

ENVIRONMENTAL REGISTER

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GOVERNOR EDGAR ISSUES EXECUTIVE ORDER CREATING NEW DEPARTMENT OF NATURAL RESOURCES

By Executive Order 95-2, dated March 1, 1995, to take effect on July 1, 1995 (19 Ill. Reg. 3573, Mar. 17, 1995), Governor Jim Edgar consolidated several executive agency functions to simplify the structure of the government, improve accountability, increase accessibility, and enhance efficiency and effectiveness. The order renames the Department of Conservation to the Department of Natural Resources. Consolidated into the new "DNR" are the Department of Energy and Natural Resources (ENR), the Department of Mines and Minerals, the Abandoned Mined Lands Reclamation Council, and the Department of Transportation Division of Water Resources. The ENR's energy conservation, alternative energy, and coal development and marketing programs will transfer to the Department of Commerce and Community Affairs under the order. The responsibilities of the Department of Conservation under the Lincoln Monument Act (20 ILCS 815) will transfer to the Historic Preservation Agency. Certain solid waste-related functions of ENR will transfer to the Illinois EPA. The personnel performing the various functions and all appropriations, properties, and records associated with those functions that are reassigned will transfer with their functions.

BOARD CASE LOAD INCREASES; BOARD SCHEDULES ADDITIONAL BOARD MEETINGS

The Board has scheduled additional meetings to help cope with the increasing work load that it has encountered in recent months. With the additional meetings, the Board is now scheduled to meet on April 6 and 20, May 4 and 18, and June 1 and 15, 1995. The Board had previously experimented with weekly meetings during January, February, and March, in addition to the regular meetings on the third Thursday of each month, to deal with such matters as new cases, provisional variances, and routine motions. Under the newly-adopted first and third Thursday meeting schedule, the Board will deal with all matters, including substantive decisions, at these bimonthly meetings.

Over the past several months, the Board's case load has increased dramatically. The number filed in each category of cases has increased. The Board received 393 contested cases (PCBs; enforcement actions, permit appeals, and variance petitions) in calendar year 1994, which is 64 percent more than the average number filed during the preceding five years. The Board received 20 petitions for adjusted standards (ASs) in 1994, approximately 127 percent more than the preceding five years' average. During 1994, 34 rulemaking petitions (Rs) were filed with the Board, representing a 27 percent increase over the preceding 5-year period. Finally, 100 administrative citations (ACs) filed during 1994 represents a 27 percent increase over the years 1992 through 1993. During this time the number of opinions and orders generated by the Board increased from 1001 (fiscal year 1991) to 1575 (FY 1995 estimate), and the Board reduced the time needed to complete an average case by 59 percent.

Major factors contributing to the increased caseload are 1) an increased volume of administrative citations filed by counties granted delegated authority by the Agency, 2) the increased filing of cases relating to leaking underground storage tank (UST) remedial action and reimbursement determination appeals, and 3) the Clean Air Act (CAA) rulemakings. The General Assembly revised the statutory CAA provisions in 1992 and the LUST provisions in 1993. (See issues 457, Sept. 16, 1992 & 475, Oct. 6, 1993.) The Board anticipates that LUST-related filings will continue to increase.

APPELLATE UPDATE

FIFTH DISTRICT CONCLUDES THAT A BOARD DECISION REMANDING THE PERMIT APPEAL TO THE AGENCY IS INTERLOCUTORY

In a summary order issued March 9, 1995, in *Marathon Oil Co. v. EPA*, No. 5-94-0295, the Fifth District appellate court determined that it did not have jurisdiction to hear an appeal of a Board decision. In the underlying decision in an NPDES permit appeal, the Board had remanded the matter to the Agency for technical determinations and disposition. The permittee appealed to the Fifth District, arguing three cited cases, *Grigoleit Co. v. PCB* (1993), 245 Ill. App. 3d 337, 613 N.E.2d 371, *Wilkey v. Illinois Racing Board* (1983), 96 Ill. 2d 245, 449 N.E.2d 843, and *Bio-Medical Laboratories, Inc. v. Trainor* (1977), 68 Ill. 2d 540, 370 N.E.2d 223, indicated that the court had jurisdiction to hear the appeal.

The court disagreed, noting that in each of those cases where an appeal was allowed, the remand was for a "ministerial act". In the instant appeal, the court observed that the Board had remanded to the Agency for substantive determinations and calculations. It noted that those Agency actions could render the appeal moot. Therefore, the court dismissed the appeal.

FIFTH DISTRICT AFFIRMS BOARD RCRA CLOSURE PLAN DECISION

In a March 9, 1995 summary order, in *EPA v. PCB and Permatreat of Illinois, Inc.*, No. 5-94-0237, the Fifth District appellate court affirmed the Board's December 16, 1993 decision in *Permatreat of Illinois, Inc. v. EPA*, PCB 93-159. In that decision, the Board determined that certain conditions imposed by the Agency on a closure plan submitted by Permatreat for its Williamson County facility were not necessary to ensure compliance with the Act and Illinois regulations. The Fifth District concluded after review of the record before it that the Board adequately explained its decision, there was no error of law, and the record did not show the decision was against the manifest weight of the evidence.

Permatreat had accumulated hazardous waste on a concrete drip pad at its wood preserving treatment facility. The Agency had contended that this was a waste pile, and Permatreat sought agreement with the Agency for a "clean closure" of the waste pile as an interim status hazardous waste treatment, storage, or disposal facility. The Agency imposed conditions on the submitted closure plan that included, *inter alia*, obligations to inspect the drip pad for cracks and leaks and to conduct soils testing.

In rendering the *Permatreat* decision, the Board initially questioned whether the pile of material on the drip pad was a waste pile, holding that the accumulated material on the drip pad was not a hazardous waste while draining on the pad. Rather, the material did not become hazardous waste until removed from the pad after draining. The Board questioned whether the waste pile clean closure requirements even applied, but noted that the appeal challenged certain conditions and not the underlying permit. The Board found that the record did not support the conclusion that a crack found in 1993 existed in 1991 at the time of the Agency's permit determination. The Board further found that soils

discoloration around the pad were discovered also in 1993, but that the record did not indicate that it was related to the "waste pile" for which closure was sought. The Board noted that the discolored soils from a nondisclosed source could indicate contamination, which would constitute a violation of the Act and regulations, but an appeal of the closure permit was not the proper context for relief. The Board concluded that the challenged conditions were not necessary to assure compliance with regard to the closure of the "pile". However, the Board let stand a portion of the conditions that related to steam-cleaning the drip pad because the permittee had agreed to perform that task.

THIRD DISTRICT HOLDS THAT CORPORATE OFFICERS MAY BE HELD LIABLE FOR VIOLATIONS OF THE ACT

In *People v. C.J.R. Processing, Inc.* (3d Dist. Mar. 8, 1995), No. 3-94-0268, a case not involving the Board, the court determined that corporate officers can be held liable for violations of the Environmental Protection Act. The court reversed a Grundy County circuit court decision dismissing a complaint as to one corporate officer defendant. The circuit court had concluded that the Act's definition of "person" did not include corporate officers.

The corporate and personal defendants operated a waste management facility in Morris, Illinois. An inspection by the Agency revealed waste scattered at the site, and the Attorney General filed a multi-count complaint in Grundy County against the several defendants, including the corporate officer defendant. The complaint alleged several violations of the Act, and included one count of statutory nuisance and one count of common law nuisance.

The corporate officer defendant sought dismissal as to himself, and the circuit court granted dismissal, holding that the Section 3.26 (415 ILCS 5/3.26) definition of "person" does not include corporate officers.

The Third District framed the issues before it as 1) whether a corporate officer is a "person" within the meaning of the Section 3.26 definition, and 2) whether a corporate officer may be held individually responsible for a corporation's violations of the Act. The court noted that the Section 3.26 definition is very similar to that of Section 1003(15) of the federal Resource Conservation and Recovery Act (RCRA; 42 U.S.C. § 6903(15)). It noted that the federal appellate court construed this in *U.S. v. Northeastern Pharmaceutical and Chemical Co.*, 810 F.2d 726 (8th Cir. 1986), to hold the corporate officers individually liable for the corporation's violations. The court refused to distinguish the *Northeastern Pharmaceutical* case on the basis that the present complaint involved non-hazardous special waste and that of *Northeastern Pharmaceutical* involved hazardous waste, since the RCRA definition involved applied to both hazardous and non-hazardous solid waste.

