

ANNUAL REPORT

2014



*ILLINOIS
POLLUTION
CONTROL
BOARD*



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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 that 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 its Annual Report for fiscal year 2014. In its various sections, this report provides detailed information about environmental rulemakings and contested cases brought before the Board between July 1, 2013 and June 30, 2014. During fiscal year 2014, the Board continued to handle a large volume of rulemaking procedures and contested cases while operating within its tight budget.

Under the Environmental Protection Act, the Board is responsible for determining, defining, and implementing environmental control standards for the State of Illinois, and the Board adjudicates complaints that allege non-criminal violations of the Act. The Board also reviews permitting and other determinations made by the Illinois Environmental Protection Agency (IEPA) and pollution control facility siting determinations made by units of local government.

During fiscal year 2014, the composition of the Board changed with the retirement of Chairman Tom Holbrook. In September, the Governor appointed Dr. Deanna Glosser, as Chairman of the Board. Board Members Carrie Zalewski, Jennifer Burke, and Jerome D. O'Leary continue their service.

Among its accomplishments during fiscal year 2014, the Board completed several significant rulemakings. In [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 \(R08-9C\)](#), the Board adopted a rule that designates aquatic life uses for the Chicago Area Waterway System and Lower Des Plaines River. In [Procedural Rules for Alternative Thermal Effluent Limitations Under Section 316\(a\) of the Clean Water Act: Proposed New 35 Ill. Adm. Code Part 106, Subpart K and Amended Section 304.141\(c\) \(R13-20\)](#), the Board adopted amendments establishing procedural rules for petitions requesting alternative thermal effluent limitations under Section 316(a) of the Clean Water Act. In [Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 201, 218, and 219 \(R13-18\)](#), the amendments will allow the State of Illinois to timely realize additional emission reduction benefits achievable by using only on-board refueling vapor recovery (ORVR) systems. In [Emergency Rulemaking Regarding Regulation of Coke/Coal Bulk Terminals: New 35 Ill. Adm. Code 213 \(R14-20\)](#) filed by IEPA, the Board found that IEPA's proposed emergency rules did not meet the statutory test for an "emergency" and declined to adopt an emergency rule.

In addition to completing its rulemaking activity in these dockets, the Board made substantial progress in other dockets including R08-9 (D), addressing the Chicago Area Waterway System and Lower Des Plaines River; R12-23, considering revisions to the Board's Concentrated Animal Feeding Operation (CAFO) rules. The Board also began a proceeding in R14-21 [Procedural Rule to Implement Electronic Filing and allow for Public Remarks at Board Meetings](#). The proposal will allow, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office Online (COOL) website, as well as service by e-mail of most types of filings. Second, the proposal will codify procedural standards for remarks by members of the public at the Board's open meetings in accordance with the Open Meetings Act.

The Board's contested case docket in fiscal year 2014 included numerous enforcement cases, permit appeals, adjusted standard petitions, administrative citations, and landfill site appeals.

Additionally, in appeals taken from Board decisions, the Illinois Supreme Court and the Illinois appellate courts issued final decisions during fiscal year 2014. Specifically in [Board of Education of Roxana Community School District No. 1 v. Pollution Control Board](#), 2013 IL 115473, the Illinois Supreme Court affirmed the Board's decision that the School District lacked standing to appear in tax certification proceedings. In [Martin Maggio v. Illinois Pollution Control Board, County of Winnebago, Winnebago County Board, and Winnebago Landfill Company](#), 2014 IL App (2d) 130260, the Second District Appellate Court affirmed the decision of the Board finding that the County Board had jurisdiction to consider the siting application. These decisions and others are summarized more thoroughly in the "Appellate Update" section of this Annual Report.

As always, more information about the Board's work is available through the Board's Web site at www.ipcb.state.il.us.

Sincerely,

A handwritten signature in black ink that reads "Deanna Glosser". The signature is written in a cursive, flowing style.

