

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION)	
)	
Petitioner,)	
)	
v.)	PCB _____
)	(Variance – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF MONICA T. RIOS, and PETITION FOR VARIANCE with attached exhibits, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

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

Dated: May 18, 2011

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

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Respondent.)	

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D. Hodge, of the law firm HODGE DWYER & DRIVER, and hereby enters her appearance in this matter on behalf of ExxonMobil Oil Corporation.

Respectfully submitted,

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

Dated: May 18, 2011

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ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm HODGE DWYER & DRIVER, and hereby enters her appearance in this matter on behalf of ExxonMobil Oil Corporation.

Respectfully submitted,

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

Dated: May 18, 2011

Monica T. Rios
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PETITION FOR VARIANCE

NOW COMES ExxonMobil Oil Corporation (“ExxonMobil”), by and through its attorneys, HODGE DWYER & DRIVER, and, pursuant to Section 35(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/35(a), and 35 Ill. Admin. Code § 104.100 *et seq.*, hereby petitions the Illinois Pollution Control Board (“Board”) for a variance from the December 31, 2014 deadline for compliance with the applicable requirements of 35 Ill. Admin. Code Part 217, Subparts A, D, E, F, and Appendix H (“NOx RACT Rule” or “Rule”) pursuant to the terms and conditions outlined in this Petition for Variance (“Petition”).

ExxonMobil, as more fully discussed below, is requesting that the Board grant a four-year and four-month variance¹ from the deadline for compliance with the requirements of the NOx RACT Rule, which imposes a December 31, 2014 deadline for implementation of Reasonably Available Control Technology (“RACT”) at the Joliet Refinery in order to control emissions of nitrogen oxides (“NOx”) from certain units listed in Appendix H of the Rule. This variance from the applicable requirements of the

¹ While the full five-year variance from the December 31, 2014 deadline would extend the deadline to December 31, 2019, ExxonMobil is committing to comply with the applicable NOx RACT requirements of 35 Ill. Admin. Code Part 217 by May 1, 2019.

Rule is necessary because the Rule is arbitrary and imposes an unreasonable hardship on ExxonMobil since the requirements of the Rule are neither mandated by federal nor state statutes or regulations. ExxonMobil's request stems from the recent approval by the United States Environmental Protection Agency ("USEPA") of the Illinois Environmental Protection Agency's ("Illinois EPA") request that the NOx RACT requirements be waived because the Chicago area has attained the 1997 8-hour ozone standard. As discussed in detail below, a variance is justified in this instance because compliance with the Rule, which is not required, will cost substantial resources, and due to the uncertainty regarding the 2011 National Ambient Air Quality Standard ("NAAQS") for ozone ("2011 standard"), a variance is needed in order to extend ExxonMobil's obligation to go forward with projects to implement the NOx RACT Rule requirements at this time.

Accordingly, ExxonMobil is requesting, a four-year and four-month variance, or until May 1, 2019, from the applicable requirements of the NOx RACT Rule as set forth at 35 Ill. Admin. Code Part 217, Subparts A, D, E, F and Appendix H, for those emission units listed in Appendix H, which are required to comply with the Rule by December 31, 2014. A variance is justified because the Rule poses an arbitrary and unreasonable hardship on ExxonMobil. Further, the requested variance is necessary for the Appendix H units in order to allow ExxonMobil additional time to install any control equipment needed to comply with the Rule during a regularly scheduled maintenance turnaround, i.e. a planned shut down of the ExxonMobil's Joliet Refinery ("Refinery"). The next such scheduled turnaround in which NOx RACT controls for Appendix H units

could be installed is slated for Winter 2018/Spring 2019, and as Illinois EPA recognized in the rulemaking to adopt the NO_x RACT Rule, an extended compliance date to coincide with planned maintenance turnarounds “mitigate[s] the potential for unplanned shutdowns which may result in gasoline shortages in Illinois.” Post-Hearing Comments of the Illinois EPA, *In the Matter of: Nitrogen Oxides Emissions From Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 21*, R08-19 (Ill.Pol.Control.Bd. Mar. 23, 2009) (hereafter cited as “Post-Hearing Comments”) (rulemaking hereafter cited as “R08-19”). Finally, the variance will allow ExxonMobil to delay its approximately \$28 million investment in control technology until a time when Illinois EPA and ExxonMobil have a better understanding of applicable and federally required NO_x RACT requirements.

I. THE NO_x RACT RULE IS NOT REQUIRED BY THE CLEAN AIR ACT.

A. Request for NO_x RACT Waiver and Approval by USEPA

On July 18, 1997, USEPA promulgated the 1997 8-hour ozone standard (“1997 standard”) replacing the 1-hour ozone standard that was in effect at the time. 62 Fed. Reg. 38856 (July 18, 1997). USEPA designated the Chicago-Gary-Lake County, IL-IN area (“Chicago area”)² as a moderate nonattainment area under the 1997 standard on April 30, 2004. 69 Fed. Reg. 23857 (April 30, 2004). Because the Chicago area was designated as a moderate nonattainment area, Illinois was required to implement RACT requirements. On March 24, 2008, USEPA issued a finding that Illinois failed to make a

² The Illinois portion of the nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, as well as portions of Grundy and Kendall Counties.

RACT State Implementation Plan ("SIP") submittal as was required for its nonattainment areas. 73 Fed. Reg. 15416 (Mar. 24, 2008).

In response to USEPA's March 2008 finding, Illinois EPA filed a rulemaking proposal with the Board for the adoption of RACT to control NO_x emissions from certain sources. Statement of Reasons, R08-19 (Ill.Pol.Control.Bd. May 9, 2008). Illinois EPA stated that "this rulemaking proposal has been prepared to satisfy Illinois' obligation to submit a SIP to address the requirements under Sections 172 and 182 of the CAA for major stationary sources of NO_x, in areas designated as nonattainment with respect to the 8-hour ozone and PM_{2.5} NAAQS." *Id.* at 5. During the rulemaking proceeding, Illinois EPA worked with several stakeholders, including ExxonMobil, in order to craft a rule that achieved the emission reductions necessary to demonstrate attainment, as well as provided flexibility in terms of emissions averaging and compliance deadlines for sources subject to the Rule. In ExxonMobil's case, the Rule establishes an initial compliance deadline of January 1, 2012, and a December 31, 2014 compliance deadline for certain covered process heaters at the Joliet Refinery.³ 35 Ill. Admin. Code § 217.152(c) and App. H. The Board adopted the final NO_x RACT Rule on August 20, 2009. Final Opinion and Order, R08-19 (Ill.Pol.Control.Bd. Aug. 20, 2009).

After the NO_x RACT Rule was adopted, Illinois EPA submitted the Rule to USEPA as a SIP revision. In July 2010, however, Illinois EPA submitted a request to USEPA for a waiver from the NO_x RACT requirements for the 1997 standard. Letter

³ As explained in further detail below, ExxonMobil is seeking a variance for process heaters listed in Appendix H of the Rule. Other, non-Appendix H, process heaters subject to the Rule at the Refinery will comply with the applicable deadline, January 1, 2012, or if the deadline is extended, January 1, 2015.

from Illinois EPA to USEPA (July 29, 2010), attached hereto as Exhibit 1. Illinois EPA's request stated, in relevant part:

The Illinois EPA also requests a waiver from the RACT requirement for major stationary sources of nitrogen oxides (NO_x) in both the Chicago and Metro-East ozone nonattainment areas, as provided under Section 182(f) of the CAA for the 1997 8-hour ozone standards. Specifically, this request seeks to exempt major stationary sources of NO_x (as defined in section 302 and Subsections 182(c), (d), and (e) of the CAA) from the RACT requirements of Section 182(b)(2). . . . As quality assured monitoring data for 2006 through 2008 (and 2007 through 2009) demonstrate that the Chicago area has attained the 1997 8-hour ozone standard, and monitoring data for 2007 through 2009 demonstrate that the St. Louis area, including the Metro-East area in Illinois has also attained the 1997 8-hour standard, additional NO_x emission reductions would not contribute to attainment of the 1997 8-hour ozone NAAQS in the two Illinois nonattainment areas. Thus, these areas are therefore eligible for a waiver of the RACT requirement under Section 182(f) for the 1997 standard.

Id. at 2. Illinois EPA further stated in regards to the NO_x RACT Rule:

Although the Illinois EPA is requesting a waiver from the NO_x RACT requirement for the 1997 8-hour ozone standard, Illinois has already submitted final rules to U.S. EPA that meet or exceed NO_x RACT control levels for major stationary sources in both the Chicago and Metro-East ozone nonattainment areas. . . . The Illinois EPA requests that U.S. EPA approve these rules as amendments to Illinois' SIP and intends that these rules will meet Illinois' NO_x RACT requirements for the a revised ozone standard expected to be promulgated in August 2010.