Declining to follow *People v. Celotex Corp.*, 516 F. Supp. 716 (C.D. Ill. 1981), where the federal district court construed the Illinois definition differently, the Third District held that a corporate officer is included in the Act Section 3.26 definition of "person". The court then examined the sufficiency of the complaint and determined that the circuit court had erred in finding it insufficient and dismissing it as to the corporate officer defendant. The Third District reversed that decision and remanded the case.

CONTESTED CASES UPDATE

STATE AGENCY HAD NO SOVEREIGN IMMUNITY FROM ENFORCEMENT ACTION

The Board determined on February 16, 1995 that a state agency is not insulated by sovereign immunity from an enforcement action brought under the Environmental Protection Act. In an order issued in the consolidated cases of *People v. Boyd Brothers, Inc.*, PCB 94-275, and *Boyd Brothers, Inc. v. Abandoned Mined Lands Reclamation Council*, PCB 94-311, the alleged violations involved acidic discharges to a stream. The People filed an enforcement action against respondent, Boyd Brothers, for the discharges. Boyd Brothers subsequently filed a separate citizens' enforcement action against another respondent, Abandoned Mined Lands Reclamation Council, a state agency, for the discharges. Boyd Brothers claimed that it was undertaking reclamation activities at a mine site under contract with the Reclamation Council and that the Council was responsible for the discharge.

The Attorney General filed a motion to dismiss the action against the Reclamation Council. The Attorney General argued that the State Lawsuit Immunity Act (745 ILCS 5/1) prohibited the action against the Council because the action could potentially subject it to a monetary penalty if successful. The Attorney General further argued that because the allegations against the Reclamation Council were based on the reclamation contract between Boyd Brothers and the Council, the Court of Claims was the more appropriate forum. Boyd Brothers argued in response that the State Lawsuit Immunity Act prohibits "claims against the state" made in court. It highlighted that this enforcement action was before the Board, an administrative agency, and it was not a "claim" or suit for a money judgment. Boyd Brothers contended that the action was specifically authorized by the Environmental Protection Act, and that the Court of Claims was not the proper forum to determine whether a violation of the Act occurred.

The Board examined the relevant statutes and determined that dismissal was not appropriate on this basis. The Board observed that Section 31(b) of the Environmental Protection Act authorizes a complaint and Section 42(a) a civil penalty against "any person" for violation of the Act. The Board noted that the statutory definition "person", at Section 3.26, expressly includes a "state agency", and that Section 47(a) imposes the duty of compliance on the "State of Illinois and all its agencies". The Board followed its holding in *EPA v. City of Champaign* (Sept. 16, 1971), PCB 71-51C, *rev'd on other grounds*, 12 Ill. App. 3d 720, 299 N.E.2d 28 (4th Dist. 1973), in which it concluded that since an enforcement action under the Environmental Protection Act is a statutory action, and not one in tort, and since the Act imposes the duty of compliance on state agencies, the Board has jurisdiction to hear complaints filed against state agencies. The Board denied the motion to dismiss.

THE AGENCY CANNOT ISSUE A SUPPLEMENTAL PERMIT TO SUSPEND WASTE ACCEPTANCE WHERE THE FACILITY NEVER HAD AN OPERATING PERMIT AND NEVER RECEIVED THE PERMITTED WASTE

The Board dismissed a permit appeal on February 16, 1995 seeking to overturn an Agency denial of a supplemental permit to allow the permittee to suspend accepting waste. In *Brockman v. EPA*, PCB 94-207, the permittee sought a supplemental permit under Section 39(c) of the Act to allow it to temporarily suspend accepting waste at its LaSalle County landfill operations. The Agency denied the permit because it deemed the application incomplete, and the permittee appealed to the Board. The Board affirmed the Agency's determination.

The permittee owns and operates a 177 acre site, for which it received a developmental permit in 1975 to develop a solid waste disposal facility and a supplemental developmental permit in 1978. The site received waste from a single source under a single operating permit from 1975 to 1982. The permittee applied for a permit allowing temporary suspension of waste acceptance in 1993, which the Agency denied and the Board affirmed in *Brockman v. EPA* (Jan. 4, 1994), PCB 93-162, *appeal pending, Brockman v. PCB*, No. 3-94-0175 (3d Dist.). The Board concluded in that case that the Agency could only evaluate a temporary suspension request in the context of a closure plan. The permittee reapplied for temporary suspension in 1994, which resulted in the Agency determining that the application was incomplete because the Agency's records indicated that the facility was closed under the Illinois landfill regulations. That decision resulted in the instant appeal to the Board.

The Board prefaced its discussion by observing that the permittee contended that he was required under Section 39(c) of the Act to apply for temporary suspension of waste acceptance to maintain its status as an existing landfill. Section 39(c), as amended in 1993, provides that a facility that held an operating permit and which has not received waste for five years or more must obtain a new operating permit unless it has obtained a permit for temporary suspension of waste acceptance. It states that a facility required to obtain a new operating permit must first obtain local siting approval under Section 39.2.

The Board noted that the supplemental permits issued to the permittee, by their own terms, did not authorize acceptance of waste. Rather, they expressly provided that the permittee was obligated to obtain an operating permit before accepting waste at the facility. The Board noted that the only operating permit issued for the site pertained to an area of the facility that ceased receiving waste in 1982. The Board held that an operating permit is a necessary prerequisite to obtaining a suspension of waste acceptance. It concluded that because the affected areas of the site never received waste, and since no supplemental permit allowing suspension of acceptance could issue, the Board did not need to address issues relating to whether the site closed in 1982. The Board held that the Agency had properly denied the permit.

THE BOARD HAS NO JURISDICTION TO HEAR A THIRD-PARTY SOLID WASTE PERMIT APPEAL

In *Madison County Conservation Alliance v. Waste Management, Inc.* (Feb. 16, 1995), PCB 94-390, the Board dismissed a third party's appeal of an Agency grant of a supplemental development permit. The Board held that the third parties lacked standing to file the appeal.

The Board relied on *White Fence Farm, Inc. v. Land & Lakes Co.*, 99 Ill. App. 3d 244, 424 N.E.2d 1370 (4th Dist. 1981), which held that Section 40(b) of the Act confers standing on third persons to appeal an Agency hazardous waste facility permit but not to appeal an Agency non-hazardous waste solid waste facility (landfill) permit.

The Board also cited *Landfill, Inc. v. PCB*, 74 Ill. 2d 541, 387 N.E.2d 258 (1978), where the Illinois Supreme Court declared invalid a Board procedural rule that allowed a third party to file for revocation of a non-hazardous solid waste permit. In dismissing the appeal, the Board observed that a third party can pursue an enforcement action for potential threats of pollution caused by the permittee.

UNSUBSTANTIATED COSTS, RESTORATIVE COSTS, AND COSTS INCURRED BEFORE NOTIFICATION ARE NOT COSTS OF REMEDIAL ACTION

In a recent decision, *Clarendon Hills Bridal Center v. EPA* (Feb. 16, 1995), PCB 93-55, the Board determined that certain unsubstantiated costs, certain restorative costs, and costs incurred before ESDA notification were not costs of remedial action that were reimbursable under the Environmental Protection Act. The Board reversed the Agency's denial as to the costs associated with repair of a storm sewer.

The petitioner was the former owner of a strip mall at which a 1990 environmental assessment disclosed a large volume of petroleum-contaminated soil. The petitioner commenced remediation and subsequently discovered three underground storage tanks at the site. The petitioner then notified the Emergency Services and Disaster Agency (ESDA, now the Illinois Emergency Management Agency or IEMA) that a release of petroleum had occurred and submitted a corrective action plan and obtained Agency approval of the plan. The petitioner later discovered a fourth tank. The petitioner removed all four tanks, completed the cleanup, and obtained a no further action letter from the Agency. The petitioner sought reimbursement from the UST Fund, and the Agency ultimately denied reimbursement for a total of \$331,404.05 in costs for which the petitioner sought Board review.

The Board prefaced its analysis by reiterating the two-part standard test for reimbursement enunciated in *Enterprise Leasing Co. v. EPA* (Apr. 9, 1992), PCB 91-174: 1) the costs incurred must be from action to "stop, minimize, eliminate, or clean up a release of petroleum" and 2) they must be "the result of activities such as tank removal, soil remediation, and free product removal". The Board then cited *Platolene 500, Inc. v. EPA* (May 7, 1992), PCB 92-9, for the proper burden in corrective action reimbursement cases before commencing its analysis on the costs at issue: the person seeking reimbursement must demonstrate that the costs were for corrective action and that they were reasonable.