Deanna Glosser, Ph.D.

Chairman

Meet the Board Members

Chairman Deanna Glosser was appointed to the Board by Governor Pat Quinn in 2011 and was designated chairman in September 2013. Dr. Glosser is an environmental planner with a doctoral degree from the Department of Urban & Regional Planning at the University of Illinois at Champaign-Urbana (UIUC). She worked for the Illinois Department of Natural Resources for 13 years and was president of Environmental Planning Solutions, Inc., a small, woman-owned business for eight years. Dr. Glosser has been involved with urban and environmental planning issues for over twenty-five years. She was closely involved with the American Planning Association (APA) for over ten years and has co-authored three policy guides for APA on wetlands, endangered species, and community and regional food planning. In addition, Dr. Glosser has served as an Adjunct Assistant Professor at UIUC's Department of Urban & Regional Planning and an Adjunct Professor in the Environmental Studies program at the University of Illinois-Springfield.



Board Member Jennifer A. Burke was appointed to the Board by Governor Pat Quinn in 2011. Ms. Burke is a licensed attorney in Illinois since 1995. Prior to joining the Board, Ms. Burke served as Senior Counsel to the City of Chicago in the Department of Law. While at the City of Chicago, Ms. Burke focused on environmental matters including Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) litigation, brownfield redevelopment, and compliance with air, waste, asbestos, and lead regulations. Ms. Burke previously was a partner in the law firm of Jenner & Block in Chicago representing clients in various environmental matters including environmental enforcement, toxic tort litigation, insurance coverage litigation, cost recovery litigation, and environmental due diligence in corporate transactions. Her law degree is from Chicago-Kent College of Law and her undergraduate degree is a Bachelor of Science in Biology from Georgetown University in Washington, D.C. Ms. Burke lives in Chicago.



Board Member Jerome D. O'Leary was appointed to the Board in 2012 by Governor Pat Quinn. Prior to joining the Board, Mr. O'Leary was the Director of Energy for the United Association of Plumbers & Pipefitters (2006-2011), and an International Representative for the United Association of Plumbers & Pipefitters (1992-2006). He was also Business Manager of the Plumbers & Pipefitters Local 25. Over the years, Mr. O'Leary was employed by various contractors performing the installation of piping systems on power plants, refineries, boilers, food production plants, chemical plants, manufacturing plants, and water and waste plants. Additionally, Mr. O'Leary has been involved in reviewing many draft air and water permits for proposed facilities which include gas and coal fired power plants, ethanol and petroleum refineries, and coal to synthetic gas plants. Mr. O'Leary is a member of the American Society of Mechanical Engineers.



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.



Rulemaking Update

Introduction

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), the Board is responsible for adopting the State's environmental regulations by conducting rulemaking proceedings. Rulemaking generally involves the Board holding quasi-legislative hearings and receiving written public comments on regulatory proposals. Such proposals are typically filed by the Illinois Environmental Protection Agency (IEPA), though the Act provides that they may be filed by "[a]ny person." Based upon the record developed during the rulemaking proceeding, the Board issues its opinions and orders, addressing the issues and the Board's reasons for its decisions, in addition to setting forth the new or amended rule language.

Proposed rules are published in the *Illinois Register* at first notice and later reviewed by the Joint Committee on Administrative Rules (JCAR) at second notice. At final notice, the adopted rules are filed by the Board with the Index Department of the Office of the Secretary of State for publication in the *Illinois Register* and codification in the Illinois Administrative Code. Besides providing the Board with general rulemaking authority to adopt Statewide and site-specific rules, the Act authorizes the Board to conduct expedited and streamlined rulemakings. For example, the Board uses a "fast-track" procedure to adopt rules required by the federal Clean Air Act. Also, after a public comment period but without JCAR second-notice review and typically without holding a hearing, the Board adopts rules "identical in substance" to those of the United States Environmental Protection Agency (USEPA) concerning drinking water, hazardous waste, and other federally-authorized programs.

