

## MEMORANDUM OF AGREEMENT

### I. General

#### A. Scope of Agreement

This Memorandum of Agreement ("Agreement") establishes a working agreement between the Illinois Environmental Protection Agency ("Illinois EPA") and the United States Environmental Protection Agency ("USEPA") for implementation of Illinois' Clean Air Act Permit Program ("CAAPP"), which is the permit program adopted by the State of Illinois and approved by USEPA to satisfy the mandate of Title V of the Clean Air Act.

This Agreement does not address enforcement of the CAAPP, as enforcement is the subject of a separate agreement between the Illinois EPA and USEPA.

#### B. Authority

This Agreement is entered into by the Chief of the Bureau of Air of the Illinois EPA and the Director of the Air and Radiation Division of USEPA, Region 5, pursuant to authority granted to the Illinois EPA by Illinois' Environmental Protection Act and authority granted to USEPA by the federal Clean Air Act. Both parties recognize that CAAPP permits are to address applicable requirements for all regulated pollutants emitted by a source, including emissions of hazardous air pollutants regulated pursuant to Section 112 of the Clean Air Act, and that the CAAPP must be implemented in conformance with applicable state and federal laws and rules. This Agreement is not intended to contravene any such requirements.

#### C. Coverage

This Agreement covers the implementation of the CAAPP for the entire State of Illinois.

#### D. Effective Date

This Agreement becomes effective upon signature by both parties

#### E. Modification of Agreement

This Agreement may be modified at any time by the written agreement of both parties.

#### F. Termination of Agreement

This Agreement will remain in effect until 10 days after either party provides written notice to the other terminating participation in the Agreement.

### II. Policy Statement

Communication and cooperation between the Illinois EPA and USEPA, as addressed by this Agreement, are essential so that Illinois' CAAPP can be implemented by Illinois EPA in an effective and timely manner, while optimizing application of resources by the Illinois EPA and USEPA and minimizing unnecessary or duplicative efforts in implementing the CAAPP by both the Illinois EPA and USEPA and

by affected sources.

### **III. Role of Parties**

#### **A. Illinois EPA Role**

The Illinois EPA, as the state permitting authority in Illinois, has the primary responsibility for implementation of the CAAPP, including:

1. Handling all aspects of CAAPP permitting for individual sources, including determining completeness and processing of applications, issuance or denial of permits, and reopening and modification of permits, except for those sources, such as Phase I Acid Rain Sources, for which USEPA is obligated to process the permits as required by the Clean Air Act;
2. Processing applications for construction and modification of CAAPP sources, for effective coordination with the processing of CAAPP permits, including making determinations of Maximum Achievable Control Technology for emissions of hazardous air pollutants from proposed major sources and modifications and existing major sources, pursuant to Sections 112(g) and 112(j) of the Clean Air Act, respectively;
3. Acting as the principle repository of documents submitted by sources subject to the CAAPP, including permit applications, notifications, and reports, unless otherwise specified by applicable regulations or permit provisions;
4. Implementing appropriate practices for sources that should not be subject to the CAAPP, including issuance of construction permits and Federally Enforceable State Operating Permits;
5. Revising its administration of the CAAPP as needed and appropriate to maintain effectiveness, with appropriate notification to USEPA for such revisions; and
6. Initiating appropriate modifications to the laws and rules that govern the CAAPP to respond to changes in relevant federal laws and rules with appropriate consultation with USEPA during such process.

#### **B. USEPA Role**

The USEPA has responsibility for assistance in and oversight of the implementation of the CAAPP, including:

1. Providing technical and administrative assistance to the Illinois EPA on an ongoing basis to assist the Illinois EPA's implementation of the CAAPP, including both specific assistance as requested by the Illinois EPA and other assistance as developed by USEPA, including guidance and instruction regarding national initiatives;
2. Providing timely and clear statements while CAAPP applications are being processed of the provisions that it finds are needed in a CAAPP permit for an individual source or a category of source to comply with the Clean Air Act and applicable federal regulations thereunder and applicable state rules in Title 35, Subtitle B: Air Pollution, Chapter I,

approved by USEPA as Illinois' State Implementation Plan;

