



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1701

Introduced 2/24/2005, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

415 ILCS 5/3.350	was 415 ILCS 5/3.58
415 ILCS 5/25b-3	from Ch. 111 1/2, par. 1025b-3
415 ILCS 5/25b-4	from Ch. 111 1/2, par. 1025b-4
415 ILCS 5/39.5	from Ch. 111 1/2, par. 1039.5
415 ILCS 5/42	from Ch. 111 1/2, par. 1042
415 ILCS 5/52.2 rep.	

Amends the Environmental Protection Act. Excludes closed loop heat pump wells using USP food grade propylene glycol and injection wells used to mitigate groundwater contamination from the definition of "potential route". Requires the Environmental Protection Agency to provide in a computer database an Illinois Toxic Chemical Inventory in cooperation with the U.S. Environmental Protection Agency based on toxic chemical release forms filed pursuant to Section 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986. Requires the Agency to publish an annual toxic chemical report before September 1 of each year (now, by April 1). For the purposes of the Clean Air Act Permit Program, in the definition of "major source" that is included in the subsection on applicability, makes a change in the list of stationary source categories for which fugitive emissions are to be considered. Provides that a compliance management system documented by a regulated entity as reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations may serve as a substitute for an environmental audit in connection with self-disclosure of non-compliance. Repeals a Section of the Act relating to environmental audit privileges. Effective Immediately.

LRB094 07707 RSP 37883 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning environmental protection.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.350, 25b-3, 25b-4, 39.5 and 42 as follows:

6 (415 ILCS 5/3.350) (was 415 ILCS 5/3.58)

7 Sec. 3.350. Potential route. "Potential route" means
8 abandoned and improperly plugged wells of all kinds, drainage
9 wells, all injection wells, including closed loop heat pump
10 wells, and any excavation for the discovery, development or
11 production of stone, sand or gravel. This term does not
12 include: (i) closed loop heat pump wells using USP food grade
13 propylene glycol and (ii) injection wells used to mitigate
14 groundwater contamination if expressly authorized by and
15 conducted in accordance with a corrective action plan or
16 remedial action plan approved by the Agency under this Act.

17 A new potential route is:

18 (1) a potential route which is not in existence or for
19 which construction has not commenced at its location as of
20 January 1, 1988, or

21 (2) a potential route which expands laterally beyond
22 the currently permitted boundary or, if the potential route
23 is not permitted, the boundary in existence as of January
24 1, 1988.

25 Construction shall be deemed commenced when all necessary
26 federal, State and local approvals have been obtained, and work
27 at the site has been initiated and proceeds in a reasonably
28 continuous manner to completion.

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

30 (415 ILCS 5/25b-3) (from Ch. 111 1/2, par. 1025b-3)

31 Sec. 25b-3. In cooperation with the United States

1 Environmental Protection Agency, the ~~The~~ Agency shall provide
2 ~~establish and maintain~~ in a computer data base an Illinois
3 Toxic Chemical Inventory. The Inventory shall be based on ~~the~~
4 ~~information submitted to the Agency on~~ the toxic chemical
5 release forms filed pursuant to Section 313 of the federal
6 Emergency Planning and Community Right-to-know Act of 1986 ~~this~~
7 ~~Title~~ and may include, to the extent practicable, any other
8 information on emissions, discharges, source reduction
9 activities, and recycling of toxic contaminants submitted to
10 the Agency pursuant to this Act. The Agency shall maintain the
11 data in the Inventory by individual facility and company name,
12 standard industrial classification, type of chemical, and
13 geographic location.

14 (Source: P.A. 87-1213.)

15 (415 ILCS 5/25b-4) (from Ch. 111 1/2, par. 1025b-4)

16 Sec. 25b-4. On or before September 1 of each year ~~January~~
17 ~~1, 1989, and by each April 1 thereafter,~~ the Agency shall
18 publish an annual toxic chemical report. Such report shall
19 summarize the information on releases of toxic chemicals into
20 the environment and the source reduction and recycling of toxic
21 chemicals contained in ~~the~~ toxic chemical release report forms
22 filed ~~with the Agency~~ pursuant to Section 313 of the federal
23 Emergency Planning and Community Right-to-know Act of 1986
24 ~~25b-2~~ and any other information contained in the Illinois Toxic
25 Chemical Inventory. Such report, at a minimum, shall contain
26 information on the types and quantities of toxic chemicals
27 discharged, emitted or disposed into the environment in
28 Illinois, the types and quantities of toxic chemicals recycled
29 or reduced at the source in Illinois, and a summary of such
30 data by county or region and type of business. The Agency shall
31 send copies of such annual report to the chief executive
32 officer of each county in the State, to local public health
33 departments, and to members of the General Assembly.

34 (Source: P.A. 87-1213.)

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

2 Sec. 39.5. Clean Air Act Permit Program.

3 1. Definitions.

4 For purposes of this Section:

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

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

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

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

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

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

20 "Applicable Clean Air Act requirement" means all of the
21 following as they apply to emissions units in a source
22 (including regulations that have been promulgated or approved
23 by USEPA pursuant to the Clean Air Act which directly impose
24 requirements upon a source and other such federal requirements
25 which have been adopted by the Board. These may include
26 requirements and regulations which have future effective
27 compliance dates. Requirements and regulations will be exempt
28 if USEPA determines that such requirements need not be
29 contained in a Title V permit):

30 (1) Any standard or other requirement provided for in
31 the applicable state implementation plan approved or
32 promulgated by USEPA under Title I of the Clean Air Act
33 that implement the relevant requirements of the Clean Air
34 Act, including any revisions to the state Implementation
35 Plan promulgated in 40 CFR Part 52, Subparts A and O and
36 other subparts applicable to Illinois. For purposes of this

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

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

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

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

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

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

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

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

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

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

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

36 (11) Any standard or other requirement of the

1 regulations promulgated to protect stratospheric ozone
2 under Title VI of the Clean Air Act, unless USEPA has
3 determined that such requirements need not be contained in
4 a Title V permit.

