

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **EXXONMOBIL OIL CORPORATION'S RESPONSE TO ILLINOIS EPA'S RECOMMENDATION**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

Dated: September 1, 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
EXXONMOBIL OIL CORPORATION'S RESPONSE TO ILLINOIS EPA'S

RECOMMENDATION upon:

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

via electronic mail on September 1, 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

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on September 1, 2011.

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

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**EXXONMOBIL OIL CORPORATION'S
RESPONSE TO ILLINOIS EPA'S RECOMMENDATION**

NOW COMES Petitioner, EXXONMOBIL OIL CORPORATION ("ExxonMobil"), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 104.220, and hereby submits its Response to the Illinois Environmental Protection Agency's ("Illinois EPA") Recommendation. In support of this Response, ExxonMobil states as follows:

I. INTRODUCTION

On May 18, 2011, ExxonMobil filed a Petition for Variance ("Petition") from the December 31, 2014 compliance date for the applicable requirements of the NOx RACT Rule at 35 Ill. Admin. Code Part 217, Subparts A, D, E, F, and Appendix H (hereafter referred to as the "NOx RACT Rule" or "Rule"). Petition for Variance, *ExxonMobil Oil Corporation v. Illinois EPA*, PCB No. 11-86 (Ill.Pol.Control.Bd. May 18, 2011) (docket hereafter cited as "PCB No. 11-86"). Over the last several months, the parties have been discussing the issues raised in the Petition,¹ as well as participating in a rulemaking to

¹ See Letter to L. Bonnett, Interim Director, Illinois EPA from M. Kolesar, Safety, Health and Environmental Manager, ExxonMobil (July 13, 2011) and Letter to L. Bonnett, Interim Director, Illinois EPA from M. Kolesar, Safety, Health and Environmental Manager, ExxonMobil (Aug. 8, 2011), attached hereto as Exhibit 1.

revise the compliance deadline of the Rule from January 1, 2012 to January 1, 2015.² On August 18, 2011, Illinois EPA filed its Recommendation in this matter, stating that “the Illinois EPA neither supports nor objects to Petitioner’s request for variance as proposed.” Recommendation, PCB No. 11-86 at 1 and ¶60 (Ill.Pol.Control.Bd. Aug. 18, 2011) (hereafter cited as “Rec.”).

As articulated in its Petition, ExxonMobil requests that the Board grant a four-year and four-month variance from the December 31, 2014 deadline or until May 1, 2019 in order to allow ExxonMobil to install any required NOx RACT controls during the Joliet Refinery’s next scheduled turnaround. The variance is justified due to the uncertainty regarding the future ozone standard and because the NOx RACT Rule is not federally required at this time. Rec. at ¶¶ 28 and 60. The Board has the authority to grant ExxonMobil’s request, and in light of Illinois EPA’s Recommendation considered with the justification for the variance articulated in the Petition and testimony in the R11-24 rulemaking, the Board should grant ExxonMobil’s Petition.

II. CLARIFICATION OF FACTS

In this Response, ExxonMobil makes the following clarifications of and/or comments on the facts and statements presented in Sections IV through VI of Illinois EPA’s Recommendation:

² On August 18, 2011, the Illinois Pollution Control Board (“Board”) issued its Adopted Rule and Final Opinion and Order amending the general compliance date of the NOx RACT Rule, as requested by Illinois EPA. Board Order, *In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217*, PCB Nos. 11-24 and 11-26 (consol.) (Ill.Pol.Control.Bd. Aug. 18, 2011) (hereafter rulemaking cited as “R11-24”). The Board declined to extend the Appendix H deadline for ExxonMobil’s emission units, and instead stated that “it will make a determination on the issue of appropriate relief for ExxonMobil in the context of any appropriate later regulatory or adjudicatory proceeding.” *Id.* at 33.

A. Facts Presented in the Petition (Section IV of Recommendation)

In regards to whether the NO_x RACT Rule is required, Illinois EPA cited the Petition and noted:

Petitioner states that the NO_x RACT Rule is not required by the CAA, due to the fact that USEPA approved Illinois EPA's NO_x waiver request. Petitioner further states that the waiver of the NO_x RACT requirements renders the NO_x RACT Rule unnecessary because USEPA and Illinois EPA have determined that implementation of NO_x RACT is not needed to attain the 1997 [ozone] standard.

