

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2011

EXXONMOBIL OIL CORPORATION,)	
)	
Petitioner,)	
)	PCB 11-86
vs)	PCB 12-46
)	(cons.)
ILLINOIS ENVIRONMENTAL)	(Variance - Air)
PROTECTION AGENCY,)	
)	
Respondent.)	

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before Bradley P. Halloran, taken before Rebecca A. Graziano, Certified Shorthand Reporter within and for the County of Will and State of Illinois, at the 375 West Briarcliff Road, Bolingbrook, Illinois, commencing at the hour of 10:00 a.m. on the 19th day of September, A.D., 2011.

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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD:
BRADLEY P. HALLORAN, Hearing officer
ANAND RAO, Board Member

HODGE, DWYER, ZEMAN,
3150 Roland Avenue
Post Office Box 5776
Springfield, IL 62705
(217) 523-4900
BY: MS. MONICA T. RIOS

Appeared on behalf of the Petitioner,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
(217) 782-5544
BY: MS. GINA ROCCAFORTE
MR. ROBERT J. KALEEL

Appeared on behalf of the Respondent.

ALSO PRESENT:

Bradford S. Kohlmeyer, ExxonMobil
Daniel J. Stockl, ExxonMobil
Doug Deason, ExxonMobil
Lorna Paisley, CARE
Ellen Rendulich, CARE
Mary Burnitz, CARE

1 MR. HALLORAN: Good morning. My name
2 is Bradley Halloran. I'm a hearing officer with the
3 Illinois Pollution Control Board, and coincidentally
4 I'm also assigned to this matter.

5 I will note for the record today
6 is Monday, September 19th, the year 2011. This is a
7 hearing regarding a variance, and the caption reads
8 ExxonMobil Oil Corporation, Petitioner, versus the
9 IEPA, Respondent, PCB 11-86, and PCB 12-46. PCB
10 11-86 was consolidated with 12-46 by board order on
11 September 8th.

12 It is also my pleasure to
13 introduce Anand Rao, one of our esteemed technical
14 people, and he may or may not ask witnesses
15 additional questions today. I don't see any members
16 of the public here today, but if there are, if they
17 show up later, they will be allowed to give either a
18 public statement or public comment, and we'll
19 address that if and when they come.

20 I will note that this hearing was
21 noticed up pursuant to the board's regulations,
22 procedural rules, and the act itself. The hearing
23 will be conducted in accordance with
24 Sections 104.200 and 101 of the board's procedural

1 rules.

2 I will note for the record that I
3 will not be making the ultimate decision in this
4 matter. We'll leave that up to the five board
5 members. They'll take a look at the transcript, the
6 record, any post hearing briefs, public comments, in
7 that they be filed after the hearing. My job here
8 is to ensure an orderly transcript, an orderly
9 hearing, and rule on any evidentiary matters that
10 may arise in the course thereof.

11 Ms. Rios, would you like to
12 introduce yourself, please?

13 MS. RIOS: Yes. Good morning, Hearing
14 Officer Halloran, Mr. Rao. Thank you for allowing
15 us to come here today to present our proposal. My
16 name is Monica Rios, and I am with the law firm
17 Hodge, Dwyer, and Driver, and I'm here on behalf of
18 ExxonMobil Oil Corporation.

19 Also present for ExxonMobil is
20 Mr. Bob Elbert, the state regulatory advisor for the
21 Midwest Region, Mr. Dan Stockl, project development
22 group leader, Mr. Doug Deason, environmental advisor
23 for ExxonMobil, Mr. Brad Kohlmeier, senior
24 environmental advisor, and Mr. Matthew Kolesar, the

1 refinery safety, health, and environment manager.

2 MR. HALLORAN: Thank you.

3 MS. ROCCAFORTE: ExxonMobil owns and
4 operates the petroleum refinery located here in Will
5 County. Emission units of the refinery are subject
6 to the recently adopted January 1st, 2015,
7 compliance deadline of the NOX RACT rule at 35
8 Illinois Administrative Code, Part 217.

9 Today through our testimony,
10 ExxonMobil will demonstrate that compliance with the
11 rule at this time poses an arbitrary and
12 unreasonable hardship which warrants a variance of
13 the
14 January 1st, 2015, compliance deadline to May 1st,
15 2019. Further, ExxonMobil will also discuss the
16 significant NOX emission reductions resulting from
17 the recent installation of control equipment that
18 has reduced NOX emissions in excess of the
19 reductions that would result in boilers and heaters
20 under the rules.

21 MR. HALLORAN: Ms. Rios, could you
22 slow down just a little, please?

23 MS. RIOS: Sure. As you may be aware,
24 ExxonMobil participated in the R11-24 rulemaking to

1 amend the NOX RACT rule. During that proceeding,
2 ExxonMobil submitted written testimony and testified
3 at hearings regarding the implication of the NOX
4 RACT rules of the January 21st, 2015, compliance
5 deadline on the refineries.

6 At hearing today, ExxonMobil will
7 provide an update to the testimony presented in the
8 R11-24 rulemaking and answer questions that the
9 board may have regarding this variance request.

10 Mr. Elbert will summarize
11 ExxonMobil's position in terms of the rule's
12 compliance date and recent discussions with Illinois
13 EPA. Mr. Stockl will then provide an update on the
14 cost incurred by the refinery for its NOX RACT
15 compliance project. Mr. Deason will discuss recent
16 actions at the federal level in terms of the status
17 of a future ozone standard, and finally Mr.
18 Kohlmeyer will provide information on the NOX
19 emission reductions at the refinery and the possible
20 impact at the refinery of USEPA's comments on the
21 NOX RACT rules.

22 The testimony provided today,
23 considered in conjunction with the testimony at the
24 R11-24 rulemaking, and information in the petitions,

1 will show that postponing the implementation of the
2 NOX RACT requirement at this time is justified,
3 given that substantial resources are being incurred
4 to comply with the rule that is not currently
5 required by federal statute. Mandating compliance
6 by January 1st, 2015, is an unreasonable hardship
7 for the very reasons we will discuss today.

8 ExxonMobil continues to spend
9 resources to implement the refinery, and it will
10 continue to do so until it has certainty from the
11 board on its request for variance. Accordingly,
12 ExxonMobil respectfully requests that the board
13 grant its petitions as expeditiously as possible.

14 MR. HALLORAN: Thank you, Ms. Rios.
15 Ms. Roccaforte, you can introduce yourself, please,
16 and also give a brief opening if you'd like.

17 MS. ROCCAFORTE: Good morning. My
18 name is Gina Roccaforte on behalf of the Illinois
19 Environmental Protection Agency. With me today is
20 Mr. Rob Kaleel. He is the manager of the air
21 quality planning section in the Bureau of Air.

22 MR. HALLORAN: Thank you. Any
23 opening?

24 MS. ROCCAFORTE: No.

1 MR. HALLORAN: All right. Ms. Rios,
2 your case in chief.

3 MS. RIOS: Before swearing in the
4 witnesses, I'd like to request that the pre-filed
5 testimony in R11-24 be entered into the record as if
6 read.

7 MR. HALLORAN: Ms. Roccaforte?

8 MS. ROCCAFORTE: No objection.

9 MR. HALLORAN: All right. Are the
10 witnesses present regarding the written testimony --

11 MS. RIOS: Yes, all three of them are.

12 MR. HALLORAN: -- you're introducing
13 into evidence? How many -- what kind of exhibits
14 are they?

15 MS. RIOS: This is the pre-filed
16 testimony of Mr. Robert Elbert, the pre-filed
17 testimony of Mr. Dan Stockl, and the pre-filed
18 testimony of Mr. Doug Deason.

19 MR. HALLORAN: We'll mark it as
20 Exhibit 1, regarding the pre-filed testimony of
21 Robert Elbert, and Exhibit 2 regarding the pre-filed
22 testimony of Mr. Deason. So we have two exhibits.
23 With no objection, they will be admitted, and I'm
24 also admitting them pursuant to Section 101.626-D of

1 the board's procedural regulations regarding written
2 testimony.

3 Ms. Rios, you may -- I'm sorry.
4 There's three. I'm sorry. And the pre-filed
5 testimony of Dan Stockl will be marked Petitioner's
6 Exhibit 3. Sorry about that. All right, Ms. Rios,
7 you may continue.

