

ILLINOIS POLLUTION CONTROL BOARD
FISCAL YEAR 1989 ANNUAL REPORT



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John C. Marlin, Chairman

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I. CHAIRMAN'S OVERVIEW

A. Trends in Environmental Regulation

The Pollution Control Board was formed in 1970, when years of growing environmental concerns culminated in the first Earth Day. Almost twenty years later, people who were shocked to learn in the 1960's that the Great Lakes and oceans could be polluted are now realizing that even the global atmosphere is not immune to man's influence. Worldwide, people are expressing serious concern over atmospheric degradation, oil spills, toxic and carcinogenic chemicals, problems at nuclear handling facilities and the extinction of species. This renewed public interest will lead to a new round of legislation and regulation by all levels of government. As Earth Day 20 approaches, the political reality is that environmental concerns are once again a top priority in Illinois, the United States, and the world at large.

The renewed emphasis on the environment is straining agency resources and causing a redefinition of roles in environmental affairs. In the early seventies, a surge of federal environmental legislation ushered in an era of strong federal leadership which largely pre-empted state activities in many areas. The federal government provided both leadership and funding for many of these initiatives. Currently, Congress continues to exert leadership in certain areas, but several trends are developing which will lead to a new relationship between environmental agencies at all levels of government during the 1990's.

One noticeable trend is a growing public impatience with what is perceived as a reluctance on the part of all levels of government to respond to environmental concerns. At the federal level this is shown by the protracted congressional debate over the Clean Air Act and impatience over the amount of time required for the U.S. EPA to implement pesticide programs. States are suffering similar criticism in arenas ranging from timeliness of complying with the requirements of federal law to their efforts at recycling, noise regulation and habitat protection.

In response to public concerns, states are becoming increasingly assertive in areas where regional politics or a lack of funding have slowed federal initiatives. Likewise, local governments are proposing ordinances that address topics such as pesticide application, solid waste, air pollution, and other matters traditionally subject to state and federal leadership.

Another national trend is the reallocation of limited funds among competing programs and the diversion of funds to the high visibility concerns at the expense of other important programs in the public health and environmental areas. Noise control and non-hazardous waste landfill programs are examples of those which suffered funding losses while programs dealing with hazardous and toxic compounds grew. These shifts have occurred as agencies attempt to stretch limited resources to meet increasing demands for public services.

The entire process is heavily influenced by the ability of the media to rapidly shift public attention to topics which are conducive to concise reporting. At the moment, modern communication techniques have the ability to shift the focus of public and political attention from one new concern to another regardless of the technical merit of the competing issues. This ability far out paces the ability of government to allocate the money and expertise necessary for the desired immediate response.

A great concern as we enter the next decade is that "old" problems will be ignored. It is important to remember that Americans today live longer and are more disease-free than those who lived a few generations ago. Diseases like malaria, yellow fever and cholera, which once decimated the population, were brought under control by basic sanitation and public health practices. Modern Americans have little experience with such diseases and often do not realize the danger posed by insect and rodent populations and poor sanitation. If programs for garbage pickup, wastewater treatment, sanitation and vaccinations languish, the old diseases will eventually return. Common sense demands that our current efforts to control newly recognized threats complement rather than replace programs which have contributed so much to the health Americans enjoy today.

In short, the 90's will be a time of evolution for environmental agencies and related interest groups. Separating the actual from the perceived problems, developing and enforcing technically and economically sound laws and regulation, while keeping intact the programs that have served society well in the past will challenge us all.

B. Recent Developments at the Board

The Pollution Control Board, along with the Illinois Environmental Protection Agency and the Department of Energy and Natural Resources, is one of three state agencies designated in the Illinois Environmental Protection Act to provide a "unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment and to assure that adverse effects upon the environment are fully considered and borne by those who cause them."

The Board promulgates environmental regulations after a hearing and public comment process where other agencies, industry and the general public have full access to make their views known. The Board is able to have a broad perspective in environmental regulation, since it deals with the full spectrum of air, land, water, and noise matters. The Board makes enforcement decisions when an agency or member of the public accuses a person or industry of violating environmental regulations. The Illinois process may be more procedural than that in some other states but the system is crafted to make sure that everyone in fact can participate on an even footing.

The Board consists of seven Members who serve staggered three year terms. The seven Board Members during fiscal year 1989 were:

Chairman Dr. John C. Marlin, appointed to the Board in 1983, became Chairman in November of 1988;
Joan G. Anderson, appointed in 1980;
Jacob D. Dumelle, appointed in 1970, served as Chairman from August of 1973 until November of 1988;
Dr. Ronald G. Flemal, appointed in 1984;
Bill S. Forcade, appointed in 1983;
J. Theodore Meyer, appointed in 1983;
Michael Nardulli, appointed in 1987.

The Board employed a staff of 17 persons until FY 84 when the Board was increased from five to seven members. This added two attorneys and two secretaries to the staff and spread the workload. Since then two small sections have been added.

The General Assembly authorized the establishment of a Scientific/Technical Section (STS) in FY 85. This section consists of four persons with advanced degrees, a librarian/ researcher and a secretary. The STS provides analysis and development of the technical aspects of records, assists in rule formulation and is available to answer staff questions. The STS also contracts for special studies and the retention of expert witnesses to fill data gaps.

Three lawyers and a secretary were added in FY 88, primarily to assist in handling the increasing workload resulting from new federal and state programs including a substantial increase in "identical in substance" rulemakings. Initially, this unit was funded by a grant from the US EPA, however, funding is gradually shifting to the State's Permit and Inspection Fund.

The Board's budget remained relatively constant until 1985. The Board's operating appropriation in FY 73 was \$952 thousand. By FY 84 it had dropped to \$815 thousand, representing a drop in purchasing power of approximately two-thirds. The funding situation deteriorated to the point that hearings for enforcement and many regulatory cases were not held for several months during FY 86, FY 87 and FY 88. Increased funding allowed all hearings to go forward during FY 89 and the backlog was substantially decreased. It is anticipated that all scheduled FY 90 hearings will be able to go forward. Additionally the FY 90 appropriation is sufficient for the STS to be fully staffed for the first time in several years.

In FY 91, the Board will seek to upgrade the staff of its administrative unit and Clerk's office which have not increased in size since 1976. New personnel are needed to docket and process the increasing number of filings and orders associated with new federal programs, administrative citations and legislation such as the Groundwater Protection Act. There is also a need to enhance the Board's ability to respond to public requests for information, prepare copies of records on appeal to the Courts, meet the

requirements of the Administrative Procedures Act, as well as handle the increased paperwork required by other agencies.

The Board is in the process of upgrading its EDP equipment and obtaining word processing capability for its professional staff. It is hoped that sufficient funds will be available in FY 91 to provide most such staff members with a computer terminal.

The Board plans to develop an index to its past orders and opinions, which now fill approximately 100 loose leaf binders containing 20 years of Orders and Opinions. Persons practicing before the Board are experiencing increasing difficulty finding and citing precedential authority. The problem will become worse as the number of areas covered by Board opinions expands.

Board Members and Staff attended tours of a number of industrial sites in FY 1989. Facilities visited included a coal mine, an oil refinery, and several factories. Future tours are planned to include technical laboratories, environmentally sensitive areas, and sites with environmental problems.

C. Board Actions on Contested Cases and Regulations

Over the years the complexity of environmental issues has increased. This has brought about a corresponding increase in the length of regulations and amount of staff time required to adequately deal with proposals. For example, the first landfill regulations were contained in a few pages which basically covered such matters as blowing litter, vector control and aesthetics. The proposed (R88-7) landfill regulations are 171 pages long and cover a variety of technical topics including leachate control, gas collection and liner specifications. Additionally new federal and state laws which are interrelated have greatly increased the volume of regulations that the Board must consider when reaching decisions.

The number and types of cases have shifted over the years in response to shifting public interest and environmental priorities. Since 1970, 17 percent of the Board's contested cases involved solid waste, while 37 percent related to water and 21 percent to air. During FY 89, 62 percent involved solid waste, while 13 percent related to water and only 9 percent to air. However, in the regulatory arena 19 percent of the FY 89 proposals involved solid waste, 55 percent water and 24 percent air.

In the nineteen years, ending with fiscal year 1989 (July 1, 1988 through June 30, 1989), 508 rulemaking proposals (Appendix B) and 6,136 contested cases (Appendix C) were filed with the Board. Over 13,500 orders were issued in response to those filings (Appendix E). An indication of the increasing technical and procedural complexity of Board proceedings is that the number of Orders needed to dispose of cases has steadily increased over the years.

The IEPA filed 197 Administrative Citations (ACs) with the

Board in FY 89. Under the AC program, IEPA inspectors "ticket" landfill operators for minor observable violations. Other persons may be cited for open dumping. The AC carries a penalty of \$500 per violation and is appealable to the Board if the person believes no violation occurred or that it was due to uncontrollable circumstances. The penalty is automatic if no appeal is filed. This program gives the IEPA the ability to quickly enforce for violations, such as blowing litter, that were often considered too minor if considered singly for a regular enforcement proceeding.

