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Letter from the Chairman

In the last month, the Board received the first of several rulemaking proposals from the Illinois Environmental Protection Agency (IEPA) addressing air emissions in Illinois. Specifically, on March 16, 2006, the Illinois Pollution Control Board adopted for first notice, without commenting on the merits, a rulemaking proposal to control mercury emissions from coal-fired electric generating units. The proposal, docketed as R 06-25, In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury), was filed by the IEPA on March 14, 2006.



The IEPA states that the proposal was filed to satisfy the State's obligation to submit a state implementation plan addressing the requirements of Clean Air Mercury Rule (CAMR) and Section 9.10 of the Illinois Environmental Protection Act (Act). The IEPA states that the proposal addresses serious deficiencies present in the CAMR including:

the unnecessary delay in achieving mercury emission reductions, the inherent concerns associated with a cap and trade program to control a persistent, bioaccumulative toxin, the inadequate mercury reductions contained in the CAMR, and the legal basis upon which CAMR was adopted.

This proposal was filed pursuant to Section 28.5 of the Act, which provides the Board with strict deadlines toward adoption of the regulation. The Board has no discretion under Section 28.5 to amend or alter those deadlines.

The first hearing on the proposal must be held "within 55 days of receipt of the rule and shall be confined to testimony by and questions of the IEPA's witnesses concerning the scope, applicability, and basis of the rule." The first hearing begins Monday, May 8th at 1:00 PM at the Thompson Center in Chicago. Section 28.5 provides that, "[w]ithin 7 days after the first hearing, any person may request that the second hearing be held." The second hearing, if necessary, will begin Monday, June 5th at 1:00 PM at the IEPA office building in Springfield. Under the Act, the second hearing "shall be devoted to presentation of testimony, documents, and comments by affected entities and all other interested parties." The third hearing "shall be devoted solely to any IEPA response to the material submitted at the second hearing and to any response by other parties" according to Section 28.5 of the Act. However, Section 28.5 provides that the third hearing will be cancelled "if the IEPA indicates to the Board that it does not intend to introduce any additional material." If it is necessary, the third hearing will begin Monday, June 19th at 10:00 AM at the IEPA office building in Springfield. All three hearings will continue day-to-day as necessary to complete the subject matter of the hearing.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. I invite you to participate in this proceeding and to assist us in developing sound environmental policy for the people of Illinois.

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

Inside This Issue:

FEDERAL UPDATE	P. 1
APPELLATE UPDATE	P. 3
RULE UPDATE	P. 6
BOARD ACTIONS	P. 13
NEW CASES	P. 20
BOARD CALENDAR	P. 21

Federal Update

United States Environmental Protection Agency Publishes Notice of its Final Order Partially Granting and Partially Denying a Petition to Object to Title V Clean Air Act Operating Permit for Onyx Environmental Services

On March 16, 2006 (71 Fed. Reg. 13591) the United States Environmental Protection Agency (USEPA) Administrator responded to a citizen petition asking USEPA to object to a Clean Air Act (CAA) title V operating permit proposed by the Illinois Environmental Protection Agency (IEPA). Specifically, the Administrator partially granted and partially denied the petition submitted by the Sierra Club and American Bottom Conservancy to object to the proposed operating permit for Onyx Environmental Services (Onyx).

The CAA affords USEPA a 45-day period to review, and to object to, a title V operating permit proposed by a state permitting authority. Section 505(b)(2) of the Act, 42 USC 7661d(b)(2), authorizes any person to petition the USEPA Administrator within 60 days after the expiration of the USEPA review period to object to a title V operating permit if USEPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the issues during the comment period, or the grounds for the issues arose after the public comment period.

On February 18, 2004, the USEPA received from the Sierra Club and American Bottom Conservancy a petition requesting that USEPA object to the proposed title V operating permit for Onyx Environmental Services. The Sierra Club and American Bottom Conservancy alleged that the proposed permit:

- (1) Violates USEPA's commitments and obligations to address environmental justice issues;
- (2) Lacks a compliance schedule and certification of compliance;
- (3) Does not address modifications Onyx allegedly took that triggered new source review requirements;
- (4) Is based on an eight-year old application;
- (5) Lacks practically enforceable conditions;
- (6) Contains a permit shield that broadly insulates it from ongoing and recent violations;
- (7) Fails to include conditions that meet the legal requirements for monitoring;
- (8) Does not contain a statement of basis;
- (9) Does not require prompt reporting of violations; and
- (10) Fails to establish annual mercury and lead limits.

On February 1, 2006, the Administrator signed an order partially granting and partially denying the petition. The order explains the reasons behind USEPA's conclusion that the IEPA must:

- (1) Address the significant comments concerning the possible need for a compliance schedule in the proposed permit;
- (2) Require Onyx to submit a current compliance certification;
- (3) Address comments concerning modifications made at the Onyx facility and the potential applicability of new source review requirements;
- (4) Require Onyx to submit an updated application that reflects all applicable requirements for the source;
- (5) Make clear either in the permit or statement of basis what constitutes "normal" operating conditions;

Environmental Register – March 2006

- (6) Amend the permit to limit Onyx' election to regulatory requirements applicable to hazardous waste incinerators;
- (7) Define the terms "container" and "containerized solids," or explain in the statement of basis where the terms are defined;
- (8) Provide information on where the applicable specifications pertaining to "manufacturer's specifications" can be located;
- (9) Provide a statement of basis that complies with the requirements of USEPA regulations and post its statement of basis on a Web site, or make available to the public on the Web site a notice telling the public where it can obtain the statement of basis; and
- (10) Explain how a thirty day reporting requirement for all deviations is prompt or require a shorter reporting period for deviations as is provided for in 40 CFR 71.

The order also explains the reasons for denying Sierra Club and American Bottom Conservancy's remaining claims.

Pursuant to section 505(b)(2) of the Act, a petitioner may seek in the United States Court of Appeals for the appropriate circuit judicial review of those portions of the petition that USEPA denied.

Copies of the final orders, the petitions, and other supporting information may be reviewed at the USEPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for Onyx Environmental Services is available electronically at:

www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2004.htm

For further information contact Pamela Blakley, Chief, Air Permitting Section, Air Programs Branch, Air and Radiation Division, USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886-4447.

United States Environmental Protection Agency Proposes Amendments Under the Clean Air Act to Control Hazardous Air Pollutants From Mobile Sources

On March 29, 2006 (71 Fed. Reg. 15803) the United States Environmental Protection Agency (USEPA) proposed amendments that would institute controls on gasoline, passenger vehicles, and portable gasoline containers (gas cans) to reduce emissions of benzene and other hazardous air pollutants (mobile source air toxics).

Benzene is a known human carcinogen, and USEPA stated that mobile sources are responsible for the majority of benzene emissions. The amendments proposed by USEPA would limit the benzene content of gasoline to an annual average of 0.62% by volume, beginning in 2011. USEPA also proposed to limit exhaust emissions of hydrocarbons from passenger vehicles when they are operated at cold temperatures. This standard would be phased in from 2010 to 2015. For passenger vehicles, USEPA proposed evaporative emissions standards that are equivalent to those in California. Finally, the amendments propose a hydrocarbon emissions standard for gas cans beginning in 2009, which would reduce evaporation and spillage of gasoline from these containers.

USEPA stated that these controls would significantly reduce emissions of benzene and other mobile source air toxics such as 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. The proposal is intended to result in additional substantial benefits to public health and welfare by significantly reducing emissions of particulate matter from passenger vehicles. USEPA projected annual nationwide benzene reductions of 35,000 tons in 2015, increasing to 65,000 tons by 2030. Total reductions in mobile source air toxics would be 147,000 tons in 2015 and over 350,000 tons in 2030. Passenger vehicles in 2030 would emit 45% less benzene, and gas cans meeting the new standards would emit almost 80% less benzene. Gasoline would have 37% less benzene overall.