8 MS. RIOS: If we could swear in the
9 witnesses, Mr. Elbert would like to provide a brief
10 statement.

11 MR. HALLORAN: It would be great I
12 think -- and we can do it one at a time to make it a
13 little cleaner. The first witness can stand -- or
14 sit up next to Rebecca, please, and she'll swear you
15 in. Thank you.

16 (Witness sworn.)

17 MR. ELBERT: Good morning. My name is
18 Bob Elbert, and I am the state regulatory advisor
19 for the Midwest Region at the ExxonMobil refinery in
20 Channahon, Illinois.

21 I have more than 19 years of
22 experience working in the environmental field. My
23 responsibilities include advocating ExxonMobil's
24 prospective on environmental issues that may impact

1 the procedures and/or operations of the ExxonMobil
2 Joliet refinery, and other company owned facilities
3 within those states of my responsibility.

4 The purpose of my testimony today
5 is to provide a brief background on the refinery and
6 ExxonMobil's concerns with the NOX RACT rule. My
7 testimony will also briefly discuss ExxonMobil's
8 participation in the R11-24 rulemaking in
9 discussions with the Illinois EPA.

10 As discussed in detail in the
11 petitions and at the hearings in the R11-24
12 rulemaking, the NOX RACT rule at this time is not
13 required by the Clean Air Act, and, as currently
14 adopted, is not approvable as RACT. ExxonMobil has
15 started to incur a project cost to implement a rule
16 that is not required, and will soon begin to spend
17 additional significant resources to meet the
18 January 1st, 2015, compliance deadline.

19 However, such expenditures should
20 be delayed until such time that the Illinois
21 Environmental Protection Agency and the regulated
22 community know if NOX RACT will be required under a
23 future ozone standard, and if so, what RACT will be,
24 and when it will be required to be implemented at

1 sources.

2 As background, the refinery is
3 located in Channahon Township in unincorporated Will
4 County. The site is adjacent to Illinois 55 at the
5 Arsenal Road exit, approximately 50 miles southwest
6 of Chicago. The refinery employs approximately 630
7 full-time employees who operate, maintain, and
8 manage the facility, which operates 24 hours a day.

9 In addition to ExxonMobil's
10 employees, an estimated 300 contractor employees
11 work full-time at the refinery providing primarily
12 maintenance services. During turnarounds, when
13 portions of the refinery are shutdown for
14 construction or large-scale maintenance projects,
15 approximately 2,000 contractor employees are on
16 site.

17 The refinery processes crude oil,
18 and is capable of processing approximately
19 248,000 barrels per day. That's nearly 10.4 million
20 gallons per day. In addition, the refinery produces
21 liquified petroleum gas, propylene, asphalt, sulfur,
22 and petroleum coke.

23 As explained in ExxonMobil's
24 testimony in the R11-24 rulemaking and in the

1 petitions, there has been uncertainty regarding the
2 promulgation and implementation of the future ozone
3 standard. As Mr. Deason will explain, some of the
4 uncertainty has been abated, as the ozone standard
5 that was expected to be issued in July 2011 has now
6 been delayed until at least 2013. Given the delay
7 and the fact that the rule is not federally required
8 at this time, as discussed in the hearings in R11-24
9 rulemaking, ExxonMobil respectfully requests that
10 the board grant a variance from the
11 January 1st, 2015, deadline, to May 1st, 2019.

12 At a hearing in the R11-24
13 rulemaking, Illinois EPA testified that the date NOX
14 RACT would be required at sources is uncertain.
15 Although we now know that a new ozone standard will
16 not be issued until at least 2013, it is still
17 uncertain as to when NOX RACT, if required, will be
18 implemented at sources, because neither Illinois EPA
19 nor ExxonMobil know for certain whether NOX RACT
20 will be required under the 2013 standard, and if so,
21 what will be postponing the implementation at the
22 refinery of a non-federally required rule is
23 reasonable at this time.

24 Further, incurring millions of

1 dollars in cost now to implement controls that are
2 not federally required is unwarranted, since the
3 refinery's compliance projects is unnecessary at
4 this time. ExxonMobil should not be required to
5 invest resources now to comply with the rule,
6 especially considering that the rule is
7 un-approvable by the USEPA, and RACT may not be
8 required under the future standard. Thus,
9 facilities should be allowed to postpone compliance
10 with the rule until a later date.

11 In ExxonMobil's case, as explained
12 in the petitions, ExxonMobil is requesting an
13 extension of the compliance date consistent with the
14 spring 2019 turnaround, which is the next scheduled
15 turnaround beyond 2015. It is crucial that any
16 controls, if required pursuant to the new ozone
17 standard, be installed during a scheduled
18 maintenance turnaround.

19 In R08-19 proceeding to adopt the
20 original NOX RACT rule, Illinois EPA acknowledged
21 the need to have the rules of the compliance dates
22 coincide with a planned turnaround. Typically, the
23 facility completes maintenance turnarounds for the
24 refinery on a five to six-year cycle. An unplanned

1 turnaround to install controls on the facility's
2 process heaters that are subject to the rule could
3 disrupt the fuel supply throughout the midwest,
4 potentially causing significantly higher gasoline
5 and diesel fuel costs, as acknowledged by the
6 Illinois EPA in the NOX RACT rulemaking.

7 As discussed in detail, my
8 pre-filed testimony in R11-24, the regulated
9 community, including ExxonMobil, did not know that
10 Illinois EPA planned to request a waiver of the NOX
11 RACT requirements until USEPA issued its proposed
12 approval of the waiver request in the federal
13 register in December of 2010.

14 Once ExxonMobil became aware of
15 the proposed waiver request and the implications for
16 the refinery, it began discussions with the Illinois
17 EPA. Over the last few months, ExxonMobil has had
18 several conference calls and meetings with the
19 Illinois EPA.

20 In follow-up to these discussions,
21 ExxonMobil sent two letters to interim director,
22 Lisa Bonnett, reiterating ExxonMobil's position and
23 further explaining why the refinery needs this
24 variance. Both letters are included as an exhibit

1 to ExxonMobil's response to Illinois EPA's
2 recommendation.

3 ExxonMobil appreciates the time
4 and the effort that Illinois EPA has contributed to
5 the discussions with the refinery and evaluating the
6 issues raised by the waiver for the NOX RACT
7 requirements for the refinery.

8 As a result of these discussions,
9 Illinois EPA has filed a neutral recommendation in
10 this matter, neither objecting nor supporting the
11 request for the variance. ExxonMobil is spending
12 resources now to comply with a rule that is not
13 required and is not sufficient to meet USEPA's RACT
14 requirements. In order to postpone compliance of
15 the rule at this time and stop expenditures of
16 resources on unnecessary projects, the compliance
17 deadline for the NOX RACT rule must be extended.

18 For ExxonMobil, it is imperative,
19 due to the uncertainty surrounding the
20 implementation of a future ozone standard, that the
21 compliance deadline for the refinery be extended
22 until the next scheduled turnaround. Otherwise,
23 ExxonMobil will continue to spend additional
24 resources to meet a deadline that is arbitrary, and

1 as Illinois EPA stated at the hearing, is ultimately
2 uncertain right now.

3 Thank you for allowing me the
4 opportunity to present my testimony. I'm happy to
5 answer any questions.

6 MR. HALLORAN: Thank you. Ms. Rios,
7 any direct?

8 MS. RIOS: No, not at this time.

9 MR. HALLORAN: Ms. Roccaforte, any
10 cross?

11 MS. ROCCAFORTE: No questions.

12 MR. HALLORAN: Mr. Rao?

13 MR. RAO: I just have one question.

14 MR. ELBERT: Yes.

15 MR. RAO: On Page 5 of Exhibit 1,
16 which is your pre-filed testimony in rulemaking
17 11-24, you provided a brief offer for your
18 discussions with the Illinois EPA during that
19 rulemaking about the compliance deadline. Have you
20 had any further discussions after the board adopted
21 the compliance deadline of January 1st, 2015, in
22 11-24 with the Illinois EPA regarding this
23 extension?

24 MR. ELBERT: I'm trying to think of

1 when the date was. We have not had -- I have not
2 had any discussions. I'm not aware that we have
3 after the -- at the petition.

