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Illinois Pollution Control Board

Annual Report
2011

Mission Statement

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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.

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Letter from the Chairman

Honorable Pat Quinn, Governor of Illinois, and Members of the General Assembly:

The Pollution Control Board is proud to present the Board's Annual Report for Fiscal Year 2011. Between July 1, 2010 and June 30, 2011, the Board continued to handle a large volume of rulemaking procedures and contested cases while operating within the constraints posed by the State's budget difficulties.

Under the Environmental Protection Act (Act), the Board has two major responsibilities: determining, defining, and implementing environmental control standards for the State of Illinois, and adjudicating complaints that allege non-criminal violations of the Act. The Board also reviews appeals arising from permitting and other determinations made by the Illinois Environmental Protection Agency (IEPA), as well as pollution control facility siting determinations made by units of local government.

Board rulemaking during FY 2011 covered most areas of the Illinois environmental regulations. Rulemakings governing water quality standards generated a great deal of public interest and several air regulations were adopted. Significant rulemakings concluded during FY 2011 are outlined in the following paragraphs.

On September 2, 2010, the Board adopted final amendments in the rulemaking entitled Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218 and 219, R10-20. The adopted regulations will reduce emissions of volatile organic material (VOM) consistent with control techniques guidelines issued by the USEPA.

On November 18, 2010, the Board adopted rules in the rulemaking entitled 10-Year Federally Enforceable State Operating Permits (FESOP) Amendments to 35 Ill. Adm. Code Part 201.162, R10-21. The rule extends the term of federally enforceable State operating permits from five to ten years. The amendments will save costs to the State and the regulated community of processing permit renewals for some 800 affected sources.

On June 16, 2011, the Board adopted final amendments in the rulemaking entitled Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Code Adm. 807.Subpart F, 810.104 and 811.Subpart G, R10-9. The adopted regulations amend the Board's financial assurance requirements in its waste disposal regulations in Parts 807, 810 and 811.

During FY 2011 the Board accepted several rulemakings that will continue into FY 2012. Ongoing rulemakings, such as the rulemaking entitled, Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304 (R08-9), will require substantial Board attention and resources. On March 18, 2010, the Board adopted an order dividing the rulemaking into four subdockets to facilitate the rulemaking process: subdocket A (recreational use), subdocket B (disinfection), subdocket C (aquatic life uses), and subdocket D (water quality standards and criteria). This rulemaking will also continue to generate considerable interest among the public and press.

The Board's contested case docket in FY 2011 included numerous enforcement cases, permit appeals, adjusted standard petitions, administrative citations, and landfill siting appeals. Board decisions were overwhelmingly upheld on appeal at both the Appellate and Supreme Court levels.

Sincerely,

G. Tanner Girard
Chairman

Board Members

Chairman G. Tanner Girard was appointed Acting Chairman in December 2005. Dr. Girard was originally appointed to the Board in 1992, and reappointed in 1994 and 1998 by Governor Jim Edgar. Governor George H. Ryan reappointed Dr. Girard to the Board in 2000. Governor Rod R. Blagojevich reappointed Dr. Girard in 2003 and 2005. Dr. Girard has a PhD 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. He was formerly Associate Professor of Biology and Environmental Sciences at Principia College from 1977 to 1992, and Visiting Professor at Universidad del Valle de Guatemala in 1988. 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 Thomas E. Johnson was appointed to the Board for a term beginning in July 2001. He served as Chairman from January 2003 until December 2003, and was then reappointed to a three-year term as Board Member. Johnson has spent more than a decade in private legal practice after graduating from Northern Illinois University School of Law in 1989 and holds a BS in Finance from the University of Illinois at Urbana Champaign. Johnson has also served the public in many capacities including: Champaign County Board Member, Special Assistant Attorney General, and Special Prosecutor for the Secretary of State.



Board Member Andrea S. Moore was first appointed to the Board in 2003. Just prior to joining the Board, Ms. Moore was Assistant Director of the Illinois Department of Natural Resources. Previously, she served in the Illinois House of Representatives from 1993 until 2002. She was Spokesperson of the House Revenue Committee and served on the Environment and Energy, Public Utilities, Cities and Villages, Labor and Commerce, and Telecommunications Rewrite Committees. She also served on the Illinois Growth Task Force and was a member of the National Caucus of Environmental Legislators. From 1984 to 1992, Ms. Moore was a member of the Lake County Board, serving two years as Vice Chair. She was also a member of the Lake County Forest Preserve Board, serving as president in 1991 and 1992. Additionally, she was the Clerk of the Village of Libertyville and was a Village Trustee. Ms. Moore is a former member of the Board of Directors of the University Center of Lake County. She was a member of the Board of Directors of the National Association of Counties. In 2001, Ms. Moore received one of the nation's most prestigious parks and recreation awards from the American Academy of Park and Recreation Administration and the National Park Foundation: the Cornelius Amory Pugsley Award. In addition, Ms. Moore was honored by the *Daily Herald* as one Lake County's 100 Most Influential Leaders of the 20th Century. Ms. Moore is currently a Site Council Member for The Gaylord Building in Lockport, which is a property of the National Trust for Historic Preservation.

Board Member Gary Blankenship was appointed to the Board in 2008. Prior to serving on the Board, Mr. Blankenship was Business Manager and Financial Secretary for Plumbers & Pipefitters Local #422 in Joliet, Illinois. He served as Vice President of the Illinois Pipe Trades Association, Financial Secretary for the Will and Grundy Counties Building Trades Council and was a member of the Strategic Planning Committee for the United Association of Plumbers and Pipefitters International Union. Mr. Blankenship, with 38 years experience, has participated in the construction and maintenance of a wide variety of air, water, solid and hazardous pollution control systems for industrial facilities such as coal fired power plants, waste water treatment plants, refineries, chemical plants, incinerators, and landfills. He also managed a five-year training program for Pipefitter Apprentices that included constructing and maintaining air and water pollution control systems. Mr. Blankenship and his wife reside in Channahon, Illinois.