Rec. at ¶ 35 (citing Pet. at 2, 7). Although these statements are accurate, the Board should consider them in conjunction with the explanations and support provided in the Petition as a whole, as well as with the statements made by Illinois EPA and ExxonMobil at the hearings in the R11-24 rulemaking.

It is true that ExxonMobil has repeatedly stated that the NO_x RACT Rule is not required by the Clean Air Act, at this time, because the Chicago area has attained the 1997 ozone standard prior to implementation of the Rule, as acknowledged by both Illinois EPA and United States Environmental Protection Agency ("USEPA"). 76 Fed. Reg. 9655 (Feb. 22, 2011) (where USEPA approved Illinois EPA's NO_x RACT waiver request stating that "although Illinois has adopted NO_x 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' NO_x RACT Rules."); Hearing Transcript, R11-24 at 19-20, 22 (Ill.Pol.Control.Bd. June 2, 2011) (cited hereafter as "Tr.") (where Illinois EPA testified that "for the time being, there is no federal mandate for NO_x RACT" and attainment of the ozone standard was achieved "without full implementation of [NO_x RACT] requirements."). Further, Illinois EPA stated at hearing in the rulemaking that the NO_x RACT Rule is not approvable as RACT.

Tr. at 10-11. Thus, the Board should note that the parties agree that the Rule is not federally required at this time, as evidenced by their filings in this matter, as well as their testimony in the R11-24 rulemaking.

In addition, ExxonMobil, by its statements that the Rule is not federally required at this time, acknowledges that NOx RACT could be required some time in the future under a new or reconsidered ozone standard. ExxonMobil has, in detail, described the uncertainties associated with the promulgation and implementation of a new ozone standard, and in particular, noted that neither Illinois EPA nor the regulated community, know what the standard will be, how areas will be designated and classified, and whether NOx RACT will be required, and if so, what it will be and when will it be required. Petition at 12-21; Pre-filed Testimony of Doug Deason on Behalf of ExxonMobil Oil Corporation, R11-24 (Ill.Pol.Control.Bd. June 20, 2011) (hereafter cited as "Deason Testimony"). Illinois EPA, too, acknowledges "the uncertainty in determining what action will be taken at the federal level and when it will be effective." Rec. at ¶ 60. Due to the uncertainty regarding the upcoming ozone standard³ and the unreasonable and arbitrary hardship the NOx RACT Rule poses to ExxonMobil, the Board should grant the requested variance in order to delay implementation of controls until such time that they are federally required.

Illinois EPA also states in its Recommendation in regards to the pending construction permit application that ExxonMobil is "seeking approval to allow the Refinery to comply with the requirements of 35 Ill. Adm. Code 217, Subparts D, E,

³ Adding to the uncertainty associated with USEPA's actions on the ozone standard is a recent lawsuit filed in Federal District Court requesting that the court compel USEPA to issue area designations for the 2008 ozone standard (75 ppb). *WildEarth Guardians v. Jackson*, No 2:11-CV-01661-LOA (D. Ariz. Aug. 24, 2011). Should WildEarth succeed in its lawsuit, USEPA will be required to issue area designations for the 2008 standard as it continues to reconsider a more stringent ozone standard.

and F, by the reduction in emissions of NO_x from the Refinery's fluidized catalytic cracking unit ("FCCU") by an amount equivalent to what would have been required by the proposed RACT standard." Rec. at ¶ 37. ExxonMobil has filed a construction permit application requesting approval of an alternate NO_x Control Strategy, as allowed pursuant to Section 217.152(c) of the Rule. NO_x emission reductions from the installation of the SCR at the FCCU/CO Boilers are in excess of, not the equivalent of, the amount of NO_x reductions that would be achieved by compliance with the Rule through the installation of controls on process heaters. Reductions from the SCR are approximately 1,300 tpy, and reductions from compliance with the NO_x RACT Rule through the addition of controls on process heaters would be approximately 370 tpy. Petition at 28-29.

