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Letter from the Chairman

As you may know, the Board has recently considered proposed rules relating to radium and phosphorus in the State's waters.

At its April 7, 2005 meeting, the Board adopted as a second first-notice proposal radium standards originally filed by the Illinois Environmental Agency (IEPA) on January 13, 2004. The Board's proposal reflects testimony received during five days of public hearings and in a substantial number of public comments.

Specifically, the Board's proposal includes a new general use water quality standard of 3.75 picocuries per liter (pCi/L) combined radium 226 and 228 in place of the existing general use water quality standard of radium 226 standard of 1 pCi/L. This standard would continue to apply to all general use waters of the State and to the Lake Michigan Basin. The proposal also applies a combined radium standard of 30 pCi/L to stream segments that receive discharge from publicly-owned treatment works (POTWs) receiving wastewater discharge from public water supplies using groundwater with a high radium concentration as a drinking water source. The 30 pCi/L combined radium 226 and 228 standard will apply only from the point of discharge to the point one mile downstream from the discharge outfall.



The Board found in its order that this second first-notice proposal will protect all designated uses of the State's waters. The Board also found that the proposal will achieve the IEPA's goal of relieving a regulatory burden for many existing POTWs. POTWs that receive wastewater from public drinking water supplies using high radium groundwater as a source of raw potable water will benefit because the Board's proposed rulemaking provides a higher combined radium standard for stream segments receiving their discharge. The Board is accepting public comment on this second first-notice proposal.

Also at its April 7, 2005 meeting, the Board adopted for first notice proposed phosphorus regulations originally filed by the IEPA on May 14, 2004. The Board has now held two days of public hearings and received a substantial number of public comments.

The IEPA proposed a phosphorus effluent limit of 1.0 milligram per liter (mg/l) as a monthly average that would apply to new or expanded discharges from treatment works with a designed average flow over 1.0 million gallons per day receiving municipal or domestic wastewater, or a total phosphorus effluent load of 25 lbs/day or more. However, if the source can demonstrate that phosphorus is not the limiting nutrient in the receiving water or that alternative phosphorus effluent limits are warranted by the aquatic environment in the receiving water, the 1.0 mg/l limit would not apply. The proposal also provides that the new water quality standards are not effective until approved by the United States Environmental Protection Agency.

The Board's orders and proposed rules are available through the Clerk's Office On-Line (COOL) at www.ipcb.state.il.us. I invite you to take a closer look at those documents. We encourage you to participate in these proceedings and to assist us in the development of sound environmental policy for the people of Illinois.

Sincerely,

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

J. Philip Novak
Chairman

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Federal Update

United States Environmental Protection Agency Adopts Amendments to the Uniform Hazardous Waste Manifest Regulations Under the Resource Conservation and Recovery Act

On March 4, 2005 (70 Fed. Reg. 10775) the United States Environmental Protection Agency (USEPA) adopted new requirements revising the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition.

The revisions standardize the content and appearance of the manifest form and continuation sheet, make the forms available from a greater number of sources, and adopt new procedures for tracking certain types of waste shipments with the manifest. The latter types of shipments include hazardous wastes that destination facilities reject, wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States. USEPA had included provisions for e-manifests in its original proposal (*See* 66 Fed. Reg. 28240, May 22, 2001), but withdrew those provisions in response to public comments. USEPA stated that it would consider e-manifest requirements in a separate rulemaking.

This final rule is effective September 6, 2005.

For further information regarding specific aspects of this notice, contact Bryan Groce, Office of Solid Waste, telephone number (703) 308-8750, email address groce.bryan@epa.gov. Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

United States Environmental Protection Agency Postpones Effective Date of National Pollutant Discharge Elimination System (NPDES) Storm Water Permit Requirements for Oil and Gas Activity That Disturbs One to Five Acres

On March 9, 2005 (70 Fed. Reg. 11560) the United States Environmental Protection Agency (USEPA) postponed, until June 12, 2006, the effective date of the requirement to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit coverage for oil and gas construction activity that disturbs one to five acres of land.

This is the second postponement promulgated by USEPA for these activities. This postponement will allow the USEPA additional time to complete its analysis of the issues raised by stakeholders about storm water runoff from construction activities at oil and gas sites and of practices and methods for controlling these storm water discharges to mitigate impacts on water quality, as appropriate. USEPA stated that it intends to publish a notice of proposed rulemaking in the *Federal Register* in the next six months to address these discharges and to invite public comments.

This action is effective on March 9, 2005.

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For further information contact Jeff Smith, Office of Wastewater Management, Office of Water, Environmental Protection Agency (4203M), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(202) 564-0652; fax number: (202) 564-6431; e-mail address: smith.jeff@epa.gov.

United States Environmental Protection Agency Proposes Amendments to the Clean Air Act National Emission Standards for Hazardous Air Pollutants for Oil and Gas Activity That Disturbs One to Five Acres

On March 25, 2005 (70 Fed. Reg. 15250) the United States Environmental Protection Agency (USEPA) proposed amendments to exempt permanently from the Clean Air Act (CAA) Title V operating permit program five categories of nonmajor (area) sources subject to national emission standards for hazardous air pollutants (NESHAP). The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers and secondary aluminum smelters.

Consistent with the CAA exemption requirements, USEPA is proposing to make a finding that compliance with Title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the five source categories. USEPA is proposing to decline making such a finding for a sixth category: area sources subject to the secondary lead smelter NESHAP.

A previous deferral from permitting for these six categories expired on December 9, 2004, subjecting all such sources to the title V program unless and until USEPA finalizes an exemption for a category.

Comments must be received on or before May 24, 2005. Submit your comments, identified by Docket ID No. OAR-2004-0010, by one of the following methods:

- (1) Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
 - (2) Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, USEPA's electronic public docket and comment system, is USEPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
 - (3) E-mail: Send electronic mail (e-mail) to EPA Docket Center at a-and-r-docket@epamail.epa.gov.
- Direct your comments to Docket ID No. OAR-2004-0010.

For further information contact Mr. Jeff Herring, Information Transfer and Program Integration Division, Office of Air Quality Planning and Standards, Mail Code C304-04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3195; fax number:(919) 541-5509; and e-mail address: herring.jeff@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 Dismisses Premature Appeal in Midwest Generation EME, LLC v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, No. 3-04-0945 (March 4, 2005) (PCB 04-185)

In a March 4, 2005 final unpublished order under Supreme Court Rule 23 (155 Ill.2d R. 23), the Third District Appellate Court dismissed, for lack of jurisdiction, the appeal captioned Midwest Generation EME, LLC v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, No. 3-04-0945 (March 4, 2005). The Board and the Illinois Environmental Protection Agency (IEPA) had moved for dismissal, arguing that the appeal was premature. The Court agreed, dismissing the appeal in a one-paragraph order.

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The case at issue here is Midwest Generation EME, LLC v. Illinois Environmental Protection Agency, PCB 04-185. This case is a pending trade secret appeal that has not yet been to hearing.

