
Environmental Register

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G. Tanner Girard, Chairman

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Letter from the Chairman

Phil Novak retired as Chairman of the Board, effective December 1, 2005. We are grateful for Phil's steady hand at the helm as the Board adjusted to reduced budget and staffing levels, including the reduction of the Board from 7 to 5 members in 2003. He plans to continue as Chairman of the Illinois Clean Energy Community Foundation and will be involved in Illinois environmental policy issues for many years to come. We will miss him at the Board, but wish him success in "retirement."



Meanwhile, the Board looks forward to a full schedule of rulemaking activity in the next several months. The Board's semi-annual regulatory agenda appeared in the December 30, 2005 Illinois Register. You can also view and download the agenda from the Board's Web site, <http://www.ipcb.state.il.us>. In addition to our many on-going rulemakings listed on the website, we expect some new rulemakings in the near future. The proposals summarized below won't necessarily be filed during the first half of the calendar year, and the Board may take up other proposals, but the Board expects to begin considering the following issues in the next six months.

The Illinois Environmental Protection Agency (IEPA) expects in the spring or summer of 2006 to submit a rulemaking proposal addressing groundwater quality. The IEPA indicates that it will address contaminants of concern that have been commonly detected in Illinois' groundwater. One such constituent is perchlorate, a rocket fuel component that has been discovered in Illinois' groundwater. Another constituent that may be included in the rulemaking proposal is ammonia. Also, the IEPA has evaluated contaminants commonly detected in groundwater in association with solid waste and Resource Conservation and Recovery Act (RCRA) sites. Groundwater standards are being developed for approximately 48 contaminants that have been commonly detected in groundwater at these sites where cleanup objectives have been developed under Tiered Approach to Corrective Action Objectives (TACO). Finally, radium 226, radium 228, and arsenic have had new Maximum Contaminant Levels (MCLs) adopted. Radium and arsenic occur with some frequency in Illinois' groundwater, and the IEPA will propose a groundwater standard amendment consistent with the MCL for each element.

The IEPA is developing a rulemaking proposal to implement P.A. 94-314. This legislation includes a requirements that the IEPA "evaluate the Pollution Control Board's rules and propose amendments to the rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or may impact offsite potable water supply wells." Well survey requirements are expected to establish minimum standards and requirements to ensure that wells are accurately identified and located so that the impact or potential impacts of soil or groundwater contamination can be identified. The rules will regularize communication between the person performing the remediation and community members who may be affected by groundwater contamination migrating from the site where a release occurred.

The IEPA also expects during the spring or summer of 2006 to file a rulemaking proposal to address mercury emissions from coal-fired electric generating units. Given the level of current publicity for mercury issues, we can expect this rulemaking to generate considerable public interest.

As always, the Board invites you to take part in all of these proceedings and assist in making sound environmental policy for the people of our state.

Sincerely,

A handwritten signature in black ink that reads "G. Tanner Girard". The signature is written in a cursive, flowing style.

G. Tanner Girard, Ph.D.
Acting Chairman

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Federal Update

United States Environmental Protection Agency Proposes Revisions to the Compliance Dates for the National Pollutant Discharge Elimination System Permit Regulations and the Effluent Limitation Guidelines for Concentrated Animal Feeding Operations Under the Clean Water Act

On December 21, 2005 (70 Fed. Reg. 75771) the United States Environmental Protection Agency (USEPA) proposed amendments to revise the compliance dates for National Pollutant Discharge Elimination System (NPDES) permit regulations and the Effluent Limitations Guidelines and Standards (ELGs) for Concentrated Animal Feeding Operations (CAFOs).

In this action, USEPA proposed to extend certain compliance dates in the NPDES permitting requirements (40 CFR part 122) and ELGs (40 CFR part 412) for CAFOs in conjunction with USEPA's efforts to respond to the order issued by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2nd Cir. 2005). USEPA stated that the purpose of the proposed rule is to address timing issues associated with the USEPA's response to the Waterkeeper decision.

The proposal would change three compliance dates:

- 1) USEPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage. The extension changes the date from February 13, 2006 to March 30, 2007.
- 2) USEPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006 to March 30, 2007.
- 3) Finally, USEPA is proposing to extend the deadline by which CAFOs are required to develop and implement nutrient management plans (NMPs), from December 31, 2006, to March 30, 2007. This proposal would revise all references to the date by which NMPs must be developed and implemented currently in the 2003 CAFO rule.

USEPA stated that it would also be issuing a proposed rule to revise the 2003 CAFO regulations more broadly in order to address the Second Circuit Court of Appeals decision in a subsequent *Federal Register* Notice, which the USEPA plans to propose for public comment in early 2006.

Comments on this proposed action must be received on or before January 20, 2006. Comments should be identified by Docket ID No. EPA-HQ-OW-2005-0036, and can be submitted by one of the following methods:

- (1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- (2) E-mail: ow-docket@epa.gov, Attention Docket ID No. EPA-HQ-OW-2005-0036.
- (3) Mail: Send the original and three copies of comments to: Water Docket, Environmental Protection Agency, Mail code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2005-0036.

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For further information contact Kawana Cohen, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2345, e-mail address: cohen.kawana@epa.gov.

