

# IPCB

Illinois Pollution Control Board

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## ANNUAL REPORT

Fiscal Year

2024

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# ILLINOIS POLLUTION CONTROL BOARD



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## **MISSION STATEMENT**

The Illinois Environmental Protection Act was enacted in 1970 for the purpose of establishing a comprehensive State-wide program to restore, protect, and enhance the quality of the environment in our State. To implement this mandate, the Act established the Illinois Pollution Control Board and accorded it the authority to adopt environmental standards and regulations for the State, and to adjudicate contested cases arising from the Act and from the regulations.

With respect for this mandate, and with recognition for the constitutional right of the citizens of Illinois to enjoy a clean environment and to participate in State decision-making toward that end, the Board dedicates itself to:

- ❖ The establishment of coherent, uniform, and workable environmental standards and regulations that restore, protect, and enhance the quality of Illinois' environment;
- ❖ Impartial decision-making that resolves environmental disputes in a manner that brings to bear technical and legal expertise, public participation, and judicial integrity; and
- ❖ Government leadership and public policy guidance for the protection and preservation of Illinois' environment and natural resources, so that they can be enjoyed by future generations of Illinoisans.





## IPCB

Illinois Pollution Control Board

**GOVERNOR**  
JB Pritzker



**CHAIR**  
Barbara Flynn Currie



**MEMBERS**  
Jennifer Van Wie  
Michelle Gibson  
Michael D. Mankowski



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September 2024

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

The Illinois Pollution Control Board is proud to present its Annual Report for fiscal year 2024. The Board usually has anywhere from 100 to 150 proceedings pending before it at any one time. Fiscal year 2024 was no exception. Still, the Board continued to process this high volume of proceedings while operating within serious budget constraints.

Below, I remind us of the Board's statutory roles and highlight an Illinois Appellate Court opinion that affirmed the Board's decisions in adopting Illinois' first statewide regulations on coal ash ponds.

**Board Roles.** Under its founding statute, the Environmental Protection Act (Act) (415 ILCS 5), the Board primarily conducts two types of proceedings: rulemakings and adjudications. Through rulemakings, the Board adopts regulations that establish Illinois' environmental standards and requirements for ensuring clean air, land, and water. Through adjudications, the Board decides contested environmental cases, including complaints that allege violations of the Act and Board regulations; petitions that ask for review of permitting and leaking underground storage tank determinations made by the Illinois Environmental Protection Agency; petitions that ask for review of pollution control facility siting determinations made by local governments; and variance and adjusted standard petitions that seek relief from Board regulations. In addition, the Board conducts a third type



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of proceeding called a “time-limited water quality standard,” which is neither a rulemaking nor an adjudication and may result in temporary regulatory relief.

**Appellate Decision.** In March of 2024, the Illinois Appellate Court issued a decision affirming the Board’s regulations concerning coal combustion residual (CCR) surface impoundments, also known as “coal ash ponds.” Before the Fourth District Appellate Court, numerous power-generating companies contested aspects of the regulations’ scope, monitoring requirements, and closure requirements. In a unanimous opinion, the Fourth District sided with the Board on each industry challenge. See Midwest Generation, LLC v. Illinois Pollution Control Board, 2024 IL App (4th) 210304. A more detailed summary of the Appellate Court’s decision appears in this Annual Report.

**Annual Report.** After introducing the Board Members, this FY24 Annual Report covers three areas:

- ❖ Completed rulemakings of the Board, including the adoption of rules on general construction or demolition debris recovery facilities;
- ❖ The Illinois Appellate Court decision affirming the Board’s CCR surface impoundment regulations; and
- ❖ From the 103rd General Assembly, enacted legislation amending the Act.

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

Sincerely,

*Barbara Flynn Currie*  
Barbara Flynn Currie  
Chair



**BOARD MEMBERS**



❖ **Chair Barbara Flynn Currie**



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.

For her “forceful, creative, consequential, and civil leadership in the Illinois General Assembly,” Barbara was awarded the 2022 Simon-Edgar Statesmanship Award, which goes to an elected government official “who has demonstrated a pattern of public service characterized by vision, courage, compassion, effectiveness, civility, and bipartisanship.” Upon presenting Barbara with the award, former Illinois Governor Jim Edgar remarked, “I have always been impressed with her passion, decency, and toughness.” He added, “Barbara and I did not always agree on policy issues, but I’ve always respected her dedication to public service and her idealism.” The annual Simon-Edgar Statesmanship Award, which Barbara received in its second year, was jointly established by the Edgar Fellows Program at the University of Illinois Institute of Government and Public Affairs and the Paul Simon Public Policy Institute at Southern Illinois University in Carbondale.

