ENVIRONMENTAL REGISTER

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BOARD'S 25th ANNIVERSARY DINNER A HUGE SUCCESS

The 25th anniversary dinner celebration of the Board on September 6 was a huge success. The Board extends its sincere appreciation to all whose efforts combined to make this a wonderful celebration! Proceeds from the dinner in excess of $5,000 were donated to the Chicago Bar Association's Irv Goodman environmental education fund as a result of over 400 people in attendance, including past and present Board members and employees, the regulated community, professional and trade associations, environmental groups, and environmental professionals.

The co-chairs of the event, Chairman Claire A. Manning, and the original Chairman, David P. Currie, distinguished professor of law at the University of Chicago gave the keynote addresses of their perspectives then and now. Richard Kissel, a member of the original Board appointed in July, 1970 acted as the master of ceremonies. Other members of that original Board, Samuel Aldrich, Jacob D. Dumelle, and Samuel T. Lawton, Jr. addressed the audience. Other featured speakers were Virginia Scott, representing the Illinois Environmental Council; Sidney Marder, Executive Director of the Illinois Environmental Regulatory Group, and a former Board member; former State Representative George Burditt, one of the sponsors of the bill that became the original Environmental Protection Act; Dr. Cecil Lue-Hing, Director of Research and Development for the Water Reclamation District of Greater Chicago, and James T. Harrington, of Ross & Hardies. Bill Roberts, Chief Legal Counsel to Governor Edgar, read the Governor's proclamation declaring September 6, 1995 as Pollution Control Board Day in Illinois. One of the high spots of the evening was a special presentation to Eileen Johnston, for her years of dedicated service to the environmental community organizing educational workshops and environmental cruises.

The Board released its 25th anniversary Annual report for fiscal year 1995 at the celebration. *More information on the 25th Anniversary Annual Report, including availability, appears in a box on the next page.*

END OF LEGISLATIVE SESSION SUMMARIZED IN THIS ISSUE

This issue includes a summary of the legislation of interest issuing from the recent end of the 1995 session of the 89th General Assembly, in ***LEGISLATIVE UPDATE***, beginning on page 7.

BOARD 25th ANNUAL REPORT AVAILABLE

The Board recently released its Silver Anniversary 25th Annual Report for fiscal year 1995. Copies were distributed to each person attending the Board's anniversary dinner, to Governor Edgar, and to each member of the General Assembly. Featured in the 25th Annual Report are interviews of current Board Chairman Claire A. Manning and the first Chairman, Professor David P. Currie. In addition to capsulizing recent legislation of interest to the Board, recent judicial decisions involving the Board, and reviewing the Board's fiscal year 1995 activities, the Report outlines the Board's functions and statutory authority under the Environmental Protection Act. The 25th Annual Report also sets forth an historical outline of the Board's first 25 years, referencing notable events in the history of the Board and key decisions of the appellate courts and the Illinois Supreme Court in Board cases. It highlights the history of the Board, outlines a list of past and present Board members, and sets forth biographical information on current Board members, veteran employees, and on Eileen Johnston, the honoree at the Board's recent 25th anniversary dinner *(see box preceding page)*.

To obtain a copy of the Board's 25th Anniversary Annual Report, contact Victoria Agyeman, at 312-814-3620.

APPELLATE UPDATE

FIRST DISTRICT AFFIRMS WORLD MUSIC THEATER DECISION

In the recent decision in *Discovery Group South, Ltd. v. PCB* (1st Dist. Aug. 28, 1995), No. 1-93-1438, the appellate court affirmed the Board's decision in the citizens' noise enforcement case involving the World Music Theatre in Tinley Park. The court held that the Board's decision was not against the manifest weight of the evidence and that the remedy imposed by the Board was not arbitrary and capricious, did not exceed the Board's authority, and did not violate the Constitutional guarantees of equal protection and freedom of speech.

Initiating *Village of Matteson v. World Music Theatre*, PCB 90-146, a complaint was filed in August of 1990 by the Village of Matteson that alleged noise pollution from the operation of the World Music Theatre in Tinley Park. The Board held 10 days of hearings over the two and one-half years this matter was pending. The Board received extensive testimony from local residents, village officials, Theatre personnel, and sound experts. On April 29, 1991, the Board issued an interim order that found the Theatre in violation and required it to monitor sound levels at various nearby locations and report potential methods of reducing the impact of those sounds.

On February 25, 1995, after considering the monitoring and report submitted by the Theatre, conducting additional hearings, and accepting further pleadings, the Board found that the respondents, World Music Theatre, JAM Productions, Ltd., and Discovery South Group, Ltd. (collectively, "the Theatre"), had violated the Board's noise regulations, imposed a monetary penalty, and ordered the Theatre to cease and desist from future violations. The Board found that the Theatre had violated the regulations on 26 dates in 1990, 1991 and 1992. The Board ordered the Theatre to pay a $13,000 fine and to conduct sound monitoring of all concerts for three years. The Theatre was required to monitor the sound in accordance with the Board's order at sites in Matteson, Country Club Hills, and at the theater, using a 5 minute L_{eq}.

The Theatre appealed the Board's decision in PCB 90-146 to the Appellate Court for the First District of Illinois. The Theatre argued that the Board's decision was defective on four bases: *1)* that it was against the manifest weight of the evidence; *2)* that the remedy imposed was arbitrary and capricious; *3)* that the Board exceeded its statutory authority in imposing the remedy; and *4)* that the Board's remedy violated the guarantees of equal protection and freedom of speech in the federal Constitution.

The Theatre asserted three independent arguments to support its claim that the decision was against the manifest weight of the evidence. The first argument was that the Board had erred in accepting inadmissible hearsay evidence (a compiled listing of noise complaints to the Matteson police and correspondence containing similar listings from the Country Club Hills police). The First District examined Section 10-40(a) of the Administrative Procedure Act (APA) *(5 ILCS 100)*, which sets forth the standard for admission of evidence in administrative proceedings, and concluded that "a reasonably prudent person would find a tabulation of the local police department's log regarding telephone complaints trustworthy and reliable." It held them admissible, but further noted that even if they had been inadmissible.

The second argument that the decision was against the manifest weight of the evidence related to the sufficiency of the testimony of several Matteson residents as to the impact of the noise on their lives.

The Theatre argued that these witnesses were not representative of the broader population, but were rather "hypersensitive" individuals. Noting that residents who testified that the concert music did not bother them had clearly heard it over two miles away, the court stated that a finding of violation did not require that the noise affect all citizens and to the same degree. Rather, all that was necessary was that some of the residents indicated unreasonable interference with their enjoyment of life. In the opinion of the court, this was sufficient to support a finding of noise pollution.

The final manifest weight argument pertained to the Board's consideration of the factors set forth in Section 33(c) of the Environmental Protection Act (Act) *(415 ILCS 5)*. The court noted that the Board had specifically addressed each of the statutory factors in its opinions and orders. The court summarized the Theatre's arguments as contending that the Board had failed to properly consider the statutory factors because it had not properly considered evidence of the Theatre's economic value, the appropriateness of its location, and the economic feasibility of requiring compliance. The First District characterized this argument as indicating the Theatre unhappiness with the weight given each factor. Relying on various authorities, the court noted that its function was not to reweigh the evidence and that the standard of review required affirmance if the evidence "fairly supports" the Board's decision and found no basis for reversing the Board's conclusion that the Theatre had emitted noise pollution in violation of the Act.

As to the remedy imposed by the Board, the court characterized the Theatre's challenges as including four arguments. The first was that the remedy was against the manifest weight of the evidence and stricter than general numerical noise emissions limitations. The Second was that the remedy was beyond the scope of the Board's authority under the Act. The third was that the remedy was an illegal rulemaking. Finally, the fourth was that the remedy violated the Theatre's constitutional equal protection and freedom of speech rights.

The court initially noted that case law imposes two standards of review for administrative decisions, and each is appropriate in a different context. In the review of quasi-judicial decisions, the "manifest weight" standard is appropriate; in context of a quasi-legislative decision, the "decision will be upheld unless it is arbitrary, capricious, or unreasonable." The court held that the Board was interpreting its own rules and had acted in a quasi-legislative capacity in fashioning a remedy, so the "arbitrary, capricious, or unreasonable" standard of review applied to its review of the remedy.

The First district observed that the Board had not applied a stricter, "*ad hoc*", noise standard in finding that the Theatre had violated the Act and Board regulations. The court noted that the regulatory numerical standard, which requires a one-hour average noise measurement, applied only to determining a violation of the Part 901 numerical standards, not to Section 24 "nuisance noise" violations. The issue was whether a deviation from the general rules was appropriate in fashioning a remedy. Observing that the Board chose a five-minute averaging period for the remedial noise monitoring because the record indicated that the regulatory averaging period was "unrealistically long" in context, the First District stated that the Board appropriately imposed reasonable restrictions to correct the Theatre's noise problem. The court held that the shorter monitoring period was not arbitrary and capricious.

The appellate court did not agree that the remedy exceeded the Board's statutory authority. Quoting *Kaeding v. PCB* (2d Dist. 1974), 22 Ill. App. 3d 36, 316 N.E.2d 788, the First District noted that the Board has "those powers that are reasonably necessary to accomplish the legislative purpose of the administrative agency . . .." The court held that the remedy was an exercise of that power.

The First District also did not agree that the Board had engaged in improper rulemaking in imposing the remedy on the Theatre. Citing Section 1-70 of the APA and the Supreme Court's opinion in *Granite City Steel Division of National Steel Co. v. PCB* (1993), 155 Ill. 2d 149, 613 N.E.2d 719, the court observed that a "rule" applies generally to all persons similarly situated. It held that Board's imposition of the five-minute averaging period was not a "rulemaking" as defined in the APA.

Finally, the court addressed the constitutional claims. It disposed of the equal protection claim, noting that the "unreasonable interference" standard used by the Board in finding a violation applies to all noise sources. The First district held that the Board's order did not violate the Theatre's equal protection rights. On the freedom of expression issue, the court observed that although music is a protected form of expression, reasonable content-neutral regulations are permissible if they serve a substantial governmental interest. The First District noted that there is such an interest in "protecting the tranquility and privacy of the home from unwelcome noise." It held that the volume restrictions imposed by the Board did not violate the Theatre's freedom of expression. The First District affirmed the Board's judgment.

(Editor's note: As this issue was prepared for publication, the Theatre had filed a motion for rehearing.)

SECOND DISTRICT AFFIRMS BOARD DISMISSAL OF COMPLAINT

In a Supreme Court Rule 23(c) opinion and order in *Nelson v. PCB* (2d Dist. Aug. 7, 1995), No. 2-95-0281, the Second District appellate court affirmed the Board's dismissal of a citizen's noise pollution complaint in PCB 94-247, *Rodney B. Nelson, M.D. v. Kane County Forest Preserve, Jack Cook, Chairman and Kane County Cougars, William Larsen, General Manager* (Feb. 16, 1995). In that decision, the Board had 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. The Second District held that the Board properly did not limit the exemption of Section 24 of the Environmental Protection Act to the actual ball playing itself. Rather, the court agreed that the Section 3.25 definition of "organized amateur or professional sporting activity" was not limited to necessary activities but included all activities part of the sporting activity.

FIRST DISTRICT GRANTS VOLUNTARY DISMISSAL OF APPEALS OF BOARD DISMISSALS

In two recent decisions, the appellate court granted voluntary dismissal of appeals of the Board's dismissal of petitions. In *Illinois Wood Energy Partners, L.P. v. PCB* (1st Dist. July 25, 1995), No. 1-95-0004 (AS 94-1), it was a petition for an adjusted standard. In *BTL Specialty Resins Corp. v. PCB* (1st Dist. Aug. 1, 1995), No. 1-94-4040 (PCB 94-160), it was a petition for "review of final hazardous waste determination". *(Editor's note: See issues 488, Nov., 1994 & 490, Jan., 1995 for more details.)*

RULEMAKING UPDATE

DELAYED EFFECTIVE DATE FOR LANDFILL FINANCIAL ASSURANCE ADOPTED, R95-13

The Board adopted a delayed effective date for the financial assurance requirements applicable to municipal solid waste landfills (MSWLFs) on August 24, 1995. This identical-in-substance action, under docket R95-13, was prompted by the April 7, 1995 action by U.S. EPA to delay the effective date for financial assurance for RCRA Subtitle D facilities by two years, from April 9, 1995 to April 9, 1997. U.S. EPA stated that it needed the additional time to perfect financial assurance mechanisms for local government and corporate self-assurance for MSWLFs.

The Board proposed the amendments for First Notice publication in the *Illinois Register* on May 4, 1995, and Notice of Proposed Amendments appeared on May 19, 1995. The Board delayed adopting the amendments until Governor Edgar signed P.A. 89-200 (formerly SB 629) into law, which occurred on July 21, 1995. In adopting the amendments, the Board noted P.A. 89-200 and its January 1, 1996 effective date at each amended statement of the Subtitle D financial assurance compliance deadline. Direct questions to Michael J. McCambridge, at 312-814-6924. Request copies of the Board's opinion and order from Victoria Agyeman, at 312-814-3620. Please refer to docket R95-13.

(Editor's note: Section 21.1 of the Act has long required that owners or operators of landfills maintain financial assurance for closure and post-closure care of their facilities, except that Section 21.1 exempted state and local government-owned facilities from this requirement. With the advent of the federal RCRA Subtitle D requirements in 40 CFR 258, which exempt only federally- and state-owned landfills, the General Assembly amended Section 21.1 to require financial assurance for the local government-owned facilities after April 9, 1995. By P.A. 89-200, effective January 1, 1996, the statutory financial assurance effective date becomes April 9, 1997 for local government MSWLFs, since privately owned landfills have already been required to maintain the assurance. See related item on P.A. 89-200 under Recent Legislation *in this issue.)*

CLEAN-FUEL FLEET PROGRAM PROPOSAL PROPOSED FOR SECOND NOTICE, R95-12

On July 7, 1995, the Board proposed rules for Second Notice review by the Joint Committee on Administrative Rules (JCAR) that would establish clean-fuel fleet program requirements in Illinois. The program would require fleet owners that acquire new motor vehicles to use a specified minimum percentage of clean-fuel vehicles (CFFVs), which meet low emissions requirements established by U.S. EPA, as part of those fleets, beginning with model year 1998.

The Illinois EPA (Agency) filed its clean-fuel proposal on March 30, 1995 as a Section 28.5 "fast-track" rulemaking proposal. The Agency stated in its rulemaking proposal that these rules are necessitated by the federal Clean Air Act Amendments of 1990 (CAAA). The CAAA requires a reduction in ozone precursor emissions in areas that are nonattainment for ozone. As part of the federal requirements, states must adopt a clean-fuel fleet program for areas that are federally-designated as serious, severe, and extreme for ozone nonattainment. A clean-fuel fleet program is required for the Chicago metropolitan area, which U.S. EPA has designated as a severe ozone nonattainment area.