The Board has not yet received a proposal from the Illinois Environmental Protection Agency (IEPA) implementing the CAFO regulations in Illinois. The Board's current agriculture-related pollution rules are codified at 35 Ill. Adm. Code 500 *et seq.*, while its general water pollution control rules are codified at 35 Ill. Adm. Code 300 *et seq.* Both sets of current rules may be affected by the federal CAFO rules. The Board anticipates that portions of the federal program may be proposed to the Board by the IEPA as federally required rules under Section 28.2 of the Act (415 ILCS 5/28.2(2004)). Additionally, the IEPA may possibly propose portions of the federal program under the general rulemaking authority of the Act (415 ILCS 5/27 & 28 (2004)).

United States Environmental Protection Agency Proposes Amendments to the Renewable Fuel Standard Requirements Under the Energy Policy Act of 2005

On December 30, 2005 (70 Fed. Reg. 77351) the United States Environmental Protection Agency (USEPA) proposed amendments to the renewable fuel standards under the Renewable Fuel Program.

In this rulemaking, USEPA is proposing to interpret and clarify the 2006 default standard applicable under the Renewable Fuel Program set forth in the Energy Policy Act of 2005. The Act requires that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in 2006 be renewable fuel if USEPA does not promulgate comprehensive regulations to implement the Renewable Fuel Program by August 8, 2006. USEPA stated that, given the short timeframe available and the need to provide certainty to the regulated community, it is proposing a limited set of regulations for the default standard for 2006 that will provide for collective compliance by refiners, blenders, and importers to meet the 2.78 volume percent requirement, with compliance determined by looking at the national pool of gasoline sold in 2006. USEPA further stated that it intends to develop and promulgate the comprehensive program subsequent to this action.

Comments must be received on or before January 30, 2006. Comments should be identified by Docket ID No. OAR-2005-0161, and should be submitted by one of the following methods:

- 1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- 2) E-mail: macallister.julia@epa.gov
- 3) Fax: (734) 214-4816.
- 4) Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR-2005-0161.

For further information contact Julia MacAllister, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4131, FAX (734) 214-4816, E-mail macallister.julia@epa.gov.

The Board expects that the Illinois Environmental Protection Agency would propose amendments to the Board's regulations in a future rulemaking if any changes should be necessary as a result of this proposed rulemaking.

Rule Update

Board Adopts Second Notice Opinion and Order in Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732); In the Matter of: Regulation of Petroleum Leaking Underground Storage Tanks (Proposed new 35 Ill. Adm. Code 734) (R04-22/R04-23 (cons.)).

On December 1, 2005, the Board adopted a second notice opinion and order in Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732); In the Matter of: Regulation of Petroleum Leaking Underground Storage Tanks (Proposed new 35 Ill. Adm. Code 734) (R04-22/R04-23 (cons.)). The Board received 63 comments and a request for an additional downstate hearing on its first

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notice proposal, published in the *Illinois Register* on March 11, 2005 at 29 Ill. Reg. 3538 and 3705. The Board's responses to the comments filed during first notice are summarized below. An additional hearing was held in this rulemaking on July 27, 2005, in Carbondale. The Board has sent the rulemaking, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2004)), to the Joint Committee on Administrative Rules (JCAR) for its review at the January 18, 2006 JCAR meeting.

The Board made significant changes, in response to the testimony and comments, to its first notice opinion and order. The second notice proposal differs from the first notice proposal in one major aspect. That difference is in the rule for handling of reimbursement of professional consulting services, which the Board has amended in response to public comment at second notice to allow for reimbursement on a time and materials basis. The Board also opened a subdocket B, explained later in more detail, to handle "scope of work" issues. For ease of reference here, the rules sent to JCAR for second notice will be called the "Docket A rules"

Board Changes In Response to Public Comments in Docket A Rules

The following is a general listing of the categories of issues that were raised during first notice in the Docket A rules:

1. General issues (consisting of comments that were not specific in nature but rather related to the overall rulemaking process);
2. Professional Consulting Services (Section 732.845/734.845);
3. Maximum payment rates in Subpart H;
4. An Illinois Environmental Protection Agency (IEPA) database;
5. The IEPA review process;
6. The applicability section (Section 732.100/734.100);
7. Alternative technology (Section 732.407/734.340);
8. Tier 2 TACO cleanup objectives and groundwater ordinances (Section 732.408/734.410 and 732.606(ff)/734.630(cc));
9. Eligibility of costs incurred after issuance of an No Further Remediation letter (Section 732.601(j)/734.605(j) and 732.606(kk)/734.630(gg));
10. Handling Charges (Section 732.606(ss)/734.630(oo) and Section 732.601(b)(10)/734.605(b)(10));
11. Auditing provisions (Section 732.614/734.665);
12. Maximum payment amount for abandonment and removal of tanks (Section 732.810/734.810);
13. Mobilization charges for drill rigs (Section 732.820/734.820);
14. Soil Removal and Disposal (Section 732.825/734.825)
15. Drum disposal (Section 732.830/734.830);
16. Maximum payment amounts for concrete, asphalt, and paving (Section 732.840/734.840);
17. Bidding of professional services (Section 732.855/734.855)
18. The economic impact of the rulemaking;
19. Miscellaneous (consisting of specific, less substantive, comments on specific subsections).

The comments are summarized in detail, as are the Board's analyses and responses to them, in the Board's 79-page second notice opinion supporting the 234-page second notice rule text.

