



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5147

Introduced 1/29/2010, by Rep. Michael G. Connelly

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-107.5	
220 ILCS 5/16-108	
220 ILCS 5/16-127	
415 ILCS 5/3.290	was 415 ILCS 5/3.21
415 ILCS 5/3.330	was 415 ILCS 5/3.32
415 ILCS 5/3.535	was 415 ILCS 5/3.53
415 ILCS 5/14.4	from Ch. 111 1/2, par. 1014.4
415 ILCS 5/22.22	from Ch. 111 1/2, par. 1022.22
415 ILCS 5/22.37 new	
415 ILCS 5/39.2	from Ch. 111 1/2, par. 1039.2
415 ILCS 5/39.5	from Ch. 111 1/2, par. 1039.5

Amends the Public Utilities Act. Provides that an eligible renewable electrical generating facility includes a generator powered by agricultural residues, wood, landscape trimmings, or organic wastes. Requires a certain percentage of an electricity provider's power to come from biomass. Authorizes increases in the number and nameplate rating of customers who are eligible for net metering. Amends the Environmental Protection Act. Provides that landscape waste is not municipal waste. Extends the length of time that landscape waste may be held at a transfer station before the station must be regulated as a pollution control facility. Exempts lignocellulosic agricultural residues, organic landscape waste, and clean wood waste from regulation as waste. Exempts agricultural waste from certain groundwater rules. Requires the Agency to develop, and the Board to adopt, performance standards for landscape waste gasification facilities as well as testing procedures and standards for the end product produced by those facilities. Defines "flood proofed" for the purpose of a provision concerning local siting review. Makes other changes.

LRB096 18562 JDS 33944 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning energy facilities.

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

4 Section 5. The Public Utilities Act is amended by changing
5 Sections 16-107.5, 16-108, and 16-127 as follows:

6 (220 ILCS 5/16-107.5)

7 Sec. 16-107.5. Net electricity metering.

8 (a) The Legislature finds and declares that a program to
9 provide net electricity metering, as defined in this Section,
10 for eligible customers can encourage private investment in
11 renewable energy resources, stimulate economic growth, reduce
12 greenhouse gas emissions and the dependence of the United
13 States on foreign energy sources, enhance the continued
14 diversification of Illinois' energy resource mix, and protect
15 the Illinois environment.

16 (b) As used in this Section, (i) "eligible customer" means
17 a retail customer that owns or operates a solar, wind, or other
18 eligible renewable electrical generating facility with a rated
19 capacity of not more than 2,000 kilowatts that is located on
20 the customer's premises and is intended primarily to offset the
21 customer's own electrical requirements; (ii) "electricity
22 provider" means an electric utility or alternative retail
23 electric supplier; (iii) "eligible renewable electrical

1 generating facility" means a generator powered by solar
2 electric energy, wind, dedicated crops grown for electricity
3 generation, agricultural residues, wood, municipal landscape
4 trimmings, organic wastes, anaerobic digestion of livestock or
5 food processing waste, fuel cells or microturbines powered by
6 renewable fuels, or hydroelectric energy; and (iv) "net
7 electricity metering" (or "net metering") means the
8 measurement, during the billing period applicable to an
9 eligible customer, of the net amount of electricity supplied by
10 an electricity provider to the customer's premises or provided
11 to the electricity provider by the customer.

12 (c) A net metering facility shall be equipped with metering
13 equipment that can measure the flow of electricity in both
14 directions at the same rate. For eligible residential
15 customers, this shall typically be accomplished through use of
16 a single, bi-directional meter. If the eligible customer's
17 existing electric revenue meter does not meet this requirement,
18 the electricity provider shall arrange for the local electric
19 utility or a meter service provider to install and maintain a
20 new revenue meter at the electricity provider's expense. For
21 non-residential customers, the electricity provider may
22 arrange for the local electric utility or a meter service
23 provider to install and maintain metering equipment capable of
24 measuring the flow of electricity both into and out of the
25 customer's facility at the same rate and ratio, typically
26 through the use of a dual channel meter. For generators with a

1 nameplate rating of 120 ~~40~~ kilowatts and below, the costs of
2 installing such equipment shall be paid for by the electricity
3 provider. For generators with a nameplate rating over 120 ~~40~~
4 kilowatts and up to 2,000 kilowatts capacity, the costs of
5 installing such equipment shall be paid for by the customer.
6 Any subsequent revenue meter change necessitated by any
7 eligible customer shall be paid for by the customer.

8 (d) An electricity provider shall measure and charge or
9 credit for the net electricity supplied to eligible customers
10 or provided by eligible customers in the following manner:

11 (1) If the amount of electricity used by the customer
12 during the billing period exceeds the amount of electricity
13 produced by the customer, the electricity provider shall
14 charge the customer for the net electricity supplied to and
15 used by the customer as provided in subsection (e) of this
16 Section.

17 (2) If the amount of electricity produced by a customer
18 during the billing period exceeds the amount of electricity
19 used by the customer during that billing period, the
20 electricity provider supplying that customer shall apply a
21 1:1 kilowatt-hour credit to a subsequent bill for service
22 to the customer for the net electricity supplied to the
23 electricity provider. The electricity provider shall
24 continue to carry over any excess kilowatt-hour credits
25 earned and apply those credits to subsequent billing
26 periods to offset any customer-generator consumption in

1 those billing periods until all credits are used or until
2 the end of the annualized period.

3 (3) At the end of the year or annualized over the
4 period that service is supplied by means of net metering,
5 or in the event that the retail customer terminates service
6 with the electricity provider prior to the end of the year
7 or the annualized period, any remaining credits in the
8 customer's account shall expire.

9 (e) An electricity provider shall provide to net metering
10 customers electric service at non-discriminatory rates that
11 are identical, with respect to rate structure, retail rate
12 components, and any monthly charges, to the rates that the
13 customer would be charged if not a net metering customer. An
14 electricity provider shall not charge net metering customers
15 any fee or charge or require additional equipment, insurance,
16 or any other requirements not specifically authorized by
17 interconnection standards authorized by the Commission, unless
18 the fee, charge, or other requirement would apply to other
19 similarly situated customers who are not net metering
20 customers. The customer will remain responsible for all taxes,
21 fees, and utility delivery charges that would otherwise be
22 applicable to the net amount of electricity used by the
23 customer. Subsections (c) through (e) of this Section shall not
24 be construed to prevent an arms-length agreement between an
25 electricity provider and an eligible customer that sets forth
26 different prices, terms, and conditions for the provision of

1 net metering service, including, but not limited to, the
2 provision of the appropriate metering equipment for
3 non-residential customers.

4 (f) Notwithstanding the requirements of subsections (c)
5 through (e) of this Section, an electricity provider must
6 require dual-channel metering for non-residential customers
7 operating eligible renewable electrical generating facilities
8 with a nameplate rating over 120 ~~40~~ kilowatts and up to 2,000
9 kilowatts. In such cases, electricity charges and credits shall
10 be determined as follows:

11 (1) The electricity provider shall assess and the
12 customer remains responsible for all taxes, fees, and
13 utility delivery charges that would otherwise be
14 applicable to the gross amount of kilowatt-hours supplied
15 to the eligible customer by the electricity provider.

16 (2) Each month that service is supplied by means of
17 dual-channel metering, the electricity provider shall
18 compensate the eligible customer for any excess
19 kilowatt-hour credits at the electricity provider's
20 avoided cost of electricity supply over the monthly period
21 or as otherwise specified by the terms of a power-purchase
22 agreement negotiated between the customer and electricity
23 provider.

24 (3) For all eligible net metering customers taking
25 service from an electricity provider under contracts or
26 tariffs employing time of use rates, any monthly

1 consumption of electricity shall be calculated according
2 to the terms of the contract or tariff to which the same
3 customer would be assigned to or be eligible for if the
4 customer was not a net metering customer. When those same
5 customer-generators are net generators during any discrete
6 time of use period, the net kilowatt-hours produced shall
7 be valued at the same price per kilowatt-hour as the
8 electric service provider would charge for retail
9 kilowatt-hour sales during that same time of use period.

10 (g) For purposes of federal and State laws providing
11 renewable energy credits or greenhouse gas credits, the
12 eligible customer shall be treated as owning and having title
13 to the renewable energy attributes, renewable energy credits,
14 and greenhouse gas emission credits related to any electricity
15 produced by the qualified generating unit. The electricity
16 provider may not condition participation in a net metering
17 program on the signing over of a customer's renewable energy
18 credits; provided, however, this subsection (g) shall not be
19 construed to prevent an arms-length agreement between an
20 electricity provider and an eligible customer that sets forth
21 the ownership or title of the credits.

22 (h) Within 120 days after the effective date of this
23 amendatory Act of the 95th General Assembly, the Commission
24 shall establish standards for net metering and, if the
25 Commission has not already acted on its own initiative,
26 standards for the interconnection of eligible renewable

1 generating equipment to the utility system. The
2 interconnection standards shall address any procedural
3 barriers, delays, and administrative costs associated with the
4 interconnection of customer-generation while ensuring the
5 safety and reliability of the units and the electric utility
6 system. The Commission shall consider the Institute of
7 Electrical and Electronics Engineers (IEEE) Standard 1547 and
8 the issues of (i) reasonable and fair fees and costs, (ii)
9 clear timelines for major milestones in the interconnection
10 process, (iii) nondiscriminatory terms of agreement, and (iv)
11 any best practices for interconnection of distributed
12 generation.

13 (i) All electricity providers shall begin to offer net
14 metering no later than April 1, 2008.

15 (j) An electricity provider shall provide net metering to
16 eligible customers until the load of its net metering customers
17 equals 5% ~~1%~~ of the total peak demand supplied by that
18 electricity provider during the previous year, provided that
19 any load above 1% of the total peak demand supplied by the
20 provider during the previous year shall consist of baseload
21 power generation from biomass, as defined in subsection (d) of
22 Section 16-127, with an availability greater than 50% measured
23 on a yearly basis. Electricity providers are authorized to
24 offer net metering beyond the 5% ~~1%~~ level if they so choose.
25 The number of new eligible customers with generators that have
26 a nameplate rating of 120 ~~40~~ kilowatts and below will be

1 limited to 1000 ~~200~~ total new billing accounts for the
2 utilities (Ameren Companies, ComEd, and MidAmerican) for the
3 period of April 1, 2010 ~~2008~~ through March 31, 2011, with
4 additional new billing accounts not to exceed 1500 in each year
5 thereafter ~~2009~~.

6 (k) Each electricity provider shall maintain records and
7 report annually to the Commission the total number of net
8 metering customers served by the provider, as well as the type,
9 capacity, and energy sources of the generating systems used by
10 the net metering customers. Nothing in this Section shall limit
11 the ability of an electricity provider to request the redaction
12 of information deemed by the Commission to be confidential
13 business information. Each electricity provider shall notify
14 the Commission when the total generating capacity of its net
15 metering customers is equal to or in excess of the 5% ~~1%~~ cap
16 specified in subsection (j) of this Section.

17 (l) Notwithstanding the definition of "eligible customer"
18 in item (i) of subsection (b) of this Section, each electricity
19 provider shall consider whether to allow meter aggregation for
20 the purposes of net metering on:

21 (1) properties owned or leased by multiple customers
22 that contribute to the operation of an eligible renewable
23 electrical generating facility, such as a community-owned
24 wind project, a community biomass combined heat and power
25 system, or a community methane digester processing
26 livestock waste from multiple sources; and

1 (2) individual units, apartments, or properties owned
2 or leased by multiple customers and collectively served by
3 a common eligible renewable electrical generating
4 facility, such as an apartment building served by
5 photovoltaic panels on the roof.

6 For the purposes of this subsection (1), "meter
7 aggregation" means the combination of reading and billing on a
8 pro rata basis for the types of eligible customers described in
9 this Section.

10 (m) Nothing in this Section shall affect the right of an
11 electricity provider to continue to provide, or the right of a
12 retail customer to continue to receive service pursuant to a
13 contract for electric service between the electricity provider
14 and the retail customer in accordance with the prices, terms,
15 and conditions provided for in that contract. Either the
16 electricity provider or the customer may require compliance
17 with the prices, terms, and conditions of the contract.

18 (Source: P.A. 95-420, eff. 8-24-07.)

19 (220 ILCS 5/16-108)

20 Sec. 16-108. Recovery of costs associated with the
21 provision of delivery services.

22 (a) An electric utility shall file a delivery services
23 tariff with the Commission at least 210 days prior to the date
24 that it is required to begin offering such services pursuant to
25 this Act. An electric utility shall provide the components of

1 delivery services that are subject to the jurisdiction of the
2 Federal Energy Regulatory Commission at the same prices, terms
3 and conditions set forth in its applicable tariff as approved
4 or allowed into effect by that Commission. The Commission shall
5 otherwise have the authority pursuant to Article IX to review,
6 approve, and modify the prices, terms and conditions of those
7 components of delivery services not subject to the jurisdiction
8 of the Federal Energy Regulatory Commission, including the
9 authority to determine the extent to which such delivery
10 services should be offered on an unbundled basis. In making any
11 such determination the Commission shall consider, at a minimum,
12 the effect of additional unbundling on (i) the objective of
13 just and reasonable rates, (ii) electric utility employees, and
14 (iii) the development of competitive markets for electric
15 energy services in Illinois.

16 (b) The Commission shall enter an order approving, or
17 approving as modified, the delivery services tariff no later
18 than 30 days prior to the date on which the electric utility
19 must commence offering such services. The Commission may
20 subsequently modify such tariff pursuant to this Act.

