

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R 2024-017
PROPOSED CLEAN CAR AND TRUCK	)	(Rulemaking – Air)
STANDARDS: PROPOSED 35 ILL. ADM.	)	
CODE 242	)	

**NOTICE OF FILING**

TO: Don Brown	Vanessa Horton
Clerk of the Board	Carlie Leoni
Illinois Pollution Control Board	Hearing Officers
60 E. Van Buren St., Suite 630	Illinois Pollution Control Board
Chicago, IL 60605	60 E. Van Buren St., Suite 630
	Chicago, Illinois 60605

(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **MOTION FOR EXTENSION OF TIME TO FILE AND MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION**, copies of which are hereby served upon you.

Respectfully submitted,  
Illinois Fuel & Retail Association,

By: /s/ Alec Messina  
One of Its Attorneys

Dated: July 1, 2025

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**CERTIFICATE OF SERVICE**

I, the undersigned, on the oath state the following: That I have served the attached

**MOTION FOR EXTENSION OF TIME TO FILE AND MOTION FOR LEAVE TO FILE**

**MOTION FOR RECONSIDERATION**, via electronic mail upon:

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That my email address is [Alec.Messina@heplerbroom.com](mailto:Alec.Messina@heplerbroom.com)

That the number of pages in the email transmission is 14.

That the email transmission took place before 4:30 p.m. on July 1, 2025.

Date: July 1, 2025

/s/ Alec Messina  
Alec Messina

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R 2024-017
PROPOSED CLEAN CAR AND TRUCK	)	(Rulemaking – Air)
STANDARDS: PROPOSED 35 ILL. ADM.	)	
CODE 242	)	

**MOTION FOR EXTENSION OF TIME TO FILE AND**  
**MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION**

The Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association, by and through their undersigned attorneys or representatives, pursuant to 35 Ill. Adm. Code 101.502(a), submit their Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration to the Hearing Officer and, in support, state as follows:

1. On November 7, 2024, the Illinois Pollution Control Board (“Board”) issued an Order denying the motions to dismiss filed by the Indiana, Illinois, Iowa Foundation for Fair Contracting (IIIFFC) and the Illinois Fuel & Retail Association (IFRA).
2. The Proponents request that the Board adopt three California motor vehicle emissions regulations addressing light-, medium-, and heavy-duty vehicles: the Advanced Clean Cars II (ACC II), Advanced Clean Trucks (ACT), and Heavy-Duty Low NOx [Nitrogen Oxide] Omnibus (Low NOx) rules. Order of the Board, November 7, 2024 (“Order”), p. 4.
3. The Board noted that “[u]nder the Board’s procedural rules for rulemaking, ‘[a]ny person may file a motion challenging the statutory authority or sufficiency of the proposal under 35 Ill. Adm. Code 101. Subpart E [Motions].’” Order at 4 (quoting 35 Ill. Adm. Code 102.212(d)).
4. In deciding the motions to dismiss, the Board assessed whether it was authorized to consider and adopt the rulemaking proposal under the federal Clean Air Act (CAA). The Board stated as follows:

For purposes of deciding the pending motions, the Board is not persuaded that the requirements of the CAA require dismissing the proposal at this stage. Above, the Board has addressed its authority to consider the proposal under the Act. In addition, the Board notes the Proponents' position that this consideration is consistent with the CAA. See Resp. at 4. They assert that the CAA "requires all new motor vehicles sold in the U.S. to be certified to the emissions standards set by either the U.S. Environmental Protection Agency or the State of California." Resp. at 4, citing 42 USC §§ 7521, 7543. They further assert that another state can adopt California standards if the state meets specified conditions. Resp. at 4-5, citing SR at 30; see SR at 17-18. Proponents argue that considering and adopting its proposal are consistent with this authorization. Resp. at 5. While these conditions may be the subject of testimony and comment, the Board is not convinced that they require granting the motions to dismiss.

Order at 7.

5. A motion for reconsideration of the Board's November 7, 2024 Order would have been due by December 12, 2024. *See* 35 Ill. Adm. Code 101.520(a) (35-day deadline for motion for reconsideration).

6. The Board's procedural rules, however, allow for motions for extension of time. "If a party's motion shows good cause, the Board or hearing officer may extend any deadline required by this Part. The motion may be filed either before or after the deadline expires." 35 Ill. Adm. Code 101.522.

7. Since December 12, 2024, there has been a change in the law that movant believes will lead the Board "to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902.

8. Specifically, the exception to federal preemption which is the basis of this entire rulemaking has now been eliminated by Congress, requiring the Board to reconsider whether this rulemaking remains consistent with the CAA as it previously ruled.

9. This situation constitutes "good cause" supporting an extension of the deadline for the filing of a motion for reconsideration of the Board's prior (non-final) decision on the motions to dismiss.

