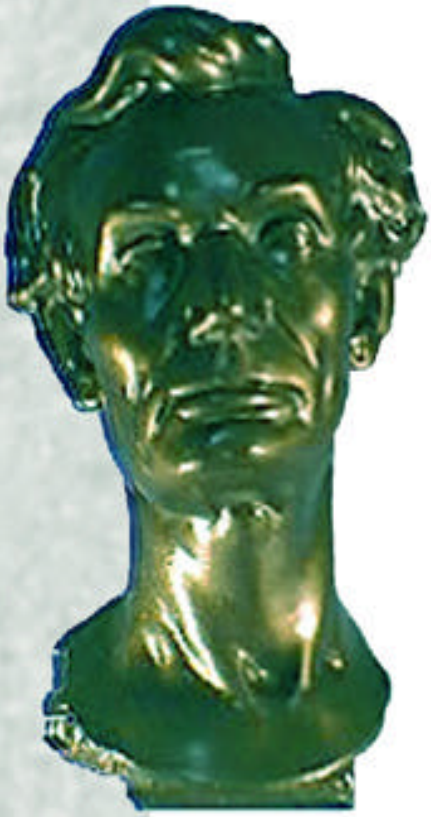
Illinois Pollution Control Board

Annual Report 1999



Mission Statement

The Illinois Environmental Protection Act (Act) was enacted in 1970 for the purpose of establishing a comprehensive State-wide program to restore, protect, and enhance the quality of the environment in our State. To implement this mandate, the Act established the Illinois Pollution Control Board (Board) and accorded it the authority to adopt environmental standards and regulations for the State, and to adjudicate contested cases arising from the Act and from the regulations.

With respect for this mandate, and with recognition for the constitutional right of the citizens of Illinois to enjoy a clean environment and to participate in State decision making toward that end, the Board dedicates itself to:

- the establishment of coherent, uniform, and workable environmental standards and regulations that restore, protect, and enhance the quality of Illinois' environment;
- impartial decision making which resolves environmental disputes in a manner that brings to bear technical and legal expertise, public participation, and judicial integrity; and
- government leadership and public policy guidance for the protection and preservation of Illinois' environment and natural resources, so that they can be enjoyed by future generations of Illinoisans.

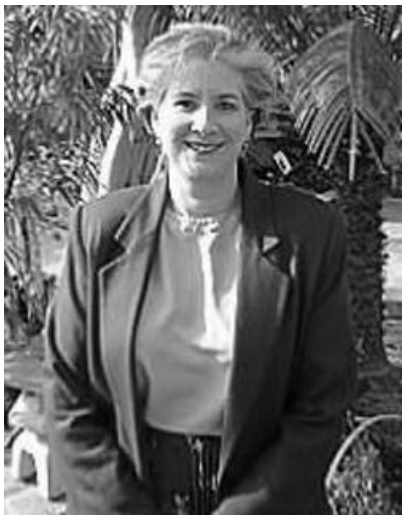
Contents

Cover

The pictured Abraham Lincoln bust was modeled from life by Leonard W. Volk in 1860 shortly before Lincoln won the Republican Party's presidential nomination.

Message from the Chairman

Honorable George H. Ryan, Governor of Illinois and Esteemed Members of the General Assembly:



The Illinois Pollution Control Board has consistently dedicated itself to establishing uniform environmental standards and regulations that restore, protect, and enhance the quality of Illinois' environment. As an impartial decision-making board, the Board ensures that the resolution of every environmental dispute is made in a manner that brings legal stability, technical expertise, and judicial integrity to the process.

Fiscal Year 1999 has given the Board several unique opportunities to protect and preserve Illinois' environment and natural resources. In January 1999, I represented the Board before Governor Ryan's Environmental and Natural Resources Transition Team. Under Governor Ryan's leadership, the Board will meet Illinois' future needs as we simplify our relationship with citizens and industry through the Governor's Office of Strategic Planning. The Board is also participating with the Governor's Office of Performance Review in an ongoing effort to improve our government operations.

In order to increase the Board's technical expertise, the Illinois General Assembly and Governor Ryan passed a law exempting the Board's technical and scientific positions from the Illinois Personnel Code. This legislation, initiated by the Board, will allow the Board to hire the qualified scientists it needs to address the Board's complex rulemaking responsibilities.

We are pleased to share with you the Annual Report of the Illinois Pollution Control Board for fiscal year 1999. This report provides information on all aspects of the Board's activities and responsibilities for protecting the environment under the Illinois Environmental Protection Act and, specifically, discusses accomplishments between July 1, 1998 and June 30, 1999.

Sincerely,

Claire A. Manning
Chairman

Judicial Review of Board Decisions

Introduction

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

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 a Board decision is whether the 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. The Board's decisions in rulemaking proceedings and in imposing conditions in variances are quasi-legislative. All other Board decisions are quasi-judicatory in nature.

In fiscal year 1999, there were final orders entered by the appellate court in seven cases involving appeals from Board opinions and orders. The Board's decision was affirmed, in total or in part, in five of these cases. Two appeals were dismissed: an appeal of a regulatory proceeding was voluntarily dismissed by the petitioners and an appeal of an administrative citation was dismissed for want of prosecution. The following, organized by section of the Act, includes summaries of written appellate decisions in Board cases for fiscal year 1999.

Rulemaking

Section 5(b) of the Act mandates the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois." When the Board promulgates rules, it does so pursuant to the authority and procedures set forth in Sections 26 through 29 of Title VI of the Act. Additionally, Section 7.2 of the Act establishes special procedures for adoption of rules "identical in substance" to rules adopted by the United States Environmental Protection Agency in certain federal programs.

When the Board adopts 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 court pursuant to Section 41. Section 29 states that the purpose of judicial review is for the court to determine the validity or applicability of the regulation.

Illinois Pork Producers Association and Illinois Beef Association v. Illinois Pollution Control Board, No. 5-97-0411 (1st Dist. April 13, 1998)

This case involved an appeal by the petitioners, the Illinois Pork Producers Association and Illinois Beef Association, from a May 15, 1997 Board decision in R97-15(A), which adopted rules implementing the Livestock Management Facilities Act (LMF Act), 510 ILCS 77/1 *et seq*. On June 19, 1997, the Illinois Pork Producers Association and Illinois Beef Association, filed a petition for review with the Fifth District Appellate Court. The petitioners raised the following issues in the appeal: (1) that the Board overstepped the clear statutory constraints set forth in the LMF Act; and (2) that the Board failed to give proper notice and comments in promulgating the rules.

This case was eventually transferred to the First District Appellate Court on motion by the Board. In its motion to transfer venue, the Board relied upon Sections 29(a) and 41(a) of the Environmental Protection Act (415 ILCS 5/29(a) and 41(a) (1994)), arguing that because the regulations in question were adopted at the Board's regular meeting in Chicago, the cause of action giving rise to the appeal arose in the First District and not in the Fifth. In opposition, the petitioners argued that the adoption of regulations by the Board in Chicago was merely a ministerial task, and thus discounted the idea that the cause of action arose in the First District. The petitioners also argued that Section 3-104 of the Administrative Review Law applied to the question of venue and that under that Section, venue was proper in the Fifth District. On September 17, 1997, the Fifth District granted the Board's motion and transferred venue based on the Board's argument that the time and place of a rule's adoption creates both a cause of action and establishes venue.

On March 31, 1998, petitioners submitted a motion to withdraw the appeal and dismiss the proceedings. As the reason for the withdrawal of the appeal, petitioners cited the ongoing settlement negotiations with interested parties, including the Illinois Department of Agriculture, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency, the Governor's Office, and the Historic Preservation Society. The appeal was withdrawn based on the reasonable belief that the ongoing negotiations would result in new legislation and a settlement of the issues in this appeal. The First District granted the motion and a mandate was issued dismissing the case on April 13, 1998.

