

# ENVIRONMENTAL REGISTER

*Illinois Pollution Control Board News*

**No. 463**

**January 6, 1993**

## INFORMATION SERVICES AVAILABLE FROM THE BOARD

See the inside of this page for details on informational items available from the Board. These items include a subscription service for Board opinions and orders and copies of the landfill regulations in electronic format.

The Board also maintains an electronic Bulletin Board System (BBS) at 312-814-1590. There is no charge for access to the BBS. See the inside of this page for details.

## **RULEMAKING UPDATE**

### **GROUNDWATER PROTECTION EXCEPTIONS FOR FERTILIZER AND PESTICIDE FACILITIES PROPOSED FOR SECOND NOTICE, R92-20**

On December 17, 1992, the Board proposed for Second Notice certain amendments to the groundwater protection regulations at 35 Ill. Adm. Code 615 and 616. These amendments, proposed in response to statutory changes, would exempt certain agricultural pesticide and fertilizer facilities from the groundwater protection rules.

On September 15, 1992, Governor Edgar signed Public Act 87-1108 into law. P.A. 87-1108 amended the Environmental Protection Act to provide an alternative groundwater protection program for certain agricultural facilities currently subject to Illinois' groundwater protection regulations (35 Ill. Adm. Code 615 and 616). The Board promptly opened docket R92-20 on October 16, 1992, to begin a rulemaking that will conform the existing rules with the statutory change.

Effective January 1, 1993, the existing groundwater protection rules regulate new and existing facilities that are located within setback zones of potable water wells. Under the provisions of PA 87-1108, facilities may elect to opt out of the groundwater protection program and participate in a new alternative groundwater protection program administered by the Illinois Department of Agriculture. The proposed amendments would render the groundwater protection regulations inapplicable to those facilities that timely and effectively opt into that alternative program.

The Board held public hearings on the proposed rules on December 8 and 10, 1992. The Board made only one substantive change in response to comments before submitting the proposed amendments to JCAR review. The Board accepted certain Agency-recommended revisions that will cause the regulatory language more closely follow that of the statutory amendments. After JCAR review, the Board may proceed to adopt the rules as final.

Direct questions to Michelle Dresdow, at 815-753-0947. (Please refer to docket R92-20.)

### **DEADLINE EXTENDED FOR RCRA UPDATE, R92-10**

On December 17, 1992, the Board entered an order that extended the deadline in Resource Conservation and Recovery Act update docket R92-10. At present, this docket includes the federal amendments adopted by USEPA during the period from January 1 through June 30, 1992. The Board found that an extension of time was necessary because the public comment period closes on December 21, 1992. The Board estimated that it will adopt rules based on the federal amendments on or about January 21, 1993. Direct questions to Morton Dorothy, at 217-333-5575. (Please refer to docket R92-10.)

## **FOR YOUR INFORMATION**

### **REPRESENTATIVES OF AGRICULTURE VISIT**

On December 3, 1992, members of the Douglas County Farm Bureau and other representatives of the agriculture industry visited the Board offices. These visitors had an opportunity to attend a Board meeting and talk with the Board members and staff.

### **ATTENDANCE AT HEARING IS SUFFICIENT TO ESTABLISH STANDING FOR SB 172 APPEAL; CITIZENS RESIDING NEAR PROPOSED FACILITY ARE A "CITIZENS' GROUP" EXEMPTED FROM PAYMENT OF COSTS FOR PREPARING RECORD**

On December 17, 1992, in Alice Zeman et al. v. Village of Summit et al. and Donna Quilty v. Board of Trustees et al., PCB 92-174 and PCB 92-177 (consolidated), the Board, in a matter of first impression, determined that local residents were a "citizens' group" exempted by Section 39.2 of the Act from payment of the cost of preparing the record. The Board also determined that one petitioner had standing pursuant to Section 40.1 to appeal the regional

pollution control facility siting determination due to "participation" by attendance at the local hearing.

STANDING continued on page 3.

ENVIRONMENTAL INFORMATION SERVICES AVAILABLE FROM THE BOARD

The Board has the following information available:

POLLUTION CONTROL BOARD ELECTRONIC BULLETIN BOARD SYSTEM (BBS). The Pollution Control Board operates an electronic BBS at 312-814-1590. The BBS is available 24 hours a day, 7 days a week, to anyone with access to a computer and a modem - there is no charge for access to the BBS. The best communications settings are 8 data bits (or data length 8), no parity (or parity = none) and 1 stop bit, i.e., 8-N-1. The best terminal emulation is ANSI-BBS or just ANSI. The BBS contains Board Agendas, Environmental Registers, Annual Reports, and various documents about the Board. You may download these documents to your computer. For additional information contact Bill Forcade at the Board Offices 312-814-3620.

