UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Enforcement and Compliance Assurance

IN THE MATTER OF:	)	
Illinois Power Company	)	**Notice of Violation**
	)	**EPA-CAA-2000-HQ-0002**
	)	
Proceedings Pursuant to	)	
Section 113(a)(1) of the	)	
Clean Air Act, 42 U.S.C.	)	
§7413(a)(1)	)	
	)	

NOTICE OF VIOLATION

This Notice of Violation ("Notice") is issued to Illinois Power Company, ("Illinois Power") for violations of the Clean Air Act ("Act") at the coal-fired power plant identified below. Illinois Power has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at their coal-fired power plant.

Commencing at various times since 1977 and continuing to today, Illinois Power modified and operated the coal-fired Baldwin Power Plant, Baldwin, Randolph County, Illinois (Baldwin Plant) without obtaining Prevention of Significant Deterioration (PSD) permits authorizing the construction and operation of physical modifications of their boiler units as required by the PSD requirements found at 42 U.S.C. §§ 7490-7492 and 40 C.F.R. § 52.21, as incorporated into the Illinois State Implementation Plan (SIP). In addition, for each of these physical modifications at the Baldwin Plant, Illinois Power has operated these modifications without installing pollution control equipment required by the Act and the Illinois SIP. These violations of the PSD requirements have resulted in the release of massive amounts of Sulfur Dioxides ("SO_2"), Nitrogen Oxides ("NO_x"), and particulate matter ("PM") into the environment. Until these violations are corrected, Illinois Power will continue to release massive amounts of illegal SO_2, NO_x, PM into the environment.

This Notice is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C.A. Section 7401-7671q. Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this Notice has been delegated to the Director, Air Enforcement Division, EPA Office of Enforcement and Compliance Assurance.

STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act (Act) was passed, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The NSR provisions of Parts C and D of Title I of the Clean Air Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. If a major stationary source is planning upon making a modification that is not major, it must obtain a general, or "minor" NSR permit regardless of its location. To obtain the required permit, the source must agree to put on Best Available Control Technology ("BACT") for an attainment pollutant or achieve Lowest Achieveable Emission Risk ("LAER") in a nonattainment area, or, in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.

3. Pursuant to Part C of the Act, the SIP of the State of Illinois requires that no construction or operation of major modification of major stationary source occur in an area designated as attainment without first obtaining a permit under 42 §§ 7470-7492 and 40 C.F.R. § 52.21 as incorporated into the Illinois SIP at 40 C.F.R. § 52.738.

4. Pursuant to Section 110(a)(2)(C) of the Act, the Illinois SIP requires that no person shall cause or allow the modification of any existing

source without first obtaining a construction permit. 35 Ill. Admin. Code Part 201.

5. The PSD requirements in paragraph 3 and 4 above are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

FACTUAL BACKGROUND

6. The Illinois Power owns and operates the Baldwin Plant,a fossil fuel-fired electric utility steam generating plant located at the Baldwin Plant, Baldwin, Illinois. The plant consists of 3 boiler units identified as units 1, 2 and 3 with 1893 megawatts total generating capacity and began operations in 1970, 1973 and 1975 respectively.

7. The Baldwin Plant located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
   For NO_x, the area has been attainment or unclassifiable.
   For SO_2, the area has been attainment.
   For PM, the area has been attainment or unclassifiable.
   For ozone, the area has been attainment.

8. The Baldwin Plant emits or has the potential to emit at least 100 tons per year of NO_x, SO_2 and/or PM and is a major stationary source under the Act.

VIOLATIONS

9. On numerous occasions between 1978 and the date of this Notice, Illinois Power Company made "modifications" at the Baldwin Plant as defined by the PSD regulations, 40 C.F.R. § 52.21. These modifications included, but are not limited to, the following individual modifications or projects: (1) replacement of cold end air heater tubes of Unit 1 in 1985 and 1990; (2) replacement of 14 cyclones and front and rear furnace walls of Unit 1 in 1992; (3) replacement of cold end air heater tubes of Unit 2 in 1988 and 1991; (4) replacement of boiler floor of Unit 2 in 1991; (5) replacement of economizer of Unit 3 in 1982; (6) the addition of secondary superheater surface of Unit 3 in 1993-4; and (7) replacement of reheater of Unit 3 in 1994.

10. For each of the modifications that occurred at the Baldwin Plant, neither the Illinois Power Company or the Baldwin Plant obtained a PSD permit pursuant to 42 §§ 7470-7492 and 40 C.F.R. § 52.21 nor a minor NSR permit pursuant to 35 Ill. Admin. Code Part 201. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emission after the modification as required by 40

C.F.R. § 52.21(b)(21)(v).

11. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii) because each change is an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

12. None of the modifications at the Baldwin Plant fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

13. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii)because for each modification a physical change was performed which resulted in the emissions increase.

14. Each of these modifications resulted in a net significant increase in emissions from the Baldwin Power Plant for NO_x, SO_2 , and/or PM. 40 C.F.R. § 52.21(b)(3)(i).

15. Therefore, Illinois Power and the Baldwin Plant violated and continue to violate the PSD requirements found at 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21 as incorporated into the Illinois SIP, by constructing and operating modifications at the Baldwin Plant without the necessary

permit required by 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21, as incorporated into the Illinois SIP.

16. Each of these violations exists from the date of start of construction of the modification until the time that the Illinois Power and the Baldwin Plant obtain the appropriate permits and operate the necessary pollution control equipment to satisfy the applicable requirements of the Illinois SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

Respondents may, upon request, confer with EPA. The conference will enable Respondents to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be make in writing to:

Gregory Jaffe
U.S. Environmental Protection Agency
Air Enforcement DivisionMail Code:2242A
401 M Street, S.W.
Washington, DC 20460
202-564-1309

11/2/99
Date

Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division
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and Compliance Assurance