

IPCB

Illinois Pollution Control Board



ANNUAL REPORT

Fiscal Year

2019

TABLE OF CONTENTS



Mission Statement 2



Letter from the Chair 3



Board Members 5



Rulemaking Update 7



Appellate Update 12



Legislative Update 16



ILLINOIS POLLUTION CONTROL BOARD



pcb.illinois.gov

Chicago Office

James R. Thompson Center, Ste. 11-500
100 West Randolph St.
Chicago, IL 60601-3233
312-814-3620 TTY: 866-323-1677

Springfield Office

1021 North Grand Ave. East
P.O. Box 19274
Springfield, IL 62794-9274
217-524-8500 TTY: 866-323-1677

MISSION STATEMENT

The Illinois Environmental Protection 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 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.





IPCB

Illinois Pollution Control Board

GOVERNOR

JB Pritzker



CHAIR

Barbara Flynn Currie



MEMBERS

Cynthia Santos
Brenda Carter
Anastasia Palivos



CHICAGO OFFICE

James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, IL
60601-3233
Main: 312-814-3620
FAX: 312-814-3669
TTY: 866-323-1677



SPRINGFIELD OFFICE

1021 N. Grand Ave. East
P.O. Box 19274
Springfield, IL
62794-9274
Main: 217-524-8500
FAX: 217-524-8508
TTY: 866-323-1677



WEBSITE

pcb.illinois.gov

December 2019

Honorable JB Pritzker, Governor of Illinois, and Members of the General Assembly:

The Illinois Pollution Control Board is proud to present its Annual Report for Fiscal Year 2019. The report highlights three areas:

- ❖ Completed Board rulemakings;
- ❖ Judicial decisions issued on appeal of final Board orders; and
- ❖ Enacted legislation—from the General Assembly’s 2019 Session—related to the Board’s work.

Under the Environmental Protection Act, the Board primarily conducts two types of proceedings: rulemakings and adjudications. Through rulemakings, the Board adopts regulations that set the environmental standards for the State of Illinois. Through adjudications, the Board decides contested cases, including complaints that allege violations; petitions that ask for review of permitting and other determinations made by the Illinois Environmental Protection Agency; petitions that ask for review of pollution control facility siting determinations made by local governments; and petitions that seek relief from Board regulations.

Most recently, the General Assembly tasked the Board with conducting a third type of proceeding, one that is neither a rulemaking nor an adjudication: a time-limited water quality standard (TLWQS) proceeding. A person may file a petition for a TLWQS, which is a form of temporary regulatory relief. The Board may grant a TLWQS for a single discharger, multiple dischargers, a watershed, a water body, or a waterbody segment. Currently, over 50 TLWQS petitions are pending before the Board.



Illinois Pollution Control Board
December 2019
Page 2


Whether conducting a rulemaking, an adjudication, or a TLWQS proceeding, the Board provides a public forum in which interested citizens may actively participate in our State's environmental decision-making. In fact, the Environmental Protection Act authorizes individual citizens and citizens groups to initiate specified proceedings before the Board, including rulemakings, enforcement actions, and third-party appeals.

The Board typically has about 150 proceedings pending before it at any one time. During Fiscal Year 2019, the Board continued to conduct these proceedings while operating within its budget.

Lastly, in our next Annual Report, we will not only cover Fiscal Year 2020 activities concerning the Board but also commemorate the 50th anniversary of the Board and the Environmental Protection Act (1970-2020).

If you have any questions about these materials or the Board, please let me know.

Sincerely,


Barbara Flynn Currie
Chair



BOARD MEMBERS



❖ **Chair Barbara Flynn Currie**

Barbara Flynn Currie recently retired from the Illinois House of Representatives. Barbara served as House Majority Leader, the first woman to hold the post. She sponsored the state's first Freedom of Information Act and the Illinois Earned Income Tax Credit. She was a champion for clean air and water; she spearheaded reforms in state funding for public education and in the juvenile justice system. She's been honored by many organizations including the Illinois ACLU, Planned Parenthood, Illinois AFL-CIO, Illinois Environmental Council, Friends of the Parks, the Illinois Council Against Handgun Violence and the Illinois Campaign for Political Reform. Barbara earned her A.B. and M.A. degrees from the University of Chicago.



❖ **Cynthia Santos**

Board Member Santos was appointed to the Board by Governor Bruce Rauner in December 2016. Before joining the Board, Ms. Santos served 20 years as an elected Commissioner of the Metropolitan Water Reclamation District of Greater Chicago. During her tenure, she was instrumental in the development of the District's Stormwater Management Program. She also served as the District's representative on the City of Chicago's Public Building Commission where she was involved in the construction of numerous schools, libraries, and police and fire stations. Ms. Santos earned a Bachelor's Degree in Political Science, Summa Cum Laude, as well as a Master's Degree in Political Science and Public Policy from Northeastern Illinois University. Ms. Santos resides in Chicago.