The Board proposed the regulations for First Notice publication on April 6, 1995. *(See issue 494, May, 1995.)* A notice of Proposed Amendments appeared in the *Illinois Register* on April 28, 1995. The Board conducted a public hearing on the proposal on May 19, 1995, in Chicago. The Second Notice period began on July 13, 1995, when JCAR received the Second Notice Package. JCAR voted No Objection to the proposed rules on August 15, leaving the Board free to adopt rules at any time. *(Editor's note: As this issue was assembled, the Board had adopted final rules on September 7, 1995. See related article on Governor Edgar's amendatory veto of Alternate Clean Fuel Act bill, SB 276 under* Recent Legislation *in this issue.)*

The Board accepted the clean-fuel fleet program rulemaking proposal 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 regulations for Second Notice within 130 days on receipt of the regulations from the Agency. Section 28.5(p) requires that the Board must adopt and file final rules based on the regulations within 21 days of when it receives a Certificate of No Objection from JCAR.

Direct questions on the clean-fuel fleet program proposal to Chuck Feinen, at 312-814-3473. Request copies of the Second Notice opinion and order from Victoria Agyeman, at 312-814-3620. Please refer to docket R95-12.

BOARD ACTS ON FEDERAL AMENDMENTS TO THE DEFINITION OF VOM, R95-2 & R95-16

On July 7, 1995, the Board adopted one set of identical-in-substance amendments, under docket number R95-2, to the definition of volatile organic material (VOM) for the purposes of the air pollution control regulations. At the same time, the Board proposed another set of amendments under docket R95-16. On August 3, 1995, the Board proposed additional amendments to other definitions under docket R95-16 for public comment in response to an Illinois EPA (Agency) request. The R95-2 and R95-16 amendments each respond to a separate federal action exempting compounds from regulation for the purposes of ozone control.

The adopted R95-2 amendments responded to a October 5, 1994 U.S. EPA amendment of its definition of volatile organic compound, which is the basis for the Illinois definition of VOM. The R95-2 docket included this amendment as the only federal amendment that occurred in the update period July 1 through December 31, 1994. The action added one compound and a class of compounds to the list of chemical species that are exempted from the definition of VOM and, hence, are exempted from regulation for control of ozone precursors. The single compound is parachlorobenzotrifluoride (PCBTF), whose alternative names are *p*-chlorotrifluoromethylbenzene or *o*-chloro-α,α,α-trifluorotoluene. The class of compounds are cyclic, branched, or linear completely-methylated siloxanes. The effect of this federal action was to exempt emissions of this material from controls for the purposes of state implementation plans for ozone--*i.e.*, industries no longer needed to control emissions of these materials, and states could no longer take credit for their control as part of state implementation plans (SIPs).

On March 16, 1995, the Board granted an Agency request for expedited consideration of the R95-2 amendments. Attached to the Agency request were letters directed to the Agency from Occidental Chemical Corporation and Dow Corning Corporation requesting that Illinois amend the Illinois definition of VOM to include the new exemptions. *(See issue 493, Apr., 1995.)* The Board initiated this action on April 20, 1995 by proposing the amendments. *(See issue 494, May, 1995.)* A Notice of Proposed Amendments appeared in the May 12, 1995 *Illinois Register*. The Board conducted one public hearing on the proposed rules, as required by the federal Clean Air Act, on June 14, 1995 in Chicago.

The proposed R95-16 amendments responded similarly to a June 16, 1995 U.S. EPA amendment the federal definition to exclude acetone, whose alternative names are 2-propanone and dimethyl-ketone. This was as the only federal amendment that occurred in the update period January 1 through June 30, 1995. The Board gave expedited consideration to the June 6 federal amendments in the realization of the importance of acetone as a wide-spread industrial solvent.

On August 3, 1995, the Board proposed additional amendments for public comment under docket R95-16 in response to an Illinois EPA (Agency) request. The Agency submitted a request for additional amendments on July 18, 1995, asking the Board to amend the definitions of "organic material", "petroleum liquid", and "organic solvent" to exclude acetone. The Agency stated that acetone would remain subject to some segments of the volatile organic material regulations unless also excluded from those additional definitions. The Board proposed the Agency-requested additional amendments for the purposes of public comment, specifically requesting comment on several issues that the request raised. The 45-day public comment period began when a Notice of Proposed Amendments appears in the *Illinois Register* on August 18, 1995. After which time, the Board will be free to adopt amendments. The Board could choose to conjunctively adopt the amendments of July 7 with those of August 3, or it may choose to proceed separately.

Direct questions to the hearing officer, Michael J. McCambridge, at 312-814-6924. Request copies of the proposed amendments from Victoria Agyeman, at 312-814-3620. Please refer to docket R95-2 or R95-16, as appropriate.

EXEMPTION FROM LANDFILL REQUIREMENTS FOR DISPOSAL OF DEAD ANIMALS PROPOSED FOR SECOND NOTICE, R95-9

On August 24, 1995, the Board proposed amendments to the Illinois landfill regulations relating to the disposal of dead animals in Illinois for Second Notice review by the Joint Committee on Administrative Rules (JCAR). The amendments would clarify the relationship between the Illinois landfill regulations and the Illinois Dead Animal Act *(225 ILCS 610/1)*. To this end, the amendments would add a definition of "dead animal disposal site" and exclude such a site from regulation as a municipal solid waste landfill (MSWLF) by excluding it from the definition of a MSWLF. MSWLFs are subject to regulation under the federal RCRA Subtitle D rules and the Illinois landfill rules.

The Illinois Farm Bureau, Illinois Beef Association, Illinois Lamb and Wool Producers, Inc., Illinois Milk Producers Association, and Illinois Pork Producers Association filed a petition on February 2, 1995. The Board accepted the petition on February 16, and conducted public hearings on April 3, in DeKalb, and April 10, in Springfield. The Board proposed the amendments for First Notice on May 18, 1995, and a Notice of Proposed Amendments appeared in the June 9, 1995 *Illinois Register*.

The Second Notice Period began when JCAR received the Second Notice package on August 28, 1995. The Board will be free to adopt the amendments when the Second Notice period ends or when JCAR submits a Certificate of No Objection, whichever comes first. *(Editor's note: At the time this issue was prepared, JCAR had voted No Objection to the proposed amendments at its September 12, 1995 meeting.)*

Direct questions to Audrey Lozuk-Lawless, at 312-814-6923. Request copies of the Board's opinion and order from Victoria Agyeman, at 312-814-3620. Please refer to docket R95-9.

SITE-SPECIFIC CYANIDE RULE PROPOSED FOR FIRST NOTICE FOR MWRDGC, R95-14

On August 24, 1995, the Board proposed a site-specific rule that would regulate the maximum allowable cyanide content of the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) John E. Egan and James C. Kirie treatment plant effluents. Associated proposed amendments include changes to reflect the change in the District's name to MWRDGC, which still appears in the water pollution control regulations as the Metropolitan Sanitary District of Greater Chicago. The 45-day First Notice period will begin when a Notice of Proposed amendments appears in the *Illinois Register*. After the First Notice period expires, the Board will be free to propose the amendments for Second Notice review by the Joint Committee on Administrative rules. *(Editor's note: As this issue was prepared, a Notice of Proposed Amendments appeared in the September 8, 1995* Illinois Register.*)*

The proposed new weak acid dissociable (WAD) cyanide standard of 10 micrograms per liter (µg/l) would apply to both plants instead of their respective existing permitted limitations of 5.2 and 5.0 µg/l, which were based on the existing state-wide general use water quality standards. The MWRDGC posited four basic justifications for the site-specific rule in its April 28, 1995 petition. It first asserted that the indigenous species used to calculate the state-wide water quality standards are not relevant to the streams receiving its effluents. MWRDGC stated second that the use of WAD cyanide is not directly associated with water toxicity. Third, the MWRDGC maintained that chlorine interferes with the WAD cyanide test. Finally, MWRDGC contended that the present regulatory limits are at or below the limit of detection for WAD cyanide.

Direct questions to Audrey Lozuk-Lawless, at 312-814-6923. Request copies of the Board's opinion and order from Victoria Agyeman, at 312-814-3620. Please refer to docket R95-14.

COMMONWEALTH EDISON PETITION FOR SITE-SPECIFIC LANDFILL FINANCIAL ASSURANCE REGULATION WITHDRAWN, R94-30

On July 7, 1995, the Board granted voluntary dismissal of a October 17, 1994 petition from Commonwealth Edison Company (Com-Ed) for a site-specific rule. *(See issue 490, Jan., 1995.)* The petition sought a declaration that the Commonwealth Edison Joliet/Lincoln Quarry facility, in Will County, is a surface impoundment, and not a landfill subject to the land pollution control (landfill) regulations. In the alternative, Com-Ed sought site-specific regulations relating to leachate management, groundwater monitoring, and final cover requirements at this facility. In seeking withdrawal, Com-Ed stated that it had reached a compromise with the Illinois EPA (Agency) for management of the site and to address the elevated levels of constituents in the groundwater at the site. Com-Ed stated that issues remain, but that it intended to file an amended petition for Board determinations on those issues.

In the original petition Com-Ed stated that it has placed over 11,000 tons of bottom ash and slag from two coal-fired generating stations each year in the facility, and has held a landfill permit for the facility for several years. Under the landfill amendments of 1990, Com-Ed notified the Agency that it intended to close the facility by September 18, 1997 (within seven years of the effective date of the amendments), but it has since reconsidered this decision due to the remaining capacity of the facility. Com-Ed initially sought a declaration that the facility is a surface impoundment to avoid compliance with the 1990 landfill amendments, which the site concededly cannot meet.

Direct questions to Kevin Desharnais, at 312-814-6926. Please refer to docket R94-30.

LEGISLATIVE UPDATE

AMENDATORY VETO FOR "BROWNFIELDS" BILL

Governor Jim Edgar amendatorily vetoed SB 46 and HB 544 with specific recommendations for changes on August 18, 1995. SB 46 and HB 544 are virtually identical bills relating to voluntary cleanup of contaminated industrial sites ("brownfields"). The Governor returned the bills because he recognized the need for a system for voluntary brownfields remediation. He applauded those who negotiated the bill's risk-based remediation of sites. However, Governor Edgar felt that the legislation went beyond the issue of brownfields remediation to alter the liability scheme in non-voluntary situations where the state must step forward to pursue remediation. Although he felt such a change was appropriate, the Governor felt it was irresponsible to alter the state's remediation scheme without addressing the far-reaching consequences. Governor Edgar stated that the bills would have his approval with certain enumerated revisions.

Governor Edgars' principal concern was that the legislation would impede the state's ability to protect human health and the environment, especially in emergency situations. Without resolution of threshold issues of liability and share, in his opinion, lengthy delays in remediation could result. He further felt that imposing the burden of proof for causation and allocation of costs on the state and the issues of orphan shares (those for whom there is no identifiable responsible party) would result in fewer cost recoveries and fewer or less complete cleanups absent the state assuming responsibility. The Governor stated that the state must first identify adequate sources of funding for Illinois to have an effective cleanup program.

The brownfields bills would repeal the existing Section 22.2(m) and (n) provisions for contaminated site cleanup in the Environmental Protection Act and replace them with new Title XVII (Sections 58 through 58.12. The added provisions would establish a risk-based system of remediation and allocation of costs. No remediation would be required to levels less than background levels unless residential land use is involved and the Illinois EPA (Agency) determines that the background level poses an acute threat to human health or the environment. If the background level is higher than a remediation objective for residential use adopted by the Board, no residential use of the property is allowed until the residential use objective or an alternative risk-based objective is first achieved.

The new law would establish a Site Investigation and Remedial Activities Program administered by the Agency for contaminated sites. Under the amendments, any person, the "remediation applicant" (or "RA"), may elect to initiate an investigation and remediation of a site, with certain exceptions--at least to the extent not allowed by federal law: federal "Superfund" sites; state or federal hazardous or solid waste treatment, storage, and disposal facility sites; sites subject to state or federal underground injection control regulations; and sites where investigation or remediation is required under a federal court or U.S. EPA order.

Under the new provisions, no permit would be required to undertake remedial actions except as required by federal law. Rather, the RA would be required to prepare remediation objectives and remediation objectives completion reports at the prescribed times in the process, and the RA could either enter into an agreement to have the Agency review the reports, as a paid-for service, or the RA may contract with an independent "review and evaluation licensed professional engineer" (or "RELPE") to conduct the review on behalf of the Agency, with the authority to approve or disapprove reserved to the Agency. Agency disapprovals or approvals with conditions or an Agency failure to timely render a determination are appealable to the Board.

The Agency must issue a "No Further Action Letter" after it approves a completion report, and the Agency may condition future uses of the property through the Letter. The No Further Action Letter constitutes prima facie evidence that the site does not constitute further threat to human health or the environment and does not require further remediation, so long as the land is used in accordance with the terms of the Letter. The RA must submit that letter to the Registrar of Deeds for the appropriate county for recordation, so that the letter becomes a permanent part of the chain of title for the affected property.

The No Further Action Letter can insulate the RA and others who have or acquire an interest in the property from further liability: the owner or operator, parents and subsidiaries of the owner, any co-owners, holders of any beneficial interest, mortgagees, transferees, heirs and legatees, etc. Some actions that can result in the voiding of the Letter include a failure to adhere to conditions in the letter, such as a violation of any land use restrictions, failure to maintain and operate any preventative or engineering controls, the disturbance of any contamination left in place, fraud or misrepresentation in obtaining the Letter, a discovery of additional contamination, the failure to record the Letter, etc. The voiding of a Letter is accomplished by a notice from the Agency, with the possibility of an appeal to the Board.

The new Title XVII provisions require the Agency to propose and the Board to adopt regulations governing various aspects of site remediation. The

Agency must submit proposed regulations for Board consideration within nine months, and the Board must adopt regulations within another nine months. The regulations will relate to site remediation objectives and alternative risk-base objectives and procedures for assembling and reviewing site investigation and remediation plans and reports.

The new law would create a Site Recommendation Advisory Committee, consisting of one member from each of seven identified industry and professional groups and one each selected by the Agency from an environmental advocacy group, a community development corporation, and a public interest community group. The Committee will make recommendations regarding state laws and regulations relating to site remediation. It will also recommendations relating to review and approval of site remediations and Illinois' efforts to implement Title XVII.

The provision that Governor Edgar would strike related to apportionment of liability and would have limited the ability to seek contribution for remedial action or to compel remedial action under certain circumstances. By its terms, Section 58.9 would have broadly applied to remedial actions outside the scope of new Title XVII. It would have limited the recovery of costs to the individual's proportionate share of responsibility for the release occasioning remedial action, and it would have inhibited the state's ability to compel action and barred recovery from a person who was not materially responsible; from a landlord that did not have actual or constructive knowledge of the acts or omissions that caused the release; and from the state, a unit of local government, a financial institution, or a corporate fiduciary that acquires an interest in the property, unless it exercised managerial control in the site that caused the release. Section 58.9 would also have required the Agency to submit notice of any need to conduct remedial action and, together with that person, to determine the proportionate share of liability for the action.

There was only one substantive difference between SB 46 and HB 544. That was a HB 544 addition to Section 22.2(j)(6)(E)(iii) that would add "industrial hygienists" to the list of examples of an "environmental professional". It would further add a "licensed industrial hygienist" to the list of those "environmental professional" entities for which professional liability insurance is not required. Under Section 22.(j), a person acquiring a property may create a presumption against later claims for reimbursement of remedial costs incurred at the property for contamination that occurred prior to the site acquisition. To create the presumption, the purchaser must have undertaken Phase I and Phase II environmental audits of the property without disclosing contamination or potential contamination at the site. The person who performed the audit must have been an "environmental professional". The statute requires environmental professionals who are not licensed professional engineers to maintain professional liability insurance in the amount of $500,000.

