

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION)	
)	
Petitioner,)	
)	
v.)	PCB 11-86
)	PCB 12-46
ILLINOIS ENVIRONMENTAL)	(cons.)
PROTECTION AGENCY,)	(Variance – Air)
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John T. Therriault	Bradley P. Halloran, Esq.
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	100 West Randolph Street
100 West Randolph, Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **MOTION TO INCORPORATE HEARING TRANSCRIPTS FROM R11-24 RULEMAKING**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

Dated: September 21, 2011

By: /s/ Monica T. Rios
One of Its Attorneys

Katherine D. Hodge
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
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(217) 523-4900

CERTIFICATE OF SERVICE

I, Monica T. Rios, the undersigned, hereby certify that I have served the attached

MOTION TO INCORPORATE HEARING TRANSCRIPTS FROM R11-24

RULEMAKING upon:

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

via electronic mail on September 21, 2011; and upon:

Gina Roccaforte, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Bradley P. Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Ellen Rundulich
Citizens Against Ruining the Environment
P.O. Box 536
Lockport, Illinois 60441

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**MOTION TO INCORPORATE HEARING
TRANSCRIPTS FROM R11-24 RULEMAKING**

NOW COMES ExxonMobil Oil Corporation (“ExxonMobil”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.306, and hereby requests that the hearing transcripts from the R11-24 rulemaking be incorporated into the record of this proceeding. In support of this Motion, ExxonMobil states as follows:

1. On May 18, 2011, ExxonMobil filed a Petition for Variance requesting a variance from the compliance date of the NOx RACT Rule. On September 2, 2011, ExxonMobil filed an Amended Petition, or in the Alternative, New Petition for Variance.
2. During the pendency of the variance proceedings, the Illinois Pollution Control Board (“Board”) held two hearings in the R11-24 Rulemaking, a proceeding to amend the compliance date of the NOx RACT Rule. These hearings were held on June 2 and June 28, 2011, respectfully. Hearing Transcripts, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217, R11-24 and 11-26 (consol.)* (Ill.Pol.Control.Bd. June 2 and 28, 2011).

3. At the June 2, 2011 hearing, the Illinois Environmental Protection Agency (“Illinois EPA”) presented Mr. Rob Kaleel as a witness, and ExxonMobil, as well as the Illinois Environmental Regulatory Group and the Board, questioned Mr. Kaleel regarding the Illinois EPA’s proposal to amend the NOx RACT Rule’s compliance deadline. At the June 28, 2011 hearing, ExxonMobil presented Mr. Robert Elvert, Mr. Dan Stockl, Mr. Doug Deason, and Mr. Brad Kohlmeyer as witnesses to discuss the impact of the NOx RACT Rule on the Joliet Refinery and discuss the reasons why an extension of the compliance date is necessary. ExxonMobil’s witnesses answered questions from the Board, Illinois EPA, and the public during the hearing. The transcripts from the June 2 and June 28, 2011 hearings in the R11-24 rulemaking are attached hereto as Exhibit 1 and Exhibit 2, respectively.

4. On September 19, 2011, the Board held a hearing in this consolidated variance proceeding. At hearing, ExxonMobil’s pre-filed testimony filed in the R11-24 rulemaking was entered into the record as if read and marked as Exhibits 1, 2, and 3.

5. Because the subject matter of this variance request is directly related to the R11-24 rulemaking, ExxonMobil requests that the transcripts from the June 2 and June 28, 2011 hearings be incorporated by reference into this proceeding. As the transcripts accurately reflect the hearings held before the Board and the testimony provided at both hearings was under oath and subject to cross-examination, the transcripts can be deemed authentic and credible. Given that the testimony at the hearings is related to the compliance deadline of the Rule and the issue in this proceeding is an extension of the compliance deadline, it is appropriate to incorporate the hearing transcripts into the record of this proceeding.

6. Counsel for ExxonMobil spoke with Counsel for Illinois EPA, and Illinois EPA does not object to this Motion.

WHEREFORE, EXXONMOBIL OIL CORPORATION respectfully requests that the Illinois Pollution Control Board grant this Motion and incorporate the hearing transcripts from the R11-24 rulemaking into the record of this proceeding.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

DATE: September 21, 2011

By: /s/ Monica T. Rios
One of Its Attorneys

Katherine D. Hodge
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MOBO:027/Filings/11-86 and 12-46/Motion to Incorporate Transcripts from R11-24 Rulemaking

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
NITROGEN OXIDES) R11-24
EMISSIONS AMENDMENTS TO 35 ILL.) (Rulemaking-
ADM. CODE PART 217) Air

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Daniel Robertson, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 2nd day of June, 2011, commencing at the hour of 1:00 p.m.

L.A. COURT REPORTERS, LLC. (312) 419-9292

EXHIBIT

tabbles

1

A P P E A R A N C E S

MR. DANIEL ROBERTSON, Hearing Officer
MR. ANAND RAO,
MS. ANDREA MOORE
MS. CARRIE ZALEWSKI
MR. THOMAS JOHNSON
MR. GARY BLANKENSHIP

HODGE, DWYER & DRIVER
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ILLINOIS ENVIRONMENTAL REGULATORY GROUP
BY: MS. GINA ROCCAFORTE
1021 North Grand Avenue East
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(217) 782-5544

ALSO PRESENT: MR. ROBERT J. KALEEL

REPORTED BY:

Steven J. Brickey, CSR
CSR License No. 084-004675

L.A. COURT REPORTERS, LLC. (312) 419-9292

1 MR. ROBERTSON: Good afternoon, all.
2 My name is Daniel Robertson and I have been
3 appointed by the Board to serve as Hearing Officer
4 in this proceeding entitled In The Matter of
5 Nitrogen Oxides Emissions Amendments to 35 Ill.
6 Adm. Code 217 listed as R11-24 in the Board's
7 docket.

8 This case has been consolidated
9 with Docket R11-26 which is titled In The Matter
10 of Illinois Environmental Regulatory Groups
11 Emergency Rulemaking Nitrogen Oxides Emissions
12 Amendments to 35 Ill. Adm. Code Part 217.

13 With me today on my left is the
14 presiding Board Member Gary Blankenship. Next to
15 him we also have Board Member Tom Johnson. On my
16 other side from the Board's technical unit, we
17 have Anand Rao and besides him we have Board
18 Member's Andrea Moore and Carrie Zalewski.

19 The purpose of today's hearing
20 is to hear testimony from the proponent, the
21 Illinois Environmental Protection Agency. This
22 testimony was pre-filed on May 19th, 2011, and has
23 been made publicly available on the Board's
24 website. To date, no other testimony has been

1 filed.

2 Unless there's any objection,
3 the testimony will be taken as if read and we will
4 begin with questions immediately. If you do have
5 any questions, I'll ask that you please state your
6 name and whom you represent before you begin your
7 questions. It is important to only speak one at a
8 time to ensure the court reporter is able to get
9 all of the questions on the record and also note
10 that any questions asked by a Board Member or
11 staff is intended to help build a complete record
12 for the Board's decision and not to express any
13 preconceived notion or bias.

14 If there is time at the end of
15 the day, the Board will allow any person who did
16 not pre-file testimony to have an opportunity to
17 testify if they so wish to. At this point, would
18 the proponent like to introduce themselves and
19 their witness for the record?

20 MS. ROCCAFORTE: Good afternoon.
21 I'm Gina Roccaforte with the Illinois
22 Environmental Protection Agency and with me today
23 is Mr. Robert Kaleel, manager of the Air Quality
24 Planning Section in the Bureau of Air and I'd ask

1 that he be sworn in at this time.

2 WHEREUPON:

3 ROBERT KALEEL

4 called as a witness herein, having been first duly
5 sworn, deposeth and saith as follows:

6 MR. ROBERTSON: Would the Agency
7 have any opening statements before proceeding to
8 testimony?

9 MS. ROCCAFORTE: No.

10 MR. ROBERTSON: Did anyone else have
11 any opening statements before we proceed to the
12 Agency's testimony? Mr. Kaleel, is that a current
13 and correct copy of your testimony that's been
14 pre-filed?

15 MS. KALEEL: Yes, it is.

16 THE COURT: And do we have any
17 objection to admitting the testimony as if read?
18 Great. At this point, I will enter the testimony
19 of Robert Kaleel as Exhibit 1 to this proceeding.

20 (Document marked as Hearing
21 Exhibit No. 1 for
22 identification.)

23 MR. ROBERTSON: Are there any
24 questions regarding Mr. Kaleel's testimony?

1 MR. DAVIS: Yes. My name is Alec
2 Davis. I represent the Illinois Environmental
3 Regulatory Group. I have a few questions for
4 Mr. Kaleel.

5 Mr. Kaleel, on page four of the
6 Agency's statement of reasons filed with the
7 rulemaking proposal, the Agency states, and this
8 is a direct quote, new non-attainment areas are
9 expected to be designated in 2012 and as a result
10 the Illinois EPA expects that NOx RACT will likely
11 be required by the beginning of the 2015 ozone
12 season, end quote.

13 Does the Illinois EPA still
14 expect that NOx RACT will likely be required by
15 the beginning of the 2015 ozone season?

16 MR. KALEEL: We believe the date
17 that NOx RACT would ultimately be required is
18 uncertain right now. The date of implementation
19 of NOx RACT is dependant on several actions on the
20 part of the US EPA and none of those actions have
21 happened yet. Primarily, what needs to happen is
22 US EPA needs to finalize the ozone air quality
23 standard that they proposed in January of 2010.
24 That starts a regulatory process of the state

1 recommending non-attainment boundaries for areas
2 not meeting the standard for US EPA to adopt those
3 as final and once they've adopted the designations
4 as final that sets in motion hardwired dates that
5 are in the Clean Air Act as to when RACT would be
6 required.

7 Since EPA hasn't acted on the
8 ozone standard yet, we don't know exactly what the
9 date will be. What we put in our statement of
10 reasons is just our expectation of EPA's schedule
11 based on public statements that EPA has made.

12 MR. DAVIS: Thank you. I guess then
13 it would be safe to say you don't know when you'll
14 know for certain when the final date will be known
15 for certain?

16 MR. KALEEL: Yeah. I guess just
17 passing along the information that we've heard
18 from US EPA, including a talk that I heard from
19 Gina McCarthy, who I forget exactly her title, but
20 she is one of the top air pollution people within
21 US EPA made a statement just this past week here
22 in Chicago that they expect to publish the ozone
23 standard in July of this year, July 29th of this
24 year.

1 Of course, they've made those
2 statements before and they've missed those dates
3 before, but they seemed quite certain that will be
4 in July of this year and they also intend to issue
5 what is called an implementation rule as a
6 proposal and that implementation rule should
7 provide states with the information about the
8 schedule for recommending non-attainment area
9 boundaries, the schedule for finalizing those and
10 other matters such as how EPA will categorize
11 non-attainment whether it be a moderate area, a
12 serious area, severe area. Those are all issues
13 that EPA needs to make clear with the
14 implementation rule so we think July of this year.

15 MR. DAVIS: Thanks. If it becomes
16 apparent that NOx RACT will not be required until
17 a date later than the 2015 ozone season, would the
18 Agency be willing to propose another extension?

19 MR. KALEEL: I think we'd be willing
20 to discuss it. I think we'd wait to see what EPA
21 does before we'd say whether or not we're actually
22 willing to make a proposal, but we'll certainly be
23 willing to discuss it.

24 MR. DAVIS: Thank you.

1 MS. RIOS: I have a follow-up
2 question. I'm Monica Rios. I'm here from Hodge,
3 Dwyer & Driver on behalf of Exxon Mobil Oil
4 Corporation. If Illinois EPA is uncertain as to
5 when implementation of the new ozone standard will
6 be required, why include January 1st, 2015, as the
7 date of compliance?

8 MR. KALEEL: Well, there is a
9 rationale behind the 2015 date, but the easy
10 answer is that it's a date that we worked out when
11 we were approached by the Illinois Environmental
12 Regulatory Group as a reasonable date.

13 It was always considered to be a
14 soft date, but given the uncertainty with the
15 status of the ozone standard and the need to make
16 this proposal as quickly as possible, I think both
17 sides mutually agreed that would be a reasonable
18 date.

19 MR. DAVIS: Mr. Kaleel, if future
20 ozone or PM2.5 National Ambient Air Quality
21 Standards are promulgated that result in
22 non-attainment areas in Illinois with a different
23 geographic scope than the current non-attainment
24 areas, will a rulemaking before the Board be

1 required to effectuate those changes and the
2 applicability of any NOx RACT rules?

3 MR. KALEEL: I would expect so. I
4 guess the premise of the question would be that
5 the non-attainment areas would have a -- be
6 categorized as moderate or above, classified as
7 moderate above, which is the trigger for the NOx
8 RACT requirement, but assuming that was the basis
9 of your question, we would clearly need to amend
10 the rule to make it applicable to the new areas.

11 MR. DAVIS: Okay.

12 MR. JOHNSON: Alec, do you mean some
13 place other than East St. Louis or Chicago?

14 MR. DAVIS: Yes. Or if the
15 boundaries were different.

16 MR. JOHNSON: Okay.

17 MR. KALEEL: That's the way I
18 interpreted the question, too.

19 MR. DAVIS: Similarly, Mr. Kaleel,
20 are you aware of any reason why the provisions in
21 Part 217 that are subject to this rulemaking might
22 not be federally approvable to satisfy the NOx
23 RACT SIP requirement for some future ozone or PM
24 2.5 National Ambient Air Quality Standard?

1 MR. KALEEL: We are aware that US
2 EPA has indicated that we would need to revise the
3 Part 217 regulations to be federally approvable.

4 MR. DAVIS: Would that require a
5 rulemaking before the Board?

6 MR. KALEEL: We believe so, yes.

7 MS. RIOS: What issues with the NOx
8 RACT rule has US EPA identified?

9 MR. KALEEL: They identified several
10 and I don't recall specifically what they all are.
11 Some of their issues were requesting
12 clarification. So there might be some things that
13 could be worked out, but at least a few things
14 come to mind. One was the fact that the NOx RACT
15 rule in Illinois had a compliance date of January
16 1st, 2012, which was several years after US EPA
17 required it.

18 So that for US EPA was a
19 nonstarter which makes it very critical that in
20 the future we have a compliance date for NOx RACT
21 that is consistent with US EPA's deadline and we
22 not push that date beyond when it's required so we
23 don't end up in the same situation of the rule not
24 being approvable. There were other things that

1 they noticed.

2 One being provisions in the way
3 the averaging plan that the Agency proposed and
4 has been adopted into the rule, they want some
5 corrections on the averaging. They also didn't
6 like the fact that the rule allowed for a
7 compliance time or an averaging time of seasonal
8 and annual. US EPA would prefer that averaging
9 time be a 30 day average, not seasonal average.
10 Those are the ones that come to mind. I think
11 there may be others.

