ILLINOIS POLLUTION CONTROL BOARD

ANNUAL REPORT 2000

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.

Table of Contents

SPRINGFIELD OFFICE
600 South Second Street
Suite 402
Springfield, IL 62704
217-524-8500

CHICAGO OFFICE
James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, IL 60601
312-814-3620
TDD 312-814-6032

SATELLITE OFFICES

211 West State Street
Suite 204
Jacksonville, IL 62650
217-245-9062

148 N. Third Street
P.O. Box 505
DeKalb, IL 60115
815-753-1904

WEB SITE
http://www.ipcb.state.il.us

Message from the Chairman

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

During fiscal year 2000, the Illinois Pollution Control Board continued its dedication to restoring, protecting, and enhancing the state's environment by establishing uniform standards and regulations. The Board prides itself in bringing legal stability, technical expertise, and judicial integrity into the process of resolving environmental disputes.

In March 2000, the IPCB began a revision of its procedural rules. The procedures will govern how persons initiate and participate in all proceedings before the Board. The Board anticipates completing the revisions to the procedural rules by the end of calendar year 2000. This is part of the Board's desire to make its proceedings more user friendly.

In May 2000, the Board accepted for hearing proposed rules for the Tiered Approach to Corrective Action (TACO). The TACO rules are used by businesses when cleaning up property that has been contaminated to determine how clean the site must be for specific uses. The Board plans to have the TACO rules in place by the end of the calendar year.

The Board is looking forward to a very productive fiscal year 2000. At the request of Governor Ryan, the Board held a series of hearings concerning natural gas fired peaker power plants. The Board plans to have recommendations for the Governor and General Assembly by the end of calendar year 2000.

We are pleased to present to you the Annual Report of the Illinois Pollution Control Board for fiscal year 2000.The Board is proud of its role in protecting the environment under the Illinois Environmental Protection Act. This report provides information about the Board's activities and responsibilities between July 1, 1999 and June 30, 2000.

Sincerely,

Claire A. Manning
Chairman

JUDICIAL REVIEW OF BOARD DECISIONS

Introduction

Pursuant to Section 41 of the Environmental Protection Act (Act), both the quasi-legislative and quasi-judicial functions of the Board are subject to review in the appellate courts. Any person seeking review must be qualified and must file a petition for review within 35 days of the Board's final opinion or order. A qualified petitioner is any person denied a permit or variance, any person denied a hearing after filing a complaint, any party to a Board hearing, or any person who is adversely affected by a final Board order.

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. The standard for review of a Board decision is whether the decision is against the manifest weight of the evidence. The standard for review of the Board's quasi-legislative actions is whether the Board's decision is arbitrary or capricious. Board decisions in rulemaking and imposing conditions in variances are quasi-legislative. All other Board decisions are quasi-judicial in nature.

In fiscal year 2000, there were final orders entered by the Illinois appellate courts in five cases involving appeals from Board opinions and orders. The Board's decision was affirmed, in total or in part, in two of these cases. In three cases, the court found that it did not have jurisdiction to hear the cases and dismissed them. The following, organized by date of final determination, includes summaries of written appellate decisions in Board cases for fiscal year 2000.

Enforcement

Sections 30 and 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/30 and 31.1 (1998)), 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 or by the Attorney General 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 this Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e) (1998). 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 the Illinois Environmental Protection Agency or a unit of local government and imposes a statutory fine for, among other things, causing or allowing open dumping of any waste.

Cory v. Pollution Control Board, No. 4-99-0676 (4th Dist. November 16, 1999) (unpublished rule 23 order)

On November 16, 1999, the Fourth District Appellate Court, in an unpublished order issued pursuant to Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23), dismissed an appeal of the Board's decision in People v. Cory (July 22, 1999), PCB 98-171.

In its July 22, 1999 decision, the Board found Victor Cory (Cory) in violation of Sections 12(a) and 12(f) of the Environmental Protection Act (415 ILCS 5/12(a), (f) (1998)) for improper operation of livestock waste lagoons at a site near Quincy, which had formerly operated as a swine production facility. The Board found Cory liable for causing water pollution as a result of actual discharges, and the continued threat of discharges, of livestock waste contaminants from the lagoons into a water of the State without a National Pollution Discharge Elimination System permit. The Board also found Cory in violation of Section 501.404(c) of the Board's rules pertaining to the maintenance of livestock waste lagoons in a manner to ensure adequate storage capacity. 35 Ill. Adm. Code 501.404(c). The Board ordered Cory to properly close the livestock waste lagoons pursuant to a plan to be submitted to the Department of Agriculture and the Illinois Environmental Protection Agency, and to pay a penalty of $22,000.

Cory appealed the Board's decision to the Fourth District Appellate Court, challenging the amount of the penalty. However, in the petition for review, Cory named only the Board as a party respondent, failing to name the State. As a result, the Attorney General, on behalf of the Board, moved to dismiss the petition, arguing that the Fourth District lacked jurisdiction due to Cory's failure to name as appellants all parties of record. Concurring with the Board and the Attorney General, the Court dismissed the case, finding that it lacked jurisdiction to hear the appeal.

Environmental Protection Agency v. Pollution Control Board and Louis Berkman Company d/b/a Swenson Spreader Company, 308 Ill. App. 3d 741, 721 N.E.2d 723 (2nd Dist. 1999)

On November 19, 1999, the Second District Appellate Court affirmed the Board's decision in *In re* Petition of the Louis Berkman Company d/b/a Swenson Spreader Company, for an Adjusted Standard from 35 Ill. Adm. Code 215, Subpart F (May 7, 1998), AS 97-5. The decision was the first to articulate the standard of review to be applied to the Board's decisions in adjusted standard cases.