Id. at 3. As discussed in further detail below, USEPA has expressed concern with the NO_x RACT Rule and will require revisions to the Rule prior to approval as part of the SIP. Letter from Illinois EPA to Illinois Environmental Regulatory Group ("IERG") (Jan. 12, 2011), attached hereto as Exhibit 2 ("IERG Letter"). As such, Illinois EPA intends to withdraw its request for approval of the Rule as part of the SIP. Also note that the revised ozone standard referenced by Illinois EPA was not promulgated in August 2010, and the 2011 standard is not expected to be issued until July 2011. EPA's Revised

Motion Requesting a Continued Abeyance and Response to State Petitioner's Cross Motion, *Mississippi, et al. v. USEPA*, No. 08-1200 (D.C. Cir. Dec. 8, 2010) (requesting until July 29, 2011 to complete the rulemaking).

On December 8, 2010, USEPA proposed to approve Illinois EPA's NOx waiver request. 75 Fed. Reg. 76332 (Dec. 8, 2010). USEPA explained that its "guidance provides that three consecutive years of monitoring data documenting ozone levels attaining the ozone NAAQS in areas which a State has not implemented certain NOx emission controls is adequate to demonstrate that the additional NOx emission reductions will not aid in achieving attainment of the ozone NAAQS." 75 Fed. Reg. at 76335. In Illinois' case, "based on the most recent three years of quality – assured ozone monitoring data, the 1997 8-hour ozone standard has been attained in these areas." *Id.*

USEPA concluded:

EPA's review of the ozone monitoring data and Illinois' NOx emission control exemption request shows that Illinois has complied with the requirements for a NOx RACT exemption in the State's 8-hour ozone nonattainment areas under section 182(f) of the CAA consistent with the guidelines contained in EPA's January 14, 2005, guidance document. Therefore, EPA proposes to determine that the State of Illinois qualifies for exemption from NOx RACT requirements for the Illinois portions of the Chicago-Gary-Lake County, IL-IN and St. Louis, MO-IL ozone nonattainment areas for the purposes of attaining the 1997 8-hour ozone NAAQS.

Id. Despite the opportunity to inform the regulated community, including ExxonMobil, at three open industry related CAA seminars between July 29 and December 10, 2010, the Illinois EPA did not mention or discuss its plans or the July 29, 2010 NOx waiver request. By not doing so, the regulated community and ExxonMobil, which worked extensively with the Illinois EPA during the NOx RACT process, lost valuable time in

which to make a decision to continue to incur costs in order to comply with the January 1, 2012 compliance deadline. ExxonMobil was unaware of Illinois EPA's request for the NOx RACT waiver until USEPA's proposed approval of the request was published in the Federal Register.

USEPA approved Illinois' NOx RACT waiver request on February 22, 2011. 76 Fed. Reg. 9655 (Feb. 22, 2011). USEPA summarized its approval by stating that "[t]his NOx RACT waiver is based on the most recent three years of complete, quality assured ozone monitoring data, which show attainment of the 1997 8-hour ozone standard in the subject nonattainment areas and demonstrate that additional areas would not contribute to attainment of the 1997 8-hour ozone NAAQS." *Id.* USEPA, in approving the request, further explained that "[a]lthough Illinois has adopted NOx RACT rules for the ozone nonattainment areas, the 1997 8-hour ozone standard has been attained in the two ozone nonattainment area[s] prior to the implementation of Illinois' NOx RACT rules." *Id.*

B. Impact of Approval of NOx RACT Waiver

USEPA's December 2010 proposal to approve Illinois' waiver request raised concerns among the regulated community regarding the upcoming compliance deadlines in the NOx RACT Rule. From the regulated community's perspective, the waiver of the NOx RACT requirements renders the NOx RACT Rule unnecessary because USEPA and Illinois EPA have determined that implementation of NOx RACT is not needed to attain the 1997 standard. The pending compliance deadlines, including the initial January 1, 2012 deadline, means that sources subject to the Rule, such as ExxonMobil, are already spending (or have already spent) resources to install controls in order to comply with the

Rule by the deadlines. However, such use of resources and expenditures are unnecessary since the Rule is not required by the CAA, and the primary basis for its adoption is no longer valid.

In response to these concerns, on January 12, 2011, Illinois EPA sent a letter to the IERG outlining its plan for addressing NOx RACT. *See* Exhibit 2. Illinois EPA stated:

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

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

Id. at 2. Illinois EPA also commented in the IERG Letter on USEPA's review of the NOx RACT Rule. Illinois EPA stated that "U. S. EPA has identified deficiencies in

Illinois' NOx RACT rule, as submitted, and will not approve the rules as meeting RACT requirements until deficiencies have been corrected." *Id.* at 2. According to Illinois EPA, it intends to correct the deficiencies in a future rulemaking. *Id.*

As referenced in No. 3 of the IERG Letter quoted above, Illinois EPA stated that it will support IERG members, such as ExxonMobil, in requesting relief through emergency rulemaking or variance. Prior to filing this Petition, ExxonMobil met with Illinois EPA twice and had several conference calls to discuss the most prudent course of relief from the Rule's compliance deadlines. As a result of discussions with Illinois EPA, ExxonMobil has submitted an application for a construction permit to implement a NOx control strategy that accounts for the NOx emission reductions, as allowed pursuant to Section 217.152(c) of the Rule, resulting from the installation and operation of a Selective Catalytic Reduction Unit ("SCR") at the Refinery's Fluid Catalytic Cracking Unit ("FCCU")/CO Boilers as an alternative to complying with the requirements of Subparts E and F of the Rule. Should the construction permit be issued as requested in the application, it will authorize the use of emission reductions from the FCCU towards compliance with the Rule in lieu of reductions from the covered process heaters. In addition, ExxonMobil discussed and shared a preliminary draft of this variance petition with Illinois EPA to show Illinois EPA that a variance is necessary to alleviate the burden of complying with this Rule at this time because the Rule is arbitrary and an unreasonable hardship on ExxonMobil.

As noted above, ExxonMobil and Illinois EPA have had several discussions regarding the timeline for compliance with the Rule. Illinois EPA has recognized that the

January 1, 2012 deadline is unreasonable considering the uncertainties associated with the upcoming 2011 standard and has filed a rulemaking proposal to alleviate the burden of complying with the 2012 deadline. *In the Matter of: Amendments to 35 Ill. Adm. Code 217, Nitrogen Oxide Emissions*, R11-24 (Ill.Pol.Control.Bd. Apr. 4, 2011) (“2011 Rulemaking”) (hereafter cited as “R11-24”). The 2011 Rulemaking seeks to extend the general date of compliance with the Rule from January 1, 2012 to January 1, 2015. At the time of the filing of this Petition, the Board had issued a First Notice Opinion and Order and scheduled two hearings in this matter. First Notice Opinion and Order, R11-24 (Ill.Pol.Control.Bd. Apr. 7, 2011); Hearing Notice, R11-24 (Ill.Pol.Control.Bd. Apr. 18, 2011).

Although this Petition is not intended to delay the 2011 Rulemaking, a request for variance is necessary because the 2011 Rulemaking does not provide the necessary relief for ExxonMobil. From ExxonMobil’s perspective, the 2011 Rulemaking revises the compliance date to allow ExxonMobil merely one additional day to meet the deadline for the Appendix H emission units, i.e., ExxonMobil's section of Appendix H is deleted in its entirety so that the process heaters included therein would now be subject to the proposed general compliance date of January 1, 2015. Further, while ExxonMobil appreciates that Illinois EPA has proposed to extend the general compliance deadline from January 1, 2012 to January 1, 2015, there remains neither a legal basis for the NOx RACT Rule at this time nor a basis for the January 1, 2015 deadline. ExxonMobil may participate in the 2011 Rulemaking in order to provide testimony regarding the fact that the Rule is not required by the CAA, and at minimum, the deadlines for compliance should be extended

to a later date when Illinois EPA and the regulated community can surmise whether NOx RACT will even be required, and if it is, what RACT will be. As discussed in more detail below, the NOx RACT Rule is arbitrary and imposes an unreasonable hardship on ExxonMobil, and thus, the Board should grant the requested variance in order to allow ExxonMobil to delay implementation of controls to comply with the Rule until the next scheduled turnaround in Winter 2018/Spring 2019.

C. The NOx RACT rule is arbitrary.

As discussed above, Illinois EPA proposed and the Board adopted the NOx RACT Rule as part of its efforts to attain the 1997 standard. However, both USEPA and Illinois EPA have determined that the Rule is not necessary to attain the 1997 standard, and in fact, the Chicago area has attained the 1997 standard without the implementation of NOx RACT at sources, which renders the NOx RACT Rule arbitrary since there is neither a federal basis nor need, at this time, for the Rule.

ExxonMobil has already incurred substantial project costs to comply with the Rule's January 1, 2012 deadline, and although Illinois EPA filed a rulemaking proposing to extend the 2012 deadline to January 1, 2015, ExxonMobil has already taken steps to comply with the January 1, 2012 deadline. Had Illinois EPA informed the regulated community and ExxonMobil of its July 29, 2011 NOx RACT waiver request, some of these costs could have possibly been delayed. In sum, ExxonMobil has spent significant resources to comply with a Rule that is arbitrary. ExxonMobil will continue to spend additional, substantial resources in order to comply with the December 31, 2014 deadline, if this variance request is not granted. ExxonMobil should not be required to incur not

only costs, but also other resources, to comply with an arbitrary Rule. There is no support or legal authority for the NO_x RACT Rule, and accordingly, a variance from the existing December 31, 2014 deadline (and/or the proposed January 1, 2015 deadline) is necessary to postpone ExxonMobil's obligation to comply with the Rule at this time.

