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Letter from the Chairman

The Illinois Pollution Control Board strives to use technology to increase the public's knowledge of environmental laws and encourage public participation in the Board's activities. For some time now, our Clerk's Office On-Line (COOL) has supplied information about cases and rulemaking procedures.

In 2004, the Board operated a voluntary pilot project introducing the option of electronic filing through COOL in specified categories of cases. Based on the positive results of that project, the Board on Monday, January 3, 2005, expanded that option to all cases. Electronic filing offers financial and environmental benefits, and the steps below guide you through the simple process.



- First, parties must obtain a State of Illinois digital ID issued free of charge under the Electronic Commerce Security Act. These digital IDs verify the identity of a document sender and secure electronic transactions. Parties can obtain a certificate through <https://autora01.cmcf.state.il.us/>.
- Second, from the Board's Home Page click on the Clerk's Office On-Line (COOL) hyperlink. You'll then see the hyperlink to "File A Document With The IPCB," which is designed to lead you step-by-step through the process.
- Third, please note that petitions for a Site-Specific Regulation, Variance, Permit Appeal, UST Appeal, Review of Pollution Control Facility Siting Decision, or Adjusted Standard require payment in advance of a filing fee with a major credit or debit card for initial filings. This payment will generate a unique Transaction ID/Authorization Code, which remains active until the filing is successfully executed.
- Fourth, you may wish to limit electronic filing to documents smaller than 20 MB, or approximately 100 pages of plain text. Features such as tables or graphics may dramatically increase file sizes. Also, please note that one filing may consist of multiple electronic documents (e.g., the text of a petition or motion and any attachments).
- Last, when your document is successfully received, you will receive by e-mail an automatic electronic confirmation. If for some reason your document does not successfully transmit, your ID/code pair will remain active until your document is successfully received.

The Board is pleased to keep pace with improvements in information technology and encourages all parties to consider and use this electronic filing option. If you have questions or require technical assistance, please contact John Therriault in our Clerk's office at (312) 814-3629.

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 Environmental Protection Agency Adopts Direct Final Rules, and Identical Proposed Amendments, to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants for Sources Subject to the Negotiated Regulation for Equipment Leaks Under the Clean Air Act

On December 23, 2004 (69 Fed. Reg. 76894), the United States Environmental Protection Agency (USEPA) adopted direct final amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. The standards are commonly known as the Hazardous Organic NESHP or the HON.

The USEPA action amends the HON to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage tank control requirements of the standards. USEPA adopted the amendments as a direct final action because the changes are viewed as noncontroversial. If the USEPA receives any adverse comments on the final rule, USEPA will withdraw the rules and then address any comments in a subsequent final rule based on the proposed rule.

Written comments must be received by January 24, 2005, unless a public hearing is requested by January 3, 2005. If a public hearing is requested, written comments must be received by February 7, 2005.

Interested persons may submit comments, identified by Docket ID No. OAR-2003-0023, by one of the following methods (the first option is the preferred one):

1) USEPA Web site: <http://www.epa.gov/edocket> EDOCKET (USEPA's electronic public docket and comment system), following the on-line instructions for submitting comments;

2) Federal eRulemaking Portal: <http://www.regulations.gov>, following the on-line instructions for submitting comments;

3) Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

For further information contact Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5402, electronic mail address: mcdonald.randy@epa.gov.

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2002)), once adopted by the USEPA, NESHP rules are applicable and enforceable under the Act without further action by the Board.

Appellate Update

Second District Affirms Board Ruling in *Roti et al. v. LTD Commodities and Illinois Pollution Control Board et al.*, No. 2-04-0199 (December 21, 2004) (PCB 99-19)

In a December 21, 2004 final unpublished 21-page order under Supreme Court Rule 23 (155 Ill.2d R. 23), the Second District Appellate Court affirmed the Board's decision in the appeal of a citizen noise pollution action *Anthony & Karen Roti, Paul Rosenstock, and Leslie Weber v. LTD Commodities and Illinois Pollution Control Board*, No. 2-04-0199 (December 21, 2004). The court decided the appeal without oral argument.

In the case before the Board, the Board first found that the trucking operation emitted noise in violation of the noise nuisance provisions of the Environmental Protection Act (Act) and Board regulations (415 ILCS 5/24 (2002) and 35 Ill. Adm. Code 900.102). After receiving input from the parties concerning the appropriate remedy, the Board then issued a final order assessing a \$15,000 civil penalty and directing abatement of the noise. *Anthony and Karen Roti, Paul Rosenstock, and Leslie Weber v. LTD Commodities*, PCB 99-19 (interim order February 15, 2001; final order February 15, 2004). Notably, the court's decision specifically affirmed the Board's remedy that gave appellant LTD Commodities (LTD) the choice to either shut down its nighttime operations or build a noise wall.

The Case Before the Board

In 1999, citizen complainants brought an enforcement action against LTD alleging numeric and nuisance noise violations from LTD's trucking facility in Bannockburn, Lake County. LTD is a mail order catalog company that began operation in 1986 and expanded its operations in 1989 and again in 1995. The citizen complainants are homeowners who bought their homes in Lake Forest in 1987, 1988 and 1990. LTD and the complainants share a common property line, which is also the boundary line between Bannockburn and Lake Forest. At hearing, complainants testified that LTD's noise began to bother them beginning, variously, in 1994 and 1996.

In its February 15, 2001 interim decision, the Board found that noise from LTD had caused an unreasonable interference with the complainant's use and enjoyment of their property in violation of the nuisance noise prohibition of Section 24 of the Act and Section 900.102 of the Board's noise regulations. The Board found no violation of its numeric noise limit rule, because noise measurements had not been taken properly.

The Board directed the parties to hearing concerning the appropriate noise remedy. The parties and their noise consultants exchanged information, and presented their views at hearing on October 15-16, and December 9, 2002, and submitted their last filings in May 2003. In a July 24, 2003 interim order, the Board imposed a \$15,000 civil penalty on LTD and ordered LTD to perform specific abatement measures. In response to a motion for reconsideration of the remedies portion of the July 2003 from LTD, on February 5, 2004 the Board issued a supplemental opinion and order. The Board again assessed the \$15,000 penalty, and ordered LTD to either (a) shut down its nighttime operations and disconnect the backup beeper on its yard tractor or (b) construct a noise wall.

The Appeal to the Second District

In its Rule 23 order, the Second District Appellate Court the court denied LTD's request to "supplement the record" with evidence concerning the recent sale of one of the complainant's homes. The court found the information "not pertinent to the disposition of the issues on appeal." *Anthony & Karen Roti, Paul Rosenstock, and Leslie Weber v. LTD Commodities and Illinois Pollution Control Board*, No. 2-04-0199 (December 21, 2004), slip op. at 11.