In its May 7, 1998 opinion, the Board granted Louis Berkman Company d/b/a Swenson Spreader Company (Swenson Spreader) a 10 year adjusted standard, with conditions, from certain volatile organic material (VOM) control requirements, over objection from the Illinois Environmental Protection Agency (Agency). Swenson Spreader is an Ogle County manufacturer of snow and ice-control equipment, which is subject to the VOM rules for miscellaneous metal parts found at 35 Ill. Adm. Code 215.204(j)(2) and limits the VOM content of coatings to 3.5 lb/gal.

In an interim opinion and order of December 4, 1997 (see *In re* Petition of Louis Berkman Company d/b/a Swenson Spreader Company for an Adjusted Standard from 35 Ill. Adm. Code 215, Subpart F, AS 97-5.), the Board found that there were no compliant coatings available to Swenson Spreader, and that installation of the power coating system recommended by the Agency was not economically reasonable. Among other things, the Board found that the control cost to Swenson Spreader would be $29,362 per ton, as compared to the $1,732 per ton cost upon which the Board had based its adoption of Part 215 (the Reasonably Available Control Technology II rules) from which Swenson Spreader sought relief. The interim order directed Swenson Spreader to submit a compliance plan addressing issues outlined in the interim opinion. In the Board's final order of May 7, 1998, the Board granted Swenson Spreader 10 years in which to further study and test compliant coatings, while allowing it to use coatings with a VOM content of 4.75 lb/gal.

Sixty days after Swenson Spreader filed the petition for an adjusted standard with the Board, the Agency filed an enforcement action against Swenson Spreader alleging violations of 35 Ill. Adm. Code 215, Subpart F. Swenson Spreader had initially agreed to settle the enforcement matter by installing a powder coating system, which the Agency alleged was conclusive proof that such an installation was economically reasonable.

In its opinion of November 19, 1999, the Second District Appellate Court addressed the standard of review applied to the Board's decision in adjusted standard proceedings, an issue of first impression. The Appellate Court recited that the manifest weight standard applies to quasi-judicial actions of the Board and that the arbitrary and capricious standard applies to quasi-legislative actions of the Board, and concluded that, in reviewing adjusted standards, it would "determine whether the ruling at issue involved an exercise of the Board's technical expertise or an interpretation of a rule or regulation, and consequently, which standard of review applies." Environmental Protection Agency v. Pollution Control Board and Louis Berkman Company d/b/a Swenson Spreader Company, No. 2-98-1101, slip op. at 11 (November 19, 1999).

The Appellate Court applied the manifest weight standard, used in quasi-judicial actions, to the Agency's first issue: that Swenson Spreader failed to establish that it was entitled to an adjusted standard because (a) it did not establish that its customers would not accept powder coating products; and (b) it did not demonstrate how long it would take to install and implement a powder coating system. The Appellate Court was unconvinced by the Agency's arguments that the Board's decision was against the manifest weight of the evidence.

The Second District determined that the Agency's second issue, regarding the interpretation of "economic reasonableness," requires the application of an arbitrary and capricious standard because the Board utilized its technical expertise in interpreting applicable regulations. While the Appellate Court agreed with the Agency that the Board "in theory" should take into consideration the tangible benefits that have been established with some certainty, the

Court agreed with the Board's finding that many of the benefits cited by the Agency as proof of its position were speculative in nature. The Appellate Court accordingly found that the Board's decision was not arbitrary or capricious.

With regard to the Agency's final issue that Swenson Spreader did not establish the economic unreasonableness of the powder coating system and that the record as a whole did not support the Board's decision, the Appellate Court did not specifically state the standard of review that it was applying. The Appellate Court, however, agreed with the Board's conclusion that Swenson Spreader's offer to install the powder coating system did not make it economically reasonable, and that the record supported the Board's decision.

ESG Watts, Inc. v. Pollution Control Board, 191 Ill. 2d 26, 727 N.E.2d 1022 (2000).

On March 23, 2000, the Illinois Supreme Court affirmed the Fourth District Appellate Court's dismissal of an appeal of a Board decision. The appeal, which was dismissed for lack of jurisdiction, was an appeal filed by ESG Watts, Inc. (ESG Watts) of the Board's decision in People v. ESG Watts, Inc. (February 19, 1998), PCB 96-237. On appeal, ESG Watts did not name the People of the State of Illinois (State) as a party in its petition for review. The Court found this to be a fatal omission.

In its February 19, 1998 opinion concerning ESG Watts' Sangamon County Landfill, the Board found ESG Watts had violated provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1994)) and the Board's landfill rules requiring an operator to supply financial assurances of its ability to provide closure and post-closure care of a site for a 30-year period. The Board ordered ESG Watts to cease and desist from violations of the Act and Board rules, and imposed a $256,000 civil penalty.

In March 1998, ESG Watts petitioned the Fourth District Appellate Court for administrative review of the Board's decision. ESG Watts named only the Board in its petition. The Board moved to dismiss the action, contending that the Appellate Court lacked jurisdiction because ESG Watts had not named the State as a party. The Appellate Court granted the Board's motion and dismissed the case in an unpublished Rule 23 order (No. 4-98-0229, February 4, 1999). The Illinois Supreme Court granted ESG Watts' motion for leave to appeal. The Supreme Court affirmed the Appellate Court's dismissal of the appeal because ESG Watts did not name the State as a party.

