Annual Report 2001

Illinois Pollution Control Board

Mission Statement

The Illinois Environmental Protection Act (Act) was enacted in 1970 for the purpose of establishing a comprehensive State-wide program to restore, protect, and enhance the quality of the environment in our State. To implement this mandate, the Act established the Illinois Pollution Control Board (Board) and accorded it the authority to adopt environmental standards and regulations for the State, and to adjudicate contested cases arising from the Act and from the regulations.

With respect for this mandate, and with recognition for the constitutional right of the citizens of Illinois to enjoy a clean environment and to participate in State decision making toward that end, the Board dedicates itself to:

The establishment of coherent, uniform, and workable environmental standards and regulations that restore, protect, and enhance the quality of Illinois' environment;

Impartial decision making which resolves environmental disputes in a manner that brings to bear technical and legal expertise, public participation, and judicial integrity; and

Government leadership and public policy guidance for the protection and preservation of Illinois' environment and natural resources, so that they can be enjoyed by future generations of Illinoisans.

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Message from the Chairman

Honorable George H. Ryan, Governor of Illinois, and Esteemed Members of the General Assembly:

In fiscal year 2001, the Illinois Pollution Control Board made major strides on two fronts to make public interaction with the Board easier than ever. First, the Board adopted an entirely new set of procedural rules. These updated and streamlined rules, which took effect in January 2001, explain how anyone, including members of the public, can initiate and participate in the Board's environmental rulemakings and adjudicatory cases. Second, the Board continued to lead the way in providing and receiving information through its Web site at www.ipcb.state.il.us. For example, the Board accepted e-mail filings in its procedural rules proceeding and began regularly scanning public comments electronically to post on the Web site.

In addition to a full slate of adjudicatory cases, fiscal year 2001 presented many challenges for the Board in shaping the State's environmental regulations. For example, the Board adopted nitrogen oxides (NOx) emissions trading rules for power plants. The rules establish a "cap and trade" program, which will use market forces to cost-effectively reduce NOx emissions to meet federal ozone standards. The Board also amended regulations for the Tiered Approach to Corrective Action Objectives (TACO). Businesses use TACO to determine the extent of environmental cleanup needed based on the risk that contamination poses to future uses of "brownfields" and leaking tank sites. In fiscal year 2001, the Board adjusted TACO's acceptable background level for arsenic to reflect new scientific knowledge about naturally occurring arsenic in Illinois. In addition, at Governor Ryan's request, the Board conducted inquiry hearings and reported on environmental issues regarding natural gas-fired, peak-load electrical power generating facilities, known as "peaker plants."

The Board is proud to present its Annual Report for fiscal year 2001. In it you will find detailed information about environmental matters and Board activities between July 1, 2000 and June 30, 2001. The Board looks forward to another productive year of serving the citizens of Illinois.

Sincerely,

Claire A. Manning

ILLINOIS POLLUTION CONTROL BOARD MEMBERS

Chairman Claire Manning was first appointed to the Board and designated Chairman in 1993 by Governor Jim Edgar. She was reappointed in 1995 and in 1998 by Governor Edgar, and again in June 2001 by Governor George H. Ryan. Chairman Manning earned a JD from Loyola University School of Law in 1979, and a BA from Bradley University. Prior to coming to the Board, Chairman Manning had served three terms as a member of the Illinois State Labor Relations Board, having been first appointed by Governor James R. Thompson in 1984, at the time of that Board's creation. Manning was instrumental in designing that Board and the public sector labor relations system in Illinois. She is a frequent speaker before various associations and environmental groups. Chairman Manning was also a visiting Professor at the University of Illinois' Institute of Labor and Industrial Relations; President-Elect of the National Association of Labor Relations Agencies; and Chief Labor Relations Counsel for the State of Illinois. Currently, Chairman Manning serves on the Illinois State Bar Association's Administrative Law Section Council and the Special Committee on Women and the Law.

Board Member Ronald C. Flemal earned a BS from Northwestern University, and a PhD in Geology from Princeton University. From 1967 to 1985, he served as a Professor of Geology at Northern Illinois University, during which time he authored over eighty articles dealing principally with environmental and natural science issues. Dr. Flemal was a long-term member of the Illinois State Bar Association Environmental Law Council. Dr. Flemal was appointed by Governor James R. Thompson in 1985, by Governor Jim Edgar in 1996, and most recently by Governor George H. Ryan in 1999.

Board Member G.Tanner Girard was first appointed in 1992, reappointed in 1994, and again in 1998, by Governor Jim Edgar. Governor George H. Ryan reappointed Dr. Girard to the Board in 2000. Dr. Girard has a PhD in science education from Florida State University. He holds an MS in biological science from the University of Central Florida and a BS in biology from Principia College. He was formerly Associate Professor of Biology and Environmental Sciences at Principia College and Visiting Professor at Universidad del Valle de Guatemala. Other gubernatorial appointments have included services as Chairperson and Commissioner of the Illinois Nature Preserves Commission and membership on the Governor's Science Advisory Committee. He also was President of the Illinois Audubon Society and Vice-President of the Illinois Environmental Council.

Board Member Elena Z. Kezelis began her term in 1999. Before joining the Board, Ms. Kezelis served as Chief Legal Counsel to Governor Jim Edgar. She is a former law partner at Sonnenschein Nath & Rosenthal. Ms. Kezelis previously worked as a litigation associate at Isham, Lincoln & Beale. Additionally, Ms. Kezelis served as a law clerk for former federal District Court Judge George N. Leighton. Ms. Kezelis received her BS from Ripon College in 1977, her JD from John Marshall Law School in 1980, and is a Barrister of the American Inns of Court. Ms. Kezelis serves on the Illinois State Bar Association's Environmental Law Council and lectures at Southern Illinois University at Carbondale as well as before various other groups.

Board Member Samuel T. Lawton, Jr. was one of the original members of the Board, serving from July 1970 to August 1973 and was Acting Chairman from December 1972 to August 1973. Member Lawton was the mayor of Highland Park, Illinois from 1967 to 1970. He also had a distinguished military career in the United States Army. Mr. Lawton earned an AB from Dartmouth College and his JD from Harvard Law School. He has over fifty years of law experience including forty years of practice at Altheimer & Gray, where he was a partner. Member Lawton was an Arbitrator with the American Arbitration Association's National Commercial and Labor Panels, past Chairman of the Chicago Bar Association's Committee on Local Government, past member of the Illinois Bar Association's Environmental Law Council, and a past Member and past Chairman of the Illinois Air Pollution Control Board. The Illinois Air Pollution Control Board was the predecessor agency of the Board. Mr. Lawton is presently an Adjunct Professor at the John Marshall Law School where he teaches courses in Municipal Law, Sales Transactions, and Environmental Law. Member Lawton was a special Assistant Attorney General for the State of Illinois representing the Departments of Transportation and Conservation, and is a published author on Illinois standards and environmental law.

