

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
EMERGENCY RULEMAKING)	R 11-__
NITROGEN OXIDES EMISSIONS:)	(Rulemaking - Air)
AMENDMENTS TO 35 ILL.)	
ADM. CODE PART 217)	

NOTICE OF FILING

TO: Mr. John T. Therriault	Timothy Fox, Esq.
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street	100 W. Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601

(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 **MOTION FOR EMERGENCY RULE, AFFIDAVIT OF ROBERT A. MESSINA, ENTRY OF APPEARANCE OF ALEC M. DAVIS, ENTRY OF APPEARANCE OF KATHERINE D. HODGE, and ENTRY OF APPEARANCE OF MONICA T. RIOS**, copies of which are herewith served upon you.

Respectfully submitted,

By: /s/ Alec M. Davis
Alec M. Davis

Dated: April 21, 2011

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CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached **MOTION FOR EMERGENCY RULE, AFFIDAVIT OF ROBERT A. MESSINA, ENTRY OF APPEARANCE OF ALEC M. DAVIS, ENTRY OF APPEARANCE OF KATHERINE D. HODGE, and ENTRY OF APPEARANCE OF MONICA T. RIOS** upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on April 21, 2011.

/s/ Alec M. Davis
Alec M. Davis

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
EMERGENCY RULEMAKING)
NITROGEN OXIDES EMISSIONS:) R11-_____
AMENDMENTS TO 35 ILL.) (Rulemaking – Air)
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MOTION FOR EMERGENCY RULE

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and hereby requests the Illinois Pollution Control Board (“Board”) amend 35 Ill. Admin. Code Part 217, as detailed herein, pursuant to the Board’s authority to adopt emergency regulations as provided in Section 27(c) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/27(c), Section 5-45 of the Illinois Administrative Procedure Act (“IAPA”), 5 ILCS 100/5-45, and 35 Ill. Admin. Code § 102.612. In support of this Motion, IERG states as follows:

I. INTRODUCTION

1. On September 25, 2009, the *Illinois Register* published the Board’s amendments to 35 Ill. Admin. Code Part 217, including Subparts D, E, F, G, H, I, and M, to impose limitations on emissions of nitrogen oxides (“NO_x”) on various categories of major stationary sources of NO_x, located in the Chicago and Metro-East geographic areas designated as nonattainment for the 1997 8-hour ozone and 1997 24-hour fine-particulate (“PM_{2.5}”) National Ambient Air Quality Standards (“NAAQS”). 33 Ill. Reg. 13345 (Sep. 25, 2009) (hereafter referred to as the “Illinois NO_x RACT Rules”).

2. In the Board rulemaking proceeding to adopt the Illinois NO_x RACT Rules, four rationales supporting the need for the rules were recognized by the Board: 1) the Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*, requirement, under Section 182 (c) and (f), for NO_x Reasonably Available Control Technology (“RACT”) requirements for major sources located in areas designated as nonattainment under the 1997 8-hour ozone NAAQS; 2) the CAA requirement, under Section 172(c)(1), for Reasonably Available Control Measures (“RACM”), including RACT, for areas designated as nonattainment under the 1997 PM_{2.5} NAAQS; 3) future RACT requirements for areas designated nonattainment under the 2006 PM_{2.5} NAAQS; and 4) future RACT requirements for areas designated nonattainment under the 2008 ozone NAAQS. Opinion and Order of the Board, *In the Matter of: Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217*, R08-19, at 6-7 (Ill. Pol.Control.Bd. Aug. 20, 2009) (“Board Order”) (rulemaking hereafter referred to as “NO_x RACT Rulemaking”).

3. As discussed in greater detail below, the rationale relied upon by the Board in adopting the Illinois NO_x RACT Rules is no longer applicable in light of air quality improvements, the U.S. EPA’s issuance of a waiver from the CAA requirement to have NO_x RACT rules in place for the 1997 8-hour ozone nonattainment areas, and the delay in issuing a final revised ozone NAAQS. As a result, there is neither a programmatic purpose nor regulatory need, *at this time*, for Illinois to have NO_x RACT rules in place.

4. Further, as discussed below, any future NO_x RACT requirements that may be applicable to Illinois pursuant to final revised ozone NAAQS may not be satisfied by

the current Illinois NO_x RACT Rules due to the fact that approval of such rules in the future will depend upon technological capabilities available at that point in the future as well as federal criteria that are subject to change. Such uncertainty, coupled with the potential impact that will come from U.S. EPA's recently announced emission rules for various large and small boilers, means that any changes to units subject to Illinois' NO_x RACT Rules, and the costs incurred to make such changes, may be in waste if additional changes are necessitated by future RACT requirements or the U.S. EPA's boiler rules. *See* 76 Fed. Reg. 15554 and 15608 (Mar. 21, 2011).

5. As discussed in more detail below, Illinois industry, including a number of IERG member companies, will be affected by the fact that compliance with the Illinois NO_x RACT Rules requires an outlay of capital and commencement of projects well in advance of the compliance date. Requiring immediate compliance does not further the aims under which the rules were promulgated, may not be sufficient to meet the future NO_x RACT requirements, and yet carries the threat of liability for non-compliance.

6. Therefore, the imposition of substantial economic costs to comply with rules for which the justification no longer applies, in addition to the potential for liability currently faced by Illinois industry as a direct result of the compliance dates in the Illinois NO_x RACT Rules, amount to a threat to the public interest, justifying the Board's adoption of an Emergency Rule extending the compliance dates, identically to the amendments proposed by the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), as detailed in Attachment A. *See* Illinois Environmental Protection Agency Proposal of Regulations, *In the Matter of: Amendments to 35 Ill. Adm. Code Part*

217, *Nitrogen Oxides Emissions*, R11-24 (Ill. Pol.Control.Bd. Apr. 4, 2011) (rulemaking hereafter referred to as “NO_x Compliance Date Rulemaking”).

7. IERG has been in communication with the Illinois EPA regarding possible regulatory and administrative actions to alleviate the unnecessary costs imposed on Illinois industry by the Illinois NO_x RACT Rules. See Letter from Laurel L. Kroack to Robert A. Messina, dated January 12, 2011, attached hereto as Attachment B. IERG supports the Agency’s rulemaking proposal to extend the compliance date; however, as described in greater detail below, immediate action is necessary to alleviate the capital costs being accrued now and to ensure that the threat of liability for noncompliance is eliminated. Further, IERG acknowledges that while an extension of the compliance date will provide relief from the immediately pending compliance deadline, a number of issues remain regarding the uncertainty faced by the regulated community posed by future RACT requirements stemming from revised NAAQS.

II. BACKGROUND ON REGULATION OF NO_x EMISSIONS

8. As stated above, the Illinois NO_x RACT Rules were finalized through publication in the *Illinois Register* on September 25, 2009. 33 Ill. Reg. 13345 (Sep. 25, 2009). The rules were originally proposed to the Board by the Illinois EPA on May 9, 2008, and underwent multiple revisions during the rulemaking process and three Board hearings dedicated to the rules. Board Order at 2-5. IERG, as well as several individual IERG Members, were active participants in the rulemaking process. *Id.* In describing the rationale underlying the regulation of NO_x emissions, the Board relied upon the Illinois EPA’s Statement of Reasons, the Agency’s testimony at hearing, and responses to questions:

The Agency reports that, “[o]n July 18, 1997, USEPA revised the NAAQS [National Ambient Air Quality Standard] for ozone by replacing the 1-hour standard with an 8-hour standard.” Statement at 3¹, citing 62 Fed. Reg. 38856 (July 18, 1997). Illinois includes two areas designated as nonattainment for the 8-hour ozone standard. Statement at 3. The Chicago nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Goose Lake and Aux Sable Townships in Grundy County, and Oswego Township in Kendall County. *Id.* The Metro East nonattainment area includes Jersey, Madison, Monroe, and St. Clair Counties. *Id.* at 3, 5.

The Agency also reports that, “[o]n July 18, 1997, USEPA revised the NAAQS for particulate matter to add new standards for fine particles, using PM_{2.5} as the indicator, and established primary annual and 24-hour standards for PM_{2.5}.” Statement at 4, citing 62 Fed. Reg. 38652 (July 18, 1997). The Agency states that USEPA has recently strengthened the 24-hour standard. Statement at 4, citing 71 Fed. Reg. 61144 (Oct. 17, 2006). Illinois includes two areas designated nonattainment for the PM_{2.5} standard. Statement at 4. The Chicago nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Goose Lake and Aux Sable Townships in Grundy County, and Oswego Township in Kendall County. *Id.* at 4-5. The Metro East nonattainment area includes Madison, Monroe, and St. Clair Counties and Baldwin Township in Randolph County. *Id.* at 5, citing 40 C.F.R. § 81.314.

The Agency states that Section 110 of the Clean Air Act (CAA) and other related provisions require states to submit for USEPA approval State Implementation Plans (SIP) “that provide for the attainment and maintenance of standards established by USEPA through control programs directed to sources of the pollutants involved.” Statement at 2, citing 42 U.S.C. § 7410. The Agency further states that “[t]he CAA also provides for the State to address emissions sources on an area-specific basis through such requirements as reasonably available control measures (“RACM”) and reasonable available control technology (“RACT”).” Statement at 2, citing 42 U.S.C §§ 7502, 7511a. Specifically, the CAA requires Illinois for each nonattainment area “to demonstrate that it has adopted ‘all reasonably available control measures as expeditiously as possible (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonable available control technology) and shall provide for attainment of the national primary ambient air quality standards.’” Statement at 2, 5, citing 42 U.S.C. § 7502(c)(1).

¹ The Board’s references to “Statement” are to the Statement of Reasons, NO_x RACT Rulemaking, (Ill. Pol.Control.Bd. May 9, 2008).

The Agency characterizes RACT as “[a] subset of RACM.” Statement at 6, citing 44 Fed. Reg. 53762 (Sept. 17, 1979). The Agency defines RACT as “the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility.” Statement at 6, citing 44 Fed. Reg. 53762 (Sept. 17, 1979). The Agency states that “Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above.” Statement at 6-7, citing 42 U.S.C. § 7511a(b)(2). The Agency further states that Section 182(f) of the CAA requires each state in which all or part of a moderate nonattainment area is located to adopt RACT for major NO_x sources. Statement at 7, citing 42 U.S.C. § 7511a(f). The Agency notes that “Section 302 of the CAA defines ‘major stationary source’ as any stationary facility or source of air pollutants that directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant.” Statement at 7, citing 42 U.S.C. § 7602.