21 (c) The electric utility's tariffs shall define the classes
22 of its customers for purposes of delivery services charges.
23 Delivery services shall be priced and made available to all
24 retail customers electing delivery services in each such class
25 on a nondiscriminatory basis regardless of whether the retail
26 customer chooses the electric utility, an affiliate of the

1 electric utility, or another entity as its supplier of electric
2 power and energy. Charges for delivery services shall be cost
3 based, and shall allow the electric utility to recover the
4 costs of providing delivery services through its charges to its
5 delivery service customers that use the facilities and services
6 associated with such costs. Such costs shall include the costs
7 of owning, operating and maintaining transmission and
8 distribution facilities. The Commission shall also be
9 authorized to consider whether, and if so to what extent, the
10 following costs are appropriately included in the electric
11 utility's delivery services rates: (i) the costs of that
12 portion of generation facilities used for the production and
13 absorption of reactive power in order that retail customers
14 located in the electric utility's service area can receive
15 electric power and energy from suppliers other than the
16 electric utility, and (ii) the costs associated with the use
17 and redispatch of generation facilities to mitigate
18 constraints on the transmission or distribution system in order
19 that retail customers located in the electric utility's service
20 area can receive electric power and energy from suppliers other
21 than the electric utility. Nothing in this subsection shall be
22 construed as directing the Commission to allocate any of the
23 costs described in (i) or (ii) that are found to be
24 appropriately included in the electric utility's delivery
25 services rates to any particular customer group or geographic
26 area in setting delivery services rates.

1 (d) The Commission shall establish charges, terms and
2 conditions for delivery services that are just and reasonable
3 and shall take into account customer impacts when establishing
4 such charges. In establishing charges, terms and conditions for
5 delivery services, the Commission shall take into account
6 voltage level differences. A retail customer shall have the
7 option to request to purchase electric service at any delivery
8 service voltage reasonably and technically feasible from the
9 electric facilities serving that customer's premises provided
10 that there are no significant adverse impacts upon system
11 reliability or system efficiency. A retail customer shall also
12 have the option to request to purchase electric service at any
13 point of delivery that is reasonably and technically feasible
14 provided that there are no significant adverse impacts on
15 system reliability or efficiency. Such requests shall not be
16 unreasonably denied.

17 (e) Electric utilities shall recover the costs of
18 installing, operating or maintaining facilities for the
19 particular benefit of one or more delivery services customers,
20 including without limitation any costs incurred in complying
21 with a customer's request to be served at a different voltage
22 level, directly from the retail customer or customers for whose
23 benefit the costs were incurred, to the extent such costs are
24 not recovered through the charges referred to in subsections
25 (c) and (d) of this Section.

26 (f) An electric utility shall be entitled but not required

1 to implement transition charges in conjunction with the
2 offering of delivery services pursuant to Section 16-104. If an
3 electric utility implements transition charges, it shall
4 implement such charges for all delivery services customers and
5 for all customers described in subsection (h), but shall not
6 implement transition charges for power and energy that a retail
7 customer takes from cogeneration or self-generation facilities
8 located on that retail customer's premises, if such facilities
9 meet the following criteria:

10 (i) the cogeneration or self-generation facilities
11 serve a single retail customer and are located on that
12 retail customer's premises (for purposes of this
13 subparagraph and subparagraph (ii), an industrial or
14 manufacturing retail customer and a third party contractor
15 that is served by such industrial or manufacturing customer
16 through such retail customer's own electrical distribution
17 facilities under the circumstances described in subsection
18 (vi) of the definition of "alternative retail electric
19 supplier" set forth in Section 16-102, shall be considered
20 a single retail customer);

21 (ii) the cogeneration or self-generation facilities
22 either (A) are sized pursuant to generally accepted
23 engineering standards for the retail customer's electrical
24 load at that premises (taking into account standby or other
25 reliability considerations related to that retail
26 customer's operations at that site) or (B) if the facility

1 is a cogeneration or self-generation facility located on
2 the retail customer's premises, the retail customer is the
3 thermal host for at least a portion of that facility and
4 the facility has been designed to meet that retail
5 customer's thermal energy requirements resulting in
6 electrical output beyond that retail customer's electrical
7 demand at that premises, comply with the operating and
8 efficiency standards applicable to "qualifying facilities"
9 specified in title 18 Code of Federal Regulations Section
10 292.205, expanded to include renewable energy production
11 from biomass, as defined in subsection (d) of Section
12 16-127, as in effect on April 1, 2010 ~~the effective date of~~
13 ~~this amendatory Act of 1999;~~

14 (iii) the retail customer on whose premises the
15 facilities are located either has an exclusive right to
16 receive, and corresponding obligation to pay for, all of
17 the electrical capacity of the facility, or in the case of
18 a cogeneration facility that has been designed to meet the
19 retail customer's thermal energy requirements at that
20 premises, an identified amount of the electrical capacity
21 of the facility, over a minimum 5-year period; and

22 (iv) if the cogeneration facility is sized for the
23 retail customer's thermal load at that premises but exceeds
24 the electrical load by less than 120 kilowatts, any sales
25 of excess power or energy are made at retail rates, or at
26 greater than or equal to 120 kilowatts, ~~any sales of excess~~

1 ~~power or energy~~ are made only at wholesale, are subject to
2 the jurisdiction of the Federal Energy Regulatory
3 Commission, and are not for the purpose of circumventing
4 the provisions of this subsection (f).

5 If a generation facility located at a retail customer's
6 premises does not meet the above criteria, an electric utility
7 implementing transition charges shall implement a transition
8 charge until December 31, 2006 for any power and energy taken
9 by such retail customer from such facility as if such power and
10 energy had been delivered by the electric utility. Provided,
11 however, that an industrial retail customer that is taking
12 power from a generation facility that does not meet the above
13 criteria but that is located on such customer's premises will
14 not be subject to a transition charge for the power and energy
15 taken by such retail customer from such generation facility if
16 the facility does not serve any other retail customer and
17 either was installed on behalf of the customer and for its own
18 use prior to January 1, 1997, or is both predominantly fueled
19 by byproducts of such customer's manufacturing process at such
20 premises and sells or offers an average of 300 megawatts or
21 more of electricity produced from such generation facility into
22 the wholesale market. Such charges shall be calculated as
23 provided in Section 16-102, and shall be collected on each
24 kilowatt-hour delivered under a delivery services tariff to a
25 retail customer from the date the customer first takes delivery
26 services until December 31, 2006 except as provided in

1 subsection (h) of this Section. Provided, however, that an
2 electric utility, other than an electric utility providing
3 service to at least 1,000,000 customers in this State on
4 January 1, 1999, shall be entitled to petition for entry of an
5 order by the Commission authorizing the electric utility to
6 implement transition charges for an additional period ending no
7 later than December 31, 2008. The electric utility shall file
8 its petition with supporting evidence no earlier than 16
9 months, and no later than 12 months, prior to December 31,
10 2006. The Commission shall hold a hearing on the electric
11 utility's petition and shall enter its order no later than 8
12 months after the petition is filed. The Commission shall
13 determine whether and to what extent the electric utility shall
14 be authorized to implement transition charges for an additional
15 period. The Commission may authorize the electric utility to
16 implement transition charges for some or all of the additional
17 period, and shall determine the mitigation factors to be used
18 in implementing such transition charges; provided, that the
19 Commission shall not authorize mitigation factors less than
20 110% of those in effect during the 12 months ended December 31,
21 2006. In making its determination, the Commission shall
22 consider the following factors: the necessity to implement
23 transition charges for an additional period in order to
24 maintain the financial integrity of the electric utility; the
25 prudence of the electric utility's actions in reducing its
26 costs since the effective date of this amendatory Act of 1997;

1 the ability of the electric utility to provide safe, adequate
2 and reliable service to retail customers in its service area;
3 and the impact on competition of allowing the electric utility
4 to implement transition charges for the additional period.

5 (g) The electric utility shall file tariffs that establish
6 the transition charges to be paid by each class of customers to
7 the electric utility in conjunction with the provision of
8 delivery services. The electric utility's tariffs shall define
9 the classes of its customers for purposes of calculating
10 transition charges. The electric utility's tariffs shall
11 provide for the calculation of transition charges on a
12 customer-specific basis for any retail customer whose average
13 monthly maximum electrical demand on the electric utility's
14 system during the 6 months with the customer's highest monthly
15 maximum electrical demands equals or exceeds 3.0 megawatts for
16 electric utilities having more than 1,000,000 customers, and
17 for other electric utilities for any customer that has an
18 average monthly maximum electrical demand on the electric
19 utility's system of one megawatt or more, and (A) for which
20 there exists data on the customer's usage during the 3 years
21 preceding the date that the customer became eligible to take
22 delivery services, or (B) for which there does not exist data
23 on the customer's usage during the 3 years preceding the date
24 that the customer became eligible to take delivery services, if
25 in the electric utility's reasonable judgment there exists
26 comparable usage information or a sufficient basis to develop

1 such information, and further provided that the electric
2 utility can require customers for which an individual
3 calculation is made to sign contracts that set forth the
4 transition charges to be paid by the customer to the electric
5 utility pursuant to the tariff.

6 (h) An electric utility shall also be entitled to file
7 tariffs that allow it to collect transition charges from retail
8 customers in the electric utility's service area that do not
9 take delivery services but that take electric power or energy
10 from an alternative retail electric supplier or from an
11 electric utility other than the electric utility in whose
12 service area the customer is located. Such charges shall be
13 calculated, in accordance with the definition of transition
14 charges in Section 16-102, for the period of time that the
15 customer would be obligated to pay transition charges if it
16 were taking delivery services, except that no deduction for
17 delivery services revenues shall be made in such calculation,
18 and usage data from the customer's class shall be used where
19 historical usage data is not available for the individual
20 customer. The customer shall be obligated to pay such charges
21 on a lump sum basis on or before the date on which the customer
22 commences to take service from the alternative retail electric
23 supplier or other electric utility, provided, that the electric
24 utility in whose service area the customer is located shall
25 offer the customer the option of signing a contract pursuant to
26 which the customer pays such charges ratably over the period in

1 which the charges would otherwise have applied.

2 (i) An electric utility shall be entitled to add to the
3 bills of delivery services customers charges pursuant to
4 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
5 and Section 16-114 of this Act, Section 5-5 of the Electricity
6 Infrastructure Maintenance Fee Law, Section 6-5 of the
7 Renewable Energy, Energy Efficiency, and Coal Resources
8 Development Law of 1997, and Section 13 of the Energy
9 Assistance Act.

10 (j) If a retail customer that obtains electric power and
11 energy from cogeneration or self-generation facilities
12 installed for its own use on or before January 1, 1997,
13 subsequently takes service from an alternative retail electric
14 supplier or an electric utility other than the electric utility
15 in whose service area the customer is located for any portion
16 of the customer's electric power and energy requirements
17 formerly obtained from those facilities (including that amount
18 purchased from the utility in lieu of such generation and not
19 as standby power purchases, under a cogeneration displacement
20 tariff in effect as of the effective date of this amendatory
21 Act of 1997), the transition charges otherwise applicable
22 pursuant to subsections (f), (g), or (h) of this Section shall
23 not be applicable in any year to that portion of the customer's
24 electric power and energy requirements formerly obtained from
25 those facilities, provided, that for purposes of this
26 subsection (j), such portion shall not exceed the average

1 number of kilowatt-hours per year obtained from the
2 cogeneration or self-generation facilities during the 3 years
3 prior to the date on which the customer became eligible for
4 delivery services, except as provided in subsection (f) of
5 Section 16-110.

6 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

7 (220 ILCS 5/16-127)

8 Sec. 16-127. Environmental disclosure.

9 (a) Effective January 1, 1999, every electric utility and
10 alternative retail electric supplier shall provide the
11 following information, to the maximum extent practicable, with
12 its bills to its customers on a quarterly basis:

13 (i) the known sources of electricity supplied,
14 broken-out by percentages, of biomass power, coal-fired
15 power, hydro power, natural gas-fired power, nuclear
16 power, oil-fired power, solar power, wind power and other
17 resources, respectively;

18 (ii) a pie-chart that graphically depicts the
19 percentages of the sources of the electricity supplied as
20 set forth in subparagraph (i) of this subsection; and

21 (iii) a pie-chart that graphically depicts the
22 quantity of renewable energy resources procured pursuant
23 to Section 1-75 of the Illinois Power Agency Act as a
24 percentage of electricity supplied to serve eligible
25 retail customers as defined in Section 16-111.5(a) of this

1 Act.

2 (b) In addition, every electric utility and alternative
3 retail electric supplier shall provide, to the maximum extent
4 practicable, with its bills to its customers on a quarterly
5 basis, a standardized chart in a format to be determined by the
6 Commission in a rule following notice and hearings which
7 provides the amounts of carbon dioxide, nitrogen oxides and
8 sulfur dioxide emissions and nuclear waste attributable to the
9 known sources of electricity supplied as set forth in
10 subparagraph (i) of subsection (a) of this Section.

11 (c) The electric utilities and alternative retail electric
12 suppliers may provide their customers with such other
13 information as they believe relevant to the information
14 required in subsections (a) and (b) of this Section.

15 (d) For the purposes of subsection (j) of Section 16-107.5,
16 subsection (f) of Section 16-108, and subsection (a) of this
17 Section, "biomass" means dedicated crops grown for energy
18 production, agricultural residues, wood, municipal landscape
19 trimmings, livestock manure, and organic wastes.

20 (e) All of the information provided in subsections (a) and
21 (b) of this Section shall be presented to the Commission for
22 inclusion in its World Wide Web Site.

23 (Source: P.A. 95-481, eff. 8-28-07.)