The Board found that the petitioner had not submitted sufficient documentation for many of the costs, and concluded that those unsubstantiated costs were not reimbursable from the Underground Storage Tank Fund.

The Board first considered \$206,245.53 in costs submitted to the Agency based solely on a per-cubic yard rate. The Agency denied the costs because the invoices did not contain sufficient information regarding the costs contained in that rate to demonstrate that the costs were reasonable. The Board noted that the Agency allows

owners to demonstrate the costs as reasonable by either submitting detailed time-and-materials information or by submitting information from a competitive bidding process. Since the petitioner had not submitted sufficient information in either regard to the Agency to aid its determination, the Board concluded that the petitioner had failed to prove the costs reasonable. The Agency denied another \$44,928.25 in associated costs supported by time-and-materials information where the Agency found the costs to be duplicate costs, costs unsupported by worksheets, or costs charged as a result of a mathematical error. The Board upheld the Agency's determination because the petitioner did not present argument or evidence as to those costs.

The Board then considered \$3,277.00 in costs relating to soil contamination investigation, \$300.00 in costs for consulting and oversight services, and \$3,227.20 in costs for backfilling and compacting the excavation. The Agency denied reimbursement for the costs because they lacked supporting documentation, asserting that the petitioner submitted a lump-sum bill that did not allow evaluation of the work performed, the personnel involved, and the rate for the services. The Board concluded that the petitioner had not provided sufficient documentation for the costs to prove them reasonable corrective action costs, and the petitioner's arguments relating to payment of the invoice did not address the reasonableness of the costs.

Similarly, as to \$7,670.00 in costs for trucking services, the Agency denied reimbursement because it was unable to determine from the invoices submitted what services had been provided. The Board affirmed, finding that petitioner failed to provide documentation to the Agency that the costs were reasonable. The Board disallowed evidence later tendered at hearing that had not been presented to the Agency to aid its review of the costs because the petitioner should have known of its burden of substantiating the costs to the Agency during review.

The Agency had also denied reimbursement for several additional items of costs as not related to corrective action. The Board agreed with the Agency as to \$28,655.70 in costs from pumping and disposal as special waste of 80,000 gallons of rainwater runoff that had collected in the excavation. The petitioner had obtained authorization for less costly disposal of this water into a sanitary sewer, and the Board could not conclude that a hazard existed that would not allow the petitioner to wait for a permit for the discharge into the sewer. Similarly, the Board agreed with the Agency that \$349.20 for street sweeping costs, \$180.00 to replace lost barricades, and \$10,127.46 to replace parking lot lighting were not corrective action. As to the costs for replacing lighting, the Board rejected an argument that an obvious typographical error in the Agency's denial letter would restrict the Agency to denying only \$127.46 in costs. Finally, the Board upheld the denial of \$280.00 in demurrage charges because the petitioner had not sufficiently documented them, \$14,213.96 in costs incurred before the petitioner notified ESDA of the release, \$37.50 in excessive manifest preparation charges, \$126.17 in handling charges associated with denied costs, and \$10,000.00 in legal fees incurred in appealing the registration of the tanks as non-reimbursable legal defense costs.

The Board disagreed with the Agency as to \$842.83 in costs and \$127.25 in handling charges associated with repairing and capping

a stormwater sewer. The Agency had denied the costs because there was no evidence that contamination had ever entered the sewer; the Board felt that a showing that the sewer created a potential for contamination was sufficient to constitute corrective action.

(Editor's note: A motion for reconsideration of this decision was pending at the time this issue was prepared for printing.)

RULEMAKING UPDATE

PART V AND PART VI 15% ROP PROPOSALS PROPOSED FOR SECOND NOTICE, R94-31 & R94-32

During February, the Board proposed two parts of the 15 percent rate of progress (ROP) plan for Second Notice review by the Joint Committee on Administrative Rules. These two parts, the Part V ROP proposal, docketed as R94-31, and the Part VI proposal, docketed as R94-32, are segments of regulatory amendments necessitated by the federal Clean Air Act Amendments of 1990 (CAAA). The CAAA requires a reduction in ozone precursor emissions in areas designated as moderate or severe nonattainment for ozone. In sum, all the ROP plan segments would seek a 15 percent 1990 VOM emissions levels in the Chicago and Metro-East St. Louis areas. The Agency has stated that the state is federally required to reduce VOM emissions by 250 tons per day (tpd) in the Chicago area and by 27 tpd in the Metro-East area. *(See issues 483, June, 1994; 484, July, 1994; 485, Aug., 1994; 486, Sept., 1994; 487, Oct., 1994 & 488, Nov., 1994.)*

The Board accepted each of the seven 15% ROP plan rulemaking proposals pursuant to the "fast-track" rulemaking provisions of Section 28.5 of the Environmental Protection Act (Act). Section 28.5 requires the Board to proceed within set time-frames toward the adoption of the proposed amendments. The Board lacks any discretion under the statute to adjust these time-frames under any circumstances. Under Section 28.5(o), the Board must have adopted the proposal for Second Notice within 130 days on receipt of the proposal from the Agency. Section 28.5(p) requires that the Board must adopt and file final rules based on the proposal within 21 days of when it receives a Certificate of No Objection from JCAR.

The Board has completed three of the seven 15% ROP proceedings: R94-12, R94-16, and R94-16. The seven parts of the Illinois ROP plan and their procedural histories are described as follows:

Part I 15% ROP Adopted, R94-12

The Board adopted the Part I ROP proposal on September 15, 1994, under docket number R94-12. The Part I amendments require the use of pressure-vacuum relief valves on vent tubes at gasoline dispensing operations in both the Chicago and Metro-East areas and a lowering of the Reid vapor pressure (RVP) on gasoline from 9.0 psi to 7.2 psi in the Metro-East area. The vacuum-pressure relief aspects of these amendments are anticipated to reduce emissions by 4 tpd in the Chicago area and by 0.4 tpd in the Metro-East area. The use of 7.2 RVP fuel will reduce emissions 8.5 tpd in the Metro-East St. Louis area. The Part I 15% ROP amendments were filed with the Secretary of State and became

effective on September 21, 1994.

Part II 15% ROP Adopted, R94-15

The Board adopted the Part II proposal on October 20, 1994, under docket number R94-15. The Part II amendments extended VOM emissions control measures to the loading of marine vessels and deletion of the exemption for barge loading from the regulations applicable to "Miscellaneous Fabricated Product Manufacturing Processes", "Miscellaneous Formulated Manufacturing Processes", "Miscellaneous Organic Chemical Manufacturing Processes", and "Other Emissions Units" source categories. The record indicated that the Part II proposal would reduce the VOM emissions by 1.3 tpd in the Chicago area and by 11.82 tpd in the Metro-East area. The Part II 15% ROP amendments were filed with the Secretary of State and became effective on October 25, 1994.

Part III 15% ROP Adopted, R94-16

The Board adopted the Part III ROP proposal on October 20, 1994, under docket number R94-16. The Part III amendments made the standards of Parts 218 and 219, Subpart B, "Organic Emissions from Storage and Loading Operations", and Subpart V, "Total Resource Effectiveness" (TRE), more stringent. The Part III plan rules added the federal Control Technology Guidelines (CTG) and Alternative Control Technology (ACT) recommended controls for volatile organic liquids (VOLs) and volatile petroleum liquids (VPLs). It was anticipated that the TRE amendments will reduce VOM emissions by 4.05 tpd in the metropolitan Chicago area by 1996 and by an additional 1.58 tpd by 1999. The VOL/VPL amendments are anticipated to reduce the VOM emissions by 2.18 tpd in the Chicago area. No reductions were expected in the Metro-East area. The Part III 15% ROP amendments were filed with the Secretary of State and became effective on November 15, 1994.

Part IV 15% ROP Proposal, R94-21

On January 26, 1995, the Board proposed the Part VI 15% ROP plan for Second Notice review by the Joint Committee on Administrative Rules. The Part IV 15% ROP proposal, docketed as R94-21, contemplates lowering the VOM content of coatings for several categories of surface coaters: the can, paper, coil, fabric, vinyl, metal furniture, baked large appliance, and miscellaneous parts and products coating categories. The Part IV proposal would also impose reductions in VOM emissions from sources in the automotive/transportation and business machine plastic parts coating categories that exceed specified emissions levels. The proposal would further make the VOM emissions limits applicable to wood furniture coating operations at a lowered threshold. The Part IV proposal would also require specified controls on synthetic organic chemical manufacturing industry (SOCMI) distillation and reactor processes and on bakery industry ovens. Finally, the amendments would make a number of minor amendments and corrections to the regulations, largely in response to comments submitted by U.S. EPA and affected entities.

