



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**  
**SB2443**

Introduced 2/3/2004, by James F. Clayborne Jr.

**SYNOPSIS AS INTRODUCED:**

415 ILCS 5/39.5 from Ch. 111 1/2, par. 1039.5  
415 ILCS 5/42 from Ch. 111 1/2, par. 1042  
415 ILCS 5/52.2 rep.

Amends the Environmental Protection Act. For the purposes of the Clean Air Act Permit Program, in the definition of "major source" that is included in the subsection on applicability, makes a change in the list of stationary source categories for which fugitive emissions are to be considered. Provides that a compliance management system documented by a regulated entity as reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations may serve as a substitute for an environmental audit in connection with self-disclosure of non-compliance. Repeals a Section of the Act relating to environmental audit privileges. Effective Immediately.

LRB093 20587 BDD 46402 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning environmental protection.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by  
5 changing Sections 39.5 and 42 as follows:

6 (415 ILCS 5/39.5) (from Ch. 111 1/2, par. 1039.5)

7 Sec. 39.5. Clean Air Act Permit Program.

8 1. Definitions.

9 For purposes of this Section:

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

12 "Affected source for acid deposition" means a source that  
13 includes one or more affected units under Title IV of the Clean  
14 Air Act.

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

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

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

22 "Affected unit for acid deposition" shall have the meaning  
23 given to the term "affected unit" in the regulations  
24 promulgated under Title IV of the Clean Air Act.

25 "Applicable Clean Air Act requirement" means all of the  
26 following as they apply to emissions units in a source  
27 (including regulations that have been promulgated or approved  
28 by USEPA pursuant to the Clean Air Act which directly impose  
29 requirements upon a source and other such federal requirements  
30 which have been adopted by the Board. These may include  
31 requirements and regulations which have future effective  
32 compliance dates. Requirements and regulations will be exempt

1 if USEPA determines that such requirements need not be  
2 contained in a Title V permit):

3 (1) Any standard or other requirement provided for in  
4 the applicable state implementation plan approved or  
5 promulgated by USEPA under Title I of the Clean Air Act  
6 that implement the relevant requirements of the Clean Air  
7 Act, including any revisions to the state Implementation  
8 Plan promulgated in 40 CFR Part 52, Subparts A and O and  
9 other subparts applicable to Illinois. For purposes of this  
10 subsection (1) of this definition, "any standard or other  
11 requirement" shall mean only such standards or  
12 requirements directly enforceable against an individual  
13 source under the Clean Air Act.

14 (2) (i) Any term or condition of any preconstruction  
15 permits issued pursuant to regulations approved or  
16 promulgated by USEPA under Title I of the Clean Air  
17 Act, including Part C or D of the Clean Air Act.

18 (ii) Any term or condition as required pursuant to  
19 Section 39.5 of any federally enforceable State  
20 operating permit issued pursuant to regulations  
21 approved or promulgated by USEPA under Title I of the  
22 Clean Air Act, including Part C or D of the Clean Air  
23 Act.

24 (3) Any standard or other requirement under Section 111  
25 of the Clean Air Act, including Section 111(d).

26 (4) Any standard or other requirement under Section 112  
27 of the Clean Air Act, including any requirement concerning  
28 accident prevention under Section 112(r)(7) of the Clean  
29 Air Act.

30 (5) Any standard or other requirement of the acid rain  
31 program under Title IV of the Clean Air Act or the  
32 regulations promulgated thereunder.

33 (6) Any requirements established pursuant to Section  
34 504(b) or Section 114(a)(3) of the Clean Air Act.

35 (7) Any standard or other requirement governing solid  
36 waste incineration, under Section 129 of the Clean Air Act.

1           (8) Any standard or other requirement for consumer and  
2 commercial products, under Section 183(e) of the Clean Air  
3 Act.

4           (9) Any standard or other requirement for tank vessels,  
5 under Section 183(f) of the Clean Air Act.

6           (10) Any standard or other requirement of the program  
7 to control air pollution from Outer Continental Shelf  
8 sources, under Section 328 of the Clean Air Act.

9           (11) Any standard or other requirement of the  
10 regulations promulgated to protect stratospheric ozone  
11 under Title VI of the Clean Air Act, unless USEPA has  
12 determined that such requirements need not be contained in  
13 a Title V permit.

14           (12) Any national ambient air quality standard or  
15 increment or visibility requirement under Part C of Title I  
16 of the Clean Air Act, but only as it would apply to  
17 temporary sources permitted pursuant to Section 504(e) of  
18 the Clean Air Act.

19           "Applicable requirement" means all applicable Clean Air  
20 Act requirements and any other standard, limitation, or other  
21 requirement contained in this Act or regulations promulgated  
22 under this Act as applicable to sources of air contaminants  
23 (including requirements that have future effective compliance  
24 dates).

25           "CAAPP" means the Clean Air Act Permit Program, developed  
26 pursuant to Title V of the Clean Air Act.

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

29           "CAAPP Permit" or "permit" (unless the context suggests  
30 otherwise) means any permit issued, renewed, amended, modified  
31 or revised pursuant to Title V of the Clean Air Act.

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

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

1 "Designated representative" shall have the meaning given  
2 to it in Section 402(26) of the Clean Air Act and the  
3 regulations promulgated thereunder which states that the term  
4 'designated representative' shall mean a responsible person or  
5 official authorized by the owner or operator of a unit to  
6 represent the owner or operator in all matters pertaining to  
7 the holding, transfer, or disposition of allowances allocated  
8 to a unit, and the submission of and compliance with permits,  
9 permit applications, and compliance plans for the unit.

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

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

15 "Emission unit" means any part or activity of a stationary  
16 source that emits or has the potential to emit any air  
17 pollutant. This term is not meant to alter or affect the  
18 definition of the term "unit" for purposes of Title IV of the  
19 Clean Air Act.

20 "Federally enforceable" means enforceable by USEPA.

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

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

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

34 "Maximum achievable control technology" or "MACT" means  
35 the maximum degree of reductions in emissions deemed achievable  
36 under Section 112 of the Clean Air Act.

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

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

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

9 "Phase II" means the period of the national acid rain  
10 program, established under Title IV of the Clean Air Act,  
11 beginning January 1, 2000, and continuing thereafter.

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

15 "Potential to emit" means the maximum capacity of a  
16 stationary source to emit any air pollutant under its physical  
17 and operational design. Any physical or operational limitation  
18 on the capacity of a source to emit an air pollutant, including  
19 air pollution control equipment and restrictions on hours of  
20 operation or on the type or amount of material combusted,  
21 stored, or processed, shall be treated as part of its design if  
22 the limitation is enforceable by USEPA. This definition does  
23 not alter or affect the use of this term for any other purposes  
24 under the Clean Air Act, or the term "capacity factor" as used  
25 in Title IV of the Clean Air Act or the regulations promulgated  
26 thereunder.

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

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

35 "Regulated air pollutant" means the following:

36 (1) Nitrogen oxides (NO<sub>x</sub>) or any volatile organic

1 compound.

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

4 (3) Any pollutant that is subject to any standard  
5 promulgated under Section 111 of the Clean Air Act.

6 (4) Any Class I or II substance subject to a standard  
7 promulgated under or established by Title VI of the Clean  
8 Air Act.

9 (5) Any pollutant subject to a standard promulgated  
10 under Section 112 or other requirements established under  
11 Section 112 of the Clean Air Act, including Sections  
12 112(g), (j) and (r).

13 (i) Any pollutant subject to requirements under  
14 Section 112(j) of the Clean Air Act. Any pollutant  
15 listed under Section 112(b) for which the subject  
16 source would be major shall be considered to be  
17 regulated 18 months after the date on which USEPA was  
18 required to promulgate an applicable standard pursuant  
19 to Section 112(e) of the Clean Air Act, if USEPA fails  
20 to promulgate such standard.

21 (ii) Any pollutant for which the requirements of  
22 Section 112(g)(2) of the Clean Air Act have been met,  
23 but only with respect to the individual source subject  
24 to Section 112(g)(2) requirement.

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

27 "Responsible official" means one of the following:

28 (1) For a corporation: a president, secretary,  
29 treasurer, or vice-president of the corporation in charge  
30 of a principal business function, or any other person who  
31 performs similar policy or decision-making functions for  
32 the corporation, or a duly authorized representative of  
33 such person if the representative is responsible for the  
34 overall operation of one or more manufacturing,  
35 production, or operating facilities applying for or  
36 subject to a permit and either (i) the facilities employ

1 more than 250 persons or have gross annual sales or  
2 expenditures exceeding \$25 million (in second quarter 1980  
3 dollars), or (ii) the delegation of authority to such  
4 representative is approved in advance by the Agency.

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

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

24 (4) For affected sources for acid deposition:

25 (i) The designated representative shall be the  
26 "responsible official" in so far as actions,  
27 standards, requirements, or prohibitions under Title  
28 IV of the Clean Air Act or the regulations promulgated  
29 thereunder are concerned.

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

33 "Section 502(b)(10) changes" means changes that contravene  
34 express permit terms. "Section 502(b)(10) changes" do not  
35 include changes that would violate applicable requirements or  
36 contravene federally enforceable permit terms or conditions



1 that are monitoring (including test methods), recordkeeping,  
2 reporting, or compliance certification requirements.

3 "Solid waste incineration unit" means a distinct operating  
4 unit of any facility which combusts any solid waste material  
5 from commercial or industrial establishments or the general  
6 public (including single and multiple residences, hotels, and  
7 motels). The term does not include incinerators or other units  
8 required to have a permit under Section 3005 of the Solid Waste  
9 Disposal Act. The term also does not include (A) materials  
10 recovery facilities (including primary or secondary smelters)  
11 which combust waste for the primary purpose of recovering  
12 metals, (B) qualifying small power production facilities, as  
13 defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C.  
14 769(17)(C)), or qualifying cogeneration facilities, as defined  
15 in Section 3(18)(B) of the Federal Power Act (16 U.S.C.  
16 796(18)(B)), which burn homogeneous waste (such as units which  
17 burn tires or used oil, but not including refuse-derived fuel)  
18 for the production of electric energy or in the case of  
19 qualifying cogeneration facilities which burn homogeneous  
20 waste for the production of electric energy and steam or forms  
21 of useful energy (such as heat) which are used for industrial,  
22 commercial, heating or cooling purposes, or (C) air curtain  
23 incinerators provided that such incinerators only burn wood  
24 wastes, yard waste and clean lumber and that such air curtain  
25 incinerators comply with opacity limitations to be established  
26 by the USEPA by rule.