As to the substance of the appeal, LTD made five contentions, each of which the court rejected. First, LTD argued that Section 24 of the Act and Section 900.102 of the Board's regulations do not provide an independent cause of action. The court disagreed, noting that "Illinois courts have consistently interpreted these provisions as allowing private complainants to initiate noise pollution actions before the Board." *Id.*, slip op. at 13. The court cited the long-standing court precedent of *Illinois Coal Operators Ass'n v. Pollution Control Board*, 59 Ill. 2d 305 (1974) *Discovery South Group, Ltd. v. Pollution Control Board*, 275 Ill. App. 3d 547 (1995), and *Ferndale Heights Utilities Co. v. Pollution Control Board*, 44 Ill. App. 3d 962 (1976).

Second, LTD contended that the Board erred in finding that LTD violated the nuisance noise prohibition. The court noted that the "principle difficulty in determining whether noise emissions constitute a nuisance lies in defining the level at which interference becomes unreasonable." *Id.*, slip op. at 15. The court discussed the Board's findings on each of the factors under Section 33(c) of the Act. While the court agreed that LTD has social and economic value to the community as an employer and taxpayer, the court concurred with the Board's finding that "the remaining factors weigh against LTD." *Id.*, slip op. at 16. As to the character and degree of injury, the court noted that the noise was "substantial and frequent." *Ibid.* As to the suitability of LTD's operation for the location, the court remarked:

Although LTD seemingly had priority of location, LTD greatly increased its trucking operation over the years. When [complainants] moved into their homes, LTD's warehouse was 100,000 square feet with eight truck docks. By 1995, LTD had expanded its warehouse to 400,000 square feet and 26 truck docks. Thus, while LTD's warehouse was once suitable to its location, its expansion and increase in business caused it to become unsuitable." *Id.*, slip op. at 16-17.

Moving on to the practicability and reasonableness of reducing the noise, the court agreed that this factor weighed against LTD. Finding reasonable several abatement alternatives available to LTD, the court mentioned that the Board had noted that the hiring of one or more employees as "dock pilots" would have eliminated the need for back-up beepers and allowed for supervision of noise reduction by other employees.

Finally, concerning any subsequent compliance, the court found that "although close, the final factor weighs against LTD", although it did take several abatement steps. But, the court remarked that "the evidence reveals that noise problems were ongoing at the time of the hearing, primarily due to LTD's refusal to disconnect the back-up beeper on the yard trailer." *Id.*, slip op. at 17.

In summary, the court held that evidence in the record supported the Board's determination and so concluded: "we cannot find the Board's determination that LTD was a noise nuisance to be against the manifest weight of the evidence." *Ibid.*

The court then went on to reject LTD's challenges to the remedies ordered by the Board, both as to the specific abatement measures and the amount of the penalty. The Board had ordered either that LTD make several operational changes (no nighttime operations, disconnect back-up beepers) or erection of a noise wall. Noting that "Section 33 of the Act vests the Board with wide discretion in fashioning a remedy", the court concluded that "the remedies ordered by the Board were not unreasonable or arbitrary". *Id.*, slip op. at 18. The court found the operational changes ordered were "practical" and "reasonable," and not contrary to federal law. *Id.*, slip op. at 18-19. Moreover, the Board had provided LTD with a "viable alternative" to the operational changes, when it gave the noise wall option. *Id.*, slip op. at 19.

The court gave short shrift to LTD's arguments that the noise wall option was not economically feasible or possible consistent with Bannockburn's zoning code, observing that the Board did not require construction of the wall. Similarly, the court found that LTD was given notice and ample opportunity to present evidence concerning this option during the Board's remedy hearing. *Id.*, slip op. at 20.

Finally, as to penalty, the court cited to Section 42 (h) of the Act. The court determined that "[b]ecause the Board considered the appropriate factors in assessing the fine, we do not believe that its determination was unreasonable". *Id.*, slip op. at 21.

Fifth District Affirms Board in Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc., No. 5-02-0700 (December 29, 2004) (PCB 02-201)

In a December 29, 2004 final unpublished 11-page order under Supreme Court Rule 23 (155 Ill.2d R. 23), the Fifth District Appellate Court affirmed the Board's decision affirming a local government's decision granting site location suitability approval for a landfill expansion. Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc., No. 5-02-0700 (December 29, 2004). The Board had found that the Jackson County Board's grant of approval to Southern Illinois Regional Landfill (SIRL) for a landfill expansion under Section 39.2 of the Environmental Protection Act was not against the manifest weight of the

evidence. 415 ILCS 5/39.2 (2002). The only issue presented for review was whether the expansion was “necessary to accommodate the waste needs of the area it is intended to serve” under the first criterion of Section 39.2. 415 ILCS 5/39.2(a)(i)(2002). Gere Properties, Inc. v. Jackson County Board and Southern Illinois Regional Landfill, Inc., PCB 02-201 (February 5, 2002).

As the court related in its opinion, SIRL has operated the Jackson County Landfill since 1992. Originally permitted in 1971, the landfill is expected to reach capacity in 2006. Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc., No. 5-02-0700 (December 29, 2004), slip op. at 1. Accordingly, SIRL applied to the County for expansion of the landfill. SIRL’s expansion application defines the service area as including 21 counties in southern Illinois, Missouri and Kentucky. *Id.*, slip op. at 9. The County held its public hearing in February 2002, at which GERE Properties, Inc. (GERE) opposed the application. The County voted to approve SIRL’s application on April 10, 2002, finding that SIRL had satisfied all of the criteria of Section 39.2 of the Act.

GERE, who challenged the Jackson County Board’s siting approval before the Board, is the owner of a landfill in neighboring Perry County. The only challenge GERE raised was that the County decision on the need criteria was against the manifest weight of the evidence. As explained in some detail in the Board’s opinion, Gere contends that there is excess landfill capacity for the service area and consequently no need for landfill expansion through 2013 in a worst-case scenario, or perhaps through 2030. SIRL and the County contend that additional capacity will be needed in roughly 5 years. Gere Properties, Inc. v. Jackson County Board and Southern Illinois Regional Landfill, Inc., PCB 02-201 (February 5, 2002), slip op. at 8-14.