The Agency argues that these authorities “establish the requirements for Illinois to submit NO_x RACT regulations for all major stationary sources of NO_x in PM_{2.5} nonattainment areas and ozone nonattainment areas classified as moderate and above.” Statement at 7, citing 72 Fed. Reg. 20586 (Apr. 25, 2007); 70 Fed. Reg. 71612 (Nov. 29, 2005). The Agency further argues that, because Illinois includes nonattainment areas classified as moderate and above for the 8-hour ozone NAAQS, it was “required to submit by September 15, 2006, a SIP demonstrating that sources specified under the CAA were subject to RACT requirements.” Statement at 7-8, citing 70 Fed. Reg. 71612 (Nov. 29, 2005). The Agency claims that, “[o]n March 24, 2008, USEPA made a finding that Illinois, among other states, failed to make a RACT submittal required under Part D of Title I of the CAA for its two moderate nonattainment areas.” Statement at 8, citing 73 Fed. Reg. 15416 (Mar. 24, 2008). The Agency notes that “[s]uch finding starts the 18-month emission offset sanctions clock and 24-month highway funding sanctions clock under Section 179(a) and (b) of the CAA and the 24-month clock for the promulgation by USEPA of a Federal Implementation Plan under Section 110(c) of the CAA”. Statement at 8, citing 42 U.S.C. §§ 7509(a) and (b), 7410(c).

In testimony for the third hearing, Mr. Kaleel stated that USEPA on December 22, 2008, designated areas as nonattainment for the 24-hour PM_{2.5} standard. Kaleel Pre-filed Test. 2 at 3². He further stated that, in Illinois, USEPA has designated “the same areas designated previously as nonattainment for the annual PM_{2.5} standard.” *Id.* He added that “Illinois must develop an attainment plan and adopt control measures needed to

² The Board’s references to “Kaleel Pre-filed Test. 2” are to the Testimony of Robert Kaleel, NO_x RACT Rulemaking, (Ill. Pol.Control.Bd. January 20, 2009).

attain the 24-hour PM_{2.5} standard within three years of the effective date of U.S. EPA's decision, and Illinois must attain the standards within five years of the effective date." *Id.*

Mr. Kaleel also addressed the establishment of nonattainment areas for the 2008 8-hour ozone standard. He stated that the Agency's "initial proposal is for Illinois to recommend to USEPA to establish nonattainment boundaries for the 2008 standard that generally match the boundaries already established for the 1997 ozone standard." Kaleel Pre-filed Test. 2 at 3. He anticipated that USEPA will complete nonattainment designations in 2010, "initiating a new cycle of planning and regulatory development." *Id.* at 3-4. He expects that, because NO_x is a precursor to both ozone and PM_{2.5}, NO_x emission reductions will improve air quality. *Id.* at 4. He argues that "[t]he reductions provided by the subject NO_x RACT proposal will help to meet the new standards and should help to address any future requirements to implement RACT for the new standards." *Id.* Specifically, he claims that, "[u]nless USEPA issues new guidance regarding NO_x control technology, we expect that this RACT proposal will satisfy requirements to implement NO_x RACT under the revised NAAQS for the source categories and geographic areas to which this proposal applies." MG Answers at 1³.

Board Order at 6-7. The above rationale can be distilled to four separate bases for Illinois to adopt NO_x RACT rules:

- 1) The CAA requirement, under Section 182 (c) and (f), for NO_x RACT requirements for major sources located in areas designated as nonattainment under the 1997 8-hour ozone NAAQS;
- 2) The CAA requirement, under Section 172(c)(1), for RACT, including RACT, for areas designated as nonattainment under the 1997 PM_{2.5} NAAQS;
- 3) Future RACT requirements for areas designated nonattainment under the 2006 PM_{2.5} NAAQS; and

³ The Board's reference to "MG Answers" is to The Illinois Environmental Protection Agency's Answers to Midwest Generation's Questions for Agency Witnesses, NO_x RACT Rulemaking, (Ill. Pol.Control.Bd. September 30, 2008).

- 4) Future RACT requirements for areas designated nonattainment under the 2008 ozone NAAQS.

9. On February 22, 2011, the U.S. EPA granted Illinois EPA's request to exempt sources of NO_x in the Illinois portions of the Chicago-Gary-Lake County, Illinois-Indiana and St. Louis, Missouri-Illinois 8-hour ozone nonattainment areas from CAA requirements for NO_x RACT for purposes of attaining the 1997 8-hour ozone NAAQS. 76 Fed. Reg. 9655 (Feb. 22, 2011) (hereafter referred to as "NO_x RACT Waiver"). As described in the NO_x RACT Waiver, because Illinois has attained the 1997 8-hour ozone standard, as demonstrated by complete, quality assured air quality data, without the implementation of additional controls, it is clear that additional NO_x emission reductions required by Section 182(f) of the CAA were not necessary for attainment of the ozone standard. *Id.* As the Illinois NO_x RACT Rules were, in part, adopted to satisfy the CAA Section 182 NO_x RACT requirement for areas designated nonattainment for the 1997 8-hour ozone standard, the U.S. EPA's NO_x RACT Waiver of this requirement effectively nullifies that basis for the rules.

10. The requirement that nonattainment areas under the 1997 PM_{2.5} NAAQS implement RACM, including RACT under Section 172(c)(1) of the CAA does not provide a sound basis for retention of the Illinois NO_x RACT Rules. In the federal Implementation Rule accompanying the 1997 PM_{2.5} NAAQS, it is made clear that RACT/RACM is not required where those controls would not advance the attainment date by 1 year or more. 72 Fed. Reg. 20612-20613 (Apr. 25, 2007), also 40 C.F.R. §50.1010(b). This fact is of great significance to the nonattainment areas in Illinois, as both have measured attainment of the standard. *See Approval and Promulgation of Air*

Quality Implementation Plans; Illinois; Indiana; Chicago and Evansville Nonattainment Areas; Determination of Attainment of the Fine Particle Standards, 74 Fed. Reg. 62243 (Nov. 27, 2009); and *Approval and Promulgation of Air Quality Implementation Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the Fine Particle Standard*, 76 Fed. Reg. 12302 (Mar. 7, 2011). As implementation of the Illinois NO_x RACT Rules cannot possibly advance the attainment dates of areas that are already attaining, they are not required under the 1997 PM_{2.5} NAAQS. Similarly, the above-cited *Determinations of Attainment* explicitly suspend the SIP requirement for the Chicago nonattainment area, including the RACT/RACM requirement, and propose to do the same for the Metro-East area.

11. Another basis relied upon by the Board for adopting the Illinois NO_x RACT Rules is to satisfy future SIP requirements for areas designated as nonattainment under the 2006 PM_{2.5} NAAQS. At the time of Mr. Kaleel's testimony, as referenced by the Board, it did seem apparent that the geographic areas covered by the Illinois NO_x RACT Rules would be designated as nonattainment under that standard. See Final Rule, Air Quality Designations for the 2006 24-Hour Fine Particle (PM_{2.5}) NAAQS, available at http://www.epa.gov/pmdesignations/2006standards/documents/2008-12-22/FR_Final_24hr_PM2.5_Designations_010609.pdf (last visited Apr. 7, 2011). However, that pre-publication notice never became effective. Subsequent to Mr. Kaleel's testimony, U.S. EPA took action to finalize area designations under the 2006 PM_{2.5} NAAQS, resulting in no areas in Illinois being designated as nonattainment. 74 Fed. Reg. 58688 (Nov. 11, 2009). The fact that no areas are designated as nonattainment means that no SIP requirement to have NO_x RACT rules stems from the 2006 PM_{2.5} NAAQS.

12. The final basis for adopting the Illinois NO_x RACT Rules was a future NO_x RACT requirement for areas designated as nonattainment under the 2008 8-hour ozone NAAQS. As of the date of this filing, the U.S. EPA continues to reconsider the 2008 standard, having proposed a revised standard in January 2010, and is expected to finalize that reconsideration in the summer of 2011. 75 Fed. Reg. 2938 (Jan. 19, 2010); *see also* EPA's Revised Motion Requesting a Continued Abeyance and Response to the State-Petitioner's Cross-Motion, Mississippi, et al., v. U.S. Environmental Protection Agency, No. 08-1200, (D.C. Cir. Dec. 8, 2010). The RACT requirements for whatever new standard is eventually promulgated will not be triggered for a number of years after the designation of nonattainment areas, and certainly do not call for the imposition of RACT requirements as immediately as do the Illinois NO_x RACT Rules.

13. A substantial element in the establishment of Reasonably Available Control Technology emission criteria is the identification of equipment and techniques in use in current relevant business sectors. Final Rule to Implement 8-Hour Ozone National Ambient Air Quality Standard – Phase 2, 70 Fed. Reg. 71612, 71652 (Nov. 29, 2005) (citing 44 Fed. Reg. 53762 (Sep. 17, 1979)); *see also* 40 C.F.R. § 51.100(o) (2006) (defining RACT for purposes of State Implementation Plan requirements). The Illinois NO_x RACT Rules reflect the level of controls that are deemed “reasonably available” at the time of their adoption. *See* Statement of Reasons, NO_x RACT Rulemaking, Section V, page 11 (Ill. Pol.Control.Bd. May 9, 2008), and Technical Support Document, NO_x RACT Rulemaking (Ill. Pol.Control.Bd. May 9, 2008). It is uncertain whether the existing rules would satisfy some future RACT requirement based upon revised ozone or

future PM standards if advances in equipment and techniques impact what is deemed to be “reasonably available.”