II. USEPA'S IMPENDING PROMULGATION OF THE 2011 STANDARD RESULTS IN SERIOUS UNCERTAINTIES FOR EXXONMOBIL.

A. The 2011 Ozone Standard

USEPA is expected to issue revised ozone NAAQS in July 2011 based on its reconsideration of the 8-hour ozone standard issued in 2008. Once the 2011 standard is issued, USEPA will issue a draft ozone implementation rule incorporating from the CAA a schedule for issuing designations, submitting SIPs, implementing RACT controls, and attaining the standard. This draft implementation rule will undergo notice and comment. After reviewing and considering comments and making necessary changes to the proposal, USEPA will likely issue a final ozone implementation rule in 2012. At that point in 2012, the regulated community and state agencies will have more certainty about ozone implementation requirements including timing for non-attainment designation recommendations, USEPA designation and classification decisions, SIP revision schedules, including RACT submissions, and compliance implementation timing. However, until 2012, there is uncertainty for ExxonMobil and Illinois EPA in every step of the process of adopting and implementing the 2011 standard. The two tables below describe some, but not all, of the uncertainties associated with each step in the process of promulgating and implementing the 2011 standard, including comparing the timelines from promulgation to attainment that the 2011 standard could follow.

Table 1

Action	Uncertainties
Promulgation of the 2011 Standard	<ul style="list-style-type: none"> ○ Timing. Although USEPA has stated that the 2011 standard will be promulgated in July 2011, this is the third time USEPA has revised the date of promulgation since the initial promulgation date of August 2010. The initial revised promulgation dates were October 2010 and December 2010. It is possible that USEPA will delay the issuance of the final standard again. ○ Level of the ozone NAAQS. The regulated community, including ExxonMobil, and Illinois EPA do not know what the final 2011 standard will be. In January 2010, USEPA proposed a range from 0.060 to 0.070 ppm. Without knowing what the standard is, it is difficult for not only states to plan, but also for facilities, such as ExxonMobil, to evaluate whether the State may require additional reductions from the source.
Designation of the Nonattainment Areas	<ul style="list-style-type: none"> ○ The CAA requires that USEPA issue designations no later than two years after promulgation of the standard, and allows for an extension of one year. The regulated community, including ExxonMobil, and Illinois EPA do not know whether USEPA will take one, two, or three years to issue designations. ○ The designations for the last ozone standard to be fully implemented, the 1997 standard, were not issued until seven years after the promulgation of the standard due to litigation. Since it is unknown what the 2011 standard will be, it is possible that there could be a delay in the issuance of designations, if environmental groups or industry associations challenge the 2011 standard. ○ Not only is the timing of when the designations will be issued uncertain, but what the designations themselves will be is also uncertain. In terms of Chicago area, if the standard is set at 0.070 ppm, depending on the years of data available for designation, it is possible that the

	<p>Chicago area could be designated in attainment rather than nonattainment. If USEPA chooses to leave the 75 ppb ozone NAAQS in place, all counties in the Chicago area have current air quality data attaining the 75 ppb ozone NAAQS.</p> <ul style="list-style-type: none"> ○ Again, the uncertainty relates to the timing of the designations. If the designations occur three years after promulgation, in July 2014, it is possible that Chicago's data for 2011, 2012, and 2013 shows attainment of the standard. ○ Depending on the final standard, the Chicago area could be designated as a nonattainment area. If so, as discussed below, more uncertainty exists as to the classification of the Chicago nonattainment area.
<p>Geographic size of the Non-attainment area</p>	<ul style="list-style-type: none"> ○ The Will County area ozone monitor design value at YE 2010 is 62 ppb. ○ Some sources in Will County have already implemented significant NOx reductions. ○ It is possible that a case may be made that the Chicago non-attainment area be restricted to a smaller geographic size in the future. ○ In this instance, Will County sources would not be subject to RACT, although if modeling showed that emission reductions from sources in Will County were needed and effective in reducing ozone, Illinois EPA could ask for emission reductions from attaining areas as part of a non-attainment area SIP revision.
<p>Classification of the Nonattainment Area</p>	<ul style="list-style-type: none"> ○ At the time of designation or thereafter, USEPA will classify each nonattainment area as marginal (3 years to attain), moderate (6 years to attain), serious (9 years to attain), severe (15 years to attain), or extreme (20 years to attain). ○ At this time, ExxonMobil has no indication from USEPA or Illinois EPA as to whether the Chicago area,

	<p>if designated nonattainment for the 2011 standard, will be classified as marginal, moderate, or a higher level of nonattainment.</p> <ul style="list-style-type: none"> ○ Classification of the area also has an impact on the timeline for attainment. The CAA allows attainment deadlines to be set 3 to 20 years (depending on the severity of the nonattainment) from the date of designation, which, again, is also subject to timing adjustments. ○ In the case of the Chicago area, depending on the classification, the attainment date could range from 3 to 20 years from the date of designation. In the case of the 1997 standard, a moderate nonattainment area had six years to attain the standard. ○ In terms of NOx RACT requirements, classification of the Chicago area as marginal, which could be a possibility depending on whether the standard is set at the high or low end of the proposed range, would mean that RACT is not required. However, if classified as moderate or above nonattainment area, RACT requirements will be required for sources. ○ At this time, because there is no way to know whether the classification will be marginal, moderate, or higher, there is uncertainty regarding whether any RACT requirements will be necessary.
<p>RACT SIP Revision Submittal</p>	<ul style="list-style-type: none"> ○ The CAA requires a RACT SIP submittal within three years from the promulgation of the standard and allows for an 18 month extension. In terms of the 2011 standard, the RACT SIP submittal could occur any time between the anticipated promulgation of the standard in July 2011 and the 4.5 year statutory timeframe or by January 2016 or even later. Since states will require sufficient time for submitting SIP revisions, at minimum, USEPA may allow 3 years for the SIP submittal or by July 2014. Again, however, there is uncertainty as to how long USEPA will allow for RACT SIP revisions. ○ For the 1997 standard, USEPA adopted a rule requiring

	<p>submittal of the RACT SIP revisions no later than 27 months after designation. If USEPA adopted a similar timeframe and the designations are issued in July 2013, RACT SIP revisions would be due in October 2015.</p> <ul style="list-style-type: none"> ○ At this time, the regulated community, including ExxonMobil, and Illinois EPA do not know USEPA's timeframe for requiring the RACT SIP revision, which, in either case described above, will be based on the date of promulgation or designation, both of which are unknown.
<p>RACT Implementation at Sources</p>	<ul style="list-style-type: none"> ○ Neither ExxonMobil and the regulated community nor Illinois EPA, at this time, can possibly know the date by which NOx RACT will be required at sources, that is, if NOx RACT is even required, which depends on the designation and classification of the Chicago area. ○ Under the 1997 standard, USEPA required implementation of RACT at sources no later than the first ozone season or portion thereof which occurred 30 months after the RACT SIP was due. If the 1997 standard rule applied to the 2011 standard, RACT would be required to be implemented at sources by January 2017 or as late as July 2018, depending on whether the RACT SIP submittal is due earlier rather than later, which is based on the date of promulgation or designation. ○ There are many uncertainties to consider when trying to determine when NOx RACT will be required at the source. Furthermore, implementation of NOx RACT may not even be necessary, depending on the designation and classification of the Chicago area and non-attainment area size. ○ In addition, depending on the standard adopted and classification of the Chicago area, NOx RACT may be the same as what is required by the current Rule or may be more or less stringent.

Attainment Date	<ul style="list-style-type: none"> ○ The attainment date is based on the date of promulgation of the designations. The CAA provides that attainment can range from 5 to 10 years for Subpart 1 areas and 3 to 20 years after the designation date for Subpart 2 areas. Since 1990, USEPA has been using Subpart 2 provisions to set attainment dates from 3 to 20 years. ○ Again, in this case, the regulated community and Illinois EPA do not know when the designations will occur. Assuming that USEPA promulgates a standard in July 2011, designations could occur one to three years later. Thus, if designations occurred two years after promulgation and USEPA required attainment in 3 years, the attainment date would be July 2016. However, if designation occurs three years after promulgation, and USEPA required 20 years for attainment, the attainment date would be 2034. Thus, there is a large range of possible attainment dates for the 2011 standard. ○ Further, USEPA has not determined the classification for the Chicago area, if it is designated as nonattainment. Typically, the attainment date is related to the severity of the nonattainment. For example, for the 1997 standard, moderate nonattainment areas had six years from designation or until June 2010 to attain the standard. If the 2011 standard follows the 1997 standard implementation schedule, designations occur in two years, and the Chicago area is classified as moderate, the attainment date will be May 2019.
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The following table demonstrates the uncertainties associated with the timeframes in which certain actions could be taken. As referenced in Table 1 above, there is substantial uncertainty as to the exact date of when several of the steps in the implementation of the 2011 standard will take place.