4 MR. RAO: Okay. Thank you. I just
5 wanted to get a clarification if there was no
6 positive response.

7 MR. ELBERT: Thank you. I don't think
8 there's any formal discussions.

9 MR. RAO: Okay. And the other
10 question I had was in your petition for variance,
11 you ask for an extension of the compliance deadline
12 to January 1st, 2019. Is that --

13 MR. ELBERT: It should be May 1st,
14 2019.

15 MR. RAO: I'm sorry. May 1st, 2019.

16 MR. ELBERT: Yes.

17 MR. RAO: Usually a variance is
18 effective for a period of five years.

19 MR. ELBERT: Yes.

20 MR. RAO: So you're asking for
21 variance of a rule which extends to about eight
22 years roughly. I was just wondering are you going
23 to file an extension for variance sometime during
24 that period of time? Because I don't think we grant

1 variances for more than five years. Maybe it's a
2 question for you.

3 MS. RIOS: I can address that
4 question. We're actually asking for the variance
5 from the rule's compliance state, rather than the
6 applicability. So we're asking for the extension
7 from the 2015 date to postpone installation of the
8 controls until the turnaround in 2019.

9 MR. RAO: You may just want to check
10 that. Because when the board grants its
11 variance -- the effective date of the variance will
12 be December of 2011, and usually it goes for a
13 five-year period. After that, the variance expires.

14 MS. RIOS: Right. And we understand
15 that. There is a provision in the board's rule that
16 allows the board to propose a different variance
17 period starting on a different day, so we will
18 provide that additional information, as we did in
19 the petition.

20 MR. RAO: Okay. Thank you.

21 MS. RIOS: Thank you.

22 MR. HALLORAN: Any further redirect,
23 Ms. Rios?

24 MS. RIOS: No.

1 MR. HALLORAN: Ms. Roccaforte?

2 MS. ROCCAFORTE: No.

3 MR. HALLORAN: Thank you. You may
4 step down, Mr. Elbert. Thank you. Your next
5 witness, Ms. Rios.

6 MS. RIOS: Mr. Dan Stockl.

7 (Witness sworn.)

8 MR. HALLORAN: You may proceed.

9 MR. STOCKL: Good morning. My name
10 is Dan Stockl, and I have over 29 years of
11 experience working at ExxonMobil's Joliet refinery
12 in various positions. I am currently the project
13 development group leader at the refinery. My
14 primary role is to manage the development of the
15 refinery's large capital project from initiation
16 through funding.

17 I'm here today to provide
18 testimony on how ExxonMobil develops its compliance
19 projects, and in particular to provide information
20 on the costs of the NOX RACT compliance project that
21 is currently underway at the refinery.

22 Properly developing a project to
23 ExxonMobil standards requires a disciplined
24 approach, beginning with ensuring the objective is

1 well understood. In the case of a regulatory
2 project, discussions among ExxonMobil's various
3 departments begins during the proposed rulemaking
4 process in order to evaluate the scope of the
5 proposed rulemaking and the magnitude of its impact
6 on the refinery.

7 During the rulemaking process,
8 ExxonMobil is working with the state regulatory
9 agencies, in this case the Illinois EPA, to help
10 develop the rule. In addition, ExxonMobil is
11 evaluating and planning for potential contingencies
12 until the rulemaking is final. The official
13 planning and development in response to the
14 rulemaking commences at the point when a new
15 regulation is final, allowing ExxonMobil to clearly
16 understand what the facility's compliance
17 requirements are.

18 Once the project objective is well
19 understood, the next step is to determine what the
20 potential options are to meet the project objective.
21 Depending on the objective, such options could
22 include operational changes, as well as multiple
23 alternative capital investment approaches. Each
24 alternative must be thoroughly researched before

1 determining which option is the most optimal.

2 Finally, the optimal solution is
3 engineered to a point where the scope and costs are
4 sufficiently defined to request funding from the
5 corporation. Once funded, detailed design
6 permitting, and construction activities can begin.
7 The typical timeline for a project of the size and
8 complexity of the refinery's NOX RACT project is
9 three and a half years from the initiation of formal
10 planning through start-up.

11 The original NOX RACT rule
12 required compliance by January 1st, 2012, for
13 several units at the refinery, and by
14 December 31st, 2014, for those emission units listed
15 in Appendix H. When the recently revised rule
16 became effective August 22, 2011, all the refinery's
17 emission units to which the rule is applicable
18 became subject to the new January 1st, 2015,
19 compliance deadline, and as stated in ExxonMobil's
20 petitions, we are requesting a variance from the
21 compliance deadline until May 1st, 2019.

22 Although the original
23 January 1st, 2012, deadline is no longer valid,
24 ExxonMobil began incurring costs to comply with this

1 rule in 2008, and ExxonMobil has continued to incur
2 substantial costs to continue with the compliance
3 project at the refinery, because without the
4 variance, the refinery must continue to move forward
5 with its project to meet the 2015 deadline, even if
6 such action imposes on a reasonable hardship on
7 ExxonMobil.

8 In order to meet the original
9 January 1st, 2012, deadline of the NOX RACT rule,
10 ExxonMobil has already incurred approximately
11 \$2 million in capital. The total cost for this 2012
12 compliance project, or phase one, is an estimated
13 \$2,400,000, which, as explained in Bob Elbert's
14 testimony, is an expense that was not necessary,
15 since the NOX RACT rule is not federally required
16 and is not approvable as RACT.

17 Also, ExxonMobil has already
18 incurred development costs of approximately \$700,000
19 in expense, and \$600,000 in capital to comply with
20 the rule's original December 31st, 2014, deadline,
21 and will begin spending additional significant
22 resources during the latter half of 2011 and the
23 first half of 2012 on this second phase investment.

24 ExxonMobil currently anticipates

1 incurring costs of approximately \$2,100,000 in the
2 second half of 2011, and \$6,500,000 in the first
3 half of 2012 towards phase two for compliance with
4 this non-federally required rule should the variance
5 request not be granted. Total expenditures required
6 in phase two for compliance with the rule are
7 anticipated to be approximately \$28,200,000. The
8 total cost for both phases are estimated at
9 \$30,600,000.

10 At the June 28th, 2011, R11-24
11 rulemaking, I testified in response to a question
12 from the board that a five-year delay in
13 implementation of the project would only marginally
14 impact the cost of the project if the compliance
15 requirements were the same.

16 As discussed during the rulemaking
17 hearing, USEPA has identified deficiencies with the
18 rule, including issues with the averaging
19 provisions. Should Illinois EPA revise the rule to
20 implement the ten percent environmental incentive, a
21 shorter averaging time period, and/or if the
22 reconsidered ozone standard leads to further
23 reductions, the scope of the NOX RACT compliance
24 project could change. If the project has to be

1 reevaluated to meet new more stringent requirements,
2 the cost of the project will likely increase, and
3 could also render the investments already made
4 obsolete.

5 Since the rule is not federally
6 required and the new or reconsidered ozone standard
7 has been delayed at least until 2013, an extension
8 of the compliance date is necessary in order to
9 delay ExxonMobil's considerable investments and
10 controls until such time they are required, and
11 ExxonMobil has more certainty as to the RACT
12 requirements of the new ozone standard.

13 Thank you for allowing me the
14 opportunity to present my testimony. I am happy to
15 answer any questions.

16 MR. HALLORAN: Any direct, Ms. Rios?

17 MS. RIOS: Not at this time.

18 MR. HALLORAN: Cross, Ms. Roccaforte?

19 MS. ROCCAFORTE: No.

20 MR. HALLORAN: Mr. Rao?

21 MR. RAO: I just have one
22 clarification question. It was in reference to the
23 capital cost. You mentioned that ExxonMobil has
24 already incurred costs of approximately \$700,000 in

1 expenses and \$600,000 in capital costs?

2 MR. STOCKL: Yes.

3 MR. RAO: In your prior testimony, it
4 was \$500,000 in capital costs. Is that a
5 typographical error?

6 MR. STOCKL: No. Since that time,
7 we've continued to have to work the project, because
8 if we have -- if the variance isn't granted, we have
9 to continue to spend money to stay on the right
10 timeline.