❖ **Jennifer Van Wie**



Board Member Jennifer A. Van Wie was appointed to the Board by Governor JB Pritzker in August 2020. She previously worked as an Assistant Attorney General in the Illinois Attorney General’s Office. While in the AGO Civil Environmental Bureau, she handled numerous significant cases dealing with air, water, and land pollution and natural resource damages. Ms. Van Wie also has experience in private practice in both Illinois and Wisconsin where she advised clients on state and federal environmental laws and regulations, including matters specific to the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).



Ms. Van Wie has been active in state and local bar associations and was a co-chair of the Environmental Law Committee of the Chicago Bar Association. Ms. Van Wie has focused her legal practice exclusively on environmental law and policy for over 20 years.

Ms. Van Wie received her Bachelor of Science degree in Public Policy from Indiana University. She received her Juris Doctorate and Master of Studies in Environmental Law from Vermont Law School (now Vermont Law & Graduate School).

### ❖ **Michelle Gibson**



Board Member Gibson was appointed to the Board by Governor JB Pritzker in November 2021. She is a Registered Environmental Health Specialist with over 15 years of experience in environmental consulting, waste diversion, resource management, and environmental public health. Michelle has implemented recycling and waste-reduction programs at hospitals, universities, residential facilities, military bases, manufacturing sites, and large office complexes. She has advised statewide environmental organizations on strategies for waste handling. Michelle also managed a Dekalb County solid waste program through which she worked with landfills and waste haulers to reduce residential waste. In addition, she supervised a team of Boone County environmental health

inspectors to enforce standards for clean drinking water, private on-site wastewater treatment systems, and food safety, as well as sanitary conditions at the height of the COVID-19 pandemic. Michelle received her Bachelor of Science degree in environmental science from Illinois State University.

### ❖ **Michael D. Mankowski**



Board Member Michael D. Mankowski was appointed to the Board by Governor JB Pritzker in July 2023. Throughout his career, Michael Mankowski has focused on public service and environmental issues. He previously served as the Director of the Office of Oil and Gas Resource Management at the Illinois Department of Natural Resources. As Director, Mr. Mankowski oversaw the regulation of over 1,500 oil and gas operators and 28 underground natural gas storage fields. He assisted in drafting the Illinois Underground Natural Gas Storage Safety Act and drafted amendments which helped to modernize the Department's Oil and Gas Act Regulations.

Prior to IDNR, Mr. Mankowski worked as an Assistant Attorney General in the Illinois Attorney General's Office. While in the AGO's Springfield Civil Environmental Bureau, he represented multiple state agencies in numerous significant cases dealing with air, water, and land pollution as well as natural resource damages and agency permitting matters.



## BOARD MEMBERS

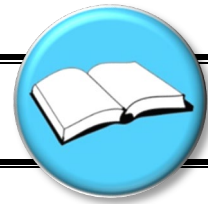
Mr. Mankowski has been active in the Illinois State Bar Association serving on the Environmental Law and Mineral Law Section Councils as well as the Strategic Marketing and the Marketing and Communications Committees.

Mr. Mankowski received his Bachelor of Science Degree in Natural Resources from the Ohio State University. He received his Juris Doctorate with a Certificate in Energy and Environmental Law from Chicago-Kent College of Law.





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## INTRODUCTION

Under the Environmental Protection Act (Act) (415 ILCS 5), the Board is responsible for adopting the State’s environmental regulations by conducting rulemaking proceedings. Rulemaking generally involves the Board holding quasi-legislative hearings and receiving public comments on regulatory proposals. The proposals are typically filed by the Illinois Environmental Protection Agency, although the Act provides that they may be filed by “[a]ny person.” 415 ILCS 5/28(a). Based on the record developed during the rulemaking, the Board issues its opinions and orders, addressing the issues and the Board’s reasons for its decisions, in addition to proposing or adopting any new or amended rule language.

The Board’s proposed rules are published in the *Illinois Register* at first notice and later reviewed by the Joint Committee on Administrative Rules (JCAR) at second notice. At final notice, the Board files its adopted rules with the Index Department of the Office of the Secretary of State for both publication in the *Illinois Register* and codification in the Illinois Administrative Code. Besides providing the Board with general rulemaking authority to adopt Statewide and site-specific rules (415 ILCS 5/27, 28), the Act authorizes the Board to conduct expedited and streamlined rulemakings. For example, the Board uses a “fast-track” procedure to adopt rules required by the federal Clean Air Act as amended by the federal Clean Air Act Amendments of 1990 (415 ILCS 5/28.5). Also, after a public comment period but without JCAR’s second-notice review and usually without holding a hearing, the Board adopts rules “identical in substance” to those of the United States Environmental Protection Agency concerning specified subjects, including drinking water, hazardous waste, underground injection control, and wastewater pretreatment (415 ILCS 5/7.2).

The rulemakings completed by the Board in fiscal year 2024 are summarized below, followed by a list of rulemakings pending at the end of that fiscal year.



