

Illinois Pollution Control Board

Annual Report

2012



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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Letter from the Chairman

Honorable Pat Quinn, Governor of Illinois, and Members of the General Assembly:

The Pollution Control Board is proud to present its Annual Report, which outlines work the Board has done in environmental rulemakings and contested cases brought before it between July 1, 2011 and June 30, 2012. The Board handled a large volume of these proceedings while operating within its tight budget.

Under the Environmental Protection Act, the Board is responsible for determining, defining, and implementing environmental control standards for the State of Illinois, and for adjudicating complaints alleging non-criminal violations of the Act. The Board also reviews permitting and other determinations made by the Illinois Environmental Protection Agency, as well as pollution control facility siting determinations made by units of local government.

During fiscal year 2012, the composition of the Board changed with my appointment as Board Chairman in October 2011. Governor Quinn appointed Jennifer Burke and Deanna Glosser to the Board in September 2011 and October 2011, respectively. Governor Quinn also re-appointed Board Members Tom Johnson and Carrie Zalewski. Long-time Board Member and Acting Chairman G. Tanner Girard was appointed the Board's executive director in October 2011 and retired from the Board in May 2012.

During fiscal year 2012, the Board completed several significant rulemakings. The Board adopted rules designating recreational uses for the Chicago Area Waterway System (CAWS) and Lower Des Plaines River (LDPR) in August 2011. In February 2012, the Board adopted limits on fecal coliform in discharges to Primary Contact Recreation waters of the CAWS and LDPR. These effluent disinfection standards apply from March 1 through November 30. In addition, the Board adopted rules regulating emissions of volatile organic materials from various consumer and commercial products, revising Illinois' enhanced vehicle inspection and maintenance program for the Chicago and Metro-East St. Louis nonattainment areas, and updating the underground storage tank program.

The Board's contested case docket in fiscal year 2012 included numerous enforcement cases, permit appeals, adjusted standard petitions, administrative citations, and landfill siting appeals.

Additionally, in appeals taken from seven Board cases, the Illinois Supreme Court and the Illinois appellate courts issued final decisions during fiscal year 2012. For example, in October 2011, the Board prevailed before the Supreme Court in *Sierra Club v. Illinois Pollution Control Board*. In that case, the high court dismissed an appeal of a Board decision for lack of standing, leaving intact the Board's grant of an adjusted standard to an environmental services company based in Peoria. In the Board proceeding, the company demonstrated the effectiveness of its new treatment process for turning certain hazardous waste from steel mills into non-hazardous waste. More information about the Board's work is contained in this Annual Report or by visiting the Board's website at www.ipcb.state.il.us to access more information.

Sincerely,

A handwritten signature in blue ink that reads "Thomas Holbrook". The signature is written in a cursive style with a large, sweeping arch over the first name.

Thomas Holbrook
Chairman

Board Members



Chairman Tom Holbrook was appointed to the Board and designated Chairman by Governor Pat Quinn in 2011. Prior to joining the Board, Holbrook served as State Representative from the 113th Representative District where he was first elected in 1994. In the Illinois House, Holbrook served on various committees. He was a member of the Environment & Energy Committee for nearly two decades and Chairman for the last decade. Chairman Holbrook helped craft significant environmental legislation including a rewrite of the procedural process for addressing leaking underground storage tanks program; revising air, water, and land permitting rules and procedures, and creating programs such as Illinois' first e-waste program. He also served on the Joint Committee on Administrative Rules, which gave him a working knowledge of the State's rulemaking process. Holbrook worked in the private sector for 33 years, installing, maintaining, and calibrating state of the art instrumentation for monitoring emissions and quality control. Holbrook received a Bachelor's Degree in Social Science and Government at Southern Illinois University in Edwardsville.

Board Member Jennifer A. Burke was appointed to the Board by Governor Pat Quinn in 2011. Ms. Burke is a licensed attorney in Illinois since 1995. Prior to joining the Board, Ms. Burke served as Senior Counsel to the City of Chicago in the Department of Law. While at the City of Chicago, Ms. Burke focused on environmental matters including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) litigation; brownfield redevelopment; and compliance with air, waste, asbestos, and lead regulations. Ms. Burke previously was a partner in the law firm of Jenner & Block in Chicago representing clients in various environmental matters including environmental enforcement, toxic tort litigation, insurance coverage litigation, cost recovery litigation, and environmental due diligence in corporate transactions. Her law degree is from Chicago-Kent College of Law and her undergraduate degree is a Bachelor of Science in Biology from Georgetown University in Washington, D.C. Ms. Burke lives in Chicago.