27 "Source" means any stationary source (or any group of  
28 stationary sources) that are located on one or more contiguous  
29 or adjacent properties that are under common control of the  
30 same person (or persons under common control) and that belongs  
31 to a single major industrial grouping. For the purposes of  
32 defining "source," a stationary source or group of stationary  
33 sources shall be considered part of a single major industrial  
34 grouping if all of the pollutant emitting activities at such  
35 source or group of sources located on contiguous or adjacent  
36 properties and under common control belong to the same Major

1 Group (i.e., all have the same two-digit code) as described in  
2 the Standard Industrial Classification Manual, 1987, or such  
3 pollutant emitting activities at a stationary source (or group  
4 of stationary sources) located on contiguous or adjacent  
5 properties and under common control constitute a support  
6 facility. The determination as to whether any group of  
7 stationary sources are located on contiguous or adjacent  
8 properties, and/or are under common control, and/or whether the  
9 pollutant emitting activities at such group of stationary  
10 sources constitute a support facility shall be made on a case  
11 by case basis.

12 "Stationary source" means any building, structure,  
13 facility, or installation that emits or may emit any regulated  
14 air pollutant or any pollutant listed under Section 112(b) of  
15 the Clean Air Act.

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

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

#### 28 1.1. Exclusion From the CAAPP.

29 a. An owner or operator of a source which determines  
30 that the source could be excluded from the CAAPP may seek  
31 such exclusion prior to the date that the CAAPP application  
32 for the source is due but in no case later than 9 months  
33 after the effective date of the CAAPP through the  
34 imposition of federally enforceable conditions limiting  
35 the "potential to emit" of the source to a level below the

1 major source threshold for that source as described in  
2 paragraph 2(c) of this Section, within a State operating  
3 permit issued pursuant to Section 39(a) of this Act. After  
4 such date, an exclusion from the CAAPP may be sought under  
5 paragraph 3(c) of this Section.

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

12 c. Upon such request, if the Agency determines that the  
13 owner or operator of a source has met the requirements for  
14 exclusion pursuant to paragraph (a) of this subsection and  
15 other applicable requirements for permit issuance under  
16 Section 39(a) of this Act, the Agency shall issue a State  
17 operating permit for such source under Section 39(a) of  
18 this Act, as amended, and regulations promulgated  
19 thereunder with federally enforceable conditions limiting  
20 the "potential to emit" of the source to a level below the  
21 major source threshold for that source as described in  
22 paragraph 2(c) of this Section.

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

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

## 29 2. Applicability.

30 a. Sources subject to this Section shall include:

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

33 ii. Any source subject to a standard or other  
34 requirements promulgated under Section 111 (New Source  
35 Performance Standards) or Section 112 (Hazardous Air

1 Pollutants) of the Clean Air Act, except that a source  
2 is not required to obtain a permit solely because it is  
3 subject to regulations or requirements under Section  
4 112(r) of the Clean Air Act.

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

7 iv. Any other source subject to this Section under  
8 the Clean Air Act or regulations promulgated  
9 thereunder, or applicable Board regulations.

10 b. Sources exempted from this Section shall include:

11 i. All sources listed in paragraph (a) of this  
12 subsection which are not major sources, affected  
13 sources for acid deposition or solid waste  
14 incineration units required to obtain a permit  
15 pursuant to Section 129(e) of the Clean Air Act, until  
16 the source is required to obtain a CAAPP permit  
17 pursuant to the Clean Air Act or regulations  
18 promulgated thereunder.

19 ii. Nonmajor sources subject to a standard or other  
20 requirements subsequently promulgated by USEPA under  
21 Section 111 or 112 of the Clean Air Act which are  
22 determined by USEPA to be exempt at the time a new  
23 standard is promulgated.

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

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

34 v. Any other source categories exempted by USEPA  
35 regulations pursuant to Section 502(a) of the Clean Air  
36 Act.

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

3 i. A major source under Section 112 of the Clean  
4 Air Act, which is defined as:

5 A. For pollutants other than radionuclides,  
6 any stationary source or group of stationary  
7 sources located within a contiguous area and under  
8 common control that emits or has the potential to  
9 emit, in the aggregate, 10 tons per year (tpy) or  
10 more of any hazardous air pollutant which has been  
11 listed pursuant to Section 112(b) of the Clean Air  
12 Act, 25 tpy or more of any combination of such  
13 hazardous air pollutants, or such lesser quantity  
14 as USEPA may establish by rule. Notwithstanding  
15 the preceding sentence, emissions from any oil or  
16 gas exploration or production well (with its  
17 associated equipment) and emissions from any  
18 pipeline compressor or pump station shall not be  
19 aggregated with emissions from other similar  
20 units, whether or not such units are in a  
21 contiguous area or under common control, to  
22 determine whether such stations are major sources.

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

25 ii. A major stationary source of air pollutants, as  
26 defined in Section 302 of the Clean Air Act, that  
27 directly emits or has the potential to emit, 100 tpy or  
28 more of any air pollutant (including any major source  
29 of fugitive emissions of any such pollutant, as  
30 determined by rule by USEPA). For purposes of this  
31 subsection, "fugitive emissions" means those emissions  
32 which could not reasonably pass through a stack,  
33 chimney, vent, or other functionally-equivalent  
34 opening. The fugitive emissions of a stationary source  
35 shall not be considered in determining whether it is a  
36 major stationary source for the purposes of Section

1 302(j) of the Clean Air Act, unless the source belongs  
2 to one of the following categories of stationary  
3 source:

- 4 A. Coal cleaning plants (with thermal dryers).
- 5 B. Kraft pulp mills.
- 6 C. Portland cement plants.
- 7 D. Primary zinc smelters.
- 8 E. Iron and steel mills.
- 9 F. Primary aluminum ore reduction plants.
- 10 G. Primary copper smelters.
- 11 H. Municipal incinerators capable of charging  
12 more than 250 tons of refuse per day.
- 13 I. Hydrofluoric, sulfuric, or nitric acid  
14 plants.
- 15 J. Petroleum refineries.
- 16 K. Lime plants.
- 17 L. Phosphate rock processing plants.
- 18 M. Coke oven batteries.
- 19 N. Sulfur recovery plants.
- 20 O. Carbon black plants (furnace process).
- 21 P. Primary lead smelters.
- 22 Q. Fuel conversion plants.
- 23 R. Sintering plants.
- 24 S. Secondary metal production plants.
- 25 T. Chemical process plants.
- 26 U. Fossil-fuel boilers (or combination  
27 thereof) totaling more than 250 million British  
28 thermal units per hour heat input.
- 29 V. Petroleum storage and transfer units with a  
30 total storage capacity exceeding 300,000 barrels.
- 31 W. Taconite ore processing plants.
- 32 X. Glass fiber processing plants.
- 33 Y. Charcoal production plants.
- 34 Z. Fossil fuel-fired steam electric plants of  
35 more than 250 million British thermal units per  
36 hour heat input.

1           AA. All other stationary source categories, which as of August 7, 1980 are being regulated by a  
2           standard promulgated under Section 111 or 112 of  
3           the Clean Air Act, ~~but only with respect to those~~  
4           ~~air pollutants that have been regulated for that~~  
5           ~~category.~~  
6

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

9           iii. A major stationary source as defined in part D  
10          of Title I of the Clean Air Act including:

11           A. For ozone nonattainment areas, sources with  
12           the potential to emit 100 tons or more per year of  
13           volatile organic compounds or oxides of nitrogen  
14           in areas classified as "marginal" or "moderate",  
15           50 tons or more per year in areas classified as  
16           "serious", 25 tons or more per year in areas  
17           classified as "severe", and 10 tons or more per  
18           year in areas classified as "extreme"; except that  
19           the references in this clause to 100, 50, 25, and  
20           10 tons per year of nitrogen oxides shall not apply  
21           with respect to any source for which USEPA has made  
22           a finding, under Section 182(f)(1) or (2) of the  
23           Clean Air Act, that requirements otherwise  
24           applicable to such source under Section 182(f) of  
25           the Clean Air Act do not apply. Such sources shall  
26           remain subject to the major source criteria of  
27           paragraph 2(c)(ii) of this subsection.

28           B. For ozone transport regions established  
29           pursuant to Section 184 of the Clean Air Act,  
30           sources with the potential to emit 50 tons or more  
31           per year of volatile organic compounds (VOCs).

32           C. For carbon monoxide nonattainment areas (1)  
33           that are classified as "serious", and (2) in which  
34           stationary sources contribute significantly to  
35           carbon monoxide levels as determined under rules  
36           issued by USEPA, sources with the potential to emit

1           50 tons or more per year of carbon monoxide.

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

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

8           a. The Agency shall issue CAAPP permits under this  
9           Section consistent with the Clean Air Act and regulations  
10          promulgated thereunder and this Act and regulations  
11          promulgated thereunder.

12          b. The Agency shall issue CAAPP permits for fixed terms  
13          of 5 years, except CAAPP permits issued for solid waste  
14          incineration units combusting municipal waste which shall  
15          be issued for fixed terms of 12 years and except CAAPP  
16          permits for affected sources for acid deposition which  
17          shall be issued for initial terms to expire on December 31,  
18          1999, and for fixed terms of 5 years thereafter.

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

31          d. For purposes of this Act, a permit issued by USEPA  
32          under Section 505 of the Clean Air Act, as now and  
33          hereafter amended, shall be deemed to be a permit issued by  
34          the Agency pursuant to Section 39.5 of this Act.



