

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PETITION OF EXXONMOBIL)	AS 2024-001
OIL CORPORATION FOR)	(Adjusted Standard – Air)
ADJUSTED STANDARD FROM)	
35 ILL. ADM. CODE 216.361,)	
35 ILL. ADM. CODE 216.103, AND)	
35 ILL. ADM. CODE 216.104)	

NOTICE OF FILING

To: Don Brown, Clerk	Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph St., Suite 11-500	60 E. Van Buren Street
Chicago, Illinois 60601	Suite 630

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Please take notice that I have today filed electronically with the Office of the Clerk of the Illinois Pollution Control Board, the attached Notice of Filing, Certificate of Service, and Response to the Illinois Environmental Protection Agency’s Motion for Stay of Proceedings or in the Alternative Motion of Extension of Time to File a Recommendation on behalf of ExxonMobil Oil Corporation, copies of which are herewith served upon you.

Dated: September 25, 2023

Respectfully submitted,

/s/ Eric E. Boyd

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have today filed the documents described above electronically with the Illinois Pollution Control Board and served the Illinois Environmental Protection Agency with the same documents electronically and by First Class Mail, postage prepaid.

Dated: September 25, 2023

Respectfully submitted,

/s/ Eric E. Boyd

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EXXONMOBIL OIL CORPORATION’S RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S MOTION FOR STAY OF PROCEEDINGS OR IN THE ALTERNATIVE MOTION OF EXTENSION OF TIME TO FILE A RECOMMENDATION

Petitioner ExxonMobil Oil Corporation (“Petitioner” or “ExxonMobil”), pursuant to 35 Ill. Adm. Code 101.500(d), for its Response to the Illinois Environmental Protection Agency’s (“IEPA’s” or “Agency’s”) Motion for Stay of Proceedings or in the alternative Motion of Extension of Time to File a Recommendation, states the following:

1. ExxonMobil filed its Petition for an Adjusted Standard on August 14, 2023. Pursuant to the Petition, ExxonMobil seeks an adjusted standard from 35 Ill. Adm. Code 216.361, 35 Ill. Adm. Code 216.103, and 35 Ill. Adm. Code 216.104 for Petitioner’s facility located at 25915 S. Frontage Road, Channahon, Illinois (the “Joliet Refinery”).

2. The date of filing the Adjusted Standard Petition triggers certain requirements under the Board’s adjusted standard regulations of 35 Ill. Adm. Code Part 104, subpart D.

3. First, anyone requesting a hearing on the Petition for Adjusted Standard must do so within 21 days of publication of newspaper notice pursuant to 35 Ill. Adm. Code 104.408(b). In this case, that date has come and gone and no requests for a hearing were made. ExxonMobil waived a hearing in its Petition at page 47.

4. Second, the IEPA is required to file a recommendation regarding the adjusted standard petition within 45 days, which in this case is September 28, 2023. 35 Ill. Adm. Code 104.416(a).

5. On September 11, 2023, the IEPA filed a Motion for Stay of Proceedings or in the alternative Motion of Extension of Time to File a Recommendation pursuant to 35 Ill. Adm. Code 101.514 and 101.522 (hereinafter "IEPA Motion").

6. The IEPA Motion notes that the Board, in response to comments made in the underlying proceeding R23-18, opened a sub-docket (R23-18(A)) to consider any proposed Alternative Emission Limitations ("AELs"), and that the six petitions for adjusted standard filed on August 14 (including ExxonMobil's Petition) mirror rulemaking proposals in R23-18(A).

7. The R23-18(A) proceeding and the adjusted standard matters, however, are separate proceedings with different procedural requirements. For example, the Board has scheduled two hearings in R23-18(A), but no hearings have been scheduled in AS 24-001. In fact, neither ExxonMobil nor any other person has requested a hearing in AS 24-001.

8. ExxonMobil respectfully submits that it should be up to the Board as to how it would like to proceed with AS 24-001 in light of the ongoing proceedings in R23-18(A). The Board is best suited to decide how to conduct such affairs.

9. For instance, realizing the urgent need for the requested relief, the Board granted in part the American Petroleum Institute's ("API's") Motion for Expedited Consideration in R23-18(A). That urgent need for the requested relief has not gone away. Although ExxonMobil is currently protected by the existence of language in its permit allowing continued operation during periods of SSM, the IEPA could potentially seek to change ExxonMobil's permit at any time. The IEPA has never said it would not act on ExxonMobil's permit or the permits of the other adjusted standard petitioners while the proceedings in R23-18(A) and the adjusted standard matters are

pending. In fact, the IEPA's understanding of what the permit language means is different from ExxonMobil's understanding based on the plain language.