The Illinois EPA (Agency) filed the Part IV proposal on September 12, 1994. The Board proposed the amendments for First Notice publication in the *Illinois Register* on September 15, 1994. The Board conducted public hearings on these proposed amendments on November 4, December 2, and December 16, 1994. The Second Notice period began on February 6, 1995, the

date JCAR acknowledged receipt of a complete Second Notice package from the Board, and it ends after 45 days, on March 23, 1995.

The Board will be free to adopt the amendments when either JCAR votes no objection to the amendments or the Second Notice period ends, whichever comes first. Direct questions on the Part IV proposal to Marie E. Tipsord, at 312-814-4925 or 618-498-9803. Please refer to docket R94-21.

Part V 15% ROP Proposal, R94-31

On February 23, 1995, the Board proposed the Part V 15% ROP proposal for Second Notice review by JCAR. The Part V proposal contemplates lowering the VOM emissions from lithographic printing operations in the Chicago and Metro-East areas. The Part V proposal would add definitions of non-heatset and sheet-fed lithographic printing, as-applied foundation solution, and alcohol. The proposal would further establish control measures for VOM emissions from lithographic printers in the Chicago and Metro-East areas. The Part V proposal would also make minor corrective amendments to the existing regulations.

The Agency stated that it contemplates that the Part V amendments would affect about 113 facilities in the Chicago area and one source in the Metro-East area. It estimated that the Part V proposal would reduce VOM emissions by 4.0 tpd in the Chicago area and by minimal amounts in the Metro-East area.

The Agency filed the Part V proposal with the Board on October 28, 1994, and the Board proposed it for First Notice publication in the *Illinois Register* on November 3, 1994. The Board conducted hearings in R94-31 on December 15, 1994 and January 9, 1995. The Notices of Proposed Amendments appeared in the *Illinois Register* on December 2, 1994, and the First Notice public comment period ended on January 16, 1995. The Board proposed the amendments for Second Notice review by JCAR on February 23, 1995. JCAR received the Second Notice package from the Board on February 27, 1995, starting the Second Notice period. That period will end after 45 days, on April 12, 1995.

The Board may proceed to adopt the amendments when the Second Notice period ends, or when JCAR issues a Certificate of No Objection, whichever comes first. Direct questions on the Part V proposal to Kevin Desharnais, at 312-814-6926. Please refer to docket R94-31.

Part VI 15% ROP Proposal, R94-32

The Part VI proposal contemplates lowering VOM emissions from motor vehicle refinishing operations in the Chicago and Metro-East areas. The Part VI proposal would impose limitations on the VOM content of coatings and surface preparation materials, require the use of specific coatings applicators and applicator cleaning equipment, and provide a control equipment alternative. The proposal would further impose recordkeeping and reporting requirements on refinishers.

The Agency stated that it contemplates that the Part VI amendments would reduce VOM emissions by 16.3 tpd in the Chicago area. The Agency estimate of reduction of VOM emissions in the Metro-East area is 1.2 tpd.

The Agency filed the Part VI proposal on October 28, 1995. On November 3, 1994, the Board proposed the Part VI ROP amendments for First Notice publication in the *Illinois Register*.

Notices of Proposed Amendments appeared in the December 9, 1994 *Illinois Register*, starting the First Notice period. The Board conducted one public hearing in R94-32 on December 16, 1994. The First Notice public comment period ended on January 23, 1995.

The Board proposed the amendments for Second Notice review by JCAR on February 16, 1995. JCAR received the Second Notice package from the Board on February 22, 1995, starting the Second Notice period. That period will end after 45 days, on April 7, 1995.

The Board may proceed to adopt the amendments when the Second Notice period ends, or when JCAR issues a Certificate of No Objection, whichever comes first. Direct questions on the Part VI proposal to Audrey Lozuk, at 312-814-6923. Please refer to docket R94-32.

Part VII 15% ROP Proposal, R94-33

On November 18, 1994, the Board proposed the Part VII ROP amendments for First Notice publication in the *Illinois Register*. The Part VII proposal contemplates lowering VOM emissions from batch chemical processes having certain standard industrial classifications (SIC) codes in the Chicago and Metro-East areas. The SIC codes involved are 2821, 2833, 2834, 2861, 2865, 2869, and 2879. This includes a broad range of chemical manufacturing activities: plastic materials and resins (SIC 2821), medicinal chemicals and botanical production (SIC 2833), pharmaceutical operations (SIC 2834), gum and wood chemicals (SIC 2861), cyclic crudes and intermediates (SIC 2865), industrial organic chemicals (SIC 2869), and agricultural chemicals (SIC 2879). The Part VII proposal would also regulate emissions from Stepan Chemical Company's Millsdale facility, in Elwood. The proposal would further add definitions for "batch process train", "batch operation", "process vent", and "single unit operation".

The Agency stated that it contemplates that the Part VII amendments would reduce VOM emissions by 12.63 tpd in the Chicago area. The Agency estimate of reduction of VOM emissions in the Metro-East area is 0.36 tpd.

The Board conducted one public hearing in R94-33 on January 4, 1995. The hearing officer cancelled subsequent scheduled hearings for the statutorily-prescribed reasons due to the low level of public interest in further hearings on the proposal. Notices of Proposed Amendments appeared in the December 16, 1994 *Illinois Register*. The First Notice public comment period ended after 45 days, on January 30, 1995. The Board must now proceed to propose the amendments for Second Notice review by JCAR. Direct questions on the Part VII proposal to Audrey Lozuk, at 312-814-6923. Please refer to docket R94-33.

(Editor's note: The Board proposed the amendments for Second Notice review by JCAR on March 16, 1995.)

Request copies of any of the Board's actions on these amendments from Victoria Agyeman, at 312-814-6920. Please refer to the appropriate docket number.

7.2 RVP EMERGENCY RULE ADOPTED FOR METRO-EAST AREA, R95-10

On February 23, 1995, the Board adopted an emergency rule that effectively extends the date for compliance with the gasoline volatility standards for certain gasoline distribution facilities in the

Metro-East area (Madison, Monroe, and St. Clair Counties). The existing regulations, adopted by the Board on September 15, 1994, as a segment of the Part I 15% ROP proposal, under docket number R94-12 (see accompanying article), prohibit the sale and distribution of gasoline having a Reid vapor pressure (RVP) greater than 7.2 psi during certain parts of the year. The prohibited period is June 1 through September 15 for gasoline retailers and May 1 through September 15 for all other facilities (including producers and distributors). The original adoption of this standard was based on the Section 28.5 "fast-track" procedures and agreement between the Agency and the regulated community. The emergency amendments make the period June 1 through September 15 for all facilities.

The Agency filed the proposal requesting these emergency amendments on February 14, 1995. The Agency explained that the federal regulations require 9.0 RVP gasoline on May 1 and 7.8 RVP gasoline on June 1. The Agency stated that the Illinois 7.2 RVP requirement at the production and distribution levels during May is inconsistent with the federal requirements. This inconsistency would require the production and distribution of 7.2 RVP gasoline to the majority of the metropolitan St. Louis market if not resolved, despite the fact that this fuel would only be required in 20 to 25 percent of the market. The Agency represented to the Board in its petition for an emergency amendment that it was unaware at the time of R94-12 of an inconsistency in treatment of such areas as Illinois and Missouri in RVP treatment.

The Board determined that it could not find that the emergency facing the industry was self-imposed. The Board made the necessary findings for an emergency amendment and noted that the Agency intends to file a general rulemaking petition for permanent amendment of the rule. The emergency amendment was effective when filed with the Secretary of State, on February 28, 1995, and will remain in effect for a maximum of 150 days, until July 28, 1995. Direct questions to Kathleen M. Crowley, at 312-814-6929. Request copies from Victoria Agyeman, at 312-814-6920. Please refer to docket number R95-10.

BOARD ACCEPTS PETITION RE DISPOSAL OF DEAD ANIMALS, R95-9

On February 16, 1995, the Board accepted a petition for regulations relating to the disposal of dead animals in Illinois. The Illinois Farm Bureau, Illinois Beef Association, Illinois Lamb and Wool Producers, Inc., Illinois Milk Producers Association, and Illinois Pork Producers Association filed the petition on February 2, 1995. The petition seeks regulatory clarification of the relationship between the Illinois landfill regulations and the Illinois Dead Animal Act (225 ILCS 610/1).

