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# Environmental Register

February 2008 - Number 644

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

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G. Tanner Girard, Acting Chairman

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# Letter from the Chairman

During February, the Board moved forward in several rulemaking dockets and received a new rulemaking proposal. Below, I've summarized that new proposal plus three other dockets that have generated significant interest and will have Board hearings this spring. As always, information about these proceedings and the Board's other cases is available through the Clerk's Office Online (COOL) on our Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

On February 19, 2008, the Illinois Environmental Protection Agency (IEPA) filed a new rulemaking proposal, which the Board docketed as In the Matter of: Proposed Amendments to Groundwater Quality Standards 35 Ill. Adm. Code 620 (R08-18). IEPA proposes to change the Groundwater Quality Standards to account for new scientific data, reflect federal amendments, update technical references, and address additional groundwater parameters. When hearings are scheduled, the dates and locations will be listed on the Board's website.



On January 10, 2008, the Board granted IEPA's motion to proceed with an amended proposal to control nitrogen oxide (NO<sub>x</sub>) emissions docketed as In the Matter of: Section 27 Proposed Rules for Nitrogen Oxide (NO<sub>x</sub>) Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217. Hearings on the amended proposal will begin Wednesday, April 9, 2008 at the Madison County Administration Building in Edwardsville and Wednesday, May 7, 2008 at the James R. Thompson Center in Chicago. More information about matters including deadlines for pre-filing hearing testimony is available under this docket number through COOL.

The Board has now held five days of hearing on a proposal docketed as In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304 (R08-9). The proposal from IEPA amends the Board's rules for Secondary Contact and Indigenous Aquatic Life Uses. The Board will continue to hear testimony from the IEPA during a hearing at Joliet Junior College beginning March 10th, 2008, and continuing until March 12, 2008, or until the IEPA's testimony is complete. Additional hearings will be set at a later date to allow for testimony of other participants.

On January 2, 2008, IEPA filed a rulemaking proposal to reduce volatile Organic material (VOM) emissions from various consumer products, architectural and industrial maintenance products, and aerosol coatings. The Board docketed that proposal as In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources Proposed New 35 Ill. Adm. Code Part 223. Hearings on the proposal will begin Wednesday, April 30, 2008, in Springfield and Wednesday, June 4, 2008, at the James R. Thompson Center in Chicago. More information about this rulemaking, including deadlines for pre-filing hearing testimony, is available under this docket number through COOL on the Board's website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

Sincerely,

A handwritten signature in black ink that reads "G. Tanner Girard". The signature is written in a cursive, slightly slanted style.

Dr. G. Tanner Girard

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## Federal Update

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### **United States Environmental Protection Agency Publishes Notice of Adequacy of the Metro-East St. Louis 8-Hour Ozone Attainment Demonstration and State Implementation Plan for Transportation Conformity Purposes Under the Clean Air Act**

On February 5, 2008 (73 Fed. Reg. 6719) the United States Environmental Protection Agency (USEPA) published a notice that found that the motor vehicle emissions budgets (MVEBs) for 8-hour ozone in Metro-East St. Louis (Madison, Monroe, St. Clair, and Jersey Counties), Illinois, are adequate for conformity purposes. As a result of this finding, Metro-East St. Louis must use the MVEBs from the 8-hour ozone attainment demonstration and state implementation plan (SIP) submitted on July 2, 2007, for future conformity determinations. This finding is effective February 20, 2008.

For further information contact Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, email address: [Maietta.anthony@epa.gov](mailto:Maietta.anthony@epa.gov).

### **United States Environmental Protection Agency Adopts National Emission Standards for Hazardous Air Pollutants (NESHAP) for iron and steel foundries Under the Clean Air Act**

On February 7, 2008 (73 Fed. Reg. 7210) the United States Environmental Protection Agency (USEPA) adopted amendments to the national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. These final amendments add alternative compliance options for cupolas at existing foundries and clarify several provisions to increase operational flexibility and improve understanding of the final rule requirements.

These final amendments are effective on February 7, 2008.

For further information contact Mr. Phil Mulrine, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5289; fax number: (919) 541-3207; e-mail address: [mulrine.phil@epa.gov](mailto:mulrine.phil@epa.gov).