24 Section 10. The Environmental Protection Act is amended by
25 changing Sections 3.290, 3.330, 3.535, 14.4, 22.22, 39.2, and

1 39.5 and by adding Section 22.37 as follows:

2 (415 ILCS 5/3.290) (was 415 ILCS 5/3.21)

3 Sec. 3.290. Municipal waste. "Municipal waste" means
4 garbage, general household and commercial waste, industrial
5 lunchroom or office waste, ~~landscape waste,~~ and construction or
6 demolition debris.

7 (Source: P.A. 92-574, eff. 6-26-02.)

8 (415 ILCS 5/3.330) (was 415 ILCS 5/3.32)

9 Sec. 3.330. Pollution control facility.

10 (a) "Pollution control facility" is any waste storage site,
11 sanitary landfill, waste disposal site, waste transfer
12 station, waste treatment facility, or waste incinerator. This
13 includes sewers, sewage treatment plants, and any other
14 facilities owned or operated by sanitary districts organized
15 under the Metropolitan Water Reclamation District Act.

16 The following are not pollution control facilities:

17 (1) (blank);

18 (2) waste storage sites regulated under 40 CFR, Part
19 761.42;

20 (3) sites or facilities used by any person conducting a
21 waste storage, waste treatment, waste disposal, waste
22 transfer or waste incineration operation, or a combination
23 thereof, for wastes generated by such person's own
24 activities, when such wastes are stored, treated, disposed

1 of, transferred or incinerated within the site or facility
2 owned, controlled or operated by such person, or when such
3 wastes are transported within or between sites or
4 facilities owned, controlled or operated by such person;

5 (4) sites or facilities at which the State is
6 performing removal or remedial action pursuant to Section
7 22.2 or 55.3;

8 (5) abandoned quarries used solely for the disposal of
9 concrete, earth materials, gravel, or aggregate debris
10 resulting from road construction activities conducted by a
11 unit of government or construction activities due to the
12 construction and installation of underground pipes, lines,
13 conduit or wires off of the premises of a public utility
14 company which are conducted by a public utility;

15 (6) sites or facilities used by any person to
16 specifically conduct a landscape composting operation;

17 (7) regional facilities as defined in the Central
18 Midwest Interstate Low-Level Radioactive Waste Compact;

19 (8) the portion of a site or facility where coal
20 combustion wastes are stored or disposed of in accordance
21 with subdivision (r) (2) or (r) (3) of Section 21;

22 (9) the portion of a site or facility used for the
23 collection, storage or processing of waste tires as defined
24 in Title XIV;

25 (10) the portion of a site or facility used for
26 treatment of petroleum contaminated materials by

1 application onto or incorporation into the soil surface and
2 any portion of that site or facility used for storage of
3 petroleum contaminated materials before treatment. Only
4 those categories of petroleum listed in Section 57.9(a)(3)
5 are exempt under this subdivision (10);

6 (11) the portion of a site or facility where used oil
7 is collected or stored prior to shipment to a recycling or
8 energy recovery facility, provided that the used oil is
9 generated by households or commercial establishments, and
10 the site or facility is a recycling center or a business
11 where oil or gasoline is sold at retail;

12 (11.5) processing sites or facilities that receive
13 only on-specification used oil, as defined in 35 Ill.
14 Admin. Code 739, originating from used oil collectors for
15 processing that is managed under 35 Ill. Admin. Code 739 to
16 produce products for sale to off-site petroleum
17 facilities, if these processing sites or facilities are:
18 (i) located within a home rule unit of local government
19 with a population of at least 30,000 according to the 2000
20 federal census, that home rule unit of local government has
21 been designated as an Urban Round II Empowerment Zone by
22 the United States Department of Housing and Urban
23 Development, and that home rule unit of local government
24 has enacted an ordinance approving the location of the site
25 or facility and provided funding for the site or facility;
26 and (ii) in compliance with all applicable zoning

1 requirements;

2 (12) the portion of a site or facility utilizing coal
3 combustion waste for stabilization and treatment of only
4 waste generated on that site or facility when used in
5 connection with response actions pursuant to the federal
6 Comprehensive Environmental Response, Compensation, and
7 Liability Act of 1980, the federal Resource Conservation
8 and Recovery Act of 1976, or the Illinois Environmental
9 Protection Act or as authorized by the Agency;

10 (13) the portion of a site or facility accepting
11 exclusively general construction or demolition debris,
12 located in a county with a population over 500,000 as of
13 January 1, 2000, and operated and located in accordance
14 with Section 22.38 of this Act;

15 (14) the portion of a site or facility, located within
16 a unit of local government that has enacted local zoning
17 requirements, used to accept, separate, and process
18 uncontaminated broken concrete, with or without protruding
19 metal bars, provided that the uncontaminated broken
20 concrete and metal bars are not speculatively accumulated,
21 are at the site or facility no longer than one year after
22 their acceptance, and are returned to the economic
23 mainstream in the form of raw materials or products;

24 (15) the portion of a site or facility located in a
25 county with a population over 3,000,000 that has obtained
26 local siting approval under Section 39.2 of this Act for a

1 municipal waste incinerator on or before July 1, 2005 and
2 that is used for a non-hazardous waste transfer station;

3 (16) a site or facility that temporarily holds in
4 transit for 10 days or less, non-petruscible solid waste in
5 original containers, no larger in capacity than 500
6 gallons, provided that such waste is further transferred to
7 a recycling, disposal, treatment, or storage facility on a
8 non-contiguous site and provided such site or facility
9 complies with the applicable 10-day transfer requirements
10 of the federal Resource Conservation and Recovery Act of
11 1976 and United States Department of Transportation
12 hazardous material requirements. For purposes of this
13 Section only, "non-petruscible solid waste" means waste
14 other than municipal garbage that does not rot or become
15 putrid, including, but not limited to, paints, solvent,
16 filters, and absorbents;

17 (17) the portion of a site or facility located in a
18 county with a population greater than 3,000,000 that has
19 obtained local siting approval, under Section 39.2 of this
20 Act, for a municipal waste incinerator on or before July 1,
21 2005 and that is used for wood combustion facilities for
22 energy recovery that accept and burn only wood material, as
23 included in a fuel specification approved by the Agency;

24 (18) a transfer station used exclusively for landscape
25 waste, including a transfer station where landscape waste
26 is ground to reduce its volume, where the landscape waste

1 is held no longer than 18 months ~~24 hours~~ from the time it
2 was received; and

3 (19) the portion of a site or facility that (i) is used
4 for the composting of food scrap, livestock waste, crop
5 residue, uncontaminated wood waste, or paper waste,
6 including, but not limited to, corrugated paper or
7 cardboard, and (ii) meets all of the following
8 requirements:

9 (A) There must not be more than a total of 30,000
10 cubic yards of livestock waste in raw form or in the
11 process of being composted at the site or facility at
12 any one time.

13 (B) All food scrap, livestock waste, crop residue,
14 uncontaminated wood waste, and paper waste must, by the
15 end of each operating day, be processed and placed into
16 an enclosed vessel in which air flow and temperature
17 are controlled, or all of the following additional
18 requirements must be met:

19 (i) The portion of the site or facility used
20 for the composting operation must include a
21 setback of at least 200 feet from the nearest
22 potable water supply well.

23 (ii) The portion of the site or facility used
24 for the composting operation must be located
25 outside the boundary of the 10-year floodplain or
26 floodproofed.

1 (iii) The portion of the site or facility used
2 for the composting operation must be located at
3 least one-eighth of a mile from the nearest
4 residence, other than a residence located on the
5 same property as the site or facility.

6 (iv) The portion of the site or facility used
7 for the composting operation must be located at
8 least one-eighth of a mile from the property line
9 of all of the following areas:

10 (I) Facilities that primarily serve to
11 house or treat people that are
12 immunocompromised or immunosuppressed, such as
13 cancer or AIDS patients; people with asthma,
14 cystic fibrosis, or bioaerosol allergies; or
15 children under the age of one year.

16 (II) Primary and secondary schools and
17 adjacent areas that the schools use for
18 recreation.

19 (III) Any facility for child care licensed
20 under Section 3 of the Child Care Act of 1969;
21 preschools; and adjacent areas that the
22 facilities or preschools use for recreation.

23 (v) By the end of each operating day, all food
24 scrap, livestock waste, crop residue,
25 uncontaminated wood waste, and paper waste must be
26 (i) processed into windrows or other piles and (ii)

1 covered in a manner that prevents scavenging by
2 birds and animals and that prevents other
3 nuisances.

4 (C) Food scrap, livestock waste, crop residue,
5 uncontaminated wood waste, paper waste, and compost
6 must not be placed within 5 feet of the water table.

7 (D) The site or facility must meet all of the
8 requirements of the Wild and Scenic Rivers Act (16
9 U.S.C. 1271 et seq.).

10 (E) The site or facility must not (i) restrict the
11 flow of a 100-year flood, (ii) result in washout of
12 food scrap, livestock waste, crop residue,
13 uncontaminated wood waste, or paper waste from a
14 100-year flood, or (iii) reduce the temporary water
15 storage capacity of the 100-year floodplain, unless
16 measures are undertaken to provide alternative storage
17 capacity, such as by providing lagoons, holding tanks,
18 or drainage around structures at the facility.

19 (F) The site or facility must not be located in any
20 area where it may pose a threat of harm or destruction
21 to the features for which:

22 (i) an irreplaceable historic or
23 archaeological site has been listed under the
24 National Historic Preservation Act (16 U.S.C. 470
25 et seq.) or the Illinois Historic Preservation
26 Act;

1 (ii) a natural landmark has been designated by
2 the National Park Service or the Illinois State
3 Historic Preservation Office; or

4 (iii) a natural area has been designated as a
5 Dedicated Illinois Nature Preserve under the
6 Illinois Natural Areas Preservation Act.

7 (G) The site or facility must not be located in an
8 area where it may jeopardize the continued existence of
9 any designated endangered species, result in the
10 destruction or adverse modification of the critical
11 habitat for such species, or cause or contribute to the
12 taking of any endangered or threatened species of
13 plant, fish, or wildlife listed under the Endangered
14 Species Act (16 U.S.C. 1531 et seq.) or the Illinois
15 Endangered Species Protection Act.

16 (b) A new pollution control facility is:

17 (1) a pollution control facility initially permitted
18 for development or construction after July 1, 1981; or

19 (2) the area of expansion beyond the boundary of a
20 currently permitted pollution control facility; or

21 (3) a permitted pollution control facility requesting
22 approval to store, dispose of, transfer or incinerate, for
23 the first time, any special or hazardous waste.

24 (Source: P.A. 95-131, eff. 8-13-07; 95-177, eff. 1-1-08;
25 95-331, eff. 8-21-07; 95-408, eff. 8-24-07; 95-876, eff.
26 8-21-08; 96-418, eff. 1-1-10; 96-611, eff. 8-24-09; revised

1 10-1-09.)

2 (415 ILCS 5/3.535) (was 415 ILCS 5/3.53)

3 Sec. 3.535. Waste. "Waste" means any garbage, sludge from
4 a waste treatment plant, water supply treatment plant, or air
5 pollution control facility or other discarded material,
6 including solid, liquid, semi-solid, or contained gaseous
7 material resulting from industrial, commercial, mining and
8 agricultural operations, and from community activities, but
9 does not include lignocellulosic agricultural residues,
10 organic landscape waste, clean wood waste, solid or dissolved
11 material in domestic sewage, or solid or dissolved materials in
12 irrigation return flows, or coal combustion by-products as
13 defined in Section 3.135, or industrial discharges which are
14 point sources subject to permits under Section 402 of the
15 Federal Water Pollution Control Act, as now or hereafter
16 amended, or source, special nuclear, or by-product materials as
17 defined by the Atomic Energy Act of 1954, as amended (68 Stat.
18 921) or any solid or dissolved material from any facility
19 subject to the Federal Surface Mining Control and Reclamation
20 Act of 1977 (P.L. 95-87) or the rules and regulations
21 thereunder or any law or rule or regulation adopted by the
22 State of Illinois pursuant thereto.

23 (Source: P.A. 92-574, eff. 6-26-02.)

24 (415 ILCS 5/14.4) (from Ch. 111 1/2, par. 1014.4)

1 Sec. 14.4. Groundwater rules.

2 (a) No later than January 1, 1989, the Agency, after
3 consultation with the Interagency Coordinating Committee on
4 Groundwater and the Groundwater Advisory Council, shall
5 propose regulations to the Board prescribing standards and
6 requirements for the following activities:

7 (1) landfilling, land treating, surface impounding or
8 piling of special waste and other wastes which could cause
9 contamination of groundwater and which are generated on the
10 site, other than construction and demolition debris and
11 hazardous, livestock, agricultural, and landscape waste,
12 ~~and construction and demolition debris;~~

13 (2) storage of special waste in an underground storage
14 tank for which federal regulatory requirements for the
15 protection of groundwater are not applicable;

16 (3) storage and related handling of pesticides and
17 fertilizers at a facility for the purpose of commercial
18 application;

19 (4) storage and related handling of road oils and
20 de-icing agents at a central location; and

21 (5) storage and related handling of pesticides and
22 fertilizers at a central location for the purpose of
23 distribution to retail sales outlets.

24 In preparing such regulation, the Agency shall provide as
25 it deems necessary for more stringent provisions for those
26 activities enumerated in this subsection which are not already

1 in existence. Any activity for which such standards and
2 requirements are proposed may be referred to as a new activity.
3 For the purposes of this Section, the term "commercial
4 application" shall not include the use of pesticides or
5 fertilizers in a manner incidental to the primary business
6 activity.

7 (a-5) On and after the effective date of this amendatory
8 Act of the 96th General Assembly, agricultural waste is exempt
9 from regulations proposed by the Agency under the authority of
10 paragraph (1) of subsection (a).