USEPA estimated that these reductions would have an average cost of less than 1 cent per gallon of gasoline and less than \$1 per vehicle. The average cost for gas cans would be less than \$2 per can. Additionally, USEPA estimated that the reduced evaporation from gas cans would result in significant fuel savings, which would more than offset the increased cost for the gas can.

Comments must be received on or before May 30, 2006. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0036, by one of the following methods:

- 1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- 2) Fax your comments to: (202) 566-1741.
- 3) Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For further information contact Mr. Chris Lieske, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4584; fax number: (734) 214-4816; email address: lieske.christopher@epa.gov.

Appellate Update

Third District Affirms Board's \$66,000 Civil Penalty Order in *Blue Ridge Construction Corp. v. IPCB and People of the State of Illinois*, No. 3-04-0874 (March 30, 2006) (PCB 02-115)

In a March 30, 2006 final seven-page unpublished order under Supreme Court Rule 23 (155 Ill.2d R. 23) in *Blue Ridge Construction Corp. v. IPCB and People of the State of Illinois*, No. 3-04-0874 (March 30, 2006), the Third District Appellate Court affirmed the Board's order imposing a \$66,000 penalty. The court made its decision on the parties' briefs, dispensing with oral argument. The case is vindication of an important purpose of the Environmental Protection Act (Act): "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b).

Board Decision.

The Board's 22-page final opinion and order in *People of the State of Illinois v. Blue Ridge Construction Corporation*, PCB 02-115 (October 7, 2005) found Blue Ridge Construction Corp. (Blue Ridge) had committed various air and water violations when it disposed of demolition debris containing asbestos by dumping the waste into a ravine through which ran an intermittent stream.

The People of the State of Illinois filed a four-count complaint with the Board in February 2002. The complaint arose from Blue Ridge's May, 2000 demolition of the former dining hall at the old Bartonville Mental Health Facility in Peoria County and Blue Ridge's management and handling of the various demolition wastes, including asbestos-containing wastes. The People charged Blue Ridge with various violations of the Act (Act), 415 ILCS 5/100 et. seq., and the Board's regulations.

In an August 7, 2003 order following the People's uncontested motion based on stipulated facts, the Board granted for partial summary judgment as to all but three paragraphs of the second count of the Act. The undisputed facts were that Blue Ridge acquired the Old Bartonville Mental Facility located in Bartonville, Peoria County, with the intention of converting the dining hall into a metal fabrication shop. On May 11, 2000, after being advised by Village of Bartonville officials that no permits were necessary, respondent commenced demolition of the dining hall. Between May 11-17, 2000, respondent opened approximately a 40-foot hole in the east wall, removed roofing material which had caved in, removed the rest of the roof that was near collapsing, and cut off and removed steel pipe roof support columns from six locations within the dining hall. During these activities, respondent deposited demolition debris from its demolition activities in a ravine adjacent to the facility. *People of the State of Illinois v. Blue Ridge Construction Corporation*, PCB 02-115 (August 7, 2003), slip op. at 1.

On May 17, 2000, an Illinois Environmental Protection Agency inspector inspected the facility and obtained seven samples of demolition materials, including insulation material from pipes within the facility. Analyses for four of the samples showed asbestos Chrysotile concentration ranging from 20% to 40% and asbestos amosite in concentrations ranging from 10% to 30%. Prior to starting demolition of the dining hall, respondent did not inspect the facility for the presence of asbestos, or submit a written notification of its intention to demolish the facility. *Id.*

The Board accordingly found that, as charged in:

- Count I: respondent failed to utilize asbestos emission control methods, failed to properly remove, handle and dispose of Regulated asbestos-containing material (RACM) and other regulated asbestos-containing material (ACM) during demolition activities causing, threatening or

Environmental Register – March 2006

allowing the emission of asbestos into the environment in violation of Section 9(a) of the Act and Section 201.141;

Count II: a) prior to the demolition of the dining hall, respondent failed to thoroughly inspect the facility for the presence of asbestos, including categories I and II non-friendly ACM in violation of 40 C.F.R. 61.145(a) and 9.1(d); b) respondent failed to submit a written notification of its intention to demolish the dining hall in violation of 40 C.F.R.(b)(1) and Section 9.1(d) of the Act;

Count III: respondent caused or allowed the open dumping of demolition debris generated by the demolition activities within the former dining hall, including but not limited to wooden desk, pipe material, and other debris in or near a ravine on property owned by respondent in violation of Section 21(a), (e), (p)(1) and (p)(2) of the Act; and

Count IV: respondent caused or allowed the open dumping of demolition debris generated by its demolition activities within and adjacent to a ravine owned by respondent so as to create a water pollution hazard in violation of Section 12(d) of the Act. *Id.*, slip op. at 2-4.

The Board sent the parties to hearing to address the remaining alleged violations and remedy. *Id.* at 4.

In its October 7, 2004 order, the Board noted as additional stipulated facts that Blue Ridge, in compliance with all applicable requirements, began asbestos removal and removal of waste in the ravine on April 16, 2001 and completed it three days later. A May 15, 2001, “Notification of Demolition and Renovation” stated that the Dining Hall site contained 1,000 cubic feet of RACM, an amount in excess of one cubic meter. After removal of material from the ravine, soil samples there tested positive for asbestos. After removal of two inches of soil, the ravine retested positive for asbestos and required additional clean-up. Blue Ridge spent a total of \$59,965.67 to remove asbestos from the facility and to remove waste from the ravine. On April 11, 2002, the Village Council of Bartonville voted to reimburse Blue Ridge \$56,000 “for the expenses associated with the clean-up except for the expenses directly related to the asbestos on the pipes.” People of the State of Illinois v. Blue Ridge Construction Corporation, PCB 02-115 (October 7, 2005), slip op. at 6-7.

After review of the record, the Board found that, as alleged in the remaining portions of Count II of the complaint, Blue Ridge had violated the various asbestos-notification and handling requirements 40 C.F.R. 61.150(a)(1) and Section 9.1(d)(1) of the Act. The Board then went on to consideration of penalty issues.

In determining whether to impose a civil penalty, the Board must consider specified statutory factors set forth in Section 33(c) of the Act to determine whether a civil penalty should be imposed. The Section 33(c) factors bear upon the reasonableness of the circumstances surrounding the violation. In determining the amount of a civil penalty, the Board is authorized by the Act to consider a number of matters in either mitigation or aggravation of penalty, including those specified in Section 42(h) of the Act.

The People argued that Blue Ridge has committed fourteen violations, at least six of which continued for 340 days. The People calculate the maximum penalty allowable under Section 42(a) of the Act to be in excess of \$30 million but sought instead a penalty of \$72,000. Blue Ridge sought a maximum penalty of \$3,000.

Much of the parties’ disagreement on penalty issues related to Blue Ridge’s recovery of \$56,000 from the Village of the \$59, 965.67 Blue Ridge spent in clean-up costs. On this issue, the Board determined:

Even if, as the People propose, this payment of \$56,000 could be construed as reimbursement of the cost of removing debris that existed before the owners purchased the facility, that removal became much more extensive and expensive when Blue Ridge dumped a large quantity of demolition debris and RACM into the ravine. Also, the parties have stipulated that the village reimbursed an amount \$3,965.67 less than the full cost to avoid paying expenses “directly related to the asbestos on the pipe.” There is nothing in the record to indicate that this amount is the actual cost of cleaning up asbestos-containing pipe. It is indeed the purpose of the Act “to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” 415 ILCS 5/2(b). Under the facts of this case, Blue Ridge has shifted costs for which it is responsible onto the Village of Bartonville and those who provide financially for its operations. The civil penalty must be at least \$56,000 to be consistent with the fundamental principle of the Act. *Id.*, slip op. at 19 (most citations omitted).