Board Member Carrie Zalewski was appointed to the Board by Governor Pat Quinn in 2009. Ms. Zalewski is a licensed attorney in Illinois. Prior to joining the Board, Ms. Zalewski served as Assistant Chief Counsel at the Illinois Department of Transportation (IDOT) where she was the lead environmental compliance attorney. While at IDOT, Ms. Zalewski dealt with various environmental issues involving NPDES permits, leaking underground storage tanks, reviewing NEPA documents for IDOT projects and other air, land and water issues faced by IDOT. Ms. Zalewski has also worked for the State Appellate Defender's Office and in private practice. She has a Juris Doctor from Chicago-Kent College of Law and a Bachelor of Science in Engineering from the University of Illinois at Urbana. While at the University of Illinois, she studied abroad in Durban, South Africa. Ms. Zalewski was selected as a member of the Illinois Women's Institute for Leadership in 2008. She is on the Board of Directors for the Chicago Youth Centers (Metropolitan), and the LaGrange YMCA.



Rulemaking Update

FY 11 RULEMAKING REVIEW

Rulemaking is one of the Board's most visible functions. During the public notice, comment, and hearing process in any given rule docket, the Board and its staff may interact with individual citizens, state agency personnel, and representatives of industry, trade association and environmental groups. The common goal is to refine regulatory language and to ensure that adopted rules are economically reasonable and technically feasible as well as protective of human health and the environment.

Section 5(b) of the Environmental Protection Act (Act) (415 ILCS 5/5(b) (2010)) directs the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois." When the Board promulgates rules, it uses both the authority and procedures in Title VII (Sections 26-29) of the Act (415 ILCS 5/26-29 (2010)) and its own procedural rules at 35 Ill. Adm. Code Part 102.

The Act and Board rules allow anyone to file regulatory proposals with the Board. The Illinois Environmental Protection Agency (IEPA) is the entity that most often files rule proposals. The Board (1) holds quasi-legislative public hearings on the proposals to receive testimony and other evidence, and (2) accepts written public comments to assist the Board in rendering its rulemaking decisions.

Notice of a rule proposal and adoption are published in the *Illinois Register*, as required by the rulemaking provisions of the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-10 through 5-160 (2010)). The Board issues written opinions and orders, in which the Board reviews all of the testimony, evidence, and public comment in the rulemaking record, and explains the reasons for the Board's decision.

There are also special procedures in Section 7.2 of the Act for Board adoption, without holding hearings, of rules that are "identical-in-substance" to rules adopted by the United States Environmental Protection Agency (USEPA) in certain federal programs. Notice of the Board's proposal and adoption of identical-in-substance rules is published in the *Illinois Register*, and the Board considers in its opinions any written public comments it has received.

Finally, under Section 5(d) of the Act, the Board may conduct such other non-contested or informational hearings as may be necessary to accomplish the purposes of the Act. As the Board explains in its procedural rules, such "hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate." See 35 Ill. Adm. Code 102.112. In some situations, the Board has held inquiry hearings on its own motion as well as on requests to do so from the Governor or a State agency.

During FY 11, rulemaking activity at the Board continued to be heavy. The following is a summary of the most significant rulemakings completed in fiscal year 2011, arranged by docket number. During FY 2011, under Section 27 and 28.5 of the Act, the Board adopted rules in five significant rulemakings of statewide applicability, and allowed the IEPA to withdraw one land proposal. The Board also adopted two site specific rulemaking.

Finally, the Board adopted three amendments to its procedural rules, dismissed one open procedural rule docket, and adopted one amendment to its administrative rules, discussed at the end of this listing.

RULES ADOPTED IN FISCAL YEAR 2011

[Amendments to the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 808,809, and 739, R06-20\(B\) \(final rules adopted Oct. 21, 2010\)](#)

On October 21, 2011, the Board adopted final rules to add definitions to 35 Ill. Adm. Code 739.100, 808.110, and 809.103. The Board proposed the R06-20(B) rules in response to public comments to further improve rules adopted in February 18, 2010, in Docket R06-20(A).

In R06-20(A), the Board adopted final rules amending its special waste regulations and corresponding used oil management provisions codified at 35 Ill. Adm. Code Parts 808, 809 and 739. The R06-20 docket was opened in response to a regulatory proposal filed by NORA, formally known as the National Oil Recycling Association, on December 13, 2005. In R06-20(A), the Board adopted regulations exempting from the manifesting requirements of Parts 808 and 809 five specified types of used oil.

[Proposed Amendments to Tiered Approach to Corrective Action Objectives \(35 Ill. Adm. Code 742\), R09-9 \(dismissed Nov. 18, 2010\)](#)

On November 18, 2011, the Board granted the IEPA's motion to voluntarily withdraw its September 3, 2008 proposal. Among other things, the IEPA stated that it wished to file a new proposal. See pending R11-9, below.

[Ameren Ashpond Closure Rules \(Hutsonville Power Station\): Proposed 35 Ill. Adm. Code 840.101 through 840.152, R09-21 \(Jan. 20, 2011\)](#)

On January 20, 2011, the Board adopted rules establishing standards under which Ameren Energy Generating Company (Ameren) can close Ash Pond D, a surface impoundment at Ameren's Hutsonville Power Station (Station) near Hutsonville, Crawford County. Ameren

originally filed the proposal for a site-specific rule with the Board on May 19, 2009. Discussions between Ameren and the Illinois Environmental Protection Agency led to resolution of various technical and other issues, and resulted in the filing of a joint proposal on September 27, 2009.

[Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Code Adm. 807.Subpart F, 810.104 and 811.Subpart G, R10-9 \(June 16, 2011\)](#)

On June 16, 2011, the Board adopted final amendments to the financial assurance requirements in its waste disposal regulations in Parts 807, 810 and 811. The IEPA filed the rulemaking proposal on July 27, 2009. The purpose of financial assurance rules is to establish requirements for performance bonds and other securities insuring closure and post-closure care and corrective action at non-hazardous waste landfill sites. The Board updated its rules to correspond with the hazardous waste financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations and the Board's other financial assurance programs.

Additionally, the Board opened a subdocket A and proposed for first-notice additional amendments to these waste disposal regulations. See pending Docket R10-9(A) below. These amendments were proposed by the IEPA following the Board's adoption of its second-notice opinion and order in R10-09.

[Reasonably Available Control Technology \(RACT\) for Volatile Organic Material Emissions from Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218 and 219, R10-20 \(Sept. 2, 2010\)](#)

On September 2, 2010, the Board timely adopted final rules based on the March 8, 2010 proposal by the IEPA pursuant to the "federally required" rulemaking provisions of Section 28.2 of the Environmental Protection Act, 415 ILCS 5/28.2 (2010).