SUBSCRIPTION SERVICE OF BOARD OPINIONS AND ORDERS. The subscription service comprises all the Opinions and Orders issued by the Pollution Control Board in a fiscal year (July 1 through June 30). The Board meets approximately twice monthly in order to issue Opinions and Orders.. Usually no later than the end of each month, a volume is issued containing the Opinions and Orders of the Board from the preceding month.

HARD COPIES OF BOARD OPINIONS AND ORDERS FOR FISCAL YEAR 1992 (July 1, 1991 through June 30, 1992) ARE AVAILABLE FOR IMMEDIATE DELIVERY. The cost is \$350.00 per set.

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Name \_\_\_\_\_ Fiscal Year Ordered \_\_\_\_\_ (FY92 available in hard copy only).

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Illinois Pollution Control Board
100 W. Randolph St., Ste. 11-500
Chicago, IL 60601

COPIES OF ILLINOIS LANDFILL REGULATIONS AND SUPPORTING DOCUMENTS  
AVAILABLE ON DISKETTE

Copies of the Illinois landfill regulations and supporting documents are available on diskette. This consists of the Board's landfill regulations and other supporting background documentation. This is offered only in an electronic version which consists of WordPerfect 5.1, on either 3.5" or 5.25" inch diskettes. The electronic format will allow for word searches and other useful tools provided by the WordPerfect software. The cost is \$100.00.

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Please send to:

Joseph D'Alessandro, Fiscal Officer  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph St., Ste 11-500  
Chicago, IL 60601

**STANDING contiued from page 2.**

The petitioners, described as residents of the Village of Summit, and others who reside in close proximity to the site of a proposed regional pollution control site, challenge the siting approval the Village granted to West Suburban Recycling and Energy Center, Inc. (WSREC) pursuant to Section 39.2 of the Act. They filed a petition for review before the Board under Section 40.1, and the Board accepted the petition and set the matter for hearing by a November 19, 1992 order. That order instructed the Village to file the record of proceedings within 21 days. The Village filed a December 8 motion for reconsideration, asserting that it was not required to file the record until the petitioners paid the estimated \$5,000.00 in copying costs pursuant to Section 39.2(n). On December 4, WSREC filed a motion to dismiss one of the petitioners for lack of standing.

On the issue of costs, the Board determined that the unit of local government must file multiple copies of the record on appeal without reimbursement for copying costs. The petitioners had refused to pay the Village's estimated fees for costs of preparing the record. They contended that imposition of those fees would cause them to abandon their appeal. The Board examined the

language of Section 39.2(n) relating to exemption of citizens' groups from payment of costs and found that the petitioners fell within that exemption. The legislative history indicated that formal organization of such a group was not necessary to qualify. The amendment's sponsor had read into the legislative record a definition of "citizens' group", which included groups of individual citizens who join together on an *ad hoc* basis for the purposes of appealing a local siting issue. Therefore, the Board found that the petitioners constituted a "citizens' group" exempted from the payment of costs of preparing the record within the meaning of Section 39.2. The Board ordered the Village to file the record on or before January 4, 1993 without reimbursement.

On the issue of standing, the Village challenged the standing of the lead petitioner because she had not presented comments during any of the public hearings. The Village conceded that the petitioner had attended the public hearings. The petitioner alleged that the Village's procedures prevented her from actively participating. The issue so framed by both sides was whether attendance constituted "participat[ion]", as that term is used in Section 40.1 sufficient to confer standing to appeal. The Board cited two of its prior decisions on this

issue. These cases examined the dictionary meaning of "participate" and the public policy behind Section 40.1, of encouraging public participation. The Board concluded that attendance at the local

hearings constituted "participated" for the purposes of Section 40.1 and the petitioner had standing to appear before the Board.

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**FINAL ACTIONS - December 17, 1992 BOARD MEETING**

PCB 90-187 Herman W. Prescott v. City of Sycamore - The Board found no violation and dismissed this citizen's water pollution enforcement action involving a DeKalb County facility. B. Forcade dissented.

PCB 92-88 Southern Food Park, Inc., an Illinois corporation v. IEPA - The Board affirmed the Agency's denial in this underground storage tank reimbursement determination appeal involving a Franklin County facility.

