State of Illinois
Illinois Polution Control Board

50TH ANNIVERSARY

ILLINOIS POLLUTION CONTROL BOARD

1970 – 2020

Front Cover Image Credits

- Center: Logo of Illinois Pollution Control Board's 50th Anniversary (2018); Designer: Liu, Alisa, former Board Environmental Scientist in Technical Unit. Anniversary logo incorporates logo (leaf, justice scales, sky) of Board (2016); Designers: Liu, Alisa (see above); and Haley, Dave, Graphic Arts Designer Advanced, Design and Publications, Illinois Office of Communication and Information.
- Top left: "Garden of the Gods - Camel Rock" (undated), Shawnee National Forest; Photographer: tacojim; Source: Getty Images https://www.gettyimages.com/detail/photo/garden-of-the-gods-camel-rock-royalty-free-image/182846493 (accessed June 11, 2020).
- Top right: "Sunset on the Illinois River" (undated), Starved Rock State Park; Photographer: Rodriquez, EJ; Source: Getty Images https://www.gettyimages.com/detail/photo/sunset-on-the-illinois-river-royalty-free-image/1195469343 (accessed June 8, 2020).
- Bottom left: "Trees and fog on a summer morning at Midewin National Tallgrass Prairie" (undated); Photographer: Patterson, Nicola; Source: Getty Images https://www.gettyimages.com/detail/photo/trees-and-fog-on-a-summer-morning-at-midewin-royalty-free-image/1158024436 (accessed June 11, 2020).
- Bottom right: "Great cypress swamp close up in the shadow" (undated), Cache River State Natural Area; Photographer: Tamascsere; Source: Getty Images https://www.gettyimages.com/detail/photo/great-cypress-swamp-close-up-in-the-shadow-royalty-free-image/1151351321 (accessed June 11, 2020).

At the Half-Century Mark:

Illinois' Pollution Control Board and Environmental Protection Act

July 1, 2020

Table of Contents

The Chair's Message 1

Governor's Proclamation – Pollution Control Board Day 3

House Speaker's Letter of Congratulations 4

Senate President's Letter of Congratulations 5

Pollution Control Board Members – Then and Now 6

The Board's Early Years 10

Perspectives of Former Board Chairs 16

Perspectives of the Current Board Members 17

Backgrounds of the Current Board Members 18

The Environmental Protection Act: How It Happened 19

Why the Environmental Protection Act Was Revolutionary 27

A Glance at Three Veteran Board Staffers 36

Variety of Board Proceedings by Decade 37

The Board Goes Digital 40

Major Judicial Appeals and Key Legislative Actions: 50 Years of Highlights 41

The Chair's Message

Barbara Flynn Currie, Chair

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

One half century ago, on July 1, 1970, Illinois' Environmental Protection Act (Act) took effect. With this landmark legislation, the State finally had a statute that made the environment and the people's health the top priority. It empowered new administrative agencies to both remedy and prevent all forms of pollution in the air, land, and water anywhere in the State. And it offered ordinary citizens many opportunities to participate in protecting and restoring the environment. In short, the Act was the first law of its kind in the country.

The Act's stated purposes remain as valid today as they were then: "to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them." In furthering these purposes, the Act created the Illinois Pollution Control Board (Board) and tasked it with two primary functions: conducting quasi-legislative rulemakings to adopt environmental standards and regulations for Illinois; and conducting quasi-judicial adjudicatory proceedings to decide contested cases arising under the Act, such as permit appeals, enforcement actions, and variances. These functions are unchanged.

In fact, the core provisions of the Act read as they did in 1970. The broad prohibitions on air, land, and water pollution have endured. Not only the Illinois Attorney General or a State's Attorney but any person may still file a complaint with the Board alleging violations of the Act or Board regulations. Not only the Illinois Environmental Protection Agency (Agency) but any person may still propose new or amended regulations to the Board. Further, whether the Board is fashioning remedies for violations in an enforcement case or reviewing proposed regulations in a general rulemaking, it must still consider the technical feasibility and economic reasonableness of reducing the pollution at issue, along with concerns from Illinois citizens.

This is not to suggest that the Act or the Board's role under it has remained static. Far from it. The Act has evolved to meet pressing environmental concerns not adequately addressed at the federal level, with the Board acting to regulate non-hazardous solid waste landfills, potentially infectious medical waste, and mercury emissions from power plants, just to name a few. The Act has simultaneously accommodated the expansive growth of federal environmental regulation, ensuring that Illinois industries and businesses are not subjected to duplicate or conflicting obligations. Currently, as directed by recent amendments to the Act, the Board is conducting a rulemaking on surface impoundments for coal combustion residuals, which includes proposed rules for identifying areas of environmental justice concern and making impoundment closures in these areas a priority.

Civil penalties that the Board may impose for violations have dramatically increased to maintain their deterrent effect and eliminate any economic benefit from noncompliance. But the Act has also been amended to encourage resolving alleged violations with the Agency short of formal enforcement, as well as to allow voluntary, effective alternative actions to off-set civil penalties.

Amendments to the Act have fostered innovation. For example, the Board has implemented market trading mechanisms to meet required emissions reductions and adopted risk-based cleanup standards for leaking underground storage tank sites and brownfields.

Moreover, over the past five decades, the types of proceedings handled by the Board have proliferated, including landfill siting appeals, third-party permit appeals, and new forms of regulatory relief.

As their shared history demonstrates, the Board and the Act will continue safeguarding Illinois' environment—and putting teeth into the State's Constitutional guarantee that each of us has a right to a healthful environment—for the next fifty years and beyond.

I am honored and pleased to share this report, commemorating the 50th anniversary of the Board and its founding statute (1970-2020).

If you have any questions about this report or the Board, please let me know.

Sincerely,

Barbara Flynn Currie
Chair
Illinois Pollution Control Board

Governor's Proclamation – Pollution Control Board Day

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

Proclamation

***WHEREAS**, the Pollution Control Board was created in 1970 with the enactment of Illinois' Environmental Protection Act; and,*

***WHEREAS**, the Board is charged with developing environmental rules and standards, adjudicating complaints alleging violation of the Act and regulations; considering requests for regulatory relief, and providing a forum to appeal specified administrative actions; and,*

***WHEREAS**, in the 50 years since its creation, more than 50 persons have served on the Board, providing expertise in law, science, and engineering as well as experience in state and local government, educational institutions, environmental organizations, and the private sector; and,*

***WHEREAS**, the Board encourages public participation in all its proceedings to ensure that its decisions consider the fullest possible range of information and positions; and,*

***WHEREAS**, the Board makes its decisions and other documents available to the public free of charge, and uses new technologies to make its work as accessible as possible; and,*

***WHEREAS**, the Board works diligently in its rulemaking process to protect Illinois' environmental and public health while fully considering the technical feasibility and economic reasonableness of proposed regulation; and,*

***WHEREAS**, the Board strives to maintain a fair and open process when adjudicating contested environmental cases including enforcement actions and permit appeals; and,*

***WHEREAS**, the Board has played and will continue to play an important role in implementing Illinois' environmental programs;*

***THEREFORE**, I, JB Pritzker, Governor of the State of Illinois, proclaim July 1, 2020, as **Pollution Control Board Day** on the occasion of its 50th anniversary and commend it for the important role it has played since 1970 in protecting the environment of Illinois and the health and well-being of its people.*

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.

Done at the Capitol in the City of Springfield, this TWELFTH day of JUNE, in the Year of Our Lord, two thousand and TWENTY, and of the State of Illinois, two hundred and SECOND.

Jesse White
SECRETARY OF STATE

JBP
GOVERNOR

House Speaker's Letter of Congratulations

GENERAL ASSEMBLY
STATE OF ILLINOIS

MICHAEL J. MADIGAN
SPEAKER
HOUSE OF REPRESENTATIVES

ROOM 300
STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

June 26, 2020

The Honorable Barbara Flynn Currie
Chair
Illinois Pollution Control Board
Chicago IL

Dear Chair Currie:

Please allow me to join your friends and colleagues and add my congratulations on the 50th anniversary of the enactment of the landmark state Environmental Protection Act and formation of the Illinois Pollution Control Board.

Over the past half century, the IPCB has achieved an impressive record of accomplishment and protected our residents from a wide variety of environmental threats.

On behalf of the Illinois House of Representatives I state that the air, water and land of this state are in a better condition because of the focused work the IPCB staff and board members. Thank you and those who preceded you for your efforts.

With warmest person regards, I remain

Michael J. Madigan

MICHAEL J. MADIGAN
Speaker of the House

Senate President's Letter of Congratulations

OFFICE OF THE SENATE PRESIDENT
DON HARMON
STATE OF ILLINOIS

327 STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217-782-2728

160 N. LASALLE ST., STE. 720
CHICAGO, ILLINOIS 60601
312-814-2075

July 1, 2020

Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Dear Chairman Currie and members of the Illinois Pollution Control Board,

A half century ago, the Illinois Environmental Protection Act took effect on July 1, 1970, and among its sweeping accomplishments in seeking to restore, protect and enhance the quality of the environment in our state was the creation of the Illinois Pollution Control Board.

Over the course of the past 50 years, the Board has followed this mandate with respect to not only the constitutional right of the citizens of Illinois to enjoy a clean environment, but also their ability to participate in decisions that affect that environment.

Throughout its history, the Pollution Control Board has conducted rulemakings to adopt regulations and standards for a healthful environment and been the forum for adjudicating contested cases such as permit appeals and environmental complaints rising under the Illinois Environmental Protection Act.

Whether exercising its regulatory or its adjudicatory power under the Act, the hallmark of Board proceedings has been extensive opportunities for ordinary Illinoisans to participate in the State's environmental decision-making. By ensuring that all sides get a fair hearing and applying its technical expertise, the Board has amassed an impressive 50-year record of decisions leading to the continued restoration and protection of Illinois' air, water and land for public appreciation and enjoyment both today and tomorrow.

I'd like to congratulate the Board on this historic anniversary and wish you well in continuing its vital mission in the years to come.

Sincerely,

Don Harmon

Don Harmon
Illinois Senate President

Pollution Control Board Members – Then and Now

As they have been since the 1970 passage of the Environmental Protection Act (Act), Members of the Illinois Pollution Control Board (Board) are appointed to their full-time positions by the Governor and confirmed by the Illinois Senate. The Governor also designates one of the five Board Members to act as the Board's Chair.

Board Members, 1970
Standing: David P. Currie, Esq., Chair
Seated, left to right: Dr. Samuel R. Aldrich; Jacob D. Dumelle, P.E.; Samuel T. Lawton, Jr., Esq.; Richard J. Kissel, Esq.

Under the Act, Board Members, who serve staggered, three-year terms, must be "technically qualified" and have "verifiable technical, academic, or actual experience in the field of pollution control or environmental law and regulation." Board Members also must comply with ethics laws and rules covering an array of subjects, including ex parte communications, conflicts of interest, and sources of additional income.

Board Members, 1995
Left to right: Dr. Ronald C. Flemal; J. Theodore Meyer, Esq.; Claire A. Manning, Esq., Chair; Joseph C. Yi, P.E.; Marili McFawn, Esq.; Dr. G. Tanner Girard; Emmett E. Dunham II, Esq., P.E.

Over its 50-year history, the Board has been honored with dedicated Members. With the aid of the Board's exceptional legal and technical staff, the Board Members have decided myriad rulemakings and contested cases in pursuit of protecting and restoring Illinois' environment.

As detailed below, Illinois Governors have made appointments to the Board 55 times. You will see that the Board's first half century ends the way it started, with a Currie as Chair: David P. Currie was the Board's first Chair and now his wife, Barbara Flynn Currie, is the Board's thirteenth Chair.

Board Members, 2020
Left to right: Cynthia M. Santos; Brenda K. Carter; Barbara Flynn Currie, Chair; Anastasia Palivos, Esq.

You will also see tenures that lasted well over a decade. But none could match Jacob D. Dumelle's for duration. "Jake" Dumelle, who was on the very first Board, served as a Board Member for 20 years, including 15 years as Chair. Having previously been the Chief of the Lake Michigan Basin Office of the Federal Water Quality Administration, Mr. Dumelle was appropriately dubbed "Illinois' Renaissance Engineer" in the January 1975 edition of *Environment Midwest*, a periodical of the United States Environmental Protection Agency, Region 5.

Board Members in Order of Appointment

1. David P. Currie, Esq. (I – Chicago)
   July 1, 1970 – December 1, 1972
   Chair July 1, 1970 – December 1, 1972
   Served as Board Member and Chair for 2½ years

2. Richard J. Kissel, Esq. (R – Lake Forest)
   July 23, 1970 – June 30, 1972
   Served as Board Member for 2 years

3. Samuel T. Lawton, Jr., Esq. (D – Highland Park)
   August 1, 1970 – July 31, 1973
   Acting Chair December 1, 1972 – July 31, 1973
   Served as Board Member for 2 years, including Acting Chair for 8 months

4. Dr. Samuel R. Aldrich (R – Urbana)
   August 1, 1970 – July 30, 1972
   Served as Board Member for 2 years

5. Jacob D. Dumelle, P.E. (D – Oak Park)
   August 1, 1970 – December 31, 1991
   Chair August 1, 1973 – October 31, 1988
   Served as Board Member for 20½ years, including Chair for 15 years, 4 months

6. Donald A. Henss, Esq. (R – Moline)
   July 15, 1972 – December 15, 1972 and
   January 11, 1973 – October 15, 1975
   Served as Board Member for 3 years, 4 months

7. John L. Parker, Esq. (R – Joliet)
   August 1, 1972 – December 15, 1972
   Served as Board Member for 4½ months

8. Roger G. Seaman, Esq. (R – Joliet)
   March 1, 1973 – November 20, 1974
   Served as Board Member for 1 year, 8 months

9. Dr. Russell T. Odell (R – Champaign)
   September 4, 1973 – September 1, 1975
   Served as Board Member for 2 years

10. Sidney M. Marder, P.E. (D – Peru)
    September 17, 1973 – January 15, 1975
    Served as Board Member for 2 years, 4 months

11. Philip Zeitland, R.A. (D – Chicago)
    November 21, 1974 – July 1, 1977
    Served as Board Member for 2 years, 8 months

12. Irvin G. Goodman, Esq. (R – Medinah, Oak Brook)
    April 8, 1975 – April 13, 1983
    Served as Board Member for 8 years

13. James L. Young, Esq. (R – Springfield)
    October 14, 1975 – October 1, 1979
    Served as Board Member for 4 years

14. Dr. Donald P. Satchell (R – Carbondale)
    December 17, 1975 – June 30, 1981
    Served as Board Member for 5½ years

15. Nels Werner, P.E. (D – Chicago)
    July 2, 1977 – February 23, 1983
    Served as Board Member for 5 years, 7 months

16. Joan G. Anderson (R – Western Springs)
    March 1, 1980 – November 15, 1993
    Served as Board Member for 13½ years

17. Donald B. Anderson (R – Peru)
    July 1, 1981 – March 12, 1984
    Served as Board Member for 2 years, 8 months

18. Walter J. Nega (D – Chicago)
    February 24, 1983 – December 1, 1986
    Served as Board Member for 3 years, 9 months

19. J. Theodore Meyer, Esq. (R – Chicago)
    June 13, 1983 – June 30, 1998
    Served as Board Member for 15 years

20. Bill S. Forcade, Esq. (D – Chicago)
    November 4, 1983 – April 30, 1993
    Served as Board Member for 9½ years

21. Dr. John Marlin (R – Urbana)
    November 4, 1983 – April 30, 1993
    Chair November 1988 – April 30, 1993
    Served as Board Member for 9½ years, including Chair for 2 years, 5 months

22. Dr. Ronald C. Flemal (R – DeKalb)
    May 16, 1985 – September 30, 2002
    Served as Board Member for 16 years, 4 months

23. Edward Nedza (D – Chicago)
    March 9, 1987 – March 16, 1987
    Served as Board Member for 7 days

24. Michael Nardulli (D – Chicago)
    October 1, 1987 – February 1994
    Served as Board Member for 6 years, 4 months

25. Dr. G. Tanner Girard (D – Grafton)
February 4, 1992 - October 22, 2011
Acting Chair December 1, 2005 to October 22, 2011
Served as Board Member for 19½ years, including Acting Chair for 5 years, 10 months
Executive Director October 23, 2011 to June 1, 2012

26. Claire A. Manning, Esq. (R – Springfield)
May 1, 1993 – December 31, 2002
Chair May 1, 1993 – December 31, 2002
Served as Board Member and Chair for 9 years, 7 months

27. Emmett E. Dunham II, Esq., P.E. (D – Elmhurst)
November 12, 1991 – October 1, 1996
Served as Board Member for 3 years

28. Marili McFawn, Esq. (R –Palatine, Inverness)
November 12, 1993 – June 30, 2001
Served as Board Member for 8 years, 7 months

29. Joseph C. Yi, P.E. (I – Park Ridge)
September 12, 1994 – January 9, 1999
Served as Board Member for 4 years, 4 months

30. Kathleen M. Hennessey, Esq. (D – Chicago)
October 16, 1996 – August 1999
Served as Board Member for 2 years, 10 months

31. Nicholas J. Melas (D – Chicago)
July 1, 1998 – November 3, 2008
Served as Board Member for 10 years, 4 months

32. Elena Z. Kezelis, Esq. (R – Springfield)
January 10, 1999 – December 1, 2001
Served as Board Member for 1 year, 11 months

33. Samuel T. Lawton, Jr., Esq. (D – Lake Forest)
April 24, 2000 – June 30, 2002
Served as Board Member for 2 years, 2 months

34. Thomas E. Johnson, Esq. (R – Urbana)
July 1, 2001 – August 30, 2012
Chair January 1, 2003 to December 1, 2003
Served as Board Member for 11 years, 2 months, including Chair for 11 months
Executive Director June 3, 2013 – September 30, 2016

35. Michael E. Tristano (R – Glen View)
December 1, 2001 – November 30, 2003
Served as Board Member for 2 years

36. William A. Marovitz (D – Chicago)
July 1, 2002 – November 30, 2003
Served as Board Member for 1 year, 4 months

37. Doris C. Karpiel (R – Carol Stream)
January 10, 2003 – November 30, 2003
Served as Board Member for 10 months

38. Lynne P. Padovan (R – Charleston)
January 10, 2003 – November 30, 2003
Served as Board Member for 10 months

39. John Philip Novak (D – Bradley)
December 1, 2003 – November 30, 2005
Chair December 1, 2003 – November 30, 2005
Served as Board Member and Chair for 2 years

40. Andrea S. Moore (R – Libertyville)
December 1, 2003 – October 22, 2011
Served as Board Member for 7 years, 10 months

41. Shundar Lin (R – Peoria)
November 3, 2008 – November 4, 2009
Served as Board Member for 1 year

42. Gary Blankenship (D – Joliet)
October 31, 2008 – August 4, 2011
Served as Board Member for 2 years, 9 months

43. Carrie Zalewski, Esq. (D – River Forest)
November 5, 2009 – March 28, 2019
Served as Board Member for 9½ years

44. Tom Holbrook (D – Belleville)
October 23, 2011 – June 30, 2013
Chair October 23, 2011 – June 30, 2013
Served as Board Member and Chair for 1 year, 8 months

45. Jennifer Burke, Esq. (D – Chicago)
August 4, 2011 – June 30, 2017
Served as Board Member for 5 years, 11 months

46. Dr. Deanna Glosser (R – Riverton)
October 23, 2011 – July 31, 2016
Chair September 13, 2013 – September 3, 2015
Served as Board Member for 4 years, 9 months, including Chair for 2 years

47. Jerome D. O'Leary (R – Rock Island)
November 15, 2012 – December 2, 2016
Served as Board Member for 4 years

48. Gerald M. Keenan (I – Glencoe)
March 16, 2015 – April 16, 2018
Chair September 4, 2015 – May 26, 2017
Served as Board Member for 3 years, 1 month, including Chair for 1 year, 8 months

49. Thomas E. Johnson, Esq. (R – Urbana)
October 1, 2016 – January 19, 2017
Served as Board Member for 4 months. See No. 34 above.

50. Cynthia M. Santos (D – Chicago)
December 12, 2016 – Current
Currently serving in 4th year as Board Member

51. Katie Papadimitriu (R – Wheaton)
January 23, 2017 – August 29, 2019
Chair May 27, 2017 – August 14, 2019
Served as Board Member for 2 years, 7 months, including Chair for 2 years, 2 months

52. Brenda K. Carter (R – Sherman)
July 1, 2017 – Current
Currently serving in 4th year as Board Member

53. U-Jung Choe (R – River Forest)
April 17, 2018 – April 25, 2019
Served as Board Member for 1 year

54. Anastasia Palivos (I – Chicago)
April 19, 2019 – Current
Currently serving in 2nd year as Board Member

55. Barbara Flynn Currie (D – Chicago)
April 26, 2019 – Current
Chair August 15, 2019 – Current
Currently serving in 2nd year as Board Member, including Chair for 10 months

Board Chairs and Acting Chairs

David P. Currie, Esq.,
July 1, 1970 – December 1, 1972

Samuel T. Lawton, Jr., Esq. (Acting),
December 1, 1972 – July 31, 1973

Jacob D. Dumelle, P.E.,
August 1, 1973 – October 31, 1988

Dr. John Marlin,
November 1, 1988 – April 30, 1993

Claire A. Manning, Esq.,
May 1, 1993 – December 31, 2002

Thomas E. Johnson, Esq.,
January 1, 2003 – December 1, 2003

John Philip Novak,
December 1, 2003 – November 30, 2005

Dr. G. Tanner Girard (Acting),
December 1, 2005 – October 23, 2011

Tom Holbrook,
October 23, 2011 – June 30, 2013

Dr. Deanna Glosser,
September 13, 2013 – September 3, 2015

Gerald M. Keenan,
September 4, 2015 – May 26, 2017

Katie Papadimitriu,
May 27, 2017 – August 14, 2019

Barbara Flynn Currie,
August 15, 2019 – Current

Board Executive Directors

Dr. G. Tanner Girard,
October 23, 2011 – June 1, 2012

Thomas E. Johnson, Esq.,
June 3, 2013 – September 30, 2016

The Board's Early Years

What were the pioneering days like for the Illinois Pollution Control Board (Board)? Most fortunately, David P. Currie, the Board's first Chair and principal drafter of the Environmental Protection Act (Act), shared his insights on that very subject.

Heady Times

When asked in 1995—on the Board's 25th anniversary—about the political and social atmosphere of the early 1970s surrounding environmental issues, Mr. Currie commented:

> *We were riding the crest of the wave. It was a time when all of a sudden the public was very excited about the environment and recognized we had not been protecting it the way we should. There was a blossoming of public interest that translated into a flood of new legislation and regulations. The public and the governor were really behind us.*

With the support of Governor Richard B. Ogilvie and an awakened public, the Board rode that wave.

U.S. Senator Edmund Muskie of Maine—First Earth Day (1970)

The bad news, Mr. Currie observed in 1972, was that Illinois' environment had been allowed "to deteriorate far more than was at all desirable or necessary." He added, however, that there was good news: "significant improvements in the air and the water can be achieved by the employment of standard technologies at reasonable costs." Accordingly, the Board's "immediate task" under his leadership was "to see to it that the many things we do know how to do at reasonable cost get done as quickly as is practicable in order to reduce some of the gross pollution problems we suffer today." That meant rulemaking.

Adopting Regulations and Standards

Mr. Currie recognized that "full-fledged enforcement" could not be undertaken until Illinois had "adequate rules to enforce." The Board's "first priority" upon its creation was to update and strengthen the existing regulations of its predecessors—the Sanitary Water Board and the Air Pollution Control Board, which were attached to the Illinois Department of Public Health (IDPH).

The old boards, besides being fragmented by media, were comprised of part-time volunteers selected largely to represent affected interest groups. In Mr. Currie's view, the old boards' "functions were essentially to ratify the [IDPH] staff's conclusions." And the regulations of the old boards were hindered by the former anti-pollution laws, which were plagued by local exemptions—an "abdication" of State responsibility in the Governor's opinion. For example, most of the old boards' regulations did not apply within the City of Chicago.

Bubbly Creek, Chicago (1911)

These problems were eliminated by the Act, which took effect on July 1, 1970.

The Act declared the Board "independent" and required that its five Members be "technically qualified." The Act provided that each Board Member be paid $30,000 per year, with the Chair paid $35,000. The Act also

required that each Board Member "devote full time to the performance of his duties." And the Board's rulemaking authorities extended everywhere in the State and to the entire field of pollution—air pollution, water pollution, public water supplies, land pollution and refuse disposal, atomic radiation, and noise pollution.

Mr. Currie was asked how the Act itself helped the Board in developing the initial set of regulations:

> *The Act helped us mostly by not tying the Board's hands. It was essentially a blank check. It was drafted that way intentionally, because it was felt that the legislature was not the place to resolve complicated technical issues. We didn't want the regulations to be the result of a political decision. We wanted a decision that considered the costs and benefits of particular pollution control measures. The statute authorized us to adopt whatever measures were necessary at acceptable costs to protect the environment and public health.*

Still, the Board was a small body created for decision-making, not for undertaking initial research to support proposed regulations. And, as Mr. Currie learned, "[t]he conscientious rulemaker will quickly discover that in setting discharge standards he cannot simply set forth a number and go out to play golf." He was a strong advocate of gathering information through public hearings.

Mr. Currie noted that some of that critical rulemaking information came from citizens groups: "There were lots of interested public groups—the League of Women Voters, law students and many others—who were very concerned about the environment and studied the proposals made and sometimes made proposals of their own."

He also recognized that industry—"those who would be required to make expenditures to comply with proposed regulations"—could be a valuable source of information:

> *Instead of stonewalling, industry would come in and work with us. They were suspicious, but we were able in most cases to work with them very well and persuade them they would get a fair hearing.*
>
> ***

> *They knew what they could do and what it would cost them to do it. We took some things with a grain of salt because they were not disinterested, but we avoided a lot of mistakes by listening to what they had to say.*

Of course, the Board also relied heavily for information on its two sister agencies, created along with the Board by the Act when it passed in 1970: the Illinois Institute for Environmental Quality (Institute); and the Illinois Environmental Protection Agency (Agency). The Institute would provide detailed, scientific support of rulemaking proposals, which were then tested through the Board's public hearings. And the Agency would supply recommendations and testimony, sharing its experiences in the field. The Board was also aided by United States Environmental Protection Agency (USEPA) guidelines and USEPA Region 5 staff, as well as by USEPA publications that outlined the available pollution control technologies and the harmful effects of specific pollutants.

In 1971, Mr. Currie summed up the importance of developing a thorough rulemaking record: "We have the authority to do most of the things we must do to protect the environment against pollution; we must rely very heavily on others for the information we need to do the job intelligently."

Using that authority, the Board first adopted specific and narrow new standards to address the most pressing problems, including regulations on air pollution episodes, secondary sewage treatment on the Mississippi River, and mercury discharges to waterways, along with phosphate discharges to Lake Michigan—"of utmost importance in preventing Lake Michigan from becoming another Lake Erie," according to Mr. Currie. In addition, the Board adopted comprehensive new sets of effluent limits and in-stream water quality standards. All these regulations were based on the Board's own rulemaking proposals.

Steel mill on Calumet River (1973)

The Board also adopted air quality standards and emission limits based on the Agency's rulemaking proposal, addressing particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides, among other contaminants. The Board then turned its attention to regulations on solid waste disposal, radiation from nuclear power plants, agricultural water pollution, mine wastes, and noise pollution. There had been no Illinois program for noise control.

Mr. Currie expected Board rulemakings to be procedurally fair ("give everybody the opportunity to present their point of view") and the Board's Members and staff "to know what the proposals and arguments are so that [participants] feel they've been treated fairly and heard." Adhering to this principle and work ethic "makes the regulations better, and our environment a better place to live."

Was the Board's rulemaking process perfect? No. Mr. Currie commented in 1975 about the "number of recurring practical difficulties in the drafting of standards," perhaps the most significant among them being:

> *the perennial insufficiency of information, despite yeoman efforts in some cases by the Agency and by the Institute, to permit anything remotely resembling a full comparison of costs and benefits. While it is hoped that all concerned will continue to strive for better information, I suspect that the problem is inherent in the nature of the subject. We should be alert to improve the regulations when we obtain better knowledge, but it would be the height of folly to do nothing until we knew everything—for it seems likely that we would do ourselves enormous and unjustified harm while waiting.*

These observations, made after the Board's first five years, hold true today after the Board's first five decades.

The Institute had been created to provide technical support for proposed regulations and enforcement strategies, engage in long-term planning, and "investigate practical problems," not conduct "abstract scientific research." Mr. Currie explained that the Institute was "designed to bridge the gap between scholars who know the effects and cures of pollution and officials who need to know." (In 1975, however, the Institute's primary function was shifted to preparing studies on the economic impact of all substantive regulations of the Board. In 1978, the Institute was eliminated, with its duties transferred to what would become the Illinois Department of Natural Resources.)

Enforcement and Variances

Along with conducting rulemakings, much of the Board's first years were dedicated to adjudicating enforcement complaints and, for petitioners seeking more time to come into compliance, variance requests. In fact, though any given rulemaking could strain the Board's resources, only 6% of the Board's dockets in fiscal years 1970 through 1972 were for rulemakings, while 61% were for variances and 32% were for enforcement. Over 50 variance petitions and enforcement complaints were filed within five months of the Board opening its doors.

Among the Board's most important early enforcement cases were those filed by citizens under what Mr. Currie called an "unprecedented provision" of the Act allowing citizens to enforce the Act and Board regulations. He considered this "private attorney general" provision "a valuable addition to and check upon the governmental enforcement agencies."

In 1972, Mr. Currie observed that adopting regulations, "no matter how appropriate, is not in itself a guarantee that pollution problems will be corrected." For that, "[v]igorous enforcement is the key." He took a pragmatic view of what would bring about compliance: "There are some good citizens who obey a law because it is on the books; there are others who have to be dragged into compliance kicking and screaming."

Whether the State, an individual citizen, or an environmental group filed the complaint, if the Board, after hearing, found a violation, it would "make whatever order is appropriate to bring an end to the pollution as rapidly as practicable, and to deter future violations,"

according to Mr. Currie. These Board orders would "typically set a schedule for compliance and often include money penalties as well."

Illinois Beach State Park on Lake Michigan (1973)

He acknowledged that "an immediate shutdown would often have such adverse effects upon innocent people such as employees and customers that it is better to allow continued operation during correction of the problem," unless there was "an absolutely intolerable pollution situation" and the "absence of any acceptable control program." In Mr. Currie's experience, a Board order that "either directed a shutdown or exposed the company to the risk of shutdown, enabled the company to overcome previously insuperable difficulties and to present almost at once a truly exemplary program."

Mr. Currie spoke in 1972 about the Board's "biggest single problem of enforcement so far," namely "municipal sewage treatment." He considered municipal sewage "probably our most serious overall water pollution problem." The quandary boiled down to local governments being unresponsive due to insufficient federal funding and the Board feeling it had "less than a full arsenal of tools" with which to obtain compliance. He noted that, practically speaking, the "ultimate sanction of shutdown" was unavailable with municipal treatment works:

> *An industry knows that if it does not comply it risks being put out of business. But shutting down the sewage treatment plants would certainly not improve the pollution situation. We have also been somewhat lenient so far in assessing money penalties against municipalities, on the ground that limited funds should be spent on pollution control instead.*

The Board did, however, make some progress on municipal sewage treatment through one remedy: "That is the highly controversial device of forbidding new connections to sewers serving overloaded or otherwise inadequate treatment facilities." The Board's "sewer connection ban," Mr. Currie explained, prevented the situation from becoming worse and put "considerable pressure on local officials, from within their own community, to get on the ball and do whatever is necessary to make additional connections possible."

Compliance schedules were not limited to the Board's enforcement orders. The Act also authorized the Board to grant an individual variance when a petitioner proved that immediate compliance with a Board regulation or order would impose an "arbitrary or unreasonable hardship." "Without the safety valves of variances," Mr. Currie observed, "even the most specific of regulations is likely to be Procrustean when applied to individual cases."