The Board ultimately concluded:

Because this case presents a large number of violations, a failure to exercise due diligence, and a need to deter similar threats to the air and water of the State, the Board finds that a substantial civil penalty is warranted in this case. The People argued that Blue Ridge's lack of prior adjudicated violations was irrelevant, but the Board consider this a mitigating factor and will accordingly reduce the amount of civil penalty sought by the People. Under the circumstances of this case and after considering all of the statutory factors, the Board will order Blue Ridge to pay a civil penalty of \$66,000. *Id.*, slip op. at 20.

The Board's last action in the case was to stay payment of the civil penalty at Blue Ridge's unopposed request during the pendency of the appeal Blue Ridge filed in the Third District on November 15, 2005. People of the State of Illinois v. Blue Ridge Construction Corporation, PCB 02-115 (December 16, 2004).

The Third District Order.

On appeal, Blue Ridge challenged only the Board's \$66,000 penalty. After a brief review of the facts of the case and the Board's order, the court's analysis turned first to the proper standard of review. While noting that the People, as well as Blue Ridge from time to time, had argued application of the "arbitrary and capricious" standard of review, the court found that the appropriate standard was the less deferential "manifest weight of the evidence" standard. Blue Ridge Construction Corp. v. IPCB and People of the State of Illinois, No. 3-04-0874 (March 30, 2006), slip op. at 5-6, citing Discovery South Group, Ltd. v. Pollution Control Board, 275 Ill. App. 3d 547, 656 N.E. 2d 51 (1995).

The court concluded that the Board's \$66,000 penalty was not against the manifest weight of the evidence:

The record shows that the Board thoroughly considered the appropriate statutory factors in calculating the amount of the penalty, which included (1) the maximum penalty allowed; (2) aggravating and mitigating factors; and (3) a fundamental principle of the Act that those who commit environmental damage should bear the cost of repairing the damage. The Board's assessment of a \$66,000 penalty was considerably less than the maximum penalty of more than \$30 million, which was authorized by the Act.

Contrary to Blue Ridge's assertion, it was not improper for the Board to consider the Village's reimbursement as a factor in aggravation. The Act explicitly states that the Board is "not limited to" consideration of the five factors enumerated in section 42(h), and, in any case, the Board analyzed the reimbursement under the factor concerning the deterrence of further violations and the enhancement of voluntary compliance. Moreover, the Board determined that Blue Ridge's receipt of the Village's reimbursement violated a fundamental principle of the Act that Blue Ridge bear responsibility for causing the asbestos contamination of the ravine, including contamination of the preexisting debris. *Id.*, slip op at 6-7 (citations omitted).

Illinois Supreme Court Grants Petitions for Leave to Appeal Third District Order in Town & Country Utilities, Inc. and Kankakee Regional Landfill, LLC v. Illinois Pollution Control Board, County of Kankakee, Edward D. Smith as State's Attorney of Kankakee County, the City of Kankakee, Illinois City Council, Byron Sandberg, and Waste Management of Illinois, Inc., Nos. 101619 and 101652 (cons.) (PLA accepted March 29, 2006) (PCB 03-31, PCB 03-33, PCB 03-35 (cons.) (January 1, 2003)

The Illinois Supreme Court has granted two Petitions for Leave to Appeal (PLAs) the Third District Appellate Court's decision in Town & Country Utilities, Inc., and Kankakee Regional Landfill, LLC v. The Illinois Pollution Control Board, County of Kankakee, Edward D. Smith as State's Attorney of Kankakee County, The City of Kankakee, Illinois City Council, Byron Sandberg, and Waste Management of Illinois, Inc. Supreme Ct. Nos. 101619, 101652 (cons.). On March 29, 2006, the Supreme Court accepted the petitions filed by both the Board and the County of Kankakee, and consolidated the two. The parties will brief the issues on the schedule set by the Court.

The Third District decision under review was reported in detail in *Environmental Register* No. 616, pp.3-6 (October, 2005), and that discussion is only briefly summarized below. In a September 7, 2005 final unpublished 11-page order under Supreme Court Rule 23 (155 Ill.2d R. 23), one justice concurring and one dissenting, the Third

District Appellate Court reinstated the grant by the City of Kankakee (City) of siting approval to the 2002 application for a new landfill made by Town and Country Utilities, Inc. and Kankakee Regional Landfill (collectively, Town and Country). Town & Country Utilities, Inc. and Kankakee Regional Landfill, LLC v. Illinois Pollution Control Board, County of Kankakee, Edward D. Smith as State's Attorney of Kankakee County, the City of Kankakee, Illinois City Council, Byron Sandberg, and Waste Management of Illinois, Inc., No. 3-03-0025 (September 7, 2005) (hereinafter Town and Country I). On October 19, 2005, the Third District denied separate petitions for rehearing filed by the Board, the County of Kankakee, and Waste Management of Illinois, Inc. The court also denied the County's motion to publish the decision, so that the Court's rationale and conclusions cannot serve as precedents in future cases.

In its decision in Town and Country I, the Court affirmed the Board's finding that the City had conducted a fundamentally fair siting procedure under Section 39.2 of the Environmental Protection Act (Act), 415 ILCS 5/39.2 (2004). But the Court reversed the Board's determination that the City's finding was against the manifest weight of the evidence as to criterion 2 of Section 39.2. In other words, the Court found the City properly found that the proposed "facility is so designed, located and proposed to be operated that the public health, safety, and welfare will be protected." 415 ILCS 5/39.2(a)(ii)(2004). In three consolidated third party appeals before it, the Board had concluded that the record lacked evidence as to whether the groundwater under the proposed site was an aquifer, rather than an aquitard. County of Kankakee and Edward D. Smith, States Attorney of Kankakee County v. City of Kankakee, Illinois, The City of Kankakee, Illinois City Council, Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.; Byron Sandberg v. City of Kankakee, Illinois, The City of Kankakee, Illinois City Council, Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C.; Waste Management of Illinois v. City of Kankakee, Illinois, City Council, Town and Country Utilities, Inc. and Kankakee Regional Landfill, L.L.C., PCB 03-31, PCB 03-33, PCB 03-35 (cons.) (January 1, 2003).

On appeal to the Supreme Court, the Board takes issue with the standard of review employed by the Third District, to the extent the court stated that it was reviewing not the Board's decision but rather the City's decision. *See* Town and Country I, slip op. at 8, n.1. The County seeks review of the Third District's decision to affirm the Board's ruling that the City proceeding was fundamentally fair.

Rule Update

Board Adopts Final 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; March 2004 Proposal Formally Withdrawn (R03-09)

On March 2, 2006, the Board adopted a final 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; March 2004 Proposal Formally Withdrawn (R03-09). The adopted rulemaking amended Part 901 and added a new Part 910 to the noise regulations found in 35 Ill. Adm. Code Subtitle H to update sound measurement definitions and techniques. The adopted amendments were filed with the Secretary of State's Index department and published in the March 24, 2006 issue of the *Illinois Register* at 30 Ill. Reg. 5594 (Part 901) and 5594 (Part 910) with a March 10, 2006, effective date.

The Board initiated this rulemaking to update noise rules the Board first adopted in the 1970's and last updated in 1987. In Part 901, the Board replaced reference to 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 changes to Section 901.104 clarify that the impulsive sound standards are based on 1-hour A-weighted equivalent sound levels. The Board also revised 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. The Board also revised outdated numerical sound emission standards for property line noise sources found at 35 Ill. Adm. Code Parts 901.

The 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 new Part contains general requirements and specific instrument requirements. 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.

One major substantive change that the Board made at second notice to this rulemaking was to exempt the noise from blasting at facilities operated by aggregate producers and surface coal mines. The Board found that the Board could appropriately defer the regulation of noise emissions from blasting at aggregate and surface coal mines to the Illinois Department of Natural Resources (IDNR). This exemption is limited to impulsive sound produced by explosive blasting activities, which are regulated by IDNR in accordance with Section 6.5 and Section 3.13 of the Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 715/6.5 and 3.13 (2004)).

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 Second Notice Proposal in Technical Correction to Formulas in 35 Ill. Adm. Code 214; Clean-Up Part III, Amendments to 35 Ill Adm. Code Part 211, 218, and 219 (R04-12/20)(cons.)