The Supreme Court rejected ESG Watts' argument that a petition for review acts as a notice of appeal, that the petition should therefore be subject to a liberal construction, and that McGaughy v. Illinois Human Rights Comm'n, 165 Ill. 2d 1 (1995), was distinguishable. The Court discussed the principles pertaining to judicial review of administrative actions, stating that such actions involve the exercise of special statutory review, and that parties must strictly adhere to the proscribed procedures in the statute. The Court then found that a rule of strict construction of petitions for administrative review is proper and necessary and is mandated by precedent. The Court rejected ESG Watts' argument that McGaughy was distinguishable.

The Court also rejected ESG Watts' argument that the Board is an arm of the State such that the Board and the State constitute a single party for purposes of the petition for review. The Court distinguished Bulk Terminals Co. v. IEPA, 29 Ill. App. 3d 978 (1st Dist. 1975), and stated that there was no reason to treat the Board and the State as one and the same entity for purposes of an appeal from an administrative agency. The Court noted "the Board is not fungible with the State because the Board was the decisionmaker while the State played a prosecutorial role."

The Court also rejected ESG Watts' argument that Lockett v. Chicago Police Board, 133 Ill. 2d 349 (1990) was no longer good law. The Court found no basis for departing from the reasoning in Lockett that a party seeking administrative review must strictly comply with statutes conferring jurisdiction, which call for all parties of record to be named, or face dismissal of the action.

Finally, the Court rejected ESG Watts' argument that the Fourth District erred in failing to conform its result to the supervisory orders entered by the Supreme Court in two other unconsolidated appeals in the Third District. The supervisory orders directed the Third District to vacate dismissals of the two unconsolidated appeals and to address the appeals on the merits in ESG Watts, Inc. v. Pollution Control Board, No. 3-98-0231 (PCB 96-107) and ESG Watts, Inc. v. Pollution Control Board, No. 3-98-0385 (PCB 96-233). Both of these appeals have since been dismissed by the Third District Appellate Court, and are discussed below.

ESG Watts, Inc. v. Pollution Control Board, No. 3-98-0231 (PCB 96-107) and No. 3-98-0385 (PCB 96-233) (3rd Dist. May 1, 2000) (unpublished Rule 23 orders)

On May 1, 2000, the Third District Appellate Court, in two unpublished orders issued pursuant to Illinois Supreme Court Rule 23 (155 Ill. 2d R. 23), dismissed two appeals of the Board's decisions in two enforcement actions: People of the State of Illinois v. ESG Watts, Inc. (February 5, 1998), PCB 96-107, and People of the State of Illinois v. ESG Watts, Inc. (February 5, 1998), PCB 96-233.

On September 11, 1998, the Third District Appellate Court dismissed the two appeals for lack of jurisdiction because ESG Watts, Inc. failed to name all necessary parties as required by Illinois Supreme Court rule 335 (155 Ill. 2d R 335) and Sections 3-107 and 3-113 of the Administrative Review Law (735 ILCS 5/3-107, 113 (1998)). On December 2, 1998, the Illinois Supreme Court issued a supervisory order in both cases, directing the Third District Appellate Court to vacate its orders, reinstate the matters, and address the appeals on the merits. The Third District dismissed the two appeals after the Supreme Court issued the ESG Watts, Inc. v. Pollution Control Board, 191 Ill. 2d 26, 727 N.E.2d 1022 (2000) decision, discussed above.

Panhandle Eastern Pipe Line Co. v. Pollution Control Board, 314 Ill. App. 3d 296, 734 N.E.2d 18 (4th Dist. 2000).

On June 5, 2000, the Fourth District Appellate Court affirmed the Board's decision in Panhandle Eastern Pipe Line Co. v. Illinois Environmental Protection Agency (January 21, 1999), PCB 98-102, affirming the Illinois Environmental Protection Agency's (Agency) permit denial.

In 1988, the Agency issued a construction permit to Panhandle Eastern Pipe Line Co. (Panhandle) to replace 12 of 15 engines with 4 new engines and imposed three special conditions: (1) to avoid federal prevention of significant deterioration (PSD) rules, overall increase in nitrogen oxide (NOx) emissions from the replacements would not exceed 39.9 tons per year (*i.e.,* would not be a "major modification"); (2) total NOx emissions for the engines would not exceed 461.3 tons per year (a limit set to avoid major modification status under the PSD rules); and (3) certain records of operations must be kept. These conditions were included in four operating permits. Panhandle did not seek Board review of any of these permit decisions.

In 1996, the Agency determined that Panhandle was exceeding the 461.3 tons per year limit. Panhandle filed an application to modify the original permit to "correct" the emission limit and proposed a NOx emission limit of 774.9 tons per year to avoid PSD application, arguing that the Agency's original NOx emission limit calculations should have been made using different factors. The Agency denied the permit application because Panhandle failed to demonstrate that it would not violate PSD standards. The Agency stated that Panhandle had not demonstrated best available control technology (BACT) as required by PSD regulations for major modifications.

In its January 21, 2000 decision, the Board affirmed the Agency's decision to deny the permit because Panhandle did not satisfy PSD requirements for BACT, and Panhandle did not support its proposed emission factor, thus it failed to prove it would not violate Section 9.1(d) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(d) (1998)).

The Fourth District held that Panhandle waived any challenge to the Board's second ground for affirming the Agency's permit denial because it did not raise the issue on appeal, and the Board's decision could be upheld on that ground alone. However, the Appellate Court addressed the remaining issue of whether the Agency lacked authority to reconsider the emission limit in the previously issued permit in general and because Panhandle did not timely seek review of the permit decision.

The Appellate Court stated that Panhandle sought to have the Agency reconsider the 1988 permit decision to avoid PSD restrictions, in spite of having failed to comply with the lower standard set in 1988. The Court held that the Agency, under Reichold Chemicals, Inc. v. Pollution Control Board, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3rd Dist. 1990), lacked the authority to reconsider its 1988 decision on the emission limit, even though Panhandle submitted an application to modify the permit. The court further held that giving the Agency unlimited time to revise its permit decisions would render the 35-day appeal period under Section 40(a)(1) of the Act meaningless.

