



ENVIRONMENTAL REGISTER

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A PUBLICATION OF THE ILLINOIS POLLUTION CONTROL BOARD

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- ❖ Jennifer A. Burke
- ❖ Deanna Glosser, PhD
- ❖ Jerome D. O’Leary
- ❖ Carrie Zalewski

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The **Illinois Pollution Control Board** is an independent five-member board that adopts environmental control standards and also rules on enforcement actions and other environmental disputes for the State of Illinois.

The *Environmental Register* is published monthly by the Board and contains updates on rulemakings, descriptions of final decisions, the Board’s meeting and hearing calendar, and other environmental law information.

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APPELLATE UPDATE

First District Reverses Board’s Decision to Uphold MWRD’s Discharge Permits and Remands the Case for Further Proceedings

Prairie Rivers Network; Natural Resources Defense Council; Sierra Club; Environmental Law and Policy Center; Friends of the Chicago River; and Gulf Restoration Network v. Illinois Pollution Control Board; Illinois Environmental Protection Agency; and Metropolitan Water Reclamation District of Greater Chicago

2016 IL App (1st) 150971 (Prairie Rivers)

Board dockets PCB 14-106, 14-107, 14-108 (consolidated)

In its February 26, 2016 opinion, the First District Appellate Court raised doubts about whether three discharge permits adequately limit phosphorus concentrations in the treated wastewater, or “effluent,” that the Metropolitan Water Reclamation District of Greater Chicago discharges to surface waters. Prairie Rivers, ¶¶ 32-35, 38. The permits were granted by the Illinois Environmental Protection Agency for the District’s Stickney, Calumet, and O’Brien plants. Six environmental groups challenged the permits before the Board. Agreeing that the facts were undisputed, the parties asked the Board to decide the case without holding a hearing, that is, on cross-motions for summary judgment. The Board did so. In awarding summary judgment to IEPA and the District, the Board affirmed IEPA’s permit determinations, after which the environmental groups petitioned the appellate court for review of the Board’s decision. The court, however, found genuine issues of material fact, which precludes deciding the case by summary judgment. Primarily, the court questioned whether IEPA set the permits’ “effluent limit” for phosphorus—a nutrient—“so high as to have the reasonable potential of causing unnatural plant or algal growth” in the waterways receiving the District’s discharges. *Id.*, ¶ 35.



As the court found questions of material fact, it reversed the Board's summary judgment ruling and remanded the case to the Board for more proceedings.

What follows is a brief summary of the case's factual and legal background, the Board's proceedings, and the court's opinion.

Background. IEPA issued permits authorizing discharges of effluent from the District's three largest water reclamation plants, each of which treats wastewater from Chicago and its suburbs: the Stickney plant in Cicero, discharging to the Chicago Sanitary and Ship Canal; the Calumet plant in Chicago, discharging to the Little Calumet River; and the O'Brien plant in Skokie, discharging to the North Shore Channel. Prairie Rivers, ¶¶ 5-8. The permits for the plants are called "National Pollutant Discharge Elimination System" or "NPDES" permits. NPDES permits last for five years (the District's from January 1, 2014 to December 31, 2018), but can be renewed or "reissued," as the District's permits were. NPDES permits allow effluent to be discharged from "point sources" to natural or man-made waterways, subject to conditions for protecting the receiving waters and their designated uses. The NPDES permitting program was established by the federal Clean Water Act; in Illinois, under the State's Environmental Protection Act and the Board's regulations, IEPA administers the program. *Id.*, ¶¶ 2-4.

Each of the three NPDES permits granted by IEPA to the District contains an effluent limit on phosphorus of 1.0 milligram per liter (mg/L). Prairie Rivers, ¶ 18. The permits require the District to comply with this phosphorus effluent limit in four years at the Stickney plant, in six years at the Calumet plant, and in 10 years at the O'Brien plant. Prior NPDES permits for these plants lacked any "numeric" effluent limit on phosphorus. Meeting the 1.0 mg/L limit would reduce phosphorus discharges from the plants by nearly 50%. *Id.*, ¶ 15.