On motion, the Board waived the 200 signature requirement that applies to all rulemaking petitions but those filed by the Agency or the Department of Energy and Natural Resources. The Board also acknowledged requests by the petitioners that at least one hearing occur downstate and that the Board avoid conducting hearings in the periods mid-April through June and September and October for the convenience of the agricultural community.

Hearings are scheduled to occur in Springfield and DeKalb, as follows:

10:00 a.m., April 3, 1995:

DeKalb County Farm Bureau
315 North 6th Street, Lower Auditorium
DeKalb

10:00 a.m., April 10, 1995:

Illinois Dep't of Agriculture State Fairgrounds
Agricultural Building
Springfield

Direct questions to Audrey Lozuk-Lawless, at 312-814-6923.
Please refer to docket R95-9.

DEADLINE EXTENDED AND ONE PRETREATMENT UPDATE PROPOSED, ANOTHER DISMISSED, R94-10 & R95-8

On February 16, 1995, the Board proposed a set of amendments to the wastewater pretreatment regulations from one update period and dismissed the docket relating to another. The amendments, proposed under docket R94-10, are based on revisions to the federal regulations that occurred in the period July 1 through December 31, 1993. The dismissed docket, R95-8, was for the period July 1 through December 31, 1994. U.S. EPA did not amend its pretreatment regulations in the second half of 1994, so the Board dismissed the corresponding update docket.

The amendments involved in docket R94-10 are based on four federal actions undertaken July 9, August 25, and September 15, and 28, 1993. The Board issued a separate order on February 16 explaining the delay and extending the deadline to complete R94-10 to June 15, 1995.

The July 9, 1993 federal amendments reimposed limitations on 11 of 13 chemicals previously withdrawn as a result of litigation in *Chemical Manufacturers Assoc. v. EPA*, 870 F.2d 177 (5th Cir. 1989). The September 28, 1993 federal amendments added discharge limitations for organic and organo-metallic pesticides in the Pesticide Chemicals Category. The Board based amendments on both sets of federal amendments. The Board determined, however, that no amendments were necessary based on the other two sets of amendments, jointly promulgated by U.S. EPA and the U.S. Army Corps of Engineers on August 25 and September 9, 1993, relating to the discharge of dredged materials. Those amendments did not affect the wastewater pretreatment regulations.

Direct questions to Diane F. O'Neill, at 312-814-6062. Please refer to docket number R94-10, for the due date extension and amendments, or R95-8, for the dismissal.

OPINION FOR NEW SOURCE REVIEW RULES MODIFIED, R92-21

On February 16, 1995, the Board modified its opinion in docket R92-21 in response to a joint motion by the Agency and the Illinois Environmental Regulatory Group (IERG). That motion, filed February 3, requested that the Board reconsider its opinion originally adopted on April 22, 1993. The Agency and IERG requested that the Board withdraw its interpretive discussion of Section 203.109(b), relating to determining when an increase in emissions becomes "significant" for the purposes of the permitting

requirements. The Board granted reconsideration and withdrew its earlier discussion, reissuing the opinion and order without that discussion.

On April 22, 1993, the Board adopted new source review (NSR) regulations, pertaining to permitting for the construction and operation of major new or modified stationary air pollution sources in Illinois. The NSR rules govern the permitting process in nonattainment areas of the state (the Chicago metropolitan and the metropolitan East St. Louis areas). The NSR rules were the first segment of Illinois' ultimate submittal of a complete State Implementation Plan (SIP) to the U.S. EPA. On a joint motion of the Agency and IERG, the Board adopted a certain interpretation of Section 203.109(b), but refused to allow a future difference in federal interpretation to preempt. Rather, the Board offered to reinterpret this provision on motion if U.S. EPA later took a different perspective.

The Agency submitted the NSR regulations to U.S. EPA for SIP review and approval. On September 23, 1994 (at 59 Fed. Reg. 48839), U.S. EPA conditionally proposed approval of the Illinois SIP revision if the state correct enumerated deficiencies in the Illinois program. Alternatively, U.S. EPA proposed disapproval of the SIP if the state did not adequately address the federally-enumerated deficiencies. U.S. EPA stated that it "believes that the language of section 203.209(b) by itself would be approvable" but that "two written interpretations" included in the Board's opinion would "require disapproval of the State's submittal" U.S. EPA allowed an opportunity for withdrawal before it took final action on the SIP submittal. The reissued February 16, 1995 opinion and order removed the interpretations cited by U.S. EPA.

Direct questions to Marie E. Tipsord, at 312-814-4925. Please refer to docket R92-21.

FOR YOUR INFORMATION

ILLINOIS RENEWABLE NATURAL RESOURCES CONFERENCE TO BE HELD IN MARCH

The first Illinois Renewable Natural Resources Conference will occur in Springfield on March 28 through 31, 1995. The conference is jointly sponsored by several associations, state and federal agencies, and university departments. Topics will include the effects of public policy on renewable resources, natural conservation in agriculture, species and habitat protection, riparian issues, ecosystem and watershed management, and fire ecology.

The conference will be held at the Springfield Renaissance Hotel, and the exhibition will occur at the Prairie Capital Convention Center. Call 217-544-8800 for more information.

BOARD MEMBER McFAWN TO SPEAK AT WOMEN'S ENVIRONMENTAL LAW FORUM

Board Member Marili McFawn has been invited to speak at a Women's Environmental Law Forum luncheon. She will discuss the nature of practicing before the Board and ongoing Board activities. The luncheon will be held at noon, April 10, 1995, in the Schiff Hardin & Waite conference center, on the 66th floor of the Sears Tower.

POLLUTION CONTROL BOARD ELECTRONIC BULLETIN BOARD SYSTEM (BBS)

The Pollution Control Board operates an electronic BBS at 312-814-1590. The BBS is available 24 hours a day, 7 days a week, to anyone with access to a computer and a modem - there is no charge for access to the BBS. The best communications settings are 8 data bits (or data length 8), no parity (or parity = none) and 1 stop bit, i.e., 8-N-1. The best terminal emulation is ANSI-BBS or just ANSI. The BBS contains Board Agendas, Environmental Registers, Annual Reports, and various documents about the Board. You may download these documents to your computer. For additional information contact Don Brown at the Board Offices 312-814-3461.

FINAL ACTIONS - February 2, 1995 BOARD MEETING

- 94-123 People of the State of Illinois v. Archer Daniels Midland Company - The Board accepted a stipulation and settlement agreement in this Emergency Planning and Community Right-to-Know Act (EPCRA) enforcement action against two Macon County facilities, ordered the respondent to pay a civil penalty of \$6,400.00, and ordered it to cease and desist from further violation. Board Member J. Theodore Meyer concurred.
- 94-389 People of the State of Illinois v. Village of Port Byron - The Board accepted a stipulation and settlement agreement in this water enforcement action against a Rock Island County facility, ordered the respondent to pay a civil penalty of \$1,000.00, and ordered it to cease and desist from further violation. Board Member J. Theodore Meyer concurred.
- 95-45 Springfield Metro Sanitary District v. IEPA - Upon receipt of an Agency recommendation, the Board granted this Sangamon County facility a 45-day provisional variance from the requirement to comply with the conditions of its NPDES permit to allow its Spring Creek facility to continue operating during a period of wastewater treatment plant modification.
- AC 94-88 Sangamon County v. City of Springfield - The Board granted voluntary dismissal of this administrative citation involving a Sangamon County facility.
- AC 95-3 IEPA v. Environmental Reclamation Company - The Board granted voluntary dismissal of this administrative citation involving a Coles County facility.
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NEW CASES - February 2, 1995 BOARD MEETING

- 95-45 Springfield Metro Sanitary District v. IEPA - See Final Actions.
- AC 95-7 Sangamon County v. Hart of Illinois, Inc. - The Board received an administrative citation against a Sangamon County facility.
- AC 95-8 Sangamon County v. ESG Watts, Inc. - The Board received an administrative citation against a Sangamon County facility.