Board Member Marili McFawn left the Board when her term expired on June 30, 2001. In addition to serving as a Board Member, McFawn also served as Attorney Assistant to several former Board Members. The Board thanks Ms. McFawn for her many years of dedicated service to the Board and to the citizens of Illinois. Everyone at the Board wishes Ms. McFawn continued success in her future endeavors.

Board Member Nicholas J. Melas was appointed to the Board in 1998 and reappointed to the Board in 2000 by Governor George H. Ryan. Mr. Melas served as the former president and commissioner of the Metropolitan Water Reclamation District of Greater Chicago. He has acted as the president of N.J. Melas & Company, Inc., and was the former president of the Illinois Association of Sanitary Districts. Additionally, Mr. Melas served as a commissioner of the Northeastern Illinois Planning Commission and the Chicago Public Building Commission. Mr. Melas received a BS in Chemistry from the University of Chicago and an MBA in Labor and Industrial Relations from the Graduate School of Business at the University of Chicago.

RULEMAKING REVIEW

Section 5(b) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/5(b) (2000)) directs the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois." When the Board promulgates rules, it uses both the authority and procedures in Title VII of the Act and its own procedural rules at 35 Ill. Adm. Code Part 102.

The Act and Board rules allow anyone to file regulatory proposals with the Board. The proposals are then discussed at quasi-legislative public hearings at which the Board gathers information and comments to assist it in making rulemaking decisions. The Board also accepts written public comments. Notice of a rule's proposal and adoption are published in the Illinois Register, as required by the rulemaking provisions of the Illinois Administrative Procedure Act (5 ILCS 100/5-10 through 5-160 (2000)). The Board issues written opinions and orders, which review the testimony, evidence, and public comment in the rulemaking record and explains the reasons for the Board's decision.

Additionally, Section 7.2 of the Act establishes special procedures for adoption, without holding hearings, of rules that are "identical-in-substance" to rules adopted by the United States Environmental Protection Agency in certain federal programs. Notice of the Board's proposal and adoption of identical-in-substance rules is published in the Illinois Register, and the Board considers in its opinions any written public comments it has received.

Finally, under Section 5(d) of the Act, the Board may conduct such other non-contested or informational hearings as may be necessary to accomplish the purposes of the Act. As the Board explains in its procedural rules, such "hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate." See 35 Ill. Adm. Code 102.112. The Board has held inquiry hearings on its own motion as well as on requests to do so from the Governor or a State agency.

During the first half of FY 2001, the Board used the inquiry hearing process. Statewide public hearings were held to gather information and testimony, on the record, on the issues involving natural gas-fired, peak-load electrical power generating facilities. The inquiry hearing process provided an open legal forum where scientific and technical testimony was presented on the record, before a hearing officer and the Board. At the conclusion of the hearing process and written public comment period, the Board issued a comprehensive decision, which set forth and evaluated all the evidence and information presented. The result of an inquiry hearing process might be initiation of the regular rulemaking process under Section 27 of the Act.

Final Rulemakings and Informational Order for Fiscal Year 2001

Natural Gas-Fired, Peak-Load Electrical Power Generating Facilities (Peaker Plants), R01-10

In the period between July 2000 and January 2001, the Board had the opportunity to exercise its regulatory authority in a creative way to assist the Governor and the legislature in gathering information concerning an emerging environmental issue: the potential environmental impact of natural gas-fired, peak-load electrical power generating facilities, known as peaker plants. On July 6, 2000, Governor George H. Ryan requested that the Board conduct inquiry hearings concerning peaker plants, using its regulatory authority under Section 27 of the Act and Part 102 of the Board's procedural rules. Governor Ryan asked the Board to address in writing whether any further requirements should be imposed on peaker plants to safeguard the environment.

As a result of its inquiry process, on December 21, 2000, the Board issued an Informational Order. In its

Elwood Energy Facility

Informational Order, the Board made several recommendations to tighten environmental regulations with respect to peaker plants. First, the Board suggested that a rulemaking be initiated for the purpose of considering whether "Best Available Control Technologies" should be required to reduce Nitrogen Oxide emissions from peaker plants. Second, the Board recommended that the Illinois Environmental Protection Agency (Agency) codify two of its administrative processes; specifically, that involving the use of dispersion air modeling, and that involving public hearings on air construction permit applications for all peaker plants. Finally, the Board suggested that compliance with the State's noise pollution regulations should be part of the Agency's permitting process for peaker plants.

In a lengthy Companion Report to its Informational Order, the Board provided a detailed summary of the information contained in the record, including testimony and exhibits presented at seven days of public hearings (held throughout the State) as well as 195 written public comments. Both the Informational Order and the Companion Report are available on the Board's Web site at http://www.ipcb.state.il.us.

Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20

On December 21, 2000, the Board adopted a new set of procedural rules that became effective January 1, 2001. These rules govern how persons initiate and participate in all proceedings before the Board under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (2000)), and other legislation directing Board action. All prior Board procedural rules and resolutions were repealed.

Revision of the Board's procedural rules was a major undertaking the Board began in 1996 with its issuance of a proposal for public comment and public hearings in a predecessor docket. Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R 97-8. Throughout the revision process, the Board received extensive comments from a host of participants, including, but not limited to: Chicago Bar Association; Illinois State Bar Association's Environmental Law Section Council; Joint Committee on Administrative Rules; Office of the Attorney General; Illinois Environmental Protection Agency; Illinois Environmental Regulatory Group; law firms; environmental and conservation groups; and individuals.

The new procedural rules consist of ten parts within Title 35 of the Illinois Administrative Code: Part 101 (General Rules); Part 102 (Regulatory and Informational Hearings and Proceedings); Part 103 (Enforcement); Part 104 (Regulatory Relief Mechanisms); Part 105 (Appeals of Final Decisions of State Agencies); Part 106 (Proceedings Pursuant to Specific Rules or Statutory Provisions); Part 107 (Petition to Review Pollution Control Facility Siting Decisions); Part 108 (Administrative Citations); Part 125 (Tax Certifications); and Part 130 (Identification and Protection of Trade Secrets and Other Non-Disclosable Information).