The most significant rulemakings completed by the Board in fiscal year 2013 are briefly summarized below, followed by a list of some of the important rulemakings pending at the end of the fiscal year.

Rulemakings Completed in Fiscal Year 2014

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(C)

On February 6, 2014, the Board adopted rules that designate aquatic life uses for the Chicago Area Waterways (CAWS) and the Lower Des Plaines River. Specifically, the Board adopted three aquatic life use (ALU) designations and definitions of those ALU designations: CAWS ALU A; CAWS and Brandon Pool ALU B; and Upper Dresden Island Pool (UDIP) ALU. Generally, CAWS ALU A waters are capable of maintaining tolerant and intermediately tolerant species such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish. CAWS ALU A waters consist of the Upper North Shore Channel, the Lower North Shore Channel, the North Branch of the Chicago River, the South Branch of the Chicago River, the Calumet-Saganashkee Channel, the Calumet River, the Little Calumet River, the Grand Calumet River, Lake Calumet, and the Lake Calumet Connecting Channel.

CAWS and Brandon Pool ALU B waters are capable of protecting aquatic life populations predominated by individuals of tolerant fish species, such as common carp, golden shiner, bluntnose minnow, yellow bullhead, and green sunfish. ALU B waters consist of the Chicago Sanitary and Ship Canal and Brandon Pool. UDIP ALU waters are capable of maintaining, and having quality sufficient to protect, aquatic-life populations consisting of individuals of tolerant, intermediately tolerant, and intolerant types such as largemouth bass, bluntnose minnow, channel catfish, orangespotted sunfish, smallmouth bass, shorthead redhorse, and spottail shiner.

The Board also determined that maintaining the General Use standard for the Chicago River is appropriate as the Chicago River can meet federal Clean Water Act goals in the foreseeable future. The Board therefore adopted no change in the ALU designation for the Chicago River.

Finally, the Board adopted rule language to establish numeric water quality standards for fecal coliform bacteria applicable to Primary Contact Recreation Waters.

Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 201, 218, and 219, R13-18

On December 19, 2013, the Board adopted amendments to its air pollution rules, establishing requirements for phasing-out Stage II vapor recovery systems at the pump nozzles of gasoline dispensing facilities (GDFs) in the Chicago ozone nonattainment area (NAA). The phase-out is based upon USEPA's determination that there is widespread use of on-board refueling vapor recovery (ORVR) systems throughout the national motor vehicle fleet. ORVR systems are incompatible with most of the Stage II equipment used at GDFs in the Chicago NAA—their simultaneous use results in greater refueling emissions than if only ORVR were to be used. Owners and operators of GDFs operating at any time before January 1, 2014, in the Chicago ozone NAA must complete decommissioning Stage II systems by December 31, 2016.

Standards and Limitations for Certain Sources of Lead: Proposed 35 Ill. Adm. Code 226, R14-19

On April 17, 2014, the Board adopted rules to reduce lead emissions in two areas of Illinois designated by USEPA as not attaining the National Ambient Air Quality Standards (NAAQS) for lead. Specifically, this “fast-track” rulemaking imposed lead controls on nonferrous metal production facilities located in the Granite City, Madison County nonattainment area and the Chicago, Cook County nonattainment area. The rules are intended to satisfy Illinois’ obligation under the federal Clean Air Act to develop a State Implementation Plan addressing requirements for lead emissions sources in lead NAAQS nonattainment areas.

National Ambient Air Quality Standards, USEPA Regulations (July 1, 2012 through December 31, 2012), R13-11

On July 25, 2013, the Board adopted amendments replacing all existing Illinois ambient air quality standards (35 Ill. Adm. Code 243) with standards “identical in substance” to the federal NAAQS. The NAAQS are adopted by USEPA pursuant to Section 109 of the federal Clean Air Act (42 U.S.C. § 7409 (2011)) and codified in 40 C.F.R. 50. The Board rulemaking was the initial proceeding under P.A. 97-945 (eff. Aug. 10, 2012), which amended the Act to ensure that Illinois’ regulations reflect USEPA’s most recent NAAQS.