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2006)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

### **United States Environmental Protection Agency Withdraws Direct Final Rule Approving Revisions to the Illinois Emission Reduction Market System, But Contemporaneous Proposed Rule Remains Pending**

On February 29, 2008 (73 Fed. Reg. 11042) the United States Environmental Protection Agency (USEPA) withdrew the January 30, 2008 (73 Fed. Reg. 5435) direct final rule approving revisions to the State of Illinois' rules for its Emission Reduction Market System (ERMS). (The Board adopted these revisions in [Amendments to Emissions Reduction Market System](#), 35 Ill. Adm. Code 205 and 211, R05-11 (June 2, 2005).)

In its notice of withdrawal of the direct final rule, USEPA stated that in its January 30, 2008 notice it had commented on statements in, and implications of, a memorandum from Robert Meyers, Principal Deputy Assistant Administrator for Air and Radiation, to USEPA's Regional Administrators dated October 3, 2007. (The rule gave an incorrect date of October 7, 2007.) The memorandum addresses the status of new source review criteria for ozone nonattainment

areas based on a decision by the Court of Appeals for the DC Circuit in the case of South Coast Air Quality Management Dist. v. EPA, 472 F.3d 882 (DC Cir. 2006). In commenting upon the memorandum of Robert Meyers in the direct final rule of January 30, 2008, USEPA Region 5 unintentionally addressed an issue of national policy. USEPA stated that, as the issue is one of national policy the implications of the Court ruling should only be addressed in national guidance and rulemaking.

USEPA pointed out that its rationale for proposing to approve the ERMS rule revisions did not rely on the observations of the national policy, and so the soundness of USEPA's proposal was not affected. Therefore, USEPA stated that it would withdraw the January 30, 2008, direct final rule, but announced that the associated proposed rule will stand as a proposed rule. (*See* 73 Fed. Reg. 5471). USEPA will publish a revised final rule after considering any comments that it may receive, and will not institute a second comment period on this action.

For further information contact John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

## Appellate Update

**First District Affirms Board Ruling and Interpretation of Underground Storage Tank Rules in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. Feb. 22, 2008); PCB 07-12 (Dec. 21, 2006) (affirming Board order in PCB 07-12 (Dec. 21, 2006)**

On February 22, 2008, the First District Appellate Court issued a seven-page order under Supreme Court Rule 23 (155 Ill.2d R. 23) affirming the Board in an appeal of an underground storage tank (UST) determination. First District Affirms Board Ruling and Interpretation of Underground Storage Tank Rules in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. Feb. 22, 2008) (hereinafter FedEx (1st Dist.)). In the case before it, the Board had granted a motion for summary judgment filed by the Illinois Environmental Protection Agency (IEPA) and affirmed the IEPA's determination rejecting an amended remediation budget requested after issuance of a "No Further Remediation" (NFR) letter. FedEx Ground Package System, Inc. v. Illinois Environmental Protection Agency, PCB 07-12 (Dec. 21, 2006) (hereinafter FedEx, PCB 07-12).

The court's order is a non-precedential one issued under Supreme Court Rule 23 (155 Ill.2d R. 23). The Board is considering requesting the court to publish the order.

Below is a summary of the First District's FedEx order, which draws heavily from the Board's reasoning. That summary is preceded by brief background on the Board's decision. Reasons for a publication request are discussed last.

### **BOARD DECISION: FedEx, PCB 07-12**

FedEx Ground Package System, Inc. (FedEx), in a petition filed August 21, 2006, sought the Board's review of a July 17, 2006 IEPA determination rejecting an amended remediation budget for FedEx's underground storage tank site in Bedford Park, Cook County. On April 3, 2003, FedEx reported a leak from an underground storage tank at its site. FedEx took corrective action at the site, and received reimbursement from the UST Fund. On April 21, 2006, the IEPA received from FedEx a Corrective Action Completion Report (CACR), an engineer's certification, and an NFR letter. Under Section 57.10(c)(1) of the Environmental Protection Act (Act), 415 ILCS 5/57.10(c)(1) (2006), the NFR letter's issuance signifies that all statutory and regulatory requirements for remediation, and the planning and budgeting submissions therefore, have been met and that such activities are complete. *See also* 35 Ill. Adm. Code 734.710(d)(1). In a letter dated May 10, 2006, the IEPA acknowledged receiving FedEx's CACR and granted FedEx's request for an NFR letter. On May 17, 2006, FedEx recorded the NFR letter with the Cook County Recorder of Deeds. FedEx, PCB 07-12 (slip op at 2-3).

