BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)
MIDWEST GENERATION, LCC	)
WAUKEGAN GENERATING STATION	)
	) ORDER RESPONDING TO PETITIONER'S
Petition number V-2004-5	) REQUEST THAT THE ADMINISTRATOR
CAAPP No. 95090047	) OBJECT TO ISSUANCE OF A STATE
Proposed by the Illinois	) OPERATING PERMIT
Environmental Protection Agency	)
	)

ORDER PARTIALLY DENYING AND PARTIALLY GRANTING
PETITION FOR OBJECTION TO PERMIT

On October 10, 2003, pursuant to its authority under the Illinois Clean Air Act Permitting Program ("CAAPP"), the Illinois Environmental Protection Act, 415 ILCS 5/39.5, title V of the Clean Air Act ("Act"), 42 U.S.C. §§ 7661-7661f, and U.S. EPA's implementing regulations in 40 C.F.R. part 70 ("part 70"), the Illinois Environmental Protection Agency ("IEPA") published a proposed title V operating permit for Midwest Generation, LLC, Waukegan Generating Station ("Waukegan permit"). The Waukegan Generating Station operates three coal-fired boilers with a nominal capacity of 805 megawatts, an electrostatic precipitator and low nitrogen oxide burners. Other equipment at the facility includes four turbines, coal handling and processing units, and fly ash processing units.

On January 29, 2004, the United States Environmental Protection Agency ("U.S. EPA") received a petition from the Lake County Conservation Alliance ("Petitioner") that U.S. EPA object to issuance of the Waukegan permit, pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d).

Petitioner alleges that the Waukegan permit (1) is legally inadequate because it does not impose an enforceable schedule to remedy non-compliance; (2) inappropriately provides for a permit shield that allows excess emissions during startup and malfunction, contrary to U.S. EPA policy; (3) fails to include applicable requirements; (4) fails to comply with the public notice requirements of the Act; (5) contains an inadequate statement of basis; (6) contains conditions that are not practically enforceable; (7) lacks adequate recordkeeping and recording requirements; (8) lacks origin and authority for each permit condition; (9) lacks adequate monitoring; and (10) is legally inadequate because it lacks the requirement to submit a compliance certification containing other such facts as IEPA may require to determine compliance. Petition at 2-7.

U.S. EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which requires the Administrator to issue an objection if the Petitioner demonstrates to the Administrator that the permit is not in compliance with the applicable requirements of the Act. *See also* 40 C.F.R. § 70.8(d); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002).

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

STATUTORY AND REGULATORY FRAMEWORK

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

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

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

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

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

BACKGROUND

Midwest Generation, LLC submitted an application for a title V permit to IEPA on September 7, 1995 for the Waukegan Generating Station ("Waukegan Generation," "Waukegan plant" or "Waukegan facility"). IEPA issued a draft CAAPP permit on July 3, 2003 and a proposed CAAPP permit on October 10, 2003. During the public comment period, IEPA received comments on the draft permit, including comments from the Petitioner. On December 8, 2004, IEPA issued a "draft revised proposed permit" for the Waukegan Generation facility. The permit was issued in draft for a 10-day public comment period on July 19, 2005 and re-proposed to U.S. EPA on August 15, 2005. IEPA has discussed issues with U.S. EPA and has attempted to address them in the re- proposed permit; however, U.S. EPA is reviewing and responding to the Petitioner's issues based only on the October 10, 2003 proposed Waukegan permit.

IEPA had notified the public that January 23, 2004 was the deadline, under the statutory time frame in section 505(b)(2) of the Act, to file a petition requesting that U.S. EPA object to the issuance of the final Waukegan permit. Petitioner submitted to U.S. EPA its request, dated January 22, 2004, to object to the issuance of the Waukegan permit. Accordingly, U.S. EPA finds that Petitioner timely filed this petition.

ISSUES RAISED BY THE PETITIONER

As noted previously, Petitioner generally alleges that the permit does not meet the requirements of the Act in several categories: the permit (1) is legally inadequate because it does not impose an enforceable schedule to remedy non-compliance; (2) inappropriately provides for a permit shield that allows excess emissions during startup and malfunction, contrary to U.S. EPA policy; (3) fails to include applicable requirements; (4) fails to comply with the public notice requirements of the Act; (5) contains an inadequate statement of basis; (6) contains conditions that are not practically enforceable; (7) lacks adequate recordkeeping and recording requirements; (8) lacks origin and authority for each permit condition; (9) lacks adequate monitoring; and (10) is legally inadequate because it lacks the requirement to submit a compliance certification containing other such facts as IEPA may require to determine compliance. Petitioner incorporates by

reference as the basis for categories 6, 7, and 8 "Comments on Application No. 9509004," its original comment letter on the draft Waukegan permit ("Comments"). *See* Petition at 1, 4, and 5.

I. Compliance Schedule

Petitioner alleges that the proposed title V permit does not comply with the Act because it does not contain a compliance schedule to bring the Waukegan plant into compliance with opacity standards. In its Comments, which it incorporated by reference and attached to the petition, Petitioner provided certain documents that it claims show a history of non-compliance because of the numerous opacity exceedances. Comments at 5. Petitioner states that its review of the opacity exceedance reports submitted by Midwest Generation revealed that the plant had exceeded opacity limits hundreds of times in the 18 months prior to issuance of the draft permit. Petition at 2.

In determining whether an objection is warranted for alleged flaws in the procedures leading up to permit issuance, such as Petitioner's claims that IEPA improperly ignored the comments Petitioner submitted, U.S. EPA considers whether alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content. In Petitioner's view, the deficiency that resulted here is the lack of a compliance schedule.

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

The Petitioner brought to IEPA's notice in its Comments the issues raised in the petition and submitted supporting documentation during the public comment period on the draft permit. IEPA, however, did not respond to the Petitioner's comments regarding the necessity for a compliance schedule for opacity exceedances. It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments. *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public."). Accordingly, IEPA has an obligation to respond to significant public comments.[1]

[1] *See* U.S. EPA's order *In the Matter of Consolidated Edison Company, Hudson Avenue Generating Station*, Petition II-2002-10, at 8 (September 30, 2003), available on the Internet at http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions.