On March 2, 2006, the Board adopted a second notice opinion and order in Technical Correction to Formulas in 35 Ill. Adm. Code 214; Clean-Up Part III, Amendments to 35 Ill Adm. Code Part 211, 218, and 219 (R04-12/20)(consolidated). The Board's first notice proposal was published at 29 Ill. Reg. 7418 (May 27, 2005). The Board, in response to public comments, made a few changes to the rulemaking at second notice. The Board has sent both rulemakings, 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 April 11, 2006, JCAR meeting.

R04-12 is a Board-initiated proposal to amend Adm. Code 214. The Board is proposing to correct technical errors in formulas that are in the Board's air rules at 35 Ill. Adm. Code 214 "Sulfur Limitations." The errors appear to have occurred when the Illinois Administrative Code was re-codified. The Board made minor, technical changes to the proposal in response to comments filed by the Illinois Environmental Protection Agency (IEPA).

The R04-20 docket was opened for the IEPA's January 6, 2004 rulemaking proposal. The IEPA designed the proposal to correct, update, and clarify rules implementing federal Clean Air Act requirements for volatile organic material (VOM) emissions reductions in the Chicago and Metro-East ozone areas. This proposal addresses capture efficiency, carbon adsorbers and control device monitoring, screen printers, sealers and topcoats, lithographic printing, natural gas fired afterburners, perchloroethylene dry cleaners, and motor vehicle refinishing. The IEPA described the rule amendments as intended to benefit the regulated community by reducing the burden of, and increasing the flexibility in, demonstrating compliance.

The proposal also makes changes to:

- Update the test methods for capture efficiency (CE);
- Clarify the term "carbon adsorber";
- Clarify requirements for screen printers;
- Clarify categories of sealers and topcoats;
- Clarify provisions on monitoring, applicability, equations, recordkeeping, and reporting for lithographic printing operations;
- Clarify that sources may turn off their natural gas fired afterburners outside the ozone season;
- Delete the requirements applicable to perchloroethylene dry cleaning facilities;
- Delete the requirement that auto finishing shops annually re-register with Agency;
- Delete the coating purchasing recordkeeping requirements; and
- Correct miscellaneous grammatical and typographical errors.

During first notice the Board received comments from the Illinois Environmental Regulatory Group (IERG), IEPA, Specialty Graphic Imaging Association (SGIA), Smurfit-Stone Container Enterprises, Inc. (Smurfit-Stone), and the Printing Industry of Illinois/Indiana Association (PII).

Environmental Register – March 2006

Issues raised and Board responses:

Capture Efficiency (CE) protocols in enforcement cases

The participants in this rulemaking have agreed that the Lower Confidence Limit (LCL) protocol alone cannot prove a violation because the LCL will tend to understate the actual CE. Because the actual CE is therefore likely to be greater than the LCL, a calculated LCL above the applicable CE standard demonstrates compliance. However, because the LCL is the “floor” for CE, a calculated LCL below the required CE does not demonstrate non-compliance. IEPA maintained that if a source uses LCL and determines that its CE appears to be below the CE standard, the “burden the source has is providing the Agency with a solid number” using one of the other protocols. IEPA also asserted that when the LCL is below the allowable CE limit, IEPA does not know if the source is out of compliance. IEPA was concerned that the Board’s first notice proposal removed its authority to require sources to use the Data Quality Objective (DQO) protocol or other CE test methods.

IEPA and IERG requested that the Board provide additional rule language concerning enforcement proceedings. The Board made changes in response to both concerns, adding clarification language to Section 218.105(c)(2)(E).

Emission Credits and Additional Testing

IEPA and IEGR both supported the Board’s first notice language regarding testing to establish emission credits, however both requested the addition of a Board Note to Section 218.105(c)(2)(E) to provide further clarification.

The Board added a Board Note to Section 218.105(c)(2)(E) to provide additional clarity to the proposed rule.

Emission Credits and Trading

Smurfit-Stone had argued that the LCL could be used to calculate actual seasonal emissions, just not the baseline for the volatile organic material (VOM) Emission Reduction Market System (ERMS) (35 Ill. Adm. Code 205). In response, IEPA stated that it had a problem with Smurfit-Stone’s position on the word “actual.” The relevant ERMS rule (35 Ill. Adm. Code 205.300(b)(1)) requires that sources must submit “[a]ctual seasonal emissions of VOM from the source.” According to IEPA, because the LCL underestimates CE and overestimates emissions, the LCL does not result in the “actual seasonal emissions.”

The Board concurred with IEPA’s interpretation. None of the participants requested that the Board add any rule language concerning the ERMS baseline/seasonal emission issue, and the Board found no reason to do so.

IEPA proposed language to the Board’s proposal that would classify DQO/LCL as an “equivalent alternative” or “statistical analysis” instead of identifying it as a protocol.

The Board did not find a clear need to make the suggested changes and did not amend its proposed language.

Error Margin

Smurfit-Stone requested that the Board delete the reference to error margins found in Section 218.105(c)(2). IEPA disagreed with the suggestions as unnecessary, and pointed out that the change would impact language already approved by the United States Environmental Protection Agency (USEPA).

The Board declined to make any changes to the error margin language

Equipment Configuration

Smurfit-Stone sought to clarify that the suitability of a given CE test method or protocol might depend not only on the process, but also on the configuration of the equipment to be tested at a particular facility. According to Smurfit-Stone, though a process may be suitable to a test method, the equipment configuration might make the method unsuitable. Although Smurfit-Stone believes the words “a particular process” should be interpreted to allow consideration of facility-specific factors, Smurfit-Stone suggests adding language to avoid potential ambiguity.

IEPA did not support Smurfit-Stone’s proposed language change.

The Board agreed with Smurfit-Stone that the phrase “a particular process” may include consideration of facility-specific factors for a particular equipment configuration, and accordingly found that the addition of Smurfit-Stone’s proposed language was not necessary.

Carbon adsorber

IERG stated that it remains concerned that the definition of “carbon adsorber” still includes media besides carbon, such as oxides of silicon and aluminum. IERG believes the stand-alone term “carbon adsorber” could be deceptive. When reviewing monitoring requirements for “carbon adsorbers,” sources, IERG explained, might not be aware that the requirements for carbon adsorbers in Parts 218 and 219 would also extend to other types of adsorbers.

The Board noted that when it promulgates regulations, the Board must assume that the regulations will be read by those regulated. IERG’s suggested changes would effectively exempt all non-carbon adsorbers from the requirements. The suggestion therefore runs directly counter to using this rulemaking to close the unforeseen compliance loophole mentioned at first notice. Under these circumstances, the Board declined at second notice to alter the definition of “carbon adsorber.”

Lithographic printing

In its comments, PII stated that lithography is different than other printing processes because lithography uses a planographic plate to deliver an inked image to a substrate. PII is concerned about the proposed regulatory requirements for coatings applied in the lithographic printing process under Parts 218 and 219.

PII sees inconsistencies between Part 215 for attainment areas and Parts 218 and 219 for nonattainment areas as they apply to coatings. PII interpreted the Board note in the attainment area regulations under Section 215.204(c) to mean that a lithographic (or flexographic or gravure) printing press that prints and applies varnish or other coatings is not subject to the paper coating rule. Under Sections 218.204(c) and 219.204(c), however, the proposed note specifies only that flexographic or rotogravure printing is not subject to the paper coating rule. According to PII, this leaves lithographic printing potentially subject to two sets of regulatory requirements for a single piece of equipment in nonattainment areas: the lithographic printing requirements of Subpart H and the coating requirements of Subpart F in Parts 218 and 219.

In response to concerns raised by PII, IEPA explained that there are differences between what is expected of sources in attainment areas (Part 215) and those in nonattainment areas (Parts 218 and 219). According to IEPA, one of those differences appears in the notes under the paper coating rules. IEPA stated that the proposed amendments to the notes in Parts 218 and 219 were intended to clarify that the exemption from paper coating limitations applies only to flexographic and rotogravure printing, *i.e.*, not to lithographic printing.