B. Environmental Impact (Section V of Recommendation)

Illinois EPA states that the "grant of the variance would impose on the public can be measured in terms of the failure of the public to receive the benefit of the NO_x emissions reductions as otherwise required by the NO_x RACT Rule until 2019." Rec. at ¶ 40. Although the 370 tpy reduction of NO_x emissions resulting from compliance with the Rule through installation of controls on process heaters will be temporarily delayed, ExxonMobil is reducing its NO_x emissions well in excess of the 370 tpy by the installation of the SCR, as explained in Section II.A above. In addition, the public is receiving the benefit of the NO_x reductions from the SCR now, i.e., the SCR began operating in Fall 2010, rather than beginning in the 2015 ozone season, when the NO_x reductions resulting from compliance with the Rule through installation of controls on process heaters would first be realized. Further, air quality in the Chicago area is

improving, as demonstrated by the attainment of the 1997 ozone standard without the implementation of the Rule and the 370 tpy reduction. Thus, although there will be a temporary delay in NOx emissions reductions from the Rule if the variance is granted, ExxonMobil is already substantially reducing its NOx emissions beyond the minimum required by the Rule, and there will be little or no impact to human health or the environment. See Petition at 33-34 (discussing environmental impact of request for variance).

C. Arbitrary and Unreasonable Hardship (Section VI of Recommendation)

Illinois EPA noted in its Recommendation regarding whether there is an arbitrary and unreasonable hardship on ExxonMobil to comply with the Rule:

Petitioner provides no evidence of its inability to comply with Section 217.152 and Appendix H. Rather, Petitioner states that “[b]ecause 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.” (Pet. at 19)

As Part of this, the Petitioner states that “[t]he 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.” (Pet. at 19)

Rec. at ¶¶ 43-44. ExxonMobil has not claimed that it is unable to comply with the Rule, rather ExxonMobil has stated that is arbitrary and unreasonable to do so at this time, and it poses a hardship on the Refinery. Petition at 19-21, 31-32 (stating that 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.”); *see generally* Pre-filed Testimony of Robert Elvert on Behalf of ExxonMobil Oil Corporation, R11-24 (Ill.Pol.Control.Bd. June 20, 2011).

Further, Illinois EPA noted ExxonMobil’s statements regarding the uncertainty surrounding each step in the promulgation and implementation of the new ozone standard. Illinois EPA, itself, acknowledged such uncertainty in its Recommendation, and, in the R11-24 rulemaking, testified regarding the same. Rec. at ¶ 60; Tr. at 6-7.

Illinois EPA stated, at hearing:

We believe the date that NOx RACT would ultimately be required is uncertain right now. The date of implementation of NOx RACT is dependent on several actions on the part of USEPA and none of those actions have happened yet. Primarily, what needs to happen is USEPA needs to finalize the ozone air quality standard that they proposed in January 2010 . . . Since EPA hasn’t acted on the ozone standard yet, we don’t know exactly what the date will be. What we put in our statement of reasons is just our expectation of EPA’s schedule based on public statements that EPA has made.

Tr. at 6-7. As noted above, Illinois EPA and ExxonMobil agree on crucial elements underlying ExxonMobil’s request for the variance – the Rule is not federally required at this time and there is uncertainty regarding federal action on a new ozone standard.

Illinois EPA also addressed ExxonMobil’s cost estimate for compliance with the Rule and stated in its Recommendation that ExxonMobil offered “no calculations or supporting data as to those estimates; therefore, the Illinois EPA is not able to substantiate the estimate of the cost.” Rec. at ¶ 47. In the Petition, ExxonMobil briefly explained that the millions of dollars in compliance costs include “planning and designing the appropriate strategy for installing and implementing the necessary controls,

ordering the equipment, and constraining or shutting down operations for installation of the control equipment.” Petition at 30. Further, ExxonMobil filed testimony in the R11-24 rulemaking, which generally explained the basis for its cost estimates. Prefiled Testimony of Dan Stockl on Behalf of ExxonMobil Oil Corporation, R11-24 (Ill.Pol.Control.Bd. June 20, 2011). At hearing in the rulemaking, Mr. Stockl’s testimony was entered into the record as if read, and Illinois EPA had the opportunity to question Mr. Stockl on the costs of the NOx RACT compliance project at the Refinery. Illinois EPA chose not to do so. Hearing Transcript, R11-24 (Ill.Pol.Control.Bd. June 28, 2011).