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

II. Permit Shield

Petitioner alleges that a permit shield is not available for noncompliance that occurred prior to or continues after the submission of an application. Petition at 2. Petitioner specifically is concerned that the permit shield created by section 8.1 of the permit could preclude an enforcement action for alleged opacity and new source review violations at the Waukegan facility. Comments at 6 and 21.

Section 8.1 of the Waukegan permit states:

> This permit shield provides that compliance with the conditions of this permit shall be deemed compliance with applicable requirements which were applicable as of the date the proposed permit for this source was issued, provided that either the applicable requirements are specifically identified within this permit, or the Illinois EPA … has determined that other requirements specifically identified are not applicable to this source and this determination is included in this permit.

The language of 8.1 accurately reflects the language of 40 C.F.R. § 70.6(f), which makes clear that the permit shield extends only to requirements which are included specifically in a title V permit, either as an applicable requirement or in a nonapplicability determination. Furthermore, a permit shield cannot preclude enforcement for violations of a standard unless the permit contains a specific determination that the source is not subject to the standard. Because the Waukegan permit does not include a nonapplicability determination for either NSR or opacity requirements, Petitioner has not demonstrated that section 8.1 could preclude an appropriate enforcement action for alleged violations of those requirements. Therefore we deny the petition on this issue.

III. State Operating Permit Conditions

Petitioner alleges that IEPA failed to include in the Waukegan permit as applicable requirements permit limits established in pre-existing state operating permits. Petitioner asserts that federally enforceable conditions from permits issued pursuant to requirements approved into the SIP generally must be included in a title V permit, as they are applicable requirements under 40 C.F.R. § 70.2. Petitioner specifically points out that provisions found in Waukegan's pre-existing permits # 73030831, #75030155 and #73030829 concerning boiler load, ESP malfunction, quarterly coal reports, additional stack test requirements, burning of fuels other than coal and associated testing requirements, and prohibiting burning of boiler waste during startup or shutdown were left out of the title V permit without explanation. Petition at 2-3.

Petitioner is correct that federally enforceable conditions from permits issued pursuant to programs approved into the Illinois SIP generally must be included in title V permits. However, the permitting authority may streamline title V permit conditions, so that one title V condition will ensure compliance with two or more underlying applicable requirements.[2] Furthermore, construction and operating permits issued in the past may contain requirements that are obsolete or that no longer apply to the facility (e.g., terms regulating construction activity during the building or modification of the source where construction is long completed). In this situation, IEPA may delete inapplicable or obsolete permit conditions from a construction or operating permit in accordance with the procedural and substantive requirements of either title I or the part 70 permit issuance process. U.S. EPA's position on transferring terms and conditions from title I permits to the source's title V permit is stated in a May 20, 1999 letter from John Seitz, U.S. EPA, to Robert Hodanbosi, STAPPA/ALAPCO.[3] Finally, if a state operating permit was not issued pursuant to a federally enforceable state operating permit program (FESOP) approved into the SIP, then the conditions of that state permit need not be included in the title V permit (unless they are otherwise applicable requirements).

U.S. EPA grants the petition on this issue. IEPA must review its records to determine whether these missing operating permit conditions are applicable requirements (within the meaning of 40 C.F.R. § 70.2) for the Waukegan facility. If they are, IEPA must include the terms and conditions of the operating permits in the title V permit, or explain in the statement of basis how it has streamlined them into other requirements in Waukegan's title V permit. However, if IEPA demonstrates that the operating permit conditions are no longer applicable to Waukegan, IEPA must explain in the statement of basis why each of the conditions in the state operating permits no longer applies to the source, and provide the public with notice and an opportunity to comment on any proposed changes to the federally enforceable terms of the pre-existing permits. Finally, if IEPA determines that the state operating permits for the Waukegan facility are not federally enforceable, it must explain in the statement of basis the reasons for its conclusion that the permits were not issued pursuant to the FESOP program approved into the SIP at 57 Fed. Reg. 59928.

IV. Public Participation

Petitioner alleges that IEPA failed to provide adequate public notice, as required under section 503(e) of the Act and 40 C.F.R. § 70.7(h)(2), to indicate that it intended to change the

[2] For a discussion of issues related to streamlining permit conditions and deleting inapplicable or obsolete permit conditions, see generally Memorandum from Lydia Wegman to Air Division Directors, "White Paper for Streamlined Development of Part 70 Permit Applications," July 10, 1995.

[3] In this letter, EPA states all provisions contained in an EPA approved SIP and all terms and conditions in permits issued under SIP approved programs are federally enforceable. All such terms and conditions are also federally enforceable "applicable requirements" that must be incorporated into the federal side of a title V permit.

terms of a permit issued under a SIP-approved program. Petitioner further notes that the lack of proper notice and the lack of a discussion of omitted existing permit requirements severely hampered the public's ability to understand the scope of IEPA's actions. Petition at 3.

The public notice that IEPA provides for all CAAPP permits, and which it published for the Waukegan CAAPP permit, states "CAAPP permits may contain new and revised conditions established under permit programs for new and modified emission units, pursuant to Title I of the federal Clean Air Act, thereby making them combined Title V and Title I permits." We agree with Petitioner that this language does not does not provide information on whether the permit action includes modifications to title I permit terms.