## RULEMAKINGS COMPLETED IN FISCAL YEAR 2024

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### Board Adopts GCDD Recovery Facility Rules

On July 6, 2023, the Board adopted final rules for permitting, operating, and closing general construction or demolition debris (GCDD) recovery facilities. The rules create a new Part of the Board’s waste disposal rules, *i.e.*, Part 820 of Title 35 of the Illinois Administrative Code.

This rulemaking began when the Illinois Environmental Protection Agency (IEPA) filed a proposal with the Board to comply with Public Act 102-310 (eff. Aug. 6, 2021). As required, IEPA proposed GCDD recovery facility rules within one year after the Public Act’s effective date. And as that new law required, the Board adopted final rules within one year after receiving IEPA’s proposal.

During the rulemaking, the Board held two public hearings, received testimony from IEPA, and received a public comment from the Illinois Attorney General’s Office. At its June 13, 2023 meeting, the Joint Committee on Administrative Rules issued a Certification of No Objection to the rules. The rules became effective on July 6, 2023.

The rulemaking is captioned Proposed 35 Ill. Adm. Code 820 General Construction or Demolition Debris Recovery Facilities, docket R23-17. Here is a link to the Board’s [opinion and order](#). The Board’s addendum containing the text of the adopted rules is [here](#).

### Board Adopts Clean Air Act “Fast-Track” Amendments

On July 20, 2023, the Board adopted final amendments to its air pollution control rules. The amendments removed provisions that had allowed the Illinois Environmental Protection Agency (IEPA) to grant emission sources advance permission to continue operating during a malfunction or breakdown or violate emission standards during startup. Under those provisions, compliance with IEPA’s advance permission gave the source a “prima facie” defense to an enforcement action resulting from exceeding emission limits during a startup, malfunction, or breakdown. The United States Environment Protection Agency (USEPA) found the provisions inconsistent with the Clean Air Act.

The adopted amendments impact three Parts of the Board’s air pollution rules, *i.e.*, Parts 201, 202, and 212 of Title 35 of the Illinois Administrative Code. IEPA filed the proposal under the “fast-track” procedures of Section 28.5 of the Environmental Protection Act, which required the Board to proceed toward adoption by meeting a series of specific deadlines. During the rulemaking, the Board held two public hearings, heard testimony, and received public comment.

At its June 13, 2023 meeting, the Joint Committee on Administrative Rules (JCAR) considered the Board’s second-notice proposal but, with the Board’s concurrence, extended the second-notice period. At its July 18, 2023 meeting, JCAR issued [Statements of Objection](#) to the proposed amendments. The Board submitted [responses](#) to JCAR’s objections and respectfully declined to withdraw or modify its proposal.



The final amendments adopted by the Board at its July 20, 2023 meeting became effective on July 25, 2023. To avoid mandatory sanctions against the State of Illinois under the Clean Air Act, IEPA must, by August 11, 2023, submit to USEPA an approvable State Implementation Plan revision that includes the final amendments.

The rulemaking is captioned Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, docket R23-18. Here is a link to the Board's [opinion and order](#), which includes the text of the adopted amendments. On an expedited basis in the sub-docket rulemaking captioned Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, docket [R23-18\(A\)](#), the Board will consider alternative standards for startup, shutdown, and malfunction (SSM) events.

### **Board Adopts “Identical-in-Substance” Amendments to Ambient Air Quality Standards**

On October 5, 2023, the Board adopted an amendment to keep Illinois' ambient air quality standards identical in substance to the National Ambient Air Quality Standards (NAAQS). The amendment to 35 Ill. Adm. Code 243 reflects one action taken by the United States Environmental Protection Agency (USEPA) during the second half of 2022. Specifically, USEPA updated its *List of Designated Reference and Equivalent Methods* to modify existing method designations and designated a new Federal Equivalent Method (FEM) for fine particulate matter (PM<sub>2.5</sub>) in ambient air. The Board's amendment took effect on October 5, 2023.

The Board's rulemaking is captioned National Ambient Air Quality Standards Update, USEPA Regulations (July 1, 2022 through December 31, 2022), docket R23-15. Here is a link to the Board's [opinion and order](#), which includes the text of the adopted amendment.

### **Board Adopts “Identical-in-Substance” Amendments to Drinking Water Rules**

On October 19, 2023, the Board adopted amendments to Illinois' primary drinking water regulations at 35 Ill. Adm. Code 611. The amendments are “identical in substance” to amendments adopted by the United States Environmental Protection Agency (USEPA) under the federal Safe Drinking Water Act (SDWA) during the second half of 2020 and the first half of 2021. Among its amendments, USEPA revised standards for lead in plumbing fixtures and plumbing materials, adopted the Lead and Copper Rule Revisions (LCRR), and approved new alternative test procedures (ATPs) for demonstrating compliance with the National Primary Drinking Water Regulations.

