

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 LEAVE TO FILE REPLY AND REPLY IN SUPPORT OF 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
Alec Messina
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Alec.Messina@heplerbroom.com
PH: (217) 528-3674

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 LEAVE TO FILE REPLY

The Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association (“Movants”), by and through their undersigned attorneys or representatives, submit to the Hearing Officer, pursuant to 35 Ill. Adm. Code 101.502(a) and 35 Ill. Adm. Code 101.500(e), their Motion for Leave to File Reply and, in support, state as follows:

1. On July 1, 2025, Movants filed their Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration (“Motion”).

2. On July 15, 2025, the Rule Proponents filed their Response in Opposition to Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration (“Response”).

3. The Board’s procedural rules provide that “[t]he moving person will not have the right to reply, except as the Board or the hearing officer permits to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). “A motion for permission to file a reply must be filed with the Board within 14 days after service of the response.” *Id.*

4. Movants respectfully request leave to file a reply to prevent material prejudice. Movants would be materially prejudiced if they are not permitted leave to respond to the assertions in the Response which Movants believe are incorrect, including, but not limited to, the following:

- Movants have not identified “good cause” to justify the extension sought; Response at 2-5;
- Movants have not provided sufficient grounds for a motion for reconsideration; *id.*
- Movants’ argument was based on a “misreading of the impact of recent acts of Congress”; *id.* at 2;
- That there are “open-ended and dilatory aspects of [Movant’s] request”; *id.* at 3;
- That “the ‘reconsideration’ Movants seek has nothing to do with the relevant legal question posed by the previously-filed motions to dismiss”; *id.* at 4;
- That “Movants seek to belatedly raise a legal argument that was available to them during their initial, unsuccessful briefing and the proper period to request reconsideration”; *id.*;
- That “there is no ‘good cause’ to reopen motions to dismiss to account for an unlawful and unconstitutional action at the federal level that is already addressed by the ‘testimony and comment’ timely submitted to the Board by parties and public commenters that followed Board instructions”; *id.* at 5;
- That “Movant’s legal premise is incorrect as a matter of law” and their “interpretation has no basis in law or practicality.”; *id.* at 5, 7; and
- That “The Motion seeks relief far broader—and more disruptive—than its title suggests, based on legal arguments Movants could have raised eight months ago and that have already been fully addressed in the record.” *Id.* at 9.

5. Movants request leave to file their proposed Reply in Support of Motion for Extension of Time to File and Motion for Leave to File 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 Hearing Officer or Illinois Pollution Control Board enter an Order granting their Motion for Leave to File Reply, ordering that the Reply in Support

of Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration attached and marked as Exhibit 1 is deemed filed *instanter*, 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
Alec Messina
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Alec.Messina@heplerbroom.com
PH: (217) 528-3674

Illinois Environmental Regulatory Group

By: /s/ Trejahn Hunter
Trejahn Hunter
215 E. Adams St.
Springfield, Illinois 62701
mwesley@ierg.org
PH: (217) 318-2296

Illinois Trucking Association

By: /s/ Matthew Hart
Matthew Hart
2250 S. Chicago St., Suite 201
Joliet, Illinois 60436
matt@iltrucking.org
PH: (630) 654-0884

Mid-West Truckers Association

By: /s/ Matt Wells
Matt Wells
2727 N. Dirksen Parkway
Springfield, Illinois 62702
mattw@midwesttruckers.com
PH: (217) 525-0310

Illinois Automobile Dealers Association

By: /s/ Lawrence Doll
Lawrence Doll
300 W. Edwards, Suite 400
Springfield, Illinois 62704
LDoll@illinoisdealers.com
PH: (217) 753-0220

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)

**REPLY IN SUPPORT OF 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 (“Movants”), by and through their undersigned attorneys or representatives, submit their Reply in Support of Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration to the Illinois Pollution Control Board (“Board”):

A. Procedural History

On July 1, 2025, Movants filed their Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration (“Motion”). On July 15, 2025, Rule Proponents filed their Response in Opposition to Motion for Extension of Time to File and Motion for Leave to File Motion for Reconsideration (“Response”). Movants submit the following replies to the arguments of Rule Proponents in the Response.