Background on Trade Secrets

By way of background, under Section 7 of the Environmental Protection Act (Act) (415 ILCS 5/7 (2002)), all files, records, and data of the Board, IEPA, and the Illinois Department of Natural Resources are open to reasonable public inspection and copying. However, the Act provides that certain materials may represent “trade secrets,” “privileged” information, “internal communications of the several agencies,” or “secret manufacturing processes or confidential data” and, accordingly, be protected from public disclosure. *See* 415 ILCS 5/7(a) (2002); *see also* 415 ILCS 5/7.1 (2002) (trade secrets). Even so, the Act denies protection from public disclosure for: effluent data under the National Pollutant Discharge Elimination System (NPDES) permit program; emission data to the extent required by the federal Clean Air Act; and the quantity, identity, and generator of substances being placed or to be placed in landfills or hazardous waste treatment, storage, or disposal facilities. *See* 415 ILCS 5/7(b)-(d) (2002).

In Midwest’s appeal, trade secret status is at issue. The Act defines “trade secret” as follows:

[T]he whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. 415 ILCS 5/3.48 (2002).

The Board has established procedures for identifying and protecting articles that constitute trade secrets or other non-disclosable information. *See* 35 Ill. Adm. Code 130. “Article” means “any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map.” 415 ILCS 5/7.1 (2002).

The owner of an article seeking trade secret protection for the article must claim that the article represents a trade secret when the owner submits the article to the State agency. *See* 35 Ill. Adm. Code 130.200(a). The State agency must consider the claimed information as a trade secret and protect it from disclosure in accordance with Part 130 procedures unless and until the State agency makes a final determination denying the trade secret request and all appeal times have expired without that final determination being overturned. *See* 35 Ill. Adm. Code 130.200(d), 130.210.

The owner of the article may submit a “Statement of Justification” for trade secret protection (*see* 35 Ill. Adm. Code 130.203) to the State agency at the time the owner submits the article, or at a later time, but in no event later than the time limit of Section 130.202. *See* 35 Ill. Adm. Code 130.200(c). Section 130.202 requires the owner to submit the Statement of Justification within ten working days of the State agency’s request (*see* 35 Ill. Adm. Code 130.202(a)), which request may be triggered by a FOIA request for the claimed information (*see* 35 Ill. Adm. Code 130.201(b)). The State agency may extend the time period an additional ten working days if timely requested by the owner. *See* 35 Ill. Adm. Code 130.202(b). The State agency must determine whether the article represents a trade secret within 45 days after receiving a complete Statement of Justification, but the owner may waive out this decision deadline. *See* 35 Ill. Adm. Code 130.206.

Midwest’s Petition for Review

The information at issue in this case relates to Midwest’s six coal-fired power stations, all of which are in Illinois. In its April 19, 2004 petition for review, Midwest stated that it submitted information to IEPA on November 6, 2003, claiming trade secret protection for the information. Pet. at 1-2. The company explained that it provided the submittal in response to an information request that the United States Environmental Protection Agency (USEPA)

made pursuant to Section 114 of the federal Clean Air Act (42 U.S.C. § 7414). Midwest stated that, as required by USEPA's Section 114 request, the company sent a copy of its response to IEPA. *Id.*

IEPA denied trade secret protection for what Midwest described as two types of information: (1) "information Midwest [] compiled concerning capital projects at each of its coal-fired electric generating units"; and (2) "information identifying the monthly and annual net generation, the monthly coal heat content, and the monthly net heat rate for each of its coal-fired units." Pet. at 2. Midwest argued that IEPA erred in determining the company failed to demonstrate that the information claimed to be trade secret had not become a matter of general public knowledge, had competitive value, and did not constitute emission data exempt from protection. *Id.* at 2-5, Attachment 1.

In a May 6, 2004 order, the Board accepted for hearing Midwest's petition for review. The Board also directed that, as Midwest requested, any hearings would be held *in camera* to avoid disclosing to the public the information claimed to be trade secret. On May 20, 2004, IEPA filed the administrative record of its trade secret determination, which consists of approximately 2,700 pages, in two volumes: Volume I is redacted so as not to disclose claimed trade secret information; Volume II contains the unredacted documents claimed to contain trade secrets.

The Board issued an interim order on November 4, 2004. Among other things, the Board denied a motion by Midwest to partially reconsider the following passage of the Board's May 6, 2004 order: "Hearings will be based exclusively on the record before IEPA at the time it issued its trade secret determination. See 35 Ill. Adm. Code 105.214(a)." Midwest instead asked the Board to review IEPA's trade secret determination *de novo*, *i.e.*, to consider new evidence and not just the evidence in the record before IEPA at the time of IEPA's trade secret determination. Additionally, in its November 4, 2004 order, the Board remanded the matter to IEPA for the limited purpose of having IEPA state, in a supplemental determination, the reasoning for its denial of trade secret protection. The Board retained jurisdiction of the trade secret appeal.

Midwest sought review by the Third District Appellate Court of the Board's November 4, 2004 decision. In the motion to dismiss granted by the court, the Board argued that the appeal was premature and that because Midwest sought review of a non-final Board order, the court lacked jurisdiction. Among other things, the Board noted that Midwest did not ask the Board to certify these questions for interlocutory appeal in accordance with the Board's procedural rule at 35 Ill. Adm. Code 101.908, citing Illinois Supreme Court Rule 308 (155 Ill.2d R. 308).

Third District Appellate Court Agrees to Publish its Decision Affirming Board Order Vacating Grant of Local Siting Approval for Landfill Expansion in Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, County of Kankakee, County Board of Kankakee, City of Kankakee, Merlin Karlock, Keith Runyon, and Michael Watson, No. 3-03-0924 (February 4, 2005) (PCB 03-125, PCB 03-133, PCB 03-134, PCB 03-135 (cons.))

In a March 23, 2005 order, the Third District Appellate Court granted the motion of the Board for publication of the Court's February 4, 2005 final unpublished 10-page order under Supreme Court Rule 23 (155 Ill.2d R. 23); the Third District Appellate Court affirmed the Board's decision to vacate the Kankakee County Board's grant of siting approval for a landfill expansion in Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, County of Kankakee, County Board of Kankakee, City of Kankakee, Merlin Karlock, Keith Runyon, and Michael Watson, No. 3-03-0924 (February 4, 2005). The court's published 10-page opinion can now serve as helpful precedent in resolving future cases.

The court's February 2005 ruling was summarized in detail last month. See *Environmental Register* No. 608 (February 2005) at pp. 3-7. The opinion, which is virtually identical to the unpublished order it replaces, will not be summarized again in detail here.

In brief, the Board vacated the County Board's decision on jurisdictional grounds. The Board found the County lacked jurisdiction over the siting application because Waste Management of Illinois, Inc. (WMI) failed to notify a nearby landowner, Brenda Keller, of its siting application in accordance with Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2002)). Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2002)) has three distinct elements. First, property owners listed on the authentic tax records must be served notice. Second, property owners who own

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property within 250 feet of the lot line of the proposed facility must be notified. Third, service on those property owners must be made using certified mail return receipt or personal service.