11 MR. RAO: So you're still implementing
12 the project?

13 MR. STOCKL: Yes, exactly.

14 MR. RAO: Thank you.

15 MR. HALLORAN: Any further questions?

16 MS. RIOS: No.

17 MR. HALLORAN: Thank you, Mr. Stockl.
18 You may step down. I want to go off the record for
19 a second, please.

20 (Whereupon, a discussion was had
21 off the record.)

22 MR. HALLORAN: We're back on the
23 record. I just saw there was three members of the
24 public here, and they may or may not want to give a

1 public comment or statement later on in the hearing.

2 Anyway, I'm sorry. Ms. Rios, your
3 third witness.

4 MS. RIOS: Mr. Doug Deason.

5 (Witness sworn.)

6 MR. HALLORAN: You may proceed,
7 Mr. Deason, when you're ready.

8 MR. DEASON: Good morning. My name is
9 Doug Deason. I work for ExxonMobil as an
10 environmental advisor. I worked extensively,
11 between 2000 and 2007, with the Texas Commission on
12 Environmental Quality developing a series of ozone
13 national air quality standards and state
14 implementation plan revisions.

15 Since 2007, I've had the primary
16 corporate responsibility to work with the United
17 States Environmental Protection Agency staff on
18 stakeholder briefings on implementation strategy
19 concepts that could be considered when a new ozone
20 standard is issued.

21 The purpose of my testimony today
22 is to briefly summarize my previous testimony from
23 the R11-24 rulemaking, provide an update to the
24 board regarding the recent developments with the new

1 ozone standard, and explain the implications of the
2 delay and the issuance of the standard on ExxonMobil
3 and its request for a variance from the NOX RACT
4 rule.

5 At the June 28th, 2011, hearing in
6 the R11-24 rulemaking, I testified regarding the
7 uncertainty surrounding the issuance and
8 implementation of the ozone standard that was
9 expected to be issued by EPA in July of 2011. At
10 that time, I provided various scenarios and
11 timelines that demonstrated the uncertainty in terms
12 of what the ozone standard would be, and depending
13 on the standard, whether NOX RACT would be required
14 for the Chicago area.

15 In addition, as the board will
16 note, in a petition there's a detailed table showing
17 the possible timeline and all of the uncertainties
18 concerning when NOX RACT, if required under the new
19 standard, would be required to be implemented at
20 sources. First, today I would like to update the
21 board on the administration's actions on EPA's
22 reconsideration of the ozone standard since the
23 June 28th R11-24 rulemaking hearing.

24 On July 11th, 2011, the EPA

1 submitted for review by the Office of Management and
2 Budget, the reconsideration of the 2008 ozone
3 primary and secondary national ambient air quality
4 standard's final rule, and also the implementation
5 of the 2011 national ambient air quality standard
6 for ozone and anti-backsliding requirements for the
7 Section 185 program for the purposes of the winter
8 ozone max. That was a proposed rule. Review of
9 proposed and final rules by the Office of Management
10 and Budget's office of information and regulatory
11 affairs is the last step to be completed prior to
12 EPA issuing either a proposed or a final rule.

13 On September 2nd, 2011, President
14 Obama directed EPA to withdraw the pending standard,
15 which was proposed in January of 2010, and he
16 announced that the ozone standard would be
17 considered in 2013. The president's directive has
18 the effect of leaving in place unchanged the 2008
19 ozone standard at 75-parts per billion.

20 While President Obama has
21 eliminated the uncertainty as to when a new standard
22 will be issued, due to the president's directive,
23 the September 2nd, 2011, letter from the EPA to the
24 Office of Management and Budget addresses the next

1 steps to implement the 2008 ozone standard, and I
2 think Monica has a copy of that to submit as an
3 exhibit.

4 MS. RIOS: I'd like to request that
5 the September 2nd letter from the Office of
6 Management and Budget be submitted as an exhibit.

7 MR. HALLORAN: Any objection?

8 MS. ROCCAFORTE: No.

9 MR. HALLORAN: That will be labeled as
10 Exhibit 4, Petitioner's Exhibit 4. It's admitted
11 into evidence with no objection.

12 MR. DEASON: A key to determining
13 whether NOX RACT will be required under the 75-part
14 per billion ozone standard depends on whether the
15 Chicago area will be classified as a moderate
16 non-attainment area.

17 In my testimony at the June 28th,
18 R11-24 rulemaking proceeding, I speculated in
19 scenario three of Exhibit 4 to my pre-filed
20 testimony on three possible options should the ozone
21 standard be set at the 70-part per billion level.
22 However, I did not at that time introduce a scenario
23 for possible options for a 75-part per billion ozone
24 NOX level, and would like to do so now through

1 another exhibit.

2 MS. RIOS: I'd like to request that an
3 updated exhibit, Possible Classification Thresholds
4 for Each Option at 75-Parts per Billion Table, be
5 entered as an exhibit.

6 MR. HALLORAN: Any objection,
7 Ms. Roccaforte?

8 MS. ROCCAFORTE: No objection.

9 MR. HALLORAN: Petitioner's Exhibit
10 Number 5 is admitted with no objection.

11 MR. DEASON: This exhibit is similar
12 to Exhibit 4 of my pre-filed testimony in the
13 rulemaking proceeding. The estimated values are
14 based on scenario three of Exhibit 4 of my pre-filed
15 testimony, except for five-parts per billion has
16 been added to each value to account for the
17 difference between a 70-part per billion and a
18 75-part per billion standard.

19 At the end of 2010, the Chicago
20 area had a design value of 74-parts per billion,
21 which if used by EPA for an attainment designation,
22 would result in the Chicago area being designated
23 attainment, and therefore there would be no RACT
24 requirement.

1 Recently, my understanding is
2 there have been exceedances of the 75-part per
3 billion standard in 2011 in the Chicago area. If
4 those exceedances are not flagged and removed from
5 the record and carried into year-end 2011, it would
6 actually help to determine the design value that
7 would be in excess of the 75-part per billion
8 standard.

9 My understanding at this point is
10 that that design value appears to be 76-parts per
11 billion, and that was my understanding as of looking
12 at air quality data supplied to me on Friday of last
13 week. It's possible that Ron Kaleel may have better
14 and more accurate information, and if you have any
15 questions, I would yield to him to better address
16 that.

17 But having stated that, it's my
18 understanding of what the year-to-date 2011 design
19 value would be, if you go to the classification
20 table and you look across the rows, under option
21 one, which is the option that has been used by the
22 EPA for both the 1991 one-hour ozone NOX
23 classifications to set the classification and
24 deadlines, as well as for the 1997 eight-hour ozone

1 standard. Under option one, a 76-part per billion
2 reading is a design value that would result in a
3 marginal non-attainment area.

4 As part of this rulemaking on the
5 ozone reconsideration, the EPA staff also evaluated
6 at least two other options, which I've listed here
7 as option 2A, a ratio of thresholds method, and also
8 option 2B, a modified ratio of thresholds method.
9 And similar to the option one analysis, if you
10 placed a 76-part per billion design value at the
11 year-end 2011 time period into a classification
12 table, you would also find a result of a marginal
13 non-attainment classification.

14 At this point, I'd like to
15 transition to talking about the 2008 ozone
16 implementation timeline. As of today, EPA has not
17 published a schedule for issuing designations for
18 the 2008 ozone standard, which is a key step towards
19 determining when NOX RACT, if required, will be
20 implemented. I'd like to introduce as an exhibit
21 that Monica can supply, a possible ozone standard
22 timeline table.

23 MS. RIOS: Yes, we'd like to request
24 that an updated ozone standard timeline be entered

1 into the record as an exhibit.

2 MR. HALLORAN: Any objection,
3 Ms. Roccaforte?

4 MS. ROCCA FORTE: No objection.

5 MR. HALLORAN: Petitioner's Exhibit
6 Number 6 is admitted.

7 MR. DEASON: A petition has been filed
8 in the Arizona Federal District Court asserting a
9 failure to act by EPA to complete the 2008 ozone
10 act's designation. The outcome of this petition and
11 the consequences for the timing of the area
12 designations for the 2008 standard, therefore, are
13 unknown at this time.

14 If you look at the middle column
15 of the three standard timeline examples in this
16 exhibit, the 2008 standard, I showed the March 2008
17 promulgation of the final rule, and then in the
18 Clean Air Act what follows as the next two steps;
19 the March 2010 first final designation by EPA, and
20 then the potential for an extension for one year if
21 there's inadequate information to March of 2011.