Board member Deanna Glosser was appointed to the Board by Governor Pat Quinn in 2011. Dr. Glosser is an environmental planner with a doctoral degree from the Department of Urban & Regional Planning at the University of Illinois at Champaign-Urbana (UIUC). She worked for the Illinois Department of Natural Resources for 13 years and has been president of Environmental Planning Solutions, Inc., a small, woman-owned business for eight years. Dr. Glosser has been involved with urban and environmental planning issues for over twenty years. She has been closely involved with the American Planning Association for over ten years and has coauthored three policy guides for APA on wetlands, endangered species, and community and regional food planning. In addition, Dr. Glosser has served as an Adjunct Assistant Professor at UIUC's Department of Urban & Regional Planning and an Adjunct Professor in the Environmental Studies program at the University of Illinois-Springfield.



Board Member Thomas E. Johnson was appointed to the Board for a term beginning in July 2001. He served as Chairman from January 2003 until December 2003, and was then reappointed to a three-year term as Board Member. Johnson has spent more than a decade in private legal practice after graduating from Northern Illinois University School of Law in 1989 and holds a BS in Finance from the University of Illinois at Urbana Champaign. Johnson has also served as a Champaign County Board Member, Special Assistant Attorney General, and Special Prosecutor for the Secretary of State.

Board Member Carrie Zalewski was appointed to the Board in 2009. Ms. Zalewski is a licensed attorney in Illinois. Prior to joining the Board, Ms. Zalewski served as Assistant Chief Counsel at the Illinois Department of Transportation (IDOT) where she was the lead environmental compliance attorney. While at IDOT, Ms. Zalewski dealt with various environmental issues involving NPDES permits, leaking underground storage tanks, reviewing NEPA documents for IDOT projects and other air, land and water issues faced by IDOT. Ms. Zalewski has also worked for the State Appellate Defender's Office and in private practice. She has a Juris Doctor from Chicago-Kent College of Law and a Bachelor of Science in Engineering from the University of Illinois at Urbana. Ms. Zalewski was selected as a member of the Illinois Women's Institute for Leadership in 2008. She is on the Board of Directors for the Chicago Youth Centers (Metropolitan), and the LaGrange YMCA.



Farewell



The Board said good-bye to three members during fiscal year 2012. In May 2012, G. Tanner Girard retired from the Board after serving for 20 years. Dr. Girard served as Board member (1992-2005) and Acting Chairman (2005-2011). In 2011, Dr. Girard became the Executive Director. Dr. Girard was well-known for his technical expertise, his work ethic, and his commitment to the Board's environmental work. During his tenure, Dr. Girard gained irreplaceable knowledge and perspective.

Former Board Member Gary Blankenship left the Board in September 2011. Mr. Blankenship was appointed to the Board in 2008. Before joining the Board, he had served since 1981 as the Business Manager and Financial Secretary Treasurer for Plumbers & Pipefitters Local #422 in Joliet.



Former Board Member Andrea Moore retired from the Board in October 2011 after eight years of service. Prior to joining the Board, Ms. Moore was Assistant Director of the Illinois Department of Natural Resources. She served in the Illinois House of Representatives from 1993 until 2002. From 1984 to 1992, Ms. Moore was a member of the Lake County Board, serving two years as Vice Chair.

The Board wishes each of our former members well in their future endeavors.

The Illinois Pollution Control Board



L-R Thomas E. Johnson, Deanna Glosser, Chairman Thomas Holbrook, Carrie Zalewski and Jennifer A. Burke

Rulemaking Update

Introduction

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Board is responsible for adopting the State's environmental regulations by conducting rulemaking proceedings. Rulemaking generally involves the Board holding quasi-legislative hearings and receiving written public comments on regulatory proposals. Such proposals are typically filed by the Illinois Environmental Protection Agency (IEPA). Based upon the record developed during the proceeding, the Board issues its opinions and orders, addressing the issues and the Board's reasons for its decisions, in addition to setting forth the new or amended rule language.