Challenge to Jurisdiction

GERE’s petition for review in the Fifth Circuit Court of Appeals raised for the first time an issue GERE had not raised before the Board: whether SIRL had met the statutory notice requirements of Section 39.2 so as to give the County and the Board jurisdiction to consider SIRL’s application. Finding that GERE had not waived its jurisdictional argument by failing to raise it before the Board, the court went on to find that SIRL had given proper notice under Section 39.2(b) of the Act, both as to service by mail and service by publication.

The court found that service of notice by certified mail, return receipt requested, was sufficient under the statute, even though the statute provides by service by registered mail, return receipt requested.

It is clear to us, having considered the plain language of the statute and the circumstances involved with an application for site location approval, that the purpose of requiring restricted mail delivery is to ensure that the sending and receiving of notice and the identities of the intended and actual recipients can be verified. Thus the fact that registered mail carries with it indemnification protection [to the sender in case of loss or damage] is irrelevant. Because both certified mail, return receipt request, and register mail document (1) the intended recipient of the notice, (2) that notice was sent, and (3) that notice was received and by whom, we do not find the form of mail used to be determinative in this case. See *People ex rel. Head v. Board of Education of Thornton Fractional Township South High School District No. 215*, 95 Ill. App. 3d 78, 81, 419 N.E.2d 505, 507 (1981); *Olin Corp. v. Bowling*, 95 Ill. App. 3d 1113, 1116-17, 420 N.E.2d 1047, 1050 (1981). Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc., No. 5-02-0700 (December 29, 2004), slip op. at 6.

The court then went on to find that the record made clear that all persons entitled to service by mail had each received notice.

As to the service by publication required under Section 39.2 (b), GERE’s argument was that SIRL’s one-time publication of its notice of intent to file a siting application within 14 days was insufficient. GERE’s premise was that the section must be read in conjunction with section 3 of the Notice by Publication Act (715 ILCS 5/3 (2002)), so that SIRL was required to publish notice for three successive weeks. In discounting this argument, the court observed that it could find

no case authored by an Illinois court that requires an applicant to publish notice pursuant to section 39.2(b) of the Act on more than one occasion. . . .We agree with the respondents that it would make no sense for the legislature to intend for notice to be published for three successive weeks yet only provide a 14-day waiting period between the date the notice is served and published and the date the application for site location approval is filed. See *Le Moyne v. West Chicago Park Commissioners*, 116 Ill. 41, 43 4 N.E. 498, 499 (1886). Accordingly, we find that SIRL’s notice by publication conforms with the statutory requirements. *Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc.*, No. 5-02-0700 (December 29, 2004), slip op. at 7-8.

Challenge to the Necessity Criterion

In analyzing the necessity criterion challenge, the court cited prior case law finding that the term “necessary” in the statute does not mean “absolutely necessary”, but only that the expansion is expedient or reasonably convenient. The court stated that

In the instance case, the facts, as determined by the County Board and by the IPCB, demonstrate a need for SIRL’s expansion. . . .Although GERE’s expert interpreted the area’s needs differently, a reviewing court should not reweigh the evidence or substitute its judgment for that of the agency. *File v. D & L Landfill, Inc.*, 219 Ill. App. 3d 897, 579 N.E. 2d 1228 (1991). Having reviewed the record in its entirety, we cannot say that the opposite result is clearly evident, plain, or indisputable. . . .Thus, we affirm the IPCB’s opinion affirming the County Board’s decision granting SIRL’s application for site location approval. *Gere Properties, Inc. v. Illinois Pollution Control Board, Jackson County Board, and Southern Illinois Regional Landfill, Inc.*, No. 5-02-0700 (December 29, 2004), slip op. at 9-10.

Challenge to the Board’s Witness Credibility Determination

Gere’s last argument on appeal was that the Board, in affirming the County Board’s decision, improperly weighed the credibility of the parties’ experts. The court found the argument to be without merit, holding that the Board’s single sentence statement at the end of an 18-page opinion was an acceptable acknowledgement that the County Board’s decision was supported by the evidence. *Id.*, slip op at 10.

Accordingly, the court affirmed the Board’s opinion affirming the County Board’s decision granting SIRL’s application for site location suitability approval.

Rule Update

Board Adopts Second Notice Opinion and Order in Amendments to the Board’s Procedural Rules to Accommodate New Statutory Provisions 35 Ill. Adm. Code 101-130 (R04-24)

On December 2, 2004, the Board adopted a second notice opinion and order in Amendments to the Board’s Procedural Rules to Accommodate New Statutory Provisions 35 Ill. Adm. Code 101-130 (R04-24). The second notice proposal involves amendments intended to reflect provisions of the new State Officials and Employees Ethics Act (5 ILCS 430, *created by* P.A. 93-615, eff. Nov. 19, 2003, *amended by* P.A. 93-617, eff. Dec. 9, 2003), as well as recent amendments to the Environmental Protection Act (415 ILCS 5 (2002)) and Administrative Procedure Act (5 ILCS 100 (2002)). The Board has sent the rulemaking, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2002)), to the Joint Committee on Administrative Rules (JCAR) for its review and approval. The proposed amendments will be considered at the January 11, 2005 JCAR meeting.

The Board opened this docket on its own motion to update its procedural rules to include several pieces of legislation discussed below. In response to the two public comments it received. The Board did not make any substantive changes to the proposal it adopted for first notice on March 18, 2004 (published in the *Illinois Register* on May 7, 2004).

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The new ethics statute, the State Officials and Employees Ethics Act (5 ILCS 430), necessitates changes to the Board's procedural rules on "*ex parte* communications." The Board proposes amending the definition of "*ex parte* communication" in Section 101.202 to track the statutory language in the Ethics Act defining the term. The Board also proposes amending Section 101.114 on *ex parte* communications. The main change to this section reflects new statutory reporting requirements for the Board's ethics officer.

In other proposed amendments to its procedural rules, the Board is addressing Public Acts that amended the Environmental Protection Act over approximately the past two years. Changes to the Environmental Protection Act in P.A. 93-152 (effective July 10, 2003) and P.A. 92-574 (effective June 26, 2002) resulted from recommendations of the Illinois Environmental Regulatory Review Commission (IERRC). Created in December 1999 by Executive Order 18, the IERRC was charged with reviewing and recommending improvements to the Environmental Protection Act, which was originally enacted in 1970.