The Board held three public hearings on the proposed rules. The Board utilized its Web site to make information regarding this proceeding readily available to the public by posting the hearing transcripts, public comments, and its opinions. The rules that became effective on Januaury 1, 2001 make the Board's procedures easier to understand.

Board Completes Four Clean Air Act Fast-Track Rulemakings Imposing Control Requirements for Nitrogen Oxide (NOx):

New 35 Ill. Adm. Code 217, Subpart W, the NOx Trading Program for Electrical Generating Units, and Amendments to 35 Ill. Adm. Code 211 and 217, R01-9

New 35 Ill. Adm. Code 217.Subpart T, Cement Kilns, and Amendments to 35 Ill. Adm. Code 211 and 217, R01-11

Amendments to 35 Ill. Adm. Code 217.Subpart V, Electric Power Generation, R01-16

New 35 Ill. Adm. Code 217.Subpart U, NOx Control and Trading Program for Specified NOx Generating Units, Subpart X, Voluntary NOx Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211, R01-17

During the past fiscal year, the Board completed four rulemakings amending its air rules regulating emissions of Nitrogen Oxides (NOx) by various sources, and establishing NOx emissions trading programs. Each of these rulemakings were initiated by Illinois Environmental Protection Agency (Agency) to amend the Board's rules at 35 Ill. Adm. Code Parts 211 and 217. Each proposal was filed under Section 28.5 of the Environmental Protection Act (Act) (415 ILCS 5/28.5 (2000)). Section 28.5 provides for "fast-track" adoption of certain regulations necessary for compliance with the Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7401 *et seq*. (1990)). The Board must complete fast-track rulemakings within tight statutory timeframes, with final rule adoption being required within approximately six months after the Board's receipt of an Agency proposal. *See* 415 ILCS 5/28.5(g)-(p) (2000).

Each of these four rulemakings is intended to assist Illinois in attaining compliance with the one-hour National Ambient Air Quality Standards (NAAQS) for ozone. Currently, two areas of the State are not in compliance with the ozone NAAQS: the Chicago and Metro-East non-attainment areas.

In October 1998, the United States Environmental Protection Agency (USEPA) promulgated a document entitled "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Regions for Purpose of Reducing Regional Transport of Ozone." This document, commonly known as the "NOx SIP Call," requires Illinois to develop NOx emissions to a specified budget. USEPA has given Illinois a budget of 270,560 tons of NOx per yearly ozone season, based on estimated NOx emissions for 2007, taking into account required NOx reductions. The deadline date for full implementation of the NOx SIP Call is May 31, 2004.

In response to the NOx SIP Call, in Section 9.9 of the Act, the General Assembly specifically mandated the Agency to propose, and the Board to adopt, rules for a NOx Trading System, as well as rules for NOx reductions for cement kilns and stationary internal combustion engines.

The Board and the Agency followed these mandates by completing rulemakings as follows:

R01-9: NOx Trading Program for Electrical Generating Units, 35 Ill Adm. Code 217.Subpart W, adopted December 21, 2000

R01-11: Cement Kilns, 35 Ill. Adm. Code.Subpart T, adopted March 21, 2001

R01-16: Electrical Power Generation, 35 Ill. Adm. Code 217.Subpart V, adopted April 5, 2001

R01-17: NOx Control and Trading Program for Specified Units, 35 Ill. Adm. Code Subpart X Voluntary NOx Reductions Program, 35 Ill Adm. Code Subpart X, adopted April 5, 2001.

Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (Environmental Land Use Control (ELUC) Rules: P.A. 91-909), R00-19(A)

On December 21, 2000, the Board adopted amendments to the Tiered Approach to Corrective Action Objectives (TACO) rules found at 35 Ill. Adm. Code 742 of the Board's land regulations. Part 742 contains procedures for developing remediation objectives based on risks to human health and the environment posed by environmental conditions at sites undergoing remediation in the Site Remediation Program, the Leaking Underground Storage Tank Program, and pursuant to Resource Conservation and Recovery Act (RCRA) Part B permits and closures.

On May 15, 2000, the Illinois Environmental Protection Agency (Agency) submitted proposed amendments to the TACO regulations. The Board moved the Agency's proposal to first notice on July 27, 2000. In doing so, the Board divided the proposal into two subdockets based upon subject matter. Most of the amendments proposed in Subdocket A are required by Public Act 91-909, which became effective July 7, 2000. Among other things, it created a new institutional control, known as the Environmental Land Use Control or "ELUC" for use under the TACO regulations. Public Act 91-909 required regulations to be adopted implementing the ELUC by no later than January 6, 2001.

The Board held three public hearings, and accepted public comments through October 23, 2000. On November 16, 2000, the Board adopted its second notice opinion and order, and sent it to the Joint Committee on Administrative Rules for its consideration. In its second notice order, the Board included one element from Subdocket B:

amendments to allowable arsenic background levels found at 35 Ill. Adm. Code 742.Appendix A, Table G.

The proposed amendment to Appendix A, Table G, would increase allowable background levels of arsenic from 7.2 to 13.0 mg/kg in metropolitan areas, and from 5.2 to 11.3 mg/kg in non-metropolitan areas. Hearings were held concurrently in Subdocket B and in Subdocket A. However, because the amendments proposed in Subdocket A had a required adoption date of January 6, 2001, those amendments were scheduled to be adopted prior to those in Subdocket B. As a result, commenters in Subdocket B asked the Board to expedite its adoption of the arsenic changes. The Board did so, and adopted the Subdocket A amendments on December 21, 2000.

Subdocket R00-19(B) was still pending at the close of fiscal year 2001.

Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240, R01-12

On August 21, 2000, the Illinois Environmental Protection Agency (Agency) filed with the Board proposed amendments to the enhanced vehicle inspection and maintenance (I/M) regulations at 35 Ill. Adm. Code 240. The Agency's proposal was filed under Section 13B-20(a) of the Vehicle Emissions Law of 1995 (Vehicle Emissions Law) (625 ILCS 5/13B-1 *et seq.* (2000)). Section 13B-20(a) requires the Board to adopt rules within 120 days after it receives the Agency's proposal. The Vehicle Emissions Law also exempts the rulemaking from the requirements of Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b) (2000)) and the rulemaking provisions of the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2000)). The Board met the statutory deadline by adopting the amendments on December 7, 2000.

