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Letter from the Chairman

While adjudicating contested cases is a large part of the Pollution Control Board's workload, Section 5(b) of the Environmental Protection Act (Act) provides that "[t]he Board shall determine, define and implement the environmental control standards applicable in the State of Illinois." This rulemaking process is a very important responsibility, and the Board expects a full schedule of this activity in the next several months.

The Board's semi-annual regulatory agenda recently appeared in the *Illinois Register* at 28 Ill. Reg. 10429-81. You can also view it on and download it from the Board's Web site at <http://www.ipcb.state.il.us/Archive/dscgi/dx.py/View/Collection-487>. The proposals summarized below won't necessarily be filed during the second half of the calendar year, and the Board may take up other proposals, but we do expect to begin considering the following issues during the fall or winter of 2004.



Concentrated Animal Feeding Operation (CAFO): The Illinois Environmental Protection Agency (IEPA) will prepare a proposal relating to new CAFO regulations enacted by the U.S. Environmental Protection Agency (USEPA) in 2002 under the National Pollutant Discharge Elimination System (NPDES).

Nitrogen Oxides Emissions: Public Act 93-0669 (effective March 19, 2004) authorized the IEPA to sell certain allowances and to disburse the proceeds, and the Board expects a proposal implementing these sales. The Board also expects this proposal to include emission controls for large internal combustion engines, as required by the state's NOx SIP Call issued by the USEPA.

Recycling Facilities: The Board expects to receive a proposal that would add operating standards for facilities recycling materials such as paper, glass, plastic, or metal cans.

Site Remediation Program: Because these sites may generate public attention and concern, the IEPA expects to propose new rules requiring them to develop and implement a Community Relations Plan.

Sludge Management Standards: The Board expects the IEPA to file a proposal relating to land application of sewage sludge. These rules would establish pollutant limits, pathogen reduction requirements, and vector control measures.

Tiered Approach to Corrective Action Objectives (TACO): Since the Board adopted TACO regulations in 1997, implementation of those rules has generated the need for various amendments, corrections, and clarifications.

Water Quality Standards: The IEPA is now preparing a proposal relating to water quality standards for total dissolved solids, sulfate, and chloride, which will be used to determine compliance with various requirements under the federal Clean Water Act. The Board also expects a proposal addressing bacteria levels in the state's surface waters.

The Board certainly will continue to decide contested cases, but these new rulemakings would be a large and important part of our activity. Naturally, the Board will continue to consider its active rulemaking dockets, including those addressing underground storage tanks, water quality standards for radium and dissolved oxygen, and interim phosphorus effluent standards. The Board invites you to take part in all of these proceedings and assist us in making sound environmental policy for the people of our state.

Sincerely,

A handwritten signature in black ink that reads "J. Philip Novak". The signature is written in a cursive style with a large initial "J".

J. Philip Novak
Chairman

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Federal Update

United States Environmental Protection Agency Adopts Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category Under the Clean Water Act

On September 8, 2004 (69 Fed. Reg. 54475), the United States Environmental Protection Agency (USEPA) adopted effluent limitations guidelines and new source performance standards for the meat and poultry products point source category. The adopted rules revise Clean Water Act effluent limitations guidelines and new source performance standards for meat producing facilities.

The adopted amendments apply to: existing as well as new slaughtering facilities (first processors); facilities that further process meat to produce products like sausages (further processors); and independent rendering facilities that convert inedible by-products to items like pet food (renderers). Additionally, the rules establish, for the first time, effluent limitations guidelines and new source performance standards for existing and new poultry first and further processors.

The guidelines and standards establish limitations on wastewater discharges of specified pollutants for meat and poultry products facilities that discharge directly to U.S. waters. There are no current regulations for facilities that discharge indirectly, and USEPA has not adopted regulations for those facilities. The adopted standards apply to facilities that are at or above a specified production threshold, and did not revise the current effluent limitations guidelines or new source performance standards for meat first or further processors below the production threshold. USEPA changed the production threshold for small poultry producers from 10 million pounds per year (lbs/yr) to 100 million lbs/yr.

USEPA has estimated that these final rules will benefit the Nation's receiving waters by reducing discharges of conventional pollutants, ammonia, and nitrogen. USEPA expects compliance with this regulation to reduce discharges of nitrogen up to 27 million pounds per year, ammonia by 3 million pounds per year, and conventional pollutants by 4 million pounds per year.

These regulations become effective October 8, 2004.

For additional technical information contact Samantha Lewis at (202) 566-1058. For additional economic information contact James Covington at (202) 566-1034.

The Board anticipates that the Illinois Environmental Protection Agency (IEPA) will determine, as part of the triennial review of the State's water rules required by the Clean Water Act, whether any amendments to the State's water rules are necessary as a result of this federal action. If so, the Board would expect to receive a regulatory proposal from the IEPA under Section 27 or 28.2 of the Environmental Protection Act (415 ILCS 5/27, 28.2 (2002)).

United States Environmental Protection Agency Adopts National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters Under Section 112(d) of

the Clean Air Act

On September 13, 2004 (69 Fed. Reg. 55217), the United States Environmental Protection Agency (USEPA) adopted national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters.

USEPA has identified industrial, commercial, and institutional boilers and process heaters as major sources of hazardous air pollutants (HAP) emissions. The final rule will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting the application of the maximum achievable control technology. The final rule is expected to reduce HAP emissions by 50,600 to 58,000 tons per year.

The HAP emitted by facilities in the boiler and process heater source category include arsenic, cadmium, chromium, hydrogen chloride (HCl), hydrogen fluoride, lead, manganese, mercury, nickel, and various organic HAP. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation to the lung, skin, and mucus membranes, effects on the central nervous system, kidney damage, and cancer. In general, these findings only have been shown with concentrations higher than those typically in the ambient air. The final rule contains numerous compliance provisions including health-based compliance alternatives for the hydrogen chloride and total selected metals emission limits.

The final rule is effective November 12, 2004.

For information concerning the rule development, contact Jim Eddinger, Combustion Group, Emission Standards Division (C439-01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5426, fax number (919) 541-5450, email address at: eddinge.jim@epa.gov.

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2002)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

Appellate Update

Third District Grants The Board's Motion To Dismiss Appeal in "People v. ESG Watts, Inc.", No. 3-04-0341 (September 13, 2004), PCB 01-167(April 1, 2004)

In a September 13, 2004 final unpublished order under Supreme Court Rule 23 (155 Ill.2d R. 23), the Third District Appellate Court dismissed, for lack of jurisdiction, an appeal filed by ESG Watts, Inc. and miscaptioned by ESG Watts as People v. ESG Watts, Inc., No. 3-04-0341 (September 13, 2004). When filing the appeal, ESG Watts did not name the Board as a party respondent. The Board argued that the appellant's failure to name all necessary parties of record pursuant to Supreme Court Rule 335 was a fatal error. The Court agreed, dismissing the appeal in a one-paragraph order.

