
Environmental Register

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

Thomas Holbrook, Chairman

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Letter from the Chairman

During May, the Board acted in a number of its rulemaking dockets, and I've summarized some of that activity below. As always, information about these rulemakings is available through the Clerk's Office Online (COOL) at our Web site at www.ipcb.state.il.us.

On May 8, 2013, the Board held its first hearing in Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 201, 218, and 219, R13-18. The Board second hearing is scheduled on June 5, 2013, in Chicago.

On May 16, 2013, the Board in Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304, R-8-9(C), adopted an order granting in part and denying in part a motion for clarification filed on April 5, 2013, by the Illinois Environmental Regulatory Group. The Board will accept comments on its first-notice proposal until July 1, 2013.

On May 16, 2013, the Board adopted amended rules in R11-9, Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742. The amendments include addition of a new exposure route, indoor inhalation, and also reflect addition of 13 chemicals to the TACO tables, updates to physical and chemical parameters, and revisions to toxicity values.

Also on May 16, 2013, the Board adopted a proposal for public comment in National Ambient Air Quality Standards, USEPA Regulations (July 1, 2012 through December 31, 2012), R13-11. Under Section 10(H) of the Environmental Protection Act, enacted by Public Act 97-945, effective August 10, 2012, the Board is required to adopt ambient air quality standards identical-in-substance to those adopted by the United States Environmental Protection Agency under Section 109 of the Clean Air Act.

Also on May 16, 2013, the Board adopted amended rules in Technical Corrections to Triennial Review of Water Quality Standards Amendments for Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 302.208(b) and (e), R11-18(B). The amendments make technical corrections to recently-adopted amendments to 35 Ill. Adm. Code 302.208. The corrections occur in reporting requirements for fluoride and manganese water quality standards, and the Board believed that failure to propose correction could result in unintended difficulty in monitoring, reporting, and demonstrating compliance.

On May 20, 2013, the Board held a hearing on the issue of groundwater monitoring in R12-9(B), Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100.

Please visit our website (www.ipcb.state.il.us) for more information on the rulemakings described above, as well as information on our docket of contested cases.



Sincerely,

A handwritten signature in cursive script that reads "Thomas Holbrook". The signature is written in dark ink and is positioned above the printed name.

Thomas Holbrook
Chairman

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Rulemaking Update

The Board Clarifies Its First-Notice Opinion and Order in Subdocket C of the CAWS/LDPR Rulemaking

The Board, on May 16, 2013, issued an order clarifying its intent with regard to water quality standards for aquatic life uses in the Upper Dresden Island Pool (UDIP), as well as the relationship between proposed aquatic life uses and adopted Recreational Use designations. The May 16, 2013 order was issued in docket R08-9(C), Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304. The order granted in part and denied in part a motion seeking clarification of the Board's first-notice opinion and order of February 21, 2013. The first-notice opinion and order had proposed designation of aquatic life use for the Chicago Area Waterways System (CAWS) and Lower Des Plaines River (LDPR). On April 5, 2013, the Illinois Environmental Regulatory Group (IERG) filed the motion for clarification. On April 19, 2013, the Illinois Environmental Protection Agency (IEPA) filed a response to IERG's motion. Also on April 19, 2013, the Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council, and Openlands (collectively, Environmental Groups) filed a response in opposition to the motion for clarification.

The Board's May 16, 2013 order clarified the Board's first-notice opinion and order in two areas. First, the Board does not intend that the General Use water quality standard will apply to the UDIP until the conclusion of subdocket D of R08-9. In R08-9(D), the Board will determine appropriate water quality standards for the UDIP. The Board invited participants to propose any rule language clarifications believed necessary. For example, should the Board delay the effective date of the proposed rule, which designates the aquatic life use for the UDIP or simply wait to adopt the UDIP aquatic life use designation until subdocket D is also adopted?