B. Introduction

Nineteen days after the President of the United States signed into law three Joint Resolutions of Congress which nullified the entire basis for this rulemaking, sixteen days before a typical motion for reconsideration would have been due, Movants punctually and succinctly notified the parties and the Board of this critical legal development by filing the Motion. In response to Movant’s undeniable logic that this matter no longer has any legal underpinning, the

Rule Proponents ignore the critical legal question—whether the Board can proceed with this rulemaking despite the unequivocal statements of Congressional intent which currently govern the land—and instead claim the statements of Congress “have nothing to do with” their rulemaking, so the Board should ignore the law, and plow forward based on “context and common sense.”

Moreover, according to the Rule Proponents, the Board should not even deliberate on whether the new law affects its authority to proceed, and should thwart the public from providing any input on the significant change in the law, because it has “confidence” that the change in the law—which they do not dispute has the force of law—will be invalidated at an unknown future time (surely “by the time enforcement begins in Model Year 2029,” they claim) by some other adjudicatory body that may or may not currently be considering the matter.

“Nothing to see here” won’t work in this scenario. An Act of Congress cannot be silenced, and the public shouldn’t be silenced from addressing the Board regarding its impact. All should be allowed to point out that there is no legal basis to proceed, and once the Board decides the issues, the matter should be dismissed.

C. There is good cause to grant the motion for extension of time and there are sufficient grounds for reconsideration.

The Rule Proponents repeatedly argue that there is no good cause for allowing an extension of the motion to reconsider deadline because the argument currently being made was “available to them during their initial, unsuccessful briefing and the proper period to request reconsideration” and consists of “legal questions that are already addressed in the existing record before the Board and that could have been raised by Movants eight months ago.” Response at 4. They aptly point out that “[a] single, firm deadline for motions to dismiss was set in September of 2024.” *Id.* at 3. They claim the Act of Congress is not, in fact, a “new law,” and they contend that

the motion for reconsideration “does not, in fact, introduce new legal issues.” *Id.* They argue that the new law does “not change the material facts as they were when the Board denied the Motions to Dismiss—a time when two of the three Proposed Rules lacked a federal waiver.” *Id.* at 4.

The Joint Resolutions of Congress nullifying this rulemaking were not signed into law by the President until June 12, 2025. Obviously, the Movants could not file a motion to dismiss by September 2024 based on a law that was not passed until June 12, 2025. The Rule Proponents’ argument that the same legal issue was before the Board on the prior motions to dismiss is wrong. The issue is: what is the effect of the June 12, 2025 law? That issue wasn’t before the Board in November 2024 and is, of course, a new legal issue.

Even the Rule Proponents’ own statements demonstrate a change in the law: they say that “when the Board denied the Motions to Dismiss,” “two of the three Proposed Rules lacked a federal waiver.” Response at 4. They therefore agree there has been a change in the law: Congress declared that as of June 12, 2025, *none* of the three Proposed Rules has a waiver.

The Rule Proponents also claim that there is no good cause because similar issues have been the subject of comment and testimony, citing the Board’s prior statement that it would consider “testimony and comment” on the issues. They contend that “the Board currently has before it testimony and public comment that address whether and how the erratic and unlawful federal actions during the current presidential administration bear on this rulemaking generally, and on the precise legal question regarding the Congressional Review Act and CAA waivers that is advanced in Movants’ proposed Motion for Reconsideration.” Response at 4-5. They further contend that the Board “specifically instructed participants to address any purported limitations from the CAA in their testimony and public comment.” *Id.* at 2.

The Board indeed suggested that information relating to certain “conditions may be the subject of testimony and comment.” The Board explained that the Rule Proponents “assert that another state can adopt California standards *if the state meets specified conditions.*” Order at 7 (emphasis added). Those conditions, as described in the Statement of Reasons, are that, as required by Section 177 of the CAA: (1) Illinois has adopted provisions in the state’s SIP under the CAA due to nonattainment of the 8-Hour Ozone standard in the Chicago and St. Louis metro areas; (2) the proposed rules would first take effect more than two years in the future; and (3) each rule proposed “would directly adopt the same standards that have been enacted in California for each covered model year, thus ensuring that Illinois’ standards are identical.” Statement of Reasons at 17. Thus, the Board expected to receive testimony and comments on these subjects.