The Illinois Supreme Court Rules and the Administrative Review Law (735 ILCS 5/3-113 (2002)) require that petitions for review name all parties from the underlying proceeding and the administrative agency that rendered the decision being appealed. In the motion to dismiss ESG Watts appeal, among other precedent, the Board relied on the Illinois Supreme Court's 2000 decision in ESG Watts v. Pollution Control Board, 191 Ill. 2d 26, 727 N.E.2d 1022 (2000). In that appeal of a Board decision in an enforcement case, the Illinois Supreme Court dismissed the appeal because ESG Watts failed to name the People, the complainant in the action before the Board. In so ruling, the Court applied its earlier precedent McGaughy v. Illinois Human Rights Commission, 165 Ill. 2d 1, 649 N.E.2d 404 (1995).

Here, in response to the motion to dismiss, ESG Watts unsuccessfully argued that because he allegedly was not served with the Board's final order, he had to file the appeal in a "rush" and so mistakenly copied and pasted the caption from the underlying Board case (*i.e.*, People v. ESG Watts). In its reply to that assertion, the Board provided the Court with an affidavit from the Board's Clerk. The affidavit outlined the steps taken to make service

of various orders on ESG Watts' attorney of record at the address he provided in his appearance. Attached were certified mail receipts confirming proper service, effectively rebuffing the claims of ESG Watts' counsel.

The dismissal of ESG Watts' appeal leaves undisturbed the Board's April 1, 2004 decision in the underlying case. The Board found that ESG Watts committed numerous violations at its Taylor Ridge landfill in Rock Island County. These included 1) failure to initiate and complete landfill closure in violation of permits and a prior Board order (People v. ESG Watts, Inc., PCB 96-107 (February 5, 1998)); 2) odor violations as a result of emission of landfill gas and other contaminants, 3) water pollution by allowing stormwater runoff and other contaminants to flow into waters of the State, 4) deposition of over 34,000 cubic yards of waste in areas of the landfill exceeding the maximum permitted height, and 5) failure to submit quarterly groundwater reports for five quarters.

The Board imposed a \$1,000,000 civil penalty and required ESG Watts to pay the People's attorney fees and expert witness costs totaling \$7,140.

First District Dismisses Appeal in Vogue Tyre & Rubber Co. v. Office of the State Fire Marshal of the State of Illinois, No. 1-03-0521 (September 28, 2004)(PCB 01-167)

In a September 28, 2004 final unpublished order under Supreme Court Rule 23 (155 Ill.2d R. 23), the First District Appellate Court dismissed, for lack of jurisdiction, the appeal Vogue Tyre Rubber & Co. v. Office of the State Fire Marshal No. 1-03-0521 (September 28, 2004). In the case before the Board, the Board had affirmed a decision by the Office of the State Fire Marshal (OSFM) finding Vogue Tyre's ineligible to have cleanup costs for specific leaking underground storage tanks (USTs) reimbursed from the UST Fund under the Environmental Protection Act (415 ILCS 5/57.9(a)(4) (2002). Vogue Tyre Rubber & Co. v. Office of the State Fire Marshal, PCB 95-78 (December 5, 2002).

When filing the appeal, Vogue Tyre did not name the Board as a party respondent. In April 2003, the OSFM and the Board moved to dismiss, arguing that the appellant's failure to name all necessary parties of record pursuant to Supreme Court Rule 335 was a fatal error. Instead of ruling on the motion, the court decided to "take the motion with the case", and required the parties and the Board to fully brief the underlying environmental issues. Before oral argument, however, the court issued a 14-page order dismissing the appeal on the grounds argued by the Board. The Court agreed, dismissing the appeal in order. Because the appeal was dismissed due to procedural defect, the court did not reach any of the UST issues briefed by the parties.

The First District Ruling in No. 1-03-0521

The appellate court first looked to the language of Section 3-113(b) of the Administrative Review Law (735 ILCS 5/3-113 (2002)) and the identical language of Supreme Court Rule 335(a) on who must be named as a respondent in petitions for direct appellate court review of administrative orders. The court found that each required that, in a petition for review, "The agency and all other parties of record shall be named as respondents." Vogue Tyre Rubber & Co. v. Office of the State Fire Marshal No. 1-03-0521 (September 28, 2004)(slip op. at 6).

The court then cited long-standing precedent for the proposition that because Illinois appellate courts exercise special statutory jurisdiction in reviewing administrative actions, those who seek to appeal must strictly adhere to the statute (*i.e.*, Section 41(a) of the Environmental Protection Act, which incorporates the Administrative Review Law). The court found that when those parties do not strictly comply, the court cannot consider the appeal. *Id.*, slip op. at 6-7. In response to various arguments made by Vogue, the court determined that "substantial compliance," such as by merely serving the Board with the petition for review and referring to the Board order, is not sufficient under various precedents. *Id.*, slip op at 7-9 (citing, among other cases, McGaughy v. Illinois Human Rights Commission, 165 Ill. 2d 1, 649 N.E.2d 404 (1995)).

The court then looked to another provision of the Administrative Review Law on amending petitions: Section 3-113(b). The provision allows a petitioner to amend its petition, but only if the unnamed party "was not named by the administrative agency in its final order as a party of record." Vogue Tyre creatively argued that it could amend because the Board failed to name itself in its final order as a party of record. The court rejected the "good-faith effort" exception to the strict statutory requirements advocated by Vogue as applied to a petition for review in another case involving the Board prior to amendment of Section 3-113(b) to specifically delineate when a petition

could be amended. See Worthen v. Village of Roxana, 253 Ill. App. 3d 378, 623 N.E.2d 1058 (1993) (amendment allowed in petition for review of local siting decision under Section 40.1 of the Act (415 ILCS 5/40.1)(2002)). The court held that strict adherence to the plain language of Section 113(b) "does not provide an exception that allows a petitioner to amend its petition for review to name the agency as respondent." *Id.* (slip op at 13). The court concluded that "because Vogue failed to name the Board as a respondent and Vogue is not permitted to amend its petition for review, this court lacks jurisdiction to hear this appeal." *Id.*, slip op at 13.

The Board's Decision in PCB 95-78

By way of background for better understanding of the issues in this UST case, petroleum leaks from underground storage tanks (USTs) are presently remediated under Title XVI of the Act. 415 ILCS 5/57-57.17 (2002). (Remediation was formerly made under the now-repealed Title V (415 ILCS 5/22.13, 22.18, 22.18b (1992)).) The Act specifies what actions must be taken, provides for Illinois Environmental Protection Agency (IEPA) approval of remediation plans and budgets, and establishes an Underground Storage Tank Fund (Fund). Under certain conditions, a person who has registered USTs with the OSFM can obtain reimbursement for costs of corrective action, subject to statutorily-set deductibles.

Title XVI divides program responsibilities between IEPA and OSFM. OSFM has oversight responsibility for some aspects of early action activities, such as supervising UST removals. OSFM also determines whether an owner or operator is eligible for reimbursement from the UST Fund, and if so, what the deductible amount should be. IEPA focuses on risk-based clean-up and site assessment, and makes various determinations on corrective action plans for remediation and monitoring and on the appropriateness of budgets and expenditures for which reimbursement is sought from the Fund. Title XVI specifies several points at which a UST owner or operator can appeal IEPA or OSFM decisions to the Board.