40 C. F.R. § 70.7(h) (2) provides that the notice required for all title V actions must identify, among other things, "the activity or activities involved in the permit action." In February 2000, U.S. EPA and IEPA, to ensure proper implementation of this provision, signed an agreement[4] that describes the framework which IEPA committed to use when it exercises its discretion to issue combined permits under both title I and title V. In compliance with 40 C.F.R. § 70.7(h), the agreement requires that "the public notice shall state that both a Title V and Title I action is occurring. A Project Summary or other technical support document will accompany the Title I/Title V permit at public notice.... The issuance, renewal or revision of terms and conditions in combined Title I/Title V permits must satisfy the substantive and procedural requirements of both Title I and Title V…." The public notice for the Waukegan title V permit merely states that "CAAPP permits" generally may include new or revised title I conditions but does not indicate clearly whether IEPA made any title I changes in this permit action.[5] In reviewing a petition to object to a title V permit because of an alleged failure of the permitting authority to meet all procedural requirements in issuing the permit, U.S. EPA considers whether the alleged failure resulted in, or may have resulted in, a deficiency in the content of the permit. In this instance, improper notice may have compromised the public's ability to review and comment on the permit such that it may have resulted in one or more deficiencies in the permit and the notice did not meet the requirements of 40 C.F.R. § 70.7(h)(2) and the agreement made in 2000.

The petition is granted on this issue. When IEPA re-notices this permit, the notice must clearly state that the permitting action includes action on title I terms if it has established, modified, streamlined or deleted any title I terms in the permit action, and the statement of basis must discuss the bases for any changes to title I permit terms.

V. Statement of Basis

[4] The agreement can be found at http://www.epa.gov/region5/air/permits/oper/t1t5mou.pdf

[5] If the state determines that the terms from the previously issued operating permits discussed in section III, above, are no longer applicable to the Waukegan facility, the deletion of these conditions would constitute one type of change that IEPA must address in the statement of basis, pursuant to 40 C.F.R. § 70.7(h)(2) and the agreement between U.S. EPA and IEPA.

Petitioner alleges that the poor quality of this project summary impairs the ability of the public to understand what applicable requirements the facility is subject to, and what periodic monitoring decisions IEPA had made. According to Petitoner, the summary contains little legal or factual discussion and does not include enough information to allow meaningful review as to whether the permit complies with all requirements. Petition at 3-4.

40 C.F.R. § 70.7(a)(5) states that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." The statement of basis is not part of the permit itself. It is a separate document which must be made available to U.S. EPA and to interested persons.[6] IEPA intends to use the project summary and the permit to satisfy the requirement for a statement of basis.

A statement of basis must contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It must highlight elements that U.S. EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B). Thus, it must include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit.[7] *See*, *e.g*., In Re Port Hudson Operation Georgia Pacific, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) ("Georgia Pacific"); In Re Doe Run Company Buick Mill and Mine, Petition No. VII-1999-001, at pages 24-25 (July 31, 2002) ("Doe Run").

U.S. EPA's regulations state that the permitting authority must provide U.S. EPA with a statement of basis. 40 C.F.R. § 70.7(a)(5). The failure of a permitting authority to meet this procedural requirement, however, does not necessarily demonstrate that the title V permit is substantively flawed. In reviewing a petition to object to a title V permit because of an alleged

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[6] Unlike permits, statements of basis are not enforceable, do not set limits and do not create obligations.

[7] EPA has provided guidance on the content of an adequate statement of basis in a letter dated December 20, 2001, from Region V to the State of Ohio and in a Notice of Deficiency ("NOD") issued to the State of Texas. <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf> (Region V letter to Ohio); 67 Fed. Reg. 732 (January 7, 2002) (EPA NOD issued to Texas). These documents describe the following five key elements of a statement of basis: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. Id. at 735. In addition, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. The Texas NOD and the Region V letter provide generalized recommendations for developing an adequate statement of basis rather than "hard and fast" rules on what to include in any given statement of basis. Taken as a whole, these recommendations provide a good road map as to what should be included in a statement of basis considering, for example, the technical complexity of the permit, the history of the facility, and any new provisions, such as periodic monitoring conditions, that the permitting authority has drafted in conjunction with issuing the title V permit.

failure of the permitting authority to meet all procedural requirements in issuing the permit, U.S. EPA considers whether the permitting authority's alleged failure resulted in, or may have resulted in, a deficiency in the content of the permit. Thus, where the record as a whole supports the terms and conditions of the permit, flaws in the statement of basis generally will not result in an objection. See e.g., Doe Run at 24-25. In contrast, where flaws in the statement of basis resulted in, or may have resulted in, deficiencies in the title V permit, U.S. EPA will object to the issuance of the permit. See e.g., Ft. James at 8; Georgia Pacific at 37-40.

In this case, as discussed below, the permitting authority's failure to adequately explain its permitting decisions in the statement of basis or elsewhere in the permit record is such a serious flaw that the adequacy of the permit itself is in question. By reopening the permit and renoticing it with a statement of basis that describes its permitting decisions, the permitting authority is ensuring compliance with the fundamental title V procedural requirements of adequate public notice and comment required by sections 502(b)(6) and 503(e) of the Act and 40 C.F.R. § 70.7(h), as well as ensuring that the rationale for terms such as the selected monitoring method, or lack of monitoring, is clearly explained and documented in the permit record. See 40 C.F.R. §§ 70.7(a)(5) and 70.8(c); Ft. James at 8.

In responding to the Petition, we reviewed the proposed Waukegan Permit and all supporting documentation. Although IEPA provided some explanation in the permit itself of the factual and legal basis for certain terms and conditions of the permit, this documentation did not set forth the basis or rationale for many other terms and conditions. Among other things, IEPA's record for the permit does not adequately support: (1) prompt reporting decisions under section 70.6(a)(3)(iii)(B); (2) exclusion of certain previous state operating permit terms and conditions; (3) recordkeeping decisions and periodic monitoring decisions under section 70.6(a)(3)(i)(B); (4) streamlining analyses; and (5) nonapplicability determinations, including a discussion of permit shields.–

By failing to include appropriate discussion in the permit or other supporting documentation, IEPA has failed to provide an adequate explanation or rationale for many significant elements of the permit. Therefore, I find that the Petitioner's claim in regard to this issue is well founded, and, by this order, I am requiring IEPA to include in the permit record a statement of the legal and factual basis for the issues identified above, as well as for other decisions that IEPA made in drafting the Waukegan permit. IEPA must reopen the Waukegan permit and make available to the public an adequate statement of basis that provides the public and U.S. EPA an opportunity to comment on the title V permit and its terms and conditions as to the issues identified above.