5 (12) Any national ambient air quality standard or
6 increment or visibility requirement under Part C of Title I
7 of the Clean Air Act, but only as it would apply to
8 temporary sources permitted pursuant to Section 504(e) of
9 the Clean Air Act.

10 "Applicable requirement" means all applicable Clean Air
11 Act requirements and any other standard, limitation, or other
12 requirement contained in this Act or regulations promulgated
13 under this Act as applicable to sources of air contaminants
14 (including requirements that have future effective compliance
15 dates).

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

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

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

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

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

28 "Designated representative" shall have the meaning given
29 to it in Section 402(26) of the Clean Air Act and the
30 regulations promulgated thereunder which states that the term
31 'designated representative' shall mean a responsible person or
32 official authorized by the owner or operator of a unit to
33 represent the owner or operator in all matters pertaining to
34 the holding, transfer, or disposition of allowances allocated
35 to a unit, and the submission of and compliance with permits,
36 permit applications, and compliance plans for the unit.

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

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

6 "Emission unit" means any part or activity of a stationary
7 source that emits or has the potential to emit any air
8 pollutant. This term is not meant to alter or affect the
9 definition of the term "unit" for purposes of Title IV of the
10 Clean Air Act.

11 "Federally enforceable" means enforceable by USEPA.

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

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

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

25 "Maximum achievable control technology" or "MACT" means
26 the maximum degree of reductions in emissions deemed achievable
27 under Section 112 of the Clean Air Act.

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

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

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

36 "Phase II" means the period of the national acid rain

1 program, established under Title IV of the Clean Air Act,
2 beginning January 1, 2000, and continuing thereafter.

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

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

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

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

26 "Regulated air pollutant" means the following:

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

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

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

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

36 (5) Any pollutant subject to a standard promulgated

1 under Section 112 or other requirements established under
2 Section 112 of the Clean Air Act, including Sections
3 112(g), (j) and (r).

4 (i) Any pollutant subject to requirements under
5 Section 112(j) of the Clean Air Act. Any pollutant
6 listed under Section 112(b) for which the subject
7 source would be major shall be considered to be
8 regulated 18 months after the date on which USEPA was
9 required to promulgate an applicable standard pursuant
10 to Section 112(e) of the Clean Air Act, if USEPA fails
11 to promulgate such standard.

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

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

18 "Responsible official" means one of the following:

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

32 (2) For a partnership or sole proprietorship: a general
33 partner or the proprietor, respectively, or in the case of
34 a partnership in which all of the partners are
35 corporations, a duly authorized representative of the
36 partnership if the representative is responsible for the

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

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

15 (4) For affected sources for acid deposition:

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

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

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

30 "Solid waste incineration unit" means a distinct operating
31 unit of any facility which combusts any solid waste material
32 from commercial or industrial establishments or the general
33 public (including single and multiple residences, hotels, and
34 motels). The term does not include incinerators or other units
35 required to have a permit under Section 3005 of the Solid Waste
36 Disposal Act. The term also does not include (A) materials

1 recovery facilities (including primary or secondary smelters)
2 which combust waste for the primary purpose of recovering
3 metals, (B) qualifying small power production facilities, as
4 defined in Section 3(17) (C) of the Federal Power Act (16 U.S.C.
5 769(17) (C)), or qualifying cogeneration facilities, as defined
6 in Section 3(18) (B) of the Federal Power Act (16 U.S.C.
7 796(18) (B)), which burn homogeneous waste (such as units which
8 burn tires or used oil, but not including refuse-derived fuel)
9 for the production of electric energy or in the case of
10 qualifying cogeneration facilities which burn homogeneous
11 waste for the production of electric energy and steam or forms
12 of useful energy (such as heat) which are used for industrial,
13 commercial, heating or cooling purposes, or (C) air curtain
14 incinerators provided that such incinerators only burn wood
15 wastes, yard waste and clean lumber and that such air curtain
16 incinerators comply with opacity limitations to be established
17 by the USEPA by rule.

18 "Source" means any stationary source (or any group of
19 stationary sources) that are located on one or more contiguous
20 or adjacent properties that are under common control of the
21 same person (or persons under common control) and that belongs
22 to a single major industrial grouping. For the purposes of
23 defining "source," a stationary source or group of stationary
24 sources shall be considered part of a single major industrial
25 grouping if all of the pollutant emitting activities at such
26 source or group of sources located on contiguous or adjacent
27 properties and under common control belong to the same Major
28 Group (i.e., all have the same two-digit code) as described in
29 the Standard Industrial Classification Manual, 1987, or such
30 pollutant emitting activities at a stationary source (or group
31 of stationary sources) located on contiguous or adjacent
32 properties and under common control constitute a support
33 facility. The determination as to whether any group of
34 stationary sources are located on contiguous or adjacent
35 properties, and/or are under common control, and/or whether the
36 pollutant emitting activities at such group of stationary

1 sources constitute a support facility shall be made on a case
2 by case basis.

3 "Stationary source" means any building, structure,
4 facility, or installation that emits or may emit any regulated
5 air pollutant or any pollutant listed under Section 112(b) of
6 the Clean Air Act.

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

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

19 1.1. Exclusion From the CAAPP.

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

32 b. An owner or operator of a source seeking exclusion
33 from the CAAPP pursuant to paragraph (a) of this subsection
34 must submit a permit application consistent with the
35 existing State permit program which specifically requests

1 such exclusion through the imposition of such federally
2 enforceable conditions.

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

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

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

20 2. Applicability.

21 a. Sources subject to this Section shall include:

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

24 ii. Any source subject to a standard or other
25 requirements promulgated under Section 111 (New Source
26 Performance Standards) or Section 112 (Hazardous Air
27 Pollutants) of the Clean Air Act, except that a source
28 is not required to obtain a permit solely because it is
29 subject to regulations or requirements under Section
30 112(r) of the Clean Air Act.

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

33 iv. Any other source subject to this Section under
34 the Clean Air Act or regulations promulgated
35 thereunder, or applicable Board regulations.

1 b. Sources exempted from this Section shall include:

2 i. All sources listed in paragraph (a) of this
3 subsection which are not major sources, affected
4 sources for acid deposition or solid waste
5 incineration units required to obtain a permit
6 pursuant to Section 129(e) of the Clean Air Act, until
7 the source is required to obtain a CAAPP permit
8 pursuant to the Clean Air Act or regulations
9 promulgated thereunder.