The adopted regulations will reduce emissions of volatile organic material (VOM) consistent with control techniques guidelines issued by the USEPA. The rules apply to Group IV Consumer & Commercial Products in ozone nonattainment areas classified as moderate and above in order to meet Illinois' obligations under the Clean Air Act. (VOM is an ozone precursor). Group IV products include industrial cleaning solvents, flat wood paneling coatings, flexible packaging printing materials, lithographic printing materials and letter press printing materials.

[10-Year Federally Enforceable State Operating Permits \(FESOP\) Amendments to 35 Ill. Adm. Code Part 201.162, R10-21 \(Nov. 18, 2010\)](#)

On November 18, 2010, the Board adopted rules to extend the term of federally enforceable State operating permits

from five to ten years. The IEPA proposed the rule April 20, 2010, to save costs to the state and the regulated community of processing permit renewals for some 800 affected sources. This amendment to 35 Ill. Adm. Code 201.162 does not change the term of perpetual permits issued pursuant to Section 201.169 or CAAPP permits issued pursuant to Section 39.5 of the Act.

[Site-Specific NOx Rule Amendment Applicable to Saint-Gobain Containers, Inc. at 35 Ill Adm. Code Section 217.152\(b\), R11-17 \(Apr. 21, 2011\)](#)

On April 21, 2011, the Board adopted a five-month extension of the date by which Saint-Gobain Containers, Inc (SGCI) must obtain a legally enforceable order incorporating specified emission limitations and monitoring requirements in order to qualify for an alternative compliance deadline. See 35 Ill. Adm. Code 217.152(b). SGCI owns and operates a glass manufacturing plant, including three natural gas-fired glass melting furnaces, in Dolton, Cook County. The nitrogen oxide emissions limitation of 5.0 pound per ton of glass produced would have otherwise applied by January 1, 2012. In its November 24, 2010 petition for rulemaking, SGCI noted that the process of its receipt of a Federal court consent decree took longer than anyone had expected. While the rule had required completion of the process by December 31, 2009, the Board's adopted amendment allowed SGCI until May 7, 2010 to finalize the consent decree and qualify for an alternative compliance deadline.

[Revision of Enhanced Vehicle Inspection and Maintenance \(I/M\) Regulations: Amendments to 35 Ill. Adm. Code Part 240, R11-19 \(Mar. 17, 2011\)](#)

On March 17, 2011, the Board adopted amendments to its air pollution regulations which establish emission standards and limitations for mobile sources codified at 35 Ill. Adm. Code 240. The adopted rules repeal various outdated emissions test standards and update definitions and incorporations.

On December 8, 2010, the IEPA filed a rulemaking proposal pursuant to authorities including Section 20 of the Vehicle Emissions Inspection Law of 2005 (VEIL of 2005). 625 ILCS 5/13C-20 (2010). Section 20 of the VEIL of 2005 provides that Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b) (2008)) and the rulemaking provisions of the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq. (2010)) "do not apply to rules adopted by the Board under this subsection [(a)]." 625 ILCS 13C-20(a) (2010). In addition, the VEIL of 2005 required the Board to adopt rules within 120 days after the IEPA proposed standards, or by April 7, 2011. The Board held two hearings, and timely adopted the rules as required.

PROCEDURAL AND ADMINISTRATIVE RULE DOCKETS

Amendments to the Board's Procedural Rules to Accommodate Electronic Filing: 35 Ill. Adm. Code 101-130, R04-8 (dismissed Mar. 3, 2011);

Procedural Rules on Hearings in Identical-in-Substance Rulemakings, R10-18 (rules for hearing by videoconference for certain rules; Aug. 5, 2011);

Procedural Rules for Authorizations under P. A. 95-115 (Regulation of Phosphorus in Detergents Act), 35 Ill. Adm. Code 106.Subpart H, R10-19 (rules adopted Jul. 15, 2011);

Revision of Mailing Address for Service of Documents: Proposed Amendment to 35 Ill. Adm. Code 101.304, R10-22 (rules adopted Dec. 2, 2010); and

Amendments to the Board's Administrative Rules to 2 Ill. Adm. Code 2175, R11-22 (rules updated Mar. 3, 2011).

SEMI-ANNUAL IDENTICAL-IN-SUBSTANCE UPDATE DOCKETS

Section 7.2 and various other sections of the Act require the Board to adopt regulations identical in substance to federal regulations or amendments thereto promulgated by the USEPA Administrator in various federal program areas. See 415 ILCS 5/7.2 (2010). These program areas include: drinking water; underground injection control; hazardous and non-hazardous waste; underground storage tanks; wastewater pretreatment; and the definition of volatile organic material.

Identical-in-substance (IIS) update dockets are usually opened twice a year in each of the seven program areas, so that the Board annually processes at least 14 update dockets in order to translate federal rules into State rules within one year of USEPA rule adoption. Additional update dockets are initiated as necessary to provide expedited adoption of some USEPA rules in response to public comments, or to correct rules for various reasons (including in response to federal litigation).

Timely completion of IIS rules requires inter-agency coordination and inter-governmental cooperation. Entities who must act in concert to successfully complete these rulemakings include the Board, the Illinois Environmental Protection Agency, USEPA, and the Office of the Attorney General. The Attorney General must certify the adequacy of and authority for, Board regulations required for federal program authorization.

For reasons of space, the Board has not included the listing of identical-in-substance dockets completed in FY11. Notable rules were adopted in RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2008 through June 30, 2009) R09-16/R10-4 (Oct. 7, 2010) and SDWA Update (January 1, 2009 through December 31, 2009) R10-1/R10-7 (Dec. 2, 2011). Summaries of these and other identical-in-substance dockets are included in the Board's *Environmental Register* newsletter. They are available on the Board's Web site at www.ipcb.state.il.us. Additional information is also available electronically on the various individual dockets from the Clerk's Office On Line (COOL) system, also available on the Board's Web site.

RULES PENDING AT END OF FISCAL YEAR 2011

At the close of FY11, there were 17 open dockets (including subdockets), exclusive of identical-in-substance update dockets.