Rulemaking Review

Section 5(b) of the Act mandates the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois." When the Board promulgates rules, it does so pursuant to the authority and procedures set forth in Sections 26 through 29 of Title VI of the Act. Additionally, Section 7.2 of the Act establishes special procedures for adoption of rules "identical in substance" to rules adopted by the United States Environmental Protection Agency in certain federal programs.

Permitting Procedures for the Lake Michigan Basin, R99-8

On August 19, 1999, the Board adopted amendments to 35 Ill. Adm. Code 301, 302, and 309.141, establishing modified permitting procedures for the Lake Michigan Basin under the National Pollutant Discharge Elimination System (NPDES) program. The Illinois Environmental Protection Agency (Agency) stated in its July 28, 1998 proposal, that these amendments were necessary to implement the federal Great Lakes Initiative, which was previously adopted by the Board. See In the Matter of: Conforming Amendments for the Great Lakes Initiative: 35 Ill. Adm. Code 302.101, 302.105, 302.Subpart E, 303.443, and 304.222 (December 18, 1997), R97-25. The proposal was filed pursuant to Section 27 of the Environmental Protection Act (415 ILCS 5/27 (1998)).

The Board held two hearings in this matter. On December 17, 1998, the Board denied a motion to dismiss this docket filed by the Illinois Environmental Regulatory Group and supported by the Chemical Industry Council of Illinois. On March 4, 1999, the Board adopted the amendments for first-notice publication in the *Illinois Register* (see 22 Ill. Reg. 3563 (March 26, 1999)). On June 17, 1999, the Board adopted the amendments for second-notice review by the Joint Committee on Administrative Rules (JCAR). At its July 20, 1999 meeting, JCAR issued a certificate of no objection to the proposed amendments.

Amendments to Permitting for Used Oil Management and Used Oil Transport, R99-18

On December 16, 1999, the Board declined to adopt rules proposed in rulemaking docket In the Matter of: Amendments to Permitting for Used Oil Management and Used Oil Transport 35 Ill. Adm. Code 807 and 809, R99-18. The Board dismissed the docket, finding that the record did not support adoption of the proposed rules for used oil management and used oil transport proposed by the Illinois Environmental Protection Agency (Agency).

The Board opened docket R99-18 as a result of activity in a predecessor regulatory docket also proposed by the Agency. See In the Matter of: Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809 (Pursuant to P.A. 90-219) (December 17, 1998), R98-29. On November 2, 1998, in docket R98-29, the Agency filed a "Motion to Sever the Docket and Proposed Amendments to Parts 809 and 807" (motion to sever). In the motion to sever, the Agency requested that the Board separate the Agency's proposed rules on used oil management and used oil transportation from its proposed rules on hazardous waste transportation. The Board granted the motion to sever and created docket R99-18 to address the Agency's proposed rules on used oil management and used oil transportation. On January 21, 1999, the Board adopted the proposed rules for first-notice publication in the *Illinois Register* (23 Ill. Reg. 2483 (February 16, 1999)).

The Board initially held two public hearings in this matter. At the request of the National Oil Recyclers Association, the Board held a third hearing in Chicago. The Board received 21 written public comments and six exhibits.

While acknowledging that the regulatory record indicated that additional State regulation of used oil management and transportation is technically feasible, the Board found that it is not economically reasonable when taking into account the existing federal and State regulatory system. The Board found that existing federal and State regulatory programs governing the used oil industry are sufficiently protective of human health and the environment, at this time, absent institution of a permitting scheme. The Board further found that these existing laws and rules have improved the management of used oil and have led to advances in safety as well. The Board found that the record did not demonstrate that the Agency's proposal would increase compliance with existing laws and rules. Accordingly, the Board dismissed the proposed rulemaking docket.

Vehicle Scrappage Activities, R00-16

On June 8, 2000, the Board adopted rules to institute a voluntary vehicle scrappage program in Illinois see In the Matter of: Vehicle Scrappage Activities, 35 Ill. Adm. Code 207, R00-16. On January 6, 2000, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal to add a new Part to the Board's air regulations. The rulemaking proposal was filed pursuant to Section 13B-30(d) of the Vehicle Emissions Inspection Law of 1995 (Vehicle Emissions Law) (625 ILCS 5/13B-30(d) (1998)). On January 20, 2000, the Board accepted the proposal for hearing and directed that a proposal for public comment be filed for publication in the *Illinois Register*. See 24 Ill. Reg. 2159 (February 29, 2000).

Section 13B-30(d) of the Vehicle Emissions Law (625 ILCS 5/13B-30(d) (1998)) states in part that Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b) (1998)) and the rulemaking provisions of the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (1998)) do not apply to rules adopted by the Board under Section 13B-30(d). The Board held two public hearings in this matter. At both hearings the Agency offered testimony in support of its proposal. In addition, at both hearings, several members of the public testified in opposition to the proposal. The Board also received four public comments. The Board made several changes to the proposal for public comment, including amendments suggested by the Agency. Most changes addressed the concerns expressed by antique car collectors in this rulemaking. The adopted amendments were published in the *Illinois Register* on June 30, 2000 (24 Ill. Reg. 8979).

Regulated Recharge Area for Pleasant Valley Water District, R00-17

On February 14, 2000, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal pursuant to Section 27 of the Environmental Protection Act (Act) (415 ILCS 5/27 (1998)). The proposal would amend Part 617 of the Board's public water supply rules to specify the State's first regulatory recharge area under Section 17.3 of the Act. The Agency's proposed amendments were submitted to establish a regulated recharge area for the Pleasant Valley Public Water District.