(Editor's note: The General Assembly will have an opportunity to consider Governor Edgar's veto when it reconvenes this Fall. An override would require 71 votes in the House of Representatives and 36 votes in the Senate on either of the two bills. Acceptance of the Governor's recommendations would require 60 votes in the House and 30 votes in the Senate. Both bills passed last May, with over 90 votes in the House and over 40 votes in the Senate.)

AMENDATORY VETO FOR "CLEAN FUELS" BILL

Governor Jim Edgar amendatorily vetoed SB 276 with specific recommendations for changes on July 21, 1995. SB 276, called the Clean Alternate Fuels Act, relates to the state promoting and encouraging the use of alternative cleaner burning fuels in fleet vehicles. The Governor returned the bill because he recognized that it would expand the use of alternative fuels and lead to cleaner air. However, Governor Edgar felt that small businesses would not be in a position to benefit from the program that the legislation would establish. He further felt that the legislation should assign the task of collecting fees to the Secretary of State, rather than the Illinois EPA (Agency). The Governor's final concern was that the bill should go further to encourage the development of alternative fuel fueling stations throughout the state. Governor Edgar stated that the bill would have his approval with certain enumerated revisions.

Governor Edgars' principal concern was that larger corporations would have the resources to move rapidly to take advantage of funds that the legislation would make available on a first-come, first-served basis. He stated that the limited funds available would then be rapidly consumed by a small group of fleet operators. The Governor recommended that the Alternate Fuels Advisory Board be authorized to provide incentives for small businesses and small fleet operators. He further recommended the deletion of the "first-come, first-served" language in the bill, in order to assure that small businesses have a fair chance of obtaining available grants.

Governor Edgar also believed that the bill's provision for Agency collection of the specified fee from fleet operators charged that task to a state agency that was ill-equipped to deal with it. He stated that the bill would force the Agency to collect the fee by mail and that the Agency lacked enforcement authority under the bill to deal with

non-responders. Governor Edgar stated that he felt the Secretary of State's office would be in a better position to collect the fees and administer the program.

Finally, Governor Edgar stated that the bill should do more to further its objective of encouraging the development of public alternative fuel fueling stations. He believed that the Bill should authorize the Alternate Fuels Advisory Board to provide grants that provide for contractual partnerships between fleet owners and operators and the fuel servicing industry. The partnerships would assure that the funds available from the fleet owner fee would be used to establish alternative fuel servicing stations.

The Alternate Clean Fuels Act would establish a program for issuing rebates to owners of alternative fuel vehicles in the Chicago metropolitan area to help cover the cost of vehicle conversion, the original equipment manufacturer cost differential, or the fuel cost differential. Rebate funds would be available on first-come, first-served basis. Through the rebate program, a fleet owner could recover up to $4,000 per vehicle for up to 150 vehicles per location or for a total of 300 vehicles. Vehicles owned by the federal government and those registered outside Illinois would not be eligible for rebates. The Alternate Clean Fuels Act would define an alternative fuel as liquified petroleum gas (LPG), compressed natural gas (CNG), minimum 80% ethanol, bio-based methanol, biomass-derived fuel, or electricity.

To fund the rebates, the bill would create the Alternate Fuels Fund and impose user fees on owners to fund the rebate program. The bill would charge the Agency with the function of collecting the $20 per vehicle fee from owners of fleets of 10 or more vehicles in the Chicago metropolitan area. State, county, and local government vehicles, rental vehicles, antique vehicles, electric vehicles, and motorcycles would be exempt from the fee. The fees would apply in fiscal years 1996 through 1999 (i.e., until June 30, 2000). Four-fifths of the funds received would be appropriated to the rebate program, and one-fifth to an ethanol fuel research program under the direction of the Agency. That research program, which would expire in 2000 or when funds are no longer available, would seek ways to reduce the costs of producing ethanol fuels, new ethanol engine technologies, and ethanol refueling systems to increase the viability of ethanol fuels.

The new law would create a nine-member Alternate Fuels Advisory Board, with eight members appointed by the Governor and chaired by the Director of the Agency. The Board would comprise two members from each of the ethanol and natural gas industries; one member from each of the liquid petroleum, electric, and heavy duty engine manufacturing industries; and one member from among private fleet operators. The Committee will make recommendations for Agency regulations to implement the ethanol research and fleet conversion rebate provisions of the bill.

The Alternate Clean Fuels Act would mandate that the Agency dedicate sufficient resources to implement the program and promulgate rules to achieve certain objectives within 90 days of becoming law. The regulations and resources would relate to the ethanol research program and the fleet conversion rebate program.

(Editor's note: The General Assembly will have an opportunity to consider Governor Edgar's veto when it reconvenes this Fall. An override would require 71 votes in the House of Representatives and 36 votes in the Senate on either of the two bills. Acceptance of the Governor's recommendations would require 60 votes in the House and 30 votes in the Senate. The bill passed last May, with 107 votes in the House and 53 votes in the Senate. See related article on proposed Clean Fuel Fleet Program, R95-12, under Rulemaking Update *in this issue.)*

GOVERNOR EDGAR SIGNS NEW LEGISLATION

Following the recent end of the legislative session, Governor Jim Edgar signed various bills into law. The effects of these on the Environmental Protection Act (Act) are briefly described below:

P.A. 89-79 (formerly SB 461), signed and effective on June 30, 1995, made a number of amendments:

- Bakery oven emissions: It amended Section 10 of the Act to expressly nullify certain regulations pertaining to volatile organic materials regulations from bakery ovens in the Chicago metropolitan area.
- Distilled spirits packaging: It amended the toxic packaging reduction provision of Section 21.5 to exclude wine or distilled spirits containers bottled prior to July 1, 1994, rather than the former exclusion for wine containers delivered to a manufacturer or distributor prior to that date.
- Limitations on Appropriations to the Board: It removed from Section 22.8 the $550,000 cap on appropriations to the Board from the Environmental Protection Permit and Inspection Fund. It removes from Section 39.5 the $400,000 cap on appropriations to the Board from the CAA Permit Fund. It corrected a cross-reference in the fee collection and appropriations provision to the core Fund provision.

P.A. 89-93 (formerly SB 327), signed and effective on July 6, 1995, amended the Act to foster utilization of coal combustion by-products for

various applications. Among the amendments to the Environmental Protection act are the following *(see below for corresponding amendments to other statutes)*:

- ♦ It added a definition of "coal combustion by-products" (defining it as "coal combustion waste" that is beneficially used for certain purposes, including materials extraction or recovery; use as a filler or raw material for making cement and concrete; certain use as anti-skid material or for athletic tracks or footpaths; use as a substitute for lime in soil modification or conditioning; use as a pavement base, pipe bedding, or backfill material; use in mine reclamation, fire control, or subsidence; etc.
- ♦ It excluded coal combustion by-products from the definition of "waste" (and, hence, from regulation as waste).
- ♦ It amended the definition of "coal combustion waste" to increase the former 10 percent limitation on the amount of fuel grade petroleum coke content of mixtures containing other fossil fuel to 20 percent; to allow mixtures to contain materials other than fossil fuel, wood, and/or tires; and to relate an Agnecy determination under Section 21(r) that the storage or disposal of waste from combustion of coal mixtures would result in no greater environmental impact than the storage or disposal of the wastes from combustion of coal alone and that such storage or disposal would not violate federal law.
- ♦ It excluded certain sites and facilities using coal combustion waste for stabilization and treatment of on-site generated waste from the definition of "pollution control facility" (and, hence, from the local siting approval requirements of Section 39.2).
- ♦ It substituted "coal combustion by-product" for "coal combustion waste" in all the prohibitions and substantive requirements of Section 21 and from the 1987 through 1988 landfill fee exclusion from Section 22.15.

P.A. 89-94 (formerly SB 448), signed and effective on July 6, 1995, amended Section 22.2 of the Act to make an owner or operator not liable for recovery of corrective action costs for a release of pesticide if the owner or operator has given notice under the Illinois Pesticide Act *(415 ILCS 60)* and is proceeding with an Agency-endorsed corrective action under that statute or for a substantial threat of a release if the owner or operator has given notice and is pursuing corrective action under that statute. *(See below for corresponding amendments to other statutes.)*

P.A. 89-101 (formerly SB 68), signed and effective on July 7, 1995, amended Section 22.16b of the Act to require the Agency to deny an air permit for construction, development, or operation of a municipal waste incinerator if it finds that the application for permit does not comply with applicable law or the application indicates that the facility would not achieve mandated air emissions requirements within six months of beginning operation. It further amended Section 22.2b to expressly exclude a person seeking a construction or development permit for a new municipal waste incinerator or waste-to-energy facility from the ability of the state to grant a prospective purchaser of real property a limit of liability for corrective costs under Section 22.2.

P.A. 89-102 (formerly SB 84), signed and effective on July 7, 1995, amended Section 39.2 of the Act to remove the inapplicability within counties having a population greater than 3,000,000 persons *(i.e., Cook County)*.

P.A. 89-122 (formerly SB 789), signed and effective on July 7, 1995, amended Section 3.47 of the Act to exclude from the definition of "storage site" those facilities that accept or receive waste in transfer containers, where the waste is not removed from the containers; those that accept or receive open-top containers containing only clean construction or demolition debris; and facilities that store waste in a completely covered or enclosed refuse motor vehicle or in the container for such a vehicle for no longer than 24 hours.

P.A. 89-143 (formerly SB 231), signed and effective on July 14, 1995, *inter alia*, amended Section 22.14 of the Act to exempt municipal waste processing and transfer facilities in existence on January 1, 1998 and expanded prior to January 1, 1990 from residential property setback restrictions, but imposing the limitation on such facilities that they no longer recieve loads of mixed municipal solid waste and landscape waste.

P.A. 89-158 (formerly SB 107), signed July 19, 1995 and effective January 1, 1996, amended the remedial action recovery provisions of Section 22.2 of the Act to exclude from the definition of "owner or operator", and, thus, from cost recovery liability, the state or a unit of local government that obtained the property through bankruptcy, tax delinquency, abandonment, or any other means by virtue of its position as sovereign. Rather, the amendments identify the person who owned, operated, or controlled a facility immediately before the acquisition as the owner or operator for the purposes of recovery.

P.A. 89-164 (formerly SB 214), signed and effective

July 19, 1995, added Section 22.2c to the Act. It provides for issuance of an injunction to effect remediation of adjoining land or to complete remediation of a site contaminated with hazardous substances or petroleum products, where the adjoining land owner does not willingly submit to entry onto the land. It allows the court issuing the injunction to condition the entry, to award damages for the entry, and to require the posting of a bond to secure performance and payment.

P.A. 89-173 (formerly SB 460), signed and effective on July 19, 1995, added Section 9.8 to the Act. This provision broadly establishes the framework for air emissions trading in Illinois. It mandates that the Illinois EPA (Agency) must design an emissions market system to aid the state in achieving the emissions reduction goals of the federal Clean Air Act Amendments of 1990. The Agency is to assemble the market system into proposed regulations for filing with the Board, to accommodate emissions reduction, banking, and trading among sources. New Section 9.8 authorizes emissions trading among sources involved in the emissions market system in compliance with the regulations to be ultimately adopted by the Board.

P.A. 89-200 (formerly SB 629), signed July 21, 1995 and effective January 1, 1996, made several amendments to the Act.

- ♦ Landfill financial assurance: It amended Section 21.1(a.5) and (b) to change the effective date by which financial assurance will be required of all landfills except those operated by the state. The former effective date set forth was April 9, 1995; the new date is "the effective date established by [U.S. EPA] for MSWLF units . . . under Subtitle D of [RCRA]". The amendments also added language to subsection (a.5) that effectively supercedes the "Illinois-regulated" restriction found in 35 Ill. Adm. Code 807 and 811, relating to non-hazardous waste landfill closure and post-closure care insurance. *(Ed itor's note: U.S. EPA amended the effective date to April 9, 1997 in the April 7, 1995* Federal Register. *See issue 494, May, 1995. The Board adopted amendments to effect the changes in docket R95-13 on August 3, 1995. See related item under* Rulemaking Update *in this issue.)*
- ♦ Expiration of landfill siting approvals: It extended from two years to three the time during which a local approval of land fill siting remains valid. It did not affect the duration as to local approvals of other types of facilities.
- ♦ Used tire management: It added definitions of "recyclable tire", "tire carcass", "tire derived fuel", "tire retreader", "tire storage unit", and "tire transporter" to the Title XIV used tire provisions. It also amended Section 54.12 to exempt certain retail tire sellers from the definition of "tire storage site". To qualify for the exemption, the retailer must maintain fewer than 1300 tires on the site, and those tires must be kept in a building so they do not accumulate water.
- ♦ Underground storage tanks: It added Section 57.12A, relating to lender liability. Under this provision and with certain limitations, a person who holds indicia of ownership without participating in management of a facility, tank, or tank system to protect its security interest is not an owner or operator of the facility. Rather, the person that formerly owned or operated the facility is deemed the owner or operator.

P.A. 89-300 (formerly HB 358), signed August 11, 1995 and effective on January 1, 1996, added Section 22.47 of the Act, which requires the Illinois EPA to establish a program for private collection and disposal of "hazardous educational waste" from schools and school districts throughout the state at least every three years. "Hazardous educational waste" is defined to include waste generated from an instructional curriculaum that could pose a hazard during normal storage, transportation, or disposal. Waste generated from building, grounds, or vehicle maintenance; asbestos or lead paint abatement; or other non-curriculum activities is expressly excluded.

P.A. 89-328 (formerly HB 412), signed and effective on August 17, 1995, amended Section 9(f) of the Act to exempt certain major dump-pit areas at grain elevators from the dump-pit area requirements of the particulate emissions requirements of the Air Pollution Control regulations, The exemption applies to those dump-pit areas of 2,000,000 bushels or less annual grain throughput, so long as the dump-pit area does not violate the general statutory prohibition against air pollution and violating air pollution control regulations. Major dump-pit areas constructed after June 30, 1975 must additionally be located outside a major population area and at least 1,000 feet from any residential or populated area to qualify for the exemption.

P.A. 89-336 (formerly HB 929), signed and effective on August 17, 1995, amended Section 22.14(b) of the Act to exclude municipal waste processing and tranfer facilities in existence on January 1, 1988 and expanded before January 1, 1990 from the general prohibition against location within 1,000 feet of residentially-zoned property or any dwelling.

(Editor's note: This bill also included amendments to the Illinois Nuclear Safety Preparedness Act, 420 ILCS 5, relating to appropriations to the Illinois Emergency Management Agency.)

