

Electronic Filing - Received, Clerk's Office, March 26, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 OF FILING

TO: Mr. John Therriault	Mr. Tim Fox
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC FILING)	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **PRE-FILED TESTIMONY OF DEIRDRE K. HIRNER**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ N. LaDonna Driver
N. LaDonna Driver

Dated: March 26, 2008

N. LaDonna Driver
HODGE DWYER ZEMAN
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THIS FILING SUBMITTED ON RECYCLED PAPER

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CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, hereby certify that I have served the attached

PRE-FILED TESTIMONY OF DEIRDRE K. HIRNER upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic filing and by depositing said documents in the United States Mail, postage

prepaid, in Springfield, Illinois, on March 26, 2008; and upon:

Mr. Tim Fox
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Rachel L. Doctors, Esq.
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via electronic mail on March 26, 2008.

/s/ N. LaDonna Driver

N. LaDonna Driver

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PRE-FILED TESTIMONY OF DEIRDRE K. HIRNER

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by one of its attorneys, N. LaDonna Driver of HODGE DWYER ZEMAN, and submits the following pre-filed testimony of Deirdre K. Hirner for presentation at the April 9, 2008, hearing scheduled in the above-referenced matter:

Testimony of Deirdre K. Hirner

My name is Deirdre K. Hirner and I am the Executive Director of IERG. I am here today to provide information on the Proposed Rule, with respect to IERG and its members. IERG is a not-for-profit Illinois corporation affiliated with the Illinois State Chamber of Commerce. IERG is composed of 55 member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. On behalf of its member companies, IERG has attended outreach meetings, reviewed drafts of the Proposed Rule, provided comments to Illinois Environmental Protection Agency (“Illinois EPA”) on drafts of the Proposed Rule and participated in Illinois Pollution Control Board (“Board”) proceedings in this matter, and in R07-18. IERG appreciates the opportunity to participate in this rulemaking and offers these comments for consideration by the Board.

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IERG has been working with Illinois EPA on this Proposed Rule since 2005. From the beginning, our members expressed concern about many aspects of the Proposed Rule. The forerunner of this Proposed Rule was part of R07-18, until the Board split the docket to deal solely with the NOx SIP Call Phase II units in R07-18 and non-Phase II units in this proceeding. We appreciate the Board's approach in that regard, which allowed the parties (including some of our members) to expeditiously deal with the SIP Call units in R07-18.

The splitting of the docket also allowed the parties to take the time to address remaining issues with this Proposed Rule. As I will outline in my testimony, IERG's most significant concerns with the Proposed Rule have ultimately been addressed by Illinois EPA, primarily by providing multiple options for compliance. As regulators impose more and more emission control requirements, each targeted source must be able to evaluate and implement a compliance strategy that is technically and economically practical for that particular source. With this in mind, IERG has advocated a reasonable and multi-faceted regulatory strategy, which also provides the emissions control results sought by Illinois EPA.

Subpart Q Concerns and Solutions

As mentioned previously, IERG has worked with Illinois EPA to address several issues with the Proposed Rule. These issues center primarily on the coverage or scope of the Proposed Rule, and its substantive requirements. In addition, IERG has worked with Illinois EPA to clarify an issue that would affect permitting of future projects.

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Scope

One example of IERG's concerns with the Proposed Rule's coverage is that the original applicability provisions would have imposed the Proposed Rule's requirements on an unknown universe of engines and turbines, as the rating levels at proposed Section 217.386(a) are lower than those for permit exemptions at 35 Ill. Admin. Code 201.146(i). Illinois EPA's latest version (December 2007) of the Proposed Rule lessens this concern by adding an applicability criterion that the Proposed Rule will only apply to major sources of NOx. Presumably, engines and turbines that the Proposed Rule would cover are already referenced in Title V permits, either as significant emission units or insignificant activities. This provides more certainty to the reach of this rulemaking.

We are also pleased to see that in the December 2007 version of the Proposed Rule, Illinois EPA has focused the rule's applicability in the ozone and PM_{2.5} nonattainment areas. IERG has long advocated this approach and it is supported by NOx emissions modeling, as discussed in Illinois EPA's December 2007 submittal.

We would point out that Attachment A to Illinois EPA's December 2007 submittal purports to list engines and turbines in the nonattainment areas "that have the potential to be affected by the proposed regulation." See Amended Technical Support Document for R07-19, at page 38. IERG has nonattainment area members with units that will be affected by this Proposed Rule, yet these units are not listed in Attachment A. Therefore, while IERG believes, for the most part, that the current approach in the Proposed Rule language for coverage of Subpart Q is acceptable, IERG does not believe that the Amended Technical Support Document provides correct information regarding the applicability of the Proposed Rule.