The Board typically holds hearings on proposals filed with it, prior to adoption of the "first notice" orders required under the APA. If the Board substantially changes rule text as a result of public hearings and comment, the Board may adopt a "second first notice" order, hold additional hearings and receive additional comment.

The list of pending dockets below does not including identical-in-substance rule dockets. For reasons of space, the substance of these dockets carried over from FY11 into FY12 is not summarized below. Additional information is available from the Board's Web site at www.ipcb.state.il.us

R07-21 Site Specific Rule for City of Joliet Wastewater Treatment Plant Fluoride and Copper Discharges, 35 Ill. Adm. Code 303.432

R08-9 Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 217 (Subdockets A, B, C, and D)

R08-18 Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620

R09-19 Air Quality Standards Clean-up: Amendments to 35 Ill. Adm. Code Part 243

R10-9(A) Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Code Adm. 807.Subpart F, 810.104 and 811.Subpart G

R11-8 Regulatory Proposal for NOx Trading Program Sunset Provisions for Non-Electric Generation Units ("Non-EGU."): Amendments to 35 Ill. Adm. Code Part 217. Subpart U

R11-9 Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742

R11-18 Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 302.Subparts B, C, E, F and 303.312

R11-20 Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators

R11-22 Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732 and 734

R11-23 Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218 and 219

R11-23(A) Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218 and 219

R11-24 R11-26(cons.) Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217

R11-25 Setback Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618

Appellate Update

INTRODUCTION

When the Board decides contested cases, the Board exercises quasi-judicial powers similar to those of an Illinois circuit court. Just as decisions of the Illinois circuit courts, Board decisions can be appealed to the Illinois appellate courts.

Pursuant to Section 41 of the Environmental Protection Act (Act) (415 ILCS 5/41 (2010)), any party to a Board hearing, anyone who filed a complaint on which a hearing was denied, anyone denied a permit or variance, anyone who is adversely affected by a final Board order, or anyone who participated in the public comment process under subsection (8) of Section 39.5 of the Act, may file a petition for review of the Board's order with the appellate court. The petition for review must be filed within 35 days of service of the Board order from which an appeal is sought.

Administrative review of the Board's final order or action is limited in scope by the language and intent of Section 41(b) of the Act. 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.

Board decisions in rulemaking, imposing conditions in variances, and setting penalties are quasi-legislative. The standard of review for the Board's quasi-legislative actions is whether the Board's decision is arbitrary or capricious. All other Board decisions are quasi-judicial in nature and the Illinois Supreme Court has stated that in reviewing State agency's quasi-judicial decisions (1) findings of fact are reviewed using a manifest weight of the evidence standard; (2) questions of law are decided by the courts *de novo*; and (3) mixed questions of law and fact are reviewed using the "clearly erroneous" standard (a standard midway between the first two). See AFM Messenger Service, Inc. v. Department of Employment Security, 198 Ill. Ed 380, 763 N.E.2d 272 (2001) and City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 692 N.E.2d 295 (1998).

In Fiscal Year 2011, the Illinois appellate courts entered a final order in one case involving appeal from a Board opinion and order. In that case, the Third District appellate court affirmed the Board's grant of a waste delisting petition; the decision was appealed to the Illinois Supreme Court. The summary of the written appellate decision for Fiscal Year 2011 follows a description of the adjusted standard case type.

ADJUSTED STANDARDS

Once the Board adopts final rules under Title VII of the Act, there are three methods by which an entity may seek relief from a regulation of general applicability. The first two are adjudicatory proceedings known as adjusted standards and variances. The third is site specific rules. The Board is authorized under Section 28.1 of the Act, 415 ILCS 5/28.1 (2010) to issue an adjusted standard to persons who are able to justify such an adjusted standard "consistent with" Section 27(a) of the Act. The Board may impose conditions on the grant of adjusted standards "as may be necessary to accomplish the purposes of the Act."

The Board must determine whether the petitioner has justified the request under the factors set forth in Section 28.1(c) of the Act, unless the Board's rules specify a different level of justification. The petitioner must prove that conditions exist that are substantially and significantly different from conditions relied on by the Board in adopting the general regulation. The requested adjusted standard must not result in environmental or health risks more substantial or significant than the risks considered by the Board in adopting the general rule. Finally, the adjusted standard is consistent with federal law.

Section 28.1(b) allows the Board to specify the necessary level of justification when adopting a rule of general applicability. In such situations, the petitioner must satisfy only the requirements of the rule, and not those of Section 28.1(c). One example of this is the procedure for waste delisting in 35 Ill. Adm. Code 720.122.

[Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency](#), 403 Ill. App. 3d 1012, 936 N.E.2d 670 (3rd Dist. 2010)(Board's order in AS 08-10 (Jan. 8, 2009), petition for leave to appeal granted and pending No.110882 (Il. S. Ct.)

On July 12, 2010, the Third District Appellate Court issued its decision affirming the Board's decision in the case captioned [Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency](#), No. 3-09-0120 (July 12, 2010). The order affirmed the Board's grant, by way of an adjusted standard, of a hazardous waste delisting to Peoria Disposal Company (PDC) in the case captioned before the Board as [In the Matter of: RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company](#), AS 8-10 (Jan 8, 2009).

A delisting proceeding is a proceeding under 35 Ill. Adm. Code 702.122, a rule adopted by the Board under its mandate in Section 7.2 of the Act, 415 ILCS 5/7.2 and 22.4 (2010), to adopt rules “identical in substance” to those adopted by the United States Environmental Protection Agency to implement the federal Resource Conservation and Recovery Act (RCRA). A generator of a waste listed as hazardous under RCRA has the ability to demonstrate that the generator’s specific waste, after treatment, no longer poses a hazard; once “delisted,” a waste need no longer be treated as hazardous. By rule, the Board considers requests for waste delisting under the Section 28.1 adjusted standard process.

The effect of the Board and Court’s decisions is to exclude from hazardous waste regulation under RCRA the residue generated by PDC’s treatment of electric arc furnace dust (EAFD) (listed as hazardous waste K061 under RCRA) at the company’s waste stabilization facility (WSF) in Peoria, Peoria County. The residue will result from PDC’s treatment (*i.e.*, stabilization) of EAFD that PDC receives from its steel mill customers. EAFD is collected by emission control devices during steel production in electric furnaces.