VI. Practical Enforceability

A petitioner must identify in its petition the objections to the permit that were raised with reasonable specificity during the public comment period. Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), provides that a petition requesting the Administrator to object to a title V permit must

identify all such objections, and that the Administrator must object to the permit if the petitioner demonstrates that the permit is not in compliance with the requirements of the Act.

Petitioner asserts in its petition that the Waukegan permit does not assure compliance with all applicable requirements because permit conditions are not enforceable as a practical matter. Petitioner notes that, throughout its comments, it pointed out sections of the Waukegan permit that are not practically enforceable, and alleges that IEPA did not respond to those comments. Petition at 4. Rather than specifying in the petition the sections of the permit that it alleges are not enforceable as a practical matter, however, Petitioner incorporated its comments into the petition by reference.

Petitioner did not include in its comments on the Waukegan permit a section specifically addressing permit terms that allegedly are not enforceable as a practical matter. Instead, in a section headed "Specific comments on permit conditions," Petitioner lists numerous comments and questions on various sections of the draft permit. *See* Petitioner's Comments at 15 - 21. In many instances, Petitioner's allegations are not clear or specific. However, where Petitioner's comments identify with reasonable specificity which terms and conditions of the permit Petitioner alleges are not practically enforceable, we are responding to those issues in this section of the petition response.

A. Condition 7.1.3 (b)

Petitioner alleges that the term "reasonable efforts" in condition 7.1.3(b) is not practically enforceable. Comments at 16.

The startup provision in Section 7.1.3(b) of the Waukegan permit states that the permittee is allowed to operate the coal fired boiler in violation of specified applicable standards during startup because the permittee "has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups."

The Illinois SIP provision at 35 IAC § 201.262 provides that a permitting authority shall not authorize a permittee to operate in violation of emission limits and standards during startups unless the permittee has affirmatively demonstrated that it has made all reasonable efforts to, among others, minimize excess emissions. The phrase "reasonable efforts" in section 7.1.3(b) is taken directly from 35 IAC § 201.262, which is part of the federally approved Illinois SIP. U.S. EPA could not properly object to including in a title V permit, a permit term that mirrors the language of federally approved SIP rules. Such provisions are "applicable requirements," as that term is defined in 40 C.F.R. § 70.2. Therefore, the petition is denied on this issue.

B. Conditions 7.1.3(b)(ii)(A) and (C)

Petitioner alleges that the statements "operational conditions prior to initiating startup of the boiler" in 7.1.3(b)(ii)(A) and "operating parameters" in 7.1.3(b)(ii)(C) are not practically enforceable. Comments at 16.

The startup provision in section 7.1.3(b)(ii) of the Waukegan permit states that the permittee must follow manufacturer's written instructions or other written instructions during startup. Sections 7.1.3(b)(ii)(A)-(D) define the minimum elements of those instructions. The sections of concern to the petitioner are 7.1.3(b)(ii)(A) and (C) which require "review of the operational condition of an affected boiler prior to initiating startup of the boiler" and "review of the operating parameters of an affected boiler during each startup" respectively. The permit fails to explain or define the terms "operational condition" and "operating parameters." The permit is not clear about what operational conditions and operating parameters the permittee must be monitoring at a minimum and, therefore, the term is practically unenforceable. U.S. EPA grants the petition on the issue. IEPA must remove "operational condition" and "operating parameters" from 7.1.3(b)(ii) or define the terms "operational condition" and "operating parameters."

C. The terms "as soon as practicable", "unusual circumstances" and "reasonable steps"

Petitioner alleges that section 7.1.3(c)(ii) is not practically enforceable because it uses the undefined terms "as soon as practicable," "unusual circumstances," and "reasonable steps." Comments at 16.

The Illinois SIP at 35 IAC § 201.262 allows the Permittee to continue operation of the affected operation in violation of the applicable requirements in the event of a malfunction or breakdown if the Permittee has submitted "proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment."

Section 7.1.3(c)(ii) states:

> "Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable reduce boiler load, repair the affected boiler, or remove the affected boiler from service so that excess emissions cease. Unless the Permittee obtains an extension from the Illinois EPA, this shall be accomplished within 24 hours or noon of the Illinois EPA's next business day, whichever is later.… The Illinois EPA, Air Compliance Section, in Springfield, may grant a longer extension if the Permittee demonstrates that extraordinary circumstances exist and the affected boiler can not reasonably be repaired or removed from service within the allowed time, it will repair the affected boiler or remove the boiler from service as soon as practicable; and it is taking all reasonable steps to minimize excess emissions, based on the actions that have been and will be taken."

The language in the permit condition, which does not reflect the exact wording of the underlying applicable requirement, attempts to specify the circumstances and the kind of "proof"

that the facility must provide for IEPA to grant an extension of time for the facility to continue to operate the malfunctioning unit in violation of the applicable emission limits.

1. As soon as practicable

Petitioner notes that in section 7.1.3(c)(ii), quoted above, the phrase "as soon as practicable" is not practically enforceable. In the context of the entire permit term, U.S. EPA believes that "as soon as practicable" has a specified time limit. Specifically, section 7.1.3(c)(ii) of the permit requires the permittee to cease excess emissions "within 24 hours or noon of the Illinois EPA's next business day, whichever is later." Since the permit provides 24 hours or noon of the Illinois EPA's next business day, unless an extension has been obtained, as the maximum time permitted to reduce boiler load, repair the affected boiler, or remove the affected boiler from service so that excess emissions cease, "as soon as practicable" has boundaries which makes the term practically enforceable. Therefore, the petition is denied on this issue.