3. Providing information to the Illinois EPA that is relevant to the implementation of the CAAPP, including preliminary versions of proposed rules and policies; copies of proposed and adopted rules and policies; and copies of significant correspondence to other permitting authorities and individual sources, either by generally making such material available to the public including the Illinois EPA, e.g., by the Technology Transfer Network(TTN) or by direct transmittal to the Illinois EPA;
4. Overseeing the CAAPP to promote its effective implementation in a manner that is consistent with national policy, by regularly reviewing the Illinois EPA's implementation of the CAAPP and advising the Illinois EPA of its observations;
5. Consulting with the Illinois EPA during the development of federal rules and policy to the extent feasible;
6. Maintaining a secondary repository of documents submitted by sources subject to the CAAPP, including copies of permit applications, notifications, and reports, as first submitted to the USEPA by either the Illinois EPA or a source, so that these documents continue to be available to USEPA; and
7. Administering permits for individual sources in those limited circumstances where USEPA is obligated to process permits, including Phase I Acid Rain Sources (as specified in Title IV of the Clean Air Act) and solid waste incineration units if operated by the Illinois EPA (as specified in Section 129(e) of the Clean Air Act).

#### **IV. General Practices for Communication**

A. The USEPA and Illinois EPA agree to the following general practices for communication:

1. The USEPA and Illinois EPA will maintain principle contacts, as follows, who will be the focal point of all communication related to the implementation of the CAAPP and will be responsible for any requests for expedited responses to requests. With appropriate notification, the principle contacts may designate specific persons on their staff to serve as contacts for specific projects or purposes.

The Manager of the Permit Section of the Bureau of Air of the Illinois EPA, and

The Chief of the Permits and Grants Section, Regulation Development Branch, Air and Radiation Division of Region 5 of USEPA;

2. USEPA and the Illinois EPA shall conduct telephone conferences on a regular basis. Such calls shall initially occur on a monthly basis, but shall be more frequent if necessary to review the implementation of the CAAPP and discuss specific applications; and
3. USEPA or the Illinois EPA may call meetings as needed to review operating procedures, resolve the handling of specific applications, or discuss concerns regarding implementation of the CAAPP. Prior to such a meeting, a written agenda shall be prepared.

B. The USEPA and Illinois EPA agree that new technology, including new computer technology, telecommunication systems and satellite communication, that will facilitate communication between the Illinois EPA and USEPA, should be used as it becomes available to both parties.

#### V. Routine Reporting Between the Illinois EPA and USEPA Concerning CAAPP Sources

A. The Illinois EPA and USEPA agree to the following procedures with respect to providing information concerning CAAPP applications, CAAPP permits and CAAPP sources to each other. Reports may be provided in any reasonable form, with the preferred means being electronic transmittal by telephone and computer data bases maintained and updated by the Illinois EPA to which USEPA has telephone access.

B. The Illinois EPA will report the following information to USEPA on a quarterly basis, reflecting information since the previous report:

1. The sources for which CAAPP applications, other than applications for administrative amendments or coverage by an issued general permit, were received, which shall identify the type of application (i.e., existing major source, new major source, area source, minor modification, significant modification or renewal), and specifically flag the following types of applications:

- a) An application proposing an early reduction of hazardous air pollutants pursuant to Section 112(i)(5) of the Clean Air Act;

- b) An application for a source subject to the Acid Rain Program pursuant to Title IV of the Clean Air Act; and

- c) An application for a municipal waste combustor or commercial incineration of hazardous waste or medical waste.

2. The sources whose CAAPP applications were deemed not complete by the Illinois EPA;

3. The sources with CAAPP applications pending for which significant public interest or any concern over environmental justice has been identified;

4. The sources for which draft CAAPP permits were released for public notice that would approve alternative equivalent emission limits;

5. The sources for which CAAPP permits were denied;

6. The sources for which the Illinois EPA was unable to revise the proposed permits to meet an objection (as specified in Section 505(c) of the Clean Air Act) that will have to be processed by USEPA; and

7. The sources for which a CAAPP permit was issued.

C. The USEPA shall report the following information to Illinois EPA on a quarterly basis, reflecting information since the previous report, if the Illinois EPA has not been already so notified:

1. Any sources with CAAPP applications pending for which significant public interest or a

concern over environmental justice has been identified by USEPA;

2. Any sources with CAAPP applications pending in which USEPA has any special interest, with explanation; and

3. Any sources with issued CAAPP permits for which petitions for review by USEPA were submitted pursuant to Section 505(b)(2) of the Clean Air Act.