Procedural Rules for Alternative Thermal Effluent Limitations Under Section 316(a) of the Clean Water Act: Proposed New 35 Ill. Adm. Code Part 106, Subpart K and Amended Section 304.141(c), R13-20

On February 20, 2014, the Board adopted amendments establishing procedural rules for petitions requesting alternative thermal effluent limitations under Section 316(a) of the federal Clean Water Act (33 U.S.C. § 1326(a)). The amendments add a new Subpart K to the Board’s procedural rules in Part 106 and update Section 304.141(c) (35 Ill. Adm. Code 106, 304.141(c)).

Definition of VOM Update, USEPA Amendments (January 1, 2013 through June 30, 2013), R14-7

On November 21, 2013, the Board adopted amendments to reflect USEPA’s most recent exemptions of chemical compounds from regulation as ozone precursors. Specifically, the Board added four compounds to the list of those exempted from the definition of “volatile organic material” (VOM). This identical-in-substance rulemaking responded to USEPA amendments to the federal definition of “volatile organic compound” (VOC) codified at 40 C.F.R. § 51.100(s). VOM in the Illinois rules has the same meaning as does VOC in the federal regulations.

SDWA Update, USEPA Amendments (January 1, 2013 through June 30, 2013), R14-8

On January 23, 2014, the Board, adopted amendments to Illinois regulations that are identical in substance to USEPA’s drinking water regulations adopted under the Safe Drinking Water Act (SDWA). The Board amended Illinois’ drinking water regulations in response to three USEPA actions that occurred during the first half of calendar year 2013, including the Revised Total Coliform Rule.

Amendments to Primary Drinking Water Standards: 35 Ill. Adm. Code 611.490, R14-9

On April 17, 2014, the Board adopted amendments to the Illinois Primary Drinking Water Standards relating to certification of laboratories analyzing drinking water samples. Specifically, if no laboratory is USEPA-certified or Illinois-certified to analyze a parameter, the amendments allow a drinking water supplier to use a laboratory certified by a sister state for that parameter. Previously, laboratories had to be certified and approved either by USEPA or IEPA.

RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2013 through December 31, 2013), R14-13

On April 17, 2014, the Board adopted amendments that update the Illinois hazardous waste regulations to be identical in substance to USEPA’s rule amendments, including conditional exclusions from the definitions of “solid waste” and “hazardous waste” for solvent-contaminated wipes. The Board also added a conditional exclusion from regulation as hazardous waste for carbon dioxide streams that are injected into Class VI carbon sequestration wells. The USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2011)). USEPA’s RCRA Subtitle C hazardous waste management regulations are found at 40 C.F.R. 260-268, 270-273, and 279.

National Ambient Air Quality Standards, USEPA Regulations (July 1, 2013 through December 31, 2013), R14-17

On June 5, 2014, the Board updated Illinois’ ambient air quality standards to make them identical in substance to USEPA’s NAAQS regarding new analytical methods for demonstrating compliance.

Appellate Update

Introduction

Under the Environmental Protection Act (Act), final opinions and orders of the Board, are appealable directly to the Illinois appellate court. In Fiscal Year 2014, the appellate court affirmed a landfill siting decision of the Board and dismissed an appeal of a variance issued by the Board. Before the Illinois Supreme Court, the Board prevailed in an appeal of tax certifications granted by the Board under the Property Tax Code (Code). In another case, the appellate court reversed circuit court findings that the Board did not violate the Open Meetings Act (OMA).