12 MS. RIOS: Has US EPA provided
13 anything to Illinois EPA in writing on those
14 issues?

15 MR. KALEEL: We do have a letter
16 from US EPA.

17 MS. RIOS: Could the Illinois EPA
18 enter that letter into the record at a later date
19 if possible or provide that to the participants?

20 MR. KALEEL: Perhaps at a later date
21 certainly we could provide that to anyone who
22 wants it, but I'm not sure we're prepared to do it
23 today, but we could certainly make it part of this
24 record.

1 MR. RAO: Would you just submit it
2 into the record, that way anybody interested will
3 have access to it?

4 MR. KALEEL: Sure.

5 MS. RIOS: Does this rulemaking
6 resolve issues that US EPA has identified in that
7 letter?

8 MR. KALEEL: It does not.

9 MS. RIOS: So, in the future, will
10 Illinois EPA propose at another rulemaking to
11 address those issues?

12 MR. KALEEL: That's what we
13 anticipate. We are aware of some of the issues
14 that US EPA had identified. The Agency doesn't
15 believe it's appropriate to pursue those in this
16 present rulemaking for a couple of reasons.

17 One is we wanted to be able to
18 change this compliance date as soon as possible.
19 So we would want it to be a noncontroversial rule
20 and it was our understanding that it is a
21 noncontroversial rule so the companies could
22 receive the relief of the extended compliance
23 date. Also, we wanted to wait until the ozone
24 standard is, in fact, finalized and we know what

1 the NOx RACT deadline and requirements will be.
2 So it's premature at this point and in this
3 rulemaking to try to deal with those deficiencies.

4 MR. ROBERTSON: I saw a hand in the
5 back earlier.

6 THE AUDIENCE: She asked it.

7 MR. ROBERTSON: Okay.

8 MR. DAVIS: Mr. Kaleel, paragraph 15
9 on page four the Agency's motion for expedited
10 review filed with this rulemaking proposal states
11 and I quote here "So as to avoid compliance
12 requirements and unreasonable and unnecessary
13 expenditures on the regulated community, prior to
14 the imposition of federal requirements, this
15 rulemaking proposal amending the compliance date
16 needs to be adopted in an expedited manner."

17 Could you please elaborate some
18 to the best of your knowledge regarding the
19 unreasonable and unnecessary expenditures upon the
20 regulated community prior to the imposition of
21 federal requirements?

22 MR. KALEEL: I guess the first thing
23 to comply with the regulations in Part 217,
24 regardless of the compliance date, will require

1 expenditures on the part of the regulated
2 communities so perhaps the language is a little
3 misreading because we don't believe the
4 expenditures are unreasonable or unnecessary. In
5 fact, they are necessary and reasonable as we have
6 proposed, but the issue is when do these expenses
7 or do these costs have to be spent by the
8 regulated community and given US EPA's waiver of
9 the NOx RACT requirement and, more importantly,
10 given the fact that both non-attainment areas in
11 Illinois are currently meeting the ozone and PM
12 2.5 Air Quality Standards, we agreed with IERG
13 that these controls might not be needed right now
14 or by January 1st, 2012. So we think these
15 expenditures will be needed at some point, but
16 it's not necessary to do it right now.

17 MR. DAVIS: You mentioned controls
18 as one of the things in the context of
19 expenditures. Could you maybe elaborate a little
20 more on that the specifics of what it would take,
21 what types of expenditures there would be?

22 MR. KALEEL: Sure. And this was the
23 subject, of course, of an extensive rulemaking a
24 couple years ago, but to comply with the

1 requirements of 217, many industries would need to
2 install control equipment.

3 So there's certainly costs and
4 expenditures for the installation of controls.
5 There's also monitoring and testing provisions in
6 the rule which will require money, including the
7 requirement for continuous emissions monitors.
8 There's also reporting expenses and I'm sure on
9 the part of the industries the engineering, the
10 planning that would go into the installation of
11 controls as well as the construction activities of
12 that equipment. So there's a number of things
13 that will cost money.

14 MR. DAVIS: Thank you. There's some
15 overlap here, but on page 13 of the Agency's
16 statement of reasons under the subheading
17 Technical Feasibility and Economic Reasonableness
18 the Agency states "By extending the compliance
19 date for the NOx requirements, affected sources
20 gain an economic benefit by delaying
21 implementation costs and associated expenses, such
22 as installation, monitoring and recordkeeping and
23 reporting costs.

24 Do you agree that affected

1 sources must plan in advance to ensure compliance
2 with environmental regulations such as those
3 contained in Part 217 that are subject to this
4 rulemaking?

5 MR. KALEEL: Yes.

6 MR. DAVIS: Do you happen to know
7 whether some affected sources would be required to
8 undertake costly and lengthy changes to their
9 operations in implementing their plan to ensure
10 compliance with the current requirements contained
11 in Part 217?

12 MR. KALEEL: Well, as I've stated
13 before, and we believe that the costs that are
14 imposed by requirements of 217 are reasonable and
15 we've made several efforts in that rulemaking.
16 The Board has approved several things that helped
17 mitigate the expenses, but we do agree that the
18 sources need to be able to plan and depending on
19 the nature of the operations some sources might
20 have pretty extensive planning requirements to be
21 able to comply.

22 MR. DAVIS: Would you agree that
23 affected sources could potentially face liability
24 if they deferred taking any action to plan or

1 implement in advance to be able to ensure
2 compliance?

3 MR. KALEEL: Well, liability is not
4 necessarily my area of expertise since I'm a
5 meteorologist, but generally speaking, though,
6 it's pretty safe to say that a company that isn't
7 complying with a state regulation is potentially
8 facing some sort of an enforcement action.

9 MR. DAVIS: Do you agree that the
10 economic benefit to be gained by the proposed
11 compliance date extension is reduced the longer
12 the affected sources must wait to know with
13 certainty whether the compliance states contained
14 in Part 217 will be extended?

15 MR. KALEEL: I think that's probably
16 true especially for sources that haven't already
17 made those commitments. The compliance date in
18 the rule was January 1st, 2012. I would expect
19 most companies are already pretty far along with
20 their planning, if not their construction, but
21 certainly the closer we are to that date the more
22 critical it becomes for the industries.

23 MR. DAVIS: My final question. Has
24 the Agency estimated how much the potential

1 economic benefit has been reduced by the Board's
2 denying both IERG's motion for emergency rule and
3 the Agency's motion for expedited review filed in
4 these consolidated dockets?

5 MR. KALEEL: No, we have not.

6 MR. DAVIS: Thank you. That's all
7 I've got.

8 MS. RIOS: I have a few more
9 questions.

10 MR. ROBERTSON: Go ahead.

11 MS. RIOS: I want to ask first a few
12 questions on the basis of the original NOx RACT
13 rule. Was the NOx RACT rule promulgated to
14 satisfy the Section 182 (c) and (f) requirements
15 of the Clean Air Act for NOx RACT for major
16 sources located in the areas designated as
17 non-attainment for the 1997 8-hour Standard?

18 MR. KALEEL: I think that was at
19 least one of the motivations for adopting the
20 rule, yes.

21 MS. RIOS: Is that basis still
22 applicable?

23 MR. KALEEL: US EPA granted a waiver
24 from the NOx RACT requirement in Section 182 for

1 the 1997 ozone standard. So for the time being,
2 there is not a federal mandate for NOx RACT.

3 MS. RIOS: Was the NOx RACT rule
4 promulgated to satisfy the requirements of Section
5 172(b)1 of the Clean Air Act for areas designated
6 non-attainment under the 1997 PM 2.5 standard?

7 MR. KALEEL: That was, again, part
8 of the motivation. I mean, the primary motivation
9 is improving air quality and since we're now
10 meeting those standards, that perhaps is less of a
11 an issue right now.

12 MS. RIOS: So would you say that
13 that basis is still applicable?

14 MR. KALEEL: For the 1997 standard,
15 no, it's not.

16 MS. RIOS: Was the NOx RACT rule
17 promulgated to satisfy future RACT requirements
18 for areas designated under the 2006 PM 2.5
19 standard?

20 MR. KALEEL: It was not adopted with
21 respect to the 2006 standard. The entire state
22 was classified as an attainment area for the 2006
23 standard.

24 MS. RIOS: Was the NOx RACT rule

1 promulgated to satisfy future RACT requirements
2 for areas designated non-attainment under the 2008
3 ozone standard?

4 MR. KALEEL: It was not, no. The US
5 EPA has not implemented the 2008 standard. I
6 believe that all areas of the state at least as of
7 today's air quality are meeting the 2008 standard.
8 Subsequent to the adoption of the standard, we did
9 recommend that certain portions of the state would
10 be non-attainment, the same portions of the state
11 that are non-attainment today for the 1997
12 standard because at that time we were not meeting
13 the standard, but the most recent air quality data
14 would suggest we're meeting the standard, but EPA
15 chose not to move forward with the 2008 ozone
16 standard because they intended to revise the
17 standard and make it more stringent and that's
18 what they're in the process of doing right now.

19 MS. RIOS: Is the NOx RACT rule
20 currently required by the Clean Air Act?

21 MR. KALEEL: It is not currently
22 required.

23 MS. RIOS: Have the Chicago and
24 Metro East areas attained the 1997 ozone standard?

1 MR. KALEEL: Yes, they are still
2 designated non-attainment, but they have attained.

3 MS. RIOS: Was the NOx RACT rule
4 required for the attainment of the 1997 ozone
5 standard?

6 MR. KALEEL: At the time we proposed
7 it, we thought it would help with attainment, but
8 we achieved attainment without full implementation
9 of these requirements.

10 MS. RIOS: What effect has the NOx
11 RACT waiver had on the basis for the rule?

12 MR. KALEEL: I'm not quite sure I
13 understand the question.

14 MS. RIOS: Let me see if I can
15 clarify it. US EPA, as you previously testified,
16 approved a NOx RACT waiver for the 1997 ozone
17 standard. How has that waiver changed the basis
18 for the promulgation of the original rule?

19 MR. KALEEL: The waiver removes the
20 federal obligation for NOx RACT. The waiver is
21 based on a finding by US EPA that the standard
22 was, in fact, met by the 2009 deadline for
23 attainment of the standard. So it was based on a
24 clean data finding, but I presume that if we had a

1 real bad ozone season and the area has not been
2 redesignated, before that happens that the waiver
3 could be removed.

4 MS. RIOS: When did Illinois EPA
5 determine that it would request a waiver from US
6 EPA for the NOx RACT requirements?

7 MR. KALEEL: Our request was
8 projected by our efforts last year in 2010 to get
9 the two areas redesignated to attainment. We knew
10 at that point in time that the area was attaining
11 the standard and we believed at that time that we
12 had met all of the State Implementation Plan
13 requirements that US EPA requires us to address
14 and we were seeking a redesignation and for some
15 good reasons we wanted that to occur in 2010.

16 EPA notified us last summer that
17 our VOC RACT rules were not approvable and we're
18 in the process working with the -- through the
19 Pollution Control Board to amend those rules to
20 address those deficiencies. EPA had also
21 mentioned and we talked about that already in
22 earlier questions that our NOx RACT rule was not
23 fully approvable and given that we're still
24 seeking a redesignation and we had the opportunity

1 to request a waiver based on the clean data
2 finding that US EPA had made we asked for the
3 waiver. So that was some time late summer while
4 we were seeking a redesignation.

5 MS. RIOS: Did Illinois EPA discuss
6 the NOx RACT waiver request with the public prior
7 to application in the Federal Register?

8 MR. KALEEL: I don't recall.

9 MS. RIOS: Do you recall when the
10 regulated community was informed that Illinois EPA
11 had submitted a RACT waiver request?

12 MR. KALEEL: I don't recall when the
13 public was made aware of that. The waiver request
14 was just a letter from the Agency to US EPA. It
15 didn't require any kind of a regulatory process or
16 public process. It was just a letter.

17 MS. RIOS: Do you know what the
18 purpose was for not informing the regulated
19 community that Illinois EPA believed that NOx RACT
20 requirements were no longer necessary?

21 MR. KALEEL: I don't believe there's
22 any intent on our part one way or the other. I
23 think it was just another step in trying to get
24 the area redesignated which we thought was a large

1 benefit to the regulated community.

2 MS. RIOS: In the statement of
3 reasons on page 12 for this rulemaking, Illinois
4 EPA states that the extension to the compliance
5 date is to fulfill the NOx RACT requirements under
6 the Clean Air Act for the 8-hour ozone standard
7 that the US EPA is currently considering.

8 MR. KALEEL: I see it here.

9 MS. RIOS: Do you know if NOx RACT
10 will be required under the new standard for the
11 Chicago area?

12 MR. KALEEL: I don't know for
13 certain it will be required, but it is my belief
14 that it will be required and my strong belief. US
15 EPA has indicated last January, January 2010, that
16 they intend to strengthen the ozone standard.
17 What they proposed was a range between 60 and 70
18 parts per billion, which is significantly stronger
19 than the 1997 standard. The 1997 standard was the
20 equivalent of 85 parts per billion. So it is much
21 more stringent. So it is our expectation that the
22 Chicago area and the Metro East area will be
23 non-attainment and these control measures will, in
24 fact, be necessary.

1 MS. RIOS: You testified earlier,
2 though, that Illinois EPA won't know what the
3 implementation schedule will be until US EPA
4 finalizes its new ozone standard. So can you
5 provide a clarification on why Illinois EPA has
6 chosen the January 1st, 2015, deadline at this
7 point when we don't know what the implementation
8 schedule will be?

9 MR. KALEEL: As I mentioned before,
10 the date was mutually agreed to with the Illinois
11 Environmental Regulatory Group. I think both
12 groups, the Agency and IERG, recognized it at the
13 time we were having those discussions that there
14 was no clear data out there because US EPA had
15 delayed finalizing the ozone standard, but in
16 order to expedite this rulemaking, both sides
17 recognized the need to settle on a date. The
18 rationale for the date, and I think it's still a
19 sound rationale, but it was based on the
20 assumption that EPA would finalize the air quality
21 standard in 2011 and would finalize non-attainment
22 designations in 2012.

23 The Clean Air Act requires that
24 for moderate, non-attainment areas that the

1 standard be met within six years, which would mean
2 projecting out, and this is speculation, but I
3 think fairly sound that we would need to attain a
4 standard by sometime in 2018. To show attainment
5 of the standard in 2018, you need three clean
6 years of data. So backing up from '18, we were
7 seeking the control measures in 2015. So we would
8 achieve clean air by 2018.

9 MS. RIOS: That schedule, however,
10 would be based on if the Chicago area was
11 designated non-attainment?

12 MR. KALEEL: Yes, it would have to
13 be a moderate, non-attainment area and the Metro
14 East area as well.

15 MS. RIOS: Has Illinois EPA
16 communicated with US EPA regarding the schedule
17 for promulgation and implementation of the new
18 standard, new ozone standard?