Second, by designating the UDIP as General Use and retaining the General Use designation for the Chicago River, the Board did not intend to alter the Recreational Use designations and standards decided in subdockets A and B of R08-9. The Board again invited participants to propose any rule language clarifications believed necessary.

As to the other issues raised by IERG and IEPA, the Board agreed with the Environmental Groups that clarifications can be suggested as a part of the first-notice comment process.

Board orders and other documents in the R08-9(C) rulemaking record may be obtained through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us. For more information, contact Marie Tipsord at 312-814-4925 or marie.tipsord@illinois.gov.

Board Adopts Final Amendments Adding Indoor Inhalation Pathway to TACO

The Board, on May 16, 2013, adopted amendments to the Tiered Approach to Corrective Action Objectives (TACO) rules (35 Ill. Adm. Code 742) in docket R11-9, Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742. The amendments include the addition of a new exposure route under TACO: the indoor inhalation exposure route. To protect building occupants, this exposure route addresses the potential for vapors to migrate into buildings from subsurface volatile chemical contamination, a process commonly known as "vapor intrusion."

Among this rulemaking's more substantial modifications is the addition of the indoor inhalation exposure route and corresponding Tier 1 soil gas and groundwater remediation objectives (ROs). The final amendments also reflect the addition of 13 chemicals to the TACO tables, update physical and chemical parameters, and revise toxicity values.

In addition, to ease the transition of adding a new exposure route to TACO, the amendments have a 60-day delayed effective date and therefore take effect on July 15, 2013.

As proposed at second notice, three significant changes to the first-notice rule language were adopted as final amendments. First, the Tier 1 and Tier 2 ROs for the indoor inhalation exposure route apply *only* when the existing or potential building at issue has a full concrete slab-on-grade or a full concrete basement floor and walls. Second, an institutional control must be placed on the property whenever the indoor inhalation ROs applied at the site rely upon the assumed presence of a building with a full concrete slab-on-grade or a full concrete basement floor and walls (e.g., Tier 1 and Tier 2 ROs). Third, in the event of building control technology (BCT) inoperability at a school, the final amendments require the “school administrator” (rather than the “site owner/operator”) to provide notification, and when doing so, to notify not only IEPA, but also the school board and every parent or legal guardian for all enrolled students. The notification of BCT inoperability is triggered by the BCT being rendered inoperable for a period of five consecutive calendar days during the school year when school is in session. “School administrator” is defined as “the school’s principal, or similar administrator responsible for the school’s operations, or his or her designee.”

Board orders and other documents in the R11-9 rulemaking record may be obtained through the Clerk’s Office On-Line (COOL) on the Board’s website at www.ipcb.state.il.us. For more information, contact Richard McGill at 312-814-6983 or richard.mcgill@illinois.gov.

Board Adopts Technical Corrections to Recently-Amended Fluoride and Manganese Water Quality Standards

The Board, on May 16, 2013, issued a final order in docket R11-18(B), adopting minor technical corrections to recently-adopted amendments of 35 Ill. Adm. Code 302.208, published in the *Illinois Register* at 36 Ill. Reg. 18863 (Dec. 28, 2012). See Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 301.106, 302.Subparts B, C, E, F and 303.312, R11-18 (Nov. 15, 2012). The Board had previously opened the R11-18(B) technical corrections subdocket, captioned Technical Corrections to Triennial Review of Water Quality Standards Amendments for Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 302.208(b) and (e), R11-18(B) (Feb. 7, 2013).

The minor changes to Section 302.208 adopted in R11-18(B) were needed to correct scrivener’s errors that occurred during the R11-18 rulemaking process. The errors occurred in the reporting requirements for the fluoride and manganese water quality standards. The Board found that failure to correct the standards could have resulted in unintended problems for dischargers in monitoring, reporting, and demonstrating compliance. Additional changes to correct scrivener’s errors were made to the formulas for the acute and chronic standards for lead (dissolved).

Board orders and other documents in the R11-18(B) rulemaking record may be obtained through the Clerk’s Office On-Line (COOL) on the Board’s website at www.ipcb.state.il.us. For more information, contact Chad Kruse at 217-524-8507 or chad.kruse@illinois.gov.