11 (b) No later than October 1, 1993, the Board shall
12 promulgate appropriate regulations for existing activities. In
13 promulgating these regulations, the Board shall, in addition to
14 the factors set forth in Title VII of this Act, consider the
15 following:

16 (1) appropriate programs for water quality monitoring;

17 (2) reporting, recordkeeping and remedial response
18 measures;

19 (3) appropriate technology-based measures for
20 pollution control; and

21 (4) requirements for closure or discontinuance of
22 operations.

23 Such regulations as are promulgated pursuant to this
24 subsection shall be for the express purpose of protecting
25 groundwaters. The applicability of such regulations shall be
26 limited to any existing activity which is located:

1 (A) within a setback zone regulated by this Act, other
2 than an activity located on the same site as a
3 non-community water system well and for which the owner is
4 the same for both the activity and the well; or

5 (B) within a regulated recharge area as delineated by
6 Board regulation, provided that:

7 (i) the boundary of the lateral area of influence
8 of a community water supply well located within the
9 recharge area includes such activity therein;

10 (ii) the distance from the wellhead of the
11 community water supply to the activity does not exceed
12 2500 feet; and

13 (iii) the community water supply well was in
14 existence prior to January 1, 1988.

15 In addition, the Board shall ensure that the promulgated
16 regulations are consistent with and not pre-emptive of the
17 certification system provided by Section 14.5. The Board shall
18 modify the regulations adopted under this subsection to provide
19 an exception for existing activities subject to Section 14.6.

20 (c) Concurrently with the action mandated by subsection
21 (a), the Agency shall evaluate, with respect to the protection
22 of groundwater, the adequacy of existing federal and State
23 regulations regarding the disposal of hazardous waste and the
24 offsite disposal of special and municipal wastes. The Agency
25 shall then propose, as it deems necessary, additional
26 regulations for such new disposal activities as may be

1 necessary to achieve a level of groundwater protection that is
2 consistent with the regulations proposed under subsection (a)
3 of this Section.

4 (d) Following receipt of proposed regulations submitted by
5 the Agency pursuant to subsection (a) of this Section, the
6 Board shall promulgate appropriate regulations for new
7 activities. In promulgating these regulations, the Board
8 shall, in addition to the factors set forth in Title VII of
9 this Act, consider the following:

10 (1) appropriate programs for water quality monitoring,
11 including, where appropriate, notification limitations to
12 trigger preventive response activities;

13 (2) design practices and technology-based measures
14 appropriate for minimizing the potential for groundwater
15 contamination;

16 (3) reporting, recordkeeping and remedial response
17 measures; and

18 (4) requirements for closure or discontinuance of
19 operations.

20 Such regulations as are promulgated pursuant to this
21 subsection shall be for the express purpose of protecting
22 groundwaters. The applicability of such regulations shall be
23 limited to any new activity which is to be located within a
24 setback zone regulated by this Act, or which is to be located
25 within a regulated recharge area as delineated by Board
26 regulation. In addition, the Board shall ensure that the

1 promulgated regulations are consistent with and not
2 pre-emptive of the certification system provided by Section
3 14.5. The Board shall modify the regulations adopted under this
4 subsection to provide an exception for new activities subject
5 to Section 14.6.

6 (e) Nothing in this Section shall be construed as
7 prohibiting any person for whom regulations are promulgated by
8 the Board pursuant to subsection (b) or (c) of this Section,
9 from proposing and obtaining, concurrently with the
10 regulations proposed by the Agency pursuant to subsection (a)
11 of this Section, a rule specific to individual persons or sites
12 pursuant to Title VII of this Act which codifies alternative
13 groundwater protection methods that provide substantially
14 equivalent protection for community water supplies.

15 (f) Nothing in this Section shall be construed as limiting
16 the power of any county or municipality to adopt ordinances,
17 which are consistent with but not more stringent than the
18 regulations adopted by the Board pursuant to this Section, for
19 application of standards and requirements within such setback
20 zones as are provided by this Act.

21 (g) The Agency shall prepare a groundwater protection
22 regulatory agenda for submittal to the Interagency
23 Coordinating Committee on Groundwater and the Groundwater
24 Advisory Council. In preparing this agenda, the Agency shall
25 consider situations where gaps may exist in federal or State
26 regulatory protection for groundwater, or where further

1 refinements could be necessary to achieve adequate protection
2 of groundwater.

3 (h) Nothing in this Section shall be construed as limiting
4 the general authority of the Board to promulgate regulations
5 pursuant to Title VII of this Act.

6 (i) The Board's rulemaking with respect to subsection
7 (a)(3) of this Section shall take into account the relevant
8 aspects of the Department of Agriculture's Part 255 regulations
9 which specify containment rules for agricultural facilities.
10 (Source: P.A. 92-574, eff. 6-26-02.)

11 (415 ILCS 5/22.22) (from Ch. 111 1/2, par. 1022.22)
12 Sec. 22.22. Landscape waste.

13 (a) Beginning July 1, 1990, no person may knowingly mix
14 landscape waste that is intended for collection or for disposal
15 at a landfill with any other municipal waste.

16 (b) Beginning July 1, 1990, no person may knowingly put
17 landscape waste into a container intended for collection or
18 disposal at a landfill, unless such container is biodegradable.

19 (c) No ~~Beginning July 1, 1990, no~~ owner or operator of a
20 sanitary landfill may ~~shall~~ accept landscape waste for final
21 disposal, except that landscape waste separated from municipal
22 waste may be accepted by a sanitary landfill if (1) the
23 landfill provides and maintains for that purpose separate
24 landscape waste processing ~~composting~~ facilities, such as
25 facilities for landscape waste composting, digestion, or

1 gasification, and processes ~~composts~~ all landscape waste, and
2 (2) the processed ~~composted~~ waste is utilized, by the operators
3 of the landfill or by any other person, for power and heat
4 generation, or as part of the final vegetative cover for the
5 landfill, or for such other uses as soil conditioning material,
6 or the landfill has received an Agency permit to use source
7 separated and processed landscape waste as an alternative daily
8 cover and the landscape waste is processed at a site, other
9 than the sanitary landfill, that has received an Agency permit
10 before July 30, 1997 to process landscape waste. For purposes
11 of this Section, (i) "source separated" means divided into its
12 component parts at the point of generation and collected
13 separately from other solid waste and (ii) "processed" means
14 shredded by mechanical means to reduce the landscape waste to a
15 uniform consistency.

16 (d) The requirements of this Section shall not apply (i) to
17 landscape waste collected as part of a municipal street
18 sweeping operation where the intent is to provide street
19 sweeping service rather than leaf collection, nor (ii) to
20 landscape waste collected by bar screens or grates in a sewage
21 treatment system.

22 (Source: P.A. 92-574, eff. 6-26-02.)

23 (415 ILCS 5/22.37 new)

24 Sec. 22.37. Gasification quality standards.

25 (a) By January 1, 2011, the Agency shall develop and make

1 recommendations to the Board concerning (i) performance
2 standards for landscape waste gasification facilities and (ii)
3 testing procedures and standards for the end product produced
4 by landscape waste gasification facilities.

5 (b) Performance standards for landscape waste gasification
6 facilities shall, at a minimum:

7 (1) provide for the management of odor;

8 (2) provide for the management of surface water;

9 (3) specify the acceptable uses of end product produced
10 by the facility; and

11 (4) require a financial assurance plan necessary to
12 restore the site as specified in an Agency permit.

13 (c) By December 1, 2012, the Board shall adopt:

14 (1) performance standards for landscape waste
15 gasification facilities; and

16 (2) testing procedures and standards for the end
17 product produced by landscape waste gasification
18 facilities.

19 The Board shall evaluate the merits of different standards
20 for end product gasification applications.

21 (d) On-site gasification that is used solely for the
22 purpose of local generation of heat and electric power is
23 exempt from any standards promulgated under subsections (a) and
24 (b).

25 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

1 Sec. 39.2. Local siting review.

2 (a) The county board of the county or the governing body of
3 the municipality, as determined by paragraph (c) of Section 39
4 of this Act, shall approve or disapprove the request for local
5 siting approval for each pollution control facility which is
6 subject to such review. An applicant for local siting approval
7 shall submit sufficient details describing the proposed
8 facility to demonstrate compliance, and local siting approval
9 shall be granted only if the proposed facility meets the
10 following criteria:

11 (i) the facility is necessary to accommodate the waste
12 needs of the area it is intended to serve;

13 (ii) the facility is so designed, located and proposed
14 to be operated that the public health, safety and welfare
15 will be protected;

16 (iii) the facility is located so as to minimize
17 incompatibility with the character of the surrounding area
18 and to minimize the effect on the value of the surrounding
19 property;

20 (iv) (A) for a facility other than a sanitary landfill
21 or waste disposal site, the facility is located outside the
22 boundary of the 100 year flood plain or the site is
23 flood-proofed; (B) for a facility that is a sanitary
24 landfill or waste disposal site, the facility is located
25 outside the boundary of the 100-year floodplain, or if the
26 facility is a facility described in subsection (b) (3) of

1 Section 22.19a, the site is flood-proofed, where "flood
2 proofed" means, for the purposes of this item (iv), being
3 designed to minimize or eliminate infiltration of flood
4 waters into the facility and discharges from the facility
5 into flood waters and being constructed to avoid impairment
6 or contamination during flooding;

7 (v) the plan of operations for the facility is designed
8 to minimize the danger to the surrounding area from fire,
9 spills, or other operational accidents;

10 (vi) the traffic patterns to or from the facility are
11 so designed as to minimize the impact on existing traffic
12 flows;

13 (vii) if the facility will be treating, storing or
14 disposing of hazardous waste, an emergency response plan
15 exists for the facility which includes notification,
16 containment and evacuation procedures to be used in case of
17 an accidental release;

18 (viii) if the facility is to be located in a county
19 where the county board has adopted a solid waste management
20 plan consistent with the planning requirements of the Local
21 Solid Waste Disposal Act or the Solid Waste Planning and
22 Recycling Act, the facility is consistent with that plan;
23 for purposes of this criterion (viii), the "solid waste
24 management plan" means the plan that is in effect as of the
25 date the application for siting approval is filed; and

26 (ix) if the facility will be located within a regulated

1 recharge area, any applicable requirements specified by
2 the Board for such areas have been met.

3 The county board or the governing body of the municipality
4 may also consider as evidence the previous operating experience
5 and past record of convictions or admissions of violations of
6 the applicant (and any subsidiary or parent corporation) in the
7 field of solid waste management when considering criteria (ii)
8 and (v) under this Section.

9 If the facility is subject to the location restrictions in
10 Section 22.14 of this Act, compliance with that Section shall
11 be determined as of the date the application for siting
12 approval is filed.

13 (b) No later than 14 days before the date on which the
14 county board or governing body of the municipality receives a
15 request for site approval, the applicant shall cause written
16 notice of such request to be served either in person or by
17 registered mail, return receipt requested, on the owners of all
18 property within the subject area not solely owned by the
19 applicant, and on the owners of all property within 250 feet in
20 each direction of the lot line of the subject property, said
21 owners being such persons or entities which appear from the
22 authentic tax records of the County in which such facility is
23 to be located; provided, that the number of all feet occupied
24 by all public roads, streets, alleys and other public ways
25 shall be excluded in computing the 250 feet requirement;
26 provided further, that in no event shall this requirement

1 exceed 400 feet, including public streets, alleys and other
2 public ways.

3 Such written notice shall also be served upon members of
4 the General Assembly from the legislative district in which the
5 proposed facility is located and shall be published in a
6 newspaper of general circulation published in the county in
7 which the site is located.

8 Such notice shall state the name and address of the
9 applicant, the location of the proposed site, the nature and
10 size of the development, the nature of the activity proposed,
11 the probable life of the proposed activity, the date when the
12 request for site approval will be submitted, and a description
13 of the right of persons to comment on such request as hereafter
14 provided.

15 (c) An applicant shall file a copy of its request with the
16 county board of the county or the governing body of the
17 municipality in which the proposed site is located. The request
18 shall include (i) the substance of the applicant's proposal and
19 (ii) all documents, if any, submitted as of that date to the
20 Agency pertaining to the proposed facility, except trade
21 secrets as determined under Section 7.1 of this Act. All such
22 documents or other materials on file with the county board or
23 governing body of the municipality shall be made available for
24 public inspection at the office of the county board or the
25 governing body of the municipality and may be copied upon
26 payment of the actual cost of reproduction.

1 Any person may file written comment with the county board
2 or governing body of the municipality concerning the
3 appropriateness of the proposed site for its intended purpose.
4 The county board or governing body of the municipality shall
5 consider any comment received or postmarked not later than 30
6 days after the date of the last public hearing.

7 (d) At least one public hearing is to be held by the county
8 board or governing body of the municipality no sooner than 90
9 days but no later than 120 days after the date on which it
10 received the request for site approval. No later than 14 days
11 prior to such hearing, notice shall be published in a newspaper
12 of general circulation published in the county of the proposed
13 site, and delivered by certified mail to all members of the
14 General Assembly from the district in which the proposed site
15 is located, to the governing authority of every municipality
16 contiguous to the proposed site or contiguous to the
17 municipality in which the proposed site is to be located, to
18 the county board of the county where the proposed site is to be
19 located, if the proposed site is located within the boundaries
20 of a municipality, and to the Agency. Members or
21 representatives of the governing authority of a municipality
22 contiguous to the proposed site or contiguous to the
23 municipality in which the proposed site is to be located and,
24 if the proposed site is located in a municipality, members or
25 representatives of the county board of a county in which the
26 proposed site is to be located may appear at and participate in

1 public hearings held pursuant to this Section. The public
2 hearing shall develop a record sufficient to form the basis of
3 appeal of the decision in accordance with Section 40.1 of this
4 Act. The fact that a member of the county board or governing
5 body of the municipality has publicly expressed an opinion on
6 an issue related to a site review proceeding shall not preclude
7 the member from taking part in the proceeding and voting on the
8 issue.