10. In addition, the IEPA has not stated whether ExxonMobil is subject to the stay under Section 28.1(f) of the Environmental Protection Act as a result of filing this Petition for Adjusted Standard. The IEPA's Motion does not say that it agrees that ExxonMobil is protected by the stay pursuant to Section 28.1(f). In fact, the IEPA's Motion says, "The Illinois EPA is not opining as to whether ExxonMobil is entitled to a stay under Section 28.1(f) of the Act . . ." Why the IEPA is unable to state its opinion as to whether or not the stay applies here is unclear.

11. The IEPA in fact has known for some time about, but been unwilling to state an opinion on, the relief requested by the API in both R23-18 and in R23-18(A), by ExxonMobil in AS 24-001, and by Marathon Petroleum Company, LLC in AS 24 – 03. The refiners brought their substantive proposal to the IEPA as early as December 1, 2022 in an e-mail from Brad Sims of ExxonMobil to Rory Davis of the IEPA. *See* page 15 of Exhibits submitted in R23-18 (January 20, 2023) (hereinafter, "Exhibits"); *see also* page 13 of Exhibits (December 5, 2022 e-mail from Brad Sims of ExxonMobil to Rory Davis) and pages 1 – 6 of Exhibits (December 6, 2022 letter to Rory Davis from Kelly Thompson of IERG). Since that time, multiple calls between industry representatives (API, IERG, and member companies including ExxonMobil) and IEPA and/or EPA have taken place regarding the substance of the proposed changes to 35 Ill. Adm. Code 216.361, 35 Ill. Adm. Code 216.103, and 35 Ill. Adm. Code 216.104. The IEPA, therefore, has had plenty of time to form an opinion on and to make a recommendation concerning the relief being requested by ExxonMobil.

12. The IEPA states that it may need additional time to discuss the adjusted standard proposal with the EPA. The Board's adjusted standard regulations, however, require that the IEPA file a recommendation within 45 days of the filing of the petition, not within 45 days from talking

to the EPA. In fact, the relief being requested by ExxonMobil has previously been considered by the EPA. As ExxonMobil's Adjusted Standard Petition explains, the relief being requested has previously been considered and adopted by the EPA when it adopted the relevant MACT standard. *See* Petition for Adjusted Standard at page 20. Finally, as stated above, the IEPA has had nearly 10 months to consider and discuss with EPA the specifics of the refinery proposal.

13. ExxonMobil, therefore, does not support the IEPA's request for a stay and believes an additional 90 days is too long of an extension for the Agency to file its recommendation. The IEPA's recommendation will undoubtedly help the Board to decide how best to proceed with AS 24-001.

14. In fact, whether an extension of time is even allowable in this instance is not clear given the language of the relevant regulation. Specifically, 35 Ill. Adm Code 101.522 states, "If a party's motion shows good cause, the Board or hearing officer may extend any deadline **required by this Part**. The motion may be filed either before or after the deadline expires." (Emphasis added.) The reference to "this Part" means Part 101. The requirement for the IEPA to file a recommendation is located at 35 Ill. Adm. Code 104.416. That section is located in Part 104, not Part 101.

15. ExxonMobil, however, does not object to a short extension of time for the IEPA to file its recommendation in this matter given the late date when the IEPA filed its Motion. As such, ExxonMobil respectfully suggests that the Board order that the IEPA file its recommendation by October 12, 2023. Although 35 Ill. Adm. Code 104.416(a) requires the IEPA to file its recommendation within 45 days of the filing of the adjusted standard petition (here, by September 28, 2023), the suggested date of October 12 is 45 days from the date that the Board's Hearing Officer in R23-18(A) required interested parties to file pre-filed testimony for the first hearing in the matter, which is scheduled for September 27. While the Hearing Officer in R23-18(A) required

that pre-filed questions based on that pre-filed testimony be filed by last Wednesday, September 20, the IEPA did not file any pre-filed questions.

16. A stay in AS 24-001 is not necessary, helpful, or appropriate.

WHEREFORE, for the reasons stated above, Petitioner ExxonMobil Oil Corporation requests that the Illinois Pollution Control Board deny the IEPA's Request for Stay and grant the IEPA an extension until October 12, 2023 to file its recommendation.

Dated: September 25, 2023

Respectfully submitted,

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