1 4. Transition.

2 a. An owner or operator of a CAAPP source shall not be  
3 required to renew an existing State operating permit for  
4 any emission unit at such CAAPP source once a CAAPP  
5 application timely submitted prior to expiration of the  
6 State operating permit has been deemed complete. For  
7 purposes other than permit renewal, the obligation upon the  
8 owner or operator of a CAAPP source to obtain a State  
9 operating permit is not removed upon submittal of the  
10 complete CAAPP permit application. An owner or operator of  
11 a CAAPP source seeking to make a modification to a source  
12 prior to the issuance of its CAAPP permit shall be required  
13 to obtain a construction and/or operating permit as  
14 required for such modification in accordance with the State  
15 permit program under Section 39(a) of this Act, as amended,  
16 and regulations promulgated thereunder. The application  
17 for such construction and/or operating permit shall be  
18 considered an amendment to the CAAPP application submitted  
19 for such source.

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

25 c. An owner or operator of a CAAPP source shall submit  
26 its initial CAAPP application to the Agency no later than  
27 12 months after the effective date of the CAAPP. The Agency  
28 may request submittal of initial CAAPP applications during  
29 this 12 month period according to a schedule set forth  
30 within Agency procedures, however, in no event shall the  
31 Agency require such submittal earlier than 3 months after  
32 such effective date of the CAAPP. An owner or operator may  
33 voluntarily submit its initial CAAPP application prior to  
34 the date required within this paragraph or applicable  
35 procedures, if any, subsequent to the date the Agency  
36 submits the CAAPP to USEPA for approval.

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

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

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

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

17 h. The Agency shall have the authority to adopt  
18 procedural rules, in accordance with the Illinois  
19 Administrative Procedure Act, as the Agency deems  
20 necessary, to implement this subsection.

21 5. Applications and Completeness.

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

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

28 c. To be deemed complete, a CAAPP application must  
29 provide all information, as requested in Agency  
30 application forms, sufficient to evaluate the subject  
31 source and its application and to determine all applicable  
32 requirements, pursuant to the Clean Air Act, and  
33 regulations thereunder, this Act and regulations  
34 thereunder. Such Agency application forms shall be  
35 finalized and made available prior to the date on which any

1 CAAPP application is required.

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

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

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

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

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

35 i. Any applicant who fails to submit any relevant facts  
36 necessary to evaluate the subject source and its CAAPP

1 application or who has submitted incorrect information in a  
2 CAAPP application shall, upon becoming aware of such  
3 failure or incorrect submittal, submit supplementary facts  
4 or correct information to the Agency. In addition, an  
5 applicant shall provide to the Agency additional  
6 information as necessary to address any requirements which  
7 become applicable to the source subsequent to the date the  
8 applicant submitted its complete CAAPP application but  
9 prior to release of the draft CAAPP permit.

10 j. The Agency shall issue or deny the CAAPP permit  
11 within 18 months after the date of receipt of the complete  
12 CAAPP application, with the following exceptions: (i)  
13 permits for affected sources for acid deposition shall be  
14 issued or denied within 6 months after receipt of a  
15 complete application in accordance with subsection 17 of  
16 this Section; (ii) the Agency shall act on initial CAAPP  
17 applications within 24 months after the date of receipt of  
18 the complete CAAPP application; (iii) the Agency shall act  
19 on complete applications containing early reduction  
20 demonstrations under Section 112(i)(5) of the Clean Air Act  
21 within 9 months of receipt of the complete CAAPP  
22 application.

23 Where the Agency does not take final action on the  
24 permit within the required time period, the permit shall  
25 not be deemed issued; rather, the failure to act shall be  
26 treated as a final permit action for purposes of judicial  
27 review pursuant to Sections 40.2 and 41 of this Act.

28 k. The submittal of a complete CAAPP application shall  
29 not affect the requirement that any source have a  
30 preconstruction permit under Title I of the Clean Air Act.

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

36 m. Permits being renewed shall be subject to the same

1 procedural requirements, including those for public  
2 participation and federal review and objection, that apply  
3 to original permit issuance.

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

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

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

15 q. The Agency shall make available to the public all  
16 documents submitted by the applicant to the Agency,  
17 including each CAAPP application, compliance plan  
18 (including the schedule of compliance), and emissions or  
19 compliance monitoring report, with the exception of  
20 information entitled to confidential treatment pursuant to  
21 Section 7 of this Act.

22 r. The Agency shall use the standardized forms required  
23 under Title IV of the Clean Air Act and regulations  
24 promulgated thereunder for affected sources for acid  
25 deposition.

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

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

35 u. An owner or operator of a CAAPP source which seeks  
36 exclusion from the CAAPP through the imposition of

1       federally enforceable conditions, pursuant to paragraph  
2       3(c) of this Section, must request such exclusion within a  
3       CAAPP application submitted consistent with this  
4       subsection on or after the date that the CAAPP application  
5       for the source is due. Prior to such date, but in no case  
6       later than 9 months after the effective date of the CAAPP,  
7       such owner or operator may request the imposition of  
8       federally enforceable conditions pursuant to paragraph  
9       1.1(b) of this Section.

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

13       w. An owner or operator of a CAAPP source shall submit  
14       within its CAAPP application emissions information  
15       regarding all regulated air pollutants emitted at that  
16       source consistent with applicable Agency procedures.  
17       Emissions information regarding insignificant activities  
18       or emission levels, as determined by the Agency pursuant to  
19       Board regulations, may be submitted as a list within the  
20       CAAPP application. The Agency shall propose regulations to  
21       the Board defining insignificant activities or emission  
22       levels, consistent with federal regulations, if any, no  
23       later than 18 months after the effective date of this  
24       amendatory Act of 1992, consistent with Section 112(n)(1)  
25       of the Clean Air Act. The Board shall adopt final  
26       regulations defining insignificant activities or emission  
27       levels no later than 9 months after the date of the  
28       Agency's proposal.

29       x. The owner or operator of a new CAAPP source shall  
30       submit its complete CAAPP application consistent with this  
31       subsection within 12 months after commencing operation of  
32       such source. The owner or operator of an existing source  
33       that has been excluded from the provisions of this Section  
34       under subsection 1.1 or subsection 3(c) of this Section and  
35       that becomes subject to the CAAPP solely due to a change in  
36       operation at the source shall submit its complete CAAPP

1 application consistent with this subsection at least 180  
2 days before commencing operation in accordance with the  
3 change in operation.

4 y. The Agency shall have the authority to adopt  
5 procedural rules, in accordance with the Illinois  
6 Administrative Procedure Act, as the Agency deems  
7 necessary to implement this subsection.

8 6. Prohibitions.

9 a. It shall be unlawful for any person to violate any  
10 terms or conditions of a permit issued under this Section,  
11 to operate any CAAPP source except in compliance with a  
12 permit issued by the Agency under this Section or to  
13 violate any other applicable requirements. All terms and  
14 conditions of a permit issued under this Section are  
15 enforceable by USEPA and citizens under the Clean Air Act,  
16 except those, if any, that are specifically designated as  
17 not being federally enforceable in the permit pursuant to  
18 paragraph 7(m) of this Section.

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

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

33 7. Permit Content.

34 a. All CAAPP permits shall contain emission

1 limitations and standards and other enforceable terms and  
2 conditions, including but not limited to operational  
3 requirements, and schedules for achieving compliance at  
4 the earliest reasonable date, which are or will be required  
5 to accomplish the purposes and provisions of this Act and  
6 to assure compliance with all applicable requirements.

7 b. The Agency shall include among such conditions  
8 applicable monitoring, reporting, record keeping and  
9 compliance certification requirements, as authorized by  
10 paragraphs d, e, and f of this subsection, that the Agency  
11 deems necessary to assure compliance with the Clean Air  
12 Act, the regulations promulgated thereunder, this Act, and  
13 applicable Board regulations. When monitoring, reporting,  
14 record keeping, and compliance certification requirements  
15 are specified within the Clean Air Act, regulations  
16 promulgated thereunder, this Act, or applicable  
17 regulations, such requirements shall be included within  
18 the CAAPP permit. The Board shall have authority to  
19 promulgate additional regulations where necessary to  
20 accomplish the purposes of the Clean Air Act, this Act, and  
21 regulations promulgated thereunder.

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

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

29 i. Incorporate and identify all applicable  
30 emissions monitoring and analysis procedures or test  
31 methods required under the Clean Air Act, regulations  
32 promulgated thereunder, this Act, and applicable Board  
33 regulations, including any procedures and methods  
34 promulgated by USEPA pursuant to Section 504(b) or  
35 Section 114 (a) (3) of the Clean Air Act.

36 ii. Where the applicable requirement does not



1           require periodic testing or instrumental or  
2           noninstrumental monitoring (which may consist of  
3           recordkeeping designed to serve as monitoring),  
4           require periodic monitoring sufficient to yield  
5           reliable data from the relevant time period that is  
6           representative of the source's compliance with the  
7           permit, as reported pursuant to paragraph (f) of this  
8           subsection. The Agency may determine that  
9           recordkeeping requirements are sufficient to meet the  
10          requirements of this subparagraph.

11           iii. As necessary, specify requirements concerning  
12          the use, maintenance, and when appropriate,  
13          installation of monitoring equipment or methods.

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

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

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

22           B. The date(s) analyses were performed.

23           C. The company or entity that performed the  
24          analyses.

25           D. The analytical techniques or methods used.

26           E. The results of such analyses.

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

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

1 f. To meet the requirements of this subsection with  
2 respect to reporting, the permit shall incorporate and  
3 identify all applicable reporting requirements and require  
4 the following:

5 i. Submittal of reports of any required monitoring  
6 every 6 months. More frequent submittals may be  
7 requested by the Agency if such submittals are  
8 necessary to assure compliance with this Act or  
9 regulations promulgated by the Board thereunder. All  
10 instances of deviations from permit requirements must  
11 be clearly identified in such reports. All required  
12 reports must be certified by a responsible official  
13 consistent with subsection 5 of this Section.

