

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION,)	
)	
Petitioner,)	
)	PCB 11-86
v.)	(Variance-Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

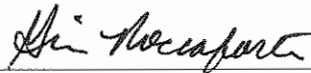
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PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the RECOMMENDATION of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2011
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**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

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RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) by its attorney, Gina Roccaforte, in response to the Petition for Variance of EXXONMOBIL OIL CORPORATION (“ExxonMobil” or “Petitioner”) from the December 31, 2014, compliance date for the applicable requirements of 35 Ill. Adm. Code 217, Subparts A, D, E, F, and Appendix H (“NO_x RACT Rule” or “Rule”). Pursuant to Section 37(a) of the Illinois Environmental Protection Act (“Act”) [415 ILCS 5/37(a) (2010)] and 35 Ill. Adm. Code 104.216, the Illinois EPA neither supports nor objects to Petitioner’s request for variance as proposed. In support of its recommendation, the Illinois EPA states as follows.

I. INTRODUCTION

1. On May 18, 2011, Petitioner filed a Petition for Variance requesting a four-year and four-month variance from the deadline for compliance with the requirements of the nitrogen oxides (“NO_x”) Reasonably Available Control Technology (“RACT”) Rule, which imposes a December 31, 2014, deadline for implementation of RACT at the Joliet Refinery to control NO_x emissions from certain emission units listed in Appendix H of the Rule.

2. Petitioner specifically seeks a variance under the NO_x RACT Rule from the December 31, 2014, compliance date to a May 1, 2019, compliance date for certain emissions

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units set forth under Appendix H of Part 217.

3. Petitioner owns and operates the Joliet Refinery that is located on a 1,300 acre tract of land located in Channahon Township in unincorporated Will County. The Joliet Refinery is adjacent to Interstate 55 at the Arsenal Road exit, approximately 50 miles southwest of Chicago. The Joliet Refinery processes crude oil and is capable of processing approximately 248,000 barrels per day (nearly 10.4 million gallons per day) and also produces liquefied petroleum gas, propylene, asphalt, sulfur, and petroleum coke.

4. Pursuant to Section 104.214 of the Illinois Pollution Control Board's ("Board") procedural rules, the Illinois EPA must provide public notice of any petition for variance within 14 days after filing of the petition. *See*, 35 Ill. Adm. Code 104.214. Section 104.214(a) provides that "the Agency must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located." *See also*, 415 ILCS 5/37(a) (2010). Section 104.214(b) requires the Illinois EPA to serve written notice of a petition on the County State's Attorney, the Chairman of the County Board, each member of the General Assembly from the legislative district affected, and any person in the county who has in writing requested notice of variance petitions. The Illinois EPA published the required notice in the *Joliet Herald News* on May 25, 2011. Also, consistent with Section 104.214(b), the Illinois EPA mailed notices of the Petition for Variance on May 20, 2011.

5. To date, the Illinois EPA has received two written comments, but no requests for hearing. *See* Exhibit 1, attached. Should any additional public comments be received before the end of the comment period, the Illinois EPA will file an amendment to its Recommendation addressing any necessary issues.

6. Pursuant to the Board's procedural rules, "[w]ithin 21 days after the publication

of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.” *See*, 35 Ill. Adm. Code 104.214(f). The Illinois EPA has filed a certification of publication within this timeframe.

7. The Illinois EPA is required to make a recommendation to the Board on the disposition of a petition for variance within forty-five (45) days of filing of the petition or any amendment thereto or thirty (30) days before a scheduled hearing pursuant to 35 Ill. Adm. Code 104.216.

II. BACKGROUND

8. As discussed, Petitioner owns and operates the Joliet Refinery that is a source that meets the applicability criteria of Part 217, i.e., a source located in Will County that emits or has the potential to emit NO_x in an amount equal to or greater than 100 tons per year. Currently, there are no pending State enforcement actions against the Petitioner.

9. In 2009, the Board adopted amendments to Part 217 to satisfy the NO_x RACT requirement under Sections 172 and 182 of the Federal Clean Air Act (“CAA”) for the 1997 8-hour ozone and particulate matter (“PM”) National Ambient Air Quality Standards (“NAAQS”)(“1997 Standards”). *See*, R08-19, *In the Matter of: Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217*. On September 2, 2009, and supplemented on October 8, 2009, the Illinois EPA submitted these amendments to the United States Environmental Protection Agency (“USEPA”) for approval as part of the Illinois State Implementation Plan (“SIP”) to satisfy the NO_x RACT requirement for the 1997 Standards. In general, the compliance date set forth under Part 217 is January 1, 2012; however, compliance dates for certain emission units at petroleum refineries are set forth under

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Appendix H. *See*, Section 217. Appendix H. There are twenty process heaters/boilers at the Joliet Refinery, including eight process heaters set forth in Appendix H with a compliance date of December 31, 2014. The other process heaters/boilers are subject to the January 1, 2012, compliance date.