High phosphorus levels in rivers and streams can contribute to algae and plant growth, which, when excessive, can lower dissolved oxygen concentrations in the waterways to the point of harming aquatic life. Prairie Rivers, ¶ 10. Illinois has "narrative" water quality standards that require waterways to be free of unnatural plant and algal growth. In addition, Illinois has numeric water quality standards for dissolved oxygen, but not for phosphorus. *Id.*, ¶¶ 11, 31.

Board's Proceedings. Challenging the 1.0 mg/L phosphorus effluent limit and other permit conditions, the environmental groups petitioned the Board to review the three NPDES permits. Prairie Rivers, ¶ 19. Ultimately, the environmental groups, IEPA, and the District filed motions for summary judgment. The environmental groups claimed, among other things, that the 1.0 mg/L limit was simply offered by the District, instead of being calculated by IEPA as required to prevent pollution. *Id.*, ¶ 30. They also argued that the effluent limit on phosphorus is not stringent enough to prevent violations of the Board's standards for in-stream water quality, known as "water quality standards." *Id.*, ¶¶ 20, 30, 31. The Board agreed with the parties that there were no genuine issues of material fact and that, accordingly, a hearing was unnecessary. In turn, the Board denied the environmental groups' motion and granted summary judgment to IEPA and the District, finding that the contested permit conditions—including the 1.0 mg/L effluent limit on phosphorus—do not violate the Environmental Protection Act or the Board's regulations. The Board therefore affirmed IEPA. *Id.*, ¶¶ 1, 21, 22.



Court's Opinion. The environmental groups appealed the Board's decision to the First District Appellate Court. The court, disagreeing with the Board and the other parties, found genuine issues of material fact, precluding summary judgment. Prairie Rivers, ¶¶ 24, 25, 33, 35, 37, 38. The genuine issues of material fact, for the court, centered upon the 1.0 mg/L phosphorus effluent limit: Even if the limit is met, do the District's phosphorus discharges have the "reasonable potential" to violate the narrative water quality standards that require rivers and streams to be free of unnatural plant and algal growth? *Id.*, ¶¶ 31, 26, 38.

To ensure compliance with these narrative water quality standards, the court continued, IEPA may derive a numeric effluent limit for phosphorus from federally-recommended or out-of-state numeric water quality standards for phosphorus. Prairie Rivers, ¶32, citing 40 C.F.R. § 122.44(d)(1)(vi)(A). Yet, "there is no evidence" that IEPA so derived the phosphorus effluent limit of 1.0 mg/L. *Id.*, ¶ 32. The court emphasized that the limit in the District's permits is "approximately 10 times greater" than numeric water quality standards for phosphorus in Wisconsin, in Minnesota, and under federal recommendations. *Id.*, ¶¶ 32, 34, 35. Evidence of this disparity, in the court's view, posed a genuine issue of material fact: Does the 1.0 mg/L effluent limit allow "a level of phosphorus so high that it has the reasonable potential of violating Illinois water quality standards by causing unnatural plant or algal growth." *Id.*, ¶ 33.

Having identified genuine issues of material fact concerning the 1.0 mg/L phosphorus effluent limit, the court declined to address the environmental groups' other grounds of appeal, reversed the Board's decision to award summary judgment, and remanded the case for further proceedings. Prairie Rivers, ¶ 42.



BOARD ACTIONS

February 4, 2016

Via videoconference: IPCB Offices in Chicago, Illinois and Springfield, Illinois

Rulemakings

<p>R16-10</p>	<p><u>National Ambient Air Quality Standards, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Air) – The Board dismissed this reserved identical-in-substance docket because the relevant United States Environmental Protection Agency actions regarding its ambient air quality standards during the update period of July 1, 2015 through December 31, 2015 were included in the Board’s proposal for public comment in the NAAQS update docket for the period January 1, 2015 through June 30, 2015.</p>	<p>5-0</p>
<p>R16-11</p>	<p><u>Definition of VOM Update, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Air) – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its volatile organic material regulations during the update period of July 1, 2015 through December 31, 2015.</p>	<p>5-0</p>
<p>R16-12</p>	<p><u>SDWA Update, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Water) – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its drinking water regulations during the update period of July 1, 2015 through December 31, 2015.</p>	<p>5-0</p>
<p>R16-13</p>	<p><u>UIC Update, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Land) – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground injection control regulations during the update period of July 1, 2015 through December 31, 2015</p>	<p>5-0</p>