14 ii. Prompt reporting of deviations from permit  
15 requirements, including those attributable to upset  
16 conditions as defined in the permit, the probable cause  
17 of such deviations, and any corrective actions or  
18 preventive measures taken.

19 g. Each CAAPP permit issued under subsection 10 of this  
20 Section shall include a condition prohibiting emissions  
21 exceeding any allowances that the source lawfully holds  
22 under Title IV of the Clean Air Act or the regulations  
23 promulgated thereunder, consistent with subsection 17 of  
24 this Section and applicable regulations, if any.

25 h. All CAAPP permits shall state that, where another  
26 applicable requirement of the Clean Air Act is more  
27 stringent than any applicable requirement of regulations  
28 promulgated under Title IV of the Clean Air Act, both  
29 provisions shall be incorporated into the permit and shall  
30 be State and federally enforceable.

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

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

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

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

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

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

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

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

26           A. The provisions of Section 303 (emergency  
27 powers) of the Clean Air Act, including USEPA's  
28 authority under that section.

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

33           C. The applicable requirements of the acid  
34 rain program consistent with Section 408(a) of the  
35 Clean Air Act.

36           D. The ability of USEPA to obtain information

1 from a source pursuant to Section 114  
2 (inspections, monitoring, and entry) of the Clean  
3 Air Act.

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

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

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

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

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

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

36 In any enforcement proceeding, the permittee seeking

1 to establish the occurrence of an emergency has the burden  
2 of proof. This provision is in addition to any emergency or  
3 upset provision contained in any applicable requirement.  
4 This provision does not relieve a permittee of any  
5 reporting obligations under existing federal or state laws  
6 or regulations.

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

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

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

19 B. The permit shield described in paragraph  
20 7(j) of this Section shall extend to all terms and  
21 conditions under each such operating scenario.

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

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

32 B. Must meet all applicable requirements;

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

1 m. The Agency shall specifically designate as not being  
2 federally enforceable under the Clean Air Act any terms and  
3 conditions included in the permit that are not specifically  
4 required under the Clean Air Act or federal regulations  
5 promulgated thereunder. Terms or conditions so designated  
6 shall be subject to all applicable state requirements,  
7 except the requirements of subsection 7 (other than this  
8 paragraph, paragraph q of subsection 7, subsections 8  
9 through 11, and subsections 13 through 16 of this Section.  
10 The Agency shall, however, include such terms and  
11 conditions in the CAAPP permit issued to the source.

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

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

19 i. Duty to comply. The permittee must comply with  
20 all terms and conditions of the CAAPP permit. Any  
21 permit noncompliance constitutes a violation of the  
22 Clean Air Act and the Act, and is grounds for any or  
23 all of the following: enforcement action; permit  
24 termination, revocation and reissuance, or  
25 modification; or denial of a permit renewal  
26 application.

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

33 iii. Permit actions. The permit may be modified,  
34 revoked, reopened, and reissued, or terminated for  
35 cause in accordance with the applicable subsections of  
36 Section 39.5 of this Act. The filing of a request by

1 the permittee for a permit modification, revocation  
2 and reissuance, or termination, or of a notification of  
3 planned changes or anticipated noncompliance does not  
4 stay any permit condition.

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

8 v. Duty to provide information. The permittee  
9 shall furnish to the Agency within a reasonable time  
10 specified by the Agency any information that the Agency  
11 may request in writing to determine whether cause  
12 exists for modifying, revoking and reissuing, or  
13 terminating the permit or to determine compliance with  
14 the permit. Upon request, the permittee shall also  
15 furnish to the Agency copies of records required to be  
16 kept by the permit or, for information claimed to be  
17 confidential, the permittee may furnish such records  
18 directly to USEPA along with a claim of  
19 confidentiality.

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

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

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

34 i. Compliance certification, testing, monitoring,  
35 reporting, and record keeping requirements sufficient  
36 to assure compliance with the terms and conditions of

1 the permit. Any document (including reports) required  
2 by a CAAPP permit shall contain a certification by a  
3 responsible official that meets the requirements of  
4 subsection 5 of this Section and applicable  
5 regulations.

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

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

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

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

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

25 1. As authorized by the Clean Air Act, at  
26 reasonable times, for the purposes of assuring  
27 compliance with the CAAPP permit or applicable  
28 requirements; or

29 2. As otherwise authorized by this Act.

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

33 iv. Progress reports consistent with an applicable  
34 schedule of compliance pursuant to paragraph 5(d) of  
35 this Section and applicable regulations to be  
36 submitted semiannually, or more frequently if the



1 Agency determines that such more frequent submittals  
2 are necessary for compliance with the Act or  
3 regulations promulgated by the Board thereunder. Such  
4 progress reports shall contain the following:

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

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

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

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

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

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

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

30 2. The compliance status.

31 3. Whether compliance was continuous or  
32 intermittent.

33 4. The method(s) used for determining the  
34 compliance status of the source, both  
35 currently and over the reporting period  
36 consistent with subsection 7 of Section 39.5 of

1 the Act.

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

5 E. Additional requirements as may be specified  
6 pursuant to Sections 114(a)(3) and 504(b) of the  
7 Clean Air Act.

8 F. Other provisions as the Agency may require.

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

20 8. Public Notice; Affected State Review.

21 a. The Agency shall provide notice to the public,  
22 including an opportunity for public comment and a hearing,  
23 on each draft CAAPP permit for issuance, renewal or  
24 significant modification, subject to Sections 7(a) and 7.1  
25 of this Act.

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

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

36 d. The Agency, as part of its submittal of a proposed

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

12 e. The Agency shall make available to the public any  
13 CAAPP permit application, compliance plan (including the  
14 schedule of compliance), CAAPP permit, and emissions or  
15 compliance monitoring report. If an owner or operator of a  
16 CAAPP source is required to submit information entitled to  
17 protection from disclosure under Section 7(a) or Section  
18 7.1 of this Act, the owner or operator shall submit such  
19 information separately. The requirements of Section 7(a)  
20 or Section 7.1 of this Act shall apply to such information,  
21 which shall not be included in a CAAPP permit unless  
22 required by law. The contents of a CAAPP permit shall not  
23 be entitled to protection under Section 7(a) or Section 7.1  
24 of this Act.

25 f. The Agency shall have the authority to adopt  
26 procedural rules, in accordance with the Illinois  
27 Administrative Procedure Act, as the Agency deems  
28 necessary, to implement this subsection.

29 9. USEPA Notice and Objection.

30 a. The Agency shall provide to USEPA for its review a  
31 copy of each CAAPP application (including any application  
32 for permit modification), statement of basis as provided in  
33 paragraph 8(b) of this Section, proposed CAAPP permit,  
34 CAAPP permit, and, if the Agency does not incorporate any  
35 affected State's recommendations on a proposed CAAPP

1 permit, a written statement of this decision and its  
2 reasons for not accepting the recommendations, except as  
3 otherwise provided in this Act or by agreement with USEPA.  
4 To the extent practicable, the preceding information shall  
5 be provided in computer readable format compatible with  
6 USEPA's national database management system.

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

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

23 d. Any USEPA objection under this subsection,  
24 according to the Clean Air Act, will include a statement of  
25 reasons for the objection and a description of the terms  
26 and conditions that must be in the permit, in order to  
27 adequately respond to the objections. Grounds for a USEPA  
28 objection include the failure of the Agency to: (1) submit  
29 the items and notices required under this subsection; (2)  
30 submit any other information necessary to adequately  
31 review the proposed CAAPP permit; or (3) process the permit  
32 under subsection 8 of this Section except for minor permit  
33 modifications.

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

1 to make such objection.

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

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

24 h. The Agency shall have the authority to adopt  
25 procedural rules, in accordance with the Illinois  
26 Administrative Procedure Act, as the Agency deems  
27 necessary, to implement this subsection.

28 10. Final Agency Action.

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

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

1 and applicable regulations.

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

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

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

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

19 vi. The Agency has provided a copy of each CAAPP  
20 application, or summary thereof, pursuant to agreement  
21 with USEPA and proposed CAAPP permit required under  
22 subsection 9 of this Section to USEPA, and USEPA has  
23 not objected to the issuance of the permit in  
24 accordance with the Clean Air Act and 40 CFR Part 70.

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

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

34 ii. Within such notice, the Agency shall specify an  
35 appropriate date by which the applicant shall  
36 adequately respond to the Agency's notice. Such date

1 shall not exceed 15 days from the date the notification  
2 is received by the applicant. The Agency may grant a  
3 reasonable extension for good cause shown.

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

8 For purposes of obtaining judicial review under  
9 Sections 40.2 and 41 of this Act, the Agency shall  
10 provide to USEPA and each applicant, and, upon request,  
11 to affected States, any person who participated in the  
12 public comment process, and any other person who could  
13 obtain judicial review under Sections 40.2 and 41 of  
14 this Act, a copy of each CAAPP permit or notification  
15 of denial pertaining to that party.

16 d. The Agency shall have the authority to adopt  
17 procedural rules, in accordance with the Illinois  
18 Administrative Procedure Act, as the Agency deems  
19 necessary, to implement this subsection.

20 11. General Permits.

21 a. The Agency may issue a general permit covering  
22 numerous similar sources, except for affected sources for  
23 acid deposition unless otherwise provided in regulations  
24 promulgated under Title IV of the Clean Air Act.

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

28 c. CAAPP sources that would qualify for a general  
29 permit must apply for coverage under the terms of the  
30 general permit or must apply for a CAAPP permit consistent  
31 with subsection 5 of this Section and applicable  
32 regulations.

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

1 general permit.

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

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

11 g. The Agency shall have the authority to adopt  
12 procedural rules, in accordance with the Illinois  
13 Administrative Procedure Act, as the Agency deems  
14 necessary, to implement this subsection.

15 12. Operational Flexibility.