The Board observed that flexographic and rotogravure printing are regulated differently from lithographic printing under Subpart H. Without additional information on the history, intent, and environmental impact of the paper coating exemption to support PII’s views, the Board concluded that the record in this rulemaking did not support PII’s requested revisions. The Board did not make any changes to the first notice proposal.

To achieve administrative economies during the hearing process, the Board consolidated the R04-20 IEPA rulemaking proposal with the R04-12 Board-initiated rulemaking proposal. The Board held two hearings in this rulemaking. The first hearing was in Chicago on March 18, 2004 and the second hearing was in Springfield on May 6, 2004.

Copies of the Board’s opinion and order in R04-12/20 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 Richard McGill at 312-814-6983; e-mail address mcgillr@ipcb.state.il.us

Board Adopts Final Opinion and Order in Two Dockets Amending 35 Ill. Adm. Code 201.146: Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146) (R05-19); and Proposed Amendments to Exemptions from State Permitting Requirements for Plastic Injection Molding Operations (35 Ill. Adm. Code 201.146) (R05-20)

On March 2, 2006 the Board adopted a final opinion and order in two dockets amending 35 Ill. Adm. Code 201.146: Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146) (R05-19), and Proposed Amendments to Exemptions from State Permitting Requirements for Plastic Injection Molding Operations (35 Ill. Adm. Code 201.146) (R05-20). Because both dockets amended the same Section in Part 201, the Board consolidated the final text for filing purposes. In each docket, the Board adopted rules virtually

Environmental Register – March 2006

identical to the first notice proposals. The adopted amendments were filed with the Secretary of State's Index department and published in the March 17, 2006 issue of the *Illinois Register* at 30 Ill. Reg. 4901 with a March 3, 2006, effective date.

R05-19

The Illinois Environmental Regulatory Group (IERG) and the Illinois Environmental Protection Agency (IEPA) proposed the R05-19 amendments jointly on February 22, 2005. Proponents' stated purpose was to eliminate permitting delays for minor projects having little environmental or regulatory impact.

The amendments adopted in R05-19 add four new categories to the existing list of 59 exemptions from state air permit requirements in Section 201.146 as follows:

Exemption for replacing or adding air pollution control equipment at existing emission units

This exemption applies 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 does 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.

Exemption for sources with federally enforceable state operating permits (FESOP) having a low potential to emit

This provision affects 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 second exemption, permits are unnecessary for projects at minor FESOP sources with a low potential to emit (less than 0.1 pound per hour or 0.44 tons per year) any regulated air pollutant absent air pollution equipment from the new or modified unit that have no outstanding compliance or enforcement issues. Also, 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. This exemption is not available to a source that must meet New Source Performance Standards (NSPS) and New Source Review (NSR) requirements under the Clean Air Act (CAA) or if outstanding compliance or enforcement issues exist.

Exemption for minor sources that are not subject to the Clean Air Act Permit Program (CAAPP) or FESOP requirements

This third exemption is limited to sources with the 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. This exemption is available for minor sources that have a slightly greater potential to emit (up to 0.5 pounds per hour), so long as the facility notifies the IEPA of its intent to construct or install a new emissions unit or modification. Only after notification can the facility begin construction, installation, or modification. This provision requires 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 NSPS and NSR requirements under the CAA.

Insignificant activities exemption

The fourth exemption creates a list of permit exempt insignificant activities similar to those for CAAPP sources. See 35 Ill. Adm. Code 201.210 through 210.211. Owners or operators must notify the IEPA when adding insignificant activities. Facilities must still comply with otherwise applicable emission standards or other regulatory requirements.

R05-20

Docket R05-20 was opened for the April 19, 2005 proposal filed by the Chemical Industry Council of Illinois (CICI). CICI's stated purpose in proposing the exemption was to eliminate the burden of state construction and operating permitting of low emitting emission units and activities for both the IEPA and owners and operators of PIM operations.

The adopted amendment added one category for plastic injection molding (PIM) operations to the existing list of permit exemptions in Section 201.146. CICI's stated purpose in proposing the exemption was to eliminate the burden of state construction and operating permitting of low emitting emission units and activities for both the IEPA and owners and operators of PIM operations. The adopted rule language limits the exemption to facilities that use 5,000 tons or less of resin annually in the PIM process. The 5,000-ton limit applies facility-wide rather than to each piece of PIM equipment.

The Board held two hearings on the R05-19 IERG/IEPA proposal in April and June, 2005, and in the R05-20 CICI proposal on July 1 and 15, 2005.

Copies of the Board's opinion and order in R05-19 or R05-20 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; e-mail address: antonioa@ipcb.state.il.us.

Board Grants Request for Expedited Consideration and Adopts First Notice Opinion and Order in Revisions to Water Quality Standards for Total Dissolved Solids in the Lower Des Plaines River for Exxon Mobil Oil Corporation: Proposed 35 Ill. Adm. Code 303.445 (R06-24)

On March 2, 2006, the Board accepted for hearing, and granted a motion to expedite, a joint rule proposal filed by the ExxonMobil Oil Corporation (ExxonMobil) and the Illinois Environmental Protection Agency (IEPA) on February 7, 2006. The proposal addresses wastewater discharges of Total Dissolved Solids (TDS) from the ExxonMobil Joliet Refinery. The refinery draws from and discharges to the Des Plaines River, approximately 1,000 feet east of the Interstate 55 Bridge; the rule proposes to relax the water quality standards in that stretch of the river during the months of November through April in each year. In summary, the proposal's purpose is to allow ExxonMobil to lawfully reduce air emissions as required by a federal consent decree by addition of pollution control equipment that will increase TDS loadings in its wastewater discharge.

The Board adopted a first notice opinion and order, without commenting on the merits of the proposal, and filed the rulemaking for first notice publication with the Secretary of State's Index department. The proposal was published in the *Illinois Register* on March 31, 2006 at 30 Ill. Reg. 5957. The Board presently intends to schedule only one hearing during the 45-day first notice period.

This site-specific rulemaking proposal would set 1,686 milligrams per Liter (mg/L) as the TDS levels for both Secondary Contact and Indigenous Aquatic life Use Waters General Use Waters. This 1,686 mg/L standard would apply instead of the general use standard of 1,000 mg/L found in 35 Ill. Adm. Code 302.208 and the secondary contact use standard of 1,500 mg/L found in 302.407.

ExxonMobil owns and operates the Joliet Refinery (refinery) located in Channahon Township on a 1,300-acre tract of land in unincorporated Will County. The site is adjacent to Interstate 55 at the Arsenal Road exit, approximately 50 miles southwest of Chicago. The refinery employs more than 500 full-time employees, and approximately 100 additional ExxonMobil employees who provide regional support services are also located at the refinery.

On October 11, 2005, ExxonMobil was a party to a consent decree involving the United States of America, as well as the States of Illinois, Louisiana, and Montana. Under that consent decree, ExxonMobil must, among other things, make substantial investments in air emissions reductions at the Joliet Refinery. The consent decree calls for the use of a wet gas scrubber in addition to added technology, which will contribute to additional sulfate and TDS to the wastewater treatment system.

ExxonMobil has asserted that because of occasional observed TDS violations in the Des Plaines River and in light of 35 Ill. Adm. Code 302.102(b)(9), the IEPA could not lawfully issue the wastewater construction permit needed by ExxonMobil. ExxonMobil and the IEPA believe that Board adoption of the proposed 1,686 mg/L TDS standard would allow for IEPA issuance of a permit approvable by the United States Environmental Protection Agency.

Copies of the Board's opinion and order in R06-24 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; e-mail address: knittlej@ipcb.state.il.us.