P.A. 93-152 (effective July 10, 2003) amended the Environmental Protection Act in several significant ways: (1) having the Illinois Environmental Protection Agency (IEPA) rather than the Board issue provisional variances (*see* 35 Ill. Adm. Code 101.302(d); Part 104.Subpart C); (2) allowing the Board to adopt settlements in citizen enforcement actions without a public hearing (*see* 35 Ill. Adm. Code 103.301); (3) updating incorporations by reference in Board rules through a new rulemaking procedure that does not require a public hearing or a request that the Department of Commerce and Economic Opportunity, formerly the Department of Commerce and Community Affairs, conduct an economic impact study on the proposed rules (*see* 35 Ill. Adm. Code 102.211); (4) authorizing prevailing citizen complainants before the Board to go to circuit court to enforce a final Board order by injunction or other relief (*see* 35 Ill. Adm. Code Part 103. Subpart F); and (5) clarifying that the administrative citation civil penalty amount of \$1,500 (or \$3,000 for a subsequent violation) is to be imposed for each violation of each provision of Section 21(p) of the Environmental Protection Act (415 ILCS 5/21(p) (2002)) (*see* 35 Ill. Adm. Code 108.500).

P.A. 92-574 (effective June 26, 2002) resulted in a number of non-substantive changes to the Environmental Protection Act. The Board now proposes corresponding changes to its procedural rules. For example, the word "duplicitous," confusing when referring to citizen complaints, is changed to "duplicative." *See* 35 Ill. Adm. Code 101.202; Part 103.Subpart B.

P.A. 93-171 (effective July 10, 2003) amends the Environmental Protection Act's provisions (Sections 52.3-1, 52.3-2, and 52.3-4) addressing Environmental Management Systems Agreements or "EMSAs." EMSAs are agreements between the IEPA and a "sponsor" designed to implement innovative environmental measures not otherwise allowed under the law.

The P.A. 93-171 amendments specify that EMSAs may be executed with participants in the United States Environmental Protection Agency's (USEPA) "Federal Performance Track Program," which is the successor to USEPA's "Federal XL Program." USEPA operates the Federal Performance Track Program to "recognize and reward businesses and public facilities that demonstrate strong environmental performance beyond current regulatory requirements." Section 52.3-1(a)(6). P.A. 93-171 states that the IEPA may terminate an EMSA if the sponsor ceases to participate in the Federal Performance Track Program. The Board proposes amending its procedural rules at Section 106.704 to specify this additional ground for IEPA termination of EMSAs and the sponsors right to appeal that termination to the Board.

P.A. 93-509 (effective August 11, 2002) amends Section 5 of the Environmental Protection Act. Among other things, this legislation reduces the number of Board members from seven to five and correspondingly reduces the number of Board members needed for a majority vote. Accordingly, the Board proposes to amend the definition of "Board decision" in the procedural rules to reflect that the favorable vote of at least three rather than four Board members is required for a Board decision. *See* 35 Ill. Adm. Code 101.202; *see also* Section 101.300(d)(1).

Also amended since the Board last completely revised its procedural rules in January 2001 is the Administrative Procedure Act. Due to P.A. 92-330 (effective August 9, 2001), the Administrative Procedure Act now requires rulemaking proposals published in the *Illinois Register* to describe any published study or research report used in developing the rule and where the public may obtain a copy. This new requirement is reflected in proposed changes to the procedural rules at 35 Ill. Adm. Code Sections 102.202, 102.210, and 102.820.

Copies of the Board's opinion and order in R04-24 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 Richard McGill at 312-814-6983; e-mail address mcgillr@ipcb.state.il.us

Board Accepts IEPA Proposal for Hearing in Setback Zone for the City of Marquette Heights Community Water Supply, New 35 Ill. Adm. Code 618 (R05-09)

On December 2, 2004, the Board accepted for hearing a proposal filed by the Illinois Environmental Protection Agency (IEPA) on November 5, 2004 to establish a 1,000 foot setback zone of protection for the community water supply (CWS) wells of the City of Marquette Heights, in Tazwell County.

The proposal seeks to add a new Part to the Board's public water supply regulations that would establish a "maximum setback zone" of protection to prevent contamination of a particularly vulnerable groundwater source used by a CWS. The proposal is the first of its kind under Section 14.3(d) of the Environmental Protection Act (Act) (415 ILCS 5/14.3(d)) (2002).

The Board has scheduled hearings in this rulemaking for March 1, 2005, at 10:00 am at Pekin City Hall, Council Chambers - 2nd Floor, 111 South Capitol Street, Pekin, IL; and Tuesday, April 5, 2005, at 10:00 am, James R. Thompson Center, Room 2-025, 100 West Randolph Street, Chicago, IL.

Copies of the Board's opinion and order in R05-09 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 Richard McGill at 312-814-6983; e-mail address mcgillr@ipcb.state.il.us

Board Accepts IEPA Proposal for Hearing, Authorizes First Notice Publication, and Grants Expedited Review, in Amendments to 35 Ill. Adm. Code 205, Emissions Reduction Market System, and 35 Ill. Adm. Code 211 (R05-11)

On December 2, 2004, the Board accepted a proposal filed by the Illinois Environmental Protection Agency (IEPA) on November 19, 2004 to amend the Board's air rules, specifically the rules relating to Emissions Reduction Market System (ERMS). The IEPA proposal was accompanied by a motion for expedited review, requesting rule adoption before June 15, 2005. The Board granted the request, and accordingly adopted the proposal, without commenting on its merits, for first notice publication. The rulemaking was published in the *Illinois Register* at 28 Ill. Reg. 16137 and 16180.

The ERMS system is a cap and trade program that involves volatile organic material (VOM) emissions in the Chicago area. It is designed to reduce VOM emission in the Chicago non-attainment area below the levels required by reasonably available control technology and other emission standards. The IEPA is proposing revisions to the program rules affecting sources in the Chicago ozone non-attainment area.

The IEPA asserts that revisions are needed because the United States Environmental Protection Agency (USEPA) is revoking the 1-hour ozone national ambient air quality standard (NAAQS) effective on June 15, 2005. More specifically, on April 30, 2004, USEPA promulgated the first phase of its Final Rule to Implement the 8-Hour Ozone NAAQS. *See* 69 Fed. Reg. 23951. Designations and classifications for this standard were effective on June 15, 2004, and the Chicago area is a Moderate Nonattainment Area for the 8-Hour Ozone NAAQS. *See* 69 Fed. Reg. 23858, 23898. However, on June 15, 2005, USEPA is revoking the 1-Hour Ozone NAAQS, including the associated designations and classifications. *See* 69 Fed. Reg. 23951, 23969.