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 regional pollution control facility to provide proof that the local government has approved the location of the proposed facility. Section 39.2 provides for proper notice and filing, public hearings, jurisdiction and time limits, specific criteria, and other information that the local government must use to reach its decision. The decision of the local government may be contested before the Board under Section 40.1 of the Act. The Board reviews the decision to determine if the local government's procedures satisfy principles of fundamental fairness and whether the decision was against the manifest weight of the evidence. The Boards final decision is then reviewable by the appellate court.

CDT Landfill Corporation v. City of Joliet and the Illinois Pollution Control Board, No. 3-98-0248 (3rd Dist. May 13, 1999)(unpublished rule 23 order)

This case involved an appeal by petitioner, the CDT Landfill Corporation (CDT), from a March 8, 1998 decision of the Board in PCB 98-60, affirming the City of Joliet's determination that the petitioner failed to satisfy two of the statutory criteria required for local siting approval of a proposed expansion of the petitioner's existing landfill under Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (1996)). Specifically, the Board found that CDT failed to meet its burden that (1) the proposed expansion was necessary to accommodate the waste needs of the intended service area; and (2) the proposed facility would be located as to minimize the incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The Board reversed the City of Joliet's determination on the other three criteria set forth in Section 39.2 of the Act.

The Third District Appellate Court agreed with the Board's conclusion that the City of Joliet acted properly when it weighed all of the evidence, including CDT's, and, that the City's factual determinations were not against the manifest weight of the evidence. The court agreed with the Board that CDT did not establish that the expansion was necessary to accommodate the waste needs of the intended service area. In addition, the court agreed with the Board's conclusion that CDT did not demonstrate that the expansion would minimize incompatibility with the character of the surrounding area. Thus, the court found that the Board's decision was not against the manifest weight of the evidence and therefore was not erroneous.

The City of Joliet filed a cross-appeal seeking review of the Board's order reversing the City of Joliet's determination as to the three additional statutory criteria; however, the court did not address the cross-appeal issues.

Citizens Opposed to Additional Landfills v. Greater Egypt Regional Environmental Complex, No. 5-97-1037 (5th Dist. March 29, 1999)(unpublished rule 23 order)

This case involved an appeal by petitioner, the Citizens Opposed to Additional Landfills (COAL), of the November 6, 1997 Board decision in PCB 97-233. The Board affirmed the site location suitability approval for a pollution control facility granted by the Perry County Board (Perry County) to the Greater Egypt Regional Environmental Complex (GERE) under Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (1996)). COAL and Harvey Pitt appealed the landfill siting decision granted by Perry County to GERE.

The decision by the Board in PCB 97-233 resolved an appeal of the decision of Perry County after this matter was remanded to it by the Board order in docket PCB 97-29 (see Citizens Opposed to Additional Landfills v. Greater Egypt Regional Environmental Complex (December 5, 1996), PCB 97-29) for the purpose of curing fundamental fairness issues caused by *ex parte* contacts between GERE and the attorneys for Perry County. The Board in docket PCB 97-233 affirmed Perry County's decision over COAL's and Pitt's challenges to jurisdiction, fundamental fairness, and the adequacy of GERE's demonstration of compliance with the criteria set forth at Section 39.2 of the Act.

The jurisdictional challenge involved the issue of whether GERE had properly sent notice to adjoining landowners under Section 39.2(b) of the Act in circumstances where it used the authentic tax records of the Perry County treasurer, but where those records did not contain current addresses. The Fifth District Appellate Court affirmed its earlier ruling in Bishop v. Pollution Control Board, 235 Ill. App. 3d 925, 601 N.E.2d 310 (5th Dist. 1992), finding that notice was proper, despite the fact that actual notice was not given to all landowners. The appellate court found that all fundamental fairness issues had been waived; these were the fundamental fairness issues addressed in docket PCB 97-29 and cured on remand, and an evidentiary issue not raised by COAL before the Board. As to GERE's compliance with the criteria set forth at Section 39.2 of the Act, the appellate court found that Perry County's decision was not against the manifest weight of the evidence.

Enforcement

Sections 30 and 31.1 of the Act, respectively, provide for standard enforcement actions and for the more limited administrative citations. The standard enforcement action is initiated by the filing of a formal complaint with the Board either by a citizen or by the Attorney General on behalf of the People of the State of Illinois. A public hearing is held where 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 this Act or any rule or regulation of the Board or permit or term or condition thereof." (415 ILCS 5/31(e) (1998)) The Board is authorized under Sections 33 and 42 of the Act to direct a party to cease and desist from violation, to revoke a permit, to impose civil penalties, and to require posting of bonds or other securities to assure correction of violations. An administrative citation is initiated by the Illinois Environmental Protection Agency or a unit of local government and imposes a statutory fine for, among other things, causing or allowing open dumping of any waste.

Galena, Illinois

ESG Watts, Inc. v. Pollution Control Board, No. 4-98-0229 (4th Dist. February 4, 1999) (unpublished rule 23 order)

This case involved an appeal by petitioner, ESG Watts, Inc. (ESG Watts), of a February 19, 1998 Board decision in Board docket number PCB 97-237 finding petitioner in violation of the Environmental Protection Act and Board rules, and imposing a penalty of $256,000, as well as $2,400 in attorney fees. In May 1996, the State of Illinois (State) filed a complaint before the Board against ESG Watts. The State alleged that ESG Watts' operation of the Sangamon Valley Landfill violated certain sections of the Environmental Protection Act and corresponding Board regulations pertaining to the proper funding for closure and post-closure care of the landfill. ESG Watts appealed the Board's decision to the Fourth District Appellate Court, challenging the amount of the penalty.

However, in its petition for review, ESG Watts named only the Board as a party respondent and failed to name the State as a party respondent. As a result, the Board moved to dismiss the petition, arguing that the court lacked jurisdiction due to ESG Watts' failure to name as respondents all parties of record.

As a threshold issue, ESG Watts requested that the court strike the Board's motion to dismiss due to a recent supervisory order issued by the Illinois Supreme Court on December 2, 1998, pertaining to two matters raising identical issues before the Third District Appellate Court. In the two matters before it, the Third District Appellate Court dismissed the appeals on September 11, 1998, for lack of jurisdiction because ESG Watts failed to name all necessary parties to the administrative review proceedings as required by Illinois Supreme Court Rule 335 (155 Ill. 2d R. 335) and Sections 3-107 and 3-113 of the Administrative Law Review (735 ILCS 5/3-107, 113). See ESG Watts, Inc. v. Pollution Control Board, Nos. 3-98-0231 and 3-98-0385 (3rd Dist. September 11, 1998); see also People of the State of Illinois v. ESG Watts, Inc. (February 5, 1998), PCB 96-107 and People of the State of Illinois v. ESG Watts, Inc. (April 16, 1998), PCB 96-233. ESG Watts filed a petition for leave to appeal the Third District's decision before the Illinois Supreme Court, but on December 2, 1998, the court denied ESG Watts' leave to appeal in a supervisory order directing the Third District to vacate its orders in the two appeals (Nos. 3-98-0231 and 3-98-0385) and to address the appeals on the merits. On January 6, 1999, the Third District Appellate Court reinstated the matters. At the time of this publication, the parties have completed briefing the appeals and were awaiting decisions by the appellate court.