PCB 92-92 North Shore Sanitary District v. IEPA - The Board granted a requested variance from a site-specific water pollution control rule applicable to the petitioner's Lake County facility.

PCB 92-98 Reichhold Chemicals, Inc. v. IEPA - The Board reversed the Agency's denial in this underground storage tank reimbursement determination appeal involving a Cook County facility.

PCB 92-111 Russell L. Bacon v. IEPA - The Board reversed the Agency's denials in this underground storage tank reimbursement determination appeal involving a McLean County facility.

PCB 92-158 Estate of Larry Junkin, by Patricia Junkin,

PCB 92-206 Clark Oil & Refining Corporation v. IEPA - Upon receipt of an Agency recommendation, the Board granted a 30-day extension to the regulatory 90-day limit on the accumulation of hazardous waster at the petitioner's

Madison County facility.

AC 92-37(A) Sangamon County v. Gerald Miller - The Board found the respondent in violation of the Act at his Sangamon County property and ordered him to pay a penalty of \$500.00 into the Environmental Protection Trust Fund.

AC 92-72 IEPA v. W.W. Sanitation, Inc. and Jackel, Inc. - The Board found the respondent in violation of the Act at its Pike County property and ordered it to pay a penalty of \$2,000.00 into the Environmental Protection Trust Fund.

AC 92-73 County of Jackson v. Robert Ellis - The Board found the respondent in violation of the Act at his Jackson County property and ordered him to pay a penalty of \$500.00 to the Jackson County Treasurer.

AC 92-74 IEPA v. Envirotech - Illinois, Inc. - The Board found the respondent in violation of the Act at its Montgomery County property and ordered it to pay a penalty of \$1,000.00 into the Environmental Protection Trust Fund.

AC 92-75 IEPA v. Morris Carraway - The Board found the respondent in violation of the Act at his St. Clair County property and ordered ~~him to pay a penalty of \$1,000.00 to the~~ Executive IEPA Agency Board \$1,000.00 to the petitioner's moti Environmental Protection Trust Fund.

AC 92-77 Sangamon County v. McCabe Packing Company - The Board found the respondent in violation of the Act at its Sangamon County property and ordered it to pay a penalty of \$1,500.00 to the Sangamon County Department of Public Health.

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**NEW CASES - December 17, 1992 BOARD MEETING**

PCB 92-197 E & D Trucking, Inc., a corporation v. IEPA - The Board accepted this underground storage tank fund reimbursement determination appeal for hearing involving a Rock Island County facility.

PCB 92-198 Citizens for a Better Environment, and Alice Zeman v. Village of McCook and West Suburban Recycling and Energy Center, Inc. - The Board accepted this regional pollution control facility siting appeal for hearing involving a Cook County facility, and consolidated it together with PCB 92-201.

PCB 92-199 Twomey Company (Warren County) v. IEPA - The Board accepted this underground storage tank fund reimbursement determination appeal for hearing involving a Warren County facility.

PCB 92-200 Ron's Interstate Sunco v. IEPA - The Board accepted this underground storage tank fund reimbursement determination appeal for hearing involving a Champaign County

facility.

PCB 92-201 Edward Novak v. Board of Trustees and Mayor of the Village of McCook and West Suburban Recycling & Energy Center, Inc. - Accepted for hearing - The Board accepted this regional pollution control facility siting appeal for hearing involving a Cook County facility, and consolidated it together with PCB 92-198.

PCB 92-202 Veach Oil Company v. IEPA - The Board ordered the submission of more information in this underground storage tank fund reimbursement determination appeal involving a Johnson County facility.

PCB 92-203 Chuck and Dan's Auto Service v. IEPA - The Board accepted this underground storage tank fund reimbursement determination appeal for hearing involving a LaSalle County facility.

PCB 92-204 Concerned Citizens of Williamson County v. Bill Kibler Corp. and The Williamson County Board of Commissioners for and in behalf of the County of William-

son in the State of Illinois - The Board ordered the submission of more information in this regional pollution control facility siting appeal involving a Williamson County facility

PCB 92-205 Douglas Furniture of California, Inc. v. IEPA - The Board accepted this air permit appeal for hearing involving a Cook County facility. Board Member B. Forcade abstained.

PCB 92-206 Clark Oil & Refining Corporation v. IEPA - See Final Actions.

PCB 92-207 People of the State of Illinois and the County of Grundy, Illinois ex. rel. Grundy County State's Attorney David W. Neal v. Environtech, Inc., an Illinois corporation, and the City of Morris, Illinois - The Board accepted this regional pollution control facility siting appeal for hearing involving a Grundy County facility.