On May 30, 2006, FedEx submitted a proposed budget amendment and claim for reimbursement to the IEPA. The proposed amended budget sought approval of additional costs in the amount of \$72,878.75; because FedEx had spent less than the originally budgeted amount on some of its costs, FedEx sought reimbursement of \$39,122.55 in addition to the original budget amount of \$333,980.67. In a cover letter, FedEx's consultant stated that it submitted the amended budget "to cover costs for removal of the 15,000-gallon diesel fuel underground storage tank, demolition and removal of a canopy, asphalt pavement of the excavated areas, abandonment of existing monitoring

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wells and recording of the No Further Remediation Letter.” FedEx, PCB 07-12 (slip op at 2-3). In a letter dated June 21, 2006, the IEPA rejected FedEx’s proposed amended budget.

In a letter dated July 3, 2006, MACTEC Engineering and Consulting, Inc., an environmental consultant retained by FedEx, requested that the IEPA review and approve FedEx’s amended budget. In a letter dated July 17, 2006, the IEPA rejected FedEx’s proposed amended budget. As its basis for doing so, the IEPA again stated that:

[t]he budget was submitted after the issuance of a No Further Remediation Letter. Pursuant to 35 Ill. Adm. Code 734.335(d), any corrective action plan or budget must be submitted to the Illinois EPA for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of 35 Ill. Adm. Code 734 prior to the issuance of a No Further Remediation Letter. FedEx, PCB 07-12 (slip op at 3-4).

Section 734.335(d) provides that “[n]otwithstanding” the general requirements that plans and budgets be submitted for approval before work is performed or costs are incurred, an owner or operator can proceed to conduct corrective action prior to the submittal or approval of an otherwise required corrective action plan or budget. “However, any such plan and budget must be submitted to the Agency . . . prior to . . . the issuance of a No Further Remediation Letter.” 35 Ill. Adm. Code 734.335(d). Subsection (e) of Section 734.335 requires amendments to plans or budgets in specified circumstances:

If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. 35 Ill. Adm. Code 734.335(d).

The Board affirmed the IEPA amended budget disapproval, ruling on cross motions for summary judgment. The Board found that subsection (d) applies not only to those who proceed with no approved plan or budget at all, but also to those who go beyond the scope of an approved plan or who incur costs that go beyond the approved corrective action budget, necessitating an amendment. In this case, FedEx proceeded under subsection (d) by incurring costs beyond amounts contained in its approved budget without first receiving IEPA approval of an amended budget. The Board held therefore that under subsection (d), for the IEPA to review a proposed budget amendment, the amendment must be submitted before the IEPA issues the NFR letter. FedEx, PCB 07-12 (slip op. at 18-19)

The Section 734.335(d) requirement of plan and budget submittal before NFR letter issuance reflects the finality and practical import that the General Assembly placed on the IEPA's issuance of the NFR letter.

### **APPELLATE COURT DECISION: FedEx (1st Dist.)**

The appellate court’s factual recitation is essentially the same as summarized above, and there was no dispute over the relevant facts. FedEx (1st Dist.), slip op at 2-3. The court reviewed *de novo* the Board's rulings on questions of law. The court added, however, that “a reviewing court should afford substantial deference to the agency's determination of a statute which the agency administers and enforces.” *Id.* at 3.