Oral argument was held before the Fourth District on January 19, 1999, at which time arguments concerning both the jurisdictional issues and the merits of the appeal were heard. Finding that the Illinois Supreme Court's December 2, 1998 supervisory order did not constitute legal precedent guiding its disposition of the motion to dismiss, the Fourth District granted the Board's motion. The court determined that Illinois Supreme Court Rule 335(a) (155 Ill. 2d R. 335(a)) and the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (1996)) required ESG Watts to name the State as a party respondent. Relying on McGaughy v. Human Rights Comm., 165 Ill. 2d 1, 6-7, 649 N.E.2d 404, 407 (1995), the court stated that appellate courts have the capability to exercise special statutory jurisdiction when they review decisions from administrative agencies. Additionally, the court reasoned that it must strictly adhere to the prescribed procedures when considering its jurisdictional limits and power as well as a party's remedy under a specific statute. Pursuant to McGaughy, the appellate court concluded that it must dismiss a petition for review if the party seeking review fails to comply with the statutory procedures in filing the matter before the court.

Justice Robert J. Steigmann wrote the decision for the court and Justices Rita B. Garman and Sue E. Myerscough concurred. On March 2, 1999, the Board received ESG Watts' affidavit of intent to seek review of the order in the Illinois Supreme Court. ESG Watts filed the appeal on March 9, 1999. At the time of this publication, the parties were nearing completion of the briefing process.

ESG Watts, Inc. v. Pollution Control Board, No. 3-98-0231 (3rd Dist. September 11, 1998)(unpublished rule 23 order)

This case involves an appeal of a February 5, 1998 Board decision in PCB 96-107 in which the Board imposed a $100,000 penalty against petitioner, ESG Watts, Inc. (ESG Watts), for various operational and financial assurance violations at the Taylor Ridge/Andalusia landfill.

On September 11, 1998, the Third District Appellate Court dismissed the appeal for lack of jurisdiction because ESG Watts failed to name all necessary parties to the administrative review proceedings as required by Illinois Supreme Court Rule 335 (155 Ill. 2d R. 335) and Sections 3-107 and 3-113 of the Administrative Law Review (735 ILCS 5/3-107, 113).

On December 2, 1998, the Illinois Supreme Court issued a supervisory order, directing the Third District Appellate Court to vacate its order, reinstate the matter, and address the appeal on the merits. On January 6, 1999, the Third District Appellate Court reinstated the matter. At the time of this publication, the parties had finished briefing the appeal and were awaiting decision by the appellate court.

ESG Watts, Inc. v. Pollution Control Board, No. 3-98-0385 (3rd Dist. September 11, 1998)(unpublished rule 23 order)

This case involves an appeal of an April 16, 1998 Board decision in PCB 96-233 in which the Board imposed a $682,000 penalty against petitioner, ESG Watts, Inc. (ESG Watts), for various operational and financial assurance violations at the Viola landfill.

On September 11, 1998, the Third District Appellate Court dismissed the appeal for lack of jurisdiction because ESG Watts failed to name all necessary parties to the administrative review proceedings as required by Illinois Supreme Court Rule 335 (155 Ill. 2d R. 335) and Sections 3-107 and 3-113 of the Administrative Law Review (735 ILCS 5/3-107, 113).

On December 2, 1998, the Illinois Supreme Court issued a supervisory order, directing the Third District Appellate Court to vacate its order, reinstate the matter, and address the appeal on the merits. On January 6, 1999, the Third District Appellate Court reinstated the matter. At the time of this publication, the parties had finished briefing the appeal and were awaiting decision by the appellate court.

M. Saleem Choudhry v. Illinois Pollution Control Board and County of DuPage, No. 2-98-1164 (2nd Dist. January 26, 1999)(unpublished rule 23 order)

This case involved an appeal of an August 6, 1998 Board decision in AC 97-13 finding that petitioner, M. Saleem Choudhry (Choudhry), violated Section 21(p)(1) and (4) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (4) (1996)) and ordered Choudhry to pay a civil penalty of $1,000. The Board also ordered Choudhry to pay hearing costs to the Board in the amount of $1,270 and to the County of DuPage in the amount of $1,379. On September 5, 1998, Choudhry filed his petition for appeal.

On December 7, 1998, the court ordered Choudhry to file a brief in support of the appeal by January 8, 1999, stating that if Choudhry failed to do so, the court would dismiss the petition for appeal. On January 26, 1999, the Second District Appellate Court dismissed this action because Choudhry failed to file a brief in support of his appeal.

THE ILLINOIS POLLUTION CONTROL BOARD MEMBERS

Chairman Claire Manning was first appointed to the Board and designated Chairman by Governor Jim Edgar in May 1993. She was reappointed in May 1995, and again in June 1998. Chairman Manning earned a JD from Loyola University School of Law in 1979, and a BA from Bradley University. Prior to coming to the Board, Chairman Manning had served three terms as a member of the Illinois State Labor Relations Board, having been first appointed by Governor Jim Thompson in 1984, at the time of that Board's creation. Manning was instrumental in designing that Board and the public sector labor relations system in Illinois. She is a frequent speaker on Board related matters before various associations and environmental groups. Prior to her appointment to the Board, Chairman Manning was also a visiting Professor at the University of Illinois' Institute of Labor and Industrial Relations; President-Elect of the National Association of Labor Relations Agencies; and Chief Labor Relations Counsel for the State of Illinois. Currently Chairman Manning serves on the Illinois State Bar Association's Administrative Law Section Council and the Special Committee on Women and the Law.

Board Member Ronald C. Flemal earned a BS from Northwestern University, and a Ph.D. in Geology from Princeton University. From 1967 to 1985, he served as a Professor of Geology at Northern Illinois University, during which time he authored over eighty articles dealing principally with environmental and natural science issues. He also serves as a member of the Illinois State Bar Association Environmental Law Council. Dr. Flemal was appointed by Governor James R. Thompson in May 1985, by Governor Jim Edgar in 1996, and most recently by Governor George H. Ryan in 1999.

James R. Thompson Center, Chicago, Illinois

Board Member G. Tanner Girard was first appointed in February 1992 and reappointed in June 1994, and again in June 1998, by Governor Jim Edgar. Dr. Girard has a Ph.D. in science education from Florida State University. He holds an MS in biological science from the University of Central Florida and a BS in biology from Principia College. Dr. Girard was formerly Associate Professor of Biology and Environmental Sciences at Principia College and Visiting Professor at Universidad del Valle de Guatemala. Other gubernatorial appointments have included services as Chairperson and Commissioner of the Illinois Nature Preserves Commission and membership on the Governor's Science Advisory Committee. He also was President of the Illinois Audubon Society and Vice-President of the Illinois Environmental Council.

Board Member Kathleen M. Hennessey effective August 20, 1999, Member Hennessey resigned from her position on the Board in order to accept a position as senior environmental attorney with DaimlerChrysler Corporation in Auburn Hills, Michigan. The Board thanks Ms. Hennessey for her years of dedicated service to the Board and to the citizens of the State of Illinois. She will be sorely missed. Everyone at the Board wishes Member Hennessey continued success in her challenging new legal position.

Board Member Elena Z. Kezelis began her term on January 10, 1999. Before joining the Board, Member Kezelis served as chief legal counsel to Governor Jim Edgar. She is a former law partner at Sonnenschein Nath & Rosenthal. Ms. Kezelis previously worked as a litigation associate at Isham, Lincoln & Beale. Additionally, Member Kezelis served as a law clerk for former federal District Court Judge George N. Leighton. Ms. Kezelis received her JD from John Marshall Law School in 1980, and is a member of the American Inns of Court.

Board Member Marili McFawn brings expertise as a former law partner at Schiff, Hardin and Waite. She also served as Attorney Assistant to former Board Chairman Jacob Dumelle, former Vice-Chairman Irvin Goodman, and former Board Member J. Theodore Meyer, and as an Enforcement Staff Attorney for the Air and Public Water Divisions at the Illinois Environmental Protection Agency. Member McFawn earned a JD from Loyola University in 1979 and a BA in English from Xavier University in 1975. She was first appointed to the Board in November 1993, and reappointed in May 1995, and in June 1998, by Governor Jim Edgar.