14. Likewise, the process of identifying the Maximum Achievable Control Technology (“MACT”) for boilers involves a similar process but different criteria for establishing emission limitations. The Illinois NO_x RACT Rules and the U.S. EPA’s MACT rule impact many of the same units in Illinois. 76 Fed. Reg. at 15608, Section IA, *Does this action apply to me?*. However, these rules are different in many respects and compliance decisions are very complex. For example, the stringency of the U.S. EPA’s carbon monoxide limit may have the unintended consequence, in some cases, of causing nitrogen oxide emissions to increase. *Id.* at 15645, Section IV(I), *Issues Related to Carbon Monoxide Emission Limits*. Businesses have been struggling with the dilemma of devising a plan to meet both standards that have been developed in apparent isolation despite their interrelationship. Since the NO_x RACT rules are no longer relevant for air quality purposes, and the U.S. EPA rule that has just recently been published is already subject to reconsideration, it is prudent to reconsider the necessity of proceeding with the implementation of a NO_x RACT rule that is now devoid of any specific programmatic purpose. *See* 76 Fed. Reg. 15266 (Mar. 21, 2011).

15. IERG has been in discussion with the Illinois EPA regarding the lack of need, at this time, for the Illinois NO_x RACT Rules. IERG agrees with the Agency that there “exists a situation where the existing NO_x RACT regulations, absent an underlying federal requirement to implement these rules at this time, impose compliance requirements upon the regulated community prior to when they will be necessary under the CAA.” Motion for Expedited Review, NO_x Compliance Date Rulemaking, at ¶ 14

(Ill. Pol.Control.Bd. Apr. 4, 2011). Accordingly, IERG supports the Agency's rulemaking proposal currently before the Board to extend the compliance deadline. However, the shared aim of IERG and the Illinois EPA, to "avoid compliance requirements and unreasonable and unnecessary expenditures upon the regulated community" *Id.*, at ¶15, requires the Board to grant this Motion for Emergency Rule.

III. THE BOARD MUST ADOPT AN EMERGENCY RULE AMENDING THE COMPLIANCE DEADLINES IN THE ILLINOIS NO_x RACT RULES

16. Section 27(c) of the Act provides, in pertinent part:

When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the Illinois Administrative Procedure Act [5 ILCS 100/5-45].

415 ILCS 5/27(c).

17. Section 102.612 of the Board's regulations provides:

- a) *When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the IAPA [415 ILCS 27(c)].*
- b) *When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay [415 ILCS 5/27(c)].* The Board will proceed with any required hearings while the regulation continues in effect.

35 Ill. Admin. Code § 102.612.

18. Section 5-45 of the IAPA provides, in pertinent part:

- (a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.
- (b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 [5 ILCS 100/5-40] and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of

emergency rulemaking with the Secretary of State under Section 5-70 [5 ILCS 100/5-70]. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. . . . Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 [5 ILCS 100/5-65] or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

(c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 [5 ILCS 100/5-40] is not precluded.

5 ILCS 100/5-45.

19. In the past, the Board has issued emergency rules based on the threat of economic hardship and potential liability to affected facilities, which were determined to have constituted a threat to the public interest warranting immediate action. In *In the Matter of: Emergency Rule Amending the Stage II Gasoline Vapor Recovery Rule in the Metro-East Area*, 35 Ill. Adm. Code 219.586(d), the Board found that uncertainty as to the U.S. EPA's position regarding the promulgation of court-mandated onboard vapor recovery rules resulted in a situation where gas stations in the Metro-East were forced to make significant capital outlays to meet a compliance deadline to install Stage II vapor recovery equipment, which outlays would be unnecessary if the U.S. EPA promulgated onboard vapor recovery rules. Opinion and Order of the Board, *In the Matter of: Emergency Rule Amending the Stage II Gasoline Vapor Recovery Rule in the Metro-East Area*, 35 Ill. Adm. Code 219.586(d), R93-12 at *5 (Ill.Pol.Control.Bd. May 20, 1993). In adopting an emergency rule changing the compliance deadline, the Board held that:

Emergency rulemaking by the Board is justified when there is a threat to the public interest. The record in this case demonstrates that facilities in the Metro-East area that should have complied with Stage II vapor recovery requirements by May 1, 1993, would suffer extreme economic

hardship if forced to comply at this time. The court mandate for USEPA to promulgate onboard controls, which potentially may eliminate the need for Metro-East facilities to comply with Stage II requirements, creates intolerable uncertainty until the USEPA provides guidance. Moreover, the affected facilities have been placed in a position where they are subject to legal action by the Agency, or any citizen, if they fail to comply with the Stage II requirements which should have taken effect on May 1, 1993.

Id. at *8. (Emphasis added.).

20. In addition, in *In the Matter of: Emergency Rule Amending 7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area*, 35 Ill. Adm. Code 219.585(a), the Board granted an emergency rule to address inconsistency between federal and state annual compliance dates for supplying lower RVP gasoline and alleviated the hardships to refiners, distributors, and bulk gasoline terminals resulting from the inconsistency in compliance dates. Opinion and Order of the Board, *In the Matter of: Emergency Rule Amending 7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area*, 35 Ill. Adm. Code 219.585(a), R95-10 at *3-5 (Ill. Pol.Control.Bd. Feb. 23, 1995).

21. Here, as in the two emergency rulemakings described above, extreme economic hardship and potential for liability experienced by industrial facilities is a threat to the public interest. As detailed below, the costs of complying with the Illinois NO_x RACT Rules amount to millions of dollars, and are being incurred now in order to ensure that subject sources will be able to comply with the Illinois NO_x RACT Rules by the current compliance date of January 1, 2012. The opportunity to avoid unnecessary harm, by extending the compliance dates, will be lost if sources must wait for the above-described rulemaking to run its course. Owners and operators of units subject to the Illinois NO_x RACT Rules are even now being forced to make large capital outlays, and

enter into engineering, purchasing, and construction contracts in order to ensure that they will be able to comply with the compliance dates contained in those rules.

22. The threat to the public interest is also recognizable in the potential liability sources subject to the Illinois NO_x RACT Rules face if they choose to not make the requisite large capital expenditures. If, by chance, the Illinois EPA's rulemaking is not finalized before the current 2012 compliance deadline, those sources that deferred making the expenditures, in reliance upon the compliance deadline extension in the rulemaking proposal, will find themselves in violation of the Illinois NO_x RACT Rules and face potential liability.

23. For example, Attachment C to this Motion details the expenditures required of CITGO Petroleum Corporation ("CITGO") Lemont Refinery to comply with the Illinois NO_x RACT Rules. The costs faced by CITGO cumulatively total above \$4 million, and expenditures have been ongoing since May of 2010, but increase rapidly beginning in April of 2011. In order for CITGO to take advantage of the extension to a compliance deadline in the Illinois NO_x RACT Rules and avoid economic harm, it needs assurances that it can rely upon as soon as possible, before these costs are incurred, such as would be provided by the Board's granting of this Motion for Emergency Rule. Absent the Board's granting this Motion, CITGO faces two alternatives: 1) continue to incur the \$4 million in unnecessary costs to ensure that the Illinois NO_x RACT Rules can be complied with, or 2) stop incurring the costs, and hope that the Illinois EPA rulemaking is finalized before the compliance date contained in the NO_x RACT Rules passes, potentially putting CITGO in a position of noncompliance.

24. Attachment D to this Motion describes the actions being taken by U.S. Steel – Granite City Works to ensure compliance with the Illinois NO_x RACT Rules. The total costs are described as being “several million dollars.” The letter also emphasizes the need for swift action to be taken to minimize the additional unnecessary capital expenditures, identifying the end of April 2011 as being a “critical” date for finalizing a compliance date extension. To IERG’s knowledge, an emergency rule is the only administrative action available that can effectuate such an extension immediately.

25. Analogous to the issues in the R93-12 rulemaking, in this case, industries have been put into this situation not through some affirmative action of their own doing, but rather due to unforeseen federal actions that call into question the underlying rules. In this case, the improved air quality, issuance of the NO_x RACT Waiver, and continued extension of the promulgation of new ozone NAAQS has left no basis for having NO_x RACT rules in place in Illinois *at this time*. Further, the NO_x RACT requirements that may come to exist stemming from a revised ozone NAAQS or new PM NAAQS can be dealt with at a later date, through a separate rulemaking. As in the R93-12 rulemaking, the uncertainty created by numerous federal requirements being revised and reconsidered has placed subject sources in a position where they are making large capital expenditures that may become unnecessary or insufficient to meet some later requirement. These unnecessary expenditures are an economic hardship that businesses in Illinois should not be forced to bear.

26. IERG recognizes that, pursuant to the IAPA, an emergency rule adopted by the Board would expire after a period of 150 days. IERG is also aware that, if the Board grants this Motion and adopts an emergency rule, that period of time is likely to

elapse prior to the current (January 1, 2012) compliance date; in which case, the compliance date will revert back to its original form. Nonetheless, an emergency rule is the only appropriate administrative remedy available. As described above, the costs for ensuring compliance with the Illinois NO_x RACT Rules are being incurred now. An immediately effective remedy is required to provide the subject sources with the assurance that they can forgo making those expenditures, otherwise, they run the risk of facing liability for noncompliance. A full rulemaking, even if expedited, will take far too long for sources to make decisions to cancel planned projects, as substantial costs will have been incurred. It is IERG's hope that the full rulemaking, as proposed by the Agency, and identical in substance to IERG's requested emergency rule, will be adopted by the Board prior to the expiration of the emergency rule.

27. The threat of liability, in addition to the unreasonable and unnecessary imposition of millions of dollars of capital expenditures, are a threat to the public interest warranting immediate action, and provide a sound basis for adopting the emergency rule extending the compliance dates in the Illinois NO_x RACT Rules, as set forth in Attachment A. Taking such immediate action will alleviate the threat until permanent amendments extending the compliance deadlines can be adopted.

