

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
NITROGEN OXIDES EMISSIONS,	)	R11-24
AMENDMENTS TO 35 ILL. ADM.	)	
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**

TO: John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601

**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 PROTECTION AGENCY and MOTION TO CORRECT TRANSCRIPT, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

DATED: July 18, 2011

1021 North Grand Avenue East  
P. O. Box 19276  
Springfield, IL 62794-9276  
217/782-5544

**THIS FILING IS SUBMITTED  
ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by its attorney, and respectfully submits its post-hearing comments in the above rulemaking proceeding. The Illinois EPA appreciates the efforts of the Illinois Pollution Control Board ("Board") in this rulemaking proposal to amend 35 Ill. Adm. Code Part 217.

The Illinois EPA witness testified and provided evidence in support of the rulemaking proposal at the first hearing that was held in Chicago on June 2, 2011. The second hearing that was held in Edwardsville on June 28, 2011, gave the other participants to the rulemaking the opportunity to present testimony.

These post-hearing comments of the Illinois EPA address Clean Air Act Requirements and ExxonMobil Oil Corporation.

*Clean Air Act Requirements*

In January 2010, the United States Environmental Protection Agency ("USEPA") proposed to strengthen the 8-hour primary ozone standard to a lower level within the range of 0.060 to 0.070 parts per million ("ppm") to protect public health and the secondary standard

within the range of 7 to 15 ppm-hours. 75 *Fed. Reg.* 2938 (January 19, 2010). This reconsideration was to ensure that the standards are clearly grounded in science, protect public health with an adequate margin of safety, and protect the environment.

The USEPA has indicated that it intends to issue a final decision on the reconsideration by July 29, 2011. *See, EPA's Revised Motion Requesting A Continued Abeyance and Response to the State Petitioners' Cross-Motion*, filed December 8, 2010, in *State of Mississippi, et al. v. EPA*. Such action will reestablish nitrogen oxides ("NO<sub>x</sub>") reasonably available control technology ("RACT") requirements in areas designated as nonattainment (moderate and above) for the revised ozone standard.

As previously stated, on July 29, 2010, the Illinois EPA submitted a request to the USEPA for a NO<sub>x</sub> RACT waiver for the 1997 8-hour ozone standard for the Illinois ozone nonattainment areas based upon quality-assured ozone monitoring data for 2007 through 2009, which demonstrate that the 1997 8-hour ozone national ambient air quality standard ("NAAQS") has been attained in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas without the implementation of NO<sub>x</sub> RACT in the Illinois portions of these areas. *See, Statement of Reasons of the Illinois Environmental Protection Agency*, April 4, 2011, at 5. Furthermore, the Illinois EPA also requested that the USEPA consider the NO<sub>x</sub> RACT amendments that were promulgated by the Board in 2009 for approval as NO<sub>x</sub> RACT in the Illinois State Implementation Plan ("SIP") under the revised ozone standard that USEPA is currently considering. *Id.*, *see also* 75 *Fed. Reg.* 76332 (December 8, 2010). On February 22, 2011, the USEPA approved the Illinois EPA's NO<sub>x</sub> RACT waiver request for the 1997 8-hour ozone standard for the Illinois ozone nonattainment areas. *Id.*; *see also* 76 *Fed. Reg.* 9655 (February 22, 2011).

In October 2006, the USEPA completed a review of the particulate matter (“PM”) NAAQS, and as a result, strengthened the 24-hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter (“μg/m<sup>3</sup>”) of air to 35 μg/m<sup>3</sup> of air, but retained the annual PM<sub>2.5</sub> standard at 15 μg/m<sup>3</sup> of air. 71 *Fed. Reg.* 61144 (October 17, 2006). However, in 2009, several parties challenged the revised PM standard and the United States Court of Appeals for the District of Columbia Circuit remanded the primary annual PM<sub>2.5</sub> standard to USEPA for reconsideration, because the USEPA failed to explain adequately why an annual level of 15 μg/m<sup>3</sup> of air is “requisite to protect the public health,” including the health of vulnerable subpopulations, while providing “an adequate margin of safety.” *American Farm Bureau Federation v. Environmental Protection Agency*, 559 F.3d 512 (D.C. Cir. 2009).

The USEPA is currently reviewing the NAAQS for PM, as the USEPA is required to periodically review and revise the NAAQS. As the USEPA has proposed to strengthen the 8-hour primary ozone standard, it is probable that the USEPA will similarly strengthen the PM standard.