P.A. 89-368 (formerly HB 729), signed August 18, 1995 and effective on January 1, 1996, added Section 17.8 to the Act to authorize the Agency to establish a program for laboratory certification and to assess a fee from each laboratory seeking certification (with state- and municipally-run laboratories exempted from payment of the fee). *(Editor's note: A corresponding amendment of the State Finance Act added the Environmental Laboratory Certification Fund.) (See below for amendments to another statute.)*

Other bills of interest that the Governor recently signed which amended statutes other than the Environmental Protection Act are as follows:

P.A. 89-50 (formerly SB 336), signed June 29, 1995 and effective July 1, 1995, the Department of Natural Resources Act *(20 ILCS 801)*, consolidates the majority of the functions of the Department of Energy and Natural Resources, the Department of Mines and Minerals, the Abandoned Mined Lands Reclamation Council, and the Division of Water Resources fo the Department of Transportation into the new Department of Natural Resources. Recycling functions were tranferred to the Department Commerce and Community Affairs and the Historic Preservation Agency. *(Editor's note: This action ratified the Governor's proclamation of Executive Order 95-2, dated March 1, 1995. See issue 492, Mar., 1995. Later "cleanup" legislation is reported as following in the upcoming session.)*

P.A. 89-68 formerly SB 364), signed June 30, 1995 and effective January 1, 1996, amended Section 60 of the Employee Commute Options Act *(625 ILCS 32/60)* to prohibit the Department of Transportation from enforcing the statute unless and until U.S. EPA threatens the state with sanctions under the federal Clean Air Act.

P.A. 89-86 (formerly SB 830), signed and effective on June 30, 1995, *inter alia*, amended Section 2a of the Open Meetings Act *5 ILCS 120)* to allow a public body to notice a closed meeting by announcement at an open meeting and Section 2.02 to require the posting of an agenda for any meeting at both the public body's principal office and at the location where the meeting is to occur.

P.A. 89-93 (formerly SB 327), signed and effective on July 6, 1995, amended the Natural Resources Act *(20 ILCS 1105)* and the Civil Administrative Code *(20 ILCS 1905)*, to require the Department of Mines and Minerals (now the Department of Natural Resources--*see P.A. 89-50 above*) to develop methods and standards for utilization of coal combustion by-products for various applications, such as soil benefaction, stabilization, and controlling acid mine drainage in previously-mined areas and in road-building materials. *(See above for corresponding amendments to the Environmental Protection Act.)*

P.A. 89-94 (formerly SB 448), signed and effective on July 6, 1995, amended the Illinois Pesticide Act *(415 ILCS 60)* to require the Department of Agriculture to establish and implement an Agrichemical Facility Response Action Program that will guide assessing the threat of pesticide-contamination of soil to groundwater and to establish a voluntary, risk-based corrective action program to protect groundwater. *(Editor's note: The Agrichemical Response Program is structured somewhat similarly to the "brownfields" program that SB 46 and HB 544 would add to the Environmental Protection Act. See accompanying item on the Governor's amendatory veto.) (See above for corresponding amendments to the Environmental Protection Act.)*

P.A. 89-99 (formerly SB 48), signed and effective on July 7, 1995, amended the Public Utilities Act *(220 ILCS 5)* to exempt Clean Air Act emissions trading from the requirement for a prior hearing before the Illinois Commerce Commission.

P.A. 89-123 (formerly SB 995), signed July 7, 1995 and effective on January 1, 1996, added a definition of "paralegal" to the Statute on Statutes *(5 ILCS 70)* that further provides that any reference in any statute to attorney fees includes paralegal fees, which are recoverable at market rates.

P.A. 89-161 (formerly SB 162), signed and effective on July 19, 1995, amended Section 2 of the Gasoline Storage Act *(430 ILCS 15/2)* to require that underground and aboveground storage tanks comply with local zoning. The amendments also allow municipalities to enforce zoning as to aboveground tanks.

P.A. 89-368 (formerly HB 729), signed August 18, 1995 and effective on January 1, 1996, amended Section 5b of the Illinois Water Well Construction Code *(415 ILCS 30)* pertaining to local regulation of water wells. The amendments further condition the issuance of local permits for well construction on the local ordinance requiring the permit to include the depth of the well and aquifer involved, to require notification of the unit of local goverment of any

subsequent lowering of the well, and for the unit of local government to maintain certain records relating to permit applications and subsequent notices, open to public inspection. An associated amendment requires units of local government to include in the information forwarded to the Department of Public Health, upon issuance of a permit or receipt of a notice, the well depth and the aquifer involved. *(See above for accompanying amendments to the Environmental Protection Act.)*

FOR YOUR INFORMATION

AGENCY TO CONDUCT OGLESBY PM_{10} MAINTENANCE PLAN SIP HEARING

The Illinois EPA (Agency) will conduct a public hearing on the proposed revision of the Oglesby PM_{10} nonattainment area state implementation plan (SIP). Under Illinois EPA File 464-95, the Agency is proposing to request that U.S. EPA redesignate that Oglesby area from nonattainment to attainment for particulate matter emissions of less than 10 microns in size (PM_{10}). The proposed SIP revision includes a maintenance plan, as required under federal law. The hearing is scheduled for 11:00 a.m., Friday, September 22, 1995, at Room C-316, Illinois Valley Community College, 815 North Orlando Smith Avenue, Oglesby.

The Agency will conduct the hearing according to its procedural rules *(35 Ill. Adm. Code 164)*. The hearing record will close on Monday, October 23, 1995. Interested persons may contact Rachel Doctors, Illinois EPA, P.O. Box 19276, Springfield 62794-9276 (phone 217-524-3333) with questions on or to request copies of the proposed revision and maintenance plan. Direct comments to John Williams, Hearing Officer, Illinois EPA, P.O. Box 19276, Springfield 62794-9276 (phone 217-782-5544).

WATERWAYS CRUISE AND ENVIRONMENTAL WORKSHOP

EILEEN JOHNSTON is organizing another waterways cruise and floating seminar on September 30, 1995. The floating seminar is on the Wendella, along the Chicago waterways and the shore of Lake Michigan. A fuller description and a reservation order form appears on Page 35 of this Issue.

SIGNIFICANT RECENT FEDERAL ACTIONS

The Board continues its series of reports on recent federal actions from the *Federal Register* that are of interest to the Board and the regulated community. Below are highlighted 22 such actions:

U.S. EPA Approval of Illinois PM_{10} Contingency Rules

On July 13, 1995 (60 Fed. Reg. 36060), U.S. EPA adopted a direct final rule that approves the Illinois state implementation plan (SIP) for particulate matter less than or equal to 10 microns diameter (PM_{10}) contingency measures. The Board adopted the PM_{10} contingency measures regulations on June 23, 1994, in docket R93-30. The PM_{10} contingency measures are a set of rules that go into effect under certain conditions after exceedance of the national ambient air quality standard (NAAQS) for PM_{10}. The federal approval of the Illinois SIP will become effective September 11, 1995 unless U.S. EPA earlier affirmatively delays the effective date in a *Federal Register* notice due to public comments received in response to a simultaneously-published notice of proposed rule (60 Fed. Reg. 36082).

The federal Clean Air Act Amendments of 1990 require the states to establish PM_{10} contingency measures for areas that have not attained the NAAQS for PM_{10}. In Illinois, U.S. EPA has designated segments of Lyons Township and the Lake Calumet areas in Cook County, the Oglesby area in LaSalle County, and Granite City and Nameoki Townships in Madison County as moderate nonattainment for PM_{10}. Federal law requires the PM_{10} contingency measures to go into effect within 60 days of when U.S. EPA determines that an area has failed to make reasonable further progress or has failed to timely attain the NAAQS. Federal law requires that the contingency measures must go into effect with minimal further administrative and no further rulemaking action.

The Illinois PM_{10} contingency measures regulations required all sources of 15 tons per year or more of PM_{10} in the affected areas to submit two levels of contingency measure plans to the Agency by November 15, 1994. The Level I plans were to contain measures that would reduce fugitive PM_{10} emissions by at least 15 percent. The level II plans were to contain measures that would reduce the emissions by 25 percent. Following an exceedance of the 24-hour PM_{10} NAAQS, the Agency is required to determine the source or sources most likely responsible and, depending on the severity of the exceedance, to notify the responsible source(s) to implement the level I or level II measures within 90 days. Alternatively, upon notification by U.S. EPA that an area has failed to attain the PM_{10} NAAQS or make reasonable further progress towards attainment, all sources in the affected area must implement the level II measures within 60 days.

U.S. EPA approval of P & S, Inc. Stage II Variance

On July 13, 1995 (60 Fed. Reg. 36060), U.S.

EPA adopted a direct final rule that approves the Illinois state implementation plan (SIP) revision for a variance granted to P & S, Inc. The Board granted this DuPage County facility a 17-month variance from the Stage II vapor recovery requirements on February 16, 1995 in docket PCB 94-299. U.S. EPA granted the approval because P & S demonstrated that immediate compliance would impose an arbitrary and unreasonable hardship. The State of Illinois is upgrading the roads near the station, and it is anticipated that P & S will have to relocate its underground storage tanks as a result of the construction. Immediate installation of Stage II equipment would require a second installation after road construction is completed. The federal approval of the Illinois SIP revision will become effective September 11, 1995 unless U.S. EPA earlier affirmatively delays the effective date in a *Federal Register* notice due to public comments received in response to a simultaneously-published notice of proposed rule (60 Fed. Reg. 36082).

Stratospheric Ozone: Significant New Alternatives Policy (SNAP)

On July 28, 1995 (at 60 Fed. Reg. 38729), U.S. EPA amended the Significant New Alternatives Policy (SNAP) in the stratospheric ozone protection rules. The amendments incorporated an updated listing of restrictions and prohibitions for substances used to substitute for ozone-depleting substances. Under the SNAP program, adopted under section 612 of the Clean Air Act, this listing indicates the acceptable and unacceptable substitutes and conditions on substitution for ozone-depleting substances in particular uses. U.S. EPA evaluates risks to human health and the environment in assembling the listings.

Approval of Additional CWA Analytical Methods

On August 2, 1995 (60 Fed. Reg. 39586), U.S. EPA approved an additional analytical test method for chlorinated pesticides and PCBs in water. U.S. EPA amended 40 CFR 136 to accommodate the amendments. The method is a disk extraction procedure.

Open Market Trading Rule for Ozone Precursors

On August 4, 1995 (60 Fed. Reg. 39668), U.S. EPA issued a proposed policy statement and model rule to allow open market trading in ozone precursor emissions. It would allow all types of sources to freely trade emissions allowances to achieve compliance without requiring submission of a state implementation plan (SIP) submission for each individual trade. The model rule is one that states could employ or vary (with federal review and approval) to allow the trading among sources. The policy shifts the government's role to prior SIP approval of trades of discrete emission reductions (DERs) to after-the-fact scrutiny during compliance determinations. U.S. EPA stated that DERs would become a compliance product similar to emissions control equipment, and the DER-using source would be responsible for compliance just as if it employed controls.

U.S. EPA imposed a public comment cutoff date of October 2, 1995 on its proposal. U.S. EPA will conduct a public hearing on the proposal on August 31, 1995 at an undisclosed location. I have a copy of this proposed federal action available for anyone interested in obtaining one.

Phase II Stormwater Discharge Permits

On August 7, 1995 (60 Fed. Reg. 40230), U.S. EPA adopted Phase II stormwater discharge permit regulations based on an April 7, 1995 proposal and simultaneously withdrew the direct final rule of April 7.

Phase II stormwater discharges include all discharges that are exclusively stormwater discharges that are not Phase I stormwater discharges. The regulations divide the universe of Phase II stormwater point source discharges into two tiers. They allow the permitting authority (state) to require permits of first tier dischargers, which include those Phase II discharges that the state determines are either contributing to water quality violations or significant pollutants to the stream. U.S. EPA anticipates that the number of first tier dischargers will be small because most were included under the Phase I regulations. The Phase II dischargers of which the state demands a permit application must apply for a permit within 180 days of notice by the state.

The second tier dischargers include all other Phase II dischargers. These must apply within six years of the effective date of the regulations (August 7, 1995).

The Clean Water Act amendments of 1987 required U.S. EPA to permit and regulate stormwater discharges. However, it prohibited U.S. EPA from demanding NPDES permit applications for stormwater discharges until October 1, 1994, with enumerated exceptions, known as Phase I

discharges. Phase I discharges, for which U.S. EPA was allowed to demand a permit application, included the following: (1) those permitted prior to February 4, 1987, (2) discharges associated with industrial activity, (3) discharges from separate large municipal stormwater systems (serving a population of 250,000 or more), (4) discharges from separate medium municipal stormwater systems (serving a population from 100,000 to less than 250,000), and (5) discharges that the permitting authority (U.S. EPA or the state) had determined were either contributing to water quality violations or significant pollutants to the stream.

Stormwater discharges excluded by statute from the permitting requirements are stormwater runoff from mining and oil and gas facilities if the discharge is not contaminated with overburden, raw material, product, byproduct, or waste on the site of the operations. Excluded from the statutory definition of point source (and, hence, from permitting) is agricultural runoff. Under the statute, U.S. EPA was to have issued Phase II NPDES regulations governing the excluded discharges by October 1, 1993.

U.S. EPA established its Phase I NPDES stormwater discharge requirements on November 16, 1990 (55 Fed. Reg. 47990). It established permit application requirements for categories of discharges similar to those in the statutory exclusion: (1) large and medium municipal separate stormwater systems (MS4), (2) those issued a permit before February 4, 1987, (3) discharges associated with industrial activity (separated into 11 categories), and (4) those discharges designated by the permitting authority (U.S. EPA or the state). It amended the regulations on December 18, 1992 (57 Fed. Reg. 60444) in response to *NRDC v. EPA*, 966 F.2d 1292 (9th Cir. 1992), to exclude two of the industrial categories, construction activities affecting less than five acres and light industrial activity without exposure to stormwater.

U.S. EPA said that it is attempting to seek alternative control strategies with greater stakeholder involvement. U.S. EPA is under a court order, in *NRDC v. Browner*, No. 95-634 (D.D.C. Apr. 6, 1995), to propose supplemental, more detailed Phase II rules by September 1, 1997, possibly imposing NPDES discharge requirements, and to refine the Phase I rules. The judicial order requires the adoption of these more detailed rules by March 1, 1999.

Leak Repair Requirements for Industrial Process Refrigeration Systems

On August 8, 1995 (60 Fed. Reg. 40420) U.S. EPA adopted leak repair requirements under section 608 of the Clean Air Act (CAA) (stratospheric ozone depletion) pertaining to the repair of leaks in industrial process refrigeration equipment. The rules are pursuant to a settlement agreement with the Chemical Manufacturer's Association (CMA).

Effective July 1, 1992, a prohibition went into effect on the venting during the service, repair, maintenance, and disposal of class I and class II substances (56 Fed. Reg. 2420, Jan. 22, 1991). U.S. EPA adopted CAA § 608 regulations on May 14, 1993 (58 Fed. Reg. 28660) relating to recycling ozone-depleting refrigerants during the servicing and disposal of air-conditioning and refrigeration equipment. Subsequent amendments occurred (59 Fed. Reg. 42950, Aug. 19, 1994; 59 Fed. Reg. 55912, Nov. 9, 1994; 60 Fed. Reg. 14607, Mar. 17, 1995).

The existing rules include requirements for service practices, equipment and reclamation certification requirements, technician certification requirements, and a requirement for refrigerant removal before equipment disposal. They also include leak repair requirements applicable to equipment containing 50 pounds or more of a class I or class II substance, allowing an annualized leak rate of 35% for commercial and industrial cooling equipment and 15% for comfort cooling equipment and requiring the owner to repair greater leaks within 30 days or replace or retrofit the equipment within one year according to a plan devised within the 30 days.

