

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R08-19
NITROGEN OXIDES EMISSIONS FROM) (Rulemaking - Air)
VARIOUS SOURCE CATEGORIES:)
AMENDMENTS TO 35 ILL. ADM. CODE)
PARTS 211 and 217)

NOTICE OF FILING

TO: Mr. John T. Therriault Timothy Fox, Esq.
Assistant Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 W. Randolph Street 100 W. Randolph Street
Suite 11-500 Suite 11-500
Chicago, Illinois 60601 Chicago, Illinois 60601
(VIA ELECTRONIC MAIL) **(VIA U.S. 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 **POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

By: /s/ Alec M. Davis
Alec M. Davis

Dated: March 23, 2009

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CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached
POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL

REGULATORY GROUP upon:

Mr. John T. Therriault
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via electronic mail on March 23, 2009; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in
Springfield, Illinois on March 23, 2009.

/s/ Alec M. Davis
Alec M. Davis

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**POST-HEARING COMMENTS OF
THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and submits the following POST HEARING COMMENTS for consideration in the above-referenced matter.

I. INTRODUCTION

IERG appreciates the opportunity to provide the following comments with regard to the February 3, 2009, NOx RACT hearing held in Edwardsville on the Illinois Environmental Protection Agency’s (“Agency” or “Illinois EPA”) proposal pending before the Illinois Pollution Control Board (“Board”), as amended. IERG would request that in proceeding to first notice, the Board consider the remaining concerns described more fully below, regarding the emissions averaging language, the compliance date, and unit types in the rule that are not currently present in the nonattainment areas subject to these proposed amendments.

II. BASIS FOR PROPOSAL

IERG’s initial concerns, regarding the proposal as applied to the affected units in the nonattainment areas, have by and large been addressed during the ongoing rulemaking process. IERG is pleased to see a proposal that is aimed not only to satisfy

the immediate need to have a NO_x RACT rule in place for nonattainment areas for the current ozone and PM_{2.5} standards, but also is intended to help attain the new ozone and PM_{2.5} standards, and satisfy the NO_x RACT requirement for those standards. IERG believes that having a NO_x RACT rule in place for future standards will enable industries operating in the nonattainment areas to better plan for the future, knowing what will be required of them. However, concerns remain, particularly with regard to potential for broader applicability of the provisions of the proposed rule.

A. The Original Proposal

The Statement of Reasons, filed with the initial proposal on May 9, 2008, provided that Illinois' NO_x RACT proposal was intended to satisfy the federal Clean Air Act ("CAA") requirements for a State Implementation Plan ("SIP") requiring Reasonably Available Control Technology ("RACT") controls for Nitrogen Oxides ("NO_x") for major stationary sources in nonattainment areas for both ozone and fine particulates ("PM_{2.5}"). Statement of Reasons, *In the Matter of: Nitrogen Oxides Emissions From Various Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217*, R08-19 at 5-8 (Ill.Pol.Control.Bd. May 9, 2008) (rulemaking hereafter cited as "*NO_x RACT Rule*"); Testimony of Robert Kaleel, *NO_x RACT Rule*, R08-19 at 1-2 (Ill.Pol.Control.Bd. Aug. 29, 2008). During the October 14, 2008 hearing, Mr. Kaleel, speaking on behalf of the Agency, iterated its position that the requirements contained in the proposal did not go beyond RACT, but were required to satisfy the requirements to implement RACT. Hearing Transcript, *NO_x RACT Rule*, R08-19 at 91 (Ill.Pol.Control.Bd. Oct. 14, 2008) (hereafter cited as "1st Tr.").

In response to the Agency's position, IERG offered that the proposal went beyond what is required to satisfy the RACT obligation. Pre-filed Testimony of David J. Kolaz, *NOx RACT Rule*, R08-19 at 3 (Ill.Pol.Control.Bd. Nov. 25, 2008) (hereafter "Kolaz Testimony"). The federal requirements for NOx RACT, coupled with what has been approved by the United States Environmental Protection Agency ("USEPA") in other states, provided the basis for IERG's contention. *Id.* at 5-15, 16-19. On this same basis, IERG offered that the system of regulations currently in place in the nonattainment areas of Illinois for ozone and PM_{2.5} are adequate to satisfy the NOx RACT requirement. *Id.* at 11-12; Hearing Transcript, *NOx RACT Rule*, R08-19 at 47-48 (Ill.Pol.Control.Bd. Dec. 9, 2008) (hereafter cited as "2nd Tr."). Thus, any further emissions reductions imposed above and beyond those currently required would be beyond RACT.

Acknowledging the Agency's commitment to the need to impose additional emissions limitations to achieve NOx RACT, IERG presented alternative limits to those stated in the Agency's proposal that it believed more accurately reflected the use of control technologies that are "reasonably available." Kolaz Testimony at 22-23, Exhibits 1 and 2. IERG maintains that its proposed emissions limits, as reproduced fully below, constitute NOx RACT for the current ozone and PM_{2.5} standards.