WHEREFORE, for the above and foregoing reasons, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP hereby respectfully requests the Illinois Pollution Control Board find that an emergency exists, and adopt the emergency rule, as detailed in Attachment A to this Motion for Emergency Rule.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: April 21, 2011

By: /s/ Alec M. Davis
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Attachment A

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

PART 217
NITROGEN OXIDES EMISSIONS
SUBPART A: GENERAL PROVISIONS

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217.100	Scope and Organization
217.101	Measurement Methods
217.102	Abbreviations and Units
217.103	Definitions
217.104	Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section	
217.121	New Emission Sources (Repealed)

SUBPART C: EXISTING FUEL COMBUSTION EMISSION UNITS

Section	
217.141	Existing Emission Units in Major Metropolitan Areas

SUBPART D: NO_x GENERAL REQUIREMENTS

Section	
217.150	Applicability
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217.154	Performance Testing
217.155	Initial Compliance Certification
217.156	Recordkeeping and Reporting
217.157	Testing and Monitoring
217.158	Emissions Averaging Plans

SUBPART E: INDUSTRIAL BOILERS

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Section

- 217.160 Applicability
- 217.162 Exemptions
- 217.164 Emissions Limitations
- 217.165 Combination of Fuels
- 217.166 Methods and Procedures for Combustion Tuning

SUBPART F: PROCESS HEATERS

Section

- 217.180 Applicability
- 217.182 Exemptions
- 217.184 Emissions Limitations
- 217.185 Combination of Fuels
- 217.186 Methods and Procedures for Combustion Tuning

SUBPART G: GLASS MELTING FURNANCES

Section

- 217.200 Applicability
- 217.202 Exemptions
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SUBPART H: CEMENT AND LIME KILNS

Section

- 217.220 Applicability
- 217.222 Exemptions
- 217.224 Emissions Limitations

SUBPART I: IRON AND STEEL AND ALUMINUM MANUFACTURING

Section

- 217.240 Applicability
- 217.242 Exemptions
- 217.244 Emissions Limitations

SUBPART K: PROCESS EMISSION SOURCES

Section

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217.301 Industrial Processes

SUBPART M: ELECTRICAL GENERATING UNITS

Section

217.340 Applicability
217.342 Exemptions
217.344 Emissions Limitations
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SUBPART O: CHEMICAL MANUFACTURE

Section

217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING
INTERNAL COMBUSTION ENGINES AND TURBINES

Section

217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans
217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section

217.400 Applicability
217.402 Control Requirements
217.404 Testing
217.406 Monitoring
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SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section

217.450 Purpose

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217.452	Severability
217.454	Applicability
217.456	Compliance Requirements
217.458	Permitting Requirements
217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
217.466	NO _x Allocations Procedure for Subpart U Budget Units
217.468	New Source Set-Asides for "New" Budget Units
217.470	Early Reduction Credits (ERCs) for Budget Units
217.472	Low-Emitter Requirements
217.474	Opt-In Units
217.476	Opt-In Process
217.478	Opt-In Budget Units: Withdrawal from NO _x Trading Program
217.480	Opt-In Units: Change in Regulatory Status
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SUBPART V: ELECTRIC POWER GENERATION

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217.521	Lake of Egypt Power Plant
217.700	Purpose
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SUBPART W: NO_x TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

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217.750	Purpose
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217.756	Compliance Requirements
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217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO _x Allocations for Budget EGUs
217.768	New Source Set-Asides for "New" Budget EGUs
217.770	Early Reduction Credits for Budget EGUs
217.774	Opt-In Units
217.776	Opt-In Process
217.778	Budget Opt-In Units: Withdrawal from NO _x Trading Program
217.780	Opt-In Units: Change in Regulatory Status
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SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

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217.800	Purpose
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217.815	NO _x Emission Reductions and the Subpart X NO _x Trading Budget
217.820	Baseline Emissions Determination
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217.835	NO _x Emission Reduction Proposal
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217.APPENDIX E	Large Non-Electrical Generating Units
217.APPENDIX F	Allowances for Electrical Generating Units
217.APPENDIX G	Existing Reciprocating Internal Combustion Engines Affected by the NO _x SIP Call
217.APPENDIX H	Compliance Dates for Certain Emissions Units at Petroleum Refineries

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the

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Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

Source: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-__ at __ Ill. Reg. ____, effective _____.

Section 217.152 Compliance Date

- a) Compliance with the requirements of Subparts E, F, G, H, I and M by an owner or operator of an emission unit that is subject to any of those Subparts is required beginning January 1, ~~2015~~2012.
- b) Notwithstanding subsection (a) of this Section, compliance with the requirements of Subpart G of this Part by an owner or operator of an emission unit subject to Subpart G of this Part shall be extended until December 31, 2014, if such units are required to meet emissions limitations for NO_x, as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before December 31, 2009, whereby such emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204.
- c) Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, ~~2015~~2012, except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H. With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing the emissions of emission units other than those listed in Appendix H, provided that the emissions limitations of such other emission units

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are equal to or more stringent than the applicable emissions limitations set forth in Subpart E or F of this Part, as applicable, by the dates set forth in Appendix H.

(Source: Amended at __ Ill. Reg. ____, effective _____)

Section 217.154 Performance Testing

- a) Performance testing of NO_x emissions for emission units constructed on or before July 1, ~~2014~~2011, and subject to emissions limitations under Subpart E, F, G, H, or I of this Part must be conducted in accordance with Section 217.157 of this Subpart. Except as provided for under Section 217.157(a)(4) and (e)(1). This subsection does not apply to owners and operators of emission units demonstrating compliance through a continuous emissions monitoring system.
- b) Performance testing of NO_x emissions for emission units for which construction or modification occurs after July 1, ~~2014~~2011, and that are subject to emissions limitations under Subpart E, F, G, H, or I of this Part must be conducted within 60 days after achieving maximum operating rate but no later than 180 days after initial startup of the new or modified emission unit, in accordance with Section 217.157 of this Subpart. Except as provided for under Section 217.157(a)(4) and (e)(1), this subsection does not apply to owners and operators of emission units demonstrating compliance through a continuous emissions monitoring system, predictive emission monitoring system, or combustion tuning.
- c) Notification of the initial startup of an emission unit subject to subsection (b) of this Section must be provided to the Agency no later than 30 days after initial startup.
- d) The owner or operator of an emission unit subject to subsection (a) or (b) of this Section must notify the Agency of the scheduled date for the performance testing in writing at least 30 days before such date and five days before such date.
- e) If demonstrating compliance through an emissions averaging plan, at least 30 days before changing the method of compliance, the owner or operator of an emission unit must submit a written notification to the Agency describing the new method of compliance, the reason for the change in the method of compliance, and the scheduled date for performance testing, if required. Upon changing the method of compliance, the owner or operator of an emission unit must submit to the Agency a revised compliance certification that meets the requirements of Section 217.155.

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(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 217.157 Testing and Monitoring

- a) Industrial Boilers and Process Heaters
 - 1) The owner or operator of an industrial boiler subject to Subpart E of this Part with a rated heat input capacity greater than 250 mmBtu/hr must install, calibrate, maintain, and operate a continuous emissions monitoring system on the emission unit for the measurement of NO_x emissions discharged into the atmosphere in accordance with 40 CFR 75, as incorporated by reference in Section 217.104. However, the owner or operator of an industrial boiler subject to Subpart E of this Part with a rated heat input capacity greater than 250 mmBtu/hr that combusts blast furnace gas with up to 10% natural gas on an annual basis and located at a source that manufactures iron and steel is not required to install, calibrate, maintain, and operate a continuous emissions monitoring system on that industrial boiler, provided the heat input from natural gas does not exceed 10% on an annual basis and the owner or operator complies with the performance test requirements under this Section and demonstrates, during each performance test, that NO_x emissions from the industrial boiler are less than 70% of the applicable emissions limitation under Section 217.164. In the event the owner or operator is unable to meet the requirements of this exception, a continuous emissions monitoring system is required within 12 months after that event, or by January 1, 2015~~December 31, 2012~~, whichever is later.
 - 2) The owner or operator of an industrial boiler subject to Subpart E of this Part with a rated heat input capacity greater than 100 mmBtu/hr but less than or equal to 250 mmBtu/hr must install, calibrate, maintain, and operate a continuous emissions monitoring system on such emission unit for the measurement of NO_x emissions discharged into the atmosphere in accordance with 40 CFR 60, subpart A and appendix B, Performance Specifications 2 and 3, and appendix F, Quality Assurance Procedures, as incorporated by reference in Section 217.104.
 - 3) The owner or operator of a process heater subject to Subpart F of this Part with a rated heat input capacity greater than 100 mmBtu/hr must install, calibrate, maintain, and operate a continuous emissions monitoring system on the emission unit for the measurement of NO_x emissions discharged

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into the atmosphere in accordance with 40 CFR 60, subpart A and appendix B, Performance Specifications 2 and 3, and appendix F, Quality Assurance Procedures, as incorporated by reference in Section 217.104.

- 4) If demonstrating compliance through an emissions averaging plan, the owner or operator of an industrial boiler subject to Subpart E of this Part, or a process heater subject to Subpart F of this Part, with a rated heat input capacity less than or equal to 100 mmBtu/hr and not demonstrating compliance through a continuous emissions monitoring system must have an initial performance test conducted pursuant to subsection (a)(4)(B) of this Section and Section 217.154.
 - A) An owner or operator of an industrial boiler or process heater must have subsequent performance tests conducted pursuant to subsection (a)(4)(B) of this Section at least once every five years. When, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.164 or 217.184, as applicable, the owner or operator of an industrial boiler or process heater must, at his or her own expense, have such test conducted in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.
 - B) The owner or operator of an industrial boiler or process heater must have a performance test conducted using 40 CFR 60, subpart A and appendix A, Method 1, 2, 3, 4, 7E, or 19, as incorporated by reference in Section 217.104, or other alternative USEPA methods approved by the Agency. Each performance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must be measured while the industrial boiler is operating at maximum operating capacity or while the process heater is operating at normal maximum load. If the industrial boiler or process heater has combusted more than one type of fuel in the prior year, a separate performance test is required for each fuel. If a combination of fuels is typically used, a performance test may be conducted, with Agency approval, on such combination of fuels typically used. Except as provided under subsection (e) of this Section, this subsection (a)(4)(B) does not apply if such owner or operator is demonstrating compliance with an emissions limitation

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through a continuous emissions monitoring system under subsection (a)(1), (a)(2), (a)(3), or (a)(5) of this Section.