Board Issues First NAAQS Proposal under New “Identical-in-Substance” Mandate

On May 16, 2013, the Board issued a proposal for public comment in docket R13-11, National Ambient Air Quality Standards, USEPA Regulations (July 1, 2012 through December 31, 2012). The Board proposes updating the ambient air quality standards in the Board’s air pollution regulations (35 Ill. Adm. Code 243). The update would conform the regulations to the National Ambient Air Quality Standards (NAAQS), which were adopted by the United States Environmental Protection Agency (USEPA) pursuant to section 109 of the Clean Air Act (CAA) (42 U.S.C. § 7409 (2011)). This is the initial proceeding under the new “identical-in-substance” mandate adopted in P.A. 97-945 (eff. Aug. 10, 2012) to ensure that Illinois’ regulations reflect USEPA’s most recent NAAQS.

The proposal would replace all existing Illinois ambient air quality standards with standards derived directly from the federal NAAQS codified in 40 C.F.R. 50. The Board intends the Illinois ambient air quality standards adopted in this proceeding to be identical-in-substance with the corresponding federal regulations, as “identical-in-substance” is defined by Section 7.2(a) of the Environmental Protection Act.

A public hearing in this rulemaking is scheduled for June 26, 2013 at 11:00 a.m. in the Sangamo Building, Room 1119N, Illinois Pollution Control Board Hearing Room, 1021 North Grand Avenue East, Springfield, Illinois.

The Board must complete action to adopt amendments within one year of the date when USEPA has revised the NAAQS. Because USEPA adopted all of the federal NAAQS more than one year before the August 10, 2013 effective date of P.A. 97-945, the Board is interpreting that this initial round of amendments must be completed before August 10, 2013.

The Board invites public comment on the proposed amendments. The Board will receive public comments until at least 45 days after a notice of these proposed amendments appears in the *Illinois Register*. Anyone may file a public comment with the Board at: Office of the Clerk, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.

Alternatively, an interested person may file electronically using the Clerk's Office On-Line (COOL) system, linked on the Board's Web page, at www.ipcb.state.il.us.

All comments relating to this rulemaking, whether filed physically or electronically, should clearly refer to docket number R13-11.

Board orders and other documents in the R13-11 rulemaking record may be obtained through COOL on the Board's website. For more information, contact Michael J. McCambridge at 312-814-6924 or michael.mccambridge@illinois.gov.

Board Actions

May 2, 2013
Chicago, Illinois

Administrative Citations

AC 13-31 County of Jackson v. Christopher Will – The Board extended the deadline for respondent to file an amended petition to June 3, 2013. 5-0

Adjudicatory Cases

PCB 10-75 Chicago Coke Co., Inc., an Illinois corporation v. IEPA; Natural Resource Defense Council and Sierra Club as Intervenors – The Board granted petitioner's motion for summary judgment. The Board denied the Illinois Environmental Protection Agency's, Natural Resources Defense Council's and the Sierra Club's motions for summary judgment. 5-0
P-A, Air

PCB 10-84 People of the State of Illinois v. Professional Swine Management, LLC, Hilltop View LLC, Wildcat Farms, LLC, High-Power Pork, LLC, Eagle Point, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, Ltd., North Fork Pork, LLC, Little Timber, LLC, and Twin Valley Pumping, Inc. – The Board denied respondents' motion to strike part of the complainant's prayer for relief. The Board granted the complainant's motion for leave to amend the first amended complaint and accepted the second amended complaint for hearing. 5-0
L-E

PCB 11-22 Scott Mayer v. Lincoln Prairie Water Company, Korte & Luitjohan Contractors, Inc., and Milano & Grunloh Engineers, LLC – The Board denied the motion for leave to file an amended complaint and struck the amended complaint. 5-0
L-E, Citizens

