the grant budget period-- the recipient could request that EPA defer the recipient's nonfederal contribution until later in the grant budget period. The recipient would have to expend its nonfederal contribution within the approved budget period.

If the agency fails to meet the cost-sharing requirements because a waiver is not granted or the agency is unable to pay the amount of cost-sharing that has been deferred during the budget period, EPA may undertake the corrective actions set forth in 40 CFR 31.43. Included are actions such as terminating, or annulling the current award, or withholding future awards.

Q. How is a recipient's maintenance of effort (MOE) obligation affected by approval of its Title V program?

- A. OGC has concluded that a grant recipient's MOE level may be adjusted to reflect the transfer of activities previously funded through section 105 grants to the Title V program. A state must maintain the level of effort associated with recurrent expenditures for activities that continue to be funded through section 105 grants. OGC has indicated that this principle applies to not only FY 1995 but future years as well.

Since the timing of Title V program approvals by EPA may vary and are uncertain, adjustment of the MOE level may need to occur in the midst of a fiscal year and not simply at its outset. Similarly, as Title V programs become fully implemented, further adjustments to the MOE level may be necessary in subsequent years.

Q. Many section 105 recipients have been contributing nonfederal funds at a rate greater

than the required 40% nonfederal minimum. When resources related to Title V have been removed from the section 105 equation, will these recipients be required to maintain their larger historical matching percentage or only a 40% contribution?

- A. This question confuses the matching and maintenance of effort requirements. If, even after adjustment for the removal of Title-V related resources, the grantee's contribution is at least 40% of the combined remaining nonfederal and federal grant funds, then the

grantee will have met the section 105 match requirement and remain eligible for at least the same level of federal funding that it had been receiving before. This is the only percentage requirement under the Act that a recipient must meet. Recipients are not obligated to increase their funding contribution to restore what might have been a historically-evolved nonfederal percentage above 40%. However, even though only 40% is required to meet the cost-sharing requirements, an amount above 40% may be required in order to meet the maintenance of effort requirement. Therefore, a recipient may not arbitrarily reduce its remaining nonfederal contribution simply because this funding level is greater than 40% relative to the total. This is because the amount of funds contributed constitutes the new maintenance of effort level and may not be reduced.

Q. Can the MOE be adjusted for reasons other than the accommodation of the changes brought about by Title V?

- A. Yes. An agency may request an adjustment of its MOE because of a nonselective reduction in the expenditures of all executive branch agencies (not just the air program) of the applicable unit of government (e.g., state or local government). As part of the revisions to Part 35, EPA is also considering other circumstances where MOE flexibility may be needed.

Grant Fiscal Integrity

Q. Must a recipient continue to report its overall air program expenditures as part of the section 105 grant?

- A. To assure that federal funds do not supplant other available resources EPA can request, as a condition for receipt of a section 105 grant, that a grantee describe all sources of support for the entirety of its air program activities.

Q. What financial integrity requirements must each grant recipient satisfy?

- A.** Permitting authorities and grant recipients will need to ensure the fiscal integrity of their grant and fee operations in order to avoid the inappropriate commingling of funds. For grants, EPA will rely upon the provisions in 40 CFR 31 including requirements that procedures for the expenditure and accounting of funds must be well documented and enable the clear tracing of funds. This includes adequate financial reporting, accounting records, internal controls, and budget controls. The recipient's workplan must also comply with all applicable federal statutes and regulations.

EPA expects each agency, if it has not already done so, to update and maintain a financial management system to accomplish the above objectives. This includes the necessary differentiation of air grant-eligible activities and expenditures from those which are related to Title V. This should occur no later than upon approval of the Title V program.

Each regional office will be expected to coordinate its review and oversight of each of its recipients' grant workplan and permit program submissions.

MATRIX OF TITLE V-RELATED AND AIR GRANT-ELIGIBLE ACTIVITIES

Use of the Matrix

The matrix should be read and used in concert with the August 4, 1993, operating permit fee guidance issued by the Office of Air Quality Planning and Standards, particularly the explanatory cover memorandum. That memorandum sets forth principles which will help guide the Agency's review of the Title V fee program submittals. The matrix does not reinterpret the Part 70 rule nor the Title V fee guidance. Rather the matrix reaffirms those program activities outlined by the guidance which are necessary for the development and implementation of a Title V operating permit program and which EPA expects to be covered by Title V fees. Title V operating permit program expenses cannot be eligible grant expenses.

Organization of the Matrix

The matrix consists of two columns of activities-- those which EPA considers necessary for the issuance and implementation of Title V permits (and which EPA expects to be covered by Title V permit fees)-- and those air program activities outside of Title V that would be eligible for federal air grant assistance.

Activities are organized by functional or substantive categories that are common to each of the columns in order to better illustrate the impact of Title V on the overall air program operations. The categories used, however, tend to reflect the functional aspects of Title V (i.e., program development, permit issuance, compliance, etc.). Because some portion of over-arching CAA activities like emissions inventory development, monitoring, etc., may be Title V-related, some repetition may occur in the matrix.

The left-hand column of the matrix lists those program activities outlined in the Title V fee guidance which are necessary for the development and implementation of a Title V operating permit program and which EPA expects to be covered by Title V fees. Categories of Title V-related activity include:

- Development of the Title V operating permit program
- Review and issuance of Title V permits
- Implementation of specific CAA requirements applicable to Title V
- Compliance/enforcement of Title V-related requirements
- Administration of Title V fee program
- Title V-related small business technical assistance
- Other activity necessary for Title V operations

By contrast, the right-hand column of the matrix lists air program activities which can reasonably be expected to remain eligible for federal air grant assistance. This list, while as comprehensive as possible, should not be viewed as absolute. The categories of activity used for grants-eligible activities include:

- Development/revision of permit requirements for non-Title V sources
- Permit review and issuance for non-Title V sources
- Implementation of specific CAA regulatory requirements
- Compliance/enforcement of CAA requirements not related to Title V
- Administration of grant and other forms of assistance
- CAA technical assistance to small business (outside of Title V)
- General and emerging air program activity

For Further Information

Questions on the matrix should be directed to William Houck in the Office of Program Management Operations at 202-260-1754. Specific concerns related to the eligibility of program expenses for Title V fee coverage and to Title V fee demonstrations should be directed to Kirt Cox at 919-541-5399 or Candace Carraway at 919-541-3189 in the Office of Air Quality Planning and Standards.

MATRIX OF TITLE V-RELATED AND AIR GRANT- ELIGIBLE ACTIVITIES

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Title V Permit Program Development	Other Permit Program Development
<p>Design/development of operating permit program for Part 70 sources including: preparation of initial program submittal; development of implementation agreement with EPA; documentation of resources and legal authority; training of staff for Title V program implementation; development of necessary regulations, policies, and procedures; development of modifications to program required by new Federal regulations or standards; integration with other Clean Air Act programs (including Title III/IV); development of data systems for tracking Part 70 sources; development and oversight of local Title V programs; development of model permits.</p>	<p>Development/revision of operating permit programs for other than Part 70 sources.</p>
<p>Determinations of program coverage and source applicability including: inventory of Part 70 sources; establishment of criteria for deferrals of non-major sources, development of significance levels for exempting required permit information; development of capacity to emit restrictions for avoiding consideration as major source (e.g., creation of synthetic minors).</p>	<p>Identification of those sources subject to any state permitting requirements other than those in the state's Title V program.</p>
<p>Revisions to the SIP to the extent they are necessary for the issuance and implementation of Part 70 permits.</p>	<p>Preparation, adoption and revision of SIPs necessary to implement permitting programs for other than Part 70 sources.</p>

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Title V Permit Review/Issuance Activities	Other Permit Review/Issuance Activities
<p>Review of permit application for permitting of Part 70 sources * including: completeness review, review of compliance plans, schedules and compliance certifications; development of permit terms and conditions (including operational flexibility); trading and compliance provisions; permit limitations; separation of state-only requirements; establishment of permit-equivalent SIP limitations; optional shield provisions; and actual issuance of the permit. * (For the purposes of this matrix, such sources include: Phase II, Title IV sources; as well as major and non-major sources deferred by EPA but which a state opts to include in Title V).</p>	<p>Review of applications and issuance of permits:</p> <ul style="list-style-type: none"> * For non-Part 70 sources; * For deferred sources during the deferral period approved by EPA rulemaking; * Covering state/local-only requirements in Part 70 permits.
<p>Activities in support of public, affected State, and EPA review of permits including: notices of issuance, renewal and significant modification and the opportunity to comment; holding of public hearings, as necessary; review of public comments and preparation of responses; documentation of hearing records; and preparation of responses to challenges on permit decisions.</p>	<p>Public participation activities associated with permit issuance, renewal and modification for other than Part 70 sources.</p>
<p>Post-permit issuance activity: following the issuance of Title V permits- any revisions, modifications, or reopenings necessary (including analysis and processing necessary for reissuance); and renewals of Title V permits.</p>	<p>Post-permit issuance activity for non-Part 70 sources.</p>
<p>Development of emission inventory compilation requirements necessary for Title V permit issuance, and any necessary equivalency and case-by-case RACT determinations under Section 110 of the Clean Air Act if conducted as part of the Part 70 permitting process.</p>	<p>Development of emission inventory compilation requirements, and any necessary equivalency and case-by-case RACT determinations under Section 110 of the Clean Air Act if conducted as part of a construction or non-Title V operating permit process.</p>

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Implementing Applicable Requirements	Implementing Other Permit or Regulatory Requirements
<p style="text-align: center;"><u>Title I</u></p> <p>Implementation and enforcement of permits issued to Part 70 sources pursuant to Title I, Parts C/D, and PSD/NSR sources.</p> <p>Implementation and enforcement of state/local minor new source review (NSR) permit for a Part 70 source that is a minor source provided that such a state/local program is approved under section 110(a)(2)(C).</p> <p>Implementation of section 111 NSPS through Part 70 permits.</p> <p style="text-align: center;"><u>Section 112</u></p> <p>Implementation of specific Title I, section 112 requirements through Part 70 permits:</p> <ul style="list-style-type: none"> * NESHAPs [112(d), 112(f)] * 112(h) design and work practice standards <p>Development and implementation of specific section 112 requirements through Part 70 permits:</p> <ul style="list-style-type: none"> * 112(g) modifications for constructed, reconstructed and modified major sources. * 112(i) early reductions occurring within Part 70 sources. * 112(j) equivalent MACT determinations. * 112(l) state/local air toxics activities that take place as part of Part 70 process. * 112(r)(7) risk management plans if plan is developed as part of Part 70 process. 	<p style="text-align: center;"><u>Title I</u></p> <p>Development, implementation and enforcement of state/local minor NSR permit programs which are not approved under 110(a)(2)(C).</p> <p>Implementation of section 111 NSPS that are not part of Title V/Part 70 process including new residential wood heaters (if not incorporated as part of Part 70 at the option of the state).</p> <p style="text-align: center;"><u>Section 112</u></p> <p>Asbestos NESHAP demolition and renovation activities (if not incorporated as part of the Part 70 program at the option of the state).</p> <p>Development and implementation of specific section 112 requirements affecting minor sources of hazardous air pollutants.</p> <p>112(l) state/local air toxics activities not within the Part 70 process (i.e., urban area toxics programs).</p> <p>112(r)(7) risk management plans or plan elements not developed as part of Part 70 process (i.e., plans are developed prior to permit issuance, plans cover sources deferred from Part 70, etc.).</p>