The August 8, 1995 amendments allow the owner or operator of industrial process equipment longer than 30 days to repair or one year to retrofit or replace leaking equipment under certain conditions. First, the 30-day deadline is extended to 120 days if a process shutdown is necessary to make the repairs. Second, the 30-day (or 120-day) deadline is also extended to the extent required repair parts are unavailable or compliance with federal, state, or local regulations delay making the repairs. The one-year deadline is extended to the extent required due to compliance with federal, state, and local regulations or the unavailability of alternative refrigerant with a lower ozone-depleting potential, or by up to an additional year where the equipment is custom-built, there is an equipment delivery time of 30 weeks or more, and the owner or operator makes timely notification of the delay and maintains the appropriate records.

Others of the August 8, 1995 amendments clarify that the owner's or operator's obliged to do no more than reduce the leak rate to less than the threshold (35% or 15%) rates, they extend the deadline for repair for certain federally-owned equipment located

in areas subject to radiological contamination, and they allow evacuation of equipment to slightly above ambient pressure (5 psig maximum) or use of a receiver at slightly above ambient to perform equipment oil changes.

Revised Air Quality Model Guideline

On August 9, 1995 (60 Fed. Reg. 40465), U.S. EPA adopted amendments effective September 8, 1995 to the "Guideline on Air Quality Models (Revised)", previously codified as 40 CFR 51, appendix W. The amendments add a supplement C to the Guideline, which incorporates improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adopts a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adopts a new screening approach for assessment of annual nitrogen dioxide (NO_2) impacts, and adds SLAB and HGSYSTEM ver. 3.0 as alternative models.

Availability of On-Board Diagnostic System Repair Information

On August 9, 1995 (60 Fed. Reg. 40474), U.S. EPA adopted regulations effective December 7, 1995 that require manufacturers to make emission-related service information available for all 1994 and later model years light-duty vehicles and light-duty trucks. The information that the manufacturers must make available to the service and repair industry is that information necessary to service on-board diagnostic information (OBD) systems and to perform other emission-related diagnosis and repairs. The action was mandated by section 202(m)(5) of the Clean Air Act (CAA). Although § 202(c) of the CAA provides that manufacturers may withhold trade secret information, it does not allow such protection if the manufacturer has released that information to its franchised dealers or other engaged in vehicle diagnosis, repair, or service.

The regulations require the manufacturer to make the information available at a reasonable price through the distribution mechanism it determines is most efficient and cost-effective. The manufacturer may alternatively make the information available to independent technicians in the form of reasonably-priced equipment and tools. The rules also require the manufacturer to make information available needed to develop and manufacture generic tools for use in diagnosis, repair, and service of the covered vehicles.

New Interpretation of Carbamate Production Waste Rule

On August 14, 1995 (60 Fed. Reg. 41817), U.S. EPA issued a new interpretation of its rule governing the hazardous waste status of certain carbamate production wastes (hazardous waste codes K156 and K157). Under the new interpretation, those production wastes generated in a process whose output is exclusively used in the production of carbamates (chemical intermediate production), but which are not generated at the site of ultimate carbamate production, will not be subjected to the carbamate waste listings.

U.S. EPA adopted the carbamate waste rule on February 9, 1995 (60 Fed. Reg. 7824), listing six wastes generated during the production of carbamates and 58 commercial chemical products that become hazardous waste when discarded or intended to be discarded. Among the added waste listings were organic waste (K156) and wastewaters (K157) from the production of carbamates and carbamoyl oximes. In adopting the original rule, U.S. EPA interpreted carbamate "production" to begin with synthesis of chemicals (intermediates) that have no use other than production of a carbamate.

In its reinterpretation, U.S. EPA stated that this caused non-carbamate wastes generated in intermediate production to become listed carbamate waste. A number of lawsuits were filed, consolidated in *Dithiocarbamate Task Force c. EPA*, No. 95-1249 (D.D.C.) challenging the listing. This resulted in U.S. EPA re-examining the information in the docket and concluding that there was no basis for including these intermediate production wastes in the carbamate waste listings, especially since those intermediate wastes included none of the hazardous constituents that caused the carbamate waste listings.

Proposed Exemption of Chicago Ozone Nonattainment Area from NO_x Requirements

On August 16, 1995 (60 Fed. Reg. 42491), U.S. EPA proposed exemption of the Chicago ozone nonattainment area from the nitrogen oxides (NO_x) transportation conformity requirements. If finally approved, Illinois will not need to demonstrate that transportation projects in the Chicago Metropolitan area will result in lowered ozone levels.

Section 176(c)(3)(A)(iii) of the Clean Air Act (CAA) requires a demonstration of the conformity with the applicable ozone and/or carbon monoxide SIP of all transportation plans and transportation improvement programs (TIPs) in nonattainment areas. The state may not build the project unless implementation of the TIP will result in lowered vehicle emissions than those in the 1990 base-line inventory. Section 182(b)(1) requires the states to submit plans for annual reductions in volatile organic

compound (VOC) and NO_x emissions in the nonattainment areas. However, § 182(b)(1) further provides that the requirement does not apply to NO_x emissions in areas for which U.S. EPA determines that further reductions in NO_x emissions would not contribute to ozone attainment.

Illinois submitted a request for an NO_x exemption under § 182(b)(1) on June 20, 1995. The request was based on the urban airshed model conducted from the Lake Michigan Ozone Study (LMOS). Under that study, projected ozone levels for NO_x emissions controls only were higher than those for VOC-only control or NO_x and VOC control scenario projections. The study further indicated that peak ozone concentrations were lowest with VOC-only controls (i.e., no NO_x controls). Based on the study submitted, U.S. EPA concluded that NO_x controls would exacerbate the Chicago area's ozone problems. Therefore, U.S. EPA proposed granting the SIP revision for the transportation conformity waiver request. U.S. EPA stated that the modeling may indicate that NO_x controls are necessary for rural Illinois areas, but not for the Chicago area, and would not likely be applied to ground-level NO_x sources.

(Editor's note: This proposed action is related to a similar proposed action of March 6, 1995 (at 60 Fed. Reg. 12180), when U.S. EPA proposed granting a CAA § 182(f) exemption from the reasonably available control technology (RACT), new source review (NSR), vehicle inspection and maintenance (I/M), and transportation conformity requirements for nitrogen oxides (NO_x). The covered area would include portions of Illinois, Indiana, Michigan, and Wisconsin that bound Lake Michigan. The NSR, RACT, I/M, and transportation conformity requirements apply to major stationary sources of NO_x in these areas. See issue 493, Apr., 1995.)

Inspection and Maintenance Program On-Board Diagnostic System Checks

On August 18, 1995 (60 Fed. Reg. 43092), U.S. EPA proposed regulations that will require the inspection of vehicle emissions control on-board diagnostic (OBD) systems during the course of vehicle inspection and maintenance (I/M) inspections. Federal law will require states to adopt corresponding requirements within two years of the date U.S. EPA adopts the OBD inspection rules.

Cars are required to have an OBD system with a dashboard light that indicates system malfunction under rules adopted on February 19, 1993 (58 Fed. Reg. 9468) pursuant to Section 202(m) of the Clean Air Act (CAA). The light is required to remain lid until cleared by service personnel or until repeated driving under similar conditions does not indicate a similar malfunction. The new regulations proposed under Section 182(c) of the CAA would add to the present vehicle I/M rules adopted under Section 182. The public comment period expires on the proposed rules on September 18, 1995, and U.S. EPA will conduct a public hearing if one is requested prior to September 5.

Hazardous Air Pollutant Standards for Petroleum Refineries

U.S. EPA adopted national emission standards for new and existing sources (NESHAPS) for hazardous air pollutant (HAP) emissions from petroleum refineries on August 18, 1995 (60 Fed. Reg. 43244). The affected entities include petroleum refinery process units, marine tank vessel loading operations, and gasoline loading rack operations that fall into standard industrial classification (SIC) code 2911 located at petroleum refineries. The rules, promulgated under section 112 of the Clean Air Act (CAA), are based on U.S. EPA's determination that refineries emit pollutants on the list of the 189 HAPs, and they will require the application of the maximum achievable control technology (MACT) to control the emissions.

U.S. EPA stated that the 11 most significant HAPs emitted by petroleum refineries include benzene, cresols and cresylic acid, ethylbenzene, hexane, methyl ethyl ketone (2-butanone), methyl *tert*-butyl ether, naphthalene, phenol, toluene, 2,2,4-trimethylpentane, and xylenes. Also listed as emitted HAPs were biphenyl, 1,3-butadiene, carbon disulfide, arbonyl sulfide, cumene, 1,2-dibromo-methane, 1,2-dichloromethane, diethanolamine, ethylene glycol, methanol, and methyl isobutyl ether (hexone).

The regulations will apply to all sources with the "potential to emit" 10 tons per year of any single HAP or 25 tons per year of any combination of HAPs. Compliance with the regulations is to occur in three phases: Phase I, for leaks greater than 10,000 parts per million (ppm), beginning August 18, 1998; Phase II, for leaks greater than 5,000 ppm, beginning August 18, 1999; and Phase III, for leaks greater than 2,000 ppm, beginning June 18, 2001. New sources are defined as constructed after July 14, 1994.

Along with the HAP-related amendments, U.S. EPA also revised the standards for performance for two existing regulations relating to volatile organic compounds (VOC) emissions, previously adopted under CAA § 111. These are equipment leaks in the synthetic organic chemicals manufacturing industry (SOCMI) and emissions from petroleum refinery wastewater systems. These amendments apparently relate to the applicability between the HAP regulations and the VOC rules.

Viskase RACT Site-Specific Rule

On August 21, 1995 (60 Fed. Reg. 43386), U.S. EPA adopted an amendment to the federal implementation plan (FIP) at 40 CFR 52.741(u)(8), applicable to the Chicago metropolitan area pertaining to volatile organic compound (VOC) emissions from Viskase Corporation's Bedford Park facility. Accompanying the addition of this rule was the withdrawal of a stay of the FIP rules as to the Viskase facility and the disapproval of a state implementation plan (SIP) revision relating to the Viskase emissions.

U.S. EPA adopted the FIP for the Chicago area on June 29, 1990. U.S. EPA determined that adjusted RACT limitations relating to Viskase and submitted by Illinois as a SIP package for approval on February 24, 1989 were not consistent with the requirements of the Clean Air Act. This was because the state rule excluded daily emission limits and recordkeeping requirements that U.S. EPA believed necessary to make the rule enforceable. U.S. EPA determined that the Viskase Corp. Bedford Park facility would be subject to the generic regulations of the miscellaneous fabricated product and miscellaneous formulation manufacturing categories. On July 19, 1990, Viskase Corp. requested that U.S. EPA reconsider its FIP rules as to the Viskase Bedford Park facility. U.S. EPA issued a stay on May 31, 1991 pending reconsideration and proposed the instant site-specific rule on November 18, 1994 (59 Fed. Reg. 59734). U.S. EPA stated that the site-specific FIP regulation is essentially similar to the Illinois-submitted SIP package, with the addition of daily emissions limits and recordkeeping requirements.

Riverside Laboratories RACT Site-Specific Rule

On August 21, 1995 (60 Fed. Reg. 43388), U.S. EPA adopted an amendment to the federal implementation plan (FIP) at 40 CFR 52.741(e)(10), applicable to the Chicago metropolitan area pertaining to volatile organic compound (VOC) emissions from Riverside Laboratory's Kane County facility. Accompanying the addition of this rule was the withdrawal of a stay of the FIP rules as to the Riverside Laboratory facility.

U.S. EPA adopted the FIP for the Chicago area on June 29, 1990. This subjected the Riverside Laboratory Kane County facility to the generic paper and fabric coating manufacturing regulations. On August 20, 1991, Riverside Laboratory requested that U.S. EPA reconsider its FIP rules as to the Riverside Laboratory Kane County facility. U.S. EPA issued a stay on June 23, 1992 pending reconsideration and proposed the instant site-specific rule on December 16, 1993 (58 Fed. Reg. 65688). In granting the relief, U.S. EPA noted that Riverside had represented in September 23, 1994 that it has eliminated all VOC use except for acetone at its plant. U.S. EPA further noted that it recently completed a rulemaking action that excluded acetone from regulation as a VOC on June 16, 1995 (60 Fed. Reg. 31633).

American Decal RACT Site-Specific Rule

On August 21, 1995 (60 Fed. Reg. 43394), U.S. EPA adopted a direct final rule that amends the federal implementation plan (FIP) at 40 CFR 52.741(x)(14), applicable to the Chicago metropolitan area pertaining to volatile organic compound (VOC) emissions from American Decal & Manufacturing Company's Chicago power-operated silk screen presses, hand screen presses, screen adhesive printing lines, rotogravure presses, and Viking screen press. Accompanying the direct final rule was a notice of proposed rule for the same subject matter (60 Fed. Reg. 43423). The rule will become effective October 20, 1995 unless earlier withdrawn.

American Decal & Manufacturing Company requested that U.S. EPA approve measures that will limit its potential VOC emissions to 100 tons per year. This request was for approval of the limitations already in its operating permit issued by the Illinois EPA. Such a limited potential to emit VOC would exempt the Chicago facility from reasonably available control technology (RACT) regulation. U.S. EPA granted the request.

Proposed Phase IV HSWA LDRs

On August 22, 1995 (60 Fed. Reg. 43655), U.S. EPA proposed amendments to the Hazardous and Solid Waste Amendments (HSWA) RCRA Subtitle C and SDWA underground injection control (UIC) land disposal restrictions (LDRs). The proposed amendments are called the "Phase IV" LDRs. U.S. EPA stated that it is considering whether to regulate potential releases to air or groundwater from surface impoundments treating diluted hazardous waste in response to a judicial remand. U.S. EPA further proposed treatment standards for wood preserving wastes and toxicity characteristic (TC) metal wastes. Further proposed were simplified LDRs, a proposal not to ban "nonamenable" wastes from surface impoundments, and simplified state authorization rules. U.S. EPA also raised the possibility of excluding certain recycled wood preserving wastes from regulation.

The Phase IV amendments are prompted by the decision in *Chemical Waste Management v. EPA*, 976 F.2d 2 (D.C. Cir. 1992), which vacated portions of the federal Third Third LDR rules that allowed dilution as an acceptable method for "deactivation" of ignitable, corrosive, or reactive (ICR) waste. The *Chemical Waste Management* court held that diluted ICR wastes could be land disposed under HSWA only if treated to the extent that the characteristic

that rendered them hazardous is removed so that the waste no longer poses a hazard. The settlement agreement in *Chemical Waste Management* allowed U.S. EPA until August 11, 1995 to propose amendments to its rules.

Proposed UIC Requirements for Class V Wells

On August 28, 1995 (60 Fed. Reg. 44652), U.S. EPA proposed new requirements that would apply to Class V underground injection wells. Class V wells are shallow wells that inject fluids directly below the surface of the ground. They include shallow industrial nonhazardous waste injection wells, septic systems, stormwater drainage wells, etc. U.S. EPA plans to retain the present authorization by rule for these wells, provided the wells meet certain minimum requirements and do not endanger underground sources of drinking water (USDWs). However, U.S. EPA intends to aggressively seek the closure of those Class V wells that may endanger USDWs. U.S. EPA stated that it proposed this action because many Class V wells place potentially harmful levels of contaminants into or above USDWs. U.S. EPA further proposed additional amendments to clarify the applicability provisions pertaining to Class V wells.