22 Both of these legal deadlines have
23 now been passed, and you'll see in the next three
24 rows I've listed as uncertain the requirements that

1 flow from EPA's current implementation and strategy,
2 which is unknown at this time. Since they have
3 exceeded the milestones laid out as legal deadlines
4 in the Clean Air Act, I didn't feel equipped to
5 speculate on what they might do, especially in the
6 face of uncertainty around a petition for which we
7 don't know the outcome.

8 Thus, neither Illinois EPA nor the
9 regulated community at this time knows the timeline
10 for completing the 2008 ozone standard designations
11 and the resulting classification of the Chicago
12 area. Classification of areas are historically
13 issued concurrently with the area designations, so
14 if the Chicago area is designated non-attainment, it
15 will likely, at the same time, receive its area
16 classification.

17 In order to determine whether RACT
18 will be required under the 2008 standard for the
19 Chicago area, we need to know both the designation
20 and classification of the Chicago area. As I've
21 previously stated, EPA has not provided any
22 indication when designations and classifications
23 will be issued. We know that the 2008 ozone
24 standard will remain in effect until at least 2013,

1 and that the act's requirements will be implemented
2 between now and then with this uncertain 2008 ozone
3 standard timeline.

4 As you can see under the Clean Air
5 Act, the RACT submittal date and implementation date
6 for RACT sources varies greatly depending on when
7 USEPA issues area designations. Having commented on
8 uncertain timeline for the 2008 standard, I would
9 just like to point to the 2013 timeline, and this
10 is, again, laid out consistent with the legal
11 deadlines called for by the Clean Air Act.

12 So when EPA completes the March
13 ozone standard consideration, if they change the
14 standard at that time, I would expect, based on my
15 knowledge of the act, that the deadlines that you
16 see here would likely flow with the implementation
17 of NOX RACT there, and also the attainment dates to
18 follow from a combination of the Clean Air Act's
19 legal deadlines and an implementation rule that EPA
20 will need to write.

21 In terms of both the 2008 standard
22 with its uncertain timelines to the EPA's departure
23 to the legal timelines, as well as the 2013
24 timelines, it's likely that RACT, if required, will

1 not be required and implemented as sources until
2 2019, which is consistent with ExxonMobil's variance
3 request.

4 Uncertainty surrounding the
5 implementation of the 2008 standard and any future
6 standard warrants the postponement of NOX RACT
7 requirements for the refinery, since at this time
8 RACT does not fed require it. Accordingly, as
9 detailed in the petitions, we believe it is a misuse
10 of resources to move forward with the refinery's NOX
11 RACT compliance project at this time.

12 A delay in implementation of the
13 project is reasonable and consistent with the likely
14 implementation path for the 2008 ozone standard that
15 is now in effect. Thus, ExxonMobil respectfully
16 requests that the board grant the variance and
17 extend ExxonMobil's compliance deadline for the rule
18 from January 1st, 2015, to May 1st, 2019.

19 That completes my proposed
20 testimony. I'd like to thank you for allowing me
21 the opportunity to present this, and would be glad
22 to address any questions.

23 MR. HALLORAN: Thank you, Mr. Deason.
24 Ms. Rios, any direct?

1 MS. RIOS: No, not at this time.

2 MR. HALLORAN: Ms. Roccaforte, any
3 cross?

4 MS. ROCCAFORTE: No questions.

5 MR. HALLORAN: Mr. Rao?

6 MR. RAO: I have a couple questions.
7 Mr. Deason, going to your Exhibit 5 with the
8 positive classification thresholds for the three
9 options you considered, under option 2A, you
10 indicated that the Chicago area may be classified as
11 marginal if we go with that 2011 data. Could you
12 explain what maybe the implications of a marginal
13 classifications are in terms of the RACT
14 requirements?

15 MR. DEASON: RACT is a requirement for
16 moderate and above areas. So for marginal area,
17 there would be no RACT requirements.

18 MR. RAO: So even if the rule came
19 into place and there was a designation made, if it's
20 marginal, then there is no need for a RACT rule?

21 MR. DEASON: That's correct.

22 MR. RAO: And also, this is Exhibit 6,
23 possible timelines?

24 MR. HALLORAN: Yes.

1 MR. RAO: In Exhibit 6, you indicated
2 that for the 2008 standard at 75-parts per billion,
3 right now the possible timelines are uncertain
4 because of a court case?

5 MR. DEASON: Well, it's uncertain for
6 two reasons. Since EPA stopped implementing,
7 they've departed from the standard required
8 timelines under the Clean Air Act. And so at this
9 point, they would need to actually pick up and
10 detail and print what they expect the states to do
11 with respect to fulfilling their obligations to
12 submit state implementation plans and to follow
13 through with the planning for the 75-part per
14 billion standard.

15 Since they've actually not
16 completed the designation process, the Illinois EPA,
17 and every other agency in the country at this point,
18 doesn't know what their geographic boundary
19 designation is, as well as what is their
20 classification. And the classifications themselves
21 provide some required timelines, milestones, and
22 objective criteria that the states have to consider
23 as they put together their state implementation
24 plans.

1 MR. RAO: Do you believe that the
2 reason they have not promulgated the variance steps
3 involved in the implementation of the rule was
4 because of the possible revision that they were
5 working on, or was it because of the court case? If
6 the court case is resolved, will that trigger some
7 of the USEPA actions, or do you expect them to wait
8 until 2013?

9 MR. DEASON: When they proposed the
10 standard in January of 2010, we also announced that
11 they weren't going to follow through with
12 implementation steps at that time, and that's the
13 path that they have pursued since then. They have
14 not -- they have chosen not to complete the
15 designation process in March of 2011, that second
16 extended deadline.

17 The Wild Earth Guardians petition,
18 which has also been entered into our pre-filed
19 record, was filed, I think, on August the 24th, and
20 it asserted that EPA has failed to act on those two
21 legally required deadlines. Literally, we're at a
22 point where, since we're not following the legal
23 deadlines in the Clean Air Act, EPA is faced with
24 responding to both this Wild Earth Guardians

1 petition, and laying out the plan for the states to
2 follow as they implement the 2008 standard.

3 I think it will be some
4 combination of a consideration of the practicality
5 of the states having to actually fulfill their
6 obligations, to look at air quality data, to perhaps
7 complete again the state recommendation process for
8 EPA to review those recommendations, and then to
9 fulfill a final designation.

10 EPA also has not completed an
11 implementation rule, and that's critically important
12 to determining the classification structure. The
13 implementation rule for the 2008 ozone standard and
14 for subsequent eight-hour ozone standards, in the
15 rule, which we'll go through both the proposed phase
16 as well as the final phase, puts in place the
17 classification table structure similar to what you
18 see in Exhibit 6.

19 MR. RAO: Thank you for the
20 clarification.

21 MR. DEASON: You're welcome.

22 MR. HALLORAN: Any further questions
23 of counsel?

24 MS. RIOS: No.

1 MR. HALLORAN: All right. Thank you,
2 Mr. Deason. You may step down.

3 MS. RIOS: At this time, we have
4 Mr. Kohlmeier.

5 (Witness sworn.)

6 MR. HALLORAN: You may start when
7 you're ready. Thanks.

8 MR. KOHLMEYER: Good morning. My name
9 is Bradford Kohlmeier, and I'm a senior
10 environmental advisor at ExxonMobil's Joliet
11 refinery. I have supported the refinery as an
12 environmental advisor specializing in air topics
13 since 1997. Prior to joining the refinery, I served
14 as an air permitting engineer for the Illinois EPA,
15 over five years of handling air permit requirements
16 for various sources in Illinois, and participated in
17 other activities as required while at the Illinois
18 EPA.

19 My testimony today will provide
20 technical information on the NOX reductions at the
21 refinery, and the possible impacts of USEPA's
22 comments on the NOX RACT rule on the refinery. As
23 Mr. Elbert testified, ExxonMobil and Illinois EPA
24 have had several discussions on the implications of

1 the NOX RACT rule for the refinery and the extension
2 of the compliance date from January 1st, 2015, to
3 May 1st, 2019.