19 MR. KALEEL: We have talked with EPA
20 about it and we have heard EPA give public
21 presentations on what they expect, but as we've
22 indicated, they have not made these dates final
23 yet. These rules are not yet final and EPA has
24 had a fairly poor track record over the past 12

1 months of adopting the standard when they
2 announced that they would adopt it.

3 MR. JOHNSON: Bob, because you work
4 for the Environmental Protection Agency, when you
5 refer to the EPA in your testimony, you're
6 referring to the US EPA?

7 MR. KALEEL: Yes, that's right.
8 Thank you. US EPA.

9 MS. RIOS: Until EPA takes action
10 and issues an implementation rule for the new
11 ozone standard, how can Illinois EPA know what the
12 timeline for compliance will be?

13 MR. KALEEL: Some of the timeline is
14 hardwired in the Clean Air Act. The timeline
15 depends, however, on when US EPA designates -- in
16 final, designates an area as non-attainment.
17 There are other requirements in the Clean Air Act.
18 Once that designation is final, the state has a
19 certain amount of time to submit a SIP, a State
20 Implementation Plan, and RACT would have to be
21 implemented in a certain amount of time after
22 that. So those intervals or time intervals are
23 known, but what we don't know is what the starting
24 date is, when does the area become non-attainment.

1 MS. RIOS: How are the official
2 implementation schedule and compliance timeline
3 communicated to the states?

4 MR. KALEEL: Through the
5 implementation rule typically.

6 MS. RIOS: Do you know when that
7 implementation rule will be finalized?

8 MR. KALEEL: Again, we're on federal
9 time here. The announcement from US EPA was they
10 would propose, not finalize, but propose an
11 implementation schedule at the same time they
12 finalize the ozone standard. So we would expect
13 that to be July of this year.

14 MR. RAO: And you would propose a
15 rule to the Board based on that schedule or is
16 that a notification that everybody will follow?

17 MR. KALEEL: To clarify, I guess,
18 the steps. US EPA would finalize the standard.
19 If we just play along, they'll finalize the
20 standard in July of 2011. The Clean Air Act
21 requires that the state make a recommendation to
22 US EPA as to what areas of the state are meeting
23 and are not meeting the standard typically that --
24 the state would have a year to do that and then US

1 EPA would take another year after that to finalize
2 so that will be the longest that that process from
3 finalizing the standard to having final
4 non-attainment could be. As long as two years.
5 January of 2010 US EPA announced in their
6 proposal -- not a final, in their proposal, they
7 announced an expedited schedule that would make
8 that entire two year process happen in one year.

9 So given that that was in their
10 proposal that this would be a one year process,
11 not a two year process, it makes the
12 implementation of RACT to be highly uncertain, but
13 it would be forgotten exactly what we projected,
14 but it could be as early as 2014 when a RACT rule
15 is due to EPA. I mean, fully approved rule.
16 Backing up a year from that or something like that
17 for a regulatory process, we would certainly need
18 to be back here talking to the Board by sometime
19 in late 2012, early 2013, to address the
20 deficiencies of US EPA and make whatever
21 modifications are necessary. If the process to
22 make an area non-attainment stretches out for the
23 entire two years, that is typically the case, our
24 RACT SIP might not be due until sometime in 2015.

1 So it stretches things out a little bit. It's all
2 hopefully as you can appreciate very speculative.
3 It depends on what US EPA announces this July.

4 MS. RIOS: Have -- I'm sorry. Have
5 you had any indication from US EPA that it intends
6 to propose the expedited schedule that it did for
7 the January 2010 standard?

8 MR. KALEEL: What we've heard is a
9 little bit of a mixed message. When US EPA
10 announced or proposed the expedited schedule for
11 designating non-attainment areas, there was a lot
12 of pushback in the form of comments to the Federal
13 Register, pushback from the states that indicated
14 that timeframe was just too short. That it would
15 be too much of a burden on the states to do the
16 analyses that are required to make the
17 recommendations and for them to do an adequate
18 public process to finalize.

19 EPA said we heard the states and
20 they told us this publicly that they heard those
21 comments and they don't expect a 12 month
22 designation process this next go around, but they
23 have also clearly said that it won't be two years
24 either. So maybe somewhere in the middle, maybe

1 18 months. Again, that's speculation on my part,
2 but consistent with what we've heard from US EPA.

3 MS. RIOS: Are you aware that US EPA
4 has indicated that the date for implementation of
5 NOx RACT requirements for compliance with the new
6 ozone standard could be the end of 2017?

7 MR. KALEEL: I am aware of that and
8 that is certainly one of the possibilities given
9 the range of scenarios that I just described.

10 MS. RIOS: How recently has that
11 communication occurred?

12 MR. KALEEL: I believe our bureau
13 chief got an e-mail from US EPA I want to say a
14 few weeks ago or a month ago. I don't recall the
15 specific date.

16 MS. RIOS: If NOx RACT compliance at
17 the source will be not be required until the end
18 of 2017, should -- would it be prudent to include
19 an extended compliance date in this rulemaking
20 rather than the 2015?

21 MR. KALEEL: It seems to be we'll be
22 backtalking to the Board anyway. If we were to
23 assume a 2017 implementation date and US EPA
24 ultimately stretched it for two years and RACT

1 wasn't due until 2018, I'm quite certain that we'd
2 receive a request to push it back another year.
3 As I described, the 2015 date was the soft date.
4 It was a good rationale. It was something that
5 was mutually agreed to between IERG and the
6 Illinois EPA as a reasonable date. I'd also
7 mention in terms of when RACT is due, the Clean
8 Air Act using terms like as expeditiously as
9 practicable, but not later than.

10 I might have got that language a
11 little bit wrong, but when we're talking about
12 when RACT is due the sense I'm getting from the
13 questions is what would be the absolute latest
14 that it could be due and not when it would be most
15 expeditious to do it.

16 So really expeditious could mean
17 January 1st, 2012, given that that's the timeframe
18 that our rule already requires or some date
19 between January 1st, 2012, and the very last date
20 EPA would accept anywhere in there.

21 MS. RIOS: Should US EPA finalize
22 the ozone standard and implementation schedule so
23 that the end of 2017 is the day when NOx RACT will
24 be required at sources, should the compliance date

1 be extended to at least January 1st, 2018, or the
2 beginning of the ozone season in 2018?

3 MR. KALEEL: I don't think we're
4 prepared to support that right now. I think we
5 would need to see what US EPA comes out with in
6 July.

7 MS. RIOS: Are you familiar with
8 Exhibit B to IERG's motion for emergency rule?
9 It's the Illinois EPA's letter to IERG. It's
10 dated January 12th, 2011.

11 MR. KALEEL: I have the exhibit here
12 in front of me.

13 MS. RIOS: Does Illinois EPA's
14 position remain the same as to its statement that
15 the NOx RACT rule imposes compliance requirements
16 on the regulated community prior to when they will
17 be necessary?

18 MR. KALEEL: I think what it's
19 referring to is the current January 1st, 2012,
20 compliance date and I think as we've indicated it
21 isn't necessary both for the reasons of the waiver
22 received from EPA and the fact that the area is
23 currently meeting the air quality standards. So
24 we don't believe that January 1st, 2012, date is

1 necessary.

2 MS. RIOS: Has Illinois EPA
3 withdrawn its pending request to approve the NOx
4 RACT rule as part of the SIP?

5 MR. KALEEL: Yes, we have.

6 MS. RIOS: When did Illinois EPA do
7 so?

8 MR. KALEEL: I don't have the
9 specific date, but it would have been within the
10 last couple of months that we made that request of
11 US EPA.

12 MS. RIOS: In Exhibit B, Illinois
13 EPA states it will support IERG and its members in
14 requesting relief from the NOx RACT rules
15 obligations that may exist prior to January 1st,
16 2015. Will Illinois EPA continue to support
17 relief from the rules requirement should Illinois
18 EPA propose to extend the compliance deadline past
19 2015?

20 MR. KALEEL: This letter was written
21 with respect to the January 1st, 2015, date and is
22 consistent with the understanding that we had with
23 IERG at the time this letter was written. I'm not
24 aware or know that we have any position about a

1 date beyond 2015 at this time. Again, pending US
2 EPA's action with the ozone standard.

3 MS. RIOS: You testified earlier
4 that US EPA -- you had heard from US EPA that they
5 will finalize the new ozone standard later this
6 year?

7 MR. KALEEL: Yes.

8 MS. RIOS: Has US EPA delayed
9 promulgation in the past on the ozone standard?

10 MR. KALEEL: Several times, yes.

11 MS. RIOS: Is it possible that the
12 issuance of the new standard will be delayed?

13 MR. KALEEL: It's certainly
14 possible.

15 MS. RIOS: Do you have any
16 indication from Illinois -- US EPA what the new
17 standard will be?

18 MR. KALEEL: We have no indication
19 other than US EPA has announced that they will
20 adopt a standard somewhere in the range of 60 to
21 70 parts per billion.

22 MS. RIOS: Do you know when the area
23 designations for the new standards will be made?

24 MR. KALEEL: As we've talked, it

1 will be somewhere within 12 months and 24 months
2 of the standard becoming final.

3 MS. RIOS: Do you know what data
4 period will be used to support the designations?

5 MR. KALEEL: I don't know for sure.
6 We're required to make our recommendation based on
7 the three most recent years of air quality data.
8 I would expect and, again, this is just more of an
9 informed speculation right now, but I would expect
10 that the data that we would be using to make our
11 recommendation would be 2009, 2010, 2011 data.
12 That three year period which would include this
13 ozone season. Depending on how long US EPA allows
14 itself to finalize the recommendations, it may be
15 that the 2009 data would be no longer used and it
16 would be 2010, 2011, 2012.

17 MS. RIOS: Have non-attainment areas
18 been designated for the 2008 standard?

19 MR. KALEEL: No.

20 MS. RIOS: Do you know how the
21 Chicago area would be designated under the 2008
22 standard based on the last three years of data?

23 MR. KALEEL: Based on the last three
24 years of data, I believe we are meeting that 75

1 parts per billion standard.

2 MS. RIOS: Do you know what the
3 Chicago area will be designated under the new
4 standard?

5 MR. KALEEL: I have no idea.

6 MS. RIOS: Will the geographic area
7 be the same as for the 1997 standard?

8 MR. KALEEL: I don't know that.

9 MS. RIOS: Is there anything to
10 prevent a county or a portion of a county from
11 being carved out of the non-attainment area?

12 MR. KALEEL: It's a complicated
13 process for establishing the boundaries for a
14 non-attainment area. US EPA has guidance of how
15 you go about doing that, but the presumptive
16 starting point is the entire metropolitan area and
17 for Chicago, the metropolitan -- I think it's --
18 I'm trying to remember the terminology right now
19 that the census bureau uses, but it includes
20 Kankakee County, DeKalb County, it includes areas
21 that are not currently a portion of the
22 non-attainment area.

23 The guidance does allow you to
24 make the area bigger than the metropolitan area or

1 make it smaller and, historically, we've
2 recommended and US EPA agreed that the full
3 metropolitan area need not be included, but
4 there's a demonstration that has to go along with
5 it. I would expect and, again, depending on the
6 level of the standard, that the area we make it
7 bigger and not smaller.

8 MS. RIOS: Does Illinois EPA know
9 what the Chicago area will be classified?

10 MR. KALEEL: I have no idea.

11 MS. RIOS: Is it possible that the
12 Chicago area will be classified as an attainment?

13 MR. KALEEL: For a standard between
14 the range of 60 and 70 parts per billion, there's
15 no reason to think the area would be attainment.
16 The most recent three year design value, the ozone
17 value that we used to compare to the standard, is
18 above 70. I believe it's 73 or 74 parts per
19 billion right now. So it's just below 75. It's
20 above 70, which would be the highest. We would
21 expect EPA to set the standard.

22 MS. RIOS: Is it possible that the
23 Chicago area will be classified as marginal
24 non-attainment?

1 MR. KALEEL: It's possible.

2 MS. RIOS: Can you explain the basis
3 for a difference in classification of marginal
4 versus moderate?

5 MR. KALEEL: US EPA has
6 established -- I think the initial cut points were
7 the Clean Air Act and they had different cut
8 points based on the measured design value for an
9 area. I don't remember exactly what the areas
10 were, but there's different values for marginal
11 versus moderate versus serious, severe. All the
12 different types of classification they're based on
13 the level of air quality that is achieved or the
14 amount that the area is above the standard.

15 In the 1997 standard, EPA was
16 forced to adopt a different scheme, a different
17 sets of cut points because the 1997 standard was
18 an 8-hour ozone standard and it had a different
19 level than the standard set back in 1990 which was
20 then a 1-hour standard.

21 So because of the different
22 level and because of the different averaging times
23 EPA had to establish different cut points for
24 those classifications. I would expect they would

1 have to do the same thing again now since the
2 level of the standard would be reduced.

3 MS. RIOS: If the Chicago area is
4 designated as attainment or as marginal
5 non-attainment, will NOx RACT be required?

6 MR. KALEEL: NOx RACT wouldn't be
7 required by the Clean Air Act. There may still be
8 a need based on what is needed for attainment in
9 the Chicago, Metro East area and in downwind
10 states there may still be a need to implement the
11 control measures.

12 MS. RIOS: Does the Illinois EPA
13 know when NOx RACT requirement will be required to
14 be implemented at the sources under the new
15 standard?

16 MR. KALEEL: We've talked about that
17 several times. We know -- we have some
18 speculations and we've talked about those as to
19 the latest possible date and as I mentioned also
20 the earliest possible date as expeditiously as
21 practicable is also in play.

22 So it's really a range of dates.
23 It's just not the uncertainty of the final
24 requirement based on US EPA's final action, but

1 also what the state deems to be a reasonable
2 compliance date.

3 MS. RIOS: Do you know what RACT
4 will be under the new standard?

5 MR. KALEEL: We don't know what RACT
6 would be, but we believe that the measures
7 contained in Part 217 will satisfy the NOx RACT
8 requirement for a future ozone standard and I, in
9 fact, testified to that point before.

10 MS. RIOS: If the Chicago area is
11 designated non-attainment, do you know what the
12 attainment date will be for the new standard?

13 MR. KALEEL: The attainment dates
14 are set by the Clean Air Act based on the level of
15 the classification asking. If the area becomes a
16 moderate, non-attainment area, it would be six
17 years after the air quality standard is finalized.
18 I'm sorry. Six years after the non-attainment has
19 been designated, the designation has been
20 finalized.

21 If it's a lower classification
22 marginal, I believe it's three years. If it's a
23 serious, I believe it's three years and it goes
24 all the way up. I recall for the 1-hour standard

1 after the 1990 Clean Air Act amendments, the
2 Chicago area was classified a severe 17, which
3 gave it 17 years for attainment. So I guess the
4 attainment date depends on when the area is
5 classified as non-attainment and what the level of
6 classification is.

