ILLINOIS POLLUTION CONTROL BOARD
September 18, 2025

IN THE MATTER OF:	)	
	)	
PROPOSED CLEAN CAR AND TRUCK	)	R 24-17
STANDARDS: PROPOSED 35 ILL. ADM.	)	(Rulemaking - Air)
CODE 242	)	

ORDER OF THE BOARD (by B.F. Currie, J.A. Van Wie):

On July 1, 2025, The Illinois Fuel & Retail Association, Illinois Environmental Regulatory Group, Illinois Trucking Association, Mid-West Truckers Association, and Illinois Automobile Dealers Association (Movants) jointly filed a motion for extension of time to file a motion to reconsider. The Movants ask the Board to reconsider its November 7, 2024, order denying two motions to dismiss this rulemaking. Today, the Board grants the motion for extension of time and motion for leave to file, grants the motion to reconsider but declines to modify its previous order, denies the motion for leave to file a reply, and stays this rulemaking.

ABBREVIATED PROCEDURAL HISTORY

On June 27, 2024, the Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Respiratory Health Association, Chicago Environmental Justice Network, and Center for Neighborhood Technology (collectively, Rule Proponents) filed a rulemaking proposal asking the Board to adopt a new Part 242 of its air pollution rules. The Rule Proponents requested 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.

On August 29, 2024, the Indiana, Illinois, Iowa Foundation for Fair Contracting filed a motion to dismiss the proposed rulemaking (IIIFFC Mot. to Dis.). On September 3, 2024, the Illinois Fuel & Retail Association filed a separate motion to dismiss (IFRA Mot. to Dis.). The Board considered both motions jointly and on November 7, 2024, issued an order denying the motions to dismiss (Board Order).

The Board held two sets of public hearings on this rule proposal, the first on December 2 and 3, 2024, and the second on March 10 and 11, 2025. At hearing, 83 members of the public provided oral public comments, and the Board has received 678 written public comments. Public comment was closed on May 12, 2025.

On July 1, 2025, Movants filed a motion for extension of time and motion for leave (Mot.) to file a motion for reconsideration of the Board's November 7, 2024, order. Movants attached their motion for reconsideration (Mot. for Rec.) as Exhibit 1 to their motion. The Rule Proponents filed a response (Resp.) opposing the motion for extension of time and the motion for reconsideration on July 15, 2025. On July 29, 2025, the Movants filed a motion for leave to file

a reply (Movants Reply). On August 5, 2025, the Rule Proponents filed a response to the Movants' motion for leave to file a reply (Proponent Reply Resp.).

STATUTORY AND REGULATORY AUTHORITIES

Board Procedural Rules

Part 101 of the Board's procedural rules addresses motions for extension of time and motions for reconsideration.:

101.522 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.

101.520 Motions for Reconsideration

a) Any motion for reconsideration or modification of a Board order must be filed within 35 days after the receipt of the order. (See Section 101.902.)
b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
c) A timely-filed motion for reconsideration or modification stays the effect of the order until final disposition of the motion. 35 Ill. Adm. Code 101.520.

Part 102 of the Board's procedural rules for rulemaking proceedings addresses dismissal.

Section 102.212 Dismissal

a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. Dismissal of a proposal will not bar a proponent from resubmitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.
d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal under 35 Ill. Adm. Code 101.Subpart E. 35 Ill. Adm. Code 101.212.

Clean Air Act

In 1965, California created its own emission control program. In 1967, Congress enacted the Clean Air Act (CAA) and granted California the ability to adopt and enforce separate motor vehicle emission standards due to the unique air quality problems that faced southern California. Ford Motor Co. v. EPA, 606 F.2d 1293, 1294 (D.C. Cir. 1979), *citing* H.R. Rep. No. 90-728, 90th Cong., 1st Sess. 21 (1967) (Ford Motor Co.).

Under the Clean Air Act, California may request a waiver to implement a state-level regulatory program for new motor vehicles or their engines. 42 U.S.C. § 7543(b), (e). Section 177 of the Clean Air Act allows states, under certain conditions, to use California's emission control standards.

Section 177 of the Clean Air Act provides as follows:

> Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—
>
> (1) such 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 (as determined by regulations of the Administrator). 42 U.S.C. § 7507.

