

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 ) R 25-17  
AMENDMENTS TO 35 ILL. ADM. CODE 217 ) (Rulemaking – Air)  
NITROGEN OXIDES EMISSIONS )

**NOTICE OF FILING**

TO: Mr. Don A. Brown,	Daniel Pauley
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
60 E Van Buren Street, Suite 630	60 E. Van Buren Street, Suite 630
Chicago, Illinois 60605	Chicago, Illinois 60605

**VIA ELECTRONIC MAIL)**

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **IERG'S PRE-FILED QUESTIONS FOR ILLINOIS EPA'S WITNESS AT SECOND HEARING**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: November 14, 2024

By: /s/ Melissa S. Brown

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**CERTIFICATE OF SERVICE**

I, the undersigned, on oath state the following: That I have caused to be served the attached: **IERG'S PRE-FILED QUESTIONS FOR ILLINOIS EPA'S WITNESS AT SECOND HEARING** via electronic mail upon:

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That the number of pages in the email transmission is 8.

That the email transmission took place before 4:30 p.m. on November 14, 2024.

Date: November 14, 2024

/s/ Melissa S. Brown

Melissa S. Brown

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
AMENDMENTS TO 35 ILL. ADM. CODE ) R25-17  
217, NITROGEN OXIDES EMISSIONS ) (Rulemaking- Air

**IERG’S PRE-FILED QUESTIONS  
FOR ILLINOIS EPA WITNESS AT SECOND HEARING**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”),  
by and through its attorney, Trejahn Hunter, and hereby files its Pre-Filed Questions for Illinois  
Environmental Protection Agency (“Illinois EPA” or “Agency”) witness at the Second Hearing  
scheduled for November 21, 2024.

**Technical Support Document**

1. Is it correct that, in interpreting USEPA’s definition of RACT as: “The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility,” the Agency believes that USEPA could have been referring “particular source” to individual emission units or an emission source with multiple emission units?
  - a. Would the Agency explain how its interpretation of RACT would differ if USEPA intended for “particular source” to apply to individual emission units or individual sources.

**SUBPART D: NO<sub>x</sub> GENERAL REQUIREMENTS**

**Section 217.152 Compliance Date and 30-day Rolling Average Basis**

2. Is it correct that, in the Agency’s Second Post-Hearing Comments, the Agency references USEPA’s conclusion related to the Good Neighbor Plan that “three years is generally an adequate amount of time for the non-EGU sources covered by the Good Neighbor Plan to install the controls. . .”?
  - a. Can the Agency explain its statement that “[s]uch time frames appear similarly analogous in the context of this proposed rulemaking”?

3. Is it correct that the Agency now proposes several extensions of compliance dates for the units listed under APPENDIX I in the Second Post-Hearing Comments because of successful demonstrations of sufficient necessity from the sources?
4. Is the Agency continuing to consider additional proposed revisions that were not included in the Agency's Second Post-Hearing Comments?
  - a. If so, when does the Agency expect to provide its decisions on those pending requests to the sources that submitted the requests?

Section 217.157 Testing and Monitoring

5. Since the conclusion of the First Hearing, has the Agency received any proposed revisions to this section to allow representative pair testing when a source has identical emission units within the standard 5-year testing interval?
6. Since the conclusion of the First Hearing, has the Agency received any proposed revisions to add a new subsection (a)(8) to Section 217.157 providing that owners or operators with emission units subject to the proposed rule have the opportunity to submit alternate monitoring plans where installing monitoring or testing facilities for individual emission units is not possible and those units further demonstrate unique monitoring or performance testing situations?
7. Since the conclusion of the First Hearing, has the Agency finalized its consideration of the proposed revisions to Section 217.157(d) to provide similar flexibility for multiple heaters venting to a common stack relying on a performance test?
  - a. If yes, has the Agency decided whether it will propose the revisions to the Board?
8. Since the conclusion of the First Hearing, has the Agency finalized its consideration of the proposed revisions to Section 217.157 to provide for a reduction in the reporting burden in such scenarios where a facility with emission units that are individually compliant with the emission limits but are using a common stack and thus subject to subsection (d), which implies the requirement of using an emission averaging plan and the reporting requirements for an Emissions Averaging Plan ("EAP")?
  - a. If yes, has the Agency decided whether it will propose the revisions to the Board?