Sections 182(b) and (c) of the federal Clean Air Act (42 U.S.C §§ 7582(b), (c) (2000)), require states to implement vehicle I/M programs in areas that do not meet National Ambient Air Quality Standards (NAAQS) for ozone or carbon monoxide. Areas that do not meet NAAQS are referred to as "non-attainment" areas. In Illinois, two areas do not meet the NAAQS for ozone: (1) the Chicago metropolitan area, which is a severe non-attainment area; and (2) the Metro-East St. Louis area, which is a moderate non-attainment area. Under Illinois' Vehicle Emissions Law, the Agency proposed, and the Board adopted, an enhanced I/M program for these two non-attainment areas. *See* Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240, R98-24 (July 8, 1998); R94-20 (Dec. 1, 1994); and R94-19 (Dec. 1, 1994).

These most recent revisions to the I/M rules are relatively minor adjustments to the enhanced I/M program, necessary to enable Illinois to meet federal and State mandated enhanced emissions testing requirements. Notable amendments include a delayed implementation of "pass/fail" on-board diagnostic testing until January 1, 2002; and retention of more lenient "start-up" hydrocarbon and carbon monoxide emission standards for model year 1981 through 1986 light-duty vehicles and certain light-duty trucks.

Amendments to Diesel Opacity Rules Required by P.A. 91-254 and P.A. 91-865: 35 Ill. Adm. Code 240, R01-8

The Illinois General Assembly adopted legislation in 1999 that amended the diesel smoke opacity tests and procedures under the Illinois Vehicle Code. *See* P.A. 91-254, effective July 1, 2000. The law required the Board to amend its existing diesel smoke opacity rules at 35 Ill. Adm. Code 240 within eight months of the legislation's effective date, *i.e.*, by February 28, 2001. The Board met this deadline by adopting the proposed amendments on January 18, 2001.

In this docket, the Board complied with the General Assembly's directive that the Board amend its diesel emissions standards and procedures to be consistent with (1) the Society of Automotive Engineers (SAE) recommended practice J1667 "Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles," and (2) the United States Environmental Protection Agency's "Guidance to States on Smoke Opacity Cutpoints To Be Used with SAE J1667 In-Smoke Test Procedures." *See* 625 ILCS 5/13-109.2 (2000). In response to a request by the Joint Committee on Administrative Rules, the Board added definitions for "snap acceleration test" as well as "affected area" and "vehicle curb weight."

The Board's Part 240 standards and procedures are used by the Illinois State Police and the Illinois Department of Transportation in their diesel inspection programs, including the "spot testing" of certain vehicles that emit excessive black smoke in ozone non-attainment areas. *See* P.A. 91-865.

Conforming and Technical Amendments to 35 Ill. Adm. Code 809, R00-18

On September 7, 2000, the Board adopted amendments to 35 Ill. Adm. Code 809 (Nonhazardous Special Waste Hauling and the Uniform Program), in a docket that it initiated on its own motion. The adopted amendments were published in the *Illinois Register* on October 6, 2000 (24 Ill. Reg. 14747).

The rulemaking made one substantive change to Part 809. The definition of "on-site" in Section 809.103, relating to transport of hazardous waste, was changed to make it consistent with a federal definition. A number of minor, technical changes that were originally brought to the Board's attention in Amendments to Permitting for Used Oil Management and Used Oil Transport: 35 Ill. Adm. Code 807 and 809, R99-18 (Dec. 16, 1999), were also made.

Semi-Annual Identical-In-Substance Update Dockets

Section 7.2 and various other sections of the Environmental Protection Act require the Board to adopt regulations identical-in-substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency (USEPA) in various federal program areas. *See* 415 ILCS 5/7.2 (2000). These program areas include: drinking water; underground injection control; hazardous and non-hazardous waste; underground storage tanks; wastewater pretreatment; and the definition of volatile organic material.

Identical-in-substance update dockets are usually opened twice a year in each of the seven program areas, so that the Board annually processes at least 14 update dockets in order to incorporate federal rules into State rules within one year of USEPA's rule adoption. Additional update dockets are initiated as necessary to provide expedited adoption of some USEPA rules in response to public comments, or to correct rules for various reasons including in response to federal litigation.

Timely completion of identical-in-substance rules requires inter-agency coordination and inter-governmental cooperation. Entities who must act in concert to successfully complete these rulemakings include the Board, Illinois Environmental Protection Agency, USEPA, and the Office of the Attorney General. The Attorney General must certify the adequacy of, and authority for, Board regulations required for federal program authorization.

JUDICIAL REVIEW OF BOARD DECISIONS

Introduction

Pursuant to Section 41 of the Environmental Protection Act (Act) (415 ILCS 5/41 (2000)), any party to a Board hearing, anyone who filed a complaint on which a hearing was denied, anyone denied a permit or variance, anyone who is adversely affected by a final Board order, or anyone who participated in the public comment process under subsection (8) of Section 39.5 of the Act, may file a petition for review of the Board's order with the appellate court. The petition for review must be filed within 35 days of service of the Board order from which an appeal is sought.

Administrative review of the Board's final order or action is limited in scope by the language and intent of Section 41 (b) of the Act. Judicial review is intended to ensure fairness for the parties before the Board, but does not allow the courts to substitute their own judgment in place of that of the Board. Board decisions in rulemaking, imposing conditions in variances, and setting penalties are quasi-legislative. The standard of review for the Board's quasi-legislative actions is whether the Board's decision is arbitrary or capricious. All other Board decisions are quasi-judicial in nature and the Illinois Supreme Court has recently stated that in reviewing State agency's quasi-judicial decisions (1) findings of fact are reviewed using a manifest weight of the evidence standard, (2) questions of law are decided by the courts *de novo*, and (3) mixed questions of law and fact are reviewed using the "clearly erroneous" standard (a standard midway between the first two). *See* City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 692 N.E.2d 295 (1998).

In fiscal year 2001, there were final orders entered by the appellate court in six cases involving appeals from Board opinions and orders. The Board's decision was affirmed, in total or in part, in five cases. The following, organized by case type and section of the Act, summarizes the written appellate decisions in Board cases for fiscal year 2001. Also summarized is a circuit court decision of particular interest, in which the Board is a respondent in the appellate court.

