

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, **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S POST-HEARING COMMENTS**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: December 16, 2024

By: /s/ Trejahn Hunter

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following: That I have caused to be served the attached **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S POST-HEARING COMMENTS** via electronic mail upon:

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That my email address is thunter@ierg.org.

That the number of pages in the email transmission is 10.

That the email transmission took place before 4:30 p.m. on December 16, 2024.

Date: December 16, 2024

/s/ Trejahn Hunter
Trejahn Hunter

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**THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S
POST-HEARING COMMENTS**

NOW COMES, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorney Trejahn Hunter, and hereby files its Post-Hearing Comments in this rulemaking for the Illinois Pollution Control Board’s (“Board”) consideration. On behalf of its Members, IERG appreciates this opportunity to provide comment on the proposed amendments to 35 Ill. Adm. Code Part 217 – Nitrogen Oxides (“NOx”) Emissions. IERG is an Illinois not-for-profit corporation of approximately fifty (50) Member companies including the chemical, food, pharmaceutical, transportation equipment, energy, heavy manufacturing, steel, oil, and power generation sectors that are regulated by governmental agencies that promulgate, enforce, or administer laws, rules, regulations, and other policies. IERG represents the interests of its Members in the development of environmental laws, regulations, and policies at the state level in Illinois and at the federal level. As IERG’s Members include sources that are subject to, or will be subject to, the NOx Reasonably Available Control Technology (“RACT”) provisions in Part 217, the proposed amendments will directly impact IERG Members.

I. BACKGROUND

On October 7, 2022, the United States Environmental Protection Agency (“USEPA”) published in the Federal Register the final rule reclassifying 24 areas from marginal nonattainment to moderate nonattainment with the 2015 Ozone National Ambient Air Quality Standards (“NAAQS”). USEPA determined that these 24 areas failed to attain the 2015 Ozone

NAAQS by the August 3, 2021, attainment date and did not qualify for a one-year attainment date extension. The failure to attain was based on monitoring data showing that the 8-hour ozone design value for the areas at issue exceeded the 0.070 ppm 2015 Ozone NAAQS for the period of 2018 – 2020. The Chicago (Chicago, IL-IN-WI) and Metro-East (St. Louis, MO-IL) areas in Illinois were two of the areas that were reclassified as moderate nonattainment by operation of law upon the effective date of USEPA's final determination (i.e., November 7, 2022). States with areas reclassified as moderate nonattainment were required to submit State Implementation Plan ("SIP") revisions by January 1, 2023. The required SIP elements to address moderate nonattainment areas include nonattainment new source review, reasonable further progress, ozone attainment demonstration, reasonably available control measures, RACT, contingency measures, and basic motor vehicle inspection and maintenance where required.

On October 18, 2023, USEPA published in the Federal Register a final action finding that 11 states failed to submit SIP revisions in a timely manner for certain areas classified as moderate nonattainment for the 2015 Ozone NAAQS. Illinois was one of the states that failed to submit the required SIP revisions by the January 1, 2023, deadline. The final action triggered certain deadlines under the Clean Air Act for imposition of sanctions if the states did not submit a complete SIP addressing the outstanding requirements and for USEPA to promulgate a Federal Implementation Plan ("FIP") if USEPA does not approve the states' SIP revisions. If USEPA has not determined that a state has made the required complete SIP submittal within 18 months of the effective date of the finding of failure, then an offset sanction will apply in the nonattainment areas at issue. If USEPA has not determined that the State has made the required complete SIP submittal within 6 months after the offset sanction is imposed, then a highway funding sanction will apply in the nonattainment areas at issue. Here, USEPA needs to determine by May 17,

2025, that Illinois EPA has submitted a complete SIP submittal in order to avoid offset sanctions and the potential for highway funding sanctions.