PCB 13-11	<u>Rock River Water Reclamation District v. IEPA</u> – The Board affirmed the Illinois Environmental Protection Agency’s August 1, 2012 denial of the Rock River Water Reclamation District’s application for a construction and operating permit to build a flow equalization or storage basin adjacent to the headworks of its wastewater treatment plant.	4-0 Burke abstained P-A, Water
PCB 13-37	<u>Texaco, Inc. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a LaSalle County facility.	5-0 UST Appeal
PCB 13-47	<u>People of the State of Illinois v. City of Carlinville</u> – In this water enforcement action concerning a Macoupin 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$3,240.00, and to cease and desist from further violations.	5-0 W-E
PCB 13-53	<u>United States Steel Corporation v. IEPA</u> – The Board granted petitioner’s motion for partial stay of the contested conditions within the revised Clean Air Act Permit Program permit.	4-0 Holbrook abstained P-A, Air

May 16, 2013
Via video conference
Springfield and Chicago, Illinois

Rulemakings

R08-9(C)	<u>In The Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304</u> – The Board denied in part and granted in part the Illinois Environmental Regulatory Group’s motion to clarify the Board’s February 21, 2013 first notice order.	5-0 Water
R11-9	<u>In the Matter of: Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742</u> – The Board adopted a final opinion and order in this rulemaking which amends the Board’s land pollution control regulations.	4-0 Burke Abstained d Land
R11-18(B)	<u>In the Matter of: Technical Corrections to Triennial Review of Water Quality Standards Amendments for Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 302.208(b) and (e)</u> – The Board adopted a final opinion and order in this rulemaking which amends the Board’s water regulations to correct scrivener’s errors.	5-0 Water
R13-11	<u>National Ambient Air Quality Standards, USEPA Regulations</u> – The Board adopted a proposal for public comment in this rulemaking to amend the Board’s air pollution control regulations. A hearing will be held in Springfield on June 26, 2013.	5-0 Air

Administrative Citations

AC 13-41 IEPA v. Robert & Tia Mixer – The Board accepted for hearing respondents’ petition for review of this administrative citation involving an Adams County facility. 5-0

Adjudicatory Cases

PCB 06-75 The City of Springfield v. IEPA – The Board granted the parties’ amended joint motion to lift the stay of uncontested Clean Air Act Permit Program permit conditions and request for remand to the Illinois Environmental Protection Agency to revise the permit’s term of duration, while maintaining the stay of the contested conditions and the Board’s jurisdiction over them. 5-0
P-A, Air

PCB 08-59 John Blickhan v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal. 5-0
P-A, Land

PCB 10-86 People of the State of Illinois v. Illinois Fuel Company – The Board accepted the first amended complaint for hearing. 5-0
W-E

PCB 12-101 Phillips 66 Company (f/k/a ConocoPhillips Company) v. IEPA
– The Board denied petitioner’s motion to reconsider its March 21, 2013 opinion and order affirming the Illinois Environmental Protections Agency’s permit decision, but remanding it for additional proceedings. 3-0
Burke and
Holbrook
abstained
P-A, Water

PCB 13-3 People of the State of Illinois v. Edward W. Fisher, Rhonda L. Fisher, and DEM/EX Group, Inc. – The Board granted complainant’s motions for summary judgment against respondents Edward Fisher, Rhonda Fisher, and DEM/EX Group. The Board found that respondents violated Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Environmental Protection Act (Act), and Section 812.101(a) of the Board regulations. 415 ILCS 5/9(a), (c), 21(a), (d)(1)-(2), (e), (p)(1), (p)(3), (p)(7)(i)-(ii), 55(a)(1), (k)(1) (2010); 35 Ill. Adm. Code 812.101(a). The Board ordered respondents to cease and desist from violating the Act and associated regulations and ordered each respondent to pay a civil penalty in the amount of \$16,000, for a total civil penalty of \$48,000. 5-0
L-E

