
Environmental Register

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The Environmental Register is a Publication of the Illinois Pollution Control Board

J. Philip Novak, Chairman

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Letter from the Chairman

December brought about many changes for the Illinois Pollution Control Board. On December 1, 2003, I took over as Chairman of the newly reconstituted Board. Senate Bill 2003/Public Act 93-0509 reduced the number of Board Members from seven to five. Board Members are to be “technically qualified” with “verifiable technical, academic, or actual experience in the field of pollution control or environmental law and regulation.” Additionally, Board Members are prohibited from holding another position outside Board employment.

Prior to joining the Board, I served 16 years in the Illinois House of Representatives. While in the House, I chaired the Environment and Energy Committee for eight years, among other committee assignments. I currently serve as a trustee on the Illinois Clean Energy Community Foundation, a 250 million dollar trust fund promoting energy efficiency and protecting natural areas.



Andrea S. Moore also joined the Board on December 1, 2003. Board Member Moore brings with her a wealth of knowledge about Illinois’ natural resources and the legislative process. Prior to joining the Board, Ms. Moore was an Assistant Director of the Illinois Department of Natural Resources. She also served in the Illinois House of Representatives from 1993 until 2002 where she held various committee assignments, including a seat on the Environment and Energy Committee.

Remaining on the Board are Dr. G. Tanner Girard, Thomas E. Johnson, and Nicholas J. Melas. Dr. Girard was first appointed to the Board in 1992. Dr. Girard has a PhD in science education, an MS in biological science, and a BS in biology. Board Member Johnson gave up a successful legal practice in 2001 to join the Board. He earned his law degree from Northern Illinois University School of Law in 1989. Board Member Melas was appointed to the Board in 1998. Mr. Melas was a commissioner of the Metropolitan Water Reclamation District of Greater Chicago for 30 years and President of its Board for the last 18 of those years.

As you may know, the Environmental Protection Act created the Illinois Pollution Control Board as an independent agency in 1970. Under the Act, the Board is responsible for adopting Illinois’ environmental regulations and deciding contested environmental cases. The Board currently has more than 250 contested cases and eleven rulemakings pending before it.

During 2004, the Board will continue serving the citizens of Illinois to the best of its ability, keeping in mind its mission to restore, protect, and enhance the State’s environment. The Board wishes you a happy and prosperous new year.

Sincerely,

A handwritten signature in black ink that reads "J. Philip Novak". The signature is written in a cursive style with a large initial "J".

J. Philip Novak
Chairman

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Federal Update

United States Department of Justice Publishes Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act Re Sauget Superfund Site

On December 3, 2003 (68 Fed. Reg. 67700), the United States Department of Justice published a notice of lodging of a consent decree under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) between the United States and Paul Sauget in the District Court for the Southern District of Illinois, in U.S. v. Pharmacia Corporation, et al. (Civil No. 99-63-GPM).

The United States' second amended complaint in this action asserts that Paul Sauget is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), for response costs that have been or will be incurred by the U. S. due to the release or threatened release of hazardous substances from several landfills that were operated by Paul Sauget at the Sauget Area 1 Superfund Site located in Sauget and Cahokia, Illinois. Under the proposed consent decree, Paul Sauget will (1) stipulate to a judgment of \$9.2 million for past and future response costs; (2) pay to the U. S. Environmental Protection Agency (USEPA) \$60,000 which represents his ability to pay the judgment entered against him; and (3) pursue in good faith and to final judgment or settlement, any cause of action that has been or may be asserted against any insurance carrier for indemnification of Paul Sauget's stipulated liability to the U.S.

Comments regarding this settlement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to United States v. Pharmacia Corporation, et al., Civ. No. 99-63-GPM (DOJ Ref. No. 90-11-2-06089). The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Illinois, Suite 300, Fairview Heights, Illinois, 62208; and at USEPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Thomas Martin, Esq. (312) 886-4273). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>.

United States Environmental Protection Agency Proposes Amendments Under the Clean Air Act to the Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

On December 16, 2003 (68 Fed. Reg. 70107), the United States Environmental Protection Agency (USEPA) proposed to defer the effective date of air quality designations for certain areas of the country that do not meet the 8-hour ozone national ambient air quality standard (NAAQS).

By April 15, 2004, USEPA will designate all areas for the 8-hour ozone NAAQS. USEPA is proposing that, when it promulgates the designations in April 2004, it will issue the first of three deferrals of the effective date of the designation for any Early Action Compact (compact) area that is designated nonattainment and continues to meet all compact milestones. Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires.