Some of the other more significant changes include allowing for reimbursement of handling charges for a subcontractor if the primary contractor has a financial interest in the subcontractor, removing professional services from eligibility for bidding, adding an additional member - appointed by members of Professionals of Illinois for the

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Protection of the Environment (PIPE) to the LUST advisory committee, deleting the requirement that engineers or geologists maintain records to be available for an IEPA audit (that requirement is now limited to the maintenance of records by the owner or operator), and adding a requirement for the Board to publish the results of the IEPA's triennial review of reimbursement rates in the Board's publication, the *Environmental Register*.

The Board also determined that some changes requested by the participants were not necessary or supported by the record. Some of those suggestions include adding mobilization charges for drill rigs and adjusting maximum payment amounts for abandonment and removal of tanks. Another suggested change that the Board did not make, after finding that the record did not support it, was to add a requirement to the rules that would require that the IEPA maintain a database of payments to track reimbursement rates.

The Board did not make changes suggested in comments to establish unpublished "expedited" rates that would serve as maximum or threshold rates for reimbursement. The Board found that it cannot adopt a procedure that allows for development of a standard of general applicability outside the procedures of the Act and the Illinois Administrative Procedure Act, because that procedure would be a violation of both statutes.

The comments on the Board's decision at first notice to limit reimbursement to Tier 2 TACO standards generally reflected concerns that remediation to a Tier 2 TACO level would limit future potential uses of the property. The Board concluded that nothing in the Act requires that costs necessary to increase salability, value or future use are reimbursable. Therefore, the Board found that use of Tier 2 TACO and groundwater ordinances as institutional controls are consistent with the provisions of the Act and the suggested changes were not warranted.

The Board decided that the rule, as proposed for second notice, is economically reasonable and technically feasible. The Board further found that any negative economic impact would be minimized by removal of the professional service lump sum payments to subdocket B.

Opening of Docket B Announced

In addition to amending its original proposal to reimburse professional consulting services on a time and materials basis, the Board also opened a subdocket B. A primary purpose of Docket B will be developing scopes of work to be used in reimbursing professional consulting services in the remediation of underground storage tank (UST) sites in Illinois. A common theme in the public comments was the lack of a clearly defined scope of work for the reimbursement rates of professional services; this was the basis of many claims that the rules would cause undue economic hardship for the environmental consultants and the small businesses served. Subdocket B will also examine issues surrounding the hourly payment amounts and hours of work for professional services.

The Board expects to adopt a proposal for public comment in January 2006. The Board will hold at least one additional hearing on the language proposed for public comment before proceeding to first notice with any appropriate rule.

Copies of the Board's opinion and order in R04-22/23 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 Marie Tipsord at 312/ 814-4925; email address tipsordm@ipcb.state.il.us.

Board Accepts Site-Specific Proposal for Hearing in Proposal of Vaughan and Bushnell Manufacturing Company of Amendments to a Site Specific Rule 35 Ill. Adm. Code 901.121 (R06-11)

On December 1, 2005, the Board accepted for hearing a proposal filed by the Vaughan and Bushnell Manufacturing Company (V&B) in Proposal of Vaughan and Bushnell Manufacturing Company of Amendments to a Site Specific Rule 35 Ill. Adm. Code 901.121 (R06-11) to amend the Board's noise regulations. The Board is in the process of scheduling a hearing in this site-specific rulemaking.

V&B seeks to amend its current site-specific rule codified at 35 Ill. Adm. Code 901.121. The current rule limits V & B's operating hours, and the company wants to begin around-the-clock operation of its forging facility located at the intersection of Davis and Main Streets, Bushnell in McDonough County. V&B manufactures striking tools, and owns and operates a forging shop built in 1940 in Bushnell (facility). The proposal filed by V&B states that the facility consists of ten drop hammers capable of producing up to 2,500 lbs. of force in the production of striking

tools. The facility is V&B's primary production facility, and is located in an area of Bushnell that is primarily industrial. V&B is the largest employer in Bushnell, currently employing 230 people.

The proposed extension of the facility's operating hours would allow V&B to operate a third shift. V&B stated that currently the land uses in the immediate area are generally heavy industrial, and that the extension of the operating hours would not have an adverse effect on its neighbors.

Copies of the Board's opinion and order in R06-11 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 John Knittle at 217/ 278-3111; email address knittlej@ipcb.state.il.us.

Board Accepts Proposal for Hearing in Clean Construction or Demolition Debris Fill Operations Under P.A. 94-272 (35 Ill. Adm. Code Part 1100) (R06-19)

On December 1, 2005, the Board accepted a proposal for hearing in Clean Construction or Demolition Debris Fill Operations Under P.A. 94-272 (35 Ill. Adm. Code Part 1100) (R06-19). The proposal, filed by the Illinois Environmental Protection Agency (IEPA) on November 21, 2005, seeks to add a new Part to the Board's regulations governing the use of clean construction or demolition debris (CCDD) as fill material in current and former quarries, mines, and other excavations. Under the statutory timeframes of P.A. 94-272, the Board must adopt final rules no later than September 1, 2006.

The proposal, based on statutory changes adopted in P.A. 94-272, sets forth standards for the operation of CCDD fill facilities, as well as establishing procedures for the submission and review of permits for these facilities. Some of the areas addressed in the amendments include public notification requirements, prohibitions on certain activities, operating standards, and requirements for closure and post closure maintenance of the facility.