Table 2

<u>ACTIVITY</u>	2011 Standard Timeline (based on CAA)	1997 Standard Timeline (for comparison purposes)
Promulgation of Final Rule	July 2011	July 1997
Final Area Designations <i>(No later than two years after promulgation of a standard. Deadline can be extended for one year. 42 U.S.C. § 7407(d)(1)(B))</i>	July 2012 to July 2014	April 2004
Submittal of NOx RACT SIP <i>(Shall submit within 3 years after promulgation of the standard. Deadline can be extended for 18 months. 42 U.S.C. § 7410(a)(1))</i>	July 2014 to January 2016	July 2006 ⁴ <i>(No later than 27 months after designation. 40 C.F.R. § 51.912(a))</i>
Implementation of NOx RACT at Sources <i>(Implementation of RACM as expeditiously as practicable. 42 U.S.C. § 7502(c)(1); implementation of RACT as expeditiously as practicable. 42 U.S.C. § 7511(a)(2))</i>	2014-2024	May 2009 ⁵ <i>(No later than the first ozone season or portion thereof which occurs 30 months after the RACT SIP is due. 40 C.F.R. § 51.912(a))</i>
Attainment Date <i>(No later than 5 years from designation, but no more than 10 years from designation. 42 U.S.C. § 7502(a)(2)(A); 3 to 20 years from designation depending on classification. 42 U.S.C. § 7511 (a))</i>	2016 to 2034	June 2010 ⁶ <i>(Six years after the effective date of the designation. 40 C.F.R. § 51.903)</i>

⁴ Illinois EPA failed to meet this deadline. See 73 Fed. Reg. 15416 (Mar. 24, 2008) (where USEPA found that Illinois EPA failed to make a RACT submittal as required for its two nonattainment areas).

⁵ The Illinois EPA's NOx RACT Rule was not finalized until August 2009. It is not required for purposes of demonstrating attainment with the 1997 standard. See 76 Fed. Reg. 9655 (Feb. 22, 2011) (where USEPA approved Illinois EPA's request for a NOx RACT waiver).

⁶ USEPA stated that the 2007-2009 data for the Chicago area shows attainment of the 1997 standard. See 76 Fed. Reg. 9655 (Feb. 22, 2011).

B. Uncertainties Resulting From the 2011 Standard Impose an Unreasonable Hardship on ExxonMobil.

Because the 2011 standard will not be promulgated until later this year, ExxonMobil, as well as the regulated community at large, is left with uncertainty regarding what the final standard will be, whether the Chicago area will be designated nonattainment, and if so, what the classification will be, when RACT SIP submittals will be due, whether RACT will even be necessary, the timeline for implementation, how will NOx RACT be defined at that time, and what the attainment date will be. In addition, the regulated community, including ExxonMobil, cannot know, at this time, what Illinois EPA's response to the 2011 standard will be. To require ExxonMobil to move forward with implementing the requirements of the existing State Rule poses an unreasonable hardship on ExxonMobil. As described in Tables 1 and 2 above, there is uncertainty at every step in the NAAQS promulgation to attainment process. The uncertainty goes beyond just the timing, i.e. what will the deadlines be. It also goes to the substance of the 2011 standard and whether RACT rules will even be required, and if so, how will NOx RACT be defined.

A variance from the December 31, 2014 deadline is necessary in order to allow ExxonMobil to ease the hardship of compliance with the unsupported and arbitrary NOx RACT Rule. If a variance is not granted from the 2014 deadline, ExxonMobil will be required to move forward with its planning and installation of NOx RACT at the Refinery, incurring significant costs. At this time, NOx RACT is not needed to attain the 1997 standard, and it may not be needed to attain the 2011 standard. If it is required for

the 2011 standard, the current NOx RACT Rule may not suffice because USEPA has already indicated that the Rule is not approvable as RACT. *See* Illinois EPA Letter at 2.

In addition, as explained in Section X below, the installation of NOx RACT must be coordinated with the Refinery's planned maintenance turnaround. The next scheduled turnaround in which NOx RACT controls could be installed is scheduled for Winter 2018/Spring 2019. To require ExxonMobil to install unnecessary controls pursuant to this Rule could result in an unplanned maintenance shut down of the Refinery, which could cause a disruption in gasoline supplies in the Midwest, as well as higher fuel prices. It is imperative that compliance with the Rule be delayed until the next planned turnaround, and as noted above, Illinois EPA recognized in the rulemaking to adopt the NOx RACT Rule that extended compliance dates to coincide with planned maintenance turnarounds are justified. *See* Post-Hearing Comments at 12; Second Motion to Amend Rulemaking Proposal, R08-19 at 2, 5, 6-7, and 13-14 (Ill.Pol.Control.Bd. Mar. 23, 2009) (discussing the addition of Section 217.152(c) and Appendix H) (hereafter "Second Motion to Amend"); Pre-filed Testimony of Robert Kaleel, R08-19 at 1 (Ill.Pol.Control.Bd. Jan. 20, 2009) (where Illinois EPA stated "recognizing the unique role of petroleum refineries in the region's economy, the Illinois EPA is recommending that the compliance date for refineries coincide with already planned maintenance turnarounds to avoid unplanned shut-downs and potential disruptions to the region's fuel supply").

A four-year and four-month variance from the December 31, 2014 compliance deadline will allow ExxonMobil to delay spending resources at this time to comply with

an arbitrary Rule until there is more certainty regarding the 2011 standard in terms of what the standard will be, the Chicago area's designation and classification, the timeline for RACT SIP submittals, and the attainment date. It is an unreasonable hardship to require compliance with the 2014 deadline when ExxonMobil will spend approximately \$28 million to implement a Rule that is not necessary and may not be needed by or be sufficient for the 2011 standard. Further, ExxonMobil's substantial investment in control technology to comply with the Rule is a potentially misappropriated investment if NOx RACT is determined to be more or less stringent than what is required by the NOx RACT Rule.

III. REGULATIONS FROM WHICH VARIANCE IS SOUGHT

ExxonMobil is seeking a four-year and four-month variance from the December 31, 2014 deadline to comply with the applicable requirements of the NOx RACT Rule, which is set forth at 35 Ill. Admin. Code Part 217, Subparts A, D, E, F and Appendix H. Section 217.150(a) states, in relevant part:

- 1) The provisions of this Subpart and Subparts E, F, G, H, I, and M of this Part apply to the following:
 - A) All sources that are located in either one of the following areas and that emit or have the potential to emit NOx in an amount equal to or greater than 100 tons per year:
 - i) The area composed of the Chicago area counties of Cook, DuPage, Kane, Lake, McHenry, and Will, the Townships of Aux Sable and Goose Lake in Grundy County, and the Township of Oswego in Kendall County; or
 - ii) The area composed of the Metro East area counties of Jersey, Madison, Monroe, and St. Clair, and the Township of Baldwin in Randolph County; and

- B) Any industrial boiler, process heater, glass melting furnace, cement kiln, lime kiln, iron and steel reheat, annealing, or galvanizing furnace, aluminum reverberatory or crucible furnace, or fossil fuel-fired stationary boiler at such sources described in subsection (a)(1)(A) of this Section that emits NOx in an amount equal to or greater than 15 tons per year and equal to or greater than five tons per ozone season.
- 2) For purposes of this Section, "potential to emit" means the quantity of NOx that potentially could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8,760 hours per year or the quantity of NOx that potentially could be emitted by a stationary source as established in a federally enforceable permit.

35 Ill. Admin. Code § 217.150(a). The NOx RACT Rule is applicable to ExxonMobil's Joliet Refinery because it is located in Will County and has the potential to emit 100 tons of NOx per year. Pursuant to Section 217.152, sources subject to the Rule must comply as follows:

- a) Compliance with the requirements of Subparts E, F, G, H, I and M by an owner or operator of an emission unit that is subject to any of those Subparts is required beginning January 1, 2012.

* * *

- c) Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, 2012, except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H. With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing

the emissions of emission units other than those listed in Appendix H, provided that the emissions limitations of such other emission units 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(a) and (c). (Emphasis added.) Since ExxonMobil is a petroleum refinery that owns or operates emission units subject to Subpart E (Industrial Boilers) or Subpart F (Process Heaters), it must comply with the January 1, 2012 deadline, except for emission units listed in Appendix H. For non-Appendix H units that are subject to the January 1, 2012 deadline, ExxonMobil will comply with the Rule's requirements by the deadline, January 1, 2015, proposed in the 2011 rulemaking currently pending before the Board.

Emission units listed in Appendix H must comply with the Rule's requirements by the deadline listed in the Appendix. Appendix H provides, in relevant part:

ExxonMobil Oil Corporation (Facility ID 197800AAA)

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

35 Ill. Admin. Code Part 217, Appendix H. Note that in the 2011 Rulemaking pending before the Board, Illinois EPA proposes to delete the above-referenced section of Appendix H, presumably because the proposed extension of the general compliance

deadline until January 1, 2015 is beyond the compliance deadline for ExxonMobil's Appendix H units. As discussed in detail above, ExxonMobil is requesting a four-year and four-month variance from the December 31, 2014 compliance deadline, and thus, ExxonMobil's deadline for implementing the requirements of the NOx RACT Rule for units listed in Appendix H will be May 1, 2019, should the Board grant this Petition.