In addition to the revisions prompted by USEPA's updates, the Board found more amendments necessary. For example, the Board corrected the Radionuclides Rule. The Board also removed rules made obsolete because they had applied to suppliers that no longer exist in Illinois—namely, unfiltered system suppliers using surface water sources and groundwater under the direct influence of surface water. A supplier using either of these sources now must apply filtration treatment and disinfection to water it provides to the public.

The Board received public comments from USEPA, the Joint Committee on Administrative Rules, and the Illinois Environmental Protection Agency, as well as one comment filed by 15 different environmental, religious, and citizens' organizations. The Board addressed all the



comments in its final opinion and order, a link to which is provided below. The amendments to Part 611 became effective on November 2, 2023.

The Board's rulemaking is captioned [SDWA Update, USEPA Amendments \(July 1, 2020 through December 31, 2020\)](#) and [SDWA Update, USEPA Amendments \(January 1, 2021 through June 30, 2021\)](#), dockets R21-10 and R22-2 (consol.). Here are links to (1) the Board's [opinion and order](#); (2) the Board's [adopted amendments](#); and (3) the Board's [addendum](#), which provides tables of information concerning the rulemaking.

### **Board Adopts “Identical-in-Substance” Amendments to Drinking Water Rules**

On December 7, 2023, the Board adopted amendments to Illinois' primary drinking water regulations at 35 Ill. Adm. Code 611. The amendments are “identical in substance” to amendments adopted by the United States Environmental Protection Agency (USEPA) under the federal Safe Drinking Water Act (SDWA) during the second half of 2022. During this period, USEPA did not amend the federal National Primary Drinking Water Regulations (NPDWRs), but it did grant summary approval of seven additional alternative test procedures (ATPs) for analyzing contaminants in drinking water. The Board therefore added these additional ATPs to the Illinois drinking water monitoring rules.

During this rulemaking, the Board received comments from the Illinois Secretary of State, the Joint Committee on Administrative Rules, and the Illinois Environmental Protection Agency. The Board addressed these comments in its December 7, 2023 opinion, a link to which is provided below. The amendments to Part 611 took effect on December 7, 2023.

The Board's rulemaking is captioned [SDWA Update, USEPA Amendments \(July 1, 2022 through December 31, 2022\)](#), docket R23-9. Here are links to (1) the Board's [opinion and order](#), which includes the adopted amendments; and (2) the Board's [addendum](#), which provides tables of information concerning the rulemaking.

### **Board Adopts “Identical-in-Substance” Amendments to VOM Definition**

On January 4, 2024, the Board adopted amendments to keep Illinois' definition of “volatile organic material” (VOM) “identical in substance” to the federal definition of “volatile organic compound” (VOC). The amendments to 35 Ill. Adm. Code 211 reflect one action taken by the United States Environmental Protection Agency (USEPA) during the first half of 2023. Specifically, USEPA excluded HFO-1336mzz(E) from its VOC definition (40 C.F.R. § 51.100(s)) after determining that the compound makes a negligible contribution to the formation of tropospheric ozone, commonly known as “smog.” The Board also made a few non-substantive changes to its VOM definition (35 Ill. Adm. Code 211.7150).

The Board's rulemaking is captioned [Definitions of VOM, USEPA Amendments \(January 1, 2023 through June 30, 2023\)](#), docket R24-8. Here are links to (1) the Board's [opinion and order](#); and (2) the Board's [addendum](#), which provides the rule text of the adopted changes. The amendments to Part 211 became effective on January 4, 2024.



### **Board Adopts Non-Substantive Amendments to Agriculture-Related Water Pollution Rules**

On February 15, 2024, the Board adopted non-substantive amendments to its agriculture-related water pollution rules. These final amendments are part of a larger undertaking by the Board to update its rules across multiple media and subject areas. The amendments, which took effect on February 15, 2024, include removing unnecessary language, replacing outdated text, updating statutory references, and reorganizing provisions for clarity. All four Parts of the Board's Subtitle E rules are affected, *i.e.*, Parts 501, 502, 503, and 506 of Title 35 of the Illinois Administrative Code.

During this rulemaking, the Board held two public hearings, receiving testimony from the Illinois Environmental Protection Agency (IEPA). The Board also received three public comments from IEPA, as well as a collective public comment from the Illinois Beef Association, Illinois Farm Bureau, Illinois Milk Producers Association, and the Illinois Pork Producers Association. At its February 6, 2024 meeting, the Joint Committee on Administrative Rules issued a "Certification of No Objection" to the Board's proposed second-notice amendments, subject to a handful of non-substantive changes, all of which the Board included in the final amendments.

The rulemaking is captioned Amendments to 35 Ill. Adm. Code Subtitle E, docket R18-25. Here is a link to the Board's [opinion and order](#), which includes the text of the adopted amendments.