Under Section 110 of the Clean Air Act (“CAA”) and related provisions, states are required to submit, for USEPA approval, SIPs that provide for the attainment and maintenance of standards established by USEPA through control programs directed to sources of the pollutants involved. 42 U.S.C. §7410. Sections 172 and 182 of the CAA also provide for the State to address emissions sources on an area-specific basis through such requirements as reasonably available control measures (“RACM”) and RACT. *See*, 42 U.S.C. §§7502 and 7511a. For each nonattainment area, the CAA requires the State to demonstrate that it has adopted “all reasonably available control measures as expeditiously as possible (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of

reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.” 42 U.S.C. § 7502(c)(1).

In 2009, the Board adopted amendments to Part 217 to satisfy the NO<sub>x</sub> RACT requirements under Sections 172 and 182 of CAA. *See*, Adopted Rule, Opinion and Order, August 20, 2009, R08-19, *In the Matter of: Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217*. However, as the Illinois EPA recognized that the waiver of the NO<sub>x</sub> RACT requirement to meet the 1997 8-hour ozone standard, the reconsideration of the 2008 8-hour ozone standard, and the USEPA’s delay in adopting the 8-hour ozone standard revision proposed in 2010 resulted in a situation where the existing NO<sub>x</sub> RACT regulations, absent an underlying federal requirement to implement these rules at this time, impose compliance requirements upon the regulated community prior to when they will be necessary under the CAA. Accordingly, in these consolidated rulemakings currently before the Board, the Illinois EPA, along with the Illinois Environmental Regulatory Group, is proposing to extend the compliance date from January 1, 2012, to January 1, 2015, so as to fulfill the NO<sub>x</sub> RACT requirements under the CAA for the 8-hour ozone standard that the USEPA is currently considering. In addition, a strengthening of the PM standard will also likely yield NO<sub>x</sub> RACT requirements upon Illinois for designated nonattainment areas.

However, even absent a federal requirement, the Board and the Illinois EPA have authority to promulgate regulations that improve air quality in Illinois. *See*, 415 ILCS 5/4, 5, 8, 9, 27, and 28. Furthermore, it is important to note the “good neighbor” provision in Section 110(a)(2)(D)(i) of the CAA that requires each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. 42 U.S. C. §7410(a)(2)(D)(i). This Section contains distinct requirements related to the impacts of interstate transport. *Id.* The SIP must

prevent sources in the state from emitting pollutants in amounts which will (i) contribute significantly to nonattainment of the NAAQS in other states; (ii) interfere with maintenance of the NAAQS in other states; (iii) interfere with provisions to prevent significant deterioration of air quality in other states; or (iv) interfere with efforts to protect visibility in other states. *Id.*

Accordingly, NO<sub>x</sub> RACT requirements in Illinois, by reducing NO<sub>x</sub> emissions in the Chicago and Metro East areas, will reduce impacts upon downwind areas in achieving strengthened NAAQS. As NO<sub>x</sub> is a precursor to PM, Illinois' NO<sub>x</sub> RACT requirements will reduce Illinois' contribution to nonattainment in downwind states, in addition to benefiting Illinois' air quality.

*ExxonMobil Oil Corporation*

Mr. Robert Elvert, on behalf of ExxonMobil Oil Corporation ("ExxonMobil"), stated at hearing, "For ExxonMobil, the Illinois EPA's proposed deadline is not sufficient given the refinery's turnaround schedule as well as how the USEPA has identified deficiencies in their March 9, 2011, letter could require redefining the control products that are needed in order to comply with the Joliet refinery." *Hearing Transcript*, June 28, 2011, at 19. In ExxonMobil's case, as explained in the Petition for Variance currently pending before the Board, ExxonMobil is requesting an extension of the compliance date consistent with its next turnaround scheduled for Spring 2019. *See, Pre-Filed Testimony of Robert Elvert on Behalf of ExxonMobil Oil Corporation*, June 20, 2011, at 4.

The Illinois EPA has attempted to accommodate industry, including ExxonMobil, by extending the compliance date; however, it is ExxonMobil's own internal decision to delay the installation of controls to a planned maintenance turnaround in Spring 2019. As stated at hearing, the Illinois EPA extended the compliance date for certain emission units located at

petroleum refineries (Section 217.Appendix H units) as a result of negotiations with the affected entities during the initial rulemaking. *Hearing Transcript*, June 28, 2011, at 21; *see also Post-Hearing Comments of the Illinois Environmental Protection Agency and Second Motion to Amend Rulemaking*, March 23, 2009, R08-19, *In the Matter of: Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217*.