- 5) Instead of complying with the requirements of subsection (a)(4) of this Section, an owner or operator of an industrial boiler subject to Subpart E of this Part, or a process heater subject to Subpart F of this Part, with a rated heat input capacity less than or equal to 100 mmBtu/hr may install and operate a continuous emissions monitoring system on such emission unit in accordance with the applicable requirements of 40 CFR 60, subpart A and appendix B, Performance Specifications 2 and 3, and appendix F, Quality Assurance Procedures, as incorporated by reference in Section 217.104. The continuous emissions monitoring system must be used to demonstrate compliance with the applicable emissions limitation or emissions averaging plan on an ozone season and annual basis.
 - 6) Notwithstanding subsection (a)(2) of this Section, the owner or operator of an auxiliary boiler subject to Subpart E of this Part with a rated heat input capacity less than or equal to 250 mmBtu/hr and a capacity factor of less than or equal to 20% is not required to install, calibrate, maintain, and operate a continuous emissions monitoring system on such boiler for the measurement of NO_x emissions discharged into the atmosphere, but must comply with the performance test requirements under subsection (a)(4) of this Section.
- b) Glass Melting Furnaces; Cement Kilns; Lime Kilns; Iron and Steel Reheat, Annealing, and Galvanizing Furnaces; and Aluminum Reverberatory and Crucible Furnaces
- 1) An owner or operator of a glass melting furnace subject to Subpart G of this Part, cement kiln or lime kiln subject to Subpart H of this Part, iron and steel reheat, annealing, or galvanizing furnace subject to Subpart I of this Part, or aluminum reverberatory or crucible furnace subject to Subpart I of this Part that has the potential to emit NO_x in an amount equal to or greater than one ton per day must install, calibrate, maintain, and operate a continuous emissions monitoring system on such emission unit for the measurement of NO_x emissions discharged into the atmosphere in accordance with 40 CFR 60, subpart A and appendix B, Performance Specifications 2 and 3, and appendix F, Quality Assurance Procedures, as incorporated by reference in Section 217.104.

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- 2) An owner or operator of a glass melting furnace subject to Subpart G of this Part, cement kiln or lime kiln subject to Subpart H of this Part, iron and steel reheat, annealing, or galvanizing furnace subject to Subpart I of this Part, or aluminum reverberatory or crucible furnace subject to Subpart I of this Part that has the potential to emit NO_x in an amount less than one ton per day must have an initial performance test conducted pursuant to subsection (b)(4) of this Section and Section 217.154.
- 3) An owner or operator of a glass melting furnace subject to Subpart G of this Part, cement kiln or lime kiln subject to Subpart H of this Part, iron and steel reheat, annealing, or galvanizing furnace subject to Subpart I of this Part, or aluminum reverberatory or crucible furnace subject to Subpart I of this Part that has the potential to emit NO_x in an amount less than one ton per day must have subsequent performance tests conducted pursuant to subsection (b)(4) of this Section as follows:
 - A) For all glass melting furnaces subject to Subpart G of this Part, cement kilns or lime kilns subject to Subpart H of this Part, iron and steel reheat, annealing, or galvanizing furnace subject to Subpart I of this Part, or aluminum reverberatory or crucible furnaces subject to Subpart I of this Part, including all such units included in an emissions averaging plan, at least once every five years; and
 - B) When, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.204, 217.224, or 217.244 of this Part, as applicable, the owner or operator of a glass melting furnace, cement kiln, lime kiln, iron and steel reheat, annealing, or galvanizing furnace, or aluminum reverberatory or crucible furnace must, at his or her own expense, have such test conducted in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.
- 4) The owner or operator of a glass melting furnace, cement kiln, or lime kiln must have a performance test conducted using 40 CFR 60, subpart A and appendix A, Methods 1, 2, 3, 4, and 7E, as incorporated by reference in Section 217.104 of this Part, or other alternative USEPA methods approved by the Agency. The owner or operator of an iron and steel reheat, annealing, or galvanizing furnace, or aluminum reverberatory or

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crucible furnace must have a performance test conducted using 40 CFR 60, subpart A and appendix A, Method 1, 2, 3, 4, 7E, or 19, as incorporated by reference in Section 217.104 of this Part, or other alternative USEPA methods approved by the Agency. Each performance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must be measured while the glass melting furnace, cement kiln, lime kiln, iron and steel reheat, annealing, or galvanizing furnace, or aluminum reverberatory or crucible furnace is operating at maximum operating capacity. If the glass melting furnace, cement kiln, lime kiln, iron and steel reheat, annealing, or galvanizing furnace, or aluminum reverberatory or crucible furnace has combusted more than one type of fuel in the prior year, a separate performance test is required for each fuel. Except as provided under subsection (e) of this Section, this subsection (b)(4) does not apply if such owner or operator is demonstrating compliance with an emissions limitation through a continuous emissions monitoring system under subsection (b)(1) or (b)(5) of this Section.

- 5) Instead of complying with the requirements of subsections (b)(2), (b)(3), and (b)(4) of this Section, an owner or operator of a glass melting furnace subject to Subpart G of this Part, cement kiln or lime kiln subject to Subpart H of this Part, iron and steel reheat, annealing, or galvanizing furnace subject to Subpart I of this Part, or aluminum reverberatory or crucible furnace subject to Subpart I of this Part that has the potential to emit NO_x in an amount less than one ton per day may install and operate a continuous emissions monitoring system on such emission unit in accordance with the applicable requirements of 40 CFR 60, subpart A and appendix B, Performance Specifications 2 and 3, and appendix F, Quality Assurance Procedures, as incorporated by reference in Section 217.104 of this Part. The continuous emissions monitoring system must be used to demonstrate compliance with the applicable emissions limitation or emissions averaging plan on an ozone season and annual basis.
- c) Fossil Fuel-Fired Stationary Boilers. The owner or operator of a fossil fuel-fired stationary boiler subject to Subpart M of this Part must install, calibrate, maintain, and operate a continuous emissions monitoring system on such emission unit for the measurement of NO_x emissions discharged into the atmosphere in accordance with 40 CFR 96, subpart H.

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- d) Common Stacks. If two or more emission units subject to Subpart E, F, G, H, I, M, or Q of this Part are served by a common stack and the owner or operator of such emission units is operating a continuous emissions monitoring system, the owner or operator may, with written approval from the Agency, utilize a single continuous emissions monitoring system for the combination of emission units subject to Subpart E, F, G, H, I, M, or Q of this Part that share the common stack, provided such emission units are subject to an emissions averaging plan under this Part.
- e) Compliance with the continuous emissions monitoring system (CEMS) requirements by an owner or operator of an emission unit who is required to install, calibrate, maintain, and operate a CEMS on the emission unit under subsection (a)(1), (a)(2), (a)(3), or (b)(1) of this Section, or who has elected to comply with the CEMS requirements under subsection (a)(5) or (b)(5) of this Section, or who has elected to comply with the predictive emission monitoring system (PEMS) requirements under subsection (f) of this Section, is required by the applicable compliance date under Section 217.152 of this Subpart, following dates:
- 1) ~~For the owner or operator of an emission unit that is subject to a compliance date in calendar year 2012 under Section 217.152, compliance with the CEMS or PEMS requirements, as applicable, under this Section for such emission unit is required by December 31, 2012, provided that, during the time between the compliance date and December 31, 2012, the owner or operator must comply with the applicable performance test requirements under this Section and the applicable recordkeeping and reporting requirements under this Subpart. For the owner or operator of an emission unit that is in compliance with the CEMS or PEMS requirements, as applicable, under this Section on January 1, 2012, such owner or operator is not required to comply with the performance test requirements under this Section.~~
 - 2) ~~For the owner or operator of an emission unit that is subject to a compliance date in a calendar year other than calendar year 2012 under Section 217.152 of this Subpart, compliance with the CEMS or PEMS requirements, as applicable, under this Section for such emission unit is required by the applicable compliance date, and such owner or operator is not required to comply with the performance test requirements under this Section.~~

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- f) As an alternative to complying with the requirements of this Section, other than the requirements under subsections (a)(1) and (c) of this Section, the owner or operator of an emission unit who is not otherwise required by any other statute, regulation, or enforceable order to install, calibrate, maintain, and operate a CEMS on the emission unit may comply with the specifications and test procedures for a predictive emission monitoring system (PEMS) on the emission unit for the measurement of NO_x emissions discharged into the atmosphere in accordance with the requirements of 40 CFR 60, subpart A and appendix B, Performance Specification 16. The PEMS must be used to demonstrate compliance with the applicable emissions limitation or emissions averaging plan on an ozone season and annual basis.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 217.158 Emissions Averaging Plans

- a) Notwithstanding any other emissions averaging plan provisions under this Part, an owner or operator of a source with certain emission units subject to Subpart E, F, G, H, I, or M of this Part, or subject to Subpart Q of this Part that are located in either one of the areas set forth under Section 217.150(a)(1)(A)(i) or (ii), may demonstrate compliance with the applicable Subpart through an emissions averaging plan. An emissions averaging plan can only address emission units that are located at one source and each unit may only be covered by one emissions averaging plan. Such emission units at the source are affected units and are subject to the requirements of this Section.
- 1) The following units may be included in an emissions averaging plan:
- A) Units that commenced operation on or before January 1, 2002.
 - B) Units that the owner or operator may claim as exempt pursuant to Section 217.162, 217.182, 217.202, 217.222, 217.242, or 217.342 of this Part, as applicable, but does not claim exempt. For as long as such a unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emissions limitations, and testing, monitoring, recordkeeping and reporting requirements.
 - C) Units that commence operation after January 1, 2002, if the unit replaces a unit that commenced operation on or before January 1,

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2002, or it replaces a unit that replaced a unit that commenced operation on or before January 1, 2002. The new unit must be used for the same purpose and have substantially equivalent or less process capacity or be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions of the unit or units that are replaced. Within 90 days after permanently shutting down a unit that is replaced, the owner or operator of such unit must submit a written request to withdraw or amend the applicable permit to reflect that the unit is no longer in service before the replacement unit may be included in an emissions averaging plan.

- 2) The following types of units may not be included in an emissions averaging plan:
 - A) Units that commence operation after January 1, 2002, except as provided by subsection (a)(1)(C) of this Section.
 - B) Units that the owner or operator is claiming are exempt pursuant to Section 217.162, 217.182, 217.202, 217.222, 217.242, or 217.342 of this Part, as applicable.
 - C) Units that are required to meet emission limits or control requirements for NO_x as provided for in an enforceable order, unless the order allows for emissions averaging. In the case of petroleum refineries, this subsection (a)(2)(C) does not prohibit including industrial boilers or process heaters, or both, in an emissions averaging plan when an enforceable order does not prohibit the reductions made under the order from also being used for compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area.