Board Member Nicholas J. Melas was appointed to the Board effective July 1, 1998. Member Melas served as the former president and commissioner of the Metropolitan Water Reclamation District of Greater Chicago. He has acted as the president of N.J. Melas & Company, Inc., and was the former president of the Illinois Association of Sanitary Districts. Additionally, he served as a commissioner of the Northeastern Illinois Planning Commission and the Chicago Public Building Commission. Member Melas received his Bachelor of Science in Chemistry from the University of Chicago and a Masters of Business Administration in Labor and Industrial Relations from the Graduate School of Business at the University of Chicago.

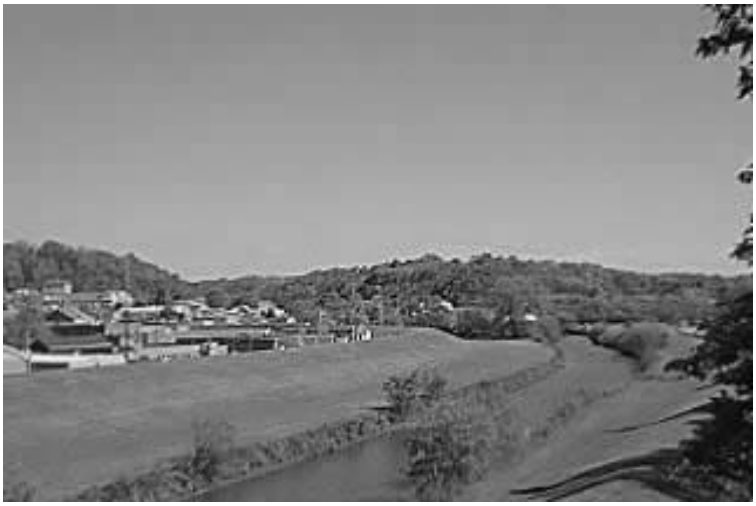
Regulatory Review

Proportionate Share Liability, R97-16

On December 17, 1998, the Board adopted rules implementing a new legislatively-created proportionate share liability scheme in Illinois. The rules implement Section 58.9 of the Environmental Protection Act (Act) 415 ILCS 5/58.9 (1996). See Pub. Act 89-443, eff. July 1, 1996. Prior to adoption of the rules, the Board held six public hearings in Chicago and Springfield.

Part 741 establishes procedures and conditions under which the Board will allocate a polluter's proportionate share of the remediation costs of a response resulting from the release or substantial threat of a release of regulated substances or pesticides on, in, under, or from a site. Part 741 applies to two types of proceedings: enforcement actions in which the State or a private party files a complaint with the Board which seeks to require another person to perform, or seeks to recover the costs of, a response; and proceedings in which two or more persons voluntarily seek to allocate 100% of the performance or cost of a response between themselves. Part 741 does not apply to (a) actions to recover costs incurred by the State prior to July 1, 1996; (b) sites on the National Priorities List; (c) sites where a federal court order or a United States Environmental Protection Agency order requires investigation or response; (d) the owner or operator of a site for which a permit has been issued or is required under federal or State solid or hazardous waste laws, or that is subject to closure or correction action requirements under federal or State solid or hazardous waste laws; or (e) the owner or operator of an underground storage tank system subject to federal or State underground storage tank laws.

Subpart A of Part 741 provides for discovery before an enforcement action is filed for the limited purpose of obtaining information necessary to identify a person who may be potentially liable. Subpart B of Part 741 sets forth the burden, the standard of proof and the outline of final orders allocating proportionate shares where a complaint has been filed by any person under the Act or the Groundwater Protection Act (415 ILCS 5/1 *et seq*. (1996)) to require another person to perform a response or to recover costs of a response. To establish a respondent's proportionate share, the complainant must prove that the respondent proximately caused or contributed to a release. Subpart C of Part 741 governs cases when two or more persons who agree to accept 100% of the liability to perform or pay a response. In that case, they may initiate a voluntary allocation proceeding before the Board by filing a joint petition or they may agree to engage in mediation.



Galena, Illinois

Permitting Procedures for the Lake Michigan Basin, R99-8

In December 1997, the Board adopted state rules to implement the federal Great Lakes Initiative (GLI). In the Matter of Great Lakes Initiative: 35 Ill. Adm. Code 302.202, 302.205, 302.Subpart E, 303.443, 304.222 (December 18, 1997), R97-25. On July 28, 1998, the Illinois Environmental Protection Agency (IEPA) proposed amendments to those rules in response to additional rulemaking by the United States Environmental Protection Agency. The proposal was filed pursuant to Section 27 of the Environmental Protection Act (Act) (415 ILCS 5/27 (1996)). On August 19, 1999, the Board adopted amendments to 35 Ill. Adm. Code 301, 302, and 309.141 regarding permitting procedures for the Lake Michigan Basin under the National Pollutant Discharge Elimination System (NPDES) program. Prior to adoption of these amendments two hearings were held: the first, on October 5, 1998, in Chicago; and the second, on December 8, 1998, in Springfield.

The amendments provide that the Total Maximum Daily Loads (TMDL) or the Waste Load Allocations (WLA) will be set either through the Lake Michigan Lakewide Management Plan or the remedial action plan for an area of concern. The amendments specify an acceptable additive risk level of one in 100,000 for establishing Tier I criteria and Tier II values for combinations of substances exhibiting carcinogenic or other nonthreshold toxic mechanisms. The amendments set forth the conversion factors to be used in translating between water quality standards, criteria or values for metals expressed in either the dissolved form or as total amount recoverable.

Further, the amendments provide guidance to the IEPA in choosing which pollutants require water quality-based effluent limits and, if required, at what level in NPDES permits. The amendments also set forth a simple mass balance formula for calculating a projected effluent limitation (PEL) giving consideration to the water quality standard, relative flowrates of effluent and receiving water, dilution allowance and the background concentration of the parameter. Moreover, the amendments set forth the conditions under which a water quality-based effluent limits or certain monitoring requirements must be included in the NPDES permit based upon a comparison of project effluent quality and PEL. Finally, the amendments update various citations and incorporations by reference to the Code of Federal Regulations and add to the Board's rules specialized definitions that were previously contained only in the IEPA's rules.

Remediation Costs for Environmental Remediation Tax Credit, R98-27

On October 15, 1998, the Board adopted amendments to 35 Ill. Adm. Code 740. Part 740 implements Public Act 90-123, which created an environmental remediation tax credit (tax credit). See Pub. Act 90-123 (1997), eff. July 21, 1997, amending Section 201(l) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.* (1996)) and Section 58.14 of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1996)). Section 58.14 of the Act required the Board to adopt tax credit rules for second notice within six months after the Board received the Illinois Environmental Protection Agency's (IEPA) proposed rules, or by July 21, 1998. Prior to adoption of the rules, the Board held three public hearings: the first, in Chicago, on February 24, 1998; the second, in Springfield, on February 27, 1998; and the third, also in Springfield, on March 17, 1998.

The tax credit allows taxpayers under the Illinois Income Tax Act to credit against their Illinois tax liability a portion of the costs the taxpayers have spent to clean up certain contaminated properties (or "brownfields"). The tax credit is intended to spur the cleanup and redevelopment of brownfields. A taxpayer who wishes to claim the tax credit must first submit to the IEPA an application for review. The amendments also establish the procedures and standards under which the IEPA will consider these applications.