4 As discussed in the petition, the
5 extension of the compliance date for ExxonMobil will
6 have little impact on the environment because
7 ExxonMobil is already reducing NOX emissions from
8 the refinery well in excess of the NOX reductions
9 that would result from compliance with the rule.
10 Pursuant to the 2005 consent decree, ExxonMobil
11 recently installed a selective catalytic reduction
12 unit, or SCR, at the refinery's fluid catalytic
13 cracking unit/CO boilers, resulting in a reduction
14 of approximately 1,300 tons per year of NOX
15 emissions.

16 ExxonMobil estimates, however,
17 that NOX reductions from compliance with the rule
18 relying upon the reductions from process heaters and
19 boilers would be approximately 370-tons per year,
20 and thus, as you can see, the 1,300-ton per year
21 reduction in NOX emissions from the SCR is well
22 beyond the 370 ton per year reduction that would be
23 generated from the process heaters and boilers.
24 Further, the reductions resulting from installation

1 of the SCR are already in place and being realized
2 on an annual basis, rather than starting in the 2015
3 ozone season as proposed by the rule.

4 The board should also note that
5 the consent decree does not prohibit ExxonMobil from
6 seeking to utilize CD emission reductions from a
7 covered refinery's compliance with any rules or
8 regulations designed to address regional haze or the
9 non-attainment status of any area.

10 Since the consent decree clearly
11 anticipated that emission reductions under the
12 consent decree could be used towards compliance with
13 certain rules, such as the NOX RACT rule, and the
14 rule itself allows for an alternate control strategy
15 referencing Section 217.125C of the rule, ExxonMobil
16 submitted a construction permit application on
17 May 11th, 2011, requesting an approval of an
18 alternative NOX control strategy as allowed by
19 Section 217.152C, utilizing the reductions from the
20 SCR to satisfy compliance with the rule.

21 Illinois EPA and ExxonMobil have
22 discussed the application, and ExxonMobil granted a
23 waiver of the review period until December 1st,
24 2011. At this time, the application is pending, and

1 ExxonMobil will continue to work with Illinois EPA
2 on this issue. Had Illinois EPA already approved
3 the alternative NOX control strategy, as to
4 Section 217.152C allows, this variance proceeding
5 would not be necessary as the alternative control
6 strategy allowed by Section 217.152C, and
7 specifically not precluded by the 2005 consent
8 decree, which would have already satisfied
9 compliance with the rule.

10 During the R11-24 rulemaking
11 proceedings, Illinois EPA provided a letter from
12 USEPA identifying certain deficiencies in the NOX
13 RACT rule, and I believe Ms. Rios is going to
14 present that.

15 MS. RIOS: Yes. We'd like to enter
16 the letter from the USEPA as an exhibit.

17 MR. HALLORAN: Ms. Roccaforte, any
18 objection?

19 MS. ROCCAFORTE: No objection.

20 MR. HALLORAN: Thank you. So
21 admitted.

22 MR. KOHLMAYER: In particular, USEPA
23 commented that the emission averaging provisions did
24 not include a ten percent environmental write-off on

1 calculated allowable missions, and failed to limit
2 the time period for averaging to 30 days or less.
3 At a hearing in the R11-24 proceeding, ExxonMobil
4 explained that its design basis for compliance with
5 the rule is based on the current provisions of the
6 rule, most notably a site-wide average limit of
7 .08 pounds of NOX per million BTU, as demonstrated
8 on an annual average basis and on an ozone season
9 basis.

10 The deficiencies identified by
11 USEPA, if eventually incorporated into the rule,
12 could potentially change a design basis and scope of
13 the refinery's compliance project. Since a ten
14 percent environmental write-off, combined with a
15 shorter averaging period, would reduce the site-wide
16 average limit beyond the level designed for it to
17 ensure compliance, and would also eliminate the
18 ability to manage compliance with site-wide average
19 limits, which the longer average waiting period
20 allowed for, such as short periods of operation
21 during turndown, et cetera.

22 These changes alone could prompt
23 ExxonMobil to consider various additional control
24 and/or operating scenarios, or accept significantly

1 more compliance risk. In addition, as discussed in
2 detail in the petition and in the R11-24 rulemaking
3 proceeding, there is uncertainty as to whether, even
4 if the above-mentioned deficiencies are addressed,
5 if the changes would allow the rule to qualify as
6 RACT, or if RACT will even be required under a
7 future ozone standard.

8 Note that RACT is currently not
9 required for the 1997 ozone standard, because USEPA
10 approved Illinois EPA's NOX RACT waiver request.
11 Thus, not only has USEPA identified deficiencies in
12 the current rule, making it un-approvable as RACT,
13 even if it was required for the 1997 ozone standard,
14 but there is also uncertainty as to what additional
15 revisions to the rule may be necessary to address
16 RACT under any future ozone standard, if RACT is
17 even required.

18 These circumstances support
19 ExxonMobil's position that compliance with the
20 current rule at this time poses an arbitrary and
21 unreasonable hardship on the refinery, since the
22 rule is not required to satisfy any federal
23 obligation, and based on USEPA's letter, it would be
24 deficient to satisfy any potential future RACT

1 requirement should RACT be required under a future
2 ozone standard.

3 As such, if needed, there will be
4 a need to revise the rule in order to be approvable
5 by USEPA as a RACT rule. Because of the uncertainty
6 associated with the implementation of a future ozone
7 standard and the deficiencies in the current rule,
8 it is an unreasonable hardship to mandate that the
9 refinery move forward with its RACT compliance
10 project at this time for the units previously listed
11 in Appendix H of the original rule, specifically the
12 atmospheric heaters, the CHD charge heater, the CHD
13 stripper re-boiler, the LPI stripper re-boiler, the
14 crude vacuum heater, and coker charge heaters.

15 Accordingly, ExxonMobil requests
16 that it be allowed to postpone the compliance date
17 of the rule from January 1st, 2015, to May 1st,
18 2019, to allow for certainty of project scope to
19 ensure compliance with any required RACT standard.

20 Thank you for allowing me the
21 opportunity to present my testimony, and I am happy
22 to answer any questions you may have.

23 MR. HALLORAN: Thank you,
24 Mr. Kohlmeyer. Ms. Rios, any direct?

1 MS. RIOS: No, not at this time.

2 MR. HALLORAN: Ms. Roccaforte?

3 MS. ROCCAFORTE: No.

4 MR. HALLORAN: Mr. Anand?

5 MR. RAO: Yeah, just one.

6 Mr. Kohlmeyer, have you had any discussions with the
7 USPEA regarding the alternate NOX strategy since the
8 completion of the rulemaking in 11-24?

9 MR. KOHLMEYER: Have we had
10 discussions with USEPA?

11 MR. RAO: No, with IEPA. Sorry.

12 MR. KOHLMEYER: With IEPA, only
13 through the permit application in the permitting
14 department. There may have been other discussions
15 and other meetings, but I was not at those.

16 MR. RAO: But there's not been any new
17 development since then?

18 MR. KOHLMEYER: There's been no new
19 development.

20 MR. RAO: Thank you very much.

21 MR. HALLORAN: Thank you,
22 Mr. Kohlmeyer. You may step down.

23 MR. HALLORAN: Ms. Rios, anything
24 further?

1 MS. RIOS: I have nothing further.

2 MR. HALLORAN: You'll rest your case
3 in chief?

4 MS. RIOS: Yes.

5 MR. HALLORAN: Ms. Roccaforte, any
6 case in chief?

7 MS. ROCCAFORTE: No.

8 MR. HALLORAN: Off the record.

9 (Whereupon, a discussion was had
10 off the record.)

11 MR. HALLORAN: We're back on the
12 record. Ms. Roccaforte, would you please have
13 Mr. Kaleel come to the stand, please? Mr. Rao would
14 like to ask him a few questions.

15 (Witness sworn.)

16 MR. HALLORAN: Proceed, Mr. Rao.

17 MR. RAO: Mr. Kaleel, in your
18 testimony in 11-24, you had indicated that --
19 regarding the 2008 ozone standard of 75-parts per
20 million, the agency had done some preliminary
21 analysis which showed the Chicago non-attainment
22 data may be out of compliance. Could you update us
23 a little bit about, you know, what would be the
24 implications of that standard?