On March 16, 2000, the Board accepted this matter for hearing in In the Matter of: Amendments to 35 Ill. Adm. Code Part 617, Regulated Recharge Area for Pleasant Valley Water District, R00-17. The Board accepted written public comment and held one public hearing in this matter.

Tiered Approach to Corrective Action Objectives, R00-19

On May 18, 2000, the Board accepted a proposal from the Illinois Environmental Protection Agency (Agency) for hearing concerning In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives, 35 Ill. Adm. Code 742, R00-19. On May 15, 2000, the Agency filed a proposal for rulemaking under Section 27 of the Environmental Protection Act (Act) (415 ILCS 5/27 (1998)) to amend the Board's tiered approach to corrective action (TACO) regulations (35 Ill. Adm. Code 742). The Agency proposed the amendments "to update and improve procedures under TACO so that its users can achieve accurate data results that are protective of human health and the environment." The Board will hold public hearings and accept public comment on the proposal as required by the Act.

Revision of the Board's Procedural Rules, R00-20

On March 16, 2000, the Board proposed revised procedural rules for first notice publication in the *Illinois Register* of In the Matter of: Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20. The procedures will govern how persons initiate and participate in all proceedings before the Board under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (1998)) and other legislation directing Board action. Upon final adoption, the proposed rules will replace all of the Board's existing procedural rules and all Board resolutions that relate to procedural matters. The Board drafted the proposed rules to more efficiently and effectively implement the Act and other laws in Board proceedings. To avoid confusing participants in the Board's process and to distinguish this proposal from the predecessor docket (R97-8), the Board opened this new docket and dismissed the predecessor docket. The Board received a significant number of public comments in R97-8, which prompted many of the changes that the Board proposed in R00-20.

The Board held three public hearings in this matter. The Board has made the transcript of each hearing available on the Board's Web site at www.ipcb.state.il.us. As a pilot program, the Board has also established a "Public Comment Page" on its

Web site, posting all public comments received. The Board anticipates completing this rulemaking before the end of calendar year 2000.

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 (1998). These program areas include: drinking water; underground injection control; hazardous and nonhazardous 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 translate federal rules into State rules within one year of USEPA 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, the 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.

LISTINGS OF ADJUSTED STANDARDS AND COMBINED SEWER OVERFLOW EXCEPTIONS GRANTED BY THE BOARD DURING FISCAL YEAR 2000

Adjusted Standard

There are three methods by which an entity may seek relief from a regulation of general applicability: variances, adjusted standards, and site-specific regulations. The Board is authorized under Section 28.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/28.1 (1998)) to grant an adjusted standard to persons who are able to justify such an adjusted standard consistent with Section 27(a) of the Act. The Board must determine whether the petitioner has established the factors set forth in Section 28.1(c) of the Act. The petitioner must prove that conditions exist that are substantially and significantly different from conditions relied upon by the Board in adopting the general regulation. The adjusted standard must not result in environmental or health risks more substantial or significant than the risks considered by the Board in adopting the general regulation. The adjusted standard must also be consistent with federal law.

***In re* Petition of Horsehead Resource Development Company, Inc. for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c) (August 5, 1999), AS 00-01**

The Board dismissed the petition filed on behalf of this Chicago, Cook County facility for an adjusted standard from the definition of “solid waste” or “hazardous waste” under the RCRA Subtitle C regulations because the petitioner had failed to timely publish the notice required by Section 28.1(d)(1) of the Act.

***In re* Petition of Horsehead Resource Development Company, Inc. for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c) (February 17, 2000), AS 00-02**

The Board granted to this Chicago, Cook County facility an adjusted standard . The Board determined that the crude zinc oxide product generated by the facility should be classified as a commodity-like material and is not a solid waste subject to regulation under the RCRA Subtitle C hazardous waste rules.

***In re* Petition of Ensign-Bickford Company for an Adjusted Standard from 35 Ill. Adm. Code 237.103 (September 23, 1999), AS 00-03**

The Board dismissed this petition filed on behalf of a Wolf Lake, Union County facility for an adjusted standard from the Board's open burning restrictions because the petitioner had failed to timely publish the notice required by Section 28.1(d)(1) of the Act.

***In re* Petition of Takasago Corporation (U.S.A.) for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 304.105 (April 20, 2000), AS 00-04**

The Board dismissed this petition filed on behalf of a University Park, Will County facility for an adjusted standard from certain of the wastewater discharge levels for total dissolved solids because the petitioner had failed to timely publish the notice required by Section 28.1(d)(1) of the Act.

***In re* Petition of Ford Motor Company (Chicago Assembly Plant) for an Adjusted Standard from 35 Ill. Adm. Code 218.986 (April 6, 2000), AS 00-06**

The Board granted this Chicago, Cook County facility an adjusted standard from certain volatile organic material emissions limitation requirements. The adjusted standard will enable the petitioner to implement an alternative emissions control plan for solvent clean-up operations.

***In re* Petition of Central Illinois Public Service Company for an Adjusted Standard from 35 Ill. Adm. Code 302.208 (February 3, 2000), AS 00-07**

The Board allowed the voluntary withdrawal Central Illinois Public Service Company's petition for an adjusted standard from the Board's general use water quality standards regulations for its Jackson County facility.

***In re* Petition of Vonco Products, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 218.401(a), (b), and (c) (the "Flexographic Printing Rule") (February 17, 2000), AS 00-08**

The Board allowed the voluntary withdrawal of Vonco Products, Inc.'s petition for an adjusted standard from certain of the Board's flexographic and rotogravure printing regulations for its Lake Villa, Lake County facility.