D. The Illinois EPA and USEPA will notify the other party when it becomes aware that a CAAPP permit, which it issued, has been altered as a result of any administrative, Board or court action, which notification shall include a copy of the relevant order and a copy of the altered permit with changes indicated.

E. The Illinois EPA and USEPA agree to coordinate the updating of the Aerometric Information Retrieval System (AIRS) with relevant information concerning CAAPP sources.

## **VI. Preliminary Review of Material by USEPA**

The USEPA and Illinois EPA agree to the following procedures for USEPA review prior to public notice of working drafts of permits, permit conditions and regulatory interpretations. These procedures are appropriate to assure that CAAPP permits and related construction permits and federally enforceable state operating permits are efficiently developed, without need for any additional effort in redrafting, to include appropriate conditions, e.g., proper interpretation of federal emission standards, simplification of overlapping regulatory requirements, and appropriate definitions of prompt reporting for deviations from requirements in CAAPP permits:

A. At the request of the Illinois EPA, USEPA will provide the Illinois EPA with detailed comments on working drafts of permits, permit conditions and regulatory interpretations that address a source, emission unit, or situation that has not been addressed before. The USEPA will provide the same level of review for such material as for a proposed permit, to the extent practicable;

B. The Illinois EPA will submit such requests to USEPA in writing and provide USEPA with at least 30 days to complete its review, and will extend this period upon reasonable request, e.g., when Region 5 of USEPA must refer the issue to another USEPA office. Notwithstanding these time periods, USEPA shall provide an initial oral response to such material within 10 working days confirming receipt, reviewing relevant facts or issues with Illinois EPA staff and providing any preliminary observations; and

C. The Illinois EPA will take reasonable steps to facilitate USEPA's preliminary review of material, by providing copies of relevant supporting information, e.g., excerpts from the application, supplying the Illinois EPA's preliminary analysis, and highlighting proposed changes to established language for permit conditions.

## **VII. Handling of Draft, Proposed and Issued Permits**

The Illinois EPA and USEPA agree to the following procedures with respect to handling draft, proposed and issued CAAPP permits:

A. At the beginning of any public comment period on a draft CAAPP permit, the Illinois EPA will provide USEPA with a copy of the draft permit accompanied by the Illinois EPA's public notice and

project summary:

1. The USEPA shall maintain a log of public inquiries which it receives concerning the draft permit for a source, including any requests for further information, which shall be promptly forwarded to Illinois EPA; and
2. The USEPA shall provide any comments on a draft CAAPP permit, including any editorial comments, to the Illinois EPA at least 10 days before the close of the comment period or the date of a public hearing, if one is scheduled, whichever is first.

B. The Illinois EPA will provide proposed CAAPP permits to USEPA for review prior to issuance in accordance with Section 505 of the Clean Air Act as follows:

1. Proposed CAAPP permits, as follow, will be flagged by the Illinois EPA for review by USEPA to ensure integrity with the Title V program nationally. A copy of the Illinois EPA's public notice and project summary from the public comment period, the Illinois EPA's response to public comments, and copies of significant comments on the draft permit, including any comments from other State permit authorities, will also be transmitted to USEPA when the proposed CAAPP permit is submitted to USEPA for review:

*a)* Any proposed CAAPP permit for which the draft CAAPP permit was the subject of extensive public interest or opposition during the public comment period, as determined by the Illinois EPA;

*b)* Any proposed CAAPP permit that would incorporate USEPA's approval of an early reduction program for emissions of hazardous air pollutants pursuant to Section 112(i)(5) of the Clean Air Act;

*c)* The first proposed CAAPP permits prepared following completion of the public comment period for initial issuance, significant modification or renewal (first initial issuance, first significant modification, and first renewal) for sources in each of the following source categories:

- (1) Asphalt processing plant
- (2) Automobile assembly plant
- (3) Cement kiln
- (4) Chemical plant
- (5) Coal-fired institutional heating plant
- (6) Coal-fired electric utility
- (7) Foundry
- (8) Gas and oil-fired heating plant
- (9) Grain processing plant
- (10) Lime kiln
- (11) Paper mill
- (12) Petroleum product distribution terminal
- (13) Petroleum refinery
- (14) Steel mill, and
- (15) Miscellaneous manufacturing plant;