10 ii. Nonmajor sources subject to a standard or other
11 requirements subsequently promulgated by USEPA under
12 Section 111 or 112 of the Clean Air Act which are
13 determined by USEPA to be exempt at the time a new
14 standard is promulgated.

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

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

25 v. Any other source categories exempted by USEPA
26 regulations pursuant to Section 502(a) of the Clean Air
27 Act.

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

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

32 A. For pollutants other than radionuclides,
33 any stationary source or group of stationary
34 sources located within a contiguous area and under
35 common control that emits or has the potential to
36 emit, in the aggregate, 10 tons per year (tpy) or

1 more of any hazardous air pollutant which has been
2 listed pursuant to Section 112(b) of the Clean Air
3 Act, 25 tpy or more of any combination of such
4 hazardous air pollutants, or such lesser quantity
5 as USEPA may establish by rule. Notwithstanding
6 the preceding sentence, emissions from any oil or
7 gas exploration or production well (with its
8 associated equipment) and emissions from any
9 pipeline compressor or pump station shall not be
10 aggregated with emissions from other similar
11 units, whether or not such units are in a
12 contiguous area or under common control, to
13 determine whether such stations are major sources.

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

16 ii. A major stationary source of air pollutants, as
17 defined in Section 302 of the Clean Air Act, that
18 directly emits or has the potential to emit, 100 tpy or
19 more of any air pollutant (including any major source
20 of fugitive emissions of any such pollutant, as
21 determined by rule by USEPA). For purposes of this
22 subsection, "fugitive emissions" means those emissions
23 which could not reasonably pass through a stack,
24 chimney, vent, or other functionally-equivalent
25 opening. The fugitive emissions of a stationary source
26 shall not be considered in determining whether it is a
27 major stationary source for the purposes of Section
28 302(j) of the Clean Air Act, unless the source belongs
29 to one of the following categories of stationary
30 source:

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

32 B. Kraft pulp mills.

33 C. Portland cement plants.

34 D. Primary zinc smelters.

35 E. Iron and steel mills.

36 F. Primary aluminum ore reduction plants.

- 1 G. Primary copper smelters.
- 2 H. Municipal incinerators capable of charging
3 more than 250 tons of refuse per day.
- 4 I. Hydrofluoric, sulfuric, or nitric acid
5 plants.
- 6 J. Petroleum refineries.
- 7 K. Lime plants.
- 8 L. Phosphate rock processing plants.
- 9 M. Coke oven batteries.
- 10 N. Sulfur recovery plants.
- 11 O. Carbon black plants (furnace process).
- 12 P. Primary lead smelters.
- 13 Q. Fuel conversion plants.
- 14 R. Sintering plants.
- 15 S. Secondary metal production plants.
- 16 T. Chemical process plants.
- 17 U. Fossil-fuel boilers (or combination
18 thereof) totaling more than 250 million British
19 thermal units per hour heat input.
- 20 V. Petroleum storage and transfer units with a
21 total storage capacity exceeding 300,000 barrels.
- 22 W. Taconite ore processing plants.
- 23 X. Glass fiber processing plants.
- 24 Y. Charcoal production plants.
- 25 Z. Fossil fuel-fired steam electric plants of
26 more than 250 million British thermal units per
27 hour heat input.
- 28 AA. All other stationary source categories, which as of August 7, 1980 are being regulated by a
29 standard promulgated under Section 111 or 112 of
30 the Clean Air Act, ~~but only with respect to those~~
31 ~~air pollutants that have been regulated for that~~
32 ~~category.~~
- 33
- 34 BB. Any other stationary source category
35 designated by USEPA by rule.
- 36 iii. A major stationary source as defined in part D

1 of Title I of the Clean Air Act including:

2 A. For ozone nonattainment areas, sources with
3 the potential to emit 100 tons or more per year of
4 volatile organic compounds or oxides of nitrogen
5 in areas classified as "marginal" or "moderate",
6 50 tons or more per year in areas classified as
7 "serious", 25 tons or more per year in areas
8 classified as "severe", and 10 tons or more per
9 year in areas classified as "extreme"; except that
10 the references in this clause to 100, 50, 25, and
11 10 tons per year of nitrogen oxides shall not apply
12 with respect to any source for which USEPA has made
13 a finding, under Section 182(f)(1) or (2) of the
14 Clean Air Act, that requirements otherwise
15 applicable to such source under Section 182(f) of
16 the Clean Air Act do not apply. Such sources shall
17 remain subject to the major source criteria of
18 paragraph 2(c)(ii) of this subsection.

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

23 C. For carbon monoxide nonattainment areas (1)
24 that are classified as "serious", and (2) in which
25 stationary sources contribute significantly to
26 carbon monoxide levels as determined under rules
27 issued by USEPA, sources with the potential to emit
28 50 tons or more per year of carbon monoxide.

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

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

35 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.

27 4. Transition.

28 a. An owner or operator of a CAAPP source shall not be
29 required to renew an existing State operating permit for
30 any emission unit at such CAAPP source once a CAAPP
31 application timely submitted prior to expiration of the
32 State operating permit has been deemed complete. For
33 purposes other than permit renewal, the obligation upon the
34 owner or operator of a CAAPP source to obtain a State
35 operating permit is not removed upon submittal of the

1 complete CAAPP permit application. An owner or operator of
2 a CAAPP source seeking to make a modification to a source
3 prior to the issuance of its CAAPP permit shall be required
4 to obtain a construction and/or operating permit as
5 required for such modification in accordance with the State
6 permit program under Section 39(a) of this Act, as amended,
7 and regulations promulgated thereunder. The application
8 for such construction and/or operating permit shall be
9 considered an amendment to the CAAPP application submitted
10 for such source.