The Board has scheduled hearings in this rulemaking for January 26, 2006, in Chicago and March 1, 2006, in Springfield.

Copies of the Board's opinion and order in R06-19 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 Amy Antonioli at 312/ 814-3665; email address antonioa@ipcb.state.il.us.

Board Adopts Second Notice Opinion and Order in 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 (R04-21)

On December 15, 2005, the Board adopted a second notice opinion and order in 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 (R04-21). In response to the 13 public comments received after publication of the Board's second first notice proposal (published on April 29, 2005 at 29 Ill. Reg. 5873), the Board made substantive changes to its proposal. The Board has sent the rulemaking, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2004)), to the Joint Committee on Administrative Rules (JCAR) for its review at the January 18, 2006 JCAR meeting.

Summary of First Notice to Second Notice Changes

The Board will not repeat the lengthy history of this rulemaking here. See the April 2005 issue of the *Environmental Register*. In brief summary, at first notice in 2004, the Board adopted the proposal filed by the Illinois Environmental Protection Agency (IEPA). At second first notice in 2005, the Board proposed a general use water quality standard of 3.75 picocuries per liter (pCi/L) radium 226 and 228 combined (combined radium) applicable to all general use waters of the State. In addition, the Board proposed a general use water quality standard of 30 pCi/L combined radium applicable to waters receiving discharge from publicly owned treatment works (POTWs). The 30 pCi/L standard applied from the point of discharge to one mile downstream of the discharge outfall and was incorporated as a new Section 302.207(d).

In its December 15, 2005 second notice opinion and order, the Board amended the general use water quality standard for combined radium 226 and 228. The Board retained the proposed standard of 3.75 pCi/L combined

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radium 226 and 228, but set the standard as an annual average value, rather than an instantaneous maximum standard, as proposed in the 2005 first notice. This standard, as before, applies to all general use waters of the State, including stream segments that receive discharge from POTWs, as well as the Lake Michigan Basin. In addition, the Board eliminated the separate water quality standard of 30 pCi/L adopted at second first notice for stream segments that receive discharges from POTWs. Finally, the Board adopts a 5pCi/L combined radium 226 and 228 standard for Public and Food Processing Water Supplies as an instantaneous maximum standard for public and food processing water supply intakes.

In adopting the second notice proposal, the Board specifically found that “the record demonstrates a need to maintain a general use water quality standard, protective both of human health and the environment,” and that the proposal “tailor[s] the general use water quality standard for radium to the nature of radionuclides in Illinois ecosystems.”

Public Comments Received

Of the 13 persons who submitted comments, those opposing the Board’s proposal include the directors of Citizens Against Ruining the Environment (CARE), the City of Joliet (Joliet), and the Fox River Reclamation District. The following commenters rejected the proposed Section 302.207(d) and offered support for the 3.75 pCi/L standard, however, they proposed that compliance be measured as a long-term average: the United States Environmental Protection Agency (USEPA), the Sierra Club and the Environmental Law and Policy Center (Environmental Groups), WRT Environmental, and the Illinois Environmental Protection Agency (IEPA).

Comments from USEPA

In its public comment, the USEPA expressed concern that the proposal did not adequately demonstrate that 30 pCi/L within a one-mile mixing zone would provide a level of protection consistent with the 3.75 pCi/L value, nor any other independent level of protection for the designated use. The USEPA also stated it is not clear how the proposed 30 pCi/L standard would be implemented to protect possible downstream public water supply intakes. The USEPA recommended that the Board express the proposed standard as an average value over some period of time to reflect long-term exposure, rather than an instantaneous value.

Comments from CARE and the Environmental Groups

In its public comment, CARE strongly objected to the addition of Section 302.207(d) of the Board’s 2005 proposal. The Environmental Groups agreed with the USEPA’s argument that an average value radium standard is consistent with the goal not to exceed the biota dose limit of 0.1 rad/day for riparian animals.

Comments from Joliet

Joliet stated that it is unlikely that sensitive species live in the receiving streams of plants that are expected to violate the proposed standard. Further, Joliet argued that because no sensitive species live downstream of impacted treatment plants in Illinois, there is no reason to establish such a restrictive standard. For this reason, Joliet concluded that the standard of 60 pCi/L radium, proposed by the Illinois Emergency Management Agency, DNS, is appropriate. Joliet did not object to the use of an annual average, and stated that the use of the annual average would reduce the number of plants with potential violations from nine plants to between two and six.

Comments from WRT Environmental

WRT Environmental agreed with the USEPA’s comment that the proposed Section 302.207(d) provides no level of protection consistent with the designated use.

Comments from the IEPA

The IEPA favors the USEPA’s recommendation of using long-term averaging for the radium general use water quality standard.

The IEPA asserted that the Board had “removed the use of a Public and Food Processing Water Supply standard matching the USEPA’s MCL for radium in drinking water.” The IEPA recommended that the 5 pCi/L drinking water standard should remain an instantaneously applied standard applicable to drinking water intakes at all times. The IEPA concluded that of the impacted POTWs, many or most would have difficulty complying with the instantaneously applied combined standard of 3.75 pCi/L, even one mile below their discharge point as those standards are currently implemented. However, the IEPA concluded from the data submitted by Joliet that the 3.75

pCi/L standard based on long term averaging will likely provide relief to many of the impacted dischargers in a way that is protective of the most sensitive uses of all waters of the State of Illinois. Further the IEPA recommended that the Board allow mixing in low flow streams that receive radium discharge to provide relief to a few POTWs that discharge to such streams.

