Response to Comments on the Metropolitan Chicago Air Quality and Economic Development XL Project

The EPA received four sets of written comments on the proposed Final Project Agreement for the Metropolitan Chicago Air Quality and Economic Development XL Project during the public comment period. The comments are presented below and were grouped where possible and paraphrased to capture the substance of the comment. The comments are followed by U.S. EPA responses.

1) Comment: It has not been demonstrated that obtaining offsets in this area is problematic.

Response: This project is not intended as the sole means for new and modified sources to obtain offset emissions. By implementing section 173(a)(1)(B) of the Clean Air Act (CAA), this project will provide an alternative to obtaining traditional offsets under 173(a)(1)(A). In addition, this project will further encourage communities to pursue emissions reduction activities while reducing overall emissions in the non-attainment area (because 40% of these emission reductions will be permanently retired). The implementation of this project creates an incentive for communities to implement emission reduction activities on a larger scale and at an accelerated pace.

2) Comment: Section 173 of the Clean Air Act requires offsets to come from existing stationary sources in a region, and not from mobile sources. CAA Section 111 (a)(6) defines an "existing source" as "any stationary source other than a new source," which means reductions from any other source categories, such as mobile and area, would be ineligible for NSR offset purposes. We are opposed to the use of emission reduction credit offsets generated by mobile and/or area sources for stationary sources, as this creates a clear shift in the environmental burden to the neighborhood surrounding the stationary source.

Response: The U.S. EPA does not agree with the assertion that offsets under section 173 of the CAA are limited to those from stationary sources, as the Agency does not believe that the definition of "existing source" in section 111(a)(6) is applicable here. Rather, the language of section 173 and the statutory framework and context are best read as allowing offsetting emissions reductions to be provided by sources other than stationary sources. As specified in section 173(a)(1)(A), the ultimate test as to whether offsetting emissions reductions are sufficient is by reference to whether they represent "reasonable further progress as defined in section 171." The definition of "reasonable further progress" in section 171(1) plainly refers to the air quality goal of attainment of the National Ambient Air Quality Standards (NAAQS), and since all sources of air pollution, mobile, stationary, and "area," contribute to nonattainment, the definition of reasonable further progress naturally does not exclude any category of emissions. Accordingly, EPA has not limited offsets under section 173(a)(1)(A) to those derived from other stationary sources, but has allowed other source categories, such as mobile sources, to provide

offsets. Likewise, EPA does not believe that the growth allowance alternative to offsets provided for in section 173(a)(1)(B) at issue in this project requires that the emissions reductions used to generate such allowances in lieu of offsets be limited to those from stationary sources. Whether offsets or growth allowances are provided by stationary sources or other sources, they must be permanent, quantifiable, and surplus in order to be creditable.

3) Comment: The intended use of offsets violates the Illinois SIP at 35 Ill. Adm. Code Part 203.302 (B) in that it allows the use of a portion of the available growth margin to satisfy the NSR offset requirement without requiring owners or operators to first present evidence that other possible sources of emission offsets were investigated, and that none were available at that time.

Response: The provision cited (Illinois SIP at 35 Ill. Adm. Code Part 203.302 (B)) was included in the proposed Final Project Agreement (FPA). The project XL does not waive this provision. A source that wishes to use the growth allowance will be required to fulfill all applicable requirements. The U.S. EPA believes that the project may proceed with the knowledge that Illinois Adm. Code Part 203.302(B) should be addressed when processing a major NSR application.

4) Comment: The analysis required under CAA Section 173(a)(5) must be required of any new or expanded source under this XL Project; Section 173(a)(5) stipulates that analysis must be done of "alternative sites, sizes, production processes, and environmental control techniques for such proposed source" which "demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification."

Response: The U.S. EPA agrees with the comment. The project does not waive any applicable CAA requirements, including Section 173(a)(5).

5) Comment: The stakeholder process was inadequate.

Response: The comment that the stakeholder process was inadequate for this project is taken seriously by the U.S. EPA. In the past, Project XL has been criticized by both project sponsors and stakeholders for being too slow and taking too long. As a result, efforts were made to streamline the XL process for this and other Project XL pilot projects to reduce project timelines while maintaining meaningful stakeholder involvement.

In response to this comment, the City of Chicago augmented their planned stakeholder efforts with additional activities. An additional general stakeholder meeting was held on September 21, 2000. A draft of the final FPA was shared with the stakeholders before it was signed. The final FPA includes numerous clarifications and changes requested by the stakeholders. In cases where stakeholder comments were not incorporated,

stakeholders were provided a clear rationale for the decision. In addition, on October 11, 2000, a subset of stakeholders met with U.S. EPA and Chicago officials to discuss quantification and tracking processes for the emission reductions. The U.S. EPA and Chicago DOE have also met or spoken with individuals or groups that raised questions or concerns with the project. The EPA believes that with the additional activities undertaken subsequent to the closing of the comment period, the stakeholder process for this project has been adequate.

