

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
MOTION FOR CANCELLING PREFILING
DEADLINES AND SCHEDULED HEARINGS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys and, pursuant to 35 Ill. Adm. Code 101.502 and 102.402, moves that the Hearing Officer issue an order cancelling all testimony and question prefiling deadlines and hearings scheduled pursuant to his June 15, 2007 Order in the above matter. In support of its Motion, the Illinois EPA respectfully states as follows:

On June 15, 2007, the Hearing Officer issued an order scheduling two hearings commencing on September 16, 2007, and November 5, 2007, respectively. In addition, the Order specified that testimony by participants wishing to testify at the first hearing was to be filed no later than August 27, 2007. One of the witnesses that the Illinois EPA plans to use to support its proposal is Michael Koerber, Director of the Lake Michigan Air Directors Consortium (“LADCO”), whose testimony in large part is based on modeling performed by LADCO. LADCO has been in the process of modeling to determine the effect that expected federal and state emissions controls will have on improving the air quality in LADCO’s five state region (Illinois, Indiana, Michigan, Ohio, and Wisconsin), and the need for additional emissions controls in order to attain the National Ambient Air Quality Standards (“NAAQS”) for 8-hour

ozone and fine particulate matter (“PM_{2.5}”). This updated modeling will provide the basis for Illinois’ attainment demonstration for these pollutants.

LADCO’s modeling efforts are complex and extremely resource intensive and have been proceeding for the last several years. The modeling submitted with the Illinois EPA’s Technical Support Document (“TSD”) with the initial regulatory proposal is considered state-of-the-art and was intended to be the basis of Illinois’ attainment demonstration when the Illinois EPA developed its regulatory strategy. The present rulemaking is an element of that attainment strategy. That modeling, as well as modeling performed by the United States Environmental Protection Agency (“USEPA”) in support of the Clean Air Interstate Rule (“CAIR”), indicated that Illinois would need substantial emissions reductions beyond those provided by CAIR in order to demonstrate attainment of the above NAAQS. This proposal was developed on the basis that significant reductions of NO_x emissions would be needed statewide from all significant stationary sources of NO_x.

Illinois’ regulatory strategy has been controversial, and part of the controversy arises from the use of 2002 as the base year for modeling purposes. Because 2002 meteorological conditions were extremely conducive to the formation of ozone and particulate matter, the monitoring data from 2002 established a high baseline, or benchmark, from which to evaluate the amount of emission reductions needed for attainment of the NAAQS. This modeling was provided to stakeholders as part of LADCO’s and Illinois’ public participation process, and stakeholders objected strongly to the use of 2002 as the base year for modeling. The five LADCO states agreed to model a more representative base year, 2005, as the basis for developing the attainment strategy for the region. This new modeling was expected to be completed in August 2007, which would have been timely with respect to the Board’s schedule

for this rulemaking.

However, on August 21, 2007, the Illinois EPA learned that the modeling would not be completed and shared with the public until October 2007. It is also believed that this new modeling might substantially change the Illinois EPA's regulatory proposal, but it is not certain and cannot be determined until the Illinois EPA has had an opportunity to review the results. This opportunity to review will only take place after LADCO has had an opportunity to quality assure ("Q and A") the results.

On August 22, 2007, when this information was communicated to the Illinois EPA's attorneys, they initiated a conference call to parties who had indicated an interest in the proposal, specifically, the representatives for the Illinois Environmental Regulatory Group ("IERG"), the Illinois Municipal Electric Agency ("IMEA"), and the Pipeline Consortium. The Illinois EPA indicated that they would be filing this Motion requesting that the scheduled hearings and prefiling deadlines be cancelled. The Illinois EPA and the above representatives then initiated a call to the Hearing Officer in this matter to convey the same information. In this call, the Illinois EPA, and the representatives for IERG, IMEA, and the Pipeline Consortium waived paper service of this Motion.

The prefiling of testimony for the first hearing is required by August 27, 2007, prefiled questions are due on September 10, 2007, and the first hearings are scheduled to begin on September 18, 2007. In these hearings, the Illinois EPA, as the proponent of the proposal, had intended to put forth its explanation and technical support for the proposal; however, without the new LADCO modeling results to be released on October 10, 2007, the information put forth would be at best incomplete and at worst may require a significant revamping of the proposal. If the September 18, 2007, hearing is not cancelled and the Illinois EPA is required to proceed, it

could represent a significant waste of resources for all participants in this matter as the Illinois EPA would have to present all testimony as tentative and qualify that statements made could be impacted by the results of modeling that will not be available until October 10, 2007. The substance of the regulatory proposal could require significant amendments, as well.

Further, if the second set of hearings scheduled to begin on November 5, 2007, were not cancelled as well, it is possible that the Illinois EPA would have in the meantime acted to revise the pending proposal. That would impose a hardship to both the Illinois Pollution Control Board (“Board”) and the other participants since there would be questions of proper notice and sufficient time to review any such possible revisions.

Under these exceptional circumstances, and to avoid a significant waste of resources by all participants in this matter, the Illinois EPA believes that the most prudent course of action is to request the cancellation of the entire schedule of hearings and pre-filing deadlines. In addition, the Illinois EPA is requesting that the Hearing Officer schedule a status call among the participants in mid-October after the modeling information becomes available. The Illinois EPA does not believe that withdrawal of the proposal is appropriate at this time, as the modeling may show that the proposal as currently proposed supports and furthers attainment of the two NAAQS.

WHEREFORE, for the reasons stated above, the Illinois EPA respectfully requests that the Hearing Officer grant the Illinois EPA's Motion for Cancelling Hearings and Prefiling Deadlines.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Rachel L. Doctors
Rachel L. Doctors
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Division of Legal Counsel

DATED: August 23, 2007

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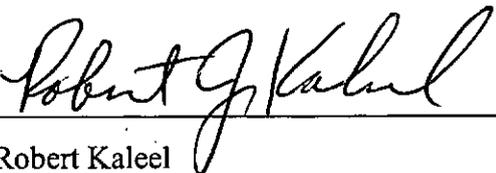
STATE OF ILLINOIS)
) SS
SANGAMON COUNTY)

AFFIDAVIT

I, Robert Kaleel, upon my oath, do hereby state as follows:

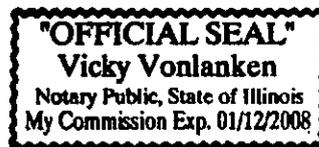
1. I am employed as the Manager of the Air Quality Planning Section of the Division of Air Pollution Control in the Bureau of Air for the Illinois Environmental Protection Agency ("Illinois EPA").
2. In my current position as Section Manager, my responsibilities include oversight of staff that provides technical support for regulatory initiatives needed to address air quality issues in Illinois, including the regulatory proposal to develop the proposal for Section 27 Proposed Rules for Nitrogen Oxide Emissions from Stationary Emissions from Stationary Reciprocating internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217. I have also been closely involved with the development of Illinois' State Implementation Plans to address the PM_{2.5} and 8-hour ozone nonattainment areas in Illinois.
3. I have reviewed the Motion for Cancelling Prefiling Deadlines and Scheduled Hearings
4. To the best of my knowledge, the factual information and representations contained within the Motion are true and accurate.

FURTHER AFFIANT SAYETH NOT.


Robert Kaleel

Subscribed and sworn to before me
this 23rd day of August, 2007.


Notary Public



R07-19 Service List

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