The IEPA contends that revocation of the 1-hour NAAQS affects applicability thresholds -- currently sources subject to the CAAPP are those with potential to emit 25 tons of VOM, but once the 1-hour ozone NAAQS is revoked, the applicability threshold raises to 100 tons. The IEPA asserts that this change will result in less facilities

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being subject to the rules and a corresponding loss of approximately 330 tons of VOM emissions reductions for each seasonal allotment period. The IEPA asserts that it must ensure that ERMS remains in place in its current form so the required VOM emissions reductions in the Chicago area is maintained.

The Board, in response to the motion for expedited consideration, has scheduled hearings in this rulemaking for January 27, 2005, at 1:00 pm at James R. Thompson Center, 100 West Randolph Street, Room 2-029, Chicago, IL 60601 and for February 22, 2005, 10:30 am, James R. Thompson Center, 100 west Randolph Street, Room 2-027, Chicago, IL 60601

Copies of the Board's opinion and order in R05-11 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; e-mail address knittlej@ipcb.state.il.us

Board Accepts IEPA Proposal for Hearing in Proposed Amendments to 35 Ill. Adm. Code 302 and 303 (R05-10)

On December 16, 2004, the Board accepted for hearing a proposal filed by the Illinois Environmental Protection Agency (IEPA) on November 8, 2004 to amend the Board's water quality standards. The proposal seeks to establish a *Escherichia coli* (E.coli) bacteria water quality standards for Lake Michigan beaches and the Mississippi River.

In its statement of reasons, the IEPA asserts that changes to the Lake Michigan standards are necessary in order to comply with Section 303(i) of the Clean Water Act, also known as the Beaches Environmental Assessment and Coastal Health Act (Beach Act). The Beach Act applies to coastal recreational waters, including Great Lake waters, and requires, among other things, a Clean Beaches Plan. The Clean Beaches Plan includes two major goals: (1) promoting recreational water quality programs nationwide; and (2) creating scientific improvements that support timely recreational water monitoring and reporting.

The IEPA proposes making three primary changes to the Lake Michigan Basin bacteria water quality standards. First, a definition will be provided for "designated bathing beach waters." Second, the rule will only apply during the recreational season (May through October) since bacterial limits are intended to protect humans during whole body contact activities that occur only during the warmer months. Third, the rule will establish a geometric mean and single sample maximum for E.coli standards. The IEPA asserts that United States Environmental Protection Agency (USEPA) guidance pertaining to the National Criteria indicates that a geometric mean has the most direct relationship to risk over the course of the recreational season and a single sample maximum is the best value against which to compare individual measurements.

On November 16, 2004 (69 Fed. Reg. 67217) the USEPA adopted water quality standards for bacteria for coastal recreation waters designated for swimming, bathing, surfing or similar water contact activities. (See *Environmental Register* summary of the federal action from November 2004). Effective December 16, 2004, the new rules cover States and Territories, including Illinois, that do not have in place USEPA-approved water quality standards for bacteria that comply with the requirements of section 303(i)(1)(A) of the Clean Water Act and are as protective of human health as USEPA's 1986 recommended bacteria criteria.

In this rulemaking, the IEPA also proposes bacteria water quality standards for Illinois' portion of the Mississippi River. The IEPA asserts that this change is proposed as a result of an agreement by the USEPA with the Sierra Club that seeks to have all states on the upper Mississippi River adopt E.coli standards. The IEPA contends that it has committed to the USEPA that it will initiate its rulemaking process to adopt E.coli standards by September 30, 2004.

The Board's hearing officer is in the process of scheduling hearings in this rulemaking.

Copies of the Board's opinion and order in R05-10 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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For additional information contact John Knittle at 217-278-3111; e-mail address knittlej@ipcb.state.il.us

Board Adopts Proposal for Public Comment in RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004) (R05-02)

On December 16, 2004, the Board adopted a proposal for comment in RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004) (R05-02). The rulemaking proposes amendments to the Illinois regulations that are “identical in substance” to hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA). The USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2002)).

This docket includes federal hazardous waste amendments that USEPA adopted in the period July 1, 2004 through December 31, 2004. The rulemaking proposal was published in the January 3, 2005 issue of the *Illinois Register* at 28 Ill. Reg. 132, 154, 207, and 232. The Board will accept public comments for 45 days after publication, through February 27, 2005. The Board anticipates adopting final rules based on this proposal at one of the March 2005 meetings.

The substantive amendments in this update deal with the USEPA actions of April 22, 2004 (69 Fed. Reg. 21737), April 26, 2004 (69 Fed. Reg. 22602), and October 25, 2004 (69 Fed. Reg. 62217).

The USEPA action of April 22, 2004 (69 Fed. Reg. 21737) applies only to members of the National Environmental Performance Track Program. The amendments relax existing requirements for members of that program. The amendments extend from 90 days to 180 days the time during which a generator of hazardous waste may accumulate hazardous waste on-site. If the generator accumulates hazardous waste on-site for longer than the allowable accumulation time, its facility is designated a hazardous waste treatment, storage, and disposal facility. The amendments impose various waste and facility management requirements, advanced notice, recordkeeping, and reporting requirements on the generator as conditions to the extended accumulation time.

On October 25, 2004 (69 Fed. Reg. 62217), USEPA adopted corrections to the April 22, 2004 amendments. The original rule did not impose the facility and waste management standards of Subparts C, D, AA, BB, and CC on the management of the accumulating hazardous waste. These requirements pertain to preparedness and prevention, contingency planning and emergency procedures, and air emissions from process vents; equipment leaks; and tanks, surface impoundments, and containers. USEPA stated that it had inadvertently omitted the references to these requirements from the final amendments.

The USEPA action of April 26, 2004 (69 Fed. Reg. 22602) was primarily an action under Section 112 of the federal Clean Air Act (42 U.S.C. 7412 (2003)), which requires USEPA to establish national emission standards for hazardous air pollutants (NESHAPs) for new and existing major sources. The NESHAPs are to reflect the maximum degree of reduction in hazardous air pollutant (HAP) emissions achievable (MACT). The MACT standard requires all major sources to achieve the HAP emissions reductions already achieved by the best-operated sources. Only one segment of the new NESHAP pertains to hazardous waste: the management of captured purge materials from coating equipment. The management of these materials may be subject to the hazardous waste standards for equipment leaks in Subparts BB of Parts 264 and 265 of the federal standards for hazardous waste treatment, storage, and disposal facilities (equivalent to Subparts BB and CC of 35 Ill. Adm. Code 724 and 725). The amendments very clearly exempt from regulation under Subparts BB of Parts 264 and 265 those purged coatings and solvents from surface coating operations that are subject to the NESHAP applicable to surface coating of automobiles and light-duty trucks.