10. Currently before the Board are rulemakings that propose to modify the compliance date from January 1, 2012, to January 1, 2015. *See*, R11-24, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code Part 217*, consolidated with R11-26, *In the Matter of: Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen Oxides Emission: Amendments to 35 Ill. Adm. Code Part 217*.

11. Under Sections 108 and 109 of the CAA, the USEPA is authorized to establish, review, and revise a NAAQS. 42 U.S.C §§ 7408-7409. Under Section 107(d)(1)(A) of the CAA, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State" that designates those areas as nonattainment, attainment, or unclassifiable. 42 U.S.C § 7407(d)(1)(A). Furthermore, "Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations." 42 U.S.C § 7407(d)(1)(B).

12. In 2008, the USEPA revised the level of the 8-hour primary ozone NAAQS and

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lowered it from 0.08 parts per million (“ppm”) (“1997 Standard”) to 0.075 ppm and revised the 8-hour secondary ozone NAAQS by making it identical to the revised primary standard (“2008 Standard”). 73 *Fed. Reg.* 16436 (March 27, 2008). However, this revised standard was challenged by numerous groups. *State of Mississippi, et al. v. EPA* (No. 08-1200, D.C. Cir. 2008).

13. In March 2009, based upon measured violations of the revised standard during 2006 through 2008, the Illinois EPA recommended to the USEPA that portions of the Chicago and Metro-East metropolitan areas be designated as nonattainment for the 2008 Standard. The recommended nonattainment boundaries were the same as the boundaries established pursuant to the 1997 revisions of the ozone NAAQS, with the exception of Jersey County. Accordingly, the recommended boundaries as nonattainment for the 2008 Standard are the Chicago-Gary-Lake County, IL-IN designated area and the St. Louis, MO-IL designated area.

14. Thereafter, in September 2009, the USEPA announced and informed the United States Court of Appeals for the District of Columbia Circuit that it would be reconsidering the 2008 Standard.¹ Accordingly, in January 2010, the USEPA proposed to strengthen the 8-hour primary ozone standard to a lower level within the range of 0.060 to 0.070 ppm to protect public health and the secondary standard within the range of 7 to 15 ppm-hours (“2010 Proposed Standards”). 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 2008 Standard (75 ppb) has not been revoked. The United States Court of Appeals for the District of Columbia Circuit in *State of Mississippi, et al. v. EPA* has ordered the case held in abeyance, pending the USEPA’s reconsideration of such

¹ See, *EPA’s Notice That It Is Reconsidering the Rule Challenged in These Cases*, filed September 16, 2009, in *State of Mississippi, et al. v. EPA*.

standard, in response to motions filed by the USEPA.²

15. The 2008 Standards were not as protective as recommended by the USEPA's panel of science advisors, the Clean Air Scientific Advisory Committee ("CASAC"). The 2010 Proposed Standards are consistent with CASAC's recommendations. The USEPA initially indicated that it would issue final standards by August 31, 2010; however, this date was delayed until December 2010. On December 8, 2010, the USEPA requested the court to continue to hold the cases in abeyance and indicated that it intends to issue a final decision on the reconsideration by July 29, 2011.³ On April 4, 2011, the court granted the USEPA's revised motion to continue holding the consolidated cases in abeyance.⁴ The USEPA represented that if by July 29, 2011, it does not sign a final action, it would not oppose a request at that time to establish an appropriate briefing schedule.⁵ Accordingly, the court ordered that the parties are directed to file motions to govern further proceedings within fourteen days after USEPA signs the final action on reconsideration, or by August 12, 2011, whichever occurs first.⁶ However, on July 26, 2011, the USEPA made the following statement:

Administrator Jackson is fully committed to finalizing EPA's reconsideration of the Clean Air Act health standard for ground level ozone. That reconsideration is currently going through interagency review led by OMB [Office of Management and Budget]. Following completion of this final step, EPA will finalize its reconsideration, but will not issue the final rule on July 29th, the date the agency had intended. We look forward to finalizing this standard shortly. A new ozone standard will be based on the best science and meet the obligation established under the Clean Air Act to protect the health of the American people. In implementing this new standard, EPA will use the long-standing flexibility in the Clean Air Act to consider costs, jobs and the economy.⁷

² See, *Order*, filed March 9, 2009; *Order*, filed January 21, 2010; and *Order*, filed April 4, 2011, in *State of Mississippi, et al. v. EPA*.

³ 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*.

⁴ See, *Order*, filed April 4, 2011, in *State of Mississippi, et al. v. EPA*.

⁵ *Id.*

⁶ *Id.*

⁷ See, <http://www.epa.gov/air/ozonepollution/actions.html>.

