

IPCB

Illinois Pollution Control Board



ANNUAL REPORT

Fiscal Years
2016-2017

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ILLINOIS POLLUTION CONTROL BOARD



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MISSION STATEMENT

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

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

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





IPCB

Illinois Pollution Control Board

GOVERNOR
Bruce Rauner



CHAIRMAN
Katie Papadimitriou



MEMBERS
Brenda Carter
Gerald M. Keenan
Cynthia Santos
Carrie Zaleski



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February 2018

Honorable Bruce Rauner, Governor of Illinois, and Members of the General Assembly:

The Illinois Pollution Control Board is proud to present its combined Annual Report for Fiscal Years 2016 and 2017. The report details Board rulemakings concluded during this timeframe, as well as judicial decisions issued on appeal of final Board orders. In addition, the report highlights enacted legislation—from the General Assembly’s 2016 and 2017 Sessions—related to the Board’s work. In this letter, after touching on the Board’s statutory roles, I briefly describe three of our success stories.



Under the Environmental Protection Act, the Board has two main functions: setting the environmental standards for the State of Illinois by adopting regulations through rulemakings; and deciding contested cases through adjudications. The latter includes hearing complaints that allege violations of the Act; petitions that ask for review of permitting and other determinations made by the Illinois Environmental Protection Agency (IEPA), as well as “pollution control facility” siting determinations made by local governments; and petitions that seek relief from Board regulations. In carrying out these two functions, the Board provides a public forum in which interested citizens can actively participate in our State’s environmental decision-making.

Typically, the Board has about 150 rulemaking and adjudicatory proceedings pending at any one time. During Fiscal Years 2016 and 2017, the Board continued to handle these proceedings while operating within its budgets, but three of the Board’s accomplishments stand out.



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- ❖ First, the Board continued its initiative to update and simplify all its regulations, a process that received additional impetus from Governor Rauner's Executive Order 2016-13 on regulatory reform. The Board apprised the Illinois Competitiveness Council of the rulemakings undertaken by the Board to both eliminate red tape and ensure that its regulations are clear and concise. For example, the Board amended its air pollution control regulations so that specified small boilers could become permitted by rule, eliminating the need for businesses to submit—and for IEPA to process—individual permit applications. The Board also streamlined its procedural rules to allow for greater use of digital technology. For instance, by requiring documents to be filed and served electronically, the Board reduced its paper use by approximately 90,000 pages and its postage costs by over \$3,000. Further, allowing more hearings to be held by videoconference resulted in reduced travel costs and greater staff efficiency.
- ❖ Second, two Board staff members participated in Central Management Services' Rapid Results workshop. These staff members, in turn, trained other Board staff in the principles of Rapid Results. Applying these principles, the Board cut in half the time it took to serve interested persons with the Board's rulemaking orders. Presently, the Board has another Rapid Results project well underway.
- ❖ Third, in the fall of 2015, the Board started its Brown Bag Lunch (BBL) series for the public and environmental professionals to hear from speakers on a wide array of topics. By the close of Fiscal Year 2017, the Board held 19 BBLs, with more scheduled, including one by representatives of the Illinois Competitiveness Council.

If you have any comments or questions about the Board or its activities, please contact me directly.

Sincerely,



Katie Papadimitriou
Chairman



BOARD MEMBERS



❖ **Chairman Katie Papadimitriou**



Chairman Papadimitriou was appointed by Governor Bruce Rauner in January 2017. She brings government and private sector experience in highly regulated industries to the Board, focusing on state and federal regulatory policies with an emphasis on deregulated energy markets and the convergence of energy and the environment. Her wide-ranging private sector experience includes: providing strategic guidance and execution to data analytics firms in the clean energy sector; developing corporate regulatory and legislative strategies; and leading business development and corporate strategy.

She also has held positions with the Illinois Commerce Commission, the Illinois Pollution Control Board, and other Illinois state agencies.

Katie has an A.B. in Political Science from the University of Chicago, where she graduated with honors, and an M.S. from the Illinois Institute of Technology.

❖ **Carrie Zalewski**



Board Member Zalewski was appointed to the Board by Governor Pat Quinn in 2009. Ms. Zalewski is a licensed attorney in Illinois. Prior to joining the Board, Ms. Zalewski served as Assistant Chief Counsel at the Illinois Department of Transportation (IDOT) where she was the lead environmental compliance attorney. While at IDOT, Ms. Zalewski dealt with various environmental issues involving NPDES permits, leaking underground storage tanks, reviewing NEPA documents for IDOT projects, and other air, land, and water issues faced by IDOT. Ms. Zalewski has also worked for the State Appellate Defender's Office and in private practice. She has a Juris Doctor from Chicago-Kent College of Law and a Bachelor of Science in Engineering from the University of Illinois at Urbana. While at the University of Illinois, she studied abroad in Durban, South Africa. Ms. Zalewski was selected as a member of the Illinois Women's Institute for Leadership in 2008.