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In this proposal, USEPA is proposing to defer until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for specific areas. USEPA stated that it believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard. In addition, these compact agreements give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require. This proposed rule does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process.

Comments must be received on or before January 15, 2004.

For further information contact Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5565 or by e-mail at: cole.david@epa.gov; or Ms. Valerie Broadwell, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-3310 or by e-mail at: broadwell.valerie@epa.gov.

If any amendments to the Illinois air rules become necessary, the Board would expect the Illinois Environmental Protection Agency to propose amendments using the Clean Air Act “fast-track” procedures at Section 28.5 of the Environmental Protection Act (415 ILCS 5/28.5 (2002)).

United States Environmental Protection Agency Publishes Notice of A Revised Policy Re the Applicability of the Safe Drinking Water Act to Submetered Properties

On December 23, 2003 (68 Fed. Reg. 74233), the United States Environmental Protection Agency (USEPA) finalized a memorandum that outlined its revised policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) for submetered properties.

Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or “sell” water. USEPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is “selling” the water and therefore is independently subject to SDWA’s drinking water requirements.

Now, as a way to promote full cost and conservation pricing to achieve water conservation, the USEPA is changing its interpretation of section 1411 as it applies to submetered properties. USEPA stated that it believes that the addition of a submeter should not in any way change the quality of water provided to customers on these properties, and the building or property owner should therefore be exempted from additional SDWA regulations. In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (such as many military installations/facilities or large mobile home parks).

The revised policy is effective December 16, 2003.

For further information contact Ronald Bergman by phone at 202-564-3823, or by e-mail at bergman.ronald@epa.gov.

This USEPA policy change did not result in a federal regulatory amendment. But, this policy statement may fulfill the Administrative Procedure Act Section 1-70 definition of a rule. 5 ILCS 100/1-70 (2002). Change to the Board’s rules or addition of a Board note concerning this federal interpretation may be necessary. The Board will examine this issue in the context of its next identical in substance SDWA update docket under Section 13 (c) of the Environmental Protection Act, 415 ILCS 5/13 (c) (2002). See R04-5, In the Matter of: SDWA Update, USEPA Amendments (July 1, 2003 through December 31, 2003).

Rule Update

Board Adopts Final Amendments in Site-Specific Rule for City of Effingham Treatment Plant Fluoride Discharge, 35 Ill. Adm. Code 303.326(R03-11)

On December 18, 2003, the Board adopted a final opinion and order in Site-Specific Rule for City of Effingham Treatment Plant Fluoride Discharge, 35 Ill. Adm. Code 304.233 (R03-11). The Board did not make any substantive changes to the first notice proposal, adopted on July 24, 2003 and published in the *Illinois Register* at 27 Ill. Reg. 13680 (August 15, 2003). This rulemaking will become effective when filed with the Secretary of State's office.

The rulemaking was initiated by a proposal for regulatory relief from a general standard filed by the City of Effingham (City), Blue Beacon International, Inc. (BBI) and Truckomat Corporation (Truckomat). BBI and Truckomat operate truck washes in Effingham, and the wastewater from the truck washes contains fluoride resulting from the brighteners used in washing the trucks. Both companies testified at hearing that there are no alternative replacements for these brighteners, and that discontinuing their use would cause a severe negative economic impact for both the facilities and for the surrounding businesses that rely on the truck traffic generated by the washing facilities.

The adopted amendments add a new Section 303.326 setting a site-specific fluoride water quality standard of 5.0 mg/L to accommodate the discharge of fluoride from the City's publicly owned treatment works (POTW). This level of fluoride is gradually reduced downstream from the POTW to 3.2 mg/L and then 2.0 mg/L before it reverts back to the general water quality standard of 1.4 mg/L.

A hearing was held in Effingham on April 11, 2003 on the substance of the rulemaking. On July 18, 2003, the Board held a second hearing dealing solely with the Illinois Department of Commerce and Economic Opportunity's decision not to conduct an economic impact study on this proposal.

Copies of the Board's opinion and order in R03-11 may be obtained by calling Dorothy Gunn at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information contact John Knittle at 217/278-3111; email address knittlej@ipcb.state.il.us.

Board Adopts Dismissal Order in Clean-Up Amendments to 35 Ill. Adm. Code Part 214 (R04-10)

On December 18, 2003, the Board adopted a dismissal order in Clean-Up Amendments to 35 Ill. Adm. Code Part 214 (R04-10) at the request of the proponent, the Illinois Environmental Protection Agency (IEPA), which moved to withdraw the proposal on November 21, 2003.