An unusually large number of lengthy and complex regulations were before the Board during FY 89. These proceedings strained the resources of the Board, other agencies and the public participants well into FY 90. This situation was due to the hearings associated with the backlog of cases from prior years, the fact that several important state and federal proposals had similar deadlines, and the receipt of two important Economic Impact Studies. Hopefully, the caseload will be more evenly distributed in future years.

The Board addressed a number of significant proposals in FY 89. Some originated with the General Assembly or private interests, others with the federal government and two with the Board. Some are described more fully in the "Activities" section of this report.

Regulations for implementation of the Illinois Groundwater Protection Act are covered by two proceedings. The first (R 89-5) promulgated setback zones from wells within regulated recharge areas. The second (R 89-14) will establish groundwater quality standards, among other things. These regulations will be completed during FY 91.

Regulations governing landfilling of non-hazardous wastes were sent to first notice in March of 1990 after consideration of the Economic Impact Study and comments received from the public. These regulations will cover landfills which receive municipal and special waste as well as industrial landfills. They are expected to be finalized during 1990.

Water-toxics rules became effective Feb. 19, 1990. They specify procedures to enhance the protection of the aquatic environment and drinking water sources from the impact of toxic chemicals. These rules have been challenged in court. Additionally the IEPA filed a proposal with the Board that will control toxic releases to the air.

The Board took swift action in 1989 to slow the spread of the Asian Tiger Mosquito. This mosquito, which carries numerous diseases in its native Asia, is spread by the shipment of scrap tires. It was found in Chicago and East St. Louis in 1987. After determining that no action would be taken at the federal level, the Board proposed an emergency rule for scrap tire management on April 7, 1988 and took final action two weeks later. This was followed by adoption of a permanent rule in the Spring of 1989. The General

Assembly subsequently passed the nation's most comprehensive tire management law. It addresses the public health, solid waste and fire hazard aspects of scrap tire storage and disposal.

In response to growing concern over ozone levels the Board set its own standard for gasoline volatility. Several other states took similar action when it became known that planned federal standards would be delayed. Beginning in 1990 the Board rule requires that gasoline evaporate at a slower rate. This will reduce ozone precursors in the Chicago area alone by about 200 tons per day during the summer months.

II. OPERATIONS OF THE BOARD

A. The Structure of the Pollution Control Board

As specified in the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111½, par. 1005, the Pollution Control Board ("Board") consists of "seven technically qualified members" appointed by the Governor subject to confirmation by the Illinois Senate. The Governor alone appoints one member to serve as Chairman. Members serve staggered, three year terms. During these terms, members serve on a full-time basis and are subject to the same constraints as the judiciary as regards sources of additional income and contacts with parties concerning the substance of pending matters.

The Board and its staff is not organized in divisions on a media-by-media basis. Rather, pursuant to the Act, each Board member employs a secretary and a confidential attorney assistant whose functions include those of a law clerk performing preliminary case analysis and drafting duties as well as a hearing officer in regulatory matters. Each individual has responsibilities in various program areas for various types of regulatory proceedings and types of contested cases.

The needs of the Board as a whole are served by a fiscal services group and the administrative staff, including the Clerk of the Board, under the direction of an administrative manager, by a Scientific/Technical Section ("STS") under the direction of a chief, and by a group of attorneys under the direction of a senior attorney. A pool of contractual attorneys in private practice act as hearing officers in contested adjudicatory cases.

B. The Function of the Pollution Control Board

The Board acts in a quasi-legislative capacity when adopting regulations, and in a quasi-judicial one when deciding contested cases. Section 5 of the Act establishes the general powers and duties of the Board:

- b. The Board shall determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of this Act.
- c. The Board shall have authority to act for the State in regard to the adoption of standards for submission to the United States under any federal law respecting environmental protection. Such standards shall be adopted in accordance with Title VII of the Act and upon adoption shall be forwarded to the Environmental Protection Agency for submission to the United States pursuant to subsections (1) and (m) of Section 4 of this Act. Nothing in this paragraph shall limit the discretion of the Governor to delegate authority granted him under any federal law.

- d. The Board shall have authority to conduct hearings upon complaints charging violations of this Act or of regulations thereunder, upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of this Act; upon petition to remove a seal under Section 34 of this Act; upon other petitions for review of final determinations which are made pursuant to the Act or Board rule and which involve a subject which the Board is authorized to regulate; and such other hearings as may be provided by rule.
- e. In connection with any hearing pursuant to subsection (b) of (d) of this section the Board may subpoena and compel the attendance of witnesses and the production of evidence reasonably necessary to resolution of the matter under consideration. The Board shall issue such subpoenas upon the request of any party to a proceeding under subsection (d) of this section or upon its own motion.
- f. The Board may prescribe reasonable fees for permits required pursuant to this Act. Such fees in the aggregate may not exceed the total cost to the Agency for its inspection and permit systems. The Board may not prescribe any permit fees which are different in amount from those established by this Act.

As a general matter, the Board transacts its business at regularly scheduled meetings held every other week; all formal Board action must be conducted at meetings which are noticed in advance and open to the public. The votes of four Members are required for most final determinations to be made by the Board, and such determinations must be made in writing and supported by findings of fact and conclusions of law. Proceedings are assigned by the Chairman to individual Members for co-ordination, initial analysis, and preparation of draft recommended Opinions and Orders. Matters are typically discussed at one meeting and proposed for a vote at the following one.

The procedures by which the Board conducts itself, as well as hearings required by the Act, are codified at 35 Ill. Adm. Code Parts 100-120. Substantive regulations adopted by the Board in the areas of air, water, land, public water supply, mine-related pollution, livestock-related pollution, hazardous and non-hazardous waste, noise and atomic radiation are codified at 35 Ill. Adm. Code Parts 200-900.

C. The Illinois Environmental System - An Historical Overview

In 1970, the Illinois General Assembly adopted the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111½, par. 1001 et seq., which created, in the main, a three agency

system for the administration of Illinois' environmental programs: the Illinois Pollution Control Board ("Board"), the Illinois Environmental Protection Agency ("Agency"), and the Institute for Environmental Quality ("Institute"). (Some programs relating to human health and the environment in the broadest sense were left within the purview of pre-existing agencies. For example, the Illinois Department of Public Health continues to have responsibility for bathing beach conditions, private drinking water well testing, and similar concerns.)

In general, this original statutory scheme allocated to the Board the power and the duty to adopt environmental regulations for the State, and to adjudicate contested cases arising from the Act and Board regulations. Contested cases include those to enforce against violations, requests for variances from generally applicable requirements, and appeals from decisions by the permitting authority, the Agency. In addition to permitting authority, the Act delegated to the Agency authority to enforce compliance with the Act and regulations, to administer grants, and to represent the state in inter-state matters. The Institute was designated as the research agency intended to propose regulations to the Board and provide the technical justification at the public hearings required by the Act.

The original scheme has subsequently been considerably modified by actions of the courts and the Illinois General Assembly in both the enforcement and regulatory areas. As to the enforcement structure of the Act, Agency staff attorneys originally prosecuted violations of the Act and Board regulations. In 1976 the Illinois Supreme Court determined that Section 4(e) of the Act was "unconstitutional to the extent that it authorizes the institution and prosecution of proceedings before the Board by an officer other than the [Illinois] Attorney General." The court interpreted Article V, Section 15 of the 1970 Illinois Constitution as providing that "the Attorney General is the sole officer authorized to represent the People of [Illinois] in any litigation in which the People ... are the real party in interest. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 359 N.E.2d 149, 156-157 (1976).

Accordingly, absent specific delegation of authority to the Agency, it is within the discretion of the Attorney General whether and when to institute prosecutions of alleged violations of the Act and Board regulations in the name of the Agency or the People of the State of Illinois, and whether to appeal any adverse determination in the courts. Similarly, as the Board too is a state agency, decisions whether to represent the Board in any judicial proceedings are within the discretion of the Attorney General.

The structure for regulatory actions has also undergone changes. The greatest change made by the General Assembly was in the function of the old Institute for Environmental Quality. In the early 1970's, the Institute served as the research division of the environmental system and proponent of many of the earliest

adopted regulations. However, a 1975 amendment to the rulemaking requirements of the Act changed the focus of the Institute. That amendment required the Institute to prepare economic impact studies (EcIS) on all substantive Board regulations, both proposed and existing, and required the Board to postpone adoption of new rules until after receipt of an EcIS and presentation of the studies at public hearing. Ill. Rev. Stat. 111 1/2, par. 1027(a). The scope and content of the studies were to be determined by a separate economic and technical advisory committee (ETAC), who were appointed by the governor as representatives of various interests.

In 1978, the functions of the Institute were transferred to a newly created Illinois Institute of Natural Resources, which has since been renamed the Department of Energy and Natural Resources ("DENR"). Ill. Reg. Stat. ch. 96 1/2, par. 7401 et seq. DENR's regulatory interaction with the Board has largely been confined to preparation and presentation of economic information. Where DENR has produced research material other than an EcIS on existing or proposed rules for presentation to the Board, it has usually been done at the specific mandate of the General Assembly, e.g. Ill. Rev. Stat. ch. 111 1/2, par. 1022.9.