The Board moved to publish the court's decision primarily because it was the first appellate court to apply to Section 39.2 (b) of the Act the Illinois Supreme Court's holding in People ex rel. v. \$30,700 U.S. Currency et al., 199 Ill. 2d 142, 766 N.E.2d 1084 (2002) (\$30,700 U.S. Currency). Under \$30,700 U.S. Currency, service is deemed complete once the notice is placed in the mail. In other words, under Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2002)), an applicant can effect service by mailing the pre-filing notice to property owners certified mail return receipt and the service is proper upon mailing. The Board found the Supreme Court's decision in \$30,700 U.S. Currency effectively overruled the appellate court's decision in Ogle County Board v. PCB, 272 Ill. App. 3d 184, 649 N.E.2d 545 (2nd Dist 1995) (Ogle County) (finding that actual receipt of notice by the landowner, and not just mailing of it by the applicant, was required to effectuate service under Section 39.2 (b) of the Act).

The court agreed with the Board's application of \$30,700 US Currency to the facts at hand, summarizing the Supreme Court holding as being that

Jurisdiction is not premised on the recipient's actions, once the letter is received, but on the form of sending of the letter; jurisdiction will exist as long as the letter is sent by the prescribed method." *Id.*, slip op. at 8.

The court observed that WMII had cited no authority in support of its contention that the statute is satisfied by actual or constructive notice, despite its specifications as to acceptable service methods, and that posting or regular mail service would do. The court remarked that even if Brenda Keller had actual notice, "[n]otice would not have been achieved by the statutorily-required means and proof of actual notice would not overcome that failure of compliance." *Ibid.*

Prior to the entry of the order publishing the Third District's February 4 decision, WMII had filed a petition for leave to appeal the Third District decision in the Illinois Supreme Court. The petition is still no before the Illinois Supreme Court.

Fifth District Appellate Court Grants Voluntary Dismissal of Appeal and Cross-Appeal in County of Saline v. Saline County Landfill, Inc. et al., No 5-04-0295 (March 31 and April 4, 2005)

The Fifth District Appellate Court granted the motion of the County of Saline to dismiss its appeal, as well as the motion of Saline County Landfill to dismiss its cross-appeal in County of Saline v. Saline County Landfill, Inc., Illinois Environmental Protection Agency and Illinois Pollution Control Board et al., No 5-04-0295 (March 31 and April 4, 2005). Consequently, the Court also cancelled oral argument in the matter, scheduled for April 6, 2005. These orders are unpublished under Supreme Court Rule 23 (155 Ill.2d R. 23). Dismissal of the appeals leaves undisturbed an important Board ruling interpreting Section 39.2(f) of the Environmental Protection Act (Act)(415 ILCS 5/39.2(f) (2002)).

The Board decision on appeal was a May 6, 2004 order in a permit appeal captioned Saline County Landfill, Inc. v. IEPA and County of Saline (Intervenor), PCB 04-117 (May 6, 2004). On January 8, 2004, Saline County Landfill, Inc. (SCLI) filed a petition for review of a determination by the Illinois Environmental Protection Agency (IEPA) to deny a permit for expansion of the landfill located in Harrisburg, Saline County. The IEPA denied the permit because the IEPA determined that SCLI did not provide proof pursuant to 39(c) of the Environmental Protection Act (Act) (415 ILCS 5/39(c) (2002) that SCLI had local siting approval for the expansion of the landfill pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2002)). On February 19, 2004, the Board granted a motion by Saline County to intervene in this proceeding in support of the permit denial. The Board found that the IEPA determination was incorrect. The Board remanded the matter to the IEPA, directing the IEPA to issue the requested permit.

The issue in this case was whether or not SCLI's 1996 local siting approval for the expansion of the landfill continued to be valid. The resolution of that issue required a reading of Section 39.2(f) of the Act (415 ILCS 5/39.2(f) (2002)) which provides in part that:

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approval shall expire at the end of 3 calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the [IEPA] for a permit to develop the site. 415 ILCS 5/39.2(f) (2002).

The plain language of Section 39.2(f) of the Act (415 ILCS 5/39.2(f) (2002)) states that local siting expires *unless* an application is made to the IEAP for development of the site within three years of local siting approval. All parties agreed that SCLI did apply for a permit within three years but that the permit was denied. *See Saline County Landfill, Inc. v. IEPA and County of Saline (Intervenor)*, PCB 2002-108 (May 16, 2002). Thus, under the plain language of the statute, a permit application for development of the site was filed within three years of siting approval.

The crux of the Board's holding was:

The statutory language is silent regarding time limitations if the [IEPA] denies a permit. This is the point where the parties disagree. The [IEPA] and Saline County argue here, that the statutory language means that the local siting approval has expired because the instant application was filed after the three years. SCLI argues that, having timely filed a permit application and diligently sought a permit, the 1996 siting has not expired.

The Board is persuaded that the local siting approval has not expired. The statutory language includes other scenarios for when siting expires besides the three-year time limitation. The statute is silent regarding an [IEPA] permit denial. Clearly, the legislature understood that not all permits are granted. Thus, the Board finds that, the legislature's failure to include a scenario wherein the [IEPA] denies a permit, indicates the legislature did not intend for a denial of a permit to have any affect on the three-year time limitation. As long as an application to develop the site is filed within three years of local siting approval, whether or not that permit is granted, the Board finds that the requirements of Section 39.2(f) of the Act (415 ILCS 5/39.2(f) (2002)) are met and local siting does not expire. *Saline County Landfill, Inc. v. IEPA and County of Saline (Intervenor)*, PCB 04-117 (May 6, 2004), slip op. at 16

Rule Update

Board Adopts Final Opinion and Order in RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004) (R05-02)

On March 3, 2005, the Board adopted a final opinion and order in RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004) (R05-02). The rulemaking adopts amendments to the Illinois regulations that are "identical in substance" to hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA). The USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2002)). The Board made only minor, nonsubstantive changes to the proposal that was published in the January 3, 2005 issue of the *Illinois Register* at 28 Ill. Reg. 132, 154, 207, and 232. The Board will hold the amendments for 30 days to give the United States Environmental Protection Agency time to review the final amendments before filing them with the Secretary of State.

The substantive amendments adopted in this update dealt with the USEPA actions of April 22, 2004 (69 Fed. Reg. 21737), April 26, 2004 (69 Fed. Reg. 22602), and October 25, 2004 (69 Fed. Reg. 62217).

The USEPA action of April 22, 2004 (69 Fed. Reg. 21737) applies only to members of the National Environmental Performance Track Program. The amendments relax existing requirements for members of that program. The amendments extend from 90 days to 180 days the time during which a generator of hazardous waste may

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accumulate hazardous waste on-site. If the generator accumulates hazardous waste on-site for longer than the allowable accumulation time, its facility is designated a hazardous waste treatment, storage, and disposal facility. The amendments impose various waste and facility management requirements, advanced notice, recordkeeping, and reporting requirements on the generator as conditions to the extended accumulation time.