1 MR. KALEEL: Sure. Subsequent to the
2 2008 standard and prior to the time that the court
3 cases that challenge the 2008 standard and EPA's
4 decision to revisit it, Illinois EPA had made
5 recommendations to USEPA -- I believe it was in
6 2009. I could get you a specific date -- as to the
7 attainment status of various counties in Illinois,
8 and at that time we had recommended that Chicago and
9 metro east areas be designated as non-attainment for
10 the 75 PPB standard.

11 I think Doug Deason explained
12 pretty well all the things that have happened in
13 between, but our situation is basically the same.
14 We still have monitors in both areas that are in
15 violation of the 75 PPB standard, so -- and I don't
16 know what the current situation is as far as
17 implementation, again, for the reasons that
18 Mr. Deason had cited. We don't know where USEPA is
19 with implementing the standard, but at least through
20 this summer we still have monitors in both the
21 Chicago and the metro east area that are violating
22 the 75 PPB standard.

23 MR. RAO: And would the levels that
24 you've noticed in the recent ozone season, would you

1 also expect, if that is a designation, to be
2 marginal in Chicago and metro east?

3 MR. KALEEL: I guess it's real hard to
4 say. The monitor in the Chicago area, I believe
5 it's in Lake County. It's a monitor at Zion. It is
6 recording a design value concentration right now
7 through 2011 data of 76 PPB, so it's only one PPB
8 above the standard. I would expect that if that
9 value is what is ultimately used for classification
10 purposes that the area would be marginal.

11 The monitor just north of there in
12 Wisconsin, we refer to it as the Chiwaukee monitor.
13 I think its design value right now is 77, which is
14 just two PPB above the standard. I know there's
15 higher values further north in Wisconsin. I believe
16 there's an 81 value in Milwaukee or just north of
17 Milwaukee. And based on at least some of the
18 categories or the one chart -- the one attachment
19 that Doug Deason presented, 81 might ultimately
20 trigger a moderate classification, but that value
21 wouldn't necessarily dictate the classification
22 value for Chicago.

23 So depending on the timing when
24 USEPA makes its decision to implement, we

1 potentially could have another year of air quality
2 data to consider. So the 76 that is being recorded
3 right now at Zion might change by next year if EPA
4 makes its classification by next year. So again, it
5 adds to the uncertainty, which has kind of been a
6 cloud over all of these proceedings here for the
7 last year of so. There's lots of uncertainty, and
8 we really don't know what the air quality levels
9 will be at the time that we need to make that
10 decision.

11 MR. RAO: And also during the
12 rulemaking in 11-24, I just want to say that I
13 realize that the agency and the recommendation is
14 neither recommending to grant or deny. Having said
15 that, you had expressed some concerns with changing
16 the compliance date for ExxonMobil to 2019 in the
17 rulemaking, noting the impact on downwind states and
18 BPM 2.5.

19 With the recent developments in
20 this ozone revisions, and based on what the White
21 House did and how the USEPA has responded, has any
22 of those concerns changed, or are they still
23 relevant?

24 MR. KALEEL: I think the concerns are

1 still relevant. We still have many of the same
2 concerns about what kinds of reductions will
3 ultimately be needed in the area. I think we're
4 fairly certain that further reductions will be
5 needed to help the Chicago area attain and help
6 downwind areas attain, so I think those concerns
7 still are before us, and those haven't been changed
8 by the recent announcement about the ozone standard.

9 Having said that, we are
10 acknowledging the uncertainties, and I think
11 that's -- those have been stated pretty well by
12 Exxon's witnesses. There's just a lot of questions
13 as to schedules, and even the level of the air
14 quality standard, the amount of reductions that we
15 might ultimately need to seek. So I think we have
16 the concerns, but we acknowledge the uncertainties.

17 MR. RAO: So will it -- would there be
18 any possibility of the board expecting a positive
19 recommendation before the end of the record?

20 MR. KALEEL: It won't be my decision,
21 so I really can't answer.

22 MR. RAO: All right. Thank you.

23 MR. HALLORAN: Any further questions,
24 Counsel?

1 MS. RIOS: No.

2 MR. HALLORAN: Thank you, sir. You
3 may step down. I think at this time if any members
4 of the public wish to give public comment or a
5 public statement, they may do so now. You can step
6 up here by the witness stand. You can either do it
7 under oath subject to cross-examination, or just
8 stand up and give a public comment not under oath.

9 MS. PAISLEY: I'll just give a public
10 comment. I'm pretty new at this and I just want to
11 make a statement.

12 MR. HALLORAN: Okay. Could you step
13 up here where the microphone is, please, next to
14 Rebecca? Thank you. Just state your name, please
15 and spell it. Just state your name and spell it for
16 Rebecca.

17 MS. PAISLEY: Sure. My name is Lorna
18 Paisley. L-o-r-n-a, P, like in Peter, a-i-s-l-e-y.

19 I've got to say, I've never worked
20 for the EPA and I've never worked for ExxonMobil,
21 but I do understand a little of the science. I
22 don't understand all the regulations, but I want to
23 say this: I know that ExxonMobil is a corporation
24 and it's about making money. Somebody has to get up

1 here and speak out for the people.

2 I do know that people die from
3 ozone levels. I know that asthma is on the rise in
4 this area, and I just want to be here for them.
5 Somebody has to care about the people. I know that
6 Mobil made more money than any corporation has in
7 some -- in the not too distant past, and I think
8 they have some obligation to society to try to make
9 air cleaner and healthier for people. I don't know
10 how you can sit there and let people die from
11 respiratory issues when you make all this money.

12 And I want to know -- I would like
13 to know, if somebody can tell me later, why this
14 meeting wasn't closer to the refinery, and I also
15 want to make a statement about those monitors. Is
16 that a joke, that they're up by the Wisconsin
17 border, that far away from the plant? I don't know.
18 It sounds like some -- I don't know. It's just kind
19 of mind boggling to the average citizen out there.
20 So that's what I want to say, okay?

21 MR. HALLORAN: Thank you so much.

22 MS. PAISLEY: You're welcome.

23 MR. HALLORAN: Any further comment?

24 Are there any members of Citizens Against Ruining

1 the Environment here?

2 MS. PAISLEY: We all are.

3 MR. HALLORAN: All four of you?

4 MS. PAISLEY: Well, he's not.

5 MR. HALLORAN: Forgive me. Okay.

6 Would you like to give an oral statement or a public
7 comment? In an oral statement you're put under oath
8 subject to cross.

9 MS. RENDULICH: A public comment.

10 MR. HALLORAN: Okay. Just state your
11 name and spell it, please.

12 THE WITNESS: Ellen Rendulich,
13 R-e-n-d-u-l-i-c-h.

14 MR. HALLORAN: And for the record,
15 please put your address down. State it for the
16 record.

17 MS. RENDULICH: Home address?

18 MR. HALLORAN: Well, I have a public
19 comment filed by you.

20 MS. RENDULICH: Right. Citizens
21 Against Ruining the Environment, we're an all
22 volunteer, nonprofit organization, and we have a
23 P.O. Box, 536, in Lockport, Illinois.

24 MR. HALLORAN: 60441?

1 MS. RENDULICH: 60441.

2 MR. HALLORAN: Terrific. Thank you.

3 THE WITNESS: You know, Lorna brought
4 up a couple comments. First of all, we were
5 concerned about the fact that this location was
6 held -- that this hearing is here rather than closer
7 to ExxonMobil, and we don't know why. We're glad it
8 wasn't down in Chicago, but this is a long way for
9 the people. And also, when -- you put the time was
10 from 10:00 until whenever. Well, we've been
11 advertising people could come all day long.

12 MR. HALLORAN: Well, if I may
13 interject, ma'am, the order says and will continue
14 as necessary.

15 MS. RENDULICH: Right.

16 MR. HALLORAN: And also, pursuant to
17 the board regulations, it's held in the county where
18 the subject site is located, and we're in Will
19 County, and so is Joliet. This is the first time
20 I've heard any problems. And you've called me a
21 couple times regarding the orders I have sent out,
22 so I just want to make that clear for the record.

23 MS. RENDULICH: Right. It just is a
24 long way for people that live on the other end,

1 because Lorna took a half hour to get here, and
2 she's not even -- she's still a long way from the
3 plant. But anyway, that was one thing we wanted to
4 point out. We didn't understand the time, so we
5 were telling people they could come all day, so we
6 didn't understand what was needed.

