

BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Proposed Operating Permit for

MIDWEST GENERATION EME, LLC to operate
FISK GENERATING STATION
located in Chicago, Illinois

I.D. No. 031600AMI
Application No. 95090081

Proposed by the Illinois Environmental Protection Agency

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE
OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE FISK GENERATING
STATION**

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LAKE COUNTY CONSERVATION
ALLIANCE

LAKE MICHIGAN FEDERATION

SIERRA CLUB

Date: January 22, 2004

Pursuant to Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), the Illinois Environmental and Public Health Organizations listed above hereby petition the Administrator (“the Administrator”) of the United States Environmental Protection Agency (“U.S. EPA”) to object to proposed Title V Operating Permit for the Fisk Generating Station. The permit was proposed to U.S. EPA by the Illinois Environmental Protection Agency. The petitioning organizations provided comments to the Illinois Environmental Protection Agency on the draft permit. A true and accurate copy of those comments is attached. This petition is filed within sixty days following the end of U.S. EPA’s 45-day review period as required by Clean Air Act § 505(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed.

If the U.S. EPA Administrator determines that this permit does not comply with the requirements of the Clean Air Act (“CAA”) or 40 C.F.R. Part 70, he must object to issuance of the permit. See 40 C.F.R. § 70.8(c)(1) (“The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.”). The permit fails to comply with the applicable requirements in a number of ways. First, it lacks a compliance schedule required by 40 C.F.R. § 70.5(c)(8)(iii)(C). Second, it fails to include monitoring requirements that meet the provisions of 40 C.F.R. § 70.6(a)(3)(i). Third, it contains provisions that violate the credible evidence rules. 42 U.S.C. § 7413; 62 Fed. Reg. 8314; 40 C.F.R. § 51.212; 40 C.F.R. § 52.23. Fourth, it contains provisions that violate U.S. EPA policy on startup, malfunction and breakdown. Finally, it violates U.S. EPA policy because it contains provisions that are not practically enforceable. For all of these reasons, the permit is not in compliance with the applicable federal requirements and the Administrator must object to it.

I. THE ADMINISTRATOR MUST OBJECT TO THE PROPOSED PERMIT BECAUSE IT LACKS A COMPLIANCE SCHEDULE DESIGNED TO BRING THE FISK PLANT INTO COMPLIANCE WITH CLEAN AIR ACT REQUIREMENTS.

It is a fundamental purpose of the Title V permitting program to ensure that regulated entities comply with requirements that originate in the Clean Air Act. The applicant for a Title V permit must disclose its compliance status and either certify compliance or enter into an enforceable schedule of compliance to remedy violations. 42 U.S.C. § 7661b(b); 40 C.F.R. § 70.5(c)(8-9). Under 40 C.F.R. § 70.1(b) and Clean Air Act § 504(a), each facility that is subject to Title V permitting requirements must obtain a permit that “assures compliance by the source with all applicable requirements.” Applicable requirements include, among others, the requirement to comply with state implementation plan (“SIP”) requirements. See 40 C.F.R. § 70.2. If a facility is in violation of an applicable requirement at the time that it receives an operating permit, the facility’s permit must include a compliance schedule. See 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule must contain “an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance.” See 40 C.F.R. § 70.5(c)(8)(iii)(C). Thus, if a power plant is in violation of NSR or SIP requirements, the plant’s operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements. The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit. (This violation would be in addition to the original violation resulting from the plant’s failure to obtain a NSR permit).

In the present permit proceeding, the applicant has certified compliance with all the requirements that apply to its facility. In its proposed permit, the IEPA accepts this certification, and consequently does not incorporate any schedule of compliance or other remedial measures in the Title V/CAAPP permit. Notwithstanding, because of both opacity exceedances and avoidance of New Source Review, the permit is required to contain a compliance schedule and the Administrator must object because of this deficiency.

A. The Administrator Must Object to the Proposed Permit Because The Permit Does Not Include A Schedule of Compliance To Remedy Opacity Exceedances

IEPA possesses evidence of non-compliance at this facility. The source of this information is Midwest Generation itself. Since it became the operator of this facility, Midwest Generation has regularly submitted information to IEPA detailing ongoing violations of opacity standards at this and its other coal burning power plants. Copies of the records relating to this facility are attached to these comments. By way of summary, the table below describes exceedances of the opacity standard at this and other Midwest Generation facilities for an eighteen-month period concluding on June 30, 2003:

OPACITY EXCURSIONS AND EXCEEDANCES AT MIDWEST GENERATION FACILITIES
FROM 1/1/02 – 6/30/03

FACILITY UNIT	OPACITY EXCURSIONS ¹	OPACITY EXCEEDANCES ²
CRAWFORD		
7	93	51
8	49	9
FISK	243	70
JOLIET		
6	96	41
7	643	219
8	759	212
POWERTON	828	387
WAUKEGAN		
6	24	9
7	333	102
8	132	52
WILL COUNTY		
1	3	0
2	43	1
3	763	159
4	302	40
TOTAL	4,311	1,352

These opacity exceedances are unresolved as of the most recent quarterly report. This report details “opacity excursions” at Crawford (10), Fisk (86), Joliet (124), Powerton (422), Waukegan (37) and Will County (183). The magnitude of some of the opacity excursions is striking. On at least 8 occasions during the most recent quarter, the Fisk facility recorded opacity readings at levels more than twice the legal limit.

The requirements for Midwest Generation to comply with opacity standards are contained in federal and state regulations. 35 Illinois Administrative Code § 212.123(a); 40 C.F.R. § 75.10. The opacity standard for this facility is lenient, ≤30%, and generous exemptions for start-up, malfunction and other conditions are provided in Illinois regulations. In light of this undemanding set of regulations, it is even more troubling that this and other Midwest Generation facilities continue to exceed the opacity standard. This suggests there may be more fundamental problems relating to facility operations, including combustion efficiency, ash handling, precipitator operation or load change procedures.