Surely the Board was not suggesting that it would be considering “testimony and comments” when deciding purely legal issues, and surely the Rule Proponents are not suggesting the Board should do so. Expert witnesses are “not competent to give testimony amounting to statutory interpretation.” *Lid Assocs. v. Dolan*, 324 Ill. App. 3d 1047, 1058 (1st Dist. 2001). Thus, “a witness may not give testimony regarding statutory interpretation, even if the witness is an attorney. ... Nor may a witness give testimony regarding legal conclusions. ...” *Northern Moraine Wastewater Reclamation District v. Illinois Commerce Comm’n & Rockwell Utilities*, 392 Ill. App. 3d 542, 573, 912 N.E.2d 204, 232 (2nd Dist. 2009).

Statutory interpretation is a question of law for the court, or in this case the Board, to decide as a matter of law, based on the law. *County of Kankakee v. Illinois Pollution Control Board*, 396 Ill. App. 3d 1000, 1006 (3rd Dist. 2009). Consequently, it is the “thousands of pages of testimony and public comment” and the “year-long, nearly complete administrative process

that has culminated in a fulsome record awaiting Board action” that have “nothing to do with” the purely legal issues presently before the Board. Response at 1, 2, 4.

Moreover, the Rule Proponents completely ignore the Board’s own procedural rules which state that “a change in the law” is one of two factors specifically listed that the Board will consider in ruling on a motion for reconsideration. 35 Ill. Adm. Code 101.902. *See also People v. Petco Petroleum Corporation*, PCB 13-72, slip op. at 1 (June 26, 2025) (The Board will consider change in the law to consider whether prior decision was in error, and may consider whether it erred in applying in applying existing law, on motion for reconsideration.) If a change in the law is grounds for a motion for reconsideration, then it is also “good cause” for extending the deadline for filing a motion for reconsideration where the change in the law occurs after the original 35-day period. 35 Ill. Adm. Code 101.522. Indeed, the rules specifically contemplate this situation by providing that a motion for reconsideration “may be filed either before or after the deadline expires.” *Id.* There is good cause for an extension and a sufficient basis for a motion for reconsideration.

Finally, the issue of the Board’s authority to proceed, or subject matter jurisdiction, is never “belatedly” raised, and is a proper subject for reconsideration. Response at 4. The Board’s rules specifically provide that “[a]ny person may file a motion challenging the statutory authority” of a rulemaking proposal. 35 Ill. Adm. Code 102.212(d).¹ “There is no presumption of jurisdiction in favor of a body exercising limited or statutory jurisdiction ... and the objection to jurisdiction may be interposed at any time.” *Citizens Utilities Co. v. Pollution Control Board*, 265 Ill. App. 3d 773, 777 (3rd Dist. 1994) (holding that the Board lacks jurisdiction over third party petitions against the issuance of NPDES permits.) *See also Malmberg v. Smith*, 241 Ill.

¹ Movants are not relying on 35 Ill. Adm. Code 102.212(c); see Response at 4.

App. 3d 428, 430 (5th Dist. 1993) (“Subject matter jurisdiction cannot be waived. Lack of subject matter jurisdiction can be raised at any time and in any court.”) Contrary to the Rule Proponents’ position, the issue of the Board’s subject matter jurisdiction has no deadline. This is yet another basis to find that good cause exists to allow the filing and disposition of the Motion for Reconsideration.

D. Movants encouraged public participation while Rule Proponents eschewed it.

“The Board encourages public participation in all its proceedings.” 35 Ill. Adm. Code 101.110(a). The Movants also encouraged public participation when they requested 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).

The Rule Proponents, however, claim there is no good cause to allow “*any* person” to discuss the change in the law. Response at 2 (emphasis in original). They object to allowing “briefing on behalf of unidentified and unlimited parties” and claim there is no basis “for those open-ended and dilatory aspects of their request.” *Id.* at 3. In summary, the Rule Proponents want to silence anyone else from discussing this subject.

Movants did not need to provide a detailed explanation of why they were encouraging public participation: as discussed above, there was a new, significant change in the law, and the Board encourages public participation, as Rule Proponents know. The request was not “open-ended” or “dilatory”; it only requested until August 15 to allow others to shed light on this major development if they desired. The fact that the Rule Proponents urge the Board to disallow any further discussion of this subject demonstrates the weakness of their position. The fact that Movants sought to foster public involvement is not a reason to deny the relief sought.

