

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
SECTION 27 PROPOSED RULES FOR	)	R07-19
NITROGEN OXIDE (NO <sub>x</sub> ) 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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA ELECTRONIC MAIL)</b>

**(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 **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

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

Dated: June 9, 2008

N. LaDonna Driver  
HODGE DWYER ZEMAN  
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**CERTIFICATE OF SERVICE**

I, N. LaDonna Driver, the undersigned, hereby certify that I have served the attached **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY**

**GROUP** 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 June 9, 2008; and upon:

Mr. Tim Fox  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
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via electronic mail on June 9, 2008.

/s/ N. LaDonna Driver  
N. LaDonna Driver

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**COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by one of its attorneys, N. LaDonna Driver of HODGE DWYER ZEMAN, and submits the following post-hearing comments in the above-referenced matter:

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of 56 member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. Following submission of Pre-Filed Testimony of Deirdre K. Hirner, the Executive Director of IERG, Ms. Hirner testified at the April 9, 2008 Hearing in this rulemaking. IERG submits these comments following the hearings on April 9, 2008 and May 7, 2008.

As discussed in Ms. Hirner’s pre-filed testimony, IERG has been working extensively with Illinois Environmental Protection Agency (“Illinois EPA”) on this Proposed Rule. IERG’s most significant concerns with the Proposed Rule have ultimately been addressed, primarily by adjusting applicability and providing multiple options for compliance, as discussed further below. IERG has not objected to the emission concentration limits in the Proposed Rule, nor the conclusions Illinois EPA drew as to feasible control technologies and costs thereof. IERG’s position in this regard

is based solely on the Proposed Rule's compliance options that provide alternatives to compliance with the proposed emission concentration limits.

Compliance Requirements

One compliance option is the low use concept at proposed Section 217.388(c). Under that provision, sources can limit the annual NOx 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 members who employ units that typically operate only on an as-needed basis, such that retrofitting these types of units with controls is not practical or cost effective. *See Pre-Filed Testimony of Deirdre K. Hirner at p. 4.*

Another key compliance alternative in 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. Further, the Proposed Rule allows averaging with emission units affected by other Part 217 provisions. *See Pre-Filed Testimony of Deirdre K. Hirner at p. 4.*

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)) with emission concentration limits, averaging plan requirements and/or low usage designations. This aspect of the Proposed Rule is particularly useful given the stringency of the limits in the Proposed Rule. Such an approach is beneficial to the environment as well, as NOx emission allowances, in an amount equivalent to the

compliance excursion, would be deducted from the allowance pool. *See Pre-Filed Testimony of Deirdre K. Hirner at p. 5.*

There was some discussion at the first hearing regarding the use of NOx allowances in this context, specifically as to local controls versus regional reductions. *See Transcript of April 9, 2008 Hearing at pp. 52-54.* Note that the Proposed Rule does not rely on NOx allowances for required reductions. In other words, purchasing or holding NOx allowances is not a compliance option under Subpart Q, as affected sources must either meet emission limits on a unit basis, average units together to meet collective emission limits, or accept a low usage emission or operating hour cap. Rather, Proposed Section 217.293(c) simply provides a mechanism to compensate for infrequent difficulties with the Proposed Rule's emission or operating hour limits.

In addition, even where sources participate in NOx trading as a primary compliance tool, USEPA has stated that such an approach may satisfy NOx RACT requirements. *See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard; Final Rule, 70 Fed. Reg. 71656-71658 (November 29, 2005).* *See also Phase 2 of the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Notice of Reconsideration, 72 Fed. Reg. 31730-31737 (June 8, 2007),* wherein USEPA stated that the term “reasonable” in “RACT” “may be construed to allow consideration of the air quality impact of required emissions reductions from region-wide cap-and-trade programs such as the CAIR NOx trading program.” *72 Fed. Reg at 31730.* Thus, merely utilizing NOx allowances, even regionally, as compensation for infrequent exceedances of the Proposed Rule's control requirements, should not run afoul of the RACT concept.