IV. ACTIVITY OF EXXONMOBIL

A. ExxonMobil's Joliet Refinery and Operations Description

The ExxonMobil Joliet Refinery, which began operating in 1972, is on a 1,300-acre tract of land located in Channahon Township in unincorporated Will County. The site is adjacent to Interstate 55 at the Arsenal Road exit, approximately 50 miles southwest of Chicago. To the immediate north of the Refinery is the Des Plaines River, while east and south is the former Joliet Army Arsenal, which has been redeveloped as an industrial complex and the Midewin National Tallgrass Prairie.

The Refinery employs approximately 630 full time employees, who operate, maintain, and manage the facility, which operates 24 hours a day. In addition to ExxonMobil's employees, an estimated 300 contractor employees work full time at the Refinery providing primarily maintenance services. During turnarounds, when portions of the Refinery are shut down for construction or large-scale maintenance projects, approximately 2,000 contractor employees are on site.

The Refinery processes crude oil and is capable of processing approximately 248,000 barrels per day (nearly 10.4 million gallons per day). The Refinery not only

produces approximately 10.4 million gallons a day of gasoline, but also produces liquefied petroleum gas, propylene, asphalt, sulfur, and petroleum coke.

B. Location of Points of Discharge

As stated above, ExxonMobil is seeking a variance from the December 31, 2014 NOx RACT Rule deadline for Appendix H units. There are twenty process heaters/boilers at the Refinery, including eight process heaters listed in Appendix H, that are subject to either the January 1, 2012 or December 31, 2014 deadline. The following table lists all of the process heaters/boilers subject to the Rule and identifies the Appendix H units; however, a variance is only being sought for the Appendix H units:

Heater / Boiler Name	ID#	Emission Point	Appendix H Unit
Crude Atmospheric Heaters	1-B-1A/B	0018	Yes
Crude Vacuum Heaters	13-B-2	0019	Yes
Alky-Iso-Stripper Reboiler, Gas	7-B-1	0038	Yes
Alky-Iso-Stripper Reboiler, ASO	7-B-1	0038	Yes
PreTreater Debutanizer Reboiler	17-B-2		No
Reformer Debutanizer Reboiler	2-B-7		No
CHD Stripper Reboiler Heater	3-B-2	0034	Yes
Saturate Gas Plant Reboiler	8-B-1		No
Coker East & West Charge Heaters	16-B-1A/B	0021	Yes
Crude Unit Feed Preheater	1-B-3, 13-B-4		No
PreTreater Reactor Charge Heater	17-B-1		No
Reformer Charge Heaters	2-B-3/4/5/6		No
CHD Charge Heater	3-B-1	0033	Yes
Hot Oil Heater	21-B-1		No

Heater / Boiler Name	ID#	Emission Point	Appendix H Unit
FCC Preheater	4-B-1		No
Auxiliary Boiler	55-B-100		No

The Illinois EPA maintains a statewide network of air quality monitoring stations. The ozone and PM_{2.5} monitoring station nearest to the Refinery is located at 36400 S. Essex Road, Braidwood, Will County. See Illinois EPA 2009 Annual Air Quality Report at 40 (November 2010) (listing the monitoring stations located in Will County). A second PM_{2.5} monitoring station is located near the Refinery at Midland and Campbell Streets, Joliet, Will County. *Id.*

C. Prior Variance(s) Issued to ExxonMobil or Any Predecessor Regarding Similar Relief

Neither ExxonMobil, nor any of its predecessors, has been issued a prior variance regarding relief that is similar to what is requested in this Petition.

D. Identification of Permits

ExxonMobil operates the Refinery pursuant to a Title V Clean Air Act Permit Program ("CAAPP") permit issued by Illinois EPA on August 15, 2000.⁷ See CAAPP Permit No. 95120304. A timely renewal application was submitted to Illinois EPA on November 4, 2004 with addendums to the application submitted on July 7, 2007 and February 16, 2011. Since the issuance of the CAAPP permit, ExxonMobil has also obtained several construction and operating permits for various projects at the Refinery. Such permits will not be affected by this variance request. ExxonMobil will continue to

⁷ A revision to the CAAPP permit was issued on December 31, 2002. The revision incorporated a minor modification that revised the ERMS baseline, allotment of ATUs, incorporated changes to a construction permit, and corrected typographical errors.

construct and operate any emission units in accordance with the conditions of its CAAPP permit and construction and operating permits.

The NOx RACT Rule, although not necessary to meet any federal requirements, is still a State rule in effect for subject sources. Thus, should Illinois EPA act on ExxonMobil's pending CAAPP renewal application, the NOx RACT Rule would likely be incorporated into a State only requirements section of a draft CAAPP permit, and any such incorporation should include a reference to the Board's decision in this matter.

E. Number of Persons Employed & Age of Facility

Construction of the Refinery began in 1970, and as stated above, operations at the facility began in 1972. Currently, there are approximately 630 full time ExxonMobil employees at the Refinery, and at least 300 full time employees of contractors that work at the Refinery.

F. Nature and Amount of Materials Used In Activity for Which Variance Is Sought and a Full Description of the Particular Process or Activity in Which the Materials Will be Used

This variance is being sought only for the process heaters at the Refinery that are subject to the NOx RACT Rule's December 31, 2014 deadline in Appendix H. These process heaters are used for indirect heat transfer within process units at the Refinery. The process heaters subject to the Rule are used in the process of converting crude oil and purchased intermediate material into gasoline, diesel fuel, and other finished products. Refinery fuel gas (including in combination with natural gas) is combusted in these process heaters and is directly related to emissions from the process heaters. The Refinery combusted refinery fuel gas (and natural gas) in an amount equivalent to

19,108,535 million BTUs in 2010 in the production of heat for purposes of producing gasoline and other products.

G. A Description of the Relevant Pollution Control Equipment Already in Use

For purposes of controlling emissions from fuel combustion emission units, typically low NO_x burners are employed as opposed to add on controls. In regards to the process heaters/boilers covered by the NO_x RACT Rule, ten of the units are already equipped with “next generation low NO_x burners,” designed to achieve a maximum NO_x emission rate of 0.05 lb/mmBtu or less. Additionally, the Refinery has recently installed an SCR at the Refinery’s FCCU/CO Boilers, which are the single largest source of NO_x emissions at the Refinery. The SCR will reduce NO_x emissions in excess of what will be achieved by compliance with requirements of the NO_x RACT Rule. See Sections IV.H and IX for additional discussions on NO_x emission reductions.

H. Nature and Amount of NO_x Emissions Currently Generated by Petitioner’s Activity

As reported in the Refinery’s 2010 Annual Emissions Report, NO_x emissions from the Refinery totaled 3,077 tons/yr, of which approximately 941 tons were attributable to the Appendix H emission units for which this variance is being sought, and a total of 1,133 tons were attributable to all emission units combined, i.e. both Appendix H and non-Appendix H units, subject to the Rule (see list of units in Section IV.B). NO_x emissions from the FCCU/CO Boilers during this same time were 1,497 tons. A full year projection of NO_x emissions following the installation of the SCR, based on the same operating rates as 2010, will result in approximately 160 tons/yr of emissions from the

FCCU, a reduction in excess of eighty-five percent of NOx emissions from the FCCU, and an over forty percent reduction of NOx emissions from the entire Refinery. The approximate NOx emissions reductions resulting from compliance with the NOx RACT Rule is about 370 tons/yr, which is well below the approximate 1,300 ton reduction from the FCCU. As noted previously, ExxonMobil has submitted a construction permit application to implement a NOx control strategy that accounts for the emission reductions from the FCCU as compliance with the NOx RACT Rule requirements.

V. **COMPLIANCE WITH THE REGULATION CANNOT BE ACHIEVED BY THE COMPLIANCE DATE.**

The NOx RACT Rule requires compliance by December 31, 2014 for the Appendix H units at ExxonMobil's Refinery. However, as explained above, the NOx RACT Rule is not required by the CAA, as the Chicago area has attained the 1997 standard, and the Rule is an unreasonable hardship on ExxonMobil. See Sections I and II. ExxonMobil, though, has already undertaken actions to comply with the existing January 1, 2012 deadline for the non-Appendix H units. Had ExxonMobil been timely notified of the Illinois EPA's NOx RACT waiver request, some of these costs could possibly have been delayed or eliminated until RACT controls are required. Further, compliance with the December 31, 2014 deadline applicable to the emission units listed in Appendix H cannot be achieved without incurring significant hardship by ExxonMobil. The approval of Illinois' NOx RACT waiver request renders the NOx RACT requirements arbitrary because attainment has already been met and there is no legal basis for the Rule. In addition, the uncertainties resulting from the impending promulgation of the 2011 standard makes moving forward with implementation of the

Rule an unreasonable hardship because ExxonMobil, as well as the regulated community at large and Illinois EPA, cannot know whether the Rule will be required by the 2011 standard or approvable as RACT for the 2011 standard. It is necessary, however, to obtain a variance from the December 31, 2014 deadline because planning and the expenditure of resources has already started for the implementation of controls to meet the 2014 deadline. ExxonMobil, as discussed in detail below, will start to incur significant costs in the 3rd and 4th Quarters 2011 to begin installation of controls at the Refinery, pursuant to an arbitrary Rule.