Approval of Additional CWA Analytical Methods

On August 28, 1995 (60 Fed. Reg. 44671), U.S. EPA approved three additional analytical test methods for total Kjeldahl nitrogen (TKN) in water. U.S. EPA amended 40 CFR 136 to accommodate the amendments. The methods are a titrimetric procedure, a colorimetric method, and a gas diffusion method. Perstorp Analytical Corporation sought and obtained approval of the methods.

Proposed Amendments to Transportation Conformity Rules

On August 29, 1995 (60 Fed. Reg. 44790), U.S. EPA proposed amendments to the transportation conformity rules. The proposed amendments would allow certain transportation control measures (TCMs) to proceed even if their conformity status has lapsed. To proceed the TCMs must have been included in an approved state implementation plan (SIP) or federal implementation plan (FIP). The present transportation conformity rules would require that the TCM be halted when the conformity status has lapsed. The statutory conformity grace period will expire on November 15, 1995. This action would grant relief primarily to those TCMs begun under the grace period in areas that have failed to demonstrate conformity.

Section 176(c)(3)(A)(iii) of the Clean Air Act (CAA) requires a demonstration of the conformity with the applicable ozone and/or carbon monoxide SIP of all transportation plans and transportation improvement programs (TIPs) in nonattainment areas. The state may not build the project unless implementation of the TIP will result in lowered vehicle emissions than those in the 1990 base-line inventory. Section 182(b)(1) requires the states to submit plans for annual reductions in volatile organic compound (VOC) and NO_x emissions in the nonattainment areas.

Proposed Streamlined CAA Operating Permits Revision Process

On August 31, 1995 (60 Fed. Reg. 45530), U.S. EPA proposed new procedures to streamline the processing of revision of Clean Air Act Title V permits. This proposal would supplement the proposed amendments of August 29, 1994 (59 Fed. Reg. 44471) and April 27, 1995 (60 Fed. Reg. 20804) to the Title V permit rules adopted on Jul 21, 1992 (57 Fed. Reg. 32250). The proposed amendments would revise the responsible official certification required on permit applications, amend the emergency defense to a charge of violation, clarify the clarify the applicability of the Title I and Title V permit requirements to research and development facilities located with major sources, and alter the minor new source review requirements to clarify the flexibility the states can employ in reviewing those sources.

Intent to Reduce Heavy-Duty Engine Emissions

U.S. EPA announced its intent on August 31, 1995 (60 Fed. Reg. 45580), in an advance notice of proposed rulemaking, to establish more restrictive engine emissions standards for new heavy-duty engines, beginning in model year 2004. U.S. EPA stated that it is working with engine manufacturers and the California Air Review Board (CARB) to reduce nitrogen oxide (NO_x) and non-methane hydrocarbon (NMHC) emissions from these engines. Control of particulate matter (PM) is also an objective. U.S. EPA invited the public to participate in the regulatory development process.

ENVIRONMENTAL REGISTER MAILING LIST

The Board is currently in the process of updating the mailing list for the *Environmental Register* and anyone who is not presently on the list is invited to join the approximately 1900 other members of the public who receive our free monthly newsletter. Please complete the address Label on page 32 and let us know if you wish to be added, or if applicable, deleted from the list. If you know of someone who would also like to receive his or her own copy of the *Environmental Register*, please pass on the address label form.

POLLUTION CONTROL BOARD
DEVELOPING A HOME PAGE ON THE WORLD WIDE WEBB

The Pollution Control Board has developed a Home Page on the World Wide Web (Internet) and has begun placing information on the Home Page this month. The Home Page is located within the State of Illinois Home Page under the State Agencies option. The address of the State of Illinois Home Page is **http://www.state.il.us/**. The Home Page is accessible through any of the commercial on-line services (e.g., America On-Line and CompuServe). The World Wide Webb will contain Boar Member profiles, Board meeting dates and agendas, Environmental Registers, Annual Reports, Citizen Participation Guides, Legislation, and various other documents about the Board. The new Home Page replaces the former Electronic Bulletin Board System (BBS). For additional information contact Joe D'Alessandro at the Board Offices, at 217-524-8512 (telephone) or jdpcb@aol.com (e-mail). *More information appears on page 33 of this issue.*

FINAL ACTIONS - July 7, 1995 BOARD MEETING

93-248 People of the State of Illinois v. John Prior and Industrial Salvage, Inc. - Board found that the respondent had violated the Act and landfill regulations, ordering immediate closure of its three Madison County sites, subject to the conditions of the existing permits; immediate correction of site conditions that did not meet permit conditions; and the revocation of the development permit for one of the sites. Board Member E. Dunham dissented.

95-102 Shell Oil Company v. EPA - The Board granted one Cook County gasoline dispensing facility a 105-day variance and two others a 381-day variance from the requirement of the air pollution control regulations to install and operate State II Vapor recovery equipment, subject to conditions.

95-103 Polyfoam Packers Corporation v. EPA - The Board granted this Cook County facility a 12-month variance from certain recordkeeping and reporting and volatile organic material emission requirements for other emission units in the Chicago metropolitan area, subject to conditions.

95-108 Village of Lake in The Hills v. EPA - The Board granted this McHenry County drinking water supply a 21-month variance from the standards of issuance and restricted status regulations as they relate to barium, subject to conditions.

96-1 City of Mt. Vernon v. EPA - Upon receipt of an Agency recommendation, the Board granted this Cook County wastewater treatment facility a 45-day provisional variance from the carbonaceous biochemical oxygen demand ($CBOD_5$) and total suspended solids (TSS) effluent requirements of the water pollution control regulations, subject to conditions, to allow the facility to continue operating during a period of treatment plant repairs.

AC 95-33 EPA v. John Sexton Sand and Gravel Corporation - The Board entered a default order, finding that the Cook County respondents had violated Section 21(o)(5) of the Act and ordering them to pay a civil penalty of $500.00.

AC 95-34 EPA v. Envirofil of Illinois, Inc. - The Board entered a default order, finding that the McDonough County respondent had violated Sections 21(o)(5) and 21(o)(12) of the Act and ordering it to pay a civil penalty of $1,000.00.

AS 93-4 In the Matter of: Petition of Conversion Systems, Inc. for an Adjusted Standard From 35 Ill. Adm. Code Part 811 (Liner) - The Board granted the petitioner an adjusted standard from certain of the landfill liner and intermediate cover requirements of the land pollution control regulations for landfills using its Poz-O-Tec® process and materials, subject to conditions; the Board directed the Clerk of the Board to open a rulemaking docket to consider incorporating this adjusted standard into a rule of general applicability. Board Members R. C. Flemal, J. Theodore Meyer, and J. Yi concurred.

AS 93-5 In the Matter of: Petition of Conversion Systems, Inc. for an Adjusted Standard From 35 Ill. Adm. Code Part 811 (Monofill) - The Board granted the petitioner an adjusted standard from certain of the landfill compaction, liner, leachate, and intermediate and final cover requirements of the land pollution control regulations for monofills using its Poz-O-Tec® process and materials, subject to conditions; the Board directed the Clerk of the Board to open a rulemaking docket to consider incorporating this adjusted standard into a rule of general applicability. Board Members R. C. Flemal, J. Theodore Meyer, and J. Yi concurred.

AS 94-8 In the Matter of: Petition of Acme Steel Company and LTV Steel Company From 35 Ill. Adm. Code 302.211 - The Board granted the petitioners an adjusted standard from the thermal discharge requirements of the water pollution control regulations for their Cook County facilities, as that section would apply to their discharges to the Calumet River between the 95th Street Bridge and the O'Brien Lock and Dam. Board Member J. Theodore Meyer dissented.

R95-2 In the Matter of: Exemptions From the Definition of VOM, U.S. EPA Recommended Policy Amendments (July 1, 1994 through December 31, 1994 - ***See Rulemaking Update.***

NEW CASES - July 7, 1995 BOARD MEETING

94-256 DoALL Company, DoALL Credit Corporation, and The Rams-Head Company v. Skokie Valley Asphalt Company, Inc. and Septran, Inc. - The Board found that the cost recovery portions of this citizens' land enforcement action against a Cook County respondent were substantially the same as a complaint for the same actions and for the same relief pending in the circuit court, so the Board struck those portions as duplicitous, rendering moot any consideration of whether the complainants properly sought cost recovery; the Board found that the rest of the complaint properly alleged violations of the Act and sought penalties and accepted it for hearing.

95-119 West Suburban Recycling and Energy Center v. EPA - The Board accepted this land permit appeal involving a proposed Cook County resource recovery facility for hearing and consolidated it with PCB 95-125 on its own motion.

95-125 West Suburban Recycling and Energy Center v. EPA - The Board accepted the air permit appeal involving a proposed Cook County resource recovery facility for hearing and consolidated it with PCB 95-119 on its own motion.

96-1 City of Mt. Vernon v. EPA - ***See Final Actions.***

96-2 People of the State of Illinois v. Phoenix Oil Company - The Board accepted this air enforcement action against a Cook County facility for hearing.

AC 95-50 County of Will v. CDT Landfill - The Board received an administrative citation against a Will County respondent.

AC 96-1 EPA v. Ken Lomax and Ken Lomax Enterprises - The Board received an administrative citation against Jefferson County respondents.

AC 96-2 EPA v. William Hanna - The Board received an administrative citation against a Carroll County respondent.

AS 95-6 In the Matter of: Petition of National Metalwares, Inc. for an Adjusted Standard From 35 Ill. Adm. Code 218.204(g) - The Board acknowledged receipt of and held this petition filed on behalf of a Kane County facility for an adjusted standard from certain of the air pollution regulations requirements applicable to volatile organic material emissions from coating operations.

AS 95-7 In the Matter of: Petition of Western Lion Limited for an Adjusted Standard from 35 Ill. Adm. Code 814.Subpart C -

The Board acknowledged receipt of and held this petition filed on behalf of a Coles County facility for an adjusted standard from certain of the closure requirements of the land pollution control regulations applicable to existing chemical and putrescible waste landfills in existence on September 18, 1990 that will remain open past September 18, 1997.

AS 95-8 In the Matter of: Petition of Illinois Department of Transportation, District 8 for an Adjusted Standard From 35 Ill. Adm. Code 304.124 (Sludge Application) - The Board acknowledged receipt of and held this petition for an adjusted standard from certain of the effluent requirements of the water pollution control regulations as they would apply to maximum iron effluent content, pending receipt of proof of publication.

R95-16 In the Matter of: Exemptions From The Definition Of VOM, U.S. EPA Recommended Policy Amendments (January 1, 1995 through June 30, 1995 - ***See Rulemaking Update.***

FINAL ACTIONS - July 20, 1995 BOARD MEETING

93-206 Safety-Kleen Corporation (Pekin Service Center) v. EPA - The Board granted voluntary withdrawal of this RCRA permit appeal involving a Tazewell County facility.

94-215 Stroh Oil Company v. Office of the State Fire Marshal - The Board affirmed the OFSM determination that this Menard County facility is eligible for reimbursement from the Underground Storage Tank Fund, subject to a $100,000 deductible.

94-250 William Bartz v. EPA - The Board granted voluntary withdrawal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

95-97 Town & Country Gas & Food Mart, Inc. v. EPA - The Board granted this Cook County gasoline dispensing facility a 12-month variance, subject to conditions, from the requirement of the air pollution control regulations that it install and operate Stage II vapor recovery equipment.

95-111 Thomas Brown (Tom's Corner Facility) v. EPA - The Board granted this Lake County gasoline dispensing facility a 7-month variance, subject to conditions, from the requirement of the air pollution control regulations that it install and operate Stage II vapor recovery equipment.

95-118 Jack Pease, d/b/a Glacier Lake Extraction v. EPA - The Board reversed the Agency's denial of a mine-related operating permit for this McHenry County facility and remanded the appeal to the Agency for issuance of an operating permit with standard and special conditions. Board Member E. Dunham concurred.

95-181 People of the State of Illinois v. Kropp Forge, a subsidiary of TIC United Corporation - The Board accepted a stipulation and settlement agreement in this air enforcement action against a Cook County facility, ordered the respondent to pay a civil penalty of $16,000.00, and ordered it to cease and desist from further violation. Board Member J. Theodore Meyer concurred.

96-12 Village of Dupo v. EPA - Upon receipt of an Agency recommendation, the Board granted this St. Clair County wastewater treatment facility a forty-five(45)-day provisional variance from the carbonaceous biochemical oxygen demand ($CBOD_5$) and total suspended solids (TSS) effluent requirement of the water pollution control regulations, subject to conditions, to allow it to continue operating during a period of repairs and modifications to the trickling filter.

AC 95-36 County of LaSalle v. Dave Hertzner - The Board entered a default order, finding that the LaSalle County

respondent had violated Section 21(p)(1) of the Act and ordering him to pay a civil penalty of $500.00.

AC 95-37 EPA v. M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara - The Board entered a default order, finding that the Cass County respondents had violated Section 21(p)(1) of the Act and ordering them to pay a civil penalty of $500.00.

AC 95-40 Will County v. Tim Van Baren, d/b/a Plum Valley Nursery - The Board entered a default order, finding that the Will County respondent had violated Section 21(p)(1) of the Act and ordering it to pay a civil penalty of $500.00.

AC 95-42 Will County v. Edward and Doris Van Drunen - The Board entered a default order, finding that the Will County respondents had violated Section 21(p)(1) of the Act and ordering them to pay a civil penalty of $500.00.

AS 94-2 In the Matter of: Joint Petition of Solar Corporation and the Illinois Environmental Protection Agency for an Adjusted Standard From 35 Ill. Adm. Code 218, Subpart PP - The Board granted this Lake County facility an adjusted standard from the certain of the requirements of the air pollution control regulations otherwise applicable to emissions of volatile organic material from miscellaneous product manufacturing processes, subject to conditions.

AS 95-7 In the Matter of: Petition of Western Lion Limited for an Adjusted Standard from 35 Ill. Adm. Code 814.Subpart C - The Board found that the petitioner had not timely filed a certification of publication and dismissed this petition filed on behalf of a Coles County facility for an adjusted standard from certain of the closure requirements of the land pollution control regulations.

NEW CASES - July 20 BOARD MEETING

95-113 White Glove of Morton Grove v. Amoco Oil Company - The Board found that this citizen's underground storage tank enforcement action involving a Cook County facility was neither frivolous nor duplicitous and accepted it for hearing.

95-127 Meyer Steel Drum, Inc. v. EPA - The Board accepted this air permit appeal involving a Cook County facility for hearing.

96-3 General Motors Corporation (GM Powertrain) v. EPA - The Board accepted this air permit appeal involving a Vermilion County facility for hearing.

96-4 Stone Container Corporation v . EPA - The Board acknowledged receipt of and held this notice of 90-day extension of time to file an air permit appeal this Lake County facility.

96-5 Ebrey Standard Service v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a Morgan County facility for hearing.