7 MS. RIOS: Are you familiar with the
8 emergency rulemaking that IERG filed recently?

9 MR. KALEEL: Yes.

10 MS. RIOS: Specifically, are you
11 familiar with the exhibits to the motion
12 explaining the cost of compliance for Citgo and US
13 Steel?

14 MR. KALEEL: I apologize, but I'm
15 familiar with these documents. I've looked at
16 them, but I've not looked at them recently.

17 MS. RIOS: Are you familiar with the
18 petition for variance that Exxon Mobil has filed
19 with the Board?

20 MR. KALEEL: I am aware they have
21 filed a petition.

22 MS. RIOS: Are you aware that NOx --
23 that Exxon Mobil explains that the cost of
24 compliance with the rule will be approximately \$28

1 million.

2 MR. KALEEL: I have heard that
3 number before.

4 MS. RIOS: Given the current
5 economic climate, what is the basis for requiring
6 facilities to invest substantial resources and
7 controls to comply with the rule which at this
8 time is not required and as you testified has
9 deficiencies that US EPA has identified and is not
10 needed for the original purpose for which it was
11 promulgated?

12 MR. KALEEL: We have agreed in our
13 proposal that those expenditures are not necessary
14 before January 1st, 2012, and had, in fact,
15 proposed a later date.

16 MS. RIOS: In the original R-819
17 rulemaking to adopt the NOx RACT rule, Illinois
18 EPA revised its original to include Appendix H.
19 Do you recall what the basis was for adding
20 Appendix H?

21 MR. KALEEL: I do recall Appendix H
22 and the basis -- the basis was an attempt to
23 accommodate the turnaround schedules for two of
24 the three refineries, petroleum refineries, that

1 were affected by the rulemaking and by
2 accommodating I mean providing later compliance
3 dates than January 1st, 2012.

4 MS. RIOS: Do you expect to revise
5 the compliance dates for the refineries in this
6 rulemaking?

7 MR. KALEEL: In the present
8 rulemaking, the compliance date would be January
9 1st, 2015. The Appendix H Exxon Mobil schedule of
10 December 31st, 2014, fits within that timeframe by
11 one day. The schedule for ConocoPhillips we did
12 not propose to change it. It would still extend
13 to the end of 2016 as was originally agreed to
14 with the companies.

15 MS. RIOS: Based on the
16 uncertainties that you've testified to regarding
17 the implementation of the new rule and the
18 compliance date for NOx RACT sources, would
19 Illinois EPA consider extending the compliance
20 dates for refineries as it did in its previous
21 rulemaking to be consistent with the
22 implementation schedule once it's issued?

23 MR. KALEEL: I think we'd always be
24 willing to talk with our industries about the

1 appropriate schedules for complying with the rule
2 as it has always been our practice. I would point
3 out and I think I mentioned this earlier one of
4 the reasons that US EPA indicated that they
5 couldn't approve our RACT rule the first time
6 around was because of compliance dates for
7 industries that extended beyond the Clean Air Act
8 deadline. I am quite certain that we would be
9 inflexible to extending dates beyond any schedule
10 that US EPA comes out in an implementation rule.
11 Whatever that date is we would just be asking for
12 US EPA to disapprove it again.

13 MS. RIOS: In the previous
14 rulemaking, the compliance deadlines were extended
15 as you said to be consistent with turnaround
16 schedules?

17 MR. KALEEL: Yes.

18 MS. RIOS: Wouldn't that same issue
19 arise here to prevent unplanned shutdowns of the
20 refineries?

21 MR. KALEEL: I guess the difference
22 being when we were negotiating in good faith
23 agreements with the industries that our RACT rule
24 would be approvable at the time that we were doing

1 those agreements and I think we know now from our
2 experience that those extended schedules would not
3 be approved.

4 MS. RIOS: Has Illinois EPA
5 considered including compliant states in the rule
6 that are based on the actions US EPA takes in
7 regards to the new ozone standard? For example,
8 requiring implementation of RACT for X number of
9 years after US EPA issued the designations and
10 classification?

11 MR. KALEEL: I think I missed the
12 very beginning part of your question if you don't
13 mind.

14 MS. RIOS: Has Illinois EPA
15 considered including compliant states in the rule
16 that are based on the actions that US EPA takes in
17 regard to the new ozone standard? For example,
18 requiring implementation of RACT X number of years
19 after the designations are issued or the
20 classifications are issued?

21 MR. KALEEL: We have not really
22 considered any serious changes to the proposal
23 that is now before the Board which is a compliance
24 date of January 1st, 2015, and we believe it's

1 important for the reasons that IERG brought to us
2 that this rulemaking proceed quickly. So there
3 may be an opportunity in a future rulemaking to
4 further adjust the dates, but we think it's
5 important to lock this in and allow the Board to
6 proceed as quickly as they can.

7 MS. RIOS: Did Illinois EPA perform
8 modeling for the basis for the NOx RACT rule?

9 MR. KALEEL: We did not model
10 specifically NOx RACT to look at its benefit in
11 isolation from other requirements. We did include
12 RACT in modeling that we had performed prior to
13 our attainment demonstration. This is my
14 recollection, but it would have included all
15 measures that would have been implemented as part
16 of an attainment demonstration, not just this
17 measure by itself.

18 MS. RIOS: Will Illinois EPA conduct
19 modeling prior to issuing designations for the new
20 ozone standard?

21 MR. KALEEL: No. Modeling is not
22 required for designations.

23 MS. RIOS: Will Illinois EPA conduct
24 modeling prior to the attainment date?

1 MR. KALEEL: We would be required to
2 prepare an attainment demonstration for an area as
3 designated as non-attainment if it's moderate or
4 above. I don't believe an attainment
5 demonstration is required for a marginal area, but
6 we would be doing modeling as part of an
7 attainment demonstration and all control measures
8 that we anticipate would be included in that.

9 MS. RIOS: So will Illinois EPA have
10 modeling complete that shows the NOx reductions
11 that will be needed to meet the new standard?

12 MR. KALEEL: It wouldn't necessarily
13 be NOx reductions. It would be NOx reductions and
14 VOC reductions both in the non-attainment area and
15 for upwind sources and the modeling process is
16 iterative. We would include control strategies in
17 the entire basin. We do this work in conjunction
18 with the other states around the Lake Michigan
19 basin. So all of the strategies that the states
20 identify would be included in the modeling.

21 MS. RIOS: Are you aware of any
22 facility shutdowns planned over the next few years
23 that would reduce NOx emissions in the Chicago
24 area, shutdowns or upgrades?

1 MR. KALEEL: I guess not
2 specifically at this time. I know that there are
3 always some.

4 MS. RIOS: Do you know if the State
5 Line Power Plant will close?

6 MR. KALEEL: That's been in the
7 paper recently. I'm aware of that, which is in
8 Indiana.

9 MS. RIOS: If Illinois EPA is
10 performing modeling for the new ozone standard,
11 will it include reductions from the refineries'
12 Consent Decrees?

13 MR. KALEEL: Yes.

14 MS. RIOS: Will it also include
15 reductions from any facility shutdowns or
16 upgrades?

17 MR. KALEEL: We would typically try
18 to include those. It's kind of a tricky area from
19 a policy perspective. The industries that are
20 shutting down typically like to hold their permits
21 with the expectation that, A, they could reopen at
22 some point in the future or sell those reductions
23 to offset to another industry perhaps seeking to
24 expand. So for us to include it in the modeling,

1 we would have to know that the source has
2 surrendered their permit and no one is seeking
3 those reductions as an offset. So we wouldn't
4 automatically put shutdowns in the model.

5 MS. RIOS: Will reductions from
6 mobile sources be included in the model?

7 MR. KALEEL: Yes.

8 MS. RIOS: Could I have just one
9 minute to speak with --

10 THE COURT: Sure. Why don't we just
11 take a five minute break.

12 (Whereupon, a break was taken
13 after which the following
14 proceedings were had.)

15 MR. ROBERTSON: Let's go back on the
16 record now and do you have any follow-up
17 questions?

18 MS. RIOS: I do. I just have a few
19 more follow-up questions. Mr. Kaleel, earlier you
20 testified that NOx RACT controls could be required
21 as expeditiously as practicable and possibly even
22 as soon as January 1st, 2012. Is it practicable
23 to have the NOx RACT implementation date prior to
24 the deadline for the NOx RACT rule?

1 MR. KALEEL: I guess I was using it
2 to try to make the point that expeditiously as
3 practicable, that language in the act means that
4 the state is supposed to consider how soon control
5 measures could be implemented and I use the
6 January 1st, 2012, date from the standpoint that
7 that is a state requirement and the companies are
8 planning. Hopefully they're planning on
9 compliance by January 1st, 2012, and have been
10 since the time that the Board first adopted the
11 rule.

12 So if it was practicable before
13 our motion to extend the date, then it's still
14 practicable. That doesn't mean that US EPA would
15 require NOx RACT by 2012. Clearly as we talked
16 about, they won't, but it's clearly practicable to
17 do it sooner than the very final date that US EPA
18 would allow for RACT and that was the point I was
19 trying to make.

20 MS. RIOS: Do you know if the new
21 ozone standard is likely to be challenged?

22 MR. KALEEL: Again, I'm a
23 metrologist, not a lawyer, but that's certainly
24 been the track record for about any US EPA action

1 these days. So it's very possible that it would
2 be challenged.

3 MS. RIOS: Historically, have
4 challenges to the ozone standards resulted in
5 delay of an implementation schedule or
6 designations?

7 MR. KALEEL: It certainly could.
8 I'm just trying to recall the recent history. EPA
9 had adopted the prior 8-hour standard in 1997 and
10 it wasn't until, I believe, 2004 or 2005 that they
11 issued their implementation rule. So it could
12 certainly delay it.

13 MS. RIOS: Going back to several of
14 the questions on the geographic area of the
15 classification for the new ozone standard and if
16 the geographic area is bigger, larger than the
17 current non-attainment area, will more sources be
18 subject to NOx RACT?

19 MR. KALEEL: I believe so. I
20 haven't looked at the emissions inventory for
21 counties surrounding the current non-attainment
22 area. So I don't know what major NOx sources are
23 in those counties, what industries they belong to,
24 what the applicability thresholds might apply.

1 I'd say it's certainly likely that additional
2 sources would need to comply with NOx RACT, but I
3 don't have any specifics on that right now.

4 MS. RIOS: Would those sources be
5 required to install controls consistent with the
6 existing rule?

7 MR. KALEEL: That would be our
8 intent, yes.

9 MS. RIOS: If the geographic area is
10 determined to be smaller than the current area
11 that's non-attainment, would the NOx RACT rule
12 controls not be required at those sources in that
13 area?

14 MR. KALEEL: I mean, that's real
15 speculation. I can't conceive of a circumstance
16 where the area would be smaller. These boundaries
17 have existed at least since 1990 and probably
18 earlier than that.

19 MS. RIOS: Earlier, you testified
20 regarding the designations and this schedule for
21 that could be anywhere from 12 to 24 months. Is
22 there a possibility that there could be an
23 additional one year extension for designations?

24 MR. KALEEL: Beyond 24 months, I'm

1 not aware of an approach that would -- anything in
2 the law that would allow them more than 24 months
3 to complete that process. I could be wrong. Gina
4 had pointed out a citation, and I'm not familiar
5 with the document that we're looking at, but there
6 does appear to be a provision for an extension of
7 a year if the administrator has insufficient
8 information. I haven't looked at this language
9 before, but it's possible what they're looking at
10 are areas that don't have monitoring data.

11 MS. RIOS: Going back to the
12 questions and testimony regarding the modeling and
13 whether to include facility shutdowns or upgrades
14 in that effort. You testified that they probably
15 wouldn't be included for several reasons, but
16 wouldn't the shutdowns or the upgrades at those
17 facilities impact the monitors, show improvements
18 at the monitoring?

19 MR. KALEEL: They certainly would.

20 MS. RIOS: Do you know where in
21 proximity to Illinois the State Line Power Plant
22 facility is?

23 MR. KALEEL: Yes.

24 MS. RIOS: Does it impact the air

1 quality in Illinois?

2 MR. KALEEL: Certainly, it does,
3 yes.

4 MS. RIOS: Are you aware of other
5 continued reductions independent of this rule that
6 impact the air quality in the Chicago area?

7 MR. KALEEL: Yes. I'm familiar with
8 several that will provide reductions beyond the
9 current date including mobile source control
10 measures. One of your questions asked about that.
11 We expect continued reductions of VOC, volatile
12 organic compounds, and NOx emissions from mobile
13 sources. Both on road and off road mobile
14 sources.

15 We know that there's an
16 agreement with many of the largest utilities in
17 the State of Illinois to implement multipollutant
18 controls. That was part of the requirement of
19 Illinois's mercury rule that the Board had
20 approved and many of those reductions are yet to
21 occur. I believe for NOx emissions all those
22 controls have to be in place by 2012. So there's
23 still another year before all those measures are
24 in place. Those are some examples. There may be

1 others.

2 MS. RIOS: Is it possible that
3 knowing whether NOx RACT is required and if it is
4 receiving a firm answer on the implementation
5 schedule from US EPA that the deadline will need
6 to be extended beyond 2013?

7 MR. KALEEL: The deadline for 2013?

8 MS. RIOS: For example, the NOx RACT
9 2013 deadline for implementation of sources?

10 MR. KALEEL: I'm a little confused
11 by the question. 2013 is what is confusing me.

12 MS. RIOS: Or 2015. 2015.

13 MR. KALEEL: As I mentioned or
14 responded to an earlier question, I think the
15 Agency would be willing to consider alternate
16 dates once we have some clarity from US EPA as to
17 to what the requirements will be.

18 MS. RIOS: And if the deadline did
19 need to be extended or additional revisions to the
20 NOx RACT rule are required in order to achieve --
21 to comply with the new standard, how will Illinois
22 EPA go about implementing those?

23 MR. KALEEL: Our usual approach is
24 to initiate some sort of a dialogue with state

1 holders to try to identify issues to try to share
2 information to try to resolve any issues prior to
3 filing a proposal with the Pollution Control Board
4 and then the following steps obviously are to make
5 the proposal and to do the rulemaking.

6 MS. RIOS: I think I'm finished.

7 MR. ROBERTSON: Thank you. Did
8 anybody else have any questions today? Seeing
9 none, any members of the Board have questions?
10 Okay. Is there anyone else that would like to
11 testify on any other matter in this proceeding
12 today? Seeing none, at this point, I would like
13 to go off the record to discuss the next set of
14 dates for this proceeding.

15 (Whereupon, a discussion was had
16 off the record.)