On October 25, 2004 (69 Fed. Reg. 62217), USEPA adopted corrections to the April 22, 2004 amendments. The original rule did not impose the facility and waste management standards of Subparts C, D, AA, BB, and CC on the management of the accumulating hazardous waste. These requirements pertain to preparedness and prevention, contingency planning and emergency procedures, and air emissions from process vents; equipment leaks; and tanks, surface impoundments, and containers. USEPA stated that it had inadvertently omitted the references to these requirements from the final amendments.

The USEPA action of April 26, 2004 (69 Fed. Reg. 22602) was primarily an action under Section 112 of the federal Clean Air Act (42 U.S.C. 7412 (2003)), which requires USEPA to establish national emission standards for hazardous air pollutants (NESHAPs) for new and existing major sources. The NESHAPs are to reflect the maximum degree of reduction in hazardous air pollutant (HAP) emissions achievable (MACT). The MACT standard requires all major sources to achieve the HAP emissions reductions already achieved by the best-operated sources. Only one segment of the new NESHAP pertains to hazardous waste: the management of captured purge materials from coating equipment. The management of these materials may be subject to the hazardous waste standards for equipment leaks in Subparts BB of Parts 264 and 265 of the federal standards for hazardous waste treatment, storage, and disposal facilities (equivalent to Subparts BB and CC of 35 Ill. Adm. Code 724 and 725). The amendments very clearly exempt from regulation under Subparts BB of Parts 264 and 265 those purged coatings and solvents from surface coating operations that are subject to the NESHAP applicable to surface coating of automobiles and light-duty trucks.

Copies of the Board's opinion and order in R05-02 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 Michael J. McCambridge at 312-814-6924; e-mail address mccambm@ipcb.state.il.us

Board Adopts Proposal for Public Comment in Definition of VOM Update, USEPA Amendments (July 1, 2004 through December 31, 2004) (R05-16)

On March 3, 2005, the Board adopted a proposal for public comment in Definition of VOM Update, USEPA Amendments (July 1, 2004 through December 31, 2004) (R05-16). This rulemaking proposes amendments to update the definition of "volatile organic material" (VOM) in the Board's air pollution regulations (35 Ill. Adm. Code 211.7150). The update is needed to ensure that Illinois' regulations reflect the United States Environmental Protection Agency's (USEPA) most recent exemption of chemical compounds from regulation as ozone precursors. The Board sent the proposal to the Secretary of State's Index Department for publication in the March 4, 2005 issue of the *Illinois Register* at 29 Ill. Reg. 4323.

Section 9.1(e) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(e) (2002)) mandates this rulemaking. That statutory provision requires the Board to exclude from the definition of VOM those compounds determined by USEPA to be exempt from regulation under the state implementation plans for ozone "due to negligible photochemical reactivity." 415 ILCS 5/9.1(e) (2002). In addition, Section 9.1(e) of the Act requires the Board to conduct this rulemaking pursuant to the provisions of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2002)) for adopting rules that are "identical in substance" to the federal requirements.

Section 9.1(e) also provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 (2002)) do not apply to this type of rulemaking. However, as provided in Section 9.1(e) of the Act, the Board, before adopting final rule amendments, will provide notice of this rulemaking proposal in the *Illinois Register*, hold one public hearing on the proposal as required by the federal Clean Air Act (33 U.S.C. § 7410(a) (2003)), and allow for public comment.

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The amendments proposed in this rulemaking address two USEPA amendments to the federal definition of “volatile organic compound” (VOC), which is the same as VOM as used in the Illinois regulations. First, on November 29, 2004, USEPA added four compounds to the list of chemical species that are exempt from the federal definition of VOC and, accordingly, are exempt from regulation for control of ozone precursors. Second, also on November 29, 2004, USEPA excluded an additional compound from the VOC definition, for purposes of emissions limitations and VOC content requirements, but retained the compound as VOC for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements.

The Board’s proposal seeks to incorporate these federal amendments into the Illinois regulatory definition of VOM at 35 Ill. Adm. Code 211.7150, with only minor differences from the federal rule text.

Copies of the Board’s opinion and order in R05-16 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.

As required by the federal Clean Air Act (33 U.S.C. § 7410(a) (2003)), the Board has also scheduled a public hearing in this rulemaking:

10:00 am, Tuesday, April 12, 2005,
James R. Thompson Center,
Illinois Pollution Control Board Hearing Room 11-512,
100 West Randolph Street, Chicago, IL 60601

For additional information contact the hearing officer, Richard McGill, at 312-814-6983; e-mail address mcgillr@ipcb.state.il.us

Board Adopts Second First Notice Proposal in Proposed New and Updated Rules for Measurement and Numerical Sound Emissions Standards, Amendments to 35 Ill. Adm. Code 901 and 910; March 2004 Proposal Formally Withdrawn (R03-09)

On March 17, 2005, the Board adopted a second first notice opinion and order in Proposed New and Updated Rules for Measurement and Numerical Sound Emissions Standards, Amendments to 35 Ill. Adm. Code 901 and 910 (R03-09). This supersedes the July 2003 first notice opinion and order in this rulemaking; the Board withdrew the prior first notice proposal on March 4, 2004 in response to public comments after finding that additional hearings were necessary to develop a complete record and to address Sections of the rules that were not included in the initial proposal. The Notice of Withdrawal (published at 27 Ill. Reg. 11908) concerns the superseded first notice proposal (published at 27 Ill. Reg. 11908 (July 25, 2003)).

The Board’s March 2005 first notice proposal was received by the Secretary of State’s Index Department and will be published in the April 15, 2005 issue of the *Illinois Register*.

The Board itself opened this rulemaking to update Parts 901 and 910 of its noise regulations found in 35 Ill. Adm. Code Subtitle H. As no one had proposed updates to the Board since 1987, many of the sound measurement definitions and techniques in the existing rules do not reflect present scientific standards. The Board also found that some of the existing site-specific needed review.

The proposed changes to Part 901 replace the existing 1965 Standard Land Use Coding Manual (SLUCM) codes with the Land-Based Classification Standards (LBCS) codes, a consistent model for classifying land uses based on a multi-dimensional land use classification model based land classification. The proposed changes to Section 901.104 clarify that the impulsive sound standards are based on 1-hour A-weighted equivalent sound levels. The Board also proposes to revise the numeric standards to bring highly impulsive noise standards into conformity with the standards set forth in Sections 901.102 and 901.103 in terms of the effective community response.

This proposal includes the revision of outdated numerical sound emission standards for property line noise sources found at 35 Ill. Adm. Code Parts 901.

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The Board received comments from four companies that are subject to site-specific noise regulations: Moline Forge, Scot Forge, Vaughan and Bushnell Manufacturing Company, and Intermet Decatur Foundry. Moline Forge was the only company that did not seek any changes to the regulations. In response to comments filed by the other companies the Board is proposing amendments to the site-specific regulations to more accurately reflect the companies' current operating conditions.