In its motion to withdraw, the IEPA reported that an October 6, 2003 hearing officer order questioned whether the rulemaking should also address other errors that appear to have occurred during recodification of certain air rules. The motion explains that IEPA cannot devote resources to the necessary research at this time. However, the IEPA stated that it does plan to proceed with a general "clean-up" of Part 214 late next year. This would be proposed in conjunction with amendments as part of the State Implementation Plan for the new National Ambient Air Quality Standard for fine particulate.

While the Board deferred to the IEPA's determination that it cannot serve as proponent in this docket at this time and dismissed this docket, the Board also found that the public would be better served if the rules were corrected sooner, rather than later when substantive changes are also proposed. Therefore, the Board stated in its order that it intends to open a docket in the near future and propose only needed corrections of typographical or similar recodification errors. See reserved docket R04-12 Technical Correction to Formulas in 35 Ill. Adm. Code 214 "Sulfur Limitations". Copies of the Board's opinion and order in R04-10 may be obtained by calling Dorothy Gunn at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

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Board Adopts Proposal for Public Comment in SDWA Update, USEPA Amendments (January 1, 2003 through June 30, 2003) (R04-03)

On December 18, 2003, the Board adopted a proposal for public comment in SDWA Update, USEPA Amendments (January 1, 2003 through June 30, 2003) (R04-03). The rulemaking proposes amendments to the Illinois regulations that are “identical in substance” to drinking water regulations adopted by the United States Environmental Protection Agency (USEPA). The USEPA rules implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (1994)).

This docket includes federal SDWA amendments that USEPA adopted in the period January 1, 2003 through June 30, 2003. The rulemaking proposal was sent to the Secretary of State and published in the January 9, 2004 issue of the *Illinois Register* at 28 Ill. Reg. 481. The Board will accept public comments for 45 days after publication, through February 26, 2004.

The substantive amendments involved in this proceeding deal with a March 25, 2003 (68 Fed. Reg. 14502) federal action where the USEPA amended the revised MCL for arsenic. USEPA changed the standard from 0.01 mg/l to 0.010 mg/l. USEPA stated that the change in significant digits for the standard clarifies that an arsenic content as high as 0.0149 is not acceptable, as was allowed under the standard of 0.01 mg/l. USEPA adopted the revised arsenic standard on January 22, 2001 (at 66 Fed. Reg. 6976). It becomes effective on January 23, 2006. Persons interested in the details of the federal amendments should consult the *Federal Register* notice of March 25, 2003.

The Board incorporated the March 25, 2003 federal amendments into the Illinois drinking water regulations by revision of the arsenic MCL. The Board was able to make this simple federal correction without deviation from the text of the federal amendments.

The Board made additional, nonsubstantive, amendments to the Part 611 regulations in this rulemaking to correct sections of the rules not affected by the underlying federal amendments.

Copies of the Board’s opinion and order in R04-3 may be obtained by calling Dorothy Gunn at 312-814-3620, or by downloading copies from the Board’s Web site at www.ipcb.state.il.us.

For additional information contact Michael J. McCambridge at 312-814-6924; e-mail address mccambm@ipcb.state.il.us.

Appellate Update

Fourth District Affirms Board In ESG Watts, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 4-02-1139 (December 2, 2003) (PCB 01-139)

In its December 2, 2003 unpublished order under Supreme Court Rule 23 (155 Ill.2d R. 23), the Appellate Court for the Fourth District affirmed the Board’s April 4, 2002 permit appeal decision. See ESG Watts, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 4-02-1139 (4th Dist. December 2, 2003), affirming ESG Watts, Inc. v. Illinois Environmental Protection Agency, PCB 01-139 (April 4, 2002). The court confirmed important Board holdings concerning the nature of landfill permits and financial assurance requirements under the Environmental Protection Act (Act) and the Board’s financial assurance rules at 35 Ill. Adm. Code Part 807.