Proposed rules are published in the *Illinois Register* at first notice and later reviewed by the Joint Committee on Administrative Rules at second notice. At final notice, the adopted rules are filed with the Index Department of the Office of the Secretary of State for publication in the *Illinois Register* and codification in the Illinois Administrative Code. Besides general rulemaking, the Act provides expedited and streamlined rulemaking procedures. For example, the Board uses a "fast-track" procedure to adopt rules required by the federal Clean Air Act Amendments. Also, after a public-comment period but without hearing or second-notice review, the Board adopts rules "identical in substance" to those of the United States Environmental Protection Agency (USEPA) concerning drinking water, hazardous waste, and other federally-authorized programs.

The most significant rulemakings completed by the Board in fiscal year 2012 are briefly summarized below, followed by a list of some of the important rulemakings pending at the end of the fiscal year.

Rulemakings Completed in Fiscal Year 2012

Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System [CAWS] and Lower Des Plaines River [LDPR]: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9

The Board previously severed IEPA's rulemaking proposal, docketed as R08-9, into four subdockets for greater efficiency: Recreational Uses (Subdocket A); Disinfection (Subdocket B); Proposed Aquatic Life Uses (Subdocket C); and Water Quality Standards and Criteria to Meet Aquatic Life Uses (Subdocket D). Final rules were adopted in R08-9(A) and R08-9(B).

Recreational Use Designations for CAWS and LDPR, R08-9(A)

On August 18, 2011, the Board adopted rules establishing recreational use designations for the CAWS and LDPR. The rules create four categories of recreational use designations: Primary Contact Recreation; Incidental Contact Recreation; Non-Contact Recreation; and Non Recreation. The Primary Contact Recreation designation is intended to meet the federal Clean Water Act's goal of recreating on and in the water (*i.e.*, "swimmable"). Six segments of the CAWS are designated as Primary Contact Recreation: (1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of Chicago River; (2) North Branch of Chicago River from its confluence with North Shore Channel to its confluence with South Branch of Chicago River and Chicago River; (3) Chicago River; (4) South Branch of Chicago River; (5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel; and (6) Calumet-Sag Channel. Seven segments of the CAWS and LDPR are designated as Incidental Contact Recreation, while the Non-Contact Recreation use designation applies to the Calumet River from Lake Michigan to Torrence Avenue. The Non-Recreation use designation applies to (1) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River, and (2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

Fecal Coliform Effluent Limits for Primary Contact Recreation Waters in CAWS and LDPR, R08-9(B)

On February 2, 2012, for effluent discharges to Primary Contact Recreation water segments of the CAWS and LDPR, the Board adopted a rule establishing an effluent limit for fecal coliform colony forming units (CFU) during the period of March 1 through November 30. If less than 10 samples are taken in a month, the effluent limit is 400 CFU per 100 mL. If 10 or more samples are taken in a month, fecal coliform cannot exceed a 30-day geometric mean of 200 CFU per 100 mL, and no more than 10% of the samples during any 30-day period can exceed 400 CFU per 100 mL. All effluents in existence on or before February 3, 2012, must meet the standards by March 1, 2016, but new discharges must meet the standards upon initiation of the discharge.

Reasonably Available Control Technology (RACT) for Volatile Organic Material [VOM] Emissions From Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219, R11-23

On July 21, 2011, in a “fast-track” rulemaking, the Board amended regulations controlling VOM emissions from the following Group II and Group IV consumer and commercial product categories: industrial cleaning solvents; flat wood paneling coatings; flexible packaging printing materials; lithographic printing materials; letter press printing materials; miscellaneous metal and plastic parts coatings; automobile and light-duty truck coatings; miscellaneous industrial adhesives; and fiberglass boat manufacturing materials.

Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217, R11-24 and Illinois Environmental Regulatory Group’s Emergency Rulemaking, Nitrogen Oxides Emissions: Amendments to 35 Ill. Adm. Code Part 217, R11-26 (consolidated)

IEPA filed its R11-24 proposal on April 4, 2011. On April 22, 2011, the Illinois Environmental Regulatory Group (IERG) filed an emergency rulemaking proposal seeking identical changes, which the Board docketed as R11-26. The Board denied IERG’s motion for emergency rule, consolidated the two dockets, and on August 18, 2011, adopted amendments extending by three years the date for compliance with nitrogen oxides (NO_x) emission control requirements in various subparts of 35 Ill. Adm. Code 217. The amendments extend the compliance date from January 1, 2012 to January 1, 2015, and apply to source categories including industrial boilers, process heaters, glass melting furnaces, cement kilns, lime kilns, furnaces used in steel making and aluminum melting, and fossil fuel-fired stations.