17 MR. ROBERTSON: So the next hearing
18 is set for June 28th at 1:00 p.m. in the County
19 Boardroom, No. 203, at the Madison County
20 Administration Building in Edwardsville.

21 As the previous Hearing Officer
22 order noted, the pre-filing deadline for that
23 deadline is June 20th. Before adjourning, I'd
24 just like to note in introductions earlier I

1 inadvertently left two people off. We've also
2 been joined by two of the Board's interns today,
3 Ethan Pressly and Erica Yee. My apologies for
4 that and with that I'd just like to thank you all
5 for taking the time to come out today and we are
6 adjourned.

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24 STATE OF ILLINOIS)

1) SS.

2 COUNTY OF COOK)

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4 I, Steven Brickey, Certified Shorthand
5 Reporter, do hereby certify that I reported in
6 shorthand the proceedings had at the trial
7 aforesaid, and that the foregoing is a true,
8 complete and correct transcript of the proceedings
9 of said trial as appears from my stenographic
10 notes so taken and transcribed under my personal
11 direction.

12 Witness my official signature in and for
13 Cook County, Illinois, on this 7th day of
14 June, A.D., 2010.

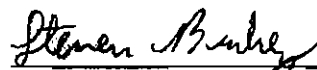
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED
CLERK'S OFFICE**

JUL 08 2011

**STATE OF ILLINOIS
Pollution Control Board**

IN THE MATTER OF:)
 NITROGEN OXIDES EMISSIONS)
 AMENDMENTS TO 35 ILL. ADM. CODE) R11-24
 217,)

IN THE MATTER OF:) R11-26
 ILLINOIS ENVIRONMENTAL) (Rulemaking -
 REGULATORY GROUP'S EMERGENCY) Air)
 RULEMAKING, NITROGEN OXIDES)
 EMISSIONS: AMENDMENTS TO 35) (Cons.)
 ILL. ADM. CODE PART 217,)

TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER DANIEL ROBERTSON
 by LORI ANN ASAUSKAS, CSR, RPR, a notary public
 within and for the County of Cook and State of
 Illinois, in Room 203 at the Madison County
 Administration Building, Edwardsville, Illinois,
 on the 28th day of June, 2011, A.D., at 1:00
 o'clock p.m.

EXHIBIT

tabbies

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1 A P P E A R A N C E S :

2

3 ILLINOIS POLLUTION CONTROL BOARD,

4 100 West Randolph Street

5 Suite 11-500

6 Chicago, Illinois 60601

7 (312) 814-6983

8 BY: MR. DANIEL L. ROBERTSON,

9

10

11 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

12

13 Mr. Gary L. Blankenship, Board Member

14 Mr. Anad Rao, Technical Unit

15

16 ILLINOIS ENVIRONMENT PROTECTION AGENCY,

17 1021 North Grand Avenue East

18 P.O. Box 19276

19 Springfield, Illinois 62794-9276

20 (217) 782-5544

21 BY: MS. GINA ROCCAFORTE,

22

23

24

25

26

27

1 A P P E A R A N C E S: (Continued)

2

ALSO PRESENT:

3

Ms. Monica T. Rios, Hodge, Dwyer & Driver

4 Ms. Kathy Hodge, Hodge, Dwyer & Driver

Mr. Robert J. Kaleel, IEPA

5 Mr. Alec M. Davis, IERG

Mr. Alec Messina, IERG

6 Mr. Bradford S. Kohlmeyer, ExxonMobil

Mr. Robert Elvert, ExxonMobil

7 Mr. Daniel J. Stockl, ExxonMobil

Mr. Douglas Deason, ExxonMobil

8 Ms. Christine Favilla, Sierra Club

Ms. Jeanine Kelly

9 Ms. Amy Funk

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1 HEARING OFFICER ROBERTSON: Good
2 afternoon all. My name is Daniel Robertson
3 and I have been appointed by the Board to
4 serve as hearing officer in this proceeding
5 entitled, "In the matter of: Nitrogen Oxides
6 Emissions, Amendments to 35 Illinois Administrative
7 Code 217," listed as R11-24 in the Board's docket.

8 This case has been consolidated
9 with Docket R11-26, which is titled, "In the matter
10 of: Illinois Environmental Regulatory Group's
11 Emergency Rulemaking, Nitrogen Oxides Emissions:
12 Amendments to 35 Illinois Administrative Code
13 Part 217."

14 With me today is the presiding
15 Board member, Gary Blankenship, and also from the
16 Board's technical unit, we have Anad Rao.

17 MR. RAO: If you want, you can use
18 the microphone. It works.

19 HEARING OFFICER ROBERTSON: Can
20 everybody hear me okay?

21 All right. The purpose of
22 today's hearing is twofold. First, this rulemaking
23 is subject to Section 27(b) of the Environmental
24 Protection Act. Section 27(b) of the act requires

1 the Board to request the Department of Commerce
2 and Economic Opportunity to conduct an economic
3 impact study on certain proposed rules before
4 adoption. If the DCEO chooses to conduct an
5 economic impact study, the DCEO has 30 to 45 days
6 after the Board's request to produce a study of
7 the economic impact of the proposed rules.

8 The Board must then make the
9 economic impact study or the DCEO's explanation
10 for not conducting the study available to the
11 public at least 20 days before a public hearing
12 on the economic impact of the proposed rules.

13 In accordance with Section 27(b)
14 of the act, the Board requested by letter dated
15 April 13, 2011, that the DCEO conduct an economic
16 impact study before these rulemakings.

17 On May 23, 2011, the DCEO
18 responded stating that they are unable to
19 undertake such a study. The Board's letter
20 and the DCEO's response have both been made
21 available on the Board's website. Later, we
22 will be accepting any comments concerning
23 these letters.

24 The second part of today's

1 hearing is to hear testimony from the proponents.
2 Pre-filed testimony was submitted by the proponent
3 R11-26, the Illinois Environmental Regulatory
4 Group, on June 20, 2011.

5 On the same day, the Board
6 received the pre-filed testimony of Robert Elvert,
7 Dan Stockl and Doug Deason, all on behalf of
8 ExxonMobil Oil Corporation. These four
9 testimonies have been made publicly available
10 on the Board's website. To date, no other
11 testimony has been filed for this hearing.

12 Unless there is any objection,
13 all testimony will be taken as if read and we
14 will begin with questions immediately. I will
15 ask if you wish to ask a question please put
16 your hand up and wait for me to acknowledge you.
17 After I have acknowledged you, please state your
18 name and whom you represent before you begin your
19 questions.

20 It is important to only speak
21 one at a time to ensure that the court reporter
22 is able to get all of your questions on the
23 record.

24 Please also note that any

1 question asked by a Board member or staff is
2 intended to help build a complete record for
3 the Board's decision and not to express any
4 preconceived notion or bias.

5 We will begin today with
6 IERG's testimony and any questions based on
7 that and will then follow the same procedures
8 for ExxonMobil's testimony. If there is time
9 at the end of the day, the Board will allow any
10 person who did not pre-file testimony to have
11 an opportunity to testify if they so wish to.

12 At this point, I would like
13 to introduce the first witness for the record.

14 MR. DAVIS: Thank you,
15 Mr. Robertson. My name is Alec Davis. I am
16 representing the Illinois Environmental Regulatory
17 Group or IERG.

18 On behalf of the IERG,
19 I would like to thank the Board for providing the
20 opportunity for us to be here today.

21 On June 20, 2011, IERG pre-filed
22 the testimony of Robert A. Messina. I would like
23 to move to enter that into the record as if read
24 at this time. I have additional copies of that

1 for anyone who might need that.

2 HEARING OFFICER ROBERTSON: Are there
3 any objections to admitting the pre-filed testimony
4 of Robert A. Messina as read?

5 Seeing none, I will enter this
6 as Exhibit 2 to the proceeding and to the pre-filed
7 testimony. This is Exhibit 2.

8 (Document marked as
9 Hearing Exhibit No. 2
10 for identification, 6/28/11.)
11 (Hearing Exhibit No. 2
12 admitted as evidence.)

13 HEARING OFFICER ROBERTSON: Do you
14 have any opening statement before we proceed with
15 testimony?

16 MR. DAVIS: Mr. Messina is with me
17 here today and he would like to offer an opening
18 statement after being sworn in and he can answer
19 any questions.

20 HEARING OFFICER FOX: Will the court
21 reporter please swear in the witness?

22 (Witness sworn.)

23 MR. MESSINA: Thank you very much.
24 I appreciate it again. My name is Alec Messina.

1 I'm the executive director for the Illinois
2 Environmental Regulatory Group. I will certainly
3 make myself available for any questions the Board
4 or anyone else may have.

5 I just wanted to make, I think,
6 two points since the pre-filed testimony has been
7 entered into the record already. One, I know that
8 there was some discussion at the previous hearing
9 when the 2015 date was arrived at and so given that
10 discussion, IERG felt it was necessary to provide
11 some additional insight to the Board as to what
12 IERG's position was in those discussions with the
13 Agency.

14 There were a number of different
15 options which -- all of which we felt were
16 appropriate to one level or another, but given
17 that, in those discussions, the Agency felt very
18 strongly about the option that we have before us
19 today, the 2015 compliance date. That was the
20 IERG's rationale for concurring and that was
21 that the Agency -- that was their favorite
22 option.

23 I think that, amongst our
24 membership, there was support for a number of

1 different options, which we laid forth in my
2 pre-filed testimony.

3 Second of all, and again, I
4 think this is also laid out in more detail in
5 the pre-filed testimony, but I think that IERG's
6 position is primarily focused on the policy
7 issue that we feel is presented by this particular
8 matter and that is that given the significant
9 amount of uncertainty that the state of Illinois
10 and the Illinois EPA and the regulating community
11 face, given the NOx waiver that was recently
12 approved by USEPA at the end of this year, and
13 the standards that it is important to our members
14 that, and to the regulating community as a whole,
15 that they not be expending dollars that may or
16 may not be sufficient for whatever requirements
17 they may need to meet in the future.

18 So given that uncertainty, we
19 feel very strongly that it would behoove all of
20 us to push back that compliance deadline until
21 certainty is present.

22 With that, if there are any
23 questions, I would be happy to do my best to
24 answer those.

1 HEARING OFFICER ROBERTSON: Do any
2 members of the public have any questions regarding
3 that testimony?

4 Seeing none, I believe the Board
5 has a question?

6 MR. RAO: Yes. I have just one
7 clarification question. The emergency rule that
8 they proposed pretty much, does it parallel what
9 the Agency has proposed in terms of the compliance
10 dates?

11 MR. MESSINA: I believe it's
12 identical.

13 MR. RAO: Okay. The question I
14 have is in Appendix H of Part 217 --

15 MR. MESSINA: Could you give me
16 just one moment so I could pull that?

17 MR. RAO: Yes.

18 MR. MESSINA: Thank you. Go ahead.
19 Thank you.

20 MR. RAO: In Section 217, Appendix H,
21 the compliance dates for certain emission units at
22 petroleum refineries, the compliance date for
23 ExxonMobil Corporation and Conoco-Phillips, some
24 of those dates have been deleted. Would you clarify

1 whether -- would the deletion of the dates,
2 will they be subject to the proposed compliance
3 date of January 1, 2015?

4 MR. MESSINA: I think that is the
5 case.

6 MR. RAO: That's the case? Is
7 it possible for you to identify where in the
8 rules there is a provision requiring those units
9 to comply with the January 1, 2015 date? And I
10 throw this question to the Agency also because
11 there is perhaps similar language. If you can
12 answer it, that's fine.

13 MS. ROCCAFORTE: I'm Gina Roccaforte
14 with the Illinois Environmental Protection Agency.
15 I don't know if Mr. Davis wants to answer that or
16 provide confirmation. Section 217.152 is the
17 compliance provision and generally Subsection A
18 governs the units that are subject to the compliance
19 date of January 1, 2015, and Subsection C is
20 another provision specifically for these units at
21 refineries.

22 MR. RAO: See, that's what -- when
23 I was reading Subsection C, it was not very clear
24 because of the exception language in Subsection C.

1 MS. ROCCAFORTE: That would now refer
2 to the Conoco-Phillips units that are still subject
3 to the chart.

4 MR. RAO: So ExxonMobil units will be
5 completely removed from that appendix section? That
6 exception does not apply to them anymore, is that
7 what you are saying?

8 MS. ROCCAFORTE: Correct. It's one
9 day beyond the date set forth in Appendix H,
10 January 1, 2015.

11 MR. RAO: Okay. Thanks.

12 HEARING OFFICER ROBERTSON: Do we have
13 some follow-up questions?

14 MR. KOHLMAYER: At ExxonMobil, we may
15 add clarity to our understanding to that.

16 HEARING OFFICER ROBERTSON: We will
17 have the court reporter swear in the witness.

18 MS. RIOS: If I could just take
19 a moment and introduce them and we will have
20 Mr. Kohlmeyer follow-up on that.

21 HEARING OFFICER ROBERTSON: Yes. Okay.
22 That's fine.

23 MS. RIOS: I'm Monica Rios. I'm here
24 on behalf of ExxonMobil Corporation, along with

1 Kathy Hodge. We pre-filed testimony in this
2 matter. With me here today from ExxonMobil is
3 Mr. Bob Elvert, Mr. Doug Deason, Mr. Dan Stockl
4 and also Mr. Brad Kohlmeyer is here. We did not
5 provide pre-filed testimony on his behalf, but
6 he is here to provide technical assistance.

7 So before we swear in these
8 witnesses, I would just like to have their testimony
9 entered into the record.

10 HEARING OFFICER ROBERTSON: Are there
11 any objections to having the pre-filed testimonies
12 entered at this time?

13 Okay. Seeing none, I
14 will entered the pre-filed testimony of Robert
15 Elvert on behalf the ExxonMobil Oil Corporation
16 as Exhibit 3.

17 (Document marked as
18 Hearing Exhibit No. 3
19 for identification,
20 6/28/11.)
21 (Hearing Exhibit No. 3
22 admitted as evidence.)

23 HEARING OFFICER ROBERTSON: And then we
24 will enter the pre-filed testimony of Dan Stockl

1 on behalf of ExxonMobil Oil Corporation as Exhibit 4
2 of these proceedings.

3 (Document marked as
4 Hearing Exhibit No. 4
5 for identification,
6 6/28/11.)
7 (Hearing Exhibit No. 4
8 admitted as evidence.)

9 HEARING OFFICER ROBERTSON: And
10 lastly, we will enter the pre-filed testimony of
11 Doug Deason on behalf of ExxonMobil Oil Corporation
12 as Exhibit 5.

13 (Document marked as
14 Hearing Exhibit No. 5
15 for identification,
16 6/28/11.)
17 (Hearing Exhibit No. 5
18 admitted as evidence.)

19 HEARING OFFICER ROBERTSON: Will the
20 court reporter please swear in the witnesses?

21 (Witnesses sworn.)