While the functions of the Board and the Agency in the regulatory scheme have remained basically the same, their responsibilities and procedures have undergone dramatic changes. The General Assembly has enlarged these agencies responsibilities by increasing the number and scope of both substantive and procedural rulemaking mandates without necessarily providing resources to accomplish the task. Mandates for adoption of substantive rules have included general provisions that all rules be adopted which would be necessary to receive authorization to administer various programs such as the NPDES program (Ill. Rev. Stat. 1987 ch. 111 1/2, par. 1013), as well as specific provisions, often containing deadlines for rule adoption, mandating state regulation in areas not covered by federal laws or regulations e.g. Ill. Rev. Stat. 1987 ch. 111 1/2, pars. 14.4, 1021(m).

The most far-reaching procedural mandates were adopted in the 1977 Illinois Administrative Procedure Act ("IAPA") Ill. Rev. Stat. 1987 ch. 127, pars. 1001 et seq., and the rules implementing that Act, codified at 1 Ill. Adm. Code Parts 100 et seq. and 200 et seq. As it applies to rulemaking, the purpose of the IAPA is to insure that all state agencies adopt rules which are within their statutory authority and which comply with state style requirements as to form and limitations on content. The IAPA also establishes requirements for public notice and opportunity for written and oral comment as well as requirements for consideration of economic impacts generally, and specifically as they relate to small businesses and small municipalities.

Proposed rules are therefore scrutinized under the IAPA by three entities:

1. The Administrative Code Division ("Code Unit") of the Office of the Secretary of State publishes the Illinois

Register in which proposed and adopted rules must be published. The Code Unit reviews rules for compliance with style and formatting requirements.

2. The Joint [Legislative] Committee on Administrative Rules ("JCAR") which is composed of members of both houses of the General Assembly. With staff assistance, JCAR reviews proposed rules for compliance with the Agency's enabling statute and the IAPA. It has the authority to both prevent objectionable regulations from taking effect as well as to recommend appropriate legislative action to the General Assembly.

3. The Small Business Office of the Department of Commerce and Community Affairs, which reviews proposed rules for their impacts on small businesses and reports its conclusions to JCAR.

The latest changes affecting the Board were initiated after USEPA criticisms concerning the working of the Illinois enforcement and regulatory processes (Issues Concerning The State of Illinois' Administration of Federally Mandated Environmental Programs, May 12, 1987 -- known as the "White Paper") prompted Governor James R. Thompson to commission a review of the Illinois system. The resulting study (Report to the Governor of Illinois On Procedures Of The Illinois Regulatory System, Michael Schneiderman, December 9, 1987) caused the Governor to direct immediate implementation of various administrative changes as well as to develop legislation to streamline the system.

The legislative effort involved the collective efforts of staff of the Office of the Governor, the Board, the Agency, DENR, and JCAR, as well as the regulated community and environmental groups. It culminated in the passage in Spring, 1988 of SB 1834, P.A. 85-1048, effective January 1, 1989. Among other things, SB 1834 modified the EcIS process and established revised procedures for the adoption of rules implementing various federal air, land and water programs.

Since passage into law of SB 1834, effective January 1, 1989, Title VII of the Act provides for three types of regulatory proceedings: 1) "identical in substance" rulemakings pursuant to specific authorization of the Act, including but not limited to Section 7.2, 13(c) 13.3, 17.5, 22.4(a), 22.4(d) and 22.7(d) (Ill. Rev. Stat. 1987 ch. 111 1/2 pars. 1007.2, 1013(c), 1013.3, 1017.5, 1022.4(a), (d), and 1022.7(d); 2) federally required rulemakings as defined in Section 28.2 (Ill. Rev. Stat. 1987 ch. 111 1/2 par. 1028.2), and 3) all other proceedings for rules of general or site-specific applicability which are to be conducted pursuant to Section 27 and 28 (Ill. Rev. Stat., ch. 111 1/2, pars. 1027, 1028, 1987. The only exception is for situations involving disaster or severe public health emergencies, where the regulation takes immediate effect and procedural requirements are subsequently fulfilled. (See Section 27 (c)).

The "identical in substance" and federally required categories were created to expedite processing of certain rules which implement federal programs, and to varying degrees exempt the proceeding from otherwise applicable requirements of the Act; identical in substance rules are also exempted from some requirements of the APA.

D. Activities of the Board

A general discussion of the types of causes of action which can be brought before the Board, and general deadlines established by the Act for adjudication is necessary to an understanding of the Board's general operations and state-established priorities.

1. Rulemaking

a. Section 27 - General Rulemaking

Any person may submit a petition for the adoption, amendment or repeal of a substantive regulation of general or site specific applicability. If the proposal meets the statutory requirements of Section 28 of the Act, the Board accepts the proposal and must schedule one public hearing for site specific rules, and two public hearings for rules of general applicability. The Act, as amended by SB 1834, requires the Board (rather than DENR as was previously the case) to make an initial determination as to whether an EcIS should be performed.

If the Board determines that an EcIS is to be prepared, DENR is mandated to conduct such a study in accordance with its enabling statute (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7401 et seq.) There is no statutory deadline for completion of an EcIS in such cases, leaving the EcIS timetable within DENR's discretion consistent with workload and resource allocation demands. Once the EcIS is submitted to the Board, the Board must conduct a public hearing to receive comments on the study prior to adoption of the rules. (There is a limited exception to this requirement which allows adoption of temporary rules of limited (one year) duration where necessary to meet adoption deadlines set in state statutes. Ill. Rev. Stat. 1987 ch. 111½, par. 1027(a)).

Overlain on these requirements are the procedural requirements of the IAPA. The IAPA allows for two types of rulemaking without prior notice and opportunity for comment: 1) emergency rulemaking pursuant to Section 5.02 and 2) peremptory rulemaking pursuant to Section 5.03 (e.g. rules necessary to implement a non-negotiated court order in which no discretion can be exercised as to the rule's content). Ill. Rev. Stat. 1987 ch. 127, pars. 1005.02, 1005.03. All other rulemaking is governed by the general rulemaking requirements of Section 5.01 of the IAPA. Ill. Rev. Stat. 1987 ch. 127 par. 1005.01.

In addition to content and formatting requirements, Section 5.01 IAPA requires publication of proposed rules in the Illinois Register and establishes a 45-day "first notice" period during

which an agency must accept written public comment. An agency must conduct a public hearing if so requested during this period under certain conditions.

Once the 45-day first notice period has elapsed, if the agency determines to proceed with rulemaking "second notice" of the proposed rules must be submitted to JCAR. The second notice period is also a 45-day period, during which JCAR reviews rules and may suggest changes or lodge an objection. Once second notice begins, no changes can be made except in response to JCAR.

If JCAR makes no objection, the agency may proceed to adopt rules, which must then be filed with the Secretary of State and published in the Illinois Register. If JCAR issues an objection, the agency may publish a refusal to respond to the objection in the Illinois Register and proceed to adopt and file the rule over the objection. JCAR may then itself take action to suspend the rule, and introduce a joint resolution in the General Assembly seeking what amounts to repeal of the rule. Ill. Rev. Stat. 1987 ch. 127, pars. 1007.07, 1007.07(a).

b. Identical in Substance Rulemaking

The identical in substance procedures provide the greatest exemption from general rulemaking requirements. Neither Section 5 of the APA nor the hearing and EcIS requirements of Section 27 of the Act apply to these rules. The Act, as amended by SB 1834, provides that identical in substance procedures may be employed to "adopt regulations identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the USEPA."

Opportunity must be given for public comment on proposed identical in substance rules. The Board may consolidate multiple federal rulemakings into one proceeding, and shall adopt final rules within one year of the adoption of the first federal rule so consolidated.

Identical in Substance update dockets are usually opened twice a year. Timely completion of identical in substance requires coordination of the Board, the Agency, the USEPA, and the Attorney General who must certify the adequacy of and authority for, Board regulations required for program authorization (e.g. RCRA, UIC, SDWA); UST rules also require coordination with the State Fire Marshall's Office. Informal processing agreements have been entered into between these parties for the processing of updates in RCRA, UIC, UST, SDWA and pretreatment program areas. (The Board would anticipate entry into such agreements in other program areas.)

Typically, identical in substance "proposal for public comment" are drafted by Board staff. These proposals are published in the Illinois Register with a notice that public comment will be accepted for a 45 day period. During this period, the Agency, the Attorney General and USEPA prepare and exchange draft comments

among themselves, and then file final comments within the 45 day period.

After the close of the comment period, the Board reviews the comments and adopts final rules. Filing of the rules is typically delayed for up to 30 days to allow the Agency, the Attorney General, and USEPA to transmit any additional technical or other corrections to the rules as adopted.

c. Federally-Required Rules

Section 28.2 defines "required rules" as those which are not identical in substance rules but which are needed to meet the requirements of the federal Clean Water Act (CWA), SDWA, Clean Air Act (CAA) (including requiring submission of a SIP) or RCRA. When the Agency submits a proposal which it believes to be federally required, the Agency is to so certify.

These proceedings are subject to the rulemaking requirements of the IAPA, and to the hearing requirements of the Act, but the EcIS procedures are modified. The Board is required to make an initial determination as to whether an EcIS should be performed within 60 days, as in general rulemaking. However, in distinction to Section 27 rulemaking, DENR is given a six-month deadline in which to complete EcIS. If the EcIS is not timely completed, the Board may proceed to adopt final rules meeting federal requirements without waiting for completion of the EcIS.