Board Grants IEPA Motion to Supplement the Record in NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217 (R06-22)

On March 16, 2006, the Board granted a motion filed by the Illinois Environmental Protection Agency (IEPA) to supplement its rulemaking proposal in NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217 (R06-22). The Board accepted the IEPA's January 19, 2006 proposal for hearing by order of February 2.

In its February 21, 2006 motion to supplement the rulemaking proposal, the IEPA requested that the Board accept two documents into the record. The first document is a petition for review filed in the State of North Carolina v. EPA, No. 05-1244 (D.C. Cir.) on July 8, 2005; the second document is the decision entered in State of West Virginia v. EPA, 362 F.3d 861 (D.C. Cir. 2004). The Board did not receive a response to the motion to supplement.

In its order, the Board granted the IEPA motion without comment. The Board reserved ruling on the March 13, 2006 motion for expedited review filed by the Illinois Environmental Regulatory Group (IERG) pending receipt of any responses to the IERG motion.

Copies of the Board's opinion and order in R06-22 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; e-mail address knittlej@ipcb.state.il.us

Board Accepts IEPA Proposal for First Notice Publication Under Section 28.5 of the Act in Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury) (R06-25)

On March 16, 2005, the Board adopted a first notice opinion and order, without commenting on the merits of the proposal, in Proposed New 35 Ill. Adm. Code 225 Control Of Emissions From Large Combustion Sources (Mercury) (R06-25). This rulemaking, filed by the Illinois Environmental Protection Agency (IEPA) under the "fast track" rulemaking authority of Section 28.5 of the Act, seeks to add a new Part 225 to the Board's air regulations to address mercury emissions from large combustion sources. The proposal was published in the March 31, 2006 issue of the *Illinois Register* at 30 Ill. Reg. 5957.

The IEPA Proposal

On January 5, 2006, Governor Rod Blagojevich announced his intent to have the IEPA propose rules requiring Illinois coal-fired electrical generating plants to reduce mercury emissions by an average of 90% by July 2009. In the Statement of Reasons accompanying its March 14, 2006 proposal, the IEPA stated that this proposal was intended to meet certain obligations of the State of Illinois under the Clean Air Act, 42 USC § 7401 *et seq.* Specifically, the proposed rule is designed to satisfy Illinois' obligation to submit a State Implementation Plan to address the requirements of the Clean Air Mercury Rule, 70 Fed. Reg. 28606, and to address the applicable requirements of Section 9.10 of the Environmental Protection Act (415 ILCS 5/9.10). If adopted, beginning July 1, 2009, IEPA's proposed rule would require Illinois coal-fired electrical generating units (EGUs) that serve a generator greater than 25 megawatts producing electricity for sale to begin to utilize control technology for mercury as necessary to achieve the numerical standards set by the proposed rule.

The regulations propose to provide new and existing sources with two alternative mercury emission standards to demonstrate compliance. The first alternative allows a source to comply with a mercury emission standard of 0.0080 lb mercury/GWh gross electrical output for each EGU. In the alternative, sources may control emissions by a minimum of 90% from input mercury levels. In addition, through December 31, 2013, companies with several sources with EGUs may utilize averaging demonstrations among the sources. Those sources that have no sister plants are grouped into a co-op so that they may also average among the listed facilities. However, every source in the averaging demonstration must attain at least a 75% reduction of input mercury or 0.020 lb mercury/GWh gross electrical output. This proposal also sets forth permitting, monitoring, recordkeeping, and reporting requirements for affected sources.

March 16, 2006 Board Order

The Board issued an order on March 16, 2006, its first regularly scheduled meeting following receipt of the IEPA proposal. Consistent with the requirements of Section 28.5 of the Act, the Board adopted an order causing first

Environmental Register – March 2006

notice publication of the proposal without merits. The Board also granted IEPA motions accompanying the proposal, including an IEPA motion that, for budgetary reasons, all hearings be held in Springfield, and if not, that the first be in Chicago.

Following the tight hearing timetable required under Section 28.5 of the Act, the Board has established the following hearing schedule (in which hearings will be continued from day to day until the business is completed)

First hearing will be begin on May 8, 2006, at 1:00 pm
Assembly Hall, Concourse Level
James R. Thompson Center
100 W. Randolph, Chicago IL

Second hearing, if necessary, will begin on June 5, 2006, at 1:00 pm
Illinois Environmental Protection Agency Office Building
Training Room, 1214 West
1021 North Grand Avenue East, North Entrance
Springfield, IL

Third hearing, if necessary, will begin on June 19, 2006, at 10:00 am
Illinois Environmental Protection Agency Office Building
Training Room, 1214 West
1021 North Grand Avenue East, North Entrance
Springfield, IL

Prefiling requirements for testimony and questions as well as other procedural details are set out in a March 16, 2006 hearing officer.

Ruling Reserved on March 15, 2006 Motions

The Board's March 16 order reserved ruling on three motions filed March 15, 2005: 1) Dynegy, Midwest Generation, and Southern Illinois Power Cooperative's Motion to Reject Regulatory Filing, 2) Ameren Energy Generating Company, Ameren Energy Resources Generating Company, and Electric Energy, Inc.'s Objection to Use of Section 28.5 Fast Track Procedures for Consideration of Mercury Proposal, and 3) Dominion Kincaid, Inc.'s Motion for the Board to Reject the Illinois Environmental Protection Agency's Proposal to Add Mercury Rules Under Section 28.5 Fast-Track Rule Making Procedures. The March 16 hearing officer order specified that any response to the motions must be filed by March 29, 2006, and any replies to the responses by April 5, 2006 (the mailbox rule of 35 Ill. Adm. Code 101 .300(c) does not apply).

Copies of the March 16 orders of the Board and hearing officer in R06-25 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 Actions

March 2, 2006

Springfield, 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 final opinion and order in this rulemaking which amends the Board's noise pollution regulations.	4-0 R, Noise
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Environmental Register – March 2006

R04-12	<u>In the Matter of: Technical Correction to Formulas in 35 Ill. Adm. Code 214</u>	4-0
R04-20 (cons.)	<u>“Sulfur Limitations”</u> ; <u>In the Matter of: Clean-Up Part III, Amendments to 35 Ill. Adm. Code Part 211, 218, and 219</u> – The Board adopted a second notice proposal to amend the Board’s air regulations.	R, Air
R05-19	<u>In the Matter of: Proposed Amendments to Exemptions from State Permitting Requirements (35 Ill. Adm. Code 201.146)</u> – The Board adopted a final opinion and order in this rulemaking which amends the Board’s air quality standards regulations.	4-0 R, Air
R05-20	<u>In the Matter of: Proposed Amendments to Exemptions From Permitting Requirements for Plastic Injection Molding Operations Code 201.146</u> – The Board adopted a final opinion and order in this rulemaking which amends the Board’s air quality standards regulations.	4-0 R, Air
R06-24	<u>In the Matter of: Revisions to Water Quality Standards for Total Dissolved Solids in the Lower Des Plaines River for Exxon Mobil Oil Corporation: Proposed 35 Ill. Adm. Code 303.445</u> – The Board accepted for hearing petitioner’s February 7, 2006 proposal to amend the Board’s water pollution control regulations. The Board granted petitioner’s motions to waive requirements to submit 200 signatures and for expedited review. The Board also requested that petitioner address the “published study or report” requirement of 35 Ill. Adm. Code 102.210(c).	4-0 R, Water

Adjusted Standards

AS 06-2	<u>In the Matter of: Petition of BP Products North America, Inc. for an Adjusted Standard Pursuant to 35 Ill. Adm. Code 721.122</u> – The Board dismissed this petition for an adjusted standard for petitioner’s failure 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) (2004)).	4-0 Air
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Decisions

PCB 06-42	<u>People of the State of Illinois v. Waste Management of Illinois, Inc.</u> – In this land enforcement action concerning a Whiteside 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) (2004)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$20,000, and to cease and desist from further violations.	4-0 L-E
PCB 06-133	<u>People of the State of Illinois v. City of Flora</u> – In this land and water enforcement action concerning a Clay 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) (2004)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$9,600, and to cease and desist from further violations.	4-0 L,W-E