16 a. An owner or operator of a CAAPP source may make  
17 changes at the CAAPP source without requiring a prior  
18 permit revision, consistent with subparagraphs (a) (i)  
19 through (a) (iii) of this subsection, so long as the  
20 changes are not modifications under any provision of Title  
21 I of the Clean Air Act and they do not exceed the emissions  
22 allowable under the permit (whether expressed therein as a  
23 rate of emissions or in terms of total emissions), provided  
24 that the owner or operator of the CAAPP source provides  
25 USEPA and the Agency with written notification as required  
26 below in advance of the proposed changes, which shall be a  
27 minimum of 7 days, unless otherwise provided by the Agency  
28 in applicable regulations regarding emergencies. The owner  
29 or operator of a CAAPP source and the Agency shall each  
30 attach such notice to their copy of the relevant permit.

31 i. An owner or operator of a CAAPP source may make  
32 Section 502 (b) (10) changes without a permit revision,  
33 if the changes are not modifications under any  
34 provision of Title I of the Clean Air Act and the  
35 changes do not exceed the emissions allowable under the



1 permit (whether expressed therein as a rate of  
2 emissions or in terms of total emissions).

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

9 B. The permit shield described in paragraph  
10 7(j) of this Section shall not apply to any change  
11 made pursuant to this subparagraph.

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

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

34 B. The permit shield described in paragraph  
35 7(j) of this Section shall not apply to any change  
36 made pursuant to this subparagraph (a) (ii).

1 Compliance with the permit requirements that the  
2 source will meet using the emissions trade shall be  
3 determined according to the requirements of the  
4 applicable implementation plan authorizing the  
5 emissions trade.

6 iii. If requested within a CAAPP application, the  
7 Agency shall issue a CAAPP permit which contains terms  
8 and conditions, including all terms required under  
9 subsection 7 of this Section to determine compliance,  
10 allowing for the trading of emissions increases and  
11 decreases at the CAAPP source solely for the purpose of  
12 complying with a federally-enforceable emissions cap  
13 that is established in the permit independent of  
14 otherwise applicable requirements. The owner or  
15 operator of a CAAPP source shall include in its CAAPP  
16 application proposed replicable procedures and permit  
17 terms that ensure the emissions trades are  
18 quantifiable and enforceable. The permit shall also  
19 require compliance with all applicable requirements.

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

26 B. The permit shield described in paragraph  
27 7(j) of this Section shall extend to terms and  
28 conditions that allow such increases and decreases  
29 in emissions.

30 b. An owner or operator of a CAAPP source may make  
31 changes that are not addressed or prohibited by the permit,  
32 other than those which are subject to any requirements  
33 under Title IV of the Clean Air Act or are modifications  
34 under any provisions of Title I of the Clean Air Act,  
35 without a permit revision, in accordance with the following  
36 requirements:

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

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

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

14 (iv) The permittee shall keep a record describing  
15 changes made at the source that result in emissions of  
16 a regulated air pollutant subject to an applicable  
17 Clean Air Act requirement, but not otherwise regulated  
18 under the permit, and the emissions resulting from  
19 those changes.

20 c. The Agency shall have the authority to adopt  
21 procedural rules, in accordance with the Illinois  
22 Administrative Procedure Act, as the Agency deems  
23 necessary to implement this subsection.

24 13. Administrative Permit Amendments.

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

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

34 c. For purposes of this Section the term  
35 "administrative permit amendment" shall be defined as a

1 permit revision that can accomplish one or more of the  
2 changes described below:

3 i. Corrects typographical errors;

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

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

10 iv. Allows for a change in ownership or operational  
11 control of a source where the Agency determines that no  
12 other change in the permit is necessary, provided that  
13 a written agreement containing a specific date for  
14 transfer of permit responsibility, coverage, and  
15 liability between the current and new permittees has  
16 been submitted to the Agency;

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

23 vi. (Blank); or

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

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

34 e. Permit revisions and modifications, including  
35 administrative amendments and automatic amendments  
36 (pursuant to Sections 408(b) and 403(d) of the Clean Air

1 Act or regulations promulgated thereunder), for purposes  
2 of the acid rain portion of the permit shall be governed by  
3 the regulations promulgated under Title IV of the Clean Air  
4 Act. Owners or operators of affected sources for acid  
5 deposition shall have the flexibility to amend their  
6 compliance plans as provided in the regulations  
7 promulgated under Title IV of the Clean Air Act.

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

11 g. The Agency shall have the authority to adopt  
12 procedural rules, in accordance with the Illinois  
13 Administrative Procedure Act, as the Agency deems  
14 necessary, to implement this subsection.

15 14. Permit Modifications.

16 a. Minor permit modification procedures.

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

20 A. Do not violate any applicable requirement;

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

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

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

34 1. A federally enforceable emissions cap  
35 assumed to avoid classification as a

1 modification under any provision of Title I of  
2 the Clean Air Act; and

3 2. An alternative emissions limit approved  
4 pursuant to regulations promulgated under  
5 Section 112(i)(5) of the Clean Air Act;

6 E. Are not modifications under any provision  
7 of Title I of the Clean Air Act; and

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

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

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

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

26 B. The source's suggested draft permit;

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

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

36 iv. Within 5 working days of receipt of a complete

1 permit modification application, the Agency shall  
2 notify USEPA and affected States of the requested  
3 permit modification in accordance with subsections 8  
4 and 9 of this Section. The Agency promptly shall send  
5 any notice required under paragraph 8(d) of this  
6 Section to USEPA.

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

18 A. Issue the permit modification as proposed;

19 B. Deny the permit modification application;

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

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

28 vi. Any CAAPP source may make the change proposed  
29 in its minor permit modification application  
30 immediately after it files such application. After the  
31 CAAPP source makes the change allowed by the preceding  
32 sentence, and until the Agency takes any of the actions  
33 specified in subparagraphs (a) (v) (A) through (a) (v) (C)  
34 of this subsection, the source must comply with both  
35 the applicable requirements governing the change and  
36 the proposed permit terms and conditions. During this

1 time period, the source need not comply with the  
2 existing permit terms and conditions it seeks to  
3 modify. If the source fails to comply with its proposed  
4 permit terms and conditions during this time period,  
5 the existing permit terms and conditions which it seeks  
6 to modify may be enforced against it.

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

10 viii. If a construction permit is required,  
11 pursuant to Section 39(a) of this Act and regulations  
12 thereunder, for a change for which the minor permit  
13 modification procedures are applicable, the source may  
14 request that the processing of the construction permit  
15 application be consolidated with the processing of the  
16 application for the minor permit modification. In such  
17 cases, the provisions of this Section, including those  
18 within subsections 5, 8, and 9, shall apply and the  
19 Agency shall act on such applications pursuant to  
20 subparagraph 14(a)(v). The source may make the  
21 proposed change immediately after filing its  
22 application for the minor permit modification. Nothing  
23 in this subparagraph shall otherwise affect the  
24 requirements and procedures applicable to construction  
25 permits.

26 b. Group Processing of Minor Permit Modifications.

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

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

35 A. Which meet the criteria for minor permit  
36 modification procedures under subparagraph



1 14(a) (i) of this Section; and

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

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

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

15 B. The source's suggested draft permit.

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

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

27 E. Certification, consistent with paragraph  
28 5(e), that the source has notified USEPA of the  
29 proposed modification. Such notification need only  
30 contain a brief description of the requested  
31 modification.

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

35 iv. On a quarterly basis or within 5 business days  
36 of receipt of an application demonstrating that the

1 aggregate of a source's pending applications equals or  
2 exceeds the threshold level set forth within  
3 subparagraph (b)(ii)(B) of this subsection, whichever  
4 is earlier, the Agency shall promptly notify USEPA and  
5 affected States of the requested permit modifications  
6 in accordance with subsections 8 and 9 of this Section.  
7 The Agency shall send any notice required under  
8 paragraph 8(d) of this Section to USEPA.

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

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

20 vii. The provisions of paragraph 7(j) of this  
21 Section shall not apply to modifications eligible for  
22 group processing.

23 c. Significant Permit Modifications.

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

29 ii. Every significant change in existing  
30 monitoring permit terms or conditions and every  
31 relaxation of reporting or recordkeeping requirements  
32 shall be considered significant. A modification shall  
33 also be considered significant if in the judgment of  
34 the Agency action on an application for modification  
35 would require decisions to be made on technically  
36 complex issues. Nothing herein shall be construed to

1 preclude the permittee from making changes consistent  
2 with this Section that would render existing permit  
3 compliance terms and conditions irrelevant.

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

12 d. The Agency shall have the authority to adopt  
13 procedural rules, in accordance with the Illinois  
14 Administrative Procedure Act, as the Agency deems  
15 necessary, to implement this subsection.

16 15. Reopenings for Cause by the Agency.

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

24 i. Additional requirements under the Clean Air Act  
25 become applicable to a major CAAPP source for which 3  
26 or more years remain on the original term of the  
27 permit. Such a reopening shall be completed not later  
28 than 18 months after the promulgation of the applicable  
29 requirement. No such revision is required if the  
30 effective date of the requirement is later than the  
31 date on which the permit is due to expire.

32 ii. Additional requirements (including excess  
33 emissions requirements) become applicable to an  
34 affected source for acid deposition under the acid rain  
35 program. Excess emissions offset plans shall be deemed

1 to be incorporated into the permit upon approval by  
2 USEPA.

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

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

11 b. In the event that the Agency determines that there  
12 are grounds for revoking a CAAPP permit, for cause,  
13 consistent with paragraph a of this subsection, it shall  
14 file a petition before the Board setting forth the basis  
15 for such revocation. In any such proceeding, the Agency  
16 shall have the burden of establishing that the permit  
17 should be revoked under the standards set forth in this Act  
18 and the Clean Air Act. Any such proceeding shall be  
19 conducted pursuant to the Board's procedures for  
20 adjudicatory hearings and the Board shall render its  
21 decision within 120 days of the filing of the petition. The  
22 Agency shall take final action to revoke and reissue a  
23 CAAPP permit consistent with the Board's order.