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Compliance

Another issue for our members has been the emission concentration limits proposed by Illinois EPA in this rulemaking. We have questioned whether these limits are appropriate from a reasonable control perspective, both in terms of feasibility and economics. Over the course of our discussions regarding this rulemaking, Illinois EPA has incorporated certain compliance options into the Proposed Rule that will help our members who would find it difficult to comply with the proposed emission concentration limits on a unit-by-unit basis.

One compliance option is the low use concept at proposed Section 217.388(c). Under that provision, sources can limit the annual NO_x emissions or annual operating hours of engines or turbines that would otherwise have to comply with the Proposed Rule's emission limits. This provision will be particularly useful to our industrial members who employ engine-driven electric generators. Because such units typically operate only on an as-needed basis, our members believe that retrofitting these types of units with controls is not practical or cost effective.

Another useful addition to the Proposed Rule is that of averaging plans at Section 217.390. This compliance option allows sources to decide which emission units are the most effective to control, thus allowing over-compliant units to offset emissions from units that are not effective to control. We are particularly pleased to see, in the December 2007 version of the Proposed Rule, that averaging plans will be able to span across different Subparts of Part 217 (see proposed Section 217.388(b)(2)). This will be helpful to our members that may not be able to utilize averaging among Subpart Q units alone, but could achieve compliance for Subpart Q units by averaging with emission units affected by other Part 217 provisions.

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One other important component to the Proposed Rule is the ability to utilize NOx allowances to compensate for infrequent circumstances of noncompliance (see proposed Section 217.392(c)). Sources may utilize this provision for complying with emission concentration limits, averaging plan requirements and/or low usage designations. This aspect of the Proposed Rule provides a critical complement to the compliance options in the Proposed Rule, particularly given the stringency of the limits in the Proposed Rule. IERG supports the ability for regulated sources to utilize the emissions marketplace when compliance difficulties arise. Such an approach is beneficial to the environment as well, as NOx emission allowances, in an amount equivalent to the compliance excursion, would be retired from the allowance pool.

Permitting

Units that are affected by this Proposed Rule would have a compliance date of May 1, 2010 (see proposed Section 217.392(b)). As discussed previously, sources will have until that time to implement one of the Proposed Rule's three compliance options for each affected unit. In the meantime, sources may have already implemented or may be implementing emission reductions at units that would be affected by the Proposed Rule. Reasons for such reductions may involve a larger decision across the source to target reductions in one area in order to offset additional NOx emissions that may be planned in another area, which is often referred to as "netting." Similarly, sources may decide to reduce their own emissions in order to sell emission reduction credits as "offsets" so that another source may add NOx emissions.

In both the netting and offset scenarios, construction permitting is typically involved in order to recognize the creditable emissions decreases and their use for the corresponding

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emissions increases. IERG is concerned that such permitting could be occurring, or has occurred in the past, that would rely upon NOx emissions reductions at units that would now be subject to the Proposed Rule.

As an example, consider a diesel engine that previously did not emit NOx at or below 660 ppm. The source decides to control the NOx emissions from the engine in order to utilize the NOx emission reductions to net against emissions increases at another emission unit. Then, when the Proposed Rule's compliance date arrives, and the controlled engine is complying with the 660 ppm NOx emission limit, there could be some question as to whether the reduction was creditable for purposes of the prior permitting, due to the requirements and purposes of the Proposed Rule (see, e.g., 35 Ill. Admin. Code 203.208(c)(4)). In order to prevent such a possible conflict, IERG proposes the addition of the following provision as a new subsection (e) in the Applicability provisions of Section 217.386:

Where a construction permit, for which the application was submitted to the Agency prior to the adoption of this Subpart, is issued that relies on decreases in emissions of NOx from existing emission units for purposes of netting or emission offsets, such NOx decreases shall remain creditable notwithstanding any requirements that may apply to the existing emissions units pursuant to this Subpart.

Illinois EPA has informed us that they concur with this addition to the Proposed Rule, in order to provide certainty in past, current and future permitting decisions.

Conclusion

IERG has members that own and operate engines and turbines that will be affected by this rulemaking in different ways. Some members' affected units operate relatively sporadically, such that the low usage compliance option will be the preferred approach. Some members' units operate as integral parts of the industrial process and cannot be limited by the low usage option, but will either have to comply with the emission concentration

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limits or utilize an averaging plan. Due to the diversity of covered units and operating needs for those units, the Proposed Rule must provide flexibility in compliance alternatives. We believe that the Proposed Rule, as currently situated, provides such flexibility, including the ability to utilize NOx allowances. These components of the Proposed Rule are vitally important, as is the current approach as to applicability for major sources of NOx emissions in the ozone and PM_{2.5} nonattainment areas.

I appreciate the opportunity to share IERG's comments on this Proposed Rule. I would be happy to answer questions regarding my testimony.

* * *

IERG reserves the right to supplement this pre-filed testimony.

Respectfully submitted,

By: /s/ N. LaDonna Driver
N. LaDonna Driver

Dated: March 26, 2008

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IERG:001/Fil/Subpart Q – Hirner Testimony