9 (e) Decisions of the county board or governing body of the
10 municipality are to be in writing, specifying the reasons for
11 the decision, such reasons to be in conformance with subsection
12 (a) of this Section. In granting approval for a site the county
13 board or governing body of the municipality may impose such
14 conditions as may be reasonable and necessary to accomplish the
15 purposes of this Section and as are not inconsistent with
16 regulations promulgated by the Board. Such decision shall be
17 available for public inspection at the office of the county
18 board or governing body of the municipality and may be copied
19 upon payment of the actual cost of reproduction. If there is no
20 final action by the county board or governing body of the
21 municipality within 180 days after the date on which it
22 received the request for site approval, the applicant may deem
23 the request approved.

24 At any time prior to completion by the applicant of the
25 presentation of the applicant's factual evidence and an
26 opportunity for cross-questioning by the county board or

1 governing body of the municipality and any participants, the
2 applicant may file not more than one amended application upon
3 payment of additional fees pursuant to subsection (k); in which
4 case the time limitation for final action set forth in this
5 subsection (e) shall be extended for an additional period of 90
6 days.

7 If, prior to making a final local siting decision, a county
8 board or governing body of a municipality has negotiated and
9 entered into a host agreement with the local siting applicant,
10 the terms and conditions of the host agreement, whether written
11 or oral, shall be disclosed and made a part of the hearing
12 record for that local siting proceeding. In the case of an oral
13 agreement, the disclosure shall be made in the form of a
14 written summary jointly prepared and submitted by the county
15 board or governing body of the municipality and the siting
16 applicant and shall describe the terms and conditions of the
17 oral agreement.

18 (e-5) Siting approval obtained pursuant to this Section is
19 transferable and may be transferred to a subsequent owner or
20 operator. In the event that siting approval has been
21 transferred to a subsequent owner or operator, that subsequent
22 owner or operator assumes and takes subject to any and all
23 conditions imposed upon the prior owner or operator by the
24 county board of the county or governing body of the
25 municipality pursuant to subsection (e). However, any such
26 conditions imposed pursuant to this Section may be modified by

1 agreement between the subsequent owner or operator and the
2 appropriate county board or governing body. Further, in the
3 event that siting approval obtained pursuant to this Section
4 has been transferred to a subsequent owner or operator, that
5 subsequent owner or operator assumes all rights and obligations
6 and takes the facility subject to any and all terms and
7 conditions of any existing host agreement between the prior
8 owner or operator and the appropriate county board or governing
9 body.

10 (f) A local siting approval granted under this Section
11 shall expire at the end of 2 calendar years from the date upon
12 which it was granted, unless the local siting approval granted
13 under this Section is for a sanitary landfill operation, in
14 which case the approval shall expire at the end of 3 calendar
15 years from the date upon which it was granted, and unless
16 within that period the applicant has made application to the
17 Agency for a permit to develop the site. In the event that the
18 local siting decision has been appealed, such expiration period
19 shall be deemed to begin on the date upon which the appeal
20 process is concluded.

21 Except as otherwise provided in this subsection, upon the
22 expiration of a development permit under subsection (k) of
23 Section 39, any associated local siting approval granted for
24 the facility under this Section shall also expire.

25 If a first development permit for a municipal waste
26 incineration facility expires under subsection (k) of Section

1 39 after September 30, 1989 due to circumstances beyond the
2 control of the applicant, any associated local siting approval
3 granted for the facility under this Section may be used to
4 fulfill the local siting approval requirement upon application
5 for a second development permit for the same site, provided
6 that the proposal in the new application is materially the
7 same, with respect to the criteria in subsection (a) of this
8 Section, as the proposal that received the original siting
9 approval, and application for the second development permit is
10 made before January 1, 1990.

11 (g) The siting approval procedures, criteria and appeal
12 procedures provided for in this Act for new pollution control
13 facilities shall be the exclusive siting procedures and rules
14 and appeal procedures for facilities subject to such
15 procedures. Local zoning or other local land use requirements
16 shall not be applicable to such siting decisions.

17 (h) Nothing in this Section shall apply to any existing or
18 new pollution control facility located within the corporate
19 limits of a municipality with a population of over 1,000,000.

20 (i) (Blank.)

21 The Board shall adopt regulations establishing the
22 geologic and hydrologic siting criteria necessary to protect
23 usable groundwater resources which are to be followed by the
24 Agency in its review of permit applications for new pollution
25 control facilities. Such regulations, insofar as they apply to
26 new pollution control facilities authorized to store, treat or

1 dispose of any hazardous waste, shall be at least as stringent
2 as the requirements of the Resource Conservation and Recovery
3 Act and any State or federal regulations adopted pursuant
4 thereto.

5 (j) Any new pollution control facility which has never
6 obtained local siting approval under the provisions of this
7 Section shall be required to obtain such approval after a final
8 decision on an appeal of a permit denial.

9 (k) A county board or governing body of a municipality may
10 charge applicants for siting review under this Section a
11 reasonable fee to cover the reasonable and necessary costs
12 incurred by such county or municipality in the siting review
13 process.

14 (l) The governing Authority as determined by subsection (c)
15 of Section 39 of this Act may request the Department of
16 Transportation to perform traffic impact studies of proposed or
17 potential locations for required pollution control facilities.

18 (m) An applicant may not file a request for local siting
19 approval which is substantially the same as a request which was
20 disapproved pursuant to a finding against the applicant under
21 any of criteria (i) through (ix) of subsection (a) of this
22 Section within the preceding 2 years.

23 (n) In any review proceeding of a decision of the county
24 board or governing body of a municipality made pursuant to the
25 local siting review process, the petitioner in the review
26 proceeding shall pay to the county or municipality the cost of

1 preparing and certifying the record of proceedings. Should the
2 petitioner in the review proceeding fail to make payment, the
3 provisions of Section 3-109 of the Code of Civil Procedure
4 shall apply.

5 In the event the petitioner is a citizens' group that
6 participated in the siting proceeding and is so located as to
7 be affected by the proposed facility, such petitioner shall be
8 exempt from paying the costs of preparing and certifying the
9 record.

10 (o) Notwithstanding any other provision of this Section, a
11 transfer station used exclusively for landscape waste, where
12 landscape waste is held no longer than 24 hours from the time
13 it was received, is not subject to the requirements of local
14 siting approval under this Section, but is subject only to
15 local zoning approval.

16 (Source: P.A. 94-591, eff. 8-15-05; 95-288, eff. 8-20-07.)

17 (415 ILCS 5/39.5) (from Ch. 111 1/2, par. 1039.5)

18 Sec. 39.5. Clean Air Act Permit Program.

19 1. Definitions.

20 For purposes of this Section:

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

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

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

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

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

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

11 "Applicable Clean Air Act requirement" means all of the
12 following as they apply to emissions units in a source
13 (including regulations that have been promulgated or approved
14 by USEPA pursuant to the Clean Air Act which directly impose
15 requirements upon a source and other such federal requirements
16 which have been adopted by the Board. These may include
17 requirements and regulations which have future effective
18 compliance dates. Requirements and regulations will be exempt
19 if USEPA determines that such requirements need not be
20 contained in a Title V permit):

21 (1) Any standard or other requirement provided for in
22 the applicable state implementation plan approved or
23 promulgated by USEPA under Title I of the Clean Air Act
24 that implement the relevant requirements of the Clean Air
25 Act, including any revisions to the state Implementation
26 Plan promulgated in 40 CFR Part 52, Subparts A and O and

1 other subparts applicable to Illinois. For purposes of this
2 subsection (1) of this definition, "any standard or other
3 requirement" shall mean only such standards or
4 requirements directly enforceable against an individual
5 source under the Clean Air Act.

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

10 (ii) Any term or condition as required pursuant to
11 Section 39.5 of any federally enforceable State
12 operating permit issued pursuant to regulations
13 approved or promulgated by USEPA under Title I of the
14 Clean Air Act, including Part C or D of the Clean Air
15 Act.

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

18 (4) Any standard or other requirement under Section 112
19 of the Clean Air Act, including any requirement concerning
20 accident prevention under Section 112(r)(7) of the Clean
21 Air Act.

22 (5) Any standard or other requirement of the acid rain
23 program under Title IV of the Clean Air Act or the
24 regulations promulgated thereunder.

25 (6) Any requirements established pursuant to Section
26 504(b) or Section 114(a)(3) of the Clean Air Act.

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

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

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

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

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

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

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

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

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

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

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

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

13 "Designated representative" shall have the meaning given
14 to it in Section 402(26) of the Clean Air Act and the
15 regulations promulgated thereunder which states that the term
16 'designated representative' shall mean a responsible person or
17 official authorized by the owner or operator of a unit to
18 represent the owner or operator in all matters pertaining to
19 the holding, transfer, or disposition of allowances allocated
20 to a unit, and the submission of and compliance with permits,
21 permit applications, and compliance plans for the unit.

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

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

1 "Emission unit" means any part or activity of a stationary
2 source that emits or has the potential to emit any air
3 pollutant. This term is not meant to alter or affect the
4 definition of the term "unit" for purposes of Title IV of the
5 Clean Air Act.

6 "Federally enforceable" means enforceable by USEPA.

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

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

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

20 "Maximum achievable control technology" or "MACT" means
21 the maximum degree of reductions in emissions deemed achievable
22 under Section 112 of the Clean Air Act.

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

25 "Permit modification" means a revision to a CAAPP permit
26 that cannot be accomplished under the provisions for

1 administrative permit amendments under subsection 13 of this
2 Section.

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

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

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

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

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

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

5 "Regulated air pollutant" means the following:

6 (1) Nitrogen oxides (NO_x) or any volatile organic
7 compound.

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

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

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

15 (5) Any pollutant subject to a standard promulgated
16 under Section 112 or other requirements established under
17 Section 112 of the Clean Air Act, including Sections
18 112(g), (j) and (r).

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

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

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

7 "Responsible official" means one of the following:

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

21 (2) For a partnership or sole proprietorship: a general
22 partner or the proprietor, respectively, or in the case of
23 a partnership in which all of the partners are
24 corporations, a duly authorized representative of the
25 partnership if the representative is responsible for the
26 overall operation of one or more manufacturing,

1 production, or operating facilities applying for or
2 subject to a permit and either (i) the facilities employ
3 more than 250 persons or have gross annual sales or
4 expenditures exceeding \$25 million (in second quarter 1980
5 dollars), or (ii) the delegation of authority to such
6 representative is approved in advance by the Agency.

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

14 (4) For affected sources for acid deposition:

15 (i) The designated representative shall be the
16 "responsible official" in so far as actions,
17 standards, requirements, or prohibitions under Title
18 IV of the Clean Air Act or the regulations promulgated
19 thereunder are concerned.

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

23 "Section 502(b)(10) changes" means changes that contravene
24 express permit terms. "Section 502(b)(10) changes" do not
25 include changes that would violate applicable requirements or
26 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 landscape waste, agricultural residues, clean wood waste, or
19 crops grown for energy for the production of electric energy or
20 in the case of qualifying cogeneration facilities which burn
21 homogeneous waste for the production of electric energy and
22 steam or forms of useful energy (such as heat) which are used
23 for industrial, commercial, heating or cooling purposes, or (C)
24 air curtain incinerators provided that such incinerators only
25 burn wood wastes, yard waste and clean lumber and that such air
26 curtain incinerators comply with opacity limitations to be

1 established by the USEPA by rule.

2 "Source" means any stationary source (or any group of
3 stationary sources) that are located on one or more contiguous
4 or adjacent properties that are under common control of the
5 same person (or persons under common control) and that belongs
6 to a single major industrial grouping. For the purposes of
7 defining "source," a stationary source or group of stationary
8 sources shall be considered part of a single major industrial
9 grouping if all of the pollutant emitting activities at such
10 source or group of sources located on contiguous or adjacent
11 properties and under common control belong to the same Major
12 Group (i.e., all have the same two-digit code) as described in
13 the Standard Industrial Classification Manual, 1987, or such
14 pollutant emitting activities at a stationary source (or group
15 of stationary sources) located on contiguous or adjacent
16 properties and under common control constitute a support
17 facility. The determination as to whether any group of
18 stationary sources are located on contiguous or adjacent
19 properties, and/or are under common control, and/or whether the
20 pollutant emitting activities at such group of stationary
21 sources constitute a support facility shall be made on a case
22 by case basis.

23 "Stationary source" means any building, structure,
24 facility, or installation that emits or may emit any regulated
25 air pollutant or any pollutant listed under Section 112(b) of
26 the Clean Air Act.

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

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

13 1.1. Exclusion From the CAAPP.

14 a. An owner or operator of a source which determines
15 that the source could be excluded from the CAAPP may seek
16 such exclusion prior to the date that the CAAPP application
17 for the source is due but in no case later than 9 months
18 after the effective date of the CAAPP through the
19 imposition of 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, within a State operating
23 permit issued pursuant to Section 39(a) of this Act. After
24 such date, an exclusion from the CAAPP may be sought under
25 paragraph 3(c) of this Section.

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

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

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

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

24 2. Applicability.

25 a. Sources subject to this Section shall include:

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

3 ii. Any source subject to a standard or other
4 requirements promulgated under Section 111 (New Source
5 Performance Standards) or Section 112 (Hazardous Air
6 Pollutants) of the Clean Air Act, except that a source
7 is not required to obtain a permit solely because it is
8 subject to regulations or requirements under Section
9 112(r) of the Clean Air Act.