Vogue Tyre's site in Skokie had four USTs registered with the OSFM in 1986. (Tanks 3 and 4 were not at issue.) In February 1993, the OSFM, by administrative order, deregistered Tanks 1 and 2, apparently because they had been removed before September 27, 1987. Vogue Tyre did not appeal the OSFM's deregistration order. In December 1994, Vogue Tyre reported a UST release and applied to the OSFM for a determination on eligibility to have Vogue Tyre's cleanup costs reimbursed from the UST Fund. In February 1995, the OSFM denied Vogue Tyre access to the UST Fund because tanks 1 and 2 were not registered. In March 1995, Vogue Tyre petitioned the Board to review the OSFM's denial. The Board proceeding was stayed pending resolution of related insurance claims. In September 2002, the OSFM filed a motion for summary judgment with the Board.

In December 2002, the Board granted the OSFM's motion for summary judgment. The Board found no genuine issue of material fact that the USTs at issue were not registered when Vogue Tyre applied for UST Fund access. Because tank registration is a prerequisite to UST Fund eligibility under the Act (*see esp.* 415 ILCS 5/57.9(a)(4) (2002)), the Board held that the OSFM's 1995 decision to deny UST Fund eligibility was entitled to affirmation as a matter of law. Further, Vogue Tyre's arguments that the OSFM erred in its 1993 UST deregistering were misplaced, according to the Board. The Board reiterated its long-held position that it lacks authority to review OSFM registration or deregistration decisions under the Gasoline Storage Act (430 ILCS 15/4 (2002)); those decisions are appealable to the circuit court under the Administrative Review Law. See Farrales v. OSFM, PCB 97-186 (May 7, 1998); Divane Brothers Electric Co. v. IEPA, PCB 93-105 (November 4, 1993); Village of Lincolnwood v. IEPA, PCB 91-83 (June 2, 1992).

Second District Grants The Board's Motion to Publish Additional Portion of its Opinion in State Oil Co. et al. v. People of the State of Illinois et al.; Abraham et al. v. Pollution Control Board et al., Nos.2-03-0463 and 2-03-0493 (cons.) (August 18, 2004) (PCB 97-103)

In a September 30, 2004 order, the Second District Appellate Court granted the motion of the People and the Board to publish an additional portion of the court's opinion in State Oil Co. et al. v. People of the State of Illinois et al.; Abraham et al. v. Pollution Control Board et al., Nos.2-03-0463 and 2-03-0493 (cons.) (August 18, 2004). (hereinafter "State Oil (2d Dist.)"). The court's original August 18, 2004 28-page opinion was withdrawn, and a 29-page opinion was filed in its stead. State Oil (2d Dist. Sept. 30, 2004).

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As reported in the August 2004 *Environmental Register*, on August 18, 2004, the Second District Appellate Court affirmed the Board in the leaking underground storage tank enforcement case. State Oil (2d Dist. August 18, 2004). The Board had ordered respondents to remediate the site, to reimburse the State for substantial clean-up costs, to pay civil penalties in the Board's case entitled People of the State of Illinois v. State Oil Company, William Anest f/d/b/a S & S Petroleum Products, Peter Anest f/d/b/a S & S Petroleum Products, Charles Abraham, Josephine Abraham, and Millstream Service, Inc.; Charles Abraham, Josephine Abraham, and Millstream Service, Inc. v. State Oil Company, William Anest f/d/b/a S & S Petroleum Products, Peter Anest f/d/b/a S & S Petroleum Products., PCB 97-103 (March 20, 2003) (hereinafter "People v. State Oil").

The appellate court authorized publication of only a portion of its August 18, 2004 28-page decision. Originally, the only portion to be published, and which could be cited as precedent, affirmed the Board holding regarding the applicability of proportionate share liability under Title XVII of the Environmental Protection Act (Act), 415 ILCS 5/100 *et seq.* See State Oil (2d Dist. August 18, 2004)(slip op. at 1-7, 28). The balance of the decision (pages 8-27), which affirmed the remediation order and penalties assessed against various respondents, was "nonpublishable" under Supreme Court Rule 23 (155 Ill.2d R. 23) and therefore was not precedential. *Id.*, slip op. at 8-27.

The Board and the People moved the court to publish an additional portion of its opinion: that portion specifically interpreting Section 57.12 of the Act. The court rejected State Oil's contention that it could not be held liable for costs of investigation, preventive action, corrective action, or enforcement action because State Oil was a former owner of the leaking USTs, and not a current owner or operator. The court also determined that Section 57.12 could be applied retroactively.

As earlier stated, in a September 30, 2004 order, the court granted the motion to publish its ruling regarding Section 57.12 of the Act. The August 18, 2004 29-page opinion was withdrawn, and a 29-page opinion was filed in its stead. State Oil (2d Dist. Sept. 30, 2004). For the reader's convenience, the Board's August 2004 synopsis of the case is updated below, and includes citations to the court's September 30, 2004 final opinion.

The Board's Decision in People v. State Oil. PCB 97-103 was an enforcement case brought on behalf of the People by the Attorney General's Office. The case concerned gasoline contamination from leaking underground storage tanks (USTs) at a service station in McHenry County. The People filed the complaint in 1996 against Anest/State Oil (the former service station owner/operator and seller) and Abraham/Millstream Service (the current service station owner/operator and purchaser). Abraham/Millstream Service in turn filed a cross-complaint against Anest/State Oil. In 1983 or 1984, gasoline began leaking from the service station into Boone Creek, which bordered the station. Anest/State Oil reported the release to the State. The service station was sold in 1985 to Abraham/Millstream Service. Gasoline was leaking into the creek in 1986, 1987, and 1989. The Illinois Environmental Protection Agency (IEPA) performed an emergency cleanup in 1989-1991. But, no mitigation or remediation work had been completed at the site since 1996, and no respondent ever received a No Further Remediation letter from the IEPA. People v. State Oil (March 20, 2003), slip op. at 5-7.

The Board issued an interim opinion and order on April 4, 2002 ruling on motions for summary judgment in the People's case, and finding that all respondents had violated Section 12(a) of the Act. The Board then held hearing on the issues of cost recovery and the Abrahams' cross-complaint against the Anests, issuing a final opinion and order on March 20, 2003 that:

- a) Found the respondents jointly and severally liable to reimburse the State for \$86,652.50 in remediation costs incurred by the IEPA. (The Board disallowed some \$12,000 in costs for which the Board found the supporting IEPA vouchers unreliable). People v. State Oil (March 20, 2003), slip op. at 5-7;
- b) Assessed a total civil penalty of \$40,000 (\$20,000 against the Abrahams and Millstream Service; \$20,000 against the Anests and State Oil) People v. State Oil (March 20, 2003), slip op. at 14-20; and

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c) Ordered the respondents to perform any additional necessary clean up of the site and to obtain a No Further Remediation Letter from the IEPA. The Board also found the respondents jointly and severally liable for any future remediation. People v. State Oil (March 20, 2003), slip op. at 20-26.

The Board did not, however, find that the People were entitled to attorney fees and costs concerning their complaint against the Abrahams. The Board concluded that there was insufficient evidence to support a finding that the Abrahams' violation was "willful, knowing, or repeated" within the meaning of Section 42(f) of the Act. 415 ILCS 5/42(f) (2002). People v. State Oil (March 20, 2003), slip op. at 20-21.