Mr. Currie noted in 1972 that along with complaints, "[a] good deal of enforcement has also been accomplished through variance cases." He recognized the apparent incongruity, "since a variance is permission to do what the law otherwise forbids," but he elaborated:

> *[T]he great bulk of variance cases are requests for approval of control programs, and the net result in a variance case is often the same as if a complaint had been filed: A timetable is set for compliance, and in cases of unjustified delay a penalty must be paid as a condition of the variance. For we have a difficult problem with a number of cases in which there has been unreasonable delay. Delay must be made unprofitable.*

In 1973, however, the Illinois appellate court held that the Board cannot impose civil penalties as a condition of a variance. The Board could ensure delayed compliance was made unprofitable, but it would have to do so in enforcement actions.

Nuclear Plants

The Board was also responsible early on for issuing construction and operating permits to, and setting radioactive emission limits on, nuclear power plants and nuclear fuel reprocessing plants. Mr. Currie recalled that "right off the bat, we had some very important nuclear licensing proceedings, mostly involving Commonwealth Edison."

This area was found in 1972 to be preempted by federal law, but Mr. Currie noted that, "[w]ith the acquiescence of Commonwealth Edison, which said it was entirely technically and economically feasible, the Board made the emissions standards more stringent by a factor of 10 than those currently applicable under federal law. Federal law later incorporated those standards."

With the Clean Air Act Amendments of 1977, the Board would return to regulating airborne radioactive emissions.

Camaraderie and Open Minds

With so many contentious issues to resolve, the teamwork of the original Board Members was pivotal. The Act specified that there be five Board Members, each appointed by the Governor and subject to Senate confirmation. The Governor was required to designate one of the five Board Members to act as Chair. Governor Ogilvie designated Mr. Currie as the Board's first Chair. Mr. Currie credited Governor Ogilvie with wisely appointing "a variety of people on the Board rather than stacking it with a lot of dedicated environmentalists." The Act did not require that Board Members represent specific interest groups, just that no more than three of them be from the same political party.

Along with the Chair, the other four original Board Members were Dr. Samuel R. Aldrich, who had been a professor of agriculture at the University of Illinois; Jacob D. Dumelle, a professional engineer and former Chief of the Lake Michigan Basin Office of the Federal Water Quality Administration; Samuel T. Lawton, Jr., an attorney, former Mayor of Highland Park, and former Chair of the old Air Pollution Control Board; and Richard J. Kissel, who had been an attorney for Abbott Laboratories and the Illinois Chamber of Commerce. Mr. Currie marveled at the original Board Members':

> *willingness to think about the merits of questions rather than taking positions representing our backgrounds. We didn't always agree on everything, but there was wide consensus that we had to look for the best solution in terms of balancing the costs and benefits of control and that we needed to be more strict than we had been in the past. And the presence of Dick Kissel on the Board, working with the rest of us to reach a common goal without taking an adversarial position, was particularly important in making the programs work and making them acceptable to industry.*

Conclusion

On the Board's 25th anniversary, Mr. Currie looked back on his two and one-half years as Chair and was pleased with the Board's accomplishments:

> *I was very happy with what we had done. Obviously there was more work to do, but the main architectural work was done. I had been in the fortunate position of being able to put most of my ideas about pollution control into effect. I do think we made a difference.*

He commented in 1972 about the Board's general approach to those early rulemakings and adjudications:

> *We have tried in all our proceedings to convey the idea that we mean business about pollution control; that we will listen to whatever anyone has to say; that we are willing to modify our proposals on the basis of evidence in the record; that we will allow a reasonable time for people of good faith to bring themselves into compliance with new requirements; and that we will not countenance unjustified delay.*

Nearly 50 years later, his words continue to guide the Board.

And for ordinary citizens who wanted to know how they could help save the environment, Mr. Currie offered this advice in 1972: "People often want to know what they as individuals can do to fight pollution. I think the most important thing is to keep up the pressure on government to provide a serious pollution control program." His recommendation remains vital.

Bibliography

- Citizens Utilities Co. v. Pollution Control Bd., 9 Ill. App. 3d 158, 164-66 (2d Dist. 1973).
- "Conversations on the Board—Straight Talk," David P. Currie Interview, Illinois Pollution Control Board 25th Anniversary Report and Fiscal Year 1995 Annual Report (1995).
- Currie, David P., Chair, "The Pollution Control Board: A First Report" (Jan. 6, 1971).
- Currie, David P., Chair, "Remarks on the Board and the Environmental Protection Act," Chicago Commonwealth Club (Jan. 26, 1972).
- Currie, David P., "Enforcement Under the Illinois Pollution Law," 70 Northwestern University Law Review 389 (1975).
- Currie, David P., "Rulemaking under the Illinois Pollution Law," 42 University of Chicago Law Review 457 (1975).
- Northern States Power Co. v. State of Minnesota, 447 F.2d 1143, 1154 (8th Cir. 1971), *aff'd by* Minnesota v. Northern States Power Co., 405 U.S. 1035 (1972).
- Proposed Rules under Section 25a of the Environmental Protection Act, R71-9, R80-1 (consol.) (Aug. 7, 1980) (Clean Air Act Amendments of 1977 "authorized limited state participation in the regulation of airborne radioactive emissions") and 35 Ill. Adm. Code 1000 (Radiation Hazards).

Image Credits

(in order of appearance)

- "Senator Edmund Muskie addressing large crowd in Fairmount Park on Earth Day" (Apr. 22, 1970) cropped; Photographer: Ross, Frank; Source: University of Pennsylvania, Digital Public Library of America https://dp.la/item/e0ef01888aac771abb6516d9731f2544?q=earth%20day%201970 (accessed June 25, 2020); Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (license: https://creativecommons.org/licenses/by-nc-sa/4.0/legalcode).
- "Bubbly Creek, with Chicken Standing on Crusted Sewage" (1911); Photographer: Chicago Daily News; Source: Chicago Historical Society (DN-0056899), Encyclopedia of Chicago, http://www.encyclopedia.chicagohistory.org/pages/10782.html (accessed June 25, 2020).
- Logo of Illinois Institute for Environmental Quality; Source: partial cover of "Problem Sites: Lands Affected by Underground Mining for Coal in Illinois" (Dec. 1977), Document No. 77/38, Internet Archive https://archive.org/stream/problemsitesland00nawr?ref=ol#page/n3/mode/2up?ref=ol (accessed June 25, 2020).
- Logo of Illinois Environmental Protection Agency; Source: IEPA Twitter account (@ILEPA); https://pbs.twimg.com/profile_images/827267516921634817/St3BIUGf.jpg (accessed June 26, 2020).
- Original Seal of United States Environmental Protection Agency (Oct. 18, 1971); Illustrator: Ken Bloomhorst of McQuade, Wilkins, Bloomhorst, Newman and Colbert; Source: USEPA, "EPA History: Origins of the EPA Seal" https://archive.epa.gov/epa/aboutepa/epa-history-origins-epa-seal.html (accessed June 26, 2020).
- "Steel Mill on the Calumet River" (May 1973); Photographer: Sequeira, Paul; Source: USEPA Documerica Series, National Archives Catalog (547060) https://catalog.archives.gov/id/547060 (accessed June 25, 2020).
- "Illinois Beach State Park on Lake Michigan. Near Zion Nuclear Plant" (Mar. 1973); Photographer: Sequeira, Paul; Source: USEPA Documerica Series, National Archives Catalog (547046) https://catalog.archives.gov/id/547046 (accessed June 25, 2020).

Perspectives of Former Board Chairs

Claire A. Manning, Esq.

My sincerest congratulations to Chair Barbara Flynn Currie and Members of the Illinois Pollution Control Board on its 50th anniversary. It was my honor and pleasure to serve as the Board's Chair for ten of the most rewarding years of my professional career. As an appointee of Governors Edgar and Ryan, I was Chair at a time that can now best be described as being in the middle of the Currie bookends, serving in the shadow of the Board's initial chair and creator, Professor David Currie, and as predecessor to former House Leader Barbara Flynn Currie—both of whom have dedicated their professional lives to the law and to the environment.

The Board itself is also a unique manifestation of these twin commitments—a legislative commitment to legal structure and environmental protection. Innumerable dedicated Board Members and professional staff have served the Board over its 50-year history, all striving to achieve a fair and proper balance between protecting Illinois' environment and assuring the regulations it is authorized to promulgate are reasonable and feasible. During my service, from 1992-2002, a variety of important new State regulatory initiatives were promulgated, including federally driven landfill regulations; the site remediation program and risk-based corrective action objectives (TACO); the leaking underground storage tank program; livestock waste regulations; Clean Air Act emissions reductions and emissions trading; and vehicle emissions testing and diesel emissions reductions, to name but a few. Those initiatives continue to be implemented by dedicated employees of the Board and the Illinois Environmental Protection Agency, the unsung heroes of Illinois' environmental protection policies and programs.

At a time when the internet was new to State government and years ahead of the legislature and courts, the Board became the first State entity to have its regulations and docket publicly available on-line through the development of the Clerk's Office On-Line (which we appropriately named "COOL"). It was a time of burgeoning change in both the industrial sector (which was becoming more globalized) and in the environmental advocacy arena, as evidenced by both the transition from Chicago-based Amoco to British Petroleum (BP) and the birth of the Environmental Law and Policy Center (ELPC), now one of the Midwest's leading environmental organizations. As regards the Board's adjudicatory role, we worked very hard to provide reasoned and science-based decisions, supported by sound adjudicatory logic, which would garner the respect of reviewing courts—recognizing both the importance of achieving deference for the Board's specialized expertise and the importance of stability in the development of applicable environmental law precedent.

In the years since my departure, I have had the opportunity and honor to practice before the Board, watching the Board's role grow in significance and in caseload, all while maintaining the same sense of dedication and commitment to the law and to the environment that was the seed of the Board's creation. I have an unwavering pride in my professional affiliation with the Board, and my hope is that countless others over the next 50 years share that pride. Congratulations to Leader (now Chair) Currie and the current (now all female) Board on this auspicious anniversary.

Dr. G. Tanner Girard

Congratulations to all the past and current Members and staff of the Illinois Pollution Control Board on the Board's 50th anniversary. Everyone can be proud of their role in one of the most effective pollution control schemes among all 50 States. I am confident that the challenges of the next 50 years will be met with likewise success.

Dr. Deanna Glosser

I was proud to have served on the Board for almost five years, two of which as Chair. One of the most profound cases that was addressed by the Board in my tenure was establishing aquatic life water quality standards for the Chicago Area Waterway System and Lower Des Plaines River. These regulations will have far-reaching effects on the water quality in these rivers, greatly enhance fisheries and other aquatic life, lead to greater recreational opportunities, and even provide economic development opportunities along

improved waterways. Serving on the Board gave me the opportunity to be a part of an effort that improves the environment today—and into the future.

Thomas E. Johnson, Esq.

Over my 17 years on the Illinois Pollution Control Board, I was honored to serve as Board Member, Chair, and Executive Director. During that time, the Board was unwavering in its zeal to carry out its mission. I am proud to have served the State of Illinois alongside the Board's devoted and capable Members and staff.

Perspectives of the Current Board Members

Barbara Flynn Currie, Chair

Fifty years ago, my late husband, David P. Currie, drafted the Environmental Protection Act, at the behest of then-Governor Richard Ogilvie, and shepherded the legislation through both chambers of the Illinois General Assembly. David served as the first Chair of the Illinois Pollution Control Board. Last summer, Governor JB Pritzker appointed me the current Chair. It's an honor and a privilege to carry on the vital work of protecting the environment. The people of the State of Illinois demand clean air, clean water, and land that is free of toxic waste. I am delighted to work with my colleagues at the Board to promote these important goals.

Cynthia M. Santos, Member

The Environmental Protection Act assigns the Board critical responsibilities: to adopt the regulations that establish Illinois' environmental standards; and to adjudicate contested cases, including complaints alleging violations of the Act or Board regulations and petitions seeking review of Illinois Environmental Protection Agency permit determinations. Significantly, the Board is an independent body and its Members must have verifiable environmental experience. With these requirements, the Act provides the Board a framework for exercising its authorities to most effectively protect and restore our State's environment. I am honored to serve on the Board and look forward to continuing its important work.

Brenda K. Carter, Member

As with most everything, change is inevitable. This is especially true in the world of environmental protection. Over the last 50 years, the State of Illinois has made meaningful changes to safeguard the environment by adopting laws that limit air emissions, prevent water pollution, and control land waste. The Board has played an integral role in ensuring that the State's pollution control and prevention measures are met through the adoption of regulations and through its decisions in enforcement matters, permit appeals, and other adjudicatory proceedings. For 50 years, the Board's efforts have demonstrated quality changes in environmental protections and I am proud to be a part of its legacy.

Anastasia Palivos, Esq., Member

There are many things that I think the Board has done to improve environmental regulations over the last 50 years, but above all, the Board has consistently committed to accessibility. Environmental issues are often community issues, and the Board provides various opportunities for the public to express concerns about their communities.

The Board continues to encourage open and transparent dialogue with all interested parties and stakeholders while navigating the future of environmental regulatory issues. I look forward to continue serving the people of Illinois with my colleagues at the Board.

Backgrounds of the Current Board Members

Barbara Flynn Currie, Chair

Barbara Flynn Currie served many terms in the Illinois House of Representatives. In 1997, she became House Majority Leader—the first woman to hold the title—and held the post until she retired from the General Assembly at the beginning of 2019. 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 has 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 M. Santos, Member

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 there, 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 K. Carter, Member

Board Member Carter has over 18 years of extensive 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. In that capacity, Brenda represented the interests of IERG's members before the Illinois Environmental Protection Agency 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 served in the Illinois Air National Guard in the Security Forces Unit for eight years and was honorably discharged in 2002. Brenda has a master's in environmental studies from the University of Illinois at Springfield.

Anastasia Palivos, Esq., Member

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 January 2018 to February 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 as Commissioner, Palivos was a legal and policy advisor to the Commission's Chair. 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.

The Environmental Protection Act: How It Happened

Fifty years ago, the nation's toughest environmental law was enacted right here in Illinois.

The legislative vehicle was House Bill 3788, passed by the General Assembly on May 29, 1970. The bill was signed into law on June 29, 1970, as Public Act 76-2429, better known as the "Environmental Protection Act." On July 1, 1970, the Environmental Protection Act (Act) took effect.

Of course, these dry procedural facts do not tell the story of the Act. For that, we must recall the era that made the Act possible and the showdown in Springfield that made it a reality.

The '60s and the First Earth Day

Toward the end of the turbulent 1960s, the country's concerns over pollution soared. Critical groundwork in changing entrenched attitudes was laid in 1962 with the publication of Silent Spring by Rachel Carson. Her book about the hazards, to both man and nature, of DDT and other chemical pesticides alarmed the public and helped spawn modern environmentalism.

Los Angeles (1972)

The decade witnessed dramatically increased emissions from automobile tailpipes. Coupled with industrial pollutants emitted to the air, they led to thick blankets of sulfur dioxide-laden smog covering major U.S. cities. In 1966, New York City suffered a widely reported smog incident linked to the death of approximately 200 people. In Chicago, laundry put out to dry came back covered in soot from smoke-belching steel mills, oil refineries, and coal-burning power plants. In 1967, the Chicago Tribune began a "Save Our Lake" campaign to end the pollution of Lake Michigan.

In 1969, television networks covered the Santa Barbara oil well spill, replete with disturbing images of oil-coated sea birds, dead seals, and fouled Southern California beaches. Roughly three million gallons of crude oil were released. The catastrophe was followed later that year by Cleveland's Cuyahoga River—clogged with oil and other combustible effluents—infamously catching on fire. Although, incredibly, the river had experienced many earlier fires that were worse, this one made it into Time magazine, which described the Cuyahoga as a river that "oozes rather than flows." And then there was Lake Erie, heavily polluted with industrial wastes and municipal sewage. By the end of the decade, massive fish kills led national publications to declare Lake Erie "dead."

Steel plant in E. Chicago (1973)

Santa Barbara oil spill (1969)

Against this backdrop of environmental disasters and rising mainstream awareness, Republican Richard B. Ogilvie ran for governor of Illinois. In campaigning, he was resolute on the need for the State to tackle its own festering pollution problems, without waiting for the federal government to act. He was elected in 1968 and set out to replace Illinois' patchwork of toothless pollution laws with a strong, comprehensive program of environmental protection.

The first Earth Day was held on April 22, 1970, featuring nationwide teach-ins and protests. In some 12,00 events across the country, twenty million people participated—at the time, 10% of the U.S. population.

First Earth Day—University of Michigan (1970)

All Eyes on Springfield—Spring 1970

House Bill 3788 was introduced in the Illinois House of Representatives on April 17, 1970. Its chief sponsor was Representative George M. Burditt, Jr. (R-La Grange). On April 23, the day after the first Earth Day, Governor Ogilvie challenged the General Assembly to approve the legislation:

> *The crisis of our environment has recently focused on the urgent needs of controlling the pollution of our air, water and land. We must also take steps now to reserve for our children the natural beauty which we have come to take for granted. But force and money alone will not do the job. We need firmness and dedication and purpose, but we also need to work together, all of us, to accomplish the dream of clean water, fresh air and natural beauty.*
>
> *The cost of cleaning up our environment will not be small, yet the cost of not facing our task will be much greater.*

On May 14, House Bill 3788 easily passed the House of Representatives. The vote was 124 to 10. There had been little lobbying for or against the bill.

The next day, House Bill 3788 arrived in the Senate. The reception was hostile. This was no surprise. It had been expected that the Senate, thought of as business-friendly, would host the showdown with industry.

Mobilized from around the country against the bill, industry groups mounted what was considered among the largest and most intense lobbying efforts Springfield had ever seen. House Bill 3788 and its companion bills were described by Senator Robert Coulson (R-Waukegan) as "stinking, rotten bills." And he was their Senate sponsor.

On May 19, House Bill 3788 was assigned to the Senate's Executive Committee, which appointed a six-person subcommittee headed by Senator Egbert Groen (R-Pekin). Industry claimed that without changes to the bill, it would intolerably burden industry, potentially close plants, drastically harm Illinois' economy, and even disrupt complex technologies that maintained our way of life.

Illinois State Capitol, Springfield

By May 22, newspapers were reporting that House Bill 3788 was in serious trouble. William J. Scott, the Illinois Attorney General, along with David P. Currie, the legislation's principal drafter and Governor Ogilvie's Coordinator of Environmental Quality, urged citizens to help save the bill—pleading that they contact their Senators, as well as Senator Coulson and Senator Groen, and come to Springfield to be heard.

Industry representatives, on May 25, presented 72 amendments. In the Ogilvie administration's view, accepting those changes, collectively, would have left the bill's effectiveness "gutted." The subcommittee had a hearing on House Bill 3788 scheduled for that evening, which it held. But not where it had planned.

Overflow crowds showed up, necessitating that the hearing be moved to the Senate floor. Among those attending were over 30 citizens groups that had arrived by caravan from Chicago—after holding a rally supporting

the bill. Testifying for the bill was Attorney General Scott, who had a record of zealously prosecuting environmental violations. He presented petitions signed by 100,000 Illinois residents insisting on aggressive anti-pollution measures—in his words, "overwhelming evidence that the people of the State demand and expect meaningful legislation in this session to combat pollution wherever it exists in Illinois."

Numerous citizens testified, as did Mr. Currie, "a consistent and outspoken critic of present weaknesses in the field of anti-pollution law and enforcement." The hearing ended after 11:00 p.m.

On the day of the hearing, Lieutenant Governor Paul M. Simon called the legislation "a step toward a serious attack on the problems of pollution." The future U.S. Senator added that "[a]ny rational evaluation of priorities today must place action on environment—and not just talk—high on the list, if we are concerned about survival." A telegram to Senator Groen from Francis T. Mayo, Great Lakes Regional Director of the Federal Water Quality Administration, stressed that the legislation "offers the State of Illinois an opportunity to establish a position of national leadership in the field of environmental protection."

The next day, May 26, Mr. Currie and his staff began drafting counter-proposals to the industry's language changes. Meanwhile, after the subcommittee heard testimony from opponents of the bill, Senator Robert Cherry (D-Chicago) moved to send the bill to the Executive Committee in the form in which it had passed the House. His motion failed.

At a press conference that day, Governor Ogilvie, with Attorney General Scott next to him, threatened to call the General Assembly into special session if the Senate did not pass House Bill 3788 before adjourning that week. This announcement torpedoed industry efforts to postpone consideration of the bill to the next year.

On the same day, May 26, face-to-face negotiations began between representatives of industry, the Governor's Office, and the Attorney General's Office. Those negotiations would go late into the night.

By the next morning, compromise amendments had been reached and Mr. Currie was testifying before the subcommittee about the agreed changes. The subcommittee sent the compromise bill to the Executive Committee, which heard testimony that day from Mr. Currie and Attorney General Scott. The Executive Committee reported out the compromise bill by a 20-0 vote to the full Senate, recommending its passage. All this in one day, May 27.

Some Democratic Senators cried railroading. But given the public's environmental mood, no Democratic member of the Executive Committee wanted to be on record voting against an anti-pollution bill.

On May 28, Senate Democrats tried amending the bill to restore it to its House form but their amendments failed. After a three-and-one-half hour battle, the Senate voted 39 to 0 in favor of the compromise bill, with nine Senators voting present. On May 29, the House concurred with the compromise bill.

Governor Ogilvie signs Environmental Protection Act into law
Also seated: Attorney General Scott
Standing in view, left to right: State Senator Coulson; Mr. Currie, the Board's first Chair

At Pheasant Run Lodge in St. Charles, where he was speaking to a gathering of the National Association of Attorneys General, Governor Ogilvie signed House Bill 3788 into law on June 29. The Act became effective two days later, on July 1, 1970.

About Those Compromises

Expecting to be "beaten on many major points," Mr. Currie decided that "the original draft of the bill would contain the best possible substantive provisions we could devise." In the end, he believed the concessions to industry were "of minor significance, because nothing essential to the total program was lost." The key negotiated changes to the House version of the bill are highlighted below.

Deal Breakers for Industry

Dropped from the bill were three provisions industry viewed as fatal flaws.

First was a provision that would have allowed any person adversely affected in fact by a violation of the Act to sue for damages. Industry feared a wave of harassment suits with towering legal defense costs. Mr. Currie—a professor at the University of Chicago Law School who had clerked for Justice Frankfurter of the U.S. Supreme Court—agreed at the time that those fears were "legitimate." For individuals, however, he stressed that "[u]nder the existing law of nuisance, the right of citizens to sue to stop pollution already exists, the private right to enforce the [A]ct by injunction remains, and there are many other existing legal avenues open to persons who suffer from the improper acts of others."

The second provision would have empowered the new Illinois Pollution Control Board (Board) to ban or restrict the sale or use of non-returnable bottles. The Ogilvie administration relented despite its concerns over the containers causing an undue disposal problem. Mr. Currie acknowledged that the provision was "an untried economic weapon which could be misused."

And third was a provision that would have authorized the Board to set monetary "charges" on emissions, discharges, and disposal. Mr. Currie conceded that the provision could be read, troublingly, as creating a "license to pollute." He also admitted that the language lacked restraints to prevent "excessive charges" and that "doubts were raised about the constitutionality of this untried new concept of law." Attorney General Scott concurred that the provision, allowing an agency to effectively impose taxes, would be contested all the way to the U.S. Supreme Court. In the decades since, the General Assembly has amended the Act numerous times to assess "fees" calibrated to the amount or type of emissions, discharges, and disposal.

Rulemaking

In a provision authorizing the Board to set ambient air quality standards, language was removed from the bill that would have required the standards to "ensure the elimination of health hazards." In another provision empowering the Board to set emission standards, language was excised that would have precluded any contaminant emissions that had not been subjected to the "best practicable treatment or control." Mr. Currie pointed out, however, that what remained in the bill already gave the Board broad authority to set whatever standards were necessary to prevent and abate air pollution, plus unprecedented power to enforce the standards. The same observation holds true for another dropped provision, which would have specifically authorized the Board to require industry to install discharge monitoring equipment at its expense.

Added to the bill during the negotiations were provisions instantly recognizable to anyone who regularly appears in Board rulemakings today. For example, new language would require the Board, when promulgating substantive regulations, to "take into account" the "technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." (Court decisions would hold that this provision did not mean that the Board, to adopt a regulation, must find it technically feasible and economically reasonable; only that the Board must consider those factors.) Mr. Currie correctly and simply described the change at the time of the bill's passage: "The [B]oard will be required to consider both the benefits and the costs of pollution controls."

Enforcement

The bill was supplemented with Section 33(c), including what would become the proverbial "33(c) factors." Under the new language, the Board, when making its enforcement decisions, would have to consider "all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved." The provision then gave a non-exhaustive list of four factors the Board must consider:

- "the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people";
- "the social and economic value of the pollution source";
- "the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location"; and
- "the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source."

A fifth factor—"any subsequent compliance"—would be added later.

Variances

During negotiations, the threshold of proof for the Board to grant someone a variance—relief from a Board regulation—became the now familiar standard: compliance "would impose an arbitrary or unreasonable hardship." Mr. Currie agreed that the new wording was "clearer and stronger" than the somewhat unwieldy language it replaced: compliance "would impose a prohibitive hardship or create an extreme safety hazard" and "the burden of such hardship or safety hazard would totally dwarf the benefit of compliance to the people."

Another modification to the variance provisions concerned timely Board decisions. Before the change, the bill provided that if the Board failed to take final action on a variance petition within 45 days, the petition was deemed denied. This wording was modified to provide that if the Board failed to take final action within 90 days, the petition was deemed granted. According to Mr. Currie, "[t]he practical effect of the amendment is that it gives the [B]oard twice the time to investigate before making a decision. A [B]oard committed to doing its job will suffer no handicap at all under the amended procedure." The duration of any variance was capped at one year in both the House and Senate versions of the bill; the cap would later change from one year to five years.

Also added to the variance provision was language allowing for a stay of the regulation from which the variance petitioner sought relief. Specifically, for anyone who filed a petition for a variance from a regulation within 20 days after the regulation's effective date, "the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition." The Board could, however, hold a hearing on that petition with as little as five days' notice. Eventually, the Act would be amended to extend the Board's decision period to 120 days and exclude from the reach of the "deemed granted" and stay provisions those Board regulations implementing federal environmental requirements.

Permitting

Language was added during negotiations to provide that if the new Illinois Environmental Protection Agency (Agency) failed to take final action within 90 days after a permit application was submitted, the permit was deemed issued. The General Assembly would later amend the Act to specify when the Agency's decision period would double, as well as to exclude from the decision period's applicability those permit applications under provisions of the Act carrying out federal environmental requirements.

Another provision that was modified concerned appeals to the Board by applicants seeking review of Agency permit denials. Instead of the Board's failure to take final action within 45 days resulting in denial of the petition for review, the final language provided that the Board's failure to take final action within 90 days resulted in the permit being deemed issued. Again, the Act would ultimately be amended, extending the Board's decision period to 120 days in permit appeals and carving out from the scope of the "deemed issued" provision those permits implementing federal requirements.

Right to Clean, Healthful Environment

Eliminated from the House version of the bill was a provision that, first, stated every person has "the right to a clean, healthful environment" and, second, gave each person standing to sue for "declaratory or preventive relief" against "actual or threatened infringement" of this right by "governmental or private action." And the prevailing plaintiff would be awarded costs and reasonable attorney fees.

No action could be brought under that provision, however, until 30 days after the plaintiff had filed a citizen enforcement action with the Board. Further, proof of compliance with Board regulations would be a prima facie defense in court.

When the bill passed both houses, Mr. Currie stated that the right to a healthful environment might be addressed through the 1970 Constitutional Convention, and it was. In fact, Section 2 of Article XI of the 1970 Constitution provides: "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law." 1970 Illinois Const., Art. XI, § 2. But the Illinois Supreme Court held in 1995 that this language did not create a new cause of action—although it did eliminate the "special injury" requirement typically used in environmental nuisance cases.

In Sum

All told, of the 72 industry-backed amendments on the negotiating table, 21 were withdrawn or rejected, 32 were accepted unchanged, and 19 were accepted with changes.

But these numbers require perspective. Attorney General Scott pointed out that industry's 72 "amendments" reflected discrete language changes and, in all likelihood, inexperienced bill drafters. All the changes could have been captured in a single formal amendment.

Still, from the give and take of the negotiations, industry undoubtedly avoided or delayed some high-cost compliance obligations and gained some valuable procedural protections. And enforcement options for ordinary citizens were scaled back.

Some Democratic Senators lamented giving any ground to industry through closed-door meetings. They believed few, if any, Senators would have opposed the House version of the bill on the Senate floor—again, with the public clamoring for pollution to be reigned in. The Ogilvie administration maintained, however, that compromise was required, having counted as many as 35 Senate votes against the bill. And industry was reported to have threatened bogging down the new law in court for years if the bill were to pass unamended. Speculating today about these "what if" scenarios from 50 years ago yields no fruit.

In Mr. Currie's view, "thanks to far-sighted legislators, the news media, concerned citizens and progressive representatives of industry—the original draft survived virtually intact and, in some areas, in an improved form." Claims that "the polluters won" betrayed, in his opinion, either "the grossest kind of ignorance" or "political quackery."

Governor Ogilvie's immediate assessment was that "we got 99.44 per cent of what we requested of the Legislature." Attorney General Scott hailed the bill as "the strongest and most effective anti-pollution bill in the United States." In Chicago, the Clean Air Co-ordinating Committee, representing 60 civic groups, found that the bill, "even as amended, remains the best in the country."

Reviewing the Senate revisions, especially through a lens of a half century, reveals that they left unscathed the legislation's most significant substantive, procedural, and administrative provisions, which are discussed in this report's "Why the Environmental Protection Act Was a Game Changer." Charges that the Ogilvie administration chose "smokestacks over lungs" or "sold out" do not withstand scrutiny.

Conclusion

Tapping into the heightened public dismay of the late '60s over our decaying environment, Governor Ogilvie proposed bold anti-pollution legislation. Blistering opposition from industry was countered by droves of concerned individuals. What took effect on July 1, 1970, as the Environmental Protection Act was fairly characterized by Mr. Currie, the Board's first Chair, as a "tremendous victory" for Illinois' environment.