Applicability

As discussed in Ms. Hirner's pre-filed testimony, one of IERG's early concerns with the Proposed Rule's coverage was 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). *See Pre-Filed Testimony of Deirdre K. Hirner at p. 3.* 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 NO<sub>x</sub> in the ozone and PM<sub>2.5</sub> nonattainment areas. IERG has long advocated this approach and it is supported by NO<sub>x</sub> emissions modeling, as discussed in Illinois EPA's December 2007 submittal. *See Pre-Filed Testimony of Deirdre K. Hirner at p. 3.*

One issue that was discussed in Ms. Hirner's pre-filed testimony, and at the April 9, 2008 hearing, is that of the units that Illinois EPA has identified as potentially affected by the Proposed Rule. *See Attachment A to Illinois EPA's December 2007 submittal, Amended Technical Support Document for R07-19, at page 38.* Ms. Hirner pointed out that IERG has nonattainment area members with units that will be affected by this Proposed Rule, yet these units are not listed in Attachment A. *See Pre-Filed Testimony of Deirdre K. Hirner at p. 3 and Transcript of April 9, 2008 Hearing, at pp. 56 and 57.* Therefore, IERG does not believe that the Amended Technical Support Document provides correct information regarding the applicability of the Proposed Rule. *Id.*

During the April 9, 2008 hearing, the Board requested that IERG provide some information regarding the member units that were not included in the Illinois EPA's

Technical Support Document. *See Transcript of April 9, 2008 Hearing at pp. 57 and 58.*

Over the last few weeks, IERG has been conferring with its members who have major sources of NO<sub>x</sub> in the nonattainment areas. For those sources, IERG and its members have been identifying engines and turbines in current Title V permits and construction permits that would appear to meet the Proposed Rule's applicability provisions. Exhibit 1 to these comments provides a preliminary listing of IERG members who have major sources of NO<sub>x</sub> in the nonattainment areas, with engines and turbines that seem to be potentially subject to the Proposed Rule. Only the shaded entries in Exhibit 1 are those that were identified by Illinois EPA as member units potentially subject to the Proposed Rule. The vast majority of the units in Exhibit 1 were not identified by Illinois EPA as potentially subject to the Proposed Rule.

Note that units identified in member permits as certain types of insignificant activities are not included in Exhibit 1. For example, emergency/standby units that qualify as insignificant activities under 35 Ill. Admin. Code 201.210(a)(16) would qualify for the emergency/standby exemption from the Proposed Rule at Section 217.386(b)(1). In addition, units with capacity less than 150 hp, which are insignificant activities under 35 Ill. Admin. Code 201.210(a)(15), would not meet the capacity thresholds for applicability under Proposed Rule Section 217.386(a). Therefore, both of these types of insignificant activities, as well as emergency/standby units with capacities greater than the limits in Section 201.210(a)(16), are not included in Exhibit 1 as units potentially subject to the Proposed Rule.

Where units identified in Exhibit 1 currently have federally enforceable limits, those limits were included in the unit descriptions. In appropriate circumstances,

federally enforceable limits may be used by members to take advantage of the low usage designation, discussed previously. IERG is not representing, by including these limits, any determination by its members as to which compliance option will be chosen. Rather, limit information is included to demonstrate that in many cases, units that were not identified by Illinois EPA as potentially applicable to the Proposed Rule currently do not qualify for low usage.

For those units that do not have federally enforceable limits, permitting resources would be involved in securing such limits if a low usage compliance option is selected for those units. If low usage is not chosen for those units, the members would have to ensure that the units comply with the Proposed Rule's emission limitations, which may involve retrofit technology. Moreover, there are several units not identified by Illinois EPA as potentially subject units, which have federally enforceable limits exceeding the low usage caps. In such cases, permitting resources would be incurred to reduce those limits to take advantage of a low usage designation, or the source would have to ensure that the units comply with the Proposed Rule's emission limits, which may involve retrofit technology.

Units that may take advantage of the low usage option, while not being subject to testing and monitoring requirements under the Proposed Rule, will have permitting obligations, inspection and maintenance, and recordkeeping and reporting requirements. Further, a restriction on operating ability that is inherent in a federally enforceable limit, is, by itself, an impact from the Proposed Rule. Therefore, these units clearly are impacted by the Proposed Rule and should be included in any analysis of the Proposed Rule's ramifications to the regulated community.