After the Board adopted the opinion and order for second-notice review by the Joint Committee on Administrative Rules, Governor Jim Edgar signed two additional bills that necessitated additional substantive changes to the proposed rules. See SB 1291 (Pub. Act 90-717, eff. August 7, 1998) and SB 1705 (Pub. Act 90-792, eff. January 1, 1999). SB 1291 provides that costs deducted, or used for an environmental remediation tax credit, under the Internal Revenue Code are eligible for the Illinois tax credit requiring changes in the rules at 35 Ill. Adm. Code 740.710 and 740.730. SB 1705 eliminated one of the geographical requirements for sites to receive more beneficial treatment under the tax credit program, requiring modification to 35 Ill. Adm. Code 740.720(c).

Amendments to Requirements for Landscape Waste Compost Facilities, R97-29

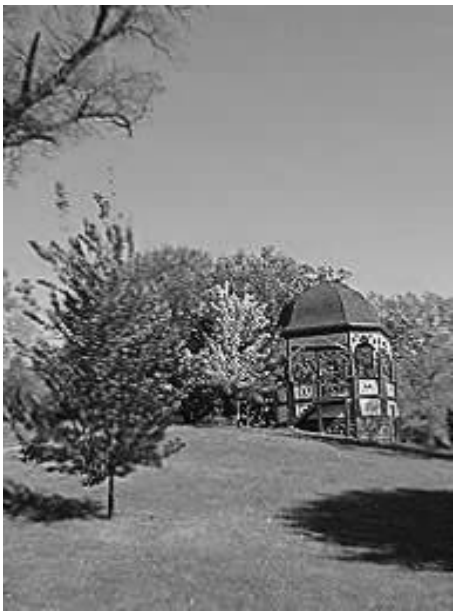
On May 6, 1997, two citizens, Dr. Renuka Desai and Susan Garrett (proponents) filed a proposal for amendments to 35 Ill. Adm. Code 830.203(c), 831.107, and 831.109(b)(3), which set requirements for landscape waste compost facilities. The proponents maintained that the amendments were necessary because landscape waste compost facilities release spores that pose risks to human health, particularly the spores of the fungus *aspergillus fumigatus*. Prior to adoption of the amendments, the Board held three public hearings: the first, in Chicago, on September 8, 1997; the second, in Springfield, on October 7, 1997; and the third, in Chicago, on August 7, 1998. The Board received numerous public comments before and during the first-notice public comment period. On November 19, 1998, the Board adopted amendments to 35 Ill. Adm. Code 830.203(c), 831.107, and 831.109(b)(3), which set amended requirements for landscape waste compost facilities.

The amendments require certain compost areas established after January 1, 1999, to be located at least one-eighth mile from health care facilities, pre-school and child care facilities, and their associated recreational areas, and primary and secondary school facilities and their associated recreational areas. The rules also include corresponding changes to the requirements for site location maps and other information in permit applications.

Involuntary Termination of Environmental Management System Agreements, R99-9

On August 17, 1997, the Illinois Environmental Protection Agency (IEPA), in accordance with Section 52.3 of the Environmental Protection Act (Act) (415 ILCS 5/52.3 (1996)), filed a proposal for rulemaking for involuntary termination of environmental management system agreements (EMSA). An EMSA is an agreement between a person and the IEPA that allows the person to implement innovative environmental measures in lieu of complying with otherwise applicable environmental laws or regulations. The innovative measures should yield greater environmental benefits than the otherwise applicable environmental laws or regulations. The Board held two hearings in this matter: the first, in Chicago, on September 29, 1998; and the second, in Springfield, on October 6, 1998. On February 4, 1999, the Board adopted the EMSA rules found at 35 Ill. Adm. Code 106.

The rules provide that the IEPA may either (a) initiate a proceeding to terminate an EMSA before the Board; or (b) summarily terminate an EMSA. However, the rules set forth the criteria that the IEPA must satisfy to summarily terminate an EMSA. Summary terminations of EMSAs are appealable to the Board for review as provided in Section 40 of the Act. The rules also contain provisions providing for filing of responses, discovery requests, and burden of proof.



Galena, Illinois

Non-Hazardous Special Waste Hauling and the Uniform Program, R98-29

On May 20, 1999, the Board adopted amendments to 35 Ill. Adm. Code 809 regarding non-hazardous special waste hauling. The Illinois Environmental Protection Agency (IEPA) proposed the amendments in response to Public Act 90-219 (Pub. Act 90-219, eff. July 25, 1997). Public Act 90-219 amends Sections 22, 22.01 and 22.2 of the Environmental Protection Act (Act) (415 ILCS 5/22, 22.01, 22.2, (1996)) in response to the federal Uniform State Hazardous Materials Transportation, Registration and Permit Program (Uniform Program). The federal Uniform Program was adopted to implement amendments to the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) (49 U.S.C. § 5119 *et seq.* (1994)). The Uniform Program primarily affects Part 809 of the Board's rules, but minor changes were made to Parts 808, 811, and 855 in order to establish consistency with the revised Part 809. Prior to adoption of the rules, two hearings were held: the first, in Springfield, on July 21, 1998; and the second, in Chicago, on July 31, 1998.

A new subpart was added at Part 809 to include the Uniform Program, while the remainder of Part 809 was modified slightly to allow for the continued permitting of non-hazardous special waste transporters. The rules include new language in Part 809 so that a non-hazardous special waste transporter is afforded due process if a permit is denied, and the IEPA has a procedure to follow if a permit application is incomplete. There are also two new exemptions from the non-hazardous special waste transport rules to avoid duplicate and potentially contradictory transporting requirements for trans porters of potentially infectious medical waste and used tires.

With regard to permitting under the Uniform Program, the amendments provide that transporters of hazardous waste in Illinois are no longer required to have an Illinois-issued permit. Instead, they must have a Uniform Permit issued by the IEPA. Registration of transporters will operate on a "base state" system; a transporter applies to its base state for its Uniform Permit and that base state reviews the Uniform Permit applications.

The rules also allow the IEPA to enter into agreements with federal agencies, national repositories, and other participating states in order to issue reciprocal Uniform Permits that allow a transporter to operate in all participating states. As a result, an interstate transporter need only fill out one permit application, as opposed to filling out numerous permit applications under the old system. The transporter's base state is responsible for collecting the fees and distributing percentages of those fees to other states participating in the program. The Uniform Program mandates that the IEPA conduct audits to ensure that transporters are accurately reporting their activity.

Enhanced Vehicle Inspection and Maintenance Regulations, R98-24

On July 8, 1998, the Board adopted amendments to 35 Ill. Adm. Code 240, the Enhanced Vehicle Inspection and Maintenance (I/M) Regulations. The amendments are required by Sections 182(b) and (c) of the federal Clean Air Act Amendments (CAAA), 42 U.S.C. §§ 7582(b), (c) (1990), and by the Vehicle Emissions Inspection Law (VEIL), 625 ILCS 5/13B-5 (1996). The CAAA require the use of I/M programs in areas that do not meet the National Ambient Air Quality Standards for ozone or carbon monoxide. In Illinois, the Chicago and Metro-East St. Louis areas are classified as "severe" and "moderate" nonattainment areas for ozone. Pursuant to Section 5/13B-5 of the VEIL, Chicago and Metro-East St. Louis are subject to these I/M regulations.

The Board adopted these amendments using the CAAA fast-track procedure of Section 28.5 of the Environmental Protection Act (Act) (415 ILCS 5/28.5 (1996)). The Board held one hearing in Chicago on March 17, 1998, regarding the merits of the proposal.

The rules contain clarifications and modifications to existing standards, and new standards for the remaining portions of the enhanced I/M testing program. More specifically, the amendments replace the current evaporative system testing program (which uses a pressure test and a purge test to test the entire system's integrity) with a fuel cap only inspection. The rules also add fast-pass standards to allow vehicles undergoing I/M 240 exhaust emissions tests be tested more quickly. Further, the rules add standards for the required on-road sensing test. Finally, the rules add a program for on-board diagnostic testing that will become mandatory on January 1, 2001, consistent with the recent federal action. See 63 Fed. Reg. 24429 (May 4, 1998).