As part of the Agency's effort to address the SIP revisions required by the reclassification and findings of failure, on February 8, 2024, the Agency provided industry stakeholders and other potentially impacted sources an "outreach" draft of its pre-proposal proposed revisions to the existing NO_x rules at 35 Ill. Adm. Code Part 217. The Agency requested feedback by March 25, 2024, prior to finalizing its proposal to submit to the Board. On July 8, 2024, the Illinois EPA filed its proposal with the Board to amend 35 Ill. Adm. Code Part 217. On July 11, 2024, the Board issued its Opinion and Order accepting the Agency's proposal for hearing, granting the Agency's motion for expedited review, and submitting the proposal to first-notice publication without comment. On September 26, 2024, the Board held its First Hearing in the matter. On November 21, 2024, the Board held its Second Hearing in the matter. Following the First and Second Hearings, the Agency submitted proposed amendments to the initial filing in its post-hearing comments. IERG now submits comments addressing the Agency's responses to IERG's pre-filed questions and follow-up questions, as well as the Agency's proposed amendments to the initial filing.

II. COMMENTS

A. Technical Analysis & Justification

For the proposed rule, the Agency has not produced any robust emission inventory analysis or attainment modeling for public review. In fact, in the Agency's Technical Support Document ("TSD"), in the "Environmental Impact" section, the Agency states that, "[w]hile the Agency anticipates that there will be NO_x emission reductions in both NAAs due to the revisions, the Agency has not included a detailed analysis quantifying anticipated reductions . . .

This analysis is simply not necessary at this juncture.” Technical Support Document, PCB R 25-17 (July 8, 2024). Emission impacts are an essential input to the photochemical grid modeling that is the heart of the attainment demonstration. With the lack of Agency effort to evaluate likely source-level emission impacts, emission inventory forecasts and modeling are rendered ineffective.

IERG and its Members acknowledge that the Agency has conducted this rulemaking on an accelerated timeline due to its SIP obligations for the moderate nonattainment areas of Chicago and Metro-East. IERG also understands that the Agency has put forth proposed revisions to applicability, limitations, and RACT requirements, in anticipation of further reclassification of these areas to serious nonattainment, which would subject stationary sources with the potential to emit (“PTE”) 50 tons or more of NO_x per year to NO_x RACT requirements. RACT is defined as “the lowest emission limitation that an emission unit is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” 35 Ill. Adm. Code 211.5370. Limits and requirements based on RACT are therefore technical determinations. Accordingly, it’s clear that the Agency’s technical analysis and justifications would be an area of concentrated public participation in this rulemaking.

Nevertheless, the Agency has stated that “the modeling performed for this period of nonattainment being moderate did not include any of the reductions that we’d anticipate in the NO_x RACT rules.” Second Hearing Transcript, PCB R 25-17, at 8 (November 21, 2024). The modeling for moderate nonattainment has not been made publicly available. The Agency further states that it “expect[s] to have modeling done hopefully by . . . summer next year,” referring to Illinois’ serious nonattainment modeling which they expect by summer 2025 to begin serious

nonattainment demonstrations. *Id.* at 10. Thus, the Agency is proposing revisions to applicability, limitations, and RACT requirements based on a serious nonattainment reclassification, but has not given the public an opportunity to review and comment on any modeling for the current moderate nonattainment classification, effectively forgoing any critique or discussion concerning the technical parameters of the proposed revisions. Indeed, the Agency has “conducted outreach with potentially affected sources and has been in communication with particular sources that have indicated that there may be a need for additional flexibility in order to comply,”¹ but this does not supplant providing the public an opportunity to review the technical support in this rulemaking.

It has been evident to IERG during this rulemaking process, and made clear to the Agency, that without the opportunity to review and discuss technical analysis and justifications produced by the Agency, underlying the Proposal, IERG and other interested parties have lacked a significant component to meaningful public participation in this rulemaking.

B. Subpart D: NO_x General Requirements

i. Section 217.152 Compliance Date and 30-day Rolling Average Basis

IERG recognizes and appreciates the Agency's efforts and willingness to address the issue raised regarding the May 1, 2025, compliance date for when affected sources must comply with the proposed revisions. The Agency gave affected sources the opportunity to make a demonstration of sufficient necessity for extensions of the May 1, 2025, compliance date and to meet with the Agency to discuss the specific circumstances of the applicable emission units to formulate a more customized compliance date that can be found in the Agency's Post-Hearing Comments.