After considering all of the comments, the Board retained the 3.75 pCi/L combined radium limit as a general use water quality standard for second-notice. The Board expressed that limit as an average measured over the length of a year. Therefore, while the concentration of radium 226 and 228 combined may be higher than 3.75 pCi/L at times due to environmental conditions, the Board concluded that the water body will still meet the standard as long as the concentration averaged over the period of a year remains at or below 3.75 pCi/L. Determining compliance in this way will provide relief to POTWs while more precisely tailoring the standard to meet the Board's goal of protecting riparian mammals. The Board did not incorporate the IEPA's suggestion of allowing for mixing even if the stream has a zero 7Q10 flow, finding that the IEPA did not support this portion of its proposal with evidence contained in the record. The Board determined that the proposed water quality standard expressed as an annual average provides relief for the majority of POTWs, while also protecting the most sensitive use of general use waters. As suggested by the USEPA and the IEPA, the Board also adopted a Public and Food Processing Water Supply standard of 5 pCi/L combined radium 226 and 228 to ensure that public water supplies meet the Federal drinking water maximum contaminant level for radium.

Copies of the Board's opinion and order in R04-21 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 Amy Antonioli at 312/ 814-3665; email address antonioa@ipcb.state.il.us.

Board Denies Motion to Dismiss in Proposed Site-Specific Perlite Waste Disposal Regulation Applicable to Silbrico Corporation (35 Ill. Adm. Code Part 810) (R06-8)

On December 15, 2005, the Board denied a motion, filed by the Illinois Attorney General' Office (AGO) on October 7, 2005, to dismiss the rulemaking Proposed Site-Specific Perlite Waste Disposal Regulation Applicable to Silbrico Corporation (35 Ill. Adm. Code Part 810) (R06-8).

Silbrico's proposed rule would allow it to dispose of this waste in a "clean fill construction and demolition debris" facility. Silbrico manufactures products using perlite, a volcanic rock that expands up to 20 times in size when heated. In its petition for rulemaking, Silbrico asserted that due to the inert and nonhazardous characteristics of the off-specification perlite and the fugitive perlite (collectively waste perlite), it seeks to dispose of these wastes at a "clean fill" facility that accepts only clean construction and demolition debris. Silbrico asserted that allowing the disposal of the waste perlite at a "clean fill" facility would save valuable space in municipal waste landfills and result in significant cost savings, while posing no environmental violation or threat.

In its motion, the AGO asserted that the Board's rules provide that a rulemaking petition may be dismissed for failure to comply with content requirements or for inadequacy. *See* 35 Ill. Adm. Code 102.210, 102.212. The alleged deficiencies included deficiencies in service, as well as conflict with the statutory definition of clean construction or demolition debris (CCDD) landfills under Section 3.160(b) of the Environmental Protection Act (Act), as added by P.A. 94-272, eff. July 19, 2005. The Illinois Environmental Protection Agency (IEPA) concurred with the AGO's arguments, and Silbrico opposed them.

In its order denying the motion to dismiss, the Board first found that no prejudice resulted from Silbrico's initial lack of service on the Department of Natural Resources and AGO since both have since been served, and the only substantive activity to date on this case stems from a motion to dismiss filed by the AGO itself.

The Board then noted that, since the filing of Silbrico's petition, the IEPA filed a rulemaking proposal to implement Section 3.160(b) of the Act. The Board accepted that proposal for hearing on December 1, 2005. (*See* the summary above of In the Matter of: Clean Construction or Debris Fill Operations Under PA 94-272, R06-19 (December 1, 2005)).

The Board found that it has the authority to grant Silbrico relief from the otherwise applicable requirements of its waste disposal rules. The Board was not prepared to say that it lacks the authority to adopt the rule Silbrico is proposing, since it does not attempt to reclassify its perlite waste as clean construction or demolition debris. Rather, the language first limits the regulation to the two perlite waste streams from Silbrico's Hodgkins facility, and then

provides that “the specified waste streams may be disposed of in a ‘clean fill’ facility that accepts only ‘clean construction and demolition debris.’” The Board was not persuaded that the rule, if ultimately enacted, would constitute an unauthorized expansion of the waste exception in Section 3.160(b) of the Act.

Copies of the Board’s opinion and order in R06-8 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 John Knittle at 217/ 278-3111; email address knittlej@ipcb.state.il.us.