The proposed new Part 910 sets forth the measurement procedures for enforcing the Board's noise standards in Parts 900 and 901. These procedures are essentially based upon the Illinois Environmental Protection Agency's noise measurement protocols at 35 Ill. Adm. Code 951. In addition to the measurement techniques, the proposal contains general requirements and specific instrument requirements. The proposed Appendix A includes tables (obtained from extensive measurements) that can be used to determine the long-term background ambient noise levels in instances where direct measurements cannot be made.

As the Board held three hearings concerning the July 2003 first notice proposal, the Board does not presently expect to hold hearings on the March 2005 proposal during the second first notice period.

Copies of the Board's opinion and order in R03-9 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 the hearing officer, Marie Tipsord, at 312-814-4925; e-mail address tipsorm@ipcb.state.il.us.

Board Adopts Final Opinion and Order in RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2004 through June 30, 2004) (R05-1)

On March 17, 2005, the Board adopted a final opinion and order in RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2004 through June 30, 2004) (R05-1). The rulemaking adopted amendments to the Illinois regulations that are "identical-in-substance" to municipal solid waste landfill (MSWLF) regulations adopted by the United States Environmental Protection Agency (USEPA). These USEPA rules implement Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C §§ 6941-6949, (RCRA Subtitle D). This docket includes federal MSWLF amendments that USEPA adopted in the period January 1, 2004 through June 30, 2004. The final amendments were filed with the Secretary of State's Index Department and will be published in the April 8, 2005 issue of the *Illinois Register*.

In brief summary, this rulemaking adopted amendments to 35 Ill. Adm. Code 810, 811, and 813. These rules are identical in substance to the one USEPA rulemaking during the update period: a March 22, 2004 amendment (69 Fed. Reg. 13242) to allow states to grant temporary research, development, and demonstration (RD&D) permits. Specifically, the RD&D permits would allow exceptions to very limited landfill requirements to allow the use of innovative technologies at landfills. In response to public comments, the Board adopted amendments which allow the Illinois Environmental Protection Agency to issue RD&D permits without first having the landfill operator receive and adjusted standard from the Board.

More specifically, the USEPA RD&D permits action of March 22, 2004 (69 Fed. Reg. 13242) allows the use of innovative technology and practices at municipal solid waste landfills (MSWLFs). USEPA adopted a new provision at 40 C.F.R. 258.4 allowing the states to grant a "variance" from very specific generally applicable requirements:

- 1) 40 C.F.R. 258.26(a)(1), requiring the control of run-on to the active portion of the landfill from the peak discharge of a 25-year storm event (corresponding with 35 Ill. Adm. Code 811.103(b)(1) and (b)(2) of the Board's regulations);
- 2) 40 C.F.R. 258.28(a), prohibiting the placement of bulk or non-containerized liquid waste in a landfill except under very limited circumstances (corresponding with 35 Ill. Adm. Code 811.107(m)(1)); and

3) 40 C.F.R. 258.60(a)(1), (a)(2), and (b)(1), requiring the use of a final cover system that minimizes erosion and infiltration into a landfill, which includes specific requirements pertaining to such criteria as permeability, thickness of each layer, and the ability of the cover material to sustain native plant growth (corresponding with 35 Ill. Adm. Code 811.314(a) through (c)).

Bioreactor Landfills Now Allowed Through Temporary Research, Development, and Demonstration Permits

The purpose of the federal amendments is to allow the operation of bioreactor landfills, which operate much differently from conventional landfills. A conventional landfill is designed to lessen the potential for groundwater contamination by minimizing the infiltration of rainwater, restricting the placement of liquid wastes in the landfill, and minimizing the hydraulic head on the bottom liner to minimize percolation of contaminated leachate into the ground. As USEPA explains in the preamble discussion of the federal amendments, a bioreactor landfill takes a different approach in order to more rapidly stabilize the landfill:

Bioreactor means a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste. 69 Fed. Reg. 13242, 13246 (Mar. 22, 2004) (quoting the definition of “bioreactor” in the national emission standards for hazardous air pollutants (NESHAPs) rule in Subpart AAAA of 40 C.F.R. 63 (2003)).

The generally-applicable federal landfill management requirements act as restrictions on the ability to operate a bioreactor landfill. The operation of a bioreactor landfill requires the reintroduction of contaminated liquid to the waste in the landfill, which is not allowed under the requirements of 40 C.F.R. 258.26(a)(1), 258.28(a), and 258.60(a)(1), (a)(2), and (b)(1) (corresponding with 35 Ill. Adm. Code 811.103(b)(1) and (b)(2), 811.107(m)(1), and 811.314(a) through (c) of the Illinois regulations). The RD&D permit rule would allow relief from these rules to permit the experimental operation of a bioreactor landfill.

Under the new federal provision, certain limitations apply to the availability of an RD&D permit. To obtain an RD&D permit that allows alternative practices to the generally applicable run-on control system requirements and/or the prohibition against placement of bulk or non-containerized liquids, the applicant must design and construct the landfill’s leachate collection system so as to maintain less than a 30-centimeter (cm) leachate depth on the bottom liner of the landfill. To obtain an RD&D permit that allows the use of alternative practices to the generally applicable final cover requirements, the owner or operator must demonstrate that infiltration of liquid through the alternative cover will not cause contamination of groundwater or surface water or cause the leachate depth on the liner to exceed 30 cm. In issuing an RD&D permit the IEPA must include whatever terms and conditions are necessary “to assure protection of human health and the environment.” See 40 C.F.R. 258.4(c) (2004).

Copies of the Board’s opinion and order in R05-06 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 Michael J. McCambridge at 312-814-6924; e-mail address mccambm@ipcb.state.il.us

Board Adopts Joint Illinois Environmental Protection Agency/ Illinois Environmental Regulatory Group Proposal for Hearing in Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146) (R05-19)

On March 17, 2005, the Board adopted a proposal for hearing in Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 210.146) (R05-19). The proposal was filed jointly by the Illinois Environmental Protection Agency (IEPA) and the Illinois Environmental Regulatory Group (IERG) on February 22, 2005. The proposal seeks to add four categories to the existing list of exemptions from state air permit requirements in Section 201.146. According to the proponents, the purpose of the proposal is to eliminate permitting delays for minor projects having little environmental or regulatory impact:

1. Owners or operators replacing or adding air pollution control equipment at existing units-- proposed subsection (hhh). The proposed exemption would only apply to existing units, which are permitted and have operated in compliance for the past year. The new pollution control equipment must maintain or improve air pollution control over the prior levels of target pollutants, and not result in a net increase in emissions of any collateral pollutant. This exemption would not apply if the installation or operation of the new or replacement pollution controls would trigger or change applicability of different regulatory requirements. Finally, required monitoring equipment must be carried over to the replacement control device and must incorporate current technology.
2. “De minimis” projects at sources with federally enforceable state operating permits (FESOP) limiting their potential to emit pollutants-- proposed subsection (iii). The proponents claim that there can be some projects at FESOP sources that do not fit under any of the existing listed exemptions under Section 201.146 and that are still insignificant from a permitting standpoint. Under this “de minimis” permitting second exemption, permits would be unnecessary for projects at truly minor FESOP sources with a low potential to emit any regulated air pollutant absent air pollution equipment from the new or modified unit that have no outstanding compliance or enforcement issues. However, raw materials and fuels that cause or contribute to emissions must not contain a hazardous air pollutant equal to or greater than 0.01 percent by weight. Also, this exemption is not available to a source that must meet New Source Performance Standards and New Source Review requirements under the Clean Air Act.
3. New units or modifications to existing units at minor sources without FESOPs--section (jjj). This third exemption, like the second in subsection (iii), would be limited to sources with the same low potential to emit any regulated air pollutant absent air pollution equipment from the new or modified unit that have no outstanding compliance or enforcement issues. But, the exemption would also be available for minor sources that have a slightly greater potential to emit, so long as the facility notifies the IEPA of its intent to construct or install a new emissions unit or modification. Only after notifications can the facility begin construction, installation, or modification. This provision, state the IEPA and IERG, would require permitting if the additional emissions from the project could change the sources’ status with respect to its potential to emit. This exemption is also not available to a source that must meet New Source Performance Standards and New Source Review requirements under the Clean Air Act.
4. Insignificant activities-- proposed subsection (kkk). The proposal would create a list of permit exempt insignificant activities similar to those for CAAPP sources. See 35 Ill. Adm. Code 201.210 through 210.211. Instead of applying for a permit, owners or operators would only notify the Agency when they add insignificant activities. Facilities must still comply with otherwise applicable emission standards or other regulatory requirements.

In its March 17, 2004 order, the Board also scheduled two public hearings on the proposal:

10:00 am, Tuesday, April 12, 2005,
James R. Thompson Center,
Illinois Pollution Control Board Hearing Room 11-512,
100 West Randolph Street, Chicago, IL 60601; and
10:00 am on Tuesday, June 14, 2005,
Illinois Pollution Control Board Hearing Room,
1021 North Grand Avenue East, North Entrance,
Springfield, IL 62794.

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The order also sets requirements and deadlines for service and filing of pre-filed testimony.

Copies of the Board's opinion and order in R05-19 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 the hearing officer, Amy Antonioli, at 312-814-3665; e-mail address antoniao@ipcb.state.il.us.

Board Actions

March 3, 2005
Springfield, Illinois

Rulemakings

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| R05-2 | <u>In the Matter of: RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004)</u> – The Board adopted a final opinion and order in this “identical-in-substance” rulemaking amending the Board’s hazardous waste regulations. | 5-0
R, Land |
| R05-16 | <u>In the Matter of: Definition of VOM Update, USEPA Amendments (July 1, 2004 through December 31, 2004)</u> – The Board adopted a proposal for public comment in this “identical-in-substance” rulemaking to amend the Board’s volatile organic material regulations. | 5-0
R, Air |

Adjusted Standards

- | | | |
|---------|--|------------|
| AS 05-4 | <u>In the Matter of: Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(C)</u> – The Board granted petitioner’s motion to incorporate the record from <u>In re Petition of SCA Tissue of North American, L.L. C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)</u> , AS 05-1 into this proceeding and accepted this matter for hearing. | 5-0
Air |
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Administrative Citations

- | | | |
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| AC 05-43 | <u>County of Macon, Illinois v. David Beck</u> – The Board found that this Macon County respondent violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2002)), and ordered respondent to pay a civil penalty of \$3,000. | 5-0 |
| AC 05-46 | <u>IEPA v. Lawrence Krueger</u> – The Board found that this Cook 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 |

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AC 05-49	<u>IEPA v. Landers' Children Family, L.L.C. and Ray Landers</u> – The Board granted complainant's motion to dismiss the administrative citation for lack of timely service.	5-0
AC 05-52	<u>IEPA v. Robert Daniel Spears</u> – The Board accepted for hearing this petition for review of an administrative citation against this Cass County respondent.	5-0
AC 05-54	<u>IEPA v. Ray Logsdon Estate, Logsdon Sand and Gravel and M.K. O'Hara Construction, Inc.</u> – The Board accepted for hearing a petition for review on behalf of M.K. O'Hara Construction, Inc. in this administrative citation against these Cass County respondents. The Board directed respondent M.K. O'Hara Construction, Inc. to file an amended petition for review accompanied by an attorney's appearance within 30 days from the date of this order, or the Board will dismiss this petition.	5-0

Decisions

PCB 04-50	<u>People of the State of Illinois v. MacMurray College</u> – In this air enforcement action concerning a Morgan 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 implement and complete a supplemental environmental project (SEP) in lieu of paying a civil penalty and to cease and desist from further violations. Under the SEP, respondent agrees to collect used computers and computer monitors from the community, donate the usable equipment to charitable organizations for use or resale, and dispose of the non-usable equipment in an environmentally acceptable manner.	5-0 A-E
PCB 04-94	<u>People of the State of Illinois v. Hauck Homes, Inc. d/b/a Rock River Estates Mobile Home Park</u> – In this water enforcement action concerning a Lee 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 \$12,000 and to cease and desist from further violations.	5-0 W-E
PCB 05-8	<u>People of the State of Illinois v. Village of Capron</u> – In this public water supply enforcement action concerning a Boone 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 \$1,000 and to cease and desist from further violations.	5-0 PWS-E
PCB 05-78	<u>People of the State of Illinois v. Ralph Stone, Mayor of the Village of Gorham</u> – In this air enforcement action concerning a Jackson 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	5-0 A-E

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civil penalty of \$500 and to cease and desist from further violations.

PCB 05-92	<u>People of the State of Illinois v. Specialty Promotions, Inc. d/b/a Specialty Printing Company</u> – In this air enforcement action concerning a Cook 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 \$75,000 and to cease and desist from further violations.	5-0 A-E
PCB 05-96	<u>People of the State of Illinois v. Village of North City, Lawrence A. Lipe & Associates, Inc., Altman-Charter Company, and Furlong Excavating, Inc.</u> – In this public water supply enforcement action concerning a Boone 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 three stipulation and settlement agreements as to Lawrence A. Lipe & Associates, Inc., Furlong Excavating, Inc. and Altman-Charter Company. Lawrence A. Lipe & Associates, Inc. was ordered to pay a civil penalty of \$5,000. Furlong Excavating, Inc. was ordered to pay a civil penalty of \$500 and to perform a supplemental environmental project by donation of \$2,000 to the Benton School District Greening Program. Altman-Charter Company was ordered to pay a civil penalty of \$2,000. The respondents also were ordered to cease and desist from further violations. This case remains open as to the sole remaining respondent, the Village of North City.	5-0 PWS-E