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Such action will reestablish NO_x RACT requirements in areas designated as nonattainment (moderate and above) for the revised ozone standard.

16. On July 29, 2010, the Illinois EPA submitted a request to the USEPA for a NO_x RACT waiver for the 1997 Ozone Standard for the Illinois ozone nonattainment areas based upon quality-assured ozone monitoring data for 2007 through 2009, which demonstrate that the 1997 Ozone Standard has been attained in the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL areas without the implementation of NO_x RACT in the Illinois portions of these areas. Furthermore, the Illinois EPA also requested that USEPA consider the NO_x RACT amendments that were promulgated by the Board in 2009 for approval as NO_x RACT in the Illinois SIP under the revised ozone standard that USEPA is currently considering. *75 Fed. Reg.* 76332 (December 8, 2010). On December 8, 2010, the USEPA proposed to approve such waiver. *Id.* On February 22, 2011, the USEPA approved the Illinois EPA's NO_x RACT waiver request for the 1997 Ozone Standard for the Illinois ozone nonattainment areas. *76 Fed. Reg.* 9655 (February 22, 2011).

17. On July 18, 1997, USEPA revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator, and established primary annual and 24-hour standards for PM_{2.5}. *62 Fed. Reg.* 38652 (July 18, 1997). In October 2006, USEPA subsequently completed another review of the NAAQS for PM, and as a result, strengthened the 24-hour PM_{2.5} standard from 65 micrograms per cubic meter ("μg/m³") of air to 35 μg/m³ of air, but retained the annual PM_{2.5} standard at 15 μg/m³ of air. *71 Fed. Reg.* 61144 (October 17, 2006).

18. At the time of the Board's promulgation of the amendments to Part 217 in R08-19, there were two areas designated as nonattainment for the 1997 annual PM_{2.5} standard; the Chicago-Gary-Lake County, IL-IN designated area and the St. Louis, MO-IL designated area.

19. However, in November 2009, the USEPA determined that the Chicago-Gary-Lake County, IL-IN nonattainment area attained the 1997 PM_{2.5} Standard. 74 *Fed. Reg.* 62243 (November 27, 2009). More recently, in May, the USEPA has determined that the St. Louis, MO-IL nonattainment area has attained such standard. 76 *Fed. Reg.* 29652 (May 23, 2011). The Illinois EPA notes that a finding of attainment is not the same as a redesignation to attainment. Redesignation cannot occur unless the State demonstrates that the air quality improvements are due to permanent and enforceable control measures.

20. Furthermore, in 2009, several parties challenged the revised PM Standards and the United States Court of Appeals for the District of Columbia Circuit remanded the primary annual PM_{2.5} standard to USEPA for reconsideration, because USEPA failed to explain adequately why an annual level of 15 µg/m³ 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).

21. Presently, the USEPA is reviewing the NAAQS for PM, as the USEPA is required to periodically review and revise the NAAQS. Such review focuses on both evidence and risk-based information in evaluating the adequacy of the current PM NAAQS and identifying potential alternative standards for consideration. The USEPA will consider comments received from the CASAC and the public in preparing a final policy assessment. 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.

22. The “good neighbor” provision in Section 110(a)(2)(D)(i) of the CAA 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) (Section 110 of the CAA). Ozone levels in Western Michigan, both at locations of measured and modeled nonattainment, are dominated by transport. *See, Western Michigan Ozone Study, Final Version, April 24, 2009.*⁸ Western Michigan is impacted by subregional transport of ozone and ozone-forming emissions from major urban areas in the Lake Michigan area, such as Chicago, Gary, and Milwaukee, and regional transport of ozone and ozone-forming emissions from other source areas in the Eastern United States. *Id.*

23. As evidenced by the impact in Western Michigan, emissions from sources in upwind states, including Illinois, Indiana, and Wisconsin, contribute significantly to nonattainment in, or interference with maintenance by, a downwind area with respect to the NAAQS. With the strengthening of the NAAQS, nonattainment designations follow. Accordingly, NO_x RACT requirements in Illinois, by reducing NO_x emissions in the Chicago area, will reduce impacts upon downwind areas in achieving strengthened NAAQS. The Milwaukee-Racine, WI, area has been designated as nonattainment for the 2006 24-hour PM_{2.5} standard. As NO_x is a precursor to PM, Illinois' NO_x RACT requirements will reduce Illinois' contribution to Wisconsin's nonattainment.

24. Nonattainment designations trigger requirements under the CAA for adopting regulations that reduce emissions sufficiently to demonstrate attainment of the standards. Under Section 172(c)(1) of the CAA, states with nonattainment areas are required to submit, in part, SIPs that provide for the adoption of reasonably available control measures ("RACM") for stationary sources in all nonattainment areas as expeditiously as possible. 42 U.S.C. § 7502(c)(1).