Enforcement

Sections 30 and 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/30, 31.1 (2000)), respectively, provide for standard enforcement actions and for the more limited administrative citations. The standard enforcement action is initiated by the filing of a formal complaint with the Board either by a citizen, the Attorney General or State's Attorney on behalf of the People of the State of Illinois. A public hearing is held where the burden is on the complainant to prove that the "respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of [the] Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e) (2000). The Board is authorized under Sections 33 and 42 of the Act to direct a party to cease and desist from violation, to revoke a permit, to impose civil penalties, and to require posting of bonds or other securities to assure correction of violations. An administrative citation is initiated by either the Illinois Environmental Protection Agency or a unit of local government and seeks to impose a statutory fine for, among other things, causing or allowing open dumping of any waste.

Environmental Protection Agency v. Pollution Control Board, No. 5-99-0386 (5th Dist. Apr. 24, 2001)

On April 24, 2001, the Fifth District Appellate Court affirmed the Board's ruling in IEPA v. Berger, PCB 94-373 (May 16, 1999). In an unpublished order issued under Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23) the Fifth District agreed with the Board's findings, but modified the Board's order by lowering the total monetary penalty assessed against Berger from $30,000 to $20,000.

The enforcement case, initiated on December 7, 1994, involved a solid waste landfill in Olney, Illinois. The State alleged that Berger and Berger Waste Management, Inc. violated various provisions of the Act and Board regulations by failing to comply with financial assurance, groundwater monitoring, significant modification, and landfill operation requirements. On May 6, 1999, following a public hearing, the Board entered an order finding Berger guilty of some of the violations. The Board found that Berger Waste Management, Inc. was not liable. The

Board revoked Berger's operating permit and ordered the landfill closed. The Board also ordered Berger to pay a fine of $30,000.

On appeal by the Illinois Environmental Protection Agency, the appellate court affirmed the Board's decision not to hold Berger Waste Management, Inc. liable for any of the alleged violations. The court also affirmed the Board's refusal to award attorney fees to the State as a sanction for discovery abuses. Additionally, the court determined that the Board's decision to impose a $30,000 penalty was not arbitrary, capricious, or unreasonable. The court concluded, however, that the Board exceeded its authority in its use of a multiplier factor in determining a penalty amount, and therefore reduced the total monetary penalty to $20,000.

James W. Martin and Eva D. Martin, individually and d/b/a Martin's of Matteson v. Pollution Control Board and Matteson WHP Partnership, No. 1-00-2513 (1st Dist. June 29, 2001)

On June 29, 2001, the First District Appellate Court affirmed in part and reversed in part the Board's order in a citizen enforcement action in Matteson WHP Partnership v. James W. Martin and Eva D. Martin, individually and d/b/a Martin's of Matteson, PCB 97-121 (June 22, 2000). In an unpublished order issued under Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23), the court affirmed the Board's order insofar as it found a violation of Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 5/21(e) (2000)) and requiring soil clean-up. The court, however, reversed the Board's finding that a groundwater remedy was necessary. The court found that, given the Board's finding that there was no violation of Section 12(a) of the Act, a groundwater remedy was not warranted.

Respondents James and Eva Martin ran a dry cleaning business at a shopping center in Matteson, Illinois, from 1981 to 1997 (the site). The Martins leased space at the shopping center. Complainant Matteson WHP Partnership, the operating entity of the shopping center, filed an enforcement action with the Board against the Martins alleging violations of Section 12(a) and 21(e) of the Act. The Board found that the Martins, through their dry cleaning business, violated Section 21(e) of the Act by improperly disposing of perchloroethylene at the site. Perchloroethylene or "perc" is a solvent commonly used in dry cleaning. The Board did not find a violation of Section 12(a) of the Act.

The Board found that, as a result of the Martins improper disposal in violation of Section 21(e) of the Act, the site's soil was contaminated with perc and there was a continuing threat of perc contamination to the site's groundwater. No groundwater contamination, however, was found. The Board therefore ordered the Martins to clean up the contaminated soil around the site and to investigate for groundwater contamination and, if found, to clean up the groundwater. The Board required the Martins to perform this work under the Tiered Approach to Corrective Action Objectives (TACO) regulations, found at 35 Ill. Adm. Code Part 742.

The First District affirmed the Board's finding of violation as not contrary to the manifest weight of the evidence. The court held that the Board properly relied solely on circumstantial evidence of improper disposal and did not need direct evidence, such as an eyewitness to the disposal, to find a violation. The court also affirmed the Board's order for a TACO soil cleanup.

In upholding the Board's soil remedy, the court rejected the Martins' argument that the Board's cleanup order provided only economic relief. The court found that the Board was not exceeding its authority in ordering a cleanup to TACO's more stringent residential cleanup levels. The court also upheld the Board's decision to make the cleanup contingent on the Martins obtaining access to the site from the property owner, who was not a party to the enforcement proceeding before the Board.

The court, however, reversed the Board's order for a groundwater investigation. The court was persuaded that because the Board found that the complainant failed to prove the alleged Section 12(a) "water" violation, the Board could not order the groundwater remedy.

Dalise Enterprises, Inc. d/b/a Barge-Way Company v. Illinois Pollution Control Board, No. 00 CH 12113 (Cir. Ct. Cook Cnty. Sept. 12, 2000), appeal docketed, No. 1-100-3391 (1st Dist. Oct. 6, 2000)

On June 19, 1998, Union Oil Company of California d/b/a UNOCAL (UNOCAL) filed a six-count complaint with the Board against eight respondents in the case Union Oil Company of California d/b/a Unocal v. Barge-Way Oil Company, Inc., Bargeway Systems, Inc.,

Joseph Kellogg, Nielsen's Bargeway, Gertrude Kellogg, Robert Nielsen, Robert F. Atkins, and Mobil Oil Company, PCB 98-169.

UNOCAL alleged that since 1982, it owned property in Glendale Heights, Illinois that had previously been used as a gasoline service station. In 1991, UNOCAL reported a release of petroleum products from two existing underground storage tanks. As directed by the Illinois Environmental Protection Agency and the Office of the State Fire Marshal, UNOCAL performed investigative and corrective action at the site, including removal of approximately 4,300 tons of contaminated soil. UNOCAL alleged that it incurred response and remediation costs totaling approximately $600,000. UNOCAL sought recovery of those costs from the respondents before the Board.

Since the original complaint was filed, a number of the respondents and counts of the complaint have been dismissed. Count three, in which UNOCAL alleged violations of Sections 12(a) and (d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d) (1998)), is the only remaining count before the Board. A counterclaim filed by Barge-Way Oil Company, Inc. against counter-respondents Robert F. Atkins, Bargeway Systems, Inc., Robert Nielsen, and Tom Biggers also remains pending before the Board.

