

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 and MOTION TO FILE FIRST NOTICE COMMENTS INSTANTER**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

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

Dated: February 6, 2009

N. LaDonna Driver  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

Alec M. Davis  
General Counsel  
Illinois Environmental Regulatory Group  
215 East Adams Street  
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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 and MOTION TO FILE FIRST NOTICE COMMENTS INSTANTER**

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 February 6, 2009; 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.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Renee Cipriano, Esq.  
Kathleen C. Bassi, Esq.  
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Schiff Hardin, LLP  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6473

via electronic mail on February 6, 2009.

/s/ N. LaDonna Driver  
N. LaDonna Driver

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| ADM. CODE PARTS 211 AND 217                 | ) |                    |

**MOTION TO FILE FIRST NOTICE COMMENTS INSTANTER**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by one of its attorneys, N. LaDonna Driver of HODGE DWYER ZEMAN, and Alec M. Davis of IERG, and pursuant to 35 Ill. Admin. Code § 101.522, hereby moves the Illinois Pollution Control Board (“Board”) or the Hearing Officer to grant this Motion to File First Notice Comments Instanter. In support of the Motion, IERG states as follows:

1. Hearings in this proceeding occurred on April 9, 2008, and May 7, 2008. IERG submitted post-hearing comments on June 9, 2008. On September 16, 2008, the Board adopted the proposed rule for First Notice.
2. Public comments were due 45 days from the date of publication for the First Notice. First Notice was published in the Illinois Register on October 31, 2008 (32 Ill. Reg. 17035). Comments in this proceeding were due on Monday, December 15, 2008.
3. On December 12, 2008, IERG and IMEA filed a motion for extension of time for the comment period until January 31, 2009, to which counsel for the Illinois EPA and the Pipeline Consortium reviewed and consented. The purpose of this extension

was to allow the parties time to agree upon proposed changes to the language of the proposed rule and file a joint comment.

4. On January 23, 2009, the Hearing Officer granted the extension of time until February 2, 2009.

5. On February 2, 2009, the Hearing Officer was notified that the parties needed a short period of time to conclude discussions for their joint comment. Illinois EPA filed comments on February 5, 2009, that included language agreed to by all parties, except for the replacement unit language for averaging plans at Section 217.390(a)(2)(A).

6. IERG opposes Illinois EPA's requirement that replacement units that have lower emissions must have the same purpose as the unit being replaced.

7. IERG's comments address this issue and provide language that we urge the Board to include at Second Notice.

WHEREFORE, IERG requests that the Board or the Hearing Officer grant this Motion to File First Notice Comments Instanter and accept these comments as timely filed.

Respectfully submitted,

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

Dated: February 6, 2009

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IERG:001/R Dockets/Fil/R07-19/Motion to File Instanter

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ADM. CODE PARTS 211 AND 217 )

**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 Alec M. Davis of IERG, and submits the following comments in the above-referenced matter:

**I. INTRODUCTION**

IERG is a not-for-profit Illinois corporation, affiliated with the Illinois Chamber of Commerce, and was organized to promote and advance the interests of its members before governmental agencies, such as the Illinois Environmental Protection Agency (“Illinois EPA”), and before the Illinois Pollution Control Board (“Board”). IERG’s members include companies engaged in industry, commerce, manufacturing, agriculture, trade, transportation, or other related activities, and which persons, entities, or businesses 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 submitted post-hearing comments on June 9, 2008, following the hearings on April 9, 2008 and May 7, 2008.

On September 16, 2008, the Board adopted the proposed rule for First Notice, which was published in the Illinois Register on October 31, 2008. Comments on First Notice were originally due on December 15, 2008. The parties were discussing several changes to the proposed rule that could be included in a joint comment. Therefore, the parties obtained an extension of time to file First Notice comments until February 2, 2009.

In trying to resolve a few remaining issues, the Hearing Officer was notified that comments would be arriving on or before February 6, 2009. On February 5, 2009, Illinois EPA filed comments that included the parties' agreement on proposed language revisions, except for Section 217.390(a)(2)(A). This provision excludes units from averaging if they commence operation after January 1 2002, unless the units are replacement units. Section 217.390(a)(2)(A) defines the units qualifying as replacement units that can participate in averaging plans. IERG and Illinois EPA do not agree on the terms of this provision, as explained more fully below.