22 MR. KOHLMAYER: I think what
23 I was thinking is the way the rule is written,
24 it is written so that regulations would apply to

1 any particular units of this size, the building
2 threshold and the regulation would be subject on
3 the effective date, as proposed here, of January 1,
4 2015, unless they were specifically listed
5 in Appendix H.

6 By striking everything
7 in Appendix H, at ExxonMobil all -- of our units
8 become effective on January 1, 2015, as the rules
9 require.

10 MR. RAO: Okay. Thank you.

11 HEARING OFFICER ROBERTSON: Okay.

12 Did the Board have any more questions for either?

13 MR. RAO: No.

14 HEARING OFFICER ROBERTSON: Did
15 anyone else have any questions for the first
16 witness?

17 Okay. Seeing none, I thank you
18 both very much for your time today and we will now
19 move onto the testimony of ExxonMobil. We have
20 already entered those pre-filed testimonies as
21 exhibits to this hearing. So we will move on to
22 questions.

23 Do any members of the public
24 have any questions regarding ExxonMobil testimonies?

1 MS. RIOS: Mr. Elvert would like to
2 make an opening statement.

3 HEARING OFFICER ROBERTSON: Oh, I'm
4 sorry.

5 MR. ELVERT: Thank you,
6 Mr. Robertson and Board members. Good afternoon.
7 My name is Robert Elvert. I am the state regulatory
8 advisor for the midwest region at ExxonMobil. My
9 colleagues and I are here today to testify regarding
10 the impact of NOx RACT rules and Exxonmobil's Joliet
11 refinery.

12 As referenced in our pre-filed
13 testimony, ExxonMobil has filed a petition for
14 variance in the NOx RACT rules in order to obtain
15 relief from the rule requirements at this time.

16 The testimony today is not intended
17 to delay this ruling. ExxonMobil is aware that
18 other facilities need relief from the rule as soon
19 as possible in order to postpone our investments
20 until a time when the rule is federally required.

21 Exxonmobil's testimony
22 in this matter is intended to provide information
23 to the Board although the extension of the
24 compliance deadline is necessary.

1 For ExxonMobil, the Illinois
2 EPA's proposed deadline is not sufficient given
3 the refinery's turnaround schedule as well as
4 how the USEPA has identified deficiencies in their
5 March 9, 2011, letter could require redefining the
6 control products that are needed in order to comply
7 with the Joliet refinery.

8 HEARING OFFICER ROBERTSON: Thank you,
9 Mr. Elvert.

10 Were there any other opening
11 statements from ExxonMobil?

12 MS. RIOS: No.

13 HEARING OFFICER ROBERTSON: And did
14 anybody else have any opening statements regarding
15 Exxonmobil's testimony?

16 Seeing none, we will proceed to
17 questions. Are there any questions regarding either
18 of the Exxonmobil's testimonies? Ms. Roccaforte, go
19 ahead.

20 MS. ROCCAFORTE: Gina Roccaforte on
21 behalf of the Illinois Environmental Protection
22 Agency. Good afternoon, Mr. Elvert.

23 MR. ELVERT: Good afternoon,

24 MS. ROCCAFORTE: Isn't it true that

1 most sources subject to the rule are, in fact,
2 currently subject to a compliance date of January 1,
3 2012?

4 MR. ELVERT: I'm sorry. Could you
5 repeat that?

6 MS. ROCCAFORTE: Sure. Isn't it true
7 that most sources subject to the rule are, in fact,
8 currently subject to a compliance date of January 1,
9 2012?

10 MR. ELVERT: It's my understanding,
11 yes, they are except in Appendix H.

12 MS. ROCCAFORTE: Following up on that,
13 isn't it true that there are certain provisions in
14 the rule that extend the compliance date for certain
15 other sources?

16 MR. ELVERT: The sources -- I'm aware
17 of the ones in Appendix H.

18 MS. ROCCAFORTE: Okay. For example,
19 owners and operators of glass melting furnaces are
20 required to meet certain emission limits?

21 MR. ELVERT: I don't know.

22 MS. ROCCAFORTE: Or the provision
23 pertaining to owners and operators of industrial
24 boilers are located at petroleum refineries?

1 MR. ELVERT: If they are located in
2 Appendix H, yes.

3 MS. ROCCAFORTE: Okay. And more
4 specifically, isn't it true that the Agency and
5 ExxonMobil engaged in negotiations and agreed to
6 a December 31, 2014, compliance date for
7 Appendix H?

8 MR. ELVERT: Yes, we did.

9 MS. ROCCAFORTE: And isn't it true
10 that ExxonMobil had a scheduled turnaround prior to
11 that date?

12 MR. ELVERT: To meet the requirements
13 for the compliance date, yes.

14 MS. ROCCAFORTE: Okay.

15 MR. RAO: May I ask a follow-up?

16 MR. ELVERT: Yes.

17 MR. RAO: What is that turnaround date
18 that you have?

19 MR. ELVERT: It's confidential at this
20 point in time. We don't advertise or publicize when
21 our maintenance turnarounds are.

22 MR. RAO: Okay. In your pre-filed
23 testimony, you indicated that the next turnaround is
24 in 2019?

1 MR. ELVERT: The next scheduled one,
2 yes. Before 2014, yes. Right now, it's scheduled
3 2019. Maybe Brad can testify to that more.

4 MR. KOHLMAYER: It is indicated in the
5 pre-filed testimony -- I'm sorry. My name is Brad
6 Kohlmeyer. The pre-filed testimony indicated that
7 the next scheduled turnaround is being considered
8 for 2019 at this point in time. There is another
9 turnaround scheduled sometime before 2014 where
10 we were currently on a plan to implement controls
11 for this.

12 MR. RAO: Okay. So in the pre-filed
13 testimony, when you said, "next turnaround," there
14 is one more scheduled?

15 MR. ELVERT: One more that would
16 be scheduled after the original 2014 date.

17 MR. RAO: Okay. Thank you.

18 MS. ROCCAFORTE: I just want to
19 clarify, it is true that ExxonMobil does have
20 scheduled turnaround prior to December 31, 2014,
21 correct?

22 MR. ELVERT: Yes.

23 MS. ROCCAFORTE: Isn't it true that
24 after negotiations with the refineries, the Agency

1 proposed -- and the final rule promulgated and
2 included compliance dates accommodating planned
3 turnaround?

4 MR. ELVERT: Yes.

5 MS. ROCCAFORTE: And isn't it true
6 that if the compliance date is modified for this
7 rulemaking, then all sources would generally be
8 subject to the same date, January 1, 2015?

9 MR. ELVERT: As this proposal is
10 written, that's my understanding, yes.

11 MS. ROCCAFORTE: And isn't
12 it true that at the first hearing, there was
13 discussion about the deficiencies of Illinois
14 NOx RACT submittal as indicated by USEPA and
15 the Illinois EPA?

16 MR. ELVERT: I'm sorry. Could you
17 repeat that, please?

18 MS. ROCCAFORTE: Isn't it true that
19 at the first hearing, there was a discussion about
20 the deficiencies of the Illinois NOx RACT submittal
21 as indicated by USEPA and the Illinois EPA?

22 MR. ELVERT: Can you repeat that one
23 more time?

24 MS. ROCCAFORTE: Sure. Isn't

1 it true that at the first hearing, there was
2 discussion as to the deficiencies of Illinois
3 NOx RACT submittal as indicated by USEPA and
4 the Illinois EPA?

5 MR. ELVERT: Yes.

6 MS. ROCCAFORTE: So you are aware
7 of the letter?

8 MR. ELVERT: Yes.

9 MS. ROCCAFORTE: Are you aware that
10 in the absence of federal requirements, the state
11 still has regulatory authority to promulgate
12 regulations that improve air quality in Illinois?

13 MR. ELVERT: Yes.

14 MS. ROCCAFORTE: I'm sorry. One
15 more. Going back to the March 9, 2011, letter
16 that you mentioned regarding deficiencies in the
17 Illinois NOx RACT submittal, isn't it true that
18 one of the deficiencies related to the compliance
19 date?

20 MR. ELVERT: Yes.

21 MS. ROCCAFORTE: Okay.

22 MR. KOHLMAYER: Brad Kohlmeier with
23 ExxonMobil. Actually, the letter indicates there's
24 deficiencies with the date for all sources in

1 Illinois. It is nonspecific to any particular
2 company.

3 MS. ROCCAFORTE: So the deficiency
4 referred to -- the compliance date for all the
5 sources then were beyond the date that the USEPA
6 required in the submittal?

7 MR. ELVERT: The original submittal?

8 MS. ROCCAFORTE: Yes.

9 MR. ELVERT: Yes.

10 MS. ROCCAFORTE: And isn't it true
11 that on January 19, 2010, when USEPA proposed to
12 submit different primary and secondary standards
13 than those set in 2008, the USEPA indicated it
14 would issue final standards by August 31, 2010?

15 MR. ELVERT: Yes.

16 MS. ROCCAFORTE: And at that time,
17 meaning January 19, 2010, isn't it true that the
18 requirement under the Clean Air Act to adopt NOx
19 RACT was in effect?

20 MR. ELVERT: I don't know.

21 MS. ROCCAFORTE: Isn't it true
22 that at various seminars, including IERG's Title 5
23 seminar held on July 27, 2010, the Agency informed
24 attendees that the Agency was seeking to redesignate

1 Chicago and Metro east non-attainment areas to
2 attainment?

3 MR. ELVERT: I don't know. I was
4 not at that seminar.

5 MS. ROCCAFORTE: Were you at any
6 of the seminars that you presented any testimony?

7 MR. ELVERT: Yes. I was at all of
8 those.

9 MS. ROCCAFORTE: Did the Agency inform
10 attendees at any of those seminars that the Agency
11 was seeking to redesignate Chicago and Metro east
12 non-attainment areas to attainment?

13 MR. ELVERT: That they were -- not
14 specifically. It was part of their effort to, but
15 not specifically any mention of the fact that it
16 was being done.

17 MS. ROCCAFORTE: Do you agree that
18 designation to attainment for non-attainment areas
19 benefits the regulated community?

20 MR. ELVERT: Repeat that.

21 MS. ROCCAFORTE: Do you agree
22 designation to attainment for non-attainment areas
23 benefits the regulated community?

24 MR. ELVERT: Yes.

1 MS. ROCCAFORTE: Do you believe
2 that the Agency sought a NOx RACT waiver to support
3 efforts toward re-designation to Chicago and Metro
4 east non-attainment areas to attainment?

5 MR. ELVERT: I don't know.

6 MS. ROCCAFORTE: Isn't it true that
7 in its request for the NOx RACT waiver, the Agency
8 requested that USEPA approve the NOx RACT rules
9 as amendments to the Illinois state implementation
10 plan and intended that these rules will meet
11 Illinois NOx RACT requirements for the revised
12 ozone standard?

13 MR. ELVERT: Could you repeat that
14 please? I'm sorry.

15 MS. ROCCAFORTE: Sure. Isn't it
16 true that in its request for the NOx RACT waiver,
17 the Agency requested that USEPA approve the NOx
18 RACT rules as amendments to the Illinois state
19 implementation plan and intended that these rules
20 will meet Illinois NOx RACT requirements for the
21 revised ozone standard?

22 MR. ELVERT: I don't know.

23 MS. ROCCAFORTE: Can I direct your
24 attention to Exhibit 1 to Exxonmobil's position

1 for variance, which is Exhibit 1 to Doug Deason's
2 testimony?

3 MR. ELVERT: Okay.

4 MS. ROCCAFORTE: It's the July 29,
5 2010, letter.

6 MR. ELVERT: Okay.

7 MS. ROCCAFORTE: Exhibit 1.

8 MR. ELVERT: Just one moment, please.

9 MS. ROCCAFORTE: Sure.

10 MR. ELVERT: Okay.

11 MS. ROCCAFORTE: Are you on Page 3?

12 MR. ELVERT: Yes. Page 3?

13 MS. ROCCAFORTE: Yes, correct. I
14 was inquiring about the first paragraph on that
15 page.

16 But isn't it true that
17 in its request of the NOx RACT waiver, the Agency
18 requested that USEPA approve the NOx RACT rules
19 as amendments to the Illinois state implementation
20 plan and intended that these rules will meet
21 Illinois' NOx RACT requirements for the revised
22 ozone standard?

23 MR. ELVERT: Yes.

24 MS. ROCCAFORTE: How many industrial

1 boilers and process heaters are at the Joliet
2 refinery?

3 MR. KOHLMAYER: I can't answer
4 that exactly without sitting down and looking.

5 MS. ROCCAFORTE: If I direct your
6 attention to the petition for variance, which
7 is Exhibit 1, Page 28, does that help you?

8 MR. ELVERT: Let me see.

9 MS. ROCCAFORTE: Actually, I might
10 have said the wrong page.

11 MR. ELVERT: Twenty-five maybe?

12 MS. ROCCAFORTE: What are
13 the NOx emissions from all of these units combined?

14 MR. RAO: Are we talking about the
15 units on Pages 25 and 26?

16 MS. ROCCAFORTE: From Exhibit 1.

17 MR. RAO: The variance petition?

18 MS. ROCCAFORTE: Correct. Do you
19 know what the combined NOx emissions are from all
20 of these units?

21 MR. ELVERT: Just one moment, please.

22 MS. ROCCAFORTE: Oh, I'm sorry.

23 MR. KOHLMAYER: As reported in our
24 2010 annual emission report for process heaters

1 and boilers, it was 1,132.5 tons per liter NOx
2 emissions in 2010. That was heaters subject
3 to this regulation, heaters and boilers.

4 MS. ROCCAFORTE: Does that include
5 the FCCU?

6 MR. KOHLMAYER: That does not
7 include the FCCU. That is not a process heater
8 or a boiler.

9 MS. ROCCAFORTE: You are correct.
10 And what are the NOx emissions from the FCCU?

11 MR. KOHLMAYER: The 2010 emissions
12 on the FCCU are 1,497.4 tons of NOx emissions as
13 reported in the AAR.

14 MS. ROCCAFORTE: Thank you.
15 And other than utilities, can you name any other
16 sources in the Chicago non-attainment area that
17 emit NOx in an amount greater than 1,000 tons per
18 year?

19 MR. KOHLMAYER: Based on historical
20 analysis of IEPA annual emission report data, yes,
21 I can.

22 MS. ROCCAFORTE: Can you tell me,
23 please?

24 MR. KOHLMAYER: Quorum Products.

1 With that being said, they average those emissions.

2 I do not have the data to confirm that.

3 MS. ROCCAFORTE: What year is that
4 data from?

5 MR. KOHLMEYER: I believe around
6 2006.

7 MS. ROCCAFORTE: Would it surprise
8 you to know that in 2010, ExxonMobil, even including
9 the FCCU was the only one?

10 MR. KOHLMEYER: No.

11 MS. ROCCAFORTE: That would make
12 ExxonMobil the largest NOx emitter from the
13 Chicago non-attainment area other than these
14 emissions, correct?