In the appellate court’s ruling, two justices voted to affirm the Board, while one voted to reverse the Board. Justice Lytton wrote the court’s order to affirm the Board, finding that the citizens’ group had standing to appeal the adjusted standard, but affirming the Board on the merits. Justice Carter’s special concurrence agreed with the judgment to affirm, but would have dismissed the appeal solely for lack of standing. Justice Wright concurred in part (the appellants have standing) and dissented in part (the Board erred on the merits).

The court’s ruling was originally an unpublished order, having no precedential effect, issued under Illinois Supreme Court Rule 23 (166 Ill.2d R.23). But, by order of August 24, 2010, the appellate court granted the appellants’ motion to publish the July 12, 2010 order, which means the order now has full precedential effect. Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency 403 Ill. App. 3d 1012, 936 N.E.2d 670 (3rd Dist. 2010) (hereinafter PDC).

The Illinois Supreme Court granted appellants’ petition for leave to appeal. Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency, No. 110882. Aside from the issue of appellants’ standing to appeal the Board’s decision, the sole source of contention is the claim that the Board failed to consider the factors set forth in Section 27(a) of the Environmental Protection Act, 415 ILCS 5/27(a)(2008). PDC has filed a response in opposition to the petition. The matter is fully briefed, oral argument has been held, and the matter is under advisement by the Court.

The Board’s AS 8-10 Decision

The Board’s January 8, 2009 decision granting the delisting PDC requested will not be summarized in detail below. But, some basic information is necessary to understand the summary of the appellate decision.

The Board found that PDC met the legal tests for delisting under Section 28.1 of the Act (415 ILCS 5/28.1 (2006)) and Section 720.122 of the Board’s hazardous waste regulations (35 Ill. Adm. Code 720.122). PDC demonstrated that (1) the treatment residue does not meet any of the criteria under which K061 EAFD was listed as hazardous waste; (2) there is no reasonable basis to believe that factors other than those for which the K061 waste was listed warrant retaining the treatment residue as a hazardous waste; and (3) the treatment residue exhibits no characteristics of hazardous waste. The scientific evidence presented to the Board showed that the treatment residue meeting the Board’s designated delisting levels does not pose a substantial present or potential threat to human health or the environment when considering all of the relevant factors, including use of the conservative risk assumptions required by the USEPA.

The Board included conditions for the delisting. The conditions included that no batch of “electric arc furnace dust stabilized residue” (EAFDSR) is allowed to leave PDC’s facility for non-hazardous waste disposal without analytical proof that the batch does not contain chemical concentrations in excess of those found to be safe. The Board amended a condition proposed by PDC to add dioxins and furans to the constituents of concern for which PDC will have to test, along with a corresponding delisting level with which PDC must comply for the treatment residue to qualify as non-hazardous waste. The Board also tightened the description of disposal facilities that may receive delisted treatment residue. The Board specified that any delisted EAFDSR must be disposed of off-site in a RCRA Subtitle D1 landfill that is permitted by IEPA and that has a groundwater monitoring system, in addition to having a liner and leachate collection system. The Board also narrowed those instances when PDC can alter its stabilization process without having to first petition the Board to justify an amendment to the delisting. AS 8-10, slip op. at 2 (Jan. 8, 2009).

The Third District Decision

Overview. PDC petitioned the Board to delist, from the list of hazardous wastes, the residue resulting from PDC’s treatment of electric arc furnace dust (EAFD). PDC, 403 Ill. App. at 1015. The Board granted PDC’s petition. Sierra Club and Peoria Families Against Toxic Waste (collectively, “opposition groups”) sought reversal of the Board’s order on four grounds: (1) the Board failed to consider the factors set forth in Section 27(a) of the Act (415 ILCS 5/27(a)); (2) the Board did not require PDC to address future permit modifications that may be necessitated by delisting; (3) the Board found that local siting approval was not required

to grant the delisting; and (4) the Board did not impose “reopener” language as a condition of the delisting. *Id.* PDC and the Board argued that the opposition groups lacked standing to appeal. The court ruled as follows: “We find that the opposition groups have standing but affirm the Board’s order on the merits of the case.” PDC, 403 Ill. App. at 1015.

Background. In 1989, IEPA issued a permit to PDC to operate a waste stabilization facility (WSF) near Peoria for the storage and treatment of hazardous and nonhazardous waste. On April 25, 2008, PDC filed a delisting adjusted standard petition under Section 28.1 of the Act, 415 ILCS 5/28.1(2008). PDC asked the Board to delist K061 hazardous waste, EAFD, an emission from the production of steel in electric arc furnaces, remaining after PDC treats and stabilizes the EAFD. The residue resulting from PDC’s treatment is referred to as “electric arc furnace dust stabilized residue” (EAFDSR). On June 12, 2008, IEPA filed a response generally supporting PDC’s request. PDC, 403 Ill. App. at 1015.

On August 18, 2008, the Board held a public hearing on PDC’s petition. PDC, 403 Ill. App. at 1015. PDC presented two witnesses at hearing, both engineers. *Id.* at 1015-16. Twenty-seven other individuals provided public comment at hearing. *Id.* at 1016. After hearing, the Board accepted written public comments. IEPA ultimately issued a recommendation that the Board grant the delisting. *Id.* On January 8, 2009, the Board issued an opinion and order granting the delisting petition, subject to conditions. *Id.* The court quotes the Board’s summary of findings, describes some of the conditions imposed upon PDC by the Board, and notes that the Board considered many of the concerns raised in public comment, including concerns over reopener language, the Section 27(a) factors, permit modifications, and local siting approval. *Id.* at 1016-18.