96-6 Spectrulite Consortium, Inc. v. EPA - The Board accepted this air variance involving a Madison County facility for hearing.

96-7 People of the State of Illinois v. Acme Wiley Corporation - Upon receipt of a proposed stipulation and settlement agreement and an agreed motion for relief from the hearing requirement in this RCRA enforcement action against a Cook County facility, the Board ordered publication of the required newspaper notice.

96-8 Alloy Engineering & Casting Co. v. EPA - The Board acknowledged receipt of this notice of 90-day extension of time to file an air permit appeal pursuant to P.A. 88-690, involving a Champaign County facility and held this matter to the August 3, 1995 Board meeting.

96-9 Owens Oil Company v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a Greene County facility for hearing.

96-10 Vogue Tyre & Rubber Company v. EPA - The Board accepted this underground storage tank remedial action appeal involving a Cook County facility for hearing.

96-11 People of the State of Illinois v. Elmhurst-Chicago Stone Company - Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action against a Winnebago County facility, the Board ordered publication of the required newspaper notice.

96-12 Village of Dupo v. EPA - ***See Final Actions.***

AC 95-41 County of Will v. Carl Smits - The Board construed a "motion for extension of time to file" as a deficient petition to review this administrative citation filed against a Will County respondent and ordered the filing of an amended petition.

AC 95-49 County of Will v. CDT Landfill - The Board accepted an appeal of this administrative citation filed against a Will County facility and consolidated it with AC 95-38, another citation involving this facility, for the purpose of hearing.

AC 96-3 County of Jackson v. Mary Endress - The Board received an administrative citation against a Jackson County respondent.

AC 96-4 County of Jackson v. Greg Burris, individually and d/b/a Burris Disposal Service - The Board received an administrative citation against a Jackson County respondent.

AC 96-5 Montgomery County v. Envotech, Illinois, Inc. - The Board received an administrative citation against a Montgomery County respondent.

AS 95-6 In the Matter of: Petition of National Metalwares, Inc. for an Adjusted Standard From 35 Ill. Adm. Code 218.204(g) - The Board accepted this petition involving for a Kane County facility for an adjusted standard from certain of the air pollution control regulations applicable to emissions of volatile organic material from coating operations for hearing.

R96-1 In the Matter of: Proposed Standards for Conversion systems: Poz-O-Tec Liner Caps and Monofills; 35 Ill. Adm. Code 807, 810, 811, and 816 - ***See Rulemaking Update.***

FINAL ACTIONS - August 3, 1995 BOARD MEETING

94-206 Comerica Bank - Illinois v. EPA - The Board granted voluntary dismissal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

94-316 Comerica Bank-Illinois v. Office of the State Fire Marshal - The Board granted voluntary dismissal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

95-11 Comerica Bank - Illinois v. EPA - Board granted voluntary dismissal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

96-25 Commonwealth Edison Company, LaSalle County Generating Station v. EPA - Upon receipt of an Agency recommendation, the Board granted this LaSalle County facility a 45-day provisional variance from the requirement of the water pollution control regulations that it discharge within the parameters of its NPDES permit, subject to conditions, to allow it to continue operating while its request for permit modification is undergoing Agency review.

96-26 Commonwealth Edison Company, Fisk, Crawford, Will County and Joliet Generating Stations v. EPA - Upon receipt of an Agency recommendation, the Board granted four of Cook and Will County facilities a 32-day extension of a previous provisional variance granted in

PCB 95-183 from the effluent temperature standards of the water pollution control regulations and from the Board's variance order in PCB 91-29, subject to conditions, to allow them to continue to operate during a period of peak electrical demands and outages of several electric generating units.

96-27 City of White Hall v. EPA - Upon receipt of an Agency recommendation, the Board granted this Greene County wastewater treatment facility a 45-day provisional variance from the carbonaceous biochemical oxygen demand ($CBOD_5$) and total suspended solids (TSS) effluent requirements of the water pollution control regulations, subject to conditions, to allow it to continue operating during a period of wastewater treatment facility repairs.

AC 95-39 County of Vermilion v. Illinois Landfill, Inc. - The Board entered a default order, finding that the Vermilion County respondent had violated Section 21(o)(5) of the Act and ordering it to pay a civil penalty of $500.00. Board Member J. Theodore Meyer concurred.

AC 95-44 EPA v. Allied Waste Industries of Illinois, Inc., d/b/a Streator Area Landfill, Inc. - The Board entered a default order, finding that the Livingston County respondents had violated Sections 21(o)(1), 21(o)(5), and 21(o)(12) of the Act and ordering them to pay a civil penalty of $1,500.00. Board Member J. Theodore Meyer concurred.

AC 95-45 County of Will v. RWS Development Corporation - The Board entered a default order, finding that the Will County respondent had violated Section 21(p)(1) of the Act and ordering it to pay a civil penalty of $500.00. Board Member J. Theodore Meyer concurred.

AC 95-46 County of Will v. William Mintz - The Board entered a default order, finding that the Will County respondent had violated Section 21(p)(1) of the Act and ordering him to pay a civil penalty of $500.00. Board Member J. Theodore Meyer concurred.

AC 95-47 EPA v. Allied Waste Industries, Inc. - The Board entered a default order, finding that the Lee County respondent had violated Section 21(o)(5) of the Act and ordering it to pay a civil penalty of $500.00. Board Member J. Theodore Meyer concurred.

AC 95-48 Sangamon County v. Town and Country Bank Trust - The Board entered a default order, finding that the Sangamon County respondent had violated Section 21(p)(1) and 21(p)(3) of the Act and ordering it to pay a civil penalty of $1,000.00. Board Member J. Theodore Meyer concurred.

R95-13 In the Matter of: RCRA Subtitle D Update, Delayed Effective Date of U.S. EPA Financial Assurance Regulations - ***See Rulemaking Update.***

NEW CASES - August 3 BOARD MEETING

95-100 C&S Recycling, Inc. v. EPA - The Board accepted an amended petition in this land permit appeal involving a Cook County facility for hearing.

95-173 Chicago-Dubuque Foundry Corporation v. City of East Dubuque - The Board found accepted this citizen's underground storage tank enforcement action against a JoDaviess County facility for hearing.

96-4 Stone Container Corporation v. EPA - The Board denied a notice of 90-day extension of time to file because the Agency had not timely sent its agreement, construed the notice as a deficient petition for review an air permit for this Lake County facility, and directed the petitioner to file an amended

petition for review within 90 days.

96-8 Alloy Engineering & Casting Co. v. EPA - The Board denied a notice of 90-day extension of time to file because the Agency had not timely sent its agreement, construed the notice as a deficient petition for review of an air permit for this Champaign County facility, and directed the petitioner to file an amended petition for review within 90 days.

96-13 PCS Phosphate Company, Inc. v. EPA - The Board acknowledged receipt of and held a notice of 90-day extension of time to file an air permit appeal involving a LaSalle County facility.

96-14 Carl and Edna Ball, d/b/a C & E Recycling and Resource Recovery - The Board accepted this petition for a variance for a Coles County facility from certain of the land pollution control regulations requiring the filing of a complete permit application for hearing.

96-15 Southern Food Park, Inc. (Carterville/Han-Dee Mart #35) v. EPA - The Board denied a notice of 90-day extension of time to file because the Agency had not timely sent its agreement, construed the notice as a deficient petition for review of an underground storage tank fund reimbursement determination involving a Williamson County facility, and directed the petitioner to file an amended petition for review within 90 days.

96-16 Richard Kurtz (45-Day Report) v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any underground storage tank remedial action appeal that may be filed on behalf of this Stephenson County facility.

96-17 Richard Kurtz (Site Classification) v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any underground storage tank remedial action appeal that may be filed on behalf of this Stephenson County facility.

96-18 Richard Kurtz (Low Priority Ground Water Monitoring Plan) v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any underground storage tank remedial action appeal that may be filed on behalf of this Stephenson County facility.

96-19 Flynn Ready-Mix Concrete v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any underground storage tank remedial action appeal filed on behalf of this JoDaviess County facility.

96-20 Barbara M. Norman, Laddie Kartes, Edward Wesolowski, Jacqueline Wesolowski, Will Burgess, Dorothy Burgess, Frank Rubino, Donna Rubino, Toby Gruszecki, and Mike Gruszecki v. U.S. Postal Service, Barrington, Illinois - The Board held this citizens' air enforcement action against a Cook County facility for a frivolous and duplicitous determination.

96-21 People of the State of Illinois v. Diamond Plating Company - The Board accepted this air enforcement action against a Madison County facility for hearing.

96-22 Lew D'Souza and Patricia D'Souza v. Richard Marraccini and Joanne Marraccini - The Board held this citizens' noise enforcement action against a Cook County facility for a frivolous and duplicitous determination.

96-23 City of Byron v. EPA - The Board held this petition for a variance for an Ogle County facility from the restricted status and standards of issuance requirements of the public water supply regulations as they apply to radium for an Agency recommendation.

96-24 People of the State of Illinois v. Terminal Railroad Association of St. Louis - The Board accepted this RCRA enforcement action against a Madison County facility for hearing.

96-25 Commonwealth Edison Company, LaSalle County Generating Station v. EPA - ***See Final Actions.***

96-26 Commonwealth Edison Company, Fisk, Crawford, Will County and Joliet Generating Stations v. EPA - ***See Final***

Actions.

96-27 City of White Hall v. EPA - ***See Final Actions.***

96-28 Freightliner of Chicago, Inc. v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any underground storage tank fund reimbursement determination appeal that may be filed on behalf of this DuPage County facility.

AC 96-2 EPA v. William Hanna - The Board received an appeal of this administrative citation filed against a Carroll County respondent.

AS 95-8 In the Matter of: Petition of Illinois Department of Transportation, District 8, for an Adjusted Standard from 35 Ill. Adm. Code 304.124 - Upon receipt of the petitioner's certificate of publication, the Board accepted this petition for an adjusted standard from certain of the water pollution control regulations relating to land application of sewage sludge.

AS 96-1 In the Matter of: Petition of Illinois Power Company (Baldwin Power Plant for an Adjusted Standard From 35 Ill. Adm. Code 302.208 and 35 Ill. Adm. Code 304.105 - The Board acknowledged receipt of a petition for an adjusted standard for a Randolph County facility from certain of the boron effluent and general use water quality requirements of the water pollution control regulations as they would apply to discharges to the Kaskaskia River and held it pending receipt of proof of publication.

AS 96-2 In the Matter of: Petition of Western Lion Limited for an Adjusted Standard From 35 Ill. Adm. Code 814.Subpart C - The Board acknowledged receipt of a petition for an adjusted standard for a Coles County facility from certain of the applicability requirements of the land pollution control regulations applicable to chemical and putrescible waste landfills in existence on September 18, 1990 that will remain open past September 18, 1997 and the prohibition against accepting new special wastestreams and held it pending receipt of proof of publication.

R95-16 In the Matter of: Exemptions From The Definition Of VOM, U.S. EPA Recommended Policy Amendments (January 1, 1995 through June 30, 1995 - ***See Rulemaking Update.***

FINAL ACTIONS - August 24, 1995 BOARD MEETING

95-89 Eugene W. Graham (Libertyville Citgo) v. EPA - The Board affirmed the Agency denial of the costs of replacing concrete in this underground storage tank fund reimbursement determination appeal involving a Lake County facility.

95-136 Burbank/Reavis High School District #220 v. EPA - The Board, having previously received a request for a 90-day extension of time to file and reserved this docket, dismissed the matter because no underground storage tank reimbursement determination appeal was filed on behalf of this Cook County facility.

95-147 American River Transportation company v. EPA - The Board granted this Grundy County facility a variance from certain of the permit and manifesting requirements of the special waste hauling

regulations.

96-7 People of the State of Illinois v. Acme Wiley Corporation - Having previously published the required newspaper notice, the Board accepted a stipulation and settlement agreement in this RCRA enforcement action, ordered the Cook County respondent to pay a civil penalty of $42,500, and ordered it to cease and desist from further violation.

96-11 People of the State of Illinois v. Elmhurst-Chicago Stone Company - Having previously published the required newspaper notice, the Board accepted a stipulation and settlement agreement in this land enforcement action, ordered the Winnebago County respondent to pay a civil penalty of $11,000, and ordered it to cease and desist from further violation.

96-13 PCS Phosphate Company, Inc. v. EPA - The Board granted voluntary withdrawal of a notice of 90-day extension of time to file an air permit appeal involving a LaSalle County facility.

96-43 A.E. Staley Manufacturing v. EPA - Upon receipt of an Agency recommendation, the Board granted this Macon County facility a 45-day provisional variance from the carbonaceous biochemical oxygen demand ($CBOD_5$) and total suspended solids (TSS) effluent requirements of the water pollution control regulations, subject to conditions, to allow it to use its newly constructed cooling tower.

96-44 City of Greenfield v. EPA - Upon receipt of an Agency recommendation, the Board granted this Greene County wastewater treatment facility a 45-day provisional variance from the carbonaceous biochemical oxygen demand ($CBOD_5$) and total suspended solids (TSS) effluent requirements of the water pollution control regulations, subject to conditions, to allow it to continue operating during a period of treatment plant repairs.

AC 94-73 EPA v. Stacy B. Hess - Having previously found that the Tazewell County respondent had violated Section 21(p)(1) of the Act, the Board ordered her to pay a civil penalty of $500.00 and $334.30 in costs. Member J. Theodore Meyer concurred and Member J. Yi dissented.

AC 94-96 EPA v. M.K. O'Hara Construction, Inc., Kenneth O'Hara, and Madalyn O'Hara - Having previously found that the Cass County respondents had violated Section 21(p)(1) of the Act at two sites, the Board ordered them to pay a civil penalty of $1,000.00 and $396.50 in costs. (Consolidated with AC 94-97.) Member J. Theodore Meyer concurred.

AC 94-97 EPA v. M.K. O'Hara Construction, Inc., Kenneth O'Hara, and Madalyn O'Hara - Having previously found that the Cass County respondents had violated Section 21(p)(1) of the Act at two sites, the Board ordered them to pay a civil penalty of $1,000.00 and $396.50 in costs. (Consolidated with AC 94-96.) Member J. Theodore Meyer concurred.

AC 95-4 Montgomery County v. Envotech, Illinois, Inc. - The Board granted withdrawal of a petition for review of this administrative citation and entered a default order, finding that this Montgomery County respondent had violated Sections 21(o)(5) and 21(o)(12) of the Act and ordering it to pay a civil penalty of $1,000.00.

AC 95-50 County of Will v. CDT Landfill - The Board entered a default order, finding that this Will County respondent had violated Sections 21(o)(6) and 21(o)(9) of the Act and ordering it to pay a civil penalty of $1,000.00.

AC 96-1 EPA v. Ken Lomax and Ken Lomax Enterprises - The Board entered a default order, finding that the Jefferson County respondents had violated Section 21(p)(1) of the Act and ordering them to pay a civil penalty of $1,000.00.

AC 96-4 County of Jackson v. Greg Burris, individually and d/b/a Burris Disposal Service - The Board entered a default order, finding that the Jackson County respondent had violated Sections 21(p)(1), 21(p)(4), and 21(p)(5) of the Act and ordering them to pay a civil penalty of $1,500.00.