Hospital/Medical/Infectious Waste Incinerators, R99-10

On May 6, 1999, the Board adopted rules to establish in state law the latest federal requirements for the control of emissions from the incineration of hospital, medical, and infectious waste. The Board adopted these amendments using the Clean Air Act Amendment (CAAA) fast-track procedures of Section 28.5 of the Environmental Protection Act (Act) (415 ILCS 5/28.5 (1996)). Prior to the adoption of these amendments, two hearings were held: the first on January 21, 1999, in Chicago; and the second hearing on February 3, 1999, in Springfield.

Section 111(d) of the CAAA (42 U.S.C. § 7401 (1990)) requires that states submit a plan for the control of emissions from any source for which the United States Environmental Protection Agency (USEPA) has promulgated a performance standard. The USEPA promulgated new source performance standards (NSPS) and emissions guidelines (EGs) to reduce emissions from hospital, medical, and infectious waste incinerators (HMIWIs). 40 C.F.R. §§ 60.50c-60.58c, 60.30e-60.39e. The NSPSs apply to HMIWIs for which construction began after June 20, 1996, or for which a modification is begun after March 16, 1998. The EGs apply to existing HMIWIs, defined as ones for which construction began on or before June 20, 1996. Unlike the NSPSs, the EGs do not establish standards for HMIWIs. Rather EGs direct the states to adopt plans regulating existing HMIWIs and establish minimum elements required in the states' plans.

The adopted regulations contain three principle provisions: (1) the establishment of emissions limits for several categories of HMIWIs; (2) the requirement that HMIWIs subject to the emission limits operate pursuant to a Clean Air Act Permit Program permit; and (3) the requirement that affected HMIWIs create waste management programs.

Following is an overview of legislative action in fiscal year 1999 that summarizes bills signed or vetoed by the Governor. The signed bills are segregated into the following categories:

- Air Pollution/Clean Air Act Compliance
- Land Pollution
- Water Pollution
- Environmental Liability, Enforcement, and Pollution Prevention
- Miscellaneous

SUMMARY OF ENVIRONMENTAL AND BOARD-RELATED STATE LEGISLATION PASSED IN FISCAL YEAR 1999

Overview

The 1999 spring legislative session was perhaps the busiest, most active session seen in Springfield in 8 years, in large part due to the election of Governor George Ryan. Beyond the array of major initiatives passed this spring ranging from HMO reform to the passage of the Governor's Illinois FIRST Program, the General Assembly passed a number of major environmental initiatives.

Several of these initives were contained in the Governor's Illinois FIRST Program. The program created a new Brownfields Redevelopment Loan Program, and expanded the State's current Water Pollution Control Revolving Loan Program for wastewater treatment plants. Another of the Governor's initiatives passed by the General Assembly was the creation of a 4-year $160 million Open Space Land Trust Program to assist local governments (particularly those in the Chicago collar counties) with acquiring open space before it is lost to development.

Additionally, the Governor called together representatives from the agriculture and environmental communities to successfully negotiate a resolution to the 3 ½ year long debate over large livestock facilities. The final livestock bill, which incorporated strong protections against excess phosphorus being land applied as well as a continued major role by the Board in adopting construction design standards for all new or expanded facilities.

The Governor was not the only leader to take the lead on pressing major environmental initiatives this spring. In February of this year, House Speaker Mike Madigan introduced legislation to require mandatory emissions testing of diesel-powered trucks to enforce standards the Board had adopted over 7 years ago. Strongly opposed by the trucking industry, Speaker Madigan and Senate sponsor Christine Radogno pressed forward with the bill, although a strong provision authorizing random spot tests by the State Police was ultimately stripped from the bill. Other environmental measures passed by the General Assembly included legislation directing the Board to create an interstate credit trading program for reducing nitrogen oxide (NOx) emissions, as well as a clarification of the financial assurance requirements for landfills located within a 100-year floodplain.

SUMMARY OF BILLS SIGNED BY THE GOVERNOR

AIR POLLUTION/CLEAN AIR ACT COMPLIANCE

Public Act 91-254 (House Bill 2031) Effective July 1, 2000

Amends Sections 13-103, 13-106, and 13-114 and adds new Sections 13-100.1, 13-102.1, 13-109.1, 13-109.3, 13-116.1, and 13-117 to the Illinois Vehicle Code. Requires all two-year old and older diesel trucks over 16,000 pounds to undergo air pollution diesel emissions tests during either of their currently required semi-annual safety test inspections. Applies only to those trucks registered within the ozone nonattainment areas in the Chicago metropolitan and collar county areas, as well as those registered within the Bi-State Metro East areas of the State (specifically, those trucks registered within Cook, DuPage, Kane, Lake, Madison, McHenry, Monroe, and St. Clair Counties, as well as those registered within the townships of Aux Sable and Goose Lake within Grundy County and Oswego Township in Kendall County). As passed to the Governor, the bill does not allow law enforcement authorities to randomly pull over trucks and test them for possible emissions violations. Preempts home rule. Exempts farm vehicles from the requirements of the bill.

Within eight months of the July 1, 2000 effective date of the bill, requires the Board to amend and update its current diesel emission standards in accordance with the Society of Automotive Engineers Recommended Practice J1667 "Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles" and the cutpoint standards set forth in the USEPA guidance document "Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedure." Additionally, provides that the level of peak smoke opacity shall not exceed 70 percent for such diesel trucks that are model years 1973 and older through December 31, 2002. Beginning January 1, 2003, provides that the level of peak smoke opacity for such trucks that are model years 1973 and older shall not exceed 55 percent.

Where a truck fails the diesel emissions test, the owner or operator of the truck would be required to repair the vehicle and retest it within 30 days. Should a vehicle fail the test and not be repaired within the 30-day time period, requires the testing station or IDOT to place the truck out-of-service. Provides that no emergency vehicles may be placed out-of-service for failure to pass the emissions test. Operating such a vehicle when it has been placed out-of-service would be classified as a petty offense punishable by a warning for a first offense, followed by a $1,000 fine for a subsequent offense. All citations issued for violations of the bill would be considered non-moving violations (so as not to punish the driver who may not actually own the truck but is merely operating it). Authorizes the testing station or IDOT to issue a certificate of waiver if the truck fails to pass a retest, provided the owner or operator can show that he spent at least $3,000 attempting to fix the emissions problem.

Adds a new Section 5.490 to the State Finance Act to create the Diesel Emissions Testing Fund as a new fund within the State Treasury. Provides that funding of the new diesel emissions inspection program created by this bill would come from a new fund created within the State Finance Act called the Diesel Emissions Testing Fund to be made up of revenues derived from fines imposed on violators, as well as from the General Revenue Fund, subject to appropriation by the General Assembly.

Beginning July 1, 2000, requires IDOT to annually conduct a study on the results of the new diesel emissions testing program and report its results to the General Assembly by June 30 of each year thereafter.

Also adds a new Section 8.23 to the State Mandates Act to provide that no reimbursement shall be required by the State for the implementation of the provisions of this bill.

Public Act 91-631 (Senate Bill 1088) Effective August 19, 1999

Adds a new Section 9.9 to the Environmental Protection Act. Requires the IEPA to propose to the Board and the Board to adopt regulations to implement an interstate credit trading program for reducing nitrogen oxide (NOx) emissions at stationary sources (primarily coal-powered power plants and factories) as required by the federal USEPA. The IEPA would allocate NOx emissions credits (allowances) to both large electric generating units (EGUs) and large non-electric generating units (non-EGUs). Allows stationary sources that have emissions allowances to buy, sell, and trade such allowances with other sources. Allows the IEPA to charge fees to EGUs that commence commercial operation on or after January 1, 2003 for the NOx allowances the Agency issues to them. Requires the IEPA to annually set aside allowances, not to exceed 5% of the total allowances available to Illinois, for new EGUs (primarily new gas to energy power plants).