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

16 c. An owner or operator of a CAAPP source shall submit
17 its initial CAAPP application to the Agency no later than
18 12 months after the effective date of the CAAPP. The Agency
19 may request submittal of initial CAAPP applications during
20 this 12 month period according to a schedule set forth
21 within Agency procedures, however, in no event shall the
22 Agency require such submittal earlier than 3 months after
23 such effective date of the CAAPP. An owner or operator may
24 voluntarily submit its initial CAAPP application prior to
25 the date required within this paragraph or applicable
26 procedures, if any, subsequent to the date the Agency
27 submits the CAAPP to USEPA for approval.

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

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

34 f. The Agency shall provide owners or operators of
35 CAAPP sources with at least three months advance notice of
36 the date on which their applications are required to be

1 submitted. In determining which sources shall be subject to
2 early submittal, the Agency shall include among its
3 considerations the complexity of the permit application,
4 and the burden that such early submittal will have on the
5 source.

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

8 h. 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 5. Applications and Completeness.

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

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

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

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

35 e. Each submitted CAAPP application shall be certified

1 for truth, accuracy, and completeness by a responsible
2 official in accordance with applicable regulations.

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

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

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

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

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

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

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

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

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

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

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

1 been submitted.

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

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

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

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

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

26 u. An owner or operator of a CAAPP source which seeks
27 exclusion from the CAAPP through the imposition of
28 federally enforceable conditions, pursuant to paragraph
29 3(c) of this Section, must request such exclusion within a
30 CAAPP application submitted consistent with this
31 subsection on or after the date that the CAAPP application
32 for the source is due. Prior to such date, but in no case
33 later than 9 months after the effective date of the CAAPP,
34 such owner or operator may request the imposition of
35 federally enforceable conditions pursuant to paragraph
36 1.1(b) of this Section.

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

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

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

31 y. The Agency shall have the authority to adopt
32 procedural rules, in accordance with the Illinois
33 Administrative Procedure Act, as the Agency deems
34 necessary to implement this subsection.

35 6. Prohibitions.

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

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

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

25 7. Permit Content.

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

33 b. The Agency shall include among such conditions
34 applicable monitoring, reporting, record keeping and
35 compliance certification requirements, as authorized by

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

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

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

20 i. Incorporate and identify all applicable
21 emissions monitoring and analysis procedures or test
22 methods required under the Clean Air Act, regulations
23 promulgated thereunder, this Act, and applicable Board
24 regulations, including any procedures and methods
25 promulgated by USEPA pursuant to Section 504(b) or
26 Section 114 (a) (3) of the Clean Air Act.

27 ii. Where the applicable requirement does not
28 require periodic testing or instrumental or
29 noninstrumental monitoring (which may consist of
30 recordkeeping designed to serve as monitoring),
31 require periodic monitoring sufficient to yield
32 reliable data from the relevant time period that is
33 representative of the source's compliance with the
34 permit, as reported pursuant to paragraph (f) of this
35 subsection. The Agency may determine that
36 recordkeeping requirements are sufficient to meet the

1 requirements of this subparagraph.

2 iii. As necessary, specify requirements concerning
3 the use, maintenance, and when appropriate,
4 installation of monitoring equipment or methods.

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

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

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

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

14 C. The company or entity that performed the
15 analyses.

16 D. The analytical techniques or methods used.

17 E. The results of such analyses.

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

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

28 f. To meet the requirements of this subsection with
29 respect to reporting, the permit shall incorporate and
30 identify all applicable reporting requirements and require
31 the following:

32 i. Submittal of reports of any required monitoring
33 every 6 months. More frequent submittals may be
34 requested by the Agency if such submittals are
35 necessary to assure compliance with this Act or
36 regulations promulgated by the Board thereunder. All

1 instances of deviations from permit requirements must
2 be clearly identified in such reports. All required
3 reports must be certified by a responsible official
4 consistent with subsection 5 of this Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 C. The applicable requirements of the acid
25 rain program consistent with Section 408(a) of the
26 Clean Air Act.

27 D. The ability of USEPA to obtain information
28 from a source pursuant to Section 114
29 (inspections, monitoring, and entry) of the Clean
30 Air Act.

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

1 evidence:

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

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

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

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

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

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

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

36 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
27 in emissions.

28 m. The Agency shall specifically designate as not being
29 federally enforceable under the Clean Air Act any terms and
30 conditions included in the permit that are not specifically
31 required under the Clean Air Act or federal regulations
32 promulgated thereunder. Terms or conditions so designated
33 shall be subject to all applicable state requirements,
34 except the requirements of subsection 7 (other than this
35 paragraph, paragraph q of subsection 7, subsections 8
36 through 11, and subsections 13 through 16 of this Section.

1 The Agency shall, however, include such terms and
2 conditions in the CAAPP permit issued to the source.

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

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

10 i. Duty to comply. The permittee must comply with
11 all terms and conditions of the CAAPP permit. Any
12 permit noncompliance constitutes a violation of the
13 Clean Air Act and the Act, and is grounds for any or
14 all of the following: enforcement action; permit
15 termination, revocation and reissuance, or
16 modification; or denial of a permit renewal
17 application.

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

24 iii. Permit actions. The permit may be modified,
25 revoked, reopened, and reissued, or terminated for
26 cause in accordance with the applicable subsections of
27 Section 39.5 of this Act. The filing of a request by
28 the permittee for a permit modification, revocation
29 and reissuance, or termination, or of a notification of
30 planned changes or anticipated noncompliance does not
31 stay any permit condition.

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

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

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

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

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

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

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

33 ii. Inspection and entry requirements that
34 necessitate that, upon presentation of credentials and
35 other documents as may be required by law and in
36 accordance with constitutional limitations, the

1 permittee shall allow the Agency, or an authorized
2 representative to perform the following:

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

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

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

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

16 1. As authorized by the Clean Air Act, at
17 reasonable times, for the purposes of assuring
18 compliance with the CAAPP permit or applicable
19 requirements; or

20 2. As otherwise authorized by this Act.

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

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

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

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

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

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

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

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

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

21 2. The compliance status.

22 3. Whether compliance was continuous or
23 intermittent.

24 4. The method(s) used for determining the
25 compliance status of the source, both
26 currently and over the reporting period
27 consistent with subsection 7 of Section 39.5 of
28 the Act.