### **Board Adopts "Identical-in-Substance" Amendments to Wastewater Pretreatment Regulations**

On May 16, 2024, the Board adopted an amendment to keep Illinois' wastewater pretreatment regulations "identical in substance" to the federal regulations. The amendment to 35 Ill. Adm. Code 307 reflects action taken by the United States Environmental Protection Agency (USEPA) during the first half of calendar year 2023. USEPA amended a provision of the steam electric power generating point source category within the effluent limitation guidelines. Specifically, USEPA extended the date by which existing coal-fired power plants must submit a notice if they plan to participate in a subcategory of electric generating units permanently ceasing coal combustion by December 31, 2028. The Board added the extended deadline to the Illinois sewer discharge criteria rules for steam electric power generating. The Board's amendment took effect on May 16, 2024.

The Board's rulemaking is captioned SDWA Update, USEPA Amendments (January 1, 2023, through June 30, 2023), docket R24-6. Here is a link to the Board's [opinion and order](#), which includes the text of the amendment.

### **Board Adopts "Identical-in-Substance" Amendments to Ambient Air Quality Standards**

On May 16, 2024, the Board adopted amendments to keep Illinois' ambient air quality standards identical in substance to the National Ambient Air Quality Standards (NAAQS). The amendments to 35 Ill. Adm. Code 243 reflect two actions taken by the United States



Environmental Protection Agency (USEPA) during the second half of 2023. First, USEPA updated the current ozone absorption cross-section to the recommended consensus-based cross-section value. Second, USEPA designated two new equivalent methods for monitoring ambient air quality, one for measuring concentrations of lead (pb) and the other for measuring concentrations of particulate matter (PM<sub>10</sub>). The Board’s final amendments, which became effective on May 16, 2024, account for these USEPA updates.

The Board’s rulemaking is captioned National Ambient Air Quality Standards Update, USEPA Regulations (July 1, 2023 through December 31, 2023), docket R24-15. Here are links to the Board’s (1) [opinion and order](#); and (2) [addendum](#), which includes the text of the adopted amendments.

### **Board Adopts “Identical-in-Substance” Amendments to Wastewater Pretreatment Rules**

On June 20, 2024, the Board adopted amendments to Illinois’ wastewater pretreatment regulations. The amendments to 35 Ill. Adm. Code 307 are “identical in substance” to rule amendments adopted by the United States Environmental Protection Agency (USEPA) during the second half of 2023. Specifically, on August 9, 2023, USEPA updated the reporting and recordkeeping requirements for dental offices as a point source category (40 C.F.R. § 441.50).

The Board’s rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (July 1, 2023 through December 31, 2023), docket R24-14. Here is a link to the Board’s [opinion and order](#), which includes the text of the adopted amendments.

### **Board Adopts “Identical-in-Substance” Amendments to Hazardous Waste Regulations**

On June 20, 2024, the Board adopted amendments to keep Illinois’ hazardous waste regulations “identical in substance” to the federal regulations. The amendments reflect actions taken by the United States Environmental Protection Agency (USEPA) during the second half of calendar years 2020 and 2021, as well as the first half of calendar year 2023. During these timeframes, USEPA updated its regulations for identifying ignitable hazardous waste, modernized test methods that currently require the use of mercury thermometers, harmonized its regulations on hazardous waste import-export recovery and disposal operations with new Canadian disposal code numbers and descriptions, and revised Method 23.

The Board’s rulemaking is captioned RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2020 through December 31, 2020), RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2021 through December 31, 2021), and RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (January 1, 2023 through June 30, 2023), dockets R21-13, R22-13, and R24-4. In all, the Board amended seven Parts of Title 35: Parts 705, 720, 721, 722, 724, 725, and 726 (35 Ill. Adm. Code 705, 720, 721, 722, 724, 725, 726). Here are links to the Board’s (1) [opinion and order](#); and (2) [addendum](#), which includes the text of the adopted amendments.



## **RULEMAKINGS PENDING AT END OF FISCAL YEAR 2024**

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- ❖ Amendments to 35 Ill. Adm. Code Subtitle B: Air Pollution, [docket R18-21](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle G: Waste Disposal, [docket R18-27](#)
- ❖ Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, [docket R20-19\(A\)](#)
- ❖ Drycleaner Environmental Response Trust Fund Act Proposal to Add 35 Ill. Adm. Code Part 1501, Repeal 35 Ill. Adm. Code Part 1500, and Repeal 2 Ill. Adm. Code Part 3100, [docket R21-19\(A\)](#)
- ❖ Amendments to 35 Ill. Adm. Code Part 203: Major Stationary Sources Construction and Modification; 35 Ill. Adm. Code Part 204: Prevention of Significant Deterioration; and Part 232: Toxic Air Contaminants, [docket R22-17](#)
- ❖ Proposed Amendments to Groundwater Quality (35 Ill. Adm. Code 620), [docket R22-18](#)
- ❖ Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, [docket R23-18\(A\)](#)







## INTRODUCTION

Under the Environmental Protection Act (415 ILCS 5), final orders of the Board are appealable directly to the Illinois appellate court (rather than to the circuit courts) and from there to the Illinois Supreme Court. In Fiscal Year 2024, Board rules concerning coal ash ponds were affirmed on appeal.