Motions and Other Matters

PCB 04-1	<u>SCI Illinois Services, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of these consolidated underground storage tank appeals involving a Cook County facility.	5-0
PCB 04-3 (Cons.)		UST Appeal
PCB 04-138	<u>People of the State of Illinois v. Pinnacle Corporation d/b/a Town & Country Homes</u> – The Board granted complainant’s motion for leave to amend complaint and accepted the first amended complaint. 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 Lake County facility, the Board ordered publication of the required newspaper notice.	5-0 W-E
PCB 04-178	<u>People of the State of Illinois v. Ned Mandich d/b/a H.B.M. Electrochemical</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 05-29	<u>Mather Investment Properties, L.L.C. v. Illinois State Trapshooters Association, Inc.</u> – The Board granted the parties’ agreed motion for an additional 90 days in which to file an answer, now due on or before May 17, 2005.	5-0 Citizens L-E

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PCB 05-32	<u>People of the State of Illinois v. GTC, International</u> – The Board granted complainant’s motions to deem facts admitted and for summary judgment on all ten counts of the complaint. The Board directed the parties to hearing on the issue of remedy.	5-0 A-E
PCB 05-102	<u>Village of Crainville 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 05-108	<u>William Breuer v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Washington County facility.	5-0 UST Appeal
PCB 05-155	<u>Midwest Petroleum Company v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a St. Clair County facility.	5-0 UST Appeal
PCB 05-156	<u>Vision Properties Blue Island, L.L.C. 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 Cook County facility.	5-0 P-A, RCRA 90-Day Ext.
PCB 05-158	<u>Wilson Sporting Goods 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 Cook County facility.	5-0 UST Appeal 90-Day Ext.

March 17, 2005 Chicago, Illinois

Rulemakings

R03-9	<u>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</u> – The Board adopted a first notice opinion and order proposing to amend the Board’s noise regulations.	5-0 R, Noise
R05-1	<u>In the Matter of: RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2004 through June 30, 2004)</u> – The Board adopted a final opinion and order in this “identical-in-substance” rulemaking amending the Board’s municipal solid waste landfill regulations.	5-0 R, Land
R05-19	<u>In the Matter of: Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146)</u> – The Board accepted for hearing the Illinois Environmental Protection Agency and Illinois Environmental Regulatory	5-0 R, Air

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Group February 22, 2005 proposal to amend the Board's air regulations.

Adjusted Standards

AS 05-2	<u>In the Matter of: Petition of the Village of Bensenville for an Adjusted Standard from 35 Ill. Adm. Code 620-410 Regarding Chloride and Lead</u> – The Board accepted for hearing petitioner's amended petition and granted the motion to file reduced copied of the amended petition.	5-0 PWS
AS 05-3	<u>In the Matter of: Waste Management of Illinois, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122 for Solid Treatment Residual from CID Recycling and Disposal Facility Biological Liquid Treatment Center</u> – The Board dismissed this petition for an adjusted standard for petitioner's failure provide proof of service on the Illinois Environmental protection Agency, a statement in the petition indicating whether the petitioner requests or waives hearing, and to timely publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected, as required by Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1(d)(1) (2002)).	5-0 Land
AS 05-5	<u>In the Matter of: Petition of Ford Motor Company for an Adjusted Standard from 35 Ill. Adm. Code 218.586</u> – The Board accepted for hearing this request for adjusted standard on behalf of this Cook County petitioner.	5-0 Air

Administrative Citations

AC 05-47	<u>IEPA v. Stacy Hess</u> – The Board accepted for hearing respondent's amended petition for review of an administrative citation against this Tazewell County respondent.	5-0
AC 05-48	<u>County of Jackson v. Southern Illinois Regional Landfill, Inc., Doug Ticer, and George Browning</u> – The Board found that these Jackson 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 05-50	<u>IEPA v. Knox County Landfill Committee and Greg Ingle</u> – The Board found that these Jackson County respondents violated Sections 21(o)(5) of the Act (415 ILCS 5/21(o)(5) (2002)), and ordered respondents to pay a civil penalty of \$500.	5-0
AC 05-51	<u>County of Sangamon v. Patrick O'Keefe</u> – The Board accepted for hearing this petition for review of an administrative citation against this Sangamon County respondent.	5-0

Decisions

PCB 03-101	<u>People of the State of Illinois v. Werner, Co.</u> – In this air enforcement action concerning a Cook 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 \$32,000, to operate and maintain all equipment and systems relating to a Supplemental Environmental Project at its Franklin Park facility, and to cease and desist from further violations.	5-0 A-E
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Motions and Other Matters

PCB 93-17	<u>Phibro-Tech f/k/a Southern Chemical Company v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal involving a McHenry County facility.	5-0 P-A, RCRA
PCB 04-68	<u>Martin Oil Marketing, Ltd. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Cook County facility.	5-0 UST Appeal
PCB 04-93	<u>Martin Oil Marketing, Ltd. V. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a McLean County facility.	5-0 UST Appeal
PCB 04-128	<u>WEWS, L.P. (the Boye Needle Facility) v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Cook County facility.	5-0 UST Appeal
PCB 04-190	<u>Johnson Oil Company v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Champaign County facility.	5-0 UST Appeal
PCB 04-207 PCB 97-193	<u>People of the State of Illinois v. Community Landfill Company, Inc. and People of the State of Illinois v. Edward Pruim an individual, and Robert Pruim, an individual</u> – The Board granted complainant’s motion to strike the second affirmative defense.	5-0 W-E
PCB 05-48	<u>Illinois Ayers Oil Company v. IEPA</u> – The Board denied petitioner’s motion for reconsideration of the Board’s January 6, 2005 order, dismissing the petition as untimely filed.	5-0 UST Appeal
PCB 05-60	<u>People of the State of Illinois v. Youssi Real Estate and Development, 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 Boone County facility, the Board ordered publication of the required newspaper notice.	5-0 W-E
PCB 05-96	<u>People of the State of Illinois v. Village of North City, Lawrence A. Lipe & Associates, Inc., Altman-Charter Company, and Furlong Excavating, Inc.</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 Franklin County facility, the Board ordered publication of the required newspaper notice as to Village of North City. The Board also granted complainant’s motion for modification of the Board’s March 3, 2005 order regarding the Altman-Charter Company proposed stipulation and settlement agreement. The modified order requires respondent to pay a civil	5-0 PWS-E

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penalty of \$500 and to perform a supplemental environmental project by donation of \$2,000 to the Benton School District Greening Program.

