

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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **MOTION FOR CLARIFICATION OF THE BOARD'S DECEMBER 1, 2011 OPINION**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,  
Petitioner,

Dated: December 20, 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  
Springfield, Illinois 62705  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, Monica T. Rios, the undersigned, hereby certify that I have served the attached  
MOTION FOR CLARIFICATION OF THE BOARD'S DECEMBER 1, 2011 OPINION

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 December 20, 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 December 20, 2011.

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

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**MOTION FOR CLARIFICATION OF  
THE BOARD'S DECEMBER 1, 2011 OPINION**

NOW COMES ExxonMobil Oil Corporation (“ExxonMobil”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500, and for its Motion for Clarification of the Board’s December 1, 2011 Opinion states as follows:

1. On December 1, 2011, the Illinois Pollution Control Board (“Board”) issued an Opinion and Order granting ExxonMobil’s request for variance from the NOx RACT Rule’s January 1, 2015 compliance deadline until May 1, 2019. Opinion and Order, *ExxonMobil Oil Corporation v. Illinois EPA*, PCB Nos. 11-86 and 12-46 (Ill.Pol.Control.Bd. Dec. 1, 2011) (hereafter cited as “Opinion”). On December 19, 2011, ExxonMobil filed a Certificate of Acceptance with the Board, accepting the terms of the Board’s Order granting the variance request.

2. This Motion requests clarification of statements made in the Board’s Opinion, and does not request any revisions to the Board’s Order.

3. The Board Opinion states in regards to NOx emission reductions from the installation of the Selective Catalytic Reduction Unit (“SCR”) at the FCCU/CO Boilers:

But, it is also important to note that during the R11-24/R11-26 proceeding, ExxonMobil's Mr. Elvert and Mr. Kohlmeyer clarified that the SCR was installed as required by the 2005 consent decree to add controls to the Refinery "well beyond what would be required by RACT." The latter stated that ExxonMobil had submitted a permit application showing "over-compliance" by about 500 tpy. But, the 2005 consent decree by its terms also specifically precluded use of the SCR's reductions in any state program to meet the attainment area requirements. For this reason, Mr. Elvert stated that use of the SCR reductions might not be available for use in an alternative compliance strategy under the NOx RACT Rule. Pet. Exh 8, R11-24/R11-26 6/28/11 Tr. at 33-35.

Opinion at 20. (Emphasis added.) The Board further states in its discussion on the environmental impact of the variance:

...the installation of the SCR on the FCCU/CO boilers will result in a total reduction in excess of 1,300 tons/yr beginning in 2011. The Board recognizes that the SCR was installed as a result of a 2005 consent decree, and may not be used for purposes of meeting attainment requirements.

*Id.* at 28. (Emphasis added.)

4. For the Board's convenience, the relevant provision of the 2005 Consent

Decree states:

150. **Outside the Scope of the General Prohibition.** Nothing in this Consent Decree is intended to prohibit ExxonMobil from seeking to:

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- v. utilize CD Emission Reductions from a Covered Refinery's compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding PSD and Non-Attainment New Source Review rules, but including, for example, RECLAIM and the Houston/Galveston Area NOx SIP) that apply to the particular Covered Refinery; provided, however, that ExxonMobil shall not be allowed to trade or sell any CD Emissions Reductions.

Consent Decree, *U.S., et al. v. ExxonMobil Corporation and ExxonMobil Oil Corporation*, No. 05 C 5808 (N.D. Ill. 2005). (Emphasis in original.)

5. The Board has inadvertently misconstrued ExxonMobil's testimony on the use of the NOx emission reductions from the SCR for meeting attainment requirements as allowed pursuant to the Consent Decree provision referenced above. The Board cites Mr. Elvert's testimony at the June 28, 2011 hearing in the R11-24/R11-26 rulemaking proceeding and concludes that "Mr. Elvert stated that the use of the SCR reductions might not be available for use in an alternative compliance strategy under the NOx RACT Rule." Opinion at 20.

6. Mr. Elvert's testimony at the hearing warrants clarification. Mr. Elvert was asked a question by the Board inquiring as to why the Illinois Environmental Protection Agency ("Illinois EPA") suggested that use of the NOx emission reductions from the SCR may not be an option for an alternate control strategy. Exhibit 8 (June 28, 2011 R11-24/R11-26 Hearing Transcript), PCB Nos. 11-86 and 12-46 (Ill.Pol.Control.Bd. Sept. 29, 2011) (hereafter cited as "Tr."). Mr. Elvert responded: "The reason is that the SCR was part of a consent decree and, therefore, not in the rule that they could not be used as an option for replacement." Tr. at 32. Mr. Elvert was explaining his understanding of Illinois EPA's basis for stating that the SCR NOx reductions may not be used as an alternate control strategy to comply with the NOx RACT Rule. He did not intend to imply that emission reductions from the SCR could not be used toward compliance with the NOx RACT Rule. In addition, immediately following Mr. Elvert's statement, Mr. Kohlmeier further explained that the 2005 consent decree required that the Refinery add controls that are well beyond RACT and stated: "The consent decree specifically includes provisions that precluded it from being

excluded for use at any state program to meet any attainment area requirements.” *Id.* at 33.