PCB 92-208 Safety-Kleen Corp. v. IEPA - The Board accepted this RCRA permit appeal for hearing involving a Cook County facility.

### **CALENDAR OF HEARINGS**

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

<b>January 7</b>		<b>Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.</b>
<b>10:00 a.m.</b>		
January 7	PCB 92-174	<u>Alice Zeman, Tony Berlin, Richard Zilka, Michael Turlek, and Kevin Greene v. Village of Summit, and West Suburban Recycling and Energy Center, Inc. (consolidated)</u> - Argo Community High School, Classroom, 7329 W. 63rd St., Summit.
10:00 a.m.	PCB 92-177	
	L-S-R	
January 8	PCB 92-174	<u>Alice Zeman, Tony Berlin, Richard Zilka, Michael Turlek, and Kevin Greene v. Village of Summit, and West Suburban Recycling and Energy Center, Inc. (consolidated)</u> - Argo Community High School, Classroom, 7329 W. 63rd St., Summit.
10:00 a.m.	PCB 92-177	
	L-S-R	
January 11	PCB 92-127	<u>City of DesPlaines, Gail Papasteriadis, and Gabriel and Linda Gulo v. Solid Waste Agency of North Cook County</u> - State of Illinois Center, 100 W. Randolph St., Chicago [room to be determined].
9:30 a.m.		
January 12	PCB 92-127	<u>City of DesPlaines, Gail Papasteriadis, and Gabriel and Linda Gulo v. Solid Waste Agency of North Cook County</u> - State of Illinois Center, 100 W. Randolph St., Chicago [room to be determined].
9:30 a.m.		
January 18	PCB 92-80	<u>Lake County Forest Preserve District v. Neil Ostro; Janet Ostro; and Big Foot Enterprises</u> - County Building, Assembly Room, 18 N. County Road, Waukegan.
10:00 a.m.	L-E	
January 19	PCB 92-184	<u>Braun's Standard Service v. EPA</u> - Pinckneyville City Hall, Council Chambers, 104 S. Walnut St., Pickneyville.
10:00 a.m.	UST-FRD	
<b>January 21</b>		<b>Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.</b>
<b>10:00 a.m.</b>		

January 21 9:30 a.m.	PCB 90-146 N-E	<u>Village of Matteson v. World Music Theater, Jam Productions, Discovery South Group, Ltd. - Village Hall, Village of Matteson, 3625 W. 215th St., Matteson.</u>
January 22 9:00 a.m.	R92-8 R	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle C (Water Toxics and Bioaccumulation) - State of Illinois Center, Suite 9-040, 100 W. Randolph St., Chicago.</u>
January 22 9:30 a.m.	PCB 90-146 N-E	<u>Village of Matteson v. World Music Theater, Jam Productions, Discovery South Group, Ltd. - Village Hall, Village of Matteson, 3625 W. 215th St., Matteson.</u>
January 25 9:00 a.m.	PCB 92-168 UST-FRD	<u>Edwards-Etherton Oil Co., Inc. v. EPA - Williamson County Courthouse, Conference Room, Adjacent to Court Room 3, 200 W. Jefferson St., Marion.</u>
January 25 10:00 a.m.	PCB 92-183 UST-FRD	<u>Archdiocese of Chicago (St. Philomena Church Facility) v. EPA - Law Offices of Joshua Sachs, 134 N. LaSalle St., Suite 2222, Chicago.</u>
January 26 10:30 a.m.	PCB 92-171 UST-FRD	<u>Phillips 66 Company, a Division of Phillips Petroleum Company v. EPA - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.</u>
<b>February 4 10:00 a.m.</b>		<b>Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.</b>
February 4 9:00 a.m.	PCB 91-202 P-A	<u>Sherex Chemical Company, Inc. v. EPA - Peoria County Courthouse, County Boardroom, 324 Main St., Peoria.</u>
February 4 10:00 a.m.	AS 91-11 PWS	<u>In the Matter of: Petition of the Illinois American Water Company for an Adjusted Standard from 35 Ill. Adm. Code 304.124 (Iron and TSS only) for the Water Company's East St. Louis Public Water Supply Facility - Belleville City Hall, Council Chambers, 10 S. Illinois St., Belleville.</u>
February 5 10:00 a.m.	R92-21 R	<u>In the Matter of Amendments to New Source Review Rules, 35 Ill. Adm. Code Part 203 - State of Illinois Building, Room C500 (Fifth Floor Auditorium) 160 N. LaSalle St., Chicago.</u>
February 9 10:00 a.m.	PCB 92-172 A-V	<u>Olin Corporation (Winchester Division) v. EPA - City Council Chambers, 101 E. Third St., Alton.</u>
February 10 10:00 a.m.	AS 91-12 PWS	<u>In the Matter of: Petition of the Illinois American Water Company for an Adjusted Standard from 35 Ill. Adm. Code 304.124 (Iron and TSS only) for the Water Company's Cairo Public Water Supply Facility - Alexander County Courthouse, Small Courtroom, 2000 Washington St., Cairo.</u>
February 11 10:00 a.m.	AC 92-26 AC	<u>County of Ogle v. City of Rochelle and Rochelle Disposal Service, Inc. (Rochelle Municipal #2 Landfill) - Ogle County Courthouse, State's Attorney Conference Room, 4th and Washington Sts., Oregon.</u>
February 19 10:00 a.m.	R92-21 R	<u>In the Matter of Amendments to New Source Review Rules, 35 Ill. Adm Code Part 203 - State of Illinois Building, Room C500 (Fifth Floor Auditorium), 160 N. LaSalle St., Chicago.</u>
February 23 9:30 a.m.	PCB 91-38 P-A	<u>American Waste Processing, Ltd. v. EPA - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.</u>
February 24 9:30 a.m.	PCB 91-38 P-A	<u>American Waste Processing, Ltd. v. EPA - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.</u>