- E. The cases relied upon by Rule Proponents are not “well-established and noncontroversial” and do not address the issue here.

In *Motor Vehicle Mfrs. Ass'n of the United States v. New York State Dep't of Env'tl. Conservation*, “the manufacturers wanted the DEC to withhold its action of adopting the regulations until January 7, 1993 because that date is when they believe the two year leadtime should have commenced running. They support their position by noting that this precondition was in the statute to insure that manufacturers had sufficient notice of future regulations affecting the auto industry. ...” *Motor Vehicle Mfrs. Ass'n of the United States v. New York State Dep't of Env'tl. Conservation*, 17 F.3d 521, 533; 1994 U.S. App. LEXIS 2183, *39-40; 24 ELR 20552; 38 ERC (BNA) 1113. The Second Circuit Court of Appeals, in ruling on the matter, stated as follows:

The issue is what do the above quoted words of § 177 mean, that is to say, what is the waiver a precondition to -- DEC's adoption of the LEV plan or DEC's enforcement of the LEV plan, or both. The most sensible response, it appears to us, is that the waiver is a precondition to enforcement of the standard that has been adopted. In other words, it is sensible for DEC to adopt the standards prior to the EPA's having granted a waiver, so long as the DEC makes no attempt to enforce the plan prior to the time when the waiver is actually obtained. The result urged by the manufacturers ignores the fact that the need for adequate notice was addressed by Congress in the two year leadtime requirement discussed below. The manufacturers' suggestion that more than two years is required because of possible uncertainty in the approval of California's waiver is a bit disingenuous. Plaintiffs know that California's waiver applications are almost always approved, in light of Congress' decision "to permit California to blaze its own trail with a minimum of federal oversight." [citations]

Id. at 534.

The Second Circuit did not address the meaning of the word “adopt” in Section 177 at all. Instead, its decision was based on rejection of the manufacturers’ argument that it had insufficient notice of the potential change in the standards, because “Plaintiffs know that California’s waiver applications are almost always approved.” That doesn’t address the statutory

language in any way and, in this case, unlike that case, California's waivers were not approved; they was obliterated by Congress.

In *American Auto. Mfrs. Ass'n v. Greenbaum*, 1993 U.S. Dist. LEXIS 15337, an unpublished District of Massachusetts opinion, the proponents *conceded* “that the words of the statute allow the automakers' interpretation,” but claimed “such a reading would frustrate Congress' intent to allow states to adopt California's program by making that adoption extremely difficult.” *American Auto. Mfrs. Ass'n v. Greenbaum*, 1993 U.S. Dist. LEXIS 15337, *27-29.

The court discussed the issue as follows:

The court infers that DEP fears that given the lag time required for EPA to grant waivers (about fifteen months for the California LEV standards), the automakers' reading of the statute would virtually guarantee that section 177 states could never implement California standards in the same model year as California. This result does seem likely to lead to utter chaos.²

DEP urges that the statute is better read to require the waiver to be granted prior to enforcement, but not prior to adoption. Given that EPA has not denied a California waiver application since 1978, [citation], the risk under this reading that manufacturers would tool up to produce cars to meet standards which were then invalidated seems low.

Id.

The court similarly did not address the actual language of the statute. Further, the court did not even make a conclusive ruling; it only found that there was not a likelihood of success on the issue. *Id.* Moreover, the court noted that although “DEP's arguments on this point are less than overwhelming, they did persuade the only other court to consider this question.” *Id.* (citing *Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Env'tl. Conservation*, 810 F. Supp. 1331, 1347). The case the court relied on was the trial court decision underlying the Second Circuit's opinion in *Motor Vehicle Mfrs. Ass'n of the United States v. New York State Dep't of Env'tl. Conservation*, discussed above, the reasoning of which is inapposite.

² Consider quote regarding “chaos” created by differing emission standards among states.