Illinois EPA’s Recommendation also stated that “based upon 2009 through 2011 monitoring data (to date), the Chicago area is now in violation of the 2008 Standard (75 ppb), currently held in abeyance.” Rec. at ¶ 49. Illinois EPA included the Affidavit of Rob Kaleel, Manager of Illinois EPA’s Air Quality Planning Section, which stated that “two locations in the Greater Chicago Metropolitan area have recorded a violation of the 2008 Standard.” *Id.* at Exhibit 2. Further, Illinois EPA speculated that “[a]ssuming the USEPA issues the final standard shortly and the Chicago and Metro-East areas are designated as nonattainment and classified as ‘moderate’ nonattainment areas under the final standard, the implementation of NOx RACT at sources will likely be due prior to May 1, 2019.” *Id.* at 52.

Although ExxonMobil has stated that it is possible that the Chicago area could be designated attainment or marginal nonattainment under the new or reconsidered ozone standard, the interpretation of the monitoring data presented by Illinois EPA in its Recommendation could be a basis for designation of the Chicago area as either a marginal or moderate nonattainment area, depending on the stringency the ozone

standard that has yet to be promulgated. If the Chicago area is classified as a moderate nonattainment area, as Illinois EPA assumes, NOx RACT may eventually be required, but again, all parties agree that there is uncertainty regarding the timeline for issuing and implementing the new ozone standard. *See* Rec. at ¶ 60 (acknowledging “the uncertainty in determining what action will be taken at the federal level and when it will be effective.”); Petition at 12-21 (providing tables outlining the possible timelines for promulgation and implementation of the 2011 standard); Deason Testimony at 3-9 (providing various scenarios regarding classification of the Chicago area if the standard is set at different levels); and Tr. at 6-7 (where Illinois EPA testified that “the date that NOx RACT would ultimately be required is uncertain right now.”).

Illinois EPA’s speculation in its Recommendation that “the implementation of NOx RACT at sources will likely be due prior to May 1, 2019” is based on the assumptions that USEPA issues the final ozone standard “shortly” and Chicago is designated a moderate nonattainment area. As described in the Recommendation, USEPA has repeatedly delayed the issuance of the final standard, and neither Illinois EPA nor ExxonMobil know when the final standard will be issued and what the proposed implementation schedule will be. In addition, should the Chicago area be designated a moderate nonattainment area, attainment of the new standard will not be required until six years after designation, which means, depending on the dates of the issuance of the final standard and designations (which could occur years after issuance of the standard, as was the case with the 1997 standard), NOx RACT could be required at sources after May 1, 2019, rather than prior to that date as Illinois EPA proposes. The simple truth is

that the uncertainty with the new ozone standard, along with the fact that the Rule is not currently required, warrants granting ExxonMobil's reasonable request for a variance.

Finally, Illinois EPA states that "the underlying regulatory provisions that are the subject of this Petition will very soon be superseded by the amendatory provisions adopted by the Board under the consolidated rulemakings." Rec. at ¶ 54. On August 18, 2011, the Board adopted its Final Rule amending the compliance date of the NOx RACT Rule from January 1, 2012 to January 1, 2015. Board Order, R11-24 (Ill.Pol.Control.Bd. Aug. 18, 2011) (filed with the Secretary of State on August 22, 2011). The newly adopted Rule subjects ExxonMobil to the general compliance date of January 1, 2015, a single day later than its original December 31, 2014 compliance deadline for its Appendix H units. ExxonMobil, therefore, still requires a variance from the January 1, 2015 compliance deadline, and accordingly, will file an Amended Petition in this proceeding and/or a new Petition for Variance to address this issue.

III. CONCLUSION

ExxonMobil appreciates Illinois EPA's efforts in this matter and its willingness to meet and discuss these issues on several occasions. Illinois EPA has acknowledged the uncertainty that ExxonMobil is facing in regards to the issuance and implementation of a new ozone standard, and has chosen not to object to ExxonMobil's request for a variance. Based on ExxonMobil's Petition, Illinois EPA's neutral recommendation, and the supporting materials enclosed with this Response, a variance until May 1, 2019 to comply with the NOx RACT rule is warranted as compliance with the Rule, at this time, is an unreasonable and arbitrary hardship on ExxonMobil.