NO_x Trading Program Sunset Provisions for Non-Electric Generating Units [Non-EGUs]: Amendments to 35 Ill. Adm. Code Part 217.Subpart U, R11-08

On September 22, 2011, the Board adopted amendments to sunset the trading provisions of the Nitrogen Oxides State Implementation Plan (SIP) Call Trading Program (NO_x Trading Program) for non-EGUs. As a result of federal court action concerning the federal Clean Air Interstate Rule (CAIR), Illinois non-EGUs no longer need to comply with NO_x Trading Program requirements to hold and trade NO_x allowances for any control period after 2008. Fifty-two existing non-EGU units and two new non-EGU units were subject to the NO_x Trading Program.

Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators [HMIWI], R11-20

The Board, on September 22, 2011, adopted amendments to the air quality standards for HMIWI, reflecting USEPA amendments. Changes include revised emissions standards that are more stringent than existing ones, revised waste management plan provisions for greater flexibility in demonstrating compliance, and removal of an existing startup, shutdown, and malfunction provision. The compliance date for the new rules is January 1, 2014.

Registration of Smaller Sources (ROSS): New 35 Ill. Adm. Code 201.175, R12-10

P.A. 97-95 provides for expedited adoption of ROSS regulations. On December 1, 2011, the Board timely adopted amendments to its air pollution regulations, establishing a registration program in lieu of the current permit requirements for smaller emission sources. An estimated 3,230 small emission sources, or roughly 50% of the currently permitted emission sources, will no longer have direct permitting obligations.

Revision of Enhanced Vehicle Emission Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code Part 240, R12-12

On January 5, 2012, the Board timely adopted amendments that sunset the steady-state idle and evaporative system integrity emissions test standards used in Illinois' enhanced vehicle I/M program for the Chicago and Metro-East St. Louis nonattainment areas. Under Section 13C-20(a) of the Vehicle Emissions Inspection Law (VEIL) of 2005 (625 ILCS 5/13C-20(a) (2010)), the Board was required to adopt final rules no later than January 31, 2012. The adopted rules implement VEIL as amended by P.A. 97-106.

Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732 and 734, R11-22

On March 15, 2012, the Board adopted amendments to its UST regulations to reflect P.A. 96-908, including repealing Part 732 and clarifying the applicability of Part 734.

Standards and Limitations for Organic Material Emissions for Area Sources: Amendments to 35 Ill. Adm. Code Part 223, R12-8

On May 3, 2012, the Board adopted amendments to address VOM emissions from various consumer products and aerosol coatings. The amendments include limits in percent VOM by weight for adhesive removers, contact adhesives, non-aerosol antistatic products, electrical cleaners, engine degreasers, fabric refreshers, footwear or leather care products, graffiti removers, hair styling products, shaving gels, and wood cleaners.

Setback Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618, R11-25

On June 21, 2012, the Board adopted a maximum setback zone for six community water supply wells owned by Fayette Water Company in Fayette County. The wells serve portions of Fayette, Shelby, and Kaskaskia Counties and are considered highly vulnerable to contamination.

UIC [Underground Injection Control] Update, USEPA Amendments (July 1, 2010 through December 31, 2010), R11-14

The Board, on January 5, 2012, adopted identical-in-substance amendments to Illinois' UIC regulations to create a new class of injection well, Class VI injection wells, which includes wells used for underground carbon sequestration.

Rulemakings Pending at End of Fiscal Year 2012

Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System [CAWS] and Lower Des Plaines River [LDPR]: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(C) [Proposed Aquatic Life Uses], R08-9(D) [Water Quality Standards and Criteria to Meet Aquatic Life Uses]

Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620, R08-18

Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504, R12-23

Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742, R11-9

Gasoline Volatility Standards and Motor Vehicle Refinishing, Proposed Amendments to 35 Ill. Adm. Code Parts 211, 215, 218, and 219, R12-24

Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100, R12-9

Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809, R12-13

Appellate Update

Introduction

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), final opinions and orders of the Board, whether adjudicatory or regulatory, are appealable directly to the Illinois appellate courts rather than to the circuit courts. In Fiscal Year 2012, the Illinois Supreme Court and the Illinois appellate courts issued final decisions involving appeals taken from seven Board cases. Those judicial rulings are briefly summarized below.