The CAA sets forth the timeframes governing the steps required following the promulgation of a new or revised NAAQS. *See*, 42 U.S.C. § 7407. As stated above, the USEPA has indicated that it intends to take final action on the reconsideration of the ozone standard by July 29, 2011. Assuming that the USEPA promulgates the standard later this month, and based upon the statutory time frames for states to submit recommended designations, for USEPA to finalize designations, for submittal of the NO<sub>x</sub> RACT SIP, and for implementation of NO<sub>x</sub> RACT at sources, the result does not yield a potential compliance date of Spring 2019.

While the Illinois EPA acknowledges that there is some uncertainty regarding the reconsideration of the ozone standard, a Spring 2019 implementation date for NO<sub>x</sub> RACT is unsupportable at this time. To illustrate, the promulgation of a final standard by USEPA in July 2011 mandates that states submit initial designations to USEPA by such date as the Administrator may reasonably require, but not later than one year after promulgation of the standard, which in this case is July 2012. *See*, 42 U.S.C. § 7407(d)(1)(A). Thereafter, as expeditiously as practicable, but in no case later than two years from the date of promulgation of the standard, or July 2013, the USEPA must promulgate the designations of all areas. *See*, 42 U.S.C. § 7407(d)(1)(B). Assuming the same time frame as with the 1997 ozone standard, NO<sub>x</sub> RACT SIPs would be due “no later than 27 months after designation,” which in this case is October 2015. *See*, 40 C.F.R. § 51.912(a)(2) (2010), and *Hearing Transcript*, June 28, 2011, at

43-44. Implementation of NO<sub>x</sub> RACT at sources is due as expeditiously as practicable; however, assuming the same time frame as with the 1997 ozone standard, “but no later than the first ozone season or portion thereof which occurs 30 months after the RACT SIP is due.” *See*, 42 U.S.C. §7502(c)(1), 40 C.F.R. §51.912(a)(3) (2010), and *Hearing Transcript*, June 28, 2011, at 43-44. Under this illustration, implementation of NO<sub>x</sub> RACT at sources is due April 2018.

However, if, as a result of the reconsideration of the ozone standard, the USEPA determines that the record supports a strengthened standard, the USEPA stated its intention to promulgate final designations on an accelerated schedule to allow the designations to be effective in one year. *See*, 75 *Fed. Reg.* 2938, at 3036-3037 (January 19, 2010). If the USEPA utilizes such an expedited schedule, or a slightly modified expedited schedule, the implementation of NO<sub>x</sub> RACT at sources would be required even earlier than April 2018, as in the illustration above. For example, if the USEPA promulgates final designations in one year, implementation of NO<sub>x</sub> RACT at sources would be due April 2017. However, with a slightly modified schedule, such as 18 months for USEPA to finalize designations, implementation of NO<sub>x</sub> RACT at sources would be due September 2017. In either of these illustrations, a Spring 2019 compliance date for implementation of NO<sub>x</sub> RACT is unsupportable.

Furthermore, as to ExxonMobil’s premise regarding the current NO<sub>x</sub> RACT rule as not being approvable as RACT, it is accurate that the USEPA noted certain deficiencies. *See, Letter from Cheryl Newton, Director, Air and Radiation Division, Region 5, USEPA, to Laurel Kroack, Chief, Bureau of Air, Illinois EPA*, dated March 9, 2011, which was requested at the June 2, 2011, hearing and submitted to the Board on June 3, 2011. However, it must be emphasized that one of the deficiencies relates to the compliance date. The other deficiencies pertain to USEPA’s Economic Incentive Program (“EIP”) Guidelines and include an averaging period beyond the



maximum 30-day averaging period allowed under the EIP Guidelines and the lack of a specific emissions cap or environmental write-off of 10 percent on calculated allowable emissions to generate a benefit to the environment. *Id.* at 2 and 4.