¹ The total number of six-minute average opacity exceedances recorded by opacity monitors and self-reported by Midwest Generation to the Illinois EPA

² Of the total number of opacity exceedances, the subset that Midwest Generation asserts are “considered exempt” because they occur during boiler startup or malfunction periods.

In light of the number of exceedances of the opacity standard, the number of years these exceedances have been occurring and reported without resolution, and the fact that they are based on continuous emission monitoring data, there is an incontrovertible factual basis for concluding this and other Midwest Generation facilities are not operating in compliance with federal and state opacity emission standards. Because of these facts, now a part of the record of these deliberations, the Title V/CAAPP permit, issued by the IEPA without a schedule of compliance, is not legally adequate and the Administrator should object to the permit.

B. The Administrator Should Object To The Permit Because It Does Not Address The Requirements Arising Under New Source Review

The second compliance issue related to this and other Midwest Generation facilities is whether these facilities improperly avoided New Source Review (NSR) and, in turn, the requirement to install modern pollution control equipment. If this and other Midwest Generation facilities improperly avoided NSR, the Title V permit should include an enforceable schedule of compliance for NSR to occur, coupled with emission and operational standards equivalent to a new facility in this source category.

1. There Is Substantial Evidence That Modifications Have Occurred At Midwest Generation Facilities

There is substantial evidence readily available to the IEPA to determine if NSR should have taken place at Midwest Generation facilities. First, there is evidence being generated as part of an ongoing U.S. EPA investigation of Midwest Generation to determine NSR compliance. More specifically, on or about February 21, 2003, Midwest Generation received a formal request from the U.S. EPA for information regarding past operations, maintenance, and physical changes at its coal plants. Midwest Generation disclosed the existence of this investigation in its May 6, 2003 filing with the U.S. Securities and Exchange Commission, a true and accurate copy of which is attached to these comments. In its SEC filing, Midwest Generation acknowledges:

Depending on the outcome of the review and regulatory developments, Midwest Generation could be required to invest in additional pollution control requirements, over and above the upgrades it is planning to install, and could be subject to fines and penalties.

Midwest Generation, LLC, Form 10-K/A Amendment No. 1, "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For The Fiscal Year Ended December 31, 2002", May 6, 2003, pp. 25-6.

A second source of evidence demonstrating modifications at Midwest Generation facilities is an article which discuss major work that was completed at Fisk in the mid-1990s. The Fisk facility was shutdown on November 2, 1994 due to a high pressure generator winding problem that caused severe bearing vibration, and that was anticipated to require the replacement or rewinding of the generator, to be completed over a period of up to ten months. November 21, 1994 letter from Mary F. O'Toole, Environmental Services Manager, Alternate Designated

Representative, ComEd to Cecilia Mijares, U.S. EPA Region 5 (copy attached). An article written by Brian Schumel of PCI Energy Services describes other work that was completed during this period of time, including a boiler/turbine overhaul in January, 1995 and, most significantly, the replacement of a 300 MW steam chest. Schumel, Brian, PCI Energy Services, The Replacement of a 300 MW Steam Chest Background. A true and accurate copy of Mr. Schumel's article is attached to these comments.

Mr. Schumel's article provides a detailed account of the steam chest replacement. Due to numerous cracks along the internal chamber of Fisk's steam chest manifold that had been present for some time, ComEd decided to replace both manifolds of the steam chest instead of repairing them. The decision to replace the manifolds was based on the fact that the location and orientation of thermal fatigue were not conducive for repair, and normal replacement would take too long. As a result, ComEd outsourced the project to an outside contractor, PCI, that oversaw the reverse engineering of the steam chest. This company had only done the project once before, which was in Detroit in 1991.

A third source of evidence relevant to determining NSR compliance are data about emission trends from electric generating units collected by the U.S. Environmental Protection Agency and posted as part of its Clean Air Markets database. <http://cfpub.epa.gov/gdm/> Using this database, it is possible to track increases in actual emissions from Midwest Generation facilities. For example, using this database, there appears to be a significant increase in actual emissions from the Fisk facility in the two- year period immediately following the completion of the major work at the facility concluding in July, 1995. A chart summarizing these increases is attached to this petition.

2. The Administrator Must Object to the Permit Because the IEPA Should Have Addressed the Non-Compliance of Improperly-Avoided New Source Review in the Title V Permitting Process

Whether Midwest Generation facilities have improperly avoided NSR is directly relevant to Title V permitting for two reasons. First, as described above, ensuring compliance with the requirements originating in the Clean Air Act is a fundamental goal of the Title V/CAAPP permitting process. In turn, there is no more important Clean Air Act requirement than compliance with New Source Review.

Congress established the New Source Review ("NSR") program in 1977. The NSR program was enacted for the purpose of protecting and enhancing "the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b). NSR is a pre-construction permitting program that serves two important purposes: first, it ensures that factories, industrial boilers and power plants comply with air quality standards when components are modified or added to these facilities; and, second, NSR requires that new plants or existing plants undergoing a major modification install state-of-the-art control technology. 42 U.S.C. § 7401(a)(1); 42 U.S.C. § 7401(a)(2). The program covers two distinct categories: (1) the construction of new industrial facilities, and (2) existing facilities that make any modifications that significantly increase pollution emissions and are not exempt from regulation. United States v. Ohio Edison Co., 2003 U.S. Dist. LEXIS

13799, *11 (S.D. Ohio, Aug. 7, 2003). If a facility falls into one of these two categories, then the company is required to establish stringent emissions controls. 42 U.S.C. § 7411(a)(1). If a modification is known to substantially increase the amount of emissions from a facility, the facility must obtain pre-construction approval. Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *11; see, e.g., 42 U.S.C. § 7475.