Motions and Other Matters

PCB 04-134	<u>People of the State of Illinois v. Interstate Brands Corporation</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.	4-0 A-E
PCB 05-49	<u>Morton F. Dorothy v. Flex-N-Gate Corporation</u> – The Board granted complainant’s motion to reconsider. The Board, however, upheld its October 20, 2005 ruling granting summary judgment in favor of the respondent on counts II through VI and directed the hearing officer to proceed to hearing on count I of the complaint.	4-0 A&L-E
PCB 05-157	<u>Grand Pier Center L.L.C. 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, Kerr-McGee Chemical L.L.C.</u> – The Board denied complainants’ motion to reconsider its’ January 5, 2006 Board order.	4-0 Citizens L-E
PCB 06-33	<u>People of the State of Illinois v. J&S Companies, Inc. and First Choice Construction, Inc.</u> – The Board denied complainant’s separate motions for default against each respondent.	4-0 L-E
PCB 06-48	<u>People of the State of Illinois v. STS Consultants, Ltd.</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 Will County facility, the Board ordered publication of the required newspaper notice.	4-0 PWS-E
PCB 06-131	<u>Wesley Brazas, Jr. v. Mr. Jeff Magnussen, President Village of Hampshire and IEPA</u> – The Board found that all claims other than those that concern the Illinois Environmental Protection Agency’s issuance of the December 9, 2005 National Pollutant Discharge Elimination System permit to the Village of Hampshire are frivolous, and dismissed those claims. The Board accepted the matter for hearing, finding that the filing of the amended petition restarted the decision time clock.	4-0 P-A, NPDES
PCB 06-138	<u>Brenda George Bryant 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 Massac County facility.	4-0 UST Appeal 90-Day Ext.
PCB 06-139	<u>Richard Gooden v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Ford County facility.	4-0 UST Appeal
PCB 06-140	<u>W.R. Meadows, Inc. v. IEPA</u> – The Board granted this request for a 90-day	4-0

Environmental Register – March 2006

extension of time to file an underground storage tank appeal on behalf of this Kane County facility.

UST Appeal
90-Day Ext.

March 16, 2006

Chicago, Illinois

Rulemakings

- R06-22 In the Matter of: NO_x Trading Program: Amendments to 35 Ill. Adm. Code Part 217 – The Board granted petitioner’s February 21, 2006 motion to supplement the rulemaking proposal. No action was taken on the motion for expedited review filed by the Illinois Environmental Regulatory Group on March 13, 2006. 4-0
R, Air
- R06-25 In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury) – The Board accepted for hearing petitioner’s March 14, 2006 proposal to amend the Board’s air pollution control regulations. The Board granted petitioner’s motions to waive copy requirements. The Board denied in part petitioner’s motion to hold the required hearings in Springfield. The Board will hold at least one hearing in the Chicago area and per the Illinois Environmental Protection Agency’s request the first hearing will be scheduled in Chicago. The Board took no action on the motions filed March 15, 2006. 4-0
R, Air

Administrative Citations

- AC 04-75 IEPA v. Charles L. Parker – The Board entered an interim opinion and order finding respondent violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2004)), and ordered respondent to pay a civil penalty of \$4,500. The Board ordered the Clerk of the Board and the Illinois Environmental Protection Agency to file within 14 days a statement of hearing costs, supported by affidavit, with service on respondent. Respondent may respond to the cost statement within 14 days of service. 4-0
- AC 05-18 IEPA v. William Shrum – The Board entered an interim opinion and order finding respondent violated Sections 21(p)(1) and (p)(4) of the Act (415 ILCS 5/21(p)(1), (p)(4) (2004)) and assessing a penalty of \$4,500. The Board ordered the Clerk of the Board and the Illinois Environmental Protection Agency to file within 14 days a statement of hearing costs, supported by affidavit, with service on respondent. Respondent may respond to the cost statement within 14 days of service. 4-0
- AC 05-33 IEPA v. Leo and Debra Harn – In response to a joint stipulation and settlement agreement in this administrative citation action involving a McDonough County facility, the Board found that respondent Leo Harn had violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2004)) and ordered respondent to pay a civil penalty of \$1,500. The Board also granted the parties’ joint motion to dismiss the petition for review and the alleged violation of 415 4-0

Environmental Register – March 2006

ILCS 5/21(p) (7) (2004). The Board also amended the caption to reflect Leo Harn's status as the only remaining respondent in this action following Debra's death.

- AC 05-63 IEPA v. John R. Malloch – The Board entered an interim opinion and order finding respondent violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2004)), and ordered respondent to pay a civil penalty of \$4,500. The Board ordered the Clerk of the Board and the Illinois Environmental Protection Agency to file within 14 days a statement of hearing costs, supported by affidavit, with service on respondent. Respondent may respond to the cost statement within 14 days of service. 4-0
- AC 06-21 County of Jackson v. Dan Kimmel – The Board accepted for hearing this amended petition for review of an administrative citation against this Jackson County respondent. 4-0
- AC 06-22 IEPA v. Harold Graves – The Board accepted for hearing this petition for review of an administrative citation against this Shelby County respondent. 4-0
- AC 06-23 IEPA v. Harold Graves – The Board accepted for hearing this petition for review of an administrative citation against this Shelby County respondent. 4-0

Decisions

- PCB 05-204 People of the State of Illinois v. Lake Street Development, L.L.C. – In this water enforcement action concerning a Lake 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) (2004)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$25,000, and to cease and desist from further violations. 4-0
W-E
- PCB 06-15 People of the State of Illinois v. Illinois-American Water Company – In this public water supply enforcement action concerning a Will 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) (2004)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$7,500, and to cease and desist from further violations. Illinois-American Water Company was also ordered to pay a cash contribution in the amount of \$5,000 to the Village of Homer Glen, for use in constructing an off-road multi-use trail system and trailhead, to perform an environmental compliance audit valued at \$5,000 at one of its facilities in the Chicago Metropolitan area and submit the results to the complainant as supplemental environmental projects. 4-0
PWS-E

Environmental Register – March 2006

PCB 06-134 People of the State of Illinois v. Village of Hainesville – In this public water supply enforcement action concerning a Lake 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) (2004)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$3,000, and to cease and desist from further violations. 4-0
PWS-E

Motions and Other Matters

PCB 03-1 Illinois State Toll Highway Authority v. IEPA – The Board granted this DeKalb County facility’s motion for voluntary dismissal of this underground storage tank appeal. 4-0
UST Appeal

PCB 04-7 People of the State of Illinois v. 4832 S. Vincennes, L.P. and Batteast Construction Company, Inc. – 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) (2004)), accepted a stipulation and settlement agreement as to the Batteast Construction Company (Batteast), and ordered Batteast to pay a total civil penalty of \$1,500, and to cease and desist from further violations. The Board also denied the complainant’s motion for summary judgment against respondent 4832 S. Vincennes, L.P., an Illinois limited partnership and directed the remaining parties to proceed to hearing. 3-1
Moore
dissented
A-E

PCB 05-220 Kenneth E. Medema, Jr. v. TNT Logistics North America – The Board granted complainant’s motion for leave to file an amended complaint. The amended complaint is due on or before April 17, 2006. The Board denied as moot complainant’s February 10, 2006 motion that the hearing officer provide an expedited ruling on the motion for leave to amend the complaint *instanter*. In addition, to allow the response time to expire, the Board reserved ruling on respondent’s February 28, 2006 motion to include communications. 4-0
Citizens
N-E

PCB 06-1 Robert F. Kassela, Jr. and Kellie R. Kassela v. TNT Logistics North America - The Board granted complainants’ motion for leave to file an amended complaint. The amended complaint is due on or before April 17, 2006. The Board denied as moot complainants’ February 10, 2006 motion that the hearing officer provide an expedited ruling on the motion for leave to amend the complaint *instanter*. In addition, to allow the response time to expire, the Board reserved ruling on respondent’s February 28, 2006 motion to include communications. 4-0
Citizens
N-E