Recent Federal Actions

Recently, Congress "disapproved" the three California standards the Rule Proponents propose that the Board adopt in this rulemaking. The three joint resolutions of Congress are H.J. Res. 87 (referencing ACT), 88 (referencing ACC II) and 89 (referencing Low NOx) (collectively, Joint Resolutions). These resolutions were signed into law by the President on June 12, 2025. *See*, Public Law 119-15, 119-16, 119-17. The three resolutions mirror each other, and Resolution 87 for example, says, in part, as follows:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that Congress disapproves the rule submitted by the Environmental Protection Agency relating to "California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision" (88 Fed. Reg. 20688 (April 6, 2023)), and such rule shall have no force or effect. H.J. Res 87.

On June 12, 2025, California, along with ten other states that have adopted these rules, filed suit in the Northern District of California to oppose this Congressional action. State of California, et. al v. United States, et. al, No. 4:25-cv-04966-HSG (N.D. Cal., filed June 12, 2025). The case is ongoing, and the Court has set an initial hearing for October 23, 2025.

MOTION FOR EXTENSION AND FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

Movants' Motion for Leave to File Reply

The Board's 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). Here, the Movants argue they would be materially prejudiced if they are not permitted to reply so that they may respond to assertions they believe are incorrect. Movants Reply at 2-3. The Rule Proponents ask that the Board deny the motion for leave to file a reply as "[m]ere disagreement does not amount to material prejudice." Proponent Reply Resp. at 1. The Board agrees. In evaluating the motion for leave to file a reply, the Board finds no evidence of material prejudice. The list of issues upon which the Movants based their motion are all present in their initial motion, and the Movants simply expand upon their reasoning in their reply. Therefore, the Board denies the Movants' motion for leave to file a reply and declines to consider the reply in deciding Movants' motions.

Movants' Motion for Extension of Time and Motion for Leave to File

The Board will consider the motion for extension of time and motion for leave to file separately from the motion for reconsideration.

The Movants first request an extension of time and leave to file the underlying motion for reconsideration. Mot. at 1. The Board's rules allow for motions of extension of time if the party shows good cause. Here, the Movants argue that recent Congressional action has eliminated the basis of the proposed rulemaking, and this action constitutes good cause to request the Board reconsider its denial of the motions to dismiss. *Id*. at 5. Movants also argue that their motion was filed within 35 days of the "enactment of the new law that is the basis of the request for reconsideration." *Id*. at 6.

The Rule Proponents argue that this motion is procedurally improper. The Rule Proponents ask that the Board deny both the motion for extension of time and the motion to reconsider and in the alternative, treat the filings as a late-filed public comment and "afford it only whatever consideration is appropriate for untimely comment submissions." Resp. at 2. The Rule Proponents argue that the Congressional actions are unlawful and therefore do not merit reconsideration. *Id*. at 8.

Board Discussion and Findings

The Board has wide discretion in determining "good cause" in motions for extension of time. People of the State of Illinois v. Environmental Health and Safety, Inc., PCB 05-51, slip

op. at 3 (April 6, 2006), *citing* Bright v. Dicke, 166 Ill. 2d 204 (1995). In past Board cases, "good cause" has extended to parties gathering additional information and requiring further time to file an amended petition. *See*, Silbrico Corp. v. IEPA, PCB 06-11, slip op. at 1 (Oct. 20, 2005).

The Board is not the proper venue to determine the legality of Congress's actions regarding the California Air Resources Board (CARB) waivers. That issue is the subject of the ongoing suit before the Northern District of California. Here, the Board must acknowledge that on June 12, 2025, Congress and the Presidential administration took actions that fundamentally change the landscape of Section 177 of the Clean Air Act. The Board finds these recent actions rise to the level of "good cause" in 35 Ill. Adm. Code 101.522. Therefore, the Board agrees with the Movants that the recent Congressional actions constitute good cause and grants the motion for extension of time and motion for leave to file the motion for reconsideration.

Movants' Motion for Reconsideration

In ruling on 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. The Board has previously held that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law, or errors in the court's previous application of the existing law." Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment v. Midwest Generation, LLC, PCB 13-15, slip op. at 8-9 (Feb. 6, 2020), *citing* Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627 (1st Dist. 1992); *see also* Citizens Against Regional Landfill v. County Board of Whiteside, PCB 92-156, slip op. at 2 (Mar. 11, 1993). A motion to reconsider may also specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

Board Discussion and Findings

Movants Allege a Recognized Ground to Reconsider

In support of their motion to reconsider, Movants argue that the Joint Resolutions signed into law by the President on June 12, 2025, constitute a change in law that nullifies the waivers allowing California to enact its own emission standards and, consequently, now prevents other states from adopting and enforcing emissions standards set by CARB. Mot. at 6; Mot. for Rec. at 10. As noted, a change in the law is a recognized ground for reconsideration. *See* Sierra Club et al., PCB 13-15, slip op. at 8-9 (*citing* Korogluyan at 627 (1st Dist. 1991)).