2. Unusual circumstances

Petitioner notes that in section 7.1.3(c)(ii), quoted above, the phrase "unusual circumstance" is not practically enforceable. The phrase "unusual circumstance" is not in section 7.1.3(c)(ii) of the proposed permit. Therefore, the petition is denied on the issue of inconsistent use of language in the permit condition.

3. Reasonable steps

Petitioner asserts that in section 7.1.3(c)(ii), quoted above, the phrase "reasonable steps" is not practically enforceable. The phrase "reasonable steps" in the permit term appears to be based on the requirement to use "all reasonable efforts" found in the SIP at IAC § 201.262, which states "Permission shall not be granted to allow violation of the standards or limitations … during startup unless the applicant has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups." Because neither the SIP nor section 7.1.3(c)(ii) specifies criteria to determine what constitutes "reasonable steps" during malfunction or breakdown, the condition is practicably unenforceable. U.S. EPA grants the petition on the issue. IEPA must remove "reasonable steps" from section 7.1.3(c)(ii), or define or provide criteria necessary to determine "reasonable steps" that meet the requirements of the SIP.

D. Section 7.1.9(c)(ii)

Petitioner alleges that the phrase "records for each affected boiler that identify the upper bound of the normal range of opacity measurements from the boilers, considering an hour of operation, within which compliance with condition 7.1.4(b) is assured" is not practically enforceable. Petitioner specifically points to the lack of definition of "upper bound of the normal range", "normal range of opacity requirements", and "normal." Comments at 18.

Section 7.1.9(c) describes the record keeping requirements for the continuous opacity monitoring systems, including section 7.1.9(c)(ii), which requires the permittee to maintain "[r]ecords for each affected boiler that identify the upper bound of the normal range of opacity

measurements from the boilers, considering an hour of operation, within which compliance with condition 7.1.4(b) is assured, with supporting explanation and documentation." Section 7.1.4(b) lists the emission limitations for particulate matter.

Neither the permit nor the permit record explains or defines how to determine the range of opacity measurements that assure compliance with the PM emission limitations, or the criteria to determine what must be included in or excluded from a normal range. Therefore, the petition is granted on the issue of practical unenforceability. IEPA must identify the normal range of opacity emissions that assures compliance with the PM emissions limitations, develop criteria for determining the normal range, or develop another means to monitor compliance with the PM emission limitations.

VII. Recordkeeping and Recording Requirements

Petitioner asserts that the Waukegan permit does not assure compliance with all applicable requirements because it lacks adequate record keeping and recording requirements. Petitioner notes that, throughout its comments, it pointed out sections of the Waukegan permit that lack adequate recordkeeping and recording requirements, and alleges that IEPA did not respond to those comments. Petition at 4. Rather than specifying in the petition the sections of the permit that it alleges lack adequate recordkeeping and recording requirements, however, Petitioner incorporated its comments into the petition by reference.

As discussed above, a petitioner must identify in its petition the objections to the permit that were raised with reasonable specificity during the public comment period. Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), provides that a petition requesting the Administrator to object to a title V permit must identify all such objections, and that the Administrator must object to the permit if the petitioner demonstrates that the permit is not in compliance with the requirements of the Act.

Petitioner did not include in its comments on the Waukegan permit a section specifically addressing permit terms that allegedly lack adequate record keeping and recording requirements. Instead, in a section headed "Specific comments on permit conditions," Petitioner lists numerous comments and questions on various sections of the draft permit. *See* Petitioner's comments at 15 - 21. In many instances, Petitioner's allegations are not clear or specific. However, where Petitioner's comments identify with reasonable specificity which terms and conditions of the permit Petitioner alleges lack adequate recordkeeping and recording requirements, we are responding to these issues in this section of the petition response.

A. Section 7.1.3(c)(iii)

Petitioner alleges that section 7.1.3(c)(iii) must include requirements for record keeping and reporting during malfunction and breakdown, not only for the boilers, but also for the coal pulverizer, ash removal system and electrostatic precipitators (ESPs). Petitioner asserts that sections 7.1.9(h) and 7.1.10(b) of the Waukegan permit limit the record keeping and reporting

requirements for breakdown and malfunction to the boilers, even though section 7.1 specifically covers the coal pulverizer, ash removal system and ESPs under the malfunction and breakdown provisions as described in section 7.1.3. Comments at 16.

Section 7.1 lists the requirements for the coal-fired boilers. Sections 7.1.1 and 7.1.2 specifically describe the boilers and the associated air pollution control equipment. Section 7.1.3(c) describes the conditions under which the permittee may continue to operate a boiler in the event of a malfunction or breakdown of the boiler, the coal pulverizer, the ash removal system, or the ESP. Section 7.1.9(h) requires the permittee to maintain records related to continued operation during malfunctions and breakdowns, including records for the maintenance and repair of the ESP. Section 7.1.10(b) requires notification and reporting of continued operation during malfunctions and breakdowns to IEPA. The reporting requirements are triggered when there are opacity and PM exceedances, not when a specific piece of equipment malfunctions. Section 7.1 does not describe the requirements for the coal pulverizer or the ash removal system specifically in the event of a malfunction or breakdown. Those requirements can be found in sections 7.3.9(f) and 7.3.10(b), which describe the record keeping and reporting requirements for continued operation during malfunctions and breakdowns of the coal crushing operation, and sections 7.4.9(f) and 7.4.10(b), which describe the record keeping and reporting requirements for continued operation during malfunctions and breakdowns of the fly ash operations. U.S. EPA denies the petition on this issue because the permit includes record keeping and reporting of the coal pulverizer, ash removal system, and ESPs.

B. Section 7.1.9(h)(ii)

Petitioner alleges that the recording requirements for breakdown and malfunction in section 7.1.9(h)(ii) appear to be much more lenient than the requirements in section 7.1.3(c)(ii). Section 7.1.9(h)(ii)(E) only requires the source to explain after excess emissions continued for two or more hours why continuous operation was necessary, what preventative measures where planned, etc. Petitioner asserts that the more lenient requirements in section 7.1.9 could lead to enforcement problems. Comments at 16-17.