The Board made additional, nonsubstantive, amendments to the Parts 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 R05-02 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

Board Actions

December 2, 2004

Via Videoconference

Springfield and Chicago, Illinois

Rulemakings

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| R04-24 | <u>In the Matter of: Amendments to the Board's Procedural Rules to Accommodate New Statutory Provisions: 35 Ill. Adm. Code 101-130</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board's procedural regulations. | 5-0
R, Proc.
Rules |
| R05-9 | <u>In the Matter of: Setback Zone for City of Marquette Heights Community Water Supply, New 35 Ill. Adm. Code 618</u> – The Board accepted for hearing the Illinois Environmental Protection Agency's November 5, 2004 proposal to amend the Board's public water supply regulations. | 5-0
R, PWS |
| R05-11 | <u>In the Matter of: Amendments to Emissions Reduction Market System, 35 Ill. Adm. Code 205 and 211</u> – The Board accepted for hearing the Illinois Environmental Protection Agency's November 19, 2004 proposal to amend the Board's air pollution control regulations. The Board granted petitioner's motion for expedited consideration and adopted a proposal for public comment. | 5-0
R, Air |

Adjusted Standards

- | | | |
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| AS 05-1 | <u>In the Matter of: Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)</u> – The Board directed petitioner to file proof of publication by December 30, 2004, or this petition will be dismissed. | 5-0
Air |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|

Administrative Citations

- | | | |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| AC 04-13 | <u>City of Chicago Department of Environment v. Eddie Greer</u> – The Board entered a final order requiring respondent to pay the Board hearing costs in the amount of \$374.40 and a civil penalty of \$3,000. This order follows the Board's interim order of September 16, 2004, which found that this respondent had violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2002)) at his Cook County facility. | 5-0 |
| AC 04-34 | <u>IEPA v. Troy Williamson and Swords Veneer and Lumber Company</u> – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Henry County facility, the Board found that respondents had violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)) and ordered respondents to pay a civil penalty of \$1,500. The Board also granted the parties' joint motion to dismiss respondents' petition for review and the alleged violations of 415 ILCS 5/21(p) (4), (7) (2002). | 5-0 |

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AC 04-61	<u>IEPA v. Florence Propheeter and Propheeter Construction Co.</u> – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Whiteside County facility, the Board found that respondents had violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)) and ordered respondent to pay a civil penalty of \$1,500. The Board also granted the parties’ joint motion to dismiss respondents’ petition for review and the alleged violations of 415 ILCS 5/21(p) (4), (7) (2002).	5-0
AC 04-89 AC 04-90 AC 04-91	<u>IEPA v. Earl and Norma Martin</u> – The Board granted complainant’s motion to consolidate these administrative citations involving a Knox County facility.	5-0
AC 05-25	<u>County of Montgomery v. Ronald F. Simmons</u> – The Board on its own motion dismissed this administrative citation for lack of timely service on respondent.	5-0
AC 05-26	<u>County of Montgomery v. Michael Schwab</u> – The Board on its own motion dismissed this administrative citation for lack of timely service on respondent.	5-0
AC 05-33	<u>IEPA v. Leo and Debra Harn</u> – The Board accepted for hearing this petition for review of an administrative citation against these McDonough County respondents.	5-0

Decisions

PCB 04-101	<u>People of the State of Illinois v. DuPage Machine Products, Inc.</u> – In this air enforcement action concerning a DuPage 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 \$37,500 and to cease and desist from further violations.	5-0 A-E
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Motions and Other Matters

PCB 01-2	<u>People of the State of Illinois v. National Material L.P. d/b/a National Lamination Company, and NM Holding, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	5-0 A-E
PCB 04-90	<u>A & R, Inc. 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

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PCB 04-108	<u>Midwest Generation, L.L.C. (Collins Generating Station) v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal involving a Grundy County facility.	5-0 P-A, Air
PCB 05-54	<u>Rock Road Companies, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal involving a Winnebago County facility.	5-0 P-A, Air
PCB 05-94	<u>APS Properties 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 Macon County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-95	<u>People of the State of Illinois v. Wienmar, Inc. d/b/a Marble Works</u> – The Board accepted for hearing this air enforcement action involving a site located in Kane County.	5-0 A-E
PCB 05-96	<u>People of the State of Illinois v. Village of North City, Lawrence A. Lipe & Associates, Inc., Altman-Charter Company, and Furlong Excavating, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Franklin County facility, the Board ordered publication of the required newspaper notice as to Lipe & Associates, Inc. only. The Board accepted for hearing this complaint for hearing as to all respondents.	5-0 PWS-E
PCB 05-97	<u>Henson Oil Co. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a McLean County facility.	5-0 UST Appeal
PCB 05-98	<u>People of the State of Illinois v. Oasis Industries, Inc., an Illinois corporation</u> – The Board accepted for hearing this air enforcement action involving a site located in Kane County.	5-0 A-E
PCB 05-99	<u>People of the State of Illinois v. James Zeller, Thomas Zeller, and Matthew Short</u> – The Board accepted for hearing this air and land enforcement action involving a site located in Williamson County.	5-0 A&L-E
PCB 05-100	<u>Estate of Irene Steinheimer 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 Morgan County facility.	5-0 UST Appeal 90-Day Ext.

Environmental Register – December 2004

PCB 05-101	<u>Mac's Convenience Stores, L.L.C. 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 Will County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-102	<u>Village of Crainville 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 Williamson County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-103	<u>People of the State of Illinois v. Marc Realty, Inc. (55 E. Jackson L.L.C)</u> – The Board accepted for hearing this air enforcement action involving a site located in Cook County.	5-0 A-E

December 16, 2004 Chicago, Illinois

Rulemakings

R05-2	<u>In the Matter of: RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (January 1, 2004 through June 30, 2004)</u> – The Board adopted a proposal for public comment in this “identical-in-substance” rulemaking to amend the Board’s hazardous waste regulations.	5-0 R, Land
R05-10	<u>In the Matter of: Bacteria (E-Coli) Water Quality Standard for Lake Michigan and Mississippi River, Proposed Amendments to 35 Ill. Adm. Code 302 and 303</u> – The Board accepted for hearing the Illinois Environmental Protection Agency’s November 8, 2004 proposal to amend the Board’s water quality regulations.	5-0 R, Water