Prohibits the regulations promulgated by the Board pursuant to this bill from being enforced until the later of May 1, 2003, or the first day of the control season subsequent to the calendar year in which all other Midwestern states in USEPA Region V that are required to reduce NOx emissions have adopted rules to implement similar NOx emissions credit trading programs. Provides that, should any court of competent jurisdiction rule any portion of the USEPA's required NOx reduction program invalid, the corresponding portion of Illinois' NOx emissions credit trading program shall be stayed as well.

James R. Thompson Center, Chicago, Illinois

Also adds a new Section 5.490 to the State Finance Act to create the NOx Trading System Fund to hold moneys generated by the IEPA from the sale of NOx emissions allowances. In May of this year, the U.S. District Court in Washington, D.C. ruled that the USEPA's requirement that Midwestern states (including Illinois) reduce their NOx emissions was unconstitutional, stating that only Congress had the power to impose such reductions. The USEPA has appealed the District Court's decision, however, the U.S. Appellate Court has yet to rule on the USEPA's appeal.

LAND POLLUTION

Public Act 91-36 (Senate Bill 1018) Effective June 15, 1999

Amends Sections 19.2, 19.3, 19.4, 19.5, 19.6, 19.8, 22.2, 58, and 58.3 and adds a new Section 58.15 to the Environmental Protection Act. Contains the enabling legislation for the environmental portion of the Governor's Illinois FIRST Program.

Creates the Brownfields Redevelopment Loan Program for the purpose of providing loans to be used for site investigation and site remediation at Brownfields sites.

Deletes the current limitation that loans from the Water Pollution Control Loan Program may be used only for local governments and only for public purposes. Authorizes moneys within the Water Pollution Control Revolving Fund to be used to make direct loans for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act. Specifies elements that must be included in the regulations concerning loan applications. Deletes the provision that requires priority in making loans from the Water Pollution Control Loan Program be given to local governments that need to make improvements to comply with National Pollution Discharge Elimination System (NPDES) permit requirements.

Provides that the Hazardous Waste Fund shall include moneys made available from any source for deposit into the Fund. Provides that the IEPA shall have the authority to accept, receive, and administer on behalf of the State any moneys made available to the State from any source for the specified purposes of the Hazardous Waste Fund.

Public Act 91-110 (Senate Bill 1199) Effective July 13, 1999 Amends Sections 15, 20, 35, and 55 and adds new Sections 10.24, 10.26, 11, 12, 12.1, 13, and 18 to the Livestock Management Facilities Act (LMFAct).

Makes the following changes:

1. Creates eight siting criteria county boards may use to review any new or expanded livestock facility with 1,000 animal units or more. Evidence and/or testimony presented at the meeting as to whether the facility will, more likely than not, be in compliance with the eight criteria would be forwarded to the Department of Agriculture (Department) in the form of non-binding recommendations. The Department would make the final decision over whether or not the facility is approved or denied. Local review of compliance with the eight criteria would only occur where a county information hearing is held (see number two below).

2. Authorizes any county board in which a new or expanded facility is to be located to request a public informational meeting to be conducted by the Department which the owner or operator of the proposed facility must attend. Alternatively, a meeting can be required upon the filing of a petition of at least 75 registered voters within the county where the facility is to be constructed. Such informational meetings are authorized to be held for any new or expanded livestock facility with 1,000 animal units or more after the effective date of this bill. (Under current law, informational meetings can only be requested for new or expanded facilities with waste lagoons; other such facilities that utilize concrete pits or other non-lagoon structures were excluded.) Sets forth requirements for public notice prior to the informational meeting.

3. Requires all new or expanded facilities with non-lagoon waste storage facilities to be built in compliance with strength and load factors set forth in the Midwest Plan Service's Concrete Manure Storage Handbook and future updates. Also requires such facilities to be equipped with waterstops and to be covered or otherwise protected from precipitation so as to prevent overflowing. Prohibits any such facilities built or expanded after the effective date of this bill from being built within the floodway of any 100-year floodplain unless the facility is floodproofed. Also prohibits any such facilities from being built within 400 feet of any natural depression in a karst area or from being built in any location where aquifer material is within 5 feet of the bottom of the waste storage area unless the facility is designed to prevent seepage.

4. Increases from $50 to $250 the registration fee for any facility with a waste lagoon, and establishes the same $250 registration fee for all other new or expanded non-lagoon facilities.

5. Requires any new facility constructed after May 21, 1996 (the effective date of the original LMFAct) that has been taken out of service for 2 or more years to be inspected by the Department prior to being placed back in service.

6. Lowers from 7,000 to 5,000 animal units the threshold at which any new or expanded facility must have its waste management plan on file with the Department. For purposes of meeting this threshold only, provides that multiple livestock management facilities under common ownership shall be considered one facility.

7. Limits the amount of livestock waste that can be land applied to 300 pounds per acre of phosphorus, and provides for required sampling no less than every 3 years until such time as a phosphorus index is developed by the Natural Resources Conservation Service (NRCS). This phosphorus index is estimated to be developed within the next 2-3 years, after which facility owners and operators will be required to base land application rates upon the index.

8. Requires the owner or operator of any livestock facility to report any release of livestock waste within 24 hours of discovering the release. Exempts releases of 25 gallons or less of waste unless the waste is released into the waters of the State of Illinois or from a controlled and recovered release during field application. Establishes penalties for failing to report a release at $1,000 for a first offense, $2,500 for a second offense occurring within a 5-year period, and $5,000 for a third or subsequent offense occurring within a 5-year period.

9. Extends the current ½ mile required setback distance for any occupied non-farm residence to also apply to occupied farm residences.

10. Provides that the Livestock Management Advisory Committee (made up of the Department, IEPA, and DNR) make recommendations to the Department for proposing rules to the Board for the design and construction of livestock waste handling facilities. Requires the Board to hold hearings and adopt final construction and design standards based upon the Midwest Plan Service's Handbooks and future updates, as well as other similar technical documents used by the NRCS. Provides that the Department alone promulgate rules for all other sections of the LMFAct.

Public Act 91-588 (Senate Bill 496) Effective August 14, 1999

Amends Sections 22.19a, 22.19b, and 39.2 of the Environmental Protection Act. Sets forth requirements that any landfill located within a 100-year floodplain that expands onto adjacent land it has owned since August 19, 1997, but for which no local siting approval or IEPA permit has been obtained, must meet in order to show proper financial assurance for 100 years after the landfill closes. Deletes the requirement that the Board adopt rules to effectively require the same standards set forth in this bill. Does not remove or alter in any way the current prohibition on building any new landfills within a 100-year floodplain. Specifically, the bill requires the owner or operator of such a landfill to include within his postclosure care plan the costs of repairing the landfill should it leak, the costs of combating erosion of the landfill, and costs related to periodic monitoring and inspections over the 100-year period following closure of the landfill. Also requires the landfill owner or operator to repair any damage to the landfill as soon as the owner or operator is notified of the need to do so by the IEPA. For the time being, this bill impacts only one landfill in the State, that being the Choteau Island landfill along the Mississippi River near Granite City. However, the bill could potentially affect other landfills in the future that meet the narrow scope of this bill.

Public Act 91-99 (Senate Bill 527) Effective July 9, 1999

Amends Section 3 of the Lawn Care Products Application and Notice Act. Adds additional notification requirements for pesticide application on school grounds outside of the school building itself. Specifically, requires school districts to maintain a registry of parents and guardians of students who have registered to receive written notification prior to the application of pesticides on school grounds, or to all parents and guardians prior to pesticide application. Requires the written notice be given to the parents and guardians at least two business days in advance. Exempts from this notification requirement situations where a pesticide must be applied immediately to prevent an imminent threat to health or property.