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

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

34 e. The Agency shall have the authority to adopt  
35 procedural rules, in accordance with the Illinois  
36 Administrative Procedure Act, as the Agency deems

1 necessary, to implement this subsection.

2 16. Reopenings for Cause by USEPA.

3 a. When USEPA finds that cause exists to terminate,  
4 modify, or revoke and reissue a CAAPP permit pursuant to  
5 subsection 15 of this Section, and thereafter notifies the  
6 Agency and the permittee of such finding in writing, the  
7 Agency shall forward to USEPA and the permittee a proposed  
8 determination of termination, modification, or revocation  
9 and reissuance as appropriate, in accordance with  
10 paragraph b of this subsection. The Agency's proposed  
11 determination shall be in accordance with the record, the  
12 Clean Air Act, regulations promulgated thereunder, this  
13 Act and regulations promulgated thereunder. Such proposed  
14 determination shall not affect the permit or constitute a  
15 final permit action for purposes of this Act or the  
16 Administrative Review Law. The Agency shall forward to  
17 USEPA such proposed determination within 90 days after  
18 receipt of the notification from USEPA. If additional time  
19 is necessary to submit the proposed determination, the  
20 Agency shall request a 90-day extension from USEPA and  
21 shall submit the proposed determination within 180 days of  
22 receipt of notification from USEPA.

23 b. i. Prior to the Agency's submittal to USEPA of a  
24 proposed determination to terminate or revoke and  
25 reissue the permit, the Agency shall file a petition  
26 before the Board setting forth USEPA's objection, the  
27 permit record, the Agency's proposed determination,  
28 and the justification for its proposed determination.  
29 The Board shall conduct a hearing pursuant to the rules  
30 prescribed by Section 32 of this Act, and the burden of  
31 proof shall be on the Agency.

32 ii. After due consideration of the written and oral  
33 statements, the testimony and arguments that shall be  
34 submitted at hearing, the Board shall issue and enter  
35 an interim order for the proposed determination, which

1 shall set forth all changes, if any, required in the  
2 Agency's proposed determination. The interim order  
3 shall comply with the requirements for final orders as  
4 set forth in Section 33 of this Act. Issuance of an  
5 interim order by the Board under this paragraph,  
6 however, shall not affect the permit status and does  
7 not constitute a final action for purposes of this Act  
8 or the Administrative Review Law.

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

15 c. USEPA shall review the proposed determination to  
16 terminate, modify, or revoke and reissue the permit within  
17 90 days of receipt.

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

25 ii. When USEPA reviews such proposed determination  
26 to terminate or revoke and reissue and objects, the  
27 Agency shall submit USEPA's objection and the Agency's  
28 comments and recommendation on the objection to the  
29 Board and permittee. The Board shall review its interim  
30 order in response to USEPA's objection and the Agency's  
31 comments and recommendation and issue a final order in  
32 accordance with Sections 32 and 33 of this Act. The  
33 Agency shall, within 90 days after receipt of such  
34 objection, respond to USEPA's objection in accordance  
35 with the Board's final order.

36 iii. When USEPA reviews such proposed

1 determination to modify and objects, the Agency shall,  
2 within 90 days after receipt of the objection, resolve  
3 the objection and modify the permit in accordance with  
4 USEPA's objection, based upon the record, the Clean Air  
5 Act, regulations promulgated thereunder, this Act, and  
6 regulations promulgated thereunder.

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

12 e. The Agency shall have the authority to adopt  
13 procedural rules, in accordance with the Illinois  
14 Administrative Procedure Act, as the Agency deems  
15 necessary, to implement this subsection.

16 17. Title IV; Acid Rain Provisions.

17 a. The Agency shall act on initial CAAPP applications  
18 for affected sources for acid deposition in accordance with  
19 this Section and Title V of the Clean Air Act and  
20 regulations promulgated thereunder, except as modified by  
21 Title IV of the Clean Air Act and regulations promulgated  
22 thereunder. The Agency shall issue initial CAAPP permits to  
23 the affected sources for acid deposition which shall become  
24 effective no earlier than January 1, 1995, and which shall  
25 terminate on December 31, 1999, in accordance with this  
26 Section. Subsequent CAAPP permits issued to affected  
27 sources for acid deposition shall be issued for a fixed  
28 term of 5 years. Title IV of the Clean Air Act and  
29 regulations promulgated thereunder, including but not  
30 limited to 40 C.F.R. Part 72, as now or hereafter amended,  
31 are applicable to and enforceable under this Act.

32 b. A designated representative of an affected source  
33 for acid deposition shall submit a timely and complete  
34 Phase II acid rain permit application and compliance plan  
35 to the Agency, not later than January 1, 1996, that meets

1 the requirements of Titles IV and V of the Clean Air Act  
2 and regulations. The Agency shall act on the Phase II acid  
3 rain permit application and compliance plan in accordance  
4 with this Section and Title V of the Clean Air Act and  
5 regulations promulgated thereunder, except as modified by  
6 Title IV of the Clean Air Act and regulations promulgated  
7 thereunder. The Agency shall issue the Phase II acid rain  
8 permit to an affected source for acid deposition no later  
9 than December 31, 1997, which shall become effective on  
10 January 1, 2000, in accordance with this Section, except as  
11 modified by Title IV and regulations promulgated  
12 thereunder; provided that the designated representative of  
13 the source submitted a timely and complete Phase II permit  
14 application and compliance plan to the Agency that meets  
15 the requirements of Title IV and V of the Clean Air Act and  
16 regulations.

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

23 d. A designated representative of a new unit, as  
24 defined in Section 402 of the Clean Air Act, shall submit a  
25 timely and complete Phase II acid rain permit application  
26 and compliance plan that meets the requirements of Titles  
27 IV and V of the Clean Air Act and its regulations. The  
28 Agency shall act on the new unit's Phase II acid rain  
29 permit application and compliance plan in accordance with  
30 this Section and Title V of the Clean Air Act and its  
31 regulations, except as modified by Title IV of the Clean  
32 Air Act and its regulations. The Agency shall reopen the  
33 new unit's CAAPP permit for cause to incorporate the  
34 approved Phase II acid rain permit in accordance with this  
35 Section. The Phase II acid rain permit for the new unit  
36 shall become effective no later than the date required



1 under Title IV of the Clean Air Act and its regulations.

2 e. A designated representative of an affected source  
3 for acid deposition shall submit a timely and complete  
4 Title IV NOx permit application to the Agency, not later  
5 than January 1, 1998, that meets the requirements of Titles  
6 IV and V of the Clean Air Act and its regulations. The  
7 Agency shall reopen the Phase II acid rain permit for cause  
8 and incorporate the approved NOx provisions into the Phase  
9 II acid rain permit not later than January 1, 1999, in  
10 accordance with this Section, except as modified by Title  
11 IV of the Clean Air Act and regulations promulgated  
12 thereunder. Such reopening shall not affect the term of the  
13 Phase II acid rain permit.

14 f. The designated representative of the affected  
15 source for acid deposition shall renew the initial CAAPP  
16 permit and Phase II acid rain permit in accordance with  
17 this Section and Title V of the Clean Air Act and  
18 regulations promulgated thereunder, except as modified by  
19 Title IV of the Clean Air Act and regulations promulgated  
20 thereunder.

21 g. In the case of an affected source for acid  
22 deposition for which a complete Phase II acid rain permit  
23 application and compliance plan are timely received under  
24 this subsection, the complete permit application and  
25 compliance plan, including amendments thereto, shall be  
26 binding on the owner, operator and designated  
27 representative, all affected units for acid deposition at  
28 the affected source, and any other unit, as defined in  
29 Section 402 of the Clean Air Act, governed by the Phase II  
30 acid rain permit application and shall be enforceable as an  
31 acid rain permit for purposes of Titles IV and V of the  
32 Clean Air Act, from the date of submission of the acid rain  
33 permit application until a Phase II acid rain permit is  
34 issued or denied by the Agency.

35 h. The Agency shall not include or implement any  
36 measure which would interfere with or modify the

1 requirements of Title IV of the Clean Air Act or  
2 regulations promulgated thereunder.

3 i. Nothing in this Section shall be construed as  
4 affecting allowances or USEPA's decision regarding an  
5 excess emissions offset plan, as set forth in Title IV of  
6 the Clean Air Act or regulations promulgated thereunder.

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

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

16 iii. Any such allowance shall be accounted for  
17 according to the procedures established in regulations  
18 promulgated under Title IV of the Clean Air Act.

19 j. To the extent that the federal regulations  
20 promulgated under Title IV, including but not limited to 40  
21 C.F.R. Part 72, as now or hereafter amended, are  
22 inconsistent with the federal regulations promulgated  
23 under Title V, the federal regulations promulgated under  
24 Title IV shall take precedence.

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

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

35 m. The designated representative of an affected source  
36 for acid deposition shall submit to the Agency the data and

1 information submitted quarterly to USEPA, pursuant to 40  
2 CFR 75.64, concurrently with the submission to USEPA. The  
3 submission shall be in the same electronic format as  
4 specified by USEPA.

5 n. The Agency shall act on any petition for exemption  
6 of a new unit or retired unit, as those terms are defined  
7 in Section 402 of the Clean Air Act, from the requirements  
8 of the acid rain program in accordance with Title IV of the  
9 Clean Air Act and its regulations.

10 o. The Agency shall have the authority to adopt  
11 procedural rules, in accordance with the Illinois  
12 Administrative Procedure Act, as the Agency deems  
13 necessary to implement this subsection.

14 18. Fee Provisions.

15 a. For each 12 month period after the date on which the  
16 USEPA approves or conditionally approves the CAAPP, but in  
17 no event prior to January 1, 1994, a source subject to this  
18 Section or excluded under subsection 1.1 or paragraph 3(c)  
19 of this Section, shall pay a fee as provided in this part  
20 (a) of this subsection 18. However, a source that has been  
21 excluded from the provisions of this Section under  
22 subsection 1.1 or paragraph 3(c) of this Section because  
23 the source emits less than 25 tons per year of any  
24 combination of regulated air pollutants shall pay fees in  
25 accordance with paragraph (1) of subsection (b) of Section  
26 9.6.