***In re* Petition of Bema Film Systems, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 218.401(a), (b), and (c) (the "Flexographic Printing Rule") (February 17, 2000), AS 00-09**

The Board allowed the voluntary withdrawal of Bema Film Systems, Inc.'s petition for an adjusted standard from certain of the Board's flexographic and rotogravure printing regulations for its Elmhurst, DuPage County facility.

***In re* Petition of Formel Industries, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 218.401(a), (b), and (c) (the "Flexographic Printing Rule") (February 17, 2000), AS 00-10**

The Board allowed the voluntary withdrawal of Formel Industries, Inc.'s petition for an adjusted standard from certain of the Board's flexographic and rotogravure printing regulations for its Franklin Park, Lake County facility.

***In re* Petition of Heritage Environmental Services, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 702.126(d)(1) (June 8, 2000), AS 00-14**

The Board dismissed this petition filed on behalf of Heritage Environmental Services, Inc. for an adjusted standard for its Cook County site from certain of the Board's RCRA and UIC permit program regulations because the petitioner had failed to timely publish the notice required by Section 28.1(d)(1) of the Act.

Final Actions Taken by the Pollution Control Board in Combined Sewer Overflow Exception Proceedings During Fiscal Year 2000 (July 1, 1999 through June 30, 2000)

The Board took no action in combined sewer overflow exception proceedings during fiscal year 2000.

ILLINOIS POLLUTION CONTROL BOARD MEMBERS

Chairman Claire Manning was first appointed to the Board and designated Chairman by Governor Jim Edgar in 1993. She was reappointed in 1995, and again in 1998. 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 Jim 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 on Board related matters before various associations and environmental groups. Prior to her appointment to the Board, 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 also serves as a 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.

Front Row: G. Tanner Girard, Chairman Claire A. Manning, Nicholas J. Melas. Back Row: Samuel T. Lawton, Jr., Elena Z. Kezelis, Ron C. Flemal, and Marili McFawn

Board Member G. Tanner Girard was first appointed in 1992 and 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 brings expertise as a former law partner at Schiff, Hardin and Waite. She also served as Attorney Assistant to former Board Chairman Jacob Dumelle, former Member Irvin Goodman, and former Board Member J. Theodore Meyer. Member McFawn also served as an Enforcement Staff Attorney for the Air and Public Water Divisions at the Illinois Environmental Protection Agency. Ms. McFawn earned a JD from Loyola University in 1979 and a BA in English from Xavier University in 1975. She was first appointed to the Board in 1993, and reappointed again in 1995 and in June 1998, by Governor Jim Edgar.

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.

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

A SUMMARY OF ENVIRONMENTAL AND BOARD RELATED STATE LEGISLATION

AIR POLLUTION/CLEAN AIR ACT COMPLIANCE

Public Act # 91-865 (Senate Bill 1503) Effective July 1, 2000

Amends Sections 13-102.1, 13-109.1, and 13-114 of the Illinois Vehicle Code (625 ILCS 5/1 *et seq.* (1998)). Amends last year's truck emissions testing law (Pub. Act 91-254) to specifically authorize nonscheduled "spot testing" emission inspections of certain diesel powered vehicles (diesel trucks).

Provides that effective October 1, 2000, the Illinois State Police (ISP) is authorized to perform nonscheduled emission inspections for cause (*i.e.,* excessive black smoke emitted by the vehicle), at any place within the ozone nonattainment areas of the State. The current designated ozone nonattainment areas of the State are within Cook, DuPage, Kane, Lake, Madison, McHenry, Monroe and St. Clair Counties, as well as, the Townships of Aux Sable and Goose Lake within Grundy and Oswego Township in Kendall County. This provision is applicable to any diesel powered vehicle operating on the roadways of the State that is registered for a gross weight of more than 16,000 pounds or has a gross vehicle weight rating of more than 16,000 pounds. The Act applies to both interstate and intrastate diesel trucks.

The Act further provides that all nonscheduled emission inspections must be conducted only by ISP at weigh stations, roadside, or at other safe and reasonable locations within an ozone nonattainment area; and that persons conducting such inspections must receive adequate training and certification for diesel emission inspections by ISP. The Act requires ISP to adopt rules for certifying individuals who conduct emission inspections; and requires ISP to issue a citation to anyone that fails a nonscheduled emission inspection, the penalty for which would be a petty offense punishable by a $400 fine. Provides that a third or subsequent violation within one year of the first violation is a petty offense punishable by a $1,000 fine. Prohibits an operator from receiving a second or subsequent violation within 30 days of receiving the initial citation.

Additionally, the Act confines the annual emissions testing requirement for such vehicles to only those intrastate diesel trucks registered within the nonattainment areas of the State. Last year's Act (Pub. Act 91-254) required both interstate and intrastate diesel trucks registered within the nonattainment areas of the State to be annually tested for emissions. Provides that ISP is to receive funding for the nonscheduled emission inspection program from the Diesel Emissions Testing Fund, the new fund created last year by Pub. Act 91-254 was made up from fines for violations under the emissions testing program. The Act also requires ISP (along with the Illinois Department of Transportation) to report to the General Assembly by June 30, 2001, and every June 30th thereafter on the results of the program.

Public Act # 91-718 (House Bill 2909) Effective June 2, 2000

Amends the Motor Fuel and Petroleum Standards Act (815 ILCS 370/1 *et seq.* (1998)). Requires retailers of gasoline to display labels on any gasoline pumps that dispense gasoline containing at least 2% methyl tertiary butyl ether (MTBE). Requires specific labeling requirements. Further provides that nothing in the bill shall be construed to require or impose an obligation upon the owner or operator of the gas station to perform a test on or measure the specific amount of MTBE in any shipment of gasoline received for retail.