In its last order in the case, the Board denied respondents' motion to stay the March 20, 2003 order pending appeal, in the sound exercise of its discretion. The Board also denied the People's motion to modify the order, finding that the filing of the appeal had ended the Board's jurisdiction in the case. People v. State Oil (May 15, 2003), slip op. at.1-2.

Second District's Decision in State Oil (2d Dist. Sept. 30, 2004). As stated earlier, the court affirmed the Board on all points. The court structured its opinion to analyze first Millstream's arguments, and then State Oil's arguments. The portion of the court's decision to be published is discussed first, and the rest afterwards.

Published Decision on Millstream's Argument on Joint and Several Liability/Proportionate Share Liability. In the published portion of the court's decision (State Oil (2d Dist. Sept. 30, 2004) slip op. at 1-7), the court agreed with the Board that the respondents were jointly and severally liable and therefore that proportionate share liability did not apply. In certain situations, the proportionate share liability provision of the Act (Section 58.9(a)(1)) limits a respondent's cleanup liability to what the respondent "proximately caused," *i.e.*, to its "proportionate share." See 415 ILCS 5/58.9 (a)(1) (2002).

Section 58.1(a)(2) of the Act is the applicability provision of the Act's Title XVII "Site Remediation Program." Section 58.1(a)(2) excludes sites subject to the UST laws, like the site at issue. Title XVII includes the proportionate share liability provision of Section 58.9(a)(1). The Board held, and the court agreed, that proportionate share liability did not apply in this case because Section 58.1(a)(2) limits the applicability of all of Title XVII, including the proportionate share liability provision. As the court stated: "Put simply, one must enter through a door before one can throw something out the window. In other words, Millstream is not entitled to invoke the provisions of Title XVII unless Title XVII is applicable to it in the first place." *Id.*, slip op. at 7.

Published Decision on State Oil's Leaking UST Liability Arguments and Section 57.12 of the Act. As explained above, in response to motion, the court agreed to publish that portion of the decision relating to Section 57.12 of the Act. (State Oil (2d Dist. Sept. 30, 2004) slip op. at 18-19.) The court provided two interpretations of an important provision of the Act's Title XVI on USTs, both of which now have precedential effect.

Section 57.12(a) of the Act provides, in pertinent part, that:

the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank.

Importantly, the court affirmed the Board's reading of Section 57.12(a). The court agreed that the provision applied not only to the current UST owner or operator, but also a former owner or operator:

[A] statute must not be construed so that it produces an absurd result Allowing an owner to escape liability by simply selling a property would, in our estimation, be absurd In short, State Oil was the owner when the problem began. That

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the problem continued beyond its ownership of the property does not absolve it from responsibility. *Id.*, slip op. at 18-19.

After reviewing several provisions of the Act, the court also concluded that the Act properly applied retroactively, since "it is clear that the legislature intended the Act to address ongoing problems, which, by definition existed at the time that the Act was enacted." *Id.*, slip op. at 19.

Unpublished Decision on Millstream's State Cleanup Costs Issues (Evidence Admissibility and Award Amount). In the unpublished portion of the decision (State Oil (2d Dist. Sept. 30, 2004) slip op. at 8-18), the court upheld the Board's decision that the IEPA's vouchers reflecting cleanup costs incurred were admissible as evidence, being both relevant and within the business-record exception to the hearsay rule. Next, the court addressed Millstream's challenge to the Board's refusal to give the State the exact amount of reimbursement requested. The court affirmed the Board's decision to award the State approximately \$86,000 of the requested \$98,000 in remediation costs, stating that "one of the reasons administrative agencies exist is the special expertise they possess in their given field [and] to the extent Millstream's argument can be read as attacking the Board's use of that expertise, it is ill taken." *Id.*, slip op. at 11.

Millstream also argued that the State introduced no evidence that its cleanup expenses were "reasonable or necessary." Looking at the plain language of Section 57.12(a), the court refused to place the burden of proving reasonableness or necessity of its costs on the State, but cautioned:

This is not to say, however, that the State is free to run up outrageous expenses. While we read section 57.12(a) as excluding reasonableness and necessity from the elements the State must prove, *** the failure to mitigate damages remains an affirmative defense; however, the burden of proving the failure to mitigate lies with the respondent. *Id.*, slip op. at 12-13.

Accordingly, the court found that the Board's award of cleanup costs to the State was not contrary to the manifest weight of the evidence.

Unpublished Decision on Penalty Issue as to Millstream. In the unpublished portion of the decision on penalty (State Oil (2d Dist. Sept. 30, 2004), slip op. at 13-15), the court upheld the Board's penalty determination as to Millstream as neither arbitrary, capricious, nor unreasonable. The court noted that Section 42 of the Act would have allowed a fine in excess of \$1 million. So, the \$20,000 penalty assessed against Millstream was "relatively modest" considering the statutory maximum penalties that are allowed. The court focused on the aggravating factors of gasoline actually leaking into the creek for 3 years and Millstream's lack of diligence in remediating the problem. *Id.*, slip op. at 15.

Unpublished Decision on State Oil's Issues (Notice and Due Process; Joint and Several Liability; Cost Award; Summary Judgment; Penalty). In the unpublished portion of the decision dealing with issues raised by State Oil (State Oil (2d Dist. Sept. 30, 2004), slip op. at 13-18, 20-29), the court first rejected an argument that the omission of State Oil from the prayer for relief in the count of the complaint for reimbursement amounted to a notice defect that violated its due process rights. The court found that State Oil had failed to demonstrate prejudice. *Id.*, slip op. at 16-17. The court then rejected State Oil's arguments regarding both joint and several liability and the clean-up cost award for the reasons it had earlier rejected Millstream's similar arguments. *Id.*, slip op. at 17-18, 20.

Next, the court found that the Board had properly granted summary judgment in favor of the People on the issue of whether State Oil violated section 12 (a) of the Act by causing or allowing "water pollution" within the meaning of section 3.545 of the Act. The court found that State Oil's answers to request to admit constituted an admission that "gasoline was intermittently leaking from December 1984 through April 1985. A leak that continues, even intermittently for almost half of a year, is a significant matter." *Id.*, slip op. at 24-25. The court concluded that:

While we agree with State Oil that, generally speaking, a discharge of a substance may be so minimal as to raise the

question of whether it fits within the definition of water pollution, where a discharge is significant, as in the instant case, we do not believe that more is necessary to establish, through expert testimony or otherwise, such things as that the leak was a nuisance or harmful. *Id.*, slip op. at 25-26.

As to penalty, the court determined that the Board had not improperly based its decision on matters occurring outside the scope of the complaint. *Id.*, slip op. at 23-26. Despite the Board's mention of events occurring prior to the complaint's allegations concerning events occurring on a single day (December 5, 1984), the court found that the Board had correctly characterized as "severe" a leak into a waterway that continues for over five months. The court held that the Board could properly find State Oil's lack of diligence in remediating the problem to be an aggravating factor.