## APPELLATE DECISION ISSUED IN FISCAL YEAR 2024

### Fourth District Appellate Court Upholds Board's Coal Ash Rules

- ❖ *Midwest Generation, LLC v. Illinois Pollution Control Board*, [2024 IL App \(4th\) 210304](#) Board docket R20-19

In response to a host of power-generating companies appealing the Board's new regulations on coal ash ponds, the Fourth District Appellate Court issued a unanimous opinion on March 13, 2024, affirming the Board. 2024 IL App (4th) 210304 ¶¶ 3, 4.

In April 2021, the Board adopted Illinois' first statewide regulations on coal ash ponds or, more formally, coal combustion residual (CCR) surface impoundments. *Id.* ¶ 2. Industry challenged four of those rules in the appellate court: (1) the rule defining "inactive CCR surface impoundment" to include impoundments that no longer contain liquid; (2) the rule requiring the owner or operator of a CCR surface impoundment to conduct *monthly* groundwater elevation monitoring; (3) the rule requiring a CCR surface impoundment owner or operator to remove the impoundment liner if the owner or operator elects to close the impoundment by removing all the CCR; and (4) the rule requiring a CCR surface impoundment owner or operator to install a final cover system that is at least six feet thick if the owner or operator elects to close the impoundment by leaving the CCR in place. *Id.* ¶¶ 2, 34-37.

In its 56-page opinion, the appellate court found that the Board did not act arbitrarily or capriciously (*id.* ¶¶ 71-93, 109-111, 134-146, 170-174), did not exceed its statutory authority (*id.* ¶¶ 57-66), and did not fail to consider the technical feasibility or economic reasonableness of the rules (*id.* ¶¶ 188-191). The court also found that the Board did not impose improper retroactive obligations by using October 19, 2015 (the effective date of the federal regulations), as the cutoff date for considering CCR surface impoundments to be closed. *Id.* ¶¶ 211-222.



Two provisions of the Environmental Protection Act were central to the appellate court repeatedly finding against the industry petitioners. First, in Section 22.59(g)(1) of the Environmental Protection Act (415 ILCS 5/22.59(g)(1) (2022)), the General Assembly directed that the Board’s rules “must, at a minimum \*\*\* be *at least* as protective and comprehensive as the federal regulations \*\*\* in [part 257] governing CCR surface impoundments.” *Id.* ¶ 63 (emphasis by court) (referring to 40 C.F.R. 257). Therefore, the legislature authorized the Board to adopt “rules that were *more* protective than the federal ones.” *Id.* ¶ 64 (emphasis by court). Accordingly, it did not matter that the Board’s definition of “inactive CCR surface impoundment” is broader than USEPA’s (*id.* ¶¶ 55-56, 62-64) or that the Board’s rule requires a thicker final cover for closure in place than USEPA’s rule does (*id.* ¶ 173).

Second, in Section 22.59(a), the General Assembly describes the purposes of Section 22.59—to “promote a healthful environment, including clean water, air, and land, \*\*\* so as to protect public health”—and then, to carry out those purposes, requires that the Section’s provisions be “*liberally construed.*” *Id.* ¶¶ 63, 214 (emphasis by court). Especially when liberally construing Section 22.59, it was clear to the appellate court that “the legislature intended that where the Board deemed appropriate, new duties could be imposed on existing impoundments.” *Id.* ¶¶ 214-216.

None of the industry petitioners sought rehearing in the appellate court or leave to appeal to the Illinois Supreme Court.





## INTRODUCTION

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Summarized below are fourteen Public Acts of the 103rd General Assembly that amend the Environmental Protection Act. These amendments passed both houses or took effect in fiscal year 2024.

For more information about these and other legislative matters, please consult the General Assembly's website (<https://www.ilga.gov/>).

## PUBLIC ACTS OF 103RD GENERAL ASSEMBLY

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### ❖ [Public Act 103-383](#)

Effective July 28, 2023

Public Act 103-383 creates the Statewide Recycling Needs Assessment Act. The legislation also amends Section 22.15 of the Environmental Protection Act to require that the Solid Waste Management Fund pay for the costs of administering the Statewide Recycling Needs Assessment Act.