Starved Rock State Park

Bibliography

- "Being kind to polluters," Editorial, Today (May 28, 1970).
- Benzkofer, Stephan, "For much of its history, Chicago covered by smoke, soot," *Chicago Tribune* (June 5, 2015) https://www.chicagotribune.com/history/ct-dirty-air-pollution-environment-chicago-flashback-per-0607-jm-20150605-story.html (accessed Mar. 16, 2020).
- Bukro, Casey, "Anti-Pollution Bill OK'd, 20 to 0, by Committee in State Senate," *Chicago Tribune* (May 28, 1970).
- Bukro, Casey, "Hits Pressure to Ease Bills on Pollution, State Coordinator Is Upset by Lobbies," *Chicago Tribune* (May 22, 1970).
- Bukro, Casey, "New Pollution Control Bill Faces Fight, State Industry Seeks to Soften Provisions," *Chicago Tribune* (May 25, 1970).
- Bukro, Casey, "Ogilvie Threatens Special Session," *Chicago Tribune* (May 27, 1970).
- Bukro, Casey, "Senate OK's Pollute Bill, Vote Is 39-0" *Chicago Tribune* (May 29, 1970).
- Bukro, Casey, "30 Groups to Back Anti-Pollution Bill," *Chicago Tribune* (May 23, 1970).
- Camper, John, "Diluted pollution bill sweeps toward OK," *Chicago Daily News* (May 28, 1970).
- City of Elgin v. County of Cook, 169 Ill. 2d 53, 85-86 (1995).
- Currie, David P., Statement of, Press Release, Governor Ogilvie's Office, *Illinois/News* (May 29, 1970).
- Dwyer, Jim, "Remembering a City Where the Smog Could Kill," The New York Times (Feb. 28, 2017) https://www.nytimes.com/2017/02/28/nyregion/new-york-city-smog.html (accessed Mar. 16, 2020).
- Estill, Bob, "Committee Okays Environment Act, 51 Amendments Added to Curb Pollution Bill," *The State Journal* (May 28, 1970).
- "For clean air and water," Editorial, *Chicago Daily News* (June 1, 1970).
- 415 ILCS 5/9.6, 9.12, 12.5, 22.2, 22.8, 22.15, 22.44, 39.5 (fees).
- Granite City Div. of Nat'l Steel Co. v. Pollution Control Bd., 155 Ill. 2d 149, 181-83 (1993).
- Hanson, Henry, "Ogilvie threatens session on pollution," *Chicago Daily News* (May 27, 1970).
- Hanson, Henry, "State gets curbs on pollution and a record budget," *Chicago Daily News* (May 30, 1970).
- Heinecke, Burnell, "Anti-pollution bill in trouble in State Senate," *Chicago Sun-Times* (May 25, 1970).
- Heinecke, Burnell, "Ogilvie warns of special session," *Chicago Sun-Times* (May 27, 1970).
- Heinecke, Burnell, "Senate OKs anti-pollution bill 39-0," *Chicago Sun-Times* (May 29, 1970).
- Heinecke, Burnell, "Senators OK pollution bill changes," *Chicago Sun-Times* (May 28, 1970).
- Heinecke, Burnell, "State Senate kills Ogilvie's retroactive capital gains tax," *Chicago Sun-Times* (May 22, 1970).
- "The History of Earth Day," Earth Day Network, https://www.earthday.org/history/ (accessed June 26, 2020).
- *Illinois Environmental News: Legislation, Litigation, and Administrative Procedure*, vol. I, nos. 3 and 4 (June 5, 1970).
- Illinois House Bill 3788, as passed House May 15, 1970.
- Illinois Public Act 76-2429, eff. July 1, 1970.
- Ingersoll, Bruce, "Amended anti-pollution bill exceeds expectations," *Chicago Sun-Times* (May 29, 1970).
- Ingersoll, Bruce, "Fight industry lobby on pollution," *Chicago Sun-Times* (May 23, 1970).
- Latson, Jennifer, "The Burning River That Sparked a Revolution," *Time* (June 22, 2015) https://time.com/3921976/cuyahoga-fire/ (accessed Mar. 12, 2020).
- Lewis, Jack, "The Birth of EPA," *EPA Journal* (Nov. 1985) https://archive.epa.gov/epa/aboutepa/birth-epa.html (accessed Mar. 12, 2020).
- Mai-Duc, Christine, "The 1969 Santa Barbara oil spill that changed oil and gas exploration forever," *Los Angeles Times* (May 20, 2015) https://www.latimes.com/local/lanow/la-me-ln-santa-barbara-oil-spill-1969-20150520-htmlstory.html (accessed Mar. 16, 2020).
- McClam, Erin, "1969 Oil Spill Near Santa Barbara Was Galvanizing for Environmentalism," *NBC News* (May 20, 2015) https://www.nbcnews.com/news/us-news/1969-oil-spill-near-santa-barbara-was-galvanizing-environmentalism-n361911 (accessed Mar. 16, 2020).
- Melosi, Martin V., "The Automobile and the Environment in American History," *Automobile in American Life and Society* http://www.autolife.umd.umich.edu/Environment/E_Overview/E_Overview4.htm (accessed Mar. 17, 2020).
- "Next step against pollution," Editorial, *Chicago Daily News* (June 11, 1970).
- Nicodemus, Charles, and Camper, John, "Pollution bill diluted in Senate," *Chicago Daily News* (May 28, 1970).
- Nicodemus, Charles, "How pollution bill was diluted," *Chicago Daily News* (May 30, 1970).
- Nicodemus, Charles, "Pollution bills meet Senate snag," *Chicago Daily News* (May 21, 1970).
- "A Notable Victory," Editorial, *Chicago Tribune* (May 29, 1970).

- "Ogilvie plan—and retort," *Chicago Daily News* (May 27, 1970).
- Ogilvie, Richard B., Governor, Remarks to Nat'l Assoc. of Attorneys General, Pheasant Run Lodge, St. Charles, IL (June 29, 1970).
- Ogilvie, Richard B., Governor, Special Message on the Environment to 76th Illinois General Assembly (Apr. 23, 1970).
- "Origins of the EPA," *The Guardia*n, EPA Historical Publication (Spring 1992) https://archive.epa.gov/epa/aboutepa/guardian-origins-epa.html (accessed Mar. 12, 2020).
- Pensoneau, Taylor, "Governor Richard Ogilvie: In the Interest of the State," Southern Illinois University Press (1997).
- "Pollution Control Bills in Peril," Editorial, *Chicago Tribune* (May 26, 1970).
- "Put bite back in Ogilvie bill: Dems," *Chicago Daily News* (May 28, 1970).
- "Rally Monday for Ogilvie pollution plan," *Chicago Sun-Times* (May 25, 1970).
- "Renfrow Raps Anti-Pollution 'Maneuvering,'" *Illinois State Register* (June 12, 1970).
- "Richard Nixon on Environment," *On the Issues* https://www.ontheissues.org/Celeb/Richard_Nixon_Environment.htm (accessed Mar. 12, 2020).
- Rind, Meir, "Richard Nixon and the Rise of American Environmentalism," *Distillations* (June 2, 2017) https://www.sciencehistory.org/distillations/richard-nixon-and-the-rise-of-american-environmentalism (accessed Mar. 12, 2020).
- Rogers, Paul G., "EPA History: The Clean Air Act of 1970," *EPA Journal* (Jan./Feb. 1990) https://archive.epa.gov/epa/aboutepa/epa-history-clean-air-act-1970.html (accessed Mar. 17, 2020).
- Rome, Adam, "Earth Day 1970 was more than a protest. It built a movement." *Washington Post* (Apr. 22, 2020) https://www.washingtonpost.com/outlook/2020/04/22/earth-day-1970-was-more-than-protest-it-built-movement/ (accessed June 26, 2020).
- Rotman, Michael, "Lake Erie," *Cleveland Historical* https://clevelandhistorical.org/items/show/58 (accessed Mar. 16, 2020).
- "Scott asks lobby on pollution," *Chicago Sun-Times* (May 24, 1970).
- "Scott urges senators to support Ogilvie's pollution measures," *Chicago Sun-Times* (May 26, 1970).
- Simon, Paul, Lieutenant Governor, Statement on House Bill 3788, Press Release (May 25, 1970).
- Small, Andrew, "What Cities Looked Like Before the EPA," *CityLab* (Mar. 2, 2017) https://www.citylab.com/environment/2017/03/five-reasons-to-love-the-epa-before-it-disappears/518199/ (accessed Mar. 12, 2020).
- Stradling, David, "Environmentalism," *Encyclopedia of Chicago*; Chicago History Museum, The Newberry Library, Northwestern University http://www.encyclopedia.chicagohistory.org/pages/431.html (accessed Mar. 16, 2020).
- Weisman, Joel, "Who won on pollution? The inside story of 'compromise' bill," *Today* (May 28, 1970).
- "Who's for clean air and water?" Editorial, *Chicago Sun-Times* (May 25, 1970).

Image Credits

(in order of appearance)

- West Los Angeles Smog (May 1972); Photographer: Daniels, Gene; Source: USEPA Documerica Series, National Archives Catalog (553021), Wikimedia Commons https://commons.wikimedia.org/wiki/File:(FROM_THE_DOCUMERICA-1_EXHIBITION._FOR_OTHER_IMAGES_IN_THIS_ASSIGNMENT,_SEE_FICHE_NUMBERS_1,_2,_3,_4,_5.)_-_NARA_-_553021.jpg (accessed June 25, 2020).
- "Republic Steel Plant in E. Chicago" (Apr. 1973); Photographer: Sequeira, Paul; Source: USEPA Documerica Series, National Archives Catalog (547101) https://catalog.archives.gov/id/547101 (accessed June 25, 2020).
- "1969 Santa Barbara Oil Spill CA" (1969); Photographer: USGS; Source: Mary C. Rabbittt, 1989, "The United States Geological Survey: 1879-1989," USGS Survey (Circular 1050, Figure 43, p.43), Wikimedia Commons https://commons.m.wikimedia.org/wiki/File:1969_Santa_Barbara_Oil_Spill_CA.jpg (accessed June 25, 2020).
- ENACT Earth Day (1970) cropped; Photographer: University of Michigan-News and Information Service; Source: University of Michigan-Bentley Historical Library, Digital Public Library of America https://dp.la/item/9749b3827406e85d48069b87aa07e094?q=earth%20day%201970 (accessed June 25, 2020); Creative Commons Attribution 4.0 International (license: https://creativecommons.org/licenses/by/4.0/legalcode).
- "Springfield, Illinois - State Capitol" (not dated); Photographer: benkrut; Source: Getty Images https://www.gettyimages.com/detail/photo/springfield-illinois-state-capitol-royalty-free-image/94529847 (accessed June 25, 2020).
- Governor Richard B. Ogilvie signs Environmental Protection Act into law (June 29, 1970) at Nat'l Assoc. of Attorneys General, Pheasant Run Lodge, St. Charles, IL; Photographer: Unidentified; Source: IEPA.
- "View from Starved Rock" (Oct. 21, 2012) cropped; Photographer: Lotzman Katzman; Source: https://web.archive.org/web/20161026223232/http://www.panoramio.com/photo/82383038, Wikimedia Commons https://commons.wikimedia.org/wiki/Category:Starved_Rock_State_Park#/media/File:View_from_Starved_Rock_-_panoramio.jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).

Why the Environmental Protection Act Was Revolutionary

DuPage River

Governor Richard B. Ogilvie, it would seem, made no small plans. He championed Illinois' first State income tax, which became law in 1969. Yet many would argue that the Environmental Protection Act (Act), which took effect on July 1, 1970, was his signature legislative achievement.

They would be correct for four reasons. First, the Act was the first law of its kind in the country. Second, the Act protected and sought to restore all parts of the environment from all forms of pollution in every corner of this State. Third, the Act delegated to administrative agencies unmatched powers for regulating pollution sources and holding them accountable. And fourth, the Act provided ordinary citizens with unparalleled roles in environmental proceedings.

The Act Was the First

David P. Currie was Governor Ogilvie's Coordinator of Environmental Quality and the main drafter of the Act. He was also the Board's first Chair. He described the Act when it passed as "unquestionably the most significant action to preserve our environment in the history of Illinois—or of any other state in the nation."

Surveying the legal landscape at that time, the National Environmental Policy Act, better known as "NEPA," was signed into law on the first day of 1970. NEPA did not, however, provide for pollution cleanup or for regulating pollutant discharges or waste disposal. Instead, it required that the federal government consider environmental impacts before deciding to undertake major actions.

In fact, when the Act took effect, the United States Environmental Protection Agency (USEPA) did not exist—it would not be established for another five months. And the workhorse federal statutes for combating pollution, in their modern form, would also not come until later: six months later for the Clean Air Act; two years later for the Clean Water Act; four years later for the Safe Drinking Water Act; and six years later for the Resource Conservation and Recovery Act. The Act even preceded by one year the Illinois Constitution's establishment of everyone's "right to a healthful environment."

The Act Was Comprehensive

Other than being the first, what made the Act stand out? On the day he signed the Act into law, Governor Ogilvie described it as the "most comprehensive and unified program of any state in the nation to stop the destruction of our natural environment." The Act recognized that "a unified state-wide program" was essential "to restore, protect and enhance the quality of the environment." § 2(a)(ii), (b). Because "air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated," they must "be dealt with as a unified whole in order to safeguard the environment." § 2(a)(iii).

The Act therefore applied to all environmental media—air, water, and land—and to all forms of pollution. It also provided its own system of administrative proceedings and judicial review. Reflecting the breadth of its reach, the Act consisted of 14 Titles:

Title I General Provisions
Title II Air Pollution
Title III Water Pollution
Title IV Public Water Supplies
Title V Land Pollution and Refuse Disposal
Title VI Noise
Title VI-A Atomic Radiation
Title VII Regulations
Title VIII Enforcement
Title IX Variances
Title X Permits
Title XI Judicial Review
Title XII Penalties
Title XIII Miscellaneous Provisions

Further, the Act applied everywhere in Illinois. Because "environmental damage does not respect political boundaries," gone were the local exemptions for Chicago and the industrial suburbs that had undermined the State's prior anti-pollution laws. § 2(a)(ii).

The Act Created Strong Agencies and Imposed Strict Requirements

How would this unified Statewide program be implemented? It started with the agencies.

Administrative Agencies

Mr. Currie observed that the Act, "for the first time anywhere," provided a "delegation of comprehensive power to administrative agencies which can deal effectively with present and future causes of environmental damage." Specifically, the Act created the Illinois Pollution Control Board (Board) and the Illinois Environmental Protection Agency (Agency). Both agencies had Statewide jurisdiction and neither was pigeonholed by media or pollution type. As Governor Ogilvie put it, the Act "clears away the thicket of authority artificially divided between agencies assigned to police only their specific areas of pollution—a manifest impossibility in view of the chemical and organic processes which will not keep pollution in separate compartments."

The Board and the Agency were independent of each other and defined along functional lines. First, the Board, required to consist of five "technically qualified" members, would adopt the State's environmental regulations and decide contested cases (enforcement actions; permit appeals; variances). § 5. Contrasting the Board with its volunteer, part-time predecessors, Mr. Currie commented in 1971 that Illinois finally had "a fulltime board with state-wide authority over all aspects of pollution, whose members are neither politicians nor representatives of particular interest groups."

Second, the Agency would issue permits for new and existing equipment and facilities, investigate pollution conditions and sources, enforce compliance, propose regulations, acquire technical data, process grants, and interact, on the State's behalf, with the federal government. § 4. When the Act became law, Governor Ogilvie described the Agency as "the investigating and prosecuting body which brings together all existing state control activity and adds many more." And that body, Mr. Currie added in 1971, was "for the first time adequately financed."

Standards and Regulations

The Act required the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois" and, to that end, authorized the Board to "adopt rules and regulations in accordance with Title VII of this Act"—Title VII stated the procedures for rulemaking. §§ 5(b), 27, 28. In turn, the Act's substantive titles (Titles II through VI-A) granted rulemaking authority for the Board to adopt standards and regulations within their respective subject matters. §§ 10, 13, 17, 22, 25, Title VI-A.

For example, under Title II on air pollution, the Board was given both broad and specific regulatory powers. First, the Board could adopt regulations "to promote the purposes of this Title." § 10. Those purposes were vast:

> *to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution. § 8.*

Second, and "[w]ithout limiting the generality of this authority," the Board's regulations could prescribe, among other things, ambient air quality standards specifying "the maximum permissible short-term and long-term concentrations of various contaminants in the atmosphere," as well as emission standards

specifying "the maximum amounts or concentrations of various contaminants that may be discharged into the atmosphere." §§ 10, 10(a)-(b). The Board could even make its regulations "apply to sources outside this State causing, contributing to, or threatening environmental damage in Illinois." § 27.

Garden of the Gods, Shawnee National Forest

Implicit in these delegations of regulatory power was the recognition that the General Assembly was not the appropriate body for establishing detailed pollution standards. But the Act required that the Board, when promulgating regulations, "take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." § 27. Hand in hand with its regulatory role, the Board could issue, on a case-by-case basis, a temporary, site-specific variance to anyone who demonstrated that compliance with a Board regulation would impose an "arbitrary or unreasonable hardship." § 35.

Among the Board's regulatory authorities was the power of setting "[s]tandards for the issuance of permits" to construct, install, or operate any equipment or facility "capable of causing or contributing to air pollution or designed to prevent air pollution." § 10(c). Permits would provide the critical link between the Board's regulations and their implementation. As part of the Act's turnkey approach, those permits, when required by Board regulation, would be issued by the Agency. § 39.

Permitting and Inspecting

The Agency was assigned "the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder." § 4(g). Under Title X, whenever the Board, by regulation, required a permit, the Agency was required to issue one "upon proof by the applicant" that its equipment or facility "will not cause a violation of this Act or of regulations hereunder." § 39. Accordingly, the permit system, in Mr. Currie's words, would "significantly ease[] the task of enforcement by shifting the burden to the discharger to show compliance with the law." And if the Agency denied a permit, the applicant could appeal to the Board for review. § 40.

Permitting would also "assure regulatory attention to a large number of sources on a regular basis, rather than leaving enforcement to the vagaries of public complaint," according to Mr. Currie. Permit applications, in short, would put contaminant sources on the Agency's radar. "A related advantage, especially in the case of permits for new sources, is to minimize the likelihood that harm will be done before the polluting nature of the source is discovered." Mr. Currie added that the permit system also would "facilitate collection of information essential both to surveillance of individual sources and to determining what measures will be needed to achieve ambient quality goals."

The Agency had wide-ranging responsibilities for information gathering, which included collecting data on the "quantity and nature of discharges from any contaminant source," along with operating "devices for the monitoring of environmental quality." § 4(b). The Agency was also given "the duty to investigate violations of this Act or of regulations adopted thereunder." § 4(e). To fulfill these obligations, the Act empowered the Agency to conduct "continuing surveillance" and a program of "regular or periodic inspection of actual or potential contaminant or noise sources, of public water supplies, and of refuse disposal sites." § 4(c). The Agency, "in accordance with constitutional limitations," could "enter at all reasonable times upon any private or public property for the purpose of inspecting and investigating to ascertain possible violations." § 4(d).

What the Agency was to do with the information it acquired would depend in part on whether the information revealed a violation. But what did the Act prohibit?

Broad Prohibitions

The Act's prohibitions were cast in the broadest terms. For example, Section 9(a) of the Act provided that no person may "[c]ause *or threaten* or allow" the emission of "any contaminant into the environment *in any State* so as to cause *or tend to cause* air pollution in Illinois, either alone *or in combination* with contaminants from other sources . . . ." § 9(a) (emphasis added). Therefore, to constitute a violation of Section 9(a), it was not necessary to wait for air pollution to occur. It was not even necessary for the emission source to emit. This was the intended "prophylactic effect" behind the prohibition, as Mr. Currie described it. Further, the emission source did not have to be the sole source of the problem or even located in Illinois—out-of-state entities would not be permitted to export their pollution to Illinois with impunity. § 9(a).

The Act's definitions made the prohibitions more sweeping. The Act expansively defined a "contaminant" as "any *solid, liquid, or gaseous* matter, any *odor, or any form of energy*, from whatever source" (§ 3(d) (emphasis added)) and "air pollution" as either of two types:

> the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as *to be injurious* to human, plant, or animal life, to health, or to property, *or to unreasonably interfere* with the enjoyment of life or property (§ 3(b) (emphasis added)).

The Act's all-encompassing approach to prohibiting air pollution was repeated for water and land pollution. For example, the Act's definition of "waters" of Illinois was great in scope, including "surface and *underground*" waters, "natural, and *artificial*" waters, and "public and *private*" waters. § 3(o) (emphasis added). "Water pollution" was also broadly defined as:

> such *alteration* of the physical, *thermal*, chemical, biological or radioactive properties of any waters of the State, *or* such *discharge of any contaminant* into any waters of the State, as will *or is likely* to create a nuisance *or* render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. § 3(n) (emphasis added).

These expansive prohibitions and definitions were essential to enforcement because, as Mr. Currie observed, "'no Board will be able to think of specific standards to govern every conceivable kind of harmful emission.'" Still, the Board's regulations were incorporated into the Act's prohibitions, too. It was unlawful, for instance, to cause, threaten, or allow the emission of any contaminant "so as to violate regulations or standards adopted by the Board under this Act." § 9(a). Agency-issued permits were not left out either. The Act prohibited anyone from constructing, installing, or operating any equipment or facility "*capable* of causing or contributing to air pollution or *designed* to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit." § 9(b) (emphasis added).

Nature Boardwalk at Lincoln Park Zoo, Chicago

Enforcement

If the Agency's "investigation discloses that a violation may exist," the Act spelled out what the Agency was supposed to do: the Agency "shall" file with the Board a "formal complaint" specifying the alleged violation and requiring "the person so complained against to answer the charges of such formal complaint at a hearing before the Board." § 31(a). The Act therefore separated the enforcer from the adjudicator, rather than, in Governor Ogilvie's words, housing the "prosecutor and judge" within the same agency. Under Illinois' anti-pollution laws pre-dating the Act, the staff of the Air Pollution Control Board would investigate violations and prosecute them in hearings before that board; it was likewise with the Sanitary Water Board. (The separation of enforcer and adjudicator has remained a hallmark of the Act, but the Agency's role would change—in 1976, the Illinois Supreme Court held that under the State Constitution, only the Illinois Attorney General or a State's Attorney, not the Agency, was authorized to file complaints with the Board on behalf of the people of the State. In response, the Act was amended to have the Agency referring potential violations to the Illinois Attorney General or a State's Attorney for enforcement rather than itself filing the complaint with the Board.)

Once the State, as the "complainant," filed its complaint alleging violations by the "respondent," attention turned to the hearing. § 31(a). The enforcement hearing would be presided over by a "qualified hearing officer" and each party "may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions" (§ 32)—these parameters applied to all adjudicatory hearings before the Board (§§ 34 (seal removal), 37 (variance), 40 (permit appeal), citing § 32). The complainant was assigned the burden of proof. § 31(c). And, concerning any Board hearing, adjudicatory or rulemaking, the Board could "subpoena and compel the attendance of witnesses and the production of evidence reasonably necessary to resolution of the matter under consideration." § 5(e).

After the enforcement hearing, the Board was to issue a final written decision "as it shall deem appropriate under the circumstances." § 33(a). When a violation was proven, for enforcement to have bite, the Board's final decision could include ordering the violator to "cease and desist from violations" and "revok[ing] the permit," either of which might effectively shut down an operation. § 33(b). The Board could also impose "money penalties" as high as $10,000 for each violation and $1,000 for each day the violation continued. §§ 33(b), 42. These civil penalty limits dwarfed those of the State's prior anti-pollution laws (capped at $5,000 per violation and $200 per day); and any penalties under the old laws had to be assessed in court. (The Act's penalty caps increased in 1990 to $50,000 per violation and $10,000 per day.) If the violation caused the "death of fish or aquatic life," the Act authorized the Board to require that the violator pay "an additional sum for the reasonable value of the fish or aquatic life destroyed." § 42. Also, if its order included "a reasonable delay during which to correct a violation," the Board could require "the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed." § 33(b). In sum, the Board's remedial arsenal was impressive. After all, one of the Act's purposes was to "assure that adverse effects upon the environment are fully considered and borne by those who cause them." § 2(b).

Fox River

An adverse final decision of the Board in an enforcement case could be appealed by either party—but only to the Appellate Court, bypassing the circuit court, and only if filed within 35 days (§ 41), avoiding, as Mr. Currie put it back then, "the endless delays of present law." Governor Ogilvie considered the appeal period, lasting "just 35 days," to be "nationally significant." And this appeal language applied to all final decisions of the Board under the Act, whether the Board adopted a regulation, reversed a permit denial, or denied a variance. §§ 29, 41. In contrast, final decisions of the Sanitary Water Board and the Air Pollution Control Board had been appealable to the circuit court, which held a new trial.

Separate from the Board, the Act provided that either the Illinois Attorney General or a State's Attorney could sue in circuit court not only for the same civil penalties but also to enjoin the violator from continuing the violation. § 42.

Additionally, in "circumstances of extreme emergency creating conditions of immediate danger to the public health," they could sue "for an immediate injunction to halt any discharge or other activity causing the danger." § 43.

The Act also gave the Agency power to "seal" equipment and facilities during emergencies, without going to court first. § 34(a), (b). Governor Ogilvie described this power as "analogous to the laws relating to contaminated foods and drugs." Specifically, if the Agency found that "episode or emergency conditions specified in Board regulations exist" or otherwise that "an emergency condition exists creating an immediate danger to health," it was authorized to seal any equipment or facility "operated in violation of such regulations" or "contributing to the emergency condition," respectively. *Id.* The owner or operator of the sealed equipment or facility could petition for a Board hearing to remove the seal or seek immediate injunctive relief in circuit court. § 34(d).

Cache River State Natural Area

The Act Allowed for Extensive Public Participation

The Act did not leave enforcement solely to the State. The General Assembly found that "to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, private as well as governmental remedies must be provided." § 2(a)(v). Accordingly, the Act's unified Statewide program would be "supplemented by private remedies," allowing ordinary citizens to bring enforcement actions before the Board, another groundbreaking concept. § 2(b).

Specifically, the Act provided that a complaint alleging violations could be filed with the Board by "[a]ny person" (§ 31(b)), a term broadly defined to include "any individual, . . . company, . . . association, . . . , estate, political subdivision, . . . or any other legal entity . . . ." (§ 3(i)). Mr. Currie referred to this citizen enforcement provision as a "safety valve":

> *From past experience, we were not willing to entrust the entire enforcement process to a state agency. Sometimes agencies were not as vigorous as they should have been in prosecuting polluters. In addition to strengthening the state agency and appointing people to it who had the right attitude about enforcing the law, we also provided a safety valve with "citizen action." It's quite amazing what the citizens groups did.*

And, besides being able to appeal an adverse final decision of the Board to the Appellate Court, a citizen complainant "adversely affected in fact by a violation" but "denied relief by the Board" could "sue for injunctive relief against such violation" in circuit court. § 45(b).

Mr. Currie explained upon the Act's passage that the statute represented a seismic shift in the legal paradigm, something he was keenly aware of as both a professor at the University of Chicago Law School and a long-time pollution fighter:

> *Virtually all present law and practical application of the law in this field have been weighted for more than a century to protect the "rights" of polluters. The Illinois act is a legal milestone in that both its intent and its provisions clearly establish that the rights of the people are paramount.*

Governor Ogilvie tellingly described the Act as "a turning point in the history of protecting the people from pollution."

Even when the State filed a complaint with the Board, the Act provided a role for interested citizens in the enforcement proceeding—by ensuring that they would have the opportunity to learn about and participate in the hearing. The Act required 21 days' notice of the hearing in a newspaper of general circulation in the county where the alleged violation occurred. § 31(a). Also, the Act required that notice be "sent to any person who has complained to the Agency respecting the

respondent within the six months preceding the date of the complaint, and to any person in the county in which the offending activity occurred who has requested notice of enforcement proceedings." *Id.* The hearing itself was required to be open to the public. § 32. Further, any person could submit "written statements to the Board in connection with the subject" of the hearing and the Board was authorized to "permit any person to offer oral testimony." *Id.*

Garden of the Gods, Shawnee National Forest

Public participation under the Act was not limited to the enforcement arena. New or amended environmental regulations of the Board could be proposed not only by the Agency or the Board itself but also by "[a]ny person." § 28. Accordingly, any individual or citizens group, for example, could file a rulemaking proposal with the Board—another facet of citizen-initiated proceedings under the Act.

Regardless of who the rulemaking proponent was, the Board could not adopt or amend a regulation "until after a public hearing within the area of the State concerned" or, "[i]n the case of state-wide regulations," a public hearing "in at least two areas." § 28. The Act required 20 days' notice of the rulemaking hearing in a newspaper of general circulation in the area of the State concerned. *Id.* The Board was also required to "give written notice to any person in the area concerned who has in writing requested notice of public hearings." *Id.* And at the hearing, which would be presided over by a "qualified hearing officer," a "reasonable opportunity to be heard with respect to the subject of the hearing shall be afforded to any person." *Id.*

The Act also required the Board to hold a public hearing in a permit appeal. § 40. As with enforcement and rulemaking hearings, notice of the permit appeal hearing was required to be given by newspaper and to specified interested individuals. *Id.* Hearing participation was not restricted to the parties (the petitioner and the Agency); instead, "any person may submit written statements" and the Board could allow "any person to offer oral testimony." §§ 32, 40. In 1995, Mr. Currie remarked that "[p]ublic hearings were really quite wonderful, a process that worked very well. I'm a big believer in them for both regulatory issues and adjudicatory matters."

When a variance petition was filed, the Act required newspaper and individual notices of its filing. § 37. Before making its recommendation to the Board as to the disposition of the variance petition, the Agency was required to "consider the views of persons who might be adversely affected by the grant of a variance." *Id.* And a public hearing would be held by the Board if the Agency "or any other person" timely objected to the petition; even without any objection to the petition, a hearing was held if the Board found it would be advisable. *Id.* Public participation rights at the variance hearing were the same as at an enforcement or permit appeal hearing. §§ 32, 37, 40. And all Board hearings, whether adjudicatory or rulemaking, would be "recorded stenographically" and the transcript "open to public inspection." §§ 28, 32.

Finally, Mr. Currie explained in 1975 that "without access to information in government files, the public cannot evaluate either the pollution problem or the government's performance, and private citizens may have great difficulty in prosecuting complaints." The Act therefore provided that "[a]ll files, records, and data" of the Agency and the Board "shall be open to reasonable public inspection" except in four situations: trade secret; privileged information; internal communications of the agencies; and information concerning secret manufacturing processes or confidential data submitted under the Act. § 7(a). As Mr. Currie noted when the Act passed, "[i]t's the first Illinois statute that really makes a commitment to let the people know what's going on."

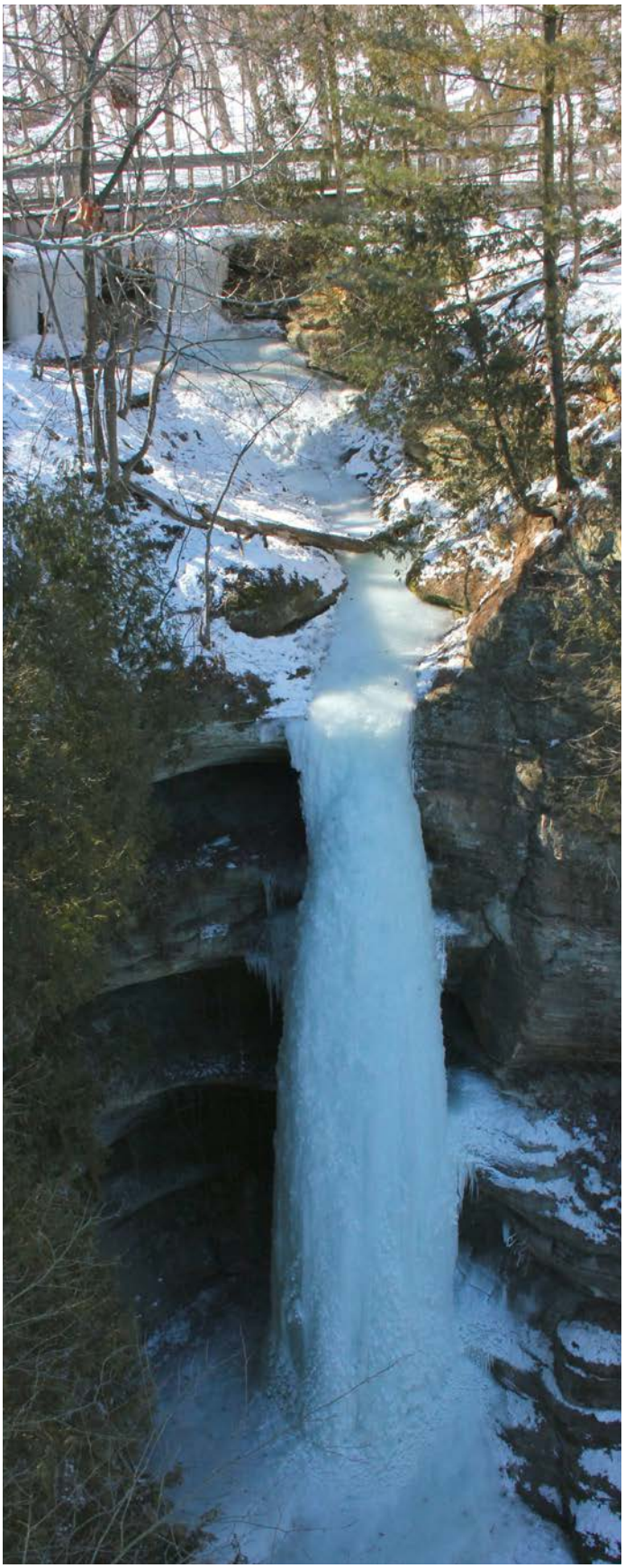
Conclusion

The Act became a success story due in no small measure to its well-crafted bedrock provisions, highlighted above. Those have remained remarkably unchanged since 1970, a testament to their primary drafter. But Mr. Currie, reflecting on the occasion of the Board's 25th anniversary, credited Governor Ogilvie: "We owe the whole program to him. He was very farsighted."