Standing. PDC and the Board argued that the opposition groups lacked standing to appeal this grant of an adjusted standard because the groups do not fall within any of the categories of persons identified in Section 41(a) of the Act (415 ILCS 5/41(a)). PDC, 403 Ill. App. at 1018. The opposition groups asserted that they have standing to appeal under Section 29(a) of the Act (415 ILCS 5/29(a)) as

persons “adversely affected or threatened” by the delisting (quoting 415 ILCS 5/29(a)). *Id.*

The court observed that there was no dispute that the opposition groups were not parties to the Board proceeding and did not fit within any of the categories of persons in Section 41(a) of the Act. PDC, 403 Ill. App. at 1018. The court ruled, however, that the delisting is a “rule or regulation specific to PDC,” particularly since the Board used its quasi-legislative power to impose conditions on PDC, and that the opposition groups therefore have standing under Section 29(a) of the Act. *Id.* at 1019. The court conceded that Section 28.1(a) of the Act (415 ILCS 5/28.1(a)) describes an adjusted standard as an “adjudicatory determination.” *Id.*, quoting 415 ILCS 5/28.1(a). Nevertheless, the court was persuaded by the

placement of Section 28.1 in Title VII of the Act (entitled “Regulations”), the fact that Section 27(a) refers to “regulations specific to individual persons or sites,” and the description of adjusted standards in a Board procedural rule. *Id.*, quoting 415 ILCS 5/Title VII & 27(a). *Id.* at 1019-20.

Merits. For the opposition groups’ challenge that the Board failed to fully and properly consider the Section 27(a) factors, the court applied the “manifest weight of the evidence” standard of review, citing the Second District’s 1999 decision in IEPA v. IPCB and the Louis Berkman Co. d/b/a Swenson Spreader Co., 308 Ill. App. 3d 741, 721 N.E.2d 723 (1999) (Swenson Spreader). PDC, 403 Ill. App. at 1020. The Third District turned to the

Illinois Supreme Court’s 1993 decision in Granite City Div. of Nat. Steel Co. v. PCB, 155 Ill. 2d 149, 613 N.E.2d 719 (1993) (Granite City). The court observed that the Granite City decision held that Section 27(a) required the Board to “consider” or “weigh carefully” the Section 27(a) factors. PDC, 403 Ill. App. at 1020, quoting Granite City. Section 27(a), continued the Third District, “does not require the Board to make a determination, based on evidence in the record, that the delisting complies with the factors.” *Id.* at 1020. The court then stated that the Board, “[a]lthough not required to do so,” specifically addressed the Section 27(a) factors. The court held that the Board’s ruling, that the delisting could be granted consistent with the Section 27(a) factors, was not against the manifest weight of the evidence. *Id.* at 1021.



Next, for the opposition groups' challenge that the Board erred in failing to require that PDC provide proposed permit modifications, if any, the court applied the "arbitrary and capricious" standard of review, noting that the Board's ruling involved the Board's technical expertise and interpretation of its rules. PDC, 403 Ill. App. at 1021, citing Swenson Spreader. The court observed that the Board's procedural rules do not require adjusted standard petitions to include information on what permit modifications would become necessary if an adjusted standard is granted. *Id.* at 1021, citing 35 Ill. Adm. Code 104.406. The court further recognized that permitting is the "province" of IEPA, not the Board, and that "safeguards are in place if future permit modifications become necessary." *Id.*, citing 415 ILCS 5/31 (enforcement). The court held that the Board did not err in finding that PDC's petition was "complete and should be granted." *Id.*

For the opposition groups' challenge that the Board erred in failing to require PDC to obtain local siting approval, the court applied the manifest weight of the evidence standard of review. PDC, 403 Ill. App. at 1021, citing Swenson Spreader. The court ruled that the actions proposed by PDC do not fit within the statutory definition of "new pollution control facility." *Id.* at 1022, citing 415 ILCS 5/3.330(b). The court noted that PDC is not seeking to expand its WSF or adjoining landfill, nor is PDC asking to handle special or hazardous waste for the first time. *Id.* The court also found that because PDC is treating waste, not just storing it temporarily or consolidating it for further transfer, PDC is not operating a "transfer station." *Id.* The court held that the Board "properly found that local siting approval was not necessary." *Id.* The Board ruled that local siting approval was not a prerequisite to delisting, but the Board declined to determine whether PDC proposed a "new pollution control facility" or "transfer station." *Id.* The court agreed that these were not relevant issues before the Board in a delisting proceeding and held that the Board correctly found that the petition should be granted. *Id.*

Finally, for the opposition groups' challenge that the Board should have required reopener language as a condition of the adjusted standard, the court applied the arbitrary and capricious standard of review. PDC, 403 Ill. App. at 1022-23, citing Swenson Spreader. The court noted that USEPA delistings often contain reopener language, allowing the USEPA Regional Administrator to take whatever action is necessary to protect human health and the environment, including revoking the delisting. *Id.* at 1023. The court then reviewed the broad authorities available to State and local officials in Illinois under the Act to take action to protect human health and the environment. *Id.*, citing 415 ILCS 5/4(s), 42(e), 43(a). In light of these authorizations for corrective action and injunction, the court ruled that reopener language is "unnecessary for delisting in this state." *Id.* The court further noted that Illinois splits between the Board and IEPA responsibilities that are USEPA's alone under the federal system. *Id.* A reopener would "serve no purpose" because once an adjusted standard is granted, the Board "no longer has authority to take any action with

respect to the facility," but IEPA does. *Id.* at 1024. The court held that the Board did not err in refusing to include reopener language. *Id.*

Special Concurrence

Justice Carter concluded that the opposition groups do not have standing. PDC, 403 Ill. App. at 1024. He would have dismissed the appeal on that ground, which would have the effect of affirming the Board. Justice Carter therefore wrote to "concur in the resulting judgment of the lead decision to affirm." *Id.*

Justice Carter reasoned that the standing issue "hinges upon a determination of whether a Board decision to grant an adjusted standard under section 28.1 of the Act is an adjudicatory decision or a rule-making decision." PDC, 403 Ill. App. at 1025. Justice Carter found that Section 28.1 "indicates that this decision is an adjudicatory decision and an appeal of such a decision is governed solely by section 41." *Id.* at 1026.