Section 21.1(a) of the Act requires a landfill operator to post “financial assurance”: a bond or other approved form of security with the Illinois Environmental Protection Agency (IEPA) to ensure money is available for the closure and post-closure care of the landfill. 415. ILCS 5/21.1 (a)(2002). In November 2000, ESG Watts requested IEPA approval of pollution liability insurance policies for closure of two of its landfills (the Taylor Ridge/Andalusia landfill in Rock Island County and the Viola landfill in Mercer County) to serve as substitute financial assurance. The policies were effective January 26, 1999 through January 26, 2001. ESG Watts intended them to replace funds in a single trust fund that served as financial assurance for three ESG Watts landfills: Sangamon Valley Landfill,

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Taylor Ridge and Viola. Upon IEPA approval of the policies, ESG Watts wanted the trust's "excess" funds (those attributable to Sangamon Valley) to be released. In February 2001, the IEPA refused to accept the insurance policies, stating, among other things, that the IEPA

has reason to believe the cost of closure and post-closure care for these sites will be significantly greater than the value of all financial assurance tendered for these sites, regardless of acceptability. Therefore the total financial assurance provided for these two sites does not equal the cost of closure and post-closure care for these sites. (slip op at 2-3).

ESG Watts appealed to the Board in July 2001.

In its April 4, 2002 opinion and order, the Board held that the insurance policies ESG Watts' had proposed as substitute financial assurance had been approved by operation of law because the IEPA issued its determination a year after expiration of the 90-day deadline for IEPA permitting decisions under Section 39(a) of the Act. But, the proposed insurance policies had expired by their terms. Accordingly, the Board further held that it could not direct the IEPA to release the funds in the trust because the trust was the only financial assurance in place for the two landfills. The Board found that leaving the landfills with no financial assurance would violate Section 21.1(a) of the Act.

The Fourth District's Rule 23 order affirmed the Board's decision in all respects. In its review of the Board's decision, the Fourth District applied the *de novo* standard of review because the appeal required interpretation of statutory and regulatory language. Although the policies had expired by their terms, the court held that the case was not moot as a case involving an event of short duration that is "capable of repetition, yet evading review". Slip op. at 4-5, citing In re. Barbara H., 183 Ill. 2d 482, 491, 702 N.E.2d 555, 559 (1998).

In reaching its conclusion on the ultimate issue in the case, the court looked to Section 21.1(a) of the Act and a financial assurance provision of the Board's landfill rules. The court held that

The Code [35 Ill. Adm. Code 807.604] provides for release of excess trust funds when "[a]n operator substitutes alternate financial assurance such that the total financial assurance for the site is equal to or greater than the current cost estimate with counting the amounts to be released." [citations omitted] in the instant case, the pollution liability policies expired on January 26, 2001. The record does not show the existence of "alternate financial assurance on April 4, 2002, when the Board refused to release the monies held in trust. We affirm the Board's ruling. (slip op. at 5-6).

Board Actions

December 4, 2003

Via Teleconference

Chicago and Springfield, Illinois

Administrative Citations

AC 04-22

County of Vermilion, v. Village of Tilton – The Board accepted for hearing this petition for review of an administrative citation against this Vermilion County respondent.

5-0

Decisions

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PCB 02-5	<u>People of the State of Illinois v. Environmental Management & Abatement, Inc. and Danny G. Kohrtd individually and as president of Environmental Management & Abatement, Inc.</u> – In this land enforcement action concerning a Will County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondents to pay a total civil penalty of \$50,000 and to cease and desist from further violations.	5-0 L-E
PCB 02-213	<u>People of the State of Illinois v. Action Athletic Equipment, Inc.</u> – In this air enforcement action concerning a Lake County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondents to pay a total civil penalty of \$28,000 and to cease and desist from further violations.	5-0 A-E
PCB 03-13	<u>People of the State of Illinois v. Chicago Diversified Projects, Inc.</u> – In this air enforcement action concerning a Cook County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondents to pay a total civil penalty of \$10,000 and to cease and desist from further violations.	5-0 A-E

Motions and Other Matters

PCB 01-43	<u>People of the State of Illinois v. Michael Stringini</u> – The Board granted complainant’s motion to dismiss counts V and VII of the complaint.	5-0 RCRA-E
PCB 03-233	<u>People of the State of Illinois v. Gerald Hewing d/b/a Hewing Technical Services</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Shelby County facility, the Board ordered publication of the required newspaper notice.	5-0 W-E
PCB 04-21	<u>Andy’s Drive-In v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Alexander County facility.	5-0 UST Appeal
PCB 04-22	<u>Wei Enterprises v. IEPA</u> – The Board dismissed this underground storage tank appeal filed on behalf of this St. Clair County facility due to lack of jurisdiction.	5-0 UST Appeal
PCB 04-23	<u>Wei Enterprises v. IEPA</u> – The Board dismissed this underground storage tank appeal filed on behalf of this St. Clair County facility due to lack of jurisdiction.	5-0 UST Appeal
PCB 04-27	<u>Eastman Chemical Company v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no permit appeal was filed on behalf of this Kane County facility.	5-0 PA, RCRA