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
<p style="text-align: center;">Implementing Applicable Requirements</p>	<p style="text-align: center;">Implementing Other Permit or Regulatory Requirements</p>
<p style="text-align: center;"><u>Title IV</u></p> <p>Issue Phase II permits and implement CEM requirements after Title V approval including:</p> <ul style="list-style-type: none"> * Observe on-site tests of Phase II CEMs including: pre-test meetings; review of protocol, records, and data integrity; and verification of monitor performance. * Conduct Phase II CEM certification reviews including monitoring plan and data acquisition system review, and review of certification application. 	<p style="text-align: center;"><u>Title IV</u></p> <p>Assist in implementing Phase I Acid Rain program activities including:</p> <ul style="list-style-type: none"> * Develop infrastructure for implementation (including- hiring, training and organizing staff; installation and operation of data management systems; and establishing links to national acid rain data base). * Observe on-site tests of Phase I CEMs including: pre-test meetings; review of protocol, records, and data integrity; and verification of monitor performance. * Conduct Phase I CEM certification reviews, including monitoring plan and data acquisition system review; and review of application certification prior to Title V approval. * Initiate Phase I CEM compliance activities for sources missing deadlines. * Participate in NO_x permitting process @ Phase I sources. * Review, evaluate and act on Phase I NO_x averaging compliance plans. * Assist in Phase I compliance activities through field presence, oversight and support to EPA enforcement actions including NO_x. <p>Implement Phase II CEM activities occurring prior to Title V approval including:</p> <ul style="list-style-type: none"> * Observe on-site tests of Phase II CEMs including: pre-test meetings; review of protocol, records, and data integrity; and verification of monitor performance. * Conduct Phase II CEM certification reviews including monitoring plan and data acquisition system review, and review of certification application.
TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES

Compliance/Enforcement of Title V Requirements	Compliance and Enforcement of Other Permit or Regulatory Requirements
<p>Compliance and enforcement activities (prior to filing of an administrative or judicial complaint or order) to the extent the activities are related to the enforcement of a Part 70 permit, the obligation to obtain a Part 70 permit, or the Part 70 permitting regulations. This includes:</p> <ul style="list-style-type: none"> * Development/administration of enforcement legislation, regulations, guidance, and policies. * Review and certification of compliance plans and schedules for Part 70 sources. * Conduct and document inspections for determining compliance with Part 70 permit requirements and provisions including the performance of necessary analyses and support activities to verify source compliance with Part 70 permit requirements and provisions (e.g., stack tests conducted/reviewed by permitting authority, review of monitoring reports). * Review and observation of CEM monitoring plan, certification tests, and certification application for Part 70 sources. * Review of monitoring data for determining compliance of Part 70 sources including CEM data and reports. * Making requests to Part 70 source for information before or after violation is identified. * Preparation and issuance of notices, findings, and letters of violation. * Development of cases and referrals up until the filing of an administrative or judicial complaint or order. 	<p>Compliance and enforcement activities including:</p> <ul style="list-style-type: none"> * Determining compliance of non-Part 70 sources including sources permitted as synthetic minors if the state opts not to include these sources as part of the Part 70 program; * Part 70 sources following filing of administrative or judicial complaint or order; * State/local-only requirements on Part 70 sources.

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Administration of Title V Permit Fee Program	Administration of Other Revenue Programs
Design and modification, as necessary, of fee structure for part 70 sources.	Development, design, operation, demonstration, collection, administration, and accounting of permit and other fees for non-Part 70 sources.
Demonstration of fee schedules and projection of revenues from fee collections from Part 70 sources.	Development, design, operation, demonstration, collection, administration, and accounting of other fees, charges and financial mechanisms for overall air program support including meeting requirements for receipt and retention of federal air grant assistance.
Collection, administration, and accounting of fees for Part 70 sources including costs of performing self-auditing or audit by independent auditor of fee collections and the adequacy of the fiscal management of the fee system.	
Technical Assistance to Small Business	Technical Assistance to Small Business
<p>Costs of the Small Business Assistance Program attributable to Part 70 sources including that portion of costs related to:</p> <ul style="list-style-type: none"> * Clearinghouse on compliance methods and technologies including pollution prevention approaches. * Establishment of CAA/small business ombudsman and the provision of information on source applicability, available assistance, and the rights and obligations of small business stationary sources under the CAA. * Small Business Compliance Advisory Panel. 	<p>Costs of the Small Business Assistance Program attributable to non-Part 70 sources including that portion of costs related to:</p> <ul style="list-style-type: none"> * Clearinghouse on compliance methods and technologies including pollution prevention approaches. * Establishment of CAA/small business ombudsman and the provision of information on source applicability, available assistance, and the rights and obligations of small business stationary sources under the CAA. * Small Business Compliance Advisory Panel.

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Other Title V-Related Program Costs	Non-Title V Permit Program Costs
<p>General air program activities to the extent such activities are necessary for the issuance and implementation of Part 70 permits. These include:</p> <ul style="list-style-type: none"> * Installation, operation, and maintenance of emissions and ambient monitoring instrumentation required in the Part 70 permit. * Performance of ambient monitoring required in Part 70 permit. * Emission testing on Part 70 sources required as part of the Part 70 permit. * Modeling and other impact analyses required as part of Part 70 permit. * Development of emissions inventories required as part of Part 70 permit (e.g., to verify compliance with Part 70 permit provisions, to develop and maintain permit fee schedule). * Overhead and administrative costs directly related to implementation of EPA approved state/local Title V operating permit program. 	<p>General and source-specific air program requirements necessary for the issuance and implementation of a state operating permit for other than a Part 70 source including:</p> <ul style="list-style-type: none"> * Installation, operation, and maintenance of emissions and ambient monitoring instrumentation required for non-Part 70 source. * Performance of ambient monitoring required for non-Part 70 source. * Emission testing on non-Part 70 sources. * Modeling and other impact analyses for a non-Part 70 source. * Development of emissions inventory data for non-Part 70 sources or to verify compliance with other than Part 70 permit provisions. * Overhead and administrative costs directly related to the implementation of a non-Title V permitting program.

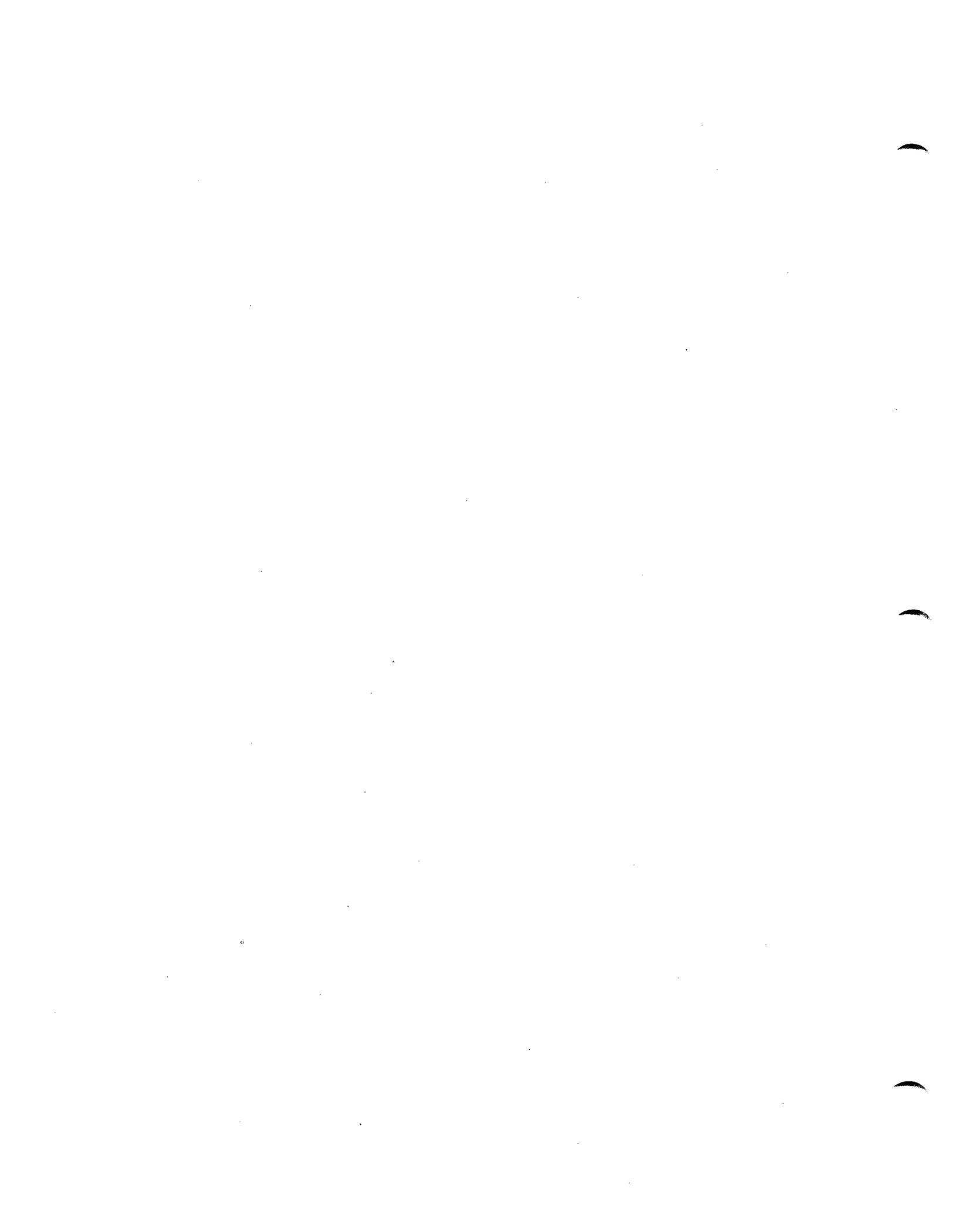
TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
General Air Program Activity	General Air Program Activity
<p>Preparation, planning, development, and adoption of source-specific SIPs necessary for the issuance of a Title V permit and implementation of the permit provisions.</p>	<p>Preparation, planning, development, and adoption of SIPs, including those for attainment and maintenance of NAAQS, enactment of state or local area-wide source regulations, and enactment of mobile or area source controls (excludes source-specific SIPs required as part of Title V program/Part 70 permit such as identification of synthetic minor sources). SIP development includes: the conduct of analyses of control options and demonstration of alternative strategies and regulatory approaches; development and maintenance of emissions inventory for preparing attainment and maintenance strategies and for assessing progress in achieving necessary emissions reductions for attaining NAAQS; and conduct of area or regional modelling to assess and demonstrate options. Also, includes the designation/redesignation of nonattainment areas and other procedural changes related to the attainment and maintenance of NAAQS.</p>
<p>Establishment, operation, and maintenance of that portion of a multiple site ambient monitoring network which is necessary for the issuance of a Title V permit or permits (as documented in the permit issued to the source or group of sources) including any applicable source-specific NAMS, SLAMS or PAMS monitor. This includes the cost of purchasing the monitor; collection, processing, management and review of data collected by the monitor; and quality assurance of the instrumentation.</p>	<p>Establishment, operation, and maintenance of multiple site ambient monitoring networks designed to assess overall levels and trends within the ambient air including the EPA required or approved networks for NAMS, SLAMS, PAMS, urban air toxics, and acid rain assessment networks. This includes the cost of purchasing monitoring equipment; collection, processing, management and review of data collected by the networks; and the quality assurance of the networks and instrumentation (excludes ambient monitoring specifically required by a Title V permit).</p>
<p>Planning, establishment, and implementation of programs for the development and training of state/local staff to implement Title V and related Title III and IV requirements.</p>	<p>Planning, establishment, and implementation of programs for the development and training of state/local staff to carry out Clean Air Act requirements and Agency priorities not related to the implementation of the Title V program.</p>