Section 217.158 Emissions Averaging Plans

9. Is it correct that USEPA has indicated to Illinois EPA that Illinois EPA must include a 10% environmental benefit in its NO<sub>x</sub> RACT averaging provisions?
  - a. If so, please provide all records reflecting this indication.

10. Is it correct that USEPA has indicated to Illinois EPA that it will not approve the Illinois EPA's NOx RACT SIP submittal without inclusion of a required 10% environmental benefit in its NOx RACT averaging provisions?
  - a. If "yes", is this consistent with the language in the Economic Incentive Programs ("EIP") guidance?
11. Is Illinois' NOx Emissions Averaging Plan being submitted to USEPA as a discretionary Economic Incentive Program for SIP revision and USEPA approval, or is the Emissions Averaging Plan a pre-existing Economic Incentive Program built into Illinois' NOx RACT regulation?
12. Are you aware of any other state NOx RACT averaging or emission cap provisions that require a 10% environmental benefit?
  - a. If so, what states and what are the circumstances under which the 10% environmental benefit is required?
  - b. Have any of these state NOx RACT SIPs been approved by USEPA?
13. Did the Illinois EPA consult any other states relative to the technical feasibility and economic reasonableness of requiring a 10% environmental benefit in NOx RACT regulations? If so, which states?
  - a. If so, include a detailed explanation of the other states' analyses.
14. Is it correct that USEPA's guidance "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001) (January 2001) was never published in the Federal Register?
15. Is the 10% environmental benefit portion of the Illinois EPA's NOx RACT averaging proposal required by the Clean Air Act or its implementing regulations?
  - a. If so, which specific provisions?
16. Is the authority for the 10% environmental benefit concept in the NOx RACT averaging portion of the Illinois EPA's proposal found only in non-binding USEPA guidance?
  - a. If not, where else is it found?
17. Is it correct that USEPA's 1994 Economic Incentive Programs Rule at 40 CFR 51, Subpart U is binding only on so called "statutory economic incentive programs," meaning EIPs submitted to comply with Clean Air Act Sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(d), and that for all other EIPs, Subpart U is non-binding guidance?

18. Is it correct that Illinois EPA's contemplated NO<sub>x</sub> RACT SIP is not being submitted to comply with Clean Air Act Sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(d)?
19. Is it correct that in USEPA's guidance document (Improving Air Quality with Economic Incentive Programs, EPA-452/R-01-001, January 2001), USEPA indicated that this guidance superseded or would take precedence over the guidance for developing discretionary economic incentive programs contained in USEPA's 1994 Economic Incentive Programs Rule at 40 CFR 51, Subpart U (59 FR 16690)?
20. Is it correct that USEPA states in Section 1.5 of its guidance (EPA-452/R-01-001) that it will remove the discretionary economic incentive program provision (40 CFR 51.490(b)) of 40 CFR Part 51, Subpart U, when the final version of its guidance (EPA-452/R-01-001) is published?
  - a. Has USEPA finalized the guidance and updated 40 CFR Part 51, Subpart U in accordance with that statement?
21. Is it correct that in USEPA's guidance (EPA-452/R-01-001), USEPA indicates that the guidance does not represent USEPA's final action regarding discretionary Economic Incentive Programs (EIPs) and that the guidance is non-binding policy for discretionary EIPs?
22. Did Illinois EPA evaluate whether the 10% environmental benefit portion of Illinois EPA's proposal is necessary to demonstrate attainment? If so, what did the Agency conclude?
  - a. If Illinois EPA concluded that the 10% environmental benefit portion of Illinois EPA's proposal is necessary to demonstrate attainment, please provide a detailed explanation of why it is necessary for attainment.
23. Is there a compliance margin built into the existing or proposed NO<sub>x</sub> RACT emission rate limits?
  - a. If so, which NO<sub>x</sub> RACT emission rate limits is it built into and what is the compliance margin for each?
24. Is it correct that where two or more boilers and/or process heaters vent to a common stack, the units are required by Section 217.157(d) to comply using an emission averaging plan?
  - a. If so, what is the justification for requiring a 10% environmental benefit emissions deduction?
  - b. How many sources in Illinois have common stack units that are covered by an emissions averaging plan?