WHEREFORE, Petitioner, EXXONMOBIL OIL CORPORATION, respectfully requests that the Illinois Pollution Control Board grant the Petition for Variance.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
Petitioner,

Dated: September 1, 2011

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

Katherine D. Hodge
Monica T. Rios
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MOBO:027/Filings/11-86/Response to Recommendation

ExxonMobil
Refining & Supply Company
Joliet Refinery
P.O. Box 874
Joliet, Illinois 60434-0874

July 13, 2011

ExxonMobil
Refining & Supply

VIA HAND DELIVERY

Ms. Lisa Bonnett
Interim Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East - MC #1
Post Office Box 19276
Springfield, Illinois 62794-9276

RE: NOx RACT Compliance Deadline
ExxonMobil Oil Corporation
Joliet Refinery
Facility I.D. No. 197800AAA

Dear Ms. Bonnett:

It was a pleasure to meet with you recently, and I sincerely appreciate the opportunity to discuss with you my concerns regarding the proposed compliance schedule for the NOx RACT Rule. As you know, ExxonMobil Oil Corporation ("ExxonMobil") has been engaged in discussions with the Illinois Environmental Protection Agency ("Illinois EPA") for more than six (6) months regarding the proposed compliance deadline for installation of NOx RACT controls at the Joliet Refinery. The Illinois EPA's proposal to extend the deadline until January 1, 2015 simply provides no relief from the NOx RACT Rule's requirements for the Refinery.

Like other regulated facilities, ExxonMobil seeks to determine the most efficient and economical means of complying with federal and state regulatory requirements and, thus, it is unreasonable to require that ExxonMobil invest approximately \$25 million to comply with a Rule that is no longer necessary. During these economic times, especially when a key point of Governor Quinn's Economic Recovery Plan is to help Illinois companies compete for business and to bring business investment to Illinois, it seems difficult to justify requiring Illinois companies to invest in compliance projects that are not necessary. Imposing regulatory requirements that are not necessary to meet a federal air quality standard places Illinois companies, such as ExxonMobil, at a competitive disadvantage with facilities located in other states, where unnecessary control requirements are not being imposed. In addition, mandating compliance with a non-federally required rule discourages companies from investing in new facilities in Illinois.

EXHIBIT

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Ms. Lisa Bonnett
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In this case, since there is no federal basis for the Rule at this time, ExxonMobil asks that your Agency reconsider its current proposal and support ExxonMobil's request for an extension of the compliance deadline until Spring 2019, which is consistent with the Refinery's turnaround schedule. For your consideration, please note the following:

- In February 2011, USEPA approved Illinois EPA's request for a waiver from the NOx RACT requirements for the Chicago area because the area had attained the 1997 8-hour standard. The approval of the waiver request voided the original basis for the NOx RACT Rule and makes installation of controls and the expenditure of resources to comply with the Rule unnecessary at this time.
- The current NOx RACT Rule is not approvable by USEPA as RACT. USEPA has found several deficiencies with the Rule, including identifying an issue with the emissions averaging provisions of the Rule. Another rulemaking will be necessary to resolve the issues raised by USEPA.
- ExxonMobil and Illinois EPA agree that there is uncertainty as to when NOx RACT (if it is required by the future revised ozone standard for the Chicago area) will be required to be implemented at sources. USEPA has indicated, at least informally to Illinois EPA, that the deadline for installation of RACT at sources under the forthcoming revised ozone standard could be late 2017, i.e. installation of controls would be required prior to the 2018 ozone season, which is an aggressive timeline for implementation of RACT at sources. Thus, for practical purposes, ExxonMobil's request to install controls in early 2019, prior to the 2019 ozone season, is merely one ozone season later than USEPA's most aggressive anticipated deadline.
- There is also uncertainty as to whether NOx RACT will even be required. NOx RACT is not required for areas designated attainment or for areas classified as marginal nonattainment. It is possible that the Chicago area will be designated attainment or classified as marginal nonattainment. In either scenario, NOx RACT is not required, which, again, makes the investment in control technology at this time for a non-required Rule arbitrary and unreasonable.
- ExxonMobil's Refinery is in a unique situation. It processes 10.4 million gallons a day of gasoline and is a crucial link in the fuel supply line feeding the Midwest. It is vital that the Refinery remain operating at all times, unless a planned turnaround¹ initiates a shut down of the Refinery or limits operations. Planned turnarounds take several years to plan

¹ As is common in the petroleum refining industry, ExxonMobil typically schedules turnarounds on a five to six year cycle. During turnarounds, the Refinery undertakes maintenance activities and/or installs new equipment or controls at a time that has been planned for well in advance and coordinated with other ExxonMobil facilities in order to make the most efficient and economical use of the Refinery's shut down period and/or limited operations.