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
<p style="text-align: center;">General Air Program Activity</p>	<p style="text-align: center;">General Air Program Activity</p> <p style="text-align: center;"><u>Mobile Source Programs</u></p> <p>Planning, development, implementation, or oversight of mobile source control program required by Titles I & II of the Clean Air Act including:</p> <ul style="list-style-type: none"> * Development of emissions inventories for mobile sources. * Planning, development and oversight of basic and enhanced motor vehicle inspection/ maintenance (implementation should be paid by vehicle inspection fees). * Planning, development and oversight of oxygenated and alternative fuels programs for motor vehicles (implementation expected to be paid by non-grant/private sector resources). * Planning, development and oversight of clean vehicle programs (implementation expected to be paid by non-grant/private sector resources). * Development and enforcement of Stage I and Stage II vapor recovery/ refueling programs for motor vehicle fuels including tanker truck inspections (installation of controls expected to be paid by non-grant/private sector resources). * Integration of transportation and air-quality related planning activities including transportation-air quality analyses and determinations of transportation conformity. * Planning, development, and oversight of transportation control measures (implementation expected to be paid by non-grant/private or other public sector resources).

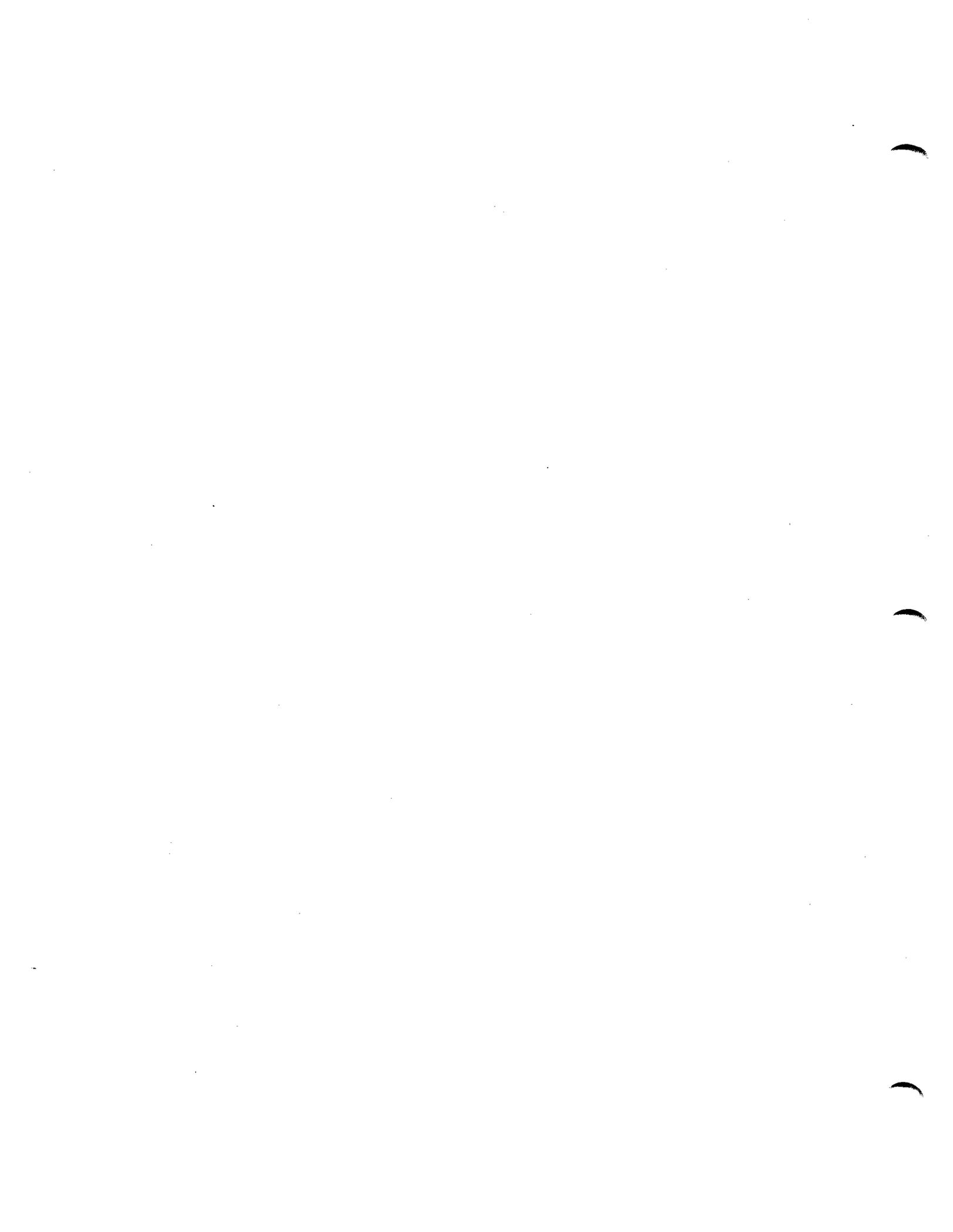
TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
<p>General Air Program Activity</p>	<p>General Air Program Activity</p> <p><u>Environmental Compatibility</u></p> <ul style="list-style-type: none"> * State/local review of assurances by federal entities as to the general conformity of their activities with an approved state implementation plan (40 CFR 93 Subpart A); state/local determination of conformity of their federally-assisted actions (40 CFR 51). * Environmental impact review. * Land use and air quality analyses.
<p>Emerging Activities and Programs</p> <ul style="list-style-type: none"> * Public education and outreach concerning implementation of the Title V program. 	<p>Emerging Activities and Programs</p> <p>Planning, development, implementation of emerging programs and initiatives required by the Clean Air Act or agency priorities including:</p> <ul style="list-style-type: none"> * Public education and outreach concerning the overall provisions of the Clean Air Act and the specific provisions required for implementation of non-Title V provisions. * Planning and implementation of specific geographic or ecosystem approaches (including multi-media support) and studies for addressing specific air pollution problems within defined geographic areas. * Planning and implementation of pollution prevention initiatives and strategies, market-based approaches, risk analysis, not directly related to implementation of a Title V permit to a specific Part 70 source. * Promotion of public/private partnerships for addressing specific air pollution problems.

TITLE V PERMIT FEE ACTIVITIES	AIR GRANT ELIGIBLE ACTIVITIES
Emerging Activities and Programs	Emerging Activities and Programs
<p>* Future determinations will need to be made about the applicability of this matrix to those Indian Tribes which administer EPA-approved operating permit programs.</p>	<ul style="list-style-type: none"> * Development and implementation of voluntary programs for reducing air pollution and/or addressing specific risks including indoor air, green programs, and other voluntary energy conservation programs. * Programs for assessing air quality maintenance/ air pollution control needs and for the development and implementation of air quality programs on Indian lands. * Programs for improving the transfer and exchange of programmatic and technical information among state and local programs including information on emerging and innovative technologies. * Innovative personnel programs to promote sharing of expertise and knowledge among state, local, and federal agencies. * Development of state programs for control of ozone depleting substances; and for control of carbon dioxide emissions. * Support for regional associations of states and interstate pollution control compacts. * Participation in international studies, programs, and agreements.

Appendix H
Petition Response for Midwest Generation, Fisk Station



Appendix H
Petition Response for Midwest Generation, Fisk Station



BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)
MIDWEST GENERATION, LCC)
FIKSK GENERATING STATION)
) ORDER RESPONDING TO PETITIONER'S
Petition number V-2004-1) REQUEST THAT THE ADMINISTRATOR
CAAPP No. 95090081) OBJECT TO ISSUANCE OF A STATE
Proposed by the Illinois) OPERATING PERMIT
Environmental Protection Agency)
_____)

ORDER PARTIALLY DENYING AND PARTIALLY GRANTING
PETITION FOR OBJECTION TO PERMIT

On October 10, 2003, pursuant to its authority under the Illinois Clean Air Act Permitting Program ("CAAPP"), the Illinois Environmental Protection Act, 415 ILCS 5/39.5, Title V of the Clean Air Act ("Act"), 42 U.S.C. §§ 7661-7661f, and EPA's implementing regulations in 40 C.F.R. part 70 ("part 70"), the Illinois Environmental Protection Agency ("IEPA") published a proposed title V operating permit for Midwest Generation, LLC, Fisk Generating Station ("Fisk permit"). The Fisk Generating Station operates one coal-fired boiler with a nominal capacity of 349 megawatts, an electrostatic precipitator and low nitrogen oxide burners. Other equipment at the facility includes an auxiliary boiler, coal handling and processing units, turbines fired with diesel and natural gas, and a gasoline storage tank.

On January 22, 2004, the United States Environmental Protection Agency ("EPA") received a petition from the Chicago Legal Clinic ("Petitioner") requesting on behalf of a number of environmental groups that EPA object to issuance of the Fisk permit, pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d).

Petitioner alleges that, in issuing the Fisk permit, IEPA failed to comply with the requirements of section 503(e) of the Act, 42 U.S.C. § 7661b(e), and 40 C.F.R. § 70.7(h)(2), and that the permit fails to (1) include a compliance schedule to bring the facility into compliance with CAA requirements; (2) include conditions that meet the legal requirements for monitoring; (3) contain conditions that meet requirements for the use of credible evidence; (4) comply with EPA policy on startup, malfunction, and breakdowns; and (5) comply with EPA policy requiring a permit to be practically enforceable. Petition at 1-2.

EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which requires the Administrator to issue an objection if the Petitioner demonstrates to the

Administrator that the permit is not in compliance with the applicable requirements of the Act. *See also* 40 C.F.R. § 70.8(d); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

Based on a review of all available information, including the petition, the Fisk proposed permit, project summary, additional information provided by the permitting authority in response to inquiries, the information provided by Petitioner, and relevant statutory and regulatory authorities and guidance, I grant the Petitioner's request in part and deny it in part for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V. EPA granted final full approval of the Illinois title V operating permit program effective November 30, 2001. 66 *Fed. Reg.* 62946 (December 4, 2001).

Sections 502(a) and 504(a) of the Act make it unlawful for major stationary sources of air pollution and other sources subject to title V to operate except in compliance with an operating permit issued pursuant to title V that includes emission limitations and such other conditions necessary to assure compliance with applicable requirements of the Act.

A title V operating permit program generally does not authorize permitting authorities to establish new substantive air quality control requirements (referred to as "applicable requirements") but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. One purpose of the title V program is to enable the source, EPA, states, and the public to better understand the applicable requirements to which the source is subject and to determine whether the source is meeting those requirements. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document and that compliance with these requirements is assured. *See 57 Fed. Reg.* 32250, 32251 (July 21, 1992).

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a), through the state title V programs, require states to submit all operating permits proposed pursuant to title V to EPA for review. EPA may comment on and object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) requires the Administrator to object to a permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. Petitions must be based on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it

was impracticable to raise the objection within the public comment period, or unless the grounds arose after the close of the public comment period. If the permitting authority has not yet issued the permit, it may not do so unless it revises the permit and issues it in accordance with section 505(c) of the Act 42, U.S.C. § 7661d(c). However, a petition for review does not stay the effectiveness of the permit or its requirements if the permitting authority issued the permit after the expiration of EPA's 45-day review period and before receipt of the objection. If, in response to a petition, EPA objects to a permit that has been issued, the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. § 70.7(g)(4) or (5)(i) and (ii), and 40 C.F.R. § 70.8(d).

BACKGROUND

Midwest Generation, LLC submitted an application for a title V permit on September 7, 1995 for the Fisk Generating Station ("Fisk Generation," "Fisk plant" or "Fisk facility"). IEPA issued a draft CAAPP permit on June 26, 2003 and a proposed CAAPP permit on October 10, 2003. During the 30-day public comment period, IEPA received comments on the draft permit, including comments from the Petitioner. On December 8, 2004, IEPA issued a "draft revised proposed permit" for the Fisk Generation facility, but has not repropoed the permit to EPA or issued a final title V permit to the Fisk Generation facility. IEPA has discussed issues with EPA and has attempted to address some of them in the draft revised proposed permit; however, EPA is reviewing and responding to the Petitioner's issues based only on the October 10, 2003 proposed Fisk permit.

IEPA had notified the public that January 23, 2004 was the deadline to file a petition requesting that EPA object to the issuance of the final Fisk permit. Petitioner submitted to EPA its request, dated January 22, 2004, to object to the issuance of the Fisk permit. Accordingly, EPA finds that Petitioner timely filed this petition.

ISSUES RAISED BY THE PETITIONER

As noted previously, Petitioner generally alleges that the permit does not meet the requirements of the Act in five categories: 1) the permit does not contain compliance schedules designed to bring the source into compliance with all applicable requirements; 2) the permit does not contain sufficient periodic monitoring to assure compliance with applicable requirements; 3) the permit contains terms that violate credible evidence requirements; 4) the permit contains terms that allow emissions in excess of emissions limitations during start-up, shutdown and malfunction; and 5) the permit contains terms that are not enforceable as a practical matter.

I. Compliance Schedules

The Petitioner notes that 40 C.F.R. § 70.5(c)(8)(iii)(C) requires that, if a facility is in violation of an applicable requirement at the time of permit issuance, the facility's permit must include a schedule containing a sequence of actions with milestones, leading to compliance with

any applicable requirements. Petition at 2. The Petitioner states that the facility certified compliance in its application, and that IEPA accepted the certification despite evidence to the contrary. *Id.* Specifically, Petitioner claims that IEPA possesses evidence of numerous unresolved exceedances of state and federal opacity limitations at the facility and of modifications to the facility that triggered new source review. The Petitioner concludes that the proposed permit therefore must include a compliance schedule and new source review requirements to bring the Fisk plant into compliance with the requirements of the Act. As discussed in more detail below, EPA is requiring IEPA to respond to Petitioner's comment in the permit record.

A. Opacity Exceedances

The Petitioner alleges that the permit lacks a compliance schedule to bring the Fisk plant into compliance with the opacity standards. Petitioner has attached copies of records submitted by the facility which detail ongoing opacity exceedances. Petition at 3. Petitioner notes that on at least eight occasions in one quarter, the Fisk facility recorded opacity exceedances at levels that were greater than twice the legal limit. Petition at 4. The Petitioner further claims that Fisk Generation reported 70 unresolved exceedances of opacity limitations from January 1, 2002 through June 30, 2003. Petitioner states that these continued exceedances suggest "more fundamental problems relating to facility operations." Petition at 4-5. Petitioner asserts that, in light of the number of exceedances of the opacity standard, the number of years these exceedances have been occurring and reported without resolution, and the fact that they are based on continuous emission monitoring data, the CAAPP permit issued by IEPA without a schedule of compliance is not legally adequate and warrants objection. Petition at 5.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that IEPA improperly ignored the facility's compliance history as documented in the records Petitioner submitted, EPA considers whether a petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. *See* CAA § 505 (b)(2) (requiring an objection "if the petitioner demonstrates ... that the permit is not in compliance with the requirements of this Act") In Petitioner's view, the deficiency that resulted here is the lack of a compliance schedule.

40 C.F.R. §§ 70.5(c)(8) (iii)(C) and 70.6(3) require that if a facility is in violation of an applicable requirement and it will not be in compliance at the time of permit issuance, its permit must include a compliance schedule that meets certain criteria. For sources that are not in compliance with applicable requirements at the time of permit issuance, compliance schedules must include "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8) (iii)(C). If the reported violation has been corrected prior to permit issuance, a compliance schedule is no longer necessary.

The Petitioner brought to IEPA's notice the issues raised in the petition and the supporting documentation during the public comment period on the draft permit. September 26, 2003, Comments on Application No. 95090081. IEPA, however, did not respond to the Petitioner's comments regarding the necessity for a compliance schedule for opacity exceedances. It is a general

principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (“the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.”) Accordingly, IEPA has an obligation to respond to significant public comments.

EPA concludes that IEPA’s failure to respond to significant comments may have resulted in one or more deficiencies in the Fisk permit. As a result, EPA is granting the petition on this issue and requiring IEPA to address Petitioner’s significant comments.

B. Requirements under New Source Review

The petition alleges that Fisk Generation improperly avoided new source review (NSR) permitting requirements and, in turn, the requirement to install modern pollution control equipment. Petition at 5. According to Petitioner, there are several sources of information that indicate that, since 1990, Fisk Generation has undergone extensive modifications that were subject to NSR. Specifically, Petitioner alleges that a boiler/turbine overhaul in 1995, including a steam chest replacement in July 1995, triggered the applicability of NSR program requirements. As evidence of the project, Petitioner attached to the petition and cited from an article written by Brian Schumel of PCI Energy Services. The Petitioner further cites as evidence that Fisk Generation has triggered NSR requirements: (1) an increase of emissions in the two-year period following 1995 based on the Clean Air Markets database, and (2) a statement made by Midwest Generation in a filing with the U.S. Securities and Exchange Commission about potential financial liability for resolution of a CAA section 114 request.

Petitioner discusses in some detail why it is important to address the question of NSR applicability at the title V permitting stage. According to the Petitioner, NSR serves two purposes: ensuring that facilities comply with air quality standards when they are modified and ensuring that, when new plants or existing plants undergo a major modification, they install state-of-the-art control technology. Petition at 6. Petitioner asserts that NSR is directly relevant to the title V permitting process here because entirely different emissions and operational standards would have applied to the facility from those currently proposed in the permit. Petition at 7. Petitioner believes that IEPA should have determined whether modifications were made at the facility and whether these modifications are exempt from CAA compliance because they are “routine maintenance, repair or replacement.” Petition at 9. Petitioner contends IEPA should have looked at the four factor test adopted by the Seventh Circuit in *Wisconsin Electric Power Company v. Reilly*, 893 F.2d 901 (7th Cir. 1990), to determine whether modifications at Fisk constitute routine maintenance repair, or replacement. Petitioner further asserts that, without NSR, IEPA cannot know which emission and operational standards apply to the Fisk facility and, therefore, the title V permit fails to include applicable requirements that arise under NSR. The Petitioner asserts that the title V permit for Fisk should include an enforceable schedule of compliance for NSR to occur, coupled with emission and operational standards equivalent to a new facility in this source category. According to the Petitioner, the absence of such a compliance schedule renders the permit insufficient and subject to objection by the Administrator. The Petitioner claims that IEPA developed the permit based solely

on the applicant's representation that it is not subject to NSR, despite the fact that evidence to the contrary was provided by commenters during the public participation process. See September 26, 2003 comments on Application No. 95090081. Petitioner concludes that the permit must contain a compliance schedule to bring the source into compliance with NSR requirements. Petition at 5-10.

The Petitioner brought the issues raised here to IEPA's attention during the public comment period on the draft permit. Petitioner's comments were significant, yet IEPA provided no response to the comments. As noted in section I.A., above, it is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977). Accordingly, IEPA has an obligation to respond to significant public comments.

EPA concludes that IEPA's failure to respond to Petitioner's significant comments may have resulted in one or more deficiencies in the Fisk permit. As a result, EPA is granting the petition on this issue and requiring IEPA to address Petitioner's significant comments.-

II. Monitoring

Petitioner alleges that the Fisk permit fails to meet the requirements for monitoring under 40 C.F.R. § 70.6(a)(3)(i). Petitioner alleges that section 7.5.8, which covers monitoring of auxiliary boilers, contains neither monitoring requirements nor a monitoring frequency, as required by CAA section 504 and 40 C.F.R. § 70.6(a)(3). Instead, Petitioner asserts that this section requires testing only in response to a written request from IEPA. Petitioner also alleges that section 7.5.7 requires testing for nitrogen oxides, opacity and carbon monoxide only in response to a written request from IEPA. Similarly, Petitioner asserts that section 7.6.8, which covers monitoring of turbines at the facility, fails to require a monitoring frequency, that the source keep records of monitoring, or that the source report to IEPA results of monitoring. Petitioner concludes that, without appropriate monitoring conditions, it is not possible for the public, EPA or IEPA to ensure that the permittee is complying with applicable emissions standards. Petition at 11. Petitioner's allegations regarding sections 7.5 and 7.6 are addressed separately below.