Board of Education of Roxana Community School District No. 1 v. Pollution Control Board, 2013 IL 115473

On November 21, 2013, the Illinois Supreme Court affirmed the appellate court's judgment that the appellate court had no jurisdiction to hear 28 appeals brought by Roxana School District (District). The District had sought direct administrative review of Board decisions rendered in "pollution control facility" (PCF) tax certification proceedings. The appellate court held that it lacked jurisdiction to hear the District's petitions for review of Board orders. The Board denied the District's motions for intervention in the proceedings. The Board also, on the recommendation of the Illinois Environmental Protection Agency (IEPA), granted WRB Refining, LLC's tax certification applications, thereby certifying various systems and devices as PCFs at the company's Wood River petroleum refinery in Roxana, Madison County. The certifications afford preferential tax treatment for the PCFs, which the District maintained would deprive it of tax revenue.

The appellate court found that pursuant to Section 11-60 of the Code, review of a Board decision in a PCF tax certification proceeding may be sought only by the tax certification applicant, and then, only in circuit court. The appellate court rejected the District's argument that Section 41 of the Act provides jurisdiction for direct appeals to the appellate court from tax certification cases and dismissed the appeals for lack of jurisdiction. The following Board cases were at issue: PCB 12-39, PCB 12-40, PCB 12-65 through PCB 12-84, and PCB 12-86 through PCB 12-91.

Though it affirmed the appellate court, the Illinois Supreme Court provided "different reasoning" for the lack of jurisdiction. It was uncontested that the Code's appeal provision provided the District no rights to appeal. The Supreme Court held, however, that even if the appellate court incorrectly ruled that Section 41 of the Act is "completely supplanted" by Section 11-60 of the Code, Section 41 would still be unavailable to the District.

The District first argued that it could appeal directly to the appellate court because it fell within the fourth category of petitioners listed in Section 41 of the Act, which permits appeals by "any party adversely affected by a final order or determination of the Board." The Supreme Court disagreed. To be a "party," the person must have been a party of record in the proceedings before the Board. The District was denied leave to intervene in the Board proceedings and accordingly "is not and cannot be deemed to have ever been a party to the litigation." The Supreme Court dispensed with the argument that jurisdiction exists based upon the second category of petitioners listed in Section 41 of the Act, which permits appeals by "any person who filed a complaint on which a hearing was denied." The high court found that "[t]here is no meaningful sense in which [the District's] petition to intervene can be considered a complaint."

The Supreme Court also rejected the position that appeals in PCF certification proceedings should be made directly to appellate court under Section 41 of the Act when brought by third parties, but to circuit court under Section 11-60 of the Code when brought by the PCF certificate applicant. The high court found that this interpretation would "yield absurd results" as "the particular court to which an appeal must be brought would differ depending on the particular litigant who brought it." The Supreme Court could "conceive of no sound reason why the legislature would possibly have wanted to create such a dual-track system." The high court recognized that "legitimate concerns may arise when the only parties permitted to participate in the regulatory process are regulators and the companies they regulate," but reasoned that such concerns are "a matter for the General Assembly."

Roxana Community Unit School District No. 1 v. Environmental Protection Agency, 2013 IL App (4th) 120825

On November 14, 2013, the appellate court reversed the Sangamon County Circuit Court's rulings that the Board did not violate the OMA. The appellate court found that the Board violated the OMA by conducting Closed Deliberative Sessions (CDS) to consider matters ineligible for closed meetings and by prohibiting the public from addressing the Board at open meetings. The appellate court also found that IEPA violated the Freedom of Information Act, which is not discussed here.

The District and other local taxing districts (plaintiffs) sought relief for both concluded and pending Board proceedings involving PCF tax certification applications submitted by WRB Refining, LLC. The same Board cases were before the Illinois Supreme Court, and are discussed above.

According to the appellate court, the OMA dispute centered on "the procedure the Board employed to grant certification of identified WRB infrastructure improvements as [PCFs]." The appellate court noted that Section 2(c)(4) of the OMA allows

the Board to “conduct a closed session to consider ‘evidence or testimony’ that was ‘presented in an open or closed hearing’ to a ‘quasi-judicial body.’” The appellate court found “no such evidence or testimony existed [in the Board’s WRB tax certification proceedings] that would warrant consideration in a [CDS] under that exception.”