And Governor Ogilvie himself confirmed that the Act was no paper tiger. He measured its considerable progress after only 20 months:

> *We are winning the fateful battle against the forces which would deprive us of our home—planet Earth. We are seeing the results of a new environmental ethic in our state.*
>
> *Streams and rivers are measurably nearer to running clear. *** Construction of water pollution control facilities has greatly accelerated. Comprehensive water pollution control regulations have been adopted.*
>
> *Air pollution is on the road to cure. We have prepared a total implementation plan for achieving air quality everywhere in the state. The federal Environmental Protection Agency has described the Illinois plan as "one of the best" and a "model for the nation." Construction of air pollution control facilities has climbed sharply since 1970.*
>
> *Striking evidence of our progress is the degree of voluntary compliance by polluters. Many of the major industries of Illinois have taken the lead in installing necessary pollution control. The state itself is close to becoming a model citizen, eliminating pollution at its own facilities.*
>
> ***
>
> *In Illinois we have turned the corner in the race to restore our environment. We still have a long way to go.*

The Act would go on making great progress and, at 50, is poised to continue doing so.



Wildcat Canyon, Starved Rock State Park

Bibliography

- "Conversations on the Board—Straight Talk," David P. Currie Interview, Illinois Pollution Control Board 25th Anniversary Report and Fiscal Year 1995 Annual Report (1995).
- Currie, David P., Chair, "The Pollution Control Board: A First Report" (Jan. 6, 1971).
- Currie, David P., "Enforcement Under the Illinois Pollution Law," 70 Northwestern University Law Review 389 (1975).
- Currie, David P., "Rulemaking under the Illinois Pollution Law," 42 University of Chicago Law Review 457 (1975).
- Currie, David P., Statement of, Press Release, Governor Ogilvie's Office, *Illinois/News* (May 29, 1970).
- Ill. Const. 1970, Art. XI, § 2.
- *Illinois Environmental News: Legislation, Litigation, and Administrative Procedure*, vol. I, nos. 3 and 4 (June 5, 1970).
- Illinois Public Act 76-2429, eff. July 1, 1970.
- Ingersoll, Bruce, "Amended anti-pollution bill exceeds expectations," *Chicago Sun-Times* (May 29, 1970).
- Lewis, Jack, "The Birth of EPA," *EPA Journal* (Nov. 1985) https://archive.epa.gov/epa/aboutepa/birth-epa.html (accessed Mar. 12, 2020).
- Ogilvie, Richard B., Governor, Remarks to Nat'l Assoc. of Attorneys General, Pheasant Run Lodge, St. Charles, IL (June 29, 1970).
- Ogilvie, Richard B., Governor, Special Message on the Environment to 76th Illinois General Assembly (Apr. 23, 1970).
- "Origins of the EPA," *The Guardian*, EPA Historical Publication (Spring 1992) https://archive.epa.gov/epa/aboutepa/guardian-origins-epa.html (accessed Mar. 12, 2020).
- Pensoneau, Taylor, "Governor Richard Ogilvie: In the Interest of the State," Southern Illinois University Press (1997).
- People *ex rel.* Scott v. Briceland, 65 Ill. 2d 485, 500 (1976).
- "Richard Nixon on Environment," *On the Issues* https://www.ontheissues.org/Celeb/Richard_Nixon_Environment.htm (accessed Mar. 12, 2020).
- Rind, Meir, "Richard Nixon and the Rise of American Environmentalism," *Distillations* (June 2, 2017) https://www.sciencehistory.org/distillations/richard-nixon-and-the-rise-of-american-environmentalism (accessed Mar. 12, 2020).
- Rogers, Paul G., "EPA History: The Clean Air Act of 1970," *EPA Journal* (Jan./Feb. 1990) https://archive.epa.gov/epa/aboutepa/epa-history-clean-air-act-1970.html (accessed Mar. 17, 2020).

Image Credits

(in order of appearance)

- "DuPage River in Channahon" (undated); Photographer: Rodriquez, EJ; Source: Getty Images https://www.gettyimages.com/detail/photo/dupage-river-in-channahon-royalty-free-image/1125516938 (accessed June 25, 2020).
- "Sandstone Cliffs in the Forest" (undated), Garden of the Gods, Shawnee National Forest; Photographer: Wildnerdpix; Source: Getty Images https://www.gettyimages.com/detail/photo/sandstone-cliffs-in-the-forest-royalty-free-image/178794193 (accessed June 29, 2020).
- "City of Chicago in USA" (undated), view of downtown skyline from Nature Boardwalk at Lincoln Park Zoo; Photographer: anderm; Source: Getty Images https://www.gettyimages.com/detail/photo/city-of-chicago-in-usa-royalty-free-image/1001977254 (accessed June 25, 2020).
- "Fox River" (undated); Photographer: eyfoto; Source: Getty Images https://www.gettyimages.com/detail/photo/fox-river-royalty-free-image/586360244 (accessed June 25, 2020).
- "Cache River State Natural Area, Illinois, USA" (undated); Photographer: baluzek; Source: Getty Images https://www.gettyimages.com/detail/photo/cache-river-state-natural-area-illinois-usa-royalty-free-image/522123800 (accessed June 25, 2020).
- "Southern Illinois - Garden of the Gods" (undated); Photographer: tacojim; Source: Getty Images https://www.gettyimages.com/detail/photo/southern-illinois-garden-of-the-gods-royalty-free-image/182834681 (accessed June 25, 2020).
- "Wildcat Canyon Icefall (Feb. 19, 2015) cropped; Photographer: hakkun; Source: https://web.archive.org/web/20161102033810/http://www.panoramio.com/photo/117212057, Wikimedia Commons https://commons.wikimedia.org/wiki/Category:Starved_Rock_State_Park#/media/File:Wildcat_Canyon_Icefall_-_panoramio.jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).

A Glance at Three Veteran Board Staffers

Behind the Illinois Pollution Control Board's contested cases, rulemakings, and appeals is a highly skilled and diligent professional staff that is responsible for the research and interpretation of legal and scientific materials, as well as the operations of the Board and its Clerk's Office. The high esteem in which the Board's staff is held—by the Board's Members and those outside the Board—has been well earned. The staff members below have been with the Board through much of its existence. They are three of the many hard-working people who have dedicated their expertise to improving Illinois' environment.

Anand M. Rao, Chief, Technical Unit

Anand M. Rao currently serves as the Board's Chief Environmental Scientist. He provides scientific and technical consultation to all Board Members regarding the Board's regulatory and adjudicatory proceedings, decisions, and policies to ensure sound science is an integral part of Board actions. Mr. Rao advises the Board's General Counsel and Senior Attorneys on all scientific and technical issues concerning cases before the Board, as well as relevant legislative and appellate matters. In addition, he leads the Board's technical unit in the performance of its professional duties.

Mr. Rao joined the Board as an environmental engineer in 1989, following his work as a research engineer studying stabilization of paper-mill wastes for Kimberly Clark Corporation. Over the last thirty years, Mr. Rao has provided technical guidance to numerous Board Chairs, Members, and attorneys on all pollution control rulemakings, including comprehensive regulation of solid waste landfills, surface and ground water quality, air quality, noise, medical waste, and environmental remediation. He has also provided considerable technical perspective on adjudicatory cases touching on all areas of the Board's authority. Mr. Rao earned his bachelor's degree in civil engineering from Bangalore University and his master's degree in environmental engineering from Marquette University.

Marie E. Tipsord, General Counsel

Marie E. Tipsord joined the Board in 1990. Ms. Tipsord proudly served as Attorney Advisor to several Board Members and two Board Chairs. In 2017, Ms. Tipsord was named the Board's General Counsel. Ms. Tipsord also serves as the Board's Freedom of Information Act Officer and Ethics Officer. During her time with the Board, Ms. Tipsord has acted as a Special Assistant Attorney General representing the Board in appeals of its decisions, including successfully arguing before the Illinois Supreme Court.

Ms. Tipsord has served as hearing officer in regulatory proceedings dealing with water quality, air quality, and land pollution. During her tenure, Ms. Tipsord has presided over cases involving water quality for the Chicago Area Waterway System and Lower Des Plaines River, disposal of clean construction and demolition debris, and air quality for coal-fired power sources. Before beginning with the Board, Ms. Tipsord worked for the Joint Committee on Administrative Rules. She received her Juris Doctor from Southern Illinois University School of Law in 1985 and a Bachelor of Arts in political science from Eastern Illinois University.

Don Anthony Brown, Clerk

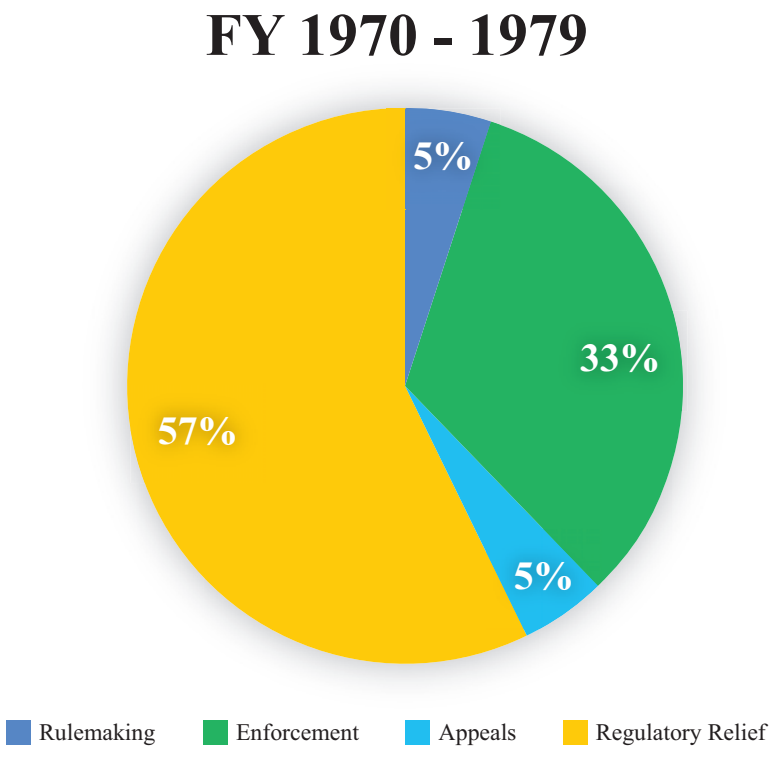
Don Anthony Brown has served as Clerk of the Board since 2017, acting as the official custodian of the Board's records, including agendas and minutes, and preparing and certifying records for appeal. Mr. Brown joined the Board in 1993 as a paralegal assistant and later served as Assistant Clerk of the Board. Married to his wife Emily for over thirty years, Don is also the father of three daughters: Dominique; Brenice; and Catherine. Currently, he serves as a Deacon at Zion Faith Center Bible Church in Chicago's Washington Heights neighborhood. Mr. Brown received a Bachelor of Arts in political science from Northern Illinois University and a Paralegal Certificate from Roosevelt University.

Variety of Board Proceedings by Decade

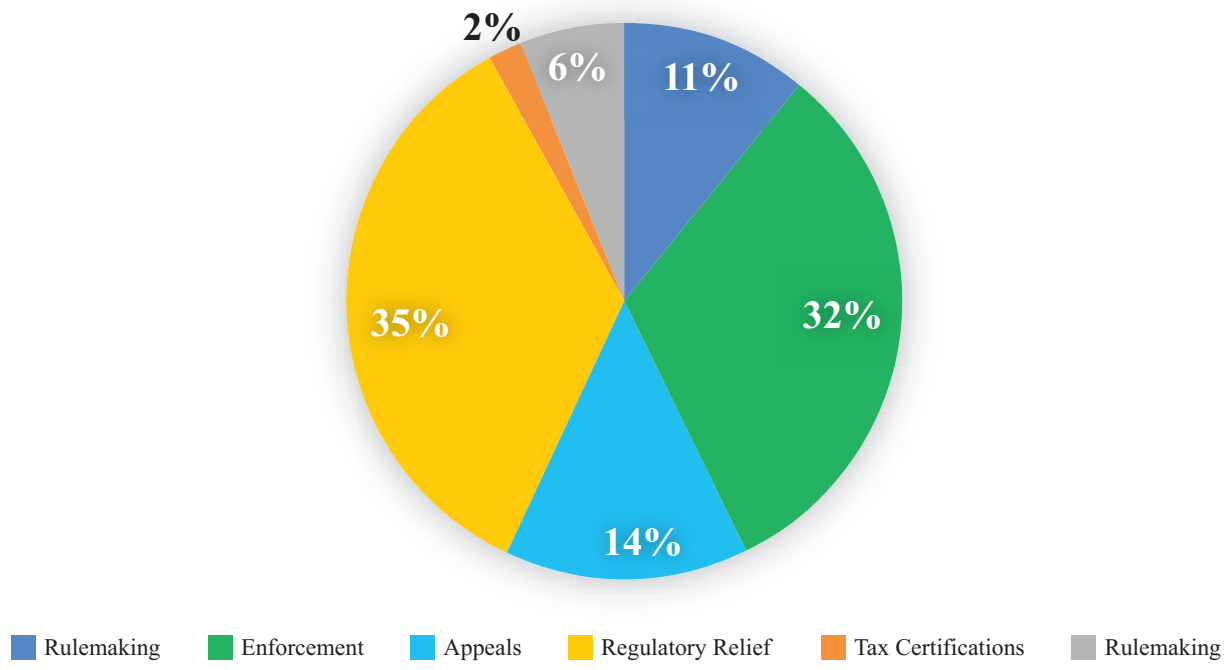
These diagrams break down Illinois Pollution Control Board (Board) proceedings into six types:

- **Rulemaking** – includes proceedings to adopt substantive regulations of general or site-specific applicability; procedural rules; "identical-in-substance" rules; Clean Air Act "Fast-Track" rules; federally required rules; and emergency rules
- **Enforcement** – includes proceedings on State complaints; citizen complaints; and administrative citations
- **Appeals** – includes proceedings to contest permit determinations; underground storage tank determinations; and local governmental "pollution control facility" siting determinations
- **Regulatory Relief** – includes proceedings on petitions for variances; adjusted standards; thermal demonstrations; water-well setback exceptions; time-limited water quality standards; and, before 2003, provisional variances
- **Tax Certifications** – includes proceedings for certification as "pollution control facilities" under the Property Tax Code
- **Other** – includes proceedings to determine whether articles are trade secrets as claimed

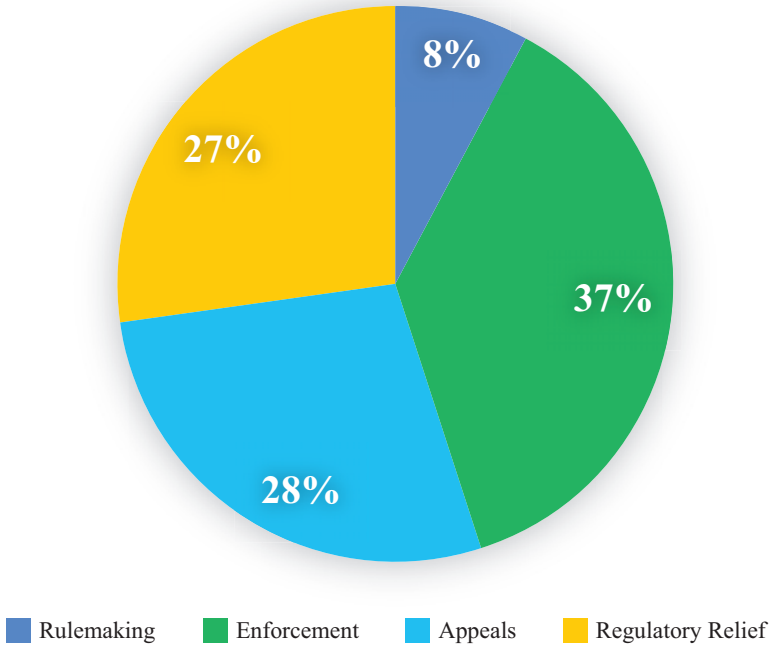
The diagrams below reflect each of the above proceeding type's percentage of the Board's docket by decade from 1970 to 2020.



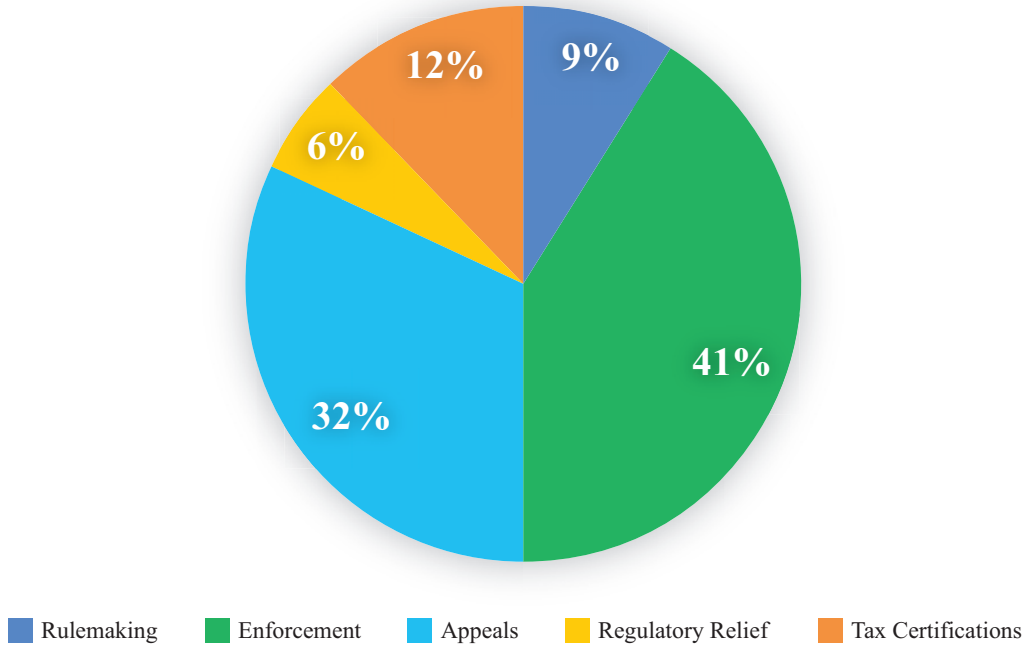
FY 1980 - 1989



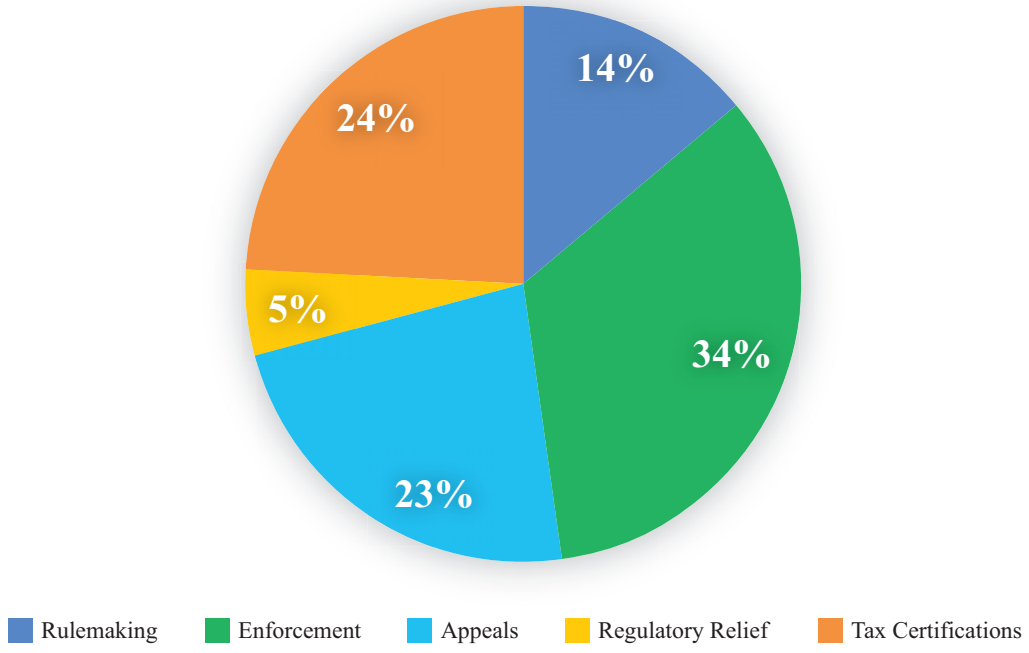
FY 1990 - 1999



FY 2000 - 2009



FY 2010 - Present



The Board Goes Digital

On its 25th anniversary in 1995, the Illinois Pollution Control Board (Board) promised that "[a]ttorneys, businesses, environmental groups, other state regulatory agencies and the general public can soon surf the Internet for the latest Pollution Control Board information." The Board's Chair at the time, Claire A. Manning, hoped that "within five years, much of the Board's information will be totally computer accessible." That hope became a reality. The Board led the way among State agencies with a "World Wide Web" site featuring, among other things, the Environmental Protection Act and the Board's regulations, meeting dates and agendas, Annual Reports, and issues of the Board's Environmental Register publication, as well as information on the Board's pending rulemakings.

In the early 2000s, the Board introduced its "Clerk's Office On-Line" or "COOL." Located on the Board's website, COOL initially served as an "electronic file cabinet." It provided the public with the contents of the Board's dockets for on-line review and download. Those contents included petitions, complaints, rulemaking proposals, motions, hearing transcripts, briefs, public comments, and Board opinions and orders.

At that time, a party or participant filing a document in a Board proceeding was generally required to submit the original paper document and nine paper copies. The Board Clerk's Office would scan these paper filings, as time and staffing allowed, and place them on COOL, along with Board decisions. The Board also began a pilot test, permitting parties and participants to use COOL for filing their documents electronically instead of filing in paper. In time, as COOL filing proved increasingly reliable, the Board expanded opportunities for voluntary electronic filing, eventually allowing, with very few exceptions, every filing to be made that way.

Meanwhile, the Board scaled back its paper-filing requirements in phases—an original paper document and nine paper copies ultimately gave way to an original and two copies. In 2017, the Board took the final step, making COOL filing (*i.e.*, no paper) mandatory except in a handful of instances, such as when the document to be filed contained a trade secret or when someone lacked the technical means to file through COOL. Replacing paper filing with electronic filing has saved time, paper, ink, postage, and office space. And by electronically receiving three of the traditionally largest types of filings—permit records, local siting records, and adjudicatory hearing exhibits—the Clerk's Office has been able to post them to COOL for the first time, greatly easing public access to these materials.

In addition to going paperless, three other components of the Board's recent digital progress stand out. First, the Board debuted its completely revamped website in 2018. The new website at https://pcb.illinois.gov is easy to use, offers an upgraded COOL, and houses many important resources, such as the Citizens' Guide to the Board and Brown Bag Lunch presentations. Also available are innovations like "E-Notify" and "Rulemaking Opening Notification" or "RON," through which individuals may sign up to receive automatic e-mail updates on Board proceedings of interest to them. Second, the Board initiated the e-mail service of documents as an alternative to serving parties and participants in paper. This shift has provided the benefits enjoyed with the move away from paper to COOL filing. If a party or participant consents, the Board serves them with its opinions and orders and its hearing officers' orders by e-mail rather than by U.S. Mail. E-mail service may be similarly used by filers to serve other parties and participants. Third, after years of doing so for its open meetings, the Board began holding some of its hearings—in rulemakings and adjudicatory cases—by videoconference. Along with reducing travel expenses and emissions, the videoconference option has added another location for members of the public to attend and participate in a Board hearing. And in 2020, due to the COVID-19 pandemic, the Board added still more ways to participate in its hearings, introducing a web-based application allowing anyone to participate remotely by computer or telephone.

One of the core purposes of the Act is to foster public participation in protecting and restoring our environment. The Board has been promoting that purpose for half of a century. Digital technologies have been instrumental in that effort over the last 25 years. The Board will continue enhancing its website and other electronic capabilities to promote public participation while conserving resources and improving efficiency.

Major Judicial Appeals and Key Legislative Actions: 50 Years of Highlights

Under the Environmental Protection Act (Act) (415 ILCS 5), final orders of the Illinois Pollution Control Board (Board) are appealable directly to the Illinois Appellate Court and, from there, to the Illinois Supreme Court. Highlighted below are the most significant reviewing court opinions issued on appeals of final Board orders. Also included are important Appellate Court and Supreme Court opinions interpreting the Act that were issued on appeals from the circuit courts. Among the judicial decisions covered are those construing the interplay of the Act, which took effect on July 1, 1970, and the Illinois Constitution, which took effect exactly one year later. Collectively, these court opinions have created a rich body of case law over the last half century.

Illinois Supreme Court Building, Springfield

You will also find highlights of Act itself as enacted and the Illinois General Assembly's key amendments to the Act. Noted too are other statutes—and provisions of the State Constitution—bearing on Illinois' environmental system. Some legislative steps molded that system as it matured, further defining the roles of the Board, the Illinois Environmental Protection Agency (Agency), and the Illinois Institute for Environmental Quality (Institute), as well as the Illinois Attorney General's Office (AGO) and local governments. Other legislative actions during the past five decades provide snapshots of the pressing environmental concerns of the day.

Illinois State Capitol, Springfield

Measures taken by the General Assembly appear below chronologically by year in blue print, as do directives to the Board by the Office of the Governor. Those descriptions are followed by overviews of the major judicial opinions.

1970 - 1972

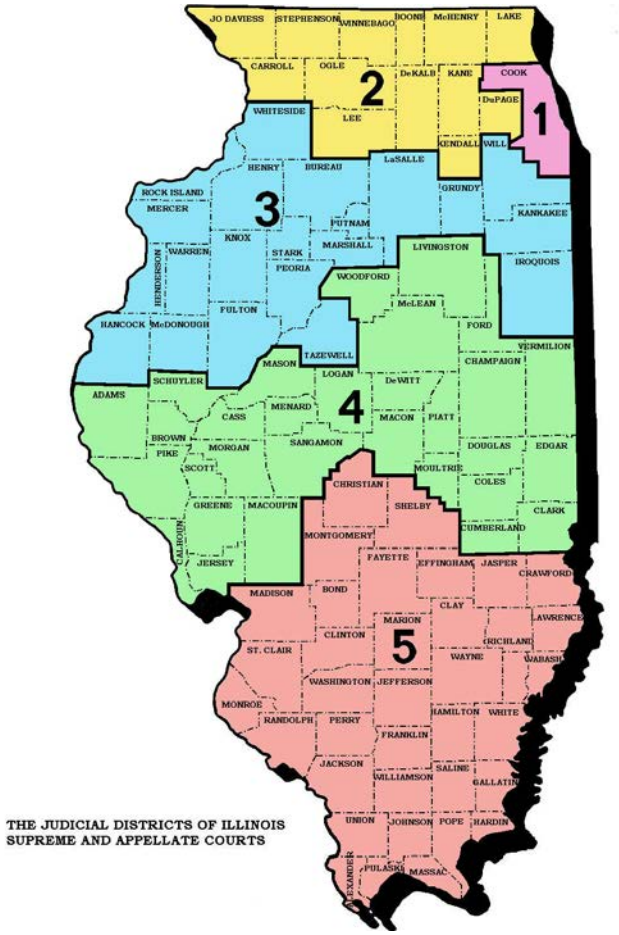
Act passed. Established uniform, Statewide system to restore, protect, and enhance environment. Covered all forms of pollution—air, water, land, noise, and atomic radiation—along with waste disposal and public water supplies. Provided procedures for rulemaking, enforcement, permits, variances, administrative review, and judicial review. Created Board to both adopt regulations implementing Act (quasi-legislative function) and serve as State's technical "environmental court" for enforcement actions, permit appeals, and variances (quasi-judicial function). Board to consist of five "technically qualified" Members, no more than three of same political party, appointed by Governor with advice and consent of Senate. Created Agency to issue permits, enforce Act and Board regulations, propose regulations to Board, administer grants, and interact with federal government on behalf of State. Created Institute to conduct practical environmental research and provide technical support to Board in rulemaking and Agency in enforcement initiatives.

Repealed Sanitary Water Board Act and Illinois Air Pollution Control Act.

1970 Illinois Constitution: Article XI—Environment, § 1—Public Policy-Legislative

Responsibility. "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy." Article XI—Environment, § 2—Rights of Individuals. "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law." Article VII—Local Government, § 6—Powers of Home Rule Units. § 6(a). "Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." § 6(h). "The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power . . . ." § 6(i). "Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive."

Revenue Act of 1939 authorized Board to certify "pollution control facilities" for favorable tax treatment.



A.E. Staley Mfg. Co. v. Illinois Envtl. Prot. Agency, 8 Ill. App. 3d 1018 (4th Dist. App. Ct.). In 1972 opinion, Appellate upheld Board regulation challenged on appeal under Sections 29 and 41 of Act. Petitioner company had private sewer system that emptied into Decatur Sanitary District's sewage treatment works, which discharged its effluent into Sangamon River. Appellate Court held Board had authority to require company to treat its contaminants before they reached municipal treatment works.

Carlyle Lake, Eldon Hazlet State Park

1973

O'Connor v. Rockford, 52 Ill. 2d 360 (Ill. Sup. Ct.). City sought to use property located in unincorporated area of non-home-rule county as landfill. Supreme Court held county could neither prohibit landfill operation by zoning ordinance nor require conditional use permit. City was required to obtain permit only from Agency. "[T]o hold here that the city's use of the proposed site as a landfill may be permitted only upon issuance of a conditional use permit by Winnebago County, or that the county, by reason of its zoning ordinance may prohibit such use, contravenes the clearly expressed legislative intent that such operations be conducted only upon issuance of a permit from the Environmental Protection Agency." Supreme Court stated that with Act, General Assembly "expressly declared the need for 'a unified state-wide program' and provided the means for issuance of appropriate permits under regulations promulgated after taking into account precisely the conflicting interests shown by this record." High court did not explicitly limit its holding to non-home-rule units. *See* John Sexton (1979, below).

Lake County Contractors Ass'n v. Pollution Control Bd., 54 Ill. 2d 16 (Ill. Sup. Ct.). League of Women Voters, Agency, and others filed complaints with Board against North Shore Sanitary District (NSSD). In consolidated enforcement proceeding, Board prohibited NSSD from permitting new sewer connections until NSSD demonstrated to Board that it could treat wastes from new sources so as not to violate Act or Board regulations. Contractors and home-builders associations sought judicial review of Board decision, although associations were not parties to enforcement proceeding. Associations contended that each was a "party adversely affected by a final order or determination of the Board" within meaning of Section 41 of Act, which provided for judicial review. Supreme Court disagreed with Associations that "party" meant "person," noting "the legislature was discriminating" in its use of those words elsewhere in Act. Supreme Court held that to come within "party adversely affected" category, entity "must have been a party to the Board proceeding and must be adversely affected by the order or determination of the Board." Associations lacked standing to seek review of Board decision because they did not fall within that category or any other category of petitioners in Section 41.

Citizens Utilities Co. v. Pollution Control Bd., 9 Ill. App. 3d 158 (2d Dist. App. Ct.). In variance proceeding, Board may impose conditions only on grant of variance, "which would not be binding until the petitioner accepts the variance upon the terms imposed." Also, Board may not impose money penalties as condition of variance. "If the Board wanted to impose penalties against Citizens for violations of effluent standards or for the deterioration of the lagoon, the Agency should have filed a complaint and followed proper enforcement procedures."

Bath, Inc. v. Pollution Control Bd., 10 Ill. App. 3d 507 (4th Dist. App. Ct.). Regulation prohibited underground burning at landfills. Landfill owner and operators argued they did not know cause of underground burning and, implicitly, that "a violation cannot be predicated upon the existence of burning in the absence of a finding that [they] by their affirmative act caused, or intended, the burning." Appellate Court rejected their argument in affirming Board. "It is not an element of a violation of the rule that the burning was knowing or intentional. We hold that knowledge, intent or scienter is not an element of the case to be established."

1974

City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170 (Ill. Sup. Ct.). Resolved contradictory holdings in appellate districts. Board's civil penalty power was not unlawful delegation of judicial power in violation of constitutional separation of powers because Act separates investigation and prosecution from adjudication; provides a thorough hearing process before Board; provides guidelines to Board through Section 33(c) of Act; and provides for judicial review of Board findings and decisions.