❖ **Brenda Carter**

Board Member Carter was appointed to the Board by Governor Bruce Rauner in May 2017. She has over 15 years of experience in the field of environmental law and policy. Before joining the Board, Brenda was the Deputy Executive Director of the Illinois Environmental Regulatory Group (IERG). As Deputy Executive Director, she was actively involved in regulatory and legislative processes, strategic planning, and policy analysis for IERG and its member companies. Prior to becoming IERG's Deputy Executive Director, she served as IERG's Project Manager for 12 years. In that capacity, Brenda represented the interests of IERG's members before the Illinois EPA and other state and federal agencies to develop environmentally-sound laws and policies, particularly in the areas of water quality standards and permitting, greenhouse gases, and environmental justice. Brenda has a Master's in Environmental Studies from the University of Illinois at Springfield.

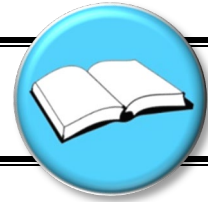


❖ **Anastasia Palivos**

Board Member Palivos was appointed to the Board by Governor JB Pritzker in April 2019. Anastasia Palivos was Commissioner of the Illinois Commerce Commission from Jan. 2018 to Feb. 2019. An Illinois native, Palivos was the first Greek-American woman appointed to the Commission and, at 28, the youngest-ever appointed commissioner. At the Commission, Palivos hosted several policy sessions investigating various energy issues including: electric vehicle deployment, transportation electrification, energy storage, wind energy, smart apps for utility operations, and gas pipeline infrastructure and safety. Prior to her appointment, Palivos was a legal and policy advisor to the chairman of the Illinois Commerce Commission. She previously worked as a business development strategy analyst for a Chicago-based health intelligence firm. She received her Juris Doctor and Bachelor of Arts in political science from DePaul University. Palivos is a founding board member of the Hippocratic Cancer Research Foundation, which provides philanthropic support for cancer research teams at Robert H. Lurie Comprehensive Cancer Center of Northwestern University.



This page is intentionally left blank.



INTRODUCTION

Under the Environmental Protection Act (Act) (415 ILCS 5), 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. The proposals are typically filed by the Illinois Environmental Protection Agency (IEPA), although the Act provides that they may be filed by “[a]ny person.” 415 ILCS 5/28(a). Based on the record developed during the rulemaking, the Board issues its opinions and orders, addressing the issues and the Board’s reasons for its decisions, in addition to proposing or adopting any new or amended rule language.

The Board’s 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 Board files its adopted rules with the Index Department of the Office of the Secretary of State for both 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 (415 ILCS 5/27, 28), 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 (415 ILCS 5/28.5). Also, after a public comment period but without JCAR second-notice review and usually 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 (415 ILCS 5/7.2).

The rulemakings completed by the Board in Fiscal Year 2019 are summarized below, followed by a list of rulemakings pending at the end of Fiscal Year 2019.

RULEMAKINGS COMPLETED IN FISCAL YEAR 2019

Board Adopts “Identical-in-Substance” Amendments to Hazardous Waste, MSWLF, and UIC Rules

- ❖ On October 4, 2018, the Board adopted “identical-in-substance” amendments to Illinois’ rules on hazardous waste, Municipal Solid Waste Landfills (MSWLFs), and underground injection control (UIC). Many of the rule amendments were driven by United States Environmental Protection Agency (USEPA) actions that occurred during the second half of 2016 and the second half of 2017. Those actions included USEPA’s adoption of the Generator Improvements Rule (GIR) and the Hazardous Waste Export-Import Revisions. The Board issued a supplemental opinion and order on



November 15, 2018, further addressing (1) 35 Ill. Adm. Code 722.333, relating to additional episodic events and (2) the definition of “municipal solid waste landfill unit” in 35 Ill. Adm. Code 810.103.

The Board’s amendments became effective on November 19, 2018. This Board rulemaking is captioned RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2016 through December 31, 2016), [docket R17-14](#), RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2016 through December 31, 2016), [docket R17-15](#), RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2017 through December 31, 2017), [docket R18-12](#), and UIC Update: Miscellaneous Non-Substantive Revisions and Corrections to 35 Ill. Adm. Code 704, 705, 730, and 738, docket R18-31 [docket R18-31](#) (consol.).