*d)* The first three proposed CAAPP permits for sources in different source categories prepared following completion of the public comment period for initial issuance, significant modification or renewal for major sources of volatile organic material (VOM) that are located in the "Chicago Area" or "Metro East Area" ozone nonattainment areas (first three initial issuance for the Chicago Area, first three initial issuance for the Metro East area, etc.);

*e)* The first proposed CAAPP permits prepared following completion of the public comment period for initial issuance, significant modification or renewal for a major source for particulate matter that is located in the "Lake Calumet", "McCook" or "Granite City" PM10 nonattainment areas;

*f)* The first proposed CAAPP permit prepared following completion of the public comment period for initial issuance, significant modification or renewal for sources that are subject to each source category for purposes of the National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63. For this purpose, each subpart, e.g., Subpart M, of 40 CFR Part 63 shall be considered a separate source category;

*g)* For purposes of the above paragraphs (a), (b), (c), (d), (e) and (f), a single proposed CAAPP permit, appropriately flagged for USEPA review, may satisfy the requirement under more than one paragraph. For example, a proposed CAAPP permit may be for the initial issuance of the first source in a listed source category and of the first major source of VOM located in a particular ozone nonattainment area. However, the Illinois EPA will flag a minimum number of proposed CAAPP permits for "diverse" sources (in different source categories, in different areas, subject to different applicable rules, etc.) for USEPA review, as follows:

(1) At least 30 proposed CAAPP permits per year during the first three years of this agreement;

(2) At least 20 proposed CAAPP permits per year during the next three years of this agreement, and

(3) At least 10 proposed CAAPP permits per year thereafter;

*h)* Any proposed general CAAPP permit that would cover numerous similar sources. Any such proposed general CAAPP permit shall only be flagged for USEPA review pursuant to this paragraph and shall not be considered to also satisfy other requirements for flagging of proposed CAAPP permits for USEPA review, as specified above.

2. The first proposed CAAPP permit for a modified permit using the minor permit modification procedure for each source in a category listed above in paragraph 1(a) will also be flagged by the Illinois EPA for review by USEPA to ensure integrity with the Title V program nationally.

3. Notwithstanding the above, USEPA will notify the Illinois EPA if it will not review a proposed permit for a particular source because the working draft of the permit or the draft

permit is acceptable as presented to USEPA or would be acceptable with minor changes in wording, provided that the permit is adopted in accordance with USEPA's finding and no substantive comments opposing the draft permit are received during the public comment period.

4. Within 30 days of receiving a proposed CAAPP permit that is flagged for review by USEPA under paragraph 1 above, or within 21 days for other proposed CAAPP permits, and prior to making any formal objection to the proposed permit, the USEPA will inform the Illinois EPA of the reasons that the USEPA is considering a proposed objection and the types of changes that might be required by USEPA to eliminate the objection and allow the Illinois EPA a reasonable opportunity to respond, so as to enable USEPA to reconsider or clarify any written objection to the proposed CAAPP permit.

5. The USEPA will provide any objection to a proposed CAAPP permit in writing within 45 days of receipt of the proposed permit. The objection will provide the reasons for the objection and, to the extent practicable, the specific language change required to correct the permit.

C. The Illinois EPA will provide USEPA with a copy of each CAAPP permit at the time that it is issued, including a copy of a revised CAAPP permit that has undergone administrative permit amendment.

D. For each general CAAPP permit, the Illinois EPA will provide the identity of each source and permittee authorized to operate pursuant to the permit, updated on at least a quarterly basis.

E. Except for documents that were not prepared by the Illinois EPA, which will be provided in paper form, the above material may be provided in any reasonable form, with the preferred means being electronic transmittal by telephone and computer data bases maintained by the Illinois EPA to which USEPA has telephone access.