FedEx made two arguments on appeal. First, FedEx argued that the Board’s UST rules contradict the Act because Section 57.8 of the Act (415 ILCS 5/57.8 (2006)) provides a statutory right to UST Fund reimbursement for successful corrective action. FedEx (1st Dist.), slip op at 4-5. The court initially noted that the Act (415 ILCS 5/57.14A (2006)) required the Board to adopt rules governing the administration of the Fund, which Fund “does not have a broad remedial purpose, presumably due to its limited resources.” FedEx (1st Dist.), slip op at 5, citing Strube v. Illinois Pollution Control Board, 242 Ill. App. 3d 822, 826 (3rd Dist. 1993). Accordingly, the court continued, “the rules and regulations administering it are not to be taken lightly and should not be ignored.” *Id.*

The court then found Section 734.335(d) reasonable and not in conflict with the Act, stating:

We do not find that imposing a regulation requiring budgets and plans to be submitted before an NFR letter is granted to be unduly restrictive or contrary to the purpose and language of the Act. The NFR letter signifies that no further steps need to be taken to correct the leaking storage tanks, and that the matter is essentially outside the scope of the Act, and therefore the Fund. Without such a regulation, budgets and plans for corrective actions taken in excess of the requirements set forth by the act could be submitted indefinitely for whatever costs incurred, possibly even for

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measures that may have been taken unnecessarily. Accordingly, although there exists a statutory right to reimbursement from the Fund, we do not find that this right is unlimited. Furthermore, we do not find that section 734.335(d) of the Illinois Administrative Code is contrary to the purpose and language of the Act, and is a reasonable and enforceable regulation limiting the statutory right to reimbursement from the fund." FedEx (1st Dist.), slip op at 5.

FedEx alternatively argued that Section 734.335(d) simply did not apply in this case because FedEx already had an approved plan and budget. FedEx (1st Dist.), slip op at 5-6. The court, "after a careful reading of the relevant sections," disagreed. *Id.* at 6. The court found that subsection (d) is not limited solely to instances where corrective action precedes the submittal of a plan or budget. Rather, the subsection applies to "those who proceed not only with no budget or plan," but also to those who "go beyond the scope of an approved plan or budget." *Id.* The court added:

"Furthermore, section 734.335(e) allows amendments to plans or budgets when revised procedures or cost estimates are necessary. Because of this, it is logical to see that section 734.335(d) is a necessary limitation specifying that plan or budget changes, or essentially the creation of a new plan or budget, should be submitted prior to the issuance of a NFR letter." *Id.*

### MOTION TO PUBLISH

The FedEx (1st Dist.) ruling is the first appellate ruling on the post-NFR budget amendment issue. But, the Board has also ruled on the same legal issue, but arising under Section 732.405(d) of the Board's UST regulations rather than under 734.335(e). Compare 35 Ill. Adm. Code 732.405, addressing releases reported between September 23, 1994 and June 23, 2002, with 35 Ill. Adm. Code 734.335 of the Board's underground storage tank regulations, addressing releases reported on or after June 24, 2002. The Board held in the Part 732 cases, as it did in the Part 734 FedEx, PCB 07-12 case, that for the IEPA to review a proposed budget amendment, the amendment must be submitted before the IEPA issues the NFR letter. Broadus Oil v. IEPA, PCB 04-31 and PCB 05-43 (cons.) (December 21, 2006), Village of Wilmette. IEPA, PCB 07-27 (July 12, 2007), and Village of Wilmette. IEPA, PCB 07-48 (July 26, 2007). A consolidated appeal of the latter two cases is pending in the First District. Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-2265, 1-07-2439 (cons.) (1st Dist.).

As previously stated, the FedEx (1st Dist.) order is a non-precedential one issued under Supreme Court Rule 23 (155 Ill.2d R. 23). Publication of FedEx (1st Dist.) as an opinion on the post-NFR budget amendment issue would serve as helpful precedent in the Wilmette appeal.

## Board Actions

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**February 7, 2008**

**Chicago, Illinois**

### Rulemakings

<b>R08-9</b>	<u>In The Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304</u> – Upon motion, the Board granted Kristy A.N. Bulleit and Brent Fewell leave to appear <i>pro hac vice</i> on behalf of Midwest Generation EME, LLC.	4-0 Water
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### Adjudicatory Cases