Board Adopts Noise Rule Amendments

- ❖ On November 1, 2018, the Board adopted amendments to its noise rules at 35 Ill. Adm. Code 900, 901, 902, and 910. The amendments update definitions, references, and sound measurement procedures, as well as clarify language, reduce wordiness, and remove obsolete provisions. These amendments are part of the Board’s broader review—started in the summer of 2016—to ensure that Board rules are current, clear, and concise.

The amendments took effect on November 1, 2018. The rulemaking is captioned Noise Rule Update: Amendments to 35 Ill. Adm. Code 900, 901, 902, and 910, [docket R18-19](#).

Board Adopts “Identical-in-Substance” Amendments to Hazardous Waste Rules, including Definition of “Solid Waste”

- ❖ On November 1, 2018, the Board adopted amendments to its hazardous waste rules. The amendments are “identical in substance” to two significant sets of rule amendments adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2018. First, in January 2018, USEPA revised hazardous waste manifest requirements and established a user fee system for the e-Manifest System. For example, the revisions to the manifest system allow a generator and transporter to redirect a consignment of hazardous waste if delivery to the original destination facility is precluded by an emergency. The user fees rule provides that fees for using the e-Manifest System must be paid for by the receiving treatment, storage, or disposal facility.

Second, in May 2018, USEPA revised the Definition of Solid Waste Rule (DSWR) in response to judicial vacatur. For example, USEPA removed the 2015 verified recycler exclusion from the DSWR and replaced it with the 2008 transfer-based exclusion. USEPA also reinstated the 2008 conditions for exporting hazardous secondary material (HSM) for reclamation, which it had removed in 2015.

The Board’s amendments became effective on December 6, 2018. The Board rulemaking is captioned RCRA Subtitle C Update, USEPA Amendments (January 1, 2018 through June 30, 2018), [docket R19-3](#).

Board Adopts Site-Specific Water Quality Standard for Segment of Sangamon River

- ❖ On November 15, 2018, the Board adopted a site-specific chronic water quality standard for dissolved nickel that will apply to a segment of the Sangamon River into which the Sanitary District of Decatur discharges. The District’s discharge exceeds the generally applicable water quality standard, which the District cannot meet by any treatment method that is both technically



feasible and economically reasonable. The adopted site-specific standard is based on the bioavailability of nickel to aquatic life in the Sangamon River near the District's discharge.

This site-specific rule (35 Ill. Adm. Code 303.410) took effect on November 19, 2018. The rulemaking is captioned Proposed Site-Specific Rule for Sanitary District of Decatur from 35 Ill. Adm. Code 302.208(e), [docket R14-24](#).

Board Adopts Final Rule to “Sunset” ERMS

- ❖ On December 6, 2018, the Board adopted a final amendment to its Emissions Reduction Market System (ERMS) rules. The amendment “sunsets” ERMS as of April 30, 2018. The Board agreed with the Illinois Environmental Protection Agency (IEPA), the rulemaking's proponent, that ERMS no longer provides emissions reductions beyond those achieved by more recent “command and control” regulations required by the federal Clean Air Act. At its November 13, 2018 meeting, the Joint Committee on Administrative Rules (JCAR) responded to the Board's proposal by issuing an objection and a recommendation. In its December 6, 2018 opinion and order, the Board responded to JCAR, respectfully declining to withdraw or modify the Board's proposal or seek repeal of Section 9.8 of the Illinois Environmental Protection Act (415 ILCS 5/9.8). The Board also adopted the ERMS sunset amendment as a final rule, rendering the ERMS program inapplicable after April 29, 2018.

The rule amendment became effective on December 26, 2018. The rulemaking is captioned Amendments to 35 Ill. Adm. Code 205, Emissions Reduction Market System, [docket R18-22](#).

Board Adopts NAAQS Amendments

- ❖ On February 14, 2019, the Board adopted rule amendments to keep Illinois' ambient air quality standards “identical in substance” to the National Ambient Air Quality Standards (NAAQS). The amendments reflect actions taken by the United States Environmental Protection Agency during the first half of 2018. Those actions included designating new reference methods for monitoring nitrogen dioxide in ambient air, as well as re-designating the Chicago and Granite City areas as attainment for the 2008 lead NAAQS. The Board removed the 1978 NAAQS for lead from the Illinois rules because they no longer apply to any area in Illinois. The Board also added a note stating that the 1971 NAAQS for sulfur dioxide no longer apply in specified areas of Illinois.

The Board's amendments became effective on February 19, 2019. The Board rulemaking is captioned National Ambient Air Quality Standards, USEPA Amendments (January 1, 2018 through June 30, 2018), [docket R19-6](#).