### **VIII. Reopening of Permits**

The USEPA and Illinois EPA agree to the following procedures with respect to reopening of issued CAAPP permits:

A. Prior to requiring a CAAPP permit to be reopened, the USEPA will provide the Illinois EPA with notice of its intent to require reopening of a permit, including an explanation why it believes the permit must be reopened, and allow the Illinois EPA a reasonable opportunity but not less than 30 days to respond to such notice of intent;

B. USEPA will make any objection to the Illinois EPA's proposed determination to modify, revoke and reissue, or terminate a CAAPP permit in writing within 90 days after receipt of the Illinois EPA's proposed action; and

C. If after 90 days, USEPA has not submitted to the Illinois EPA either a written objection or a final approval letter, the Illinois EPA's proposed determination shall be deemed approved by USEPA and the Illinois EPA may issue the proposed determination as a final action.

### **IX. USEPA Processing of CAAPP Applications**

The Illinois EPA and USEPA agree that the following procedures shall be used for CAAPP applications that the USEPA must process because the Illinois EPA is unable to revise the proposed permit to meet an objection (as specified by Section 505(c) of the Clean Air Act):

A. The Illinois EPA will provide USEPA with a copy of the application and other relevant documents in the Illinois EPA's file for a source within 15 days upon a determination that a CAAPP application must be processed by USEPA.

B. At the request of the USEPA, the Illinois EPA will provide the USEPA with detailed comments on permitting issues and working drafts of permits or permit conditions; and

C. The USEPA will provide the Illinois EPA with a copy of the draft permit at the time that it is made available for public comment.

#### **X. Integrated Processing of Construction Permits**

The USEPA and Illinois EPA agree that the following shall be considered acceptable procedures for integrating the modification of a CAAPP permit with the processing of a construction permit. The modification of a CAAPP permit to include the terms and conditions from a construction permit that was subject to all of these procedures may be done by administrative amendment.

A. A construction permit that the Illinois EPA plans to issue pursuant to integrated processing shall:

1. Be prepared in the same general form as a CAAPP permit;
2. Be clearly identified as being subject to integrated processing;
3. Include all conditions that would be anticipated to be added to the CAAPP permit to address the operation of the emission units covered by the permit;
4. Include appropriate conditions to address construction and initial operation of such emission units, as would normally be present in a construction permit, which conditions shall be clearly noted if they will not be included in the CAAPP permit; and
5. Include a condition specifying the circumstances in which the terms of the construction permit may be placed in the CAAPP permit by administrative amendment, as further described in paragraph E, below.

B. The application for such a construction permit shall be considered a CAAPP application for purposes of the sections of this agreement addressing routine reporting, preliminary review of material, handling of permits, and availability of information;

C. The public comment period for the draft of such permit shall also include notice to affected states, as would occur with a CAAPP permit;

D. A proposed permit will be sent to USEPA by the Illinois EPA for any such construction permit for review by USEPA in accordance with Section 505 of the Clean Air Act, prior to it being considered a construction permit that has completed integrated processing, as follows:

1. The proposed permit sent to USEPA will be accompanied by the Illinois EPA's public notice and project summary from the public comment period, the Illinois EPA's response to public comments, and copies of significant comments on the draft permit, including any comments from other State permit authorities;

2. If so designated by the Illinois EPA, the proposed permit sent to USEPA may constitute issuance of an enforceable construction permit for the purpose of authorizing commencement of construction under Illinois' State Implementation Plan. Any such construction permit shall clearly indicate that the permit, at the time of issuance, is a proposed permit for purposes of integrated processing and will only be considered to have completed integrated processing if USEPA makes no objection to the permit within its 45 day period for review; and

3. If USEPA objects to the issuance of the construction permit as having completed integrated processing, the Illinois EPA shall issue a revised construction permit addressing USEPA's objections and submit it to USEPA for review until such time that USEPA has no objection or integrated processing is discontinued, as addressed by paragraph F, below.

E. When revising a CAAPP permit to include the conditions of a construction permit that has completed integrated processing:

1. The Illinois EPA need only include those conditions applicable to the emission units for which the request for revision to the CAAPP Permit has been made (as would occur in the event that construction and initial compliance demonstrations have only been completed for certain units) but shall include all conditions applicable to such emission units except as initially noted in the construction permit;

2. The terms and conditions from the construction permit shall be included in the CAAPP permit without any substantive changes and with at most minor changes in form or wording as needed to adapt them for placement in the CAAPP permit.