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and require large lead time to properly prepare and procure for the event. An unplanned shut down will cause a disruption to the fuel supply and could result in increased gasoline prices.

- The Illinois EPA acknowledged the Refinery's special circumstances in the original NOx RACT rulemaking, which is why the original December 14, 2014 extended deadline for Appendix H units was included in the Rule. Illinois EPA and the Illinois Pollution Control Board ("Board") justified an extension of the compliance deadline then, and for the same reasons, it should agree to an extension of the compliance deadline now, in the pending rulemaking, given the critical nature of the Refinery's operations and its turnaround schedule.

These issues, as briefly discussed above, have serious implications for the Refinery, including, but not limited to, the following:

- USEPA's comment on the emissions averaging provisions of the Rule has significant repercussions for ExxonMobil, as well as any other facilities that intend to use emissions averaging to comply with the Rule's requirements. In ExxonMobil's case, the implications of USEPA's comment could change the entire scope of the compliance project and, should the emissions averaging provisions be revised to incorporate USEPA's comments, ExxonMobil's compliance strategy would have to be re-evaluated.
- Planning is already underway and substantial costs, approximately \$2.1 million will be incurred during the second half of 2011 in order to meet the 2014 compliance date, and ExxonMobil has already spent an estimated \$1.2 million towards compliance with the 2014 deadline. Further, in the first half of 2012, the Refinery will spend an additional \$6.5 million towards compliance, if an extension of the deadline is not received.
- In the case of NOx RACT, the controls to comply with the Rule were scheduled to be installed during a planned turnaround prior to 2014; however, now that those controls are not mandated by the Clean Air Act ("CAA"), ExxonMobil should not be required to incur an additional approximately \$25 million in what could be deemed a misappropriated investment.
- It is reasonable and justified to extend the compliance date for ExxonMobil because investing a significant amount of resources at this time to comply with a non-federally required and non-approvable Rule is arbitrary, and poses an unreasonable hardship on ExxonMobil, as detailed in its Petition for Variance ("Petition").²

² *ExxonMobil Oil Corporation v. Illinois EPA*, PCB No. 11-86 (Ill.Pol.Control.Bd. May 18, 2011).

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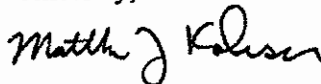
In order to alleviate the hardship posed by compliance with the NOx RACT Rule by the December 31, 2014 deadline for Appendix H units, ExxonMobil has actively sought multiple avenues of relief. ExxonMobil is participating in the pending rulemaking before the Board and will ask the Board to include a May 1, 2019 compliance deadline in its adopted rule. In addition, ExxonMobil filed the Petition with the Board requesting a variance from the 2014 deadline because the Rule is arbitrary and poses an unreasonable hardship on the Refinery. Finally, pursuant to 35 Ill. Admin. Code § 217.152(c), ExxonMobil submitted a construction permit application for approval of an alternate NOx Control Strategy, which includes the NOx reductions resulting from the installation of the Selective Catalytic Reduction Unit ("SCR") at the Refinery's Fluid Catalytic Cracking Unit/CO Boilers. The SCR reductions are significantly greater than the NOx reductions from compliance with NOx RACT Rule.

Although Illinois EPA has general authority to propose regulations to improve air quality, such authority was not the basis for the adoption of the NOx RACT Rule. Due to the approval of the NOx RACT waiver, the Rule is not necessary for CAA purposes. In these economic times, it is a misuse of resources to require the Refinery to incur an additional estimated \$25 million in costs to install controls that may not even be needed, and/or that may be insufficient under the future revised standard. Extending the compliance deadline for the Refinery will allow ExxonMobil to delay its investment until the next scheduled turnaround, and know with more certainty whether controls will be required and, if so, that the compliance strategy will, in fact, be sufficient under the future revised standard.