City of Monmouth v. Pollution Control Bd., 57 Ill. 2d 482 (Ill. Sup. Ct.). Pointing to criteria in Section 33(c) of Act that Board must consider, Supreme Court held that "unreasonable interference" type of air pollution under Section 9(a) is not unconstitutional for lack of "sufficient standards." Separately stated that primary purpose of civil penalties is to "aid in enforcement of the Act;" punitive considerations are secondary. Finally, Board's quasi-judicial decisions are to be upheld unless "contrary to the manifest weight of the evidence."

Incinerator, Inc. v. Pollution Control Bd., 59 Ill. 2d 290 (Ill. Sup. Ct.). That pollution control equipment at other locations had developed operating problems and installing equipment on large incinerators had not been perfected did not establish that systems which could have been installed on incinerators at issue were either technically impracticable or economically unreasonable under

Section 33(c)(iv) of Act. Supreme Court also ruled that complainant may meet its burden of proof by remedying shortcomings of its case in chief through cross-examination. Finally, Board's civil penalty of $5,000 was neither arbitrary nor excessive.

Illinois Coal Operators Assoc. v. Pollution Control Bd., 59 Ill. 2d 305 (Ill. Sup. Ct.). Standard for reviewing Board's quasi-legislative rulemaking actions is whether they are "clearly arbitrary, unreasonable or capricious." Here, 1973 numeric noise regulations' exemption—for constriction equipment but not similar equipment used in mining—was upheld as constitutional over equal protection challenge, with Supreme Court noting rational distinctions based on duration, location, and prevalence of respective activities and adding that "evils in the same field may be of different dimensions and reform may take place one step at a time."

City of Chicago v. Pollution Control Bd., 59 Ill. 2d 484 (Ill. Sup. Ct.). Agency filed complaints with Board against home-rule City of Chicago alleging violations of Act and regulations at sanitary landfill and three incinerators operated by City. Supreme Court found State legislated in field of environmental control by enacting Act, but "did not express the intent that the State should exclusively occupy this field." Instead, Act provided "it is the obligation of the State Government 'to encourage and assist local governments to adopt and implement environmental-protection programs consistent with this Act.'" Supreme Court therefore concluded "local governmental unit may legislate concurrently with the General Assembly on environmental control. However, . . . such legislation by a local government unit must conform with the minimum standards established by the legislature." Further, Supreme Court held that, although collecting and disposing garbage is governmental function to be performed by City, "in exercising that function the City of Chicago must comply with the Environmental Protection Act and the rules adopted pursuant thereto." Otherwise, "it would be difficult if not impossible for the General Assembly to perform the mandate of maintaining a healthful environment imposed upon it by article XI of the 1970 Constitution." High court did not explicitly limit its holding to home-rule units. *See* John Sexton (1979, below).

Kaskaskia Canyon, Starved Rock State Park

Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851 (5th Dist. App. Ct.). Current landowner "allowed" discharges of contaminants—violating Section 12(a) of Act—even though source of water pollution, coal mining refuse piles, was deposited on site by former landowner. Lack of knowledge that contaminant discharges were occurring was not defense: "The Environmental Protection Act is Malum prohibitum, no proof of guilty knowledge or Mens rea is necessary to a finding of guilt. *** [K]nowledge is not an element of a violation of section 12(a) and lack of knowledge is no defense." Current landowner owned piles that were pollution source and "had the capability of controlling the pollutional discharge."

1975

Institute, research arm of Illinois' environmental system, required to prepare economic impact study (EcIS) on Board's proposed and existing environmental regulations and file EcIS with Board. Adoption of each new Board rule postponed until after Board received Institute's EcIS and presented it at public hearing. But first, scope and content of EcIS determined by Governor's Economic and Technical Advisory Committee (ETAC).

Act amended to increase maximum duration of variance from one year to five years.

Carlson v. Village of Worth, 62 Ill. 2d 406 (Ill. Sup. Ct.). Agency issued permit to construct and operate landfill in non-home-rule municipality, which then enacted ordinance prohibiting landfills from operating without permit from municipality. Supreme Court agreed with Appellate Court in holding that "local regulation was preempted" by Act. Language in Agency permit—that permittee was not released from complying with applicable local ordinances—did not make local

ordinance applicable here as "Agency has not been authorized to delegate the responsibility placed upon it by the General Assembly to decide whether or not a sanitary landfill should be permitted to operate at a specified location." Lastly, Supreme Court's supplemental opinion favorably quoted Appellate Court: "It is clear from the Environmental Protection Act itself, its legislative history, and preceding legislation in the same area that the General Assembly intended to thereby exclude any authority of local political entities which could interfere with or frustrate the objective of establishing a unified state-wide system of environmental protection." As in O'Connor, Supreme Court did not explicitly limit its holding to non-home-rule units, which was viewed as casting doubt on City of Chicago even as to home-rule units. *See* John Sexton (1979, below).

Springfield Marine Bank v. Pollution Control Bd., 27 Ill. App. 3d 582 (4th Dist. App. Ct.). Board denied variances that would have allowed additional hook-ups to overloaded sewage treatment plant. While noting hardship to petitioner was substantial and aggravation of problem from single variance might be small, Appellate Court found Board could appropriately draw line "somewhere." Board finding that damage to public would be greater than hardship to petitioner was not contrary to manifest weight of evidence.

1976

Commonwealth Edison Co. v. Pollution Control Bd., 62 Ill. 2d 494 (Ill. Sup. Ct.). Board 1972 "non-degradation" air rule upheld over challenge that it was unlawful delegation of rulemaking authority to Agency. Under rule, if existing ambient air quality was better than Board standards, that better air quality must be maintained unless Agency, in deciding whether to issue construction permit, determined that lowering existing ambient air quality was justified by "necessary economic and social development and will not interfere with or become injurious to human health or welfare." Rule did not delegate to Agency authority to set standards. But, separately, emission standards for particulates and sulfur dioxide (SO2) were remanded for Board to further consider "economic reasonableness and technical feasibility."

Processing and Books, Inc. v. Pollution Control Bd., 64 Ill. 2d 68 (Ill. Sup. Ct.). In enforcement case for "unreasonable interference" type of air pollution under Section 9(a) of Act, Supreme Court resolved authority split to find complainant did not have burden of proof on each criterion in Section 33(c). Word "unreasonable"—for unreasonable interference—excluded "trifling inconvenience, petty annoyance or minor discomfort" and instead required "substantial interference" with enjoyment of life or property.

People *ex rel.* Scott v. Briceland, 65 Ill. 2d 485 (Ill. Sup. Ct.). Act empowered Agency to prosecute enforcement cases before Board. Supreme Court held provision unconstitutional because under Illinois' 1970 Constitution, only Attorney General may represent people of State in suit or proceeding where people are "the real party in interest." Result is that only AGO may bring Section 31 enforcement actions before Board on behalf of State. Generally, however, Agency staff attorneys appear before Board in other adjudicatory proceedings under Act on behalf of Agency (*e.g.*, permit appeals).

Shell Oil Co. v. Pollution Control Bd., 37 Ill. App. 3d 264 (5th Dist. App. Ct.). Requirement of Act's Section 27 that Board "take into account" specified factors "is a flexible one and of necessity requires that a great deal of discretion be exercised by the Board. *** Clearly, the legislature did not intend by Section 27 that the Board would be limited by the technology of control systems solely existent at the time of the adoption of its rules. The development of pollution control technologies does not result solely from the initiative of polluting industries. Rather, it occurs largely in response to emission standards which are established through the legislative and administrative process for the protection of the general public."

Tri-County Landfill Co. v. Pollution Control Bd., 41 Ill. App. 3d 249 (2d Dist. App. Ct.). "Section 12(a) of the Act enjoins, inter alia, 'threatening . . . the discharge of any contaminant so as to cause or to tend to cause.' If § 12(d) referring to water pollution hazard is not to be rendered superfluous, it must be construed to refer to conduct not yet amounting to a violation of § 12(a). *** The Board here reasonably found that allowing the discharge with no knowledge or assurance of the results was a water pollution hazard considering the nearness of the well and the gravity of the result which may well occur," *i.e.*, "pollution of a whole populace's water supply."

1977

State's rulemaking process overhauled with passage of Illinois Administrative Procedure Act (IAPA). Among far-reaching procedural changes ushered in, IAPA required public notice of pro-

posed rules, required greater opportunity for public comment and participation in rulemaking, and required that proposed rules, before they take effect, be reviewed by Joint Committee on Administrative Rules (JCAR) to ensure, among other things, State agencies' proposals fall within respective statutory authorities. Board was subject to IAPA and Act, but latter's rulemaking requirements already satisfied many IAPA provisions. IAPA also required agencies to consider their proposed rules' economic impacts generally, and specifically as they concern small businesses.

Village of Lombard v. Pollution Control Bd., 66 Ill. 2d 503 (Ill. Sup. Ct.). Board lacked authority to adopt regulations mandating regional sewage treatment in a county. Board regulations divided Du Page County into nine water-treatment regions, each comprised of more than one unit of local government, and required each region to establish a centralized water-treatment program. Regulations were designed to compel cooperation in water treatment and phase out numerous small, inefficient plants in densely populated county. Supreme Court held that Act lacked "reference to even the possibility of . . . authority" for Board to adopt regulations "involving detailed intervention . . . into the economic and political operation of a county and the municipalities and sanitary districts within the county" or to "compel independent governmental entities to cooperate with one another." Further, Section 27(a) of Act "does not empower the Board to consider the authority of existing governmental units and sanitary districts or to determine who is to fund the new water-treatment plants."

Remnant of original prairie, Illinois

Monsanto Co. v. Pollution Control Bd., 67 Ill. 2d 276 (Ill. Sup. Ct.). Board correctly determined it lacked authority to grant permanent variances. "Compliance by all polluters with board regulations is an ultimate goal. The variance provisions afford some flexibility in regulating speed of compliance, but a total exemption from the statute would free a polluter from the task of developing more effective pollution-prevention technology." Also, Board decision to grant variance was exercise of quasi-judicial authority, but when Board imposed conditions on variance, it exercised quasi-legislative authority and cannot be overturned unless arbitrary, capricious, or unreasonable.

Modine Mfg. Co. v. Pollution Control Bd., 40 Ill. App. 3d 498 (2d Dist. App. Ct.). Upheld procedural rule providing Board may reconsider its final orders; rule was authorized by Sections 5(d) and 26 of Act. Also, administrative agency has power to construe its own regulations to avoid "absurd or unfair results."

1978

Institute eliminated. Institute's duties transferred to newly formed Illinois Institute of Natural Resources, later renamed Department of Energy and Natural Resources (DENR). DENR required to prepare EcIS on all proposed environmental regulations of Board, unless DENR found EcIS unnecessary for one or more reasons enumerated in DENR's statute—even then, ETAC could overrule DENR and require EcIS, as could Board if it found, based substantial evidence presented at hearing, that EcIS was necessary.

Illinois Envtl. Prot. Agency v. Pollution Control Bd., 69 Ill. 2d 394 (Ill. Sup. Ct.). Attorney General has constitutional right to represent all State agencies involved in case if Attorney General is not involved as private individual or as party. Board may not hire private counsel without permission of AGO.

Ashland Chemical v. Illinois Envtl. Prot. Agency, 64 Ill. App. 3d 169 (3d Dist. App. Ct.). Board's 1977 particulate and SO2 emission rules were invalidated because Board failed to follow Commonwealth Edison (1976, above) mandate and failed to require EcIS.

Illinois State Chamber of Commerce v. Pollution Control Bd., 67 Ill. App. 3d 839 (1st Dist. App. Ct.). Adhering to Ashland Chemical (1978, above), Appellate Court invalidated Board's 1977 particulate and SO2 rules. Also found new public hearing required.

1979

Wells Mfg. Co. v. Pollution Control Bd., 73 Ill. 2d 226 (Ill. Sup. Ct.). In enforcement case for "unreasonable interference" type of air pollution under Section 9(a) of Act, Board need not find against respondent on each criterion of Section 33(c) for complainant to meet burden of proof. Respondent's "priority of location" was a factor in its favor but not "absolute defense." Changed circumstance of industry respondent substantially increasing its emissions would undercut priority-of-location argument. Lack of available technology to reduce emissions is not "absolute defense to a claim of air pollution but rather is one of the factors to be considered by the Board."

Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541 (Ill. Sup. Ct.). Board may not by rule authorize third-party appeal of Agency's permit grant when Act did not provide for that appeal. Act provided for Board review of Agency permit denial on petition of permit applicant. Board had authority to hold enforcement hearings upon citizen or Agency complaints alleging activity caused or threatened pollution, but Board may not hear charges that Agency violated its statutory duty—to grant permits only upon proof by applicant that undertaking will not cause violation of Act. Supreme Court found Board rule ignored enforcement provisions of Act, which required Agency to investigate violations: "The focus must be upon polluters who are in violation of the substantive provisions of the Act, since it would be unreasonable to presume these provisions direct the Agency to investigate its own compliance with permit-granting procedures." Finally, Act's lack of third-party appeal of permit grant did not deny due process: "The grant of a permit does not insulate violators of the Act or give them a license to pollute; however, a citizen's statutory remedy is a new complaint against the polluter, not an action before the Board challenging the Agency's performance of its statutory duties in issuing a permit."

County of Cook v. John Sexton Contractors, 75 Ill. 2d 494 (Ill. Sup. Ct.). Agency issued permits to develop and operate sanitary landfill. Issue was whether home-rule County could require landfill owner to comply with zoning ordinance. Supreme Court explained that even if an environmental matter, like landfill here, fell within home-rule power under "broad and imprecise" grant of State Constitution's Article VII, Section 6(a), General Assembly "may remove or limit most home rule powers by a three-fifths majority vote (Ill. Const.1970, art. VII, sec. 6(g)), or may specifically supercede, either in part or in total, most home rule powers through its own legislation covering the particular matter (Ill. Const.1970, art. VII, secs. 6(h), 6(i))." Issue here was whether, through Act, legislature had "specifically excluded or limited, pursuant to section 6(h) or 6(i), the home rule power." If Act had not, home rule unit may, concurrently with State, exercise and perform any home rule powers. Ill. Const. 1970, Art. VII, § 6(i). Supreme Court noted it held in City of Chicago that "Act did not express the intent that the State should exclusively occupy the field."

After finding that O'Connor (1972, above) and *Carlson* (1975, above) stood for proposition that Act excluded non-home-rule units from regulating sanitary landfills, Supreme Court turned to City of Chicago (1974, above), which held that "a local governmental unit may legislate concurrently with the General Assembly on environmental control. However, . . . such legislation by a local governmental unit must conform with the minimum standards established by the legislature." Supreme Court then modified that City of Chicago ruling "by substituting the words 'home rule' for the word 'local,' and the word 'uniform' for the word 'minimum' . . . . Under this modification, as applied to environmental pollution, home rule governmental units are limited to adopting only those uniform standards established by the Board pursuant to legislative authority." Supreme Court found "legislature has delegated solely to the Board the authority to adopt uniform statewide environmental standards, and that a home rule unit which passes a related ordinance, in the interest of local implementation and enforcement, must conform to those same standards."

Supreme Court viewed power of Board to set uniform, Statewide environmental standards and power of home-rule county to zone property as "distinct but concurrent powers that must be exercised cooperatively in interest of environmental protection." To that end, home-rule County, in zoning land for landfills, must adhere to Board's regulations while Agency, operating under Board's regulations, must comply with home-rule County's zoning ordinance when issuing landfill permits. Board's authority under Act and County's home-rule authority Constitution's Article VII, Section

6 "can be exercised in unison to accomplish the public policy expressed in article XI, section 1, of the 1970 Constitution." Landfill owner here, who had complied with Board's regulations, "must also comply" with home-rule County's zoning restrictions. *See* SB 172 (1981, below); City of Elgin (1995, below).

Illinois State Chamber of Commerce v. Pollution Control Bd., 78 Ill. 2d 1 (Ill. Sup. Ct.). Supreme Court reviewed 1978 air rules originally adopted by the Board in 1971 and "validated" in 1977. Supreme Court held Board was estopped from relitigating issues decided against it in Ashland Chemical (1978, above), even though Chamber was not a party to that appeal.

Phillips Petroleum Co. v. Illinois Envtl. Prot. Agency, 72 Ill. App. 3d 217 (2d Dist. App. Ct.). Tank car was owned by Phillips Petroleum Company (Phillips), which had filled it with anhydrous ammonia. Transporter railroad company, Chicago and Northwestern Transportation (CNT), put together the train, including Phillips' tank car. Train derailed, puncturing tank car which released anhydrous ammonia to air. CNT had control over tank car at time of derailment. Board found Phillips and CNT violated Section 9(a) of Act. Only Phillips appealed. In reversing Board, Appellate Court held that Phillips did not exercise sufficient control over pollution source—tank car—at time of derailment to have caused, threatened, or allowed pollution in violation of Section 9(a). Act did not impose "strict liability."

1980

Board authorized to adopt regulations "identical in substance" (IIS) to hazardous waste rules adopted by United States Environmental Protection Agency (USEPA) under federal Resource Conservation and Recovery Act (RCRA). Since then, IIS programs expanded to include rules under federal Safe Drinking Water Act (SDWA), underground injection control (UIC) program, underground storage tank (UST) program, wastewater pre-treatment program, and others.

Act amended to give Board authority to grant "provisional variances." Standard same as that for granting a variance—compliance with Board's generally applicable regulation would impose "arbitrary or unreasonable hardship."

While variance could last up to five years, relief provided by provisional variance could last up to 45 days and be extended up to additional 45 days, but could not exceed total of 90 days during calendar year.

Act amended to authorize third parties to appeal Agency's grant of RCRA permit for developing hazardous waste disposal site.

Rockford Drop Forge Co. v. Pollution Control Bd., 79 Ill. 2d 271 (Ill. Sup. Ct.). "Unreasonable interference" type of noise pollution under Section 24 of Act was upheld over constitutional challenge that provision was so vague as to violate due process. "We do not inquire whether the phrase 'unreasonably interferes with the enjoyment of life,' standing alone, would be too vague to pass muster, for what is proscribed is conduct which violates any regulation or standard adopted by the Board."

1981

Senate Bill 172 or "SB 172" amended Act to give local governments, regardless of home rule status, authority to grant or deny siting approval applications for proposed pollution control facilities (*e.g.*, new or expanding landfill, incinerator, or waste transfer station). As Illinois Supreme Court explained, "[t]he Act was amended to place decisions regarding the sites for landfills with local authorities and to avoid having a regional authority (the Agency) in a position to impose its approval of a landfill site on an objecting local authority." E & E Hauling (1985, below). SB 172 was seen as General Assembly's response to Supreme Court's decision in John Sexton (1979, above)

SB 172 specified uniform siting criteria to be both addressed by siting applicant and considered by "appropriate" local government—later specified as county board for facility in unincorporated area and governing body of municipality for facility in incorporated area. Siting criteria included whether facility is "necessary to accommodate the waste needs of the area it is intended to serve" and "so designed, located and proposed to be operated that the public health, safety and welfare will be protected." Siting

procedures included written notices of siting application to neighboring landowners and in newspaper, allowing written public comments, and holding a public hearing. Local siting decision required to be in writing and specify reasons, and grant may impose reasonable and necessary conditions not inconsistent with Board regulations. Imposed 120-deadline on local government to take final action (later increased to 180 days); if failed to meet decision deadline, applicant may deem siting approved. Adverse local siting decision appealable to Board by siting applicant—or—by third parties who participated in local government's hearing. On appeal, Board review to include "fundamental fairness of procedures used" by local government. Act's siting approval, criteria, and procedures, and appeal procedures were exclusive, superseding local zoning and other local land use requirements. Providing proof of local siting approval made prerequisite to Agency granting permit for developing or constructing pollution control facility. Nearly 40 years later, local siting provisions of Act still commonly referred to as "SB 172."

For new facility not subject to local siting, SB 172 amended Act to bar Agency from issuing development or construction permit unless applicant submitted proof that it secured all necessary local zoning approvals (home rule or non-home rule). Later changed from bar to provide that Agency's grant of permit does not relieve applicant from meeting and securing all necessary local zoning approvals. *See* Village of Carpentersville (1990, below).

Revenue Act of 1939 authorized Board to certify "low sulfur dioxide emission coal fueled devices" for favorable tax treatment.

Illinois Envtl. Prot. Agency v. Pollution Control Bd., 86 Ill. 2d 390 (Ill. Sup. Ct.). Reading Sections 39 and 40 of Act together, Supreme Court found that Agency had duty to specify, in permit determination letter, reasons for permit denial; on appeal to Board, Agency precluded from raising reason not specified in denial letter.

1982

Borg-Warner Corp. v. Michael M. Mauzy, 100 Ill. App. 3d 862 (3d Dist. App. Ct.). IAPA applied to National Pollutant Discharge Elimination System (NPDES) permitting in Illinois. During appeal to Board, IAPA stayed renewed NPDES permit, with existing permit remaining in effect until final Board decision. Opportunity for adjudicatory hearing on appeal to Board satisfied due process and federal Clean Water Act; not required before Agency.

Village of Hillside v. John Sexton Sand and Gravel Corp., 105 Ill. App. 3d 533 (1st Dist. App. Ct.). Agency procedure for transfer of landfill permits from prior owner to new owner was valid. Under Sections 4(g) and 39(a) of Act, only Agency may establish these rules.

Pielet Bros. Trading Inc. v. Pollution Control Bd., 110 Ill. App. 3d 752 (5th Dist. App. Ct.). Section 21(e) of Act (now Section 21(d)(1)) provided permit exemption for landfill disposing solely "refuse generated by the operator's own activities." Pielet Brothers received junk cars, processed them for valuables, and then disposed remaining refuse—approximately 250 cubic yards per day—in its on-site landfill, which covered many acres and had its own heavy equipment. Appellate Court agreed with Board that Section 21(e) exemption was unavailable to Pielet Brothers as it applied "only to minor amounts of refuse which could be disposed of without environmental harm on the site where generated." Plus, Pielet Brothers' refuse was not "generated by the operator's own activities"—it processed others' junk cars. Separately, Appellate Court affirmed Board ruling that two-year statute of limitations did not apply to State's enforcement action as it did not expressly include State, and State protecting public's right to clean environment, not asserting private rights on behalf of limited group.

1983

Act amended to add State "superfund" program and liability scheme patterned after federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Act amended to expand Board from five Members to seven Members.

Celotex Corp. v. Pollution Control Bd., 94 Ill. 2d 107 (Ill. Sup. Ct.). Validity of air regulation may be challenged by source in permit appeal before Board and,

in turn, Appellate Court. Section 29 of Act, providing for judicial review within 35 days after adoption of regulation, is not exclusive method for challenging regulation. "There is nothing in the statute to indicate that the General Assembly intended to deprive one of an opportunity to challenge a regulation that is being applied to deny him a permit simply because he did not contest the regulation immediately after its adoption. The absurdity of holding otherwise becomes completely clear if the requested applicant was not in business within 35 days of the adoption of the regulation." In support of its interpretation that Section 29 is not exclusive, Supreme Court cited D. Currie, Rulemaking Under the Illinois Pollution Law, 42 U. Chi. L. Rev. 457, 473-74 (1975): "Professor David P. Currie, a principal draftsman of the Act and the first chairman of the Board, has stated that the normal method for challenging a pollution regulation is by way of a defense in a proceeding to enforce the rule. *** He considers that section 29 provides an additional method for challenging regulations. Its provisions allow one to test a regulation without having to risk being charged with its violation."

Wasteland Inc. and Roger Pemble v. Pollution Control Bd. and Illinois Envtl. Prot. Agency, 118 Ill. App. 3d 1041 (3d Dist. App. Ct.). Board found numerous violations at landfill, revoked operating permit, imposed $75,000 civil penalty, ordered operator and general manager to cease and desist from further violations, and required posting $100,000 performance bond to ensure compliance with remedial measures ordered. Appellate Court affirmed Board; highest penalty to date upheld on judicial review. *See* City of Morris (2011, below).

The County of Lake v. Pollution Control Bd., Illinois Envtl. Prot. Agency, and Browning-Ferris Industries, 120 Ill. App. 3d 89 (2d Dist. App. Ct.). "[L]ocal authorities can impose 'technical' conditions on siting approval." However, County's condition requiring that Agency impose County's conditions in Agency permit and enforce those conditions "usurped the exclusive power of the Agency to grant or deny a permit."

1984

Vehicle emissions inspection program adopted. To reduce ground-level ozone pollution, "automobile tailpipe testing" program required automobile owners living within Chicago metropolitan and Metro East St. Louis areas to have their vehicles tested periodically.

Act amended to authorize Board to issue "adjusted standards." Like variance, adjusted standard is petitioner-specific adjudicatory determination that provided relief from Board regulation of general applicability; not subject to rulemaking requirements of IAPA or Act. While variance lasted up to five years (with potential for extension from year to year) and required petitioner to comply with generally applicable regulation at end of variance period, adjusted standard may last any number of years or be permanent.

County of Kendall v. Avery Gravel Co., 101 Ill. 2d 428 (Ill. Sup. Ct.). Supreme Court noted Act was enacted "shortly before the new Illinois Constitution delegated broad home rule powers upon many Illinois counties," and "[s]ince that time, this court has decided a number of cases involving the tension between unified State control of environmental matters and local control via the use of county zoning restrictions and other ordinances." Relying on its decision in Carlson (1975, above), Supreme Court held that permits issued by Agency under Act for crushing, washing, and screening limestone at strip mining site precluded non-home-rule county from imposing its zoning ordinance requirements on those activities. "It is impossible to have a unified system of environmental control if counties can subvert the Agency with restrictive zoning ordinances."

Pioneer Processing, Inc. v. Illinois Envtl. Prot. Agency; County of LaSalle *ex rel.* Peterlin v. Pollution Control Bd.; and People *ex rel.* Hartigan v. Pollution Control Bd., 102 Ill. 2d 119 (Ill. Sup. Ct.). In appeal of issuance of construction permit for hazardous waste disposal site, Attorney General, as chief legal officer of State, had standing to obtain judicial review of Board's decision despite not having participated before Agency or Board. As Section 39(c) of Act provided that Agency "shall conduct a public hearing in the county where the site is proposed to be located," Supreme Court held that contested case provisions of IAPA applied to Agency's proceeding. Agency's "closed-door meetings" with permit applicant violated IAPA ex parte communications prohibition, rendering permit issued by Agency void.

1985

E & E Hauling Inc. v. Pollution Control Bd., 107 Ill. 2d 33 (Ill. Sup. Ct.). In its first decision involving "SB 172" siting case (Section 39.2 of Act), Supreme Court found that county was not disqualified from acting as

decision-maker on grounds of bias where county would receive revenue from landfill. "County boards and other governmental agencies routinely make decisions that affect their revenues." Public officials should be considered to act without bias. Further, local siting authority should not be disqualified because it owns the property on which siting applicant would operate landfill: "We do not consider that the legislature intended this unremarkable factual situation to make 'fundamental fairness of the procedures' impossible."

Illinois Power Co. v. Pollution Control Bd. and Illinois Envtl. Prot. Agency, 137 Ill. App. 3d 449 (4th Dist. App. Ct.). Board failed to hold valid hearing within statutory 90-day decision period on appeal of Agency's permit determination. Act's 21-day notice provision was mandatory and Board's failure to comply rendered hearing void. Board's non-compliance with decision deadline allowed company to deem permit issued.

Third District Appellate Court Building, Ottawa

Illinois Envtl. Prot. Agency v. Pollution Control Bd., 138 Ill. App. 3d 550 (3d Dist. App. Ct.). Landfill permitting process was "administrative continuum" that "became complete only after the PCB had ruled." Agency permit denial did not involve detailed findings of fact and conclusions of law but rather only Agency reasons for denial, which permit applicant had no opportunity to challenge until Board hearing. It was Board hearing that provided "the full panoply of safeguards normally associated with a due process hearing." Board therefore does not apply "manifest weight" deference to Agency determination. Affirmed by Supreme Court (1986, below).

1986

Solid Waste Management Act passed to reduce reliance on landfills and increase planning for alternative means of addressing solid waste (*e.g.*, reducing waste at source, recycling). Solid waste "tipping fee" enacted on disposal of solid waste to fund Agency's enforcement activities and State's recycling activities.

Administrative citation program created. Authorized Agency to issue citation to anyone violating specified landfill operating prohibitions. Unless person appealed citation to Board, person must pay statutorily fixed civil penalty of $500 per violation. Considered "traffic ticket" of Act.

Leaking petroleum UST program enacted, setting requirements for owners and operators of petroleum USTs to register tanks with State and clean up leaking UST contamination of soil and groundwater. Tank registration fees go to new UST Fund, out of which petroleum UST owners and operators may apply for cleanup cost reimbursement.

Illinois Envtl. Prot. Agency v. Pollution Control Bd., 115 Ill. 2d 65 (Ill. Sup. Ct.). Supreme Court looked to permitting roles that Act assigned to Board and Agency. As permit process under Section 39(a) did not require Agency to conduct hearing, "no procedures, such as cross-examination, are available for the applicant to test the validity of the information the Agency relies upon in denying its application." Board is not required to apply "manifest weight of the evidence" standard to Agency permit determination; "safeguards of a due process hearing are absent until the hearing before the Board."

Chemetco, Inc. v. Pollution Control Bd., 140 Ill. App. 3d 283 (5th Dist. App. Ct.). Appellate Court held Board "statutory authority to accept settlement agreements in enforcement cases where findings of violation are precluded by the terms of the stipulation and proposal but where the respondent is ordered to pay a stipulated penalty and to timely perform agreed upon compliance activities." General rule is that "where there is an express grant of authority, there is likewise the clear and express grant of power to do all that is reasonably necessary to execute the power or perform the duty specifically conferred." After reviewing Act's enforcement provisions, Appellate Court found "primary goal of the Act is the enhancement of the environment, and settlements that do not contain a finding of violation but do impose a penalty and a compliance plan may more expeditiously facilitate this enhancement," adding that "the law generally favors the encouragement of settlements."

City of Lake Forest v. Pollution Control Bd. and Thomas Greenland, 146 Ill. App. 3d 848 (2d Dist. App. Ct.). Appellate Court reversed Board's decision finding Lake Forest violated Act and ordering it to cease and desist from further violations. Because only way Lake Forest could comply with cease and desist order was to repeal its leaf burning ordinance, Board exceeded its authority—Appellate Court could "find no arguable authority permitting [Board] to interfere in a purely governmental function as it has done." Under Act, Board may not adopt regulations banning burning of landscape waste throughout State generally, but may within limited areas if requisite hearing and evidentiary standards are met. But here, Board "avoided the statutory standards and apparently seeks to require a ban on leaf burning in the City of Lake Forest by an indirect and unauthorized means."

1987

Illinois Groundwater Protection Act required Board to adopt groundwater quality standards.

In May 1987, USEPA issued white paper raising significant concerns with delays in Illinois' administration of federally mandated environmental programs. In response, Governor James R. Thompson commissioned Michael Schneiderman, attorney and former director of Institute, to analyze State's environmental regulatory system and recommend ways of addressing USEPA's concerns. In December 1987, "Schneiderman Report" was released, ultimately resulting in major legislative changes to streamline Illinois' system (1989 and 1992, below).

Schneiderman Report also suggested two measures—to reduce length of Board rulemaking hearings—that have since come into widespread use. First, "negotiated rulemaking" where Agency narrows disputed issues with regulated entities and environmental groups before Agency files rulemaking proposal with Board. Second, Board requiring "pre-filed testimony" in substantive rulemakings, which allows more efficient use of hearing time.

Act amended, authorizing Board to grant water-well setback exceptions, allowing specified potential source of contamination to locate within setback area of potable water supply well when, among other things, petitioner will use best available technology controls economically achievable to minimize likelihood of contaminating potable water supply well.

Central Illinois Public Service Co. v. Pollution Control Bd., 116 Ill. 2d 397 (Ill. Sup. Ct.). In enacting adjusted standard provision, Section 28.1 of Act, legislature did not intend to eliminate site-specific rulemaking under Section 27.