Section 7.1.3(c)(ii) requires the permittee, as soon as practicable after the occurrence of excess emissions due to malfunction or breakdown, to reduce boiler load, repair the affected boiler, or remove the affected boiler from service so that excess emissions cease. Section 7.1.9(h) details the records the permittee is required to keep for continued operation during malfunctions and breakdowns. It is true that section 7.1.9(h)(ii)(E) requires the permittee to explain why continuous operation was necessary, what preventative measures where planned, etc., after excess emissions continued for two or more hours. However, section 7.1.9(h)(ii)(C), which requires the permittee to list the corrective actions used to reduce the quantity of emissions, applies at all times, not just after two hours of excess emissions. U.S. EPA believes that the permit includes sufficient record keeping for the permittee to demonstrate that it is complying with section 7.1.3(c)(ii). Therefore the petition is denied on this issue.

C. Section 7.1.5(b)(ii)

Petitioner alleges that sections 7.1.5(d)(ii)(A) and (B) do not require monitoring, record keeping and recording. Comments at 17. Because there is no section 7.1.5(d) in the Waukegan permit, EPA believes that Petitioner meant to refer to section 7.1.5(b) of the permit, and will respond as if it had.

Section 7.1.5(b)(ii) lists alternative emission limitations for PM and sulfur dioxide with which the permittee must comply when the affected boiler is not using solid fuel as its principal fuel. This section expressly replaces the PM and sulfur dioxide emission limitations that are applicable when Waukegan is using coal as its primary fuel. Section 7.1.5 does not replace any of the monitoring, record keeping and/or reporting requirements in the permit if Waukegan switches its principal fuel. The monitoring, record keeping and reporting requirements in sections 7.1.7, 7.1.8, 7.1.9, and 7.1.10 continue to apply regardless of which emissions limitations are effective. Because the permit requires monitoring, record keeping, and reporting for periods when the affected boiler is not using solid fuel as its principal fuel, the petition is denied on this issue.

D. Section 7.1.9(g)

Petitioner alleges that section 7.1.9(g) does not require that the source keep records of all the requirements for startups from section 7.1.3(b). Petitioner specifically inquires about the requirements for keeping records of the "reasonable efforts," the use of "manufacturer's instructions," and that the source "review(ed) conditions" or "review(ed) operating parameters" from 7.1.3(b). Comments at 18.

Section 7.1.3(b) provides that, pursuant to 35 IAC § 201.262, the permittee may operate the boilers in violation of applicable emission limits if the permittee demonstrates that it uses all reasonable efforts to minimize startup emissions, duration of individual startups, and frequency of startups. 35 IAC § 201.262 requires that IEPA base its authorization upon information provided in the permittee's CAAPP application. Section 7.1.9(g) of the Waukegan permit requires the permittee to keep "[r]ecords of the source's established startup procedures … (as summarized in the CAAPP application)." U.S. EPA believes that this section of the Waukegan permit requires the permittee to maintain records demonstrating that it complied with all startup procedures proposed in the CAAPP application as "all reasonable efforts" to minimize startup emissions, duration and frequency. U.S. EPA believes that this section requires sufficient records to demonstrate compliance with the requirement of section 7.1.3(b), and, therefore, denies the petition on this issue.

E. Section 7.1.9(h)

Petitioner alleges that section 7.1.9(h) does not require sufficient record keeping for the requirements in section 7.1.3(c). Petitioner specifically comments on the lack of record keeping on what steps the source has undertaken to prevent similar breakdowns and malfunctions as provided

for in the state operating permit. Comments at 18.

Section 7.1.3(c) provides that, pursuant to 35 IAC § 201.262, the permittee may operate the boilers in violation of applicable emission limits if the permittee demonstrates that "continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment." 35 IAC § 201.262 requires that IEPA base its authorization upon information provided in the permittee's CAAPP application. Section 7.1.9(h) of the Waukegan permit requires the permittee to keep an explanation of why continued operation of the affected boiler was necessary whenever particulate matter emissions may have exceeded the applicable hourly standard or opacity exceeded the applicable standard for two or more hours. Furthermore, section 7.1.9(h) requires the permittee to keep records of preventative measures planned or taken to prevent similar malfunctions or breakdowns or to reduce their frequency or severity. U.S. EPA believes that the requirements of section 7.1.9(h) are sufficient to demonstrate compliance with the requirements of section 7.1.3(c). Therefore, the petition is denied on this issue.

VIII. Origin and Authority

As discussed above, a petitioner must identify in its petition the objections to the permit that were raised with reasonable specificity during the public comment period. Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), provides that a petition requesting the Administrator to object to a title V permit must identify all such objections, and that the Administrator must object to the permit if the petitioner demonstrates that the permit is not in compliance with the requirements of the Act.

Petitioner alleges that the permit does not identify the origin and authority of each term and condition. Petitioner notes that, throughout its comments, it pointed out sections of the Waukegan permit that do not reference origin and authority. Petition at 4-5. Rather than specifying in the petition the sections of the permit that it alleges lack origin and authority, however, Petitioner incorporated its comments into the petition by reference.

Petitioner did not include in its comments on the Waukegan permit a section specifically addressing permit terms that allegedly lack origin and authority. Instead, in a section headed "Specific comments on permit conditions," Petitioner lists numerous comments and questions on various sections of the draft permit. *See* Petitioner's comments at 15 - 21. In some instances, Petitioner's allegations are not clear or specific. However, where Petitioner's comments identify with reasonable specificity which terms and conditions of the permit Petitioner alleges lack reference to origin and authority, we are responding to these issues in this section of the petition response.

A. Section 7.1.9(h)(ii)(E)

Petitioner alleges in its original comments that section 7.1.9(h)(ii)(E) does not list the origin and authority for the permit condition. Comment at 18.