Justice Carter observed that Section 28.1(a) of the Act states that the decision to grant an adjusted standard is an "adjudicatory determination" and that the rulemaking provisions of Title VII, in which Section 29 is located, do not apply. PDC, 403 Ill. App. at 1026, citing 415 ILCS 5/28.1(a). Justice Carter further noted that Section 28.1(g) provides that final Board determinations under Section 28.1 "may be appealed pursuant to Section 41 of this Act." *Id.*, quoting 415 ILCS 5/28.1(g). Accordingly, "the statute . . . directs that appeals are governed by section 41, not section 29, of the Act." *Id.*

Justice Carter recognized that Section 41 references Section 29 and "specifically states that the limitations in section 41 as to who may petition for review of an adjudicatory decision shall not apply to petitions for review of rules and regulations as set forth in section 29." PDC, 403 Ill. App. at 1026. For Justice Carter, however, "that leads back to the same question of whether a decision under section 28.1 of the Act is an adjudicatory decision or a rule-making decision." *Id.* According to Justice Carter, because Section 28.1 indicates that adjusted standards are adjudicatory decisions and that the rulemaking provisions of Title VII do not apply, Section 29 is inapplicable. *Id.* Justice Carter disagreed with the lead decision's reasoning that Swenson Spreader supports finding a delisting to be a rulemaking procedure, as that decision merely recognized that adjusted standards involve both quasi-legislative and quasi-adjudicatory functions, warranting multiple standards of review. *Id.* at 1027.

Justice Carter next noted that the opposition groups do not fall within any of the Section 41 categories of persons who may appeal this Board decision. PDC, 403 Ill. App. at 1027. Finally, Justice Carter observed that the opposition groups could have sought leave of the Board to intervene to gain party status, which would have given them appeal rights under Section 41.

Dissent

Justice Wright concurred with that part of the court's order in which the opposition groups were found to have standing to appeal under Section 29 of the Act. PDC, 403 Ill. App. at 1028. In disagreeing with Justice Carter on this point, Justice Wright asserts that because the Board has been "extremely reluctant" to allow intervention in adjusted standard proceedings, the fact that the opposition groups did not initiate an "inevitably futile request for intervention" is insignificant to the matter of standing. *Id.* According to Justice Wright, if party status was required to seek judicial review of an adjusted standard grant, then the Board could "successfully truncate judicial" review by "simply developing an unwritten policy to deny all non-petitioners' requests to intervene." *Id.* at 1029.

Justice Wright dissented from that part of the court's order in which the Board's decision to issue the adjusted standard was affirmed. PDC, 403 Ill. App. at 1029. Justice Wright gave four reasons for dissenting. First, Justice Wright suggested that the Board adopted the listing of K061 EAFD as RCRA hazardous waste after considering the Section 27(a) factors, and that the Board did not define the level of justification required for an adjusted standard, Justice Wright argued that the Board contradicted Section 104.426 of the Board's procedural rules (35 Ill. Adm. Code 104.426) when the Board held that there is no threshold of evidence that the adjusted standard petitioner must meet with respect to the Section 27(a) factors. *Id.* at 1029-1030. Justice Wright maintained that the procedural rule places the burden of proof "squarely on the shoulders of the petitioner" to "introduce a sufficient threshold of evidence to satisfy the section 27(a) factors." *Id.* at 1030.

Second, Justice Wright asserted that the Board's order does not contain specific findings or reasoning "concerning the Section 27(a) factors in the context of PDC's evidence submitted to the Board," and therefore does not comply with Section 28.1 of the Act. PDC, 403 Ill. App. at 1031. Justice Wright posits that the Board's ruling was "purely arbitrary" in the absence of findings that the adjusted standard "would not result in environmental or health effects more adverse than those considered by the Board when originally adopting the general regulation consistent with the 27(a) factors." *Id.* at 1034.

Third, Justice Wright argued that the Board failed to specify whether PDC satisfied its burden of proof with respect to subsection (a) of the Section 720.122 waste delisting rule, subsection (b) of that rule, or both subsections. PDC, 403 Ill. App. at 1033-34. Fourth, Justice Wright believed that PDC's "new, first-time operation as an above ground storage yard and transfer station for future off-site disposal falls squarely within the definition of a new pollution control facility." *Id.* at 1036. Therefore, she continues, PDC must obtain local siting approval "regardless of whether the K061 waste is hazardous or delisted as non-hazardous EAFDSR." *Id.* In conclusion, Justice Wright places extra

emphasis on the fact that PDC receives waste from "out-of-state" generators and that the waste will "remain in Illinois for perpetuity." *Id.* at 1037.

Justice Wright would reverse the Board's delisting as arbitrary and capricious or, alternatively, remand to the Board to make "specific findings of fact regarding PDC's burden to prove the Section 27(a) factors as well as the requirements of Section 720.122(a) and (b)." PDC, 403 Ill. App. at 1038.

Legislative Update

Summarized below are eight Public Acts from the 97th General Assembly relating to the Board's work, seven of which amend the Environmental Protection Act and one of which amends the Electronic Products Recycling and Reuse Act. Additional information about the legislative session is available at the General Assembly Web page at www.ilga.gov.

Public Act 97-95 (House Bill 1297); Effective July 12, 2011

P.A. 97-95 adopts a number of amendments to the Environmental Protection Act, including provisions authorizing the Illinois Environmental Protection Agency (IEPA) to establish a Registration of Smaller Sources (ROSS) in the place of permitting for those sources. Among its other provisions, P.A. 97-95 seeks to streamline permit processes by requiring the IEPA to develop online applications and authorizing general permits, permits by rule, and a process for expedited review;

Public Act 97-137 (House Bill 3371); Effective July 14, 2011

P.A. 97-137 amends the Environmental Protection Act. Under P.A. 96-1416, in adopting rules setting levels of contaminants that may be present in "uncontaminated soil" used as fill at specified sites, the only background level of a carcinogen that the Board may consider is benzo(a)pyrene, with other carcinogens meeting a 1 in 1 million lifetime risk factor. P.A. 97-137 removes the benzo(a)pyrene restriction and provides that, if the most stringent remediation objective or applicable background concentration for a specified contaminant is greater than the 1 in 1 million lifetime risk factor, then the Board may consider allowing that contaminant at a concentration up to its most stringent remediation objective or applicable background level. P.A. 97-137 also authorizes licensed Professional Geologists, as well as licensed Professional Engineers, to certify whether soil is uncontaminated soil.

Public Act 97-220 (Senate Bill 100); Effective July 28, 2011

P.A.97-220 adopts a number of amendments to the Environmental Protection Act. Among its numerous provisions, the Public Act authorizes the Board in the place of the IEPA to make certain decisions concerning the operation of landscape waste composting operations. The Public Act also provides that no person shall use, cause, or allow the use of any site subject to an environmental covenant under the Uniform Environmental Covenants Act in a manner that is inconsistent with the activity and use limitations imposed under the covenant. In addition, the Act creates two new criminal offenses: criminal damage to a public water supply and aggravated criminal damage to a public water supply.