Lastly, the court rejected State Oil's arguments that the \$20,000 penalty against it was excessive, and impermissibly punitive. *Id.*, slip op. at 26-29. In light of the factors of Section 42(h) of the Act, the court found that the Board's penalty against State Oil "was an appropriate use of [the Board's] discretion," based on adequate evidence in the record. *Id.*, slip op. at 29.

Rule Update

Board Dismisses 3 Identical in Substance Rulemaking Dockets As Unnecessary: UST Update, USEPA Regulations (January 1, 2004 through June 30, 2004), R05-3; Exemptions from the Definition of VOM Update, USEPA Regulations (January 1, 2004 through June 30, 2004), R05-5; UIC Update, USEPA Regulations (January 1, 2004 through June 30, 2004), R05-7

Every six months the Board reserves a series of dockets, for adoption of Board rules, to accommodate any rules adopted by the United States Environmental Protection Agency (USEPA) to implement various programs. On September 16, 2004, the Board dismissed as unnecessary three dockets reserved to consider rules adopted by USEPA during the period January 1, 2004 through June 30, 2004. In each of the three program areas described below, USEPA adopted no rules during the update period.

UST Program (R05-3). Section 22.4(d) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(d) (2002)) requires the Board to adopt regulations which are "identical in substance," as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2002)), to underground storage tank (UST) regulations promulgated by the USEPA pursuant to Section 9003 of the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. § 6991b (2003), to implement Subtitle I of RCRA (42 U.S.C. §§ 6991 *et seq.* (2003)), with certain limitations. USEPA has codified its UST regulations at 40 C.F.R. 281 through 283.

VOM Program (R05-5). Section 9.1(e) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(e) (2002)) requires the Board to adopt regulations that are "identical in substance," as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2002)), to exemptions from the definition of "volatile organic material" (VOM), those compounds that the United States Environmental Protection Agency (USEPA) has found to be exempted from regulation under state implementation plans for ozone due to negligible photochemical reactivity. USEPA has codified these exemptions as part of its definitions at 40 C.F.R. 51.100(s).

UIC Program (R05-7). Section 13(c) of the Environmental Protection Act (Act) (415 ILCS 5/13(c) (2002)) requires the Board to adopt regulations that are "identical in substance" to regulations of the United States Environmental Protection Agency (USEPA). 415 ILCS 5/7.2 (2002). Specifically, Section 13(c) relates to underground injection control (UIC) regulations that USEPA adopted to implement provisions of the Safe Drinking Water Act (42 U.S.C. § 300h *et seq.* (2003)). USEPA has codified its UIC regulations at 40 C.F.R. 144 through 148.

Copies of the Board's separate dismissal orders in R05-3, R05-5, and R05-7 may be obtained by calling Dorothy Gunn at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information contact Mike McCambridge at 312/814-6924; e-mail address: mcccambm@ipcb.state.il.us.

Board Actions

September 2, 2004

Via Videoconference

Springfield and Chicago, Illinois

Administrative Citations

AC 04-27	<u>IEPA v. Douglas S. Carrico, d/b/a Carrico's Auto Heap</u> – The Board entered an interim opinion and order finding respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)) and assessing a penalty of \$1,500. The Board ordered the Clerk of the Board and the Environmental Protection Agency to file within 14 days a statement of hearing costs, supported by affidavit, with service on respondent.	5-0
AC 04-43	<u>County of Jackson v. Frank Stonemark</u> – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Jackson County facility, the Board found respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)) and ordered respondent to pay a civil penalty of \$1,500. The Board also granted the parties' joint motion to dismiss respondent's petition for review and the alleged violation of 415 ILCS 5/21(p)(7) (2002).	5-0
AC 04-63 AC 04-64	<u>County of Jackson v. Egon Kamarasy</u> – The Board granted complainant's motion to consolidate AC 04-63 and AC 04-64.	5-0
AC 04-80	<u>IEPA v. Joseph Luparell and Troy Curley</u> – The Board accepted complainant's response to the July 8, 2004 Board order regarding service on respondent Troy Curley. The Board found that complainant properly served respondent and accepted for hearing Troy Curley's petition for review of an administrative citation against these Sangamon County respondents.	5-0
AC 05-3	<u>IEPA v. City of Freeport and Ryan Wilson</u> – The Board found that these Stephenson County respondents violated Section 21(o)(11) of the Environmental Protection Act (415 ILCS 5/21(o)(11) (2002)), and ordered respondent to pay a civil penalty of \$500.	5-0
AC 05-5	<u>IEPA v. Robert and Phylis Ulrich and Bob Ulrich Pallet, Inc.</u> – The Board accepted for hearing this petition for review of an administrative citation against these Adams County respondents.	5-0
AC 05-6	<u>IEPA v. Knox County Landfill Committee and Greg Ingle</u> – The Board found that these Knox County respondents violated Sections 21(o)(1), (o)(2), (o)(5), and (o)(12) of the Act (415 ILCS 5/21(o)(1), (o)(2), (o)(5), and (o)(12) (2002)), and ordered respondents to pay a civil penalty of \$2,000.	5-0
AC 05-8	<u>IEPA v. Ted Harrison and Gerald S. Gill</u> – The Board accepted for hearing respondents Harrison's and Gill's petitions for review of an administrative	5-0

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citation against these Adams County respondents.

AC 05-9	<u>IEPA v. Bill Collins</u> – The Board found that this Franklin County respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)), and ordered respondent to pay a civil penalty of \$1,500.	5-0
AC 05-10	<u>IEPA v. Lawrence P. and Jacqueline L. Koch</u> – The Board found that these Bond County respondents violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2002)), and ordered respondents to pay a civil penalty of \$3,000.	5-0
AC 05-11	<u>IEPA v. Environmental Reclamation Company and Gene Stacey</u> – The Board found that these Bond County respondents violated Sections 21(o)(5) and (o)(12) of the Act (415 ILCS 5/21(o)(5), (o)(12) (2002)), and ordered respondents to pay a civil penalty of \$1,000.	5-0
AC 05-12	<u>County of Sangamon v. James Withers</u> – The Board granted complainant’s motion to dismiss this administrative citation for lack of service on respondent.	5-0

Decisions

PCB 96-98	<u>People of the State of Illinois v. Skokie Valley Asphalt, Company, Inc., Edwin L. Frederick, Jr. individually and as owner and President of Skokie Valley Asphalt Company, Inc., and Richard J. Frederick individually and as owner and Vice-President of Skokie Valley Asphalt Company, Inc.</u> – The Board found that respondents violated the following provisions of the Environmental Protection Act (Act) and the Board’s regulations: Sections 12 (a) and (f) of the Act (415 ILCS 5/12(a) and (f) (2002)), and 35 Ill. Adm. Code 302.203, 304.105, 304.106, 305.102(b), 309.102(a), and 309.104(a) at respondent’s facility located Grayslake Village, Lake County. The Board ordered the respondents to pay a total civil penalty of \$153,000.	5-0 W-E
PCB 01-1	<u>People of the State of Illinois v. Metals Technology Corporation</u> – In this air enforcement action concerning a DuPage County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$50,000 and to cease and desist from further violations.	5-0 A-E
PCB 04-67	<u>People of the State of Illinois v. Royal Trucking Company</u> – In this water enforcement action concerning a location in Cook County, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$5,000 and to cease and desist from further violations.	5-0 W-E