FINAL ACTIONS - February 9, 1995 BOARD MEETING

- 92-216 U.S. Department of the Army - Rock Island Arsenal v. IEPA - The Board granted voluntary withdrawal of this RCRA permit appeal involving a Rock Island County facility.
- 95-5 People of the State of Illinois v. Midwest Grain Products of Illinois, Inc. - The Board accepted a stipulation and settlement agreement in this air enforcement action against a Tazewell County facility, ordered the respondent to pay a civil penalty of \$15,000.00, and ordered it to cease and desist from further violation.
- 95-46 Avon Products, Inc. v. IEPA - Upon receipt of an Agency recommendation, the Board granted Avon Products a 10-day provisional variance from the 90-day limitation on the accumulation of hazardous waste at its Cook County facility.
- AC 94-71 IEPA v. Atkinson Landfill Company, Inc. - The Board granted voluntary withdrawal of the petition for review and entered a default order, finding that the Henry County respondent had violated Sections 21(o)(1), 21(o)(2), 21(o)(3), and 21(o)(5) and ordering it to pay a civil penalty of \$2,000.00.
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NEW CASES - February 9, 1995 BOARD MEETING

- 95-46 Avon Products, Inc. v. IEPA - See Final Actions.
- 95-47 People of the State of Illinois v. W.O.W. Truck Lines, Inc. - The Board accepted this special waste hauling enforcement action against a St. Clair facility for hearing.
- 95-48 Kathe's Auto Service Center v. IEPA - The Board, on its own motion, accepted this underground storage tank appeal involving a Cook County facility and consolidated it with PCB 95-43 for hearing.
- AC 95-1 County of Will v. CDT Landfill - The Board accepted this appeal of an administrative citation against a Will County respondent and consolidated it with AC 94-98 and AC 95-2 for hearing.
- AC 95-2 County of Will v. CDT Landfill - The Board accepted this appeal of an administrative citation against a Will County respondent and consolidated it with AC 94-98 and AC 95-1 for hearing.
- AC 95-9 IEPA v. Robert L. Buck, Marie M. Buck, and Darrell Buck - The Board received an administrative citation against a Greene County facility.
- AC 95-10 IEPA v. William Kinney - The Board received an administrative citation against a Macoupin County facility.
- AC 95-11 IEPA v. Gordon McCann and Larson Foundation - The Board received an administrative citation against a Logan County facility.
- AC 95-12 IEPA v. Joe Perry - The Board received an administrative citation against a Cook County facility.
- AC 95-13 IEPA v. Staunton Fuel & Material, Inc. - The Board received an administrative citation against a Macoupin County facility.
- AC 95-14 IEPA v. Ken Lomax and Ken Lomax Enterprises - The Board received an administrative citation against a Jefferson County facility.
- AS 95-2 In the Matter of: The Joint Petition of the

IEPA and the City of Metropolis for an Adjusted Standard From 35 Ill. Adm. Code Part 304 for Suspended Solids, 5-Day Biological Oxygen Demand (BOD-5) and Ammonia Nitrogen - The Board held this petition on behalf of a Massac County facility for an adjusted standard from certain of the water pollution control regulations until after receipt of certificate of publication and granted the joint motion to incorporate exhibits from another proceeding, AS 94-17.

R95-9 In the Matter of: Illinois Farm Bureau Petition for Amendments to Regulation Amendments to 35 Ill. Adm. Code 810.103 (Solid Waste Disposal: General Provisions)-See Rulemaking Update.

FINAL ACTIONS - February 16, 1995 BOARD MEETING

- 93-55 Clarendon Hills Bridal Center (Learsi & Co., Inc.) v. IEPA - The Board affirmed the Agency's denial of reimbursement for \$330,434.37 in costs as lacking supporting documentation, beyond the scope of corrective action, or for action undertaken prior to notification of the release and reversed its denial of \$969.68 in sewer repair costs and associated handling charges in this underground storage tank reimbursement determination appeal involving a DuPage County facility. Theodore Meyer dissented.
- 94-18 City of Wheaton v. Office of the State Fire Marshal - The Board denied reconsideration of its December 1, 1994 dismissal of this underground storage tank reimbursement determination appeal because the motion raised nothing new that the Board did not consider in making its initial determination. Board Member J. Yi abstained.
- 94-85 Nichols Aluminum v. IEPA - The Board granted voluntary dismissal of this air permit appeal involving a Lake County facility.
- 94-207 Wilmer Brockman, Jr. and First Midwest Bank/Illinois, as Trustee Under Trust No. 757 v. IEPA - The Board affirmed the Agency's denial of a supplemental permit allowing suspension of waste acceptance in this land permit appeal because this LaSalle County facility never had an operating permit. Chairman Claire A. Manning and Board Member Marili McFawn concurred.
- 94-220 People of the State of Illinois v. City of Gillespie, Macoupin County; John Crawford, d/b/a Knostman Crawford Associates; and H & H Mechanical and Electrical Contractors, Inc. - The Board accepted a stipulation and settlement agreement in this water enforcement action against a Macoupin County facility, ordered the respondent, John Crawford Associates, to pay a civil penalty of \$25,000.00, and ordered it to cease and desist from further violation.
- 94-229 Village of Creve Coeur v. IEPA - The Board granted an exception from the prohibition against siting a new potential source (a sludge storage unit) within the setback zones of three community water supply wells in this water well setback exception involving a prospective Tazewell County facility. Board Member J.
- 94-237 Marathon Oil Company v. IEPA - The Board denied reconsideration of its December 14, 1994 order affirming the Agency's denial of reimbursement for \$93,911.80 in costs in this underground storage tank reimbursement determination appeal involving a Cook County facility because the motion did not present new facts or any reason to believe the initial decision was in error, the Board granted voluntary dismissal of the remaining claim for \$1,012.50 in costs.
- 94-247 Rodney B. Nelson, M.D. v. Kane County Forest Preserve, Jack Cook, Chairman and Kane County Cougars, William Larsen, General Manager - The Board found that it lacked jurisdiction over fireworks displays at baseball games because they are exempted under the Act and dismissed this citizen's noise enforcement action against a Kane County facility.
- 94-271 People of the State of Illinois v. National Interchem Corporation - The Board dismissed this Emergency Planning and Community Right-to-Know Act (EPCRA) enforcement action against a Cook County facility for lack of jurisdiction because the Agency had not properly given notice of the alleged violation before the People filed this action.
- 94-282 UNO-VEN Company v. IEPA - The Board granted this DuPage County gasoline dispensing facility a five-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.
- 94-299 P & S, Inc. v. IEPA - The Board granted this DuPage County gasoline dispensing facility a 17-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.
- 94-313 Major & Sandh Petroleum, Inc. v. IEPA - The Board granted this Cook County gasoline dispensing facility a five-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.
- 94-314 Mukhtiar Singh v. IEPA - The Board granted

	this Cook County gasoline dispensing facility a five-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.	95-55	<u>The Village of Sauget v. IEPA</u> - Upon receipt of an Agency recommendation, the Board granted this St. Clair County facility a 45-day provisional variance from the wastewater treatment plant overflow and bypass requirements during an upgrade to its metering capabilities.
94-320	<u>Dorothy B. Kindy, d/b/a Rex's Service Station, Inc. v. IEPA</u> - The Board granted this Cook County gasoline dispensing facility an eight-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.	AC 94-16	<u>Sangamon County v. Donley, Inc.</u> - The Board entered a default order, finding that the Sangamon County respondent had violated Sections 21(p)(1) and 21(p)(3) of the Act and ordering it to pay a civil penalty of \$1,000.00 and hearing costs in the amount of \$139.50. Board Member J. Theodore Meyer concurred.
94-321	<u>Emro Marketing Company (Romeoville Facility) v. IEPA</u> - The Board granted this Will County gasoline dispensing facility a five-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.	AS 94-10	<u>In the Matter of: Petition of Envirite Corporation For an Adjusted Standard From 35 Ill. Adm. Code 721, Subpart D: List of Hazardous Substances, Appendix I</u> - The Board granted clarification and modification and vacated its December 14, 1994 order, reissuing an order granting this Cook County facility an adjusted standard delisting a hazardous waste, subject to conditions.
94-322	<u>Emro Marketing Company (Monee Facility) v. IEPA</u> - The Board granted this Will County gasoline dispensing facility a five-month variance from the requirement to install and operate Stage II vapor recovery equipment, subject to conditions.		
94-390	<u>Madison County conservation Alliance v. Waste Management, Inc. (Chain-of-Rocks Canal on Chouteau Island), and IEPA</u> - The Board dismissed this third party land permit appeal involving a Madison County facility (landfill), since the legislature did not vest the Board with jurisdiction to hear third party appeals of Agency land permit determinations.	R92-21	<u>In the Matter of: Amendments to the New Source Review Rules, 35 Ill. Adm. Code 203</u> - See Rulemaking Update.
		R95-8	<u>In the Matter of: Pretreatment Update, USEPA Regulations (July 1, 1994 through December 31, 1994)</u> - See Rulemaking Update.