ExxonMobil requests that the Illinois EPA propose amendments in the current rulemaking to retain Appendix H, and revise the compliance date for ExxonMobil's units to May 1, 2019. Should Illinois EPA decline to revise the pending rulemaking proposal, ExxonMobil requests that Illinois EPA issue the construction permit authorizing the alternate NOx Control Strategy. Finally, if Illinois EPA does not support revising the pending rulemaking or approving the construction permit application, ExxonMobil requests that Illinois EPA submit a recommendation to the Board in the Petition proceeding, recommending that the Board grant ExxonMobil's variance request.

I look forward to discussing this matter with you in more detail in our meeting set for July 14, 2011. Should you have any questions prior to our meeting, please do not hesitate to contact me.

Sincerely,



Matthew J. Kolesar
Safety, Health and Environment Manager

ExxonMobil
Refining & Supply Company
Joliet Refinery
P.O. Box 874
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ExxonMobil
Refining & Supply

VIA HAND DELIVERY

August 8, 2011

Ms. Lisa Bonnett
Interim Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East - MC #1
Post Office Box 19276
Springfield, Illinois 62794-9276

Re: Follow-up to July 14 Meeting
NOx RACT Compliance Deadline
ExxonMobil Oil Corporation
Joliet Refinery
Facility I.D. No. 197800AAA

RECEIVED

AUG 08 2011

SECURITY DESK

Dear Ms. Bonnett:

On July 14, 2011, representatives from ExxonMobil Oil Corporation ("ExxonMobil") met with you and your staff to discuss ExxonMobil's concerns with the proposed compliance schedule for the NOx RACT Rule. We sincerely appreciate the opportunity to have met with you and discuss these issues in person. In response to comments and/or questions raised during the meeting, ExxonMobil is providing additional information below for your consideration. As stated in correspondence dated, July 13, 2011, and at the meeting, ExxonMobil asks for your support of its request to extend the Rule's compliance deadline for the Joliet Refinery until May 1, 2019 in order to allow for the installation of required controls during a planned turnaround.

ExxonMobil and Illinois EPA agree on several aspects related to the extension of the compliance deadline for the Refinery. We agree that NOx RACT is not required at this time, and that in regards to any future ozone standard, there is uncertainty as to what the standard will be, area designations, and the timeline for implementation. In addition, we agree that the current Rule is not approvable as RACT by USEPA and that ExxonMobil is slated to incur significant costs during the remainder of this year for implementation of the requirements of the Rule. Finally, we agree also that air quality in the Chicago region is improving.

As we have discussed extensively, there is no federal basis for the NOx RACT Rule at this time, and thus, it is unreasonable to require an additional \$25 million investment to comply with a Rule that is no longer necessary. As you evaluate whether to support ExxonMobil's request for an extension of the compliance deadline, please take under consideration the following issues:

- The scope of the Refinery's compliance project for the Rule is likely to change based on the comments made by USEPA regarding deficiencies in the emissions averaging provisions of the Rule. The currently designed compliance project for the Refinery may not be able to meet the 10% "environmental incentive" reduction suggested by USEPA, especially if the averaging period is reduced from the entire ozone season to 30 days or less. It is an inefficient use of resources to require an additional \$25 million dollar investment in a control project that may not be sufficient to meet future federally approvable requirements.

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Illinois EPA has stated that a future rulemaking will be necessary to address USEPA's comments, and thus, since the Rule is not mandated by federal law at this time, the Rule is only a state rule, allowing Illinois EPA broad discretion in adoption of compliance deadlines. Based on the information articulated in the Petition for Variance, at hearing in the pending rulemaking, and in discussion and correspondence with Illinois EPA, an extension of the compliance date for the Refinery's Appendix H units is warranted.