27 i. The fee for a source allowed to emit less than  
28 100 tons per year of any combination of regulated air  
29 pollutants shall be \$1,800 per year.

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

35 A. The Agency shall assess an annual fee of

1           \$18.00 per ton for the allowable emissions of all  
2 regulated air pollutants at that source during the  
3 term of the permit. These fees shall be used by the  
4 Agency and the Board to fund the activities  
5 required by Title V of the Clean Air Act including  
6 such activities as may be carried out by other  
7 State or local agencies pursuant to paragraph (d)  
8 of this subsection. The amount of such fee shall be  
9 based on the information supplied by the applicant  
10 in its complete CAAPP permit application or in the  
11 CAAPP permit if the permit has been granted and  
12 shall be determined by the amount of emissions that  
13 the source is allowed to emit annually, provided  
14 however, that no source shall be required to pay an  
15 annual fee in excess of \$250,000. The Agency shall  
16 provide as part of the permit application form  
17 required under subsection 5 of this Section a  
18 separate fee calculation form which will allow the  
19 applicant to identify the allowable emissions and  
20 calculate the fee for the term of the permit. In no  
21 event shall the Agency raise the amount of  
22 allowable emissions requested by the applicant  
23 unless such increases are required to demonstrate  
24 compliance with terms of a CAAPP permit.

25           Notwithstanding the above, any applicant may  
26 seek a change in its permit which would result in  
27 increases in allowable emissions due to an  
28 increase in the hours of operation or production  
29 rates of an emission unit or units and such a  
30 change shall be consistent with the construction  
31 permit requirements of the existing State permit  
32 program, under Section 39(a) of this Act and  
33 applicable provisions of this Section. Where a  
34 construction permit is required, the Agency shall  
35 expeditiously grant such construction permit and  
36 shall, if necessary, modify the CAAPP permit based

1 on the same application.

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

14 b. (Blank).

15 c. (Blank).

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

27 e. The Agency shall have the authority to adopt  
28 procedural rules, in accordance with the Illinois  
29 Administrative Procedure Act, as the Agency deems  
30 necessary to implement this subsection.

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

35 i. carbon monoxide;

36 ii. any Class I or II substance which is a

1 regulated air pollutant solely because it is listed  
2 pursuant to Section 602 of the Clean Air Act; and

3 iii. any pollutant that is a regulated air  
4 pollutant solely because it is subject to a standard or  
5 regulation under Section 112(r) of the Clean Air Act  
6 based on the emissions allowed in the permit effective  
7 in that calendar year, at the time the applicable bill  
8 is generated.

9 19. Air Toxics Provisions.

10 a. In the event that the USEPA fails to promulgate in a  
11 timely manner a standard pursuant to Section 112(d) of the  
12 Clean Air Act, the Agency shall have the authority to issue  
13 permits, pursuant to Section 112(j) of the Clean Air Act  
14 and regulations promulgated thereunder, which contain  
15 emission limitations which are equivalent to the emission  
16 limitations that would apply to a source if an emission  
17 standard had been promulgated in a timely manner by USEPA  
18 pursuant to Section 112(d). Provided, however, that the  
19 owner or operator of a source shall have the opportunity to  
20 submit to the Agency a proposed emission limitation which  
21 it determines to be equivalent to the emission limitations  
22 that would apply to such source if an emission standard had  
23 been promulgated in a timely manner by USEPA. If the Agency  
24 refuses to include the emission limitation proposed by the  
25 owner or operator in a CAAPP permit, the owner or operator  
26 may petition the Board to establish whether the emission  
27 limitation proposal submitted by the owner or operator  
28 provides for emission limitations which are equivalent to  
29 the emission limitations that would apply to the source if  
30 the emission standard had been promulgated by USEPA in a  
31 timely manner. The Board shall determine whether the  
32 emission limitation proposed by the owner or operator or an  
33 alternative emission limitation proposed by the Agency  
34 provides for the level of control required under Section  
35 112 of the Clean Air Act, or shall otherwise establish an

1 appropriate emission limitation, pursuant to Section 112  
2 of the Clean Air Act.

3 b. Any Board proceeding brought under paragraph (a) or  
4 (e) of this subsection shall be conducted according to the  
5 Board's procedures for adjudicatory hearings and the Board  
6 shall render its decision within 120 days of the filing of  
7 the petition. Any such decision shall be subject to review  
8 pursuant to Section 41 of this Act. Where USEPA promulgates  
9 an applicable emission standard prior to the issuance of  
10 the CAAPP permit, the Agency shall include in the permit  
11 the promulgated standard, provided that the source shall  
12 have the compliance period provided under Section 112(i) of  
13 the Clean Air Act. Where USEPA promulgates an applicable  
14 standard subsequent to the issuance of the CAAPP permit,  
15 the Agency shall revise such permit upon the next renewal  
16 to reflect the promulgated standard, providing a  
17 reasonable time for the applicable source to comply with  
18 the standard, but no longer than 8 years after the date on  
19 which the source is first required to comply with the  
20 emissions limitation established under this subsection.

21 c. The Agency shall have the authority to implement and  
22 enforce complete or partial emission standards promulgated  
23 by USEPA pursuant to Section 112(d), and standards  
24 promulgated by USEPA pursuant to Sections 112(f), 112(h),  
25 112(m), and 112(n), and may accept delegation of authority  
26 from USEPA to implement and enforce Section 112(l) and  
27 requirements for the prevention and detection of  
28 accidental releases pursuant to Section 112(r) of the Clean  
29 Air Act.

30 d. The Agency shall have the authority to issue permits  
31 pursuant to Section 112(i)(5) of the Clean Air Act.

32 e. The Agency has the authority to implement Section  
33 112(g) of the Clean Air Act consistent with the Clean Air  
34 Act and federal regulations promulgated thereunder. If the  
35 Agency refuses to include the emission limitations  
36 proposed in an application submitted by an owner or

1 operator for a case-by-case maximum achievable control  
2 technology (MACT) determination, the owner or operator may  
3 petition the Board to determine whether the emission  
4 limitation proposed by the owner or operator or an  
5 alternative emission limitation proposed by the Agency  
6 provides for a level of control required by Section 112 of  
7 the Clean Air Act, or to otherwise establish an appropriate  
8 emission limitation under Section 112 of the Clean Air Act.

9 20. Small Business.

10 a. For purposes of this subsection:

11 "Program" is the Small Business Stationary Source  
12 Technical and Environmental Compliance Assistance Program  
13 created within this State pursuant to Section 507 of the  
14 Clean Air Act and guidance promulgated thereunder, to  
15 provide technical assistance and compliance information to  
16 small business stationary sources;

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

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

24 1. is owned or operated by a person that employs  
25 100 or fewer individuals;

26 2. is a small business concern as defined in the  
27 "Small Business Act";

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

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

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

34 b. The Agency shall adopt and submit to USEPA, after  
35 reasonable notice and opportunity for public comment, as a



1 revision to the Illinois state implementation plan, plans  
2 for establishing the Program.

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

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

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

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

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

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

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

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

30 3. The State Legislature shall select four members  
31 who are owners or representatives of owners of small  
32 business stationary sources. Both the majority and  
33 minority leadership in both Houses of the Legislature  
34 shall appoint one member of the panel.

35 i. Panel members should serve without compensation but  
36 will receive full reimbursement for expenses including

1 travel and per diem as authorized within this State.

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

6 21. Temporary Sources.

7 a. The Agency may issue a single permit authorizing  
8 emissions from similar operations by the same source owner  
9 or operator at multiple temporary locations, except for  
10 sources which are affected sources for acid deposition  
11 under Title IV of the Clean Air Act.

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

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

21 22. Solid Waste Incineration Units.

22 a. A CAAPP permit for a solid waste incineration unit  
23 combusting municipal waste subject to standards  
24 promulgated under Section 129(e) of the Clean Air Act shall  
25 be issued for a period of 12 years and shall be reviewed  
26 every 5 years, unless the Agency requires more frequent  
27 review through Agency procedures.

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

33 c. If the Agency determines that the source is not in  
34 compliance with all applicable requirements it shall

1 revise the CAAPP permit as appropriate.

2 d. The Agency shall have the authority to adopt  
3 procedural rules, in accordance with the Illinois  
4 Administrative Procedure Act, as the Agency deems  
5 necessary, to implement this subsection.

6 (Source: P.A. 92-24, eff. 7-1-01; 93-32, eff. 7-1-03.)

7 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

8 Sec. 42. Civil penalties.

9 (a) Except as provided in this Section, any person that  
10 violates any provision of this Act or any regulation adopted by  
11 the Board, or any permit or term or condition thereof, or that  
12 violates any order of the Board pursuant to this Act, shall be  
13 liable for a civil penalty of not to exceed \$50,000 for the  
14 violation and an additional civil penalty of not to exceed  
15 \$10,000 for each day during which the violation continues; such  
16 penalties may, upon order of the Board or a court of competent  
17 jurisdiction, be made payable to the Environmental Protection  
18 Trust Fund, to be used in accordance with the provisions of the  
19 Environmental Protection Trust Fund Act.

20 (b) Notwithstanding the provisions of subsection (a) of  
21 this Section:

22 (1) Any person that violates Section 12(f) of this Act  
23 or any NPDES permit or term or condition thereof, or any  
24 filing requirement, regulation or order relating to the  
25 NPDES permit program, shall be liable to a civil penalty of  
26 not to exceed \$10,000 per day of violation.

27 (2) Any person that violates Section 12(g) of this Act  
28 or any UIC permit or term or condition thereof, or any  
29 filing requirement, regulation or order relating to the  
30 State UIC program for all wells, except Class II wells as  
31 defined by the Board under this Act, shall be liable to a  
32 civil penalty not to exceed \$2,500 per day of violation;  
33 provided, however, that any person who commits such  
34 violations relating to the State UIC program for Class II  
35 wells, as defined by the Board under this Act, shall be

1 liable to a civil penalty of not to exceed \$10,000 for the  
2 violation and an additional civil penalty of not to exceed  
3 \$1,000 for each day during which the violation continues.