## **II. COMMENTS**

IERG requests that the following language be used as the second sentence in Section 217.390(a)(2)(A):

The new unit or units must be used for the same purpose having substantially equivalent or less process capacity, or the new unit or units must be permitted for less NOx emissions on an annual basis than the actual NOx emissions of the unit or units that are replaced.

IERG requests this change in order for the averaging plan to promote, rather than hinder, environmental benefit and energy efficiency. Illinois EPA's provision states that new units cannot participate in averaging unless they are used for the same purpose as the

units they are replacing and either they have substantially the same or less process capacity or less NOx emissions than the replaced units. In the case of the emissions qualifier, the replacement units must still have the same purpose as the replaced units, under Illinois EPA's language. IERG believes this is a flawed concept, as set forth below.

First, Illinois EPA's language as to "same purpose" is dangerously vague. By way of example, assume a facility has Unit A that provides power to an existing Process A, and the facility uses Unit A in an averaging plan with other units at the facility. The facility considers installing Unit B in Process B that can provide power to Process A and Process B, placing Unit A in standby mode. This approach is beneficial as it would bring a more efficient power source to greater portions of the facility. This is a critical concern as facilities are striving to find creative solutions to meet their operational needs while maximizing energy efficiency and minimizing environmental concerns of the present and the future (e.g., greenhouse gases). Further in that regard, the new unit would likely be subject to a myriad of programs such as New Source Performance Standards and possibly New Source Review, thus decreasing overall emissions.

However, under Illinois EPA's "same purpose" language, the new Unit B may not be allowed to participate in averaging to replace Unit A, because Unit B not only provides power to Process A (as Unit A did) but also provides power to Process B. IERG believes that Illinois EPA would therefore conclude that Unit B does not have the "same purpose" as Unit A. This would prohibit Unit B from replacing Unit A in an averaging plan. Thus, a more energy efficient and environmentally beneficent scenario is penalized and may be rejected by the facility because of Illinois EPA's language.

Second, Illinois EPA states that it does not agree with this revision suggested by IERG due to concerns with debottlenecking of downstream units. However, debottlenecking is a New Source Review concept, which ensures that emissions from debottlenecked units are accounted for during permitting. IERG would like to point out that this is supposed to be a regulation for Reasonably Available Control Technology, which does not include a debottlenecking concept. Putting that issue aside, the language supported by the parties already requires that permitting for the new units will occur, i.e., “the new unit or units must be permitted for less NOx emissions on an annual basis than the actual NOx emissions of the unit or units that are replaced.” Within that permitting process, any emissions resulting from debottlenecking will be addressed. Therefore, Illinois EPA’s concern in this regard is misplaced.

As a further illustration of the Illinois EPA’s misplaced emphasis on the use of Subpart Q to address the debottlenecking issue, if in the example presented previously Unit A is not participating in an averaging plan and is replaced by a new Unit B that fulfills the power requirements for Process A and Process B, the debottlenecking concerns expressed by the Illinois EPA do not go away simply because there are no averaging plan considerations. Instead, as stated by IERG previously, these concerns are properly addressed by the permitting program through the application of rules and regulations designed for that purpose.

As more and more regulatory requirements arise, facilities are under increasing pressure to find ways to take advantage of technology to promote overall efficiency, while considering emission effects. Emissions averaging is a crucial tool to meet those needs. IERG urges the Board not to encourage facilities to reject efficient and

environmentally advantageous projects, simply because of Illinois EPA's preferred "same purpose" restriction in this rule. Instead, IERG requests that the Board include IERG's suggested language as the second sentence in Section 217.390(a)(2)(A).

**III. CONCLUSION**

IERG appreciates the opportunity to participate in this proceeding, and respectfully requests that the Board take these additional comments into consideration.

Respectfully submitted,

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

Dated: February 6, 2009

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