The U.S. EPA received the proposal from the City of Chicago Department of Environment (Chicago DOE) on May 12, 2000. On July 17, 2000, the U.S. EPA formally selected the proposal for project development. The Chicago DOE had began the stakeholder process on July 13, 2000 when they presented the Project XL proposal to a Clean Air Communities Campaign Committee meeting.

Several stakeholder meetings were then scheduled with a broader invitation list. These meetings were held on July 24, 2000, August 7, 2000, August 28, 2000 and September 21, 2000. Chicago DOE notified the Metropolitan Mayors Caucus Clean Air Task Force, the Campaign for Clean Air and Development Steering Committee, and the Clean Air Communities Campaign Committee. These diverse groups either engaged other groups or notified the U.S. EPA and Chicago DOE of other groups that might wish to participate in the process. The draft final project agreement was sent to the stakeholder group on August 18, 2000. Availability of the proposed final project agreement for public comment for a two-week period was announced in the Federal Register on August 25, 2000.

Further, significant opportunities for stakeholder involvement in this project will continue during project implementation. At any time during implementation, interested parties may participate in stakeholder activities.

6) Comment: Under "Monitoring, Reporting, Accountability, and Evaluation Methods to be Used," the proposal states that, "It is the goal of the parties that the methodology and structure will be transparent to the public, and provide interested parties with timely and sufficient information to verify emission reductions made available through the growth allowance." This should be a commitment of the U.S. EPA, IEPA and City, rather than a goal.

Response: The U.S. EPA agrees with the comment. Language in the Final Project Agreement will reflect this suggestion. It is a commitment of all parties to the agreement to have an open and publicly available process rather than a goal.

7) Comment: Provisions should be included barring the backsliding of the 40 percent retirement.

Response: All parties to the agreement agree that there should be no reduction in the percentage of reductions that are retired. The U.S. EPA has clarified this in the Final

Project Agreement, stating that the percentage of emissions retired may not be less then 40% of the selected emission reduction activity.

8) Comment: The proposal should stipulate that every emission reduction credit retired under the XL project be permanently ineligible to fulfill future regulations, essentially preventing the double counting of emission reductions. In addition, all emission reduction activities expected to be mandated in the near future should be ineligible for emission credits, as the reduction would be of a temporary nature.

Response: Emission reductions performed under this project may not be double counted. To maintain the superior environmental benefit of the project, the emission reductions may not be used to fulfill other applicable current or future requirements. When putting together emission reduction programs, every effort will be made to anticipate new programs or requirements that may effect activities under this project.

9) Comment: The current emission inventory used to produce an anticipated Attainment Demonstration SIP has numerous flaws.

Response: The U.S. EPA agrees that it is difficult to quantify some air quality benefits of the activities and strategies. The U.S. EPA believes that as new and better information becomes available on emissions from mobile sources, area sources and off-road sources, the information should be used in the quantification efforts. These considerations have led us to believe that the inventory (1990 base year) should not be used as a strict determinant of total emissions from a source category or a reduction strategy. Although the growth allowance concept has been generally conceived to create an emission allowance from the approved emission inventory, that is not the concept to be implemented in this XL project. Although the emission inventory will not be used to carve out the emission allowance, the emission inventory can be used as a general measure for how much potential a certain strategy may possess.

Quantification of emission reductions has instead been assessed through workgroups (Illinois EPA, U.S. EPA and City of Chicago) using the best available estimation techniques to quantify reductions from certain sources. Before an actual reduction can be credited to a municipality, sufficient documentation must be submitted to the Illinois EPA and U.S. EPA for review and acceptance. Details of this system have not been entirely agreed upon, however, some criteria for documentation of reductions have been established. Only after actual reductions have been verified and quantified to the satisfaction of both the Illinois EPA and U.S. EPA will any credits be attributed to the "growth allowance." Stakeholders will have opportunities to review and comment on the proposed structure for quantifying emissions reductions.

10) Comment: Several comments on the criteria for development zones were received. One commenting organization stated that the development zones should only be those areas that are either a federal Empowerment Zone or Enterprise Community; eligible for

designation as a State Enterprise Zone Community; or meet the criteria for the Community Renewal and New Markets Act of 2000 as proposed in H.R. 4923. Two commenting groups stated that the development zones should consider a broad range of environmental characteristics including brownfield redevelopment and transportation oriented development in addition to income characteristics. Another stated that areas in proximity to transit stops should not receive the same benefits from the program as an economically distressed area.