In addition, it is the regulated source that will determine whether a particular unit should be classified as a low usage unit. There may be concerns as to operating capacity that will prevent a unit from being designated as low usage, even if its historical emissions have been relatively low. For such units, the source will be obligated to take steps, perhaps with control technology, to make these units compliant with the Proposed Rule's emission limit requirements. Therefore, such units should also be addressed in any discussion of the impacts of the Proposed Rule.

Permitting

In Ms. Hirner's pre-filed testimony, IERG proposed the addition of a new subsection (e) to 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.

*See Pre-Filed Testimony of Deirdre K. Hirner at pp. 5 and 6.*

This provision was also included in the Illinois EPA's errata sheet, submitted as Exhibit 2 at the May 7, 2008 Hearing. Including this provision in the Proposed Rule would preserve NOx emission reductions in qualifying netting or offset situations, notwithstanding any reductions that would be required by the Proposed Rule, which would provide certainty in past, current and future permitting decisions. *See Pre-Filed Testimony of Deirdre K. Hirner at pp. 5 and 6.* IERG urges the Board to include this proposed provision at First Notice.

Conclusion

IERG has members that own and operate engines and turbines that will be affected by this rulemaking in different ways. IERG maintains that the supporting documents for the Proposed Rule are incomplete in identifying the units that would potentially be impacted by the Proposed Rule. Therefore, IERG questions whether the supporting documents for this rulemaking accurately reflect the economic reasonableness/technical feasibility of the Proposed Rule. However, IERG believes that the Proposed Rule, as currently situated, provides the necessary flexibility of compliance options, including the ability to utilize NOx allowances, for the diversity of covered units and operating needs for those units. These components of the Proposed Rule are vitally important, as is the current approach for applicability to major sources of NOx emissions in the ozone and PM<sub>2.5</sub> nonattainment areas.

IERG appreciates this opportunity to provide comments on this Proposed Rule.

Respectfully submitted,

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

Dated: June 9, 2008

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**EXHIBIT 1**

**IERG Member Companies - Major Sources of NOx  
in Non-Attainment Areas with  
Engines or Turbines that are not Insignificant Activities  
PRELIMINARY LISTING**

Note: Shaded items were identified by IEPA in the rulemaking documents.

<b>Permittee</b>	<b>Permit No.</b>	<b>Facility No.</b>	<b>Location</b>	<b>Description</b>
Abbott Laboratories	96010010	097809AAD	Abbott Park	<p>Natural gas fired engine-driven chiller (1) Unit C14 – Annual emissions not to exceed 12.19 ton/yr</p> <p>Diesel generators (1) – The total emissions from the Diesel Generator AP14C shall not exceed 1.6 tpy;</p> <p>Diesel generators (3) – The total emissions from Diesel Generators AP-5, AP-7, and K-14 shall not exceed 31.50 tpy</p> <p>Mobile generators (2) – The total emissions from the emergency generators shall not exceed 31.50 tpy</p> <p>Diesel fired emergency generator for AP14C (1) – Total NOx emissions not to exceed 31.9 ton/yr</p>
Abbott Laboratories	96010011	097125AAA	North Chicago	<p>Turbine – no limit</p> <p>Mobile generators (2) – The total emissions from the emergency generators shall not exceed 31.50 tpy</p>
Ameren Energy Generating Company	03080009	031438ABC	Elgin	<p>Turbines (4) – The total annual emissions from the four affected turbines shall not exceed 235.5 tpy-total</p>
Union Electric (AmerenUE)	95090017	119105AAA	Venice	<p>Turbine (1) – The annual emissions from the turbine shall not exceed 39.00 tpy</p> <p>Turbine (1) – There are no specific emission limitations for this unit</p>