Congress has defined a modification as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4); see also 40 C.F.R. § 60.14(a) (U.S. EPA defining a modification as “any physical change or operations change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies”). A determination that New Source Review has been triggered by site modifications would require the source to comply with new source requirements and apply state-of-the-art pollution controls, which are much more stringent than emission limits proposed without a permit. 42 U.S.C. § 7411(a)(1); see also Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *56.

The second reason why NSR is directly relevant to the Title V permitting process was pointed out by Matt Dunn, testifying on behalf of the Illinois Attorney General at the public hearings for the Fisk and Crawford facilities. The IEPA developed a permit containing emission and operational standards explicitly and unthinkingly based on the applicant’s representations that it is not subject to new source standards. As pointed out by Mr. Dunn, if a facility should have undertaken New Source Review, then entirely different emission and operational standards would apply than those included by IEPA in the proposed permit. Simply, in the absence of determining if NSR applies, IEPA cannot know which emission and operational standards apply to Midwest Generation’s facilities. Although this information was not provided by the applicant, it has been introduced into the permitting process by members of the public, and should have been included in IEPA’s deliberations. In sum, as a prerequisite to setting the emission and operational standards in the Title V permit, IEPA must determine whether NSR applies. Because IEPA failed to do this, the permit is deficient and the U.S. EPA Administrator must object.

3. The Administrator Must Object to the Permit Because the Illinois EPA Failed to Meet Its Legal Responsibility that it Ensure that New Source Review Is Being Imposed On The Sources It Regulates

In reviewing modifications to this and other Midwest Generation facilities, IEPA has clear guidance on the nature of its authority to require Midwest Generation to comply with New Source Review requirements. This guidance is contained in the recently decided NSR compliance case, United States v. Ohio Edison Co., 2003 U.S. Dist. LEXIS 13799, *11 (S.D. Ohio, Aug. 7, 2003). In Ohio Edison, the Plaintiff commenced an enforcement action against the Defendant, alleging that the Defendant was subject to NSR by virtue of renovation activities at one of its coal power plants. For its part, Ohio Edison argued the renovations were properly characterized as “routine maintenance, repair and replacement”, an exception to NSR requirements. 40 C.F.R. 52.21(b)(2)(iii)(a); 40 C.F.R.60.14(e)(1).

For sources that made modifications before the effective date of recently promulgated regulations, the determination of what constitutes routine maintenance is made on a case-by-case basis. See, e.g., Ohio Edison, 2003 U.S. Dist. LEXIS 13799; Wisconsin Electric Power Co. v. Reily, 893 F.2d 901 (7th Cir. 1990). Only a few cases have analyzed what the EPA classifies as “routine maintenance, repair or replacement.” However, these cases have held that the EPA’s overall interpretation of the routine maintenance exemption should be construed narrowly. See, e.g., Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *25; United States v. Southern Indiana Gas & Electric Co., 245 F. Supp. 2d 994, 1009 (S.D. Ind. 2003); WEPCO, 893 F.2d at 907. For this reason, coal-fired power plants cannot contend a lack of fair notice regarding the U.S. EPA’s narrow interpretation of the CAA because the plain language of the CAA and its regulations are clearly understood as narrowing the routine maintenance exemption. Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *166. In addition, neither Midwest Generation nor IEPA can excuse past NSR noncompliance by resorting to new U.S. EPA regulations regarding the routine maintenance, repair and replacement exemption. The Notice announcing these rules explicitly states they will not become effective until 60 days after being published in the August 27, 2003 Federal Register. In addition, the regulations will require further implementation by individual states that will take place over the next three years. Simply, the new regulations were not in effect when the physical changes now subject to investigation and public comment were being made at Midwest Generation’s facilities.

In WEPCO, the EPA determined that Wisconsin Electric Power Company’s proposed renovations were modifications that required NSR compliance. 893 F.2d 901. After Wisconsin Electric challenged the EPA’s determination that proposed renovations would subject a power plant to certain CAA pollution control provisions and regulations, the Seventh Circuit held that the renovations were not “routine maintenance, repair and replacement.” WEPCO, 893 F.2d at 912. More recently, the Southern District of Ohio reviewed whether eleven renovation activities performed on Ohio Edison’s Sammis plant were exempt from NSR compliance. Ohio Edison, 2003 U.S. Dist. LEXIS 13799. Upon adopting the Seventh Circuit’s analysis in WEPCO, the Southern District of Ohio determined that all eleven activities were modifications that were not routine and required NSR compliance. See *id.* at *12.

Using the analysis of WEPCO and Ohio Edison, the first question that IEPA should have asked is whether a modification was made at a Midwest Generation facility. As previously stated, a modification is defined as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. §7411(a)(4). (emphasis added). Any physical change, which either replaces critical components or rebuilds damaged elements of a facility, will signify a modification under the CAA. Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *71. The Ohio Edison court had no difficulty determining that Ohio Edison made modification to its Sammis plant because it replaced critical components of the facility in addition to rebuilding damaged components of the facility. *Id.* at *72.

The next question that IEPA should have addressed is whether a modification is exempt from CAA compliance on the grounds that such a modification constitutes “routine maintenance, repair or replacement.” Such a question appears difficult because the regulations do not exempt “maintenance, repair or replacement from compliance with the CAA – rather, the regulation

exempts “*routine* maintenance, repair or replacement.” See, e.g., *id.* at *73-74. However, if a regulated entity like Midwest Generation claims the benefit of such an exemption, it has the burden of proof to show that modifications are routine and indeed exempt from CAA compliance. *Id.* at *78. Moreover, because the U.S. EPA has not defined what “routine” shall mean, this is determined by the regulator on a case-by-case basis. *Id.* at *164.

