

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To: Persons on Service List  
(Via Electronic Filing)

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

KWAME RAOUL  
Attorney General  
State of Illinois

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

Dated: March 16, 2022

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**CERTIFICATE OF SERVICE**

I, James E. James, an Assistant Attorney General, certify that on the 16th day of March, 2022, I caused to be served the foregoing Post Hearing Comment of the Illinois Attorney General's Office and Notice of Filing thereof on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

/s/ Jason E. James

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**POST-HEARING COMMENT OF THE ILLINOIS ATTORNEY GENERAL’S OFFICE**

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois (“People”), notes a procedural issue for the Board’s consideration in response to the hearing held on February 17, 2022. The People note that the U.S. Environmental Protection Agency (“USEPA”) has initiated a new Federal rulemaking process addressing the Project Emissions Accounting rule, which is the basis for the proposal currently before the Board in the above-captioned matter (the “Proposal Before the Board”). The new Federal rulemaking is intended to resolve the issues raised in the litigation challenging the recent revisions to the Project Emissions Accounting rule.

As the People’s pre-hearing comment filed on January 4, 2022 noted, several states and environmental advocates are continuing to pursue federal court review of the Project Emissions Accounting rule underlying the Proposal Before the Board. The federal legal challenge is currently in abeyance but remains pending before the U.S. Court of Appeals for the District of Columbia Circuit. *New Jersey v. U.S. Env’tl Prot. Agency*, No. 21-1033 (D.C. Cir.).<sup>1</sup>

As described in the People’s earlier comment, USEPA requested that the D.C. Circuit put the federal litigation into abeyance to review the Project Emissions Accounting rule in light of an executive order from President Biden. That executive order directed USEPA to address actions

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<sup>1</sup> The Illinois Attorney General’s Office is not party to this litigation.

taken between 2017 and 2020 that conflict with President Biden's environmental policies. In other words, USEPA requested that the D.C. Circuit put the federal case into abeyance, because proceeding with that litigation would be a waste of resources, if the agency decided to revise the Project Emissions Accounting rule to make it consistent with the legal requirements of the Clean Air Act.

USEPA has now completed that review and decided to amend the Project Emissions Accounting rule to address the claims of illegality raised by the states and environmental advocates. Attached hereto as Exhibit A is a true and correct copy of the February 10, 2022 motion to govern filed by USEPA before the D.C. Circuit Court. In its motion, USEPA states that the agency has identified concerns with the Project Emissions Accounting rule and has initiated a new Federal rulemaking process to address the issues as raised by the states and environmental groups.

Because USEPA has initiated the new Federal rulemaking process, the agency asked the D.C. Circuit to hold the litigation in abeyance for a full year, until February 23, 2023. The states and environmental groups did not object to this approach and are willing to engage in the new Federal rulemaking process rather than immediately push forward with their litigation efforts.

In light of these new developments, this comment serves to alert the Board of USEPA's intention to change the Project Emissions Accounting rule. As discussed in the most recent Board hearing, the Project Emissions Accounting rule is the basis for the Proposal Before the Board.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by KWAME RAOUL,

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# EXHIBIT A

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

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

Petitioners,

v.

U.S. Environmental Protection Agency  
and Michael S. Regan, in his capacity as  
Administrator, U.S. Environmental  
Protection Agency,

Respondents.

No. 21-1033 (consolidated with  
Nos. 21-1039 and 21-1259)

**EPA's Unopposed Motion to Govern**

EPA moves to keep these consolidated cases in abeyance until February 28, 2023, to allow the agency to consider revisions to the challenged rule. EPA also moves to consolidate Case No. 18-1149 with these cases. Petitioners do not oppose the relief sought.

Petitioners seek review of EPA’s rule “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting.” 85 Fed. Reg. 74,890 (Nov. 24, 2020). In February 2021, this Court agreed to put this matter in abeyance so that EPA could review the challenged action in light of policies set forth in an Executive Order signed by President Biden. Order (Feb. 17, 2021) (also requiring 90-day status reports and motion to govern by August 17); *see* Order (Aug. 30, 2021) (granting EPA’s motion to keep case in abeyance for 30 days); Order (Sept. 17, 2021) (granting EPA’s motion to keep case in abeyance for a month); Order (Nov. 15, 2021) (granting EPA’s motion to keep case in abeyance for 90 days and ordering motion to govern by today).

Last January EPA received an administrative petition for reconsideration from some petitioners of the challenged action under 42 U.S.C. § 7607(d)(7)(B). In October EPA denied that petition because it does not meet the criteria for mandatory reconsideration under Section 7607(d)(7)(B). But EPA agreed that the reconsideration petition “identifies potential concerns that warrant further consideration....” EPA thus “plans to initiate, at its own discretion, a rulemaking process to consider revisions to the EPA’s New Source Review regulations that would address the issues raised in the...petition and comments on the Project Emission Accounting rule.”