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

12 iv. Any other source subject to this Section under
13 the Clean Air Act or regulations promulgated
14 thereunder, or applicable Board regulations.

15 b. Sources exempted from this Section shall include:

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

24 ii. Nonmajor sources subject to a standard or other
25 requirements subsequently promulgated by USEPA under
26 Section 111 or 112 of the Clean Air Act which are

1 determined by USEPA to be exempt at the time a new
2 standard is promulgated.

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

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

13 v. Any other source categories exempted by USEPA
14 regulations pursuant to Section 502(a) of the Clean Air
15 Act.

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

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

20 A. For pollutants other than radionuclides,
21 any stationary source or group of stationary
22 sources located within a contiguous area and under
23 common control that emits or has the potential to
24 emit, in the aggregate, 10 tons per year (tpy) or
25 more of any hazardous air pollutant which has been
26 listed pursuant to Section 112(b) of the Clean Air

1 Act, 25 tpy or more of any combination of such
2 hazardous air pollutants, or such lesser quantity
3 as USEPA may establish by rule. Notwithstanding
4 the preceding sentence, emissions from any oil or
5 gas exploration or production well (with its
6 associated equipment) and emissions from any
7 pipeline compressor or pump station shall not be
8 aggregated with emissions from other similar
9 units, whether or not such units are in a
10 contiguous area or under common control, to
11 determine whether such stations are major sources.

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

14 ii. A major stationary source of air pollutants, as
15 defined in Section 302 of the Clean Air Act, that
16 directly emits or has the potential to emit, 100 tpy or
17 more of any air pollutant (including any major source
18 of fugitive emissions of any such pollutant, as
19 determined by rule by USEPA). For purposes of this
20 subsection, "fugitive emissions" means those emissions
21 which could not reasonably pass through a stack,
22 chimney, vent, or other functionally-equivalent
23 opening. The fugitive emissions of a stationary source
24 shall not be considered in determining whether it is a
25 major stationary source for the purposes of Section
26 302(j) of the Clean Air Act, unless the source belongs

1 to one of the following categories of stationary
2 source:

3 A. Coal cleaning plants (with thermal dryers).

4 B. Kraft pulp mills.

5 C. Portland cement plants.

6 D. Primary zinc smelters.

7 E. Iron and steel mills.

8 F. Primary aluminum ore reduction plants.

9 G. Primary copper smelters.

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

12 I. Hydrofluoric, sulfuric, or nitric acid
13 plants.

14 J. Petroleum refineries.

15 K. Lime plants.

16 L. Phosphate rock processing plants.

17 M. Coke oven batteries.

18 N. Sulfur recovery plants.

19 O. Carbon black plants (furnace process).

20 P. Primary lead smelters.

21 Q. Fuel conversion plants.

22 R. Sintering plants.

23 S. Secondary metal production plants.

24 T. Chemical process plants.

25 U. Fossil-fuel boilers (or combination
26 thereof) totaling more than 250 million British

1 thermal units per hour heat input.

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

4 W. Taconite ore processing plants.

5 X. Glass fiber processing plants.

6 Y. Charcoal production plants.

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

10 AA. All other stationary source categories,
11 which as of August 7, 1980 are being regulated by a
12 standard promulgated under Section 111 or 112 of
13 the Clean Air Act.

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

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

18 A. For ozone nonattainment areas, sources with
19 the potential to emit 100 tons or more per year of
20 volatile organic compounds or oxides of nitrogen
21 in areas classified as "marginal" or "moderate",
22 50 tons or more per year in areas classified as
23 "serious", 25 tons or more per year in areas
24 classified as "severe", and 10 tons or more per
25 year in areas classified as "extreme"; except that
26 the references in this clause to 100, 50, 25, and

1 10 tons per year of nitrogen oxides shall not apply
2 with respect to any source for which USEPA has made
3 a finding, under Section 182(f)(1) or (2) of the
4 Clean Air Act, that requirements otherwise
5 applicable to such source under Section 182(f) of
6 the Clean Air Act do not apply. Such sources shall
7 remain subject to the major source criteria of
8 paragraph 2(c)(ii) of this subsection.

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

13 C. For carbon monoxide nonattainment areas (1)
14 that are classified as "serious", and (2) in which
15 stationary sources contribute significantly to
16 carbon monoxide levels as determined under rules
17 issued by USEPA, sources with the potential to emit
18 50 tons or more per year of carbon monoxide.

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

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

25 a. The Agency shall issue CAAPP permits under this

1 Section consistent with the Clean Air Act and regulations
2 promulgated thereunder and this Act and regulations
3 promulgated thereunder.

4 b. The Agency shall issue CAAPP permits for fixed terms
5 of 5 years, except CAAPP permits issued for solid waste
6 incineration units combusting municipal waste which shall
7 be issued for fixed terms of 12 years and except CAAPP
8 permits for affected sources for acid deposition which
9 shall be issued for initial terms to expire on December 31,
10 1999, and for fixed terms of 5 years thereafter.

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

23 d. For purposes of this Act, a permit issued by USEPA
24 under Section 505 of the Clean Air Act, as now and
25 hereafter amended, shall be deemed to be a permit issued by
26 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

1 its initial CAAPP application to the Agency no later than
2 12 months after the effective date of the CAAPP. The Agency
3 may request submittal of initial CAAPP applications during
4 this 12 month period according to a schedule set forth
5 within Agency procedures, however, in no event shall the
6 Agency require such submittal earlier than 3 months after
7 such effective date of the CAAPP. An owner or operator may
8 voluntarily submit its initial CAAPP application prior to
9 the date required within this paragraph or applicable
10 procedures, if any, subsequent to the date the Agency
11 submits the CAAPP to USEPA for approval.

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

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

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

26 g. The CAAPP permit shall upon becoming effective

1 supersede the State operating permit.

2 h. 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 5. Applications and Completeness.

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

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

13 c. To be deemed complete, a CAAPP application must
14 provide all information, as requested in Agency
15 application forms, sufficient to evaluate the subject
16 source and its application and to determine all applicable
17 requirements, pursuant to the Clean Air Act, and
18 regulations thereunder, this Act and regulations
19 thereunder. Such Agency application forms shall be
20 finalized and made available prior to the date on which any
21 CAAPP application is required.

22 d. An owner or operator of a CAAPP source shall submit,
23 as part of its complete CAAPP application, a compliance
24 plan, including a schedule of compliance, describing how
25 each emission unit will comply with all applicable

1 requirements. Any such schedule of compliance shall be
2 supplemental to, and shall not sanction noncompliance
3 with, the applicable requirements on which it is based.

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

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

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

22 h. If the owner or operator of a CAAPP source submits a
23 timely and complete CAAPP application, the source's
24 failure to have a CAAPP permit shall not be a violation of
25 this Section until the Agency takes final action on the
26 submitted CAAPP application, provided, however, where the

1 applicant fails to submit the requested information under
2 paragraph 5(g) within the time frame specified by the
3 Agency, this protection shall cease to apply.

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

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

1 application.

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

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

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

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

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

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

26 p. The owner or operator of a CAAPP source seeking a

1 permit shield pursuant to paragraph 7(j) of this Section
2 shall request such permit shield in the CAAPP application
3 regarding that source.

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

11 r. The Agency shall use the standardized forms required
12 under Title IV of the Clean Air Act and regulations
13 promulgated thereunder for affected sources for acid
14 deposition.

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

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

24 u. An owner or operator of a CAAPP source which seeks
25 exclusion from the CAAPP through the imposition of
26 federally enforceable conditions, pursuant to paragraph

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

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

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

1 Agency's proposal.

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

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

17 6. Prohibitions.

18 a. It shall be unlawful for any person to violate any
19 terms or conditions of a permit issued under this Section,
20 to operate any CAAPP source except in compliance with a
21 permit issued by the Agency under this Section or to
22 violate any other applicable requirements. All terms and
23 conditions of a permit issued under this Section are
24 enforceable by USEPA and citizens under the Clean Air Act,
25 except those, if any, that are specifically designated as

1 not being federally enforceable in the permit pursuant to
2 paragraph 7(m) of this Section.

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

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

17 7. Permit Content.

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

25 b. The Agency shall include among such conditions

1 applicable monitoring, reporting, record keeping and
2 compliance certification requirements, as authorized by
3 paragraphs d, e, and f of this subsection, that the Agency
4 deems necessary to assure compliance with the Clean Air
5 Act, the regulations promulgated thereunder, this Act, and
6 applicable Board regulations. When monitoring, reporting,
7 record keeping, and compliance certification requirements
8 are specified within the Clean Air Act, regulations
9 promulgated thereunder, this Act, or applicable
10 regulations, such requirements shall be included within
11 the CAAPP permit. The Board shall have authority to
12 promulgate additional regulations where necessary to
13 accomplish the purposes of the Clean Air Act, this Act, and
14 regulations promulgated thereunder.

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

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

22 i. Incorporate and identify all applicable
23 emissions monitoring and analysis procedures or test
24 methods required under the Clean Air Act, regulations
25 promulgated thereunder, this Act, and applicable Board
26 regulations, including any procedures and methods

1 promulgated by USEPA pursuant to Section 504(b) or
2 Section 114 (a) (3) of the Clean Air Act.

3 ii. Where the applicable requirement does not
4 require periodic testing or instrumental or
5 noninstrumental monitoring (which may consist of
6 recordkeeping designed to serve as monitoring),
7 require periodic monitoring sufficient to yield
8 reliable data from the relevant time period that is
9 representative of the source's compliance with the
10 permit, as reported pursuant to paragraph (f) of this
11 subsection. The Agency may determine that
12 recordkeeping requirements are sufficient to meet the
13 requirements of this subparagraph.

14 iii. As necessary, specify requirements concerning
15 the use, maintenance, and when appropriate,
16 installation of monitoring equipment or methods.

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

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

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

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

26 C. The company or entity that performed the

1 analyses.

2 D. The analytical techniques or methods used.

3 E. The results of such analyses.

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

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

14 f. To meet the requirements of this subsection with
15 respect to reporting, the permit shall incorporate and
16 identify all applicable reporting requirements and require
17 the following:

18 i. Submittal of reports of any required monitoring
19 every 6 months. More frequent submittals may be
20 requested by the Agency if such submittals are
21 necessary to assure compliance with this Act or
22 regulations promulgated by the Board thereunder. All
23 instances of deviations from permit requirements must
24 be clearly identified in such reports. All required
25 reports must be certified by a responsible official
26 consistent with subsection 5 of this Section.

1 ii. Prompt reporting of deviations from permit
2 requirements, including those attributable to upset
3 conditions as defined in the permit, the probable cause
4 of such deviations, and any corrective actions or
5 preventive measures taken.

6 g. Each CAAPP permit issued under subsection 10 of this
7 Section shall include a condition prohibiting emissions
8 exceeding any allowances that the source lawfully holds
9 under Title IV of the Clean Air Act or the regulations
10 promulgated thereunder, consistent with subsection 17 of
11 this Section and applicable regulations, if any.

12 h. All CAAPP permits shall state that, where another
13 applicable requirement of the Clean Air Act is more
14 stringent than any applicable requirement of regulations
15 promulgated under Title IV of the Clean Air Act, both
16 provisions shall be incorporated into the permit and shall
17 be State and federally enforceable.

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

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

24 i. The Agency shall include in a CAAPP permit, when
25 requested by an applicant pursuant to paragraph 5(p) of
26 this Section, a provision stating that compliance with

1 the conditions of the permit shall be deemed compliance
2 with applicable requirements which are applicable as
3 of the date of release of the proposed permit, provided
4 that:

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

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

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

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

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

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

26 B. The liability of an owner or operator of a

1 source for any violation of applicable
2 requirements prior to or at the time of permit
3 issuance.

4 C. The applicable requirements of the acid
5 rain program consistent with Section 408(a) of the
6 Clean Air Act.

7 D. The ability of USEPA to obtain information
8 from a source pursuant to Section 114
9 (inspections, monitoring, and entry) of the Clean
10 Air Act.

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

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

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

22 iii. The permittee submitted notice of the
23 emergency to the Agency within 2 working days of the
24 time when emission limitations were exceeded due to the
25 emergency. This notice must contain a detailed
26 description of the emergency, any steps taken to

1 mitigate emissions, and corrective actions taken.

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

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

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

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

26 i. Terms and conditions for reasonably anticipated

1 operating scenarios identified by the source in its
2 application. The permit terms and conditions for each
3 such operating scenario shall meet all applicable
4 requirements and the requirements of this Section.

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

10 B. The permit shield described in paragraph
11 7(j) of this Section shall extend to all terms and
12 conditions under each such operating scenario.

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

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

23 B. Must meet all applicable requirements;

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

1 in emissions.

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

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

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

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

1 application.

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

8 iii. Permit actions. The permit may be modified,
9 revoked, reopened, and reissued, or terminated for
10 cause in accordance with the applicable subsections of
11 Section 39.5 of this Act. The filing of a request by
12 the permittee for a permit modification, revocation
13 and reissuance, or termination, or of a notification of
14 planned changes or anticipated noncompliance does not
15 stay any permit condition.

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

19 v. Duty to provide information. The permittee
20 shall furnish to the Agency within a reasonable time
21 specified by the Agency any information that the Agency
22 may request in writing to determine whether cause
23 exists for modifying, revoking and reissuing, or
24 terminating the permit or to determine compliance with
25 the permit. Upon request, the permittee shall also
26 furnish to the Agency copies of records required to be

1 kept by the permit or, for information claimed to be
2 confidential, the permittee may furnish such records
3 directly to USEPA along with a claim of
4 confidentiality.