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PCB 04-52	<u>Kramer's Service Station v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Vermilion County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-69	<u>Republic Bank of Chicago, as Trustee of Bank Trust #2234, Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noula Halikias, and Patricia Halikias, as beneficiaries of Trust #2234 v. Sunoco, Inc. (R&M)</u> – The Board found that the alleged violations in counts I through III of the complaint were neither duplicative nor frivolous, dismissed count IV as frivolous, and accepted for hearing this matter involving a Cook County facility.	4-0 Melas abstained Citizens UST-E
PCB 04-75	<u>Mate Technologies, Inc. v. F.I.C. America Corporation</u> – The Board ordered complainant to file proof of service of the complaint upon respondent within 30 days, or this matter would be subject to dismissal. Respondent's motion for extension of time to file a motion to dismiss was referred to the hearing officer for disposition.	5-0 Citizens L-E
PCB 04-84	<u>People of the State of Illinois v. Paramount Developers, Inc.</u> – The Board accepted for hearing this water enforcement action involving a site located in DuPage County.	5-0 W-E
PCB 04-85	<u>Robert & Tony Thompson v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Alexander County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-86	<u>Braun Oil Company v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Randolph County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-87	<u>Knapp Oil Company v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal on behalf of this Massac County facility.	5-0 UST Appeal 90-Day Ext.

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Rulemakings

- R03-11 In the Matter of: Site-Specific Rule for City of Effingham Treatment Plant Fluoride Discharge, 35 Ill. Adm. Code 304.233 –The Board adopted a final opinion and order granting this request for a rulemaking to amend the Board’s water pollution control regulations. 5-0
R, Water
- R04-3 In the Matter of: SDWA Update, USEPA Amendments (January 1, 2003 through June 30, 2003) – The Board adopted a proposal for public comment in this “identical-in-substance” rulemaking to amend the Board’s public water supply regulations. 5-0
R, PWS
- R04-10 In the Matter of: Clean-Up Amendments to 35 Ill. Adm. Code Part 214 – The Board granted petitioner’s motion to dismiss its proposal to amend the Board clean air regulations. But, the Board stated that it would soon open a docket for its own proposal to correct errors in formulas in Part 214. 5-0
R, Air

Adjusted Standards

- AS 03-4 In the Matter of: Petition of Argonne National Laboratory for an Adjusted Standard from 35 Ill. Adm. Code 218.182 – The Board granted this DuPage County petitioner an adjusted standard, with conditions, from volatile organic material emission requirements. 5-0
Air

Administrative Citations

- AC 04-18 IEPA v. Luther Coleman – The Board accepted for hearing this petition for review of an administrative citation against this Saline County respondent. 5-0
- AC 04-19 IEPA v. Christopher Coleman – The Board accepted for hearing this petition for review of an administrative citation against this Union County respondent. 5-0
- AC 04-20 IEPA v. Jerry Summers – The Board found that this Fayette County respondent violated Section 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1), (3) (2002)) and ordered respondent to pay a civil penalty of \$3,000. 5-0
- AC 04-21 IEPA v. RCS Inc., Jay Ross, and Terry Robbins – The Board found that these Jersey County respondents violated Section 21(o)(5) of the Act (415 ILCS 5/21(o)(5) (2002)) and ordered respondents to pay a civil penalty of \$500. 5-0

Decisions

- PCB 02-63 People of the State of Illinois v. MII, Inc. – In this air enforcement action concerning a Morgan County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered 5-0
A-E

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the respondent to pay a total civil penalty of \$50,000 and to cease and desist from further violations.

PCB 03-118 PCB 03-119 PCB 03-150 Cons.	<u>Dalee Oil Company v. IEPA</u> – The Board affirmed the respondent’s decisions to deny reimbursement for nearly \$19,400 in unreasonable cost in this consolidated appeal concerning a facility located in Washington County.	5-0 UST Appeal
PCB 03-126	<u>Mick’s Garage v. IEPA</u> – The Board affirmed the respondent’s January 10, 2003 determination that a \$50,000 deductible applied in this appeal concerning a facility located in Madison County.	5-0 UST Appeal
PCB 04-6	<u>People of the State of Illinois v. Valley Run Stone</u> – In this air enforcement action concerning a Kendall County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$24,500 and to cease and desist from further violations.	5-0 A-E