Citizens for a Better Environment v. Pollution Control Bd., 152 Ill. App. 3d 105 (1st Dist. App. Ct.). Vacated Board's 1986 order adopting emergency rules to implement process for approving hazardous waste stream disposal under Section 39(h) of Act. Appellate Court found no emergency existed under IAPA to justify bypassing general notice and comment rulemaking procedures. IAPA defined "emergency" as "existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare." Here, "need to adopt emergency rules in order to alleviate an administrative need [easing implementation of Section 39(h)], which, by itself, does not threaten the public interest, safety or welfare, does not constitute an 'emergency.'"

McHenry County Landfill, Inc. v. Pollution Control Bd., 154 Ill. App. 3d 89 (2d Dist. App. Ct.). Where local government denied siting approval and applicant appealed, Board lacked authority to allow cross-appeals by third-

party objectors. Under Act, only siting applicant may appeal local siting denial. Because third-party objectors were not proper parties before Board, they lacked standing to appeal to Appellate Court under Section 41 of Act.

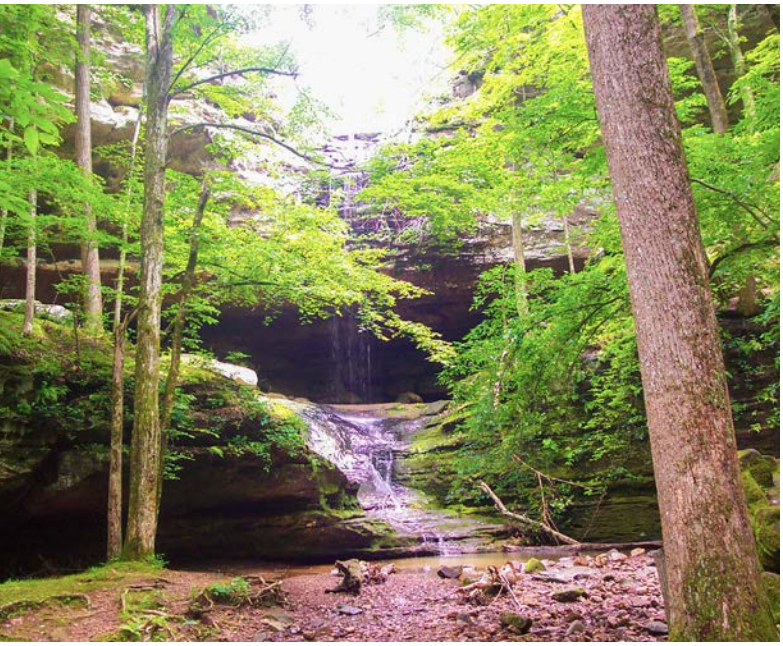
City of Quincy v. Carlson, 163 Ill. App. 3d 1049 (4th Dist. App. Ct.). Agency issued notice under Section 4(q) of Act informing City of actual or threatened hazardous substance release, identifying response action for City to take, and informing City of potential punitive damages liability under Section 22.2 of Act. "[P]otential release of hazardous waste into the environment is the very type of extraordinary or emergency situation which justifies a post-deprivation hearing." Punitive damages provision did not deny due process as its "sufficient cause" language provided parties with good-faith defense they could raise before imposition.

1988

Act amended, expanding types of violations enforceable by administrative citation to include open dumping.

To preserve shrinking landfill space and encourage composting, prohibition enacted on disposing landscape waste in landfills after 1990.

Added to Act, new title on assisting local governments in financing wastewater treatment works—Title IV-A, Water Pollution Control.



Big Rocky Hollow Trail, Ferne Clyffe State Park

Added to Act, new title on reporting toxic chemical emissions and discharges, Title VI-B, Toxic Chemical Reporting.

Responsible Property Transfer Act passed to require that real estate owners disclose properties' environmental conditions to prospective buyers or lenders.

M.I.G. Investments, Inc. v. Illinois Envtl. Prot. Agency, 122 Ill. 2d 392 (Ill. Sup. Ct.). Affirmed Board's ruling that vertical expansion of landfill required local government's siting approval under Section 39.2 of Act. "It would be unreasonable to consider that any increase, however small, in the lateral dimensions of a landfill facility is subject to the provisions of section 39.2 of the Act, while any vertical expansion is not."

1989

In response to Schneiderman Report, Board's rulemaking processes overhauled, allowing quicker compliance with changes in federal air, land, and water pollution regulations. IIS rulemaking authority (added in 1980 for hazardous waste) expanded and "federally required" rulemaking authority added. Empowered Board to "pass through" federal rules; these Board rulemakings were, to varying degrees, exempt from procedural requirements of Act and IAPA.

Act also amended to make often expensive and time-consuming government EcIS no longer mandatory. Instead, whether EcIS should be conducted was for Board to determine. If Board determined EcIS was necessary, DENR was required to prepare one.

Act also amended to create "pre-hearing conference" mechanism for Board rulemakings. Board's hearing officer could meet with proponent and potentially affected persons to identify and limit issues of disagreement, promote efficient hearings. Unlike hearing, pre-hearing conference not subject to requirements for newspaper notice or transcription.

Act amended to articulate burden of proof in adjusted standard proceedings when not specified in Board regulation of general

applicability. Included proving that factors relating to petitioner's facility are "substantially and significantly different" from factors relied on by Board in adopting generally applicable regulation.

Prohibition enacted on landfilling used scrap tires. If allowed to amass outdoors and collect rainwater, they provide breeding grounds for disease-carrying Asian tiger mosquito. Added new title to Act—Title XIV, Used Tires.

Prohibition enacted on landfilling lead acid batteries, which contain polychlorinated biphenyls or "PCBs."

Revenue for UST Fund boosted to address increasing number of leaking USTs discovered throughout State.

Village of Carpentersville v. Pollution Control Bd., 135 Ill. 2d 463 (Ill. Sup. Ct.). Agency imposed condition on construction permit requiring Cargill, Inc. to build 100-foot tall discharge stack for on-site incinerator, which Cargill used to dispose hazardous waste from its manufacturing process. In Cargill's appeal of permit condition, Board determined that non-home-rule Village's zoning ordinance, which limited height of structures to 35 feet, was pre-empted by Act. Supreme Court held, however, that amendment of Act's Section 39(c) "makes clear that permits issued under the Act no longer preempt local zoning ordinances," whether issued by home-rule or non-home-rule local government. Amendment read: "Except for those facilities owned or operated by sanitary districts * * *, and except for new regional pollution control facilities * * *, and except for fossil fuel mining facilities, the granting of a permit under this Act *shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility.*" (Emphasis added by court.) Accordingly, because Act contained specific provision allowing for local zoning to apply, 35-foot height restriction in non-home-rule Village's zoning ordinance was not pre-empted by Agency permit condition. (Note exception for "new regional pollution control facilities," which were subject to SB 172 siting requirements.)

High court stressed its prior decisions in Avery Gravel (1984, above), John Sexton (1979, above), Carlson (1975, above), and O'Connor (1973, above) "were based upon this court's interpretation of the Act as it existed prior to the General Assembly's amendment of section 39(c)." Supreme Court interpreted John Sexton as holding that "despite the General Assembly's intent that the Act preempt local regulations," because General Assembly "failed to 'specifically limit the concurrent powers or specifically declare the State's exercise to be exclusive,'" (Ill. Const. 1970, Art. VII, § 6(i)), "home rule units under the constitution must, at a minimum, be allowed to exercise concurrent powers in environmental matters." By amending Section 39(c), however, General Assembly determined that, under Act, "zoning powers of local governmental units, both home rule and non-home-rule, should be *broader than the minimum powers to share concurrent jurisdiction* with the State that are provided for in section 6 of article VII (Ill. Const. 1970, art. VII, § 6(i))." (Emphasis added.) Village could therefore impose zoning restriction that *directly conflicted* with Agency permit condition.

Finally, Supreme Court held that Article XI, § 1 of 1970 Constitution ("The public policy of the State . . . is to provide and maintain a healthful environment . . . . The General Assembly shall provide by law for the implementation of this public policy.") did not impose duty on General Assembly to "adopt uniform, statewide standards for environmental protection." "General Assembly's only duty under the constitution with regard to environmental matters is to 'provide by law for the implementation and enforcement of' the State's public policy 'to provide and maintain a healthful environment.' (Ill. Const. 1970, art. XI, § 1.) If the General Assembly chooses to implement uniform, statewide standards in furtherance of this duty, it can (but is not constitutionally required to) do so. Similarly, if the General Assembly determines that local zoning ordinances should play a role in Illinois' coordinated pollution control plan, even though such ordinances may conflict in certain instances with uniform, statewide standards, then the General Assembly can constitutionally do so."

Perkinson v. Pollution Control Bd., 187 Ill. App. 3d 689 (3d Dist. App. Ct.). Discharge of swine waste to stream was caused by man-made trench cut through dike of lagoon without hog farm owner's knowledge. "[T]he law does not impose strict liability on property owners for pollution which results from a cause beyond the owner's control." But pollution source's owner "causes or allows the pollution within the meaning of the statute and is responsible for that pollution unless the facts establish the owner either lacked the capability to control the source

. . . or had undertaken extensive precautions to prevent vandalism or other intervening causes . . . .” In affirming Board, Appellate Court agreed that nothing indicated Perkinson “had taken any precautions against vandalism” and Perkinson “plainly had control of the lagoons and the land where the pollutional discharge occurred.”

1990

Eighteen-month moratorium passed on constructing any hazardous waste incinerators.

Maximum civil penalties for violations of Act or Board regulation increased from $10,000 to $50,000 for violation and from $1,000 to $10,000 for each day violation continues.

Section 42(h) added to Act. Authorized Board, in determining appropriate civil penalty, to consider any matters of record in mitigation or aggravation of penalty, including five specified factors (*e.g.*, “duration and gravity of the violation”; “presence or absence of due diligence on the part of the violator in attempting to comply . . . or to secure relief”; “any economic benefits accrued by the violator because of delay in compliance”; and “monetary penalty which will serve to deter further violations”).

Vehicle emissions inspection program expanded to cover growing Chicago metropolitan area. “Automobile tailpipe testing” made stricter to assure vehicles would be maintained.

New standards passed for constructing and operating landscape waste compost facilities.

Landfill operator certification program created.

Wells Mfg. Co. v. Illinois Envtl. Prot. Agency, 195 Ill. App. 3d 593 (1st Dist. App. Ct.). Agency had received many odor complaints about facility. Before facility’s operating permit expired, Agency sent two-page renewal form to operator, requesting certification that equipment was unchanged, which operator provided. Agency then denied operating permit renewal due to alleged air pollution. This procedure violated due process; permit applicant had no opportunity before denial to submit evidence that it was not polluting air. Constitutional infirmity was not cured by Board hearing to challenge information relied on by Agency in permit denial.

Reichhold Chemicals, Inc. v. Pollution Control Bd. and Illinois Envtl. Prot. Agency, 204 Ill. App. 3d 674 (3d Dist. App. Ct.). “[A]dministrative agency has no inherent authority to amend or change a decision and may undertake a reconsideration of a decision only where authorized by statute.” Agency lacked statutory authority to reconsider or modify its permit determination. “When the Agency denies an application, the applicant’s only options are to start over with a new application or file a petition for review. Requests to modify or reconsider are not permissible under the present statutory scheme.”

1991

To reduce ground-level ozone, gas station owners required to install Phase II vapor recovery systems that catch escaping gasoline fumes from pump nozzles. Applied to owners in Chicago metropolitan and Metro East St. Louis areas.

Moratorium on constructing any hazardous waste incinerators extended by three years.

Program passed for separating, transporting, and disposing potentially infectious medical waste or “PIMW” (*e.g.*, used gauze, bandages, needles) generated by facilities such as hospitals, clinics, doctor offices, and dentist offices. Added new title to Act—Title XV, Potentially Infectious Medical Waste.

Act amended to create exception to hearing requirement in State enforcement action; allowed Board to accept stipulation and proposed settlement without holding hearing. Unless Board, in its discretion, found hearing warranted, it must give newspaper notice of proposed settlement. If anyone demanded hearing within 21 days, Board must hold one.

Section 45(d) added to Act. Allowed third-party complaints in circuit court under specified conditions. First, State brings action under Act against person with interest in real property upon which person is alleged to have “allowed open dumping or open burning by a third party” in violation of Act. Second, State “seeks to compel the defendant to remove the waste or otherwise clean up the site.” If those two conditions are met,

then defendant may, "in the manner provided by law for third-party complaints, bring in as a third-party defendant a person who with actual knowledge caused or contributed to the illegal open dumping or open burning, or who is or may be liable for all or part of the removal and cleanup costs." This is exception to Section 45(b), which requires citizen complainant to have been denied relief by Board before being able to pursue injunctive relief in circuit court.

People of the State of Illinois v. Fiorini, 143 Ill. 2d 318 (Ill. Sup. Ct.). State brought action in circuit court alleging dump site owner-operator caused or allowed waste to be deposited in violation of Act. Owner-operator filed third-party complaint alleging others generated, transported, or otherwise arranged for waste to be dumped on site. Section 45(b) of Act allowed "[a]ny person adversely affected in fact by a violation" of Act to bring action in circuit court for injunctive relief, but only after exhausting administrative remedies before Board through citizen enforcement action. Supreme Court held Section 45(b) did not articulate standard for third-party complaints brought from action by State pending in circuit court and therefore did not bar owner-operator's third-party complaint. As for owner-operator's requested cleanup cost recovery, Supreme Court stated that "[w]hile cleanup costs are not expressly provided for in [Sections 33(b) and 42 through 45] of the Act, we decline to hold here that an award of cleanup costs would not be an available remedy for a violation of the Act under appropriate facts. Rather, we believe that such a determination is properly left to the trial court's discretion."

People of the State of Illinois v. Brockman, 143 Ill. 2d 351 (Ill. Sup. Ct.). State filed complaint in circuit court against landfill owner-operator alleging violations of Section 21 of Act. Owner-operator filed third-party complaint against its customers—generators and transporters of waste deposited at landfill. Supreme Court held that third-party claims against waste generators and transporters may be properly joined with State's action against landfill owner-operator for violations of Section 21 of Act. "Section 21, the basis for the State's action against [owner-operator], merely states that 'any person' may be liable for a violation. Nowhere in the Act do we find a prohibition against third-party claims. *** [W]here a defendant properly states a claim for contribution, indemnification, or any other cause of action which supports derivative liability, that claim may properly be joined with the primary action." As to contribution claim, "[i]f it is determined that [owner-operator] caused or allowed unpermitted waste to be dumped and, further, if it is found that third-party defendants dumped the unpermitted waste, there could be common liability for contamination of the site." High court took no exception to "the general rule" of Perkinson (1989, above), Phillips Petroleum (1979, above), and Meadowlark Farms (1974, above)—that "liability for the pollution requires that the defendant be in control of the pollution either through ownership or control of the property." Citing principles of equity, Supreme Court concluded that "control does not operate to bar a contribution claim based on violations of the Act which create a public nuisance. Where a proper claim for contribution may be stated, the fact that a contributing polluter lacked control over the premises will not defeat that claim," but may consider control in apportioning fault.

McLean County Disposal, Inc. v. County of McLean and Pollution Control Bd., 207 Ill. App. 3d 477 (4th Dist. App. Ct). "The broad delegation of authority to the local board reflects the legislative understanding that the local board hearing, which provides the only opportunity for public comment on the site, is the most critical stage of the [landfill siting] process."

1992

Clean Air Act Permit Program (CAAPP) passed to comply with Title V of the federal Clean Air Act. CAAPP permit consolidates—into single operating permit—multiple requirements each specified stationary source must meet for controlling its air pollutant emissions. Included third-party permit appeal rights.

In response to Schneiderman Report, passed "fast-track" rulemaking process for Board to more quickly adopt rules to comply with federal Clean Air Act Amendments of 1990. Fast-track rulemaking would be proposed to Board by Agency. Required Board to take specified actions by deadlines measured from receipt of proposal. Generally, must be completed within approximately six months.

EcIS requirement eliminated for all proposed environmental rules. For general rulemaking,

Act still required Board to consider "economic reasonableness," hold public hearing on economic impact, and determine whether proposed regulation would have "adverse economic impact" on people of State. Cost information, however, would have to come from rulemaking participants.

Waste Mgmt. of Illinois, Inc. v. Pollution Control Bd., 145 Ill. 2d 345 (Ill. Sup. Ct.). Village of Bensenville denied siting approval for Waste Management's proposed waste transfer station. Waste Management appeal to Board. Under Section 40.1(a) of Act, if Board does not take "final action" on the appeal "within 120 days," petitioner may deem the site location approved. On the 120th day, Board issued order affirming Village. Just under a month later, Board issued opinion containing its findings. Supreme Court held Board satisfied "final action" requirement of Section 40.1(a) by issuing its order within 120 days, even though Board's opinion was not issued within this time period. Supreme Court added that "we do not necessarily conclude" Board's order was *final and appealable* for purposes of review," but "a conclusion that the order was not final and appealable would not invalidate the action taken by the Board." (Emphasis by court.)

People v. NL Industries, 152 Ill. 2d 82 (Ill. Sup. Ct.). Board and circuit court have "concurrent jurisdiction" to hear cost-recovery actions under Section 22.2 of Act. Generally, under doctrine of exhaustion of remedies, party must first pursue all remedies provided for by statute before turning to review in courts. But State does not have to exhaust its administrative remedies with Board before filing suit in circuit court. State may file action with Board or circuit court.

States Land Improvement Corp. v. Illinois Envtl. Prot. Agency, 231 Ill. App. 3d 842 (4th Dist. App. Ct.). Agency placed closed landfill site on Agency's State Remedial Action Priorities List (SRAPL). Appellate Court held Agency lacked express authority under Act to adopt regulations creating SRAPL. Further, Agency lacked implied authority under Act to adopt those regulations "which impose such dire consequences upon a site owner without opportunity to be heard as to when the site must be removed from the SRAPL." Agency regulations were therefore void. Landfill site must be "expunged" from SRAPL.

1993

Leaking petroleum UST program overhauled to concentrate on cleaning up sites that pose greatest risk (mandated risk-based corrective action) and reimbursing costs incurred on those cleanups. Added new title to Act—Title XVI, Petroleum Underground Storage Tanks. Rather than Agency, Office of the State Fire Marshal (OSFM)—long responsible for UST registrations and overseeing UST removals under another statute—would determine under Act whether UST owner or operator is eligible to seek corrective action cost reimbursement from UST Fund and, if so, applicable deductible. Both OSFM determinations appealable to Board, joining array of Agency determinations during leaking UST process that could be appealed to Board.

Extended motor fuel tax earmarked for UST Fund, which was bolstered again to pay backlog of $60 million owed by State to UST owners and operators for cleanups already undertaken.

Granite City Div. of Nat'l Steel Co. v. Pollution Control Bd., 155 Ill. 2d 149 (Ill. Sup. Ct.). Affirmed Board's water toxics rules. Board's narrative standard and procedures for Agency to derive narrative criteria on case-by-case basis were not unconstitutionally vague, nor were Board's rules for allowed mixing, mixing zone, a zone of initial dilution (ZID). Rejected arguments that Board's rules were improper delegation of Board's rulemaking authority to Agency—derived criteria, mixing zones, and ZIDs are not themselves "rules" but rather Agency case-by-case determinations subject to Board review, while allowed mixing is outside of Agency NPDES permitting. Also, Act required Board to "take into account" technical feasibility and economic reasonableness of complying with proposed regulation; Board "need not conclude that compliance with a proposed regulation is 'technically feasible and economically reasonable' before it can adopt such regulation." If Board, "in its discretion and based on its technical expertise, determines that a proposed regulation is necessary to carry out the purpose of the Act, it may adopt technology-forcing standards which are beyond the reach of existing technology."

Strube v. Pollution Control Bd., 242 Ill. App. 3d 822 (3d Dist. App. Ct.). Filing motion with Board to reconsider its final decision was not required to seek

judicial review of that decision. On merits, Appellate Court affirmed Board's decision affirming Agency's denial of UST Fund reimbursement for costs of replacing pavement. UST Fund has narrow purpose, not broad remedial one. Appellate Court agreed repaving costs were outside statutory definition of "corrective action."

Grigoleit Co. v. Pollution Control Bd., 245 Ill. App. 3d 337 (4th Dist. App. Ct.). On appeal of permit denial, when Board order remanded case to Agency merely to perform "ministerial task" of issuing permit, that Board order was final for judicial review. Also, on remand from Board, Agency lacked discretion to impose additional conditions on permit that Board directed it to issue—otherwise, "the Agency could permanently thwart a Board determination that a party is entitled to a particular type of permit by continuing upon each remand, after appeal to the Board, to impose conditions upon the issuance of a permit to which the Board deems an applicant to be entitled without condition."

Land and Lakes Co. v. Pollution Control Bd., Village of Romeoville, and County of Will, 245 Ill. App. 3d 631 (3d Dist. App. Ct.). Section 39.2 of Act did not violate separation of powers clause of Illinois Constitution by making local legislative bodies perform adjudicatory functions. Affirmed Board's decision granting intervention to Will County State's Attorney as constitutional officer analogous to Attorney General with standing to intervene on behalf of Will County citizens. Village denied siting approval for applicant's failure to give proper notice of siting application, but denial included written "conditions to approval." Board found proper notice and remanded case to Village to clarify its decision, instructing Village that sole issue to decide was whether applicant met burden of proving need for proposed landfill expansion. Appellate Court held Board's remand did not mean Village failed to render final decision within statutory period and therefore did not result in automatic siting approval. But Village relied on incorrect information about neighboring landfill, which County was suing to permanently close due to environmental hazards. Appellate Court reversed Board's narrow remand and instead, to satisfy fundamental fairness, remanded case to Village to hold completely new hearing on siting application, including sufficient inquiry into neighboring landfill's available capacity.

People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788 (5th Dist. App. Ct.). Contractor, hired to work on village's sewer system, discharged raw sewage into ditch after not properly maintaining bypass. Contractor "neither lacked the capability to control the source of the pollution nor undertook any precautions to prevent the pollution." Even if village and engineers contributed to violation, "it is no defense that another party may have been partially responsible for the pollution." Finally, the Act "does not allow the alleged polluter to defend on the basis that compliance would be an unreasonable hardship."

1994

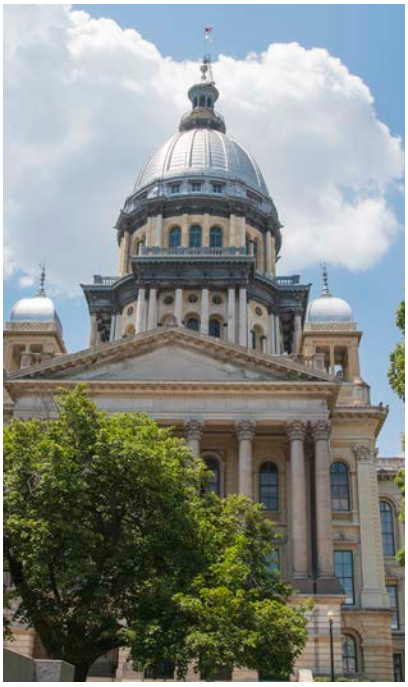
Vehicle emissions inspection program again expanded to include larger geographic area within Chicago metropolitan and Metro East St Louis areas. "Automobile tailpipe testing" made more comprehensive to detect pollution-causing problems in vehicles.

Section 31 of Act amended. Agency could refer alleged violations to AGO for enforcement before Board only after serving alleged violator with notice offering opportunity to meet with Agency in effort to resolve alleged violations.

Chemrex, Inc. v. Pollution Control Bd., 257 Ill. App. 3d 274 (1st Dist. App. Ct.). Reversed Board decision affirming Agency denial of UST Fund reimbursement. Act was amended, narrowing types of tank contents eligible for reimbursement. Agency denied reimbursement due to statutory amendment. In affirming Agency, Board acknowledged that, generally, where statutory amendment involves prior activity, law that applies is one in effect at time activity occurred, but Board found no prior activity involved here. Rather, Board held eligibility was controlled by law in effect on date reimbursement application was filed and, accordingly, statutory amendment was not being applied retroactively. In reversing Board, Appellate Court found because UST owner had performed all required tasks before Act was amended, denying reimbursement would retroactively apply amendment and improperly deny UST owner's vested right. Appellate Court held UST Fund eligibility "should have been determined at the time when underground storage tank owners and operators notified the state agencies of underground storage tank leaks, and embarked upon the remediation required by statute and the rules."

Rochelle Disposal Services, Inc. v. Pollution Control Bd., 266 Ill. App. 3d 192 (2d Dist. App. Ct). In administrative citation (AC) proceeding, Board found both landfill owner, City of Rochelle, and landfill

operator, Rochelle Disposal, violated Section 21(o) of Act. Rochelle Disposal appealed, claiming it was not subject to AC because landfill permit was in City's name. Rochelle Disposal operated landfill under contract with City to do so. "Whether the name on the permit reads 'City of Rochelle' or 'Rochelle Disposal' is a distinction without a difference." Appellate Court agreed with Board that Section 21 prohibitions expressly applied to "person"; not limited to "permittee." Otherwise, "operator of a landfill could arguably avoid [ACs] by finding a 'straw man' to apply for the State license." Finally, in AC cases, Board lacked statutory authority to mitigate penalty amount. Section 42(b)(4) of Act stated that person found to have violated Section 21(o) in AC proceeding "shall pay a civil penalty of $500 for each violation." Appellate Court contrasted civil penalties under Section 42(h), which "permit[s] the Board to consider factors in mitigation and aggravation."



1995

"Brownfields" redevelopment initiative passed to overhaul nearly all land pollution cleanups. (Leaking petroleum UST program was similarly overhauled in 1993.) New "risk-based" cleanup standards—tiered approach to cleanup objectives or "TACO"—designed to focus resources on risks contaminated sites posed to human health or environment. Stringency of soil and groundwater cleanup standards depended on current and future use of site; accounted for exposure pathways and area background contaminant levels. Implicit in TACO's creation was recognition that always requiring pristine cleanups would often discourage returning contaminated site to economic viability or unwisely deplete limited resources in doing so.

Added new title to Act—Title XVII, Site Remediation Program. Title encompassed not only TACO but also voluntary cleanup program called "Site Remediation Program" (SRP). Called for Board regulations in both areas. Agency authorized to charge SRP applicant for its review and evaluation services. SRP applicant may contract with licensed professional engineer who would perform review and evaluation services for and under direction of Agency. Appeals of Agency disapprovals and conditional approvals could be appealed to Board by SRP applicant. "No Further Remediation" (NFR) letter to be issued to SRP applicant by Agency upon its approval of completed cleanup. Recipient of NFR letter required to record it in chain of title. NFR letter could restrict future use of site. NFR letter limited future environmental liability of site owner and others (*e.g.*, purchaser or site mortgage holder).

Department of Natural Resources (DNR) created to effectuate Governor Jim Edgar's Executive Order combining Department of Conservation, Department of Mines and Minerals, Department of Transportation's Division of Water Resources, Abandoned Mined Lands Reclamation Council, and parts of DENR into "super agency." Also, DENR's Division of Recycling transferred to Department of Commerce and Community Affairs (DCCA).

Emissions Reduction Market System (ERMS) provisions added to Act. Required that Agency develop market system for banking and trading emissions credits to reduce emissions causing ground-level ozone. Agency required to propose rules to Board for implementing ERMS.

City of Elgin v. County of Cook, 169 Ill. 2d 53 (Ill. Sup. Ct.). Section 2 of Article XI of Constitution did not create new cause of action; instead, eliminated "special injury" requirement usually applied in environmental nuisance cases. "Thus, while a plaintiff need not allege a special injury to bring an environmental claim, there must nevertheless still exist a cognizable cause of action."

Separately, Supreme Court stated SB 172 "overruled" John Sexton and "made clear all units of local government, home rule and non-home-rule alike, have concurrent jurisdiction with the Agency in approving siting." Section 39(c) of Act amended to "require local government siting approval as a precondition to the issuance of an Agency permit."

Shepard v. Pollution Control Bd., 272 Ill. App. 3d 764 (2d Dist. App. Ct.). Homeowners appealed after Board dismissed their noise complaint against skeet and trap shooting club. Appellate Court quoted Section 24 of Act: "No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business activity, *so as to violate any regulation or standard adopted by the Board under this Act.*" (Emphasis added by court.) In affirming Board's ruling that Section 24 provided no general cause of action, Appellate Court contrasted Section 9 of Act, which showed "an intention on the part of the legislature to create a general statutory prohibition." Appellate Court quoted Section 9: "No person shall: (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, *or so as to violate regulations or standards adopted by the Board under this Act.*" (Emphasis added by court.) Appellate Court also affirmed Board ruling that skeet and trap shooting club fell within exemption—in Section 25 of Act—from Board noise regulations, including prohibition on unreasonable interference, for "organized amateur or professional sporting activity." Appellate Court also held that Section 25 exemption was not unconstitutional special legislation favoring shooting clubs because it treated all organized sporting activities in same manner.

Southwest Energy Corp. v. Pollution Control Bd., Beardstown Area Citizens for a Better Environment, and City of Havana, 275 Ill. App. 3d 84 (4th Dist. App. Ct.). "Although a local siting proceeding more closely resembles an adjudicatory proceeding than a legislative one, the local governing body is not held to the same standards as a judicial body." However, in reaching siting decision, local governing body's trip to tour siting applicant's existing facility was not fundamentally fair procedure. Trip took place after siting application was filed. Siting opponents were hindered because not exposed to same information as trip participants. However, not every trip to tour existing facility is necessarily fundamental fairness violation. And would be proper for siting applicant to pay for tour as Section 39.2(k) of Act allows local governing body to charge reasonable fee to cover reasonable and necessary costs incurred in siting review process.

Discovery South Group, Ltd. v. Pollution Control Bd., 275 Ill. App. 3d 547 (1st Dist. App. Ct.). Outdoor concert theater (Theater) appealed Board order finding "unreasonable interference" noise violations and ordering remedy that included requiring sound monitoring during music events for three years and specifying monitoring equipment, monitoring procedures, and sound-level restrictions. First, against hearsay challenge, Appellate Court affirmed Board on admissibility of tabulations of police department logs of telephone complaints about noise; reasonably prudent person would find tabulations trustworthy and reliable. Second, Board finding of unreasonable interference was not against manifest weight of evidence. Complainant village merely had to show, by preponderance of evidence, that noise emitted by Theater unreasonably interfered with enjoyment of life for some of its residents, not that all its residents were affected or that those affected were affected to same degree. Testimony from many residents about how Theater noise interfered with sleep, reading, watching television, and conversation, as well as village officials' testimony about numerous noise complaints received, provided sufficient basis for Board's finding of noise pollution.

On remedy, because music at concerts was not continuous and reasonably steady, Board tailored measurement procedure to require sound averaging over five-minute interval rather than Board regulation's one hour. Against challenge that Board's remedy was stricter than its regulation, Appellate Court noted that Board was not determining whether its numeric noise standards had been violated—to which the one-hour interval applied—but rather fashioning remedy for unreasonable interference violation. "Illinois decisions reflect the generally acknowledged authority of the Board to take whatever steps are necessary to rectify the problem of pollution and to correct instances of pollution on a case-by-case basis." Appellate Court found Board remedy "not arbitrary or capricious since it was based upon expert evidence provided by both parties." Board necessarily has power to order compliance with Act, and this remedy was "exercise of the Board's power to order compliance." Nor was five-minute sound averaging prescribed here an unpromulgated "rule"; it was not new standard of general applicability. Finally, against freedom of speech challenge, Appellate

Court upheld Board's volume restrictions as "content-neutral" and designed to serve substantial governmental interest in "protecting the tranquility and privacy of the home from unwelcome noise."

1996

For cleanup and cost recovery actions, Act amended to replace joint and several liability with "proportionate share of liability" (PSL). PSL added to Title XVII of Act where SRP and TACO were added one year earlier. PSL prohibited actions under Act or Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity "beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person's act or omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons."

However, excluded from PSL applicability were any site on National Priorities List; any treatment, storage, or disposal site for which permit has been issued, or that is subject to closure requirements under federal or State solid or hazardous waste laws; any site that is subject to federal or State UST laws; and any investigation or remedial action at site required by order of federal court or USEPA. Breadth of exclusions might explain why Board has not yet issued final decision applying PSL.

Livestock Management Facilities Act passed along with other legislation to regulate livestock manure lagoons against releases contaminating waters and odor problems. Registration, inspections, and financial assurance required. Department of Agriculture required to develop rules in consultation with Agency, DNR, and Department of Public Health and propose rules to Board.