<b>PCB 04-102</b>	<u>Emerald Performance Materials, L.L.C (as purchaser of Noveon, Inc.) v. IEPA</u> – The Board granted petitioner’s motion to change name from “Noveon” to “Emerald Performance Materials, L.L.C and to voluntarily dismiss objections 1, 2, 5, and 6. The Board will address issues 3 and 4 after close of briefing schedule.	4-0 P-A, Air
<b>PCB 05-164</b>	<u>Rohm and Haas Company v. IEPA.</u> – The Board granted this Kankakee County facility’s motion for voluntary dismissal of this permit appeal.	4-0 P-A, Air
<b>PCB 06-177</b>	<u>People of the State of Illinois v. Sheridan Sand &amp; Gravel Co.</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 LaSalle County facility, the Board ordered publication of the required newspaper notice.	4-0 L-E
<b>PCB 07-76</b>	<u>2F, Inc. v. IEPA</u> – The Board granted this Saline County facility’s motion for voluntary dismissal of this underground storage tank appeal.	4-0 UST Appeal
<b>PCB 07-82</b>	<u>Bob's Service Center, Inc. v. IEPA</u> – The Board granted this St. Clair County facility’s motion for voluntary dismissal of this underground storage tank appeal.	4-0 UST Appeal
<b>PCB 07-128</b>	<u>Jahraus Oil Company, Inc. v IEPA</u> – The Board granted this Marion County facility’s motion for voluntary dismissal of this underground storage tank appeal.	4-0 UST Appeal
<b>PCB 07-130</b>	<u>Gallaher's Shell v. IEPA</u> – The Board granted this Hancock County facility’s motion for voluntary dismissal of this underground storage tank appeal.	4-0 UST Appeal
<b>PCB 08-35</b>	<u>Estate of William Eggert v. IEPA</u> – The Board granted respondent’s motion for dismissal of this underground storage tank appeal involving a Hancock County facility.	UST Appeal

### February 21, 2008 Chicago, Illinois

### Adjusted Standards

<b>AS 07-3</b>	<u>In the Matter of: Petition of Midwest Generation, LLC, Waukegan Generating Station for an Adjusted Standard from 35 Ill. Adm. Code 225.230</u> – The Board granted Environmental Law & Policy Center’s motion to withdraw the December 6, 2007 motion to intervene and denied petitioner’s motion to strike. The Board also granted petitioner’s motion to file a reply and directed petitioner to file a response to the renewed motion to intervene by March 6, 2008. The Board will consider the Illinois Environmental Protection Agency’s response along with petitioner’s response when ruling on the renewed motion to intervene.	4-0 Air
<b>AS 07-4</b>	<u>In the Matter of: Petition of Midwest Generation, LLC, Will County Generating Station for an Adjusted Standard from 35 Ill. Adm. Code 225.230</u> – The Board granted Environmental Law & Policy Center’s motion to withdraw the December 6, 2007 motion to intervene and denied petitioner’s motion to strike. The Board also granted petitioner’s motion to file a reply and directed petitioner to file a response to the renewed motion to intervene by March 6,	4-0 Air

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2008. The Board will consider the Illinois Environmental Protection Agency’s response along with petitioner’s response when ruling on the renewed motion to intervene.

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| <b>AS 08-2</b> | <u>In the Matter of: Petition of Stericycle, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 1422.111(B)(1); 1450.105(A)-(B); 1450.200 (E); and Condition 15 of Permit No. 1997-264-DE/OP, Supplemental Permit No. 2005-182-SP</u> – The Board accepted petitioner’s amended petition, noting hearing was waived.  | 4-0<br>PIMW |
| <b>AS 08-7</b> | <u>In the Matter of: Petition of the City of Chicago Heights for an Adjusted Standard From 35 IAC 810.103, 814.102 and 814.501(c)</u> – The Board dismissed this petition for an adjusted standard for petitioner’s failure to timely publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected, as required by Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1(d)(1) (2006)). The Board also identified other petition deficiencies. | 4-0<br>Land |

### Administrative Citations

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|-----------------|---|-----|
| <b>AC 07-43</b> | <u>County of Jackson v. Bob Osinga</u> – The Board entered a final opinion and order requiring respondent to pay hearing costs of the Board in the amount of \$165.30 and a civil penalty of \$3,000. This order follows the Board's interim order of December 6, 2007, which found that this respondent had violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006)). | 4-0 |
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### Adjudicatory Cases

