September 8, 2000

Steve Marquardt
USEPA Region 5 (AR-18J)
77 West Jackson
Chicago, IL 60604

Dear Mr. Marquardt,

The following represents comments of Citizens for a Better Environment (CBE) and the American Lung Association of Metropolitan Chicago, both organizations actively involved in air quality and community health in the Chicago Metropolitan Region. We are committed to insuring that the Clean Air Act's promise of healthy, sustainable communities is realized throughout the region. The use of Section 173 (a)(1)(B) of the Clean Air Act (CAA) may be an appropriate vehicle for achieving the twin goals of clean air and economic growth in certain nonattainment areas.

To begin, we commend the U.S. Environmental Protection Agency (EPA), Illinois Environmental Protection Agency and the City of Chicago on some of the innovative ideas contained in the *Chicago Regional Air Quality and Economic Development Strategy* Proposed Project XL Agreement. We think it's particularly laudable that the City is proposing to address the potential for achieving emission reductions from area and mobile sources. In addition to the Volatile Organic Compounds (VOC) reductions that these efforts may achieve, they are also likely to lead to a reduction in hazardous air pollutants, particulate matter, greenhouse gases and acid aerosols.

Further, we believe that Section 173 (a)(1)(B) of the Clean Air Act (CAA) may be an appropriate vehicle for achieving the twin goals of clean air and economic growth in certain nonattainment areas. At the same time, it is only appropriate to use CAA Section 173(a)(1)(B) for nonattainment areas with State Implementation Plans (SIP) that have made more than adequate progress in attaining and maintaining the applicable NAAQS.

However, the flexibility provided by Section 173(a)(1)(B) should only be applied towards areas that are truly in need of economic development. While incentives to redevelop brownfields and encourage transit-oriented development are important, they are not appropriate for use as the sole selection criteria for the designation of development zones.

Finally, Project XL requires, among other criteria, superior environmental protection and "no shifting of risk burden." As the project is currently written, we have major concerns about the ability of this project to fully comply with the intent of Section 173(a)(1)(B) and with project XL criteria guidelines.

New Source Review and Offsets

We recognize the complexity and difficulty of New Source Review (NSR) for new companies siting within the Chicago nonattainment area. However, it has not been demonstrated that obtaining offsets in this area is problematic, since the City of Chicago Emission Reduction Credit Bank has awarded credits for use as offsets once in its history.

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. Since mobile and area source emissions are relatively small and diffused over a large geographical area, combining and concentrating them in a single location clearly leads to disparate impacts.

Additionally, we believe that 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. This XL project cannot authorize owners or operators to rush straight to use of the available growth margin in development zones without making the showings required by both state and federal law. Moreover, the XL project should not proceed based upon any suggestion that these legal showings will be honored in the breach, with perfunctory and conclusory showings accepted.

Furthermore, 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." Section 173(a)(1)(B) of the CAA does not nullify the requirements set forth in Section 173(a)(5). We believe this analysis should be subject to full public review and comment.

Public Participation

CBE was privileged to be a stakeholder in the development of a recently signed Project XL sponsored by the Metropolitan Water Reclamation District of Greater Chicago, the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency. The stakeholder process provided numerous opportunities for comment and discussion of the proposal. Further, virtually every comment that CBE or any other stakeholder offered was given serious consideration. In most cases, our suggestions were either incorporated into the FPA, some alternative language was "negotiated", or we received a complete and thorough explanation of why our suggestion had been rejected.

Such has not been the case with this City of Chicago, U.S.EPA, IEPA Project XL. Not only has the stakeholder process been rushed, but the project sponsors have been completely unresponsive to our concerns. There have been only three meetings, each only about two weeks apart and the last stakeholder meeting actually occurred after the draft FPA had already been published in the Federal Register. We believe that this type of "stakeholder process" is inadequate and that it does not fulfill the requirements for public involvement in the development of a Project XL.

Implementation of the FPA

This proposal should assure an improved public process during the implementation of this Project XL. 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. CBE requested that local residents be involved in the public process surrounding any new facility siting or expansion under this project. We believe it critical that interested parties in the communities affected by each new or expanded facility under this project be provided sufficient time and information to understand the issues and comment in a meaningful way.

Anti-backsliding on Superior Environmental Performance

The annual review provision described in the proposal seemingly allows the terms of this agreement to be adjusted. We believe, at a minimum, that the 40 percent emission reduction retirement, which purportedly fulfills the "superior environmental protection" criteria of this XL project, cannot be diminished. Provisions should be included barring the backsliding of the 40 percent retirement.

Emission Reduction Credits

Because the eight hour ozone standard, which is more protective than the current one hour standard, is likely to be enforced in the near future, we are concerned that emission reduction credits may be double counted or unavailable to assist with attainment of future regulations. The proposal should stipulate that absolutely every emission reduction credit retired under the XL project be permanently ineligible to fulfill future regulations, essentially preventing the double counting of emission reductions. Additionally, 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.

Inadequacy of the Current SIP

While we welcome the prospect of communities implementing strategies that go beyond current state and federal regulations, it is difficult to quantify the air quality benefits of these activities. The current emission inventory used to produce an anticipated Attainment Demonstration SIP has numerous flaws. In order to ascertain the value of local efforts, we suggest first improving the following aspects of the inventory:

- Mobile Sources. Considering the recent May 11, 2000 report from the National Academy of Science, which noted that VOC emissions from mobile sources based on EPA's MOBILE model are substantially underestimated;
- Airports. Given the recently released study by the Suburban O-Hare Commission, emissions from that airport - and others - may also be substantially underestimated.
- Accidental Releases, including releases from upsets and maintenance, should be included;
- Area Source emissions should be quantified and included; and
- Photochemical Assessment Monitoring System should be expanded.