❖ **Gerald M. Keenan**

Board Member Keenan was appointed to the Board by Governor Bruce Rauner in 2015. He has many years of experience as a regulator, entrepreneur, consultant, and financier in the electric, natural gas, and telecommunications industries. His wide ranging energy industry experience includes: service as General Manager of the Illinois Commerce Commission; extensive experience in strategic and corporate planning, mergers and acquisitions, and corporate restructuring; board level advisor to Fortune 500 energy companies; active participation in federal and state efforts to develop market based solutions to environmental issues, including development of SO₂, NO_x, and VOC trading markets; and development and implementation of competitive market frameworks for natural gas and electricity in the US and other countries.



Mr. Keenan was a partner in PriceWaterHouseCoopers LLP, where he led the Energy Strategy Consulting practice for North America, and in Coopers & Lybrand LLP. He has extensive international experience, including significant work in China, Mexico, Brazil, El Salvador, England, Scotland, and Germany. He has worked in Haiti since 2001 and serves as a director of three not for profit organizations that operate educational, medical, and economic development programs in Haiti.

❖ **Cynthia Santos**

Board Member Santos was appointed to the Board by Governor Bruce Rauner in December 2016. Before joining the Board, Ms. Santos served 20 years as an elected Commissioner of the Metropolitan Water Reclamation District of Greater Chicago. During her tenure, she was instrumental in the development of the District's Stormwater Management Program. She also served as the District's representative on the City of Chicago's Public Building Commission where she was involved in the construction of numerous schools, libraries, and police and fire stations. Ms. Santos earned a Bachelor's Degree in Political Science, Summa Cum Laude, as well as a Master's Degree in Political Science and Public Policy from Northeastern Illinois University. Ms. Santos resides in Chicago.

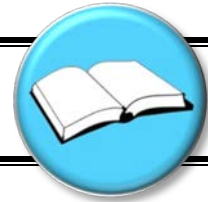


❖ **Brenda Carter**

Board Member Carter was appointed to the Board by Governor Bruce Rauner in May 2017. She has over 15 years of experience in the field of environmental law and policy. Before joining the Board, Brenda was the Deputy Executive Director of the Illinois Environmental Regulatory Group (IERG). As Deputy Executive Director, she was actively involved in regulatory and legislative processes, strategic planning, and policy analysis for IERG and its member companies. Prior to becoming IERG's Deputy Executive Director, she served as IERG's Project Manager for 12 years. In that capacity, Brenda represented the interests of IERG's members before the Illinois EPA and other state and federal agencies to develop environmentally-sound laws and policies, particularly in the areas of water quality standards and permitting, greenhouse gases, and environmental justice. Brenda has a Master's in Environmental Studies from the University of Illinois at Springfield.



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INTRODUCTION

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

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

The rulemakings completed by the Board in Fiscal Years 2016 and 2017 are summarized below, followed by a list of rulemakings pending at the end of Fiscal Year 2017.

RULEMAKINGS COMPLETED IN FISCAL YEARS 2016 & 2017

R12-9(B) Board Closes Subdocket on Groundwater Monitoring for CCDD Fill Operations

- ❖ IEPA initiated a rulemaking—captioned Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100—by filing a proposal under Sections 22.51 and 22.51a of the Act (415 ILCS 5/22.51, 22.51a). The proposal sought rule amendments that would allow uncontaminated clean construction or demolition debris (CCDD) and uncontaminated soil to be used as fill at quarries, mines, and other excavations. The Board adopted final amendments to its rules, but declined to require groundwater



monitoring at permitted CCDD facilities or at uncontaminated soil fill sites. However, as recommended by JCAR, the Board opened subdocket B to further examine whether groundwater monitoring should be required. After reviewing the extensive additional comment and testimony received, the Board determined, on August 6, 2015, that the record still failed to demonstrate that groundwater monitoring was necessary at these locations to protect groundwater. The Board therefore closed subdocket B. Here is a link to the Board's [opinion and order](#).

R15-13 Board Adopts “Identical-in-Substance” Amendments for Wastewater Pretreatment Update

- ❖ On August 20, 2015, the Board adopted final amendments to Illinois regulations that are “identical in substance” to wastewater pretreatment regulations adopted by USEPA. The Board’s rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (July 1, 2014 through December 31, 2014). The rule amendments update an “incorporation by reference” of the federal provision concerning appropriate methods for federal Clean Water Act analyses. USEPA requires that only “sufficiently sensitive” methods be selected for the analyses. This is not a wastewater pretreatment requirement, but it does apply to analyses performed for the wastewater pretreatment program. In addition, as a routine matter, the Board updated—to the 2014 edition—all incorporations by reference to USEPA regulations and federal statutes. Here is a link to the Board’s [opinion and order](#).