Administrative Citations

AC 04-22	<u>County of Vermilion, Illinois v. Village of Tilton</u> – The Board entered an interim opinion and order finding respondent violated Sections 21(p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(3) (2002)) and assessing a penalty of \$1,500. The Board ordered the Clerk of the Board and the County of Vermilion to file within 14 days a statement of hearing costs, supported by affidavit, with service on respondent.	5-0
AC 04-46	<u>IEPA v. Christopher Coleman</u> – The Board entered a final opinion and order requiring respondent to pay hearing costs of the Illinois Environmental Protection Agency and the Board in the amount of \$318.05 and a civil penalty of \$3,000. This order follows the Board's interim order of November 4, 2004, which found that this respondent had violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)) at his Union County facility.	5-0

Environmental Register – December 2004

AC 05-32 IEPA v. James A. Haas, Jr. – The Board dismissed the December 3, 2004 petition for review as untimely filed. The Board found that this Sangamon County respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)), and ordered respondent to pay a civil penalty of \$3,000. 5-0

Decisions

PCB 04-224 People of the State of Illinois v. Heritage FS, Inc. – In this water enforcement action concerning a Kankakee 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 \$10,000 and to cease and desist from further violations. 5-0
W-E

PCB 05-75 People of the State of Illinois v. Dennis Elahi d/b/a Paramount Management and Construction Company – 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 respondent to pay a total civil penalty of \$30,000 and to cease and desist from further violations. 5-0
A-E

Motions and Other Matters

PCB 96-98 People of the State of Illinois v. Skokie Valley Asphalt Co., Inc., and Richard J. Frederick – The Board denied complainant’s motion to void the Board’s October 21, 2004 order. The stay of the \$153,000 civil penalty imposed in the September 2, 2004 order will remain in effect until the Board issues a final order in this matter. In that final order, the Board will lift the stay, direct the respondents to pay the civil penalty and address the issue of attorney fees and costs. The respondents are hereby given until January 13, 2005 to respond to the complainant’s request for attorney fees and costs. 5-0
W-E

PCB 02-115 People of the State of Illinois v. Blue Ridge Construction Corporation – The Board granted respondent’s motion to stay enforcement of monetary penalty pending the outcome of the appeal pending before the Appellate Court. 5-0
A&W-E

PCB 04-136 People of the State of Illinois v. Cromwell-Phoenix, Inc. – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice. 5-0
A-E

PCB 05-45 United Parcel Service (Claim #1) v. IEPA – 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 St. Clair County facility. 5-0
UST Appeal

Environmental Register – December 2004

PCB 05-46	<u>United Parcel Service (Claim #3) 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 St. Clair County facility.	5-0 UST Appeal
PCB 05-47	<u>United Parcel Service (Claim #2) 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 St. Clair County facility.	5-0 UST Appeal
PCB 05-52	<u>People of the State of Illinois v. Safe Lock Self Storage 2, LLC</u> – The Board granted complainant’s motion and accepted the amended complaint in this water enforcement action involving a site located in St. Clair County. The Board ordered publication of the required newspaper notice upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement.	5-0 W-E
PCB 05-101	<u>Mac’s Convenience Stores L.L.C. v. IEPA</u> – The Board ordered petitioner to file an amended petition to cure noted deficiencies by February 5, 2005, or this matter will be dismissed.	5-0 UST Appeal
PCB 05-104	<u>L&M Pork Farm, Inc. (Property Identification Number 14-01-300-005) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of L&M Pork Farm located in Woodford 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 05-106	<u>Sunrise AG Services Company (Property Identification Number 09-11-200-002-0080) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Sunrise AG Services Company located in Mason 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 05-108	<u>William Breuer 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 Washington County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-109	<u>Paul Johnson, Inc. v. IEPA and City of Waterman, Illinois</u> – The Board accepted for hearing this water well setback request and granted the motion for expedited decision in this matter involving a DeKalb County facility.	5-0 WWS
PCB 05-110	<u>People of the State of Illinois v. J. McDaniel, Inc.</u> – The Board accepted for hearing this water enforcement action involving a site located in Vermilion County.	5-0 W-E

New Cases

December 2, 2004 Board Meeting

- 05-094** APS Properties 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 Macon County facility.
- 05-095** People of the State of Illinois v. Wienmar, Inc. d/b/a Marble Works – The Board accepted for hearing this air enforcement action involving a site located in Kane County.
- 05-096** People of the State of Illinois v. Village of North City, Lawrence A. Lipe & Associates, Inc., Altman-Charter Company, and Furlong Excavating, Inc. – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Franklin County facility, the Board ordered publication of the required newspaper notice as to Lipe & Associates, Inc. only. The Board accepted for hearing this complaint for hearing as to all respondents.
- 05-097** Henson Oil Co. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a McLean County facility.
- 05-098** People of the State of Illinois v. Oasis Industries, Inc., an Illinois corporation – The Board accepted for hearing this air enforcement action involving a site located in Kane County.
- 05-099** People of the State of Illinois v. James Zeller, Thomas Zeller, and Matthew Short – The Board accepted for hearing this air and land enforcement action involving a site located in Williamson County.
- 05-100** Estate of Irene Steinheimer 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 Morgan County facility.
- 05-101** Mac's Convenience Stores, L.L.C. 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 Will County facility.
- 05-102** Village of Crainville 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 Williamson County facility.
- 05-103** People of the State of Illinois v. Marc Realty, Inc. (55 E. Jackson L.L.C) – The Board accepted for hearing this air enforcement action involving a site located in Cook County.
- AC 05-037** City of Chicago Department of Environment v. AAA Dollar Disposal, Inc. – The Board accepted an administrative citation against this Cook County respondent.
- AC 05-038** County of Macon, Illinois v. Terry Cripe and Donna Cripe – The Board accepted an administrative citation against these Macon County respondents.
- AC 05-039** County of Macon, Illinois v. Richard Webb and Teresa Webb – The Board accepted an administrative citation against these Macon County respondents.
- AC 05-040** IEPA v. Northern Illinois Service Company – The Board accepted an administrative citation against this Winnebago County respondent.
- AC 05-041** County of Macon, Illinois v. Blue Mound Plumbing – The Board accepted an administrative citation against this Macon County respondent.

December 16, 2004 Board Meeting

- 05-104** L&M Pork Farm, Inc. (Property Identification Number 14-01-300-005) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of L&M Pork Farm located in Woodford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).
- 05-105** Burroughs AG Service, Inc.-Lostant (Property Identification Number 31-27-307-000) v. IEPA – No action taken.

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05-106 Sunrise AG Services Company (Property Identification Number 09-11-200-002-0080) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Sunrise AG Services Company located in Mason County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-107 Burroughs AG Service, Inc.-Wyoming (Property Identification Number 05-29-300-007) v. IEPA – No action taken.

05-108 William Breuer 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 Washington County facility.