⁸ www.ladco.org/reports/ozone/post08/western_michigan_report_final.pdf

25. A subset of RACM is the RACT requirements. RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See*, 44 *Fed. Reg.* 53762 (September 17, 1979). Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. 42 U.S.C. §7511a(b)(2).

26. In addition, under Section 182(f) of the CAA, an overlapping requirement in each state in which all or part of a “moderate” area is located is the adoption of RACT for major NO_x sources. 42 U.S.C. § 7511a(f).

27. The NO_x RACT regulations promulgated by the Board in 2009 require major stationary sources located in the nonattainment areas in Illinois to comply with the NO_x requirements beginning January 1, 2012. However, after negotiations with the refineries, including the Petitioner, Appendix H to Part 217 was added that includes compliance dates accommodating planned maintenance turnarounds. Hence, the promulgation of the December 31, 2014, compliance date for the Petitioner’s emission units is set forth at Appendix H.

28. The Illinois EPA recognizes that the waiver of the NO_x RACT requirement to meet the 1997 Standard, the reconsideration of the 2008 Standard, and the USEPA’s delay in adopting the 2010 Proposed Standard results in a situation where the existing NO_x 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 the consolidated rulemakings R11-24 and R11-26 currently before the Board, the Illinois EPA is proposing to extend that compliance date from January 1, 2012, to January 1, 2015, so as to fulfill the NO_x RACT requirements under the CAA

for the 2010 Proposed Standard that the USEPA is currently considering. In addition, a strengthening of the PM standard will also likely yield NO_x RACT (or RACM) requirements upon Illinois for designated nonattainment areas.

29. However, even absent a federal requirement, the Board and the Illinois EPA have authority to promulgate regulations that improve air quality in Illinois to meet the NAAQS. *See*, 415 ILCS 5/4, 5, 8, 9, 27, and 28.

30. Most recently, on August 8, 2011, in *State of Mississippi, et al. v. EPA*, the environmental petitioners filed a motion requesting the court to order USEPA to complete its ongoing reconsideration rulemaking, and on August 10, 2011, two sets of industry petitioners filed motions requesting the court to establish a briefing schedule regarding their challenges to the underlying ozone standard rule, and state petitioners, in their motion filed on August 11, 2011, joined in the environmental petitioners' request.⁹ On April 12, 2011, USEPA filed its motion to govern further proceedings and stated that despite the Administration's best efforts, the ongoing interagency review of USEPA's draft final rule has not yet been completed; however, USEPA believes that such review will be completed shortly, after which USEPA expects expeditiously to sign the final action that will complete its reconsideration rulemaking.¹⁰ Furthermore, USEPA moved that the court direct USEPA to notify the court and the parties within one day of the date that the Agency signs a final action on its rulemaking reconsidering the ozone standard.¹¹ USEPA acknowledges that in its most recent motion seeking abeyance, it

⁹ *See, Motion by American Lung Association et al. for Order Directing EPA to Complete Reconsideration Action Forthwith*, filed August 8, 2011; *Opposition of the Ozone NAAQS Litigation Group and the Utility Air Regulatory Group to American Lung Association et al.'s Motion for an Order Directing EPA to Complete Reconsideration Action Forthwith and Cross-Motion to Govern Further Proceedings*, filed August 10, 2011; *Opposition of National Association of Home Builders to American Lung Association et al.'s Motion for an Order Directing EPA to Complete Reconsideration Action Forthwith, and Cross-Motion to Govern Further Proceedings*, filed August 10, 2011; and *State Petitioners' Motion to Govern Further Proceedings*, filed August 11, 2011.

¹⁰ *See, EPA's Motion to Govern Further Proceedings*, filed August 12, 2011.

¹¹ *Id.*

represented to the court that if USEPA had not taken final action on its rulemaking reconsidering the ozone standard by July 29, 2011, USEPA would not oppose a motion seeking to establish an *appropriate* briefing schedule (emphasis in original).¹²

III. RELIEF REQUESTED

31. As explained above, the Petitioner is currently required to comply with the applicable requirements of the NO_x RACT Rule for emission units set forth under Appendix H by December 31, 2014. Specifically, the Petitioner is required to comply with Section 217.152, which provides, in part, as follows:

Section 217.152 Compliance Date

- a) Compliance with the requirements of Subparts E, F, G, H, I and M by an owner or operator of an emission unit that is subject to any of those Subparts is required beginning January 1, 2012.