Board Adopts “Identical-in-Substance” Amendments for Hazardous Waste Airbags

- ❖ On April 25, 2019, the Board adopted amendments to its hazardous waste rules. The amendments are “identical in substance” to rule amendments adopted by the United States Environmental Protection Agency (USEPA) during the second half of 2018. During that time, USEPA revised its hazardous waste rules once: on November 30, 2018, USEPA adopted an immediate final rule (IFR) that conditionally excludes airbag waste from regulation as hazardous waste. The IFR's purpose was to facilitate the on-going recall of defective Takata vehicle airbags. The Board expedited its adoption of the airbag exclusion, relieving vehicle service and salvage facilities from the burden of complying with hazardous waste generator standards for removing recalled airbags from vehicles. Under the exclusion, a facility collecting the removed airbags is the hazardous waste generator.



RULEMAKING UPDATE

The Board's amendments took effect on May 2, 2019. This Board rulemaking is captioned RCRA Subtitle C Update, USEPA Amendments (January 1, 2018 through June 30, 2018), [docket R19-11](#).



RULEMAKINGS PENDING AT END OF FISCAL YEAR 2019

- ❖ Coal Combustion Waste (CCW) Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841, [docket R14-10](#) (and [R14-10PC](#))
- ❖ Public Water Supplies: Proposed New 35 Ill. Adm. Code 604 and Amendments to 35 Ill. Adm. Code Parts 601, 602, 607, and 611, [docket R18-17](#)
- ❖ Amendments to 35 Ill. Adm. Code 225.233, Multi-Pollutant Standard (MPS), [docket R18-20](#) (and [R18-20PC](#))
- ❖ Amendments to 35 Ill. Adm. Code Subtitle B: Air Pollution, [docket R18-21](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle C: Water Pollution, [docket R18-23](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle D: Mine-Related Water Pollution, [docket R18-24](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle E: Agriculture-Related Water Pollution, [docket R18-25](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle F: Public Water Supplies, [docket R18-26](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle G: Waste Disposal, [docket R18-27](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, [docket R18-28](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle M: Biological Materials, [docket R18-29](#)
- ❖ Amendments to Definition of “Class 4 etiologic agent”, 35 Ill. Adm. Code 1420.102, [docket R18-29\(B\)](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle O: Right to Know, [docket R18-30](#)
- ❖ Amendments to General Use Water Quality Standards for Chloride, [docket R18-32](#)
- ❖ Proposed New 35 Ill. Adm. Code 204, Prevention of Significant Deterioration, Amendments to 35 Ill. Adm. Code Parts 101, 105, 203, 211, and 215, [docket R19-1](#)
- ❖ National Ambient Air Quality Standards, USEPA Regulations (July 1, 2018 through December 31, 2018), [docket R19-14](#)
- ❖ Definition of VOM Update, USEPA Amendments (July 1, 2018 through December 31, 2018), [docket R19-15](#)
- ❖ SDWA Update, USEPA Amendments (July 1, 2018 through December 31, 2018), [docket R19-16](#)
- ❖ Amendments to Manifesting Requirements: Special Waste Hauling 35 Ill. Adm. Code 809, [docket R19-18](#)





INTRODUCTION

Under the Environmental Protection Act (415 ILCS 5), final opinions and orders of the Board are appealable directly to the Illinois appellate court rather than to the circuit courts. In Fiscal Year 2019, three Board decisions—rulemaking, siting appeal, and permit appeal—were affirmed on appeal.

APPELLATE DECISIONS ISSUED IN FISCAL YEAR 2019

Illinois Supreme Court Affirms Appellate Court’s Judgment Affirming Board’s Groundwater Monitoring Decision in CCDD Rulemaking

- ❖ *The County of Will v. The Pollution Control Board*, [2019 IL 122798](#)
[Board docket R12-9\(B\)](#)

On June 20, 2019, the Illinois Supreme Court, in a 5-1 decision, affirmed the Third District Appellate Court’s judgment ([2017 IL App \(3d\) 150637-U](#)) affirming the Board’s rulemaking decision to not require groundwater monitoring at clean construction or demolition debris (CCDD) fill operations or uncontaminated soil (US) fill operations. From that rulemaking decision, two appeals were taken, one by Will County and its Land Use Department (Will County) and the other by the Attorney General’s Office for the People of the State of Illinois (State). The Supreme Court began its opinion by observing that, in 2010, the Illinois General Assembly amended the Environmental Protection Act, requiring the Board to adopt rules for using CCDD and US as fill. Under the amendment, the rules had to include standards and procedures “necessary to protect groundwater”; the legislature also gave an “inexhaustive list of 12 ways to do so that the Board may consider,” one of which was groundwater monitoring. *County of Will*, ¶ 1. The Board’s final rules imposed, for incoming fill, stronger “front-end” testing and certification requirements than the Illinois Environmental Protection Agency (IEPA) had proposed, but the Board did not adopt IEPA’s proposed requirement for “back-end” groundwater monitoring at fill operations. *Id.*, ¶¶ 1, 11, 20, 26, 32.