Section 7.1.9(h) lists 35 IAC § 201.263 as the origin and authority for the entire term. Section 201.263 states "any person subject to this Rule [Subpart] shall maintain such records and make such reports as may be required in procedures adopted by the Agency." Section 7.1.9(h)(ii)(E) details the records that must be kept for PM or opacity matter exceedances. U.S. EPA believes the origin and authority for this permit term is provided and, therefore, the petition is denied on this issue.

B. Section 7.1.10(b)(ii)

Petitioner alleges in its original comments that section 7.1.10(b)(ii) does not list the origin and authority for the permit condition. Comments at 19.

Section 7.1.10(b) lists 35 IAC § 201.263 as the origin and authority. Section 201.263 states "any person subject to this Rule [Subpart] shall maintain such records and make such reports as may be required in procedures adopted by the Agency." 7.1.10(b)(ii) details the reports the permittee must maintain for PM and opacity exceedances that continue for more than two hours. U.S. EPA believes the origin and authority for this permit term is provided and, therefore, the petition is denied on this issue.

C. Section 7.1.9(b)

Petitioner alleges that section 7.1.9(b), which covers recording requirements for control devices, the ESP, does not adequately list the origin and authority. The permit term references Section 39.7 of the Illinois Environmental Protection Act as its origin or authority. It is unclear just which part of the section specifically applies to this condition. Section 39.7 of the Illinois Environmental Protection Act covers the entire required permit content of a title V permit.

Section 7.1.9(b) cites Section 39.5(7)(b) as its origin and authority. Section 39.5(7)(b) of the Illinois Environmental Protection Act requires IEPA to include monitoring, reporting, and record keeping requirements necessary to assure compliance with the Act. U.S. EPA believes that Section 39.5(7)(b) of the Illinois Environmental Protection Act is sufficient origin and authority for section 7.1.9(b) and, therefore, the petition is denied on this issue.

IX. Periodic Monitoring

Petitioner asserts that the Waukegan permit does not contain monitoring adequate to ensure compliance with all periodic monitoring requirements. Petition at 5. According to Petitioner, the permit must contain parametric monitoring requirements for the electrostatic precipitators (ESPs), establish a link between compliance with emissions limits and the parametric monitoring requirements, include a clear and enforceable indicator range for each parameter, and must be revised to require stack testing at a specified time well before April 2006. Petitioner notes that the

Administrator addressed similar issues in the July 31, 2003 responses to petitions by the New York Public Interest Research Group on title V permits issued to Dunkirk Power LLC and Huntley Generating Station. In those responses, Petitioner notes, the Administrator remanded the permits to the permitting authority because they did not "include proper operating ranges for each of the ESP parameters," and, therefore, did not "provide the means to determine ESP compliance." Petition at 5, quoting Order Granting in Part and Denying in Part Petition for Objection to Permit, Petition Number II-2002-02 (July 31, 2003) (Dunkirk response) and Order Granting in Part and Denying in Part Petition for Objection to Permit, Petition Number II-2002-01 (July 31, 2003) (Huntley response).

Two provisions of part 70 require that title V permits contain monitoring requirements. The "periodic monitoring rule," 40 C.F.R. § 70.6(a)(3)(i)(B), requires that "[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. . . Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of [40 C.F.R. § 70.6(a)(3)(i)(B)]." The "umbrella monitoring" rule, 40 C.F.R. § 70.6(c)(1), requires that each title V permit contain, "[c]onsistent with [section 70.6(a)(3)], ...monitoring ... requirements sufficient to assure compliance with the terms and conditions of the permit." EPA has interpreted section 70.6(c)(1) as requiring that title V permits contain monitoring required by applicable requirements under the Act (e.g., monitoring required under federal rules such as MACT standards and monitoring required under SIP rules), and such monitoring as may be required under 40 C.F.R. § 70.6(a)(3)(i)(B). 69 *Fed. Reg*. at 3202, 3204 (Jan. 22, 2004); *see also, Appalachian Power Co. v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000).

A. Sections 7.1.8 and 7.1.9

Petitioner alleges that, although the monitoring requirements in section 7.1.8 state that the continuous opacity monitors (COMs) are the primary basis for the reporting of exceedances of the opacity limitations, the permit does not include monitoring requirements for the ESP. We understand this comment to mean that Petitioner is concerned that the permit does not require monitoring to assess the operation and effectiveness of the ESP. Petition at 6.

Petitioner further alleges that the Waukegan permit fails to establish a link between the COM readings and the PM limits, because the permit does not establish proper operating ranges for the operating parameters of the ESP that would serve as parametric monitoring for PM emissions. The appropriate operating ranges, correlated with emissions, are necessary to determine proper ESP operation and measure compliance. Petitioner highlights the concern by citing the reporting requirement for PM in section 7.1.9(3), which requires the source to report exceedances of PM limits, yet the permit is silent on how such PM emission limit exceedances would be discovered. *Id.*

Section 7.1.8(a) requires the permittee to install, operate, calibrate, and maintain COMs for the affected boilers. The COMs provide monitoring for compliance with SIP limits for opacity and PM, since those applicable requirements of the SIP do not specify periodic monitoring requirements. "Affected boilers" are defined in 7.1.3(a) as boilers meeting the descriptions in sections 7.1.1 and 7.1.2. In each of these sections, the boilers are described as both the boiler and the control equipment, including the ESP. Since section 7.1.8(a) requires COMs to monitor the affected boilers, then the COMs are also required to monitor the opacity from the ESP. Section 7.1.9(b)(i) require the permittee to record the ESP fields that are in service, the primary voltages and currents, and the secondary voltages and currents once per shift as parametric measurements for the operating condition of the ESP. The permit requires both the measurement of the opacity from the affected boilers and records of the operating condition of the ESP. However, the permit does not include details on how the opacity monitoring, the primary voltages and currents, and the secondary voltages and currents indicate compliance with the emission limitations. The permit must include a correlation between these measurements and compliance with the PM emission limitations.