Movants Make a New Argument

A motion to reconsider must do more than merely reiterate arguments already made by the movant and rejected by the Board. The Movants ask that the Board reconsider its November 7, 2024, decision that denied two motions to dismiss this rulemaking. The Movants argue that the basis for the Board to adopt the three proposed California standards is, "entirely dependent

upon the exception to federal preemption remaining applicable… [I]f the proposed standards are not 'California standards for which a waiver has been granted,' then no State could adopt those standards under any circumstance." Mot. for Rec. at 10.

The Movants cite the language of Section 177 of the Clean Air Act to support their argument that the Congressional action removed Illinois' authority to adopt the California rules. "The only authority Illinois, or any State, has to adopt vehicle emissions standards is to adopt 'standards that are identical to the California standard *for which a waiver has been granted*.'" Mot. for Rec. at 12, *citing* 42 U.S.C. § 7507 (emphasis by Movants). Since the Joint Resolutions declared that the three rules shall have "no force or effect," Movants argue that ACC II, ACT, and Low NOx rules "are no longer 'California standards *for which a waiver has been granted*.'" *Id*. (emphasis by Movants). Movants argue that the Joint Resolutions invalidated any waiver granted to California and that the Board is prohibited from adopting and enforcing these California standards. *Id*. at 13.

The Rule Proponents argue the motion for reconsideration is improper because it "seeks to relitigate the motion to dismiss phase – more than eight months after the Board resolved it." Resp. at 3. The Rule Proponents set forth that the Board's rulemaking authority under the Environmental Protection Act (Act) has not changed since the initial motions to dismiss were filed in the matter. *Id*. at 4. Additionally, the Rule Proponents claim that Movants' arguments concerning the Board's authority under the Clean Air Act have already been considered by the Board and addressed in the record. *Id*.

While the motion to dismiss filed by the Indiana, Illinois, Iowa Foundation for Fair Contracting did raise arguments concerning the Board's authority to consider this proposal under the Clean Air Act, those arguments did not address federal preemption in the event of Congress altering the availability or enforceability of the waivers for the ACC II, ACT and Low NOx rules. The issue of whether the waivers are valid following the passage of the Joint Resolutions which declared the waivers to have "no force or effect" is now before the Board for the first time.

Movants Timely Raise a New Argument for the First Time

The Joint Resolutions were signed into law by the President on June 12, 2025. Movants filed their motion for reconsideration on July 1, 2025. Because the new argument relies on changes made by the Joint Resolutions, it could not have been made prior to their enactment on June 12, 2025. Accordingly, the Movants timely raised a new argument for reconsideration.

Movants Establish a Recognized Ground to Reconsider

Movants argue that the Joint Resolutions constitute a change in the law upon which this rulemaking proposal is based. Mot. for Rec. at 9. First, Movants note that the Joint Resolutions were passed by both houses of Congress and approved and signed by the President on June 12, 2025, and consistent with the process of bicameralism and presentment, have the full force and effect of law. *Id.* at 12. The Joint Resolutions "disapprove" recent grants of waivers for the ACC II, ACT, and Low NOx rules, and establish that the waivers "shall have no force or effect". *Id.* at

10; *see* Public Law No. 119-15, 119-16, 119-17 (Jun. 12, 2025). Movants aver that this change "nullifies the entire basis for this rulemaking." *Id.* at 12.

The Rule Proponents contend that the Joint Resolutions were unlawful Congressional Review Act resolutions and therefore do not constitute a change in law that eliminated the waivers. Resp. at 3-4. Rule Proponents argue that because the Congressional actions are unlawful, in their view, States' ability to adopt and enforce California standards are unaffected. Resp. at 5.

Initially, while the Board notes the ongoing California legal challenge to the Joint Resolutions, the Board reiterates that the Board is not the proper forum to determine whether the Joint Resolutions were lawfully enacted. Given the record and caselaw now before the Board, the Board must proceed with this analysis assuming that the Joint Resolutions were properly enacted through compliance with the processes of bicameralism and presentment and have the full force of law. *See* Mot. for Rec. at 11-12, *citing* Ctr. for Biological Diversity v. Bernhardt, 946 F.3d 553, 562 (9th Cir. 2019) ("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 and deprived the [federal rule at issue] of any force or effect. 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 [federal statutes at issue]."). The Joint Resolutions clearly alter the availability of the California waivers for the ACC II, ACT and Low NOx rules. The Board finds that Movants have established that the Joint Resolutions constitute a change in the law and therefore grants the motion for reconsideration.