NEW CASES - February 16, 1995 BOARD MEETING

95-1	<u>Penny Snyder, George J. Moran, Robert D. Larson, George Arnold, Jim Bensman, Madison County Conservation Alliance, Piasa Palisades Group of the Sierra Club v. Waste Management of Illinois, Inc.</u> - The Board held this citizens' land enforcement action against a Madison County facility for a frivolous or duplicitous determination.		total suspended solids effluent requirements of the water pollution control regulations filed on behalf of a DuPage County facility for an Agency recommendation.
		95-50	<u>Palos Kar Wash Professionals, Inc. v. IEPA</u> - The Board accepted this underground storage tank corrective action appeal involving a Cook County facility for hearing.
95-6	<u>Silver Glen Estates v. IEPA</u> - The Board accepted an amended petition on behalf of a Kane County facility for a variance from the radium-226 and radium-228 standards of the public water supply regulations and held this matter for an Agency recommendation.	95-51	<u>Don Carson Steinheimer and Ray Darrow Steinheimer as Co-Executors of the Estate of Irene D. Steinheimer, deceased v. GTE North, Inc.</u> - The Board held this citizen's underground storage tank enforcement action against a Morgan County facility for a frivolous and duplicitous determination.
95-49	<u>Glenbard Wastewater Authority v. IEPA</u> - The Board held this petition for a variance from the		

- 95-52 Safety-Kleen Corporation (Dolton Illinois Recycle Center) v. IEPA - The Board accepted this petition filed on behalf of a Cook County facility for a variance from the volatile organic material emissions requirements from other units of the air pollution control requirements for hearing.
- 95-53 Prairie Packaging, Inc. v. IEPA - The Board accepted this air permit appeal involving a Cook County facility for hearing.
- 95-54 The City of Metropolis (Metropolis Municipal Landfill) v. IEPA - The Board accepted this land permit appeal involving a Massac County facility for hearing.
- 95-55 The Village of Sauget v. IEPA - See Final Actions.
- AC 95-5 IEPA v. Atkinson Landfill Company and Donald Martin - The Board accepted an appeal of this administrative citation filed against a Henry County facility.
- AS 94-19 In the Matter of: Petition of Hepworth U.S. Holdings, Inc. for an Adjusted Standard From 35 Ill. Adm. Code 620.410 - The Board accepted this petition filed on behalf of a LaSalle County facility for an adjusted standard for relief from the Class I groundwater quality standards for arsenic, lead, and nickel and requested that the Agency to re-file its response, and, having received two requests for hearing, the Board set this matter for hearing.
- R95-10 Emergency Rule Amending the 7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area, 35 Ill. Adm. Code 219.585(a) - See Rulemaking Update.

FINAL ACTIONS - February 23, 1995 SPECIAL BOARD MEETING

- 93-160 People of the State of Illinois v. Naperville Asphalt, Inc. - The Board accepted a stipulation and settlement agreement in this air enforcement action against a Kendall County facility, ordered the respondent to pay a civil penalty of \$2,000.00, and ordered it to cease and desist from further violation. Board Member J. Theodore Meyer concurred.
- 94-54 Central Illinois Public Service Company v. IEPA - The Board granted voluntary withdrawal of this NPDES permit appeal involving a Jasper County facility.
- 94-57 Central Illinois Public Service Company v. IEPA - The Board granted voluntary withdrawal of this NPDES permit appeal involving a Montgomery County facility.
- 94-230 Bargain Auto Rental, Inc./Budget Rental Car v. Office of the State Fire Marshal - The Board granted voluntary withdrawal of this underground storage tank reimbursement appeal involving a DuPage County facility.
- 94-392 People of the State of Illinois v. Burkart Foam, Inc. - The Board accepted a stipulation and settlement agreement in this Emergency Planning and Community Right-to-Know Act (EPCRA) enforcement action against a Alexander County facility, ordered the respondent to pay a civil penalty of \$2,850.00, and ordered it to cease and desist from further violation.
- 95-59 Truckstops of America, Inc. v. IEPA - Upon receipt of an Agency recommendation, the Board granted this Lake County gasoline dispensing facility a 45-day extension of the previous provisional variance granted in PCB 95-8 from the air pollution control regulations that require the installation and operation of Stage II vapor recovery equipment.
- 95-60 H & E Gas Pantry v. IEPA - Upon receipt of an Agency recommendation, the Board granted this Cook County gasoline dispensing facility a 45-day provisional variance from the air pollution control regulations that require the installation and operation of Stage II vapor recovery equipment.
- 95-61 Petro Plus, Inc. v. IEPA - Upon receipt of an Agency recommendation, the Board granted this Cook County gasoline dispensing facility a 45-day extension of the previous provisional variance granted in PCB 94-379 from the air pollution control regulations that require the installation and operation of Stage II vapor recovery equipment.
- R95-10 In the Matter of: Emergency Rule Amending

7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area, 35 Ill. Adm. Code 219.585(a) - See Rulemaking Update.

NEW CASES - February 23, 1995 SPECIAL BOARD MEETING

95-56	<u>Rodney B. Nelson, M.D. v. Kane County Board, Warren Kammerer, Chairman</u> - The Board held this citizen's land enforcement action against a Madison County facility for a frivolous and duplicitous determination.		Bond County facility for hearing.
		AC 95-6	<u>IEPA v. A-Reliable Auto Parts & Wreckers, Inc., a/k/a Scrap Processors</u> - The Board accepted an appeal of this administrative citation against a Cook County facility.
95-57	<u>Forrest Williams, d/b/a Williams Mobil v. IEPA</u> - The Board, on its own motion, consolidated this underground storage tank appeal involving a Lake County facility with PCB 95-58, and accepted it for hearing.	AC 95-7	<u>Sangamon County v. Hart of Illinois, Inc.</u> - The Board accepted an appeal of this administrative citation against a Sangamon County facility.
95-58	<u>Forrest Williams, d/b/a Williams Mobil v. IEPA</u> - The Board, on its own motion, consolidated this underground storage tank appeal involving a Lake County facility with PCB 95-57, and accepted it for hearing.	AC 95-15	<u>County of Will v. CDT Landfill</u> - The Board received an administrative citation against a Will County facility.
		AC 95-16	<u>IEPA v. John Sharp, d/b/a John's Auto Salvage</u> - The Board received an administrative citation against a Montgomery County facility.
95-59	<u>Truckstops of America, Inc. v. IEPA</u> - See Final Actions.		
95-60	<u>H & E Gas Pantry v. IEPA</u> - See Final Actions.	AC 95-17	<u>Sangamon County v. The Illinois National Bank of Springfield, N/K/A First of America Trust Company, as Trustee Under Trust No. 894-6418-002; and Ray Landers</u> - The Board received an administrative citation against a Sangamon County facility.
95-61	<u>Petro Plus, Inc. v. IEPA</u> - See Final Actions.		
95-62	<u>D & L Landfill, Inc. v. IEPA</u> - The Board accepted this land permit appeal involving a		

CALENDAR OF HEARINGS

All hearings held by the Board are open to the public. All Pollution Control Board Meetings (highlighted) are open to the public but public participation is generally not allowed. Times and locations are subject to cancellation and rescheduling without notice. Confirmation of hearing dates and times is available from the Clerk of the Board at 312- 814-6931.

March 2 11:00 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
March 3 10:00 a.m.	PCB 94-215 UST-FRD	<u>Stroh Oil Company v. OSFM</u> - Pollution Control Board Office, Suite 402, 600 South Second Street, Springfield.
March 9 11:00 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 11-500, Chicago
March 10 10:00 a.m.	AC 94-98 AC	<u>County of Will v. CDT Landfill</u> - County Board Conference Room, 302 North Chicago Street, Joliet. (Consolidated with AC 95-1 and AC 95-2.)
March 13 1:00 p.m.	PCB 95-43 UST-Appeal	<u>Kathe's Auto Service Center v. EPA</u> - James R. Thompson Center, Room 11-500, 100 West Randolph Street, Chicago. (Consolidated with PCB 95-48.)