* * *

- c) Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, 2012, *except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H.* With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing the emissions of emission units other than those listed in Appendix H, provided that the emissions limitations of such other emission units are equal to or more stringent than the applicable emissions limitations set forth in Subpart E or F of this Part, as applicable, by the dates set forth in Appendix H. (emphasis added)

35 Ill. Adm. Code 217.152(a) and (c).

¹² *Id.*

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32. Appendix H contains eight emission units of the Petitioner, and the date set forth for compliance for such units is December 31, 2014. Appendix H provides, in part, as follows:

Section 217.APPENDIX H Compliance Dates for Certain Emission Units at Petroleum Refineries

ExxonMobil Oil Corporation (Facility ID 197800AAA)

Point	Emission Unit Description	Compliance Date
0019	Crude Vacuum Heater (13-B-2)	December 31, 2014
0038	Alky Iso-Stripper Reboiler (7-B-1)	December 31, 2014
0033	CHD Charge Heater (3-B-1)	December 31, 2014
0034	CHD Stripper Reboiler (3-B-2)	December 31, 2014
0021	Coker East Charge Heater (16-B-1A)	December 31, 2014
0021	Coker East Charge Heater (16-B-1B)	December 31, 2014
0018	Crude Atmospheric Heater (1-B-1A)	December 31, 2014
0018	Crude Atmospheric Heater (1-B-1B)	December 31, 2014

35 Ill. Adm. Code 217.Appendix H. Petitioner requests a four-year and four-month variance period beginning on December 31, 2014, and ending on May 1, 2019, for Appendix H units.

33. The Petitioner's primary basis for requesting temporary relief from the compliance date set forth under Section 217.152(c) is that the "variance is justified because the Rule poses an arbitrary and unreasonable hardship" on Petitioner. (Pet. at 2) In addition, "the requested variance is necessary for the Appendix H units in order to allow ExxonMobil additional time to install any control equipment needed to comply with the Rule during a regularly scheduled maintenance turnaround, i.e. a planned shut down of the ExxonMobil's Joliet Refinery." (Pet. at 2) The Petitioner also states that the NO_x RACT Rule is not required by the CAA and that the USEPA's impending promulgation of the 2011 ozone standard results in serious uncertainties for the Petitioner. (Pet. at 3-21)

IV. FACTS PRESENTED IN THE PETITION

34. As required by Section 104.216(a), the Illinois EPA has investigated the facts alleged in Petitioner's Petition for Variance. 35 Ill. Adm. Code 104.216(a). To date, the Illinois EPA has received two public comments regarding the Petition. *See*, Exhibit 1, attached. As stated *supra*, the Illinois EPA will file an amendment to its Recommendation should any additional comments be received before the end of the public comment period.

35. Petitioner states that the NO_x RACT Rule is not required by the CAA, due to the fact that the USEPA approved Illinois EPA's NO_x waiver request. (Pet. at 2) Petitioner further states that the waiver of the NO_x RACT requirements renders the NO_x RACT Rule unnecessary because USEPA and Illinois EPA have determined that implementation of NO_x RACT is not needed to attain the 1997 [ozone] standard. (Pet. at 7)

36. Petitioner states that the NO_x RACT Rule is arbitrary since there is neither a federal basis nor need, at this time, for the Rule. (Pet. at 11)

37. Currently, Petitioner has a pending construction permit application with the Illinois EPA requesting approval of the use of a substitute source of emission reductions under 35 Ill. Adm. Code 217.152(c). More specifically, Petitioner is seeking approval to allow the Refinery to comply with the requirements of 35 Ill. Adm. Code 217, Subparts D, E, and F, by the reduction in emissions of NO_x from the Refinery's fluidized catalytic cracking unit ("FCCU") by an amount equivalent to what would have been required by the proposed RACT standard.

V. ENVIRONMENTAL IMPACT

38. Pursuant to Section 104.216(b)(2), the Illinois EPA is required to state the location of the nearest air monitoring station, where applicable. 35 Ill. Adm. Code 104.216(b)(2). The Illinois EPA confirms the locations of the ozone and PM_{2.5} monitoring

stations relative to Petitioner's facility as Petitioner sets forth in its Petition for Variance. *See*, Illinois EPA 2009 Annual Air Quality Report (November 2010) at 40. (Pet. at 26)

39. Petitioner states that “[s]hould this variance be approved, based on 2010 actual emissions, an approximate 370 tons/yr NO_x emission reduction, which is scheduled to occur following the December 31, 2014 deadline, would be delayed until 2019.” (Pet. at 33)

40. The injury that the grant of the variance would impose on the public can be measured in terms of the failure of the public to receive the benefit of the NO_x emissions reductions as otherwise required by the NO_x RACT Rule until 2019.

VI. ARBITRARY AND UNREASONABLE HARDSHIP

41. In considering whether to grant or deny a variance pursuant to Section 35(a) of the Act, the Board is required to determine whether the Petitioner has shown that it would suffer an arbitrary or unreasonable hardship if required to comply with the regulation or permit requirement at issue. 415 ILCS 5/35(a) (2010). The Act provides that “[t]he Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.” *Id.*

42. Also, Section 104.216(b)(5) of the Board rules requires the Illinois EPA to estimate the cost that compliance would impose on the Petitioner and on others. 35 Ill. Adm. Code 104.216(b)(5).