### ❖ [Public Act 103-333](#)

Effective January 1, 2024

Public Act 103-333 amends the Environmental Protection Act by adding definitions and rulemaking provisions concerning limestone residual material generated from treating drinking water. First, Public Act 103-333 amends the definition of “pollution control facility” in Section 3.330 by adding—to the list of sites *not* considered pollution control facilities—the “portion of a mine used for the placement of limestone residual materials generated from the treatment of drinking water by a municipal utility in accordance with rules adopted under Section 22.63.” Second, Public Act 103-333 adds Section 22.63 to the Environmental Protection Act. Under Section 22.63, the Board “shall adopt rules for the placement of limestone residual materials generated from the treatment of drinking water by a municipal utility in an underground limestone mine located in whole or in part within the municipality that operates the municipal utility.” The rules “shall be consistent with the Board’s Underground Injection Control regulations for Class V wells, provided that the rules shall allow for the limestone residual materials to be delivered to and placed in the mine by means other than an injection well.” And



for Section 22.63, “limestone residual material” means “limestone residual generated from the treatment of drinking water at a publicly-owned drinking water treatment plant.”

❖ [Public Act 103-93](#)

Effective January 1, 2024

Public Act 103-93 adds Section 13.10 to the Environmental Protection Act. Section 13.10 requires the Illinois Environmental Protection Agency (IEPA), by March 1, 2024, to make publicly available on its website specified information about microplastics. That information must include a description of microplastics and their effects on aquatic life and human health, as well as “any federal and State regulatory actions taken to address microplastics and their effects on aquatic life and human health.” IEPA must update the website as additional information about microplastics in Illinois becomes available. In addition, by October 1, 2024, IEPA must submit a report to the General Assembly and the Governor that provides “an overview of any [IEPA] actions relating to microplastics, a comparative analysis of actions in other states regarding microplastics in the environment, and information on the latest guidance from the United States Environmental Protection Agency.”

❖ [Public Act 103-172](#)

Effective January 1, 2024

Public Act 103-172 amends Sections 58.2 and 58.7 of the Environmental Protection Act, within that statute’s Title XVII on the Site Remediation Program. First, the legislation changes to \$2,500 the advance partial payment IEPA may require for its review, rather than “an amount acceptable to [IEPA], but not to exceed \$5,000 or one-half of the total anticipated costs of [IEPA], whichever sum is less.” Second, Public Act 103-172 changes the timeframe for review by IEPA or a “RELPEG” (a Licensed Professional Engineer or a Licensed Professional Geologist) contracted by the remediation applicant. The existing timeframe is 60-days. The legislation maintains that timeframe but only for reviewing a single plan or report, while extending it to 90-days for multiple plans or reports submitted concurrently. Third, the legislation provides that IEPA may decline to act on a remediation applicant’s submittal if the applicant has failed to pay required fees. And until all required fees are paid, any deadline for IEPA action on that submittal is tolled.

❖ [Public Act 103-372](#)

Effective January 1, 2024

Public Act 103-372 creates the Paint Stewardship Act and makes conforming changes to Section 22.15 of the Environmental Protection Act. Specifically, Section 22.15 is amended to provide that fees collected under the Paint Stewardship Act must be deposited in the Solid Waste Management Fund, from which the costs of administering the Paint Stewardship Act must be paid.



### ❖ [Public Act 103-342](#)

Effective January 1, 2024

Public Act 103-342 amends Section 21(q) of the Environmental Protection Act, which prohibits conducting a landscape waste composting operation without an IEPA permit. Section 21(q) also allows specified activities without a permit if listed criteria are met. Public Act 103-342 amends some of those criteria to account for the “incidental sale of finished compost,” generally by excepting it from being considered compost generated by the composting facility. The amendments define “incidental sale of finished compost” as “the sale of finished compost that meets general use compost standards and is no more than 20% or 300 cubic yards, whichever is less, of the total compost created annually by a private landowner for the landowner’s own use.”

### ❖ [Public Act 103-569](#)

Effective June 1, 2024

Public Act 103-569 amends Sections 25a-1 and 25b of the Environmental Protection Act by adding the Office of Homeland Security to the agencies required to receive both a decommissioning plan before a nuclear power plant begins decommissioning and an environmental feasibility report before a nuclear steam-generating facility or a nuclear fuel reprocessing plant begins construction. The Public Act also adds a gloss on the Board’s power to adopt standards to protect the health, safety, and welfare of Illinois citizens from radiation hazards—namely, that the Board consult with the Illinois Emergency Management Agency, the Office of Homeland Security, and IEPA.

### ❖ [Public Act 103-651](#)

Effective July 18, 2024

Public Act 103-651 adds provisions to the Environmental Protection Act concerning carbon capture and sequestration. These provisions include a prohibition on injecting any carbon dioxide stream produced by a carbon dioxide capture project into specified wells to enhance oil or gas recovery, as well as a prohibition on operating a carbon sequestration activity in a way that causes, threatens, or allows carbon dioxide releases tending to cause water pollution. The legislation adds a new title to the Environmental Protection Act, Title XVIII on carbon capture and sequestration. The new title addresses air construction permit applications for carbon dioxide capture projects at existing sources. Public Act 103-651 also authorizes IEPA to propose rules to the Board concerning minimum carbon capture efficiency rates. Additionally, among the 18 sections of new Title XVIII are provisions on permitting, closure, financial assurance, insurance, liability, and fees.