- b) An owner or operator must submit an emissions averaging plan to the Agency by January 1, ~~2015~~2012. The plan must include, but is not limited to, the following:
 - 1) The list of affected units included in the plan by unit identification number; and
 - 2) A sample calculation demonstrating compliance using the methodology provided in subsection (f) of this Section for the ozone season (May 1

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through September 30) and calendar year (January 1 through December 31).

- c) An owner or operator may amend an emissions averaging plan only once per calendar year. Such an amended plan must be submitted to the Agency by January 1 of the applicable calendar year. If an amended plan is not received by the Agency by January 1 of the applicable calendar year, the previous year's plan will be the applicable emissions averaging plan.
- d) Notwithstanding subsection (c) of this Section:
 - 1) If a unit that is listed in an emissions averaging plan is taken out of service, the owner or operator must submit to the Agency, within 30 days after such occurrence, an updated emissions averaging plan; or
 - 2) If a unit that was exempt from the requirements of Subpart E, F, G, H, I, or M of this Part pursuant to Section 217.162, 217.182, 217.202, 217.222, 217.242, or 217.342 of this Part, as applicable, no longer qualifies for an exemption, the owner or operator may amend its existing averaging plan to include such unit within 30 days after the unit no longer qualifies for the exemption.
- e) An owner or operator must:
 - 1) Demonstrate compliance for the ozone season (May 1 through September 30) and the calendar year (January 1 through December 31) by using the methodology and the units listed in the most recent emissions averaging plan submitted to the Agency pursuant to subsection (b) of this Section, the monitoring data or test data determined pursuant to Section 217.157, and the actual hours of operation for the applicable averaging plan period; and
 - 2) Submit to the Agency, by March 1 following each calendar year, a compliance report containing the information required by Section 217.156(i).
- f) The total mass of actual NO_x emissions from the units listed in the emissions averaging plan must be equal to or less than the total mass of allowable NO_x emissions for those units for both the ozone season and calendar year. The following equation must be used to determine compliance:

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$$N_{act} \leq N_{all}$$

Where:

$$N_{act} = \sum_{i=1}^n \sum_{j=1}^k EM_{act(i,j)}$$

$$N_{all} = \sum_{i=1}^n \sum_{j=1}^k EM_{all(i,j)}$$

N_{act} = Total sum of the actual NO_x mass emissions from units included in the averaging plan for each fuel used (tons per ozone season and year).

N_{all} = Total sum of the allowable NO_x mass emissions from units included in the averaging plan for each fuel used (tons per ozone season and year).

$EM_{act(i)}$ = Total mass of actual NO_x emissions in tons for a unit as determined in subsection (f)(1) of this Section.

i = Subscript denoting an individual unit.

j = Subscript denoting the fuel type used.

k = Number of different fuel types.

n = Number of different units in the averaging plan.

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in tons for a unit as determined in subsection (f)(2) of this Section.

For each unit in the averaging plan, and each fuel used by such unit, determine actual and allowable NO_x emissions using the following equations:

- 1) Actual emissions must be determined as follows:

When emission limits are prescribed in lb/mmBtu,

$$EM_{act(i)} = E_{act(i)} \times H_i / 2000$$

When emission limits are prescribed in lb/ton of processed product,

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$$EM_{act(i)} = E_{act(i)} \times P_i / 2000$$

- 2) Allowable emissions must be determined as follows:

When emission limits are prescribed in lb/mmBtu,

$$EM_{all(i)} = E_{all(i)} \times H_i / 2000$$

When emission limits are prescribed in lb/ton of processed product,

$$EM_{all(i)} = E_{all(i)} \times P_i / 2000$$

Where:

$EM_{act(i)}$ = Total mass of actual NO_x emissions in tons for a unit.

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in tons for a unit.

E_{act} = Actual NO_x emission rate (lbs/mmBtu or lbs/ton of product) as determined by a performance test, a continuous emissions monitoring system, or an alternative method approved by the Agency.

E_{all} = Allowable NO_x emission rate (lbs/mmBtu or lbs/ton of product) as provided in Section 217.164, 217.184, 217.204, 217.224, 217.244, or 217.344, as applicable. For an affected industrial boiler subject to Subpart E of this Part, or process heater subject to Subpart F of this Part, with a rated heat input capacity less than or equal to 100 mmBtu/hr demonstrating compliance through an emissions averaging plan, the allowable NO_x emission rate is to be determined from a performance test after such boiler or heater has undergone combustion tuning. For all other units in an emissions averaging plan, an uncontrolled NO_x emission rate from USEPA's AP-42, as incorporated by reference in Section 217.104, or an uncontrolled NO_x emission rate as determined by an alternative method approved by the Agency, will be used.

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- H = Heat input (mmBtu/ozone season or mmBtu/year) calculated from fuel flow meter and the heating value of the fuel used.
- P = weight in tons of processed product.

- g) An owner or operator of an emission unit subject to Subpart Q of this Part that is located in either one of the areas set forth under Section 217.150(a)(1)(A)(i) or (ii) that is complying through an emissions averaging plan under this Section must comply with the applicable provisions for determining actual and allowable emissions under Section 217.390, the testing and monitoring requirements under Section 217.394, and the recordkeeping and reporting requirements under Section 217.396.
- h) The owner or operator of an emission unit located at a petroleum refinery who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating compliance those time periods when an emission unit included in the emissions averaging plan is shut down for a maintenance turnaround, provided that such owner or operator notify the Agency in writing at least 30 days in advance of the shutdown of the emission unit for the maintenance turnaround and the shutdown of the emission unit does not exceed 45 days per ozone season or calendar year and NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance turnaround.
- i) The owner or operator of an emission unit that combusts a combination of coke oven gas and other gaseous fuels and that is located at a source that manufactures iron and steel who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating compliance those time periods when the coke oven gas desulfurization unit included in the emissions averaging plan is shut down for maintenance, provided that such owner or operator notify the Agency in writing at least 30 days in advance of the shutdown of the coke oven gas desulfurization unit for maintenance and such shutdown does not exceed 35 days per ozone season or calendar year and NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance period.
- j) The owner or operator of an emission unit located at a petroleum refinery who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating

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compliance those time periods when NO_x pollution control equipment that controls one or more emission units included in the emissions averaging plan is shut down for a maintenance turnaround, provided that:

- 1) the owner or operator notify the Agency in writing, at least 30 days in advance of the shutdown, of the NO_x pollution control equipment for the maintenance turnaround;
- 2) the shutdown of the NO_x pollution control equipment does not exceed 45 days per ozone season or calendar year; and
- 3) except for those emission units vented to the NO_x pollution control equipment undergoing the maintenance turnaround, NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance turnaround.

(Source: Amended at __ Ill. Reg. _____, effective _____)

Section 217.164 Emissions Limitations

- a) Except as provided for under Section 217.152, on and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any industrial boiler to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

Fuel	Emission Unit Type and Rated Heat Input Capacity (mmBtu/hr)	No _x Emissions Limitation (lb/mmBtu) or Requirement
Natural Gas or Other Gaseous Fuels	Industrial boiler greater than 100	0.08
	Industrial boiler less than or equal to 100	Combustion tuning
Distillate Fuel Oil	Industrial boiler greater than 100	0.10

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	Industrial boiler less than or equal to 100	Combustion tuning
Other Liquid Fuels	Industrial boiler greater than 100	0.15
	Industrial boiler less than or equal to 100	Combustion tuning
Solid Fuel	Industrial boiler greater than 100, circulating fluidized bed combustor	0.12
	Industrial boiler greater than 250	0.18
	Industrial boiler greater than 100 but less than or equal to 250	0.25
	Industrial boiler less than or equal to 100	Combustion tuning

- b) For an industrial boiler combusting a combination of natural gas, coke oven gas, and blast furnace gas, the NO_x emissions limitation shall be calculated using the following equation:

$$\text{NO}_x \text{ emissions limitation for period in lb/mmBtu} = \frac{(NO_{x_{NG}} * Btu_{NG}) + (NO_{x_{COG}} * Btu_{COG}) + (NO_{x_{BFG}} * Btu_{BFG})}{Btu_{NG} + Btu_{COG} + Btu_{BFG}}$$

Where:

$$NO_{x_{NG}} = 0.084 \text{ lb/mmBtu for natural gas}$$

$$Btu_{NG} = \text{the heat input of natural gas in Btu over that period}$$

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$NO_{x_{COG}}$ = 0.144 lb/mmBtu for coke oven gas

Btu_{COG} = the heat input of coke oven gas in Btu over that period

$NO_{x_{BFG}}$ = 0.0288 lb/mmBtu for blast furnace gas

Btu_{BFG} = the heat input of blast furnace gas in Btu over that period

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 217.184 Emissions Limitations

Except as provided for under Section 217.152, on or after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any process heater to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

Fuel	Emission Unit Type and Rated Heat Input Capacity (mmBtu/hr)	NO_x Emissions Limitation (lb/mmBtu) or Requirement
Natural Gas or Other Gaseous Fuels	Process heater greater than 100	0.08
	Process heater less than or equal to 100	Combustion tuning
Residual Fuel Oil	Process heater greater than 100, natural draft	0.10
	Process heater greater than 100, mechanical draft	0.15
	Process heater less than or equal to 100	Combustion tuning
Other Liquid Fuels	Process heater greater than 100, natural draft	0.05

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Process heater greater than
100, mechanical draft 0.08

Process heater less than or
equal to 100 Combustion tuning

(Source: Amended at __ Ill. Reg. _____, effective _____)

Section 217.204 Emissions Limitations

- a) On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any glass melting furnace to exceed the following limitations. Compliance must be demonstrated with the emissions limitation on an ozone season and annual basis.

Product	Emission Unit Type	No _x Emissions Limitation (lb/ton glass produced)
Container Glass	Glass melting furnace	5.0
Flat Glass	Glass melting furnace	7.9
Other Glass	Glass melting furnace	11.0

- b) The emissions during glass melting furnace startup (not to exceed 70 days) or furnace idling (operation at less than 35% of furnace capacity) shall be excluded from calculations for the purpose of demonstrating compliance with the seasonal and annual emissions limitations under this Section, provided that the owner or operator, at all times, including periods of startup and idling, to the extent practicable, maintain and operate any affected emission unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. The owner or operator of a glass melting furnace must maintain records that include the date, time, and duration of any startup or idling in the operation of the glass melting furnace.