The Seventh Circuit adopted the EPA’s four factor test to determine which modifications constitute routine maintenance, repair and replacement. *WEPCO*, 893 F.2d at 910. The court stated that the EPA makes a case-by-case determination by weighing 1) the nature and extent of the project; 2) the purpose of the project; 3) the frequency of similar projects; and 4) the cost of the work. See *id.*

When analyzing the nature and extent of the work performed, IEPA should have looked to different facets of the renovations. See *Ohio Edison*, 2003 U.S. Dist. LEXIS 13799, *79. For example, activities that involve the replacement of equipment and miles of tubing are indications that the project is not routine. *Id.* A project that requires a facility to shut down for a period of weeks or even months also indicates the project is a large endeavor that is not routine. *Id.* More importantly, projects that require outside contractors to perform the modifications, which prove to be a one-of-a-kind project, cannot be classified as routine maintenance, repair or replacement. *Id.* at *80. Finally, a company that classifies a project as one that should be accounted for as a capital improvement, instead of operational costs, further substantiates the fact that a modification will not be considered routine to exempt the company from CAA compliance. *Id.* at *81. It appears all of these factors were present at the Fisk and Joliet facilities.

Next, projects performed for the purpose of increasing the availability and reliability of a facility, and extending the life expectancy of the facility will not exempt the facility from NSR compliance. *Id.* at *87. The court recognizes that such modifications are not routine maintenance that simply maintains the unit. *Id.* This is true because the purpose of such activities is to extend the life expectancy of the unit by making them more reliable and available for usage in the future. *Id.* Because Ohio Edison stated that all eleven activities were intended to increase the life expectancy of the Sammis plant for an extra thirty years, the court decided that this second factor weighed against classifying such activities as “routine maintenance, repair or replacement.” *Id.*

Another factor that IEPA should have considered is how frequently the activity is performed. *WEPCO*, 893 F.2d at 910. The *Ohio Edison* court declined to accept Ohio Edison’s argument that at the industry as a whole should be looked to when analyzing this factor. *Ohio Edison*, 2003 U.S. Dist. LEXIS 13799, *87-88 (“The frequency factor certainly can take into account repairs done at other plants across the country but, in the Court’s view, such evidence is not as instructive in addressing whether a particular activity at a particular unit can be considered routine”). Thus, the appropriate standard is how frequent the activity has been performed at the particular unit at issue. *Id.* at *88.

The final factor that IEPA should have considered when determining if a renovation is exempt from CAA compliance is the cost of the activity. *WEPCO*, 893 F.2d at 910. Because Ohio Edison classified all eleven activities as capital expenditures, and not maintenance expenditures, the court concluded that the activities were not “routine maintenance, repair or

replacement.” Ohio Edison, 2003 U.S. Dist. LEXIS 13799, *90. As a result, costs determined to be capital expenditures instead of maintenance expenses support the finding that modifications do not fall within the routine maintenance exemption. Id. at *85. In conclusion, any physical changes that constitute modifications under the CAA are not exempt as routine maintenance when the projects were large in scope, involved outside contractors, increased the value of the facilities, proved to be expensive and were treated as capital expenditures for accounting purposes. See, e.g., id. at 10.

In sum, the Administrator must object to the proposed Title V Permit for the Fisk Generating Facility because IEPA failed to ensure that New Source Review was imposed as required on Fisk and, consequently, the Title V permit fails to include applicable requirements that arise under New Source Review.

II. THE ADMINISTRATOR MUST OBJECT TO THE PERMIT BECAUSE IT FAILS TO INCLUDE CONDITIONS THAT MEET THE LEGAL REQUIREMENTS FOR MONITORING.

The necessary monitoring is strictly regulated by 40 C.F.R. § 70.6(a)(3)(i), which states that

Each permit shall contain the following requirements with respect to monitoring:
(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. . . . (B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit

40 C.F.R. § 70.6(c)(1) states that “All part 70 permits shall contain . . . testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.” CAA § 504 and 40 C.F.R. § 70.6(a)(3) require that permits indicate the frequency at which testing shall take place. Because these conditions fail to meet the applicable requirements of both the Clean Air Act and the Code of Federal Regulations, the Administrator must object to the proposed permit.

- Condition 7.5 fails to require any monitoring whatsoever in Condition 7.5.8 and fails provide a frequency at which testing shall take place as required by CAA § 504 and 40 C.F.R. § 70.6(a)(3). Testing is only required in response to a written request by Illinois EPA. This barebones testing fails to comply with 40 C.F.R. § 70.6(a)(3) and 40 C.F.R. § 70.6(c)(1). Consequently, without such monitoring conditions, it is not possible for the public, the U.S. EPA and the IEPA to ensure that Permittee is complying with applicable emissions standards.

- Condition 7.5.4 requires the unit to comply with NOx standards pursuant to 40 C.F.R. § 60.44b, opacity standards contained in Condition 5.2.2(b) pursuant to 35 IAC § 214.304, and CO standards pursuant to 35 IAC § 216.121. However, in Condition 7.5.7, Permittee is required to test emissions of these pollutants only in response to “a written request from the Illinois EPA.” In violation of 40 C.F.R. § 70.6(a)(3)(i), Condition 7.5 fails to include testing and monitoring provisions sufficient to verify the Permittee’s compliance with Condition 7.5.4, and Condition 5.2.2(b), 35 IAC § 214.304, and 35 IAC § 216.121 as applied to Permittee in Condition 7.5.
- Condition 7.6.8 fails to provide a frequency at which monitoring shall take place as required by CAA § 504 and 40 C.F.R. § 70.6(a)(3). Further, it fails to require that records be kept of the monitoring and that results of that monitoring be reported to the Illinois EPA, as required by 40 C.F.R. § 70.6(c)(1). Consequently, without such conditions, it is not possible for the public, the U.S. EPA and the IEPA to ensure that Permittee is complying with applicable emissions standards.