### ❖ [Public Act 103-1006](#)

Effective January 1, 2025

Public Act 103-1006, which adds Section 22.23e to the Environmental Protection Act, concerns electric vehicle battery storage sites. Generally, this legislation requires owners or operators of specified battery storage sites to register with IEPA. Public Act 103-1006 also defines a host of terms, including “battery storage site” and “used battery”. Under these definitions, a battery



storage site is a site where used batteries are stored; and a used battery is an electric vehicle battery that is sold, given, or otherwise conveyed to a battery storage site. In addition, the legislation requires, by January 1, 2026, that IEPA propose related rules to the Board. In turn, within one year after receiving IEPA's proposal, the Board must adopt final rules for the operation of battery storage sites. Those rules must include requirements for end-of-life battery receipt, handling, storage, and transfer; standards for fire prevention; requirements for contingency planning and emergency response; and requirements for recordkeeping, reporting, and financial assurance.

❖ [Public Act 103-799](#)

Effective January 1, 2025

In Public Act 103-1991, which adds Section 21.8 to the Environmental Protection Act, the General Assembly finds that because all fluorescent lamps contain mercury, they can create an immediate public health and environmental hazard if accidentally broken. Generally, this legislation prohibits anyone from selling, offering to sell, or distributing, as a new manufactured product, any of the specified types of fluorescent lamps in Illinois. When the prohibition first applies varies based on the type of fluorescent lamp.

❖ [Public Act 103-801](#)

Effective January 1, 2025

Public Act 103-801 concerns wastewater reuse. This legislation amends Section 12 of the Environmental Protection Act and adds Sections 12.7 and 14.8 to that statute. Among other things, the legislation allows a publicly owned treatment works' treated municipal wastewater to be used for irrigation if conducted in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Public Act 103-801 also authorizes IEPA to propose rules to the Board concerning the use of recycled sewage treatment plant effluent and the direct potable reuse of treated wastewater.

❖ [Public Act 103-1008](#)

Effective August 9, 2024

Public Act 103-1008 amends Section 39.5 of the Environmental Protection Act, which concerns the Clean Air Act Permit Program (CAAPP). The legislation removes Section 39.5(7)(k), which had required that each CAAPP permit include enumerated conditions for establishing an affirmative defense to specified noncompliance due to defined emergency situations.

❖ [Public Act 103-1017](#)

Effective January 1, 2025

Public Act 103-1017 amends two prohibitions in Section 22.24 of the Environmental Protection Act, which concerns cleaning mud, gravel, waste, and other material from landfill sites off the wheels and undercarriages of trucks before leaving landfills. The amendments, beginning on January 1, 2025, make both prohibitions applicable in counties with a population over 250,000, instead of over 275,000. Under one prohibition, a person must not operate a landfill in an



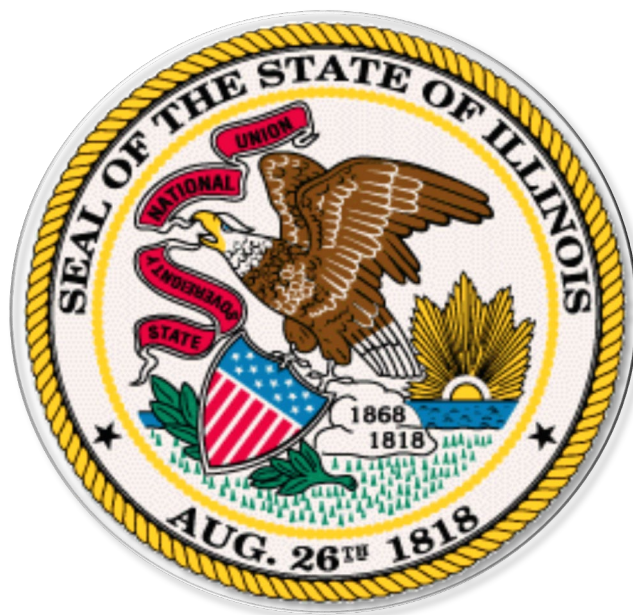
applicable county unless truck-cleaning facilities are provided at the landfill. Under the other prohibition, a person must not drive a truck off a landfill site in an applicable county without first cleaning those materials off the truck's wheels and undercarriage.

❖ **Public Act 103-1025**

Effective January 1, 2025

Public Act 103-1025 amends Section 22.12 of the Environmental Protection Act by deleting old provisions that had required the owner of an underground storage tank (UST) containing hazardous waste to register the UST with IEPA, as well as notify IEPA of any change in registration information or removal of the UST from service.





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