Motions and Other Matters

PCB 99-187	<u>Gina Pattermann v. Boughton Trucking and Materials, Inc.</u> – The Board denied respondent’s motion for reconsideration.	5-0 A&N-E
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PCB 01-7	<u>People of the State of Illinois v. QC Finishers, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	5-0 A-E
PCB 03-125	<u>City of Kankakee v. County of Kankakee, County Board of Kankakee, and Waste Management of Illinois, Inc.; Merlin Karlock v. County Board of Kankakee, County Board of Kankakee, and Waste Management of Illinois, Inc.;</u>	5-0
PCB 03-133	<u>Michael Watson v. County of Kankakee, County Board of Kankakee, and Waste Management of Illinois, Inc.; Keith Runyon v. County of Kankakee, County Board of Kankakee and Waste Management of Illinois, Inc.;</u>	P-C-F-S-R
PCB 03-134	<u>Keith Runyon v. County of Kankakee, County Board of Kankakee and Waste Management of Illinois, Inc. v. County of Kankakee</u> – The Board declined to take action on the pending motions due to lack of jurisdiction to modify the Board’s judgment or to rule on matters of substance, which are the subject of appeal.	
PCB 03-135	<u>Waste Management of Illinois, Inc. v. County of Kankakee</u> – The Board declined to take action on the pending motions due to lack of jurisdiction to modify the Board’s judgment or to rule on matters of substance, which are the subject of appeal.	
PCB 03-144 (Cons.)	<u>Waste Management of Illinois, Inc. v. County of Kankakee</u> – The Board declined to take action on the pending motions due to lack of jurisdiction to modify the Board’s judgment or to rule on matters of substance, which are the subject of appeal.	
PCB 04-31	<u>Broadus Oil v. IEPA</u> – The Board granted petitioner’s motion for leave to clarify petition for review. The board directed the Clerk of the Board to open a new docket (PCB 05-43) for review of the September 8, 2003 decision and instructed petitioner to submit a filing fee for the new docket by October 4, 2004. Finally, the Board on its on motion consolidated PCB 04-31 and PCB 05-43.	5-0 UST Appeal
PCB 04-183	<u>Johnson Oil Company v. IEPA</u> – The Board accepted petitioner’s amended petition for review for hearing and granted the motion for admission of John D. Moriarity to appear <i>Pro Hac Vice</i> .	5-0 UST Appeal
PCB 04-190	<u>Johnson Oil Company v. IEPA</u> – The Board accepted petitioner’s amended petition for review for hearing and granted the motion for admission of John D. Moriarity to appear <i>Pro Hac Vice</i> .	5-0 UST Appeal
PCB 04-202	<u>Auburn Realty v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Christian County facility.	5-0 UST Appeal
PCB 04-203	<u>2 F, Inc. v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Williamson County facility.	5-0 UST Appeal
PCB 04-208	<u>Yesley Service Company v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Randolph County facility.	5-0 UST Appeal
PCB 04-209	<u>DiMucci Development Corporation v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Cook County facility.	5-0 UST Appeal
PCB 04-210	<u>Aylsworth Oil Company v. IEPA</u> – Having previously granted a request for a 90-	5-0

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day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this White County facility.

UST Appeal

PCB 05-2	<u>Holland Energy, L.L.C.-Beecher City (Property Identification Numbers 0524-01-00-100-004, 0825-16-00-100-004, 0825-16-00-300-002, 0825-16-00-300-003, 0825-16-00-200-002) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that Holland Energy’s facilities are pollution control facilities and dismissed this matter.	5-0 T-C
PCB 05-3	<u>Holland Energy, L.L.C.-Beecher City (Property Identification Numbers 0524-01-00-100-004, 0825-16-00-100-004, 0825-16-00-300-002, 0825-16-00-300-003, 0825-16-00-200-002) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that Holland Energy’s facilities are pollution control facilities and dismissed this matter.	5-0 T-C
PCB 05-4	<u>Holland Energy, L.L.C.-Beecher City (Property Identification Numbers 0524-01-00-100-004, 0825-16-00-100-004, 0825-16-00-300-002, 0825-16-00-300-003, 0825-16-00-200-002) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that Holland Energy’s facilities are pollution control facilities and dismissed this matter.	5-0 T-C
PCB 05-5	<u>Holland Energy, L.L.C.-Beecher City (Property Identification Numbers 0524-01-00-100-004, 0825-16-00-100-004, 0825-16-00-300-002, 0825-16-00-300-003, 0825-16-00-200-002) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that Holland Energy’s facilities are pollution control facilities and dismissed this matter.	5-0 T-C
PCB 05-6	<u>Holland Energy, L.L.C.-Beecher City (Property Identification Numbers 0524-01-00-100-004, 0825-16-00-100-004, 0825-16-00-300-002, 0825-16-00-300-003, 0825-16-00-200-002) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that Holland Energy’s facilities are pollution control facilities and dismissed this matter.	5-0 Novak T-C

Environmental Register – September 2004

PCB 05-11	<u>UAP Richter – Dixon (Property Identification Number 02-15-07-100-020) v. IEPA</u> – Because the Board did not receive any petition for review of the IEPA’s recommendation to deny certification, consistent with the IEPA’s recommendation, the Board declined to certify that UAP Richter’s facilities are pollution control facilities and dismissed this matter.	5-0 T-C
PCB 05-27	<u>Heritage FS, Inc. (Property Identification Numbers 06-10-06-400-005) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that certain agrichemical containment facilities of Heritage FS, Inc. located in Shelby County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)). No action was taken on the recommendation to deny certification for the certain portion of the building over the minibulk/package agrichemical secondary containment structure at the site.	5-0 T-C
PCB 05-30	<u>Village of Frankfort v. IEPA</u> – The Board accepted for hearing this permit appeal involving a facility located in Cook and Will Counties.	5-0 P-A, Water
PCB 05-31	<u>Hall’s Automotive (SICR) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility	5-0 P-A, NPDES
PCB 05-32	<u>People of the State of Illinois, by Lisa Madigan, Attorney General for the State of Illinois v. GTC, International, an Illinois corporation</u> – The Board accepted for hearing this air enforcement action involving a site located in Cook County.	5-0 A-E
PCB 05-33	<u>Vollbracht Farms, Inc. (Property ID # 14-0-0282-000-00) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Vollbracht Farms, Inc. located in Adams County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-34	<u>Moss Family Farms, Inc. (Property ID #34-013-08) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Moss Family Farms, Inc. located in Pike County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-35	<u>Kibler Development Corporation and Marion Ridge Landfill, Inc. v. IEPA</u> – The Board accepted for hearing this permit appeal involving a facility located in Williamson County.	5-0 P-A, Land
PCB 05-36	<u>Bunker Hill Amoco v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Macoupin County facility.	5-0 UST Appeal