However, based on on-going dialogue with the Illinois EPA, and statements the Agency has made on the record during the Board's proceedings, IERG understands that the rationale for this proposal has evolved, as more fully described below.

B. The Amended Proposal

On January 30, 2009, the Illinois EPA filed a Motion to Amend Rulemaking Proposal. Among other things, the motion would extend the compliance date to January

1, 2012. Motion to Amend Rulemaking Proposal, *NOx RACT Rule*, R08-19 at 2 (Ill.Pol.Control.Bd. Jan. 30, 2009). IERG appreciates the Agency's recognition of the concern raised by IERG, regarding the initially proposed short compliance date, and the negative impact that it would have on what could be considered reasonably available. Pre-filed Testimony of Deirdre K. Hirner, *NOx RACT Rule*, R08-19 at 15-16 (Ill.Pol.Control.Bd. Nov. 25, 2008); Kolaz Testimony at 14-15.

In pre-filed testimony, and at hearing, Mr. Kaleel described the new ozone and PM_{2.5} standards, and stated that the emissions reductions from the proposal would help to meet those new standards, as well as help satisfy the NOx RACT requirement for SIPs submitted for those standards. Testimony of Robert Kaleel, *NOx RACT Rule*, R08-19 at 3-4 (Ill.Pol.Control.Bd. Jan. 20, 2009); Hearing Transcript, *NOx RACT Rule*, R08-19 at 16-20 (Ill.Pol.Control.Bd. Feb. 3, 2009).

Thus, IERG understands the proposal is not intended only to satisfy the federal requirement for having NOx RACT for ozone and PM_{2.5} nonattainment areas, and avoid the imposition of sanctions, but is also intended to meet the new federal standards for ozone and PM_{2.5}. Further, IERG understands it is intended to satisfy the corresponding new RACT requirements.

III. EMISSION LIMITS

IERG continues to believe that the originally proposed emission limits are more stringent than is necessary to satisfy the requirement to have NOx RACT in place in nonattainment areas for the current ozone and PM_{2.5} standards. Mr. Kolaz set forth alternative limits for industrial boilers that IERG feels more accurately reflect what is achievable with control technologies that are "reasonably available." Kolaz Testimony at

22-23 and Exhibit 1. For the Board's convenience, those alternative limits are reproduced below:

FUEL	TYPE	EMISSION LIMIT (lbs/mmBtu)
Natural Gas or Other Gaseous Fuels	>100 mmBtu/hr	0.12
	≤100 mmBtu/hr	Combustion Tuning
	Auxiliary boiler at EGU, oil or natural gas, ≤250 mmBtu/hr, ≤20% capacity factor	Exempt
Distillate Fuel Oil	>100 mmBtu/hr	0.20
	≤100 mmBtu/hr	Combustion Tuning
	Auxiliary boiler at EGU, oil or natural gas, ≤250 mmBtu/hr, ≤20% capacity factor	Exempt
Other Liquid Fuels	>100 mmBtu/hr	0.20
	≤100 mmBtu/hr	Combustion Tuning
	Auxiliary boiler at EGU, oil or natural gas, ≤250 mmBtu/hr, ≤20% capacity factor	Exempt
Solid Fuel	>100 mmBtu/hr (circulating fluidized bed)	0.12
	>250 mmBtu/hr	0.38
	>100 mmBtu/hr, ≤250 mmBtu/hr	0.38
	≤100 mmBtu/hr	Combustion Tuning

IV. AVERAGING LANGUAGE

The Agency's proposed rule includes a provision for demonstrating compliance through the use of an emissions averaging plan. See proposed Section 217.158. IERG supports this concept.

Section 217.158(a) of Subpart C (NOx General Requirements) of the proposed rule allows such averaging for emission units subject to Subpart D (industrial boilers), E (process heaters), F (glass melting furnaces), G (cement and lime kilns), H (iron and steel and aluminum manufacturing), M (electrical generating units), or Q (stationary internal combustion engines and turbines). IERG would request that the Board note that Subpart

Q, the subject of R07-19, also contains an emission averaging provision in Section 217.390 (Emission Averaging Plans). IERG believes that the averaging provisions of Sections 217.158 and 217.390 should be substantively the same, and for clarity should be contained in Section 217.158 (Emission Averaging Plans) of Subpart C (NO_x General Requirements).

IERG has provided comments regarding the emission averaging plan provisions in Subpart Q (R07-19), and maintained this position in its questioning of Agency witnesses in this proceeding regarding the averaging provisions of Section 217.158. Illinois Environmental Protection Agency's Answers to Pre-filed Questions by the Illinois Environmental Regulatory Group, *NO_x RACT Rule*, R08-19 at 8 (Ill.Pol.Control.Bd. Sept. 30, 2008); 1st Tr. at 79-83. Consequently, IERG requests that the following language be used as the second sentence in Section 217.158(a)(1)(C):

The new unit or units must be used for the same purpose having substantially equivalent or less process capacity, or the new unit or units must be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions of the unit or units that are replaced.