10. This motion is submitted within 35 days of the enactment of the new law that is the basis of the request for reconsideration. The three Joint Resolutions of Congress (H.J. Res. 87, H.J. Res. 88, and H.J. Res 89) were signed into law by the President on June 12, 2025.

11. The movants request the Hearing Officer to extend the deadline for filing a motion for reconsideration until August 15, 2025, to allow “[a]ny person” to “file a motion challenging the statutory authority or sufficiency of the proposal” in light of the recently enacted laws, consistent with 35 Ill. Adm. Code 102.212(d).

12. The movants request leave to file their proposed Motion for Reconsideration, attached and marked as Exhibit 1, *instanter*.

WHEREFORE, the Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association respectfully pray that the Illinois Pollution Control Board enter an Order granting their Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration, ordering that the Motion for Reconsideration attached and marked as Exhibit 1 is deemed filed *instanter*, ordering that any other person may file a motion for reconsideration by August 15, 2025, and granting such other and further relief in their favor as the Board deems just and proper.

Respectfully submitted,

Illinois Fuel & Retail Association

By: /s/ Alec Messina

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**Exhibit  
1**

IN THE MATTER OF: )  
 ) R 2024-017  
PROPOSED CLEAN CAR AND TRUCK ) (Rulemaking – Air)  
STANDARDS: PROPOSED 35 ILL. ADM. )  
CODE 242 )

**MOTION FOR RECONSIDERATION**

The Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association, by and through their undersigned attorneys or representatives, submit their Motion for Reconsideration to the Illinois Pollution Control Board (“Board”) and, in support, state as follows:

1. On November 7, 2024, the Board issued an Order denying the motions to dismiss filed by the Indiana, Illinois, Iowa Foundation for Fair Contracting (IIIFFC) and the Illinois Fuel & Retail Association (IFRA).
2. The Proponents request that the Board adopt three California motor vehicle emissions regulations addressing light-, medium-, and heavy-duty vehicles: the Advanced Clean Cars II (ACC II), Advanced Clean Trucks (ACT), and Heavy-Duty Low NOx [Nitrogen Oxide] Omnibus (Low NOx) rules. Order of the Board, November 7, 2024 (“Order”), p. 4.
3. In their rulemaking proposal, the Proponents claim that Illinois is “authorized to adopt the proposed rules under the federal Clean Air Act (CAA).” P. 17. Specifically, the Proponents stated as follows as federal statutory authority for their proposal:

In 1977, Congress amended the CAA to add Section 177, which allows states with provisions in a state implementation plan (SIP) under the CAA to adopt California’s standards in place of the federal standards. Section 177 permits qualifying states, like Illinois, to adopt and enforce “standards relating to [the] control of emissions” if “such standards are identical to the California standards



for which a waiver has been granted for such model year” and are adopted two years before the “commencement of such model year.”

*Id.* The Proponents further stated that under their proposal, Illinois “would directly adopt the same standards that have been enacted in California for each covered model year, thus ensuring that Illinois’ standards are identical.” *Id.*

4. In ruling on the prior motion to dismiss, the Board noted that “[u]nder the Board’s procedural rules for rulemaking, ‘[a]ny person may file a motion challenging the statutory authority or sufficiency of the proposal under 35 Ill. Adm. Code 101. Subpart E [Motions].’” Order at 4 (quoting 35 Ill. Adm. Code 102.212(d)).

5. In deciding the motions to dismiss, the Board assessed whether it was authorized to consider and adopt the rulemaking proposal under the federal Clean Air Act (CAA). The Board stated as follows:

For purposes of deciding the pending motions, the Board is not persuaded that the requirements of the CAA require dismissing the proposal at this stage. Above, the Board has addressed its authority to consider the proposal under the Act. In addition, the Board notes the Proponents’ position that this consideration is consistent with the CAA. See Resp. at 4. They assert that the CAA “requires all new motor vehicles sold in the U.S. to be certified to the emissions standards set by either the U.S. Environmental Protection Agency or the State of California.” Resp. at 4, citing 42 USC §§ 7521, 7543. They further assert that another state can adopt California standards if the state meets specified conditions. Resp. at 4-5, citing SR at 30; see SR at 17-18. Proponents argue that considering and adopting its proposal are consistent with this authorization. Resp. at 5. While these conditions may be the subject of testimony and comment, the Board is not convinced that they require granting the motions to dismiss.

Order at 7.

6. “In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board’s decision was in error.” 35 Ill. Adm. Code 101.902.

7. States are prohibited from adopting their own motor vehicle emissions standards through

federal preemption. 42 U.S.C. § 7543(a) (“No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines ... No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.”)

8. The only exception is that California has in the past been allowed to develop its own emission standards, and States could adopt those standards under certain, very limited circumstances. A State “may *adopt* and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines” if: (1) the “standards are identical to the California standards for which a waiver has been granted for such model year, and; (2) California and such State adopt such standards at least two years before commencement of such model year.” 42 U.S.C. § 7507 (emphasis added).