Environmental Register – September 2004

PCB 05-37	<u>Mussman's Back Acres, Inc. (Property ID # 01-04-14-200-008) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Mussman's Back Acres, Inc. located in Kankakee County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-38	<u>Lone Willow USA, Inc. (Property ID # 09-12-100-007 and 09-12-200-011) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Lone Willow USA, Inc. located in Woodford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-39	<u>Lincoln Land FS, Inc. (Property ID # 09-21-404-007) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Lincoln Land FS, Inc. located in Morgan County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-40	<u>Lincoln Land FS, Inc. (Property ID #06-29-100-023-0080 and 06-29-100-019-0080) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Lincoln Land FS, Inc. located in Scott County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-41	<u>Lazy B Farm (Property ID #05-000-289-00) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Lazy B Farm located in Lawrence County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C
PCB 05-42	<u>Chris and Greg Niebrugge (Property ID #07-1-23-000-011-000) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Chris and Greg Niebrugge located in Crawford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	5-0 T-C

September 16, 2004
Chicago, Illinois

Rulemakings

- R05-3 In the Matter of: UST Update, USEPA Regulations (January 1, 2004 through June 30, 2004) – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its exemptions from the definition of underground storage tank during the update period of January 1, 2004 through June 30, 2004. 5-0
R, Land
- R05-5 In the Matter of: Exemptions from the Definition of VOM Update, USEPA Regulations (January 1, 2004 through June 30, 2004) - The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its exemptions from the definition of volatile organic material during the update period of January 1, 2004 through June 30, 2004. 5-0
R, Air
- R05-7 In the Matter of: UIC Update, USEPA Regulations (January 1, 2004 through June 30, 2004) - The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground injection control regulations during the update period of January 1, 2004 through June 30, 2004. 5-0
R, Land

Administrative Citations

- AC 04-13 City of Chicago Department of Environment v. Eddie Greer – The Board entered an interim opinion and order finding respondent violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)) and assessing a penalty of \$3,000. The Board ordered the Clerk of the Board and the Environmental Protection Agency to file within 14 days a statement of their hearing costs and allowed respondent to file a response by October 14, 2004. 5-0
- AC 05-13 IEPA v. Roy Bruce – The Board found that this Jefferson County respondent violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2002)), and ordered respondent to pay a civil penalty of \$3,000. 5-0
- AC 05-17 IEPA v. Roger Miller and Joan Kay Miller – The Board accepted for hearing this petition for review of an administrative citation against these Cumberland County respondents. 5-0

Decisions

- PCB 91-17 Noveon, Inc. f/k/a BF Goodrich Corporation (Henry Facility) v. IEPA – The Board affirmed the National Pollutant Discharge Elimination System permit as issued by respondent on December 28, 1990. 5-0
P-A, Land

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PCB 99-120	<u>People of the State of Illinois v. Wood River Refining Company</u> – In this air enforcement action concerning a Madison County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$126,000 and to cease and desist from further violations.	5-0 A-E
PCB 02-164	<u>Barbara and Ronald Stuart v. Franklin Fisher and Phyllis Fisher</u> – The Board found that only respondent Franklin Fisher violated the following provisions of the Environmental Protection Act (Act) and the Board’s regulations: Section 24 of the Act (415 ILCS 5/24) and 35 Ill. Adm. Code 900.102 at respondent’s facility located in Will County. The Board directed Franklin Fisher to cease and desist from further violation of the Environmental Protection Act and Board regulations by ceasing and desisting the use of the propane cannons on the property.	3-1 Johnson dissented Novak abstained Citizens N-E

Motions and Other Matters

PCB 02-177	<u>People of the State of Illinois v. John Prior d/b/a Prior Oil Company and James Mezo d/b/a Mezo Oil Company</u> – The Board granted respondent John Prior’s motion for stay of final order entered July 8, 2004, pending the outcome of his petition for direct review in Fifth District Appellate Court.	5-0 L, W-E
PCB 04-15	<u>People of the State of Illinois v. Atkinson Grain & Fertilizer, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Henry County facility, the Board ordered publication of the required newspaper notice.	5-0 W-E
PCB 04-48	<u>Village of Robbins and Allied Waste Transportation, Inc. v. IEPA</u> – The Board denied the Cook County petitioners’ motion for summary judgment, and directed the matter to hearing on all issues.	5-0 P-A, Land
PCB 04-105	<u>Webb & Sons, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Coles County facility.	5-0 UST Appeal
PCB 04-164	<u>People of the State of Illinois v. The Fields of Long Grove Home Owner’s Association</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Lake County facility, the Board ordered publication of the required newspaper notice.	5-0 PWS-E
PCB 04-187	<u>Sutter Sanitation, Inc. and Lavonne Haker v. IEPA</u> – The Board denied the motion to intervene of the Ruffner family, Mr. Stock, and Stock & Co. The Board also granted in part and denied in part the respondent’s motion to strike, striking Exhibits 1-7 of, and references to those exhibits in, petitioners’ motion for partial summary judgment. Finally, the Board granted petitioners’ motion for partial summary judgment, denied the respondent’s motion for partial summary judgment, and directed the parties to hearing on the remaining two grounds for permit denial, for this Effingham County facility.	5-0 P-A, Land

Environmental Register – September 2004

PCB 04-217	<u>Telzrow Oil Company v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Calhoun County facility.	5-0 UST Appeal
PCB 04-219	<u>Commonwealth Edison v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this La Salle County facility.	5-0 UST Appeal
PCB 04-220	<u>Jim’s Mobil v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Madison County facility.	5-0 UST Appeal
PCB 05-44	<u>People of the State of Illinois v. Roger Kuberski</u> – The Board accepted for hearing this water enforcement action involving a site located in Cook County.	5-0 W-E, NPDES
PCB 05-45	<u>United Parcel Service (Claim #1) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-46	<u>United Parcel Service (Claim #3) v. IEPA</u> - The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-47	<u>United Parcel Service (Claim #2) v. IEPA</u> - The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-48	<u>Illinois Ayers Oil Company (Ayerco #7) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cass County facility.	5-0 UST Appeal
PCB 05-50	<u>L. Keller Oil Properties (Charleston) v. IEPA</u> – The Board accepted for hearing and this underground storage tank appeal involving a Cook County facility. The Board also granted petitioner’s motion for expedited review.	5-0 UST Appeal
PCB 05-51	<u>People of the State of Illinois v. Randy Oldenberger d/b/a Environmental Health and Safety</u> – The Board accepted for hearing this air enforcement action involving a site located in Cook County.	5-0 A-E

New Cases

September 2, 2004 Board Meeting

05-029 Mather Investment Properties, L.L.C. v. Illinois State Trapshooters Association, Inc. – The Board held for a later duplicative/frivolous determination this citizen’s enforcement action involving a Sangamon County facility.

05-030 Village of Frankfort v. IEPA – The Board accepted for hearing this permit appeal involving a facility located in Cook and Will Counties.

05-031 Hall’s Automotive (SICR) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility.

Environmental Register – September 2004

05-032 People of the State of Illinois, by Lisa Madigan, Attorney General for the State of Illinois v. GTC, International, an Illinois corporation – The Board accepted for hearing this air enforcement action involving a site located in Cook County.