Act's Title XVI on leaking petroleum USTs amended to bring Illinois into compliance with USEPA guidelines.

Section 31 pre-enforcement process amended to require that Agency serve notice letter within 180 days after learning of alleged violation. Notice required not only opportunity to meet but also Agency explanation of actions that may resolve alleged violations. Alleged violator given 45 days to respond with proposed Compliance Commitment Agreement (CCA). Meeting required to be held without AGO representative present. If CCA entered into and complied with, Agency barred from referring alleged violations to AGO. If no agreement, Agency required to serve another notice with another opportunity to meet as "precondition" to referral to AGO for enforcement before Board. Regardless of whether Agency complies with Section 31 pre-enforcement process, Board has held that AGO may file complaint on its own motion.

Medical Disposal Services, Inc. and Industrial Fuels and Resources/Illinois, Inc. v. Illinois Envtl. Prot. Agency and Pollution Control Bd., 286 Ill. App. 3d 562 (1st Dist. App. Ct.). Pollution control facility permit applicant must be same entity that received local siting approval. Board correctly affirmed Agency's denial of permit application under Section 39(c) of Act for lacking proof of local siting approval. Even if permit applicant proposed substantially similar operation to that which received siting, Section 39.2 recognized significance of siting applicant's experience. In short, local siting approval was not transferrable to purchaser.

1997

Act amended in response to Medical Disposal Services (1996, above). Legislation allowed pollution control facility siting approval to be transferred. Subsequent owner or operator required to serve notice on local siting authority and any party to local siting proceeding that it is applying with Agency for development or construction permit. Agency must evaluate subsequent owner or operator's prior experience in waste management operations.

Legislation passed to prohibit disposal in municipal waste incinerators of fluorescent and high intensity lights containing mercury. Directed Board to include fluorescent lights as category

of universal waste subject to hazardous waste regulation.

Section 40 of Act amended to authorize third-party appeals to Board of Agency's NPDES permit determinations.

Act amended to prohibit local governments from siting new or expanded landfills or waste disposal areas within 100-year floodplain. Legislation removed floodproofing exception to prohibition.

Act amended to require any "host agreement," oral or written, between local government and developer of pollution control facility be made public before siting vote.

Amended Act's Title IV-A to include assisting local governments in financing public drinking water supplies.

Residents Against a Polluted Environment and Edmund B. Thorton Foundation v. Pollution Control Bd., Landcomp Corporation, and County of LaSalle, 293 Ill. App. 3d 219 (3d Dist. App. Ct.). In siting approval appeal, Board lacked authority to review County's process of amending its solid waste management plan, and therefore evidence of siting applicant's involvement in plan amendment was inadmissible. Section 40.1 of Act allowed Board review of procedures employed by County during siting process only.

1998

Act amended to require that siting applicant provide at least 14 days' notice of local siting hearing to contiguous communities, as well as county board of county in which pollution control facility would be located. Also allowed them to participate in local siting hearing.

Section 27 of Act amended to require that Board ask DCCA to conduct EcIS on proposed environmental regulations. Allowed but did not require that DCCA conduct EcIS. DCCA (now Department of Commerce and Economic Opportunity) given up to 45 days to conduct EcIS or decide not to prepare one. Board required to make EcIS or DCCA's explanation for not preparing one, available to public at least 20 days before economic impact hearing. Since this amendment took effect, none of Board's requests has resulted in DCCA conducting EcIS, generally due to lack of resources.

People *ex rel.* Ryan v. McHenry Shores Water Co., 295 Ill. App. 3d 628 (2d Dist. App. Ct.) Section 42(e) of Act authorized circuit court to issue injunction enjoining water company from violating Board regulations; court not required to find water supply contaminated. Circuit court's $25,000 civil penalty was supported by Section 42(h) factors. Nothing in Act limited civil penalties to "a certain percentage of the violator's gross annual income."

1999

Section 9.9 added to Act, requiring that Agency propose rules to Board for implementing interstate credit trading program designed to help reduce nitrogen oxides (NOx) emissions from stationary sources, primarily coal-fired power plants.

Brownfield Redevelopment Loan Program created to provide borrower-friendly loans for investigating and remediating Brownfield sites.

Section 21 of Act amended to expand open dumping prohibitions to deposit of general or clean construction or demolition debris.

Act's Title IV-A amended to include assisting in financing privately owned community water supplies.

Illinois Envtl. Prot. Agency v. Pollution Control Bd. and Louis Berkman Company d/b/a Swenson Spreader Company, 308 Ill. App. 3d 741 (2d Dist. App. Ct.). Appellate Court, in affirming Board's grant of ten-year adjusted standard, was first to articulate standards of review applicable to Board's adjusted standard decision under Section 28.1 of Act. When Board's decision involved its technical expertise and interpretation of rules, quasi-legislative functions, it was subject to "arbitrary and capricious" standard of review. Board's fact findings not dependent on its expertise, quasi-judicial functions, were subject to "manifest weight of the evidence" standard.

2000

Amended Act's Section 42 to increase administrative citation penalties for open dumping from $500 per offense to $1,500 for first offense and $3,000 for subsequent offense. Increase not applicable to landfill operating violations.

Prohibited constructing elementary or secondary school in Cook County unless Phase I environmental audit conducted to assure no contamination on site. Potential contamination required Phase II and, if necessary, enrollment in SRP.

Amended Act to require that Agency propose and Board adopt rules for creating remediation instrument known as "Environmental Land Use Controls" (ELUCs). When contamination is left in place under TACO, ELUCs would restrict future uses of site to manage risk and would be recorded.

Governor George H. Ryan, by July 6, 2000 letter to Chair Claire A. Manning, requested that Board hold inquiry hearings on potential environmental threats from "peaker plants," issue written findings, and, as warranted, recommend actions.

ESG Watts, Inc. v. Pollution Control Bd., 191 Ill. 2d 26 (Ill. Sup. Ct.). Because company's petition for review failed to name the State—a party to Board enforcement proceeding— Appellate Court correctly dismissed appeal for lack of jurisdiction. Left intact was Board's $256,000 civil penalty imposed on ESG Watts for failing to update landfill's closure cost estimates or provide adequate financial assurance. (Administrative Review Law was later changed to allow amendment of petition to add overlooked party of record.)

People *ex rel.* Ryan v. McFalls, 313 Ill. App. 3d 223 (3d Dist. App. Ct.). Class of persons who may cause open dumping is not limited to owner or operator of disposal site. Off-site generators may effectuate consolidation of refuse; "control" over disposal site is not prerequisite to causing open dumping in violation of Act.

People *ex rel.* Ryan v. Davies, 313 Ill. App. 3d 238 (3d Dist. App. Ct.). State filed suit to recover cleanup costs incurred by Agency in removing 5,000 to 6,000 used or waste tires from owners' property. Under Section 55.3 of Act, State may clean up these tire accumulations and recover costs from owner. In reversing circuit court, Appellate Court held Section 55.3 need not be applied retroactively; it applied to tire accumulation that was on site, regardless of whether tires had been dumped before Section 55.3 was added to Act.

Panhandle Eastern Pipe Line Co. v. Pollution Control Bd., 314 Ill. App. 3d 296 (4th Dist. App. Ct.). Appellate Court affirmed Board's decision affirming Agency's denial of 1997 application to revise 1988 construction permit. Panhandle waived challenge to Board's second ground for affirming Agency because company did not challenge that ground in opening brief before court. Board's decision "could be upheld for that reason alone, and the issues regarding the first ground could be deemed moot." But Appellate Court proceeded to hold Agency lacked authority to reconsider its 1988 permit determination in 1997, even though Panhandle submitted application to modify that permit. Appellate Court agreed with Board that giving Agency unlimited time to revise permit determination would render Act's 35-day appeal period meaningless.

Midewin National Tallgrass Prairie

Land and Lakes Co. v. Pollution Control Bd., 319 Ill. App. 3d 41 (3d Dist. App. Ct.). On third-party challenges concerning fundamental fairness and siting criteria, Appellate Court affirmed Board's decision affirming Will County's grant of landfill siting approval. Generally, Board hearing is limited to local siting record, but Board may hear "new evidence relevant to the fundamental fairness of the proceedings where such evidence necessarily lies outside of the record." As local government's role in siting approval process is "both quasi-legislative and quasi-adjudicative," right to fundamental fairness incorporates "minimal

standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence." Appellate Court found that fundamental fairness of quasi-adjudicative proceeding is outside scope of Board's specific experience or expertise; therefore, Appellate Court applied de novo standard of review to Board's fundamental fairness determination. (This aspect of Appellate Court ruling was overturned in favor of applying the more deferential "clearly erroneous" standard of review—Peoria Disposal (2008, below).) Appellate Court found local proceedings fundamentally fair. On siting criteria, court concluded Will County Board decision was not against manifest weight of evidence. (Later Supreme Court ruling clarified that Appellate Court is to review Board's decision, not local siting decision—Town & Country I (2007, below).)

2001

Act amended to require Agency review of need for multi-pollutant strategy to reduce emissions from older coal-fired electric plants. Agency authorized to propose rules to Board based on that review.

Act amended to define "school" as public school located wholly or partly in Cook County. Prohibited starting school construction unless site enrolled in SRP and remedial action plan, if required, approved by Agency. Also, if remedial action plan is required, no person may cause or allow any person to occupy school unless plan completed.

Responsible Property Transfer Act repealed. It had required a real estate owner to disclose property's environmental condition to prospective buyer or lender.

Will County Board v. Pollution Control Bd., 319 Ill. App. 3d 545 (3d Dist. App. Ct.). Appellate Court affirmed Board's decision to strike condition of Will County's landfill siting approval as against manifest weight of evidence. Condition required siting applicant's operations at another landfill to cease on later of either its anticipated closure date or new landfill's opening date. Temporary operation of two landfills was not inconsistent with Will County's solid waste management plan. Board's finding that condition was not reasonable and necessary to satisfy siting criteria was not against manifest weight of evidence.

ESG Watts, Inc. v. Pollution Control Bd., 326 Ill. App. 3d 432 (4th Dist. App. Ct.). Appellate Court reversed Board's ruling that Board lacked jurisdiction to hear appeal. In response to information from landfill operator about financial assurance, Agency letter stated operator did not meet requirements and matter might be referred for enforcement. Appellate Court held this was denial of adequacy of operator's financial insurance, not merely pre-enforcement procedure, and therefore operator was allowed to appeal.

2002

Community Landfill Co. and City of Morris v. Ill. Envtl. Prot. Agency, 331 Ill. App. 3d 1056 (3d Dist. App. Ct.). Appellate Court affirmed Board's decision affirming Agency's denial of landfill permit. Proposed performance bonds' surety did not comply with regulation requiring surety to be on approved list. Agency had no obligation to either notify permit applicant that surety had been removed from list or give applicant opportunity to respond before denial. Because permit would have violated regulation, Agency denial was required and did not constitute improper use of permitting as enforcement tool. Nor could applicant invoke equitable estoppel against Agency—company failed to prove Agency knowingly represented that bonds were compliant while knowing they were not.

Prairie Rivers Network v. Pollution Control Bd., Ill. Envtl. Prot. Agency, and Black Beauty Coal Co., 335 Ill. App. 3d 391 (4th Dist. App. Ct.). First judicial review of Board decision in third-party appeal of NPDES permit determination. Board affirmed Agency's issuance of NPDES permit and Appellate Court affirmed Board. Appellate Court agreed with Board that scope of burden of proof does not change when petitioner is third party; petitioner must show that permit, as issued, would violate Act or Board regulations. Because USEPA approved Illinois' NPDES permit program as complying with federal Clean Water Act, it is Act and State regulations that apply, not provisions applicable to federally administered NPDES program. Agency not required to issue second draft permit and reopen public comment period.

2003

Act amended to require entity generating or transporting construction or demolition debris or uncontaminated soil from construction or demolition job to maintain documentation identifying hauler, generator, place of origin,

weight or volume, and owner and operator of location where debris or soil disposed.

Section 39(a) amended to allow Agency to consider specified "prior adjudications of noncompliance" by permit applicant and fashion permit conditions to "correct, detect, or prevent noncompliance."

Act amended to provide for Agency rather than Board to issue provisional variances. Previously, Board had authority to grant provisional variance but only on Agency recommendation and Board was required to do so within two working days after Agency notice. Amendment implicitly recognized Board had no discretion to deny Agency-recommended provisional variance and two-working day provision presented undue coordination difficulties in complying with Open Meetings Act agenda-posting requirements.

Added Section 45(e) to Act amended, authorizing any party to Board enforcement proceeding—not just State—to bring action in circuit court to enforce Board's final order.

Hearing-exception procedure added to Act for proposed settlements in citizen enforcement actions before Board (*i.e.*, complaint not filed by AGO or State's Attorney), but unlike State enforcement settlement procedure, no newspaper notice required.

Added to Act, new title on responding to petroleum releases, Title VI-C, Oil Spill Response.

Act amended, decreasing Board Membership from seven to original size of five Board Members. As it has since its passage in 1970, Act continued to require that Board Members be "technically qualified" but language was added requiring that Board Members have "verifiable technical, academic, or actual experience in the field of pollution control or environmental law and regulation."

People *ex rel.* Madigan v. Dixon-Marquette Cement, Inc., 343 Ill. App. 3d 163 (2d Dist. App. Ct.). Cement manufacturing generated waste called "cement kiln dust," which had been deposited on site since at least 1970, resulting in 30-acre pile reaching 70 feet high. Dust contained arsenic, chromium, lead, and cadmium, among other contaminants. Because cement kiln dust was generated and deposited on site, defendants argued no permit was required from Agency. Appellate Court rejected this interpretation of on-site permit exemption of Section 21(d)(1) of Act. Purpose was not to create legislative loophole or gap in permit system. Sheer volume of waste and its toxicity were not contemplated by exemption.

Illinois Envtl. Prot. Agency v. Jersey Sanitation Corp., 336 Ill. App. 3d 582 (4th Dist. App. Ct.). Board struck conditions from supplemental permit Agency issued to Jersey Sanitation. Board's decision—that applicant's plan was sufficient to comply with Act and Board regulations absent conditions—was not against manifest weight of evidence.

2004

Section 42(h) on civil penalties amended. Two new factors added that Board may consider: whether respondent voluntarily self-disclosed violation to Agency; and whether respondent agreed to undertake "supplemental environmental project," defined generally as an environmentally beneficial project that respondent is not otherwise legally required to perform. Section 42(h) further amended to generally require that Board ensure each civil penalty is at least as great as economic benefit accrued by respondent as a result of delayed compliance.

Section 42 of Act amended in response to Appellate Court's decision in Agpro (2004, below). As amended, Act authorized court to issue injunction requiring polluter to clean up contamination resulting from violation, even if no on-going violation.

People *ex rel.* Madigan v. Agpro, Inc., 345 Ill. App. 3d 1011 (2d Dist. App. Ct.). Appellate Court construed "restrain" in Section 42(e) of Act to mean preventative injunction or restraining order, not mandatory injunction requiring affirmative act like remediating contamination. On facts, no continuing violation of Section 12(d) to restrain. Under Section 12(d), no person may "[d]eposit any contaminants upon the land in such place and manner

so as to create a water pollution hazard." "[I]t does not prohibit the mere existence of a water pollution hazard on a parcel of land." Agpro ceased pesticide and fertilizer application operations in 1993 and therefore stopped depositing contaminants upon land at that time. Supreme Court affirmed, 214 Ill. 2d 222 (2005).

People *ex rel.* Madigan v. Tang, 346 Ill. App. 3d 277 (1st Dist. App. Ct.). To sufficiently allege personal liability of corporate officer for causing or allowing acts in violation of Act, complaint must allege facts establishing that corporate officer had "personal involvement or active participation in the acts resulting in liability," not just that corporate officer held management position, had general corporate authority, served in supervisory capacity, or otherwise had personal involvement or active participation in managing corporation.

Village of Sugar Grove v. Rich, 347 Ill. App. 3d 689 (2d Dist. App. Ct.). Non-home-rule unit may regulate in a field occupied by State legislation when State Constitution or statute specifically conveys that authority. However, even with that authority, non-home-rule unit may not adopt ordinance that "infringes upon the spirit of the state law or is repugnant to the general policy of this state." Act "occupies the field of noise control," but Illinois Municipal Code "gives municipalities the authority to regulate the same within their municipalities." Appellate Court found that non-home-rule Village's ordinance was "in concert with the spirit of the laws and policies of this state" because it "does not contradict any of the regulations promulgated by the Pollution Control Board" and "is not overreaching, as it purports to regulate only unwanted noise originating and disturbing others within the Village." Therefore, Appellate Court held that Village's ordinance was not pre-empted by the Act.

State Oil Co. v. People of the State of Illinois and Pollution Control Bd., 352 Ill. App. 3d 813 (2d Dist. App. Ct.). Agency performed emergency cleanup of gasoline contamination from leaking USTs at service station. Board found both current and former owners violated Section 12(a) of Act and were jointly and severally liable for State's cleanup costs. In affirming Board, Appellate Court ruled that Section 58.9(a)(1) "proportionate share" liability did not apply to leaking gasoline USTs and that Section 57.12's reference to UST "owner" being liable for cleanup costs includes former owner.

2005

Right-to-Know provisions of Act amended. Required Agency to evaluate contaminant releases when soil or groundwater contamination may extend beyond boundary of release site. Required Agency to give notice to wide array of persons if specified events occur, such as off-site exposure threats from soil contamination; exposure threats to water systems from groundwater contamination; referrals to AGO or State's Attorney for immediate injunction due to substantial danger; and immediate removal actions under CERCLA. Agency also required to evaluate Board rules and propose amendments as necessary to require potable water supply surveys and community relations activities in response to contaminant releases that may impact off-site potable water supply wells.

Land pollution provisions of Act amended. If Agency required to give notice of soil or groundwater contamination under Right-to-Know amendments, Agency may issue to person potentially liable an order, unilaterally or on consent, requiring response actions consistent with CERCLA and TACO. Not applicable to leaking petroleum USTs. Recipient of unilateral order may appeal to Board.

Act amended, imposed interim and final permit program for using clean construction or demolition debris (CCDD) as fill. As of July 1, 2008, no person may use CCDD as fill material in current or former quarry, mine, or other excavation without Agency permit.

Added to Act, new title on providing notices of contamination and related activities, Title VI-C, Oil Spill Response. Included provision on Board rulemaking concerning potable water well surveys and community relations activities.

Alternate Fuels, Inc. v. Dir. of Illinois Envtl. Prot. Agency, 215 Ill. 2d 219 (Ill. Sup. Ct.). Alternate Fuels, Inc. (AFI) received empty plastic agricultural chemical containers that had been "triple-rinsed" by third party. AFI shredded plastic containers into one-inch chips and entered into contract with Illinois Power to sell chips as alternative

fuel. Agency issued violation notice, claiming that plastic containers were "waste" being treated and stored without Agency permit, and that AFI site was pollution control facility requiring local siting approval. Supreme Court rejected Agency interpretation that "discarded material"—in Act's definition of "waste"—meant material not being used for its original purpose. Looking to Act's definition of "recycling, reclamation or reuse," high court concluded that plastic containers were not discarded. AFI was instead processing material that would otherwise be discarded and returning it as "product" into economic mainstream. AFI's plastic containers were not hazardous waste and therefore meaning of "other discarded material" in RCRA hazardous waste regime was not at issue.

Roti v. LTD Commodities, 355 Ill. App. 3d 1039 (2d Dist. App. Ct.). Section 24 of Act, combined with Section 900.102 of Board's regulations, prohibits noise emissions that unreasonably interfere with enjoyment of life or with lawful business activity, regardless of whether emissions violate any numeric noise limit. "[P]rivate citizens can maintain causes of action before the Board for violations of section 24 of the Act and section 900.102 of the Regulations." For noise violation, Appellate Court found Board's remedy—ordering warehouse to cease nighttime operations—not unreasonable or arbitrary.

Waste Mgmt. of Illinois, Inc. v. Pollution Control Bd., 356 Ill. App. 3d 229 (3d Dist. App. Ct.). Board vacated Kankakee County's landfill-expansion grant of siting approval for lack of jurisdiction based on siting applicant's failure to notify adjacent landowner as required by Section 39.2(b) of Act. That provision required siting applicant to "cause written notice of [siting] request to be served either in person or by registered mail, return receipt requested" on property owners within 250 feet of proposed expansion's lot line. After multiple failed attempts to personally serve one neighboring landowner, siting applicant posted notice to door of her residence. Appellate Court affirmed Board. "All that is required by the statute is that notice is sent by registered mail, return receipt requested. Jurisdiction is not premised on the recipient's actions, once the letter is received, but on the form of the sending of the letter; jurisdiction will exist as long as the letter is sent by the prescribed method." Also, court agreed with Board that "certified mail, return receipt requested, is the exact equivalent of registered mail, return receipt requested, for purposes of the statute." Finally, Appellate Court found "constructive notice" would require showing landowner sought to avoid proper service, which was not shown here.

Karlock and Watson v. Waste Mgmt. of Illinois, Inc., 361 Ill. App. 3d 992 (3d Dist. App. Ct.). Because third parties cannot appeal denial of siting application, Board denied motions of two neighboring property owners to intervene in siting applicant's appeal of denial of landfill expansion siting approval. Appellate Court did not reach intervention issue, finding it lacked jurisdiction because Board ruling on intervention did not simultaneously dispose of appeal and therefore was not final appealable order.

2006

For leaking petroleum UST program, including UST Fund, Act amended to include in term "owner" a person who acquired ownership interest in site—that had registered UST or USTs removed but did not yet have NFR letter—and who submitted written election to Agency to proceed under UST program.

Act's definition of "coal combustion by-product" (CCB) amended to specify process for Agency to make beneficial use determination (CCB-BUD) on application that "coal-combustion waste" is CCB when used in manner meeting specified criteria. Agency CCB-BUD disapproving or approving with conditions the application could be appealed to Board by applicant. Agency approval of beneficial use remains in effect for five years but could be extended by Agency. Required Board to establish standards and procedures for Agency issuance of CCB-BUDs.

Amended Illinois Vehicle Code, creating new testing program based on use of on-board diagnostic systems in specified counties. Replaced program established under Vehicle Emissions Inspection Law of 1995.

Amended Act, requiring nuclear power plant owners to notify Agency and Illinois Emergency Management Agency (IEMA) within 24 hours of unpermitted release of radionuclides. Required Agency and IEMA to inspect each nuclear power plant at least quarterly. Required Agency to consult with IEMA in proposing rules to Board on standards for detecting and reporting unpermitted releases of radionuclides.

United Disposal of Bradley, Inc. v. Pollution Control Bd. and Illinois Envtl. Prot. Agency, 363 Ill. App. 3d 243 (3d Dist. App. Ct.). Board affirmed Agency's denial of permit modification that would have allowed United Disposal to accept waste generated outside of Village boundary. When United Disposal originally applied for permit, it opted to be "non-regional" facility. In affirming Board, Appellate Court agreed that United Disposal was now improperly "attempt[ing] to operate a regional pollution control facility without first obtaining the necessary siting approval required by the Act."

2007

Town & Country Utilities, Inc. v. Pollution Control Bd., 225 Ill. 2d 103 (Ill. Sup. Ct.) (Town & Country I). Board reversed City of Kankakee's grant of landfill siting approval. Appellate Court overturned Board's decision, finding City's siting approval was not against manifest weight of evidence. Supreme Court overturned Appellate Court, finding that Board's decision, not City's "interim" decision, must be reviewed on appeal. "The fact that the Board undertakes consideration of the record prepared by the local siting authority rather than preparing its own record does not render the Board's technical expertise irrelevant. Instead, the Board applies that technical expertise in examining the record to determine whether the record supported the local authority's conclusions." Board's determination—proposed landfill was not designed, located, and proposed to be operated to protect public health, safety, and welfare (Section 39.2(a)(ii) criterion)—was not against manifest weight of evidence. A "negative decision as to one of the criteria is sufficient to defeat an application for site approval of the pollution control facility." *See also* Town & Country II (2010, below).

2008

Northern Illinois Service Co. v. Illinois Envtl. Prot. Agency and Pollution Control Bd., 381 Ill. App. 3d 171 (2d Dist. App. Ct.). In affirming Board's administrative citation finding of open dumping violation, Appellate Court agreed with Board that 9,700-cubic yard pile of uprooted, dead trees, unprocessed and 10 to 13 feet high, had been discarded and thus constituted "waste" and "litter." Materials had been deposited in quarry and, in some instances, present over ten years. Appellate Court rejected company's claim that because tree pile had value as mulch, it cannot have been discarded.

People *ex rel.* Madigan v. Lincoln, Ltd., 383 Ill. App. 3d 198 (1st Dist. App. Ct.). State filed action against landfill operator, Lincoln, Ltd., alleging violations of Act for, among other things, conducting waste-disposal operation without Agency permit. State prevailed on motion for partial summary judgment, after which circuit court granted Lincoln interlocutory appeal and certified this question to Appellate Court: "Whether clean construction and demolition debris [CCDD] deposited onto the land for the purpose of providing the infrastructure for a recreational facility to be built at the site and to be used for snow skiing/snow boarding . . . constitutes 'waste' under the [Act] and requires a permit in compliance with the Act's waste disposal requirements." People agreed, solely for summary judgment ruling, that landfill contained only CCDD as defined in Section 3.160(b) of Act. Under that definition, CCDD "shall not be considered 'waste'" if it is used or handled as provided in either of two exemptions. Lincoln argued it fell within second exemption, claiming its CCDD was, in words of exemption, being "separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated . . . ." First, Appellate Court found that Lincoln's CCDD was not "separated or processed." Lincoln failed to "sort through and separate out any type of useable material, or process the waste in some way such as by washing or chipping it for any subsequent reuse." Appellate Court found that Lincoln's customers heaping CCDD into "a towering pile," which Lincoln then pushed or shifted to remove air pockets, was not separating or processing the CCDD. Second, Appellate Court found that Lincoln did not satisfy the additional requirement of "return[ing] [the CCDD] to the economic mainstream in the form of raw materials or products." Paying small local tax, speculating about costs of converting landfill, and predicting consumer interest in potential ski hill was "not the same

as putting extracted raw materials or new products into the economic mainstream today." Allowing landfill operator's mere future intentions to control would "negate landfill regulation." *See* Lincoln, Ltd. (2016, below, case against landowner).

Peoria Disposal Co. v. Pollution Control Bd., 385 Ill. App. 3d 781 (3d Dist. App. Ct.). Section 39.2(e) of Act required only that County take "final action" on siting application within 180 days after receiving siting application, not that County's "written decision memorializing that final action" be issued within 180 days. County took timely final action at meeting when it voted against motion to approve siting application. County also satisfied Section 39.2(e)'s "written decision" requirement by adopting written set of facts in support of its decision and agreeing to allow meeting transcript to serve as written record of what occurred.

On fundamental fairness of local siting proceedings, members of local siting authority are "presumed to have made their decision in fair and objective manner." Presumption is not overcome "merely because a member of the authority has previously taken a public position or expressed strong views on a related issue." To prove bias or prejudice, petitioner must show that "a disinterested observer might conclude that the local siting authority, or its members, had prejudged the facts or law of the case." Also, issues of local siting authority's bias or prejudice "are generally considered forfeited unless they are raised promptly in the original siting proceeding." In affirming Board on fundamental fairness, Appellate Court overruled the part of its decision in Land and Lakes (2000, above) applying de novo standard of review, and instead applied "clearly erroneous" standard of review to Board's determination on fundamental fairness.

2009

Act amended to re-enact Section 28.5 fast-track rulemaking for rules required to be adopted by federal Clean Air Act Amendments of 1990.

Act amended by adding Section 22.55 on household waste drop-off points.

Act amended to require specified public notices be given by Agency and owner or operator of community water system; triggered initially by Agency either issuing seal order concerning community water system or making referral to AGO or State's Attorney for immediate injunction because of substantial danger to community water system.

Right-to-Know provisions of Act added in 2005 (above) were amended to add "soil gas" contamination and more notices concerning community water systems.

Act amended by adding Section 22.54 on beneficial use determination (BUD). Agency authorized to determine material that otherwise must be managed as waste may be managed as "non-waste" if it is used beneficially—rather than discarded—and in manner protective of human health and environment. Specified criteria for BUD. Agency BUD disapproving or approving with conditions the application could be appealed to Board by applicant. Approval may last up to five years. Material beneficially used in accordance with BUD and other criteria maintains its non-waste status after BUD's effective period. Materials excluded from BUD eligibility include hazardous waste, coal combustion waste, CCB, sludge applied to land, PIMW, and used oil.

Act amended to extend administrative citation enforcement provisions to persons who cause or allow water to accumulate in used tires. Exception in prohibition for residential household site with up to 12 used or waste tires (later changed to four used or waste tires "covered and kept dry").

Illinois State Capitol, Springfield

2010

Mercury Thermostat Collection Act enacted. Required thermostat manufacturers to establish and maintain program for collecting and managing out-of-service mercury thermostats. Imposed handling and management requirements on contractors, wholesalers, manufacturers, and retailers. Specified prohibitions on mixing and disposing out-of-service mercury thermostats.

Act amended by adding Section 17.10 to prevent carcinogenic volatile organic compounds from exceeding their maximum contaminant levels in finished water of community water systems by requiring owner or operator of system to implement Agency-approved response plan. Agency disapproval or modification may be appealed to Board.

Act amended to define "uncontaminated soil" but also to authorize Board to specify, by rule, maximum concentrations of contaminants that may be present in uncontaminated soil. Provided that uncontaminated soil is not waste. Authorized Board to adopt rules for using uncontaminated soil and CCDD as fill material at fill operations. Required owners and operators of CCDD fill operations and uncontaminated soil fill operations to meet specified requirements, including confirming that CCDD or uncontaminated soil was not removed from site subject to environmental remediation. Authorized Agency to collect fee from owners and operators of fill operations for accepted CCDD and uncontaminated soil. Provided that violations may be enforced by administrative citation.

County of Kankakee v. Pollution Control Bd., 396 Ill. App. 3d 1000 (3d Dist. 2010) (Town & Country II). In 2002, Town & Country filed siting application with City for proposed landfill. After City granted siting approval, third-party objectors petitioned for review with Board, which reversed, deciding City erred in finding proposed landfill met public health, safety, and welfare criterion of Section 39.2(a) of Act. Appellate Court reinstated City's siting approval, but Supreme Court held that the decision to be reviewed by Appellate Court was Board's, not City's, and that Board's decision was not against manifest weight of evidence (*see* Town & Country I (2007, above)). With Board's decision reinstated, Town & Country's 2002 application failed. In 2003, Town & Country filed another siting application with City for proposed landfill at same location. After City granted siting approval, third-party objectors petitioned for review with Board, which affirmed. On appeal of Board decision, primary issue before Appellate Court (Town & Country II) was meaning of "disapproved" within Section 39.2(m) of Act, which provided "[a]n applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved pursuant to a finding against the applicant under any of [siting] criteria . . . within the preceding 2 years." In reversing Board, Appellate Court first found that Town & Country's 2002 application was "disapproved" when Board reversed City's siting approval on Section 39.2(a)(ii) criterion. Then, eschewing any decision on whether 2003 application was "substantially the same" as 2002 application—for Section 39.2(m)'s bar—Appellate Court proceeded to affirm Board's finding that Section 39.2(b) jurisdictional notice to neighboring landowners was satisfied: "The plain language of subsection 39.2(b) does not require separate mailings to co-owners of property, does not specify any mode of determining the address to be used when serving notice by registered mail, and does not require actual receipt of mailed notice."

After affirming Board's ruling that City's siting proceedings were fundamentally fair, Appellate Court reversed Board finding on Section 39.2(a)(viii) criterion that proposed landfill is consistent with county solid waste management plan. County, one of third-party objectors, had amended its solid waste management plan in 2003 to provide that no landfills may be sited within County other than expansion of existing landfill on real property contiguous to existing landfill; and that development of any other landfills within County on land not contiguous to existing landfill is inconsistent with plan. City found Town & Country's proposed landfill consistent with county plan as it would be "located so as to be near, and in an area which is contiguous" to existing landfill. Board found City's conclusion "not against the manifest weight of the evidence." After finding County plan's use of "contiguous" to be ambiguous, Appellate Court emphasized that "[a]n ambiguity in statutory language does not create interpretive license to simply choose one or the other of possible meanings; rather, it simply widens the range of evidence that may be used to discover what the drafters intended." Looking to County resolutions for plan amendments in 2001, 2002, and

2003, Appellate Court concluded that Town & Country's proposed landfill was "immediate object of the County's decision to preclude 'non-contiguous' landfilling" and that County intended word "contiguous" to prevent what Town & Country was proposing—a new landfill 1.75 miles away from existing landfill.