43. Petitioner provides no evidence of its inability to comply with Section 217.152 and Appendix H. Rather, Petitioner states that “[b]ecause the 2011 standard will not be promulgated until later this year, ExxonMobil, as well as the regulated community at large, is left with uncertainty regarding what the final standard will be, whether the Chicago area will be

designated nonattainment, and if so, what the classification will be, when RACT SIP submittals will be due, whether RACT will even be necessary, the timeline for implementation, how will NO_x RACT be defined at that time, and what the attainment date will be.” (Pet. at 19)

44. As part of this, the Petitioner states that “[t]he uncertainty goes beyond just the timing, i.e. what will the deadlines be. It also goes to the substance of the 2011 standard and whether RACT rules will even be required, and if so, how will NO_x RACT be defined.” (Pet. at 19)

45. Further, Petitioner states that “[a]t this time, NO_x RACT is not needed to attain the 1997 standard, and it may not be needed to attain the 2011 standard. If it is required for the 2011 standard, the current NO_x RACT Rule may not suffice because USEPA has already indicated that the Rule is not approvable as RACT. *See* Illinois EPA Letter at 2.” (Pet. at 20)

46. Petitioner states that “the installation of NO_x RACT must be coordinated with the Refinery’s planned maintenance turnaround. The next scheduled turnaround in which NO_x RACT controls could be installed is scheduled for Winter 2018/Spring 2019. To require ExxonMobil to install unnecessary controls pursuant to this Rule could result in an unplanned maintenance shut down of the Refinery, which could cause a disruption in gasoline supplies in the Midwest, as well as higher fuel prices.” (Pet. at 20)

47. Petitioner states that “[i]n order to comply with the December 31, 2014 deadline, ExxonMobil will begin spending approximately \$2.5 million in the 3rd and 4th Quarters of 2011 of an estimated \$28 million to comply with the December 31, 2014 deadline.” (Pet. at 30) Petitioner also states, in part, that “ExxonMobil has already spent approximately \$3 million to comply with the 2012 deadline.” (Pet. at 31) ExxonMobil provides estimates of cost, but offers no calculations or supporting data as to those estimates; therefore, the Illinois EPA is not able to

substantiate the estimates of cost.

48. In promulgating the NO_x RACT Rule, the Board determined the rule to be technically feasible and economically reasonable. *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*.

49. As stated *supra*, in January 2010, the USEPA proposed to strengthen the 8-hour primary ozone standard to a lower level within the range of 0.060 to 0.070 ppm (or 60 to 70 ppb) to protect public health and the secondary standard within the range of 7 to 15 ppm-hours. 75 *Fed. Reg.* 2938 (January 19, 2010). The USEPA intended to issue a final decision on the reconsideration by July 29, 2011. Most recently, however, the USEPA has stated that because the reconsideration of the ozone standard is currently going through interagency review, it did not issue the final standard on July 29, 2011, the date the USEPA had intended. The USEPA believes that such review will be completed shortly, after which USEPA expects expeditiously to sign the final action that will complete its reconsideration rulemaking. However, based upon 2009 through 2011 monitoring data (to date), the Chicago area is now in violation of the 2008 Standard (75 ppb), currently held in abeyance. *See, Affidavit*, Exhibit 2, attached.

50. In the Petition, Petitioner sets forth tables that include the uncertainties associated with the steps involved in the process of promulgating and implementing the 2011 standard [2010 Proposed Standard], including a comparison table against the 1997 standard timeline. (Pet. at 12-18) 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.

51. The promulgation of a final standard by USEPA 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. *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, the USEPA must promulgate the designations of all areas. *See*, 42 U.S.C. § 7407(d)(1)(B). SIPs are generally due within three years after the promulgation of the standard; however, assuming the same time frame as with the 1997 standard, “no later than 27 months after designation.” *See*, 42 U.S.C. § 7410(a)(1) and 40 C.F.R. § 51.912(a)(2) (2010). Implementation of NO_x RACT at sources is due as expeditiously as practicable; however, assuming the same time frame as with the 1997 standard, such time frame would be “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) and 40 C.F.R. § 51.912(a)(3) (2010).

52. Assuming the USEPA issues the final standard shortly and the Chicago and Metro-East areas are designated as nonattainment and classified as “moderate” nonattainment areas under the final standard, the implementation of NO_x RACT at sources will likely be due prior to May 1, 2019.