III. THE ADMINISTRATOR MUST OBJECT TO THE PERMIT BECAUSE IT CONTAINS CONDITIONS THAT VIOLATE THE REQUIREMENTS RELATED TO CREDIBLE EVIDENCE.

The U.S. EPA has the authority to bring enforcement actions “on the basis of *any information available* to the Administrator.” 42 U.S.C. § 7413 (emphasis added). This has been interpreted to mean any “credible evidence” that a court would accept. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46. U.S. EPA has stated that this means that “any credible evidence can be used to show a violation of or, conversely, demonstrate compliance with an emissions limit.” *Id.* Consequently, permit language may not exclude the use of any data that may provide credible evidence. *Id.* Specifically in regards to monitoring, the U.S. EPA has viewed permit conditions that provide that compliance will be demonstrated by certain test methods as tacitly excluding the use of other data to demonstrate compliance or noncompliance and, therefore, those conditions as violating the credible evidence rules. “The permit must specify the source’s obligations for monitoring in a way that does not establish an exclusive link between the test method and the emissions limit.” *Id.*

The Fisk proposed Title V permit contains numerous conditions which violate the credible evidence rules. While the permit does include Condition 9.1.3, which allows the use of other credible evidence notwithstanding the identified compliance practices, this is not sufficient to negate the violations of the credible evidence rules contained in other conditions that limit credible evidence. In general, these conditions violate the credible evidence rule because they specify that certain types of data be used to determine compliance. “Permit language may not [s]pecify that only certain types of data may be used to determine compliance.” *Id.* Identifying such data is not necessary according to the U.S. EPA. “In general, the permit should simply tell the source what it must do . . . It is not necessary to say that a term assures compliance or that an activity is required to assure compliance.” *Id.* at III-47. See also Credible Evidence Revisions, 62 Fed. Reg. 8314; 40 C.F.R. § 51.212; 40 C.F.R. § 52.23. The Administrator must object to the proposed permit because the following conditions in the permit unacceptably limit credible evidence in violation of 42 U.S.C. § 7413.

- Condition 5.2.2(a) unacceptably limits credible evidence by stating how compliance with that requirement shall be based.
- Condition 7.1.8(b) provides that continuous monitoring for SO₂ from the affected boilers “shall be used to demonstrate compliance with the limits in Condition 7.1.4(c)” By establishing an exclusive link between the test method and emissions limit, Condition 7.1.8(b) unacceptably limits credible evidence.
- Condition 7.1.12(d) is completely contrary to the credible evidence rule and citizens’ right to enforce the permit by stating that “compliance is assumed to be inherent.”
- Further, by including a limited list of “Compliance Procedures”, the following conditions unacceptably limit credible evidence in violation of 42 U.S.C. §7413:
 - Condition 5.9.1
 - Condition 7.1.12
 - Condition 7.2.12
 - Condition 7.3.12
 - Condition 7.4.12
 - Condition 7.5.12
 - Condition 7.6.12
 - Condition 7.7.12

IV. THE ADMINISTRATOR MUST OBJECT TO THE PERMIT BECAUSE IT CONTAINS CONDITIONS REGARDING STARTUP, MALFUNCTION AND BREAKDOWN THAT VIOLATE U.S. EPA POLICY.

The Administrator must object to the permit because it is deficient due to its failure to include sufficiently stringent requirements regarding startup, malfunction and breakdown. The permit requirements regarding violations that take place during startup, malfunction and breakdown must be consistent with applicable U.S. EPA’s guidance. See Kathleen M. Bennett, Memorandum “Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions,” September 28, 1982 (“Bennett Mem.”); Steven A. Herman and Robert Perciasepe, Memorandum “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,” September 20, 1999 (“Herman Mem.”).

Automatic exemptions for excess emissions during startup, shutdown and malfunction are prohibited. Bennett Mem. at 1. “[A]ll periods of excess emissions are violations of the applicable standard.” Id. The U.S. EPA is particularly intolerant of excess emissions during start-up and shutdown. “Start-up and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation or the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods.” Id. at 3.

- In the conditions listed below, the permit “authorize[s]” “continue[d] operation . . . in violation . . . of the applicable requirements . . .” or “the applicable standards . . .” Automatic exemptions for excess emissions during startup, shutdown and malfunction are prohibited. Bennett Mem. at 1. The Administrator must object to the permit because this

authorization included in these conditions is unclear and can be read as impermissibly excusing a violation.

Condition 7.1.3(b)

Condition 7.1.3(c)

Condition 7.2.3(b)

Condition 7.3.3(b)

Condition 7.4.3(b)

Condition 7.5.3(b)

Condition 7.5.3(c)

Condition 7.6.3(b)

Condition 7.6.3(c)

- U.S. EPA policy requires that the Permittee demonstrate that “all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups.” Herman Mem., Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” More specifically, regarding excess emissions during startups, U.S. EPA policy indicates that States must require of Permittees that: (1) Any bypass leading to excess emissions be unavoidable and necessary to prevent loss of life, personal injury, or severe property damage; (2) The facility be operated in a manner consistent with good practice for minimizing emissions; (3) All possible steps be taken to minimize the impact of excess emissions on ambient air quality; (4) All emission monitoring systems be kept in operation if at all possible; and (5) The Permittee properly and promptly notify the Agency. Herman Mem., Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” Further for the affirmative defense to be available, Permittee must be required to demonstrate its adherence to the above requirements and Permittee must demonstrate that: (1) Periods of excess emissions during startup and shutdown were short, infrequent and could not have been prevented through careful planning and design; and (2) Excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance. Herman Mem. Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” The Administrator must object to the permit because it fails to include these requirements in the following conditions:

Condition 7.1.3(b)

Condition 7.5.3(b)

Condition 7.6.3(b)