Permittee	Permit No.	Facility No.	Location	Description
Caterpillar, Inc.	95120094	093807AAB	Aurora	Turbines (2) – The total annual emissions from the 2 turbines (and duct burners not subject to Subpart Q) shall not exceed 139.85 tpy  Emergency generator (1) – The total annual emissions from the emergency generator shall not exceed 25.75 tpy
Midwest Generation, LLC (formerly Commonwealth Edison)	95090256	043805AAM	Eola	Turbines (12) – There are no specific emission limitations for these units.
Midwest Generation, LLC (formerly Commonwealth Edison)	95090077	031600AMJ	Chicago	Turbines (11) – There are no specific emission limitations for these units.
Corn Products International, Inc.	96010009	031012ABI	Bedford Park	Turbines (2) – The total emissions shall not exceed 24.8 tpy
Dynegy Midwest Generation, Inc.	95090016	119813AAC	Stallings	Turbines (4 – each with diesel startup engine) – There are no specific emission limitations for these units.
Dynegy – Rocky Road Power	00050067	089425AAC	East Dundee	Turbines (4) – Annual emissions from all turbines shall not exceed 245.00 tpy.
Elwood Energy LLC (Dominion)  <b>IEPA listed this site, but only listed 3 units.</b>	99120064	197808AAG	Elwood	Turbines (9)  – The total annual emissions from turbines #1 - #4 shall not exceed 72.73 tpy  – The total annual emissions from turbines #5 and #6 shall not exceed 217.56 tpy  – The total annual emissions from turbines #7 - #9 shall not exceed 326.34 tpy
(Exxon) Mobil Oil Corporation – Joliet Refinery	95120304	197800AAA	Joliet	1 turbine – Annual emissions from the co-generation unit shall not exceed 248.3 tpy
Midwest Generation, LLC	95090047	097190AAC	Waukegan	Turbines (4) – The emissions from each turbine shall be no more than 50 tons per ozone season.

**Electronic Filing - Received, Clerk's Office, June 9, 2008**

\* \* \* \* \* **PC #3** \* \* \* \* \*

Permittee	Permit No.	Facility No.	Location	Description
Midwest Generation, LLC	95090076	031600AIN	S. Pulaski Rd. – Chicago	Engines (12) – No limits  Turbines (12) – No limits
Midwest Generation, LLP	95090081	031600AMI	Cermak Road – Chicago	Turbines (8) – The emissions from each turbine shall be no more than 50 tons per ozone season.
Midwest Generation, LLP	95090046	197809AAO	Joliet	Engines (5) – No limits
Morris Cogeneration, LLC	99110011	063800AAJ	Morris	Turbines (3) – No limits
NICOR Gas	95120046	043065ADJ	Naperville	Engines (4) – The total annual emissions from the affected engines shall not exceed 169.5 tpy
NICOR Gas	95120042	031015ACL	Bellwood	Engines (2) – No limits
Settler's Hill RDF/Midway Landfill (Waste Management)	95090054	089808AAA	Batavia	Turbines (2) – Emissions from turbine 1 shall not exceed 174.3 tpy; emissions from turbine 2R shall not exceed 30.7 tpy.*
U.S. Steel Corporation	96030056	119813AAI	Granite City	Emergency Generator – Emissions from the emergency generator shall not exceed 19.9 tpy  Engines (2) – No limits
Waste Management, Inc.	95090055	031812AAQ	Northbrook	Turbines (3) – Emissions from each of the affected turbines shall not exceed 29.8 (total 89.4 tpy)*
Waste Management of Illinois, Inc.	95090088	163050AAD	E. St. Louis	Engines (3) – Emissions from each of the affected engines shall not exceed 34.0 tpy (total 102.00 tpy)*
Waste Management of Illinois, Inc. – CID Landfill	95090244	031600FHJ	Calumet City	Turbines (3) – Emissions from the turbines shall not exceed 249.5 ton/yr, total.*
Waste Management of Illinois, Inc.	95090111	043803AAI	Naperville	Turbines (3) – Emissions from turbines 1 and 2 shall not exceed 61.4 tpy; emissions from turbine 3 shall not exceed 30.7 tpy.*
Woodland Recycling and Disposal Facility (Waste Management)	95090109	089813AAJ	Elgin	Engines (2) – Emissions from each affected engine shall not exceed 35.9 tpy*

\*These units will likely qualify for the landfill gas control exemption at proposed section 217.386(b)(3).  
IERG:001/Misc/NOx Emission Limitations – IERG Member Companies5