Board Actions

December 1, 2005

**Via Videoconference
Chicago and Springfield, Illinois**

Rulemakings

- | | | |
|-------------------|--|-----------------|
| R04-22 | <u>In the Matter of: Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732); In the Matter of:</u> | 4-0 |
| R04-23 (cons.) | <u>Regulation of Petroleum Leaking Underground Storage Tanks (Proposed New 35 Ill. Adm. Code 734) – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s land pollution control regulations.</u> | R, Land |
| R06-11 | <u>In the Matter of: Proposal of Vaughan & Bushnell Manufacturing Company of Amendment to a Site Specific Rule 35 Ill. Adm. Code 901.121 – The Board accepted for hearing petitioner’s October 20, 2005 proposal to amend the Board’s noise pollution control regulations. The Board granted petitioner’s motion to waive requirement to submit 200 signatures. The Board also requested that petitioner address the “published study or report” requirement of Section 102.210(c). 35 Ill. Adm. Code 102.210(c). See also 35 Ill. Adm. Code 102.202(k), as directed by the hearing officer.</u> | 4-0 R, Noise |
| R06-19 | <u>In the Matter of: Clean Construction or Demolition Debris Fill Operations Under P.A. 94-272 (35 Ill. Adm. Code Part 1100) – The Board accepted for hearing Illinois Environmental Protection Agency’s November 11, 2005 proposal to amend the Board’s land pollution control regulations. The Board granted petitioner’s motion to waive requirement to submit copies of material incorporated by reference as required by 35 Ill. Adm. Code 102.202(d). The Board also requested that petitioner address the “published study or report” requirement of Section 102.210(c). 35 Ill. Adm. Code 102.210(c). See also 35 Ill. Adm. Code 102.202(k), as directed by the hearing officer.</u> | 4-0 R, Land |

Administrative Citations

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|----------|---|-----|
| AC 05-20 | <u>IEPA v. John Groff</u> – The Board entered a final opinion and order requiring respondent to pay hearing costs of the Illinois Environmental Protection Agency and the Board in the amount of \$271.70 and a civil penalty of \$4,500. This order follows the Board's interim order of June 16, 2005, which found that this respondent had violated Sections 21(p)(1), (3) and (7) of the Environmental Protection Act. (415 ILCS 5/21(p)(1), (3), and (7) (2004)). | 4-0 |
| AC 05-80 | <u>County of Kankakee v. South Holland Trust #10897 and John & Ella Hall</u> – The Board grants the complainant's motion to strike John R. Hall, Jr.'s July 27, 2005 letter, previously construed as a timely filed petition for review, dismissed the petition for review. The Board found John and Ella Hall violated Section 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2004)). The Board ordered respondents to pay a civil penalty of \$3,000 unless South Holland Trust and Saving had done so under the Board's August 18, 2005 order. | 4-0 |
| AC 06-13 | <u>IEPA v. Lyndell Heinzmann</u> – The Board accepted for hearing this petition for review of an administrative citation against this Marion County respondent. | 4-0 |

Motions and Other Matters

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|------------|--|----------------------|
| PCB 05-73 | <u>City of Sullivan v. IEPA</u> – The Board granted petitioner's motion for voluntary dismissal of this underground storage tank appeal involving a Moultrie County facility. | 4-0 UST Appeal |
| PCB 05-192 | <u>People of the State of Illinois v. Bag Makers, 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 McHenry County facility, the Board ordered publication of the required newspaper notice. | 4-0 A-E |
| PCB 05-214 | <u>People of the State of Illinois v. Barry Hayden d/b/a Hayden Properties</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 St. Clair County facility, the Board ordered publication of the required newspaper notice. | 4-0 W-E |
| PCB 06-26 | <u>Telzrow Oil Company v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Jersey County facility. | 4-0 UST Appeal |
| PCB 06-78 | <u>People of the State of Illinois v. North American Lighting, Inc.</u> – The Board accepted for hearing this air and water enforcement action involving a site located in Clay County. | 4-0 A&W-E |

Environmental Register – December 2005

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| PCB 06-79 | <u>People of the State of Illinois v. City of Gillespie</u> – The Board accepted for hearing this water enforcement action involving a site located in Macoupin County. | 4-0 W-E |
| PCB 06-80 | <u>People of the State of Illinois v. Fulford Construction, Inc.</u> – The Board accepted for hearing this water enforcement action involving a site located in St. Clair County. | 4-0 W-E |
| PCB 06-81 | <u>People of the State of Illinois v. Briggs, Industries, Inc.</u> – The Board accepted for hearing this air and water enforcement action involving a site located in Crawford County. | 4-0 L&W-E |

December 15, 2005

Chicago, Illinois

Rulemakings

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|--------|---|-----------------|
| R04-21 | <u>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</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s water quality standards. | 4-0 R, Water |
| R06-8 | <u>In the Matter of: Proposed Site-Specific Perlite Waste Disposal Regulation Applicable to Silbrico Corporation (35 Ill. Adm. Code Part 810)</u> – The Board denied the Office of the Attorney General’s motion to dismiss the proposal. | 4-0 R, Land |

Adjusted Standards

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| AS 05-7 | <u>In the Matter of: Petition of Waste Management of Illinois, Inc. for an Adjusted Standard from Subpart D of 35 Ill. Adm. Code 721 and for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122 for Treatment Residual of CID Recycling and Disposal Facility Biological Liquid Treatment Center</u> – The Board denied this request for an adjusted standard from the Board’s hazardous waste regulations, finding petitioner did not provide the requested level of justification. | 4-0 Land |
| AS 06-1 | <u>In the Matter of: Petition of Lafarge Midwest, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 739.161 Pursuant to 35 Ill. Adm. Code 720.132 and 720.133</u> – The Board accepted petitioner’s amended petition for adjusted standard, and will decide the case after receipt of any amended Illinois Environmental Protection Agency recommendation or reply by petitioner. | 4-0 Air |