As to the compliance date deficiency, the USEPA stated, in part, that "...the deadline for implementation of NO<sub>x</sub> RACT rules is the start of the ozone season in 2009, or more specifically, May 1, 2009, well before the January 1, 2012, implementation deadline...." *Id.* at 3. "The Phase 2 ozone implementation rule makes it very clear that EPA cannot approve as NO<sub>x</sub> RACT rules that provide for implementation after May 1, 2009." *Id.*

Likewise, a compliance date of Spring 2019 is well beyond a compliance date based upon the illustration above, or an earlier date based upon a likely expedited designations schedule. Accordingly, a Spring 2019 compliance date would again jeopardize the approval of the State's NO<sub>x</sub> RACT SIP submittal.


Furthermore, as Mr. Robert Kaleel testified, the Illinois EPA intends for Part 217 to satisfy the NO<sub>x</sub> RACT requirements for the revised ozone standard. *Hearing Transcript* June 2, 2011, at 42, *and Hearing Transcript*, June 28, 2011, at 58. In addition, as stated above, the Illinois EPA has requested that USEPA consider the NO<sub>x</sub> RACT requirements that were promulgated by the Board in 2009 for approval as NO<sub>x</sub> RACT in the Illinois SIP under the revised ozone standard that USEPA is currently considering. *75 Fed. Reg.* 76332 (December 8, 2010). The Illinois EPA recognizes that a rulemaking proposal to remedy the averaging period and emissions cap deficiencies is required. However, as to emissions limitations, ExxonMobil's questioning of the adequacy of these requirements satisfying NO<sub>x</sub> RACT under the revised ozone standard is without merit.

However, notwithstanding the comments above, the Illinois EPA again notes that ExxonMobil is seeking regulatory relief through a variance petition that would, if granted, provide an extension of the compliance deadline for Appendix H units from December 31, 2014, to May 1, 2019. *ExxonMobil Oil Corporation v. Illinois Environmental Protection Agency*, PCB 11-86. That relief is also being advanced by ExxonMobil in the context of this regulatory proceeding. To the extent that there could be action by USEPA that will affect Illinois EPA's recommendation in the variance proceeding, it is similarly possible that such federal action may also provide a reason for Illinois EPA to modify some of the comments made herein.

In sum, as the Illinois EPA indicated in the initial NO<sub>x</sub> RACT rulemaking, NO<sub>x</sub> emissions reductions will improve both ozone and PM<sub>2.5</sub> air quality, since NO<sub>x</sub> is a precursor to both pollutants. The designation of areas as nonattainment will again trigger the CAA requirement for these areas to implement RACT for NO<sub>x</sub> and volatile organic compounds. The reductions provided by the NO<sub>x</sub> RACT requirements under Part 217 will assist in meeting the new standards and are most likely sufficient in addressing any future requirements to implement NO<sub>x</sub> RACT for the new standards.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

DATED: July 18, 2011  
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Springfield, IL 62794-9276  
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ON RECYCLED PAPER**

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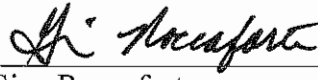
**MOTION TO CORRECT TRANSCRIPT**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by its attorney, and pursuant to 35 Ill. Adm. Code § 101.604, requests that the Illinois Pollution Control Board ("Board") order the correction of the transcript of the hearing held in this matter on June 28, 2011, as follows:

<u>Page</u>	<u>Line</u>	<u>Correction</u>
2	14	Change "Anad" to "Anand"
27	24	Change "position" to "petition"
30	24	Change "Quorum" to "Corn"
31	8	Change "including" to "excluding"
31	13-14	Change "these emissions" to "utilities"
32	15	Change "FCR" to "SCR"
34	4	Change "NSDS" to "NSPS"
34	7	Change "NSDS" to "NSPS"
41	12	Change "should be then" to "should instead be set at"
43	20	Change "state require they" to "states be required to"

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully requests that the Board order the correction of the hearing transcript as set forth above.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

DATED: July 18, 2011

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**THIS FILING IS SUBMITTED  
ON RECYCLED PAPER**

STATE OF ILLINOIS                     )  
                                                   )       SS  
COUNTY OF SANGAMON             )  
                                                   )

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and MOTION TO CORRECT TRANSCRIPT upon the following person:

John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601-3218

and electronically and mailing it from Springfield, Illinois, by first class mail, postage affixed, upon persons included on the attached Service List.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,



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Gina Roccaforte  
Assistant Counsel  
Division of Legal Counsel

Dated: July 18, 2011

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**SERVICE LIST R11-24, R11-26 (Cons.)**

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