

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
NITROGEN OXIDES EMISSIONS,)	
AMENDMENTS TO 35 ILL. ADM.)	R11-24
CODE 217)	
)	
IN THE MATTER OF:)	
)	
ILLINOIS ENVIRONMENTAL)	
REGULATORY GROUP'S EMERGENCY))	R11-26
RULEMAKING, NITROGEN OXIDES)	(Rulemaking – Air)
EMISSIONS: AMENDMENTS TO 35 ILL.))	(Cons.)
ADM. CODE PART 217)	

NOTICE OF FILING

TO: Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601
(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 **PRE-FILED TESTIMONY OF ROBERT A. MESSINA**, copies of which are herewith served upon you.

Respectfully submitted,

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

Dated: June 20, 2011

Alec M. Davis
General Counsel
Illinois Environmental Regulatory Group
215 East Adams Street
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(217) 522-5512

CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached

PRE-FILED TESTIMONY OF ROBERT A. MESSINA upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Kathleen C. Bassi
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via electronic mail on June 20, 2011; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in
Springfield, Illinois on June 20, 2011.

/s/ Alec M. Davis
Alec M. Davis

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PRE-FILED TESTIMONY OF ROBERT A. MESSINA

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorney, Alec M. Davis, and submits the following PRE-FILED TESTIMONY OF ROBERT A. MESSINA for presentation at the June 28, 2011 hearing in the above-referenced matter.

Pre-Filed Testimony of Robert A. Messina

I. INTRODUCTION

My name is Robert A. Messina, and I am the Executive Director of IERG. My testimony is intended to provide the Illinois Pollution Control Board (“Board”) with what information it may require to understand IERG’s position on this proposal. IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is comprised of 51 member companies that are regulated by governmental agencies that promulgate, enforce, or administer environmental laws, rules, regulations, or other policies. One of IERG’s primary roles is to represent the interests of its members in rulemakings before the Board. IERG appreciates the

opportunity to participate in this proceeding, and offers this testimony for consideration by the Board.

IERG's involvement in this matter is premised on three distinct concerns: 1) the federal NO_x RACT waiver resulted in a situation where the Illinois NO_x RACT rules are no longer federally required, 2) there remains great uncertainty regarding whether the existing NO_x RACT rules will satisfy the Clean Air Act requirement for future ozone or PM_{2.5} standards, and 3) it remains uncertain when future NO_x RACT rules will be required. In light of those concerns, IERG believes it is prudent to not require compliance with the current NO_x RACT rules, and for companies to expend resources to comply with the current rules, until such time as the uncertainty is resolved.

II. BACKGROUND

IERG was an active participant in the original Board rulemaking to adopt the Illinois NO_x RACT rules that are the subject to the matter before us today. *In the Matter of: Nitrogen Oxides Emissions from Various Source Categories; Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19* (hereafter cited as "R08-19"). IERG's involvement included years of pre-proposal meetings and discussion with the Illinois EPA (or "Agency"), multiple rounds of draft proposal review, and active participation in the Board's hearings. *See* Pre-Filed Testimony of Deirdre K. Hirner on Behalf of the Illinois Environmental Regulatory Group, R08-19, at 2-14 (Ill.Pol.Control.Bd. Nov. 25, 2008). At the conclusion of those proceedings, IERG remained concerned that the rules being adopted by the Board went beyond what was required for RACT rules for the 1997 8-hour ozone and 1997 PM_{2.5} National Ambient Air Quality Standards ("NAAQS"), as well as the fact that the compliance date did not provide adequate time for some affected sources to ensure compliance. IERG's concerns were largely ameliorated by the

Agency's stated position that the rules would satisfy future NO_x RACT requirements for future revised ozone and PM_{2.5} NAAQS. First-Notice Comments of the Illinois Environmental Regulatory Group, R08-19, at 3-5 (Ill.Pol.Control.Bd. Jul. 6, 2009).

IERG first learned of the Illinois EPA's July 29, 2010, NO_x RACT waiver request on December 8, 2010, when the U.S. EPA proposed to grant the waiver. 75 Fed. Reg. 76332 (Dec. 8, 2010). IERG then engaged in a series of discussions with the Agency to determine whether it would be agreeable to an extension of the compliance dates contained in the Illinois NO_x RACT rules, in light of the fact that there was no longer a federal requirement to have such rules. Both IERG and the Agency recognized early in the discussions that any benefit to be gained by the regulated community in extending the compliance date required expeditious amendment. It was also generally thought that no formal action could be taken until the U.S. EPA's approval of the NO_x RACT waiver to ensure that the request for extension would be appropriate, in that it would not trigger non-compliance with those federal requirements. Illinois EPA's intentions to work with the regulated community were formally expressed in a letter. See letter from Laurel L. Kroack, Chief, Bureau of Air to Mr. Robert A. Messina, Executive Director, IERG, dated Jan. 12, 2011, filed as Attachment B to IERG's Motion for Emergency Rule, *In the Matter of: Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen Oxides Emissions: Amendments to 35 Ill. Adm. Code Part 217*, R11-26 (Ill.Pol.Control.Bd. Apr. 21, 2011) (hereafter "Kroack Letter").