The appellate court also determined that the Board “prohibited public comment.” The appellate court concluded that this violated Section 2.06(g) of the OMA, which provides that “[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” The appellate court reversed the circuit court’s rulings and remanded the case for further proceedings, including “plaintiffs’ pursuit of appropriate remedies.” The case is pending before the circuit court (No. 12-MR-224) as of the end of FY 2014.

Martin Maggio v. Illinois Pollution Control Board, County of Winnebago, Winnebago County Board, and Winnebago Landfill Company, 2014 IL App (2d) 130260

In a March 31, 2014 opinion, the appellate court affirmed the Board’s decision to affirm the landfill siting approval issued by the Winnebago County Board (County). The County granted the siting application of Winnebago Landfill Company (WLC) to expand the company’s solid waste landfill. Martin Maggio had filed a third-party appeal under the Act with the Board to contest the local siting approval. Mr. Maggio argued unsuccessfully to the Board and then to the appellate court that WLC’s pre-application notices were not timely served upon all surrounding landowners and that the County lacked jurisdiction to consider WLC’s siting application.

In reviewing the Board’s decision, the appellate court examined service requirements under Section 39.2(b) of the Act, which provides that “[n]o later than 14 days before the date on which the county board . . . receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, . . . on the owners of all property within 250 feet in each direction of the lot line of the subject property” The appellate court observed that these notice requirements are jurisdictional prerequisites, meaning WLC must comply with them to vest the County with authority to hear the landfill siting application. The court further noted that for purposes of Section 39.2(b), the language certified mail, return receipt requested, is considered the same as registered mail, return receipt requested. WLC mailed 102 pre-application notices to all surrounding property owners by certified mail, return receipt requested, twenty-one days before WLC filed its siting application with the County. Some notices went unclaimed and were returned to WLC; other notices were not delivered until after the fourteenth day before the siting application was filed.

According to Maggio, Section 39.2(b) requires proof that surrounding landowners received their pre-application notices at least 14 days prior to the filing of the siting application. The Board cited People ex rel. Devine v. \$30,700 United States Currency, 199 Ill. 2d 142 (2002), in which the Illinois Supreme Court examined the service requirements of two differently-worded “return receipt” statutes. The high court found that one statute requires the return of the receipt, but the other statute only requires a request for the return of the receipt. The appellate court agreed with the Board that Section 39.2(b) “mandates only that a return receipt be ‘requested’ [and] does not require proof that the recipient actually received the notice.”

The appellate court then turned to the timing of WLC’s mailing. The court observed that WLC and the Board interpret differently the timing issues; however the appellate court decided that WLC complied under either interpretation. Therefore, the court declined to “definitively resolve which interpretation is correct.” Mr. Maggio’s petition for leave to appeal is pending before the Illinois Supreme Court as of the end of FY 2014.

Sierra Club v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, Illinois Power Holdings, LLC, AmerenEnergy Medina Valley Cogen, LLC, and Ameren Energy Resources, LLC, No. 4-14-0001 (4th Dist.)

On November 21, 2013, the Board granted a variance, subject to conditions, to Illinois Power Holdings, LLC (IPH) and AmerenEnergy Medina Valley Cogen, LLC in PCB 14-10. The variance provides relief from sulfur dioxide (SO₂) annual emission rates of the Multi-Pollutant Standard (MPS), which apply to seven coal-fired generating stations. In granting the variance, the Board found that timely compliance with the MPS 2015 and 2017 SO₂ emission rates would impose an “arbitrary or unreasonable hardship” on IPH.