Public Act # 91-704 (House Bill 4374) Effective July 1, 2000

Amends Section 8 of the Motor Fuel Tax Law (35 ILCS 505/8 (1998)). The measure increases from $25 million per year to $30 million per year the amount of money the Illinois Environmental Protection Agency (Agency) receives from the State's Motor Fuel Tax (MFT) Fund to fund its Vehicle Emissions Inspection program. It also extends by 5 ½ years (from December 31, 2000 until June 30, 2006) the duration during which the Agency will continue to receive such funding from the MFT Fund for this purpose.

Public Act # 91-794 (Senate Bill 1648) Effective June 9, 2000

Amends Section 8 of the Motor Fuel Tax Law (35 ILCS 505/8 (1998)). Extends by 5 ½ years (from December 31, 2000 until June 30, 2006) the duration during which time the Illinois Environmental Protection Agency shall continue to receive $25 million per year from the State's Motor Fuel Tax (MFT) for the purpose of funding the State's Vehicle Emissions Inspection program. **NOTE: Public Act 91-704/HB 4374, extended the date to June 30, 2006 for MFT funding of the Vehicle Emissions Inspection program, but also increased the amount of MFT funding for the program from $25 million per year to $30 million per year. The $5 million increase in funding, however, does not take effect until July 1, 2000, the effective date of Pub. Act 91-704.*

LAND POLLUTION

Public Act # 91-909 (House Bill 3457) Effective July 7, 2000

Amends Sections 3.78a and 58.5 and adds Section 58.17 to the Environmental Protection Act (415 ILCS 5/1 *et seq.* (1998)). Changes the definition of "clean construction or demolition debris." Provides that material from certain construction or demolition sites used on the same site as an aboveground mound lower than 20 feet shall not be categorized as "waste." The City of Chicago is exempt from this provision.

Provides that the Illinois Environmental Protection Agency (Agency) is required, within two months of the effective date of this bill, to propose to the Board rules to create a remediation instrument known as an Environmental Land Use Control (ELUC). ELUCs will establish land use limitations or obligations on the use of real property, when necessary, in order to manage risk to human health or the environment. Specifically, in those instances arising from contamination left in place pursuant to the procedures set forth under the Site Remediation (Brownfields) Program in the State's Act and the Tiered Approach Corrective Action Objectives regulations promulgated thereunder, ELUCs will restrict future uses of the land. The measure requires the rules to include provisions addressing establishment, content, recording, duration, and enforcement of ELUCs. The Board is required to adopt such rules within six months of receiving the proposed rules from the Agency.

ENVIRONMENTAL LIABILTY, ENFORCEMENT, AND POLLUTION PREVENTION

Public Act # 91-851 (House Bill 3478) Effective January 1, 2001

Amends Section 2 of the Gasoline Storage Act (430 ILCS 15/0.01 *et seq.* (1998)). Prohibits the Office of the State Fire Marshal (OSFM) from prohibiting the dispensing of motor fuel directly into the gasoline tanks of motor vehicles from gasoline tanker trucks, gasoline tank wagons, or portable gasoline tanks at certain specified types of sites and for certain government vehicles.

The Act specifically authorizes the dispensing of motor fuel for: (1) agricultural sites for agricultural purposes; (2) construction sites for construction purposes; (3) sites used for the parking, operation, or maintenance of commercial vehicle fleets in Cook, DuPage, Kane, Lake, McHenry, and Will Counties; and (4) sites used for the refueling of police, fire, emergency medical service vehicles or other vehicles that are owned, leased, operated, or operated under contract with the State, any unit of local government, any school district, and any agency of the State with vehicles that are not normally accessible to the public. Requires the OSFM to adopt rules for: (1) the permitting of such refueling operations; (2) the establishment of permit fees to be deposited into the Fire Prevention Fund for the purposes of supporting the administrative costs of the permit program as well as the costs of the OSFM conducting inspections of such operations; and (3) the procedures for refueling at such operations.

Public Act # 91-816 (Senate Bill 1288) Effective June 13, 2000

Amends Section 6 of the Liquefied Petroleum Gas Regulation Act (430 ILCS 5/0.01 *et seq.* (1998)). Provides that the fines for a violation of the provisions of the Act shall be not less than $1,000 and not more than $1,500 for each offense.

Public Act # 91-858 (Senate Bill 1298) Effective January 1, 2001

Amends Section 15-109.1 of the Illinois Vehicle Code (625 ILCS 5/1 *et seq.* (1998)). The Act prohibits anyone from operating a second division vehicle of 8,000 pounds or more that is loaded with dirt, garbage, or similar material unless the material is in a cargo area. Requires the tailgate on the vehicle to be in good repair to prevent the material from escaping. Authorizes police officers to stop such vehicles where the officer determines that the material may fall, sift, blow, drop, or in any way escape or fall from the vehicle.

Public Act # 91-869 (Senate Bill 1629) Effective January 1, 2001

Amends Section 11-1301 of the Illinois Vehicle Code (625 ILCS 5/1 *et seq.* (1998)). This measure authorizes any truck used exclusively for the collection of garbage, refuse, or recyclable material to stop or stand on a road in any business, residential, or rural area for the sole purpose of collecting the garbage, refuse, or recyclable material. Requires such vehicles to operate their hazard lights as well as their amber oscillating, rotating, or flashing light or lights while stopping or standing on the road.

