

THE ALLIANCE OF RESIDENTS CONCERNING O'HARE, Inc.

A Not-for-Profit Corporation

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"To achieve a balance between public health and the economy"

April 30, 2004

Mr. Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Ref. January 7, 2004 Letter to Mr. Richard Grzebieniak of 1060 Wicke, Des Plaines, IL 60018

Dear Mr. Grant:

We have been forwarded a copy of your recent letter to Mr. Richard Grzebieniak and would like to take the opportunity to comment on a few of the issues discussed therein.

You indicated that you were not familiar with the study mentioned by Richard [listing O'Hare as the largest airport-related polluter in the United States]. (In fact, O'Hare and its aircraft is one of the top major source air polluters in the whole United States¹!) We believe the referenced report is the excellent recent work by NESCAUM, which can be found at our website^{2&3}. The study is titled:

Controlling Airport-Related Air Pollution, Prepared by Northeast States for Coordinated Air Use Management And Center for Clean Air Policy, June 2003.

We believe that the NESCAUM study and report should be required reading for your office as, amongst other valuable contributions, it delves significantly into the legal aspects relating to airport caused pollution.

We are aware of your referenced "recent IEPA report"⁴ on O'Hare toxics emissions and have previously disagreed with substantial portions of that report, (see enclosed "Technical Note"). Your statement that "...indicates that O'Hare is not a major source of toxic air pollutants" is in error; the IEPA study did not study or draw conclusions relative to O'Hare toxic source emissions levels, merely the measurement of (some of the) air quality impacts of such emissions. Indeed, the compilation of the aggregated amounts of airport toxic emissions (including from aircraft) is one of the continuing environmental impact definitional problems, as airports prefer not to compile such information and the USEPA and the air industry drag their feet on characterizing all the airport sources (especially aircraft).

¹ USEPA (1999) database

² <http://www.areco.org/NESCAUM%20report%206.03.pdf>

³ This study does not specifically "list" O'Hare airport but given that O'Hare has the greatest number of aircraft operations in the U.S., simple extrapolation would indicate that it would be the greatest polluting airport.

⁴ Find as the 11th item under Air Pollution studies: <http://www.areco.org/studies.htm#air>

Proud Recipient: 1995 Environmental Merit Award, Arlington Heights - 1996, '99 Illinois State Senate Recognition
Protecting the Health and Safety of Millions of O'Hare Affected Citizens

The IEPA study's conclusion that, "The levels of toxic compounds found near O'Hare and other sites in the Chicago metropolitan area were comparable or lower than those found in other large U.S. cities" was included in our review of that study, from which we excerpt the following:

The resulting airport emissions should have had, as the monitoring data shows, some impact in the areas adjacent to the airport. While the downwind concentrations were found to be higher, the results showed that the "levels found at O'Hare Airport are still in the "typical urban range" and comparable to or lower than levels found in other large urban areas." This conclusion leaves one quite uncomfortable, considering that most of the "typical" urban pollution concentrations are known to be unacceptable (the *raison de' etre* for the EPA). Thus, it is of little comfort to know that our atmosphere is just as bad as other major cities. Furthermore, the study does not cite the specific locations used in this comparison, leaving the probability that those sites are also influenced by airport and/or aircraft emissions and thus creating a situation of justifying one airport's pollution impact on the basis of being no worse than that from other airports!

Even Chicago's own study shows that O'Hare is the worst Hazardous Air Polluter (HAP'S) in the state of Illinois⁵.

A 1993 USEPA study of Chicago's Midway airport, with about one-third the amount of flights that O'Hare has, showed that Midway and its aircraft emitted an extraordinary amount of carcinogens, much more than some of the worst polluters in the state and region (see enclosed⁶).

A 1999 USEPA study of jet aircraft emissions shows tremendous health affects caused by aircraft (see enclosed⁷).

O'Hare is a mammoth polluter and is unique because it emits unusual toxic aviation related pollution from many sources, including its incinerator. O'Hare is located in a very densely populated area: more than 600,000 people live within three miles of the airport, millions within ten miles. This mammoth polluter is concentrated in only about four square miles and this concentration creates a horrible health menace to the residents of the local communities and the northwest side of Chicago.