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

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

35 F. Other provisions as the Agency may require.

36 q. If the owner or operator of CAAPP source can

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

11 8. Public Notice; Affected State Review.

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

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

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

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

1 are not based on applicable requirements or the
2 requirements of this Section.

3 e. The Agency shall make available to the public any
4 CAAPP permit application, compliance plan (including the
5 schedule of compliance), CAAPP permit, and emissions or
6 compliance monitoring report. If an owner or operator of a
7 CAAPP source is required to submit information entitled to
8 protection from disclosure under Section 7(a) or Section
9 7.1 of this Act, the owner or operator shall submit such
10 information separately. The requirements of Section 7(a)
11 or Section 7.1 of this Act shall apply to such information,
12 which shall not be included in a CAAPP permit unless
13 required by law. The contents of a CAAPP permit shall not
14 be entitled to protection under Section 7(a) or Section 7.1
15 of this Act.

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

20 9. USEPA Notice and Objection.

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

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

1 information.

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

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

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

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

1 objection.

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

15 h. 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 10. Final Agency Action.

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

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

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

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

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

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

10 vi. The Agency has provided a copy of each CAAPP
11 application, or summary thereof, pursuant to agreement
12 with USEPA and proposed CAAPP permit required under
13 subsection 9 of this Section to USEPA, and USEPA has
14 not objected to the issuance of the permit in
15 accordance with the Clean Air Act and 40 CFR Part 70.

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

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

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

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

35 For purposes of obtaining judicial review under
36 Sections 40.2 and 41 of this Act, the Agency shall

1 provide to USEPA and each applicant, and, upon request,
2 to affected States, any person who participated in the
3 public comment process, and any other person who could
4 obtain judicial review under Sections 40.2 and 41 of
5 this Act, a copy of each CAAPP permit or notification
6 of denial pertaining to that party.

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

11 11. General Permits.

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

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

19 c. CAAPP sources that would qualify for a general
20 permit must apply for coverage under the terms of the
21 general permit or must apply for a CAAPP permit consistent
22 with subsection 5 of this Section and applicable
23 regulations.

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

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

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

1 CAAPP permit covers emission units at the source.

2 g. 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 12. Operational Flexibility.

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

22 i. An owner or operator of a CAAPP source may make
23 Section 502 (b) (10) changes without a permit revision,
24 if the changes are not modifications under any
25 provision of Title I of the Clean Air Act and the
26 changes do not exceed the emissions allowable under the
27 permit (whether expressed therein as a rate of
28 emissions or in terms of total emissions).

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

35 B. The permit shield described in paragraph

1 7(j) of this Section shall not apply to any change
2 made pursuant to this subparagraph.

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

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

25 B. The permit shield described in paragraph
26 7(j) of this Section shall not apply to any change
27 made pursuant to this subparagraph (a) (ii).
28 Compliance with the permit requirements that the
29 source will meet using the emissions trade shall be
30 determined according to the requirements of the
31 applicable implementation plan authorizing the
32 emissions trade.

33 iii. If requested within a CAAPP application, the
34 Agency shall issue a CAAPP permit which contains terms
35 and conditions, including all terms required under
36 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
27 requirements:

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

31 (ii) Sources must provide contemporaneous written
32 notice to the Agency and USEPA of each such change,
33 except for changes that qualify as insignificant under
34 provisions adopted by the Agency or the Board. Such
35 written notice shall describe each such change,
36 including the date, any change in emissions,

1 pollutants emitted, and any applicable requirement
2 that would apply as a result of the change;

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

5 (iv) The permittee shall keep a record describing
6 changes made at the source that result in emissions of
7 a regulated air pollutant subject to an applicable
8 Clean Air Act requirement, but not otherwise regulated
9 under the permit, and the emissions resulting from
10 those changes.

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

15 13. Administrative Permit Amendments.

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

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

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

29 i. Corrects typographical errors;

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

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

1 iv. Allows for a change in ownership or operational
2 control of a source where the Agency determines that no
3 other change in the permit is necessary, provided that
4 a written agreement containing a specific date for
5 transfer of permit responsibility, coverage, and
6 liability between the current and new permittees has
7 been submitted to the Agency;

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

14 vi. (Blank); or

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

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

25 e. Permit revisions and modifications, including
26 administrative amendments and automatic amendments
27 (pursuant to Sections 408(b) and 403(d) of the Clean Air
28 Act or regulations promulgated thereunder), for purposes
29 of the acid rain portion of the permit shall be governed by
30 the regulations promulgated under Title IV of the Clean Air
31 Act. Owners or operators of affected sources for acid
32 deposition shall have the flexibility to amend their
33 compliance plans as provided in the regulations
34 promulgated under Title IV of the Clean Air Act.

35 f. The CAAPP source may implement the changes addressed
36 in the request for an administrative permit amendment

1 immediately upon submittal of the request.

2 g. 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 14. Permit Modifications.

7 a. Minor permit modification procedures.

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

11 A. Do not violate any applicable requirement;

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

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

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

25 1. A federally enforceable emissions cap
26 assumed to avoid classification as a
27 modification under any provision of Title I of
28 the Clean Air Act; and

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

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

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

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

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

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

17 B. The source's suggested draft permit;

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

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

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

34 v. The Agency may not issue a final permit
35 modification until after the 45-day review period for
36 USEPA or until USEPA has notified the Agency that USEPA

1 will not object to the issuance of the permit
2 modification, whichever comes first, although the
3 Agency can approve the permit modification prior to
4 that time. Within 90 days of the Agency's receipt of an
5 application under the minor permit modification
6 procedures or 15 days after the end of USEPA's 45-day
7 review period under subsection 9 of this Section,
8 whichever is later, the Agency shall:

9 A. Issue the permit modification as proposed;

10 B. Deny the permit modification application;

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

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

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

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

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

17 b. Group Processing of Minor Permit Modifications.

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

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

26 A. Which meet the criteria for minor permit
27 modification procedures under subparagraph
28 14(a)(i) of this Section; and

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

35 iii. An applicant requesting the use of group
36 processing procedures shall meet the requirements of

1 subsection 5 of this Section and shall include the
2 following in its application:

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

6 B. The source's suggested draft permit.

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

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

18 E. Certification, consistent with paragraph
19 5(e), that the source has notified USEPA of the
20 proposed modification. Such notification need only
21 contain a brief description of the requested
22 modification.