05-033 Vollbracht Farms, Inc. (Property ID # 14-0-0282-000-00) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Vollbracht Farms, Inc. located in Adams County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-034 Moss Family Farms, Inc. (Property ID #34-013-08) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Moss Family Farms, Inc. located in Pike County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-035 Kibler Development Corporation and Marion Ridge Landfill, Inc. v. IEPA – The Board accepted for hearing this permit appeal involving a facility located in Williamson County.

05-036 Bunker Hill Amoco v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Macoupin County facility.

05-037 Mussman's Back Acres, Inc. (Property ID # 01-04-14-200-008) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Mussman's Back Acres, Inc. located in Kankakee County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-038 Lone Willow USA, Inc. (Property ID # 09-12-100-007 and 09-12-200-011) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lone Willow USA, Inc. located in Woodford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-039 Lincoln Land FS, Inc. (Property ID # 09-21-404-007) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lincoln Land FS, Inc. located in Morgan County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-040 Lincoln Land FS, Inc. (Property ID #06-29-100-023-0080 and 06-29-100-019-0080) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lincoln Land FS, Inc. located in Scott County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-041 Lazy B Farm (Property ID #05-000-289-00) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lazy B Farm located in Lawrence County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-042 Chris and Greg Niebrugge (Property ID #07-1-23-000-011-000) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Chris and Greg Niebrugge located in Crawford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

AC 05-014 City of Chicago Department of Environment v. Bovis Lend Lease, Inc. – The Board accepted an administrative citation against this Cook County respondent.

AC 05-015 IEPA v. C. John Blickham – The Board accepted an administrative citation against this Adams County respondent.

AC 05-016 IEPA v. Richard Groff – The Board accepted an administrative citation against this Fulton County respondent.

AC 05-017 IEPA v. Roger and Joan Kay Miller – The Board accepted an administrative citation against these Champaign County respondents.

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AC 05-018 IEPA v. William Shrum – The Board accepted an administrative citation against this Perry County respondent.

AC 05-019 IEPA v. David and Shelby Hill and N. E. Finch Company – The Board accepted an administrative citation against these Fulton County respondents.

AC 05-020 IEPA v. John Groff and Robert Groff – The Board accepted an administrative citation against these Marion County respondents.

AC 05-021 IEPA v. Willis E. Farley, Jr. – The Board accepted an administrative citation against this Mason County respondent.

September 16, 2004 Board Meeting

05-044 People of the State of Illinois v. Roger Kuberski – The Board accepted for hearing this water enforcement action involving a site located in Cook County.

05-045 United Parcel Service (Claim #1) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.

05-046 United Parcel Service (Claim #3) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.

05-047 United Parcel Service (Claim #2) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this St. Clair County facility.

05-048 Illinois Ayers Oil Company (Ayerco #7) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cass County facility.

05-049 Morton F. Dorothy v. Flex-N-Gate Corporation – The Board held for a later duplicative/frivolous determination this citizen’s enforcement action involving a Champaign County facility.

05-050 L. Keller Oil Properties (Charleston) v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Cook County facility. The Board also granted petitioner’s motion for expedited review.

05-051 People of the State of Illinois v. Randy Oldenberger d/b/a Environmental Health and Safety – The Board accepted for hearing this air enforcement action involving a site located in Cook County.

AC 05-022 County of Sangamon v. James Withers – The Board accepted an administrative citation against this Sangamon County respondent.

AC 05-023 IEPA v. Phillip Hamann – The Board accepted an administrative citation against this Mason County respondent.

AC 05-024 City of Chicago Department of Environment v. Richland Group Enterprises, Inc. – The Board accepted an administrative citation against this Cook County respondent.

AC 05-025 County of Montgomery v. Ronald F. Simmons – The Board accepted an administrative citation against this Montgomery County respondent.

Calendar

10/6/04 9:30AM	PCB 04-79	Bonita Saxbury and Richard Saxbury v. Archer Daniels Midland (Hull, Illinois Division)	City Hall Council Chambers 215 N. Monroe Street Pittsfield
10/7/04 10:00AM	<u>Illinois Pollution Control Board Meeting</u>		Union League Club 65 W. Jackson Boulevard Chicago

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10/7/04 10:00AM	PCB 04-81	People of the State of Illinois v. Emmett Utilities, Inc, an Illinois corporation, and Russell D. Thorell, individually and as president of Emmett Utilities, Inc.	City Hall Council Chambers 232 E. Jackson Macomb
10/8/04 10:00AM	PCB 04-81	People of the State of Illinois v. Emmett Utilities, Inc, an Illinois corporation, and Russell D. Thorell, individually and as president of Emmett Utilities, Inc.	City Hall Council Chambers 232 E. Jackson Macomb
10/21/04 10:00AM	<u>Illinois Pollution Control Board Meeting</u>		Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 2-025
10/21/04 1:30PM	R04-21	In the Matter of: Revisions to Radium Water Quality Standards: Proposed New 35 Ill. Adm. Code 302.307 and Amendments to 35 Ill. Adm. Code 302.207 and 302.525	Michael A. Bilandic Building Room N-502 160 North LaSalle Chicago
10/22/04 1:30PM	R04-21	In the Matter of: Revisions to Radium Water Quality Standards: Proposed New 35 Ill. Adm. Code 302.307 and Amendments to 35 Ill. Adm. Code 302.207 and 302.525	James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago
10/25/04 10:00AM	R04-26	In the Matter of: Interim Phosphorus Effluent Standard, Proposed 35 Ill. Adm. Code 304.123(g-k)	Illinois Department of Natural Resources Building Illinois State Fairgrounds Lakeview A, B, and C Springfield
10/26/04 10:00AM	R04-26	In the Matter of: Interim Phosphorus Effluent Standard, Proposed 35 Ill. Adm. Code 304.123(g-k)	Illinois Department of Natural Resources Building Illinois State Fairgrounds Lakeview A, B, and C Springfield
11/1/04 11:00AM	AC 04-63	County of Jackson v. Egon Kamarasy (Site Code 0778095036)(Consolidated: AC 04-63 and 64)	Jackson County Health Department Front Building 415 Health Department Road Murphysboro
11/1/04 11:00AM	AC 04-64	County of Jackson v. Egon Kamarasy (Site Code 0778125013)(Consolidated: AC 04-63 and 64)	Jackson County Health Department Front Building 415 Health Department Road Murphysboro
11/4/04	<u>Illinois Pollution Control Board Meeting</u>		Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago And 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield

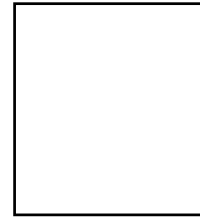
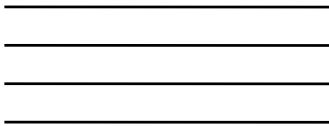
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<p>11/4/04 1:00PM</p>	<p>R03-9</p>	<p>In the Matter of: Proposed New and Updated Rules for Measurement and Numerical Sound Emissions Standards Amendments to 35 Ill. Adm. Code 901 and 910</p>	<p>Mississippi Room Bureau of Water 1021 N. Grand Avenue East Springfield</p>
<p>11/9/04 12:00PM</p>	<p>AC 04-82</p>	<p>IEPA v. John Brown d/b/a John Brown Painting</p>	<p>City Hall Council Chambers 106 W. 5th Street Metropolis</p>

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

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

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