A. Section 7.5

Section 7.5.7 of the Fisk permit contains a statement of IEPA's authority to request testing for emissions of opacity, sulfur dioxide, particulate matter, nitrogen oxides, and carbon monoxide. The section specifies timeframes, procedures, and methods to be used once IEPA requests that the source test for these pollutants. However, it does not specify when or how often IEPA will require such testing. Merely including IEPA's authority to request a test in a permit condition rather than specifying the frequency with which testing must occur is inadequate to assure compliance with the nitrogen oxide, opacity, sulfur dioxide, particulate matter, or carbon monoxide standards for the relevant time period. Therefore, the permit condition fails to include "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" 40 C.F.R. § 70.6 (a)(3)(i)(B) and Section 39.5 of the Environmental

Protection Act. In addition, Section 7.5.8 requires only that Fisk Generation submit to IEPA for approval a monitoring plan that specifies which operating parameters Fisk will monitor to demonstrate compliance with the emission limitations in the permit for nitrogen oxides. The monitoring plan is not part of the permit record. Section 7.5.8 refers to a requirement that the facility submit a monitoring plan pursuant to 40 C.F.R. § 60.49b(c), but there is no evidence that the facility did so. IEPA must either include the approved monitoring plan in the permit or incorporate it by reference into the title V permit. Because the proposed permit fails to require any monitoring that would "yield reliable data from the relevant time period that are representative of the source's compliance with the permit," the petition is granted on this issue. The final permit must contain monitoring that meets the requirements of 40 C.F.R. § 70.6 (a)(3)(i)(B) and Section 39.5 of the Environmental Protection Act.

B. Section 7.6

The Petitioner alleges that section 7.6.8 fails to specify a monitoring frequency, any record keeping requirements, or a requirement to report monitoring results to IEPA. Petition at 11. Section 7.6.4 of the Fisk permit contains emission limitations on opacity, sulfur content in the fuel, the concentration of sulfur dioxide emissions, nitrogen oxides emissions and a restriction on operating hours for turbines at the facility which use distillate fuel oil but are started up with natural gas as described in section 7.6.1.

Section 7.6.8 contains requirements for monitoring emissions of nitrogen oxides from these units, and section 7.6.9 contains a requirement to maintain records of operating hours and of sulfur content of the fuel used by the turbines. However, the permit does not have any monitoring requirement to demonstrate compliance with either the opacity or sulfur dioxide concentration limits. Although there is a recordkeeping requirement for sulfur content in the fuel, the permit does not specify what method the source must use to determine the sulfur content, or how frequently it must make that determination. Therefore, the petition is granted on this issue. IEPA must include in the final permit "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance" with the emission limitations stated in section 7.6.4. 40 C.F.R. § 70.6 (a)(3)(i)(B) and Section 39.5 of the Illinois Environmental Protection Act.

III. Credible Evidence

Petitioner states that the proposed Fisk permit contains numerous conditions that "violate the credible evidence rules." Petition at 11. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes EPA to bring enforcement actions "on the basis of any information available to the Administrator." Petitioner asserts that, in the Region 9 Title V Permit Review Guidelines, September 9, 1999, p. III- 46, EPA interpreted this language to mean any "credible evidence" that a court would accept. Petition at 10. Petitioner further cites the Region 9 Guidelines to assert that "any credible evidence can be used to show a violation of or, conversely, demonstrate compliance with an emission limit." Consequently, permit language may not exclude the use of any data that may provide credible evidence.

Petitioner notes that the Fisk permit includes section 9.1.3, which expressly allows the use of other credible evidence notwithstanding specific conditions that may specify compliance practices for specific applicable requirements. Petitioner alleges that this term is insufficient to negate the violations of the credible evidence rules contained in the other conditions that limit the use of credible evidence. Petition at 10.

EPA has clarified through rulemaking (generally referred to as the "credible evidence" rule) that various kinds of information, including non-reference test data, may be used "to demonstrate compliance or non-compliance with emission standards." 62 *Fed. Reg.* 8314, 8315 (February 24, 1997). As explained below, EPA grants in part and denies in part on this issue.

A. Language establishing compliance methods

Petitioner first alleges that section 5.2.2(a) limits credible evidence by specifying how compliance with that requirement will be determined. Petition at 11. Section 5.2.2(a) contains a facility-wide opacity limitation on fugitive particulate matter emissions. It states that "compliance with this requirement shall be based on the procedures in Section 7 (Unit Specific Conditions) of this permit." Petitioner also alleges that sections 5.9.1, 7.1.12, 7.2.12, 7.3.12, 7.4.12, 7.5.12, 7.6.12 and 7.7.12 violate credible evidence requirements because they include a limited list of "compliance procedures." Finally, Petitioner alleges that, because section 7.1.8(b) requires continuous monitoring for SO₂ and states that such monitoring "shall be used to demonstrate compliance," it establishes an exclusive link between the test method (continuous monitoring) and the emissions limit for sulfur, unacceptably limiting the use of credible evidence. Petition at 11-12.

The sections of the Fisk permit cited by Petitioner generally contain language stating that compliance with specific limits is "addressed by" monitoring, testing, or record keeping provisions in specific terms of the permit. Section 5.9.1 states that there are no general compliance procedures. In addition to providing that compliance "is addressed by" recordkeeping, section 7.6.12 provides that compliance with section 7.6.4(b) is demonstrated by records required by section 7.6.9(c). Section 7.7.12 provides that compliance with sections 7.7.4(a) and (b) is considered to be assured by the use of certain procedures and by recordkeeping required by section 7.7.9. Section 7.1.8(b) provides that "...the Permittee shall install, operate, calibrate and maintain continuous monitoring equipment for the measurement of SO₂ from the affected boilers which shall be used to demonstrate compliance with the limits in Condition 7.1.4(c) based on the average hourly SO₂ emission rate determined from monitored data from three-hour block averaging periods..."

After reviewing the terms cited by the Petitioner and the general terms in section 9, EPA concludes that the proposed Fisk permit appropriately provides for the use of credible evidence by EPA, IEPA, or citizens to demonstrate whether or not a facility is in compliance with federally enforceable requirements. Petitioner has failed to either point to any language in the permit conditions cited in the petition that excludes the use of credible evidence or provide any instances where IEPA improperly excluded the use of credible evidence. The language in the specific permit

conditions that Petitioner cites does not say that the specified methods or procedures are the exclusive or sole methods or procedures to be used to determine compliance. In addition, section 9.1.3 specifically makes any other credible evidence available for use, notwithstanding other conditions of the permit, by any person to prove compliance or violation of any applicable requirement. For these reasons, EPA denies the petition with respect to this issue.

B. Statements about the potential for violations

Petitioner claims that section 7.1.12.d is “completely contrary to the credible evidence rule and citizens' right to enforce a permit by stating that ‘compliance is assumed to be inherent.’” Petition at 12. Section 7.1.12.d states:

“Compliance with the CO emission limitation in 7.1.4(d) is addressed by emission testing in accordance with Condition 7.1.7.

Note: Further compliance procedures are not set by this permit as compliance is assumed to be inherent in operation of an affected boiler under operating conditions other than startup or shutdown.” (emphasis added)

Although EPA believes that the proposed Fisk permit generally provides for the use of credible evidence, EPA agrees that the note in term 7.1.12(d) is inappropriate in the permit and leads to confusion. EPA is requiring IEPA to remove the note because it provides that “compliance is assumed to be inherent” when the boiler is operating under normal conditions. Such language, on its face, is not consistent with part 70, which requires permits to contain “testing, monitoring, reporting and recordkeeping requirements” and to have “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance”. 40 C.F.R. § 70.6(c)(1) and (a)(3)(i)(B). In essence, the Note in Section 7.1.12(d) could be read as eliminating the need for any of the compliance requirements (testing, monitoring, recordkeeping, and reporting) of part 70 to determine whether the facility is complying with the CO emission limits in the permit. In addition, the language in the note is not in compliance with the annual compliance certification requirements under part 70. Compliance certifications must be based, among other things, on the monitoring data described in 40 C.F.R. § 70.6(c)(5)(iii)(B) and (C). Every source’s annual compliance certification must be based on its own evaluation of its data. The permit may not authorize the facility to certify compliance based on something else, such as an assumption that compliance is inherent. Therefore, EPA grants the petition on this issue to the extent that IEPA is required to remove the note. See EPA’s order *In the Matter of TVA Gallatin Power Plant, Gallatin, Tennessee and TVA Johnsonville Power Plant, New Johnsonville, Tennessee Electric Power Generation*, Petition IV-2003-04, at 4-9, (July 29, 2004), available on the internet at <http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions>.

IV. Startup, malfunction, and breakdown policy

The Petitioner alleges that automatic exemptions for excess emissions during startup and malfunction are inconsistent with EPA's guidance (Kathleen M. Bennett, "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions," September 28, 1982 ("Bennett Memo"); Steven A. Herman, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," September 20, 1999 ("Herman Memo"). Petition at 11. Petitioner alleges that the Fisk permit has numerous conditions that allow for automatic exemptions from applicable emission limits and standards during startup, shutdown and malfunction. Petition at 11-12.

A. Continued operation in violation of the applicable requirements or applicable standards

In alleging that the proposed permit authorizes automatic exemptions, Petitioner points to the following sections: 7.1.3(b), 7.1.3(c), 7.2.3(b), 7.3.3(b), 7.4.3(b), 7.5.3(b), 7.5.3(c), 7.6.3(b), 7.6.3(c). Petitioner states that the authorization in these sections is unclear, and can be read as impermissibly excusing a violation. Petition at 13.

The permit conditions that the Petitioner cites specify requirements for the facility during startup, malfunction and breakdown. The startup provision in Section 7.1.3(b) of the Fisk permit states that the permittee is allowed to operate the coal fired boiler in violation of specified applicable standards during startup because the permittee "has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups." The general authorization is qualified by a limit on the time period that the boiler can continue to operate under the authorization and by a provision that the authorization "does not shield the Permittee from enforcement for any such violation and shall only constitute a prima facie defense to such an enforcement action." Sections 7.5.3(b) and 7.6.3(b) contain identical authorizations and limitations for auxiliary boilers and turbines during startups, but the timeframes for the affected emissions unit to operate under the authorization differs in each section.

The Illinois SIP provision at 35 IAC § 201.262 provides that a permitting authority shall not authorize a permittee to operate in violation of emission limits and standards during startups unless the permittee has affirmatively demonstrated that it has made all reasonable efforts to, among others, minimize excess emissions. Sections 7.1.3(b), 7.5.3(b) and 7.6.3(b) mirror the language of this SIP provision. The Fisk permit contains a determination that the source already has made a demonstration that it has made all reasonable efforts to minimize startup emissions, duration of startups and frequency of startups. However, neither the permit nor the permit record (e.g., a statement of basis) provide any information about or explanation of how IEPA determined in advance that the permittee met its burden of affirmatively demonstrating that it had complied with the affirmative defense requirements of the permit. EPA is granting the petition and requiring IEPA to explain how it determined in advance that the permittee had met the requirements of the Illinois SIP at 35 IAC § 201.262.