On February 23, 2011, the U.S. EPA finalized the NO_x RACT waiver. 76 Fed. Reg. 9655 (Feb. 23, 2011). On April 4, 2011, the Illinois EPA filed its proposed rule in this matter, accompanied by a motion asking the Board to expedite its review of the proposal. On April 7, 2011, the Board issued an order denying the Agency's motion for expedited review, but adopted

the proposal for first-notice. On April 22, 2011, IERG filed its motion for emergency rule, proposing amendments identical to those proposed by the Agency. On May 19, 2011, the Board issued an order denying IERG's motion, and consolidating both the Agency's docket¹ with the docket created for IERG's emergency rulemaking; the matter currently before us. On June 2, 2011, the Board held its first hearing in this matter.

III. PROPOSED JANUARY 1, 2015 COMPLIANCE DATE

Both the amendments proposed by the Agency, and those proposed in IERG's Motion for Emergency Rule would extend the compliance date of the Illinois NO_x RACT rules to January 1, 2015. At the June 2, 2011, hearing dedicated to this matter, Mr. Robert Kaleel, testifying on behalf of the Illinois EPA, repeatedly stated that the proposed date was arrived at in agreement with IERG. *See* Transcript, R11-24/R11-26 at 9 (Ill.Pol.Control.Bd. Jun. 8, 2011) (hereafter cited as "Transcript"). Some explanation of how that date was arrived at may prove beneficial to the Board. As Mr. Kaleel rightly asserted in testimony, any future NO_x RACT requirement will stem from the revised ozone NAAQS, however, there is some uncertainty as to when that NO_x RACT will ultimately be required. Transcript at 6-8. A number of possible options were proposed by IERG in the course of its discussions with the Agency, including: revoking the NO_x RACT Rules entirely, extending the compliance date to an unspecified date contingent on future federal requirements, or choosing a fixed date, with the possibility of revisiting the compliance date issue if federal action on a revised ozone NAAQS is delayed, or is substantively different than expected.

As mentioned above, the urgency for action, and the resultant desire to reach a mutually agreed-upon extension meant that any benefit to the regulate community would be lost if IERG

¹ Docket R11-24, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217*, a general rulemaking dealing with identical subject matter and seeking identical amendments, proposed by the Illinois EPA. (Consolidated dockets cited hereafter as "R11-24/R11-26").

insisted on a contrary position to that of the Agency. While all of IERG's members deemed all of the afore-mentioned options beneficial to the regulated community at-large, a fixed, January 1, 2015 date was preferred by the Agency. IERG's acceptance of that approach was not intended to convey that it was the ideal solution for all IERG members, but rather, that it was the solution most likely to be adopted quickly, to the benefit of those members that could take advantage of it.

IV. FUTURE RACT REQUIREMENTS

IERG appreciates the Agency's willingness to work with us in this matter, and the Agency's willingness to discuss both future compliance date extensions and substantive changes that may be required, depending on the timing and substance of the U.S. EPA's final revised ozone NAAQS. *See* Kroack Letter and Transcript at 8-12. The Agency has already stated that the current Illinois NO_x RACT rules require revisions to be federally approvable, so it makes little sense to have sources spend money now to comply with rules that will be changing in the near future, as the potential for that money to be wasted is a very real concern.

In preemptive response to potential Board concerns regarding the potential air quality impact of the proposal, I offer the following:

1. U.S. EPA has formally determined that all areas of Illinois have attained both the 1997 ozone and PM_{2.5} standards. Chicago ozone, 75 Fed. Reg. 12088 (Mar. 12, 2010). Metro-East ozone, 76 Fed. Reg. 33647 (Jun. 9, 2011). Chicago PM_{2.5}, 74 Fed. Reg. 62243 (Nov. 29, 2009). Metro-East PM_{2.5}, 76 Fed. Reg. 29652 (May 23, 2011).
2. With the approval of Illinois' NO_x RACT waiver, U.S. EPA has acknowledged that those rules are not necessary to meet current air quality standards, since the standard has already been attained. 76 Fed. Reg. at 9655.

3. According to Mr. Kaleel's testimony at hearing, all areas of Illinois currently meet the 2008 ozone standard, although U.S. EPA has chosen to not implement that standard, as its reconsideration is pending. Transcript at 21.
4. The extension of the compliance date should have very little environmental impact, as the current compliance date requiring any potential emissions reductions has not yet occurred, although for those sources that have already made changes to their units to ensure compliance (i.e. installation of low-NO_x burners or other controls) some air quality improvement should continue to be realized.

V. NEED FOR IMMEDIATE ACTION

The economic benefit to be gained from the rulemaking currently before the Board may very well be moot for some companies. To the extent that some subject sources are still able to defer costs as a result of the proposed compliance date extension, IERG would encourage the Board to take action as soon as possible.

VI. CONCLUSION

Thank you for the opportunity and for your consideration of this testimony. I would be pleased to answer any questions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: June 20, 2011

By: /s/ Alec M. Davis
One of Its Attorneys

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