[Sierra Club v. Illinois Pollution Control Board, 2011 IL 110882](#)

On October 27, 2011, the Supreme Court of Illinois dismissed an appeal of a Board decision for lack of standing. The high court's ruling leaves intact the Board's adjusted standard decision to "delist" (*i.e.*, exclude from hazardous waste regulation) the residue generated by Peoria Disposal Company's treatment of K061 electric arc furnace dust. The Supreme Court held that the Board's grant of an adjusted standard under Section 28.1 of the Act is not a "rule or regulation," but instead an "adjudicatory determination" that creates "an individualized exception" to a rule or regulation. Therefore, the non-party citizens' groups before the Board did not have standing to seek judicial review of the Board's grant of a hazardous waste delisting to Peoria Disposal Company (AS 08-10). Under the Act, while a Board rule or regulation may be appealed by "[a]ny person adversely affected or threatened" by the rule or regulation (Section 29), a Board adjudicatory determination is generally appealable only by a "party" to the Board proceeding (Section 41). It was uncontested that the Sierra Club and Peoria Families Against Toxic Waste, who made public comments to the Board, were not and never sought to become "parties" to the delisting case before the Board. In dismissing the appeal, the high court vacated the Third District Appellate Court's decision (403 Ill. App. 3d 1012 (3rd Dist. 2010)), in which the Third District found standing but affirmed the Board.

[Community Landfill Co., Edward Pruiem, and Robert Pruiem v. Illinois Pollution Control Board and People of the State of Illinois, 211 IL App \(3d\) 091026-U](#)

On July 27, 2011, the Third District Appellate Court issued a non-precedential order under Supreme Court Rule 23, affirming the Board's finding of personal liability for Community Landfill Company (CLC) corporate officers, Edward and Robert Pruiem, based upon their personal involvement or active participation in violations concerning the Morris Community Landfill, a municipal solid waste landfill facility (PCB 97-193, PCB 04-207 (consol.)). The Pruiems argued that they were merely participating in the management of CLC, but the court agreed with the Board that the Pruiems "clearly had control over the landfill operations for which the Board found them personally liable, and they did not take precautions to prevent the violations." The court also affirmed the total amount of the civil penalty ordered by the Board (\$250,000), but remanded the case to the Board for apportionment of the penalty, which the Board had imposed jointly and severally on the Pruiems and CLC. In remanding, the Third District explained that because the Pruiems shared in some but not all of the CLC violations, the "total injury" is "divisible."

[City of Morris and Community Landfill Co. v. Illinois Pollution Control Board and People of the State of Illinois, 2011 IL App \(3d\) 090847](#)

On August 5, 2011, the Third District Appellate Court issued an opinion in which the court affirmed: 1) the Board's finding that Community Landfill Company (CLC) violated the Act's financial assurance requirements in connection with the company's operation of the Morris Community Landfill; 2) the Board's order that CLC must obtain \$17.4 million in closure and post-closure financial assurance; 3) the Board's penalty against CLC in the amount of \$1,059,534.70; and 4) the Board's order that CLC must cease and desist from accepting additional waste at the landfill (PCB 03-191). The penalty reflected the amount CLC saved by not paying financial assurance bond premiums and constitutes the largest penalty affirmation in the Board's history. The court, however, reversed the Board's rulings against the City of Morris, owner of the land. The Board found the City in violation of financial assurance requirements and imposed a \$399,308.98 penalty (amount of dumping royalties the City received from CLC). The court observed that Section 21(d)(2) of the Act provides that "[n]o person shall *** [c]onduct any waste-storage, waste-treatment, or waste-disposal operation *** in violation of any regulations or standards adopted by the Board," including financial assurance regulations. Though the City helped CLC obtain financial assurance, litigated alongside CLC on landfill issues, and treated leachate from the landfill, the court found no evidence that the City oversaw, directed, or supervised CLC in the "day-to-day operations of the landfill." The court ruled that the Board therefore erred in finding that the City was "conducting a waste disposal operation."

[Fox Moraine, LLC v. United City of Yorkville, City Council, and Pollution Control Board, 2011 IL App \(2d\) 100017](#)

On November 8, 2011, the Second District Appellate Court issued an opinion in which the court affirmed the Board's decision to affirm the United City of Yorkville City Council's denial of Fox Moraine, LLC's application to site a landfill in Yorkville (PCB 07-146). Upheld were the Board's findings that: 1) Yorkville's proceedings on the landfill siting application were fundamentally fair despite allegations of bias and 2) Yorkville's rulings that Fox Moraine failed to satisfy several pollution control facility siting criteria of Section 39.2(a) of the Act were not against the manifest weight of the evidence.