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|-------------------|---|----------------------|
| <b>PCB 06-80</b>  | <u>People of the State of Illinois v. Fulford Construction, Inc.</u> – In this water enforcement action concerning a St. Clair 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$2,000.00, and to cease and desist from further violations. | 4-0<br>W– E          |
| <b>PCB 06-173</b> | <u>People of the State of Illinois v. First Country Homes, L.L.C.</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 Will County facility, the Board ordered publication of the required newspaper notice.  | 4-0<br>W-E           |
| <b>PCB 07-84</b>  | <u>American Bottom Conservancy and Sierra Club v. City of Madison, Illinois and Waste Management of Illinois, Inc.</u> – The Board denied petitioners’ motion to reconsider the December 6, 2007 Board Order which affirmed the decision of the City of Madison approving Waste Management of Illinois’ application to site the “North Milan” landfill expansion.   | 4-0<br>L-S-R         |
| <b>PCB 08-33</b>  | <u>Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. v. IEPA</u> – The Board granted petitioner’s motion to incorporate the record in PCB 05-85 and accepted the amended petition, restarting the decision time clock.   | 4-0<br>W-V           |
| <b>PCB 08-38</b>  | <u>Interstate Oil, Inc. v. IEPA</u> – The Board dismissed this petition for review as untimely filed.   | 4-0<br>P-A,<br>Water |

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<b>PCB 08-42</b>	<u>Tom Edwards/River Rescue v. IEPA and Peoria Disposal Company</u> – The Board denied each respondent’s motion to dismiss. The Board ordered petitioner to file an amended petition to cure noted deficiencies, on or before March 3, 2008, or the petition would be subject to dismissal.	4-0 P-A, RCRA
<b>PCB 08-44</b>	<u>People of the State of Illinois v. Prairie Material Sales, Inc.</u> , – The Board accepted for hearing this water enforcement action involving a site located in DuPage County.	4-0 W - E
<b>PCB 08-45</b>	<u>People of the State of Illinois v. Distinctive Homes, Ltd. and Distinctive Companies, Ltd</u> – The Board accepted for hearing this water enforcement action involving a site located in Cook County.	4-0 W - E

## New Cases

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### February 7, 2008 Board Meeting

**AC 08-13** County of DuPage v. Margarita Sotelo – The Board accepted an administrative citation against this DuPage County respondent.

**AC 08-14** County of DuPage v. Nicolas Cruz – The Board accepted an administrative citation against this DuPage County respondent.

**AC 08-15** County of DuPage v. Jamal Abro – The Board accepted an administrative citation against this DuPage County respondent.

**AC 08-16** IEPA v. Gene Greeden – The Board accepted an administrative citation against this Iroquois County respondent.

### February 21, 2008 Board Meeting

**08-44** People of the State of Illinois v. Prairie Material Sales, Inc., – The Board accepted for hearing this water enforcement action involving a site located in DuPage County.

**08-45** People of the State of Illinois v. Distinctive Homes, Ltd. and Distinctive Companies, Ltd – The Board accepted for hearing this water enforcement action involving a site located in Cook County.

## Provisional Variances

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**IEPA 08-06** WRB Refining LLC Wood River Refinery v. IEPA – On January 18, 2008, the Illinois Environmental Protection Agency accepted WRB Refining LLC’s request for provisional variance to allow the shutdown of the flare gas recovery compressor (FGRC) for the Distilling Flare at its Wood River Refinery. The shutdown of the FGRC may result in an exceedance of sulfur dioxide emission rates contained in 35 Ill. Adm. Code 214.301 and condition 7.7.3(g) Clean Air Act Permit Program operating permit No.95120306, issued November 7, 2003. The relief is granted until such time as maintenance to the Distilling Flare FGRC is completed, or through January 31, 2008, whichever occurs first. However, in no case may the period of the shutdown of the FGRC, or the relief granted by this provisional variance, exceed five days.

**IEPA 08-07** Landmark Aviation v. IEPA – On February 8, 2008, the Illinois Environmental Protection Agency granted Landmark Aviation’s request for a 30-day provisional variance from hazardous waste storage time limitations pursuant to 35 Ill. Adm. Code 722.134(b). Landmark Aviation had scheduled a hazardous waste transporter to remove a hazardous waste roll-off container from its facility at 1200 North Airport Driver in Springfield on February 5, 2008. But the Landmark employee that typically signs documents concerning such shipments experienced a family emergency and was unable to be present when the transporter arrived. The applicable storage deadline for the container is February 8, 2008, but the transporter cannot return to the facility until the week of February 18, 2008.