1. O'Hare operations today, emit thousands of tons of noxious material into the air annually...enough to fill 120 football stadiums 100 feet deep...and this all moves through our neighborhoods and into our homes!
2. Data from both the state of Illinois and U.S. Environmental Protection agencies show that O'Hare's aircraft alone, emit more Volatile Organic Compounds than those from all (70-100) Illinois electric power plants

⁵ O'Hare International Airport (HAPs per KM Chng) 346.75 Tons per Year

⁶ VIGYAN Inc. US-EPA "Estimation and Evaluation of Cancer Risks Attributed to Air Pollution in Southwest Chicago: Final Summary Report Region 5 Air and Radiation Division". April, 1993.

⁷ Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft (EPA-420/R-99-013, April 1999).

combined, with Carbon Monoxide emissions as much as 60% of that total! Adding the associated ground, mobile and stationary emissions would double that⁸.

The fact that IEPA could even think that O'Hare airport is not a major polluter defies common sense: O'Hare and its aircraft are first a major local point or area emission source, since a large majority of aircraft emissions are emitted at or relatively near the airport during the landing and take-off cycles. O'Hare is basically a functioning major city with mega aircraft operations with all the supporting operations that a city would need including an onsite incinerator, power plants, major fueling operations and about 175,000 cars, trucks, taxis, etc. that go into the four square mile O'Hare confines each day. A recent O'Hare/Peotone study shows that **8.3 million people's health is affected by O'Hare operations, 5.5 million significantly so**⁹. (Enclosed is our recent testimony to the USEPA in which we used O'Hare airport as an example.)

Out of the dozens of studies we have reviewed or have posted on our website from all around the world, Illinois' apparent posture that it is the only state to have an airport that is not a major polluter seems grossly illogical, especially for what is historically the busiest airport in the world.

Considering only one of the dozens of airport-poisoning diseases, it has been estimated that cancer incidences caused by O'Hare airport and its aircraft cost the public approximately \$8 billion annually¹⁰. The victims, not the Chicago airport, endure this considerable cost.

As regarding the balance of your comments on airport-related legal or regulatory issues, we offer that the NESCAUM report does a very good job in analyzing these aspects. In one particular sense, AReCO has for years been a strong advocate of the need to regulate airport emissions, both toxic and "criteria", as a "bubble". The NESCAUM report supports this view and we quote there from:

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C.10 Regulation of "Airport Bubbles"

It has been proposed that the state could regulate total emissions from an airport by regulating an "airport bubble." That is, the state would consider all of the emissions arising from the airport, no matter what their source, and set a total cap on the emissions. The airport proprietor would then have to develop a plan to reduce emissions to levels no greater than the level of the cap.

This approach raises some issues regarding the source of the state authority to regulate an airport bubble. The CAA provides that stationary sources may be

⁸ R.E. Ruthenberg. "Comparison of Criteria Emissions from O'Hare Airport Aircraft to Those of Electric Power Generating Plants." 7/28/02. (Based on data we have, it appears that the other Clean Air Act criteria emissions are also "off-the-charts".)

⁹ R.E. Ruthenberg. "A Perspective on O'Hare Airport vs. Peotone (proposed) Airport Pollution Impact," Aug. 15, 2003. http://www.areco.org/Pollution%20Impacted%20Pop_Airports.pdf

¹⁰ Cutler, Bradley & Deshmukh, Mowen, Toh, Dec. 8, 2002; and also, Martin, Peter and Alan Martin, "A Vicious Cycle: How Can The Government Justify Expanding Airport Capacity To Solve An Overcapacity Problem?" Oct. 30, 2003.

regulated using the “bubble” concept, but although the question has never been directly litigated, it is clear that airports are not stationary sources under the Act.²⁹² Further, at least one Circuit Court has held that a facility cannot be a stationary source and an indirect source.²⁹³ According to this interpretation, airports could not be regulated as a stationary source.