March 14 1:00 p.m.	PCB 95-43 UST-Appeal	<u>Kathe's Auto Service Center v. EPA</u> - James R. Thompson Center, Room 11-500, 100 West Randolph Street, Chicago. (Consolidated with PCB 95-48.)
March 16 11:00 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
March 17 10:00 a.m.	PCB 95-3 A-V	<u>Illinois Petroleum Marketers Association (representing 267 facilities located in the Chicago ozone nonattainment area) v. EPA</u> - James R. Thompson Center, Room 9-040, 100 West Randolph Street, Chicago.
March 23 11:00 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 11-500, Chicago
March 28 10:00 a.m.	R 94-2(B) R, Land	<u>In the Matter of: Petroleum Leaking Underground Storage Tanks, 35 Ill. Adm. Code 732</u> - County Board Chambers, 200 South Ninth Street, 2nd Floor, Springfield.
March 29 10:00 a.m.	R 94-2(B) R, Land	<u>In the Matter of: Petroleum Leaking Underground Storage Tanks, 35 Ill. Adm. Code 732</u> - County Board Chambers, 200 South Ninth Street, 2nd Floor, Springfield.
April 3 10:00 a.m.	R 95-9 R, Land	<u>In the Matter of: Petition for Amendments to 35 Ill. Adm. Code 810.103 (Solid Waste Disposal: General Provisions)</u> - DeKalb County Farm Bureau, 315 North 6th Street, Lower Auditorium, DeKalb.
April 6 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 2-025, Chicago
April 7 11:00 a.m.	AS 94-2 Air	<u>In the Matter of: Petition of Solar Corporation and the IEPA for an Adjusted Standard from 35 Ill. Adm. Code 218.Subpart PP</u> - Libertyville Village Hall, Board Room, 118 West Cook Street, Libertyville.
April 10 10:00 a.m.	AS 94-8 Water, NPDES	<u>In the Matter of: Petition of Acme Steel Company and LTV Steel Company for an Adjusted Standard from 35 Ill. Adm. Code 302.211</u> - James R. Thompson Center, Room 9-040, 100 West Randolph Street, Chicago.
April 10 10:00 a.m.	R 95-9 R, Land	<u>In the Matter of: Petition for Amendments to 35 Ill. Adm. Code 810.103 (Solid Waste Disposal: General Provisions)</u> - Illinois Dep't of Agriculture State Fairgrounds, Agricultural Building, Springfield.
April 12 10:00 a.m.	AC 95-4 AC	<u>Montgomery County v. Envotech, Illinois, Inc. (Litchfield Hillsboro Landfill)</u> - Montgomery County Courthouse, Courtroom 1, 120 North Main Street, Hillsboro.
April 13 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 11-500, Chicago
April 18 1:00 p.m.	AS 94-3 Air	<u>In the Matter of: Petition of Outboard Marine Corporation (OMC Waukegan Facility) for an Adjusted Standard from 35 Ill. Adm. Code 218</u> - Lake Courthouse, County Board Room, 10th Floor, 18 North County Street, Waukegan.
April 19 10:00 a.m.	AC 94-92 AC	<u>County of DuPage v. Waste Management of Illinois, Inc. (Greene Valley Landfill)</u> - DuPage County Courthouse, Courtroom 2003, Second Floor, 505 North County Farm Road, Wheaton.
April 20 10:00 a.m.	AC 95-7 AC	<u>Sangamon County v. Hart of Illinois, Inc. (Laomi/Hart of Illinois, Inc.)</u> - Illinois Pollution Control Board, Suite 402, 600 South Second Street, Springfield.

April 20 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
April 21 10:00 a.m.	AC 94-92 AC	<u>County of DuPage v. Waste Management of Illinois, Inc. (Greene Valley Landfill)</u> - DuPage County Courthouse, Courtroom 2003, Second Floor, 505 North County Farm Road, Wheaton.
April 21 11:00 a.m.	AS 94-15 Land	<u>In the Matter of: Petition of Lone Star Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 811.320(d)</u> - LaSalle County Courthouse, Courtroom 305, 119 West Madison Street, Ottawa.
April 24 10:00 a.m.	PCB 95-77 L-S-R, 3d P	<u>Keith Tiberend v. Waste Management of Illinois, Inc. and Village of Marissa</u> - M.A.C.C. Building (Old High School), North Borders Street, Marissa.
April 25 10:00 a.m.	R 94-2(B) R, Land	<u>In the Matter of: Petroleum Leaking Underground Storage Tanks, 35 Ill. Adm. Code 732</u> - James R. Thompson Center, 100 West Randolph Street, Room 9-040, Chicago.
April 26 10:00 a.m.	R 94-2(B) R, Land	<u>In the Matter of: Petroleum Leaking Underground Storage Tanks, 35 Ill. Adm. Code 732</u> - James R. Thompson Center, 100 West Randolph Street, Room 9-040, Chicago.
April 27 10:00 a.m.	PCB 94-273 EPCRA-E	<u>People of the State of Illinois v. Metals Technology Corp.</u> - Elmhurst City Hall, Second Floor, Conference Room No. 2, 209 North York Street, Elmhurst.
May 1 10:00 a.m.	PCB 95-75 P-A, Air	<u>Medical Disposal Services, Inc. (Harvey Site) v. EPA</u> - James R. Thompson Center, Room 11-500, 100 West Randolph Street, Chicago. (Consolidated with PCB 95-76.)
May 3 10:00 a.m.	PCB 94-270 A-E	<u>People of the State of Illinois v. Spraying Systems Company</u> - DuPage County Courthouse, Courtroom 212, 505 North County Farm Road, Wheaton.
May 4 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
May 8 1:00 p.m.	AS 94-19 PWS	<u>In the Matter of: Petition of Hepworth U.S. Holdings, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 620.410</u> - LaSalle County Downtown Courthouse, Room 206, Ottawa.
May 9 9:00 a.m.	PCB 94-371 WWSE	<u>City of Elgin v. EPA</u> - Kane County Courthouse, Courtroom 110, 100 South Third Street, Geneva.
May 10 10:00 a.m.	PCB 95-89 UST-FRD	<u>Eugene W. Graham (Libertyville Citgo) v. EPA</u> - Libertyville Village Hall, Board Room, 118 West Cook Street, Libertyville.
May 18 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
May 19 10:00 a.m.	PCB 93-15 N-E, Citizens	<u>Dorothy Furlan and Michael Furlan v. University of Illinois School of Medicine</u> - Winnebago County Courthouse, County Board Room 817, 400 West State Street, Rockford.
June 1 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
June 1 1:00 p.m.	PCB 94-370 A-V	<u>The Dow Chemical Company (Dow Joliet Site) v. EPA</u> - Illinois Pollution Control Board, 600 South Second Street, Suite 402, Springfield.

June 9 10:00 a.m.	PCB 92-60 UST-FRD	<u>Kean Oil Company v. EPA</u> - McHenry County Government Center, Room B-164, 2200 North Seminary, Woodstock.
June 14 10:00 a.m.	PCB 94-191 P-A, NPDES	<u>Arco Products Company, a division of Atlantic Richfield Company v. EPA</u> - James R. Thompson Center, Room 11-500, 100 West Randolph Street, Chicago.
June 15 10:30 a.m.		Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago
June 21 1:00 p.m.	PCB 94-136 UST-FRD	<u>Elmhurst-Chicago Stone Company v. EPA</u> - DuPage County Board Office, Third Floor, 421 North County Farm Road, Wheaton.

Calendar Code

3d P	Third Party Action	A-CAAdministrative Citation
A-E	Air Enforcement	A-SAdjusted Standard
A-V	Air Variance	CSOCombined Sewer Overflow Exception
GW	Groundwater	HW DelistRCRA Hazardous Waste Delisting
L-E	Land Enforcement	L-S-RLandfill Siting Review
L-V	Land Variance	MWMedical Waste (Biological Materials)
N-E	Noise Enforcement	N-VNoise Variance
P-A	Permit Appeal	PWS-EPublic Water Supply Enforcement
PWS-V	Public Water Supply Variance	RRegulatory Proceeding proceeding (hazardous waste only)
RCRA	Resource Conservation and Recovery Act	S02S02 Alternative Standards (35 ILL. ADM. CODE 302.211(f))
SWH-E	Special Waste Hauling Enforcement	SWH-VSpecial Waste Hauling Variance
T	Thermal Demonstration Rule	T-CTax Certifications
T-S	Trade Secrets	UST-AppealUnderground Storage Tank Corrective Action Appeal
UST-E	Underground Storage Tank Enforcement	UST-FRDUnderground Storage Tank Fund Reimbursement Determination
W-E	Water Enforcement	W-VWater Variance
WWS	Water-Well Setback Exception	

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The Illinois Pollution Control Board is an independent seven member board which adopts the environmental control standards for the State of Illinois and rules on enforcement actions and other environmental disputes. The Board Members are:

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The Environmental Register is a newsletter published by the Board monthly. The Register provides updates on rulemakings and other information, lists final actions, and contains the Board's hearing calendar. The Register is provided free of charge.

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