On Reconsideration, the Board Affirms Its November 7, 2024 Order

The Rule Proponents argue that the status of a California waiver is irrelevant to states' ability to adopt and enforce the CARB rules. Resp. at 5-6. Rule Proponents support their argument by likening this congressional action to an "interpretation of the CAA" and cite cases holding that, while waiting for USEPA to approve a California waiver, states can adopt the California standards but must wait to enforce the standards until a waiver has been granted. *Id.*; *see, e.g.*, American Automobile Manufacturers Association, et. al v. Greenbaum, 1993 U.S. Dist. LEXIS 15337 (D. Mass. Oct. 27, 1993) (Am. Auto. v. Greenbaum); Motor Vehicle Manufacturers Ass'n. v. New York State Department of Environmental Conservation, 810 F. Supp. 1331, 1348 (N.D.N.Y. 1993) (Motor Vehicle Manufacturers); Minn. Auto Dealers Ass'n. v. Minn. Pollution Control Agency, 520 F. Supp. 3d 1126, 1137 (D. Minn 2021) (Minn. Auto Dealers).

Specifically, Rule Proponents point to two cases that discuss other states' ability to adopt, but not enforce, California standards while waiting for USEPA to grant a waiver for the CARB standard. In Am. Auto. v. Greenbaum, the plaintiffs challenged Massachusetts' adoption of a California standard under Section 177 of the Clean Air Act. 1993 U.S. Dist. LEXIS 15337 (D. Mass. Oct. 27, 1993). There, the District Court decided a motion from the plaintiffs for a preliminary injunction and in so doing, evaluated the likelihood of success of the seven counts of the complaint, one of which involved USEPA waivers. Am. Auto. v. Greenbaum at *27. The

plaintiffs argued that "Section 177(1) permits states to adopt and enforce only those California standards that have *already* obtained a federal waiver […]" *Id*. (emphasis in original). Massachusetts had adopted a standard before USEPA granted California a waiver for the standard and just over one year after Massachusetts adopted the standard, USEPA granted the waiver. *Id*. Massachusetts argued that Section 177 should be read to allow states to adopt the California standards prior to USEPA granting a waiver, but only allow enforcement of the standards after the waiver was granted. *Id*. at *29.

The court in Greenbaum looked to a factually similar New York District Court case that evaluated the purpose of Section 177 in considering a state's ability to adopt versus enforce California emissions standards prior to USEPA granting a waiver for the standards. *See* Motor Vehicle Manufacturers at 1348 (finding on summary judgment that Section 177 did not preclude New York from *adopting* California standards before USEPA issued a waiver for those California standards). The Greenbaum court noted that, while Massachusetts' "arguments on this point are less than overwhelming, they did persuade the only other court to consider this question [in the New York case]" and determined, in the context of the motion for preliminary injunction, that the plaintiffs did not show a likelihood of success on this issue. Am. Auto v. Greenbaum. at *29. On appeal to the First Circuit, however, the plaintiffs dismissed their appeal as to the waiver issue. American Automobile Manufacturers Ass'n. v. Commissioner, Massachusetts Department of Environmental Protection, 31 F.3d 18, 22 (1st Cir. 1994).

The Motor Vehicle Manufacturers plaintiffs appealed the decision of the New York District Court. *See* Motor Vehicle Manufacturers Ass'n. of the United States v. New York State Department of Environmental Conservation, 17 F.3d 521, 534 (2d Cir. 1994). On appeal, the Second Circuit made a similar determination as the lower courts:

> The issue is what do the above quoted words of § 177 mean, that is to say, what is the waiver a precondition to – [the Department of Environmental Conservation]'s adoption of the [California Low Energy Vehicle] plan or DEC's enforcement of the [California] 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. Motor Vehicle Manufacturers Ass'n. of the United States v. New York State Department of Environmental Conservation, 17 F.3d 521, 534 (2d Cir. 1994).