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

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

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

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

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

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

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

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

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

20 1. As authorized by the Clean Air Act, at
21 reasonable times, for the purposes of assuring
22 compliance with the CAAPP permit or applicable
23 requirements; or

24 2. As otherwise authorized by this Act.

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

1 regulations.

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

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

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

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

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

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

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

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

9 2. The compliance status.

10 3. Whether compliance was continuous or
11 intermittent.

12 4. The method(s) used for determining the
13 compliance status of the source, both
14 currently and over the reporting period
15 consistent with subsection 7 of Section 39.5 of
16 the Act.

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

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

23 F. Other provisions as the Agency may require.

24 q. If the owner or operator of CAAPP source can
25 demonstrate in its CAAPP application, including an
26 application for a significant modification, that an

1 alternative emission limit would be equivalent to that
2 contained in the applicable Board regulations, the Agency
3 shall include the alternative emission limit in the CAAPP
4 permit, which shall supersede the emission limit set forth
5 in the applicable Board regulations, and shall include
6 conditions that insure that the resulting emission limit is
7 quantifiable, accountable, enforceable, and based on
8 replicable procedures.

9 8. Public Notice; Affected State Review.

10 a. The Agency shall provide notice to the public,
11 including an opportunity for public comment and a hearing,
12 on each draft CAAPP permit for issuance, renewal or
13 significant modification, subject to Sections 7(a) and 7.1
14 of this Act.

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

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

25 d. The Agency, as part of its submittal of a proposed
26 permit to USEPA (or as soon as possible after the submittal

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

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

24 f. The Agency shall have the authority to adopt
25 procedural rules, in accordance with the Illinois
26 Administrative Procedure Act, as the Agency deems

1 necessary, to implement this subsection.

2 9. USEPA Notice and Objection.

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

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

19 c. If USEPA objects in writing to the issuance of the
20 proposed CAAPP permit within the 45-day period, the Agency
21 shall respond in writing and may revise and resubmit the
22 proposed CAAPP permit in response to the stated objection,
23 to the extent supported by the record, within 90 days after
24 the date of the objection. Prior to submitting a revised
25 permit to USEPA, the Agency shall provide the applicant and

1 any person who participated in the public comment process,
2 pursuant to subsection 8 of this Section, with a 10-day
3 period to comment on any revision which the Agency is
4 proposing to make to the permit in response to USEPA's
5 objection in accordance with Agency procedures.

6 d. Any USEPA objection under this subsection,
7 according to the Clean Air Act, will include a statement of
8 reasons for the objection and a description of the terms
9 and conditions that must be in the permit, in order to
10 adequately respond to the objections. Grounds for a USEPA
11 objection include the failure of the Agency to: (1) submit
12 the items and notices required under this subsection; (2)
13 submit any other information necessary to adequately
14 review the proposed CAAPP permit; or (3) process the permit
15 under subsection 8 of this Section except for minor permit
16 modifications.

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

21 f. If the permit has not yet been issued and USEPA
22 objects to the permit as a result of a petition, the Agency
23 shall not issue the permit until USEPA's objection has been
24 resolved. The Agency shall provide a 10-day comment period
25 in accordance with paragraph c of this subsection. A
26 petition does not, however, stay the effectiveness of a

1 permit or its requirements if the permit was issued after
2 expiration of the 45-day review period and prior to a USEPA
3 objection.

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

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 10. Final Agency Action.

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

25 i. The applicant has submitted a complete and

1 certified application for a permit, permit
2 modification, or permit renewal consistent with
3 subsections 5 and 14 of this Section, as applicable,
4 and applicable regulations.

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

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

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

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

22 vi. The Agency has provided a copy of each CAAPP
23 application, or summary thereof, pursuant to agreement
24 with USEPA and proposed CAAPP permit required under
25 subsection 9 of this Section to USEPA, and USEPA has
26 not objected to the issuance of the permit in

1 accordance with the Clean Air Act and 40 CFR Part 70.

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

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

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

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

21 For purposes of obtaining judicial review under
22 Sections 40.2 and 41 of this Act, the Agency shall
23 provide to USEPA and each applicant, and, upon request,
24 to affected States, any person who participated in the
25 public comment process, and any other person who could
26 obtain judicial review under Sections 40.2 and 41 of

1 this Act, a copy of each CAAPP permit or notification
2 of denial pertaining to that party.

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

7 11. General Permits.

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

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

15 c. CAAPP sources that would qualify for a general
16 permit must apply for coverage under the terms of the
17 general permit or must apply for a CAAPP permit consistent
18 with subsection 5 of this Section and applicable
19 regulations.

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

24 e. When granting a subsequent request by a qualifying
25 CAAPP source for coverage under the terms of a general

1 permit, the Agency shall not be required to repeat the
2 public notice and comment procedures. The granting of such
3 request shall not be considered a final permit action for
4 purposes of judicial review.

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

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

12 12. Operational Flexibility.

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

1 or operator of a CAAPP source and the Agency shall each
2 attach such notice to their copy of the relevant permit.

3 i. An owner or operator of a CAAPP source may make
4 Section 502 (b) (10) changes without a permit revision,
5 if the changes are not modifications under any
6 provision of Title I of the Clean Air Act and the
7 changes do not exceed the emissions allowable under the
8 permit (whether expressed therein as a rate of
9 emissions or in terms of total emissions).

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

16 B. The permit shield described in paragraph
17 7(j) of this Section shall not apply to any change
18 made pursuant to this subparagraph.

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

26 A. Under this subparagraph (a)(ii), the

1 written notification required above shall include
2 such information as may be required by the
3 provision in the applicable implementation plan
4 authorizing the emissions trade, including at a
5 minimum, when the proposed changes will occur, a
6 description of each such change, any change in
7 emissions, the permit requirements with which the
8 source will comply using the emissions trading
9 provisions of the applicable implementation plan,
10 and the pollutants emitted subject to the
11 emissions trade. The notice shall also refer to the
12 provisions in the applicable implementation plan
13 with which the source will comply and provide for
14 the emissions trade.

15 B. The permit shield described in paragraph
16 7(j) of this Section shall not apply to any change
17 made pursuant to this subparagraph (a) (ii).
18 Compliance with the permit requirements that the
19 source will meet using the emissions trade shall be
20 determined according to the requirements of the
21 applicable implementation plan authorizing the
22 emissions trade.

23 iii. If requested within a CAAPP application, the
24 Agency shall issue a CAAPP permit which contains terms
25 and conditions, including all terms required under
26 subsection 7 of this Section to determine compliance,

1 allowing for the trading of emissions increases and
2 decreases at the CAAPP source solely for the purpose of
3 complying with a federally-enforceable emissions cap
4 that is established in the permit independent of
5 otherwise applicable requirements. The owner or
6 operator of a CAAPP source shall include in its CAAPP
7 application proposed replicable procedures and permit
8 terms that ensure the emissions trades are
9 quantifiable and enforceable. The permit shall also
10 require compliance with all applicable requirements.

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

17 B. The permit shield described in paragraph
18 7(j) of this Section shall extend to terms and
19 conditions that allow such increases and decreases
20 in emissions.

21 b. An owner or operator of a CAAPP source may make
22 changes that are not addressed or prohibited by the permit,
23 other than those which are subject to any requirements
24 under Title IV of the Clean Air Act or are modifications
25 under any provisions of Title I of the Clean Air Act,
26 without a permit revision, in accordance with the following

1 requirements:

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

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

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

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

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

25 13. Administrative Permit Amendments.

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

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

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

14 i. Corrects typographical errors;

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

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

21 iv. Allows for a change in ownership or operational
22 control of a source where the Agency determines that no
23 other change in the permit is necessary, provided that
24 a written agreement containing a specific date for
25 transfer of permit responsibility, coverage, and
26 liability between the current and new permittees has

1 been submitted to the Agency;

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

8 vi. (Blank); or

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

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

19 e. Permit revisions and modifications, including
20 administrative amendments and automatic amendments
21 (pursuant to Sections 408(b) and 403(d) of the Clean Air
22 Act or regulations promulgated thereunder), for purposes
23 of the acid rain portion of the permit shall be governed by
24 the regulations promulgated under Title IV of the Clean Air
25 Act. Owners or operators of affected sources for acid
26 deposition shall have the flexibility to amend their

1 compliance plans as provided in the regulations
2 promulgated under Title IV of the Clean Air Act.

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

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

10 14. Permit Modifications.

11 a. Minor permit modification procedures.

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

15 A. Do not violate any applicable requirement;

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

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

23 D. Do not seek to establish or change a permit
24 term or condition for which there is no
25 corresponding underlying requirement and which

1 avoids an applicable requirement to which the
2 source would otherwise be subject. Such terms and
3 conditions include:

4 1. A federally enforceable emissions cap
5 assumed to avoid classification as a
6 modification under any provision of Title I of
7 the Clean Air Act; and

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

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

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

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

24 iii. An applicant requesting the use of minor
25 permit modification procedures shall meet the
26 requirements of subsection 5 of this Section and shall

1 include the following in its application:

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

5 B. The source's suggested draft permit;

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

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

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

22 v. The Agency may not issue a final permit
23 modification until after the 45-day review period for
24 USEPA or until USEPA has notified the Agency that USEPA
25 will not object to the issuance of the permit
26 modification, whichever comes first, although the

1 Agency can approve the permit modification prior to
2 that time. Within 90 days of the Agency's receipt of an
3 application under the minor permit modification
4 procedures or 15 days after the end of USEPA's 45-day
5 review period under subsection 9 of this Section,
6 whichever is later, the Agency shall:

7 A. Issue the permit modification as proposed;

8 B. Deny the permit modification application;

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

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

17 vi. Any CAAPP source may make the change proposed
18 in its minor permit modification application
19 immediately after it files such application. After the
20 CAAPP source makes the change allowed by the preceding
21 sentence, and until the Agency takes any of the actions
22 specified in subparagraphs (a) (v) (A) through (a) (v) (C)
23 of this subsection, the source must comply with both
24 the applicable requirements governing the change and
25 the proposed permit terms and conditions. During this
26 time period, the source need not comply with the

1 existing permit terms and conditions it seeks to
2 modify. If the source fails to comply with its proposed
3 permit terms and conditions during this time period,
4 the existing permit terms and conditions which it seeks
5 to modify may be enforced against it.

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

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

25 b. Group Processing of Minor Permit Modifications.

26 i. Where requested by an applicant within its

1 application, the Agency shall process groups of a
2 source's applications for certain modifications
3 eligible for minor permit modification processing in
4 accordance with the provisions of this paragraph (b).

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

8 A. Which meet the criteria for minor permit
9 modification procedures under subparagraph
10 14(a) (i) of this Section; and

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

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

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

24 B. The source's suggested draft permit.

25 C. Certification by a responsible official
26 consistent with paragraph 5(e) of this Section,

1 that the proposed modification meets the criteria
2 for use of group processing procedures and a
3 request that such procedures be used.

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

10 E. Certification, consistent with paragraph
11 5(e), that the source has notified USEPA of the
12 proposed modification. Such notification need only
13 contain a brief description of the requested
14 modification.

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

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

1 paragraph 8(d) of this Section to USEPA.

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

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

13 vii. The provisions of paragraph 7(j) of this
14 Section shall not apply to modifications eligible for
15 group processing.

16 c. Significant Permit Modifications.

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

22 ii. Every significant change in existing
23 monitoring permit terms or conditions and every
24 relaxation of reporting or recordkeeping requirements
25 shall be considered significant. A modification shall
26 also be considered significant if in the judgment of

1 the Agency action on an application for modification
2 would require decisions to be made on technically
3 complex issues. Nothing herein shall be construed to
4 preclude the permittee from making changes consistent
5 with this Section that would render existing permit
6 compliance terms and conditions irrelevant.

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

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

19 15. Reopenings for Cause by the Agency.

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

1 adopted by the Agency:

2 i. Additional requirements under the Clean Air Act
3 become applicable to a major CAAPP source for which 3
4 or more years remain on the original term of the
5 permit. Such a reopening shall be completed not later
6 than 18 months after the promulgation of the applicable
7 requirement. No such revision is required if the
8 effective date of the requirement is later than the
9 date on which the permit is due to expire.

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

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

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

24 b. In the event that the Agency determines that there
25 are grounds for revoking a CAAPP permit, for cause,
26 consistent with paragraph a of this subsection, it shall

1 file a petition before the Board setting forth the basis
2 for such revocation. In any such proceeding, the Agency
3 shall have the burden of establishing that the permit
4 should be revoked under the standards set forth in this Act
5 and the Clean Air Act. Any such proceeding shall be
6 conducted pursuant to the Board's procedures for
7 adjudicatory hearings and the Board shall render its
8 decision within 120 days of the filing of the petition. The
9 Agency shall take final action to revoke and reissue a
10 CAAPP permit consistent with the Board's order.

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

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

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

25 16. Reopenings for Cause by USEPA.

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

21 b. i. Prior to the Agency's submittal to USEPA of a
22 proposed determination to terminate or revoke and
23 reissue the permit, the Agency shall file a petition
24 before the Board setting forth USEPA's objection, the
25 permit record, the Agency's proposed determination,
26 and the justification for its proposed determination.

1 The Board shall conduct a hearing pursuant to the rules
2 prescribed by Section 32 of this Act, and the burden of
3 proof shall be on the Agency.

4 ii. After due consideration of the written and oral
5 statements, the testimony and arguments that shall be
6 submitted at hearing, the Board shall issue and enter
7 an interim order for the proposed determination, which
8 shall set forth all changes, if any, required in the
9 Agency's proposed determination. The interim order
10 shall comply with the requirements for final orders as
11 set forth in Section 33 of this Act. Issuance of an
12 interim order by the Board under this paragraph,
13 however, shall not affect the permit status and does
14 not constitute a final action for purposes of this Act
15 or the Administrative Review Law.

