

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM CODE 204,)
PREVENTION OF SIGNFICANT) **R2019-001**
DETERIORATION, AMENDMENTS TO 35) **(Rulemaking-Air)**
ILL. ADM. CODE 101, GENERAL RULES,)
35 ILL. ADM. CODE 105, APPEALS OF)
FINAL DECISIONS OF STATE AGENCIES,)
35 ILL. ADM. CODE 203, MAJOR)
STATIONARY SOURCE CONSTRUCTION)
AND MODIFICATION, 35 ILL. ADM. CODE)
211, DEFINITIONS AND GENERAL)
PROVISIONS, 35 ILL. ADM. CODE 215,)
ORGANIC MATERIAL EMISSIONS)
STANDARDS AND LIMITATIONS)

NOTICE OF FILING

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 don.brown@illinois.gov (via electronic mail)	Attached Service List
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PLEASE TAKE NOTICE that on the 5th day of February, 2019, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed its Notice of Withdrawal of Attorney, Appearance of Jason E. James and Request for Acceptance of Appearance Pursuant to 35 IAC 101.112(b), a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Jason E. James
Assistant Attorney General
Environmental Bureau
69 West Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660
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SERVICE LIST

<p>Tanya Rabczak Hearing Officer Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 tetyana.rabczak@illinois.gov</p>	<p>Sally Carter Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794 Sally.carter@illinois.gov</p>
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM CODE 204,)
PREVENTION OF SIGNFICANT) **R2019-001**
DETERIORATION, AMENDMENTS TO 35) **(Rulemaking-Air)**
ILL. ADM. CODE 101, GENERAL RULES,)
35 ILL. ADM. CODE 105, APPEALS OF)
FINAL DECISIONS OF STATE AGENCIES,)
35 ILL. ADM. CODE 203, MAJOR)
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211, DEFINITIONS AND GENERAL)
PROVISIONS, 35 ILL. ADM. CODE 215,)
ORGANIC MATERIAL EMISSIONS)
STANDARDS AND LIMITATIONS)

NOTICE OF WITHDRAWAL OF ATTORNEY

YOU ARE HEREBY notified that Kathryn A. Pamenter is withdrawing as an attorney representing the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* Kwame Raoul, Attorney General of the State of Illinois. Please direct all future pleadings, correspondence and telephone calls concerning this case to Jason James, whose request for appearance pursuant to 35 IAC 101.112(b) is attached hereto.

Respectfully submitted,

/s/ Jason E. James
Assistant Attorney General
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69 W. Washington St., 18th Floor
Chicago, IL 60602
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jjames@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
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PROPOSED NEW 35 ILL. ADM CODE 204,)	
PREVENTION OF SIGNFICANT)	R2019-001
DETERIORATION, AMENDMENTS TO 35)	(Rulemaking-Air)
ILL. ADM. CODE 101, GENERAL RULES,)	
35 ILL. ADM. CODE 105, APPEALS OF)	
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211, DEFINITIONS AND GENERAL)	
PROVISIONS, 35 ILL. ADM. CODE 215,)	
ORGANIC MATERIAL EMISSIONS)	
STANDARDS AND LIMITATIONS)	

APPEARANCE

I, Jason E. James, hereby file my appearance in this proceeding on behalf of the Illinois Attorney General's Office, for the People of the State of Illinois, as interested party.

Respectfully submitted,

/s/ Jason E. James
Assistant Attorney General
Environmental Bureau
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Chicago, IL 60602
(312) 814-0660
jjames@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW 35 ILL. ADM. CODE 204,)	R19-1
PREVENTION OF SIGNIFICANT)	(Rulemaking – Air)
DETERIORATION, AMENDMENTS TO 35)	
ILL. ADM. CODE 101, 105, 203, 211, and 215.)	

REQUEST FOR ACCEPTANCE OF APPEARANCE PURSUANT TO 35 IAC 101.112(b)

Pursuant to 35 Ill. Adm. Code 101.112(b), the Illinois Attorney General, on behalf of the People of the State of Illinois (the “People”), requests that the Illinois Pollution Control Board (the “Board”) accept the appearance of Assistant Attorney General (“AAG”) Jason E. James in this rulemaking. The People make this request because AAG James did not personally and substantially participate in this rulemaking while an Attorney-Advisor at the Board.

In the alternative, the People request the Board’s consent for AAG James to represent the People in this rulemaking. *See* 35 Ill. Adm. Code 101.112(b). The People make this request because there is no actual or apparent risk of bias or prejudice if the Board provides this consent.