2. Contested Cases

The Board is authorized to hear a variety of contested case actions. While many implement federal programs, others implement state programs which have no counterparts in federal law. A brief description of all types of action will be given.

a. Enforcement Actions:

Title VIII of the Act provides for two types of enforcement actions: the "standard" enforcement action, and the administrative citation. The "standard" action may be brought by the Agency, the Attorney General, State's Attorneys, or any other person to enforce against violations of any portion of the Act or the Board's rules. The administrative citation action may be brought only by the Agency, or by local government pursuant to delegation agreement with the Agency, to enforce a limited statutory list of violations at open dumps and at sanitary landfills.

The "standard" enforcement action pursuant to Section 30 is initiated before the Board by the filing of a formal complaint. However, if the Agency is the complainant it must provide the alleged polluter with written notice of its intent to file a complaint and opportunity to meet and settle the matter prior to a complaint's filing. At least one public hearing must be held, at which the burden is on the complainant to prove that "respondent

has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of [the] Act or any rule or regulation of the Board or permit or term or condition thereof".

Section 33 establishes various "facts and circumstances bearing upon the reasonableness" of the alleged violations, and establishes other procedural requirements as well. Board Orders in these cases may include a direction to cease and desist from violations, revocation of a permit, imposition of civil penalties and/or posting of performance bonds or other security to assure timely correction of violations.

Section 42 of the Act provides that civil penalties shall not exceed \$10,000 per violation plus an additional \$1,000 per day the violation continues, with exception for the state's NPDES, UIC, RCRA and administrative citation programs. (The Board notes that in the spring 1989 session, the legislature in SB633, amended the penalty provisions of Section 42(a) of the Act, increased the daily violating penalty limits from \$1000 to \$10,000 and the violation itself from \$10,000 to \$50,000. On September 8, 1989, the Governor amendatorily vetoed an unrelated portion of SB633; thus, final legislative action will take place during the fall veto session.)

The limits for the NPDES program are \$10,000 per day of violation. The limits for the UIC program are \$10,000 per violation for Class II wells and \$2,500 for all others with an addition \$1,000 per continuing day of violation for all wells. The limits for the RCRA program are \$25,000 per day of violation. The limits for the administrative citation program are \$500 per violation plus any hearing costs.

Administrative citation proceedings are brought pursuant to Sections 31.1 and 21(p) or 21(q) of the Act. The citation served by the Agency or local government on respondent must contain a copy of an inspection report which must contain details including date, time, and weather conditions. The citation must be served within 60 days of the violation. The respondent may file a petition for appeal within 35 days.

If no appeal is filed, the Board enters an order making a finding of violation and imposing the non-discretionary \$500 per violation fee. If an appeal is filed, a hearing must be held at which the burden of proof is on the complainant. If the Board finds that the violation occurred it is required to make such finding and impose the statutory penalty unless it finds that the person appealing has proved that the violation was the result of "uncontrollable circumstances". Where "uncontrollable circumstances" are proven, the Board shall not make a finding of violation or impose a statutory penalty.

b. Regulatory Relief Mechanisms:

Title VII of the Act establishes two main types of regulatory relief mechanisms: variances and adjusted standards. Short-term

variances for a total of 90 days during any calendar year (called provisional variances) and longer term variances for a period of up to five years are available pursuant to Sections 35-38 of the Act. The variance mechanism contemplates compliance with applicable regulatory standards at the end of the variance period, and is available upon a showing by the petitioner that denial of variance would impose an "arbitrary or unreasonable hardship" and that the requested relief is consistent with federal law.

Hearings must be held on petitions for longer term variance if the petitioner requests hearing, or if any person objects to grant of variance within 21 days of the filing of a petition, no hearings are held on petitions for provisional variance.

Provisional variances must be acted on favorably by the Board within two days of receipt of an Agency recommendation that they be granted. Most longer term variances cases must be decided by the Board within 120 days of filing of a petition or the petitioner may "deem the request granted...for a period not to exceed one year". Ill. Rev. Stat. 1987 ch. 111½, par. 1038(a). Exception is made to this 120-day default variance provision for requests for variance from rules which implement state RCRA, UIC or NPDES programs; in these cases, Board failure to act entitles the petitioner to bring a mandamus action in the Illinois Appellate Courts.

The Board prioritizes these cases to avoid issuance of variances by default.

The adjusted standard of Section 28.1, as expanded by SB 1834, is a mechanism for the grant of a "permanent variance" from otherwise applicable general standards, in adjusted standards proceedings, an individualized standard is established for a pollution source. The outcome of an adjusted standard proceeding is essentially a "site-specific rule", but the proceeding is an adjudicatory one which is explicitly exempted from the rulemaking requirements of the Act and the IAPA. If the Board has not itself established a specific level of justification (proof) which the petitioner must meet to qualify for an adjusted standard, Section 28.1 requires the petitioner to demonstrate that:

1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
2. the existence of those factors justifies an adjusted standard;
3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4. the adjusted standard is consistent with any applicable federal law.

There are no statutory decision deadlines in adjusted standards cases.

c. Review of Decisions By the Agency and Local Government

Pursuant to Title X of the Act, the Board acts as a reviewing body for two types of decisions: decisions made by the Agency concerning permits, and decisions by local governments concerning the siting of regional pollution control facilities within their borders. Each of these types of cases have statutory decision deadlines with default provisions, so that their adjudication is prioritized.

Section 40(a) of the Act authorizes an applicant to appeal the Agency's denial of a permit, as well as the conditions of any permit issued. In addition, Section 40(b) provides for the appeal of RCRA permits granted by the Agency for a hazardous waste disposal site by third parties so located as to be affected by the permitted facility.

Hearings must be held in all permit appeal cases. In permit appeals, the sole question before the Board is whether the applicant proves that the application as submitted to the Agency prior to its permitting decision demonstrated that no violation of the Act would have occurred if the requested permit had been issued. Illinois Environmental Protection Agency v. Pollution Control Board, 118 Ill. App. 3d 772, 445 N.E. 2d 189 (3rd Dist. 1984), aff'd. 115 Ill. 2d, 503 N.E. 2d 343 (1986). The Board decision deadlines for permit appeals are the same as for variances: the Board must make a decision within 120 days of the filing of a petition. If the permit is a RCRA, UIC or NPDES permit, Board failure to timely act entitles the petitioner to bring a mandamus action in the Illinois courts. For all other permits, failure to timely act allows the petitioner to "deem the permit issued under the Act"; Section 39(a) provides no detail concerning the nature or duration of "deemed issued" permits.

Board review of local government decisions is somewhat different. Beginning in 1981, a bill commonly known as SB172, codified in Section 39.2 of the Act gave municipalities and counties authority to grant site location suitability approval for regional pollution control facilities ("RPCF") to be located within their boundaries of the RPCF proposes to receive waste generated outside those boundaries. At a public hearing, the applicant must demonstrate that the proposed site meets nine specific statutory criteria. The elected representatives of the municipality or the county must make a quasi-adjudicatory decision, based solely on the written record, as to whether the applicant has demonstrated compliance; application of local zoning or other land use requirements is specifically prohibited.

Section 40.1(a) allows an applicant to appeal the denial of SB172 or any conditions placed on a granted approval. Section 40.1(b) allows appeal of a granted approval by a third party who is located so as to be affected by the proposed facility and who participated in the municipality or county public hearing. In these appeals, the burden is on the applicant to demonstrate that the local decision was "fundamentally unfair" or against the manifest weight of the evidence. Public hearings must be held in all SB 172 appeal cases. The Board must take final action on the appeal within 120 days of the filing of the petition; if not, "petitioner may deem the site location approved".

The Board notes that adjudication of these appeals is a significant portion of its workload. Transcripts of local hearings are typically voluminous, and currently average about 7,000 pages with 3,000 pages of exhibits; these records have been as long as 20,000 pages. Moreover, recent Illinois appellate court decisions require the Board to address each of the nine statutory criteria, even when the case can be decided on the basis of fewer than all nine criteria.

d. Miscellaneous

The Act establishes various other obligations upon the Board and creates other causes of action which the Board occasionally processes. These include trade secret determinations (Section 7.1), well water setback exceptions (Section 14.2), designation of "regulated [groundwater] recharge areas" (Section 14.4), actions for recovery of costs of removal or remedial action incurred by the State as a result of a release or substantial threat of a release of a hazardous substance or pesticide (Section 22.2(f)), special waste delisting appeals (Section 22.9), and solid waste management fee exemption appeals (Section 22.16(a)). Duties imposed by other Acts include pollution control tax facility certification (Ill. Rev. Stat. 1987 ch. 120 pars. 502a-1 et seq.) and as now amended, appeals of Lake Michigan Discharge permits issued by the Illinois Department of Transportation ("IDOT") and the Agency, (P.A. 86-0245, effective August 15, 1989, amending Ill. Rev. Stat. ch. 19, par. 65 and ch. 111½, par. 1039).