4 (3) Any person that violates Sections 21(f), 21(g),  
5 21(h) or 21(i) of this Act, or any RCRA permit or term or  
6 condition thereof, or any filing requirement, regulation  
7 or order relating to the State RCRA program, shall be  
8 liable to a civil penalty of not to exceed \$25,000 per day  
9 of violation.

10 (4) In an administrative citation action under Section  
11 31.1 of this Act, any person found to have violated any  
12 provision of subsection (o) of Section 21 of this Act shall  
13 pay a civil penalty of \$500 for each violation of each such  
14 provision, plus any hearing costs incurred by the Board and  
15 the Agency. Such penalties shall be made payable to the  
16 Environmental Protection Trust Fund, to be used in  
17 accordance with the provisions of the Environmental  
18 Protection Trust Fund Act; except that if a unit of local  
19 government issued the administrative citation, 50% of the  
20 civil penalty shall be payable to the unit of local  
21 government.

22 (4-5) In an administrative citation action under  
23 Section 31.1 of this Act, any person found to have violated  
24 any provision of subsection (p) of Section 21 of this Act  
25 shall pay a civil penalty of \$1,500 for each violation of  
26 each such provision, plus any hearing costs incurred by the  
27 Board and the Agency, except that the civil penalty amount  
28 shall be ~~be a~~ \$3,000 for each violation of any provision of  
29 subsection (p) of Section 21 that is the person's second ~~a~~  
30 ~~second~~ or subsequent adjudication violation of that  
31 provision. The penalties shall be deposited into the  
32 Environmental Protection Trust Fund, to be used in  
33 accordance with the provisions of the Environmental  
34 Protection Trust Fund Act; except that if a unit of local  
35 government issued the administrative citation, 50% of the  
36 civil penalty shall be payable to the unit of local

1 government.

2 (5) Any person who violates subsection 6 of Section  
3 39.5 of this Act or any CAAPP permit, or term or condition  
4 thereof, or any fee or filing requirement, or any duty to  
5 allow or carry out inspection, entry or monitoring  
6 activities, or any regulation or order relating to the  
7 CAAPP shall be liable for a civil penalty not to exceed  
8 \$10,000 per day of violation.

9 (b.5) In lieu of the penalties set forth in subsections (a)  
10 and (b) of this Section, any person who fails to file, in a  
11 timely manner, toxic chemical release forms with the Agency  
12 pursuant to Section 25b-2 of this Act shall be liable for a  
13 civil penalty of \$100 per day for each day the forms are late,  
14 not to exceed a maximum total penalty of \$6,000. This daily  
15 penalty shall begin accruing on the thirty-first day after the  
16 date that the person receives the warning notice issued by the  
17 Agency pursuant to Section 25b-6 of this Act; and the penalty  
18 shall be paid to the Agency. The daily accrual of penalties  
19 shall cease as of January 1 of the following year. All  
20 penalties collected by the Agency pursuant to this subsection  
21 shall be deposited into the Environmental Protection Permit and  
22 Inspection Fund.

23 (c) Any person that violates this Act, any rule or  
24 regulation adopted under this Act, any permit or term or  
25 condition of a permit, or any Board order and causes the death  
26 of fish or aquatic life shall, in addition to the other  
27 penalties provided by this Act, be liable to pay to the State  
28 an additional sum for the reasonable value of the fish or  
29 aquatic life destroyed. Any money so recovered shall be placed  
30 in the Wildlife and Fish Fund in the State Treasury.

31 (d) The penalties provided for in this Section may be  
32 recovered in a civil action.

33 (e) The State's Attorney of the county in which the  
34 violation occurred, or the Attorney General, may, at the  
35 request of the Agency or on his own motion, institute a civil  
36 action for an injunction to restrain violations of this Act,

1 any rule or regulation adopted under this Act, any permit or  
2 term or condition of a permit, or any Board order.

3 (f) The State's Attorney of the county in which the  
4 violation occurred, or the Attorney General, shall bring such  
5 actions in the name of the people of the State of Illinois.  
6 Without limiting any other authority which may exist for the  
7 awarding of attorney's fees and costs, the Board or a court of  
8 competent jurisdiction may award costs and reasonable  
9 attorney's fees, including the reasonable costs of expert  
10 witnesses and consultants, to the State's Attorney or the  
11 Attorney General in a case where he has prevailed against a  
12 person who has committed a wilful, knowing or repeated  
13 violation of this Act, any rule or regulation adopted under  
14 this Act, any permit or term or condition of a permit, or any  
15 Board order.

16 Any funds collected under this subsection (f) in which the  
17 Attorney General has prevailed shall be deposited in the  
18 Hazardous Waste Fund created in Section 22.2 of this Act. Any  
19 funds collected under this subsection (f) in which a State's  
20 Attorney has prevailed shall be retained by the county in which  
21 he serves.

22 (g) All final orders imposing civil penalties pursuant to  
23 this Section shall prescribe the time for payment of such  
24 penalties. If any such penalty is not paid within the time  
25 prescribed, interest on such penalty at the rate set forth in  
26 subsection (a) of Section 1003 of the Illinois Income Tax Act,  
27 shall be paid for the period from the date payment is due until  
28 the date payment is received. However, if the time for payment  
29 is stayed during the pendency of an appeal, interest shall not  
30 accrue during such stay.

31 (h) In determining the appropriate civil penalty to be  
32 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or  
33 (b) (5) of this Section, the Board is authorized to consider any  
34 matters of record in mitigation or aggravation of penalty,  
35 including but not limited to the following factors:

36 (1) the duration and gravity of the violation;

1           (2) the presence or absence of due diligence on the  
2 part of the respondent in attempting to comply with  
3 requirements of this Act and regulations thereunder or to  
4 secure relief therefrom as provided by this Act;

5           (3) any economic benefits accrued by the respondent  
6 because of delay in compliance with requirements, in which  
7 case the economic benefits shall be determined by the  
8 lowest cost alternative for achieving compliance;

9           (4) the amount of monetary penalty which will serve to  
10 deter further violations by the respondent and to otherwise  
11 aid in enhancing voluntary compliance with this Act by the  
12 respondent and other persons similarly subject to the Act;

13           (5) the number, proximity in time, and gravity of  
14 previously adjudicated violations of this Act by the  
15 respondent;

16           (6) whether the respondent voluntarily self-disclosed,  
17 in accordance with subsection (i) of this Section, the  
18 non-compliance to the Agency; and

19           (7) whether the respondent has agreed to undertake a  
20 "supplemental environmental project," which means an  
21 environmentally beneficial project that a respondent  
22 agrees to undertake in settlement of an enforcement action  
23 brought under this Act, but which the respondent is not  
24 otherwise legally required to perform.

25           In determining the appropriate civil penalty to be imposed  
26 under subsection (a) or paragraph (1), (2), (3), or (5) of  
27 subsection (b) of this Section, the Board shall ensure, in all  
28 cases, that the penalty is at least as great as the economic  
29 benefits, if any, accrued by the respondent as a result of the  
30 violation, unless the Board finds that imposition of such  
31 penalty would result in an arbitrary or unreasonable financial  
32 hardship. However, such civil penalty may be off-set in whole  
33 or in part pursuant to a supplemental environmental project  
34 agreed to by the complainant and the respondent.

35           (i) A person who voluntarily self-discloses non-compliance  
36 to the Agency, of which the Agency had been unaware, is

1 entitled to a 100% reduction in the portion of the penalty that  
2 is not based on the economic benefit of non-compliance if the  
3 person can establish the following:

4 (1) that the non-compliance was discovered through an  
5 environmental audit or a compliance management system  
6 documented by the regulated entity as reflecting the  
7 regulated entity's due diligence in preventing, detecting,  
8 and correcting violations, ~~as defined in Section 52.2 of~~  
9 ~~this Act, and the person waives the environmental audit~~  
10 ~~privileges as provided in that Section with respect to that~~  
11 ~~non-compliance;~~

12 (2) that the non-compliance was disclosed in writing  
13 within 30 days of the date on which the person discovered  
14 it;

15 (3) that the non-compliance was discovered and  
16 disclosed prior to:

17 (i) the commencement of an Agency inspection,  
18 investigation, or request for information;

19 (ii) notice of a citizen suit;

20 (iii) the filing of a complaint by a citizen, the  
21 Illinois Attorney General, or the State's Attorney of  
22 the county in which the violation occurred;

23 (iv) the reporting of the non-compliance by an  
24 employee of the person without that person's  
25 knowledge; or

26 (v) imminent discovery of the non-compliance by  
27 the Agency;

28 (4) that the non-compliance is being corrected and any  
29 environmental harm is being remediated in a timely fashion;

30 (5) that the person agrees to prevent a recurrence of  
31 the non-compliance;

32 (6) that no related non-compliance events have  
33 occurred in the past 3 years at the same facility or in the  
34 past 5 years as part of a pattern at multiple facilities  
35 owned or operated by the person;

36 (7) that the non-compliance did not result in serious



1 actual harm or present an imminent and substantial  
2 endangerment to human health or the environment or violate  
3 the specific terms of any judicial or administrative order  
4 or consent agreement;

5 (8) that the person cooperates as reasonably requested  
6 by the Agency after the disclosure; and

7 (9) that the non-compliance was identified voluntarily  
8 and not through a monitoring, sampling, or auditing  
9 procedure that is required by statute, rule, permit,  
10 judicial or administrative order, or consent agreement.

11 If a person can establish all of the elements under this  
12 subsection except the element set forth in paragraph (1) of  
13 this subsection, the person is entitled to a 75% reduction in  
14 the portion of the penalty that is not based upon the economic  
15 benefit of non-compliance.

16 (Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04;  
17 revised 9-11-03.)

18 (415 ILCS 5/52.2 rep.)

19 Section 10. The Environmental Protection Act is amended by  
20 repealing Section 52.2.

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.