The malfunction or breakdown provisions in sections 7.1.3(c), 7.2.3(b), 7.3.3(b), 7.4.3(b), 7.5.3(c), and 7.6.3(b) state that that the permittee is allowed to operate the units in violation of specified applicable standards during malfunction or breakdown because the permittee has submitted “proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment.” These sections mirror the language of the Illinois SIP provision at 35 IAC § 201.262 which provides that a permitting authority shall not authorize a permittee to operate in violation of emission limits and standards during malfunctions or breakdowns unless the permittee has submitted proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment. To authorize continued operation of units in violation of applicable standards, IEPA must have received proof that such operation is necessary to provide essential services, or to prevent injury to personnel or severe damage to equipment. The specific proof required in each instance usually will depend on the nature and the cause of the malfunction or breakdown. Thus, a determination that the permittee has met the requirements of 35 IAC § 201.262 to authorize continued operations during malfunction or breakdowns is a case-by-case determination. EPA therefore is granting the petition and requiring IEPA either to explain in the statement of basis how it determined in advance that the permittee had met the requirements of the Illinois SIP at 35 IAC § 201.262 or to specify in the permit that continued operation during malfunction or breakdown will be authorized on a case-by-case basis if the source meets the SIP criteria.

B. Definition of malfunction

Petitioner alleges that, because sections 7.1.3(c), 7.2.3(b), 7.3.3(b), 7.4.3(b), 7.5.3(c) and 7.6.3(c) do not include a definition of “malfunction,” and because the word is vague, these permit terms are unenforceable as a practical matter. Petition at 14.

The purpose of a title V permit is to ensure that a source operates in compliance with all applicable requirements. The lack of a definition for the term “malfunction” in the permit does not, on its face, render the permit unenforceable. This is a commonly used regulatory term, and the plain meaning of the term is clear. Moreover, Petitioner has not demonstrated that IEPA has improperly or inconsistently interpreted the term in practice so as to render it unenforceable. Petitioner points out that EPA recommends that malfunction be defined as “a sudden and unavoidable breakdown of process or control equipment.” Petition at 12 *citing* Herman Memo. However, Petitioner fails to identify any instance where IEPA has interpreted “malfunction” in a manner that contradicts or is inconsistent with EPA’s recommended definition in the Herman Memo. For these reasons, the petition is denied on this issue.

C. Operating log

The Petitioner, citing the Herman Memo, alleges that, because sections 7.1.9(g), 7.1.9(h)(ii), 7.2.9(g)(ii), 7.3.9(f)(ii), 7.4.9(f)(ii), 7.5.9(c), 7.5.9(d)(ii), 7.6.9(e), and 7.6.9(f)(ii) of the Fisk permit do not require that the source’s responses to excess emissions be documented by a properly signed, contemporaneous operating log, they warrant EPA objection.

Sections 7.1.9(g) and 7.6.9(e) of the Fisk permit contain recordkeeping requirements for different emissions units during startup. Sections 7.1.9(h)(ii), 7.2.9(g)(ii), 7.3.9(f)(ii), 7.4.9(f)(ii) and 7.6.9(f)(ii) contain recordkeeping requirements for various emissions units during malfunctions. Section 7.5.9 is incorrectly numbered and contains two subsections; one contains recordkeeping requirements for startups and the other for malfunctions. All of these sections are similar in that they require the source to maintain records of, among other things, the date and description of the startup or malfunction, the duration of the startup or malfunction, and an estimate of the magnitude of excess emissions occurring during the startup or malfunction. In addition, for malfunctions, the source is required to keep records of the corrective actions used to reduce the quantity of emissions.

The 1999 Herman memo, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," cited by Petitioner, states that, to be approved into a SIP, an affirmative defense must require that an owner or operator's actions during startup, shutdown or malfunctions be "documented by properly signed, contemporaneous operating logs, or other relevant evidence." 35 IAC §§ 201.261-201.265, which provide for an affirmative defense to the continued operation and emission of pollutants in excess of established limits during startup, shutdown and malfunction, do not contain the requirement that a source document its response with properly signed, contemporaneous operating logs or other relevant evidence. However, EPA approved sections 201.261-201.265 into the Illinois SIP in 1972, before publication of the Herman Memo. Sections 7.1.9(g), 7.1.9(h)(ii), 7.2.9(g)(ii), 7.3.9(f)(ii), 7.4.9(f)(ii), 7.5.9(d)(ii), 7.6(9)(e), and 7.6.9(f)(ii) of the Fisk permit are consistent with sections 201.261-201.265 of the Illinois SIP. EPA cannot properly object to including in a title V permit a permit term that mirrors the language of federally approved SIP rules. Such provisions are "applicable requirements," as that term is defined in 40 C.F.R. § 70.2. Therefore, the petition is denied on this issue.

Section 7.5.9(c) does not address startups or malfunctions, and so the Herman memo is not relevant to it. Accordingly, the petition is denied on this issue for section 7.5.9(c).

V. Practical Enforceability

Petitioner claims that the Fisk permit contains numerous terms which are not enforceable as a practical matter, and violate EPA policy regarding practical enforceability. Petition at 14. The petition cites EPA Region 9 Title V Permit Review Guidelines, September 9, 1999, p. III-46:

A permit is enforceable as a practical matter (or practically enforceable) if permit conditions establish a clear legal obligation for the source [and] allow compliance to be verified. Providing the source with clear information goes beyond identifying the applicable requirement. It is also important that permit conditions be unambiguous and do not contain language which may intentionally or unintentionally prevent enforcement.

Petitioner goes on to argue that, even if words, such as "reasonable" or "significant," are quoted directly from the Act or regulations, their use may render the permit insufficiently clear to be enforceable as a practical matter. Petitioner claims that permit conditions which reference undefined procedures, documents, or instructions are not practically enforceable. Petitioner cites EPA Region 9 Title V Permit Review Guidelines, September 9, 1999, p. III-52 - III-53, which requires that undefined terms such as "reasonable precautions" or "best engineering practices" must be defined in the permit. Petition at 14. Petitioner's allegations are addressed below.

A. Undefined procedures and documents

1. Petitioner alleges that the requirement to operate according to "other written instructions" in sections 7.1.3(b)(ii) and 7.5.3(b)(ii) of the Fisk permit is vague and fails to specify which instructions the permittee is required to follow. As a result, these terms are unenforceable as a practical matter. Petition at 17-18.

7.1.3(b)(ii) and 7.5.3(b)(ii) state :

“The Permittee shall conduct startup of an affected boiler in accordance with the manufacturers’ instructions or other written instructions prepared by the Permittee and maintained on site, that are specifically developed to minimize excess emissions from startups and that include, at a minimum the following measures:”

The condition then goes on to specify the measures that must be included in the written instructions.

The Illinois SIP at 35 IAC § 201.262 requires Fisk “affirmatively demonstrate that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups.” Although the permit language does not reflect the exact wording of the underlying applicable requirement, the permit term is designed to specify how Fisk must comply with the SIP requirement to minimize excess emissions from startups. Because the permit outlines the measures that must be included in the written instructions and the SIP does not specify that the instructions must be approved or reviewed, the petition is denied on this issue.

2. Section 7.1.7(b)(1) requires the permittee to perform testing at “other operating conditions that are representative of normal conditions.” Petitioner alleges that this phrase is vague and not practically enforceable, and that specific operating conditions must be included in the permit. Petition at 16.

This section specifies the conditions under which a performance test run at the facility is acceptable. Although the specific language cited by Petitioner is not specific, the remainder of section 7.1.7(b) sets out test methods and procedures which the source must follow in performing tests. These conditions are not specifically identified in a regulation, but are negotiated on a site-specific basis between the permittee and regulatory agency, either prior to a performance demonstration, or as determined during the agency's review of the test report. These conditions are not only site-specific, but may also vary with time, manufacturing conditions, or other factors that

change at an individual facility. This term, in conjunction with the other requirements of section 7.1.7, provides detail about how Fisk must conduct performance tests and what the criteria are for an acceptable performance demonstration. The phrase to which the Petitioner objects does not affect the enforceability of these provisions, therefore, the petition is denied with respect to this issue.

3. Petitioner notes that sections 7.1.8(a)(i) and (b) require that monitoring equipment must be operated pursuant to written monitoring procedures that include a quality assurance/control plan. Further, section 7.1.8(a)(i) requires that "procedures shall reflect the manufacturer's instruction as adapted by the Permittee based on its experience." Petitioner alleges that these terms are vague because they allow the permittee unlimited discretion in developing such procedures. As a result, the terms are practically unenforceable. Petition at 16.

The permit condition that the Petitioner cites requires that the permittee must, among other things, pursuant to 40 CFR § 75.14, operate continuous monitoring equipment to measure opacity from the boilers. The condition goes on to require written monitoring procedures and that such "procedures shall reflect the manufacturer's instruction as adapted by the Permittee based on its experience." This language is not from 40 C.F.R. section 75.14, which is the authority cited in the permit for this permit language. EPA grants this petition on the issue. IEPA must remove language from 7.1.8(a)(i) which is not required by the underlying applicable requirement or explain in the permit or statement of basis how this language implements the meaning and intent of the underlying applicable requirement.

4. Section 7.6.3(b)(ii)(a) requires the permittee to minimize startup emissions, the duration of startups, and to minimize the frequency of startups by implementing "established startup procedures." The Petitioner alleges that this terminology is vague and fails to define with specificity what procedures the permittee is required to follow, rendering the term not practically enforceable. Petition at 16.

Section 7.6.3(b)(ii)(a) requires the permittee to minimize emissions during startups by implementing "established startup procedures." The Illinois SIP at 35 § IAC 201.262 requires Fisk to "affirmatively demonstrate that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups." Although the permit language does not reflect the exact wording of the underlying applicable requirement, the permit term is clearly designed to specify how Fisk must comply with the SIP requirement to minimize excess emissions from startups. Because neither the SIP nor the permit condition specify or establish the requirements or minimum elements of the startup procedures, the permit term is practically unenforceable. EPA grants the petition on the issue. IEPA must remove "established startup procedures" from 7.6.3(b)(ii)(a), include the startup procedures in the permit, or include minimum elements of the startup procedures that would "affirmatively demonstrate that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups".

5. Section 8.5 requires that tests be conducted using standard test methods. Petitioner alleges that the permit must define the term "standard test methods," or, at a minimum, cite a regulation or statute where that term is defined. Petitioner asserts that the term, as written, allows the permittee too much discretion in deciding what qualifies as a standard test method, and, therefore, is unenforceable as a practical matter. Petition at 15.