The only issue on appeal was whether the Board was “arbitrary and capricious” in deciding that groundwater monitoring regulations were unnecessary to protect groundwater from CCDD and US fill operations. *County of Will*, ¶¶ 2, 73. The Supreme Court noted that, “[b]ecause the Board is composed of technically qualified individuals, their expertise is essential in crafting regulations,” adding that the person challenging the Board’s decision “bears a heavy burden to establish that it was clearly arbitrary and capricious.” *Id.*, ¶ 43 (citations omitted). For determining whether an agency action is arbitrary and capricious, the Court turned to three familiar judicial “guidelines”: “Agency action is arbitrary and capricious if the agency: (1) relies on factors which the legislature did not intend for the agency to



consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.*, ¶ 44 (citation omitted).

First, the Supreme Court held that the State and Will County failed to establish that the Board’s decision was arbitrary and capricious for relying on an improper factor when it considered whether CCDD and US are “waste.” *County of Will*, ¶¶ 48, 49. After noting that it was the State that repeatedly raised the “waste” issue during the rulemaking, the Court found the issue relevant to deciding which regulations are necessary to protect groundwater—not generally from all pollution—but *from CCDD and US*, the statutory definitions of which specify that those materials are not waste. *Id.*, ¶¶ 49, 51-53.

Second, the Supreme Court held that the State and Will County failed to establish that the Board’s decision was arbitrary and capricious for not considering either the costs of groundwater monitoring or the hazards of older and noncompliant fill. *County of Will*, ¶¶ 59, 66. The Court found that the Board “devoted considerable attention to the costs of groundwater monitoring and balanced those costs against other considerations—namely, the potential closure of some CCDD and US fill sites, which could have a negative economic impact on not only the fill industry but also the public.” *Id.*, ¶ 62. The Court also found that the legislature sought to protect groundwater *from CCDD and US* at fill sites, *i.e.*, “the legislature was concerned with materials that met the statutory definitions, not with older and noncompliant materials that may not have.” *Id.*, ¶ 66. The Board therefore “properly focused on evidence from CCDD and US fill sites.” *Id.*, ¶ 67.

Third, the Supreme Court held that the State and Will County failed to establish that the Board’s decision was arbitrary and capricious for offering an explanation that was counter to the evidence or implausible. *County of Will*, ¶ 72. The Court recounted the evidence from the rulemaking record, which the Board found provided no indications of groundwater contamination from permitted sites. *Id.* Contrary to the State’s “specious” claim that the Board dismissed the General Assembly’s directive, “[a]t no point in this process did the Board dismiss the need for groundwater protection rules.” *Id.*, ¶ 73. Instead, [a]t every point in the process, the Board returned to the language of the [Environmental Protection] Act.” *Id.* The Court found that “[t]he Board exercised its rulemaking authority in three lengthy and well-supported orders” in which the Board determined that groundwater monitoring was unnecessary to protect groundwater because “front-end” certification and screening “would keep contaminants out of CCDD and US fill sites and, thus, satisfy the legislature’s directions.” *Id.*

In affirming the appellate court’s affirmation of the Board’s decision, the Supreme Court noted that the legislature “may direct the Board to adopt a groundwater monitoring program” and “any person, including the State and Will County, may present a written proposal regarding groundwater monitoring to the Board.” *County of Will*, ¶¶ 74, 76.

Illinois Supreme Court Denies IEPA’s Petition for Leave to Appeal Appellate Court’s Judgment Affirming Board’s Decision that New Local Siting Approval Not Required for Landfill Expansion Permit

- ❖ *The Illinois Environmental Protection Agency v. The Illinois Pollution Control Board and Brickyard Disposal & Recycling, Inc.*, [2018 IL App \(4th\) 170144](#)
[Board docket PCB 16-66](#)

The Fourth District Appellate Court issued a precedential opinion on October 29, 2018, affirming the Board’s decision in a landfill permit appeal. Brickyard Disposal & Recycling, Inc. (Brickyard) filed a permit application with the Illinois Environmental Protection Agency (IEPA), seeking to allow a “wedge”



area of its Vermilion County landfill to be filled with municipal solid waste instead of inert material. IEPA denied the application as incomplete, determining that Brickyard failed to obtain local governmental siting approval for the proposed expansion. Brickyard appealed to the Board, which granted the company's motion for summary judgment and ordered IEPA to consider the merits of Brickyard's permit application.