15 MR. KOHLMEYER: Based on the
16 information you just provided, assuming that is
17 correct.

18 MS. ROCCAFORTE: Thank you. That's
19 all I have for Mr. Elvert.

20 HEARING OFFICER ROBERTSON: Does
21 anybody else from the public have any other
22 questions regarding the testimonies of ExxonMobil?

23 MS. ROCCAFORTE: Excuse me. I have
24 questions for Mr. Deason. I didn't know if we were

1 going in order of the testimony.

2 HEARING OFFICER ROBERTSON: Oh,
3 I'm sorry. We are taking them all as a panel.
4 Go ahead.

5 MS. ROCCAFORTE: Thank you.

6 MR. RAO: I have a couple of
7 questions specifically for Mr. Elvert, if I may
8 ask them right now.

9 HEARING OFFICER ROBERTSON: Okay.

10 MR. RAO: Mr. Elvert, on Page 6 of
11 your testimony, you talk about your negotiations
12 with IEPA and on the last sentence on Page 6, you
13 note that on May 9th, follow-up call, according
14 to Illinois EPA, ExxonMobil suggested the option
15 of using NOx emissions from the FCR project as an
16 alternate NOx control strategy and may not be an
17 option.

18 Did they tell you why that cannot
19 be an option?

20 MR. ELVERT: The reason is that the
21 SCR was part of a consent decree and, therefore,
22 not in the rule that they could not be used as an
23 option for replacement.

24 MR. RAO: Okay. So have

1 they --

2 MR. KOHLMAYER: I would like to add
3 to that as well. Actually, based on the questioning
4 of EPA previously, they were the highest emitter of
5 NOx emissions based on 2010 data at ExxonMobil. We
6 signed a consent decree in 2005 to add NOx controls
7 to that well beyond what would be required for RACT.
8 That was streamered at the end of 2010 so those
9 emissions that we advised you of just now included
10 two months of operation with that SCR in service.
11 The future emissions from the FCC are projected to
12 be on the order of 160 tons per year. So let's
13 get all the numbers on the table here. That's
14 a reduction of about 1,300 tons from ExxonMobil
15 with installation.

16 The consent decree specifically
17 includes provisions that precluded it from being
18 excluded for use at any state program to meet any
19 attainment area requirements. In discussions on
20 the record, there's many discussions in the
21 industry working to develop a RACT rule.

22 There was no discussion in
23 developing RACT where the single biggest emitting
24 stack at refineries in any of them because they

1 are all covered under consent decrees for those
2 reductions.

3 RACT would be less stringent
4 than an NSDS standard. What we actually submitted
5 in a permit application showed the over-compliance,
6 which would be always 500 tons per year beyond and
7 would be required in the NSDS standard. That is
8 what was proposed, an incremental 500 above and
9 beyond RACT standard.

10 So the example that was given was
11 a substantial reductions that you did not hear about
12 yet.

13 MR. RAO: Thank you for the
14 clarification.

15 And one more question. It's on
16 Page 9 of your pre-filed testimony concerning NOx
17 reductions. You stated based on the NOx reductions
18 required by refinery consent decrees, reductions
19 resulting from the facility shutdowns and upgrades
20 and reductions from mobile sources and other
21 regulatory requirements, the Chicago area could be
22 classified marginal and, thus, RACT would not be
23 required.

24 Could you please comment on

1 whether the statement is based on any preliminary
2 assessments made by the Agency or USEPA or is it
3 based on your own understanding of what of the
4 reductions -- potential reductions will be?

5 MR. ELVERT: I think it would be
6 hard to assess the -- based upon the firm's last
7 few years of clean data. I think it was mentioned
8 in the first hearing, this 73 or 74, based upon if
9 the new standard is at a 70, that it is possible
10 with the continuing reduction, we could have an
11 ozone marginal area.

12 In regard to the facility shutdown
13 and upgrades, reduction for mobile sources, we look
14 at information that's taken from USEPA's annual acid
15 rain program from cold powered power plants emission
16 rates from 2008 and 2010 that shows specific
17 reductions for outstanding facilities. We
18 collected this information later for the Chicago
19 area, the Midwest Generation Will County units 1
20 and 2. Benefits will be realized for the upcoming
21 2011 season, which we are already in. State line
22 energy units will be realized no later than 2013
23 and Vermillion Energy will be realized no later
24 than 2013 ozone season.

1 In addition to that, in USEPA's
2 presentation, it shows using the new moves modeling
3 from 2008 to 2015, there is a reduction of NOx
4 reductions in Cook County alone from 82,000 tons to
5 37,000 tons.

6 MR. RAO: Okay. Thank you very much.
7 That's all I have.

8 HEARING OFFICER ROBERTSON: Okay.

9 MS. ROCCAFORTE: Thank you. These
10 next questions these are for Mr. Deason. Good
11 afternoon.

12 MR. DEASON: Hi.

13 MS. ROCCAFORTE: Are you aware that
14 in the absence of federal requirements, the state
15 still has regulatory authority to promulgate
16 regulations that improve air quality in Illinois?

17 MR. DEASON: Yes.

18 MS. ROCCAFORTE: On Page 3 of your
19 testimony, you state that the waiver of the NOx
20 RACT requirements renders the rule unnecessary.
21 Do you mean unnecessary for purposes of the 1997
22 ozone standard, correct?

23 MR. DEASON: Yes.

24 MS. ROCCAFORTE: Furthermore, you

1 state that the Illinois EPA refers to the January 1,
2 2015, compliance deadline was premature. Isn't it
3 true that the Agency's rulemaking proposal and
4 IERG's rulemaking proposal, which have been
5 consolidated, are identical and they both accept
6 the compliance date as the same date, January 1,
7 2015?

8 MR. DEASON: Yes.

9 MS. ROCCAFORTE: On Page 6 of your
10 testimony, you mentioned the 2010 hearing three-year
11 design value of 62 parts per billion in Will County
12 where Exxonmobil's refinery is located. Why is that
13 value relevant in this rulemaking?

14 MR. DEASON: The value is relevant
15 when you look at actually determining how much and
16 how raw the geography is and which sources will
17 eventually be required to having in place the NOx
18 RACT to meet the upcoming ozone standard.

19 MS. ROCCAFORTE: Isn't it true that
20 determining the area's non-attainment status is
21 to monitor that the highest design value that is
22 relevant?

23 MR. DEASON: Or the counties that
24 are actually in the non-attainment area and those

1 counties have not yet been defined for the upcoming
2 ozone reconsideration.

3 MS. ROCCAFORTE: Isn't it true that
4 Will County has historically been in the Chicago
5 area non-attainment area?

6 MR. DEASON: Yes.

7 MS. ROCCAFORTE: So it's the 74 parts
8 per billion and not 62 parts per billion that is the
9 relative design value for the Chicago non-attainment
10 area?

11 MR. DEASON: At this time.

12 MS. ROCCAFORTE: And also Page 6,
13 you refer to Option 2-A as described on Slide 14
14 of Exhibit 3. Isn't it true that your scenario
15 one example is based on Option 2-A on Slide 14 of
16 Exhibit 3?

17 MR. DEASON: Excuse me while
18 I look through this.

19 MS. ROCCAFORTE: Sure.

20 MR. DEASON: Gina, if you could
21 restate.

22 MS. ROCCAFORTE: On Page 6, you refer
23 to Option 2-A as described on Slide 14 of Exhibit 3.
24 Isn't it true that your scenario one example is

1 based upon Option 2-A on Slide 14 of Exhibit 3?

2 MR. DEASON: Restate the question
3 one more time. I'm now looking at Slide 14.

4 MS. ROCCAFORTE: Is it true that
5 your scenario one example is based upon Option 2-A
6 on Slide 14 of Exhibit 3?

7 MR. DEASON: Option 2-A of scenario
8 one. 2-A is 70 parts per billion, option 2-A, yes.

9 MS. ROCCAFORTE: Has USEPA finalized
10 any of the options on Slide 14 of Exhibit 3?

11 MR. DEASON: No, they have not.

12 MS. ROCCAFORTE: So your examples are
13 just speculative then, right?

14 MR. DEASON: Yes.

15 MS. ROCCAFORTE: So according to
16 your example, if the Chicago area is designated
17 as non-attainment and classified as marginal and
18 designations are finalized in 2012, isn't it true
19 attainment date would be three years from final
20 designation, which would be in 2015?

21 MR. DEASON: If you could restate
22 your premise for when the designation occurs?

23 MS. ROCCAFORTE: Final designation
24 in 2012 and I'm inquiring about attainment date.

1 MR. DEASON: For marginal area, it
2 would be three years after designation.

3 MS. ROCCAFORTE: Which would be 2015?

4 MR. DEASON: Yes.

5 MS. ROCCAFORTE: And then the same
6 scenario for designation for finalizing 2013, the
7 attainment date would be in 2016, correct?

8 MR. DEASON: For a marginal area,
9 that's correct.

10 MS. ROCCAFORTE: And would NOx
11 reductions as a result of the requirements under
12 Part 217, if timely implemented, assist in the
13 Chicago area attaining the new standards even
14 classified as marginal?

15 MR. DEASON: To the extent that they
16 complete it before the attainment year.

17 MS. ROCCAFORTE: Moving on to your
18 scenario two, to your knowledge, has the Illinois
19 EPA ever requested a lower classification under
20 Section 181 of the Clean Air Act?

21 MR. DEASON: I don't know.

22 MS. ROCCAFORTE: So it's just
23 speculation in your example?

24 MR. DEASON: It's an option. It's in

1 front of every local area.

2 MS. ROCCAFORTE: And for purposes of
3 the design value of the new ozone standard, which
4 three-year consecutive area data will be utilized
5 when the USEPA finalizes designations in 2013?

6 MR. DEASON: They typically use the
7 three calendar years in advance of the designation
8 year. So that would be the full year information
9 from 2012, 2011 and 2010.

10 MS. ROCCAFORTE: And in January 2010,
11 the USEPA proposed that the level of the eight-hour
12 ozone standard should be then a lower level within
13 the range of 60 to 70 parts per billion. Your
14 testimony includes scenarios based upon a standard
15 of 70 parts per billion and 65 parts per billion.
16 However, isn't it true that your testimony doesn't
17 include a scenario at 60 parts per billion?

18 MR. DEASON: Yes.

19 MS. ROCCAFORTE: Isn't it possible
20 that the final standard could be even lower than
21 65 parts per billion?

22 MR. DEASON: Yes.

23 MS. ROCCAFORTE: Drawing your
24 attention now to Exhibit 2, Slide 3.

1 MR. DEASON: This is the slide for
2 the current schedule for the ongoing maximum use?

3 MS. ROCCAFORTE: Correct. When is the
4 next ozone review?

5 MR. DEASON: The next ozone review
6 that's currently underway has begun.

7 MS. ROCCAFORTE: The next one at the
8 bottom of the slide?

9 MR. DEASON: Oh, I'm sorry. This one
10 is with the proposal of June of 2013 and finally,
11 March of 2014.

12 MS. ROCCAFORTE: So it's possible that
13 USEPA will propose even further tightened standards
14 in 2013?

15 MR. DEASON: That's a possibility.

16 MS. ROCCAFORTE: To your knowledge,
17 has the USEPA ever relaxed an ozone standard?

18 MR. DEASON: Yes.

19 MS. ROCCAFORTE: When was that?

20 MR. DEASON: The original ozone
21 standard that was set back in the 1970s was relaxed
22 at one point. From memory, I can't provide you the
23 specifics, but I would be glad to find that and
24 provide that.

1 MS. ROCCAFORTE: Have they relaxed it
2 since then?

3 MR. DEASON: No.

4 MS. ROCCAFORTE: Drawing your
5 attention to Exhibit 2, Slide 4.

6 MR. DEASON: This is the slide
7 entitled, "Anticipated NOx Implementation
8 Milestones"?

9 MS. ROCCAFORTE: Correct. When
10 does USEPA anticipate designation to be effective
11 for ozone?

12 MR. DEASON: This slide suggests
13 that the designation will be no later than the
14 summer of 2013.

15 MS. ROCCAFORTE: It could be sooner,
16 though, correct?

17 MR. DEASON: Yes.

18 MS. ROCCAFORTE: And if USEPA
19 finalizes designations in the summer of 2013,
20 when would the state require they submit the
21 NOx RACT state implementation plan to USEPA?

22 MR. DEASON: I believe that's
23 27 months later.

24 MS. ROCCAFORTE: So that would be

1 late 2015?

2 MR. DEASON: Yes.

3 MS. ROCCAFORTE: And when would
4 implementation of RACT be required?

5 MR. DEASON: That's typically
6 30 months after the submission of the RACT plan
7 by the state.

8 MS. ROCCAFORTE: So early 2018?

9 MR. DEASON: If it's submitted in
10 the second half of 2015, two and a half years later,
11 yes, in 2018.

12 MS. ROCCAFORTE: Thank you. That's
13 all I have.

14 HEARING OFFICER ROBERTSON: Do any
15 other members of the public have any follow-up
16 questions?

17 MS. RIOS: I have a follow-up question
18 for Mr. Deason.

19 HEARING OFFICER ROBERTSON: Sure.

20 MS. RIOS: Illinois EPA was asking
21 questions regarding the attainment date for marginal
22 areas. If the Chicago area is designated marginal,
23 it's not then required?

24 MR. DEASON: No.

1 HEARING OFFICER ROBERTSON: Are
2 there anymore questions for ExxonMobil testimonies?

3 MR. KOHLMAYER: I would like to
4 clarify a statement that was provided earlier if
5 that's okay.

6 HEARING OFFICER ROBERTSON: That's
7 fine.

8 MR. KOHLMAYER: I believe
9 the question was posed that ExxonMobil agreed to
10 a December 31, 2014, deadline date to install
11 controls for a rule developed to support RACT.
12 Yes, we did agree to those based on that rule
13 meeting the requirements of RACT as it is written.

14 We designed our developed
15 projects and designed projects to meet
16 specifications in those regulations as they
17 have been designed.

18 As the IEPA mentioned earlier,
19 the March 9th letter from USEPA to the Illinois
20 identified deficiencies in that RACT submittal
21 and while they have indicated that IEPA has the
22 authority to develop regulations protecting the
23 environment for reasons other than the national
24 ambient air quality standards meeting RACT

1 requirements.

2 The letter from USEPA
3 to IEPA clearly states that IEPA requested
4 approval of those regulations to satisfy RACT
5 requirements to meet the Clean Air Act
6 requirements. That wasn't the intended focus
7 of those regulations.