PCB 05-100	<u>Estate of Irene Steinheimer 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 Morgan County facility.	5-0 UST Appeal
PCB 05-159	<u>Fruendt Crop Services, Inc. (Property Identification Number 11-26-03-300-010) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Fruendt Crop Services, 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 Land
PCB 05-160	<u>Precision Pork, L.L.C. (Property Identification Number 12-14-29-200-003) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Precision Pork, L.L.C. located in Lee 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 Land
PCB 05-161	<u>Crest Automotive 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 Cook County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-162	<u>Ye Olde Glass Shoppe 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 Clark County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-163	<u>People of the State of Illinois v. Pekin Paperboard Company, L.P.</u> – The Board accepted for hearing this water enforcement action involving a site located in Tazewell County.	5-0 W-E
PCB 05-164	<u>Rohm and Haas Company v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Kankakee County facility.	5-0 P-A, Air
PCB 05-165	<u>Century Chevy 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 McLean County facility.	5-0 UST Appeal 90-Day Ext.
PCB 05-166	<u>Clinton County Oil Company, Inc. 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	5-0

this Madison County facility.

UST Appeal
90-Day
Ext.

PCB 05-167

Clinton County Oil Company, Inc. 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 Madison County facility.

5-0
UST Appeal
90-Day
Ext.

New Cases

March 3, 2005 Board Meeting

05-156 Vision Properties Blue Island, L.L.C. 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 Cook County facility.

05-157 Grand Pier Center L.L.C. and American International Specialty Lines Insurance Co. as subrogee of Grand Pier Center L.L.C. v. River East L.L.C., Chicago Dock and Canal Trust, Chicago Dock and Canal Company, and Kerr-McGee Chemical L.L.C. – The Board held for a later duplicative/frivolous determination this citizens' land enforcement action involving a Cook County facility.

05-158 Wilson Sporting Goods 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 Cook County facility.

AS 05-005 In the Matter of: Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(C) – Pending receipt of the certificate of publication, the Board held this Cook County facility's petition for an adjusted standard from the Board's volatile organic material emission standards and limitations for the Chicago area.

R05-019 In the Matter of: Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146) – No action taken.

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05-159 Fruendt Crop Services, Inc. (Property Identification Number 11-26-03-300-010) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Fruendt Crop Services, 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)).

05-160 Precision Pork, L.L.C. (Property Identification Number 12-14-29-200-003) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Precision Pork, L.L.C. located in Lee County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

05-161 Crest Automotive 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 Cook County facility.

05-162 Ye Olde Glass Shoppe 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 Clark County facility.

05-163 People of the State of Illinois v. Pekin Paperboard Company, L.P. – The Board accepted for hearing this water enforcement action involving a site located in Tazewell County.

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05-164 Rohm and Haas Company v. IEPA – The Board accepted for hearing this permit appeal involving a Kankakee County facility.

05-165 Century Chevy 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 McLean County facility.

05-166 Clinton County Oil Company, Inc. 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 Madison County facility.

05-167 Clinton County Oil Company, Inc. 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 Madison County facility.

AC 05-057 IEPA v. Leonard Harris – The Board accepted an administrative citation against this Boone County respondent.

AC 05-058 IEPA v. Knox County Landfill Committee – The Board accepted an administrative citation against this Knox County respondent.

AC 05-059 IEPA v. Dale and Carol Hartley – The Board accepted an administrative citation against these Edgar County respondents.

Calendar

4/5/05 10:00 AM	R05-9	In the Matter of: Setback Zone for City of Marquette Heights Community Water Supply, New 35 Ill. Adm. Code 618	James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago
4/6/05 9:00 AM	PCB 04-186	Waste Management of Illinois, Inc. v. County Board of Kankakee County, Illinois	County Administration Building County Board Room – 4th Floor 189 East Court Street Kankakee
4/7/05 9:00 AM	PCB 04-186	Waste Management of Illinois, Inc. v. County Board of Kankakee County, Illinois	County Administration Building County Board Room – 4th Floor 189 East Court Street Kankakee
4/7/05 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		Videconference 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
4/8/05 9:00 am	PCB 04-186	Waste Management of Illinois, Inc. v. County Board of Kankakee County, Illinois	County Administration Building County Board Room – 4th Floor 189 East Court Street Kankakee
4/15/05 10:00 AM	PCB 05-155	Midwest Petroleum Company v. IEPA	Belleville City Hall Council Chambers 101 S. Illinois Street Belleville

4/21/05 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		James R. Thompson Center Hearing Room 9-040 100 W. Randolph Street Chicago
4/28/05 10:30 AM	AC 04-77	IEPA v. Frank Bencie	Benton City Hall Council Chambers 500 W. Main Street Benton
5/5/05 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		Illinois Pollution Control Board Board Room 1021 N. Grand Avenue East Springfield
5/10/05 9:00 AM	PCB 04-12	Teresa L. Shepro, as Trustee of the Justice W. Shepro Trust, and Teresa L. Shepro and Frank Wiemerslage, as beneficiaries under Trust No. 898 of the Chicago Trust Company v. Newby Oil Company, David E. Tripp and Janice L. Tripp	City Hall Annex Council Chambers 128 E. Railroad Sandwich
5/19/05 11:00 AM	<u>Illinois Pollution Control Board Meeting</u>		James R. Thompson Center Hearing Room 9-040 100 W. Randolph Street Chicago

Boone Creek Class III Special Resource Groundwater Listing Notice

The Illinois Environmental Protection Agency (Illinois EPA) requests listing Boone Creek Fen, which is a dedicated nature preserve (DNP), and the area that contributes groundwater to the DNP, as Class III: Special Resource Groundwater. Boone Creek Fen is located in central McHenry County, Illinois, approximately three miles east of the City of Woodstock. The DNP is a 88.15-acre tract located in the McHenry Quadrangle, Township 44 North, Range 7 East of the Third Principal Meridian, Sections 1, 2, 11, and 12. There are four privately owned nature areas within the DNP: Boone Creek Fen, Spring Hollow, Lee Miglin Savanna, and Amberin Ash Ridge. The area contributing groundwater to, and including the DNP, is an irregularly shaped 5.04 square mile (3,225.6 acre) tract of land. The recharge area is located to the south and west of the DNP.

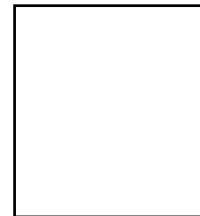
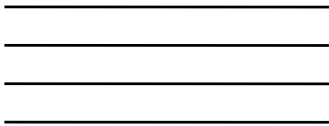
Under the authority of 35 Ill. Adm. Code 620.230, Class III: Special Resource Groundwater can be established for: groundwater that is demonstrably unique (e.g. irreplaceable sources of groundwater) and suitable for application of a water quality standard more stringent than the otherwise applicable water quality standard specified; groundwater that is vital for a particularly sensitive ecological system; or groundwater contributing to a DNP that has been listed by the Illinois EPA. The Illinois EPA is required to review a written request to list DNPs, and upon confirmation of the technical adequacy, publish the listing of the DNP(s) in the Environmental Register for a 45-day public comment period. Within 60 days after the close of the comment period, the Illinois EPA is required to publish a final listing in the Environmental Register.

The Groundwater Section of the Bureau of Water, at the Illinois EPA has completed the review required according to the criteria specified in Subsection 620.230(b)(1), and finds the petition to be technically adequate. In addition, the 45-day public comment period has ended, and no comments were received.

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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