The Board found that new local siting approval was not required because the wedge area expansion would not extend beyond the landfill boundaries that already received the local government's siting approval. The Board rejected IEPA's position that the IEPA-permitted—rather than the locally-sited—boundaries controlled what constitutes a “new pollution control facility” requiring local siting approval.

In affirming the Board on appeal, the appellate court saw “no indication from examination of the [Environmental Protection] Act that the General Assembly intended to invoke the long and expensive process of local siting review each time [IEPA] restricted waste boundaries and the landfill operators sought to remove or expand those waste boundaries within an existing pollution control facility. *** There is no statutory language indicating local siting approval is necessary for the inner workings of an operating pollution control facility.” IEPA, ¶ 41.

On May 22, 2019, the Illinois Supreme Court (No. 124241) denied IEPA's petition for leave to appeal the Fourth District's judgment affirming the Board.

Illinois Supreme Court Denies Petitions for Leave to Appeal Appellate Court's Judgment Affirming Board's Decision on Siting Waste Transfer Station

- ❖ Will County v. Village of Rockdale, [2018 IL App \(3d\) 160463](#)
[Board dockets PCB 16-54, PCB 16-56 \(consol.\)](#)

The Third District Appellate Court issued a unanimous, precedential opinion on July 5, 2018, affirming the Board's decision in a “pollution control facility” siting appeal. On November 27, 2018, in denying a petition for rehearing, the appellate court modified its opinion affirming the Board and one justice dissented.

The Village of Rockdale (Village) granted siting approval to Environmental Recycling and Disposal Services (ERDS) for a waste transfer station. To contest the Village's siting approval, Will County and Waste Management of Illinois, Inc. (Waste Management) filed third-party appeals with the Board. After the Board affirmed the Village's decision, Will County and Waste Management appealed the Board's decision to the Third District Appellate Court.

The Third District affirmed the Board in all respects. Specifically, the appellate court affirmed the Board's determinations that

- The Village had jurisdiction because ERDS' notice of the siting application was sufficient.
- ERDS amended its siting application only once, as permitted, not twice.
- The Village's imposition of conditions on the siting approval was proper.
- The Village's decisions on the contested siting criteria were not against the manifest weight of the evidence.
- ERDS provided sufficient details about the proposed facility.

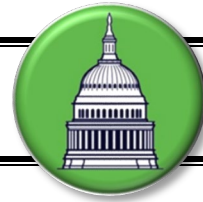
On March 20, 2019, the Illinois Supreme Court (No. 124324) denied Will County's petition for leave to appeal (PLA) the Third District's judgment affirming the Board. The Illinois Supreme Court also denied



APPELLATE UPDATE

both Waste Management's PLA on May 22, 2019 (No. 124334) and Waste Management's motion for supervisory order on May 23, 2019 (No. 124779).





INTRODUCTION

Summarized below are 14 Public Acts—from the 2019 session of the 101st General Assembly—that relate to the Board’s work.

Among the statutes affected by these Public Acts are the Environmental Protection Act, the Drycleaner Environmental Response Trust Fund Act, and the Solid Waste Planning and Recycling Act.

For more information about these and other matters considered during the 2019 session, please consult the General Assembly’s website at www.ilga.gov.

PUBLIC ACTS FROM 2019 SESSION OF 101ST GENERAL ASSEMBLY

❖ [Public Act 101-22](#)
Effective June 21, 2019

Public Act 101-22 amends the Environmental Protection Act by prohibiting ethylene oxide sterilization operations unless the source captures 100% of all ethylene oxide emissions and reduces ethylene oxide emissions to the atmosphere by at least 99.9% or to 0.2 parts per million. Further, P.A. 101-22 requires the source’s owner or operator to conduct initial and annual emissions testing and, if conditions are not met, immediately cease ethylene oxide sterilization operations and, within 24 hours after becoming aware of the failed emissions test, notify the Illinois Environmental Protection Agency (IEPA). Within 60 days after the failed test, the source’s owner or operator must perform specified actions.

Under P.A. 101-22, an ethylene oxide sterilization source is also subject to requirements for continuously collecting emissions information, implementing an ambient air monitoring plan that includes air sampling at community locations, and performing dispersion modeling. Among numerous other provisions, the new law also imposes setback requirements for specified new facilities.