III. JUDICIAL REVIEW OF BOARD DECISIONS

A. Introduction

Pursuant to Title XI, Section 41 of the Act, both the quasi-legislative and the quasi-judicial functions of the Board are subject to review in the appellate courts of Illinois. Any person seeking review must be qualified and must file a petition for review within 35 days of the Board's final order or action. A qualified petitioner is any person denied a permit or variance, any person denied a hearing after filing a complaint, any party to a Board hearing, or any person who is adversely affected by a final Board order.

The administrative review of the Board's final order or action is limited in scope by the language and intent of Section 41(b). Judicial review is intended to ensure fairness for the parties before the Board but does not allow the courts to substitute their own judgment in place of that of the Board. The standard for review of the Board's quasi-adjudicatory decisions is whether the Board's decision is against the manifest weight of the evidence. The standard for review of the Board's quasi-legislative actions is whether the Board's decision is arbitrary or capricious. Board decisions in rulemaking proceedings and in imposing conditions in variances are quasi-legislative. All other Board decisions are quasi-adjudicatory in nature.

The appellate courts reviewed eight Board decisions in fiscal year 1989. Two were permit cases, five were site location suitability cases, and one was a regulatory proceeding. The cases are discussed below. They are organized by section of the Act to facilitate the reader's comprehension and understanding of the effect and the applicability of the judicial decision on activities governed by that section.

1. Permit Appeals

The Board is authorized to require a permit for the construction, installation, and operation of facilities and equipment. Under Section 39 of the Act, it is the duty of the Agency to issue those permits to applicants. Permits are issued only those applicants who prove that the permitted activity will not cause a violation of the Act or regulations under the Act. The Agency has the statutory authority to impose conditions on a permit being issued to further ensure compliance with the Act. An applicant who has been denied a permit or who has been granted a permit subject to conditions can contest the Agency decision at a Board hearing pursuant to Section 40. The applicant must prove that the permitted activity will cause no future violation of the Act before the Board can alter the Agency's decision. The final decision of the Board is reviewable by the appellate court.

In Browning Ferris Industries of Illinois, Inc. v. Pollution Control Board, 179 Ill.App.3d 598; 534 N.E.2d 616 (Ill.App.2 Dist. 1989), the Agency approved a closure/post closure plan for a

landfill after making several modifications to the plan. Using the permit appeal procedures of Section 40, Browning Ferris Industries (BFI) sought Board review of the Agency modifications. The Board affirmed the Agency's conditions because BFI did not prove that the modifications were unnecessary because no future violations of the Act would occur. BFI appealed the Board's determination pursuant to Section 41.

The Second District Appellate Court affirmed the Board decision that the burden of proof was not carried by the petitioner. BFI's technical evidence was over eight years old and did not provide the necessary assurance of no future violations. The Court stated that higher levels of assurance are required today to carry a burden of proof because of recently developed knowledge about the entry of hazardous waste into the human environment and its effect on health.

BFI had also objected to a condition which gave the Agency a unilateral right to amend a closure/post closure plan after that plan had been approved. The Board had approved this condition after finding that the Agency's unilateral right was subject to many due process safeguards provided in 35 Ill. Adm. Code 725.218(f) (1985). The court affirmed the Board's decision.

In the second permit case, Village of Carpentersville v. Pollution Control Board, 176 Ill. App. 3d 668, 531 N.E.2d 400 (Ill. App. 2 Dist. 1988), the Agency imposed a condition on a construction permit which required Cargill, Inc. to build a 100 foot incinerator discharge stack. Cargill objected to the condition on the basis that the Village's zoning ordinance prevented Cargill from building to that height. Without reaching the merits of the stack height issue, the Board determined that the Agency's permit condition preempted the Village's ordinance. The Village, as an adversely affected party, appealed the Board's decision to the appellate courts under Section 41.

The Second District Appellate Court reversed the decision of the Board and remanded. The court found the Board decision to be contrary to the plain and unambiguous language of Section 39(c). Section 39(c) states that an applicant must meet all zoning requirements of the zoning jurisdiction. The court stated that County of Kendall v. Avery Gravel Co., 101 Ill. 2d 428, 463 N.E.2d 723 (1984), the case relied on by the Board, did not apply here because unlike Carpentersville, Kendall concerned retroactive application of legislation.

2. Site Location Suitability Appeals

The Act provides, in Sections 39(c) and 39.2, for local government participation in the siting of new regional pollution control facilities. Section 39(c) requires an applicant requesting a permit, for the development or construction of a new facility, to provide proof that the local government has approved the location of the proposed facility. Section 39.2 lists specific criteria that the local governments must use to reach their

decision. All of the criteria must be met before approval may be granted. The decision of the local government may be appealed to the Board under Section 40.1 of the Act. The Board's final decision is then reviewable by the courts.

In Waste Management of Illinois, Inc. v. Pollution Control Board, 175 Ill.App.3d 1023; 530 N.E.2d 682 (Ill.App. 2 Dist. 1988), the local government of Lake County denied approval of an application for site location suitability approval because the applicant, Waste Management (WMI), failed to satisfy the criteria of Section 39.2(a). WMI filed for Board review of the siting decision pursuant to Section 40.1 of the Act.

The Board reviewed the record pertaining to criterion (i) of Section 39.2 and found that the county's decision was not against the manifest weight of the evidence. Since all the criteria listed for nonhazardous waste facilities in subsection (a) must be fulfilled before approval can be granted, the Board affirmed the local government's decision to deny approval. The Board did not review the record regarding any other criteria even though WMI objected to the local government's determinations on criteria ii, iii, and vi.

On appeal, the Second District Appellate Court affirmed the Board decision that criteria (i). In reviewing the record concerning criteria (i), the court stated that the waste needs of an area are properly determined by consideration of several factors, including facilities outside of the area but providing service to the area, proposed facilities in or out of the area, and the life expectancy of existing facilities. The Board was correct in using all of these factors in its determination.

On appeal, WMI also argued that when the Board failed to review all the contested criteria WMI received an unfair Board hearing. In response, the court stated that the Board had a statutory duty to review all of the challenged criteria because a thorough review and the resulting opinion would be in the best interests of judicial economy and efficiency. The court found no prejudice to WMI from this error and refused WMI's request for remand on this issue.

WMI also claimed that the local government's procedures for the application process were in violation of Section 39.2. The court found this argument to be against the intent and provisions of the Act. Although Section 39.2(g) does state that the procedures in the Act are to be the exclusive siting procedures, section 40.1(a) directs the Board to consider the "fundamental fairness of the procedures used by" the local government. When read consistently, the court stated, a local government can establish rules and procedures for siting hearings so long as they are consistent with the Act and fundamentally fair. WMI failed to show prejudice resulting from the local hearing and the court affirmed the Board.

In the next case, Citizens Against the Randolph Landfill v. Pollution Control Board, 178 Ill.App.3d 686; 533 N.E.2d 401 (Ill.App.4 Dist. 1988), the Board vacated the decision of the McLean County Board which denied approval of an application for site location suitability approval. The Board found that, pursuant to Section 39.2(e), when the local government failed to take final action within 180 days of the filing of the application, the application was approved by operation of law.

After the Board's final decision, the local government filed a motion with the Board for reconsideration. Also, a non-profit corporation, Citizens Against the Randolph Landfill (CARL), filed for leave to intervene in the motion for reconsideration proceeding. The Board denied both motions and both parties filed for review in the appellate court.

The Fourth District Appellate Court found that the local government's decision was valid under Section 39.2(e). The court stated that the deadline for local government decision was waived by the applicant. The applicant had participated in the local government's public hearings which were held after the deadline date. This participation constituted a waiver of the applicant's Section 39.2(e) rights. The Board's decision was reversed and remanded with directions to consider the merits of the case.

The court addressed the challenge that the local government's petition for a Section 41 review was not timely filed. A petition for Section 41 review must be filed within 35 days of the Board's final order. The applicant contends that the 35 day time limit extends from the final order on the review and not from the final order on the motion for reconsideration. The court found that the applicable administrative and court rules allow the time for filing an appeal to run anew after the disposition of a motion for reconsideration. See Supreme Court Rules, 335 (h)(2); Ill.Rev.Stat.1985, ch. 110, par. 3-101; 35 Ill.Adm.Code 103.240(1985). The applicant's motion to dismiss the local government's petition for judicial review was denied.

The appellate court affirmed the Board's denial of CARL's leave to intervene. The court found that the Board did not have specific authority to allow intervention in this situation and that this did not constitute a denial of due process.

In John Ash Sr. v. Illinois Pollution Control Board and Iroquois County Board, unpublished, No. 3-88-0376, March 14, 1989, the Board affirmed the Iroquois County Board's denial of a site location suitability application for failure to fulfill the criteria of Section 39.2(a). The local government's decision was the result of a remand order from the Board. The original decision had also denied approval. The applicant, John Ash, Sr. (Ash), appealed to the courts claiming that the application was approved by operation of law pursuant to Section 39.2(e) because the second and ultimate disposition of the case was not taken in 180 days. Ash also claimed that he had not received a fundamentally fair hearing from the local government.

The Third District Appellate Court stated that the 180 day rule does not refer to the ultimate disposition of a case after the processes of review and remand. Final action, as used in 39.2(e), defines an action "sufficiently final to justify an appeal." The original decision was reached within the 180 day time limit. The court affirmed the Board decision that section 39.2(e) did not apply to this case.