Among other things, the court discussed the applicability of the “deliberative process privilege” to local siting authorities and rejected the argument that siting criterion (viii) (consistency with county solid waste management plan) applies only if the facility is proposed to be located upon unincorporated land.

Jose Gonzalez & 1601-1759 East 130th Street, L.L.C. v. Pollution Control Board, 2011 IL App (1st) 093021

On November 9, 2011, the First District Appellate Court issued an opinion in which the court affirmed the Board’s decision to impose fixed civil penalties plus hearing costs on two respondents for open dumping violations that took place in the City of Chicago (AC 06-39, AC 06-40, AC 06-41, & AC 07-25 (consol.)). The administrative citations had been filed with the Board by the City of Chicago Department of Environment (CDOE) pursuant to Section 31.1 of the Act. CDOE filed four citations in all, alleging violations by three respondents on two dates at one site, and asking the Board to impose statutory civil penalties totaling \$25,500. In a consolidated decision, the Board found violations in two of the four actions. The violations were based upon 1) waste that had been “fly-dumped” on the site by others before the site was purchased by the respondents and 2) waste from a Chicago Transit Authority (CTA) renovation project that had been brought to the site by agreement between a hauler and the respondents. Under Section 42(b)(4-5) of the Act, the Board imposed statutory civil penalties totaling \$12,000 (\$1,500 per violation of Section 21(p) of the Act) and hearing costs totaling approximately \$2,500. Regarding the fly-dumped waste, the First District agreed with the Board that a person may “cause or allow” the open dumping of waste even though the waste was not placed on the site by the person and existed on the site before the person acquired the site. Concerning the CTA waste, the court agreed with the Board that the respondents were in control of the site and did not lack the capability of controlling the pollution.

Toyal America, Inc. v. Illinois Pollution Control Board and People of the State of Illinois, 2012 IL App (3d) 100585

On February 3, 2012, the Third District Appellate Court issued an opinion affirming the Board’s \$716,440 penalty against Toyal America, Inc. (Toyal), an aluminum products manufacturer located in Lockport, Will County. Toyal is part of the Toyal Group of companies, an international manufacturer of aluminum powders and pigments for automotive and industrial coating markets. The Board found that Toyal had, for eight years, violated “Reasonably Available Control Technology” (RACT) regulations requiring the control and reduction of volatile organic material (VOM) emissions in the Chicago ozone nonattainment area (PCB 00-211). Toyal conceded its violations, appealing only the \$716,440 penalty imposed by the Board. In affirming the Board, the Third District provided the first precedential appellate decision in over fifteen years to address the propriety of a penalty under both Sections 33(c) and 42(h) of the Act. The court addressed each Section 33(c) factor individually in reviewing the Board’s decision on whether to impose a penalty. The court did the same with respect to each Section 42(h) factor when reviewing the Board’s decision on the appropriate penalty amount. The Third District noted that Toyal was “fully aware” of its violations for eight years and yet never sought regulatory relief or ceased operations to control VOM emissions in an ozone nonattainment area. The court also agreed with the Board’s rejection of Toyal’s “forgone benefit” challenge to \$316,440 of the penalty, which the Board assessed to account for the company’s economic benefit from noncompliance.

Illinois Environmental Protection Agency v. Illinois Pollution Control Board and Prime Location Properties, LLC, 2012 IL App (5th) 100072-U