PCB 06-49 People of the State of Illinois v. Premier Waste & Recycling, Inc. – 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 Cook County facility, the Board ordered publication of the required newspaper notice. 4-0
L-E

PCB 06-76 Gateway FS, Inc. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Monroe County facility. 4-0
UST Appeal

Environmental Register – March 2006

PCB 06-82	<u>People of the State of Illinois v. Barger Engineering, Inc.</u> – The Board denied respondent’s motion for dismissal of this air enforcement action involving a White County facility.	4-0 W-E
PCB 06-85	<u>Prosize Oil Company (#922355) 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 Jefferson County facility.	4-0 UST Appeal
PCB 06-86	<u>Prosize Oil Company (#982486) 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 Jefferson County facility.	4-0 UST Appeal
PCB 06-87	<u>Wayne & Dennis Swanson 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 Kane County facility.	4-0 UST Appeal
PCB 06-88	<u>Biggs Brothers Service Center v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a St. Clair County facility.	4-0 UST Appeal
PCB 06-137	<u>City of Springfield, Illinois v. IEPA</u> – The Board ordered petitioner to file an amended petition to cure noted deficiencies, noting that the filing of an amended petition would restart the decision time clock. The Board granted petitioner’s motion to incorporate the records of prior Board proceedings.	4-0 PWS-V
PCB 06-142	<u>Magie Bros./Penreco v. IEPA</u> – The Board ordered petitioner to file an amended petition to cure noted deficiencies, accompanied by an attorney’s appearance on or before April 10, 2006, or the petition would be subject to dismissal.	4-0 P-A, NPDES
PCB 06-143	<u>People of the State of Illinois v. Astec Mobile Screens, Inc.</u> – The Board accepted for hearing this Resource Conservation and Recovery Act enforcement action involving a site located in Whiteside County.	4-0 RCRA-E
PCB 06-144	<u>People of the State of Illinois v. Golden Bag Company</u> – The Board accepted for hearing this air enforcement action involving a site located in Kane County.	4-0 A-E
PCB 06-145	<u>Arlyn D. Fisk d/b/a Arlyn Fisk’s Service Center v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Randolph County facility.	4-0 UST Appeal
PCB 06-146	<u>Midwest Generation, L.L.C., Waukegan Generating Station v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Lake County facility.	4-0 P-A, Air

New Cases

March 2, 2006 Board Meeting

06-138 Brenda George Bryant 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 Massac County facility.

06-139 Richard Gooden v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Ford County facility.

06-140 W.R. Meadows, 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 Kane County facility.

AC 06-026 IEPA v. Marshall and Juanita Garrison – The Board accepted an administrative citation against these Jefferson County respondents.

March 16, 2006 Board Meeting

06-141 Flagg Creek Water Reclamation District v. Village of Hinsdale, Metropolitan Water Reclamation District of Greater Chicago, Illinois Department of Transportation, and DuPage County – No action taken.

06-142 Magie Bros./Penreco v. IEPA – The Board ordered petitioner to file an amended petition to cure noted deficiencies, accompanied by an attorney's appearance on or before April 10, 2006, or the petition would be subject to dismissal.

06-143 People of the State of Illinois v. Astec Mobile Screens, Inc. – The Board accepted for hearing this Resource Conservation and Recovery Act enforcement action involving a site located in Whiteside County.

06-144 People of the State of Illinois v. Golden Bag Company – The Board accepted for hearing this air enforcement action involving a site located in Kane County.

06-145 Arlyn D. Fisk d/b/a Arlyn Fisk's Service Center v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Randolph County facility.

06-146 Midwest Generation, L.L.C., Waukegan Generating Station v. IEPA – The Board accepted for hearing this permit appeal involving a Lake County facility.

AC 06-027 County of LaSalle v. Jerry Koetz – The Board accepted an administrative citation against this LaSalle County respondent.

AC 06-028 County of Macon, Illinois v. Onyx Valley View Landfill – The Board accepted an administrative citation against this Macon County respondent.

AC 06-029 County of Macon, Illinois v. Onyx Valley View Landfill – The Board accepted an administrative citation against this Macon County respondent.

Calendar

<p>4/06/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>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</p>
<p>04/19/06 10:00 AM</p>	<p>R06-21</p>	<p>In the Matter of: Organic Material Emissions Standards and Limitations for the Chicago and Metro-East Areas: Proposed Amendments to 35 Ill. Code 218 and 219</p>	<p>Illinois Pollution Control Board James R. Thompson Center Suite 11-512 100 West Randolph Chicago</p>
<p>04/20/06 9:00 AM</p>	<p>AC 05-40</p>	<p>IEPA v. Northern Illinois Service Company</p>	<p>State of Illinois Rockford Regional Office, Conference Room A 4302 North Main Street Rockford</p>
<p>4/20/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>James R. Thompson Center Conference Room 09-040 100 W. Randolph Street Chicago</p>
<p>4/25/06 10:00 AM</p>	<p>R04-25</p>	<p>In the Matter of: Proposed Amendments to Dissolved Oxygen Standard 35 Ill. Adm. Code 302.206</p>	<p>Illinois Environmental Protection Agency, North Entrance, TQM Room 1000 E. Converse Springfield</p>
<p>5/4/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>Illinois Pollution Control Board Board Room, 1244 N 1021 N. Grand Avenue East Springfield</p>
<p>05/8/06 1:00 PM</p>	<p>R06-25</p>	<p>In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions From Large Combustion Sources (Mercury) If necessary, may be continued day-to-day</p>	<p>James R. Thompson Center Assembly Hall Concourse Level 100 W. Randolph Chicago</p>
<p>05/17/06 9:00 AM</p>	<p>R06-21</p>	<p>In the Matter of: Organic Material Emissions Standards and Limitations for the Chicago and Metro-East Areas: Proposed Amendments to 35 Ill. Code 218 and 219</p>	<p>Madison County Administration Building Room 108 157 North Main Edwardsville</p>
<p>5/18/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>Chicago James R. Thompson Center Conference Room 09-040 100 W. Randolph Street Chicago</p>

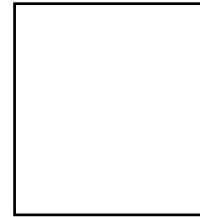
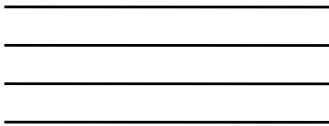
Environmental Register – March 2006

<p>5/23/06 10:00 AM</p>	<p>R06-23</p>	<p>In the Matter of: Standards and Requirements for Potable Water Well Surveys and for Community Relations Activities Performed in Conjunction with Agency Notices of Threats from Contamination Under PA 94-134: New 35 Ill. Adm. Code Part 1505</p>	<p>Illinois Pollution Control Board Hearing Room 1021 North Grand Avenue East North Entrance Springfield</p>
<p>6/1/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>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</p>
<p>06/5/06 1:00 PM</p>	<p>R06-25</p>	<p>In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions From Large Combustion Sources (Mercury) If necessary, may be continued day-to-day</p>	<p>Illinois Environmental Protection Agency Office Building Training Room 1214 West 1021 N. Grand Avenue East, North Entrance Springfield</p>
<p>5/18/06 11:00 AM</p>	<p><u>Illinois Pollution Control Board Meeting</u></p>		<p>Chicago James R. Thompson Center Conference Room 09-040 100 W. Randolph Street Chicago</p>
<p>06/19/06 10:00 AM</p>	<p>R06-25</p>	<p>In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions From Large Combustion Sources (Mercury) If necessary, may be continued day-to-day</p>	<p>Illinois Environmental Protection Agency Office Building Training Room 1214 West 1021 N. Grand Avenue East, North Entrance Springfield</p>

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

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

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