Motions and Other Matters

PCB 00-28	<u>Beelman Truck Company v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Madison County facility.	5-0 UST Appeal
PCB 01-173	<u>Cole Taylor Bank, not individually, but solely as trustee under a certain Illinois land trust known as trust 40323; as successor trustee to Michigan Avenue National Bank of Chicago, under trust 1904 v. Rowe Industries, Inc. successor to Coleman Cable and Wire Company, and Chapco Carton Company</u> – The Board granted the parties’ joint motion for dismissal of this citizen’s land enforcement action involving a Cook County facility.	5-0 Citizens L-E
PCB 02-1	<u>People of the State of Illinois v. Stein Steel Mill Services, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Madison County facility, the Board ordered publication of the required newspaper notice.	5-0 A-E
PCB 02-162	<u>People of the State of Illinois v. Fox Valley Dry Wall, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Kane County facility, the Board ordered publication of the required newspaper notice.	5-0 L-E

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PCB 02-213	<u>People of the State of Illinois v. Action Athletic Equipment, Inc.</u> – The Board entered an order amending the payment provisions in its December 4, 2003 order.	5-0 A-E
PCB 03-214	<u>Illinois Ayers Oil Company v. IEPA</u> – The Board granted petitioner’s motion for interlocutory appeal and affirmed the December 2, 2003 hearing officer order denying petitioner’s motion to compel discovery.	4-1 Johnson dissented UST Appeal
PCB 03-230	<u>Catholic Bishop of Chicago v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Cook County facility.	5-0 UST Appeal
PCB 04-25	<u>Gary Svacina v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Cook County facility.	5-0 UST Appeal
PCB 04-31	<u>Broadus Oil v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a LaSalle County facility.	5-0 UST Appeal
PCB 04-32	<u>Roy Strom Building Corporation v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Lake County facility.	5-0 UST Appeal
PCB 04-33	<u>Byron Sandberg v. City of Kankakee, Illinois City Council and Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.; Waste Management of Illinois v. City of Kankakee, Illinois City Council and Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.; County of Kankakee, Illinois and Edward D. Smith, Kankakee County States Attorney v. City of Kankakee, Illinois City Council and Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.</u> – The Board denied the County of Kankakee’s motion to disqualify Attorney Claire Manning from representing Town and Country Utilities, Inc. as moot. No other action was taken on pending motions.	5-0 P-C-F-S-R 3d Party
PCB 04-34		
PCB 04-35		
PCB 04-64	<u>McLean County School District No. 5 v. IEPA</u> – The Board granted petitioner’s motion for dismissal of its request for a water well setback exception.	5-0 WWS
PCB 04-69	<u>Republic Bank of Chicago as Trustee of Trust #2234, Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noula Halikias, and Patricia Halikias as beneficiaries of Trust #2234 v. Sunoco, Inc. (R&M)</u> – The Board granted attorney Joseph Freudenberg’s motion requesting permission to appear <i>pro hac vice</i> on behalf of respondent and respondent’s motion for extension of time to respond to the complaint until February 13, 2004.	4-0 Melas abstained Citizens UST Appeal

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PCB 04-79	<u>Bonita Saxbury and Richard Saxbury v. Archer Daniels Midland</u> – The Board found that the alleged violations in the complaint were neither duplicative nor frivolous and accepted for hearing this matter involving a Pike County facility.	5-0 Citizens N-E
PCB 04-83	<u>Wei Enterprises v. IEPA</u> – The Board accepted for hearing this amended petition for review in response to the Board’s November 20, 2003 order on behalf of a St. Clair County facility.	5-0 UST Appeal
PCB 04-88	<u>Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, and Sierra Club v. IEPA</u> – The Board accepted for hearing this third party appeal involving a facility located in the Village of New Lenox, Will County.	5-0 P-A, NPDES
PCB 04-89	<u>Russell Oil v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Saline County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-90	<u>A&R, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-91	<u>Thomeczek Oil Company v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Randolph County facility.	5-0 UST Appeal 90-Day Ext.
PCB 04-92	<u>Sather Enterprises, Lt. V. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a DeWitt County facility.	5-0 UST Appeal
PCB 04-93	<u>Martin Oil Marketing, Ltd. v. IEPA</u> – The Board ordered petitioner file amended petition curing deficiencies and accompanied by an attorneys appearance, within 30 days, or this matter would be subject to dismissal.	5-0 UST Appeal
PCB 04-94	<u>People of the State of Illinois v. Hauck Homes, Inc. d/b/a Rock River Estates Mobile Home Park</u> – The Board accepted for hearing this water enforcement action involving a site located in Lee County.	5-0 W-E