AS 94-15 In the Matter of: Petition of Lone Star Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 811.320(d) - The Board denied an adjusted standard from certain of the land pollution control (landfill) regulations pertaining to establishing the background concentration of contaminants in the groundwater at this LaSalle County facility.

AS 95-4 In the Matter of: Petition of the Metropolitan Water Reclamation District of Greater Chicago for an Adjusted Standard From 35 Ill. Adm. Codes 811, 812, and 817 (Sludge Application) - The Board granted this Cook County petitioner an adjusted standard from certain of the land pollution control regulations to allow the use of waste-water sludge in lieu of soil for final cover at certain types of landfills.

R95-12 In the Matter of: Clean Fuel Fleet Program: Proposed 35 Ill. Adm. Code 241 - ***See Rulemaking Update.***

NEW CASES - August 24 BOARD MEETING

96-10 Lynn Ready-Mix Concrete (Site Classification Work Plan) v. EPA - The Board, having previously granted a 90-day extension of time to file, severed the issues in this underground storage tank remedial action appeal, restricted this docket to any appeal relating to the UST site classification work plan, and reserved new docket PCB 96-35 for any appeal relating to the UST site

classification completeness report.

96-29 Larry Slates, Lonnie Seymour, James Klaber, Faye Mott and Hoopeston Community Memorial Hospital v. Illinois Landfills, Inc. and Hoopeston City Council, on behalf of the City of Hoopeston - The Board accepted this third party appeal of a pollution control facility local siting approval for a proposed Vermilion County facility for hearing.

96-30 Fruit Belt Service Company v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a Massac County facility for hearing.

96-31 Central Illinois Public Service Company (Hutsonville Generating Station) v. EPA - The Board, receiving a notice of 90-day extension of time to file, reserved this docket for any NPDES permit appeal that may be filed on behalf of this Crawford County facility.

96-32 People of the State of Illinois v. Harper-Wyman Company - The Board received this RCRA enforcement action against a Bureau County facility for hearing.

96-33 City of Monmouth v. EPA - The Board held this petition for a variance for a Warren County facility from certain of the restricted status and standards of issuance requirements of the public water supply regulations as they apply to radium and gross alpha activity requirements of the public water supply regulations.

96-34 Prairie Recreational Developments, Inc. (Land & Lakes Company/Wheeling) v. EPA - The Board held this notice of 90-day extension of time to file a land permit appeal on behalf of this Lake County facility.

96-35 Lynn Ready-Mix Concrete (Site Classification Completion Report) v. EPA - The Board, having previously granted a 90-day extension of time to file under docket PCB 96-19, severed the issues in this underground storage tank remedial action appeal, restricted the previously opened docket for any appeal relating to the UST site classification work plan, and reserved this docket for any appeal relating to the UST site classification completeness report.

96-36 Town of Cortland v. EPA - The Board held this petition for a variance for a DeKalb County facility from certain of the restricted status and standards of issuance requirements of the public water supply regulations as they apply to radium requirements of the public water supply regulations.

96-37 Denny's Phillips 66 v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a Bond County facility for hearing.

96-38 People of the State of Illinois v. City of Metropolis - The Board received this land and water enforcement action against a Massac County facility for hearing.

96-39 Consolidated Distilled Products, Inc. (Union Liquor Company) v. Office of the State Fire Marshal - The Board accepted this underground storage tank fund reimbursement determination appeal involving a Cook County facility for hearing.

96-40 Interstate Pollution control, Inc. v. EPA - The Board accepted this land permit appeal involving a Winnebago County facility for hearing.

96-41 Village of LaGrange, City of Countryside, Chris Radogno, Laureen Dunne Silver, Michael Turlek, and Donald Younker v. McCook Cogeneration Station, L.L.C., and the Board of Trustees of the Village of McCook - The Board accepted this third party pollution control facility local siting approval appeal involving a proposed Cook County facility for hearing.

96-42 Aviation Services Group v. EPA - The Board, having received a notice of 90-day extension of time to file, reserved this docket for any underground storage tank corrective action appeal that may be filed on behalf of this Cook County facility.

96-43 A.E. Staley Manufacturing v. EPA - ***See***

Final Actions.

96-44 City of Greenfield v. EPA - ***See Final Actions.***

AC 96-6 County of Will v. CDT Landfill - The Board received an administrative citation against a Will County respondent.

AC 96-7 EPA v. Alice E. Guth - The Board received an administrative citation against a Tazewell County respondent.

AC 96-8 County of Jackson v. Easton Automotive - The Board received an administrative citation against a Jackson County respondent.

AC 96-9 EPA v. Charlie Fyffe - The Board received an administrative citation against a Wabash County respondent.

AC 96-10 County of Will v. CDT Landfill - The Board received an administrative citation against a Will County respondent.

AS 96-1 In the Matter of: Petition of Illinois Power Company (Baldwin Power Plant) for an Adjusted Standard From 35 Ill. Adm. Code 302.208 and 35 Ill. Adm. Code 304.105 - The Board accepted a petition for an adjusted standard for a Randolph County facility from certain of the boron effluent and general use water quality requirements of the water pollution control regulations as they would apply to discharges to the Kaskaskia River.

CALENDAR OF HEARINGS

All hearings held by the Board are open to the public. Pollution Control Board Meetings (highlighted) are usually 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.

September 6 10:00 a.m.	AS 94-20 Water	In the Matter of: Petition of Galesburg Sanitary District for an Adjusted Standard from 35 Ill. Adm. Code 304.105 - Galesburg City Hall, City Council Chambers, 55 West Tompkins Street, Galesburg.
September 6 1:30 p.m.	R 95-16 R, Air	In the Matter of: Exemptions from the Definition of VOM, USEPA Amendments (January 1, 1995 to June 30, 1995) - James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago.

September 7 **10:30 a.m.**		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
September 7 10:00 a.m.	AS 94-20 Water	In the Matter of: Petition of Galesburg Sanitary District for an Adjusted Standard from 35 Ill. Adm. Code 304.105 - Galesburg City Hall, City Council Chambers, 55 West Tompkins Street, Galesburg.
September 8 10:00 a.m.	AS 94-20 Water	In the Matter of: Petition of Galesburg Sanitary District for an Adjusted Standard from 35 Ill. Adm. Code 304.105 - Galesburg City Hall, City Council Chambers, 55 West Tompkins Street, Galesburg.
September 11 9:00 a.m.	PCB 95-182 P-A, Land	Carl and Edna Ball, d/b/a C & E Recycling and Resource Recovery v. EPA - City Council Chambers, 208 North 19th Street, Mattoon.
September 11 9:00 a.m.	PCB 96-14 L-V	Carl and Edna Ball, d/b/a C & E Recycling and Resource Recovery v. EPA - City Council Chambers, 208 North 19th Street, Mattoon.
September 12 9:00 a.m. September 20 10:30 a.m.	PCB 94-157 UST-FRD PCB 96-6 A-V	Community Trust Bank (Wilson's Service Center) v. EPA - Centralia City Hall, Council Chambers, 222 South Poplar, Centralia. Spectrulite Consortium, Inc. v. EPA - Illinois Pollution Control Board, 600 South Second Street, Suite 402, Springfield.
September 21 **10:30 a.m.**		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
September 27 10:00 a.m.	AC 95-11 AC	EPA v. Gordon McCann and Larson Foundation (Lincoln/McCann-Larson) - Illinois Pollution Control Board, 600 South Second Street, Suite 402, Springfield.
October 5 **10:30 a.m.**		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
October 6 9:00 a.m.	PCB 94-244 W-E, Citizens	Rodney B. Nelson, M.D. v. Kane County Forest Preserve, Jack E. Cook, Chairman, Kane County Board, Warren Kammerer, Chairman - Kane County Government Center, Building A, Auditorium, 719 South Batavia Street, Geneva.
October 10 10:00 a.m.	PCB 96-41 L-S-R, 3d P	Village of LaGrange, City of Countryside, Christine Radogno, Laureen Dunne Silver, Michael Turlek, and Donald Younker v. McCook Cogeneration Station, L.L.C., and the Board of Trustees of the Village of McCook - Village Hall, 50th and Glencoe, McCook.
October 19 **10:30 a.m.**		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
November 2 **10:30 a.m.**		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
November 7	PCB 94-157	Community Trust Bank (Wilson's Service Center) v. EPA - Centralia City

9:00 a.m.	UST-FRD	Hall, Council Chambers, 222 South Poplar, Centralia.
November 15 10:45 a.m.	AS 95-6 Air	In the Matter of: Petition of National Metalwares, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 218.204(g) - Old Kane County Courthouse, Courtroom 110, 1st Floor, 100 South Third Street, Geneva.
November 16 10:30 a.m.		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
December 7 10:30 a.m.		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**
December 21 10:30 a.m.		**Pollution Control Board Meeting, James R. Thompson Center, 100 W. Randolph St., Conference Room 9-040, Chicago**

Calendar Codes

3d P	Third Party Action	A-C	Administrative Citation
A-E	Air Enforcement	A-S	Adjusted Standard
A-V	Air Variance	CSO	Combined Sewer Overflow Exception
GW	Groundwater	HW Delist	RCRA Hazardous Waste Delisting
L-E	Land Enforcement	L-S-R	Landfill Siting Review
L-V	Land Variance	MW	Medical Waste (Biological Materials)
N-E	Noise Enforcement	N-V	Noise Variance
P-A	Permit Appeal	PWS-E	Public Water Supply Enforcement
PWS-V	Public Water Supply Variance	R	Regulatory Proceeding proceeding (hazardous waste only)
RCRA	Resource Conservation and Recovery Act	$S0_2$	$S0_2$ Alternative Standards (35 ILL. ADM. CODE 302.211(f)))
SWH-E	Special Waste Hauling Enforcement	SWH-V	Special Waste Hauling Variance
T	Thermal Demonstration Rule	T-C	Tax Certifications
T-S	Trade Secrets	UST-Appeal	Underground Storage Tank Corrective Action Appeal
UST-E	Underground Storage Tank Enforcement	UST-FRD	Underground Storage Tank Fund Reimbursement Determination
W-E	Water Enforcement	W-V	Water Variance
WWS	Water-Well Setback Exception		

ENVIRONMENTAL REGISTER MAILING LIST

The Board is updating the mailing list for the Environmental Register. The Board desires to assure that the names of those who desire to receive regular free copies of the *Register* will appear on the mailing list. If you no longer wish to directly receive regular issues of the *Register*, please fill out the address label below, indicating your wish, and return it to the Board as soon as possible. If you do not presently receive the *Register* on a regular basis, please submit the indicated appropriate mailing information below, indicating that you want your name added to the list.

Please return the completed form to:

Victoria Agyeman
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

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ILLINOIS POLLUTION CONTROL BOARD HOME PAGE ON THE WORLD WIDE WEB (INTERNET)

The Illinois Pollution Control Board (IPCB) maintains a Home Page on the Internet (World Wide Web) which is located within the State of Illinois Home Page under the State Agenies option. The Page can be accessed through any of the commercial on-line services (America On-Line and Compuserve, for example). The address of the Illinois Home Page is:

http://www.state.il.us/

The IPCB Page will disseminate information about the Board and its activities. The following is a listing of information which is currently available or will be available in the near future:

♦
Board Member Profiles
Biographical information of Board members.

♦
Board Meeting Dates and Agendas
Listing of regularly scheduled Board meetings and tentative meeting agendas.

♦
Information Services
Listing of IPCB contacts and a summary discussion of the Board's process.

♦
Pending Rulemakings
Monthly update of rulemaking activity pending before the Board.

♦
Procedural Rules
Full listing of the Board's procedural rules.

♦
Legislation
Compilation of recently enacted legislation affecting the Board.

♦
Newsletters
Identical to the hard copy version of the IPCB's Newsletter. Includes, among other things, an update on IPCB decisions in the appellate courts, significant federal actions, final action taken on cases, and new cases filed with the IPCB.

♦
Annual Reports
An electronic version of annual reports. Includes the 25th Anniversary/FY95 Annual Report.
Any questions or comments may be addressed to Joe D'Alessandro at the IPCB by phone at (217) 524-8512 or via e-mail at the following address: jdpcb@aol.com.

ILLINOIS POLLUTION CONTROL BOARD PHOTOCOPYING FEES/DOCUMENT DISTRIBUTION POLICY

It has become necessary, effective August 1, 1995 to raise the per page rates for IPCB documents to better reflect the actual costs of reproduction and distribution. Significant resources, both human and material, are expended to locate, photocopy and in the case of those wanting to pay later for copies received, the resources required to maintain a billing system. Your understanding will be appreciated.

The IPCB's revised rates/policy are as follows:

- A single opinion and order will be furnished on request without cost, irrespective of length, with the dissenting and/or concurring opinion(s). Requests for multiple opinions and orders are 75 cents per page.
- Hearing Transcripts are 75 cents per page.
- All other documents are 75 cents per page.
- The following State Agencies are, upon request, provided copies of opinions and orders and transcripts free of charge:

  Illinois Attorney General's Office (AG)
  Illinois Environmental Protection Agency (IEPA)
  Illinois Department of Natural Resources (DNR)

- Requests for copies will be honored in as timely a manner as possible. Requests for copies by mail will be honored. The Board reserves the right to add a postage charge to large bulk mailings.

WATERWAYS CRUISE AND ENVIRONMENTAL WORKSHOP

EILEEN JOHNSTON is organizing another waterways cruise and floating seminar on September 30, 1995. The floating seminar is planned to discuss areas of environmental concern and the progress made in solving problems since the first Earth Day in 1970. Participants will view pictures of what the areas looked like twenty years ago. Speakers from state and federal agencies and industries will discuss the environmental progress made, pollution abatement, and current problems.

The cruise is on the Wendella and is 72 miles long. Participants will view the ever-changing and exciting shoreline of Chicago and Northern Indiana, and the waterways of the Calumet Sag Channel, Calumet River, and I & M Shipping Canal. The cruise also passes steel mills, new water reclamation facilities, barges, landfills, and the canyon of skyscrapers.

Eileen's cruise serves to demonstrate the environmental challenges facing our country due to the dramatic impact of man on the environment. Some of the questions addressed during the floating seminar include: What progress has been made? Can we eat fish from the Lake? How are environmental regulations proposed and enforced?

Participants meet at 8:45 a.m. at the foot of the Wrigley Building, and return before 4 p.m. Parking facilities are located west of the building, allow time to locate a space. Use public transportation if possible. Be prompt, don't miss the boat! Bring your lunch. Soft drinks are sold on board. Warm clothes and head gear are in order. The cost is $45, $35 for full time students. Send checks to:

Eileen Johnston, 505 Maple Avenue, Wilmette, IL 60091; (708) 251-4386

Please make reservation before September 20, 1995. Space is limited, so the sooner the better!

****

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School, Firm, Group _____

Address _____

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Ticket No. _____ Amount Enclosed _____

Printed by Authority of the State of Illinois, August-September, 1995, 2,000 copies, order #57701.

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:

Claire A. Manning, Chairman
Springfield, Illinois

Emmett E. Dunham II Elmhurst, Illinois	Ronald C. Flemal DeKalb, Illinois	G. Tanner Girard Grafton, Illinois
Marili McFawn Palatine, Illinois	J. Theodore Meyer Chicago, Illinois	Joseph Yi Park Ridge, Illinois

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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