Administrative Citations

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| AC 06-15 | <u>IEPA v. Allen Noltensmeier</u> – The Board granted complainant’s motion for voluntary dismissal of this administrative citation due to failure of timely service. | 4-0 |
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Environmental Register – December 2005

Decisions

PCB 06-28 Midwest Petroleum Company v. IEPA – The Board affirmed the July 18, 2005 determination of the Illinois Environmental Protection Agency rejecting petitioner’s amended corrective action plan budget. 4-0
UST Appeal

Motions and Other Matters

PCB 03-22 People of the State of Illinois v. Saint-Gobain Containers, Inc. – The Board granted complainant’s motion to stay this air enforcement action concerning a Logan County facility. A-E

PCB 04-106 People of the State of Illinois v. Thomas Gray, an individual, Steve Whyte, an individual, Gladys Whyte, an individual – The Board granted complainant’s motion to voluntarily dismiss respondents Steve Whyte and Gladys Whyte from this land enforcement action concerning a Kankakee County facility. 4-0
L-E

PCB 06-32 Beverly Bank v. IEPA – 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 Cook County facility. 4-0
UST Appeal

PCB 06-34 Ramsey C.U.S.D. #204 v. IEPA – 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 Fayette County facility. 4-0
UST Appeal

PCB 06-36 People of the State of Illinois v. Magellan Pipeline Company, L.P. – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Lee County facility, the Board ordered publication of the required newspaper notice. 4-0
L-E

PCB 06-38 Downtown Shell (Greenville) v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Bond County facility. 4-0
UST Appeal

PCB 06-50 E&L Trucking Company v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Cook County facility. 4-0
UST Appeal

PCB 06-54 People of the State of Illinois v. Webb AG, Inc. – The Board granted complainant’s motion for voluntary dismissal of Count II. 4-0
L-E

PCB 06-82 People of the State of Illinois v. Barger Engineering, Inc. – The Board accepted for hearing this water enforcement action involving crude oil and salt water release at a site located in White County. 4-0
W-E

Environmental Register – December 2005

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| PCB 06-83 | <u>People of the State of Illinois v. Levi A. Kaufman</u> – The Board accepted for hearing this land enforcement action involving a site located in Coles County. | 4-0 L-E |
| PCB 06-84 | <u>Cowden Oil 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 Shelby County facility. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-85 | <u>Prosise Oil Company (Incident #922355) 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 Jefferson County facility. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-86 | <u>Prosise Oil Company (Incident #982486) 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 Jefferson County facility. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-87 | <u>Wayne & Dennis Swanson 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 Kane County facility. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-88 | <u>Biggs Brothers Service Center 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. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-89 | <u>Maryville Voice Newspaper Company 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 Madison County facility. | 4-0 UST Appeal 90-Day Ext. |
| PCB 06-90 | <u>People of the State of Illinois v. Village of Volo and Smith Engineering Consultants, Inc.</u> – The Board accepted for hearing this public water supply enforcement action involving a site located in Lake County. | 4-0 PWS-E |

New Cases

December 1, 2005 Board Meeting

06-078 People of the State of Illinois v. North American Lighting, Inc. – The Board accepted for hearing this air and water enforcement action involving a site located in Clay County.

06-079 People of the State of Illinois v. City of Gillespie – The Board accepted for hearing this water enforcement action involving a site located in Macoupin County.

06-080 People of the State of Illinois v. Fulford Construction, Inc. – The Board accepted for hearing this water enforcement action involving a site located in St. Clair County.

06-081 People of the State of Illinois v. Briggs, Industries, Inc. – The Board accepted for hearing this air and water enforcement action involving a site located in Crawford County.

R06-019 In the Matter of: Clean Construction or Demolition Debris Fill Operations Under P.A. 94-272 (35 Ill. Adm. Code Part 1100) – The Board accepted for hearing Illinois Environmental Protection Agency’s November 11, 2005 proposal to amend the Board’s land pollution control regulations. The Board granted petitioner’s motion to waive requirement to submit copies of material incorporated by reference as required by 35 Ill. Adm. Code 102.202(d). The Board also requested that petitioner address the “published study or report” requirement of Section 102.210(c). 35 Ill. Adm. Code 102.210(c). *See also* 35 Ill. Adm. Code 102.202(k), as directed by the hearing officer.

December 15, 2005 Board Meeting

06-082 People of the State of Illinois v. Barger Engineering, Inc. – The Board accepted for hearing this water enforcement action involving crude oil and salt water release at a site located in White County.

06-083 People of the State of Illinois v. Levi A. Kaufman – The Board accepted for hearing this land enforcement action involving a site located in Coles County.

06-084 Cowden Oil 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 Shelby County facility.

06-085 Prosize Oil Company (Incident #922355) 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 Jefferson County facility.

06-086 Prosize Oil Company (Incident #982486) 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 Jefferson County facility.

06-087 Wayne & Dennis Swanson 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 Kane County facility.

06-088 Biggs Brothers Service Center 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.

06-089 Maryville Voice Newspaper Company 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.

06-090 People of the State of Illinois v. Village of Volo and Smith Engineering Consultants, Inc. – The Board accepted for hearing this public water supply enforcement action involving a site located in Lake County.