53. Additionally, as stated *supra*, currently before the Board are rulemakings that propose to modify the compliance date from January 1, 2012, to January 1, 2015. *See*, R11-24, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code Part 217*, consolidated with R11-26, *In the Matter of: Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen Oxides Emission: Amendments to 35 Ill. Adm. Code Part 217*. The Illinois EPA has attempted to accommodate industry, including the Petitioner, by extending the compliance date. As Petitioner states, the Illinois EPA extended the compliance date for Appendix H units as a result of negotiations with the affected entities during the initial rulemaking. (Pet. at 20)

54. The Illinois EPA does note, however, that the consolidated rulemakings are currently at second notice and were considered and reviewed by the Joint Committee on Administrative Rules (“JCAR”) at its August 16, 2011, meeting. *See*, 35 Ill. Reg. 12984 (August 5, 2011). JCAR has determined that No Objection will be issued; therefore, the rulemakings are able to be adopted by the Board upon filing with the Secretary of State. Accordingly, the underlying regulatory provisions that are the subject of this Petition will very soon be superseded by the amendatory provisions adopted by the Board under the consolidated rulemakings.

VII. CONSISTENCY WITH FEDERAL LAW

55. Pursuant to Section 35 of the Act [415 ILCS 5/35 (2010)] and 35 Ill. Adm. Code 104.208(a), all petitions for variances must be consistent with federal law. Petitioner states that “there are no applicable federal laws or regulations that preclude granting the instant variance request.” (Pet. at 36)

56. Petitioner is correct that there is currently no authority that precludes granting the instant variance request. However, Illinois must still develop plans to attain and maintain the ozone and PM_{2.5} NAAQS. More importantly, Illinois must address its impact on downwind states pursuant to Section 110(a)(2)(D) of the CAA. 42 U.S.C § 7410.

VIII. COMPLIANCE PLAN

57. Pursuant to Section 104.204(f), the Petitioner is required to present a detailed compliance plan in the Petition for Variance. *See*, 35 Ill. Adm. Code 104.204(f). The Petitioner provided the following compliance plan in its Petition for Variance.

58. The Petitioner requests the term of the variance to begin on December 31, 2014, and terminate on May 1, 2019. The Petitioner suggests that the compliance plan consist of the requirement to comply with applicable requirements by the requested extended deadline. The

Petitioner suggests the following conditions:

- a. ExxonMobil is not required to comply by December 31, 2014, with 35 Ill. Admin. Code Part 217, Subparts A, D, E, F, and Appendix H, as applicable to the units listed in Appendix H.
- b. ExxonMobil shall comply with the applicable NO_x RACT requirements of Part 217 by May 1, 2019 for the following emission units listed in 35 Ill. Admin. Code Part 217, Appendix H:

Point	Emission Unit Description	Compliance Date
0019	Crude Vacuum Heater (13-B-2)	May 1, 2019
0038	Alky Iso-Stripper Reboiler (7-B-1)	May 1, 2019
0033	CHD Charge Heater (3-B-1)	May 1, 2019
0034	CHD Stripper Reboiler (3-B-2)	May 1, 2019
0021	Coker East Charge Heater (16-B-1A)	May 1, 2019
0021	Coker East Charge Heater (16-B-1B)	May 1, 2019
0018	Crude Atmospheric Heater (1-B-1A)	May 1, 2019
0018	Crude Atmospheric Heater (1-B-1B)	May 1, 2019

IX. RECOMMENDATION AND CONCLUSION

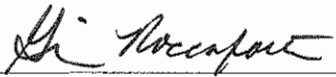
59. Under Section 37(a) of the Act and Section 104.216(b)(11) of the Board rules, the Illinois EPA is required to make a recommendation to the Board as to the disposition of the petition. *See*, 415 ILCS 5/37(a) (2010) and 35 Ill. Adm. Code 104.216(b)(11). The burden of proof in a variance proceeding is on the Petitioner to demonstrate that compliance with the rule or regulation would impose an arbitrary or unreasonable hardship. *See*, 415 ILCS 5/35(a) (2010) and 35 Ill. Adm. Code 104.238.

60. The Illinois EPA has concerns regarding the Petition, but the Illinois EPA also acknowledges the uncertainty in determining what action will be taken at the federal level and when it will be effective. Therefore, the Illinois EPA neither supports nor objects to the relief being sought by the Petitioner.

WHEREFORE, for the reasons set forth above, the Illinois EPA neither supports nor objects to the variance as presented and requested by Petitioner.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2011

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

May 25, 2011

TO: Gina Roccaforte
FROM: Paul Duncan
24053 S. GREEN HERON DR.
CHANNARON, FL 33410

PLEASE DO NOT EXEMPT OIL
GET ANY FURTHER VARIANCE TO
REQUIREMENTS ALREADY IN
EFFECT. ENVIRONMENTAL DAMAGE
HAS BEEN A CONTINUING PROBLEM
OVER THE YEARS. SMELLS IN THE AIR
WHEREAS EMISSIONS ARE RELEASING
IN AIR WHERE PEOPLE HAVE TO
BREATHE IN FROM FEW FEET
AND POSSIBLY CAUSE FERTILITY
IN YOUNG BOYS.