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

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

36 v. The provisions of subparagraph (a) (v) of this

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

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

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

14 c. Significant Permit Modifications.

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

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

31 iii. Significant permit modifications must meet
32 all the requirements of this Section, including those
33 for applications (including completeness review),
34 public participation, review by affected States, and
35 review by USEPA applicable to initial permit issuance
36 and permit renewal. The Agency shall take final action

1 on significant permit modifications within 9 months
2 after receipt of a complete application.

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 15. Reopenings for Cause by the Agency.

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

15 i. Additional requirements under the Clean Air Act
16 become applicable to a major CAAPP source for which 3
17 or more years remain on the original term of the
18 permit. Such a reopening shall be completed not later
19 than 18 months after the promulgation of the applicable
20 requirement. No such revision is required if the
21 effective date of the requirement is later than the
22 date on which the permit is due to expire.

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

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

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

1 the applicable requirements.

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

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

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

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

29 16. Reopenings for Cause by USEPA.

30 a. When USEPA finds that cause exists to terminate,
31 modify, or revoke and reissue a CAAPP permit pursuant to
32 subsection 15 of this Section, and thereafter notifies the
33 Agency and the permittee of such finding in writing, the
34 Agency shall forward to USEPA and the permittee a proposed
35 determination of termination, modification, or revocation

1 and reissuance as appropriate, in accordance with
2 paragraph b of this subsection. The Agency's proposed
3 determination shall be in accordance with the record, the
4 Clean Air Act, regulations promulgated thereunder, this
5 Act and regulations promulgated thereunder. Such proposed
6 determination shall not affect the permit or constitute a
7 final permit action for purposes of this Act or the
8 Administrative Review Law. The Agency shall forward to
9 USEPA such proposed determination within 90 days after
10 receipt of the notification from USEPA. If additional time
11 is necessary to submit the proposed determination, the
12 Agency shall request a 90-day extension from USEPA and
13 shall submit the proposed determination within 180 days of
14 receipt of notification from USEPA.

15 b. i. Prior to the Agency's submittal to USEPA of a
16 proposed determination to terminate or revoke and
17 reissue the permit, the Agency shall file a petition
18 before the Board setting forth USEPA's objection, the
19 permit record, the Agency's proposed determination,
20 and the justification for its proposed determination.
21 The Board shall conduct a hearing pursuant to the rules
22 prescribed by Section 32 of this Act, and the burden of
23 proof shall be on the Agency.

24 ii. After due consideration of the written and oral
25 statements, the testimony and arguments that shall be
26 submitted at hearing, the Board shall issue and enter
27 an interim order for the proposed determination, which
28 shall set forth all changes, if any, required in the
29 Agency's proposed determination. The interim order
30 shall comply with the requirements for final orders as
31 set forth in Section 33 of this Act. Issuance of an
32 interim order by the Board under this paragraph,
33 however, shall not affect the permit status and does
34 not constitute a final action for purposes of this Act
35 or the Administrative Review Law.

36 iii. The Board shall cause a copy of its interim

1 order to be served upon all parties to the proceeding
2 as well as upon USEPA. The Agency shall submit the
3 proposed determination to USEPA in accordance with the
4 Board's Interim Order within 180 days after receipt of
5 the notification from USEPA.

6 c. USEPA shall review the proposed determination to
7 terminate, modify, or revoke and reissue the permit within
8 90 days of receipt.

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

16 ii. When USEPA reviews such proposed determination
17 to terminate or revoke and reissue and objects, the
18 Agency shall submit USEPA's objection and the Agency's
19 comments and recommendation on the objection to the
20 Board and permittee. The Board shall review its interim
21 order in response to USEPA's objection and the Agency's
22 comments and recommendation and issue a final order in
23 accordance with Sections 32 and 33 of this Act. The
24 Agency shall, within 90 days after receipt of such
25 objection, respond to USEPA's objection in accordance
26 with the Board's final order.

27 iii. When USEPA reviews such proposed
28 determination to modify and objects, the Agency shall,
29 within 90 days after receipt of the objection, resolve
30 the objection and modify the permit in accordance with
31 USEPA's objection, based upon the record, the Clean Air
32 Act, regulations promulgated thereunder, this Act, and
33 regulations promulgated thereunder.

34 d. If the Agency fails to submit the proposed
35 determination pursuant to paragraph a of this subsection or
36 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
26 to the Agency, not later than January 1, 1996, that meets
27 the requirements of Titles IV and V of the Clean Air Act
28 and regulations. The Agency shall act on the Phase II acid
29 rain permit application and compliance plan in accordance
30 with this Section and Title V of the Clean Air Act and
31 regulations promulgated thereunder, except as modified by
32 Title IV of the Clean Air Act and regulations promulgated
33 thereunder. The Agency shall issue the Phase II acid rain
34 permit to an affected source for acid deposition no later
35 than December 31, 1997, which shall become effective on

1 January 1, 2000, in accordance with this Section, except as
2 modified by Title IV and regulations promulgated
3 thereunder; provided that the designated representative of
4 the source submitted a timely and complete Phase II permit
5 application and compliance plan to the Agency that meets
6 the requirements of Title IV and V of the Clean Air Act and
7 regulations.

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

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

29 e. A designated representative of an affected source
30 for acid deposition shall submit a timely and complete
31 Title IV NOx permit application to the Agency, not later
32 than January 1, 1998, that meets the requirements of Titles
33 IV and V of the Clean Air Act and its regulations. The
34 Agency shall reopen the Phase II acid rain permit for cause
35 and incorporate the approved NOx provisions into the Phase
36 II acid rain permit not later than January 1, 1999, in

1 accordance with this Section, except as modified by Title
2 IV of the Clean Air Act and regulations promulgated
3 thereunder. Such reopening shall not affect the term of the
4 Phase II acid rain permit.