VI. EFFORTS NECESSARY TO ACHIEVE IMMEDIATE COMPLIANCE

In order to comply with the December 31, 2014 deadline, ExxonMobil will begin spending approximately \$2.5 million in the 3rd and 4th Quarters of 2011 of an estimated \$28 million to comply with the December 31, 2014 deadline. The expenditure of these costs is unnecessary because they will be spent to bring the Refinery into compliance with a Rule that has no basis in the CAA. Efforts to install controls will include planning and designing an appropriate strategy for installing and implementing the necessary controls, ordering the equipment, and constraining or shutting down operations for installation of the control equipment. All such efforts and the monetary expenditures associated with each stage of installation and implementation are unnecessary at this time because they are not required by the CAA.

Further, compliance with the December 31, 2014 deadline means that ExxonMobil is implementing projects that are not needed to attain a current standard and may not be needed to attain a future standard. Even if RACT is required for the 2011

standard the NOx RACT Rule may not be sufficient. Accordingly, efforts to achieve immediate compliance would include spending significant resources to implement NOx RACT when it is not required and uncertain as to whether it will be in the future.

VII. ARBITRARY OR UNREASONABLE HARDSHIP

Compliance with the Rule's December 31, 2014 deadline for implementation of NOx RACT for the emissions units listed in Appendix H is arbitrary because, in the simplest of terms, the NOx RACT Rule is not required by the CAA. In addition, as noted above, Illinois EPA's pending proposal to extend the general compliance deadline to January 1, 2015 is also arbitrary because not only is the Rule not required, but there is no basis for the 2015 deadline. USEPA and Illinois EPA have determined that the Rule was not needed for attainment of the 1997 standard. Further, according to USEPA, the Rule is not approvable as RACT. Because the Rule is neither required nor needed for attainment, mandating compliance with the December 31, 2014 deadline is arbitrary. *See* Section I.C. for detailed discussion on the arbitrariness of the Rule.

Compliance with the December 31, 2014 deadline also imposes an unreasonable hardship on ExxonMobil. The uncertainty as to whether NOx RACT rules will be required, and if so, when they will be required restricts ExxonMobil's planning implementation of projects at the Refinery. If NOx RACT is required, Tables 1 and 2 illustrate the varied range of dates and scenarios surrounding the promulgation of the 2011 standard and subsequent designations. ExxonMobil has already spent approximately \$3 million to comply with the 2012 deadline, and this year, it will start spending considerable resources to comply with the 2014 deadline should a variance not

be granted. *See* Section II.A and B for detailed discussion on the uncertainties involved in this case and the unreasonable hardship on ExxonMobil.

VIII. COMPLIANCE PLAN AND SUGGESTED CONDITIONS

As discussed throughout this Petition, the NOx RACT Rule is arbitrary and poses an unreasonable hardship on ExxonMobil. At this time, neither ExxonMobil nor Illinois EPA knows whether NOx RACT will be required for a future ozone standard.

Accordingly, a delay in compliance with the Rule is warranted. ExxonMobil suggests that the compliance plan consist of the requirement to comply with applicable requirements by the requested extended deadline. ExxonMobil recommends the following condition should the Board grant this variance request:

- a. ExxonMobil is not required to comply by December 31, 2014, with 35 Ill. Admin. Code Part 217, Subparts A, D, E, F, and Appendix H, as applicable to the units listed in Appendix H.
- b. ExxonMobil shall comply with the applicable NOx RACT requirements of Part 217 by May 1, 2019 for the following emission units listed in 35 Ill. Admin. Code Part 217, Appendix H:

Point	Emission Unit Description	Compliance Date
0019	Crude Vacuum Heater (13-B-2)	May 1, 2019
0038	Alky Iso-Stripper Reboiler (7-B-1)	May 1, 2019
0033	CHD Charge Heater (3-B-1)	May 1, 2019
0034	CHD Stripper Reboiler (3-B-2)	May 1, 2019
0021	Coker East Charge Heater (16-B-1A)	May 1, 2019
0021	Coker East Charge Heater (16-B-1B)	May 1, 2019
0018	Crude Atmospheric Heater (1-B-1A)	May 1, 2019
0018	Crude Atmospheric Heater (1-B-1B)	May 1, 2019

IX. ENVIRONMENTAL IMPACT

As discussed above, ExxonMobil has significantly decreased its NOx emissions through use of an SCR at the FCCU/CO Boilers. This reduction is substantially larger than the NOx reduction resulting from compliance with the Rule. Should this variance be approved, based on 2010 actual emissions, an approximate 370 tons/yr NOx emission reduction, which is scheduled to occur following the December 31, 2014 deadline, would be delayed until 2019. Instead however, 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.

If the Board grants the requested variance, there will be little or no impact on human health and the environment compared to the impact if immediate compliance with the Rule is required because the Chicago area has attained the 1997 standard. Illinois EPA proposed the NOx RACT Rule in order to obtain the emission reductions necessary to attain the 1997 standard. Both Illinois EPA, by its NOx waiver request, and USEPA, by its approval, have acknowledged that implementation of the NOx RACT Rule is not necessary to reach attainment since, in fact, the Chicago area is in attainment with the 1997 standard. Since attainment of the 1997 standard has been reached prior to implementation of the Rule, there is little environmental impact, if any, in delaying the implementation of the Rule for ExxonMobil's Refinery. As previously discussed, the Refinery has reduced its NOx emissions substantially over the last few years and will continue to do so pursuant to the requirements of its Consent Decree. In addition, during the variance period, ExxonMobil will begin planning for implementation of the NOx

RACT requirements should applicable NOx RACT Rule requirements remain in effect or should new NOx RACT rules be adopted by the Board.

In addition, over the next few years, several large facilities in the Chicago area will be shut down, resulting in a significant decrease of NOx emissions. *See* "Aging Indiana Power Plant to Shut down, Cutting Chicago-area Air Pollution," Chicago Tribune (May 5, 2011) (stating that the State Line Power Plant will shut down no later than 2014 and that Midwest Generation will clean up or shut down its Chicago area plants by 2018). Thus, during the requested variance period, there will be additional significant NOx emission reductions in the Chicago area.

X. PROPOSED VARIANCE PERIOD

ExxonMobil proposes that the four-year and four-month variance period begin on December 31, 2014 and end on May 1, 2019. As explained above, the NOx RACT Rule is not federally required, and furthermore, it is not currently approvable by USEPA as NOx RACT. Therefore, requiring compliance with the Rule is not only arbitrary, but it is also unreasonable considering that ExxonMobil will spend approximately \$28 million to implement the controls required by the Rule, which may not even be necessary or sufficient depending on the 2011 standard. In this case, beginning the variance period on December 31, 2014 rather than on the date that the Board takes final action on this Petition is justified because of the long lead times needed to implement the NOx RACT controls, and because of the uncertainty as to whether the Rule will be considered RACT for the 2011 standard or whether RACT will be needed at all.

A four-year and four-month variance is also necessary for practical purposes in order to postpone compliance with the Rule until a time when the Refinery is scheduled to be temporarily shut down for a maintenance turnaround. ExxonMobil typically completes maintenance turnarounds for the Refinery on a five- to six-year cycle. Early or unscheduled turnarounds to install controls on the Refinery's process heaters could disrupt the fuel supply throughout the Midwest, potentially causing significantly higher gasoline and diesel fuel costs, as acknowledged by Illinois EPA in the NOx RACT rulemaking, where Illinois EPA revised its proposal to include extended compliance dates for petroleum refineries. *See* Second Motion to Amend at 2, 5, 6-7, and 13-14. The next Refinery turnaround beyond December 31, 2014, is scheduled for Winter 2018/Spring 2019, and accordingly, ExxonMobil is requesting a four-year and four-month variance from the December 31, 2014 deadline until May 1, 2019, which would allow for the installation of required NOx controls during the scheduled Winter 2018/Spring 2019 turnaround.

XI. CONSISTENCY WITH FEDERAL LAW

Under Title IX of the Act, 415 ILCS 5/35-38, the Board is responsible for granting variances when a petitioner demonstrates that immediate compliance with the Board regulation(s) would impose an "arbitrary or unreasonable hardship" on the petitioner. 415 ILCS 5/35(a). The Board may grant a variance, however, only to the extent consistent with applicable federal law. *See* 415 ILCS 5/35(a).

Section 104.208(a) of the Board rules states the following with regard to consistency with federal law for all petitions for variances from the Board's air regulations:

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code. Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted pursuant thereto. If granting a variance would require revision of the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.

35 Ill. Admin. Code § 104.208(a). In this situation, there are no applicable federal laws or regulations that preclude granting the instant variance request. As referenced above, the NOx RACT Rule is not required by the CAA. Therefore, the variance is consistent with federal law. In addition, granting this variance request would not require a revision to the SIP, as Illinois EPA intends to withdraw its NOx RACT SIP submittal.