It appears that the only source of authority is the state’s power, under the CAA, to regulate “indirect sources” of pollution. As discussed above, airports likely qualify as “indirect sources” under the CAA. The decision “whether and how to regulate [indirect sources] is left largely to the states.”²⁹⁴ According to the CAA, the power of the states is limited to including “indirect source review programs” in a SIP. An “indirect source review program” is defined as the “facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution” so as to cause compliance problems. Thus, state power would be limited to “new or modified” airports. The relevant section of the CAA does not define what a “modified indirect source” is, and this issue does not appear to have been the subject of litigation. It would appear that any airport expansion projects involving, for example, the addition of a runway, would be a “modification” subject to review. The definition of an indirect source may vary slightly in the states that currently have indirect source reviews. Generally, states establish a de minimus threshold for indirect sources (e.g., activities that increase aircraft operations by 1,000). An indirect source permit could be required from the state for such projects.

With the pressure for airport expansion, the limit of indirect source review to new or modified airports may not be as large a hurdle as it first appears. A number of airports throughout the nation are in the process of applying for expansion, or are expected to expand and could thereby provide an opportunity to utilize this provision. If the indirect source will cause compliance problems when modified (which may occur due to airport expansion), the state can require mitigation measures.²⁹⁵ Such measures could include a limit on the total emissions of certain pollutants at the airport.

The “airport bubble” concept could be a powerful tool for states to reduce emissions from airports that seek to expand. Plans for expansion are being considered at a number of the largest airports in the country.²⁹⁶ However, in the absence of airport efforts to expand, there does not appear to be a source of authority for states to impose emissions caps on airports. This question, however, certainly deserves further research.

C.11 Other Opportunities for State Involvement

²⁹² See *Natural Resources Defense Council v. U.S. Environmental Protection Agency*, 725 F.2d 761 (D.C. Cir. 1984). In this case EPA’s original regulation of sources included airports.

²⁹³ Larson.

294 Sierra Club v. Larsen, (hereafter Larsen), 2 F.3d 462, 467 (1 st Cir. 1993).

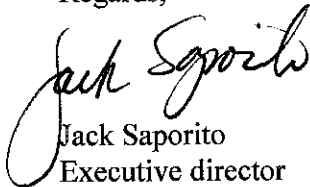
It is our continuing belief that O'Hare airport (and Midway, DuPage and Palwaukee) should be regulated as consolidated emission source "bubbles". We further believe that these emissions should be included in planned reductions in order to meet USEPA and Clean Air Act requirements as related to emission sources located in ozone "non-attainment areas". The fact is that whereas many of these emissions are included in the existing Illinois SIP, the state plans for emissions reductions do not, as far as we know, include any reductions contributions from these major sources. We emphasize that, by EPA definitions, airport emissions are so large as to legally qualify as "major" sources.

This perspective is now even more important to Illinois (and other states) as recent USEPA actions may have effectively eliminated significant source emissions reductions envisioned in the SIP from Illinois electric power plants¹¹. This is especially critical for NOx as the Chicago non-attainment area ROP (rate-of-progress) plan presumes significant NOx reductions from all other attainment areas of Illinois (i.e. everything other than the 6-county Chicago area). It may be that now, airport emission reductions have become mandatory (along with other additional compensations) in order to stand any chance of achieving attainment objectives which, if not achieved, can have both substantial legal and public health impacts.

We believe that the State of Illinois and IEPA would in-fact prefer to regulate emissions for airports (and perhaps other operations) using the "bubble" approach and that IEPA may be operating under the assumption that this cannot be done for airports due to federal preemption. We request that you take action to correct this assumption and provide legal incentive and assistance to IEPA in order to achieve "bubble" regulation of airport emissions, especially O'Hare, Midway, DuPage and Palwaukee (which could be a combined "bubble") and to additionally include airport "bubble" emissions reductions in the state's SIP, especially as such steps might help to offset any utility emissions reductions resulting from (unwanted) USEPA actions.

Thank you for both your responsiveness and your attention.

Regards,



Jack Saporito
Executive director

c: Governor Rod R. Blagojevich
Lt. Governor Pat Quinn
Representative Rosemary Mulligan

¹¹ The existing Illinois SIP counts heavily (almost 80%) on NOx emissions reductions from Illinois sources, primarily electric utilities, which are "imported" into the Chicago non-attainment area from counties outside the 6-county Chicago non-attainment area.

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