On March 2, 2012, the Fifth District Appellate Court issued a non-precedential order under Supreme Court Rule 23, affirming the Board’s reversal of an Illinois Environmental Protection Agency (IEPA) leaking underground storage tank (UST) decision concerning a former Metropolis gas station (PCB 09-67). First, the court determined that the timely filing of a petition under Section 40 of the Act by a non-attorney on behalf of Prime Location, LLC (Prime) was not “the practice of law” and accordingly the “nullity rule” did not apply to void the Board proceeding. Prime’s amended petition was filed by an attorney after the 35-day statutory period but well before the case went to hearing. The court therefore affirmed the Board’s denial of IEPA’s motion to dismiss based upon the alleged unauthorized practice of law. Next, the Fifth District ruled that the Board correctly reversed IEPA’s rejection of Prime’s cleanup plan and budget for not submitting reports for a separate incident. The court agreed with the Board that an earlier IEPA determination, which was never appealed, did not preclude IEPA from later determining that all of the site’s USTs had leaked when the release was first reported and were part of the same incident. Under Section 57.7(e) of the Act, Prime could perform investigation and cleanup beyond what IEPA had approved beforehand, and then seek IEPA approval and UST Fund reimbursement for such work. Lastly, the Fifth District affirmed the Board’s award of legal fees and costs incurred by Prime in successfully prosecuting the appeal before the Board. The court held that where Prime’s attorney provided a customary supporting affidavit to document legal services and charges, the Board did not err by awarding, under Section 57.8(l) of the Act, \$10,888.18 in legal fees and costs from the UST Fund without requiring proof that the fees and costs had been paid.

Legislative Update

Summarized below are five Public Acts from the 2012 session of the 97th General Assembly relating to the Board's work, each of which amends the Environmental Protection Act. Additional information about the recent legislative session is available at the General Assembly Web page at www.ilga.gov.

Public Act 97-843 (House Bill 3881) **Effective July 23, 2012**

P. A. 97-483 amends the Environmental Protection Act by providing that no person shall establish and the Environmental Protection Agency (IEPA) shall not issue a permit to establish a new municipal solid waste landfill unit or a new sanitary landfill in a county of more than 2,000,000 inhabitants on or after the effective date of the act. P.A. 97-483 also provides that no person shall laterally expand and the IEPA shall not issue a permit for the lateral expansion of a municipal solid waste landfill unit or the expansion of a sanitary landfill in a county of more than 2,000,000 inhabitants on or after the effective date of the Act.

Public Act 97-887 (Senate Bill 2947) **Effective August 2, 2012**

P.A. 97-887 amends the Environmental Protection Act by providing that, except as otherwise provided, no person other than the State of Illinois, its agencies and institutions, or a unit of local government shall own or operate (rather than conduct) a municipal solid waste landfill (MSWLF) unit or other waste disposal operation on or after March 1, 1985, which requires a specified permit, unless that person has posted with the IEPA a performance bond or other security. P.A. 97-887 also provides that, on and after the effective date established by the United States Environmental Protection Agency (USEPA) for MSWLF units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, no person, other than the State of Illinois, its agencies and institutions, shall own or operate (rather than conduct any disposal operation at) a MSWLF unit that requires a specified permit, unless that person has posted with the IEPA a performance bond or other security.

Public Act 97-945 (Senate Bill 3672) **Effective August 10, 2012**

P.A. 97-945 amends the Environmental Protection Act by providing that, in accordance with Section 7.2(b) of the Environmental Protection Act, the Board shall adopt ambient air quality standards identical-in-substance to the national ambient air quality standards promulgated by the Administrator of the USEPA. P.A. 97-945 also provides that it shall not be construed to limit the right of a person to submit a proposal to the Board, or the authority of the Board to adopt, air quality standards that are more stringent than the standards promulgated by the Administrator, pursuant to the general rulemaking requirements of the Illinois Administrative Procedure Act and Title VII of the Environmental Protection Act.

Public Act 97-1057 (House Bill 4526) **Effective August 24, 2012**

P.A. 97-1057 amends the Environmental Protection Act addresses the use of perchloroethylene. Beginning January 1, 2013, P.A. 97-1057 authorizes the use of (i) perchloroethylene drycleaning machines that have only a primary control system, but only for the remainder of each machine's useful life and at the facility at which it is located on the effective date of the Act and (ii) perchloroethylene drycleaning machines that have primary and secondary control systems. Beginning January 1, 2014, P.A. 97-1057 prohibits a person from operating a drycleaning machine unless (i) a person with specified training is present at the facility during the machine's operation and (ii) certain secondary containment measures are in place. P.A. 97-1057 includes a number of other related provisions.

Public Act 97-1081 (Senate Bill 2867) **Effective August 24, 2012**

P.A. 97-1081 amends a number of provisions of the Environmental Protection Act. Among those amendments, P.A. 97-1081 extends the duration of special waste hauler permits from one year to three years and enacts a corresponding threefold increase in the permit fees.

A Publication of the Illinois Pollution Control Board

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December 13, 2012