(Source: Amended at __ Ill. Reg. _____, effective _____)

Section 217.224 Emissions Limitations

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- a) On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any cement kiln to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

<u>Emission Unit Type</u>	<u>No_x Emissions Limitation (lb/ton clinker produced)</u>
Long dry kiln	5.1
Short dry kiln	5.1
Preheater kiln	3.8
Preheater/precalciner kiln	2.8

- b) On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any lime kiln to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

<u>Fuel</u>	<u>Emission Unit Type</u>	<u>No_x Emissions Limitation (lb/ton lime produced)</u>
Gas	Rotary kiln	2.2
Coal	Rotary kiln	2.5

(Source: Amended at __ Ill. Reg. ____, effective _____)

Section 217.244 Emissions Limitations

- a) On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any reheat furnace, annealing furnace, or galvanizing furnace used in iron and steel making to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

<u>Emission Unit Type</u>	<u>No_x Emissions Limitation (lb/mmBtu)</u>
Reheat furnace, regenerative	0.18

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Reheat furnace, recuperative, combusting natural gas	0.09
Reheat furnace, recuperative, combusting a combination of natural gas and coke oven gas	0.142
Reheat furnace, cold-air	0.03
Annealing furnace, regenerative	0.38
Annealing furnace, recuperative	0.16
Annealing furnace, cold-air	0.07
Galvanizing furnace, regenerative	0.46
Galvanizing furnace, recuperative	0.16
Galvanizing furnace, cold air	0.06

- b) On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any reverberatory furnace or crucible furnace used in aluminum melting to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

<u>Emission Unit Type</u>	<u>No_x Emissions Limitation (lb/mmBtu)</u>
Reverberatory furnace	0.08
Crucible furnace	0.16

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 217.344 Emissions Limitations

On and after January 1, ~~2015~~2012, no person shall cause or allow emissions of NO_x into the atmosphere from any fossil fuel-fired stationary boiler to exceed the following limitations. Compliance must be demonstrated with the applicable emissions limitation on an ozone season and annual basis.

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Fuel	Emission Unit Type	No _x Emissions Limitation (lb/mmBtu)
Solid	Boiler	0.12
Natural gas	Boiler	0.06
Liquid	Boiler that commenced operation before January 1, 2008	0.10
	Boiler that commenced operation on or after January 1, 2008	0.08

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 217.APPENDIX H Compliance Dates for Certain Emission Units at Petroleum Refineries

ExxonMobil Oil Corporation (Facility ID 197800AAA)

Point	Emission Unit Description	Compliance Date
0019	Crude Vacuum Heater (13-B-2)	December 31, 2014
0038	Alky Iso Strripper Reboiler (7-B-1)	December 31, 2014
0033	CHD Charge Heater (3-B-1)	December 31, 2014
0034	CHD Strripper Reboiler (3-B-2)	December 31, 2014
0021	Coker East Charge Heater (16-B-1A)	December 31, 2014
0021	Coker East Charge Heater (16-B-1B)	December 31, 2014
0018	Crude Atmospheric Heater (1-B-1A)	December 31, 2014
0018	Crude Atmospheric Heater (1-B-1B)	December 31, 2014

ConocoPhillips Company Wood River Refinery (Facility ID 119090AAA)

Point	Emission Unit Description	Compliance Date
0017	BEU-HM-1	December 31, 2012
0018	BEU-HM-2	December 31, 2012
0004	CR-1 Feed Preheat, H-1	December 31, 2012

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0005	CR-1 1 st Interreactor Heater, H-2	December 31, 2012
0009	CR-1 3 rd Interreactor Heater, H-7	December 31, 2012
0091	CR-3 Charge Heater	December 31, 2012
0092	CR-3 1 st Reheat Heater, H-5	December 31, 2012
0082	Boiler-17	December 31, 2012
0080	Boiler 15	December 31, 2012
0073	Alky HM-2 Heater	December 31, 2012
0662	VF-4 Charge Heater, H-28	December 31, 2012
0664	DU-4 Charge Heater, H-24	December 31, 2014
0617	DCU Charge Heater, J-20	December 31, 2014
0014	HCU Fractionator Reboil, H-3	December 31, 2016
0024	DU-1 Primary Heater South, F-301	December 31, 2016
0025	DU-1 Secondary Heater North, F-302	December 31, 2016
0081	Boiler 16	December 31, 2016
0083	Boiler 18	December 31, 2016
0095	DHT Charge Heater	December 31, 2016
0028	DU-2 Lube Crude Heater, F-200	December 31, 2016
0029	DU-2 Mixed Crude Heater West, F-202	December 31, 2016
0030	DU-2 Mixed Crude Heater East, F-203	December 31, 2016
0084	CR-2 North Heater	December 31, 2016
0661	CR-2 South Heater	December 31, 2016

(Source: Amended at __ Ill. Reg. ____, effective _____)

Attachment B



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

217/785-4140
TDD 217/782-9143

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

January 12, 2011

Mr. Robert A. Messina
Executive Director
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701

Re: Illinois EPA's Response to U.S. EPA's Waiver of Illinois' NOx RACT Requirement

Dear Mr. ^{Alec}Messina:

I understand concerns have been raised by IERG and its membership about upcoming implementation dates for Illinois NOx Reasonably Available Control Technology (RACT) rules, in light of U.S. EPA's proposed waiver of NOx RACT requirements for the 1997 8-hour ozone standard. I intend, through this letter, to provide you with the Illinois EPA's planned response to U.S. EPA's waiver of the NOx RACT requirement once it has been finalized.

As you are aware, on July 29, 2010, the Illinois EPA submitted a NOx RACT waiver request to the U.S. EPA, based on quality assured monitoring data showing attainment of the 1997 8-hour ozone standard in all of Illinois for the period 2007-2009. On December 8, 2010, the U.S. EPA proposed to grant the waiver request in the *Federal Register*. It is my understanding that U.S. EPA intends to finalize the waiver in the near future.

As you are also aware, the Illinois Pollution Control Board (Board) adopted a suite of rules intended to satisfy the NOx RACT requirement for the 1997 8-hour ozone standard in the Chicago and Metro-East 8-hour ozone nonattainment areas. See R08-19 and 35 Ill. Adm. Code Part 217. Subparts D, E, F, G, H, I, and M. These rules have a general compliance date of January 1, 2012.

On March 12, 2008, U.S. EPA revised the NAAQS for ozone to an 8-hour average of 0.075 ppm. Based on measured violations of the revised standard, the Illinois EPA recommended to U.S. EPA on March 9, 2009 that both the Chicago and Metro-East areas should be designated as nonattainment areas for which NOx RACT would be required. However, U.S. EPA has not yet acted on implementation of the new standard. Rather, consistent with a directive of the new Obama Administration regarding the review of then pending regulations, U.S. EPA reviewed a number of actions that were taken in the last year of the previous Administration, including the 2008 ozone NAAQS revision. U.S. EPA subsequently proposed to revise the level of the standard to a range of 0.060 to 0.070 ppm. See - 75 *Federal Register* 2938, January 19, 2010.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 3009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

1

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

U.S. EPA announced they were going to finalize the standard by August 31, 2010, which was delayed until October 2010, and then December 2010. Most recently, U.S. EPA announced they expected to finalize the NAAQS revision in the summer of 2011, which will reestablish requirements for NOx RACT to be implemented in areas designated as nonattainment for the revised standard. New nonattainment areas are expected to be designated in 2012, and as a result, Illinois EPA expects that NOx RACT will likely be required by the beginning of the 2015 ozone season.

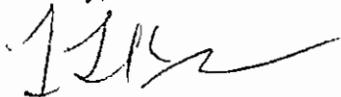
The Illinois EPA recognizes that the waiver of the NOx RACT requirement to meet the 1997 8-hour ozone standard, the reconsideration of the 2008 8-hour ozone standard, and U.S. EPA's delay in adopting the 8-hour ozone standard revision proposed in 2010 results in a situation where the existing NOx RACT rules, absent an underlying federal requirement to adopt these rules at this time, imposes compliance requirements on the regulated community prior to when they will be necessary under the federal Clean Air Act. In light of that situation, the Illinois EPA intends to pursue the following:

- 1) To withdraw the pending request currently before the U.S. EPA to approve the Illinois NOx RACT rules as a SIP revision;
- 2) To file a rulemaking proposal with the Board, as soon as practicable, to extend the compliance date of the Illinois NOx RACT rules to a date of January 1, 2015;
- 3) To support IERG and its members in a request for relief from the existing NOx RACT compliance obligations that may exist prior to January 1, 2015, consistent with the Agency's upcoming rulemaking to extend the compliance deadline to January 1, 2015, through emergency rulemaking or variance, and;
- 4) To continue to dialog with IERG, should U.S. EPA's expected promulgation of a new ozone standard in the summer of 2011 necessitate further changes to Illinois' NOx RACT rules.

As you are also aware, U.S. EPA has identified deficiencies in Illinois' NOx RACT rule, as submitted, and will not approve the rules as meeting RACT requirements until the deficiencies have been corrected. The Illinois EPA intends to file a rulemaking proposal with the Board, as soon as practicable, to correct the deficiencies. This proposal will be a separate from and should not affect adoption of the revised compliance date.

I hope this letter clarifies the Illinois EPA's intentions with respect to implementation of the NOx RACT rule. Feel free to contact me if you have any other questions on this matter.

Sincerely,



Laurel L. Kroack
Chief, Bureau of Air

Attachment C



CITGO Petroleum Corporation

135th Street & New Avenue
Lemont, IL 60439-3659

January 12, 2011

Mr. Alec Davis
General Counsel
Illinois Environmental Regulatory Group (IERG)
215 East Adams Street
Springfield, Illinois 62701

Lemont Refinery Expenditure Schedule to Comply with IEPA NO_x RACT Rule

Dear Alec:

As discussed, this provides information regarding the rate at which project expenses will be incurred at Lemont Refinery to comply with the Illinois Environmental Protection Agency (IEPA) NO_x RACT rule (35 IAC 217 Subparts C, D, and E). The U.S. EPA has proposed waiving the requirement for IEPA to implement NO_x RACT Rules. If this is finalized as proposed, this effectively removes the sole basis for the current NO_x RACT rule and leaves the rule with no underlying driver. The result is that the rule's January 1, 2012 compliance deadline is no longer mandated by current federal requirements.