Section 8.5 is a general term included under the "General Permit Conditions" provisions of Section 8. IEPA includes generic requirements for facilities as general supplemental language in every title V permit in Illinois. As a general matter, specific terms and conditions for each emission unit specify which test methods the source must use to monitor the emission of particular pollutants. Therefore, the petition is denied on this issue.

B. Permit conditions that contain imprecise timeframes are not practically enforceable.

Petitioner claims that permit conditions that contain imprecise timeframes are not practically enforceable, and cites EPA Region 9 Title V Permit Review Guidelines, September 9, 1999 as a basis for this claim.

1. Petitioner alleges that the language in section 5.2.3(b) which requires the permittee to amend its operating program "from time to time" so that it is "current" is vague, subjective, and not practically enforceable. The Petitioner also alleges that the section 5.2.3(c) requirement that paved areas be cleaned on a "regular" basis is vague, undefined, and not practically enforceable. The language in condition 5.2.7 requiring the permittee to "immediately" implement the episode action plan is vague, subjective and therefore not practically enforceable. Petition at 17.

The language in sections 5.2.3(b) and (c) and 5.2.7 comes directly from the EPA-approved Illinois SIP provisions 35 IAC §§ 212.312, 35 IAC § 212.306, and 35 IAC §§ 244.142 thru 144 respectively. EPA cannot properly object to including in a title V permit a permit term that mirrors the language of federally approved SIP rules. Such provisions are "applicable requirements" as that term is defined in 40 C.F.R. § 70.2. The petition is denied on this issue.

2. The petition alleges that the terms "timely" and "as soon as" used in section 7.1.3(b)(ii)(D) are vague and undefined. This term, which requires only "timely energization of the electrostatic precipitator as soon as this may be safely accomplished," allows the permittee too much discretion. Petition at 17.

Section 7.1.3(b)(ii)(D) lists the procedures that a permittee must include in written instructions that it develops to minimize excess emissions during startups. Included in this list of procedures is the "[t]imely energization of the electrostatic precipitator as soon as this may be safely accomplished without damage or risk to personnel or equipment." Petitioner alleges that the phrases ("timely" and "as soon as") in this provision are vague because they allow the permittee too much discretion. Petitioner is, however, reading these phrases in isolation. EPA believes that these

phrases, when read in the context of the entire sentence, require the facility to energize the electrostatic precipitator as soon as the facility can safely do so without risk to personnel or damage to equipment, thus limiting the facility's discretion and tying it to safety concerns. Therefore, the petition is denied on this issue.

3. Petitioner alleges that the language "as expeditiously as possible" in section 7.1.8(a)(iv) is vague and not practically enforceable. Petition at 17.

EPA's review of the permit proposed for Fisk Generation shows that this phrase is not used in section 7.1.8(a)(iv). The petition is denied on this issue.

4. Sections 7.1.10(b)(i), 7.2.10(b)(i), 7.3.10(b)(i), 7.4.10(b)(i), 7.5.10(b)(i), and 7.6.10(b)(i) of the Fisk permit require the permittee to "notify the Illinois EPA's Regional Office, by telephone ... as soon as possible during normal working hours for each incident of continued operation during malfunctions and breakdowns." Petitioner alleges that the term "as soon as possible" is vague and allows the permittee too much discretion in determining when to notify IEPA. Consequently, Petitioner asserts that the conditions are not practically enforceable. Petition at 17-18.

The underlying applicable requirement for this term is found in 35 IAC § 202.263 of the SIP. The timeframe for reporting emissions to IEPA during a malfunction or breakdown required by this SIP provision is "immediately" not "as soon as possible" as the permit allows. The petition is granted for on this issue. IEPA must revise the permit to require Fisk to report to the agency "immediately" or explain how the phrase "as soon as possible" meets the requirements of 35 IAC § 202.263.

5. Petitioner alleges that sections 7.2.9(a) and (b) in the permit require the permittee to keep records "which shall be kept up to date." According to Petitioner, this wording is vague and therefore not practically enforceable. Petition at 18.

EPA believes this language clearly requires the permittee to maintain current records on an ongoing basis. Therefore the petition is denied on this issue.

C. Permit conditions that use the term "reasonable" are not practically enforceable.

The permit contains the terms "reasonable" and "reasonably" in a number of sections. Petitioner alleges that these terms are vague, subjective, and allow the permittee too much discretion. Use of the vague terms "reasonable" and "reasonably" leads to the conditions being not practically enforceable and, therefore, according to the Petitioner, the Administrator must object to the permit. Petition at 18.

1. Petitioner alleges that sections 7.2.3(b)(ii), 7.3.3(b)(ii), 7.4.3(b)(ii), and 7.5.3(b)(ii) are not practically enforceable because they require only that the “affected boiler ... reasonably be repaired or removed” and that the permittee take only “reasonable steps to minimize emissions.” Petition at 18.

The Illinois SIP at 35 IAC § 201.262 allows the Permittee to continue operation of the affected operation in violation of the applicable requirements in the event of a malfunction or breakdown if the Permittee has submitted “proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment.”

Sections 7.2.3(b)(ii), 7.3.3(b)(ii), 7.4.3(b)(ii), and 7.5.3(b)(ii) state:

“... The Illinois EPA, Air Compliance Section, in Springfield, may grant a longer extension if the Permittee demonstrates that extraordinary circumstances exist and the affected operation can not reasonably be repaired or removed from service within the allowed time, the affected operation can not be repaired or removed from service as soon as practicable; and the Permittee is taking all reasonable steps to minimize excess emissions, based on the actions that have been and will be taken.”

The language in the permit condition, which does not reflect the exact wording of the underlying applicable requirement, attempts to specify the kind of “proof” that the facility must provide for IEPA to grant an extension of time for the facility to continue to operate the malfunctioning unit in violation of the applicable emission limits. Because neither the SIP nor the permit condition specify the criteria to determine whether a unit can be “reasonably” repaired or what constitute “reasonable” steps during malfunction or breakdown, the condition is practically unenforceable. EPA grants the petition on the issue. IEPA must remove “reasonably” and “reasonable” from 7.2.3(b)(ii), 7.3.3(b)(ii), 7.4.3(b)(ii), and 7.5.3(b)(ii) or define or provide criteria to determine “reasonably” and “reasonable” that meet the requirements of the SIP.

2. Sections 7.1.3(c)(iv), 7.2.3(c)(iv), 7.3.3(c)(iv), 7.4.3(c)(iv), 7.5.3(c)(iv), and 7.6.3(c)(iv) of the permit provide that “the permittee shall comply with all reasonable directives of the Illinois EPA.” Petitioner alleges that the permit is deficient because it does not require the permittee to comply with all IEPA directives. Petition at 19.

Some of the sections to which Petitioner refers in his discussion of this issue do not contain the language about which Petitioner is concerned. EPA believes that Petitioner meant to refer in this section of the petition to sections 7.2.3(b)(iv), 7.3.3(b)(iv), and 7.4.3(b)(iv) rather than 7.2.3(c)(iv), 7.3.3(c)(iv), and 7.4.3(c)(iv), and will address the issue as if Petitioner had done so.

The language in these sections is taken directly from 35 IAC § 201.263, which is part of the federally approved Illinois SIP. As discussed above, EPA could not properly object to including in a title V permit, a permit term that mirrors the language of federally approved SIP rules. Such provisions are “applicable requirements,” as that term is defined in 40 C.F.R. § 70.2. Therefore, the petition is denied on this issue.

3. Sections 7.2.6(a)(i), 7.3.6(a)(i), and 7.4.6(a)(i) provide that the permittee must implement measures that “minimize visible emissions of particulate matter and provide a reasonable assurance of compliance” with applicable emission standards. Petitioner alleges that the permit does not require compliance with applicable requirements because of the use of the word “reasonable” in these sections, and asserts that the term renders the condition vague and not practically enforceable. Petition at 19.

EPA agrees that the term “reasonable,” as it is used here, is inappropriate. Furthermore, reasonable is not a requirement of Part 70, Section 504 of the Clean Air Act or Section 39.5 of the Environmental Protection Act. The permittee has an obligation to comply with all applicable emission standards, and to implement control measures that will assure compliance with those limits. Therefore, by including the word “reasonable” in these sections, the permit term goes beyond what is allowed by the applicable requirements. The petition is granted on this issue. IEPA must remove the term “reasonable” from these permit conditions.

D. Permit conditions that allow for too much agency discretion are not practically enforceable

Petitioner asserts that the permit has numerous provisions that are not practically enforceable because a permit condition allows for too much agency discretion. As a result, citizens are not able to enforce the permit condition without access to a determination by IEPA. Such agency discretion allows the source to negotiate the condition “off-permit” and bypass the permitting process requirements and procedures. Petition at 20.

1. Section 5.2.3(a) provides for IEPA review of the operating program regarding fugitive particulate matter. Petitioner asserts that allowing this sort of agency discretion renders the condition not practically enforceable. The condition is also vague because it fails to indicate what this review entails, for instance, whether review of the program involves IEPA approval or whether review provides IEPA with the opportunity to alter the program. Petition at 20.

The origin for section 5.2.3(a) of the Fisk permit is 35 IAC § 212.309(a), a part of the Illinois SIP. 35 IAC § 212.309(a) refers for implementation to sections 212.310 and 212.312 of the Illinois SIP, which require the plan to be submitted to IEPA for review. Section 5.2.3(a) appropriately incorporates the SIP requirement which provides that the plan must be submitted to IEPA for review. The petition is denied for this issue.

2. Petitioner alleges that section 7.1.7(a)(i)(B) allows the IEPA to waive the requirement for testing particulate matter and carbon monoxide. Petitioner believes that this provision makes the testing requirements not practically enforceable because citizens would have trouble disputing a finding by the Director that the testing requirement should be waived. Petition at 20.

Section 7.1.7(a)(i) details the testing requirements to measure PM emissions. However, the permit term goes on to say in section 7.1.7(a)(i)(B) “[n]otwithstanding [the testing requirement], the Illinois EPA may upon request of the Permittee . . . waive this requirement.” The ability of IEPA to waive the testing requirement altogether would result in monitoring that failed to “yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 C.F.R. § 70.6(a)(3)(i)(B) and Section 39.5 of the Environmental Protection Act. The petition is granted on this issue. IEPA must either remove the provision authorizing it to waive the testing requirements or explain how such a waiver would meet the requirements of part 70.

3. Petitioner alleges that condition 7.1.7(c) provides for IEPA review and approval of a test plan for the coal-fired boiler and allows IEPA to impose additional conditions through the test plan. This sort of agency discretion renders the condition not practically enforceable because citizens would not be able to enforce the permit condition without access to a determination by IEPA and would have difficulty challenging a decision by the IEPA to approve the test plan. Further, this agency discretion allows the source to negotiate the test plan “off-permit” and bypass the permitting process requirements and procedures. Petition at 20.