2011

IAPA amended to require that state agency, before filing proposed rule for Illinois Register publication, conduct economic impact analysis on any proposed rule that may have an adverse impact on small businesses. Not applicable to Board's IIS rulemakings.

Act amended, authorizing Agency to establish Registration of Smaller Sources (ROSS) for eligible emission sources, allowing annual registration in place of air pollution construction or operating permit. Also authorized Agency to issue "general permits" and "permits by rule" instead of issuing site-specific permits. Added expedited review process for permit applications where applicants pay additional fee.

Act amended to add Section 9.15 on greenhouse gases. Provided that construction permit would not be required due to greenhouse gas emissions if source is not "subject to regulation," as defined in federal Prevention of Significant Deterioration program, for greenhouses gases. Provided that operating permit would not be required due to greenhouse gas emissions if source is not "subject to regulation," as defined in CAAPP, for greenhouses gases.

Section 31 pre-referral process amended again. Required Agency, in specified circumstances, to propose CCA necessary to bring alleged violator into compliance. If CCA accepted, non-compliance with it made enforceable violation of Act.

Act amended to add another Section 42(h) factor that Board may consider on civil penalties: whether respondent successfully completed a CCA.

Amended Electronic Products Recycling and Reuse Act to allow for enforcement by administrative citation.

Sierra Club v. Pollution Control Bd., 2011 IL 110882 (Ill. Sup. Ct.). Board granted adjusted standard (AS) to Peoria Disposal, delisting residue generated from its treatment of K061 electric arc furnace dust. Citizen groups appealed but were not parties to Board proceeding. Supreme Court held Board's grant of AS under Section 28.1 of Act was not "rule or regulation" but rather "adjudicatory determination" that created "an individualized exception" to rule or regulation. Also distinguished granting AS under Section 28.1 (quasi-judicial exercise) from adopting site-specific rule under Section 27 (quasi-legislative exercise). Board rule or regulation may be appealed under Section 29(a) by "any person adversely affected or threatened" by it, but Board adjudicatory determination is generally appealable under Section 41(a) only by "party" to Board proceeding. Citizen groups therefore lacked standing to seek judicial review of AS decision.

City of Morris and Community Landfill Co. v. Pollution Control Bd. and People *ex rel.* Madigan, 2011 IL App (3d) 090847 (3d Dist. App. Ct.). City of Morris owned land where landfill was operated by Community Landfill Company (CLC). Appellate Court affirmed Board decision that CLC conducted disposal operation in violation of financial assurance requirements for six years and must obtain $17.4 million in closure and post-closure financial assurance, as well as Board order that CLC cease and desist from accepting additional waste at landfill and Board's imposition on CLC of civil penalty of $1,059,534.70—highest Board penalty to date upheld on judicial review. However, for Board rulings against City, including $399,308.98 civil penalty, based on City being subject to and violating financial assurance requirements, Appellate Court reversed Board. No evidence that City "oversaw, directed or supervised" CLC in its waste disposal operations. "While the City helped CLC obtain financial assurance, litigated alongside CLC on various issues and treated leachate from the landfill, those activities were separate and distinct from CLC's 'waste disposal operation' at the landfill." Appellate Court noted Board finding that City was not involved in "day-to-day operations" of landfill, which Appellate Court held is "the test for determining if an entity is 'conducting waste operations.'"

Fox Moraine, LLC v. United City of Yorkville and Pollution Control Bd., 2011 IL App (2d) 100017 (2d Dist. App. Ct.). Because of nature of local siting proceedings, ex parte communications between public and local decision-makers were "inevitable." Reviewing court would not reverse decision where local siting authority members received ex parte communications unless petitioner suffered prejudice. "Mere expressions of public sentiment are not sufficient for a showing of prejudice, "[n]or does the existence of strong public opposition render the proceedings fundamentally unfair, as long as the applicant is provided with a full and complete opportunity to present evidence in support of its application." Appellate Court agreed with Board barring applicant at Board hearing from questioning City council members on their mental impressions as their "comments speak for themselves." Board error in failing to find City council member biased against proposed landfill did not render local proceeding fundamentally unfair, as remedy for bias—disqualifying that member—would have still left majority voting against siting application. In addition, applicability of siting criterion (viii) (consistency with "county" solid waste management plan) was not limited to facilities proposed to be located on unincorporated land, *i.e.*, criterion applied to landfill proposed to be located within City limits.

Gonzalez v. Pollution Control Bd., 2011 IL App (1st) 093021 (1st Dist. App. Ct.). Appellate Court affirmed Board's administrative citation decision finding Section 21(a) open dumping violations—by limited liability company (LLC) and its individual owner (Gonzalez)—and imposing statutorily fixed civil penalties, as well as hearing costs. City of Chicago Department of Environment filed administrative citations under authority delegated to it by Agency. Board found violations due to waste "fly-dumped" at site by trespassers and due to Chicago Transit Authority (CTA) renovation project's waste dumped at site by hauler. Regarding fly-dumped waste, person may "allow" open dumping—even though waste was not placed at site by that person and was placed there before that person acquired site—by not timely removing the waste. LLC and Gonzalez were "aware of the preexisting fly-dumped waste" when they purchased site but "failed to remove it for over 14 months." Concerning CTA waste, Gonzalez built both fence around property and an entrance gate; LLC and Gonzalez contracted with hauler to store CTA waste at site in dumpsters or trucks for $500 per night; Gonzalez gave hauler key to entrance gate. Gonzalez's office was 10 minutes from site; LLC and Gonzalez could have had but did not have representative monitor haulers' activities. Gonzalez was present to observe cleanup of CTA waste. LLC and Gonzalez did not show they took "extensive precautions" to prevent CTA waste dumping. LLC and Gonzalez were in control of site where pollution occurred and did not lack the capability of controlling pollution.

2012

Act amended to require that Board adopt ambient air quality standards "identical in substance" to National Ambient Air Quality Standards (NAAQS).

Toyal America, Inc. v. Pollution Control Bd. and People *ex rel.* Madigan, 2012 IL App (3d) 100585 (3d Dist. App. Ct.). After finding Toyal violated volatile organic material (VOM) emissions reduction regulation for eight years, Board imposed $716,440 civil penalty, including $316,440 for Toyal's economic benefit from delayed compliance. Toyal appealed, arguing economic benefit should be offset by $1 million in "potential cost savings" from solvent recovery that Toyal would have enjoyed had it timely complied. In affirming Board, Appellate Court reviewed each penalty factor under Sections 33(c) and 42(h) of Act, applying "manifest weight of evidence" standard to Board's fact findings and "clearly arbitrary, capricious, or unreasonable" standard to Board's penalty decision. Toyal was "fully aware" of violations for eight years and yet never ceased operations to control VOM emissions (in ozone nonattainment area) or sought regulatory relief. Allowing violator to offset its economic benefit from delayed compliance based on "forgone-benefit theory" would undermine deterrence. USEPA penalty manual noted theory may arise, not that offset was required; plus, manual not binding on Board.

Stop the Mega-Dump v. County Board of DeKalb County, 2012 IL App (2d) 110579 (2d Dist. App. Ct.). Fundamental fairness did not require giving general public the right to fully participate in local siting hearing such as by presenting evidence and cross-examining applicant's witnesses. Waste Management's guided tours of comparable landfill for members of local siting authority were not ex parte communications because they occurred before Waste Management filed siting application. Pre-filing contacts show fundamental unfairness if objector accusing siting authority of prejudgment identifies "specific evidence showing that members of the siting authority were actually biased." But if local siting authority found Section 39.2(a) siting

criteria were met, its members were not precluded from considering landfill expansion's economic benefits to community—those were not "adjudicative facts" and therefore irrelevant to siting approval. "Revenue or other financial considerations are irrelevant to a prejudgment inquiry because neither the local siting authority nor its members will realize and enjoy the additional potential revenue or pecuniary benefit. It is the community at large that stands to gain or lose from the local siting authority approving or disapproving the site. *** County boards and other governmental agencies routinely make decisions that affect their communities' revenues."

2013

Illinois Hydraulic Fracturing Regulatory Act enacted. Granted permitting and regulatory authority over "fracking" to DNR.

Bd. of Educ. of Roxana Cmty. School Dist. No. 1 v. Pollution Control Bd., 2013 IL 115473 (Ill. Sup. Ct.). WRB Refining, LP applied with Agency under Property Tax Code to have 28 of its petroleum refinery's systems, methods, devices, and facilities certified as "pollution control facilities" (PCFs) for preferential tax assessment. Agency recommended that Board certify all 28 as PCFs, which Board did. Board also denied motions of Board of Education (Roxana) to intervene in 28 proceedings. Roxana appealed. Appellate Court found it lacked jurisdiction because under Property Tax Code's appeal provision, review of Board PCF determination may be sought only by tax certification applicant or holder, and then, only in circuit court. Supreme Court affirmed but declined to reach whether Property Tax Code "leaves no room for resort to section 41," the Act's appeal provision. High court explained that even if Section 41 were not "completely supplanted" in PCF certification appeals, "it still would be of no aid to [Roxana] here." In so holding, Supreme Court overruled two Appellate Court decisions.

Prairie Creek, Midewin National Tallgrass Prairie

First, overruling Appellate Court's 1992 decision in Reed-Custer Cmty. School Dist. No. 255-U v. Pollution Control Bd., 232 Ill. App. 3d 571 (1st Dist. App. Ct.), Supreme Court rejected Roxana's argument that it was a Section 41 "party adversely affected by a final order or determination of the Board." To be a "party" within that clause, "one must have been an actual party of record in the underlying proceedings before the Board." Here, Roxana was denied leave to intervene by Board and accordingly "is not and cannot be deemed to have ever been a party." Second, overruling Appellate Court's 1989 decision in Citizens Against the Randolph Landfill (CARL) v. Pollution Control Bd., 178 Ill. App. 3d 686 (4th Dist. App. Ct.), Supreme Court rejected position that Roxana fell within another clause of Section 41 petitioners, authorizing appeals by "any person who filed a complaint on which a hearing was denied." Roxana "did not file a complaint at all," meaning an initial pleading that starts action, states basis for claim, and demands relief. Roxana requested leave to intervene in proceedings started by another.

2014

Amended Act's Title IV-A to include assisting in financing publicly owned municipal storm water projects.

Act amended, prohibiting any person, beginning July 1, 2016, from causing or allowing operation of 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 calendar year, without permit granted by Agency or in violation of permit conditions. Also prohibited any person from causing or allowing tire storage site in violation of Board's financial assurance rules; AGO or State's Attorney may seek immediate injunction to require removal of all tires for which financial assurance is not maintained.

Public Water Supply Operations Act amended. Community water supply must have on operational staff, and designate to Agency, Responsible Operator in Charge directly supervising treatment and distribution facilities. Violation by Responsible Operator in Charge may be enforced by administrative citation.

Maggio v. Pollution Control Bd., 2014 IL App (2d) 130260 (2d Dist. App. Ct.). Third-party objector argued landfill company failed to comply with "return receipt requested" and 14-day notice requirements of Section 39.2(b) of Act, depriving County of jurisdiction over siting application. Under Section 39.2(b), at least 14 days before local siting authority receives request for siting approval, applicant must "cause written notice of such request to be served either in person or by registered mail, return receipt requested," on specified owners of property surrounding proposed site. Appellate Court agreed with 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." Board correctly relied on Illinois Supreme Court's construction of different statute in People *ex rel.* Devine v. $30,700 United States Currency, 199 Ill. 2d 142 (2002) as invalidating "actual receipt" interpretation of Section 39.2(b) by Appellate Court in 1995 in Ogle County Board v. Pollution Control Bd., 272 Ill. App. 3d 184 (2d Dist. App. Ct.). As actual receipt was not required, it followed that actual receipt by 14-day deadline was not required. In affirming Board, Appellate Court rejected Board's extra gloss on Section 39.2(b) that service of notice must be initiated sufficiently far in advance to reasonably expect receipt by 14-day deadline. Instead, "statute simply requires that the notices be mailed, return receipt requested, at least 14 days before the siting application is filed."

2015

People *ex rel.* Madigan v. J.T. Einoder, Inc., 2015 IL 117193 (Ill. Sup. Ct.). Lynwood CCDD site ceased operating before 2004 amendment to Section 42(e) of Act, which authorized mandatory injunction (*i.e.*, requiring actions necessary to address violation of Act). Before amendment, Section 42(e) authorized only prohibitory injunction (*i.e.*, restraining future violation of Act). Supreme Court reversed order requiring removal of CCDD pile deposited 90 feet above grade. Section 42(e) amendment "not simply procedural. It creates an entirely new type of liability . . . . Applying it retroactively here would impose a new liability on defendants' past conduct. For that reason, it is a substantive change in the law and cannot be applied retroactively." In addition, Supreme Court upheld personal liability of Janice Einoder for violating Act by operating waste disposal facility and depositing CCDD above grade without permit. Corporate officer, to be personally liable, does not have to perform the physical acts constituting violation. Einoder participated in violations because she signed over 250 contracts authorizing debris dumping at site, many of which she signed after Agency cited operation and after she participated in discussions with Agency regarding violation notices.

E.O.R. Energy, LLC v. Pollution Control Bd. and People of the State of Illinois, 2015 IL App (4th) 130443 (4th Dist. App. Ct.). Board found Colorado companies (E.O.R. Energy and AET Environmental) violated Act in connection with transporting hazardous waste acid into Illinois and disposing it in Class II oil-and-gas field wells. Board imposed civil penalties of $200,000 and $60,000 on E.O.R. and AET, respectively. E.O.R. was energy company involved in petroleum production. AET Environmental specialized in logistics of transporting, storing, and disposing hazardous waste generated by third-parties. Companies argued Agency and Board lacked jurisdiction because acid material was "product," not "waste," and because it was injected into Class II wells, which are under DNR's exclusive jurisdiction. Appellate Court agreed with Board that acid material was both "waste" and "hazardous waste" under Act. In affirming Board, Appellate Court ruled that although DNR issued Class II UIC permits for wells, jurisdiction depended not on how wells were classified but rather on type of injections that took place. Here, acid material injected was not Class II fluid; it was hazardous waste.

Estate of Slightom v. Pollution Control Bd., 2015 IL App (4th) 140593 (4th Dist. App. Ct.). Issue was which of two conflicting deductibles applied to request for cleanup cost reimbursement from State's UST Fund. Board affirmed Agency's determination to apply higher deductible and therefore deny reimbursement. Agency had determined in 1991 that $100,000 deductible applied (Act amended in 1993 to give OSFM responsibility for determining deductibles—*see* 1993, above). OFSM determined in 2008 that $10,000 deductible applied. In reversing Board, Appellate Court held Act now authorized OSFM (not Agency) to determine deductibles and required that Agency apply OSFM-determined deductibles. Agency and Board had relied on Board regulation requiring that if more than one deductible determination was made, then higher deductible determination applied. However, Appellate Court found that when UST owner or operator elected to proceed under Title XVI of Act, as here, Board regulation was invalid to extent it allowed Agency to apply Agency-determined deductible instead of OSFM's.

2016

Act amended to restrict disposal of waste generated from remediating manufactured gas plant sites.

Act amended to require that Board adopt regulations establishing State permit program for Prevention of Significant Deterioration (PSD) meeting requirements of federal Clean Air Act. Included applicant and third-party appeals to Board of Agency PSD permit determinations.

Amended Public Water Supply Regulation Act to require that public water supplies comply with federal recommendations on optimal fluoridation.

Northern Illinois Service Co. v. Illinois Envtl. Prot. Agency, 2016 IL App (2d) 150172 (2d Dist. App. Ct.). In affirming Board finding of open dumping violation in administrative citation case, Appellate Court agreed construction company disposed waste by bringing debris materials from excavation and job sites to its property, piling them on ground, and leaving them there uncovered with no certain plan for their landfilling. Company's "ultimate disposal plan was not certain as it failed to present a time frame for gathering material and transporting it to a landfill." Evidence showed, in practice, company landfilled materials "over sporadic intervals, from one week up to 16 months. To allow such a vague, future intent to stand as a certain plan for disposal in a landfill would tend to negate regulation of this area."

Emerald Performance Materials, LLC v. Pollution Control Bd., 2016 IL App (3d) 150526 (3d Dist. App. Ct.). Board granted adjusted standard (AS) to company for its ammonia nitrogen wastewater discharges into Illinois River but company appealed three conditions imposed on that relief. Appellate Court affirmed one condition and reversed other two. First, Appellate Court affirmed condition setting five-year termination date on AS, rejecting company's argument that an AS was meant to be permanent or indefinite and "not time-bound like variances." Appellate Court explained that variance "anticipates compliance at the end of the variance period" but AS "allows the petitioner to exceed the general standard indefinitely, pursuant to the terms of the [AS], which may include conditions, including a sunset provision." Five-year sunset condition was not arbitrary or capricious. Company or its predecessors "have been discharging effluent that exceeds the allowable amount of pollution into the Illinois River for decades." Sunset condition encouraged company to "aggressively pursue means to reduce the amount of ammonia it discharges" and recognized that "technology advances." In imposing sunset condition, Board "considered all aspects of [company's] inability to comply with the ammonia standard." Board is "charged with the authority to obtain compliance with the environmental standards, and a sunset provision is a viable means to achieve compliance and not contrary to the legislative purpose of the Act."

Second, Appellate Court reversed condition precluding company from renewing or modifying AS unless it arranged for "best management practices" to offset 45% of nitrogen in its discharge. Board may not impose "pre-conditions" on petitioner's statutory right to seek AS. Because offset condition "improperly changes the statutory requirements," it was beyond Board's authority. Appellate Court also found offset condition arbitrary and capricious because Board failed to examine its technical feasibility or economic reasonableness, and there was no evidence company's discharge was negatively impacting environment. Further, in fashioning offset condition, Board improperly relied on draft document entitled "Illinois Nutrient Loss Reduction Strategy," which was issued by Agency and Illinois Department of Agriculture after Board finished accepting evidence. Company had no opportunity to respond to or address Nutrient Strategy, violating "[b]asic notions of fair play."

Third, Appellate Court reversed—as beyond Board's authority and arbitrary and capricious—condition requiring that company continue incorporating "ammonia reduction as a metric in the employee gain sharing plan." Appellate Court agreed with company that condition was "beyond the sphere of environmental protection" as there was no evidence it had reduced ammonia.

Chain O'Lakes State Park

Prairie Rivers Network v. Pollution Control Bd., 2016 IL App (1st) 150971 (1st Dist. App. Ct.). Appellate Court found genuine issue of material fact precluded Board's grant of summary judgment—in third-party NPDES permit appeal—to Agency and Metropolitan Water Reclamation District of Greater Chicago (MWRD). Appellate Court cited record evidence of unnatural plant or algal growth in waterways that received MWRD's discharges as raising doubts as to whether Agency adequately limited phosphorous concentrations in NPDES permits for MWRD's Stickney, Calumet, and O'Brien water reclamation plants.

People v. Lincoln, Ltd., 2016 IL App (1st) 143487 (1st Dist. App. Ct.). In case of 70-foot tall debris mound at unpermitted landfill, landowner did not "allow" tenant-operator's open dumping in violation of Act by failing to prevent or shut down operations. Landowner contractually required tenant-operator to comply with all laws, including Act; pursued contract rights in attempt to stop illegal waste disposal operation; and did not operate landfill. But landowner was required to remedy waste illegally stored or abandoned on property by tenant-operator many years earlier to extent tenant-operator did not address it on remand. "[A]t some point, it cannot be said that the continuation of litigation permits an owner of land to indefinitely postpone and thereby allow waste to remain on its property and not be obligated to remove the waste should another responsible party not do so." *See* Lincoln, Ltd. (2008, above, case against operator).

2017

Act amended, adding Section 38.5, to provide that Board may grant "time-limited water quality standard" (TLWQS) in proceeding neither adjudicatory nor subject to rulemaking requirements of Act or IAPA. TLWQS is form of temporary relief from surface water quality standards that Board may issue for single discharger, multiple dischargers, watershed, water body, or waterbody segment. Previously, for variances granted from surface water quality standards, USEPA had become troubled by Act's variance standard of "arbitrary or unreasonable hardship." TLWQS were designed to be consistent with the federal Clean Water Act and USEPA rules.

Act amended to require that pollution control facility siting applicant present at least one witness to testify subject to cross-examination at local government's public hearing.

Appellate Courthouse, Mount Vernon—Fifth District Appellate Court

D & L Landfill, Inc. v. Pollution Control Bd., 2017 IL App (5th) 160071 (5th Dist. App. Ct.). Appeal centered on interpreting trigger, under Section 22.17(a) of Act, for extending landfill's post-closure care period beyond 15-year minimum. In affirming Board's affirmation of Agency's denial of completion certification, Appellate Court agreed Board regulations—that prohibited landfills from contaminating groundwater and prohibited Agency from certifying completion of post-closure care unless landfill will not violate standards—constituted Board regulation requiring longer than 15 years of post-closure care within meaning of Section 22.17(a). Appellate Court rejected narrow reading that regulation must have specifically amended minimum years of post-closure care. Appellate Court also agreed with Board that Part 620 groundwater quality standards applied to Part 807 landfill; and that regulatory prohibitions on operating landfill so as to cause contamination applied even though no longer "operating"—operation during landfill's waste-accepting years resulted in groundwater exceedances.

2018

Illinois Envtl. Prot. Agency v. Pollution Control Bd. and Brickyard Disposal & Recycling, Inc., 2018 IL App (4th) 170144 (4th Dist. App. Ct.). Reversing Agency permit denial, Board found new local siting approval not required because proposed filling of wedge area would not extend beyond landfill boundaries that had already received local siting approval. Board also rejected Agency's position that Agency-permitted boundaries controlled what constitutes "new pollution control facility"

requiring local siting approval. In affirming Board, Appellate court saw "no indication from examination of the Act that the General Assembly intended to invoke the long and expensive process of local siting review each time the Agency 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."

French Canyon, Starved Rock State Park

2019

Act amended to prohibit ethylene oxide (EtO) sterilization operations unless source captures 100% of all EtO emissions and reduces EtO emissions to atmosphere by at least 99.9% or to 0.2 parts per million. Also required Agency to conduct at least one annual, unannounced inspection of all EtO sterilization sources, as well as propose Board regulations on Agency air testing for determining ambient levels of EtO throughout State.

Act amended to prohibit activities that cause EtO emissions absent Agency approved dispersion modeling and plan for continuously collecting emissions information. Specified EtO emissions sources must obtain Agency permit.

Because coal combustion residual (CCR) from electric generating industry has caused groundwater contamination and other pollution at active and inactive plants throughout Illinois, Act amended to expansively regulate CCR surface impoundments. For example, required following: permit to construct, install, modify, operate, or close CCR surface impoundment; closure alternatives analyses; with specified exceptions, financial assurance for closure, post-closure care, and remediation of CCR surface impoundments; and initial and annual fees on CCR surface impoundment owners or operators. Included applicant and third-party appeals to Board of Agency CCR permit determinations. Agency required to propose and Board to adopt CCR regulations that include procedures for identifying areas of environmental justice concern and prioritizing closure of CCR surface impoundments in these areas.

County of Will v. Pollution Control Bd., 2019 IL 122798 (Ill. Sup. Ct.). Supreme Court affirmed Appellate Court's judgment affirming Board's rulemaking decision to not require groundwater monitoring at CCDD fill operations or uncontaminated soil (US) fill operations. Board adopted regulations requiring stronger "front-end" testing and certification requirements than Agency proposed, but not requiring "back-end" groundwater monitoring requirement Agency proposed. Supreme Court noted that "because the Board is composed of technically qualified individuals, their expertise is essential in crafting regulations," adding that person challenging Board's decision "bears a heavy burden." Board "exercised its rulemaking authority in three lengthy and well-supported orders in which it concluded that 'back-end' groundwater monitoring was unnecessary because 'front-end' certification and screening would keep contaminants out of CCDD and US fill sites and, thus, satisfy the legislature's directions in sections 22.51(f)(1) and 22.51a(d)(1) [of Act]." Board was not "arbitrary and capricious" in deciding record did not support requiring groundwater monitoring to protect groundwater.

2020

Act and Drycleaner Environmental Response Trust Fund Act amended. Transferred Drycleaner Environmental Response Trust Fund Council's powers, duties, rights, and responsibilities to Agency. Assigned Board regulatory authorities concerning perchloroethylene drycleaning machines, drycleaning solvents, licensing, and Fund, as well as related enforcement authorities.

Image Credits

(in order of appearance)

- "Illinois Supreme Court Building, E. Capitol Ave. entrance, Springfield, Illinois" (May 18, 2013); Photographer: Chen, Yinan; Source: www.goodfreephotos.com, Wikimedia Commons https://commons.wikimedia.org/wiki/File:GFP-Illinois-Springfield-downtown_Supreme_Court_Building.jpg (accessed June 25, 2020).
- "Springfield, Illinois capitol building" (undated); Photographer: benkrut; Source: Getty Images https://www.gettyimages.com/detail/photo/springfield-illinois-capital-building-royalty-free-image/91428338 (accessed June 25, 2020).
- "Map of Illinois Appellate Judicial Districts"; Source: County of DuPage https://www.dupageco.org/Courts/IllinoisCourts/2860/ (accessed June 25, 2020).
- Carlyle Lake Hazlet State Park" (undated); Photographer: Wirepec; Source: Getty Images https://www.gettyimages.com/detail/photo/carlyle-lake-hazlet-state-park-royalty-free-image/493060706 (accessed June 25, 2020).
- "Kaskaskia Canyon Falls - Starved Rock State Park" (May 26, 2010) cropped; Photographer: hakkun; Source: https://web.archive.org/web/20161023153342/http://www.panoramio.com/photo/60135210 Wikimedia Commons https://commons.wikimedia.org/wiki/Category:Starved_Rock_State_Park#/media/File:Kaskaskia_Canyon_Falls_-_Starved_Rock_State_Park_-_panoramio.jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).
- "Mesic Prairie Remnant in Illinois" (Oct. 27, 2016) cropped; Photographer: Quadriflora77; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/Category:Prairie#/media/File:Mesic_Prairie_Remnant_Illinois.jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 4.0 International (license: https://creativecommons.org/licenses/by-sa/4.0/legalcode).
- "Third District Appellate Court Building in the Washington Park Historic District, Ottawa, IL (1860)." (May 11, 2013) cropped; Photographer: Teemu008; Source: https://www.flickr.com/photos/teemu08/8746702779/, Wikimedia Commons https://commons.wikimedia.org/wiki/File:Third_District_Appellate_Court_Building,_State_Supreme_Court_Building_(8746702779).jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 2.0 Generic (license: https://creativecommons.org/licenses/by-sa/2.0/legalcode).
- "Supreme Court of Illinois" (undated); Photographer: pabradyphoto; Source: Getty Images https://www.gettyimages.com/detail/photo/supreme-court-of-illinois-royalty-free-image/1024223344 (accessed June 25, 2020).
- "Waterfall at Ferne Clyffe State Park, Big Rocky Hollow Trail" (June 12, 2009) cropped & desaturated; Photographer: Abert, Curtis; Source: FCwaterfall4, Wikimedia Commons https://commons.wikimedia.org/wiki/Category:State_parks_of_Illinois#/media/File:Ferne_Clyffe_State_Park.jpg (accessed June 25, 2020); Creative Commons Attribution 2.0 Generic (license: https://creativecommons.org/licenses/by/2.0/legalcode).
- Illinois State Capitol (undated); Photographer: jerryhopman; Source: Getty Images https://www.gettyimages.com/detail/photo/illinois-state-capitol-royalty-free-image/1028745408 (accessed June 25, 2020).
- "Flora of the Midewin National Tallgrass Prairie" (Aug. 28, 2012) cropped; Photographer: Alanscottwalker; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/File:Midewin9.JPG (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).
- "Illinois Supreme Court building, Springfield, Illinois, USA" (Apr. 5, 2012) cropped; Photographer: Alanscottwalker; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/File:Illinois_Supreme_Court.JPG (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).
- "The interior dome of the Illinois State Capitol building" (undated); Photographer: JamesTung; Source: Getty Images https://www.gettyimages.com/detail/photo/illinois-state-capitol-interior-royalty-free-image/184118847 (accessed June 25, 2020).
- "Prairie Creek" (undated), Midewin National Tallgrass Prairie; Photographer: Rodriquez, EJ; Source: Getty Images https://www.gettyimages.com/detail/photo/prairie-creek-royalty-free-image/1157613853 (accessed June 29, 2020).
- "Prairie" (Aug. 24, 2017) cropped, Chain O'Lakes State Park; Photographer: Eden, Janine and Jim from New York City; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/Category:State_parks_of_Illinois#/media/File:Chain_O'Lakes_State_Park.jpg (accessed June 25, 2020); Creative Commons Attribution 2.0 Generic (license: https://creativecommons.org/licenses/by/2.0/legalcode).
- "5th District Appellate Court, Mount Vernon, Illinois" (July 12, 2007); Photographer: Lawton, Robert; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/File:5th_District_Appellate_Court.JPG (accessed June 25, 2020); Creative Commons Attribution 2.5 Generic (license: https://creativecommons.org/licenses/by/2.5/legalcode).
- "French Canyon, Starved Rock State Park, IL" (Aug. 30, 2013); Photographer: Shaw, Adam; Source: Wikimedia Commons https://commons.wikimedia.org/wiki/File:French-canyon.jpg (accessed June 25, 2020); Creative Commons Attribution-ShareAlike 3.0 Unported (license: https://creativecommons.org/licenses/by-sa/3.0/legalcode).

Thank You

The Board expresses its sincere appreciation to Richard McGill, Senior Attorney for Research and Writing, for preparing *At the Half-Century Mark: Illinois' Pollution Control Board and Environmental Protection Act.* Richard took a deep dive into the Board's archives and other legislative documents to provide a comprehensive historical perspective on the enactment of the Act and its evolution over the last 50 years, as well as the Board's role in implementing the Act. The Board also recognizes attorneys Chloe Cummings, Vanessa Horton, Mark Kaminski, and Daniel Pauley for invaluably assisting Richard in all phases of this report, including help with reviewing and drafting highlights on five decades of major judicial appeals under the Act and key environmental legislation. Finally, the Board thanks Member Brenda Carter for shepherding all the Board's efforts in commemorating this golden anniversary.

Image Credits

- "Woodsy Owl" (1970); Artist: Wendelin, Rudolph, USDA; Source: https://www.flickr.com/photos/usdagov/9733378263/, Wikimedia Commons https://commons.wikimedia.org/wiki/File:Woodsy_Owl.jpg (accessed June 25, 2020); Creative Commons Attribution 2.0 Generic (license: https://creativecommons.org/licenses/by/2.0/legalcode).

Nothing in this report should be construed as legal advice or the Board's position on any pending or future legal issue.

Back Cover Image Credits

- Logo of Illinois Pollution Control (2016); Designers: Liu, Alisa, former Board Environmental Scientist in Technical Unit; and Haley, Dave, Graphic Arts Designer Advanced, Design and Publications, Illinois Office of Communication and Information.
- "Summer wildflowers" (undated), Dixon Waterfowl Refuge; Photographer: Rodriquez, EJ; Source: Getty Images https://www.gettyimages.com/detail/photo/summer-wildflowers-royalty-free-image/1163846537 (accessed June 8, 2020).

IPCB
Illinois Pollution Control Board

Illinois Pollution Control Board

James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
Phone: (312) 814-3620 • Fax: (312) 814-3669 • TTY: (866) 323-1677

1021 North Grand Avenue East,
P.O. Box 19274
Springfield, Illinois 62794-9274
Phone: (217) 524-8500 • Fax: (217) 524-8508

Printed by Authority of the State of Illinois
6/20

IOCI 20-561