R16-14	<u>RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Land) – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its municipal solid waste landfill regulations during the update period of July 1, 2015 through December 31, 2015.	5-0
R16-15	<u>RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2015, through December 31, 2015)</u> (Land) – The Board dismissed this reserved identical-in-substance docket because the relevant United States Environmental Protection Agency actions regarding its hazardous waste regulations during the update period of July 1, 2015 through December 31, 2015 will be included in the Board’s proposal for public comment in the RCRA Subtitle C update docket for the period January 1, 2015 through June 30, 2015.	5-0

ADJUSTED STANDARDS

AS 15-3	<u>In the Matter of: Petition of the City Of Collinsville for an Adjusted Standard from 35 Ill. Adm. Code 620.410 for Certain Constituents (Water)</u> – The Board granted petitioner an adjusted standard with conditions from the groundwater quality standards at its Madison County facility.	
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ADMINISTRATIVE CITATIONS

AC 15-26	<u>IEPA v. Joseph DeRosa & Gwen A. Griffitts and DeRosa Autobody</u> – The Board entered a final opinion and order requiring respondents to pay hearing costs of the Illinois Environmental Protection Agency and the Board in the amount of \$489.25 and a civil penalty of \$3,000. This order follows the Board's interim order of November 19, 2015, which found that these respondents had violated Sections 21(p)(1) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 55(k)(1) (2014)).	5-0
AC 16-5	<u>IEPA v. Ronald W. & Susan A. Falmier</u> – The Board accepted respondents’ amended petition for review involving a Williamson County facility.	5-0



AC 16-7	<u>IEPA v. James Reichert Limited Family Partnership</u> – The Board accepted respondent’s petition for review involving a Williamson County facility.	5-0
AC 16-8	<u>IEPA v. Greg Lingle d/b/a GTS, Inc., and Tereasa Baker</u> – The Board found that these Johnson County respondents violated Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(2), 21(p)(3), 21(p)(7), 55(k)(1) (2014)), and ordered respondents to pay a civil penalty of \$7,500.	5-0

ADJUDICATORY CASES

PCB 04-66	<u>Premcor Refining Group v. IEPA</u> (Land-Permit Appeal, RCRA) – No action taken.	
PCB 15-88	<u>Ameren Missouri and Raccoon Creek Energy Center v. IEPA</u> (Air-Permit Appeal, CAAPP) – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal.	5-0
PCB 15-89	<u>Ameren Missouri and Goose Creek Energy Center v. IEPA</u> (Air-Permit Appeal, CAAPP) – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal.	5-0
PCB 15-134	<u>Ameren Missouri and Pinkneyville Energy Center v. IEPA</u> (Air-Permit Appeal, CAAPP) –The Board granted the parties’ joint motion to stay this permit appeal until August 2, 2016.	5-0
PCB 15-186	<u>Sharon Burgess v. IEPA</u> (UST Appeal) – The Board exercised its discretion under Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2012)) and directed the Illinois Environmental Protection Agency’s (Agency) to reimburse petitioner \$11,304.16 in legal fees and costs from the UST Fund. On November 5, 2016, the Board reversed the Agency’s March 19, 2015 decision modifying the Corrective Action Plan and Budget submitted by petitioner. The Board remanded the Corrective Action Plan and Budget to the Agency for issuance with the reimbursement amounts corrected.	5-0
PCB 16-74	<u>Newcomer Farms - Lanark v. IEPA</u> (Water-Tax Certification) – The Board found and certified that specified facilities of Newcomer Farms located in Carroll County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).	5-0