XII. WAIVER OF REQUEST FOR HEARING

Pursuant to 35 Ill. Admin. Code § 104.204(n), ExxonMobil waives its right to a hearing on this Petition.

XIII. AFFIDAVIT IN SUPPORT

In support of this Petition, ExxonMobil is filing the Affidavit of Matthew J. Kolesar, which is attached hereto as Exhibit 3.

XIV. CONCLUSION

The NOx RACT Rule is not required by the CAA, and thus, it is an arbitrary rule until such time NOx RACT requirements are required by the CAA. Compliance with the Rule at this time also poses an unreasonable hardship because ExxonMobil is incurring

significant costs to comply with the Rule, when there is uncertainty as to whether NOx RACT will be required. In addition, to require the installation of unnecessary NOx RACT controls at the Refinery when there is no turnaround scheduled until Winter 2018/Spring 2019 is unreasonable and burdensome because it will require ExxonMobil to initiate an unplanned shut down of the Refinery, possibly causing significant disruptions in fuel supplies and gasoline prices, depending on how long the Refinery is shut down. Accordingly, because the NOx RACT Rule is arbitrary and imposes an unreasonable hardship on ExxonMobil, the Board should grant this request for a four-year and four-month variance from the December 31, 2014 compliance deadline for Appendix H units.

WHEREFORE, Petitioner, ExxonMobil Oil Corporation, respectfully requests that the Board grant a four-year and four-month variance to May 1, 2019 from the December 31, 2014 compliance deadline for the NOx RACT Rule.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

DATE: May 17, 2011

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

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-7326

217/782-9143 (TDD)

July 29, 2010

Dr. Susan Hedman, Regional Administrator
Office of the Regional Administrator, R-19J
U. S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3507

Re: Control Technique Guidelines SIP Submittal and NOx RACT Waiver Request

Dear Dr. Hedman:

The Illinois Environmental Protection Agency (Illinois EPA), on behalf of the State of Illinois, hereby submits the enclosed three amendments to Illinois' State Implementation Plan (SIP) for ozone pursuant to Sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA) (42 U.S.C. §§ 7502 and 7511a) and Sections 4, 10, 27, and 28 of the Illinois Environmental Protection Act (415 ILCS 5/4, 10, 27, and 28):

1. Group II Consumer and Commercial Product Categories: Industrial Cleaning Solvents, Flat Wood Paneling Coatings, Flexible Packaging Printing Materials, Lithographic Printing Materials, and Letterpress Printing Materials.
2. Group III Consumer and Commercial Product Categories: Paper, Film, and Foil Coatings, Metal Furniture Coatings, and Large Appliance Coatings.
3. Group IV Consumer and Commercial Product Categories: Miscellaneous Metal and Plastic Parts Coatings, Auto and Light-Duty Truck Coatings, Miscellaneous Industrial Adhesives, and Fiberglass Boat Manufacturing Materials.

These rules are intended to meet the obligations of the State of Illinois under the CAA to submit a revision to the SIP to address requirements under Sections 172 and 182 for sources of volatile organic materials (VOM) emissions in areas designated as nonattainment with respect to the ozone National Ambient Air Quality Standard (NAAQS). Section 172(c)(1) of the CAA provides that states must include in their SIPs for nonattainment areas "reasonably available control measures" (RACM), including "reasonably available control technology" (RACT), for sources of emissions. Section 182(b)(2) of the CAA provides that, for ozone nonattainment areas, the State must revise its SIP to include RACT for sources of VOM emissions covered by a control techniques guideline (CTG) issued between November 15, 1990, and the date of attainment. U.S. EPA issued final CTGs for Group II Consumer and Commercial Product Categories on October 5, 2006, final CTGs for Group III categories on October 9, 2007, and final CTGs for Group IV categories on October 7, 2008.

On July 9, 2009, the Illinois EPA filed a regulatory proposal for the Group II CTG categories with the Office of the Clerk of the Pollution Control Board (Board). The Board docketed this proposed rulemaking as PCB R10-8 and issued a Notice of Hearings on August 12, 2009. Public hearings were held on October 27, 2009 and December 8, 2009. The Board adopted the rule and issued its Final Order on June 17, 2010 and the Notice of Adopted Amendments was published in the *Illinois Register* on July 9, 2010. The complete docket for the rulemaking is available on the Board's website at <http://www.ipcb.state.il.us/COOL/External/CaseView.aspx?case=13733>.

For the Group III CTG categories, the Illinois EPA filed a regulatory proposal with the Board on October 23, 2009. The Board docketed this proposed rulemaking as PCB R10-10 and issued a Notice of Hearings on November 5, 2009. Public hearings were held on December 9, 2009 and January 6, 2010. The Board adopted the rule and issued its Final Order on March 18, 2010 and the Notice of Adopted Amendments was published in the *Illinois Register* on April 9, 2010. The complete docket for the rulemaking is available on the Board's website at <http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?referer=results&case=13766>.

Illinois' rulemaking process has almost been completed for the Group IV CTG categories and the Illinois EPA requests parallel processing while the rule is being reviewed by the Joint Committee on Administrative Rules (JCAR), and published as an adopted rule in the *Illinois Register*. The Illinois EPA filed a regulatory proposal with the Board on March 8, 2010. The Board docketed this proposed rulemaking as PCB R10-20 and issued a Notice of Hearings on March 18, 2010. Public hearings were held on April 28 and May 19, 2010. The Board adopted the rule for second notice review by JCAR on July 15, 2010. The rulemaking documentation is being submitted here with this request for parallel processing. When the proposal is printed as an adopted rule in the *Illinois Register*, this SIP submittal will be supplemented with an addendum that includes the final rule as published. The complete docket for the rulemaking is available on the Board's website at <http://www.ipcb.state.il.us/COOL/External/CaseView.aspx?case=13839>.

In order to assist with your review of this SIP submittal, two paper copies and an electronic disk of the rulemaking documentation for the three rules are enclosed. A list of the enclosed documents is also attached.

The Illinois EPA also requests a waiver from the RACT requirement for major stationary sources of nitrogen oxides (NO_x) in both the Chicago and Metro-East ozone nonattainment areas, as provided under Section 182(f) of the CAA for the 1997 8-hour ozone standard. Specifically, this request seeks to exempt major stationary sources of NO_x (as defined in Section 302 and Subsections 182(c), (d), and (e) of the CAA) from the RACT requirements of Section 182(b)(2). Section 182(f)(1)(A) provides for a waiver of the NO_x RACT requirement if "additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area...". As quality assured monitoring data for 2006 through 2008 (and 2007 through 2009) demonstrate that the Chicago area has attained the 1997 8-hour ozone standard, and monitoring data for 2007 through 2009 demonstrate that the St. Louis area, including the Metro-East area in Illinois has also attained the 1997 8-hour ozone standard, additional NO_x emission reductions would not contribute to attainment of the 1997 8-hour ozone NAAQS in the two Illinois nonattainment areas. Thus, these areas are therefore eligible for a waiver of the RACT requirement under Section 182(f) for the 1997 8-hour ozone standard.

Although the Illinois EPA is requesting a waiver from the NOx RACT requirement for the 1997 8-hour ozone standard, Illinois has already submitted final rules to U.S. EPA that meet or exceed NOx RACT control levels for major stationary sources in both the Chicago and Metro-East ozone nonattainment areas. On September 1, 2009, the Illinois EPA submitted to the U.S. EPA adopted rules for NOx emissions from stationary reciprocating internal combustion engines and turbines. On September 2, 2009, and supplemented on October 8, 2009, the Illinois EPA submitted to the U.S. EPA adopted rules for NOx emissions from various source categories, including industrial and utility boilers, process heaters, cement kilns, lime kilns, glass melting furnaces, aluminum melting furnaces, and reheat, annealing, and galvanizing furnaces at iron and steel plants. The Illinois EPA requests that U.S. EPA approve these rules as amendments to Illinois' SIP and intends that these rules will meet Illinois' NOx RACT requirements for the revised ozone standard expected to be promulgated in August 2010.

The Illinois EPA believes that this submittal, in conjunction with other submittals made previously to the U.S. EPA (e.g., emissions inventories, attainment plans, rate of progress plans, RACT requirements, maintenance plans, and transportation conformity budgets), will allow the U.S. EPA to expeditiously take the necessary actions to redesignate both the Chicago and Metro-East areas to attainment for the 1997 8-hour ozone standard.

If further information is required or should you have any questions, please feel free to contact Laurel L. Kroack, Chief of the Bureau of Air, at (217)785-4140.