PCB 13-28 People of the State of Illinois v. Atkinson Landfill Company – The Board granted the parties’ agreed motion for extension of time to answer or otherwise plead in response to the first amended complaint. The Board struck complainant’s April 22, 2013 re-filing of the first amended complaint on April 22, 2013 as unnecessary. The Board also reserved ruling on the pending motion for joinder of additional respondents. 5-0
W-E

PCB 13-43 People of the State of Illinois v. Blick's Construction Co., Inc. and Ron Bricker – The Board granted respondents’ motion to dismiss count II of the complaint as insufficiently pled and dismissed count II as to both respondents. 5-0
A-E

PCB 13-62 United States Steel Corporation v. IEPA – The Board accepted for hearing this permit appeal involving a Madison County facility. No action was taken on petitioner’s motion for partial stay of specified conditions in the construction permit. 4-0
Holbrook
abstained
P-A, Air

PCB 13-63 Spectrum Preferred Meats, Inc. v. IEPA – The Board accepted for hearing this permit appeal involving an Ogle County facility. No action was taken on petitioner’s motion for partial stay of specified conditions in the construction permit. 4-0
Burke abstained
P-A, Water

New Cases

May 16, 2013 Board Meeting

PCB 13-60 People of the State of Illinois v. Village of Atkinson – No action taken.

PCB 13-61 People of the State of Illinois v. City of Galva – No action taken.

PCB 13-62 United States Steel Corporation v. IEPA – The Board accepted for hearing this permit appeal involving a Madison County facility. No action was taken on petitioner’s motion for partial stay of specified conditions in the construction permit.

PCB 13-63 Spectrum Preferred Meats, Inc. v. IEPA – The Board accepted for hearing this permit appeal involving an Ogle County facility. No action was taken on petitioner’s motion for partial stay of specified conditions in the construction permit.

AC 13-42 IEPA v. James & Pam Green – The Board accepted an administrative citation against these Whiteside County respondents.

AC 13-43 IEPA v. Mike Munson – The Board accepted an administrative citation against this Crawford County respondent.

AC13-44 IEPA v. Raymond Burns – The Board accepted an administrative citation against this Marion County respondent.

AC 13-45 IEPA v. Marshall Brennan – The Board accepted an administrative citation against this LaSalle County respondent.

AS 13-3 Kramer Tree Specialists, Inc. v. IEPA – No action taken.

Calendar

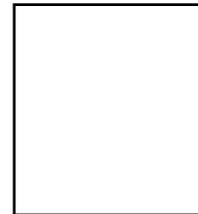
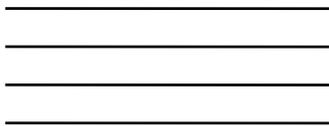
6/5/2013 1:00 PM	R13-18	<u>In the Matter of: Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 201, 218, and 219</u>	Michael A. Bilandic Building Room N-505 160 North LaSalle St. Chicago
6/6/2012 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago
6/20/2012 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago
6/26/2013 11:00 AM	R13-11	<u>In the Matter of: National Ambient Air Quality Standards, USEPA Regulations (July 1, 2012 through December 31, 2012)</u>	Illinois Pollution Control Board Conference Room 1021 North Grand Avenue East Springfield
7/1/2012 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago

7/25/2013 10:30 AM	PCB 12-124	<u>Broadus Oil Company v. IEPA</u>	Illinois Environmental Protection Agency Sangamo room 1021 North Grand Avenue East Springfield
7/25/2013 10:30 AM	PCB 12-134	<u>Brimfield Auto & Trick v. IEPA</u>	Illinois Environmental Protection Agency Sangamo room 1021 North Grand Avenue East Springfield
7/25/2012 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago
7/29/2013 10:30 AM	R08-09(D)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304</u>	James R. Thompson Center Room 9-040 100 W. Randolph Street Chicago
8/8/2012 11:00 AM	Illinois Pollution Control Board Meeting		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
8/22/2012 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center Hearing Room 11-512 100 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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