February 25 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
March 1 10:00 a.m.	PCB 92-122 UST-FRD	<u>F and R Enterprises, Inc. v. EPA</u> - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.
March 4 9:00 a.m.	R92-8 R	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle C (Water Toxics and Bioaccumulation)</u> - Municipal Building, Council Chambers, 7th and Monroe Streets, Springfield.
March 11 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
March 12 9:00 a.m.	PCB 92-33 UST-E	<u>Erich J. Mandel v. Thaddeus G. Kulpaka</u> - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.
March 17 10:00 a.m.	PCB 92-166 P-A	<u>Marathon Oil Company (Robinson Refinery) v. EPA</u> - Robinson Public Library, Meeting Room, 606 N. Jefferson, Robinson.
March 25 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
April 8 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
April 12 10:30 a.m.	PCB 92-165 UST-FRD	<u>Reichhold Chemicals, Inc. v. EPA</u> - State of Illinois Center, Suite 11-500, 100 W. Randolph St., Chicago.
April 22 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
April 23 10:00 a.m.	PCB 91-52 P-A	<u>Atwood Industries, Inc. v. EPA</u> - [Location in Stockton to be determined at a later date], Stockton.
May 6 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
May 20 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
June 3 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.
June 17 10:00 a.m.		Pollution Control Board Meeting, State of Illinois Center, 100 W. Randolph St., Conference Room 9-040, Chicago.

**Calendar Code**

A-C	Administrative Citation	A-E	Air Enforcement
A-S	Adjusted Standard	A-V	Air Variance

CSO	Combined Sewer Overflow Exception	L-E	Land Enforcement
L-S-R	Landfill Siting Review	L-V	Land Variance
N-E	Noise Enforcement	N-V	Noise Variance
P-A	Permit Appeal	PWS-E	Public Water Supply Enforcement
PWS-V	Public Water Supply Variance	R	Regulatory Proceeding
SO <sub>2</sub>	SO <sub>2</sub> Alternative Standards	SWH-E	Special Waste Hauling Enforcement
SWH-V	Special Waste Hauling Variance	T	Thermal Demonstration Rule (35 ILL. ADM. CODE 302.211(F))
T-C	Tax Certifications	T-S	Trade Secrets
W-E	Water Enforcement	W-V	Water Variance
WWS	Water-Well Setback Exception	UST-E	Underground Storage Tank Enforcement
UST-FRD	Underground Storage Tank Fund Reimbursement Determination		

Printed by Authority of the State of Illinois, January 6, 1993, 2,000 copies, order #57701.

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

John C. Marlin, Chairman  
Urbana, Illinois

Joan G. Anderson  
Western Springs, Illinois

Ronald C. Flemal  
DeKalb, Illinois

Bill S. Forcade  
Chicago, Illinois

G. Tanner Girard  
Grafton, Illinois

J. Theodore Meyer  
Chicago, Illinois

Michael L. Nardulli  
Chicago, Illinois

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

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