These are concerns initially raised by the environmental community regarding the 1990 base year inventory approved in 1995.

Development Zone Criteria

The proposal states that 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. We believe this interpretation should limit development zone designation to 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. As stated in the proposal, none of the above listed options are mandatory; instead, they are listed as three of five criteria choices, the other two being participation in the Illinois EPA Site Remediation Program (Brownfield) Enrollment or being in close proximity to regular transit service, only one of which must be met.

The proposal should state clearly that one of the three economic designations must be met in order to be eligible for "Development Zone" designation. While brownfield remediation and development in established public transportation corridors are both important, we believe they should only be treated as additional criteria for determining priority for competing projects instead of "Development Zone" eligibility. Furthermore, neither of these qualifications are in any way related to CAA Section 173(a)(1)(B). Additionally, public transit criteria should not be considered for "regularly scheduled" bus service with headways longer than 20 minutes, thereby avoiding unreasonably long transit trips for those who would transfer.

Pollution Prevention and Environmental Justice

We have several concerns about the types of industry that will be allowed to benefit from this XL project. XL projects are supposed to offer superior environmental performance, and we do not believe that retirement of 40% of surplus emission credits meets this criteria, since the reductions achieved could otherwise be generated and fully retired. Thus, we believe any company that benefits from this program should be subject to superior environmental performance, itself.

The City of Chicago and U.S. EPA were both asked to address this concern with language in the proposal that would set minimum standards for pollution prevention (P2) and/or the generation of air toxics. In the current proposal, P2 is never defined and therefore could be construed to mean virtually anything from recycling waste paper to sending wastes offsite to an incinerator. Further, the language about P2 is inconsistent, in terms of the City's intent. For example,

- Section II.C. states that, "The City of Chicago will *focus* these additional environmental programs on pollution prevention measures that reduce the overall emissions of the facility."

- Section III.A. states that, "These programs will *include* pollution prevention measures to reduce the overall emissions of the facilities using the growth allowance."

- Section III.D. states that, ". . .firms using the growth allowance in the City of Chicago will be *required to demonstrate a commitment* to additional pollution prevention measures aimed at reducing overall emissions of any source using the growth allowance . . ."

- Section III.H. states that, "Specifically, pollution prevention measures *will be required* which reduce emissions in the immediate surrounding area."

In effect, the City's commitment to pollution prevention is meaningless. Not only does the term lack definition in the context of this draft FPA but the City's commitment to requiring P2 is vague and open to interpretation, given the language noted immediately above. This project should not move forward without a well-defined P2 commitment that is enforceable, just as NSR offsets are a well defined federally enforceable requirement.

XL projects, by their definition, must not shift risk burden. Since this project is specifically targeting areas in need of economic development, an increase of air toxics or any other risk burden constitutes an economic justice issue. U.S.EPA has stated: it "believes that no unjust or disproportionate shifting of the risk burden will occur." We would like to see a detailed explanation and analysis of EPA's rationale for this statement, as the concept of a "closer geographic connection between the source of the new emissions [from this XL project] and the source of emissions reductions [credits]." does not appear to be likely within the voluminous City of Chicago boundaries. We believe these ambiguities regarding local impacts and what are currently undefined development zones are in direct conflict with the Agency's commitment to address environmental justice issues. Therefore we request a thorough review of this proposal by the Director of the Office of Environmental Justice.

Under this proposal, as it is currently written, communities where these facilities would be located or expanded are likely to be subject to disparate impacts as a result of increases in toxic air pollutants, with little or no local economic benefit. CBE works with residents in a number of minority and low income communities that continually voice concern over local hiring. We believe that any community impacted by any increase in

emissions from projects under this proposal, whether hazardous or not, should at least benefit from some minimum level of local jobs required by the new or expanded facility. Although the City's Code gives mention to the use of local resources, the XL project should specifically set a minimum standard for hiring locally within a maximum radius of the facility.

We remain concerned that this proposal has not adequately addressed the potential for qualifying projects to undermine the intent of Illinois' proposed Emission Reduction Market System (ERMS). Given our ongoing concerns about environmental justice impacts of the ERMS rule itself, we find this especially problematic. Furthermore, as drafted, this proposal may create similar problems for any potential emissions trading program embodied in Illinois's response to U.S. EPA's NOx SIP Call. The proposal also creates potential uncertainties regarding offsets for NOx when the CAA Section 182 (f) NOx Waiver is appropriately rescinded.

The proposed City of Chicago XL Project has several good ideas that have the potential to bolster economic vitality in depressed areas and improve the environment at the same time. However, the stakeholder process has been inadequate, many of the criteria are too ambiguous, and the potential for serious environmental justice issues are far too great. Therefore, we request that the Agency disapprove this project at the current time. Further, we suggest:

- An extension of the public comment period for this proposal;
- An adequately designed public participation process to seek broader input on the proposal;
- Review of this proposal by the EPA Office of Environmental Justice;
- Appropriate designation of specific development zones;
- Well defined pollution prevention requirements for participating projects; and
- Adequate response to additional concerns contained in these comments.

As it now stands, there are too many shortcomings to merit federal approval of this project at this time.

Sincerely,

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Brian Urbaszewski
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American Lung Association of Metropolitan Chicago

Cc: Barry E. Hill, Director, EPA Office of Environmental Justice
Ann E. Goode, Director, EPA Office of Civil Rights
Bill Lann Lee, Assistant Attorney General, DOJ Office of Civil Rights