Public Act 97-230 (Senate Bill 1929); Effective July 28, 2011

P.A. 97-230 amends the Environmental Protection Act and defines "general construction or demolition debris that is processed for use at a landfill" as general construction or

demolition debris that is processed for use as alternative daily cover, road building material, or drainage structure building material at a MSWLF unit. The Public Act also allows facilities to include up to 35% of "general construction or demolition debris that is processed for use at a landfill" to be considered recyclable for purposes of meeting the 75% recycling requirement. It also provides for calculation of the 75% diversion requirement on a 12-month rolling average rather than on a daily basis. The Public Act also established other requirements on the processing and transportation of this material.

Public Act 97-286 (House Bill 2001); Effective August 10, 2011)

P.A. 97-286 amends the Environmental Protection Act by providing that it is a Class 4 felony to openly dump more than 250 cubic feet of waste or 50 waste tires. The Act now provides that the penalty for a first violation of the open dumping prohibition is a Class A misdemeanor, regardless of the quantity of waste dumped. The Public Act also increases the felony penalty for open dumping from \$5,000 to \$25,000.

Public Act 97-287 (Senate Bill 2106); Effective August 11, 2011

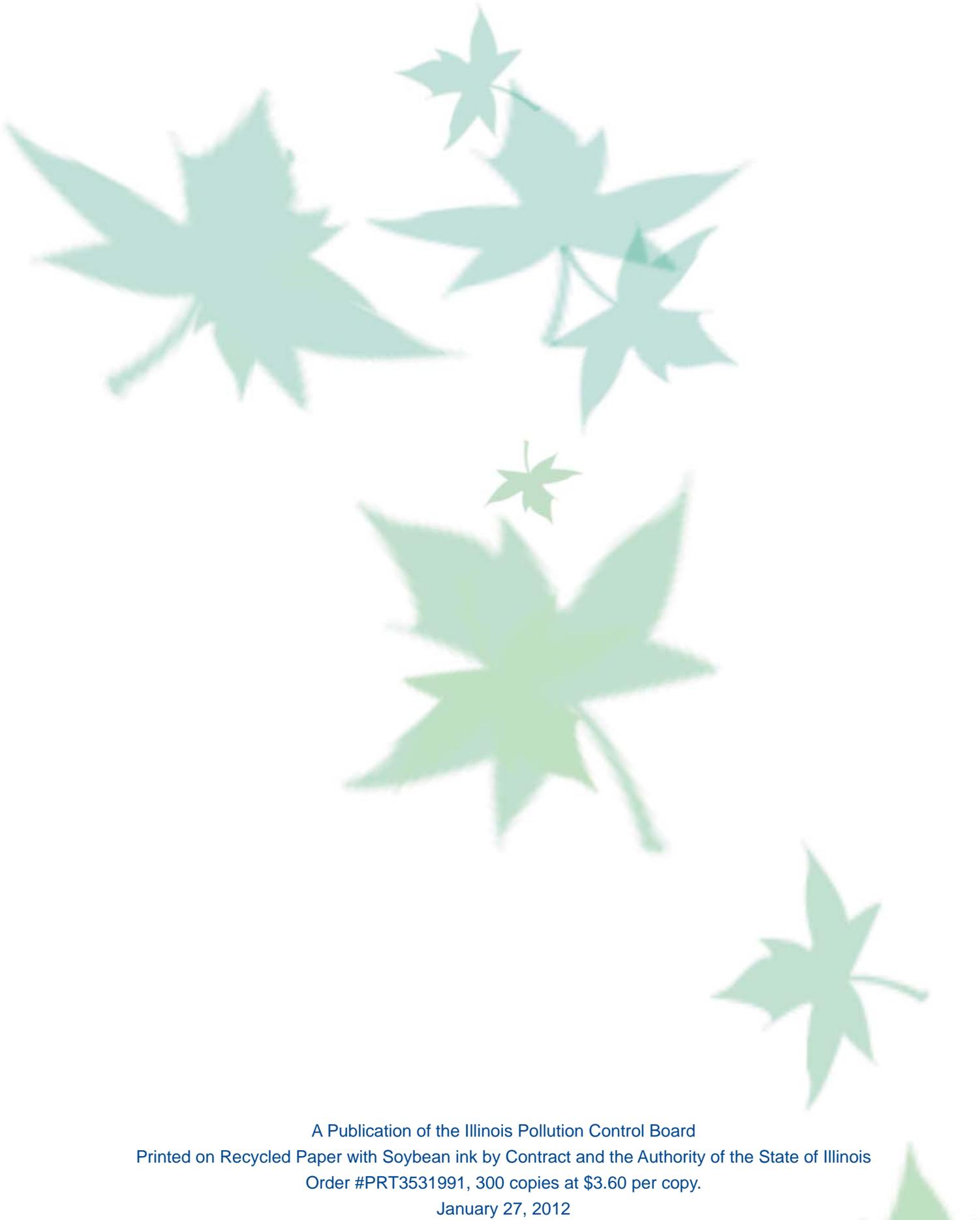
Public Act 97-287 adopts a number of amendments to the Electronic Products Recycling and Reuse Act. Among its provisions, the Public Act expands the range of products covered to include electronic keyboards, scanners, electronic mice, facsimiles, portable digital music players, video game consoles, small scale servers, cable and satellite boxes, and VCRs. The Public Act also authorizes the Illinois Environmental Protection Agency to issue administrative citations for violations of the Electronic Products Recycling and Reuse Act.

Public Act 97-519 (Senate Bill 1357); Effective August 23, 2011

Public Act 97-519 amends the Environmental Protection Act by authorizing the Illinois Environmental Protection Agency and any person alleged to have violated the Environmental Protection Act, Board rules, or permit conditions to enter voluntarily into an enforceable Compliance Commitment Agreement. Among its other provisions, the Public Act includes successful completion of a Compliance Commitment Agreement to factors the Board may consider in determining civil penalties.

Public Act 97-545 (House Bill 2056); Effective January 1, 2012

Among its other provisions, Public Act 97-545 amends the Environmental Protection Act by providing that the definition of "pollution control facility" does not include "the portion of a site or facility that is used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of this Act."



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