- c. How many new sources with two or more boilers and/or process heaters venting to a common stack will be required by 217.157(d) to comply using an emission averaging plan due to the lower 50 mmBtu/hr applicability for Boilers and process heaters?
- 25. Are there alternatives other than requiring a 10% environmental benefit emissions deduction to satisfy the need for the NO<sub>x</sub> RACT SIP to include an environmental benefit?
  - a. If so, has Illinois EPA evaluated any alternatives other than deducting 10% to satisfy the need for the NO<sub>x</sub> RACT SIP to include an environmental benefit?
    - i. If so, which alternatives?
    - ii. If not, why not?
- 26. Are there any circumstances under which Illinois EPA would be willing to consider NO<sub>x</sub> RACT averaging without a 10% environmental benefit and to submit a NO<sub>x</sub> RACT SIP to USEPA that does not contain a 10% environmental benefit for NO<sub>x</sub> RACT averaging?
  - a. If so, what are those circumstances?
- 27. Since the conclusion of the First Hearing, has the Agency received any proposed revisions to Section 217.158 to include source-specific emission caps as an acceptable compliance option?
- 28. Has Illinois EPA evaluated how the results of the Presidential election and a potential change in the USEPA Administration could impact USEPA's position on the need for a NO<sub>x</sub> RACT SIP to include a 10% environmental benefit?
- 29. Is it correct that 40 CFR Part 51, Subpart U, does not require or even suggest as guidance a 10% environmental benefit for RACT emissions averaging unless there is trading with non-RACT sources?
- 30. How does the Agency reconcile the email communication between the Agency and USEPA's Kathleen Mullen, with regard to the required sunset of the Maintenance Turnaround ("TA") provisions, and the now proposed revisions to subsection (j)(1) through (j)(5), providing a daily emissions cap for refineries demonstrating compliance through an emissions averaging plan during periods of maintenance turnaround, found in the Agency's the Second Post-Hearing Comments?
  - a. Would the Agency explain how these proposed revisions would impact subject sources?

**SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION  
ENGINES AND TURBINES**

Section 217.386 Applicability

31. Is it correct that the Agency “does not believe that a 15 ton unit-level applicability threshold for engines and turbines is appropriate because in many cases sources have many units that are identical or similar”?
- a. Is the Agency amenable to proposed revisions to this section that would provide a 15 ton “per source”- level applicability threshold for engines and turbines, rather than on a “per unit” basis?

**SUBPART U: NO<sub>x</sub> CONTROL AND TRADING PROGRAM FOR SPECIFIED NO<sub>x</sub> GENERATING UNITS**

Section 217.456 Compliance Requirements

32. Is the Agency amenable to submitting revisions to Subpart U in this rulemaking to utilize the monitoring and reporting flexibility provided to Illinois by USEPA in Federal Register Vol. 84, No. 46 on March 8, 2019, for non-electric generating units or “non-EGUs” with design heat input greater than 250 mmBtu/hour?
33. In the event that revisions to Subpart U are filed by the Agency or another interested party, what are the next steps for the Agency to submit a second and separate SIP submittal for the different portions of rules that are proposed in this rulemaking?
34. Do the existing monitoring, recordkeeping, and reporting requirements for a non-EGU fossil fuel-fired stationary boiler with a maximum design heat input greater than 250 mmbtu/hr that is subject to Subpart E satisfy the intent of complying with 40 CFR 96, subpart H as promulgated in 217.456(c), (e)(1)(B) through (D), and (e)(2)?

Respectfully Submitted,

THE ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: November 14, 2024

By: /s/ Trejahn Hunter

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