On August 17, 2000, Dalise Enterprises, Inc. d/b/a Barge-Way Company (Dalise) filed a complaint for declaratory judgment and an emergency motion for a temporary restraining order and preliminary injunction in Cook County Circuit Court. With these filings, Dalise sought to enjoin the Board from further action in this matter, alleging that the Board lacked jurisdiction over private cost recovery actions. The Board moved to dismiss with prejudice. The Board noted that Section 31(d) of the Act (415 ILCS 5/31(d) (1998)) allows for "any person" to file a complaint before the Board alleging violations of the Act. The Board also noted that the Illinois General Assembly, in Section 33(a) of the Act (415 ILCS 5/33(a) (2000)), gave the Board broad authority to fashion appropriate remedies and that the Illinois Supreme Court, in People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991), refused to find that the Board could not award cleanup costs for a violation of the Act.

Following oral argument, the Cook County Circuit Court, on September 12, 2000, granted the Board's motion to dismiss Dalise's complaint for declaratory judgment with prejudice and denied Dalise's motion for a temporary restraining order.

On October 6, 2000, Dalise appealed the Cook County Circuit Court's decision to the First District Appellate Court. This appeal is still pending before the appellate court. The complaint in PCB 98-169 is still pending before the Board.

Permit Appeals

The Board is authorized to require a permit for the construction, installation, and operation of pollution control facilities and equipment. Under Section 39 of the Environmental Protection Act (Act) (415 ILCS 5/39 (2000)), it is the duty of the Illinois Environmental Protection Agency (Agency) to issue permits to those applicants who prove that the permitted activity will not cause a violation of the Act or the Board's regulations. An applicant who has been denied a permit, or who has been granted a permit with conditions, may contest the Agency decision at a Board hearing under Section 40 of the Act. Additionally, the legislature has, in certain circumstances, authorized "third party" appeals of Agency issued permits.

ESG Watts, Inc. v. Pollution Control Board, No. 4-00-0382 (4th Dist. Jan. 17, 2001)

On January 17, 2001, the Fourth District Appellate Court affirmed the Board's decision in an unpublished order the court issued under Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23). The court upheld a Board order affirming the denial by the Illinois Environmental Protection Agency (Agency) of a landfill permit to ESG Watts in ESG Watts, Inc. v. IEPA, PCB 95-109 (Mar. 16, 2000).

The case involved a solid waste landfill in Sangamon County, Illinois. On September 16, 1994, ESG Watts, Inc. (ESG Watts) submitted a significant modification permit application for a solid waste landfill to the Agency. The Agency denied the permit application, pursuant to Section 39(i) of the Environmental Protection Act (Act) (415 ILCS 5/39(i) (2000)), which allows the Agency to consider ESG Watt's prior experience in waste management operations. The Agency found that ESG Watts had a prior history of repeated violations of State laws, regulations, and standards concerning the operation of landfills. As evidence of the repeated violations, the Agency listed 19 administrative citations and cited People v. Watts Trucking, No. 91-CH-242 (Cir. Ct. Sangamon County). *See also* ESG Watts, Inc. v. Pollution Control Board,

No. 3-00-0314 (3rd Dist. Jan. 25, 2001), summarized below, where the Agency relied upon the same administrative citations and an enforcement action for denying another permit application.

ESG Watts appealed the permit denial to the Board and the Agency ultimately moved for summary judgment. The Agency argued that the issue was answered by the Third District in ESG Watts, Inc. v. Pollution Control Board, 286 Ill. App. 3d 325, 676 N.E.2d 299 (3rd Dist. 1997), in which the Agency denied seven waste stream permit applications submitted by ESG Watts on the basis of the same repeated violations it cited in this case. ESG Watts argued that a Section 39(i) evaluation must be done on a case-by-case basis and must be permit-specific. The Board affirmed the Agency's decision and found that the Agency correctly relied, in part, upon ESG Watts' previously cited violations.

The Fourth District found that the statute directs that a Section 39(i) evaluation must occur sometime before the issuance of a permit, but does not require a new evaluation prior to the issuance of every permit or provide a time limit on the evaluation. The court found that the Board properly upheld the Agency's permit denial based on the 19 administrative citations and the cited court case in its Section 39(i) evaluation.

ESG Watts, Inc. v. Pollution Control Board, No. 3-00-0314 (3rd Dist. Jan. 25, 2001)

On January 25, 2001, the Third District Appellate Court affirmed the Board's decision in an unpublished order the court issued under Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23). The court upheld a Board order affirming the denial by the Illinois Environmental Protection Agency (Agency) of a landfill permit to ESG Watts in ESG Watts, Inc. v. IEPA, PCB 95-110 (Mar. 16, 2000).

The case involved a solid waste landfill in Taylor Ridge, Illinois. In September 1994, ESG Watts, Inc. (ESG Watts) submitted a significant modification permit application for a solid waste landfill to the Agency. The Agency denied the permit application, pursuant to Section 39(i) of the Environmental Protection Act (Act) (415 ILCS 5/39(i) (2000)), which allows the Agency to consider ESG Watts' prior history of waste management operations, including 19 administrative citations and one adverse circuit court enforcement action. *See* People v. Watts Trucking, No. 91-CH-242 (Cir. Ct. Sangamon County); *see also* ESG Watts, Inc. v. Pollution Control Board, No. 4-00-0382 (4th Dist. Jan. 17, 2001), summarized above, where the Agency relied upon the same administrative citations and enforcement action for denying another permit application. ESG Watts appealed the Agency's decision to the Board.

The Agency filed a motion for summary judgment based on ESG Watts, Inc. v. Pollution Control Board, 286 Ill. App. 3d 325, 676 N.E.2d 299 (3rd Dist. 1997). The Board granted the Agency's motion. ESG Watts appealed to the Third District Appellate Court.

The Third District stated that when it reviews a grant of summary judgment, it considers the question *de novo*. The court noted that in response to the Agency's motion for summary judgment, ESG Watts bore the burden of proving the existence of a genuine issue of material fact. The court concluded that ESG Watts failed to meet this burden by offering only the barest contention that the prior violations were no longer relevant to the Agency's decision in the case. ESG Watts provided no factual support for this contention. Accordingly, the court found that summary judgment was proper, and affirmed the Board's decision.

