

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R 22-17
AMENDMENTS TO 35 ILL. ADM. CODE	)	
PART 203: MAJOR STATIONARY	)	(Rulemaking - Air)
SOURCES CONSTRUCTION AND	)	
MODIFICATION, 35 ILL. ADM. CODE	)	
PART 204: PREVENTION OF	)	
SIGNIFICANT DETERIORATION, AND	)	
PART 232: TOXIC AIR CONTAMINANTS	)	

**NOTICE OF FILING**

To: Persons on Service List  
(Via Electronic Filing)

PLEASE TAKEN NOTICE that I have filed today with Clerk of the Illinois Pollution Control Board by electronic filing the following Pre-Hearing Comment of the Illinois Attorney General’s Office, a true and correct copy of which is attached hereto and hereby served upon you.

KWAME RAOUL  
Attorney General  
State of Illinois

/s/ Jason E. James  
Jason E. James, AAG

Dated: January 4, 2022

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**CERTIFICATE OF SERVICE**

I, James E. James, an Assistant Attorney General, certify that on the 4th day of January, 2022, I caused to be served the foregoing Pre-Hearing Comment of the Illinois Attorney General's Office and Notice of Filing thereof on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

/s/ Jason E. James

Jason E. James

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**PRE-HEARING COMMENT OF THE ILLINOIS ATTORNEY GENERAL'S OFFICE**

The Illinois Attorney General's Office, on behalf of the People of the State of Illinois (“People”), notes a procedural issue for the Board’s consideration in advance of upcoming hearings. Several states and environmental advocates are currently pursuing federal court review of the federal regulations underlying this regulatory proposal currently before the Board. The legal challenge is currently pending before the U.S. Court of Appeals for the District of Columbia Circuit. *New Jersey v. U.S. Env’t Prot. Agency*, No. 21-1033 (D.C. Cir.).

As mentioned in the Illinois Environmental Regulatory Group’s August 16, 2021 proposal, the U.S. Environmental Protection Agency (“USEPA”) amended its Prevention of Significant Deterioration and Nonattainment New Source Review regulations in accordance with guidance published under former Administrator Scott Pruitt. 85 Fed. Reg. 74,890 (Nov. 24, 2020); *see* IERG Proposal at 13. These amendments became effective on December 24, 2020.

On January 22, 2021, a coalition of attorneys general—representing seven states and the District of Columbia—and a coalition of environmental advocacy organizations filed petitions for review of this regulation before the U.S. Court of Appeals for the District of Columbia. *New Jersey*, No. 21-1033 (D.C. Cir. Jan. 22, 2021). The Illinois Attorney General’s Office is not party to this litigation.

On February 16, 2021, USEPA filed an unopposed motion to put the challenge into abeyance (attached to this comment as Exhibit A). USEPA sought additional time in order to review the amended regulation in light of President Biden’s January 20, 2021 Executive Order on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” *New Jersey*, No. 21-1033 (D.C. Cir., Feb. 16, 2021). The Agency stated that the case must be held in abeyance because President Biden directed the Agency “to immediately review and, as appropriate, address actions from the last four years that conflict with” the environmental policies outlined in the Executive Order. The court granted the Agency’s unopposed request for additional time to review the challenged rule.

The case remains in abeyance. USEPA has periodically renewed its abeyance request. Most recently, USEPA filed an unopposed request to keep the case in abeyance on November 12, 2021, which the Court granted. The Court directed parties to file motions to govern future proceedings by February 10, 2022.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL,

By: /s/ Jason E. James

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**PRE-HEARING COMMENT OF THE ILLINOIS ATTORNEY GENERAL'S OFFICE**

EXHIBIT A

ORAL ARGUMENT NOT YET SCHEDULED  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

State of New Jersey, State of Maryland,  
Commonwealth of Massachusetts, State  
of Minnesota, State of Oregon,  
Commonwealth of Pennsylvania, State  
of Washington, and the District of  
Columbia,

Petitioners,

v.

U.S. Environmental Protection Agency  
and Jane Nishida, in her capacity as  
Acting Administrator, U.S.  
Environmental Protection Agency,<sup>1</sup>

Respondents.

No. 21-1033 (consolidated with  
No. 21-1039)

**EPA's Unopposed Motion for Six-Month Abeyance**

EPA moves to put these consolidated cases into abeyance for six months so it can review the challenged rule in light of an Executive Order signed on January 20, 2021. Petitioners do not oppose the relief sought provided that EPA files 90-day status reports during abeyance.

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<sup>1</sup> Jane Nishida is substituted for her predecessor Andrew R. Wheeler under Fed. R. App. P. 43(c)(2).

Petitioners seek review of EPA’s rule “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting.” 85 Fed. Reg. 74,890 (Nov. 24, 2020). The two petitions for review were filed within the last month and no briefing schedule has been entered.

On January 20, 2021, President Biden signed an Executive Order on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” The order establishes a policy

to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

Executive Order 13990, § 1.<sup>2</sup> To that end, the order directs federal agencies to “immediately review” and, as appropriate, address actions from the last four years that conflict with that policy. *Id.*

EPA thus needs to brief its incoming leadership on the challenged rule and decide whether any further action is necessary in light of the Executive Order. For that reason, it asks the Court to place these cases in abeyance. Abeyance would

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<sup>2</sup> Available at <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf>.