F. The Illinois EPA may decide at any time that such an application or construction permit will no longer be handled by integrated processing so that the CAAPP permit for the source will not be modified by administrative amendment to include terms and conditions from the construction permit. The Illinois EPA will promptly notify the USEPA if such a decision is made to discontinue integrated processing while a proposed permit is under review by USEPA.

## **XI. Availability of Documents**

The Illinois EPA and USEPA agree to the following procedures with respect to availability of documents:

A. The Illinois EPA will maintain a file of documents for each source that will include permit applications; public notices, project summaries and other documents associated with public comment periods; permits; notifications, reports, compliance certifications and other submittals made by the source; Illinois EPA inspection reports; documents related to enforcement actions against the source; and other pertinent documents related to the source. This file will be maintained at the Bureau of Air's main office and will be available for inspection by USEPA. This file, other than confidential information, shall also be available for inspection by the public, upon reasonable advance notice consistent with applicable State procedures governing public access to records;

B. The USEPA will maintain similar files of material in its possession for each source, which will be available for Illinois EPA and public inspection upon reasonable advance notice consistent with applicable federal procedures governing access to records; and

C. The Illinois EPA and USEPA will make copies of material in these files available to the other party upon reasonable request, provided however that both USEPA and Illinois EPA will take reasonable and appropriate measures to prevent unnecessary, redundant or overly burdensome requests. Any requests for copies of such material will be made in writing and directed to the official custodian of such files.

## **XII. USEPA Audit of Illinois EPA Implementation of the CAAPP**

The USEPA and Illinois EPA agree that the following procedures shall be used for a formal audit by USEPA of the Illinois EPA's general implementation of the CAAPP:

A. USEPA will routinely conduct an on-site audit of the Illinois EPA's implementation of the CAAPP once every two years;

B. The USEPA will provide the Illinois EPA with at least 60 days advance notice of its audit, identifying the specific sources and material that it intends to review and whether the on-site audit will examine whether permit fees adequately reflect the reasonable costs of the CAAPP, as required by Section 502(b)(3) of the Clean Air Act;

C. The Illinois EPA will make the requested material available for USEPA review at the Bureau of Air's main office; and

D. The USEPA will discuss its observations and findings with the Illinois EPA in person at the conclusion of the on-site audit.

## **XIII. Handling of Confidential Information**

The Illinois EPA and USEPA agree to the following procedures for handling of confidential information:

A. Any information subject to a claim of confidentiality that is provided from the Illinois EPA to USEPA or vice versa will be clearly marked as such and will be separated from information that is not so claimed;

B. If either Illinois EPA or USEPA is prohibited from providing requested information to the other party, because of a claim of confidentiality, the party holding the information will instruct the source to provide the information directly to the party requesting the information; and

C. Any information subject to a claim of confidentiality will be treated in accordance with applicable regulations governing protection of such material, i.e., USEPA will follow 40 CFR 2 and the Illinois EPA will follow Section 7 of Illinois' Environmental Protection Act.

## **XIV. Dispute Resolution**

The USEPA and Illinois EPA agree to the following procedures in the event of a dispute between the USEPA and Illinois EPA over the implementation of the CAAPP. For this purpose, a dispute is any disagreement between the staff of USEPA and Illinois EPA handling a particular matter that prevents

further action on the matter by these individuals:

A. A dispute will be promptly referred to the Manager of the Permit Section of the Bureau of Air of the Illinois EPA and the Chief of the Permits and Grants Section for Region 5 of USEPA, or their designees, who will promptly review the issues and the relevant facts and circumstances and attempt to resolve the dispute;

B. If the dispute cannot be resolved at this level within 15 working days, the matter may be referred to the supervisors of these persons for resolution;

C. This process will continue, if necessary, to the level of the Chief of the Bureau of Air, of the Illinois EPA, and the Director of the Air and Radiation Division of USEPA, Region 5; and

D. Upon conclusion of dispute resolution, the Illinois EPA and USEPA will each review the nature of the disagreement and its resolution to identify opportunities for improving implementation of the CAAPP.

**XV. Signatures**

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Bharat Mathur, Chief  
Bureau of Air  
Illinois Environmental Protection Agency

Date

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David Kee, Director  
Air and Radiation Division, Region 5  
United States Environmental Protection Agency

Date