In addition, P.A. 101-22 requires that IEPA conduct at least one unannounced inspection of all ethylene oxide sterilization sources per year, as well as conduct air testing to determine ambient levels of ethylene oxide throughout the State. The new law further requires that IEPA submit proposed rules—for ambient air testing of ethylene oxide—to the Board within 180 days after the new law’s effective date.



❖ [Public Act 101-23](#)

Effective June 21, 2019

Public Act 101-23 amends the Environmental Protection Act by prohibiting specified sources from conducting activities that cause ethylene oxide emissions unless the owner or operator submits a plan—to the Illinois Environmental Protection Agency (IEPA) for review and approval—to continuously collect emissions information. The new law also prohibits those activities unless the source’s owner or operator has performed dispersion modeling approved by IEPA.

In addition, P.A. 101-23 requires owners or operators of specified ethylene oxide emissions sources to obtain an IEPA permit. Further, the IEPA permit must impose a site-specific annual cap on ethylene oxide emissions to protect public health, as well as include a condition allowing IEPA to reopen the permit if it determines that the source’s ethylene oxide emissions pose a risk to public health.

❖ [Public Act 101-74](#)

Effective July 12, 2019

Public Act 101-74 amends the Solid Waste Planning and Recycling Act by creating the Statewide Materials Management Advisory Committee; directing the Committee to prepare a report that includes specified information and recommendations on waste diversion, among other waste-related issues; and requiring the Committee to submit the report to the General Assembly by July 1, 2021.

❖ [Public Act 101-125](#)

Effective July 26, 2019

Public Act 101-125 amends the Environmental Protection Act by providing that municipal waste incineration emission standards do not apply to industrial incineration facilities that burn material, or fuel derived from that material, for which the United States Environmental Protection Agency (USEPA) has issued a non-waste determination. The emission standards do not apply if, in its non-waste determination, USEPA finds that the material is not a solid waste under the Resource Conservation and Recovery Act (RCRA) “Non-Hazardous Secondary Materials Rule” at 40 C.F.R. § 241.3(c).

❖ [Public Act 101-137](#)

Effective July 26, 2019

Public Act 101-137 amends the Environmental Protection Act by prohibiting lead-acid battery retailers from disposing of used lead-acid batteries by delivering them to a collection or recycling facility, unless that collection or recycling facility accepts lead-acid batteries. P.A. 101-0137 also prohibits the knowing mixing of lead-acid batteries with material intended for collection as a recyclable material by a hauler, as well as the knowing placement of a lead-acid battery into a container intended for collection and processing at a recycling center. In addition, P.A. 101-137 defines “rechargeable battery” and, unless expressly authorized by a recycling collection program, prohibits specified acts involving the knowing mixing or placing of rechargeable batteries.

❖ [Public Act 101-141](#)

Effective July 1, 2020

Public Act 101-141 amends the Environmental Protection Act by providing that, if permitting and construction has commenced before July 1, 2025, a pilot project allowing for a pyrolysis or gasification facility is permitted for a locally zoned and approved site in either Will County or Grundy County. The



new law also provides that, to the extent allowed by federal law, uncontaminated plastics—that have been processed into a “feedstock” meeting specifications for a plastics gasification facility or plastics pyrolysis facility, and that are further processed by such a facility and returned to the economic mainstream in the form of raw materials or products—are considered recycled and are not subject to regulation as waste. In addition, P.A. 101-141 authorizes the Illinois Environmental Protection Agency to propose, and the Board to adopt, rules for implementing and administering the new law. It also provides that, if permitting and construction for the pilot project has not commenced by July 1, 2025, the provisions are repealed.

❖ [Public Act 101-145](#)
Effective July 26, 2019

Public Act 101-145 amends the Environmental Protection Act by providing that, when manifests are required by the Board for shipping nonhazardous special waste, the manifests must consist of forms prescribed by the Illinois Environmental Protection Agency. The new law eliminates the requirement that nonhazardous special waste manifests be identical to manifests required for shipping hazardous waste. Public Act 101-145 also provides that the forms must comply with the requirements of Section 22.01 of the Environmental Protection Act and may be purchased from a third party.

❖ [Public Act 101-171](#)
Effective July 30, 2019

Public Act 101-171 amends the Environmental Protection Act by adding requirements to address coal combustion residual (CCR) surface impoundments. The General Assembly finds that CCR from the electric generating industry has caused groundwater contamination and other pollution at active and inactive plants throughout Illinois.