- The following conditions fail to include a definition of malfunction. Malfunction is vague and renders the condition not practically enforceable. The US E.P.A. recommends that malfunction be defined as “a sudden and unavoidable breakdown of process or control equipment.” Herman Mem. Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” More specifically, regarding excess emissions during malfunctions and breakdowns, U.S. EPA policy indicates that States must require of Permittees that: (1) The air pollution control equipment and processes be maintained and operated in a manner consistent with good practice for minimizing emissions; (2) Repairs be made in an expeditious fashion when the operator knows or should know that applicable emission limitations are being exceeded; (3) Amount and duration of excess emissions be minimized to the maximum extent practicable; (4) All possible steps be taken to minimize the impact of

excess emissions on ambient air quality; and (5) All emission monitoring systems be kept in operation when possible. Herman Mem., Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” For the affirmative defense to be available, Permittee must be required to demonstrate its adherence to the above requirements and must be required to demonstrate that: (1) The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator; (2) The excess emissions (i) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (ii) could not have been avoided by better operation and maintenance practices; and (3) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance. Herman Mem. Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” The Administrator must object to the permit because it fails to include these requirements in the following conditions:

Condition 7.1.3(c)

Condition 7.2.3(b)

Condition 7.3.3(b)

Condition 7.4.3(b)

Condition 7.5.3(c)

Condition 7.6.3(c)

- Finally, regarding both startups and malfunctions, the Permittee’s actions in response to excess emissions must be documented by a properly signed, contemporaneous operating log. Herman Mem. Attachment “Policy on Excess Emissions During Malfunctions, Startup, and Shutdown.” The Administrator must object to the permit because it fails to include this requirement in the following conditions:

Condition 7.1.9(g):

Condition 7.1.9(h)(ii)

Condition 7.2.9(g)(ii)

Condition 7.3.9(f)(ii)

Condition 7.4.9(f)(ii)

Condition 7.5.9(c)

Condition 7.5.9(d)(ii)

Condition 7.6.9(e)

Condition 7.6.9(f)(ii)

V. THE ADMINISTRATOR MUST OBJECT TO THE PERMIT BECAUSE IT CONTAINS CONDITIONS THAT VIOLATE U.S. EPA POLICY REQUIRING A PERMIT TO BE PRACTICALLY ENFORCEABLE.

The Fisk proposed Title V permit contains numerous conditions which are not practically enforceable. This is a violation of U.S. EPA policy regarding practical enforceability and, consequently, the Administrator must object to the permit. For a permit condition to be enforceable, the permit must leave no doubt as to exactly what the facility must do to comply with the condition. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.

A permit is enforceable as a practical matter (or practically enforceable) if permit conditions establish a clear legal obligation for the source [and] allow compliance to be verified. Providing the source with clear information goes beyond identifying the applicable requirement. It is also important that permit conditions be unambiguous and do not contain language which may intentionally or unintentionally prevent enforcement.

Id.

Although some of the language identified below (i.e., “reasonable” or “significant”) may be quoting directly from the Act or regulations, this is not sufficient to justify the Illinois E.P.A.’s use of this language verbatim in the permit and overcome the practical enforceability problem. It is the responsibility of the Agency to interpret and implement the Act and regulations. One obligation under this responsibility involves translating language from the Act or regulations that would not be practically enforceable in a permit to language to be included in a permit that clearly and specifically identifies what a facility must do.

A. Permit Conditions That Reference Undefined Procedures, Documents, Etc., Are Not Practically Enforceable.

A permit condition is not practically enforceable if it references documents, procedures, instructions, etc., that are described in a manner that is insufficient to allow such items and the content thereof to be specifically, finally and conclusively identified. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46. Further, “specific numbers must be incorporated into the permit rather than a reference to a document which may not include clear requirements.” Id. at III-52. Terminology such as “reasonable precautions” or “best engineering practices” must be defined. Id. at III-52, III-53. As noted above, for a permit condition to be enforceable, the permit must leave no doubt as to exactly what the facility must do to comply with the condition. Id. The following conditions are not practically enforceable because they fail to sufficiently identify referenced procedures, documents, instructions, etc., and, therefore, the Administrator must object to the permit.

- The reference to the alternative of “other written instructions” is vague and fails to specify exactly what instructions the Permittee shall be following, where those instructions come from, etc. This term is not practically enforceable rendering the following conditions deficient. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.
Condition 7.1.3(b)(ii)
Condition 7.5.3(b)(ii)
- Condition 7.1.7(b)(i) provides that the Permittee shall perform testing at “other operating conditions that are representative of normal operations.” This is vague and not practically enforceable because the specific conditions that Permittee must meet and actions that Permittee must take must be included in the permit. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46. The condition is deficient because it does not include the exact operating conditions at which testing must be performed.

- Conditions 7.1.8(a)(i) and (b) provide that “monitoring equipment shall be operated pursuant to written monitoring procedures that include a quality assurance/control plan.” Further, Condition 7.1.8(a)(i) goes on to state “which procedures shall reflect the manufacturer’s instructions as adapted by the Permittee based on its experience.” The terminology “written monitoring procedures” is vague in that it fails to identify the content of the written monitoring procedures, the process of developing such procedures, and other necessary details. It also allows the Permittee unlimited discretion in developing such procedures. Condition 7.1.8(a)(i) allows Permittee even further discretion in adapting the manufacturer’s instructions as it sees fit, limited only by Permittee’s “experience” with the term “experience” left unclear and completely undefined. As a result, the above terminology and, therefore, both Conditions 7.1.8(a)(i) and (b) are not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46.
- Condition 7.6.3(b)(ii)(A) requires the Permittee to implement “established startup procedures” “to minimize startup emissions, the duration of startups, and minimize the frequency of startups.” “Established startup procedures” is vague because it fails to indicate with specificity what procedures the Permittee shall be following. This terminology and therefore the whole condition are, consequently, not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.
- Condition 8.5. provides that “Tests . . . shall be conducted using standard test methods.” “Standard test methods” must be defined. At a minimum, the permit must cite a regulation or statute where standard test methods are defined. As it is written, the terminology is vague, allows the Permittee too much discretion in deciding what qualifies as standard test methods, and, as a result, the condition is not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.