Very truly yours,



Douglas P. Scott
Director

Attachments

cc: Cheryl L. Newton, U.S. EPA Region 5

Illinois State Implementation Plan
Group II, Group III, and Group IV
Control Technique Guidelines

List of Enclosed Documents

A. Group II

- A1. Illinois EPA regulatory proposal, July 9, 2009 (certain documents omitted)
- A2. Letter from Acting Chairman Girard to Director Ribley of the Department of Commerce and Economic Opportunity ("DCEO") regarding request for economic impact study, August 6, 2009
- A3. Order of the Board by A.S. Moore, accepting the Illinois EPA's regulatory proposal for hearing, granting the Illinois EPA's request for waiver of copy requirements, and denying the Illinois EPA's Motion for Expedited Review, August 6, 2009
- A4. Hearing Officer Order, Notice of Hearings, August 12, 2009
- A5. Prefiled Testimony of David Bloomberg of Illinois EPA and Illinois EPA's Motion to Amend Rulemaking Proposal, September 14, 2009
- A6. Order of the Board by A.S. Moore, granting the Illinois EPA's Motion to Amend Rulemaking Proposal, October 15, 2009
- A7. Record of Hearing, October 27, 2009 (full transcript omitted)
- A8. Hearing Officer Order, October 28, 2009
- A9. Illinois EPA's Second Motion to Amend Rulemaking Proposal, December 7, 2009
- A10. Record of Hearing, December 8, 2009 (full transcript omitted)
- A11. Hearing Officer Order, December 9, 2009
- A12. Post-Hearing Comment of Mostardi Platt Environmental, December 28, 2009
- A13. Order of the Board by A.S. Moore, adopting the rulemaking proposal and ordering the clerk to file the proposal for first notice publication in the *Illinois Register*, January 7, 2010 (full text of rule omitted)
- A14. Comments of Mostardi Platt Environmental, January 19, 2010

- A15. *Illinois Register* Notice of Proposed Amendments (full text of rule omitted), 34 Ill. Reg. 1766, February 5, 2010
- A16. First Notice Comments of the Illinois Environmental Protection Agency, February 17, 2010
- A17. Comments of Mostardi Platt Environmental, April 9, 2010
- A18. Comments of the Illinois Environmental Protection Agency, April 26, 2010
- A19. Order of the Board by A.S. Moore, adopting the rule for second notice review by JCAR, May 6, 2010 (full text of rule omitted)
- A20. Letter from Vicki Thomas of the Joint Committee on Administrative Rules ("JCAR") to Acting Chairman Girard, accepting rulemaking for second notice, May 18, 2010
- A21. Comments of the Flexible Packaging Association, June 4, 2010
- A22. Letter from Illinois EPA to Vicki Thomas of JCAR regarding response to Flexible Packaging Association's comments, June 10, 2010
- A23. Letter from JCAR to Acting Chairman Girard and Certification of No Objection to Rulemaking Proposal, June 15, 2010
- A24. Final Order of the Board by A.S. Moore, adopting the rule and ordering the clerk to file final rule for publication in *Illinois Register*, June 17, 2010 (full text of rule omitted)
- A25. Notice of Publication of Adopted Rules, July 9, 2010
- A26. *Illinois Register* Notice of Adopted Amendments, 34 Ill. Reg. 9069, July 9, 2010

B. Group III

- B1. Illinois EPA regulatory proposal, October 23, 2009 (certain documents omitted)
- B2. Order of the Board by A.S. Moore, accepting the Illinois EPA's regulatory proposal for hearing, granting the Illinois EPA's request for waiver of copy requirements, and ordering the clerk to file the proposal for first notice publication in the *Illinois Register*, November 5, 2009 (full text of rule omitted)
- B3. Board Hearing Officer Order, Notice of Hearings, November 5, 2009
- B4. Letter from Acting Chairman Girard to Director Ribley of the DCEO regarding request for economic impact study, November 5, 2009

B5. *Illinois Register* Notice of Proposed Amendments, 33 Ill. Reg. 16399, November 20, 2009 (full text of rule omitted)

B6. Letter from Vicki Thomas of JCAR to Acting Chairman Girard regarding request for analysis of effects of rulemaking on units of local government, school districts, or community college districts, November 19, 2009.

B7. Prefiled Testimony of Yoginder Mahajan of the Illinois EPA, November 24, 2009

B8. Record of Hearing, December 9, 2009 (full transcript omitted)

B9. Illinois EPA's Motion to Amend Rulemaking Proposal, December 28, 2009

B10. Record of Hearing, January 6, 2010 (full transcript omitted)

B11. Hearing Officer Order, January 11, 2010

B12. Order of the Board by A.S. Moore, adopting the rule for second notice review by JCAR, February 4, 2010 (full text of rule omitted)

B13. Letter from Vicki Thomas of JCAR to Acting Chairman Girard, accepting rulemaking for second notice, February 10, 2010

B14. Letter from JCAR to Acting Chairman Girard and Certification of No Objection to Rulemaking Proposal, March 11, 2010

B15. Final Order of the Board by A.S. Moore, adopting the rule and ordering the clerk to file final rule for publication in *Illinois Register*, March 18, 2010 (full text of rule omitted)

B16. Notice of Publication of Adopted Rules, April 8, 2010

B17. *Illinois Register* Notice of Adopted Amendments, 34 Ill. Reg. 5330, April 9, 2010

C. Group IV

C1. Illinois EPA regulatory proposal, March 8, 2010 (certain documents omitted)

C2. Letter from Acting Chairman Girard to Director Ribley of the DCEO regarding request for economic impact study, March 18, 2010

C3. Board Hearing Officer Order, Notice of Hearings, March 18, 2010

C4. Order of the Board by A.S. Moore, accepting the Illinois EPA's regulatory proposal for hearing, granting the Illinois EPA's request for waiver of copy requirements, and ordering the

clerk to file the proposal for first notice publication in the *Illinois Register*, March 18, 2010 (full text of rule omitted)

C5. *Illinois Register* Notice of Proposed Amendments, 34 Ill. Reg. 4281, April 2, 2010 (full text of rule omitted)

C6. Letter from Vicki Thomas of JCAR to Acting Chairman Girard regarding request for analysis of economic and budgetary effects of rulemaking, March 31, 2010

C7. Letter from Director Ribley of the DCEO declining request to undertake economic impact study, April 7, 2010

C8. Prefiled Testimony of Rory Davis of the Illinois EPA, April 15, 2010

C9. Record of Hearing, April 28, 2010 (full transcript omitted)

C10. Illinois EPA's Request for Hearing, May 4, 2010

C11. American Coatings Association's Request for Hearing, May 5, 2010

C12. Prefiled Testimony of the American Coatings Association, May 7, 2010

C13. Prefiled Testimony of Olin Corporation, May 7, 2010

C14. Post-Hearing Comments of the Illinois EPA and Motion to Amend Rulemaking Proposal, May 17, 2010

C15. Record of Hearing, May 19, 2010 (full transcript omitted)

C16. Testimony of David Halcomb, Exhibit No. 3 at May 19, 2010 hearing

C17. Testimony of Rayvac Plastic Decorators, Inc., Exhibit No. 4 at May 19, 2010 hearing

C18. Hearing Officer Order, May 24, 2010

C19. S&C Electric Company's Response to Illinois EPA's Motion to Amend Rulemaking Proposal, June 1, 2010

C20. Post-Hearing Comments of Olin Corporation, June 3, 2010

C21. Post-Hearing Comments of the Illinois EPA, June 4, 2010

C22. Post-Hearing Comments of the American Coatings Association, June 4, 2010

C23. Post-Hearing Comments of the Illinois Environmental Regulatory Group, June 4, 2010

C24. Post-Hearing Comments of Electro-Motive Diesel, June 4, 2010

C25. Order of the Board by A.S. Moore, adopting the rule for second notice review by JCAR, July 15, 2010 (including full text of second notice version of the rule)

C26. Letter from Vicki Thomas of JCAR to Acting Chairman Girard, accepting rulemaking for second notice, July 20, 2010



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PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

January 12, 2011

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

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

Dear Mr. ^{Alec} Messina:

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

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

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

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

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

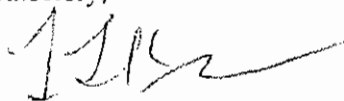
The Illinois EPA recognizes that the waiver of the NOx RACT requirement to meet the 1997 8-hour ozone standard, the reconsideration of the 2008 8-hour ozone standard, and U.S. EPA's delay in adopting the 8-hour ozone standard revision proposed in 2010 results in a situation where the existing NOx RACT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

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

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

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

Sincerely,



Laurel L. Kroack
Chief, Bureau of Air

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION)	
)	
Petitioner,)	
)	
v.)	PCB _____
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

AFFIDAVIT OF MATTHEW J. KOLESAR

I, Matthew J. Kolesar, being first duly sworn on oath, depose and state as follows:

1. I am currently employed as the Safety, Health and Environment Manager for ExxonMobil Oil Corporation ("ExxonMobil") in Joliet, Illinois, a position which I have held since August 2009.
2. I participated in the preparation of the Petition for Variance dated May 17, 2011, to the extent it discusses ExxonMobil.
3. I have read the Petition for Variance dated May 17, 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.

Matthew J. Kolesar

 Matthew J. Kolesar

Subscribed and sworn to before me
 this 17th day of May, 2011.

Diane T. Kelly

 Notary Public



CERTIFICATE OF SERVICE

I, Monica T. Rios, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF MONICA T. RIOS, and PETITION FOR VARIANCE with attached exhibits 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 May 18, 2011; and upon:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on May 18, 2011.

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