- The Board recently declined to extend the compliance deadline in the pending rulemaking and opted for addressing ExxonMobil's request in the variance matter or in another proceeding before the Board in order for the parties to "await USEPA action that may affect ExxonMobil's situation." Accordingly, ExxonMobil must move forward with pursuing its other options for relief because it has only two opportunities to install controls, i.e. during its planned turnaround prior to 2014 or during the Spring 2019 turnaround. Because the Rule is not federally required at this time, it is burdensome to require that ExxonMobil install the controls prior to 2014. Since the 24-hour a day operations of the Refinery are crucial to maintaining a steady fuel supply, it is crucial that any required controls be installed during the next scheduled turnaround in Spring 2019.
- Should Illinois EPA choose to do so, it could, in effect, make the variance proceeding moot if it approved the construction permit application submitted for the authorization and implementation of an alternative NOx Control Strategy, as allowed by Section 217.152(c) of the Rule. Further, ExxonMobil's Consent Decree allows for the use of the SCR for RACT compliance, just as other refineries in Illinois are using Consent Decree boiler and heater controls for compliance with Subparts D and E of the Rule.
- On July 27, 2011, USEPA announced that it would not meet its July 29 deadline to issue the final ozone standard and proposed implementation rule. USEPA did not provide a new time frame in which to issue the new standard. As noted above, until the new standard is issued, there remains considerable uncertainty as to the standard itself, as well as area designations and implementation. Further, when the new standard is issued, we will at least know what the standard will be and a proposed implementation schedule, but there will still be uncertainty since, in all likelihood, the standard will be challenged, and area designations delayed. Since there is so much uncertainty regarding the future standard and timeline for implementation, delaying compliance with the NOx RACT Rule at this time is not only prudent, but justified.
- Prior to USEPA's announcement that it would not issue the final ozone standard on July 29, USEPA received two letters¹ from the U.S. Senate questioning the basis for issuing a new ozone standard at this time and raising issues regarding USEPA's reconsideration of the 2008 standard. The Senate Letters ask important questions, and it is likely that USEPA will respond to those questions prior to issuing a final rule. Further, based on the issues raised in the letter, it is possible that USEPA will continue to delay the issuance of a final standard.

¹ See Letter from J. M. Inhofe, Ranking Member, Committee on Environment & Public Works, U.S. Senate to L. P. Jackson, Administrator, USEPA (July 25, 2011) and Letter from U.S. Senate to L. P. Jackson, Administrator, USEPA (July 25, 2011).

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- On July 15, ExxonMobil, at Illinois EPA's request, agreed to a 30-day extension of the deadline for Illinois EPA to file its recommendation in the variance proceeding. Illinois EPA explained that it would like the additional time in order to review USEPA's final standard and determine the impact on ExxonMobil's request for an extension of the compliance deadline. ExxonMobil did not grant the extension lightly, as granting the extension required ExxonMobil to waive the Board's decision deadline for another 30 days (until November 17, 2011). At this point, since implementation of the compliance project is moving forward, every 30-day delay costs the Refinery approximately \$300,000. ExxonMobil, however, was willing to incur these costs if it meant that Illinois EPA would continue to work with the Refinery towards a resolution in this matter that is agreeable to both parties.
- As noted above, USEPA has delayed its issuance of the new ozone standard, which means that Illinois EPA may not have the opportunity to review the final standard and proposed implementation timeline prior to the August 15 deadline for its recommendation in the variance proceeding. The delay in issuance of the ozone standard should prompt Illinois EPA to support ExxonMobil's Petition for Variance since it is still unknown what the standard and implementation scheduled will be, and requiring the expenditure of \$25 million now is a misuse of valuable resources.

ExxonMobil appreciates Illinois EPA's willingness to discuss these issues, and ExxonMobil requests, based on the extensive information in the rulemaking proceeding, as well as information provided to Illinois EPA during discussions, that Illinois EPA issue the construction permit authorizing the alternate NOx Control Strategy or submit a recommendation to the Board in the Petition proceeding, recommending that the Board grant ExxonMobil's variance request.

Should you have any questions regarding the above or would like to discuss further, please do not hesitate to contact me.

Sincerely,

Deene Kidd for MJK

Matthew J. Kolesar
Safety, Health and Environment Manager

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EXXONMOBIL OIL CORPORATION)	
)	
Petitioner,)	
)	
v.)	PCB 11-86
)	(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 Response to Illinois EPA's Recommendation dated September 1, 2011, to the extent it discusses ExxonMobil.
3. I have read the Response to Illinois EPA's Recommendation dated September 1, 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 1st day of September, 2011.

Diane J. Kelly

 Notary Public