The Board finds the question before it in this rulemaking to be factually different from the situations in the Massachusetts and New York cases cited above, and distinguishable from the Rule Proponents' reliance on them. In those cases, the states had adopted a California standard while waiting for USEPA approval of the waiver for the standard. During that time, the federal courts determined states could adopt the California standard, but they could not enforce the standard until the waiver was granted. Here, the Board is faced with an entirely different situation. The Board is not waiting for USEPA approval of a waiver, or an "interpretation" of a waiver's terms – Congress has eliminated the waivers for ACC II, ACT, and Low NOx as of June 12, 2025. This is instead a clear act of Congress that constitutes a change in the substantive law upon which the waivers are based.

Rule Proponents also cite to Ford Motor Co. to argue that states can adopt California emissions standards regardless of USEPA or federal actions. Resp. at 6. However, Ford Motor Co. analyzes Congress' intent amending the Clean Air Act in 1977 where the Court found amendments "significantly altered the California waiver provision and the relationship between California and federal emission control standards." Ford Motor Co. v. EPA, 606 F.2d 1293, 1300 (D.C. Cir. 1979). After the 1977 congressional amendment to the Clean Air Act changed California's waiver for emission standards to allow California to implement certain emissions standards not necessarily more stringent than federal standards, plaintiff Ford brought a complaint against the USEPA administrator for implementing the changed waiver thus disallowing Ford from selling California-equipped cars outside California. Ford argued that it should be allowed to continue complying with California's old "more stringent" emission standards to sell its cars outside of California rather than with the amended standards. Critical to the Court's determination was that the amendment to Section 209(b) changed the waiver from requiring California's standards to be "more stringent" than federal standards to obtain a waiver of federal preemption, to language that permits California to obtain the waiver, so long as it determines that its emission control standards would be, "[i]n the aggregate, at least as protective of public health and welfare as applicable Federal standards." *See* Ford Motor Co. at 1296-1297 (*quoting* Section 209(b) of the Clean Air Act, 42 U.S.C. § 7543(b) (Supp. I 1977)). The Court determined that Ford challenged USEPA's implementation of a congressional determination in the wrong forum – the Court, rather than Congress – stating, "EPA did not promulgate a new rule, it merely recognized and effectuated changes wrought by Congress. However meritorious Ford's position with regard to those changes may be, it was then and is now being presented to the wrong forum. Neither the Administrator nor this court is free to reverse the congressional determination." Ford Motor Co. at 1300.

Ford Motor Co. requires the courts to abide by the congressional intent when interpreting Section 177. The Court's holding that there is no requirement to conduct a separate waiver proceeding for each state adopting California standards relied on Congress's intent in amending Section 177 and the terms of the California waiver. *See* Ford Motor Co. at 1297-1298 (finding Congress's decision to "expand and strengthen the California waiver provision" to "afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare"). As of now, the Joint Resolutions to give the ACC II, ACT, and Low NOx waivers "no force or effect" constitute significant alterations to the California waiver provision and the relationship between California and federal emission control. Congress has made its intent known in the Joint Resolutions. The Board has found that the enactment of the Joint Resolutions constitutes a change in the law authorizing states to adopt and enforce "California standards for which a waiver has been granted." However, the ultimate outcome of this change, and its effect on proceeding with this rulemaking, is the subject of the court challenge filed in California.

Importantly, Movants ask the Board to reconsider an original motion to dismiss that challenged the Board's statutory authority to consider this rulemaking proposal. *See* IIIFFC Mot. to Dis. at 2, 8; IFRA Mot. to Dis. at 2. The Movants dispute the Rule Proponents' position that the Board is authorized to consider and adopt the proposal under the Clean Air Act. Board Order at 7. In its original order on the motions to dismiss, the Board determined that the proposal was

made on the Board's authority under Section 10 of the Act, noting it had previously considered adopting California emissions standards on its own motion. *Id.* at 5-6, 8; *see also* Application of California Motor Vehicle Control Program in Illinois, R89-17(C) (Oct. 11, 1990). Section 10 of the Act authorizes the Board to "adopt regulations to promote the purposes of this Title," including on the "[s]tandards and conditions regarding the sale, offer, or use of any fuel, vehicle, or other article determined by the Board to constitute an air pollution hazard." 415 ILCS 5/10(A), (A)(d) (2024). While the Joint Resolutions "disapproving" the waivers may affect the authority of states to adopt and enforce "California standards for which a waiver has been granted" under Section 177 of the Clean Air Act, the Board finds that this does not constitute a change to the Board's statutory authority under Section 10 of the Act to consider this rulemaking proposal. The Board is not persuaded that it is necessary to modify its finding of jurisdiction in its November 7, 2024, order.