The other cases cited by the Rule Proponents similarly do not actually address the statutory interpretation issue at hand and do not support their position. *Minn. Auto Dealers Ass’n v. Minn. Pollution Control Agency*, 520 F. Supp. 3d 1126, 1137 (D. Minn. 2021) (ruling that the auto dealers did not have Article III standing because they had not alleged injury in fact because the rules would not harm them until enforcement); *Ford Motor Co. v. Environmental Protection Agency*, 606 F.2d 1293, 1298 (merely repeating the statutory language: “The Act does not require that the EPA Administrator conduct a separate waiver proceeding for each state that chooses to do so. Rather, it states simply that any state which has federally approved plans to bring itself into compliance with national air quality standards may adopt and enforce auto emission standards provided those standards are identical to the California ones for which a waiver has already been obtained and provided both California and the adopting state have given manufacturers a two-year lead time...”); *Virginia v. EPA*, 108 F.3d 1397, 1411 (the issue *actually* before the court was “Does section 177, read together with section 202, forbid EPA from conditioning its approval of a state’s implementation plan on the state’s adoption of the California program to limit motor vehicle emissions? We hold that this provision did so bar EPA and that, in this respect, the final rule is invalid....”).

Rule Proponents made the following declarations regarding the state of the law based on these authorities: “It is well-established and noncontroversial that U.S. EPA waivers are not a prerequisite to a state’s adoption of California’s standards—they are only a prerequisite to their enforcement. Every federal court to consider the question has soundly rejected Movants’ reading of the CAA.” Response at 2. The Rule Proponents also claimed that the Movants “position flatly contradicts well-established federal court interpretations of Section 177.” *Id.* at 6.

The cases were discussed in detail above. None genuinely conducted an evaluation of the meaning of the statutory language at hand. Two of them were decided based on the notion that “California’s waiver applications are almost always approved” and, thus, the issue could largely be ignored. Four were federal district court opinions with zero precedential value. *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122, 916 N.E.2d 1240, 1250 (2nd Dist. 2009) (“Holdings of federal district courts are not precedential or binding on this court.”) One was from a federal appellate court, but that is likewise not binding on Illinois tribunals (*id.*) and, as noted above, was decided based on a lead time argument and speculation that the waiver would again be approved in the future.

This is not a “well-established and noncontroversial” body of law from “well-established federal court interpretations of Section 177.” Most importantly, none of these cases addressed the very issue now before the Board: what happens when the waiver is invalidated by an Act of Congress? This is an issue of first impression, so the answer is unknown (and Movants’ position thus could not possibly “flatly contradict” anything). What is an absolute fact, however, is that as of this moment, Congress has legislated that the waivers upon which this rulemaking was based have “no force or effect,” and that is the law of the land to be enforced by the Board.

F. The plain language of the supreme law of the land requires dismissal.

The Board is called upon to make the decision in this issue of first impression. The Board need not adopt the strained, half-hearted interpretation in the cases cited by the Rule Proponents that directly contradicts the text of the statute, whether it seems “sensible” or not. Congress declared to States: “thou shall not adopt or enforce” rules; these courts inexplicably decided that it’s “sensible” to say those words mean “go ahead and adopt rules but just don’t

enforce them yet.” Why would the Board adopt that absurd interpretation of unambiguous statutory language?

It is indisputable that “the best indication of the legislature's intent is the statute's language, and, where the statutory language is unambiguous, the court must enforce the law as written.” *Vernon Hills III Ltd. Pshp. v. St. Paul Fire & Marine Ins. Co.*, 287 Ill. App. 3d 303, 308 (2nd Dist. 1997). The Supreme Court of the United States reminds tribunals of “the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written.” *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 476 (1992).

The Rule Proponents do not dispute that the Congressional Joint Resolutions legally have the full force of law (see Motion, ¶¶11-16) but instead claim that the “unlawful and unconstitutional action at the federal level” are just part of the “erratic and unlawful federal actions during the current presidential administration” that are “manifestly unlawful” “federal actions hijacking the Congressional Review Act process and unlawfully claiming to invalidate the waivers.” Response at 4, 5, 8, 9. They point out that the actions of Congress are currently under review by a federal district court in California. *Id.* at 8. They claim that “Board can adopt the Proposed Rules with confidence that by the time enforcement begins in Model Year 2029, federal courts will have confirmed that the purported waiver invalidations have no legal effect.” *Id.*

That’s not how the United States Constitution works. “Under the supremacy clause, state courts have an obligation to enforce federal law.” *Wellington Homes, Inc. v. West Dundee China Palace Restaurant, Inc.*, 2013 IL App (2d) 120740, ¶ 20. Any state law which interferes with or is contrary to federal law must yield. *Id.* As the Supreme Court of the United States has explained, the Supremacy Clause makes the laws of Congress “the supreme Law of the Land”

and “charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.” *Howlett v. Rose*, 496 U.S. 356, 367 (1990). The Rule Proponents’ opinions on the validity of the Congressional action are irrelevant, as the Supreme Court of Illinois has explained: “The supremacy clause forbids state courts to disassociate themselves from federal law because they disagree with its substance or because they refuse to recognize the superior authority of federal law.” *Italia Foods, Inc. v. Sun Tours, Inc.*, 2011 IL 110350, ¶ 23. Thus, the Board, as an Illinois tribunal, must enforce federal law as it is currently written.