Response: The U.S. EPA's interpretation of section 173(a)(1)(B) is that "an area to which economic development should be targeted" should apply to those areas within the larger metropolitan area that need revitalization, redevelopment, creation of jobs, and other similar factors. The criteria described in the final project agreement selects areas to fulfill this goal. The decision was made to revise the criteria from the proposed final project agreement to delete the transportation criteria and add the Chicago development corridors. The U. S. EPA believes that the location of sources in close proximity to transit hubs may act to reduce vehicle miles traveled and therefore reduce emissions, but in the selection of development zones in this geographic area, these areas created concerns to some stakeholders as to the breadth of the zones as well as potential for areas on the urban fringe. The Chicago corridors were selected for addition to the criteria since they are specifically defined areas within the city that have been approved by local planning processes to promote similar goals as 173(a)(1)(B). The development corridors largely overlap the areas enterprise zones and empowerment zones, which were designed to create jobs and expand economic opportunities in distressed areas of the city.

11) Comment: The project might encourage or allow an industry to leave the inner city.

Response: Language has been included in the Final Project Agreement to deter sources from moving from the inner parts of the city to the edges to take advantage of this project. The purpose of this project is not to allow sources to move to fringe locations, but instead to give incentives to communities to generate additional emission reductions to act as a tool to place new businesses and jobs in that community.

12) Comment: The pollution prevention language in the final project agreement was inconsistent and needs to be better defined.

Response: The Final Project Agreement has been revised to include pollution prevention measures that will be required which reduce overall emissions at the facility. The requirement for pollution prevention measures is a more stringent requirement on the source than current NSR requirements. Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics.

13) Comment: The final project agreement should be reviewed by the U.S. EPA's Office of Environmental Justice. Provide more documentation of the basis for the statement that there will be no unjust or disproportionate shifting of risk burden.

Response: The U.S. EPA Region 5 and Headquarters Offices of Environmental Justice have reviewed the Final Project Agreement. When evaluating the project, the U.S. EPA considered whether it would shift risk burden relative to what is required under current rules and regulations. Under current NSR rules, a source can obtain emission offsets from any location within the nonattainment area. While the City of Chicago is a large area, it is smaller than the entire nonattainment area. Relative to existing rules, this project improves upon the current NSR requirements by creating emission reductions in closer proximity to the new or modified source, by gaining an additional 40% emission reduction beyond what is required, and by requiring pollution prevention activities.

In addition to these project components, all other applicable federal and State requirements will apply, including CAA section 173(a)(5) which requires "an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification."

The implementation of this project does not act to shield a source from environmental justice or Title VI review which can be requested under existing permit programs. This project also provides for meaningful and robust public participation before a new source is located in a development zone.

14) Comment: The project should specifically set a minimum standard for hiring employees who live within a maximum radius of the facility.

Response: The City of Chicago stated at the September 21, 2000 stakeholder meeting that when new businesses apply for use of the growth allowance, local hiring is one of a wide range of potential measures the City evaluates, but it would be determined on a case-by-case basis. Sources using the growth allowance will work with the City of Chicago to develop a plan which give preference for job interviews to residents of the community in which the business is located.

15) Comment: This proposal has not adequately addressed the potential for qualifying projects to undermine the intent of Illinois' proposed Emission Reduction Market System (ERMS). This proposal may create similar problems for any potential emissions trading program embodied in the Illinois response to the U.S. EPA NOx SIP Call. The proposal also creates potential uncertainties regarding offsets for NOx when the CAA Section 182 (f) NOx Waiver is appropriately rescinded.

Response: At this time the EPA has not approved the Illinois ERMS program. This project is consistent with both the spirit and the letter of the ERMS program. The intent of the ERMS program is to reduce VOC emissions in the Chicago area. The superior environmental benefit of this XL project is also to reduce VOC emissions in the Chicago nonattainment area. Thus, this project is fully consistent with and helps achieve the

intent of the ERMS program. This project will also be administered in a way that complies with the requirements for accounting for emissions, creditability of area and mobile source emission reductions, and other requirements of the ERMS rules. ERMS program credits generated by approved emission programs implemented pursuant to this XL project will only be used to satisfy the offset requirement for a source. EPA does not expect this project to affect sources subject to the NOx SIP Call; nor should it impact the Section 182(f) NOx waiver under which the Chicago ozone nonattainment area currently operates.