7 MR. HALLORAN: Again, if you read the
8 order, it started at 10:00 a.m. and will continue as
9 necessary.

10 MS. RENDULICH: Right.

11 MR. HALLORAN: Thank you.

12 MS. RENDULICH: It was just -- we're
13 not clear on that. The other thing that Lorna
14 pointed out, too, you know, the industry --
15 ExxonMobil doesn't need a hardship. I mean, they
16 don't need any extended time. They have plenty of
17 money. If they have to hit some of their
18 shareholders, that's their problem. This is
19 ridiculous to put money above people's health.

20 Secondly, I wanted to mention that
21 we will be submitting comments. We're teaming up
22 with some other groups, like Illinois Respiratory
23 National Resource Defense Council, and some other
24 ones, so comments will be sent in later. Some of

1 the stuff we didn't understand, like the terminology
2 RACT, when you're talking about RACT.

3 When I went on the website to try
4 to pull up the link, which I've talked to you a
5 couple times, we didn't really understand what was
6 going on. So it's hard for groups like us, so we
7 really need to get help outside -- more professional
8 help to understand what's going on. We're just
9 citizens.

10 So when I tried to understand to
11 explain to the people there's a public hearing, we
12 couldn't understand these extensions, the dates,
13 these teleconference calls. I don't know how you
14 can make it clearer, but we really need help
15 in -- this should be available simply for us to
16 understand. That's all I can say on that.

17 And then the other thing Lorna
18 pointed out is these monitors are not in the right
19 locations. We had a public meeting just recently
20 here in Lemont Township, and the -- I don't know if
21 it was the EPA or the Pollution Control Board that
22 was there, but they admitted that these monitors
23 that are existing, they're either too low -- most of
24 them are too high, or they're not in the

1 vicinity -- they don't follow the air pollution. So
2 what good are these monitors? We need lots more
3 monitors, period.

4 That's all I can think of at this
5 time. So we need a lot more monitors. They
6 shouldn't get any kind of break. They need to get
7 some pollution controls on. That's about it.

8 MR. HALLORAN: Thank you, Ms.
9 Rendulich. Any further comment, statements? Would
10 you like to give a public comment?

11 MS. BURNITZ: A public comment is
12 fine.

13 MR. HALLORAN: Thank you. Proceed.

14 MS. BURNITZ: My name is Mary Burnitz.
15 I'm a member of CARE. I, along with Ellen and
16 Lorna, there's a lot of it I do not understand. We
17 went to a meeting in Lemont Township. I have some
18 of the paperwork here. I don't understand how these
19 monitors are supposed to be in place to protect the
20 public, but where they're placed isn't conducive to
21 protecting the public. I don't understand how
22 they -- you're a multimillion-dollar entity, and I
23 disagree with you getting any extensions, variances,
24 any monetary anything.

1 Here's an example: My car is out
2 of emission. I can't get my license plate because
3 my little car's emission is not good. My husband
4 hasn't worked in two and a half years. I'm a
5 homemaker. I have to get my car to compliance to
6 get my vehicle tag, but yet you continually ask for
7 variances and later timelines, and I don't
8 understand it.

9 Since being in this group, I've
10 learned so much about politics and money. Huge
11 corporations that they say, "This is for the good of
12 the public, this is for the good of the public," and
13 it's not for the good of the public at all. It's
14 just something I don't understand. So that's it.

15 MR. HALLORAN: Thank you so much. Any
16 further comments? I see one gentleman out there
17 that hasn't given any. Any rebuttal, Ms. Rios?

18 MS. RIOS: No, not at this time.

19 MR. HALLORAN: Thanks. Let's go off
20 the record for a moment, please.

21 (Whereupon, a discussion was had
22 off the record.)

23 MR. HALLORAN: All right. We're back
24 on the record. What we're going to do now, we're

1 going to take a lunch and come back here at
2 approximately 12:15, 12:20, and conclude the
3 hearing. Obviously we're kind of waiting around to
4 see if any more public comes in to wish -- or to
5 state any more comments for the record. Anyway, see
6 you all back at 12:15, 12:20. Thank you.

7 (Whereupon, a break was taken,
8 after which the following
9 proceedings were had.)

10 MR. HALLORAN: We're back on the
11 record. It's approximately 12:15, 12:18. I assume
12 that the petitioner and Ms. Rios, you have no case
13 and rebuttal?

14 MS. RIOS: No.

15 MR. HALLORAN: So both sides have
16 rested. But I do want to address the board order of
17 September 8th, 2011. It's the last paragraph. I
18 believe it's Page 3. It notes that the decision
19 deadline at PCB 11-86 pursuant to waiver is
20 December 1st, 2011, which is correct. It goes on to
21 state, "Which would require a decision by the board
22 at its November 17th, 2011, meeting." That is
23 incorrect. The board meeting, there is one,
24 coincidentally, on December 1st, 2011.

1 As to the close of record, I'm
2 going to address that now. Previously, we had an
3 agreement, and for the most part it was addressed in
4 the August 17th, 2011, hearing officer order. The
5 post hearing briefing schedule was discussed and
6 agreed to, and I'm reading from the second
7 paragraph. The petitioner's opening brief is due to
8 be filed on or before October 7th, and I'm basing
9 that on, I believe, the transcript, by contract, is
10 eight business days. The transcript should be due
11 by September 29th. It should be filed, I believe.

12 The respondent's responsive brief
13 is due to be filed on or before October 17th, 2011.
14 And this is a bit of a change, but it's been agreed
15 to. The petitioner's reply brief is due to be filed
16 on or before October 24th. Originally it said
17 October 21st, but it was agreed by respondent that
18 October 24th, 2011, would be fine.

19 I'm going to set public comment to
20 be filed on or before October 11th, 2011, and as to
21 all post hearing briefs or comment, the mailbox rule
22 does not apply to any of the briefs or comments, and
23 all electronic or approved fax filings must be
24 received by the clerk's office no later than

1 4:30 p.m. of the deadline.

2 So right now, unless the
3 petitioner files another waiver of the statute
4 decision deadline and we get a new briefing
5 schedule, right now the record in this case closes
6 October 24th, 2011.

7 And I also want to make note,
8 we're going to put the group Citizens Against
9 Ruining the Environment, CARE, the acronym, P.O.
10 Box 536, Lockport, Illinois 60441. Ellen Rendulich
11 is the director. We're going to put her on the
12 service list as well.

13 With that said, I'm not sure if I
14 forgot anything. Any closing arguments?

15 MS. RIOS: No.

16 MR. HALLORAN: And I do want to note
17 that I find no credibility issues with any of the
18 witnesses that testified here today.

19 Ms. Rios, you mentioned that you
20 may be filing some kind of motion to incorporate
21 documents from an earlier proceeding?

22 MS. RIOS: Yes. We will likely file a
23 motion to incorporate the transcript from the
24 June 28th hearing and the R11-24 rulemaking.

1 MR. HALLORAN: Okay. Do you have any
2 idea when you'll be filing that?

3 MS. RIOS: We can probably get that on
4 file this week.

5 MR. HALLORAN: Okay. Terrific. I
6 guess that's it. I just want to thank you all for
7 your civility and professionalism, and have a great
8 ride home. Thank you so much.

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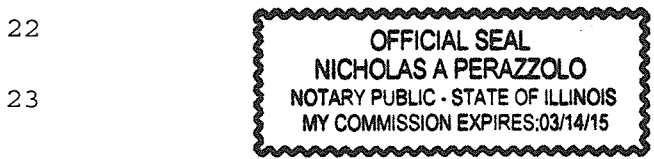
1 STATE OF ILLINOIS)
) SS
2 COUNTY OF COOK)

3
4
5 REBECCA A. GRAZIANO, being first
6 duly sworn on oath, says that she is a court
7 reporter doing business in the City of Chicago, that
8 she reported in shorthand the proceedings given at
9 the taking of said hearing, and that the foregoing
10 is a true and correct transcript of her shorthand
11 notes so taken as aforesaid, and contains all the
12 proceedings given at said hearing.

13
14 *Rebecca Graziano*
REBECCA A. GRAZIANO, CSR
15 Eight West Monroe Street, Suite 2007
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17
18 SUBSCRIBED AND SWORN TO
before me this 28th day
19 of September, A.D., 2011.

20 *Nicholas Perazzo*
Notary Public



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