In its original denial of the motions to dismiss, the Board addressed the Rule Proponents' position that the proposal is consistent with the Clean Air Act requirement that "all new motor vehicles sold in the U.S. [] be certified to the emissions standards set by either the U.S. Environmental Protection Agency or the State of California" and Section 177's authorization of states to adopt California standards. Board Order at 7, *citing* 42 U.S.C. §§ 7521, 7543. The Board was not convinced that the Rule Proponents' reliance on the Clean Air Act required granting the motion to dismiss, given its established authority to consider the proposal under Section 10 of the Act. While the Board agrees that the federal Joint Resolutions constitute a change in law relevant to this rulemaking proceeding, the Board is not convinced that the Joint Resolutions change its authority to consider this proposal under Section 10 of the Act to require dismissing the proposal. The Board therefore declines to modify its November 7, 2024, order, and affirms its denial of the motions to dismiss. As the Board said in its original denial of the motions to dismiss, jurisdiction can be challenged at any point in the proceeding. Board Order at 4; 35 Ill. Adm. Code 102.212(d).

The Board notes that while the Joint Resolutions do not constitute a change to the Board's authority to consider this rulemaking under the Act, the enactment into law of the Joint Resolutions "disapproving" the waivers for ACC II, ACT, and Low NOx calls into question the availability of the Section 177 waiver authorization giving states the ability to adopt and enforce the standards. The ongoing California lawsuit challenging the legality of the Joint Resolutions also raises valid questions about the legality of the Joint Resolutions.

Staying the Rulemaking Proceeding

Because the Board finds that the California suit raises questions on the legality of the Joint Resolutions, the Board will stay this rulemaking until the conclusion of the ongoing California suit, State of California, et. al v. United States, et. al, or until the Board orders otherwise. *See*, Indian Refining Limited Partnership, et al v. Illinois EPA, PCB 91-84, slip op. at 1 (Aug. 13, 1992), Velsicol Chemical Corp. v. IEPA, PCB 78-171, slip op. at 1 (June 22, 1978). Without commenting on the merits of the California case, the Board acknowledges that its ability to adopt California motor vehicle standards is derived from Section 177 of the Clean Air Act. In its initial order on the motions to dismiss, the Board held that its statutory authority to consider any rulemaking is derived from Section 10 of the Act. Board Order at 8. That remains true.

However, the Joint Resolutions of Congress "disapproving" the ACC II, ACT, and Low NOx waivers call in to question whether States have the ability to adopt and enforce CARB standards which Congress has "disapproved". That question is the subject of the ongoing California suit. The Board must wait until this active legal issue is resolved before moving forward in this rulemaking.

The Board makes clear that in issuing this stay, it is not taking a position on the merits of the proposed rulemaking in any way. Rather, the Board recognizes the robust record created so far in this rulemaking – two multi-day hearings, testimony from multiple witnesses at hearing, and a vast amount of information provided to the Board, which includes hundreds of comments, oral and written, from members of the public. Staying the rulemaking while the Courts determine the fate of the waivers allows the Board to preserve resources during this pause. Additionally, the Board notes to participants that it continues to have questions on how this proposed rule would work in Illinois. Those questions include issues surrounding the motor vehicle tax, the administrative duties that would be assigned to the Secretary of State, infrastructure concerns, and the actual costs to the public to implement or not implement the rules. When the Board lifts this stay, it intends to (1) evaluate the Section 177 requirements and determine whether Illinois has met those requirements, and (2) proceed with further discussion on other issues prior to deciding whether to move to first notice or dismiss the rulemaking.

Therefore, on its own motion, the Board stays this rulemaking and directs Movants and Rule Proponents to provide status updates every six months, beginning on March 5, 2026. Other participants may file status updates on this same schedule. If California is successful in its suit and the waivers are reinstated, the Board anticipates it will pose additional questions to participants when the stay is lifted.

ORDER

1. The Board denies Movants' motion for leave to file a reply.

2. The Board grants the Movants' motion for extension of time and motion for leave to file the motion for reconsideration.

3. The Board grants the Movants' motion for reconsideration of the Board's denial of the motions to dismiss, and on reconsideration affirms its November 7, 2024 order.

4. The Board stays this rulemaking until the resolution of State of California, et. al v. United States, et. al, No. 4:25-cv-04966-HSG (N.D. Cal., filed June 12, 2025) or until the Board orders otherwise. Movants and Rule Proponents are to file written status updates every six months, beginning on March 5, 2026. Other participants may file status updates on this same schedule.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 18, 2025, by a vote of 5-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board