My living from years back with
the oil in the air is and has
caused a dirty green-gray
not air to breathe and sleep for
TWO SOL. NIGHTS. Paul Duncan



Electronic Filing Received, Clerk's Office, August 18, 2011

Citizens
Against

Ruining the
Environment

P.O. Box 536
Lockport, IL 60441

carelockport@usa.com

willcountycare.org

June 29, 2011

Gina Roccaforte
Assistant Counsel, Division of Legal Counsel
IL Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Re: Exxon Mobil Oil Corporation Pollution Variance

Dear Gina:

Citizens Against Ruining the Environment ~ CARE is an environmental organization located in Will County. We are extremely opposed to Exxon Mobile's request to the IL Pollution Control Board for a Pollution Variance for Nitrogen Oxides under Title IX of the Environmental Protection Act (415 ILCS5/35-38).

Since 1995 CARE has been working toward cleaner air standards. Will County is a non attainment area for many air pollutants. It is a well known fact that Will County and Illinois' residents, fish and animal chain and the environment are have been and are currently suffering from the negative effects of hazardous air pollution. We have spoken many times relating to our concerns of the cumulative effects of air pollution from various industries such as coal fired power plants and companies such as Exxon Mobile. We know that NOx emissions cause death, respiratory and lung disease, degrades our water quality and negatively effects our environment, humans and animals.

Data that we've collected states that "These pollutants also effect animals similarly as humans. Pollutants such as nitrogen dioxide (NO₂), are known to be highly toxic to various animals as well as to humans. We know that high levels may be fatal, while lower levels affect the delicate structure of lung tissue. As with ozone, long-term exposure to nitrogen oxides makes animals more susceptible to respiratory infections. Nitrogen dioxide exposure lowers the resistance of animals to such diseases as pneumonia and influenza. Humans exposed to high concentrations suffer lung irritation and potentially lung damage. Increased respiratory disease has been associated with lower level exposures."

No industry in IL, including Exxon Mobile should be given variances or extensions. Industry must not be allowed to continue poisoning our air one additional day. We must protect the quality of our lives. Exxon Mobile has until December 31, 2014 to come into compliance – that is more than sufficient time considering that industries have known for many years that Nitrogen Oxide can be fatal to humans.

Thanking you in advance for your considerations,

Ellen Rendulich, Director, 815.834.1611

Citizens Against Ruining the Environment ~ C.A.R.E.
PO Box 536
Lockport IL 60441
www.willcountycare.org

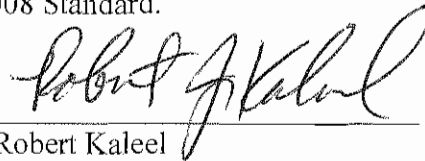
"Above all - the protection of human health and the environment should always be considered first." CARE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION,)	
)	
Petitioner,)	
)	PCB 11-86
v.)	(Variance-Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

AFFIDAVIT

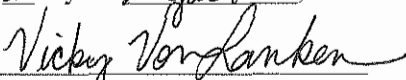
I, Robert Kaleel, under oath, hereby state and affirm that I am the Manager of the Air Quality Planning Section in the Bureau of Air of the Illinois Environmental Protection Agency. As such, I am aware of data collected from air quality monitors in the Greater Metropolitan Chicago area. Based on information and belief, the Chicago area is now in violation of the 2008 National Ambient Air Quality Standard for ozone of 75 parts per billion (ppb), measured over an eight hour period (2008 Standard.) Violations occur when the fourth highest 8-hour values at any site, averaged over a three year period, exceed 75 ppb. Based on air quality measurements from 2009, 2010, and through August 1, 2011, two locations in the Greater Chicago Metropolitan area have recorded a violation of the 2008 Standard.

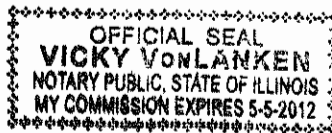


Robert Kaleel
 Manager
 Air Quality Planning Section
 Bureau of Air
 Illinois Environmental Protection Agency

SUBSCRIBED AND SWORN TO BEFORE ME

This 18th day of August, 2011


 Notary Public



STATE OF ILLINOIS)

COUNTY OF SANGAMON)

) SS
)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached RECOMMENDATION 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

and mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed to the following persons:

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Katherine D. Hodge
Monica T. Rios
Hodge Dwyer & Driver
3150 Roland Avenue
P. O. Box 5776
Springfield, IL 62705-5776

ILLINIOS ENVIRONMENTAL
PROTECTION AGENCY,



Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2011

1021 North Grand Ave. East
Springfield, IL 62794-9276
217.782.5544
217.782.9143 (TDD)