9. The ability of the State of Illinois to even potentially adopt (not just to enforce – to adopt in the first place as *specifically* stated in 42 U.S.C. § 7507) the rules proposed in this rulemaking is entirely dependent upon the exception to federal preemption remaining applicable. This means if the proposed standards are not “California standards for which a waiver has been granted,” then no State could adopt those standards under any circumstances.

10. California previously had a waiver that allowed it to develop certain more stringent emissions standards. These include the very same emissions standards proposed by the proponents here: ACC II, ACT, and Low NO<sub>x</sub> rules. USEPA provided the waivers in the Federal Register, stating that, for the ACC II rules, it was granting “California a waiver of preemption pursuant to section 209(b) of the CAA, as amended, 42 U.S.C. 7543(b), for

regulations applicable to new 2026 and subsequent model year” vehicles (90 Fed. Reg. 642 (January 6, 2025)); for the ACT rules that it was granting “requests for waivers of Clean Air Act (CAA) preemption” (88 Fed. Reg. 20688 (April 6, 2023)); and for the Low NOx rules, it was “granting California a waiver of preemption pursuant to section 209(b) of the CAA, as amended, 42 U.S.C. 7543(b), for regulations applicable to new 2024 and subsequent model year (MY) California on-road heavy-duty vehicles and engines.” 90 Fed. Reg. 643 (January 6, 2025).

11. On June 12, 2025, the President of the United States signed into law three Joint Resolutions of Congress. House Joint Resolution 87 stated that “Congress disapproves the rule submitted by the Environmental Protection Agency relating to” the ACT “Waiver of Preemption” and “such rule shall have no force or effect.” Public Law No. 119-15 (06/12/2025) (citing 88 Fed. Reg. 20688 (April 6, 2023)).

12. House Joint Resolution 88 stated that “Congress disapproves the rule submitted by the Environmental Protection Agency relating to” the ACC II “Waiver of Preemption” and “such rule shall have no force or effect.” Public Law No. 119-16 (06/12/2025) (citing 90 Fed. Reg. 642 (January 6, 2025)).

13. House Joint Resolution 89 stated that “Congress disapproves the rule submitted by the Environmental Protection Agency relating to” the Low NOx “Waiver of Preemption” and “such rule shall have no force or effect.” Public Law No. 119-17 (06/12/2025) (citing 90 Fed. Reg. 643 (January 6, 2025)).

14. Congress legislates both through acts and joint resolutions. With the exception of joint resolutions proposing amendments to the Constitution, joint resolutions of Congress that have been approved by the President have the full force of law and are as much of a law as a bill

similarly approved by both houses of Congress and signed by the President. *Citizens for Constitutional Integrity v. United States*, 57 F.4th 750, 754 (10th Cir. 2023).

15. “Here, Congress complied with the process of bicameralism and presentment in enacting the Joint Resolution, because the Joint Resolution passed both houses of Congress and was signed by the President into law. By enacting the Joint Resolution, Congress amended the substantive environmental law ... Accordingly, the Joint Resolution is enforceable as a change to substantive law, even though it did not state that it constituted an amendment to the [Clean Air Act].” *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 562 (9<sup>th</sup> Cir. 2019).

16. House Joint Resolutions 87, 88, and 89 were passed by both houses of Congress and approved and signed by the President. Therefore, they have the full force of law.

17. These resolutions passed by Congress are now the law of the land and specifically provide that the “waiver of preemption pursuant to section 209(b) of the CAA, as amended, 42 U.S.C. 7543(b),” which was previously allowed to California for the ACC II, ACT, and Low Nox rules, “*shall have no force or effect.*”

18. The only authority Illinois, or any State, has to adopt vehicle emissions standards is to adopt “standards are identical to the California standards *for which a waiver has been granted.*” 42 U.S.C. § 7507 (emphasis added).

19. As of June 12, 2025, the waivers of preemption previously granted to California for the ACC II, ACT, and Low NOx Rules had “no force or effect.” Thus, as of June 12, 2025, the ACC II, ACT, and Low NOx Rules are no longer “California standards *for which a waiver has been granted.*”

20. This change in the law nullifies the entire basis for this rulemaking. Illinois is prohibited

by federal law from even *adopting*, let alone enforcing, vehicle emissions standards, unless those standards are “California standards for which a waiver has been granted.” The only California standards proposed to be adopted in this rulemaking are the ACC II, ACT, and Low NOx Rules. In light of the prior waivers legally having “no force or effect” under federal law, none of those standards is a California standard for which a waiver has been granted. Accordingly, no rules have been proposed in this rulemaking which Illinois has the authority to adopt. Consequently, this rulemaking should be dismissed.

WHEREFORE, the Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association respectfully pray that the Illinois Pollution Control Board enter an Order granting their Motion for Reconsideration, dismissing this rulemaking in its entirety, and granting such other and further relief in their favor as the Board deems just and proper.

Respectfully submitted,

Illinois Fuel & Retail Association,

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