

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
100 W. Randolph Street	100 W. Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

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

Dated: October 11, 2011

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

CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached

COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

Mr. 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 October 11, 2011; and upon:

Gina Roccaforte - Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276
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Springfield, IL 62705-5776

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

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on October 11, 2011.

/s/ Alec M. Davis

Alec M. Davis

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COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP, by and through its attorney, Alec M. Davis, and pursuant to the September 29, 2011 Hearing Report, hereby submits the following public comments in the above-described matter.

The Illinois Environmental Regulatory Group (“IERG”) consists of 51 member companies operating environmentally regulated facilities throughout the State of Illinois. IERG represents its members in environmental regulatory and legislative development, but also, from time to time, other actions which have the potential to impact its members. The petitioner in this matter, ExxonMobil Oil Corporation, is an IERG member.

IERG encourages the Illinois Pollution Control Board (“Board”) to find that compliance with the Illinois NOx RACT Rules, as applied to the specific circumstances faced by ExxonMobil, would constitute an arbitrary and unreasonable hardship; and grant the variance. IERG bases its position on the uncertainty faced by ExxonMobil in light of the changing federal ozone standards and associated RACT requirements, as well as the fact that Illinois’ NOx RACT Rules appear to be un-approvable by U.S. EPA as RACT, in their current form.

THERE IS NO BASIS IN FEDERAL LAW FOR NO_x RACT RULES IN ILLINOIS

As established in the Board's R11-24 rulemaking, the federal requirement for NO_x RACT rules stemming from the 1997 8-hour ozone standard has been waived. Board Order, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217*, R11-24 (Ill.Pol.Control.Bd. Aug. 18, 2011). Further, and since the time of the R11-24 finalization, the federal rulemaking to reconsider the 2008 standard, and establish a more stringent standard in its place, has been withdrawn by President Obama. Update on Status of the Ozone Standard, *ExxonMobil Oil Corporation v. Illinois EPA*, PCB Nos. 11-86 and 12-46 (consol.) (Ill.Pol.Control.Bd. Sept. 6, 2011) (hereafter cited as "PCB Nos. 11-86 and 12-46"). As such, the only current federal basis for NO_x RACT would stem from the 2008 standard (75 ppb). Whether or not NO_x RACT will be required by that 2008 standard depends on the designation of the particular geographic area as being nonattainment, with a classification of moderate or greater. Hearing Transcript, PCB Nos. 11-86 and 12-46, at 29 (Ill.Pol.Control.Bd. Sept. 19, 2011) (hereafter cited as "Transcript"). Although not certain, early indications from U.S. EPA make it appear likely that the Chicago area will be either designated as attainment, or as a marginal nonattainment area; and therefore not be subject to the NO_x RACT requirement. *Id.* at 30-32 and 50-52, also Exhibit 3 to ExxonMobil Oil Corporation's Post-Hearing Brief, PCB Nos. 11-86 and 12-46 (Ill.Pol.Control.Bd. Oct. 6, 2011) (hereafter cited as "Petitioner's Brief") – indicating areas with design values as high as 0.084ppm potentially being classified as marginal.

The U.S. EPA has recently announced that it will propose a revised standard in the fall of 2013, to be finalized in 2014. Exhibit 2 to Petitioner's Brief. Any NO_x RACT requirement that could possibly stem from that standard, assuming that such a requirement is EVEN REQUIRED,

will not be known for a number of years. Therefore, for the foreseeable future, there is no requirement for Illinois to have NOx RACT rules in place.

ILLINOIS' NOx RACT RULES WILL REQUIRE REVISION TO BE APPROVABLE

Even if the Chicago area is, at some point in the future, subject to the Clean Air Act requirement to have NOx RACT rules in place, the rules currently on the books in Illinois have already been determined by U.S. EPA to be inadequate. Transcript at 44-47. For instance, the averaging provisions in the current rules have been objected to by the U.S. EPA. *Id.* That puts companies subject to the current NOx RACT rules in a very difficult position, in that their plans to comply are based on a rule where they know that a rulemaking will be required in the future to amend the underlying rules' substance. For companies with long lead-times for their compliance plans, or for those already taking action to be able to comply with the rules on the books, such actions and the costs incurred may well be in waste if the amendments are such that alternative compliance strategies are required.

EXXONMOBIL'S TURNAROUND SCHEDULE

As has been explained at length, the nature of ExxonMobil's scheduling of turnarounds requires advance planning of projects. Petition for Variance, PCB No. 11-86, at 35 (Ill.Pol.Control.Bd. May 18, 2011). A variance extending the compliance date of non-federally required rules seems to be a reasonable accommodation, in light of the high costs involved in this matter, and the uncertainty created by the changing ozone standards and NOx RACT requirements.

CONCLUSION

IERG believes it is arbitrary and unreasonable to force a company to make large expenditures, when those expenditures are 1) not required in the immediate future, 2) may prove to be unnecessary entirely, and as a worst-case, 3) may be inadequate to satisfy the purported basis, if future revisions to the NOx RACT rules require a compliance strategy other than that being pursued by ExxonMobil. Given the significant uncertainty of the regulatory landscape, and the number of years that it may be before that uncertainty is resolved, IERG believes that ExxonMobil's request for relief is reasonable, and encourages the Board to grant the variance requested in this matter.

IERG thanks the Board for its consideration of these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: October 11, 2011

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

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