B. Permit Conditions That Contain Imprecise Timeframes Are Not Practically Enforceable.

The permit contains numerous conditions that provide timeframes in terms that are vague and subjective and therefore not practically enforceable. “Without [a time limit] defined in the permit, the burden may be on the permitting authority to prove that the source could or should have acted sooner.” U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-51. The permit must “[r]equire that an outer time limit be set on any actions required to occur . . .” Id. Consequently, without such outer time limits, set time periods or frequencies, the following conditions are not practically enforceable, the permit is deficient, and the Administrator must object to the permit.

- Condition 5.2.3(b) provides that Permittee shall amend its operating program from “time to time” so that it is “current.” These timeframes are vague, subjective and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-51.

- Condition 5.2.3(c) provides that paved areas shall be cleaned on a “regular” basis. This timeframe is vague, subjective and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-51.
- Condition 5.2.7 requires Permittee to “immediately” implement the episode action plan. The timeframe “immediately” is vague, subjective and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-51.
- Condition 7.1.3(b)(ii)(D) requires only “timely energization of the electrostatic precipitator as soon as this may be safely accomplished” This condition must include a specific timeframe denoted in hours, minutes, or the like by which the ESP must be energized. The terms “timely” and “as soon as” are vague and allow the Permittee too much discretion in determining when the ESP may be energized. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-51.
- Condition 7.1.8(a)(iv) provides that “monitoring pursuant to 35 IAC § 201.401 is not applicable during any period of a monitoring system or device malfunction if the Permittee demonstrates that the malfunction was unavoidable and is being repaired as expeditiously as practicable, pursuant to 35 IAC § 201.404.” The language “as expeditiously as practicable” is vague and not defined and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-51.
- The following conditions in the permit include the language “The Permittee shall notify the Illinois EPA’s Regional Officeas soon as possible” The terminology “as soon as possible” is vague and allows the Permittee too much discretion in determining when the IEPA may be notified and, consequently, the following conditions are not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-51.
 - Condition 7.1.10(b)(i)
 - Condition 7.2.10(b)(i)
 - Condition 7.3.10(b)(i)
 - Condition 7.4.10(b)(i)
 - Condition 7.5.10(b)(i)
 - Condition 7.6.10(b)(i)
- Conditions in the permit require the Permittee to keep records “which shall be kept up to date.” This timing is vague and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-51. A set frequency or time period must be imposed upon Permittee, and, consequently, the following conditions are deficient:
 - Condition 7.2.9(a)
 - Condition 7.2.9(b)

C. Permit Conditions That Use the Term “Reasonable” Are Not Practically Enforceable.

The permit uses the terms “reasonable” and “reasonably” in a number of conditions. These terms are vague, subjective, and allow the Permittee too much discretion in determining

whether certain actions are reasonable. For a permit condition to be enforceable, the permit must leave no doubt as to exactly what the facility must do to comply with the condition. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46. Use of the vague terms “reasonable” and “reasonably” leads to the conditions being not practically enforceable and, therefore, the Administrator must object to the permit. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-52.

- The conditions listed below are not practically enforceable because they require only that the “affected boiler . . . reasonably be repaired or removed” and that Permittee take only “reasonable steps to minimize emissions.” This is because the terms “reasonable” and “reasonably” are subjective. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-52. Condition 7.1.3(c)(ii)
Condition 7.2.3(b)(ii)
Condition 7.3.3(b)(ii)
Condition 7.4.3(b)(ii)
Condition 7.5.3(b)(ii)
- The permit provides that “the Permittee shall comply with all reasonable directives of the Illinois EPA” in the following conditions. The use of the term “reasonable” is vague and allows the Permittee too much discretion in determining which directives of the IEPA’s are reasonable and therefore discretion in determining which of the directives of the IEPA’s that it will comply with. By including the term “reasonable”, it renders the condition not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-52. The condition is deficient because it fails to require Permittee to follow all IEPA directives.
Condition 7.1.3(c)(iv)
Condition 7.2.3(c)(iv)
Condition 7.3.3(c)(iv)
Condition 7.4.3(c)(iv)
Condition 7.5.3(c)(iv)
Condition 7.6.3(c)(iv)
- The Permit also states that “The Permittee shall implement and maintain control measures for the affected operations . . . that . . . provide a reasonable assurance of compliance . . .” in the following conditions. By using the term “reasonable” in the following conditions, the permit fails to require actual compliance and it renders the condition vague and not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-52. The term “reasonable” is subjective and allows the Permittee too much discretion conclude that it need only do the bare minimum or less to comply with the cited regulations. The condition is deficient because it fails to require complete compliance of the Permittee.
Condition 7.2.6(a)(i)
Condition 7.3.6(a)(i)
Condition 7.4.6(a)(i)

D. Permit Conditions That Allow for Too Much Agency Discretion Are Not Practically Enforceable.

The permit has numerous provisions that are not practically enforceable because the condition allows for too much agency discretion. This results in citizens not being able to enforce the permit condition without access to a determination by Illinois EPA. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-49. Further, “citizens would have difficulty disputing a finding by the Director that the source had met the requirements of that condition.” *Id.* Finally, such agency discretion allows the source to negotiate the condition “off permit” and bypass the permitting process requirements and procedures. *Id.* Consequently, the following conditions are not practically enforceable and, therefore, the Administrator must object to the permit.