The statute in question says a State “may adopt and enforce” motor vehicle emissions standards if those standards are “identical to the California standards for which a waiver has been granted.” The plain, unambiguous language legislates that States can only *adopt* a standard if it is a standard that is “identical to the California standards for which a waiver has been granted.” Thus, any proposal to *adopt* standards must be based on standards “for which a waiver *has been* granted,” meaning it must already be granted before the adoption proceedings begin. If Congress wanted the States to have the ability to move forward with adoption of standards, but not yet enforce them, it would have said a State “may enforce” motor vehicle emissions standards if those standards are “identical to the California standards for which a waiver has been granted.” Then, States could implicitly adopt the standards but not yet enforce them. But Congress did not say that. It said, “adopt and enforce.”

Similarly, if Congress wanted speculation regarding whether a waiver will be granted in the future to be part of the equation, as the courts cited by the Rule Proponents seem to think, then it could have said “identical to the California standards for which a waiver has been granted *or for which a waiver is pending*,” or similar language. But Congress did not say that. It said,

“for which a waiver *has been granted*” already. The plain language Congress used cannot be read any other way.

The Rule Proponents claim that “[p]ractically speaking, Movants’ reading would upend CAA implementation. U.S. EPA waiver decisions often take a year or more—sometimes several years—making it impossible for states to both adopt standards two years before the applicable model year and wait until after U.S. EPA grants a waiver.” Response at 10. As the Supreme Court of the United States recently reminded us, however: “When a party claims that a law yields anomalous policy consequences, its usual recourse lies in Congress, not in the courts where litigants are generally entitled to expect that statutes will be enforced as written.” *Feliciano v. DOT*, 145 S. Ct. 1284, 1296 (2025).

This unquestionably is a proceeding that seeks to “adopt” motor vehicle emissions regulations. A “rulemaking” or “rulemaking proceeding” “means a proceeding brought under Title VII of the Act or other applicable law to *adopt*, amend, or repeal a regulation.” 35 Ill. Adm. Code. 101.202 (emphasis added). This is not a proceeding to amend or repeal regulations; the Rule Proponents “urge the Illinois Pollution Control Board (“Board”) to *adopt* three motor vehicle emissions regulations...” Statement of Reasons, page 9 (emphasis added). *See also* 35 Ill. Adm. Code 102.200 (any person “may submit a regulatory proposal for the *adoption*, amendment, or repeal of a regulation”) (emphasis added).

The word “adopt” is not defined in Illinois regulations. “Adopt” is defined most relevantly as “to accept formally and put into effect” or “to accept formally: acknowledge or enact as true, wise, fitting, germane” and “to take up or accept esp. as a practice or tenet often evolved by another.” *Public Emples. Benefits Program v. Las Vegas Metropolitan Police Department*, 124 Nev. 138, 149, 179 P.3d 542, 550 (2008) (quoting *Merriam-Webster's*

Collegiate Dictionary 16 (10th ed. 1997)); *Arminio v. Butler*, 183 Conn. 211, 219, 440 A.2d 757, 761 (1981) (quoting *Webster, Third New International Dictionary*). Thus, when the federal government said the States may only “adopt” vehicle emissions regulations under limited circumstances, it meant States cannot “take up or accept,” “enact,” or “put into effect” regulations unless the limited circumstances exist. Those circumstances are only that a State can “take up” the subject of incorporating California’s regulations “for which a waiver has been granted.” Those circumstances do not exist here. There is no legal basis to proceed.