R15-19 Board Strengthens Rules to Address Mismanagement of Used and Waste Tires

- ❖ On September 3, 2015, the Board adopted final amendments to its rules for managing used and waste tires. IEPA initiated the rulemaking by filing a proposal under Public Act 98-656. The rulemaking is captioned Management of Used and Waste Tires: Proposed Amendments to 35 Ill. Adm. Code 848. Since the rules were last amended in 1998, Illinois experienced several major fires at tire storage sites. Those fires showed the continuing threats posed—to public health, safety, and welfare—by mismanaging used and waste tires. The breeding of disease-spreading mosquitoes in used and waste tires is another problem. The rule amendments are designed to protect the State’s residents from these threats, while minimizing impacts on markets and businesses that diminish the threats by recycling and reusing tires. Among other things, the amended rules establish a tire storage permit program, require tire tracking and recordkeeping, and enhance requirements for financial assurance, tire removal agreements, contingency planning, and emergency responses. Here is a link to the Board’s [opinion and order](#).

R15-20 Board Updates Multiple Aspects of Its Procedural Rules, including Pro Hac Vice and Service Requirements

- ❖ On September 3, 2015, the Board adopted final amendments to its procedural rules in a rulemaking captioned Procedural Rules Amendments: Proposed Amendments to 35 Ill. Adm. Code 101, 103, 104, 106, 108. Specifically, the Board revised the process for allowing out-of-state attorneys to appear *pro hac vice* in a Board adjudicatory proceeding. In addition, to implement Public Act 98-822, the Board revised its procedural rules on the notice required for variance petitions. Further, the Board amended its rules on administrative citations to accommodate citations filed under the Public Water Supply Operations Act and the Electronic Products Recycling and



Reuse Act. The rulemaking also continued to update and clarify the Board's procedural rules for all forms of service. Here is a link to the Board's [opinion and order](#).

R15-23 Board Amends Drinking Water Rule to Reflect Latest Nationally-Recommended Fluoride Level

- ❖ On November 5, 2015, the Board adopted amendments to its primary drinking water standards, lowering the required drinking water concentration of fluoride that must be maintained by community water suppliers. With the rule change, savings for community water supplies—from the reduced costs of adding fluoride—are estimated to be about \$2 million Statewide per year, including roughly \$1 million each year for the City of Chicago. The rulemaking is captioned Amendments to Primary Drinking Water Standards: 35 Ill. Adm. Code 611. The Board's rule amendment decreases the required fluoride ion concentration, consistent with the level recommended by the United States Department of Health and Human Services. The federal agency indicated that the lower fluoride concentration provides the best balance of preventing tooth decay and limiting dental fluorosis. Here is a link to the Board's [opinion and order](#).

R16-4 Board Adopts “Identical-in-Substance” Amendments for SDWA Update

- ❖ On November 5, 2015, the Board adopted amendments to Illinois regulations that are “identical in substance” to drinking water regulations adopted by USEPA under the Safe Drinking Water Act (SDWA). The Board's rulemaking is captioned SDWA Update, USEPA Amendments (January 1, 2015 through June 30, 2015). The rule amendments do not include any direct USEPA actions regarding the National Primary Drinking Water Regulations. Instead, the amendments reflect needed corrections to accommodate suggestions from JCAR and IEPA, as well as corrections initiated by the Board. Here is a link to the Board's [opinion and order](#).

R14-22 Board Amends Site-Specific Noise Rule for Forging Operation

- ❖ The Board, on November 19, 2015, adopted amendments to a site-specific noise rule. The rule amendments extend the allowable operational levels for Clifford-Jacobs Forging Company's impact forging facility, located in unincorporated Champaign County. The rulemaking is captioned Proposal of Clifford-Jacobs Forging Co. for an Amendment to the Site-Specific Rule at 35 Ill. Adm. Code 901.119. The amendments allow the facility to operate its 14 hammers at any one time 24 hours a day, Monday through Saturday. But, the rule changes require that Clifford-Jacobs limit its forging operations as necessary to not exceed a specified decibel limit from 11:00 p.m. to 6:00 a.m. Here is a link to the Board's [opinion and order](#).

R15-21 Board Adopts Rules Requiring Emission Cuts from Power Plants

- ❖ On November 19, 2015, the Board adopted rules designed to significantly reduce emissions of sulfur dioxide (SO₂), carbon dioxide (CO₂), and other pollutants from power plants. The emissions reductions are intended primarily to ensure that all areas of the State comply with the National Ambient Air Quality Standards (NAAQS) for SO₂. Additionally, the rule changes should aid the State's efforts to address regional haze, greenhouse gases, and the interstate transport of airborne



pollution. The rulemaking is captioned Amendments to 35 Ill. Adm. Code Part 214, Sulfur Limitations, Part 217, Nitrogen Oxides Emissions, and Part 225, Control of Emissions from Large Combustion Sources. Here is a link to the Board's [opinion and order](#).