- Condition 5.2.3(a) provides for Illinois EPA review of the operating program regarding fugitive particulate matter. Allowing this sort of Agency discretion renders the condition not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-49. The condition is also vague because it fails to indicate what this review entails, for instance, whether review of the program involves Illinois EPA approval or whether review provides Illinois EPA with the opportunity to alter the program.
- Condition 7.1.7(a)(i)(B) allows the Illinois EPA to waive the requirement. This is not practically enforceable because citizens would have trouble disputing a finding by the Director that the requirement should be waived. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-49.
- Condition 7.1.7(c) provides for Illinois EPA review and approval of the test plan to be utilized along with allowing for IEPA to impose additional conditions through the test plan. Allowing this sort of Agency discretion renders the condition not practically enforceable because citizens would not be able to enforce the permit condition without access to a determination by IEPA and would have difficulty challenging a decision by the IEPA to approve the test plan. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-49. Further, this agency discretion allows the source to negotiate the test plan “off permit” and bypass the permitting process requirements and procedures. *Id.*

E. Certain Other Permit Conditions That Contain Vague Language Are Not Practically Enforceable.

The permit has a number of other conditions that are not practically enforceable because they contain language that is vague and, therefore, the Administrator must object to the permit. For a permit condition to be enforceable, the permit must leave no doubt as to exactly what the facility must do to comply with the condition. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.

- Condition 5.2.3(a) requires the operating program to “significantly reduce fugitive particulate matter emissions.” “Significantly” is vague and therefore not practically enforceable. U.S.

EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-51. “‘Significant’ must be defined for the permit to be enforceable.” Id.

- Condition 5.2.7 discusses the Episode Action Plan but the provisions in this condition are vague and lacking sufficient detail to be practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46. For Condition 5.2.7(a) to be enforceable, the episode action plan would need to be defined and the contents of the plan delineated in much greater detail. The specific conditions that Permittee must meet and actions that Permittee must take included in the permit. Condition 5.2.7(b) requires that Permittee implement only the “appropriate” steps in the plan. The term “appropriate” is subjective, vague and not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46. Condition 5.2.7(c) uses the term “changed.” This term is also subjective and not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46.
- The following conditions use the term “deviation” and, therefore, are not practically enforceable because the term is vague. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46.
 - Condition 5.7.1
 - Condition 7.1.10(g)
 - Condition 7.2.10(a)
 - Condition 7.3.10(a)
 - Condition 7.4.10(a)
 - Condition 7.5.10(c)
 - Condition 7.6.10(a)
 - Condition 7.7.10
- The condition that “The Permittee may obtain an extension of or up to a total of 72 hours* from the Illinois EPA, Air Regional Office unless extraordinary circumstances exist” is unclear. This language is inconsistent with the following sentence, which allows the IEPA to grant a longer extension if “unusual circumstances exist”, because it seems to set a lower threshold than “extraordinary circumstances.” Consequently, the two sentences are inconsistent with each other and seem to apply to different circumstances although it is not clear in what ways they apply. Furthermore, the terminology “extraordinary circumstances” and “unusual circumstances” is not defined and unclear in general and therefore not practically enforceable in all of the following conditions:
 - Condition 7.1.3(c)(ii)
 - Condition 7.2.3(b)(ii)
 - Condition 7.3.3(b)(ii)
 - Condition 7.4.3(b)(ii)
 - Condition 7.5.3(b)(ii)
- Condition 7.1.7(b)(ii) provides that “[m]easurements shall be taken at an appropriate location.” The term “appropriate” is vague and not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-46.

- Condition 7.1.8(d) is not practically enforceable because it is stated in the conditional. It places the burden on the Permittee or the citizen enforcing the condition of confirming that the requirements are consistent with 40 C.F.R. Part 75. The permit is deficient because the IEPA failed to ensure that all requirements included in the permit are consistent with 40 C.F.R. Part 75.
- Condition 7.1.10(d)(ii) gives some recordkeeping requirements by way of example but it is not clear whether these are required actions from 40 C.F.R. Part 75 or mere suggestions. The permit is deficient because examples are not practically enforceable and the permit failed to require specific actions of the Permittee. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.
- The Permit includes the language “such as” in the following conditions. This language is vague and transforms the language that follows “such as” into examples. Examples are not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46. This is especially troublesome in the following conditions because this language is used regarding the control measures. The permit is deficient because it fails to require specific control measures.
 - Condition 7.2.6(a)(i)
 - Condition 7.3.6(a)(i)
 - Condition 7.4.6(a)(i)
- It is unclear what is meant by “A summary of compliance compared to the established control measures” in the following conditions. This language is vague and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46.
 - Condition 7.3.9(c)(v)
 - Condition 7.4.9(c)(v)
- Several conditions are devoid of practically enforceable substantive requirements. They state that “The Permittee shall operate and maintain each affected process with the control measures identified in Condition” 7.2.9(b) or 7.4.9(b) yet neither of those conditions identifies any control measures beyond what are currently being implemented at the facility, which could be none at all.
 - Condition 7.2.6(b)(ii)
 - Condition 7.3.6(a)(ii)
 - Condition 7.4.6(a)(ii)
- Condition 7.5.4(a)(iii) states that “the Permittee shall maintain and operate the affected boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.” The terminology “good air pollution control practice” is vague, not defined and, therefore, not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, III-53. Good air pollution control practice must be defined with the exact actions that the Permittee needs to take delineated.

- The compliance certification contained as a Standard Permit Condition in Condition 9.8 is inadequate. It is vague and therefore not practically enforceable. U.S. EPA Region 9 Title V Permit Review Guidelines, Sept. 9 1999, p. III-46. It indicates that the compliance certification shall be submitted no later than May 1. This is unclear as to whether that means May 1 of every year and is therefore not practically enforceable.

VI. CONCLUSION

In sum, the permit fails to meet federal requirements in numerous ways. These deficiencies require that the Administrator object to issuance of the permit pursuant to See 40 C.F.R. § 70.8(c)(1).