The court agreed with the Board's determination that the local government hearing had been conducted in a fundamentally fair manner. The court stated that a fundamentally fair hearing does not require a different resolution when the same evidence is involved, as long as the evidence is reconsidered. The record showed that the local government had reconsidered the application and all the available evidence at three meetings. The court determined that the Board decision was not against the manifest weight of the evidence.

The court also reviewed the Board's decision that Ash had not met the first criteria in section 39.2(a). Ash argued that to meet the first criteria an applicant needed only to show that a landfill be "reasonably convenient" to the service area. The court stated that this criteria required a showing that a landfill was necessary and essential to the service area. After considering the evidence in the record, the court affirmed the Board's decision because it was not against the manifest weight of the evidence.

The next site location suitability approval case challenged the constitutionality of Section 39.2. In Stark v. Pollution Control Board, 177 Ill.App.3d 293; 532 N.E.2d 309 (Ill.App. 1 Dist. 1988), the applicant's petition was dismissed because the Board lacked jurisdiction under Section 39.2(h). This section creates procedural distinctions on the basis of population. Under Section 39.2(h), all new or existing regional pollution control facilities located within unincorporated Cook County ("an unincorporated area of any county having a population of over 3,000,000") or within the City of Chicago (the corporate limits of cities . . . with a population of over 1,000,000") do not have to abide by the provisions of Section 39.2 and are not within the Board's reviewing authority. Stark appealed the final order of the Board to the appellate courts, claiming Section 39.2 was unconstitutional special legislation and was an unconstitutional denial of equal protection under the law.

The First District Appellate Court first found Stark to be without standing to raise the constitutional question. The court went on to address the constitutional issue because the issue was likely to recur in other actions. The court found that the enactment of 39.2 was a product of the legislatures combined knowledge of constitutional case law, the administrative structure of Cook County and the City of Chicago, and the environmental problems of Illinois. Without a clear showing of prejudice or unconstitutionality, the court would not interfere with the

legislature's environmental program. The Board's dismissal order was affirmed.

In A.R.F. Landfill, Inc. v. Pollution Control Board, 174 Ill.App.3d 82; 528 N.E.2d 390 (Ill.App. 2 Dist. 1988), A.R.F. Landfill (ARF) had applied for site location suitability approval for a new regional pollution control facility. The Lake County Board denied approval for failure to meet all Section 39.2(a) criteria and the Board affirmed that decision. ARF appealed to the Second District Appellate Court, arguing that the county board members were biased and prejudiced, resulting in a fundamentally unfair hearing.

The court affirmed the Board because ARF failed to object in the original hearings before the county Board. The court stated that to prevent the improper withholding of claims of bias for use only in the event of an unfavorable ruling, a party is required to raise issues of bias or prejudice in the original hearings where the issue can be immediately addressed. Failure to do so results in a waiver of the right to appeal that issue.

3. Appeals from Regulatory Decisions

When the Board promulgates a regulation, judicial review of that Board action is authorized under Sections 29 and 41 of the Act. Section 29 entitles any person who is adversely affected or threatened by a regulation to petition for review. The review is held in the appellate courts pursuant to Section 41. Section 29 states that the purpose of the judicial review is for the court to determine the validity or applicability of the regulation.

Illinois State Chamber of Commerce v. Pollution Control Board, 177 Ill.App.3d 923; 532 N.E.2d 987 (Ill.App. 2 Dist. 1988), concerned the Board's adopted exemption levels and a compliance deadline for emissions of volatile organic materials from flexographic and rotogravure printing facilities. The appellants, under Section 41, sought administrative review of the regulation and requested that the Board order be vacated for being arbitrary, capricious, and unreasonable. The appellants also maintained that the order should be remanded for proper consideration by the Board using the statutory factors listed in Section 27 of the Act.

Section 27(a) articulates a number of general factors for the Board to consider when promulgating a regulation including the technical feasibility and the economic reasonableness of the proposed measure.

The Second District Appellate Court affirmed the ruling of the Board. The court stated that Section 27 was intended to establish the boundaries of the Board's delegated authority by listing specific factors for consideration in Board rulemaking. The legislature did not indicate to what depth the Board's inquiry must extend. As the record clearly showed that both technological and economic factors were considered to some extent in the decision

making process, the Board acted properly and the decision was not arbitrary or capricious.

IV. APPENDICES

Board activities for fiscal year 1989 and for the previous nineteen years has been collected in charts for convenient referencing and comparison. These charts are included in the Appendices to the Annual Report. The first four appendices supply information covering the nineteen years of the Board's existence. Appendix A provides a breakdown of Board expenditures from fiscal year 1980 to fiscal year 1989. Appendix B displays the number of rulemakings filed in each of the past nineteen years broken down by media. Appendix C lists the number of contested cases filed in each of the past nineteen years broken down by type of case. Appendix D displays the number of enforcement cases filed in each of the past nineteen years, either by a citizen or the Attorney General, and broken down by media.

The remaining appendices contain information regarding only fiscal year 1989. Appendix E provides the number and types of opinions and orders produced by the Board in fiscal year 1989. Appendix F lists the proposals for rulemakings submitted to the Board during fiscal year 1989. Appendix G lists those rulemakings which the Board took final action on in fiscal year 1989. Both of these appendices provide the docket number and title of the rulemaking, the relevant dates, and the pertinent Illinois Register Citation. Appendix H details the types and amount of final actions taken at each Board meeting during fiscal year 1989. And, finally, Appendix I is a summary of the cases involving the Board decided by the courts this year.

Also available from the Board is a list of all final actions taken during fiscal year 1989. The list is divided into Board meeting dates and contains a short informative paragraph for each final action. Interested persons should write the Board to request this list.

APPENDIX A
 Illinois Pollution Control Board
 Expenditures by Fiscal Year (000 omitted) *

	FY80	FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89
<u>APPROPRIATED:</u>	707.2	698.9	666.2	691.1	815.0	1,098.5	1,221.6	1,267.5	1,210.8	1,559.4
<u>EXPENDITURES:</u>	612.8	659.6	663.0	676.5	787.9	976.7	1,212.3	1,256.9	1,194.5	1,417.5
Personal Services	292.7	317.2	308.4	331.9	387.6	467.1	663.0	684.9	666.3	731.0
Retirement	23.4	23.8	13.8	15.3	22.2	27.3	37.3	38.8	32.3	32.2
Social Security	17.8	20.3	20.4	22.2	26.7	33.2	47.3	48.7	47.6	50.2
Contractual Services	120.5	119.4	147.6	161.1	205.0	208.3	101.1	119.5	110.8	108.3
Travel	18.2	19.9	16.2	17.4	19.8	30.1	29.3	29.8	27.3	33.1
Commodities	3.7	4.0	4.0	5.0	8.2	6.9	7.5	8.2	9.3	10.0
Printing	34.0	40.4	41.8	43.8	32.4	45.8	45.0	49.9	62.6	47.4
Equipment	1.2	0.7	0.1	1.0	2.3	10.8	8.3	4.0	3.5	3.0
Telecommunications	9.6	11.8	12.9	13.6	17.7	21.8	33.8	33.0	33.8	36.4
Hearing Officers	39.4	43.7	44.1	23.5	27.7	26.9	38.2	39.5	28.6	36.4
Court Reporting	52.3	58.4	53.7	41.6	38.3	33.7	87.9	91.0	75.8	72.4
Expert Testimony						25.8	41.7	37.0	9.6	9.6
Special Studies										
Electronic Data Processing						30.0	71.9	72.6	57.0	58.4
Environmental Trust Fund Grant									30.0	70.2
U.S. Environmental Protection Fund										118.9

* Board Member salaries and pension contributions appear in the State Officers budget and are not reflected above.

1. FY 71 through 79 figures are available in previous Annual Reports.
2. Number of Board Members increased from 5 to 7 with corresponding increase in staff.
3. The Scientific and Technical Section was added.