You indicated that IEPA and IERG are considering an emergency rule-making to put before the Illinois Pollution Control Board (IPCB) to modify the NO_x RACT current deadline to a new deadline (possibly January 1, 2015) which would be after NO_x RACT becomes required in the future (a distinct possibility given the U.S. EPA's looming new Ozone standard).

Accordingly, information to support the emergency nature of the IEPA/IERG request is presented below.

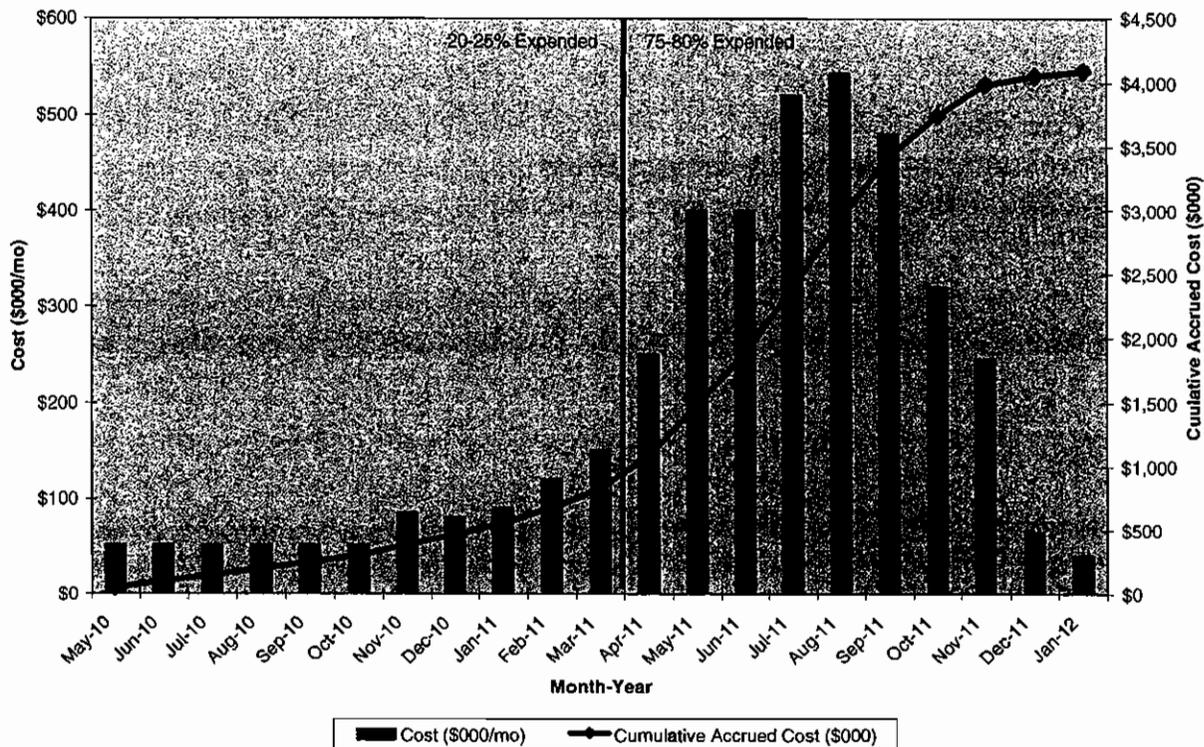
Background

The Lemont Refinery compliance strategy for the NO_xRACT rule is to use the emission averaging option allowed by the rule. Three emission sources require project work to be able to use this option. The project work involves the installation of monitoring equipment only; no burner changes are needed. A significant portion of the project cost is associated with the installation of infrastructure to support the monitoring, such as foundations, structural steel, platforms, electrical, lighting, data communications, etc.

Expenditure Schedule

The following chart illustrates the rate at which this project's costs are expected to be incurred at Lemont Refinery.

Project Expenditure Rate (Actual and Projected) to Comply with IEPA NO_x RACT Rules



As the chart shows, the project expenditure rate will increase rapidly beginning in April. By the end of March, approximately 20-25% of the total capital cost of the project will have been incurred. By the end of June the project will be nearly half way through its budget. And by the end of September, nearly 85% of the project budget will have been committed. Many of the items associated with the expenditures through March involve project engineering and awarding contracts. After March, construction and installation costs begin to be incurred.

If deferral of any of this expenditure is to occur due to postponing the compliance date, action on the part of the IEPA and the IPCB needs to occur soon. Assuming the U.S. EPA proposed waiver of the requirement for Illinois to adopt NO_x RACT to comply with the 1997 Ozone standard is finalized as proposed and to minimize now-unnecessary capital expenditures, it is critical that actions to defer the NO_x RACT Rule compliance deadline be completed by the end of March (or earlier).

IERG Staff
January 19, 2011
Page 3

If there are questions on this information, please call me at 630/257-4450 or Matt Klickman at 630/257-4308.

Sincerely,

A handwritten signature in black ink, appearing to read "C. W. Harmon". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

C. W. Harmon, Manager
Health, Safety, Security and Environmental

MWK/PLM

Attachment D



Granite City Works
United States Steel
20th & State Streets
Granite City, Illinois 62040
(618) 451-3456

April 1, 2011

Mr. Alec Davis
General Counsel
Illinois Environmental Regulatory Group (IERG)
215 East Adams Street
Springfield, IL 62701

RE: U.S. Steel Granite City Works Compliance Schedule with IEPA NO_x RACT Rule

U.S. Steel has begun preparations to comply with the Illinois Environmental Protection Agency (IEPA) NO_x RACT rule (35 IAC 217 Subparts C, D, and E). Since the U.S. EPA has waived the requirement for IEPA to implement the NO_x RACT rules, the compliance deadline of January 1, 2012 is no longer mandated by current federal requirements or required to achieve compliance with any National Ambient Air Quality Standards (NAAQS).

U. S. Steel's preparations to comply with the NO_x RACT rule thus far, included engineering, selection of contractors, and selection of vendors to execute U. S. Steel's NO_x RACT compliance plan. This plan includes projects to implement additional monitoring and flue gas recirculation on #11 Boiler and #12 Boiler, and addition of a Continuous Emissions Monitoring System (CEMS) to the Hot Strip Mill slab reheat furnaces. The next step to complete the NO_x RACT projects is to procure materials and begin installation of equipment. To complete this step, several million dollars will be expended by U.S. Steel to the Granite City Works NO_x RACT compliance plan during the next four months in order to meet a January 1, 2012 compliance date.

If deferral of the compliance date is to occur, it is critical that the IEPA and IPCB act soon to finalize this deferral by the end of April, 2011. Swift action on this issue is essential for U.S. Steel to take effective steps to minimize further unnecessary capital expenditures that have already begun in anticipation of a January 1, 2012 compliance date which is no longer supported by federal mandate. Deferring the NO_x RACT rule will allow U. S. Steel to free up limited capital to employ on other environmental projects.

For these reasons, U.S. Steel supports emergency rulemaking procedures to finalize the deferral of the NO_x RACT compliance date.

Please contact me at (618) 451-3391 with any questions on this correspondence.

Sincerely,

A handwritten signature in black ink that reads "Jill A. Foust". The signature is written in a cursive, flowing style.

Jill A. Foust
Environmental Director
U.S. Steel – Granite City Works

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
EMERGENCY RULEMAKING)	
NITROGEN OXIDES EMISSIONS:)	R11-_____
AMENDMENTS TO 35 ILL.)	(Rulemaking – Air)
ADM. CODE PART 217)	

AFFIDAVIT OF ROBERT A. MESSINA

Pursuant to 35 Ill. Adm. Code §101.504, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Robert A. Messina, certifies that the statements set forth in the Motion for Emergency Rule are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



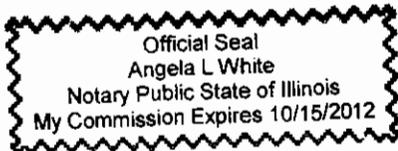
 Robert A. Messina
 Executive Director
 Illinois Environmental Regulatory Group

SUBSCRIBED AND SWORN BEFORE ME

This 21st day of April 2011.



 Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
EMERGENCY RULEMAKING)	R 11-__
NITROGEN OXIDES EMISSIONS:)	(Rulemaking - Air)
AMENDMENTS TO 35 ILL.)	
ADM. CODE PART 217)	

ENTRY OF APPEARANCE OF ALEC M. DAVIS

NOW COMES Alec M. Davis, of the ILLINOIS ENVIRONMENTAL REGULATORY GROUP, and hereby enters his appearance in this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

By: /s/ Alec M. Davis
Alec M. Davis

Dated: April 21, 2011

Alec M. Davis
General Counsel
Illinois Environmental Regulatory Group
215 East Adams St.
Springfield, IL 62701
(217) 522-5512

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
EMERGENCY RULEMAKING) R 11-____
NITROGEN OXIDES EMISSIONS:) (Rulemaking - Air)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217)

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D. Hodge, of the law firm HODGE DWYER &
DRIVER, and hereby enters her appearance in this matter on behalf of the Illinois
Environmental Regulatory Group.

Respectfully submitted,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: April 21, 2011

Katherine D. Hodge
Hodge Dwyer & Driver
3150 Roland Avenue
Post Office Box 5776
Springfield, IL 62705-5776
(217) 523-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
EMERGENCY RULEMAKING) R 11-____
NITROGEN OXIDES EMISSIONS:) (Rulemaking - Air)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217)

ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm HODGE DWYER & DRIVER,
and hereby enters her appearance in this matter on behalf of the Illinois Environmental
Regulatory Group.

Respectfully submitted,

By: /s/ Monica T. Rios
Monica T. Rios

Dated: April 21, 2011

Monica T. Rios
Hodge Dwyer & Driver
3150 Roland Avenue
Post Office Box 5776
Springfield, IL 62705-5776
(217) 523-4900