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PCB 04-95	<u>Arclar Company, LLC (Coal Preparation Facility - Willow Lake) (Property Identification Number 09-01-300-001-0080) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Arclar Company, LLC located in Saline County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 04-96	<u>Black Beauty Coal Company (Coal Preparation Facility - Riola Portal) (Property Identification Number 27-33-200-004-8060) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Black Beauty Coal Company located in Vermilion County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 04-97	<u>Black Beauty Coal Company (Coal Preparation Facility - Vermilion Grove Portal) (Property Identification Number 32-13-100-014-0060) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Black Beauty Coal Company located in Vermilion County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C

New Cases

December 4, 2003 Board Meeting

04-084 Bonita Saxbury and Richard Saxbury v. Archer Daniels Midland – The Board held for a later duplicative/frivolous determination this citizens’ land enforcement action involving a Pike County facility.

04-085 Lincoln Technical Institute v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

04-086 People of the State of Illinois v. Emmett Utilities, Inc. and Russell D. Thorell individually and as president of Emmett Utilities, Inc. – The Board accepted for hearing this public water supply enforcement action involving a site located in McDonough County.

04-087 Webel Foods, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Pike County facility.

AC 04-023 IEPA v. Roy Baur d/b/a Baur Trucking – The Board accepted an administrative citation against this St. Clair County respondent.

AC 04-024 Ogle County v. Kenneth Gilland – The Board accepted an administrative citation against this Ogle County respondent.

AC 04-025 IEPA v. Colorado Real Estate & Investment Company (Kingspark Mobile Estates) – The Board accepted an administrative citation against this Peoria County respondent.

AC 04-026 IEPA v. Charles Flick – The Board accepted an administrative citation against this Union County respondent.

AC 04-027 IEPA v. Douglas S. Carrico d/b/a Carricos Auto Heap – The Board accepted an administrative citation against this Green County respondent.

December 18, 2003 Board Meeting

04-088 Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, and Sierra Club v. IEPA – The Board accepted for hearing this third party appeal involving a facility located in the Village of New Lenox, Will County.

04-089 Russell Oil v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Saline County facility.

04-090 A&R, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

04-091 Thomeczek Oil Company v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Randolph County facility.

04-092 Sather Enterprises, Lt. V. IEPA – The Board accepted for hearing this underground storage tank appeal involving a DeWitt County facility.

04-093 Martin Oil Marketing, Ltd. v. IEPA – The Board ordered petitioner file amended petition curing deficiencies and accompanied by an attorneys appearance, within 30 days, or this matter would be subject to dismissal.

04-094 People of the State of Illinois v. Hauck Homes, Inc. d/b/a Rock River Estates Mobile Home Park – The Board accepted for hearing this water enforcement action involving a site located in Lee County.

04-095 Arclar Company, LLC (Coal Preparation Facility - Willow Lake) (Property Identification Number 09-01-300-001-0080) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Arclar Company, LLC located in Saline County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

04-096 Black Beauty Coal Company (Coal Preparation Facility - Riola Portal) (Property Identification Number 27-33-200-004-8060) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Black Beauty Coal Company located in Vermilion County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

04-097 Black Beauty Coal Company (Coal Preparation Facility - Vermilion Grove Portal) (Property Identification Number 32-13-100-014-0060) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Black Beauty Coal Company located in Vermilion County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

AC 04-028 IEPA v. American Disposal Services of Illinois, Inc. and David Bryant – The Board accepted an administrative citation against these Livingston County respondents.

AS 04-001 In the Matter of: Petition of Crownline Boats, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 215.301 – Pending receipt of the certificate of publication, the Board held this Hancock County facility's petition for an adjusted standard from the Board's air pollution control regulations.

Provisional Variances

Public Act 93-0152 (Senate Bill 222) amended Sections 35-37 of the Illinois Environmental Act (415 ILCS 5/5(b) (2002)) so that provisional variances are issued by the Illinois Environmental Protection Agency (IEPA). If the IEPA grants a provisional variance, then the IEPA must file a copy of its written decision with the Board. The Board must maintain copies of the provisional variances for public inspection. Copies of provisional variances can be obtained by contacting the Clerk's Office at (312) 814-3620, or by visiting the Board's Website at www.ipcb.state.il.us. If the IEPA denies a provisional variance request, then the applicant may initiate a proceeding with the Board for a full variance.

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IEPA 03-003 General Electric Company v. IEPA – The Illinois Environmental Protection Agency granted General Electric Company a provisional variance from the 90-day limitation on the accumulation of hazardous wastes, as set forth in 35 Ill. Adm. Code 722.134(b) for seven 55-gallon drums of a hazardous waste consisting of old flashcubes and sand waste. The provisional variance period is October 14, 2003 through November 14, 2003.

