

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

IN THE MATTER OF:)
)
FAST-TRACK RULES UNDER NITROGEN) R07-18
OXIDE (NO_x) SIP CALL PHASE II) (Rulemaking – Air)
AMENDMENTS TO 35 ILL. ADM. CODE)
SECTION 201.146 AND PARTS 211 AND 217)
_____)
)
IN THE MATTER OF:)
)
SECTION 27 PROPOSED RULES FOR) R07-19
NITROGEN OXIDE (NO_x) EMISSIONS) (Rulemaking – Air)
FROM STATIONARY RECIPROCATING)
INTERNAL COMBUSTION ENGINES AND)
TURBINES: AMENDMENTS TO 35 ILL.)
ADM. CODE PARTS 211 AND 217)

NOTICE

To: John Therriault, Acting Clerk Timothy Fox, Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street James R. Thompson Center
Suite 11-500 100 West Randolph Street
Chicago, Illinois 60601 Chicago, Illinois 60601

See also, Attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **MOTION FOR LEAVE TO FILE REPLY BY DATE CERTAIN** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted by,

_____/s/_____
Robb H. Layman
Assistant Counsel

Dated: July 11, 2007
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 524-9137

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MOTION FOR LEAVE TO FILE REPLY
BY DATE CERTAIN

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorneys, and respectfully requests leave to file a Reply to separate Responses recently filed with the Board in the above-captioned matter. In support thereof, the Respondent states the following:

1. On June 25, 2007, the Illinois EPA electronically filed a Motion for Reconsideration (hereinafter “Motion”) with the Board pertaining to an earlier May 17, 2007, order.
2. On July 6, 2007, the Pipeline Consortium filed a Response to the Motion with the Board. An electronic mail version of the Response was received at 3:57 p.m. on that same day by the undersigned attorney. Formal service of the motion has not been made on the undersigned attorney, however, it is possible that service has been made to one of the other attorneys of record for the Illinois EPA.

3. On July 9, 2007, the Illinois Environmental Regulatory Group (“Illinois IERG”) filed a separate Response to the Motion with the Board. An electronic mail version of the Response was received at 1.18 p.m. on that same day by one the undersigned attorney’s colleagues. Formal service of the motion has not been made on the undersigned attorney, however, it is possible that service has been made to one of the other attorneys of record for the Illinois EPA.

4. The Board’s regulations do not specifically provide a right to a reply to a moving party in the context of a Motion for Reconsideration. The Board’s regulations governing general motion practice do not provide a right to reply to a moving party, however, they do allow for a reply where permitted by the Board or hearing officer to prevent material prejudice. *See, 35 Ill. Adm. Code 101.500(e)*. The latter provision requires that a reply must be filed within 14 days following service of the response. *Id.*

5. A review of the Responses filed by the Pipeline Consortium and the Illinois IERG was conducted for the first time by the undersigned attorney yesterday due to his vacation scheduling of last week. This review has revealed that the Responses contain arguments that are both misleading and without merit. For one thing, certain arguments raised by the industry objectors concerning the fast-track provisions of Section 28.5 of the Illinois Environmental Protection Act, 415 ILCS 5/28.5 (2006), distort the plain meaning of the statute and downplay the existence of two possible interpretations of the statute’s text, even though such arguments are clearly at variance with the statutory construction previously urged by industry group lawyers in the earlier mercury rulemaking. *See generally, In the Matter of Proposed New 35 Ill. Adm. Code Part 225 Control of Emissions from Large Combustion Sources, PCB R06-25*. Moreover, certain arguments raised in the Responses appear to attack the accuracy and the relevancy of a

document that the Illinois EPA believes is a useful, extrinsic aid to the statute's construction, even though the document itself was first introduced and relied upon in legal arguments presented by one of the industry objectors in this case, as well as cited by other industry lawyers in the earlier mercury rulemaking.

6. In order to prevent material prejudice that would result from the inability to confront these arguments, the Illinois EPA seeks a right of Reply to the aforementioned Responses. Given the possible interest of the Board in minimizing delays in this matter, the undersigned attorney will commit to filing a comprehensive Reply to both Responses with the Board by no later than Wednesday, July 18, 2007, at least two days shy of the Board's 14 day period allotted in its procedural rules.

7. No hardship or prejudice will occur to the Pipeline Consortium or the Illinois IERG as a result of the granting of this Motion and, further, it will ensure that all of the statutory construction arguments concerning the applicability of Section 28.5 are properly addressed for the Board's re-consideration.

WHEREFORE, the Illinois EPA respectfully requests that the Board grant leave for the Illinois EPA to file a Reply to the Responses with the Board by no later than Wednesday, July 18, 2007, or, in the alternative, provide such relief as may be just and appropriate.

Respectfully submitted by,

_____/s/_____
Robb H. Layman
Assistant Counsel

Dated: July 11, 2007
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 524-9137

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2007, I did send, by electronic mail,
the following instrument entitled **MOTION FOR LEAVE TO FILE REPLY BY**

DATE CERTAIN to:

John Therriault, Acting Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

and a true and correct copy of the same foregoing instrument, by First Class Mail with
postage thereon fully paid and deposited into the possession of the United States Postal
Service, to:

Timothy Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Chicago, Illinois 60601

See also, Attached Service List

_____/s/_____
Robb H. Layman
Assistant Counsel

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