Illinois State House, Springfield, Illinois

Public Act 91-525 (Senate Bill 529) Effective August 1, 2000

Amends Sections 2, 3, and 10 and adds new Sections 3.26 and 10.3 to the Structural Pest Control Act. Requires (currently, only encourages) every school to adopt an integrated pest management program where economically feasible. Also requires school districts to maintain a registry of parents and guardians of students who have registered to receive written notification prior to the application of pesticides inside school buildings, or to all parents and guardians prior to pesticide application. Requires the written notice be given to the parents and guardians at least two business days in advance. Also provides that employees may register to receive notice of pesticide application inside school buildings. Provides that a school employee should be designated to assume responsibility for oversight of pest management practices in each school.

Public Act 91-162 (Senate Bill 844) Effective July 16, 1999

Amends Sections 11-31-1 and 11-31.1-1 of the Illinois Municipal Code. Authorizes municipalities to environmentally remediate petroleum products on, in, or under any abandoned or unsafe property within the municipality. Also provides that a municipal Code Hearing Department may prosecute violations of any municipal ordinance that requires, after notice is given, the cutting of weeds, the removal of garbage or debris, the removal of inoperable vehicles, or the abatement of a nuisance from private property.

WATER POLLUTION

Public Act 91-52 (Senate Bill 145) Effective June 30, 1999

Amends and re-enacts Title IV-A of the Environmental Protection Act (originally enacted by Pub. Act 85-1135), relating to the Water Pollution Control Revolving Fund and loan programs for wastewater treatment facilities and public water supply projects. Validates actions taken in reliance on those provisions. Affirms obligations arising under loan agreements. Includes statements of findings and purpose. Also re-enacts and amends the related section (Section 4.1) of the State Finance Act.

Amends Section 19.10 of the Build Illinois Bond Act to re-authorize certain deposits into the Water Pollution Control Revolving Fund. Introduced in the wake of a Cook County Circuit Court ruling last fall under which the court found the original bill (Pub. Act 85-1135) unconstitutional as a violation of the single subject matter requirement.

Public Act 91-84 (House Bill 2636) Effective July 9, 1999

Amends Sections 1, 9, 9.1, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 22 and adds a new Section 9.3 to the Public Water Supply Operations Act. Extends the current safeguard requirements for public water supplies to all community water supplies. Provides that a community water supply that cannot be clearly grouped into one category shall be considered individually and designated by the IEPA. Changes the requirements for classification as an exempt public water supply. Gives the Community Water Supply Operators Advisory Board the authority to review contested IEPA reciprocity determinations. Changes the requirements for water supply operators. Deletes provisions concerning the registration of public water supplies qualifying for exemption and concerning limited certificates.

Public Act 91-501 (House Bill 1893) Effective August 13, 1999

Amends Sections 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, and 19.8 of the Environmental Protection Act. Provides that privately owned community water supplies are eligible for loans through the Water Pollution Control Loan Program. Defines "privately owned community water supply." Changes from 30 days to 15 days the amount of time in which the local government or privately owned community water supply has to respond to a notice of delinquency. Deletes an obsolete provision regarding a report to the General Assembly dealing with the loan program.

ENVIRONMENTAL LIABILTY, ENFORCEMENT, AND POLLUTION PREVENTION

Public Act 91-409 (House Bill 251) Effective January 1, 2000

Amends Section 47-15 of the Criminal Code of 1961. Increases the statutory penalty from a maximum fine of $500 to a minimum fine of $500 for any person convicted of dumping garbage on real property (*i.e.*, along side a road or on someone else's land). If a court finds the perpetrator to be indigent, it may allow the person to perform 100 hours of community service in lieu of paying the $500 fine.

Public Act 91-72 (House Bill 909) Effective July 9, 1999

Amends Section 21 of the Environmental Protection Act. Prohibits any person from causing or allowing the open dumping of waste in a manner that results in the deposit of general or clean construction or demolition debris.

Public Act 91-82 (House Bill 2011) Effective January 1, 2000

Amends Section 42 of the Environmental Protection Act. Increases the penalties for open dumping from the current $500 per offense to $1,500 for a first offense and $3,000 for subsequent offenses. Authorizes the IEPA, as well as those counties that have entered into delegation agreements with the IEPA, to issue administrative citations for open dumping violations. All revenues derived from violations would be deposited into the Environmental Protection Trust Fund, except that 50% of the revenue from a violation would be returned to the local government where the local government issued the administrative citation (as is current law). The increase in penalties contained in this bill apply only to open dumping; not landfill violations.

Public Act 91-442 (House Bill 2023) Effective January 1, 2000

Amends Section 58.15 of the Environmental Protection Act. Prohibits the commencing of construction of any building for use as an elementary or secondary school unless a Phase I environmental audit is first conducted to assure there is no contamination on site. Where the Phase I audit shows there may be some contamination on site, requires a more detailed Phase II environmental audit be conducted to determine the level of contamination. Where the Phase II audit shows the presence or likely presence of a release or substantial threat of release of a regulated substance under the Environmental Protection Act at, on, to, or from the property, requires the site to be enrolled in the IEPA's Brownfields Site Remediation program and the remediation completed. Applies only to Cook County.

Public Act 91-453 (House Bill 2631) Effective August 6, 1999

Amends Sections 5, 10, 40, 45, 60, 75, 80, and 85 of the Drycleaner Environmental Response Trust Fund Act. Eliminates obsolete provisions relating to start-up funding for the program from the General Revenue Fund. Establishes the operational date for applying for and receiving program benefits as July 1, 1999. Changes various deadlines within the program. Provides that, upon request by the Auditor General, the Council (as opposed to the IEPA, as is currently the law) shall retain a firm of certified public accountants to examine and audit the Council. Changes the dates before which application for remedial action account benefits must be submitted to the Council, as well as the deadline by which and site investigation to identify soil and groundwater contamination from the release of dry cleaning solvent must be completed, from June 30, 2003 to June 30, 2004. Extends from July 1, 2007 to January 1, 2010 the repeal of the drycleaning facility license fee and the drycleaning solvent tax.

MISCELLANEOUS

Public Act 91-214 (Senate Bill 1105) Effective January 1, 2000

Amends Section 4c of the Personnel Code to add to the list of general exemptions only those technical and engineering staff employed by the Board. Currently, this category of general exemptions to the Personnel Code covers only those technical and engineering staff within the Department of Nuclear Safety, the Department of Transportation, and the Illinois Commerce Commission.

Public Act 91-178 (Senate Bill 1174) Effective January 1, 2000

Amends Section of 2-105 of the Illinois Human Rights Act. Requires all State departments, agencies, boards, and commissions (including the Board) to notify the Department of Human Rights (DHR) thirty days before effecting a layoff. Requires DHR to make adverse impact determinations and requires the State agency to notify the employee, the employee's union, and the Dislocated Worker Unit at the Department of Commerce and Community Affairs. Prohibits any layoff for ten working days after notice is given to the DHR unless an emergency layoff situation exists. Provides that each employee targeted for a layoff should be notified by the State agency targeting the layoff that transitional assistance may be available to him or her.

Public Act 91-558 (House Bill 1860) Effective August 14, 1999

Amends Section 23 and adds a new Section 26.1 to the Illinois Certified Shorthand Reporters Act. Subjects persons regulated under the Act to disciplinary action for willfully failing to systematically retain stenographic notes or transcripts, including paper or electronic media, for a 5-year period. Provides that it is the licensee's responsibility to retain the notes or transcripts. Specifies that, in the case of litigation, the person must retain stenographic notes or transcripts for five years after the end of the litigation.

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