AC 06-018 IEPA v. Maurice L. Thompson Trust – The Board accepted an administrative citation against this Fulton County respondent.

AC 06-019 IEPA v. Maurice L. Thompson Trust – The Board accepted an administrative citation against this Fulton County respondent.

Environmental Register – December 2005

R06-012 In the Matter of: UST Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-013 In the Matter of: Wastewater Pretreatment Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-014 In the Matter of: Definition of VOM Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-015 In the Matter of: SDWA Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-016 In the Matter of: UIC Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-017 In the Matter of: RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-018 In the Matter of: RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2005 through December 31, 2005) – The Board reserved this docket for a routine update, to make the Board rules “identical in substance” to United States Environmental Protection Agency rules adopted during the update period. The update period is July 1, 2005 through December 31, 2005.

R06-020 In the Matter of: Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 808.809 – No action taken.

Provisional Variances

IEPA 06-10 Salt Creek Sanitary District v. IEPA—The Illinois Environmental Protection Agency granted this Du Page County waste water treatment plant facility a provisional variance allowing it to exceed its daily maximum limits for Total Suspended Solids and for Carbonaceous Biochemical Oxygen Demand above the limits specified in its National Pollution Discharge Elimination System Permit for the time period from December 21, 2005 through February 4, 2006.

Public Act 93-0152 (Senate Bill 222) amended Sections 35-37 of the Illinois Environmental Act (415 ILCS 5/5(b) (2002)) so that provisional variances are issued by the Illinois Environmental Protection Agency (IEPA). If the IEPA grants a provisional variance, then the IEPA must file a copy of its written decision with the Board. The Board must maintain copies of the provisional variances for public inspection. Copies of provisional variances can be obtained by contacting the Clerk’s Office at (312) 814-3620, or by visiting the Board’s Website at www.ipcb.state.il.us. If the IEPA denies a provisional variance request, then the applicant may initiate a proceeding with the Board for a full variance.

Calendar

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|---------------------|---|--|---|
| 1/05/06 | <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 |
| 1/19/06 11:00 AM | <u>Illinois Pollution Control Board Meeting</u> | | Chicago Michael A. Bilandic Building 160 N. LaSalle Street Second Floor, Room N-505 Chicago |
| 1/20/06 10:30 AM | PCB 06-25 | William Breuer v. IEPA | Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East Springfield |
| 1/25/06 9:00 AM | PCB 04-19 | Paul and Donna Fredrickson v. Jeff Grelyak | McHenry County Courthouse/ Government Center, Room A-140 2200 N. Seminary Street Woodstock |
| 1/26/06 1:00 PM | R06-19 | In the Matter of: Clean Construction or Demolition Debris Fill Operations Under PA 94-272 (35 Ill. Adm. Code 1100) | James R. Thompson Center 100 West Randolph Street Room 16-503 Chicago |
| 1/31/06 10:30 AM | R 06-10 | In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) | Michael A. Bilandic Building Room N502 160 N. LaSalle Street Chicago |
| 2/02/06 | <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 |
| 2/16/06 11:00 AM | <u>Illinois Pollution Control Board Meeting</u> | | Chicago James R. Thompson Center Conference Room 09-040 100 W. Randolph Street Chicago |

Environmental Register – December 2005

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|---------------------|---|--|---|
| 3/1/06 10:00 AM | R06-19 | In the Matter of: Clean Construction or Demolition Debris Fill Operations Under PA 94-272 (35 Ill. Adm. Code 1100) | Illinois State Museum Auditorium, Lower Level 502 South Spring Street Springfield |
| 3/1/06 10:30 AM | R 06-10 | In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) | IEPA North Entrance TQM Room 1000 E. Converse Springfield |
| 3/02/06 | <u>Illinois Pollution Control Board Meeting</u> | | Illinois Pollution Control Board Board Room, 1244 N 1021 N. Grand Avenue East Springfield |
| 3/16/06 11:00 AM | <u>Illinois Pollution Control Board Meeting</u> | | Chicago James R. Thompson Center Conference Room 09-040 100 W. Randolph Street Chicago |

Annual Listing

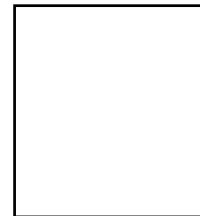
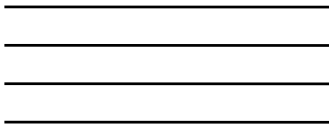
ILLINOIS EPA'S ANNUAL LISTING OF DEDICATED NATURE PRESERVES

| <u>Dedicated Nature Preserves</u> | <u>County</u> | <u>Proposed</u> | <u>Final</u> |
|-----------------------------------|---------------|-----------------|--------------|
| Parker Fen | McHenry | September 1998 | January 1999 |
| Fogelpole Cave | Monroe | May 2003 | August 2003 |
| Boone Creek Fen | McHenry | November 2004 | March 2005 |
| Spring Hollow | McHenry | November 2004 | March 2005 |
| Lee Miglin Savanna | McHenry | November 2004 | March 2005 |
| Amberin Ash Ridge | McHenry | November 2004 | March 2005 |
| Paulter (Cave) Nature Preserve | Monroe | May 2005 | August 2005 |
| Stemler Cave Nature Preserve | St. Clair | May 2005 | August 2005 |

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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