I. AAG James Did Not Personally and Substantially Participate in R19-1

No former Board employee “may represent any other person in any Board proceeding in which he or she participated personally and substantially” 35 Ill. Adm. Code 101.112(b). AAG James is a former Board employee. However, as detailed below, AAG James did not personally and substantially participate in this rulemaking while employed at the Board. Consequently, his appearance should not be disqualified.

Beginning in 2015, AAG James worked at the Board as an Attorney-Advisor. On June 27, 2018, AAG James accepted an offer of employment at the Office of the Illinois Attorney General (“AGO”). AAG James resigned from his position at the Board effective July 13, 2018.

The Illinois Environmental Protection Agency (“IEPA”) proposed this rulemaking on July 2, 2018. An AGO attorney filed an appearance on July 16, 2018. The Board first acted in this rulemaking on August 23, 2018 by proposing the amendments for public comment.

The AGO has screened AAG James from those Board matters where the AGO had participated while AAG James worked at the Board, *e.g.*, People v. Six M Corp., PCB 12-35 (Aug. 16, 2018) (Notice of Screening). However, AAG James resigned from the Board before the AGO began participating in this rulemaking and, accordingly, AAG James has not been screened here.

The circumstances do not constitute personal and substantial participation for a variety of reasons. First, AAG James had accepted the AGO’s offer of employment before IEPA proposed these amended rules. He worked at the Board for less than two weeks after IEPA submitted its proposal. Furthermore, the Board first acted on this proposal more than a month after AAG James had resigned. Lastly, the AGO’s involvement in this rulemaking never overlapped with AAG James’ employment at the Board. Therefore, Section 101.112(b) does not preclude AAG James from representing the People

Board precedent also supports this analysis. In People v. Skokie Valley Asphalt Co., PCB 96-98 (Oct. 16, 2003), the Board applied Section 101.112(b) to disqualify an AAG that previously worked for the Board from representing the People. The Board made that decision because the AAG had worked for the Board at the time that the Board issued orders in Skokie Valley. PCB 96-98, slip op. at 3 (Oct. 16, 2003). Here, the Board has not issued any orders while AAG James worked at the Board.

Simultaneously with this filing, the People have filed the Appearance of AAG James in this rulemaking. The People respectfully request that the Board decline to disqualify this appearance.

II. In the Alternative, the People Request Consent to AAG James' Representation

In the alternative of finding that AAG James did not personally and substantially participate in this rulemaking, the People request that the Board provide written consent to AAG James representing the People.

A former Board employee who personally and substantially participated in a Board proceeding can represent another person in that proceeding if the Board and all proponents “consent in writing after disclosure of the participation.” 35 Ill. Adm. Code 101.112(b).

The previous section discloses AAG James' participation in this rulemaking.

A “proponent” is any person “who submits a regulatory proposal to the Board” to amend a regulation. 35 Ill. Adm. Code 101.202. In this rulemaking, IEPA is the sole proponent. AAG James' participation has been disclosed to IEPA, and IEPA has verbally consented to AAG James representing the People. IEPA intends to file written consent in this docket.

AAG James did not meaningfully participate in this rulemaking while at the Board, as previously described. There is neither any risk of actual bias or prejudice, nor any risk of an appearance of impropriety by AAG James representing the People in this rulemaking. For these reasons, the People request the Board's written consent.

III. Conclusion

The People respectfully request that the Board decline to disqualify AAG James' appearance in this rulemaking because he did not personally and substantially participate in R19-1 while working at the Board.

In the alternative, the People respectfully request that the Board consent in writing to AAG James' representation and, when IEPA submits its written consent, not disqualify AAG James' appearance.

The People further request that the Board make this determination in time to allow the AGO to represent the People at the hearing in this rulemaking scheduled for February 26, 2019. *See In the Matter of: Proposed New 35 Ill. Adm. Code 204, R19-1 (Dec. 12, 2018) (Notice of Hearing).*

Respectfully Submitted,

By: /s/ Jason E. James
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Date: February 5, 2019

CERTIFICATE OF SERVICE

I, Jason E. James, a , do certify that I caused to be served, this 5th day of February, 2019, the foregoing Notice of Filing and Notice of Withdrawal of Attorney and Request for Appearance of Attorney Pursuant to 35 IAC 101.112(b) to the persons listed on the Notice of Filing *via email*.

Jason E. James
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