¹ First Hearing Transcript at 16 (September 26, 2024).

ii. Section 217.158 Emissions Averaging Plans

a. 10% Environmental Benefit Emissions Write-Off

IERG continues to oppose the Agency's proposal to include a 10% environmental benefit in its NOx RACT emission averaging provisions as it has not been proven to be a requirement and has not been justified. IERG is awaiting the Agency's Post-Second Hearing Comments regarding these provisions, which will include responses to pertinent follow-up questions posed by IERG during the Second Hearing which the Agency witness proposed to address in post-hearing comments.

b. Maintenance Turnaround

IERG recognizes and appreciates the Agency's efforts and willingness to address the issue raised regarding the Agency's initial proposal to eliminate the maintenance turnaround provisions in Sections 217.158 (h) and (j) after the new compliance date. Discussions between the Agency and affected sources, who successfully demonstrated the necessity for maintenance turnaround provisions, resulted in the Agency proposing amendments to this section in its Post-Hearing Comments. An additional amendatory provision for an exemption is being proposed for an industrial boiler when (1) backup distillate fuel oil is used in lieu of natural gas during periods of natural gas curtailment or gas supply interruption or (2) during periods of periodic testing and maintenance of backup fuels or operator training, not exceeding 48 hours in a calendar year. IERG supports these proposed amendments.

C. Subpart Q: Stationary Reciprocating Internal Combustion Engines and Turbines

IERG recognizes and appreciates the Agency's efforts and willingness to amend Section 217.390 to allow for alternative emissions equations. IERG submitted comments to the Agency

on the pre-proposal draft amendments where IERG encouraged the Agency to allow for the use of emission equations in Section 217.390 which are already in place and required under 40 CFR Part 75 for sources that fall under those reporting requirements. In the Agency's Post Hearing Comments, the Agency proposed an additional method to calculate allowable emissions under Subpart Q to allow units that use a CEMS to determine NO_x emissions and monitor fuel flow, in lieu of stack flow, under 40 CFR XX, Appendix D. IERG supports these proposed amendments.

D. Subpart U: NO_x Control and Trading Program for Specified NO_x Generating Units

i. Section 217.456 Compliance Requirement

In IERG's March 25, 2024, pre-proposal comments to the Agency, IERG requested that the Agency revise the requirements in Part 217 Subpart U to incorporate additional monitoring and reporting flexibility provided five years ago by USEPA for non-electric generating units ("non-EGUs", *i.e.*, boilers, combustion turbines, and combined cycle units) with design heat input greater than 250 mmBtu/hr. Throughout the rulemaking, the Agency has not offered clear reasoning on whether it would be willing to move forward with proposed amendments. In its Post-Hearing Comments, filed with the Board on October 18, 2024, the Agency stated "theoretically, the Agency could submit two SIP submittals at different times for different portions of rules that were revised in a single rulemaking. However, USEPA indicated that it cannot assure the Agency that the changes to Subpart U that IERG is seeking are approvable." Post Hearing Comments of the Illinois Environmental Protection Agency, PCB R 25-17 at 4 (October 17, 2024). This statement illustrated that there was certainly an opportunity to further pursue amendments under this section. However, in its responses to IERG's Second Hearing Pre-Filed Questions, the Agency finally opposed proposing any amendments. The Agency stated, "[i]f another interested party were to propose revisions to Subpart U in this rulemaking, the

Agency would advise the Board not to adopt such revisions.” Illinois Environmental Protection Agency’s Responses to IERG’s Pre-Filed Questions for Illinois EPA Witness at Second Hearing at 12 (November 20, 2024). Accordingly, the Agency opposes any amendments to this section without offering any opportunities for relief from the onerous reporting requirements during this rulemaking. IERG requests that the Agency propose amendments to Part 217 Subpart U to incorporate additional monitoring and reporting flexibility provided for in the federal regulations for non-EGUs. *See* 84 Fed. Reg. 8422, Section IV, Final Action at 8438 (March 8, 2019).

III. CONCLUSION

For reasons articulated above, IERG submits the above comments for the Board’s consideration. IERG appreciates the opportunity to submit these comments.

Respectfully Submitted,

THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: December 16, 2024

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