5 f. The designated representative of the affected
6 source for acid deposition shall renew the initial CAAPP
7 permit and Phase II acid rain permit in accordance with
8 this Section and Title V of the Clean Air Act and
9 regulations promulgated thereunder, except as modified by
10 Title IV of the Clean Air Act and regulations promulgated
11 thereunder.

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

26 h. The Agency shall not include or implement any
27 measure which would interfere with or modify the
28 requirements of Title IV of the Clean Air Act or
29 regulations promulgated thereunder.

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

34 i. No permit revision shall be required for
35 increases in emissions that are authorized by
36 allowances acquired pursuant to the acid rain program,

1 provided that such increases do not require a permit
2 revision under any other applicable requirement.

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

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

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

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

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

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

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

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

5 18. Fee Provisions.

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

18 i. The fee for a source allowed to emit less than
19 100 tons per year of any combination of regulated air
20 pollutants shall be \$1,800 per year.

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

26 A. The Agency shall assess an annual fee of
27 \$18.00 per ton for the allowable emissions of all
28 regulated air pollutants at that source during the
29 term of the permit. These fees shall be used by the
30 Agency and the Board to fund the activities
31 required by Title V of the Clean Air Act including
32 such activities as may be carried out by other
33 State or local agencies pursuant to paragraph (d)
34 of this subsection. The amount of such fee shall be
35 based on the information supplied by the applicant

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

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

29 B. The applicant or permittee may pay the fee
30 annually or semiannually for those fees greater
31 than \$5,000. However, any applicant paying a fee
32 equal to or greater than \$100,000 shall pay the
33 full amount on July 1, for the subsequent fiscal
34 year, or pay 50% of the fee on July 1 and the
35 remaining 50% by the next January 1. The Agency may
36 change any annual billing date upon reasonable

1 notice, but shall prorate the new bill so that the
2 permittee or applicant does not pay more than its
3 required fees for the fee period for which payment
4 is made.

5 b. (Blank).

6 c. (Blank).

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

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

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

26 i. carbon monoxide;

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

30 iii. any pollutant that is a regulated air
31 pollutant solely because it is subject to a standard or
32 regulation under Section 112(r) of the Clean Air Act
33 based on the emissions allowed in the permit effective
34 in that calendar year, at the time the applicable bill
35 is generated.

1 19. Air Toxics Provisions.

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

30 b. Any Board proceeding brought under paragraph (a) or
31 (e) of this subsection shall be conducted according to the
32 Board's procedures for adjudicatory hearings and the Board
33 shall render its decision within 120 days of the filing of
34 the petition. Any such decision shall be subject to review
35 pursuant to Section 41 of this Act. Where USEPA promulgates
36 an applicable emission standard prior to the issuance of

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

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

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

23 e. The Agency has the authority to implement Section
24 112(g) of the Clean Air Act consistent with the Clean Air
25 Act and federal regulations promulgated thereunder. If the
26 Agency refuses to include the emission limitations
27 proposed in an application submitted by an owner or
28 operator for a case-by-case maximum achievable control
29 technology (MACT) determination, the owner or operator may
30 petition the Board to determine whether the emission
31 limitation proposed by the owner or operator or an
32 alternative emission limitation proposed by the Agency
33 provides for a level of control required by Section 112 of
34 the Clean Air Act, or to otherwise establish an appropriate
35 emission limitation under Section 112 of the Clean Air Act.

1 20. Small Business.

2 a. For purposes of this subsection:

3 "Program" is the Small Business Stationary Source
4 Technical and Environmental Compliance Assistance Program
5 created within this State pursuant to Section 507 of the
6 Clean Air Act and guidance promulgated thereunder, to
7 provide technical assistance and compliance information to
8 small business stationary sources;

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

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

16 1. is owned or operated by a person that employs
17 100 or fewer individuals;

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

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

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

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

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

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

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

36 e. There shall be appointed a Small Business Ombudsman

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

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

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

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

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

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

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

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

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

33 21. Temporary Sources.

34 a. The Agency may issue a single permit authorizing
35 emissions from similar operations by the same source owner

1 or operator at multiple temporary locations, except for
2 sources which are affected sources for acid deposition
3 under Title IV of the Clean Air Act.

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

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

13 22. Solid Waste Incineration Units.

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

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

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

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

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

33 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

34 Sec. 42. Civil penalties.

1 (a) Except as provided in this Section, any person that
2 violates any provision of this Act or any regulation adopted by
3 the Board, or any permit or term or condition thereof, or that
4 violates any order of the Board pursuant to this Act, shall be
5 liable for a civil penalty of not to exceed \$50,000 for the
6 violation and an additional civil penalty of not to exceed
7 \$10,000 for each day during which the violation continues; such
8 penalties may, upon order of the Board or a court of competent
9 jurisdiction, be made payable to the Environmental Protection
10 Trust Fund, to be used in accordance with the provisions of the
11 Environmental Protection Trust Fund Act.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this Section:

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

19 (2) Any person that violates Section 12(g) of this Act
20 or any UIC permit or term or condition thereof, or any
21 filing requirement, regulation or order relating to the
22 State UIC program for all wells, except Class II wells as
23 defined by the Board under this Act, shall be liable to a
24 civil penalty not to exceed \$2,500 per day of violation;
25 provided, however, that any person who commits such
26 violations relating to the State UIC program for Class II
27 wells, as defined by the Board under this Act, shall be
28 liable to a civil penalty of not to exceed \$10,000 for the
29 violation and an additional civil penalty of not to exceed
30 \$1,000 for each day during which the violation continues.

31 (3) Any person that violates Sections 21(f), 21(g),
32 21(h) or 21(i) of this Act, or any RCRA permit or term or
33 condition thereof, or any filing requirement, regulation
34 or order relating to the State RCRA program, shall be
35 liable to a civil penalty of not to exceed \$25,000 per day
36 of violation.

1 (4) In an administrative citation action under Section
2 31.1 of this Act, any person found to have violated any
3 provision of subsection (o) of Section 21 of this Act shall
4 pay a civil penalty of \$500 for each violation of each such
5 provision, plus any hearing costs incurred by the Board and
6 the Agency. Such penalties shall be made payable to the
7 Environmental Protection Trust Fund, to be used in
8 accordance with the provisions of the Environmental
9 Protection Trust Fund Act; except that if a unit of local
10 government issued the administrative citation, 50% of the
11 civil penalty shall be payable to the unit of local
12 government.