IEPA 03-004 City of Polo v. IEPA – The Illinois Environmental Protection Agency granted the City of Polo a 45-day provision variance from 35 Ill. Adm. Code 302.212 for ammonia nitrogen, from 35 Ill. Adm. Code 304.120(b) for CBOD5, and from 304.120(c) for total suspended solids. The variance period is October 14, 2003 through November 27, 2003.

IEPA 03-005 City of South Pekin – The Illinois Environmental Protection Agency granted the City of South Pekin a 45-day provisional variance from 35 Ill. Adm. Code 302.212 for ammonia nitrogen, from 35 Ill. Adm. Code 304.120(b) for CBOD5, and from 304.120(c) for total suspended solids. The provisional variance would allow the city to replace lagoon liners that were severely damaged by a tornado on May 10, 2003. The anticipated completion of the project is December 31, 2003.

IEPA 03-006 City of Polo v. IEPA – The Illinois Environmental Protection Agency granted the City of Polo an extension of a 45 day provisional variance granted in November, from 35 Ill. Adm. Code 302.212 for ammonia nitrogen, from 35 Ill. Adm. Code 304.120(b) for CBOD5, and from 304.120(c) for total suspended solids. An error during the manufacture of one of the parts resulted in a delay in part replacement. The variance will be in effect from December 3, 2003 until January 6, 2004.

Calendar

1/07/04 8:30AM	PCB 03-214	Illinois Ayers Oil Co. v. IEPA	Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East North Entrance Springfield
1/08/04 11:00AM	<u>Illinois Pollution Control Board Meeting</u>		Videconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago and 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield
1/13/04 9:00AM	PCB 97-2	People of the State of Illinois v. Jersey Sanitation Corporation	Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East North Entrance Springfield
1/13/04 9:00AM	PCB 02-164	Barbara and Ronald Stuart v. Franklin Fisher	Bolingbrook Village Hall Boardroom 375 West Briar Cliff Bolingbrook
1/14/04 9:00AM	PCB 02-164	Barbara and Ronald Stuart v. Franklin Fisher	Bolingbrook Village Hall Boardroom 375 West Briar Cliff Bolingbrook

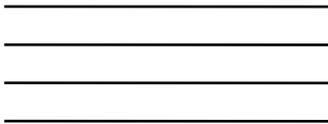
Environmental Register – December 2003

1/20/04 9:00AM	PCB 96-10	Vogue Tyre & Rubber Company v. IEPA	Illinois Pollution Control Board James R. Thompson Center Hearing Room 11-512 100 W. Randolph St. Chicago
1/22/04 11:00AM	<u>Illinois Pollution Control Board Meeting</u>		Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 9-031 Chicago
1/22/04 1:00PM	R04-11	Proposed Site Specific Rulemaking Ameren Energy Generating Company Amending 35 Ill. Adm. Code 901	Illinois Pollution Control Board James R. Thompson Center Hearing Room 11-512 100 West Randolph Chicago
2/05/04 11:00AM	<u>Illinois Pollution Control Board Meeting</u>		Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 Chicago and 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield
2/17/04 9:00AM	AS 02-5	In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/17/04 9:00AM	PCB 91-17	Noveon, Inc. f/k/a BF Goodrich Corporation (Henry Facility) v. IEPA	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/18/04 9:00AM	AS 02-5	In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/18/04 9:00AM	PCB 91-17	Noveon, Inc. f/k/a BF Goodrich Corporation (Henry Facility) v. IEPA	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/19/04 9:00AM	AS 02-5	In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/19/04 9:00AM	PCB 91-17	Noveon, Inc. f/k/a BF Goodrich Corporation (Henry Facility) v. IEPA	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/20/04 9:00AM	AS 02-5	In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/20/04 9:00AM	PCB 91-17	Noveon, Inc. f/k/a BF Goodrich Corporation (Henry Facility) v. IEPA	Marshall County Courthouse Boardroom 122 North Prairie Lacon
2/19/04 11:00AM	<u>Illinois Pollution Control Board Meeting</u>		Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 9-040 Chicago

The Illinois Pollution Control Board is an independent five-member board that adopts environmental control standards, rules on enforcement actions, and other environmental disputes for the State of Illinois.

The Environmental Register is published monthly by the Board, and contains updates on rulemakings, descriptions of final decisions, the Board's hearing calendar, and other environmental law information.

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