Public Act # 91-889 (House Bill 3082) Effective January 1, 2001

Amends Section 21-1.5 of the Criminal Code of 1961 (720 ILCS 5/1-1 *et seq.* (1998)). The Act makes it a Class 4 felony for anyone to transport anhydrous ammonia in a portable container unless the container is authorized for anhydrous ammonia transportation as defined under rules adopted under the Illinois Hazardous Materials Transportation Act (430 ILCS 30/1 *et seq.* (1998)). Provides that an authorized package includes a package previously authorized under the Illinois Hazardous Materials Transportation Act.

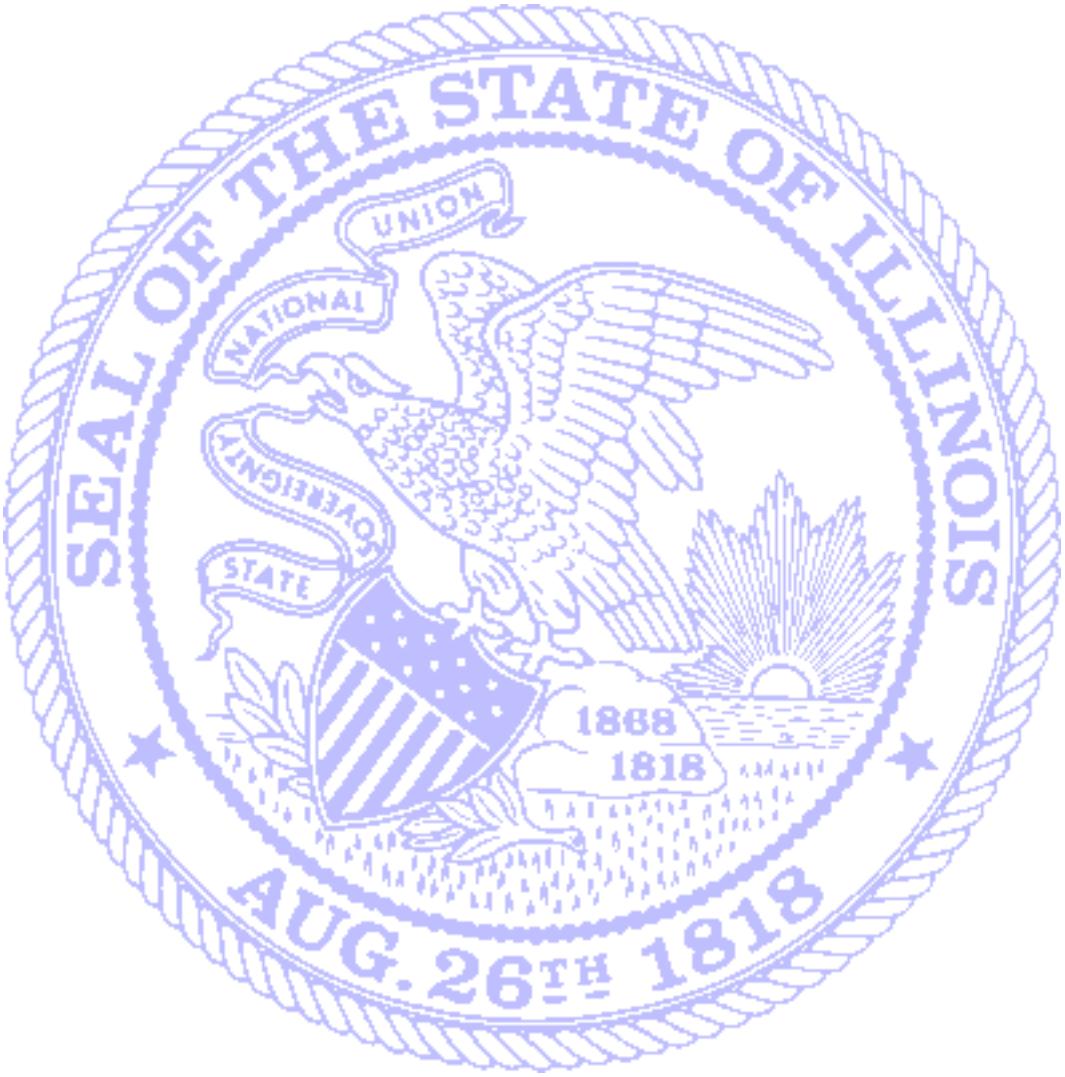
MISCELLANEOUS

Public Act 91-856 (House Bill 4481) Effective June 22, 2000

Amends Section 55.6 of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (1998)). The Act maintains indefinitely the current allocation of the State Used Tire Management Fund (Fund), the allocation of money in the Fund was scheduled to be discontinued beginning July 1, 2000. The current allocation for the Fund is as follows: 38% to the Illinois Environmental Protection Agency (Agency) for enforcement and cleanup; 23% to the Department of Commerce and Community Affairs (DCCA) for recycling research, grants, and loans; 25% to the Department of Public Health for investigating public health threats and concerns; 2% to the Department of Agriculture for its activities under the Illinois Pesticide Act; 2% to the Board for administration of its activities related to used and waste tires; and 10% to the Department of Natural Resources' Natural History Survey for research on tire-breeding mosquitoes and diseases.

Money in the Fund over $2 million are allocated 55% to the Agency for enforcement and cleanup and 45% to DCCA for recycling grants and loans. The 55/45 split of the money over $2 million does not change under this Act, however, the allocation formula for money in an amount of up to $2 million was due to expire on July 1, 2000.

A Publication of the Illinois Pollution Control Board



Printed on Recycled Paper with Soybean Ink by Contract and the Authority of the State of Illinois.
Order #1040901, 500 copies at $X.XX per copy.
January 27, 2001