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**IEPA 08-08 Caveout Remediation Site Participant Group v. IEPA** – On February 14, 2008, the Illinois Environmental Protection Agency granted Caveout Remediation Site Participant Group’s (Group’s) request for a 30-day provisional variance from hazardous waste storage time limitations pursuant to 35 Ill. Adm. Code 722.134(b). The Caveout Remediation Site consists of approximately 16.5 acres located near the former Borg-Warner Manufacturing Facility on U.S. Route 51 south of 625 Southside Drive in Decatur. Remediation is being done at the site under the Illinois EPA’s Site Remediation Program (LPC1150155433). Removal of sludge from an inactive wastewater treatment system (WWTS) on the site began November 17, 2007. The sludge was placed in nine lined roll-off boxes and in a concrete tank that was part of the WWTS to await proper removal to, and disposal at, a disposal facility. Results from the testing of a sample of the removed sludge were inconsistent with those obtained from an earlier sample. The lab results indicated that the sludge was a hazardous waste and prevented the original disposal facility from accepting the sludge. The Group has been exploring its options with various hazardous waste disposal facilities. The 90-day on-site holding period for the sludge ends on February 15, 2008.

*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](http://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.*

## Calendar

<p>3/6/08 11:00 AM</p>	<p><b><u>Illinois Pollution Control Board Meeting</u></b></p>		<p><b>James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago</b></p>
<p>3/07/08 1:00 PM</p>	<p>R08-08</p>	<p><u>In the Matter of: Abbott Laboratories’ Proposed Site-Specific Amendment to Applicability Section of Organic Material Emission Standards and Limitations for the Chicago Area: Subpart T: Pharmaceutical Manufacturing (35 Ill. Adm. Code 218.480(b))</u></p>	<p>Libertyville Village Hall Second Floor 118 W. Cook Street Libertyville</p>
<p>3/10/08 10:00 AM</p>	<p>R08-09</p>	<p><u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines, River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304</u>  (Continues until complete or through March 12, 2008)</p>	<p>Joliet Junior College Smith Business &amp; Technology Center 1215 Houbolt Road Joliet</p>
<p>3/12/08 9:00 AM</p>	<p>PCB 05-35</p>	<p><u>Kibler Development Corporation and Marion Ridge Landfill, Inc. v IEPA</u></p>	<p>Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East, North Entrance Springfield</p>

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3/12/08 9:00 AM	PCB 07-43	<u>Kibler Development Corporation and Marion Ridge Landfill, Inc. v IEPA</u>	Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East, North Entrance Springfield
3/20/08 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		<b>James R. Thompson Center Room 09-040 100 W. Randolph Street Chicago</b>
4/3/08 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		<b>James R. Thompson Center 100 W. Randolph Street Chicago</b>
4/17/08 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		<b>James R. Thompson Center Room 09-040 100 W. Randolph Street Chicago</b>

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**DIVISION OF WATER POLLUTION CONTROL**

**RESTRICTED STATUS LIST**

In order to comply with 35 Illinois Administrative Code Section 306.401, Illinois Pollution Control Board Regulations, the Illinois EPA has prepared the following list of facilities which are on Restricted Status. Restricted Status is defined as the Agency determination that a sewer or lift station has reached hydraulic capacity or that a sewage treatment plant has reached design capacity, such that additional sewer connection permits may no longer be issued without causing a violation of the Act or Regulations. Please note that the list is continually being revised to reflect the current situation. Therefore, if you have any questions on the capability of a treatment facility or transport system, please contact this Agency for a final determination. This listing reflects the status as of December 31, 2007.

Facility names followed by an asterisk (\*) indicates that construction is underway to ultimately alleviate problems, which resulted in imposition of Restricted Status. Facilities followed by a double asterisk (\*\*) are additions to the list.