APPENDIX B
Illinois Pollution Control Board
Rulemakings Filed by Fiscal Year

Type of Filing	FY71- FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	Total
Water	72	9	5	9	5	6	3	10	4	123
Air	78	9	22	20	27	24	39	11	8	238
Land	7	4	5	10	5	9	5	10	4	59
Public Water Supply	3	1	0	1	1	0	1	2	1	10
Noise	14	0	2	9	1	0	0	0	0	26
Other (Procedural Rules, etc.)	41	2	2	4	1	0	1	1	0	52
TOTAL	215	25	36	53	40	39	49	34	17	508

APPENDIX C
 Illinois Pollution Control Board
Contested Cases Filed by Fiscal Year

Type of Filing	FY71- FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	Total
<u>Variations</u>										
Water	1167	61	48	52	41	51	38	41	29	1528
Air	1005	23	23	38	27	15	11	42	23	1207
Land	88	2	1	2	0	1	8	13	37	152
Public Water Supply	138	16	3	4	8	17	27	15	14	242
Noise	20	1	2	0	0	0	0	1	2	26
Special Waste Hauling	12	4	0	0	0	0	2	3	0	21
TOTAL	2430	107	77	96	76	84	86	115	105	3176
<u>Enforcement</u>										
Water	424	14	14	16	7	8	0	3	7	493
Air	443	4	7	6	5	16	3	4	11	499
Land	363	5	2	2	9	7	2	6	2	398
Public Water Supply	97	6	2	1	1	1	0	0	1	109
Noise	55	3	0	1	0	0	0	3	6	68
Special Waste Hauling	2	1	1	0	0	0	0	0	0	4
TOTAL	1384	33	26	26	22	32	5	16	27	1571
<u>Permit Denials</u>	227	26	23	39	55	87	97	71	54	679
<u>Landfill Siting Reviews</u>	0	3	6	6	16	7	13	10	8	69
<u>Administrative Citations</u>	0	0	0	0	0	0	83	136	197	416
<u>Other</u>	77	17	17	78	3	22	4	4	3	225
GRAND TOTAL	4118	186	149	245	172	232	288	352	394	6136

APPENDIX D
 Illinois Pollution Control Board
Citizen Enforcement Cases Filed by Fiscal Year*

Filed By:	FY71- FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	Total
<u>Citizens</u>										
Water	77	3	2	2	1	0	1	1	3	90
Air	57	0	3	3	7	1	2	1	2	76
Land	24	1	1	0	0	4	2	2	1	35
Public Water Supply	6	0	0	0	1	0	1	3	1	12
Noise	16	3	0	1	4	0	0	0	5	29
Special Waste Hauling	0	1	0	0	0	1	0	0	0	2
TOTAL	180	8	6	6	13	6	6	7	12	244
<u>Attorney General</u> (People of the State of Illinois)										
Water	24	1	0	1	1	0	1	0	4	32
Air	48	0	0	1	0	0	0	1	9	59
Land	16	0	0	2	1	0	0	0	1	20
Public Water Supply	3	0	0	0	2	0	0	0	0	5
Noise	3	0	0	0	0	0	0	0	1	4
Special Waste Hauling	0	0	0	0	0	0	0	0	0	0
TOTAL	94	1	0	4	4	0	1	1	15	120
GRAND TOTAL	274	9	6	10	17	6	7	8	27	364

* List does not include cases brought by Attorney General on behalf of the Illinois Environmental Protection Agency.

APPENDIX E
 Illinois Pollution Control Board
Number of Opinions and Orders of the Board by Fiscal Year*

Type of Filing	FY71- FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	Total
<u>Cases</u>										
Opinion & Orders	3,130	159	114	147	74	127	110	105	106	4,072
Orders	4,089	275	280	340	327	403	454	568	609	7,345
Dissenting	133	12	16	15	19	33	10	24	16	278
Concurring	74	7	19	22	17	33	15	11	9	207
Supplemental Statements	50	2	1	2	4	2	4	0	3	68
TOTAL	7,476	455	430	526	441	598	593	708	743	11,970
<u>Regulations</u>										
Opinion & Orders	146	21	60	34	30	52	55	70	54	522
Orders	362	77	53	82	61	63	90	61	72	921
Dissenting	20	1	3	3	3	12	5	3	1	51
Concurring	6	1	3	0	1	4	7	4	2	28
Supplemental Statements	8	0	0	0	1	0	1	0	0	10
TOTAL	542	100	119	119	96	131	158	138	129	1,532
GRAND TOTAL	8,018	555	549	645	537	729	751	846	872	13,502

*Includes Final Decisions.

APPENDIX F
 Illinois Pollution Control Board
Rulemakings Initiated in Fiscal Year 1989

Number	Title	Date Initiated	Status*	Illinois Register Citation
R88-18	Pretreatment Update	September 22, 1988	Adopted on December 15, 1988	Vol. 13, Issue 8 (Feb. 24, 1989), P. 2463.
R88-19	Site Specific Petition of Roadmaster Corporation	July 19, 1988	First Notice	Vol. 13, Issue 30 (July 28, 1989), p. 12384.
R88-20	Petition for Site-Specific Exception to 35 I.A.C. 215.245 for Simkins Industries, Inc. (Cicero Plant)	July 21, 1988	Dismissed on October 18, 1989	
R88-21	Proposed Amendment to Title 35, Subtitle C (Toxic Control)	August 5, 1988	First Notice	Vol. 13, Issue 37 (September 15, 1989), pp. 14152, 14172, 14211, 14159, and 14164.
R88-22	Amendment to 35 I.A.C. 304.301, Exception for Ammonia Nitrogen Water Quality Standards	August 18, 1988	Adopted on May 11, 1989	Vol. 13, Issue 23 (June 9, 1989), p. 8880.
R88-23	Proposed Amendments to Part 211 and 215, Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment.	August 24, 1988	Adopted on May 28, 1989	Vol. 13, Issue 27 (July 7, 1989), pp. 19862, 10893.
R88-24	Managing Scrap Tire Accumulation for the Control of Mosquitos, Part 830	September 22, 1988	Adopted on April 27, 1989	Vol 13, Issue 21 (May 26, 1989), p. 7949.

(Continued on next page.)

*Status as of October 18, 1989.

APPENDIX F (continued)

Number	Title	Date Initiated	Status*	Illinois Register Citation
R88-25	City of Havana Site-Specific Rule Change to the Combined Sewer Overflow Regulations	September 1, 1989	First Notice	Vol. 13, Issue 33 (August 18, 1989), p. 13173.
R88-26	Safe Drinking Water Act Rules	Reserved	Reserved	
R88-27	Underground Storage Tank Rules, Part 731	February 2, 1989	Adopted on April 27, 1989	Vol. 13, Issue 25 (June 23, 1989), p. 9519
R88-28	Amendments to 35 I.A.C. 211 and 243, Air Quality Standards and Measurement Methods for PM10	October 20, 1988	Dismissed on January 19, 1989	
R88-29	RCRA Corrections, Miscellaneous, RCRA Units	Reserved	Dismissed on January 19, 1989	
R88-30	Limits to Volatility of Gasoline	December 21, 1988	First Notice	Docket A: Vol. 13, Issue 39 (September 29, 1989), p. 15249. Docket B: Vol. 13, Issue 40 (October 6, 1989), p. 15551.
R89-1	RCRA Update, USEPA Regulations	January 3, 1989	Adopted on September 13, 1989	Vol. 13, Issue 47 (November 27, 1989), pp. 18952, 18477, 18278, 18300, 18523, 18527, 18354, 18606, and 18403.
R89-2	UIC Update, USEPA Regulations (July 1, 1988 through December 31, 1988)	January 3, 1989	Proposed for Public Comment on October 5, 1989	Vol. 13, Issue 46 (November 17, 1989), pp. 17651, 17644, and 17638. Vol. 13, Issue 47 (November 27, 1989), pp. 18125, 18139, and 18110.

⊃ (Continued on next page.)

*Status as of October 18, 1989.

APPENDIX F (continued)

Number	Title	Date Initiated	Status*	Illinois Register Citation
R89-3	Pretreatment Regulations	January 3, 1989	Adopted on September 28, 1989	Vol. 13, Issue 49 (December 8, 1989), pp. 19288 and 19243.
R89-4	UST Financial Assurance Regulations	March 1, 1989	Adopted on July 27, 1989	Vol. 13, Issue 38 (September 22, 1989), p. 15010
R89-5	Proposed Amendments to Title 35, Subtitle F: Public Water Supplies, (Parts 615 and 616)	March 13, 1989	First Notice	Vol. 13, Issue 38 (September 22, 1989), pp. 14641, 14589, 14647, and 14693.
R89-6	Elizabeth Street Foundry, Inc. Petition for a Site Specific Rule Change	April 28, 1989	Dismissed on July 13, 1989	
R89-7A	Continuous Monitoring Rules and Repeal of New Source Performance Standards and Hazardous Air Pollutant Regulations, Parts 230 and 231	May 5, 1989	Second Notice	First Notice in Vol. 13, Issue 23 (June 9, 1989, p. 8782. First Notice Docket B: Vol. 13, Issue 24 (June 16, 1989), pp. 9223, 9212.
R89-8	Exemptions from the Definitions of VOM	June 21, 1989	Adopted on October 18, 1989	Vol. 13, Issue 45 (November 13, 1989), p. 17457.

*Status as of October 18, 1989.

APPENDIX G
 Illinois Pollution Control Board
Final Dispositions on Rulemakings in Fiscal Year 1989

Number	Title	Final Disposition	Illinois Register Citation
R79-14	Amendments to Chapter Two Pollution Control Board Rules	Dismissed on December 15, 1988	
R84-20	Petition of the City of Joliet for a Site Specific Rule for the East Side Joliet Waste Water Treatment Facility	Adopted on January 5, 1989	Volume 13, Issue 3 (January 20, 1989), p. 851.
R84-45	Petition of Cretex Pressure Pipe, Inc. for Site Specific Relief from 35 I.A.C. 807.305	Adopted on September 8, 1988	Volume 12, Issue 40 (September 30, 1988), p. 15566.
R85-11	Petition for Site Specific Exception to Effluent Standards for the Illinois-American Water Company East St. Louis Treatment Plant	Adopted on February 5, 1989	Volume 13, Issue 7 (February 17, 1989), p. 2060.
R86-3	Petition of the North Shore Sanitary District to Amend Regulations	Adopted on November 3, 1988	Volume 12, Issue 49 (December 2, 1988), p. 20126.
R86-11	Liquid Hazardous Waste and USEPA HSWA Prohibitions	Dismissed on September 22, 1988	
R86-17B	Proposed Amendments to 35 I.A.C. 304.120, Deoxygenating Waste Standards	Adopted on April 27, 1989	Volume 13, Issue 20 (May 19, 1989), p. 7754.
R86-21	Proposed Amendments to 35 I.A.C. 215, Volatile Organic Material Emission Standards and Limitations for Large Appliance Coating in Effingham County	Dismissed on December 15, 1988	
R86-30	Amendments to 35 I.A.C. 214, Sulfur Limitations (Petition of Shell Oil Company)	Adopted on November 3, 1988	Volume 12, Issue 51 (December 16, 1988), p. 20778.