7. In addition to the testimony at the June 28, 2011 rulemaking hearing, Mr. Kohlmeyer addressed the consent decree and emission reduction issue in his testimony at the September 19, 2011 hearing in the variance proceeding. He testified:

The board [sic] should also note that the consent decree does not prohibit ExxonMobil from seeking to utilize CD emission reductions from a covered refinery’s compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area.

Since the consent decree clearly anticipated that emission reductions under the consent decree could be used towards compliance with certain rules, such as the NOx RACT rule, and the rule itself allows for an alternate control strategy reference Section 217.125C [sic] of the rule, ExxonMobil submitted a construction permit application on May 11th, 2011, requesting an approval of an alternative NOx control strategy as allowed by Section 217.152C, <sup>1</sup>utilizing the reductions from the SCR to satisfy compliance with the rule.

Hearing Transcript, PCB Nos. 11-86 and 12-46 at 43 (Ill.Pol.Control.Bd. Sept. 19, 2011).

(Emphasis added.) Mr. Kohlmeyer’s testimony during the rulemaking and variance hearings shows that the emission reductions from the SCR can be used to demonstrate compliance with certain rules, including the NOx RACT Rule.

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<sup>1</sup> Section 217.152(c) states: Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, 2015, except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H. With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing the emissions of emission units other than those listed in Appendix H, provided that the emissions limitations of such other emission units are equal to or more stringent than the applicable emissions limitations set forth in Subpart E or F of this Part, as applicable, by the dates set forth in Appendix H. 35 Ill. Admin. Code § 217.152(c). (Emphasis added.)

8. Based on ExxonMobil's sworn testimony regarding the use of NOx emission reductions from the SCR and the Affidavits attached hereto as Exhibit 1, ExxonMobil requests that the Board clarify its Opinion revising the statements referenced in paragraph 3 of this Motion, consistent with the record in this proceeding.

WHEREFORE, EXXONMOBIL OIL CORPORATION respectfully requests that the Illinois Pollution Control Board clarify the Board's December 1, 2011 Opinion, as described herein.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,  
Petitioner,

DATE: December 20, 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  
Springfield, Illinois 62705  
(217) 523-4900

MOBO:027/Filings/11-86 and 12-46/Motion for Clarification

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**AFFIDAVIT OF ROBERT S. ELVERT**


I, Robert Elvert, being first duly sworn on oath, depose and state as follows:

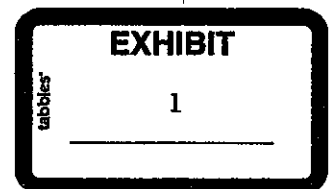
1. I am currently employed as the State Regulatory Advisor for the Midwest Region at ExxonMobil Oil Corporation ("ExxonMobil") in Joliet, Illinois.
2. I participated in the preparation of the Motion for Clarification dated December 20, 2011, to the extent it discusses ExxonMobil.
3. I have read the Motion for Clarification dated December 20, 2011, and based upon my personal knowledge and belief, the facts stated therein with regard to ExxonMobil are true and correct.

FURTHER AFFIANT SAYETH NOT.

  
 \_\_\_\_\_  
 Robert S. Elvert

Subscribed and sworn to before me  
this 20th day of December 2011.

  
 \_\_\_\_\_  
 Notary Public





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**AFFIDAVIT OF BRADFORD S. KOHLMAYER**


I, Bradford Kohlmeier, being first duly sworn on oath, depose and state as follows:

1. I am currently employed as a Senior Environmental Advisor for ExxonMobil Oil Corporation ("ExxonMobil") in Joliet, Illinois.
2. I participated in the preparation of the Motion for Clarification dated December 20, 2011, to the extent it discusses ExxonMobil.
3. I have read the Motion for Clarification dated December 20, 2011, and based upon my personal knowledge and belief, the facts stated therein with regard to ExxonMobil are true and correct.

FURTHER AFFIANT SAYETH NOT.

  
 \_\_\_\_\_  
 Bradford S. Kohlmeier

Subscribed and sworn to before me this 20<sup>th</sup> day of December, 2011.

  
 \_\_\_\_\_  
 Notary Public

OFFICIAL SEAL  
 DIANE T KELLY  
 NOTARY PUBLIC - STATE OF ILLINOIS  
 MY COMMISSION EXPIRES: 10/27/12