PCB 16-75	<u>Robert Young v. IEPA (Water-Tax Certification)</u> – The Board found and certified that specified facilities of Robert Young located in Sangamon County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).	5-0
PCB 16-76	<u>Environmental Recycling and Disposal Services, Inc. v. Will County, Illinois, Will County Board, Waste Management of Illinois, Inc. (Landfill Siting Review-Permit Appeal)</u> – The Board accepted for hearing this third-party pollution control facility siting appeal involving a site in Will County.	5-0
PCB 16-77	<u>O'Leary Farms - Viola (Property ID No. 11-11-21-300-005) v. IEPA (Water-Tax Certification)</u> – The Board found and certified that specified facilities of O'Leary Farms located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).	4-0 O'Leary abstained
PCB 16-78	<u>O'Leary Farms - Viola (Property ID No. 11-11-32-300-005) v. IEPA (Water-Tax Certification)</u> – The Board found and certified that specified facilities of O'Leary Farms located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).	4-0 O'Leary abstained
PCB 16-79	<u>People of the State of Illinois v. GBC Metals, LLC d/b/a Olin Brass (Land-Enforcement)</u> – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement, and an agreed motion to request relief from the hearing requirement in this land enforcement action involving an Alton County facility, the Board ordered publication of the required newspaper notice.	5-0

NEW CASES

ADMINISTRATIVE CITATION

AC 16-12 IEPA v. David E. Wilson, Thomas Thomas, Richard Roberts, and Scott Lanman – No action taken.



ADJUDICATORY CASES

PCB 16-76 Environmental Recycling and Disposal Services, Inc. v. Will County, Illinois, Will County Board, Waste Management of Illinois, Inc.

(Landfill Siting Review-Permit Appeal)

– The Board accepted for hearing this third-party pollution control facility siting appeal involving a site in Will County.

PCB 16-77 O'Leary Farms - Viola (Property ID No. 11-11-21-300-005) v. IEPA

(Water-Tax Certification)

– The Board found and certified that specified facilities of O'Leary Farms located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).

PCB 16-78 O'Leary Farms - Viola (Property ID No. 11-11-32-300-005) v. IEPA

(Water-Tax Certification)

– The Board found and certified that specified facilities of O'Leary Farms located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2014)).

PCB 16-79 People of the State of Illinois v. GBC Metals, LLC d/b/a Olin Brass

(Land-Enforcement) – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement, and an agreed motion to request relief from the hearing requirement in this land enforcement action involving an Alton County facility, the Board ordered publication of the required newspaper notice.



CALENDAR

Thursday, February 04, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois
- and -
IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, Thursday, February 18, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois
- and -
IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Friday, February 12, 2016

Lincoln's Birthday - Board Closed

Monday, February 15, 2016

Washington Birthday (President's Day) - Board Closed

Thursday, February 18, 2016 1:30 PM

R2016-002
National Ambient Air Quality Standards, USEPA
Amendments (January 1, 2015 through June 30,
2015)

James R. Thompson Center, IPCB Hearing Room
100 W. Randolph Street, Room 11-512
Chicago, IL

- and -

Sangamo Building, IPCB Hearing Room
1021 North Grand Avenue East (north entrance)
Springfield, IL

Thursday, February 18, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois
- and -
IPCB Office

James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, March 03, 2016 11:00 AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois
- and -
IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Tuesday, March 15, 2016 9:00 AM - CANCELLED

PCB 2014-003
Johns Manville, a Delaware corporation, v. Illinois
Department of Transportation
James R. Thompson Center, Room 2-029
100 W. Randolph St.
Chicago, IL

Wednesday, March 16, 2016 11:00:00 AM CANCELLED

PCB 2014-003
Johns Manville, a Delaware corporation, v. Illinois
Department of Transportation
James R. Thompson Center, Room 2-029
100 W. Randolph St
Chicago, IL

Thursday, March 17, 2016 9:00 AM CANCELLED

PCB 2014-003
Johns Manville, a Delaware corporation, v. Illinois
Department of Transportation

James R. Thompson Center, Room 2-029
100 W. Randolph St.
Chicago, IL

Thursday, March 17, 2016 11:00:00 AM CANCELLED

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois



- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, April 7, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, April 21, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, May 5, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Thursday, May 19, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Monday, May 30, 2016

Memorial Day - Board Closed

Thursday, June 2, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois

Wednesday, June 8, 2016 10:30 AM

AC 2016-007
IEPA v. James Reichert Limited Family Partnership

City Hall Council Chambers
1102 Tower Square Plaza
Marion, IL

Thursday, June 16, 2016 11:00AM

Board Meeting
IPCB Office
1021 N Grand Ave E - Room 1244 N (First Floor)
Springfield, Illinois

- and -

IPCB Office
James R. Thompson Center
100 W Randolph - Room 11-512
Chicago, Illinois





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