APPENDIX G (continued)

Number	Title	Final Disposition	Illinois Register Citation
R86-31	Petition to Amend 35 I.A.C. Part 214, Sulfur Limitations (CIPS Coffeen Generating Station)	Adopted on September 22, 1988	Volume 12, Issue 44 (October 22, 1989), p. 17387.
R86-32	Proposal of the Illinois Drum Manufacturers and Reconditioners to Amend the Board's Air Pollution Regulation	Dismissed on August 4, 1988	
R86-41	Proposed Amendment to 35 I.A.C. 212.209, Village of Winnetka Generating Station	Denied on August 4, 1988	
R87-1	John Deere Harvester-Moline Petition to Amend 35 I.A.C. 215	Adopted on November 3, 1988	Volume 12, Issue 49 (December 2, 1988), p. 20133.
R87-18	Petition to Amend I.A.C. Part 216, Carbon Monoxide Emissions (Midwest Grain Products of Illinois)	Adopted on November 29, 1988	Volume 12, Issue 51 (December 16, 1988), p. 20774
R87-21	Site Specific Exception to Effluent Standards for Greater Peoria Sanitary District	Dismissed on October 6, 1988	
R87-22	Site Specific Rule Change at 35 I.A.C. Part 304, Subpart B (CIPS Newton Station)	Adopted on August 4, 1988	Volume 12, Issue 36 (September 2, 1988), p. 13966.
R87-38	Proposed Amendments to 35 I.A.C. 201, Subtitle B, Air Pollution, Chapter I, Subpart J, Monitoring and Testing	Adopted on December 15, 1988	Volume 13, Issue 7 (February 17, 1989), p. 2066.
R88-1	Miscellaneous Amendments to 35 I.A.C., Subtitle C: Water Pollution	Adopted on April 6, 1989	Illinois Register: Vol. 13, Issue 17 (April 28, 1989), pp.5984
R88-5A	Procedural Rules Revision 35 I.A.C. 101, 106 (Subpart G), and 107	Adopted on June 8, 1989	Volume 13, Issue 29 (July 21, 1989), pp. 12055

(Continued on next page.)

APPENDIX G (continued)

Number	Title	Final Disposition	Illinois Register Citation
*R88-6	Proposed Site Specific Rule Change for City of Mendota: 35 I.A.C. 306.304	Dismissed on April 6, 1989	
R88-13	Revision of Flouride Drinking Water Standard Amendments to 35 I.A.C. 604.202 and 604.203	Dismissed on October 6, 1988	
R88-15	Proposed Rule Concerning Army Maintenance Dredging of Illinois Waterway	Dismissed on January 19, 1989	
R88-16	RCRA Update, USEPA Regulations	Adopted on November 17, 1988	Volume 13, Issue 2 (January 13, 1989), pp. 362, 382, 437, 447, 452, and 458.
R88-17	UIC Update, USEPA Regulations and Corrections	Adopted on December 15, 1988	Volume 13, Issue 2 (January 13, 1989), p. 478.
R88-18	Pretreatment Update	Adopted on December 15, 1988	Volume 13, Issue 8 (February 24, 1989), p. 2463.
R88-22	Amendment to 35 I.A.c. 304.301, Exception for Ammonia Nitrogen Water Quality Violations	Adopted on May 11, 1989	Volume 13, Issue 23 (June 9, 1989), p. 8880.
R88-23	Proposed Amendments to Parts 211 and 215, Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment	Adopted on May 28, 1989	Volume 13, Issue 27 (July 7, 1989), pp. 10862, 10893.
R88-24	Managing Scrap Tire Accumulations for the Control of Mosquitoes, Part 849	Adopted on April 27, 1989	Volume 13, Issue 21 (May 26, 1989), p. 7949.
R88-27	UST Update, USEPA Regulations	Adopted on April 27, 1989	Volume 13, Issue 25 (June 23, 1989), p. 9519.
R88-29	RCRA Corrections, Miscellaneous, RCRA Units	Dismissed on January 19, 1989	

APPENDIX H
 Illinois Pollution Control Board
Number of Final Actions per Meeting during Fiscal Year 1989

Date of Board Meeting	Admin. Citation	Adjusted Standard	Enforcement	Landfill Siting Review	Permit Denial	Permit	SO ₂ Alternative	Tax Certification	Variance	Regulatory Proceed	Other*	Total Number Cases
7-13-88	1	0	2	0	1	0	1	0	1	1	1	8
8-4-88	14	0	0	1	2	0	0	0	5	3	1	26
8-10-88	0	0	0	0	0	0	0	0	1	0	0	1
8-15-88	0	0	0	0	1	0	0	0	1	0	0	2
8-18-88	3	0	1	0	1	0	0	0	3	0	0	8
9-8-88	3	0	1	0	5	0	0	0	9	3	2	23
9-22-88	4	0	0	0	3	2	0	0	2	2	2	15
10-6-88	2	0	0	0	0	0	0	0	5	2	0	9
10-20-88	2	0	2	1	2	0	0	0	8	0	0	15
11-3-88	1	0	1	0	2	0	0	0	1	3	1	9
11-17-88	2	0	2	1	3	0	0	0	6	1	1	16
11-29-88	2	0	1	0	2	0	0	0	5	1	1	12
12-2-88	0	0	0	0	0	0	0	0	1	0	0	1
12-15-88	3	0	3	1	3	0	0	0	4	8	1	23
1-5-89	16	1	2	0	3	0	0	0	4	2	2	30
1-19-89	7	0	1	0	5	1	0	0	2	3	0	19
2-2-89	2	0	1	0	6	3	0	0	3	1	1	17
2-9-89	0	0	0	0	0	0	0	0	0	1	0	1
2-23-89	16	1	1	0	1	2	0	0	9	0	0	30
3-2-89	0	0	0	0	0	0	0	0	1	0	0	1
3-9-89	6	0	1	0	8	0	0	0	7	0	0	22
3-15-89	0	0	0	0	0	0	0	0	1	0	0	1
3-23-89	9	0	0	0	1	1	0	0	5	0	0	16
4-6-89	8	0	3	1	0	0	0	0	5	2	0	19
4-27-89	17	0	2	0	5	1	0	0	7	3	0	35
5-11-89	6	1	1	0	2	0	0	0	5	1	0	16
5-25-89	7	0	0	3	1	0	0	0	4	1	0	16
6-8-89	8	0	1	0	5	1	0	0	5	1	1	22
6-22-89	10	0	2	1	1	0	0	0	5	0	0	19
TOTALS	149	3	28	9	63	11	1	0	115	39	14	432

*Other category includes: Combined sewer overflow, trade secrets, thermal demonstrations, and resolutions.

APPENDIX I
 Illinois Pollution Control Board
Appellate Court Decisions during Fiscal Year 89

Case Name	Decision	PCB Number	Case Citation
A.R.F. Landfill v. Pollution Control Board	Affirmed	PCB87-51	174 Ill.App.3d 82; 528 N.E.2d 390 (Ill.App. 2 Dist. 1988).
John Ash Sr. v. PCB and Iroquois County Board	Affirmed	PCB87-29 PCB87-173	No. 3-88-0376 Unpublished.
Browning-Ferris Ind. v. Pollution Control Board	Affirmed	PCB84-136	179 Ill.App.3d 598; 534 N.E.2d 616 (Ill.App. 2 Dist. 1989).
Citizens Against the Randolph Landfill v. Pollution Control Board	Reversed and Remanded	PCB87-133	178 Ill.App.3d 686; 533 N.E.2d 401 (Ill.App. 4 Dist. 1988).
Illinois State Chamber of Commerce v. Pollution Control Board	Affirmed	R85-21	177 Ill.App.3d 923; 532 N.E.2d 987 (Ill.App. 2 Dist. 1988).
Stark v. Pollution Control Board	Affirmed	PCB87-195	177 Ill.App.3d 293; 532 N.E.2d 309 (Ill.App. 1 Dist. 1988).
*Village of Carpentersville v. Pollution Control Board	Reversed and Remanded	PCB87-89	176 Ill.App.3d 668; 531 N.E.2d 400 (Ill.App. 2 Dist. 1988).
Waste Management of Illinois v. Pollution Control Board	Affirmed	PCB87-75	175 Ill.App.3d 1023; 530 N.E.2d 682 (Ill.App. 2 Dist. 1988).

* Currently under review by Illinois Supreme Court.