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

22 c. USEPA shall review the proposed determination to
23 terminate, modify, or revoke and reissue the permit within
24 90 days of receipt.

25 i. When USEPA reviews the proposed determination
26 to terminate or revoke and reissue and does not object,

1 the Board shall, within 7 days of receipt of USEPA's
2 final approval, enter the interim order as a final
3 order. The final order may be appealed as provided by
4 Title XI of this Act. The Agency shall take final
5 action in accordance with the Board's final order.

6 ii. When USEPA reviews such proposed determination
7 to terminate or revoke and reissue and objects, the
8 Agency shall submit USEPA's objection and the Agency's
9 comments and recommendation on the objection to the
10 Board and permittee. The Board shall review its interim
11 order in response to USEPA's objection and the Agency's
12 comments and recommendation and issue a final order in
13 accordance with Sections 32 and 33 of this Act. The
14 Agency shall, within 90 days after receipt of such
15 objection, respond to USEPA's objection in accordance
16 with the Board's final order.

17 iii. When USEPA reviews such proposed
18 determination to modify and objects, the Agency shall,
19 within 90 days after receipt of the objection, resolve
20 the objection and modify the permit in accordance with
21 USEPA's objection, based upon the record, the Clean Air
22 Act, regulations promulgated thereunder, this Act, and
23 regulations promulgated thereunder.

24 d. If the Agency fails to submit the proposed
25 determination pursuant to paragraph a of this subsection or
26 fails to resolve any USEPA objection pursuant to paragraph

1 c of this subsection, USEPA will terminate, modify, or
2 revoke and reissue the permit.

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

7 17. Title IV; Acid Rain Provisions.

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

23 b. A designated representative of an affected source
24 for acid deposition shall submit a timely and complete
25 Phase II acid rain permit application and compliance plan

1 to the Agency, not later than January 1, 1996, that meets
2 the requirements of Titles IV and V of the Clean Air Act
3 and regulations. The Agency shall act on the Phase II acid
4 rain permit application and compliance plan in accordance
5 with this Section and Title V of the Clean Air Act and
6 regulations promulgated thereunder, except as modified by
7 Title IV of the Clean Air Act and regulations promulgated
8 thereunder. The Agency shall issue the Phase II acid rain
9 permit to an affected source for acid deposition no later
10 than December 31, 1997, which shall become effective on
11 January 1, 2000, in accordance with this Section, except as
12 modified by Title IV and regulations promulgated
13 thereunder; provided that the designated representative of
14 the source submitted a timely and complete Phase II permit
15 application and compliance plan to the Agency that meets
16 the requirements of Title IV and V of the Clean Air Act and
17 regulations.

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

24 d. A designated representative of a new unit, as
25 defined in Section 402 of the Clean Air Act, shall submit a
26 timely and complete Phase II acid rain permit application

1 and compliance plan that meets the requirements of Titles
2 IV and V of the Clean Air Act and its regulations. The
3 Agency shall act on the new unit's Phase II acid rain
4 permit application and compliance plan in accordance with
5 this Section and Title V of the Clean Air Act and its
6 regulations, except as modified by Title IV of the Clean
7 Air Act and its regulations. The Agency shall reopen the
8 new unit's CAAPP permit for cause to incorporate the
9 approved Phase II acid rain permit in accordance with this
10 Section. The Phase II acid rain permit for the new unit
11 shall become effective no later than the date required
12 under Title IV of the Clean Air Act and its regulations.

13 e. A designated representative of an affected source
14 for acid deposition shall submit a timely and complete
15 Title IV NOx permit application to the Agency, not later
16 than January 1, 1998, that meets the requirements of Titles
17 IV and V of the Clean Air Act and its regulations. The
18 Agency shall reopen the Phase II acid rain permit for cause
19 and incorporate the approved NOx provisions into the Phase
20 II acid rain permit not later than January 1, 1999, in
21 accordance with this Section, except as modified by Title
22 IV of the Clean Air Act and regulations promulgated
23 thereunder. Such reopening shall not affect the term of the
24 Phase II acid rain permit.

25 f. The designated representative of the affected
26 source for acid deposition shall renew the initial CAAPP

1 permit and Phase II acid rain permit in accordance with
2 this Section and Title V of the Clean Air Act and
3 regulations promulgated thereunder, except as modified by
4 Title IV of the Clean Air Act and regulations promulgated
5 thereunder.

6 g. In the case of an affected source for acid
7 deposition for which a complete Phase II acid rain permit
8 application and compliance plan are timely received under
9 this subsection, the complete permit application and
10 compliance plan, including amendments thereto, shall be
11 binding on the owner, operator and designated
12 representative, all affected units for acid deposition at
13 the affected source, and any other unit, as defined in
14 Section 402 of the Clean Air Act, governed by the Phase II
15 acid rain permit application and shall be enforceable as an
16 acid rain permit for purposes of Titles IV and V of the
17 Clean Air Act, from the date of submission of the acid rain
18 permit application until a Phase II acid rain permit is
19 issued or denied by the Agency.

20 h. The Agency shall not include or implement any
21 measure which would interfere with or modify the
22 requirements of Title IV of the Clean Air Act or
23 regulations promulgated thereunder.

24 i. Nothing in this Section shall be construed as
25 affecting allowances or USEPA's decision regarding an
26 excess emissions offset plan, as set forth in Title IV of

1 the Clean Air Act or regulations promulgated thereunder.

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

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

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

14 j. To the extent that the federal regulations
15 promulgated under Title IV, including but not limited to 40
16 C.F.R. Part 72, as now or hereafter amended, are
17 inconsistent with the federal regulations promulgated
18 under Title V, the federal regulations promulgated under
19 Title IV shall take precedence.

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

23 l. It is unlawful for any owner or operator to violate
24 any terms or conditions of a Phase II acid rain permit
25 issued under this subsection, to operate any affected
26 source for acid deposition except in compliance with a

1 Phase II acid rain permit issued by the Agency under this
2 subsection, or to violate any other applicable
3 requirements.

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

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

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

19 18. Fee Provisions.

20 a. For each 12 month period after the date on which the
21 USEPA approves or conditionally approves the CAAPP, but in
22 no event prior to January 1, 1994, a source subject to this
23 Section or excluded under subsection 1.1 or paragraph 3(c)
24 of this Section, shall pay a fee as provided in this part
25 (a) of this subsection 18. However, a source that has been

1 excluded from the provisions of this Section under
2 subsection 1.1 or paragraph 3(c) of this Section because
3 the source emits less than 25 tons per year of any
4 combination of regulated air pollutants shall pay fees in
5 accordance with paragraph (1) of subsection (b) of Section
6 9.6.

7 i. The fee for a source allowed to emit less than
8 100 tons per year of any combination of regulated air
9 pollutants shall be \$1,800 per year.

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

15 A. The Agency shall assess an annual fee of
16 \$18.00 per ton for the allowable emissions of all
17 regulated air pollutants at that source during the
18 term of the permit. These fees shall be used by the
19 Agency and the Board to fund the activities
20 required by Title V of the Clean Air Act including
21 such activities as may be carried out by other
22 State or local agencies pursuant to paragraph (d)
23 of this subsection. The amount of such fee shall be
24 based on the information supplied by the applicant
25 in its complete CAAPP permit application or in the
26 CAAPP permit if the permit has been granted and

1 shall be determined by the amount of emissions that
2 the source is allowed to emit annually, provided
3 however, that no source shall be required to pay an
4 annual fee in excess of \$250,000. The Agency shall
5 provide as part of the permit application form
6 required under subsection 5 of this Section a
7 separate fee calculation form which will allow the
8 applicant to identify the allowable emissions and
9 calculate the fee for the term of the permit. In no
10 event shall the Agency raise the amount of
11 allowable emissions requested by the applicant
12 unless such increases are required to demonstrate
13 compliance with terms of a CAAPP permit.

14 Notwithstanding the above, any applicant may
15 seek a change in its permit which would result in
16 increases in allowable emissions due to an
17 increase in the hours of operation or production
18 rates of an emission unit or units and such a
19 change shall be consistent with the construction
20 permit requirements of the existing State permit
21 program, under Section 39(a) of this Act and
22 applicable provisions of this Section. Where a
23 construction permit is required, the Agency shall
24 expeditiously grant such construction permit and
25 shall, if necessary, modify the CAAPP permit based
26 on the same application.

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

13 b. (Blank).

14 c. (Blank).

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

26 e. The Agency shall have the authority to adopt

1 procedural rules, in accordance with the Illinois
2 Administrative Procedure Act, as the Agency deems
3 necessary to implement this subsection.

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

8 i. carbon monoxide;

9 ii. any Class I or II substance which is a
10 regulated air pollutant solely because it is listed
11 pursuant to Section 602 of the Clean Air Act; and

12 iii. any pollutant that is a regulated air
13 pollutant solely because it is subject to a standard or
14 regulation under Section 112(r) of the Clean Air Act
15 based on the emissions allowed in the permit effective
16 in that calendar year, at the time the applicable bill
17 is generated.

18 19. Air Toxics Provisions.

19 a. In the event that the USEPA fails to promulgate in a
20 timely manner a standard pursuant to Section 112(d) of the
21 Clean Air Act, the Agency shall have the authority to issue
22 permits, pursuant to Section 112(j) of the Clean Air Act
23 and regulations promulgated thereunder, which contain
24 emission limitations which are equivalent to the emission
25 limitations that would apply to a source if an emission

1 standard had been promulgated in a timely manner by USEPA
2 pursuant to Section 112(d). Provided, however, that the
3 owner or operator of a source shall have the opportunity to
4 submit to the Agency a proposed emission limitation which
5 it determines to be equivalent to the emission limitations
6 that would apply to such source if an emission standard had
7 been promulgated in a timely manner by USEPA. If the Agency
8 refuses to include the emission limitation proposed by the
9 owner or operator in a CAAPP permit, the owner or operator
10 may petition the Board to establish whether the emission
11 limitation proposal submitted by the owner or operator
12 provides for emission limitations which are equivalent to
13 the emission limitations that would apply to the source if
14 the emission standard had been promulgated by USEPA in a
15 timely manner. The Board shall determine whether the
16 emission limitation proposed by the owner or operator or an
17 alternative emission limitation proposed by the Agency
18 provides for the level of control required under Section
19 112 of the Clean Air Act, or shall otherwise establish an
20 appropriate emission limitation, pursuant to Section 112
21 of the Clean Air Act.

22 b. Any Board proceeding brought under paragraph (a) or
23 (e) of this subsection shall be conducted according to the
24 Board's procedures for adjudicatory hearings and the Board
25 shall render its decision within 120 days of the filing of
26 the petition. Any such decision shall be subject to review

1 pursuant to Section 41 of this Act. Where USEPA promulgates
2 an applicable emission standard prior to the issuance of
3 the CAAPP permit, the Agency shall include in the permit
4 the promulgated standard, provided that the source shall
5 have the compliance period provided under Section 112(i) of
6 the Clean Air Act. Where USEPA promulgates an applicable
7 standard subsequent to the issuance of the CAAPP permit,
8 the Agency shall revise such permit upon the next renewal
9 to reflect the promulgated standard, providing a
10 reasonable time for the applicable source to comply with
11 the standard, but no longer than 8 years after the date on
12 which the source is first required to comply with the
13 emissions limitation established under this subsection.

14 c. The Agency shall have the authority to implement and
15 enforce complete or partial emission standards promulgated
16 by USEPA pursuant to Section 112(d), and standards
17 promulgated by USEPA pursuant to Sections 112(f), 112(h),
18 112(m), and 112(n), and may accept delegation of authority
19 from USEPA to implement and enforce Section 112(l) and
20 requirements for the prevention and detection of
21 accidental releases pursuant to Section 112(r) of the Clean
22 Air Act.

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

25 e. The Agency has the authority to implement Section
26 112(g) of the Clean Air Act consistent with the Clean Air

1 Act and federal regulations promulgated thereunder. If the
2 Agency refuses to include the emission limitations
3 proposed in an application submitted by an owner or
4 operator for a case-by-case maximum achievable control
5 technology (MACT) determination, the owner or operator may
6 petition the Board to determine whether the emission
7 limitation proposed by the owner or operator or an
8 alternative emission limitation proposed by the Agency
9 provides for a level of control required by Section 112 of
10 the Clean Air Act, or to otherwise establish an appropriate
11 emission limitation under Section 112 of the Clean Air Act.

12 20. Small Business.

13 a. For purposes of this subsection:

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

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

25 "Small Business Stationary Source" means a stationary

1 source that:

2 1. is owned or operated by a person that employs
3 100 or fewer individuals;

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

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

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

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

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

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

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

22 e. There shall be appointed a Small Business Ombudsman
23 (hereinafter in this subsection referred to as
24 "Ombudsman") to monitor the Small Business Assistance
25 Program. The Ombudsman shall be a nonpartisan designated
26 official, with the ability to independently assess whether

1 the goals of the Program are being met.

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

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

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

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

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

17 3. The State Legislature shall select four members
18 who are owners or representatives of owners of small
19 business stationary sources. Both the majority and
20 minority leadership in both Houses of the Legislature
21 shall appoint one member of the panel.

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

25 j. The Panel shall select its own Chair by a majority
26 vote. The Chair may meet and consult with the Ombudsman and

1 the head of the Small Business Assistance Program in
2 planning the activities for the Panel.

3 21. Temporary Sources.

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

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

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

18 22. Solid Waste Incineration Units.

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

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

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

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

13 (Source: P.A. 93-32, eff. 7-1-03; 94-580, eff. 8-12-05.)