13 (4-5) In an administrative citation action under
14 Section 31.1 of this Act, any person found to have violated
15 any provision of subsection (p) of Section 21 of this Act
16 shall pay a civil penalty of \$1,500 for each violation of
17 each such provision, plus any hearing costs incurred by the
18 Board and the Agency, except that the civil penalty amount
19 shall be \$3,000 for each violation of any provision of
20 subsection (p) of Section 21 that is the person's second or
21 subsequent adjudication violation of that provision. The
22 penalties shall be deposited into the Environmental
23 Protection Trust Fund, to be used in accordance with the
24 provisions of the Environmental Protection Trust Fund Act;
25 except that if a unit of local government issued the
26 administrative citation, 50% of the civil penalty shall be
27 payable to the unit of local government.

28 (5) Any person who violates subsection 6 of Section
29 39.5 of this Act or any CAAPP permit, or term or condition
30 thereof, or any fee or filing requirement, or any duty to
31 allow or carry out inspection, entry or monitoring
32 activities, or any regulation or order relating to the
33 CAAPP shall be liable for a civil penalty not to exceed
34 \$10,000 per day of violation.

35 (b.5) In lieu of the penalties set forth in subsections (a)
36 and (b) of this Section, any person who fails to file, in a

1 timely manner, toxic chemical release forms with the Agency
2 pursuant to Section 25b-2 of this Act shall be liable for a
3 civil penalty of \$100 per day for each day the forms are late,
4 not to exceed a maximum total penalty of \$6,000. This daily
5 penalty shall begin accruing on the thirty-first day after the
6 date that the person receives the warning notice issued by the
7 Agency pursuant to Section 25b-6 of this Act; and the penalty
8 shall be paid to the Agency. The daily accrual of penalties
9 shall cease as of January 1 of the following year. All
10 penalties collected by the Agency pursuant to this subsection
11 shall be deposited into the Environmental Protection Permit and
12 Inspection Fund.

13 (c) Any person that violates this Act, any rule or
14 regulation adopted under this Act, any permit or term or
15 condition of a permit, or any Board order and causes the death
16 of fish or aquatic life shall, in addition to the other
17 penalties provided by this Act, be liable to pay to the State
18 an additional sum for the reasonable value of the fish or
19 aquatic life destroyed. Any money so recovered shall be placed
20 in the Wildlife and Fish Fund in the State Treasury.

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

23 (e) The State's Attorney of the county in which the
24 violation occurred, or the Attorney General, may, at the
25 request of the Agency or on his own motion, institute a civil
26 action for an injunction, prohibitory or mandatory, to restrain
27 violations of this Act, any rule or regulation adopted under
28 this Act, any permit or term or condition of a permit, or any
29 Board order, or to require such other actions as may be
30 necessary to address violations of this Act, any rule or
31 regulation adopted under this Act, any permit or term or
32 condition of a permit, or any Board order.

33 (f) The State's Attorney of the county in which the
34 violation occurred, or the Attorney General, shall bring such
35 actions in the name of the people of the State of Illinois.
36 Without limiting any other authority which may exist for the

1 awarding of attorney's fees and costs, the Board or a court of
2 competent jurisdiction may award costs and reasonable
3 attorney's fees, including the reasonable costs of expert
4 witnesses and consultants, to the State's Attorney or the
5 Attorney General in a case where he has prevailed against a
6 person who has committed a wilful, knowing or repeated
7 violation of this Act, any rule or regulation adopted under
8 this Act, any permit or term or condition of a permit, or any
9 Board order.

10 Any funds collected under this subsection (f) in which the
11 Attorney General has prevailed shall be deposited in the
12 Hazardous Waste Fund created in Section 22.2 of this Act. Any
13 funds collected under this subsection (f) in which a State's
14 Attorney has prevailed shall be retained by the county in which
15 he serves.

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

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

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

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

35 (3) any economic benefits accrued by the respondent
36 because of delay in compliance with requirements, in which

1 case the economic benefits shall be determined by the
2 lowest cost alternative for achieving compliance;

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

7 (5) the number, proximity in time, and gravity of
8 previously adjudicated violations of this Act by the
9 respondent;

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

13 (7) whether the respondent has agreed to undertake a
14 "supplemental environmental project," which means an
15 environmentally beneficial project that a respondent
16 agrees to undertake in settlement of an enforcement action
17 brought under this Act, but which the respondent is not
18 otherwise legally required to perform.

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

29 (i) A person who voluntarily self-discloses non-compliance
30 to the Agency, of which the Agency had been unaware, is
31 entitled to a 100% reduction in the portion of the penalty that
32 is not based on the economic benefit of non-compliance if the
33 person can establish the following:

34 (1) that the non-compliance was discovered through an
35 environmental audit or a compliance management system
36 documented by the regulated entity as reflecting the

1 regulated entity's due diligence in preventing, detecting,
2 and correcting violations, ~~as defined in Section 52.2 of~~
3 ~~this Act, and the person waives the environmental audit~~
4 ~~privileges as provided in that Section with respect to that~~
5 ~~non-compliance;~~

6 (2) that the non-compliance was disclosed in writing
7 within 30 days of the date on which the person discovered
8 it;

9 (3) that the non-compliance was discovered and
10 disclosed prior to:

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

13 (ii) notice of a citizen suit;

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

17 (iv) the reporting of the non-compliance by an
18 employee of the person without that person's
19 knowledge; or

20 (v) imminent discovery of the non-compliance by
21 the Agency;

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

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

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

30 (7) that the non-compliance did not result in serious
31 actual harm or present an imminent and substantial
32 endangerment to human health or the environment or violate
33 the specific terms of any judicial or administrative order
34 or consent agreement;

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

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

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

10 (Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04;
11 93-831, eff. 7-28-04.)

12 (415 ILCS 5/52.2 rep.)

13 Section 10. The Environmental Protection Act is amended by
14 repealing Section 52.2.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.