P.A. 101-171 requires a permit to construct, install, modify, operate, or close a CCR surface impoundment. It also requires the owner of a CCR surface impoundment to submit—to the Illinois Environmental Protection Agency (IEPA) for approval—a closure alternatives analysis. Further, with specified exceptions, the CCR surface impoundment owner or operator must provide financial assurance for closure, post-closure care, and remediation. The new law also provides that the CCR surface impoundment owner must post, on its publicly available website, all closure plans, permit applications, and supporting documentation, as well as any IEPA approval of the plans or applications. Among numerous other provisions, P.A. 101-171 also imposes initial and annual fees on CCR surface impoundment owners or operators.

In addition, Public Act 101-171 requires IEPA to submit proposed rules—addressing specified aspects of CCR surface impoundments—to the Board within eight months after the new law’s effective date.

❖ [Public Act 101-226](#)
Effective June 1, 2020

Public Act 101-226 amends the Environmental Protection Act by deleting language that had stated the provisions on preserving community water supplies apply only to projects receiving 100% of their funding from the State. In a provision that excludes “routine maintenance” of community water supplies from rules governing corrosion prevention projects, P.A. 101-226 provides that routine maintenance activities “shall” (instead of “may”) include specified activities.



- ❖ [Public Act 101-373](#)
Effective August 15, 2019

Public Act 101-373 repeals the Kyoto Protocol Act of 1998.

- ❖ [Public Act 101-400](#)
Effective July 1, 2020

Public Act 101-400 amends the Environmental Protection Act and the Drycleaner Environmental Response Trust Fund Act. It transfers the Drycleaner Environmental Response Trust Fund Council's powers, duties, rights, and responsibilities to the Illinois Environmental Protection Agency. P.A. 101-400 also provides that Council rules become Board rules and authorizes the Board to adopt rules to administer the program.

Senate Bill 718, amending P.A. 101-400, passed both houses on November 13, 2019. Among its provisions, [Senate Bill 718](#) provides that specified sections of P.A. 101-400 take effect on July 1, 2020, and the rest of the new law takes effect on December 31, 2019.

- ❖ [Public Act 101-422](#)
Effective January 1, 2020

Public Act 101-422 amends the Environmental Protection Act by providing that when a permit for a new facility is required by that statute's Title II (air pollution), the Illinois Environmental Protection Agency must provide specified notices.

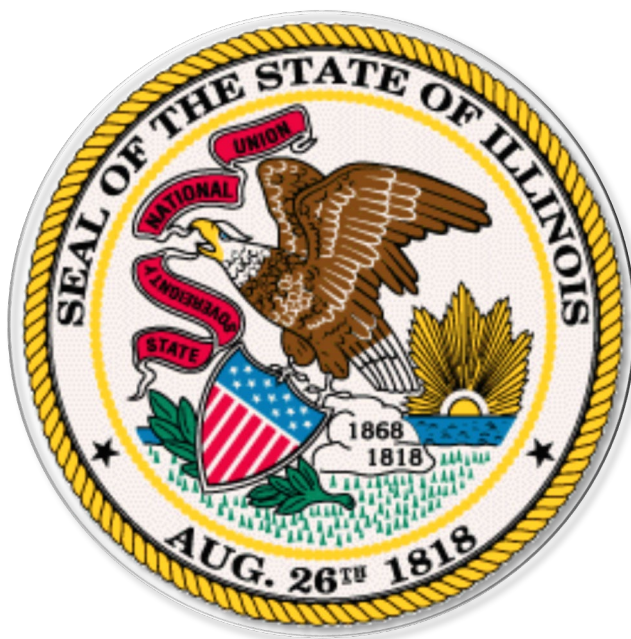
- ❖ [Public Act 101-457](#)
Effective August 23, 2019

Public Act 101-457 amends the Environmental Protection Act by, beginning January 1, 2020, prohibiting the manufacture, for sale in Illinois, of "thermal paper"—paper with bisphenol A added to the coating. It also prohibits distributing or using any thermal paper to make business or banking records, except for thermal paper manufactured before January 1, 2020. In addition, the new law's prohibitions do not apply to paper containing recycled material.

- ❖ [Public Act 101-573](#)
Effective January 1, 2020

Public Act 101-573 amends the Environmental Protection Act by enacting legislative recommendations made by the Mahomet Aquifer Task Force established under Public Act 100-403. Public Act 101-573 requires that the Illinois Environmental Protection Agency (IEPA) consider specified factors in prioritizing, for inspection, unregulated or underregulated landfills that overlie Mahomet Aquifer. It also amends the Illinois Groundwater Protection Act by requiring that IEPA, subject to appropriation, conduct up to two pilot studies of landfills that overlie the aquifer.





A Publication of the Illinois Pollution Control Board
December 2019

All IPCB Annual Reports dating back to 1970 are available electronically at pcb.illinois.gov.