Site Location Suitability Appeals

Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (2000)) requires local government approval of the siting of specified new pollution control facilities. Section 39.2 provides procedures for proper notice and filing, public hearings, jurisdiction and time limits, specific siting criteria, and other procedures that the local government must follow in reaching its decision. The decision of the local government may be contested before the Board under Section 40.1 of the Act. The Board reviews the decision, and the record supporting it, to determine (1) whether the local government's procedures satisfy basic principles of fundamental fairness, and (2) whether the decision was against the manifest weight of the evidence. The Board's final decision is then reviewable by the appellate court.

Land and Lakes Co. v. Pollution Control Board, 319 Ill. App. 3d 41, 743 N.E.2d 188 (3rd Dist. 2000)

On December 28, 2000, the Third District Appellate Court affirmed the Board's decision in two

consolidated third-party appeals challenging a decision of the Will County Board. *See* Land and Lakes Co. v. Illinois Pollution Control Board and Waste Management, Inc., PCB 99-136 (Aug. 5, 1999) and Sierra Club v. Illinois Pollution Control Board and Waste Management, Inc., PCB 99-139 (Aug. 5, 1999). The Board affirmed the Will County Board's grant of siting approval to Waste Management, Inc. (WMI), for the construction of a new pollution control facility.

This case involved a proposal to develop a solid waste landfill on the site of the former Joliet Army Ammunition Plant. The Will County Board ultimately voted to grant WMI's application based upon the recommendations of the Will County Board's Pollution Control Facility Committee. The petitioners appealed the Will County Board's decision on the grounds that the proceedings were fundamentally unfair and that the decision to grant the application was contrary to the manifest weight of the evidence. *See also* the related case Will County Board v. Pollution Control Board, 319 Ill. App. 3d 545, 747 N.E.2d 5 (3rd Dist. 2001), summarized below. The Board found that the proceedings were fundamentally fair, and affirmed the decision of the Will County Board as supported by the manifest weight of the evidence.

The Appellate Court upheld the Board's decision on both the fundamental fairness and the siting criteria. With regard to the fundamental fairness allegations, the court concluded that because the fundamental fairness of quasi-adjudicative proceedings is a question that is outside the scope of the Board's specific experience or expertise, its review should be *de novo*. With regard to the siting criteria, the court concluded that the Board correctly decided that the Will County Board's decision was not contrary to the manifest weight of the evidence.

Will County Board v. Pollution Control Board, 319 Ill. App. 3d 545, 747 N.E.2d 5 (3rd Dist. 2001)

On January 24, 2001, the Third District Appellate Court affirmed the Board's decision to strike a condition from the Will County Board's approval of Waste Management, Inc.'s (WMI) application for the construction of a new pollution control facility.

This case involved a proposal to develop a solid waste landfill on the site of the former Joliet Army Ammunition Plant (Prairie View landfill). *See also* the related case Land and Lakes Co. v. Pollution Control Board, 319 Ill. App. 3d 41, 743 N.E.2d 188 (3rd Dist. 2000), summarized above. Will County and WMI entered into a contract to develop Prairie View landfill, and WMI submitted an application for site approval. Will County approved the application, but added a condition that WMI's operations at another landfill cease either on its anticipated closure date or on the date Prairie View landfill opened, whichever was later. WMI filed a petition with the Board for review of the added condition. The Board found that the addition of the condition was not supported by the manifest weight of the evidence. Will County appealed the Board's decision to the court.

Will County argued that the Board erred in striking the added condition because it was reasonable and necessary to satisfy the required siting criteria in Section 39.2(a) of the Illinois Environmental Protection Act (415 ILCS 5/39.2(a) (2000)). The court noted that the Board relied heavily on the projected shortfall in disposal capacity to conclude that the added condition was not reasonable and necessary, and agreed with the Board's analysis.

Will County also contended that the added condition was necessary to satisfy the criteria, which required that the proposed facility be consistent with the county's solid waste management plan (plan). The court found that the temporary operation of two landfills was not inconsistent with the plan, given that the older landfill was slated to close. The court concluded that under these circumstances, the Board's finding that the added condition was not reasonable or necessary was not against the manifest weight of the evidence.

A SUMMARY OF ENVIR0NMENTAL LEGISLATION

The following are summaries of environmental and Board related bills. The bills are broken into the following categories:

- Air Pollution/Clean Air Act Compliance
- Land Pollution
- Environmental Liability, Enforcement, and Pollution Prevention
- Miscellaneous

AIR

Public Act 92-0012 (House Bill 1599) Effective July 1, 2001

Adds Section 9.10 and amends Section 9.9 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)); makes numerous substantive changes to other various Acts. Public Act 92-0012 was one of the most comprehensive pieces of environmentally related legislation acted upon by lawmakers this past legislative session. With mounting concerns nationally over soaring natural gas prices and California's rolling blackouts, Governor George H. Ryan forged a bipartisan compromise to create a $3.5 billion incentive package designed to revitalize Illinois' coal industry and strengthen the State's ability to provide its citizens with low-cost electricity.

City Water Light & Power

The measure creates the Illinois Resource Development and Energy Security Act, which combines tax and financing incentives to spur the development of new, clean-coal fired electric plants. Additionally, it also calls on the Illinois Environmental Protection Agency (Agency) to review the need for a State multi-pollutant strategy to reduce emissions from older coal-fired electric plants not subject to stricter air quality requirements. Based on that review, the Agency may file proposed rules with the Board.

**Note:* Public Act 92-0279 (Senate Bill 372), also from this past legislative session, contains identical rulemaking provisions pertaining to emissions from older coal-fired electric plants.

Public Act 92-0024 (House Bill 3373) Effective July 1, 2001

Amends Sections 39.5, 54.12, 54.13, and 55.3 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Public Act 92-0024 makes substantive changes to the Clean Air Act Permit Program as required by the Federal Clean Air Act (Title V). It deletes provisions allowing for administrative modifications, but maintains provisions allowing for minor modifications to emissions trading permits.

The measure also amends the Used Tires Title of the Environmental Protection Act. Definitions pertaining to "used tires" and "tire storage sites" are changed. The Illinois Environmental Protection Agency (Agency) is authorized to provide notice to the owner or operator, or both, of a site where used or waste tires are located, whenever the Agency finds that the used or waste tires pose a threat to public health or the environment. Additionally, it also allows for the immediate cleanup and subsequent scheduled reimbursement of removal costs associated with large tire dump sites of more than 250,000 passenger tire equivalents.