Section 7.1.12(b) of the Waukegan permit clarifies that "compliance with the PM emissions limitation of 7.1.4(b) is addressed by continuous opacity monitoring in accordance with Condition 7.1.8(a), PM testing in accordance with Condition 7.1.7, and the recordkeeping required by Conditions 7.1.9." Neither the permit nor the permit record demonstrates how the COM, PM testing and record keeping will be used to demonstrate ongoing compliance with the PM emission limitations. However, this permit term implies that the COMs, which measure opacity, would also address compliance with the PM emission limitation.

While opacity from a boiler stack is a good indicator of boiler operation and combustion efficiency, an exact correlation between opacity and PM limits can be difficult to establish. Accordingly, we are unable to determine, based on the information contained in the permit record, whether opacity monitoring is an appropriate surrogate for monitoring PM emission limits. In our judgment, any such correlation regarding the Waukegan facility must be made using COMs data from the time that the PM stack test was run. Stack tests performed for compliance determinations often result in emissions that are lower than the limit in the applicable requirement. If, for example, the once per permit term PM test indicates PM emissions of 10 to 20 percent less than the requisite standard, it may be difficult to correlate that with the COMs data to establish an opacity range that assures compliance with the PM standard.

In this case, since IEPA used opacity and as one of the surrogate methods to assure compliance with PM limits, the title V permit must include a specific opacity limit or a method for determining an opacity limit that would correlate the results of the PM testing results and the opacity limit.

The other method noted in the Waukegan title V permit to assure compliance with the PM emission limit is the recording of primary and secondary voltage and current, and the fields in service from the facility's ESPs. *See* section 7.1.9(b) of the Waukegan permit. The permit further states in section 7.1.7(e)(iii)(c) that the permittee shall report a detailed description of the operating

conditions during testing and the control equipment condition and operating parameters during testing.

On this issue, EPA agrees with the Petitioner that, if ESP parametric monitoring is to be used as a surrogate to assure compliance with PM emission limits, the permit must contain additional information regarding the operation of the ESPs. That is, if these ESP operational parameters can be used to determine compliance through the indication of proper operation of the ESP, then the state must incorporate into the Waukegan title V permit specific operational limits (upper level or lower level) and/or operational ranges, or a method for determining the ranges. The established ESP parametric levels or ranges could be those recorded during emissions tests, or those listed by the control equipment manufacturer as the settings used for optimum operation.

The permit does not make a clear connection between the continuous opacity monitoring and the PM emission limitation, nor does the permit provide sufficient information to determine compliance through the indication of the proper operation of the ESP. Therefore, since additional periodic monitoring terms are needed to assure compliance with the PM limit, the petition is granted on this issue pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B). IEPA must include a specific opacity limit or a method for determining an opacity limit that would correlate the results of the PM testing and the opacity limit in a manner that assures compliance with the PM limit, and must incorporate into the permit specific operational limits (upper level or lower level) and/or operational ranges or a method for determining the ranges.

B. Timing of Stack Testing

Petitioner alleges section 7.1.7(a)(i)(A) of the permit allows for the delay of any PM testing until prior to April 1, 2006, and that delayed stack testing does not provide monitoring adequate to assure compliance with the PM emission limitations. Petition at 5.

Section 7.1.7(a)(i)(A) requires stack testing prior to April 1, 2006, which at the time of proposed permit (October 6, 2003) may have been a two and half year difference between permit issuance and the requirement for the first PM testing. As detailed in section IX.A of this order, the permit relies on PM testing for establishing opacity monitoring and ESP parametric measures to assure compliance with PM emissions limitations. The PM testing will not be sufficient to assure compliance until such testing occurs. Where the underlying applicable requirement has no periodic testing or monitoring, the title V permit must include "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . ." 40 C.F.R. § 70.6(a)(3)(i)(B). In this instance, because the permit relies on the correlation between the PM testing and the parametric measures, the permittee must perform the stack testing as soon as possible so that it yields "reliable data from the relevant time period" and assures that this data is representative of the source's compliance. Therefore, pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B), the petition is granted on this issue. In order to meet these requirements, IEPA must set a date that is as early as possible in the permit term by which Waukegan must conduct PM testing for use in establishing opacity monitoring and ESP parametric measures so that the permit includes appropriate monitoring conditions that are in effect during the permit term and assures

compliance with the PM emission limitations in section 7.1.4 for the entire term of the permit.

X. Compliance Certification

Petitioner alleges that section 9.8 of the Waukegan permit and Section 39.5(7)(p)(v)(C)(1-4) of the Illinois Environmental Protection Act do not require the source to submit "such other facts" as the permitting authority may require to determine the compliance status of the source. The compliance certification cannot allow the source to omit any information it has outside the required testing, monitoring, recordkeeping and reporting requirements that would show that it is in compliance or in violation of its permit. Petition at 6-7.

40 C.F.R. § 70.6(c)(5)(iii)(D) requires that a compliance certification include such other facts as the permitting authority may require to determine the compliance status of the source. Section 39.5(7)(p)(v)(F) of the Illinois Environmental Protection Act, the underlying authority for this term, provides that the compliance certification must include "other provisions as the Agency may require." These provisions of part 70 and the Illinois Environmental Protection Act provide the permitting authority with the discretion and authority to require a source to comply with additional compliance certification requirements. If IEPA determines additional facts are necessary to determine the compliance status of the source, it has the authority to include such requirements in the permit. It is not necessary that the source of this authority be recited in the permit. The petition is denied on this issue.

CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I grant in part and deny in part the petition of the Lake County Conservation Alliance requesting the Administrator to object to issuance of the title V CAAPP permit to Midwest Generation, LCC, Waukegan Generating Station.

Dated: 9/22/2005

_____/s/_____

Stephen L. Johnson-
Administrator