The language of section 7.1.7(c), taken from 35 IAC § 283.220 of the federally-approved Illinois SIP, is clear on its face. As discussed in sections V.B.1, a permitting authority cannot use a title V permit to modify a requirement from a federally approved SIP. Therefore, the petition is denied on this issue.

E. Certain other permit conditions that contain vague language are not practically enforceable.

Petitioner alleges that the permit has a number of other conditions that are not practically enforceable because they allow too much agency discretion. The permit allows the source to negotiate conditions “off-permit” and bypass the permitting process requirements and procedures. Petition at 20.

1. Section 5.2.3(a) of the Fisk permit requires the permittee to operate the source “under the provisions of an operating program . . . designed to significantly reduce fugitive particulate matter emissions.” Petitioner asserts that the term “significantly” is vague and, therefore, not practically enforceable. Petition at 19-20.

The language in this section is taken directly from 35 IAC § 212.309(a)¹, which is part of the federally approved Illinois SIP. As discussed above, EPA could not properly object to

1. The Seventh Circuit addressed EPA’s approval of this SIP provision¹ in *Citizens for a Better Environment v. EPA*, 649 F.2d 522 (7th Cir. 1981). The Court decided that the term “significantly,” as used in this SIP provision, was not necessarily unenforceable. The question of whether the required fugitive operating program resulted in a significant reduction of emissions was one of fact, to be determined in a particular situation. *Id.* at 528. At the time the Seventh

including in a title V permit, a permit term that mirrors the language of federally approved SIP rules. Such provisions are “applicable requirements,” as that term is defined in 40 C.F.R. § 70.2. Therefore, because section 5.2.3(a) tracks the SIP provision the petition is denied on this issue.

2. Petitioner alleges that section 5.2.7, which addresses the episode action plan, is vague and lacking sufficient detail to be practically enforceable. For section 5.2.7(a) to be enforceable, Petitioner asserts, the episode action plan would need to be defined and the contents of the plan delineated in much greater detail. Section 5.2.7(b) requires that the permittee implement only the “appropriate” steps in the plan. The term “appropriate” is subjective, vague and not practically enforceable. Petitioner states that section 5.2.7(c) uses the term “changed,” and alleges that it is subjective and not practically enforceable. Petition at 21. Section 5.2.7(c) does not contain the word “changed,” but provides that the permittee must submit to IEPA a revised plan if an “operational change” occurs.

A source’s episode action plan sets out steps which the source must take if IEPA issues various levels of air pollution advisories. 35 IAC § 244, with which section 5.2.7(a) of the Fisk permit requires the source to comply, requires sources to develop a plan describing actions that the source will take at each level of alert. EPA believes that the term “appropriate,” as used in section 5.2.7(b) of the Fisk permit, clearly means that the source implements the section of its plan for the level of alert issued by the state. The use of the term “appropriate” in this section of the permit, therefore, is not vague and unenforceable. The petition is denied on this issue.

3. Petitioner alleges that sections 5.7.1, 7.1.10(g), 7.2.10(a), 7.3.10(a), 7.4.10(a), 7.5.10(c), 7.6.10(a), and 7.7.10 use the term “deviation” and, that these sections are not practically enforceable because the term is vague. Petition at 21.

Section 5.7.1 contains general, source-wide reporting requirements. In the remaining sections cited by Petitioner, the permit requires reporting of deviations from specific permit requirements. IEPA cites section 39.5(7)(f) of the Illinois Environmental Protection Act, 415 ILCS 5/39.5(7)(f), as the origin and authority for each of these sections.

The lack of a definition for the term “deviation” does not, on its face, render the permit unenforceable. This is a commonly used regulatory term, and the plain meaning of the term is clear. Moreover, Petitioner has not demonstrated that IEPA has improperly interpreted it in practice so as to limit impermissibly the reporting required by these sections. For this reason, the petition is denied on this issue.

4. Petitioner alleges that the language in conditions 7.1.3(c)(ii), 7.2.3(b)(ii), 7.3.3(b)(ii), 7.4.3(b)(ii), and 7.5.3(b)(ii) is unclear. Petitioner asserts that two consecutive sentences in these sections are inconsistent, because the first allows IEPA to grant an extension if

Circuit reviewed U.S. EPA’s approval of this SIP provision, it was identified as section 203(f) of the Illinois SIP.

“extraordinary circumstances” exist, while the second provides for an extension if “unusual circumstances” exist. Petitioner asserts that this difference in language sets a lower threshold in the second sentence. Furthermore, the terms “extraordinary circumstances” and “unusual circumstances” are not defined and are unclear in general and, therefore, they are not practically enforceable. Petition at 21.

The draft Fisk permit contained the language to which Petitioner cites, except that it occurred in section 7.5.3(c)(ii), rather than 7.5.3(b)(ii). In the proposed permit, the sections at issue provide that IEPA may grant an extension if the permittee demonstrates that “extraordinary circumstances exist.” Therefore, the petition is moot regarding the inconsistent use of language in the permit condition. However, EPA agrees that the term “extraordinary circumstances” is vague. Although the sections at issue are derived from section 201.262 of the Illinois SIP, which provides the criteria for allowing operation of a unit in violation of certain SIP provisions during periods of malfunction, the language of these permit sections goes beyond the provisions of the SIP by allowing continued operation during an undefined set of circumstances. Therefore, the petition is granted for this issue. IEPA either must define “extraordinary circumstances” in a manner consistent with the requirements of the SIP or remove the language from the permit.

5. Section 7.1.7(b)(ii) of the Fisk permit, which addresses testing requirements for particulate matter and carbon monoxide, provides that “[m]easurements shall be taken at an appropriate location.” Petitioner alleges that the term “appropriate” is vague and not practically enforceable. Petition at 21-22.

EPA agrees that the provisions in section 7.1.7(b)(ii) are not specific with respect to measurement location. However, the next section, 7.1.7(b)(iii), requires that the source use EPA Method 1 to determine the location of sampling points. Method 1 is very clear with respect to the procedures for determining appropriate sampling points, or measurement locations. Section 7.1.7, taken as a whole, is enforceable as a practical matter; the petition is denied on this issue.

6. Petitioner alleges that section 7.1.8(d) is not practically enforceable because it is stated in the “conditional.” Petition at 22. It places the burden of determining whether the requirements of the permit are consistent with those of 40 C.F.R. part 75 on the permittee or on citizens enforcing the permit.

Section 7.1.8(d) describes the monitoring requirements for the coal fired boilers. It provides that “[t]o the extent that applicable performance specifications and operating requirements for monitoring under 40 C.F.R. Part 75 are inconsistent with the above requirements for monitoring, the procedures of 40 C.F.R. Part 75 shall take precedence.” Under this provision, the requirements of part 75, applicable requirements as defined in 40 C.F.R. 70.2, act as default minimum monitoring requirements in the event that any other monitoring provision in the permit condition are found to be inconsistent with part 75. Petitioner has not cited any instance where a monitoring condition may be inconsistent with part 75 and that the monitoring requirements in part 75 would be inappropriate in that instance. Because Petitioner has failed to demonstrate, as

required under section 505(b)(2) of the Act, that the permit is not in compliance with the requirements of the Act, the petition is denied on this issue.

7. Petitioner alleges that section 7.1.10(d)(ii) provides examples of recordkeeping requirements by way of example, but is not clear whether these are requirements or mere suggestions. Petitioner asserts that the permit is deficient because examples are not practically enforceable and the permit failed to require specific actions of the permittee. Petition at 22.

Upon review, EPA believes that section 7.1.10(d)(ii) contains reporting requirements, not examples. Therefore, the petition is denied on this issue.

8. Petitioner alleges that the permit language “such as” in sections 7.2.6(a)(i), 7.3.6(a)(i), and 7.4.6(a)(i) is vague and transforms into examples that are not practically enforceable the language that follows “such as.” Petitioner asserts that this is especially troublesome in the cited sections because this language relates to control measures. The permit is deficient because it fails to require specific control measures. Petition at 22.

Petitioner further alleges that sections 7.2.6(a)(ii), 7.3.6(a)(ii), and 7.4.6(a)(ii) are devoid of practically enforceable substantive requirements. They state that “The permittee shall operate and maintain each affected process with the control measures identified in Conditions 7.2.9(b), 7.3.9(b), or 7.4.9(b),” yet none of those conditions identify any control measures beyond what are currently being implemented at the facility, which could be none at all. Id.

Sections 7.2.6(a)(ii), 7.3.6(a)(ii), and 7.4.6(a)(ii) require that some control measures be implemented. These sections contain requirements to operate and maintain each affected process with the control measures identified in the record keeping provisions of the respective sections of the permits (7.2.9(b), 7.3.9(b), and 7.4.9(b)). Together, these terms are enforceable as a practical matter with respect to operational restrictions for visible emission from these units. Therefore, the petition is denied on this issue.

9. The Petitioner alleges that it is unclear what is meant by a “summary of compliance compared to the established control measures” in sections 7.3.9(c)(v) and 7.4.9(c)(v). This language is vague and therefore not practically enforceable. Petition at 22.

EPA agrees with Petitioner that the language of sections 7.3.9(c)(v) and 7.4.9(c)(v) is confusing. First, the language is not clear on its face. Additionally, there are no compliance measures in sections 7.3 or 7.4 with which the permittee can compare compliance. The petition is granted on this issue. IEPA must either remove the term from the permit or clarify the term such that the reader understands what a “summary of compliance” must contain and how the summary relates to the control measures.

10. Petitioner asserts that the terminology “good air pollution control practice” in section 7.5.4(a)(iii) is vague, not defined, and, therefore, not practically enforceable. Petitioner

maintains that the term must be defined, with the exact actions delineated that the permittee must take. Petition at 22.

Section 7.5.4 is derived from 40 C.F.R. § 60.11(d), which are part of the general requirements of the New Source Performance Standards. The Petitioner has not alleged or demonstrated that IEPA has not included in the permit the specific requirements that apply to individual emissions units. Therefore, the petition is denied on this issue.

11. Petitioner alleges that the compliance certification contained as a Standard Permit Condition in section 9.8 is inadequate. The section requires that the source submit its compliance certification no later than May 1. It is unclear whether the requirement means May 1 of every year, and is, therefore, not practically enforceable.

EPA disagrees. Section 9.8 requires the submission of annual compliance certifications. The language cited by Petitioner makes clear that Fisk Generation must, at a minimum, submit its compliance certification no later than May 1 of each year. The petition is denied on this issue.

CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I grant in part and deny in part the petition of the Chicago Legal Clinic requesting the Administrator to object to issuance of the title V CAAPP permit to Midwest Generation, LCC, Fisk Generating Station.

Dated: March 25, 2005

/s/
Stephen L. Johnson
Acting Administrator