LAND

Public Act 92-0486 (Senate Bill 75) Effective January 1, 2002

Adds Section 5.545 to the State Finance Act (30 ILCS 105/1 *et seq.* (2000)). Amends Sections 58.3, 58.13, and adds Section 58.18 to the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Amends Section 5 of the Response Action Contractor Indemnification Act (415 ILCS 100/1 *et seq.* (2000)). Public Act 92-0486 creates the Brownfields Site Restoration Program and establishes the Brownfields Site Restoration Program Fund. The measure requires the Illinois Environmental Protection Agency (Agency), with the assistance of the Department of Commerce and Community Affairs (DCCA), to establish and administer a program to help pay the costs of investigating and remediating abandoned or underutilized properties. All fees, for Agency and DCCA reviews, are to be deposited into the Brownfields Site Restoration Program Fund.

Within six months after the statute's effective date, the Agency and DCCA are required to propose rules to the Board prescribing procedures and standards for administrating the program. The Board must adopt rules for second notice within nine months after receiving the proposed rules.

Public Act 92-0151 (Senate Bill 1180) Effective July 24, 2001

Amends Section 58.16 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Public Act 92-0151 defines "school" as any public school located in whole or in part in a county with a population of more than 3,000,000. The measure also provides that no person can begin to construct a school in county with a population of more 3,000,000 unless the site is enrolled in the Site Remediation Program and the remedial action plan, if required, is approved by the Illinois Environmental Protection Agency. Additionally, no person can cause or allow any person to occupy a school in a county with a population of more than 3,000,000, for which a remedial action plan is required, unless the plan is completed.

WATER

Public Act 92-0132 (House Bill 171) Effective July 24, 2001

The measure creates the Methyl Tertiary Butyl Ether (MTBE) Elimination Act. Beginning three years after the statute's effective date, no person will be allowed to use, manufacture, or sell MTBE as a fuel additive or transport fuel containing MTBE in Illinois. It directs the Illinois Environmental Protection Agency to develop more efficient and cost-effective procedures to remediate MTBE contamination.

Public Act 92-0147 (Senate Bill 394) Effective July 24, 2001

Amends Sections 17.7 and 17.8 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Public Act 92-0147 adds one person, representing the Illinois Association of Environmental Laboratories, to the Community Water Supply Testing Council. The Illinois Environmental Protection Agency (Agency) is required to develop alternative assessment schedules for certification of environmental laboratories. The measure also creates an Environmental Laboratory Certification Committee (Committee) and defines its duties.

Until the Agency and the Committee establishes administrative and certification assessment schedules in accordance with the specified procedures, the current assessment and payment schedules will remain in effect. The Agency, with the concurrence of the Committee, must base the assessment schedules upon actual and anticipated costs for certification under State and federal programs and the associated costs of the Agency and Committee. On or before the first day of August of each year, the Agency must submit its assessment schedules determination and supporting documentation for the forthcoming year to the Committee.

Public Act 92-0369 (Senate Bill 852)
Effective August 15, 2001

Amends Section 9 of the Illinois Groundwater Protection Act (415 ILCS 55/1 *et seq.* (2000)). Public Act 92-0369 defines "non-transient and non-community water system." Provides that a public water system is considered to be either a community water system or a non-community water system. As part of the permit application, all new non-transient, non-community water systems must demonstrate technical, financial, and managerial capacity consistent with the Federal Safe Drinking Water Act.

Pubic Act 92-0036 (Senate Bill 880)
Effective June 28, 2001

Amends Section 40 of the Department of Nuclear Safety Law of the Civil Administrative Code of Illinois (20 ILCS 2005/1 *et seq.* (2000)). Adds Section 8.25 to the State Mandates Act (30 ILCS 805/1 *et seq.* (2000)). Public Act 92-0036 provides that the Illinois Environmental Protection Agency is not required to perform analytical services for community water supplies to determine compliance with containment levels for radionuclides. Community water supply operators may request the Department of Nuclear Safety (DNS) to perform analytical services to determine compliance with contaminant levels of radionuclides. Community water supply operators that choose not to participate in DNS's testing programs must perform their own analysis of all drinking water to determine radionuclide contaminant levels.

DNS is required to adopt rules establishing fees for testing the water supplies. All fees collected under this measure must be deposited in the Radiation Protection Fund. Rules adopted by DNS concerning the fees charged for the testing of community water supply samples, must reasonably reflect the direct and indirect cost of the testing.

MISCELLANEOUS

Public Act 92-0447 (House Bill 1887)
Effective August 21, 2001

Amends Sections 11.2 and 12 of the Lead Poisoning Prevention Act (410 ILCS 45/1 *et seq.* (2000)). Adds Section 22.28a to the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Public Act 92-0447 makes various changes relating to violations, and provides for the handling of large appliances ("white goods") by junkyards and scrap dealers. Allows the Department of Public Health to assess civil penalties against a licensed lead worker, licensed lead professional, licensed lead contractor, or approved lead training provider. The measure also authorizes temporary restraining orders and injunctions.

Public Act 92-0291 (House Bill 2575)
Effective August 9, 2001

Amends Section 390 of the Environmental Impact Fee Law (Law), (415 ILCS 125/1 *et seq.* (2000)). Extends the repeal of the Law to January 1, 2013 (previously scheduled to be repealed on January 1, 2003).

Public Act 92-0387 (House Bill 3014)
Effective August 16, 2001

Amends Section 3 and adds Section 49 to the Radiation Protection Act of 1990 (420 ILCS 40/1 *et seq.* (2000)). Amends Sections 20 and 35 of the Radon Industry Licensing Act (420 ILCS 44/1 *et seq.* (2000)). Public Act 92-0387 provides that a person who sells a device or performs a service without being properly licensed will be required to pay a civil penalty of up to $5,000 for each offense, in addition to any other penalty provided by law. The person, however, must be given an opportunity for a hearing prior to final action by the Department of Nuclear Safety (DNS). Any civil penalty that is levied must be paid within 30 days after the order becomes final. Additionally, the measure grants DNS specific powers pertaining to the remediation of Ottawa radiation sites.

Public Act 92-0299 (House Bill 3217)
Effective August 9, 2001

Repeals the Responsible Property Transfer Act of 1988 (765 ILCS 90/1 *et seq.* (2000)). Provides that any action that accrued under the Responsible Property Transfer Act of 1988 before its repeal may be maintained in accordance with the provisions of that Act as it existed before its repeal.

Public Act 92-0397 (Senate Bill 861)
Effective January 1, 2002

Amends Sections 52.3-1 and 52.3-2 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2000)). Deletes the provision that terminates the Illinois Environmental Protection Agency's authority to execute initial Environmental Management System Agreements after December 31, 2001.

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