Sierra Club, a participant in the PCB 14-10 proceeding, filed a petition with the appellate court for review of the Board’s variance decision. The companies moved to dismiss the appeal, arguing that Sierra Club, a non-party before the Board, lacked standing to seek judicial review under Section 41 of the Act. Sierra Club responded that it has standing under Section 29(a) of the Act because the Board’s variance order constitutes a “rule or regulation” and Sierra Club is “adversely affected or threatened” by it. In a February 24, 2014 order, the appellate court granted the companies’ motion to dismiss for want of standing and dismissed the appeal. Sierra Club’s petition for leave to appeal was pending before the Illinois Supreme Court as of the end of FY 2014.

Legislative Update

Summarized below are three Public Acts from the 2014 session of the 98th General Assembly relating to the Board's work, two of which amend the Environmental Protection Act (Act) and one of which amends the Public Water Supply Operations Act. In addition, Governor Quinn used his amendatory veto power when vetoing one bill that would amend the Act. These actions are briefly summarized below. Additional information about the recent legislative session is available at the General Assembly web page at www.ilga.gov.

Public Act 98-656 (Senate Bill 2671) **Effective June 19, 2014**

P. A. 98-656 amends the Act by providing that, on or before January 1, 2015, the owner or operator of each tire storage site that contains used tires totaling more than 10,000 passenger tire equivalents, or at which more than 500 tons of used tires are processed in a calendar year, shall submit documentation demonstrating its compliance with Board rules. P.A. 98-656 also provides that, beginning July 1, 2016, no person shall cause or allow the operation of a tire storage site that contains used tires totaling more than 10,000 passenger tire equivalents, or at which more than 500 tons of used tires are processed in a calendar year, without a permit granted by the Illinois Environmental Protection Agency (IEPA) or in violation of permit conditions.. P.A. 98-656 also requires the IEPA to propose and the Board to adopt rules implementing these requirements.

Public Act 98-822 (Senate Bill 2657) **Effective August 1, 2014**

P.A. 98-822 amends a number of provisions of the Act. Among them, P.A. 98-822 amends Section 37 by establishing that petitioners, rather than the IEPA, must provide public notice of petitions for variances from Board regulations or orders.

Public Act 98-856 (Senate Bill 2770) **Effective August 4, 2014**

Public Act 98-856 amends the Public Water Supply Operations Act by providing that every community water supply in Illinois, with specified exemptions, shall have on its operational staff, and shall designate to the IEPA in writing, either (i) one Responsible Operator in Charge who directly supervises both the treatment and distribution facilities of the community water supply or (ii) separate Responsible Operators for treatment and distribution. P.A. 98-856 also provides that a violation of the Act by a Responsible Operators in Charge shall be enforceable by administrative citation filed with the Board.

House Bill 4606

As adopted by the General Assembly, House Bill 4606 would amend Section 3.330 of the Act by providing that the portion of a site or facility that accepts exclusively general construction or demolition debris and is operated and located in accordance with a specified provision of the Act is not a pollution control facility. Section 3.330 now defines "pollution control facility" by exempting from the definition facilities located in a county with a population over 3,000,000 as of January 1, 2000 or in a county contiguous to such a county.

In his amendatory veto message, the Governor recommended that the Act be further amended by providing that 1) any person submitting an application for a permit prior to the initial acceptance of general construction or demolition debris shall publish notice of the application in a newspaper of general circulation in the county in which the facility is proposed to be located; (2) the notice must be published at least 15 days before submission of the permit application to the IEPA; (3) the notice shall state the information described in specified provisions of the Act, along with a statement that persons may file written comments with the IEPA concerning the permit application within 30 days after the filing of the permit application unless the time period to submit comments is extended by the IEPA; (4) the IEPA shall accept written comments concerning the permit application that are postmarked no later than 30 days after the filing of the permit application, unless the time period to accept comments is extended by the IEPA; and (5) when a permit applicant submits information to the IEPA to update a permit application being reviewed by the IEPA, the applicant shall not be required to reissue the notice under a specified provision of the Act.

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