8 The decision in the March 9th
9 letter included deficiency related to the emissions
10 averaging plan, which is a breath of fresh air, a
11 great idea that the Agency had in helping meet
12 compliance. USEPA has identified that deficiency
13 and that there should be a ten percent economic
14 incentive program to address that.

15 That would suggest that the
16 RACT requirements -- the technology standards that
17 the Agency has proposed has been put to satisfy
18 RACT requirements of USEPA and no further reductions
19 would be required, which would then potentially
20 change our design or we may not be able to meet
21 this rule or comply with this rule if they revise
22 that standard.

23 That's one reason we've asked
24 for an extension of the date because now we know

1 this rule is deficient to meet RACT requirements
2 regardless of whether or not it's going to be
3 pursued for other reasons.

4 RACT, for 1997 ozone standard
5 is no longer required because of the waiver. So
6 if they're going to use this as a future regulation
7 and it is deficient, we would like to develop what
8 the limits are going to be so that we don't double
9 invest to meet a standard or invest inefficiently.

10 There's millions of dollars
11 being invested and we're not sure if we can meet
12 the requirement. So it's fairly significant to
13 us then. We want to know what the standard
14 is going to be.

15 A good example was provided
16 earlier that the future RACT could end up with a
17 tighter standard. If that's the case, then, that
18 may drive this regulation to be even more stringent
19 considering -- without considering USEPA.

20 So we just need clearer
21 understanding what to design to. We're fearful
22 that the regulation will be revised and we will
23 not be able to meet that standard.

24 HEARING OFFICER ROBERTSON: Okay.

1 I believe I saw a hand up in the back. Did
2 anyone else have any questions?

3 MS. FAVILLA: I have been trying
4 to wrap my mind around all of this. I am most
5 interested to learn from all the industries why
6 this is. I do believe that cost of complying
7 with the NOx RACT rules will have to be incurred
8 soon. It's not just the environment, but the
9 Illinois air quality too. It's for my child and
10 children. My parents live in Madison and Jersey
11 County. Our air quality will be affected. So if
12 you are talking about a cost to the bottom line
13 for business, when you think about the cost to
14 health and the citizens and what that does to the
15 public health costs, which are rapidly increasing.

16 So I guess my question is it
17 sounds to me like you're trying to get Chicago
18 designated marginal so you don't have to follow
19 the rules because there won't be any rules. You
20 won't have the bottom line that you will have to
21 get to.

22 MR. KOHLMAYER: There are always
23 requirements that we will need to comply with.
24 RACT is a requirement if you are in a non-attainment

1 classification. The state needs to develop what
2 they consider to be a rule for control.

3 MS. FAVILLA: Would they be allowed
4 to put a NOx into the air without a minimum or
5 maximum?

6 MR. KOHLMAYER: Currently, standards
7 are already in place in the state of Illinois. This
8 is another type of standard.

9 MS. FAVILLA: Okay. Thank you.

10 HEARING OFFICER ROBERTSON: Do any
11 other members of the public have any questions for
12 ExxonMobil?

13 Seeing none, does the Board have
14 any follow-up questions of the ExxonMobil based on
15 that testimony?

16 MR. RAO: I have just one question
17 for Mr. Stockl.

18 MR. STOCKL: Yes.

19 MR. RAO: In your testimony, you have
20 provided some of the cost data for compliance with
21 the NOx RACT rule to meet the requirements of 2014
22 deadlines as approximately \$25 million.

23 MR. STOCKL: Yes.

24 MR. RAO: If compliance is delayed

1 by five years, is that going to affect the cost?

2 MR. STOCKL: If it's the same
3 compliance requirements, probably not. Marginally.
4 Only marginally, I should say.

5 MR. RAO: Okay.

6 HEARING OFFICER ROBERTSON: Anymore
7 questions?

8 Seeing none --

9 MR. RAO: I do.

10 HEARING OFFICER ROBERTSON: Okay.

11 MR. RAO: This is generally for the
12 panel. USEPA is expected to promulgate their new
13 ozone rules next month. That's what I gathered
14 from reading the testimony. Does the promulgation
15 of those rules give you any kind of specificity as
16 to what kind of standard you are looking at in terms
17 of compliance?

18 MR. DEASON: If I could speak to
19 that, when the USEPA said that they intend to
20 issue a reconsideration decision at the end of
21 this month, there are a number of steps that they
22 need to complete to actually do that and some of
23 them -- these have been started. They have
24 articulated that when they issue this ozone

1 reconsideration, at the request of many of the
2 states, the states have asked EPA to also lay
3 out how they intend to implement much better
4 than they have in the past.

5 In many cases, EPA has made
6 modifications to the standards and then left
7 hanging for the regulating community as well as
8 the industry, sometimes for multiple years,
9 exactly how to implement standards. So I think
10 maybe if you're trying to get at when would you
11 know precisely based on EPA's reconsideration
12 of this ozone standard assessment of the current
13 air quality designation step that actually
14 determines whether or not the area is attainment,
15 marginal or moderate non-attainment, that series
16 of decisions is probably a number of years in
17 front of us.

18 My speculation again
19 would be that somewhere in the 2013 time period
20 we will have had a series of EPA decisions,
21 implementation rules and an assessment of air
22 quality that will allow you to answer with some
23 certainty what the requirements for further NOx
24 reductions for this area will be.

1 MR. RAO: Okay.

2 MR. DEASON: Does that help?

3 MR. RAO: That kind of answers the
4 question, but I was more looking at the standard
5 itself once the revised standard comes out based
6 on that available information, can you estimate
7 what, you know, the situation would be for the
8 Exxon refinery?

9 MR. DEASON: What you can begin to
10 do is look at the standard and begin to take a
11 look at your current air quality data and speculate
12 where you might be in a couple years when you
13 actually have to do that designation, but at that
14 point, it's speculation.

15 When the Agency actually completes
16 the designation process, the use of current air
17 quality, they issue a decision that says based on
18 the state's recommendation for the geographic
19 non-attainment area and the consideration of that
20 recommendation and a look at the current air
21 quality, they will then issue that designation.

22 MR. RAO: Okay.

23 MR. KOHLMAYER: I could add to
24 that. One additional question could be when will

1 we know what we need to design to.

2 MR. RAO: Yes.

3 MR. KOHLMEYER: And from my
4 perspective, we would know what we need to design
5 to when IEPA and USEPA basically address the
6 deficiencies that were identified in the March 9th
7 letter from USEPA and IEPA and agree as to what
8 would meet RACT or what might lead to the future
9 rules. We would probably require that rule by the
10 USEPA as to the deficiency be addressed. Basically,
11 will that deficiency be .08 or .07 or something
12 else? So that's the number we need to design to.

13 MR. RAO: Thank you.

14 HEARING OFFICER ROBERTSON: Does
15 anybody else have anymore questions?

16 MS. KELLY: I just wanted to say that
17 we absolutely do not meet the 2012 deadline. We're
18 a small company. It's going to cost millions of
19 dollars to do what we're doing. We're looking at
20 options that will significantly reduce NOx. We
21 can't do that in the short run. By piecemealing
22 things to meet the 2012 deadline, we absolutely need
23 the extension.

24 HEARING OFFICER ROBERTSON: Did you

1 have a question?

2 MS. FUNK: Yes. I'm Amy Funk. I'm
3 with the public. I'm a resident of the Metro east
4 area. I came here actually to hear the industry
5 explain why they were looking for an extension and I
6 think I do understand where you are coming from.

7 I just have a few questions. I'm
8 not sure if my questions are for Exxon or for the
9 IEPA. I'm not sure who will answer it. How long
10 have you -- when did the initial RACT -- forgive my
11 ignorance here. When was it first written in stone?

12 MR. ELVERT: NOx RACT for
13 Illinois?

14 MS. FUNK: Yes.

15 MR. ELVERT: Gina, you may want to
16 explain.

17 MS. ROCCAFORTE: The rule was
18 initially promulgated in 2009.

19 MS. FUNK: And an extension was given
20 in 2012?

21 MS. ROCCAFORTE: Well, the state was
22 originally to make a submittal to USEPA by
23 December 2007. So we were late with that -- the
24 state was late with that and our 2012 deadline in

1 the original rule was beyond a 2009 date that
2 implementation of RACT was required by.

3 MS. FUNK: So Exxon, you were aware
4 that this was coming down and did you take any steps
5 for planning towards this?

6 MR. KOHLMAYER: We were actively
7 involved with discussions with the Agency during
8 rule development. RACT -- you have to go through
9 this development process so you don't know what
10 to design for until you have the final standard.
11 Right now, we still have to change our design.
12 Unfortunately, because we are a refinery, we run
13 24/7 except for plant turnaround, which doesn't
14 occur very often. We need to get all of our
15 engineering work done and any standards within
16 that turnaround. Otherwise, that shutdown disrupts
17 economics.

18 MS. FUNK: I understand. Based
19 off that, is it of your opinion that current
20 proposed NOx RACT standards would reduce NOx and,
21 therefore, contribute to decreasing ozone levels?

22 MR. KOHLMAYER: They will reduce NOx
23 emissions, correct.

24 MS. FUNK: Which could essentially be

1 in the best interest of the industry as I believe
2 the IEPA stated in terms of helping reach -- I mean
3 are you looking to reach attainment?

4 MR. KOHLMAYER: Actually, when this
5 rule was promulgated, the intent of this rule was to
6 meet the requirements as we were denied attainment.
7 However, there have been a lot of proactive steps in
8 this industry and the area actually has reached
9 attainment as a result of USEPA issuing a waiver
10 saying this requirement -- this RACT rule is not
11 required. We do not need it anymore to meet our
12 requirements because the state has demonstrated
13 attainment.

14 MS. FUNK: And that's 1997.

15 MR. KOHLMAYER: Based on the 1997
16 standard. Potentially on the RACT requirement in
17 the future for the 2008 standard, we don't know
18 what that standard is yet and that's our concern.

19 MS. FUNK: Just so I understand what
20 this means from a general public perspective, if you
21 get this extension, then, in the event say the new
22 standard that hopefully will come out at the end of
23 the month goes to 65 parts per billion and then IEPA
24 then will go to a new rulemaking procedure based on

1 that, is that correct?

2 MR. KOHLMAYER: Yes. That would be my
3 understanding.

4 MR. KALEEL: If I understood the
5 question properly -- my name is Robert Kaleel with
6 the Illinois EPA Bureau of Air.

7 HEARING OFFICER ROBERTSON: And I will
8 need the court reporter to swear you in.

9 MR. KALEEL: I did testify at the
10 first hearing.

11 (Witness sworn.)

12 MR. KALEEL: I guess that I ask that
13 you repeat the question.

14 MS. FUNK: Just so I understand, if
15 you get this extension, then, in the event say the
16 new standard that hopefully will come out at the end
17 of the month goes to 65 parts per billion, what's
18 the next step?

19 MR. KALEEL: Yes. Thank you for
20 repeating the question. Two parts to that the 2015
21 date that the Agency proposed, our intension with
22 that particular date, and it is a date that we
23 worked out in the discussions with IERG, the purpose
24 was to make sure that that date was expeditious as

1 is required by the Clean Air Act and also would
2 occur and prior to any deadline that USEPA may
3 impose for RACT for a revised standard.

4 I think I testified at
5 the first hearing we don't anticipate that that
6 deadline would be before 2015. More than likely, it
7 would be 2017 or 2018 as Bob testified to.

8 So that date should address NOx
9 RACT and, in fact, I testified on a number of
10 occasions and we have indicated in our letter USEPA
11 requested a waiver. We would intend for Part 217 to
12 be our NOx RACT submittal for the revised ozone
13 standard.

14 We are aware that there are
15 certain deficiencies that USEPA identified. We
16 expect that we would have to modify Part 217 at some
17 point once any uncertainties in regards to schedule
18 and regards to EPA policy are clarified. We always
19 intended that there would have to be another
20 rulemaking. Our goal here was to set the 2015 date
21 in a way to give some relief to the regulated
22 industry in light of the NOx waiver.

23 We never indicated that we
24 intended to withdraw this rule or that the rule was

1 unnecessary for air quality purposes. There has
2 been a lot of discussion here that this rule was
3 only necessary to meet NOx RACT requirements. The
4 Agency has never held that position.

5 MS. FUNK: Finally, the
6 RACT -- excuse my terminology. The NOx RACT rule
7 will result in some -- if it goes into effect,
8 result in some benefit from an air quality
9 perspective?

10 MR. KALEEL: It will absolutely help
11 improve air quality from an ozone perspective, from
12 a fine particle perspective, and also we talked
13 about it, but this rule will help address and
14 improve air quality for all those standards.

15 MS. FUNK: And the extension,
16 because there's been so much discussion of it, it
17 would take effect for the whole state, not just
18 limited to the Chicago area; is that correct?

19 MR. KALEEL: Part 217 requirements
20 apply to both Chicago and Metro east ozone
21 non-attainment area. It's not a state-wide
22 requirement.

23 MS. FUNK: It includes Metro east?

24 MR. KALEEL: It does include Metro

1 east, yes.

2 MS. FUNK: Thank you.

3 HEARING OFFICER ROBERTSON: Does
4 anyone else have anymore questions based on
5 ExxonMobil testimony?

6 Seeing none, I want to thank
7 you all for your time today. Would anybody else
8 like to testified on any other matter in this
9 proceeding?

10 Seeing none, before we close
11 today, did anybody wish to comment on the letters
12 submitted to the DCEO or DCEO response?

13 Seeing none, at this point I
14 would like to go off the record and set the next
15 set of dates for this proceeding.

16 (Whereupon, a discussion
17 was had off the record.)

18 HEARING OFFICER ROBERTSON: So we
19 are back on the record. We were just discussing the
20 dates of final comments. Final comments in this
21 rulemaking will due July 18th. That is a Monday.
22 July 18th, 2011.

23 With that -- and also
24 the mailbox rule will not be applying either to that

1 date, which means that comments must be received
2 by July 18th.

3 With that, I would like
4 to thank you all very much for your time in
5 attending this matter today and we are now
6 adjourned.

7 (Whereupon, the above-entitled
8 proceedings were adjourned.)

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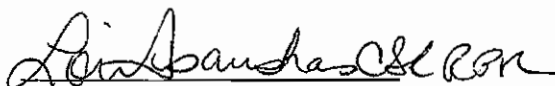
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
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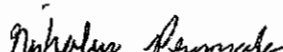
6 I, LORI ANN ASAUSKAS, CSR, RPR,
7 do hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook,
9 and State of Illinois; that I reported by means
10 of machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

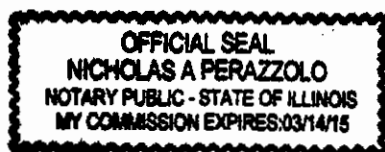
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17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
19

20 SUBSCRIBED AND SWORN TO
21 before me this 21st day
22 of July, A.D., 2011.

23 
24 Notary Public



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