05-109 Paul Johnson, Inc. v. IEPA and City of Waterman, Illinois – The Board accepted for hearing this water well setback request and granted the motion for expedited decision in this matter involving a DeKalb County facility.

05-110 People of the State of Illinois v. J. McDaniel, Inc. – The Board accepted for hearing this water enforcement action involving a site located in Vermilion County.

AC 05-042 IEPA v. Knox County Landfill Committee and Greg Ingle – The Board accepted an administrative citation against these Knox County respondents.

AC 05-043 County of Macon, Illinois v. David Beck – The Board accepted an administrative citation against this Macon County respondent.

R05-012 In the Matter of: RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-013 In the Matter of: RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-014 In the Matter of: UST Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-015 In the Matter of: Wastewater Pretreatment Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-016 In the Matter of: Definition of VOM Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-017 In the Matter of: SDWA Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

R05-018 In the Matter of: UIC Update, USEPA Amendments (July 1, 2004 through December 31, 2004) – The Board reserved this docket for a routine identical-in-substance update. The update includes any federal amendments which occurred during the period of July 1, 2004 through December 31, 2004.

Calendar

<p>1/6/05 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>Videoconference 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</p>
<p>1/6/05 1:30 PM</p>	<p>R05-08</p>	<p>In the Matter of: Mercury Wastes Under PA 93-0964: Amendments to Standards for Universal Waste Management (35 Ill. Adm. Code Parts 703, 720, 721, 724, 725, 728, and 733)</p>	<p>Illinois Environmental Protection Agency Training Room 1214 West North Entrance 1021 N. Grand Avenue East Springfield</p>
<p>1/14/05 10:30 AM</p>	<p>PCB 05-83</p>	<p>Bowman Oil Company v. IEPA</p>	<p>Benton City Hall Council Chambers 500 W. Main Street Benton</p>
<p>1/19/05 10:30 AM</p>	<p>PCB 05-97</p>	<p>Henson Oil Co. v. IEPA</p>	<p>Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East (North Entrance) Springfield</p>
<p>1/20/05 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>James R. Thompson Center Hearing Room 9-040 100 W. Randolph Street Chicago</p>
<p>1/27/05 1:00 AM</p>	<p>R05-11</p>	<p>In the Matter of: Amendments to Emissions Reduction Market System, 35 Ill. Adm. Code 205 and 211</p>	<p>James R. Thompson Center Room 2-029 100 W. Randolph Street Chicago</p>
<p>1/31/05 9:00 AM</p>	<p>PCB 99-187</p>	<p>Gina Pattermann v. Boughton Trucking and Materials, Inc.</p>	<p>Bolingbrook Village Hall Boardroom 375 West Briar Cliff Road Bolingbrook</p>
<p>2/1/05</p>	<p>PCB 99-187</p>	<p>Gina Pattermann v. Boughton Trucking and Materials, Inc.</p>	<p>Bolingbrook Village Hall Boardroom 375 West Briar Cliff Road Bolingbrook</p>

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<p>2/2/05 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>Videoconference 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</p>
<p>2/10/05 9:00 AM</p>	<p>PCB 05-55</p>	<p>Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud v. IEPA and Village of Wauconda (Consolidated: PCB 05-55, 58, and 59)</p>	<p>Village Hall 2nd Floor—Board Room 118 West Cook Libertyville</p>
<p>2/10/05 9:00 AM</p>	<p>PCB 05-58</p>	<p>Slocum Lake Drainage District of Lake County, Illinois v. Illinois Environmental Protection Agency and Village of Wauconda, Illinois (Consolidated: PCB 05-55, 58, and 59)</p>	<p>Village Hall 2nd Floor—Board Room 118 West Cook Libertyville</p>
<p>2/10/05 9:00 AM</p>	<p>PCB 05-59</p>	<p>Al Phillips, Vern Meyer, Gayle DeMarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Polito, Williams Park Improvement Association, Mat Schlueter, Mylith Park Lot Owners Association, Donald Krebs, Don Berkshire, Judy Brumme, Twin Pond Farms Homeowners Association, Julia Tudor, Christine Deviney v. Illinois Environmental Protection Agency and Village of Wauconda (Consolidated: PCB 05-55, 58, and 59)</p>	<p>Village Hall 2nd Floor—Board Room 118 West Cook Libertyville</p>
<p>2/11/05 9:00 AM</p>	<p>PCB 05-55</p>	<p>Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud v. IEPA and Village of Wauconda (Consolidated: PCB 05-55, 58, and 59)</p>	<p>Village Hall 2nd Floor—Board Room 118 West Cook Libertyville</p>
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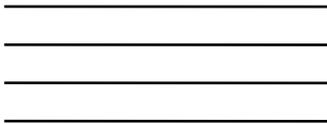
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2/11/05 9:00 AM	PCB 05-59	Al Phillips, Vern Meyer, Gayle DeMarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Polito, Williams Park Improvement Association, Mat Schlueter, Mylith Park Lot Owners Association, Donald Krebs, Don Berkshire, Judy Brumme, Twin Pond Farms Homeowners Association, Julia Tudor, Christine Deviney v. Illinois Environmental Protection Agency and Village of Wauconda (Consolidated: PCB 05-55, 58, and 59)	Village Hall 2 nd Floor—Board Room 118 West Cook Libertyville
2/17/05 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 9-040 100 W. Randolph Street Chicago
2/22/05 10:30 AM	R05-11	In the Matter of: Amendments to Emissions Reduction Market System, 35 Ill. Adm. Code 205 and 211	James R. Thompson Center Room 2-207 100 W. Randolph Street Chicago
2/24/05 9:00 AM	PCB 05-85	Citgo Petroleum Corporation and PDV Midwest Refining, LLC v. IEPA	James R. Thompson Center Room 11-512 100 W. Randolph Street Chicago
3/1/05 10:00 AM	R05-09	In the Matter of: Setback Zone for City of Marquette Heights Community Water Supply, New 35 Ill. Adm. Code 618	Pekin City Hall Council Chambers—2 nd Floor 111 South Capitol Street Pekin
3/3/05 11:00 AM	Illinois Pollution Control Board Meeting		Illinois Pollution Control Board Hearing Room (North Entrance) 1021 North Grand Avenue East Springfield
3/17/05 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 9-040 100 W. Randolph Street Chicago
4/5/05 10:00 AM	R05-09	In the Matter of: Setback Zone for City of Marquette Heights Community Water Supply, New 35 Ill. Adm. Code 618	James R. Thompson Center Room 2-025 100 W. Randolph Street 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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