<u>FACILITY NAME</u>	<u>RESPONSIBLE AUTHORITY</u>	<u>COUNTY</u>	<u>REMAINING CAPACITY</u>
Bourbonnais (Belle Aire Subd.)	Village of Bourbonnais	Kankakee	0

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Camelot Utilities Wastewater Collection System	Camelot Utilities	Will	0
Camp Point (a portion mh 60-68)	Village of Camp Point	Adams	0
Clearview S.D.	Clearview S.D.	McLean	0
Davis Junction	Village of Davis Junction	Ogle	0
East Alton	City of East Alton	Madison	0
Farmington	City of Farmington	Fulton	0
Hurst & Blairville Collection SYSTEM	City of Hurst	Williamson	0
Port Byron STP	Village of Port Byron	Rock Island	0
Rosewood Heights S.D.- Ninth Street LS	Rosewood Heights S.D.	Madison	0
South Palos Twp. SD	South Palos Twp.	South Palos Twp.	0
Sundale Utilities – Washington Estates STP	Sundale Utilities Corporation	Tazewell	0
Taylorville-Shawnee Ave. PUMP STATION	City of Taylorville	Christian	0
Utilities Unlimited	Utilities Unlimited	Will	0
Washington (Rolling Meadows)	City of Washington	Tazewell	0

Deletions from previous quarterly report: Richmond WWTP

Additions from previous quarterly report: None

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**DIVISION OF WATER POLLUTION CONTROL**

**CRITICAL REVIEW LIST**

In order to comply with 35 Illinois Administrative Code Section 306.401, Illinois Pollution Control Board Regulations, the Illinois Environmental Protection Agency has prepared the following list of facilities which are on Critical Review. Critical Review as defined as the Agency determination that a sewer or lift station is approaching hydraulic capacity or that a sewage treatment plant is approaching design capacity such that additional sewer connection permit applications will require close scrutiny to determine whether issuance would result in a violation of the Act or Regulations. Please note that these lists are continually being revised to reflect the current situation. Therefore, if you have any questions on the capability of a treatment facility or transport system, please contact the Agency for a final determination. This listing reflects the status as of December 31, 2007.

Facility names followed by a double asterisk (\*\*) are additions to the list.

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FACILITY NAME	RESPONSIBLE AUTHORITY	COUNTY	REMAINING CAPACITY	PE ADDED SINCE LAST LIST
Algonquin	Village of Algonquin	Kane	569	1,274
Aqua Illinois, Inc.	Aqua Illinois, Inc.	Will	711	453
University Park				
Antioch STP	Village of Antioch	Lake	373	48
Beardstown SD	City of Beardstown	Cass	1,568	0
Benton-Southeast STP	City of Benton	Franklin	60	0
Bethalto (L.S. #1)	Village of Bethalto	Madison	87	0
Carrier Mills	Village of Carrier Mills	Saline	836	0
Carrollton	City of Carrollton	Greene	140	0
Citizens Utilities Co. of Ill.- River Grange	Citizens Utilities Co. of Ill.	Will	10	0
Charleston	City of Charleston	Coles	5,052	0
Downers Grove S.D.	Downers Grove S.D.	DuPage	172	130
East Dundee STP	Village of E. Dundee	Kane	508	17
Elkville	Village of Elkville	Jackson	6	0
Ferson Creek Utilities Co.	Utilities, Inc.	Will	70	0
Harvard WWTP	City of Harvard	McHenry	0	30
LCPWD-Diamond- Sylvan STP	County of Lake Public Works Department	Lake	0	0
Lockport	City of Lockport	Will County	0	1,612
Moline (North Slope)	City of Moline	Rock Island	1,151	0
Morris STP	City of Morris	Grundy	0	0
New Lenox STP 1***	Village of New Lenox	Will	0	494
Paris STP	City of Paris	Edgar	0	0
Rock Island (Main)	City of Rock Island	Rock Island	2,824	0
Streator	City of Streator	LaSalle/ Livingston	449	146
Wauconda – Remaining Collection System & Lakeview Villa LS	Village of Wauconda	Lake	***	0
Wauconda WWTP	Village of Wauconda	Lake		66

Deletions from previous quarterly report: None

Additions from previous quarterly report: None

\*\*\*Contact IEPA – Permit Section

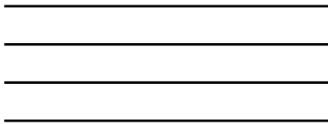
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The Illinois Pollution Control Board is an independent five-member board that adopts environmental control standards, rules on enforcement actions, and other environmental disputes for the State of Illinois.

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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