IERG requests this change to facilitate the averaging plan's promotion of environmental benefit and energy efficiency. Illinois EPA's provision states that new units cannot participate in averaging unless they are "used for the same purpose" as the units they are replacing. The scope of the restriction, "used for the same purpose," is difficult to determine from the language of the proposed rule and the Agency's testimony. IERG's proposed language addresses this concern and provides suitable limitations to allow facilities to find creative solutions to meet their operational needs, while maximizing energy efficiency and minimizing present and future environmental concerns pertinent to emissions such as greenhouse gases. Further, any new unit would likely be

subject to a myriad of programs such as New Source Performance Standards and possibly New Source Review, thus ensuring applicable emission requirements, including those pertaining to major modifications, would result in a decrease of overall emissions.

IERG also suggests that a more appropriate baseline for limiting new units for use in an averaging plan is January 1, 2010. This date will capture those units that would be subject to this rule, and will ensure that the most economical and energy efficient units are controlled. The Agency offers that January 1, 2002 was selected because it was the base year for the inventory. As IERG understands, reliance on this base year will have no bearing on an emission reduction strategy needed to satisfy the USEPA requirement for NO_x RACT. Consequently, the date chosen as the cutoff for emission averaging purposes should allow the use of all the units that were constructed prior to the existence of this proposed rule. It is reasonable to restrict the use of “new” units that occur after the existence of the rule as we have discussed in the preceding paragraphs. For these reasons, a date of January 1, 2010 should be used in place of January 1, 2002 in proposed Section 217.158.

V. COMPLIANCE DATE

As described above, the amended proposal now contains a compliance date of January 1, 2012. As testified to by Mr. Kolaz at the December 9, 2008 hearing, IERG would prefer a compliance date of January 1, 2014. 2nd Tr. at 50. IERG continues to maintain that the 2014 date is appropriate in this case, as it would provide additional time for affected entities to plan and secure financing for any projects necessitated by these amendments. Further, compliance in 2014 will provide emissions reductions to improve air quality to assist the nonattainment areas for the new standards to achieve attainment.

VI. UNIT TYPES NOT IN NONATTAINMENT AREAS

In pre-filed questions, and again at hearing, IERG questioned why the proposal included unit types that are not currently present in nonattainment areas for either ozone or PM_{2.5}. Pre-filed Questions for IEPA Submitted by IERG, *NOx RACT Rule*, R08-19 at Question 11 (Ill.Pol.Control.Bd. Sept. 16, 2008); 1st Tr. at 57-64. Mr. Kaleel stated that the units were included because the engineering work and cost analysis for those units had been performed. He further stated that if, at some future date, the nonattainment areas were expanded to include such a unit, reference to the rule could provide guidance as to what emissions limits the units would be required to meet. 1st Tr. at 62. When questioned, Mr. Kaleel acknowledged that a future rulemaking would have to be initiated in order to expand the applicability of this proposed rule to such units. *Id.*

IERG, therefore, contends that such units would be better addressed at a future date, when and if additional control regulations are required. IERG would suggest such units be removed from this proposed rule. IERG believes it is important to note that owners and operators of such units have not had the opportunity to participate in these proceedings. As the proposal being considered does not impact them as currently drafted, they are not on notice of the proposal before the Board. Further, new units of these types, should they at some future point be operated in the nonattainment areas, would be subject to much more stringent new source standards. Finally, to reiterate what Mr. Kaleel stated, a separate rulemaking would be required in order for such units, now located outside of the nonattainment areas, to become subject to Part 217. IERG again points out that such future rulemaking would provide the appropriate forum to further amend the regulation to include limits for such units.

VII. CONCLUSION

IERG would like to thank the Illinois EPA, particularly Mr. Kaleel, for giving attention to the operational realities industry must face to comply with the proposed regulation. IERG is prepared to offer its support for the proposal, as it pertains to satisfaction of the NOx RACT requirements for nonattainment areas for both the current and new ozone and PM_{2.5} standards, and to attainment of the new standards. IERG continues to be concerned regarding some ancillary issues, including the averaging language, the compliance date, and the inclusion of unit types not located in nonattainment areas, as addressed in its comments.

IERG has reviewed the Agency's motion for an expedited rulemaking in order to avoid sanctions. IERG intends to provide separate comment that generally will support Illinois EPA's motion. In that regard, IERG would request that the Board consider its concerns and proposed solutions presented to date in the context of this rulemaking in proceeding to first notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: /s/ Alec M. Davis
Alec M. Davis

Dated: March 23, 2009

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