G. The Board should dismiss this rulemaking.

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*.” 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,

By: /s/ Alec Messina
Alec Messina
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Alec.Messina@heplerbroom.com
PH: (217) 528-3674

Illinois Environmental Regulatory Group

By: /s/ Trejahn Hunter
Trejahn Hunter
215 E. Adams St.
Springfield, Illinois 62701
mwesley@ierg.org
PH: (217) 318-2296

Mid-West Truckers Association

By: /s/ Matt Wells
Matt Wells
2727 N. Dirksen Parkway
Springfield, Illinois 62702
mattw@midwesttruckers.com
PH: (217) 525-0310

Illinois Trucking Association

By: /s/ Matthew Hart
Matthew Hart
2250 S. Chicago St., Suite 201
Joliet, Illinois 60436
matt@iltrucking.org
PH: (630) 654-0884

Illinois Automobile Dealers Association

By: /s/ Lawrence Doll
Lawrence Doll
300 W. Edwards, Suite 400
Springfield, Illinois 62704
LDoll@illinoisdealers.com
PH: (217) 753-0220

CERTIFICATE OF SERVICE

I, the undersigned, on the oath state the following: That I have served the attached
**MOTION FOR LEAVE TO FILE REPLY AND REPLY IN SUPPORT OF MOTION FOR
EXTENSION OF TIME TO FILE AND MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION**, via electronic mail upon:

Mr. Don A. Brown
Clerk of the Board
Illinois Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, IL 60605
don.brown@illinois.gov

Vanessa Horton
Carlie Leoni
Hearing Officers
Illinois Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, IL 60605
vanessa.horton@illinois.gov
carlie.leoni@illinois.gov

Caitlin Kelly, Assistant Attorney General
Office of the Attorney General
115 S. LaSalle St.
Chicago, IL 60602
Caitlin.Kelly@ilag.gov

Renee Snow, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
renee.snow@illinois.gov

Jason E. James, Assistant Attorney General
Office of the Attorney General
201 West Point Drive, Suite 7
Belleville, IL 62226
Jason.James@ilag.gov

Albert Ettinger
Law Firm of Albert Ettinger
7100 N. Greenview
Chicago, Illinois 60626
ettinger.albert@gmail.com

Gina Roccaforte, Assistant General Counsel
Dana Vetterhoffer, Deputy General Counsel
Sarah McKavetz, Assistant Counsel
Office of the Attorney General
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794
Gina.Roccaforte@illinois.gov
Dana.Vetterhoffer@illinois.gov
sarah.mckavetz@illinois.gov

Joe Halso
Jim Dennison
Sierra Club Environmental Law Program
1536 Wynkoop Street, Suite 200
Denver, Colorado 80202
joe.halso@sierraclub.org
jim.dennison@sierraclub.org

Nathaniel Shoaff
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5610
nathaniel.shoaff@sierraclub.org

Robert A. Weinstock, Director
Environmental Advocacy Center
Northwestern Pritzker School of Law
357 E. Chicago Ave.
Chicago, IL 60611
robert.weinstock@law.northwestern.edu

Kara M. Principe
Michael J. McNally
Melissa L. Binetti
Indiana Illinois Iowa Foundation
for Fair Contracting
6170 Joliet Road, Suite 200
Countryside, IL 60525
kprincipe@iiffc.org
mmcnally@iiffc.org
mbinetti@iiffc.org

Jennifer Thompson, Legislative Affairs
Pamela Wright, General Counsel
Office of the Secretary of State
213 State Capitol
Springfield, IL 62756
jthompson@ilsos.gov
pwright@ilsos.gov

Lawrence Doll, General Counsel
Illinois Automobile Dealers Association
300 W. Edwards Street, Suite 400
Springfield, IL 62074
ldoll@Illinoisdealers.com

Melissa Brown
HeplerBroom, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Melissa.Brown@heplerbroom.com

Matt Wells, Vice President
Mid-West Truckers Association
2727 N. Dirksen Parkway
Springfield, IL 62702
mattw@midwesttruckers.com

Fred Turatti, Sr. Director Fuel & Vehicle Policy
Matthew Fuller, Policy Analyst
American Fuel & Petrochemical Manufacturers
1800 M Street, NW Suite 900 North
Washington, DC 20036
fturatti@afpm.org
mfuller@afpm.org

That my email address is Alec.Messina@heplerbroom.com

That the number of pages in the email transmission is 21.

That the email transmission took place before 4:30 p.m. on July 29, 2025.

Date: July 29, 2025

/s/ Alec Messina
Alec Messina