R16-2 Board Adopts “Identical-in-Substance” Amendments for NAAQS Update, including Ozone

- ❖ On March 3, 2016, the Board adopted final amendments to Illinois’ ambient air quality standards. The amendments are “identical in substance” to regulatory revisions made by USEPA under the National Ambient Air Quality Standards (NAAQS). The amendments, among other things, remove the 1997 eight-hour ozone NAAQS in response to USEPA adopting the implementation rule for the 2008 eight-hour ozone NAAQS. In addition, the amendments incorporate by reference methods designated for monitoring ambient air quality. USEPA designated the methods for these priority pollutants: fine particulates (PM_{2.5}); carbon monoxide; coarse particulates (PM_{10-2.5}); and ozone. The Board rulemaking is captioned NAAQS Update, USEPA Amendments (January 1, 2015 through June 30, 2015, August 26, 2015, October 26, 2015, November 19, 2015, and December 18, 2015). Here is a link to the Board’s [opinion and order](#).

R15-22 Board Adopts Amendments to Public Water Supply Rules

- ❖ On April 7, 2016, the Board adopted final amendments to its public water supply rules at 35 Ill. Adm. Code 601, 602, and 603. The amendments (1) update Parts 601 through 603; (2) consolidate the community water supply permitting rules in Parts 652 and 602; and (3) modify the rules, particularly Part 603, to be consistent with 2014 amendments to the Public Water Supply Operations Act. The rulemaking is captioned Public Water Supplies: Proposed Amendments to 35 Ill. Adm. Code Parts 601, 602, and 603. Here is a link to the Board’s [opinion and order](#).

R16-17 Board Adopts New Procedural Rules for Its Digital Initiative

- ❖ On May 19, 2016, the Board further advanced its digital initiative, adopting final procedural rule amendments to increase electronic filing, e-mail service, videoconference hearings, and on-line record access. Other rule changes include clarified appeal periods and reduced filing obligations. The amendments make environmental and economic sense. The rulemaking is captioned Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 125. Here is a link to the Board’s [opinion and order](#).

R15-24 Board Amends Water Pollution Permitting Rules

- ❖ On June 2, 2016, the Board issued an opinion and order declining to modify or withdraw its rulemaking proposal in response to an objection made by JCAR. After responding to JCAR’s concerns, the Board adopted the final amendments to its water pollution permitting rules at 35 Ill. Adm. Code 309, which address National Pollutant Discharge Elimination System (NPDES) permits and non-NPDES permits. The rule amendments streamline the non-NPDES permitting process and provide flexibility to administratively continue NPDES permits. The rulemaking, captioned Water



Pollution: Proposed Amendments to 35 Ill. Adm. Code Part 309, was initiated by IEPA. Here is a link to the Board's [opinion and order](#).

R16-7 Board Adopts “Identical-in-Substance” Hazardous Waste Rules, including Amended Definition of “Solid Waste”

- ❖ On June 16, 2016, the Board amended its hazardous waste regulations at 35 Ill. Adm. Code 703, 720 through 722, 724 through 728, and 733. The amendments are “identical in substance” to rules adopted during 2015 by USEPA under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Among the RCRA Subtitle C updates, three warrant highlighting. First, USEPA significantly amended the Definition of Solid Waste Rule or “DSWR.” Second, USEPA removed the “comparable fuels rule” and the “gasification rule.” Third, USEPA determined not to regulate coal combustion residuals (CCR) as hazardous waste and adopted new rules to govern the disposal of CCR as non-hazardous solid waste, expanding the “Bevill exemption.” The Board’s rulemaking is captioned RCRA Subtitle C Update, USEPA Amendments (January 1, 2015 through June 30, 2015 and July 2, 2015). Here are links to the Board’s 85-page [opinion](#); the Board’s 767-page [order](#); and the Board’s 168-page [addendum](#).

R16-16 Board Adopts “Identical-in-Substance” Rules for UST Corrective Action

- ❖ On July 7, 2016, the Board amended its underground storage tank (UST) regulations at 35 Ill. Adm. Code 731. The amendments are “identical in substance” to corrective action rules adopted by USEPA during the second half of 2015. USEPA amended many areas of its UST regulations (*e.g.*, secondary containment for tanks and piping; operator training; release prevention and detection technologies), but most of the changes are outside the scope of the Board’s identical-in-substance UST mandate, which is limited to corrective action. The Board’s rulemaking is captioned UST Update, USEPA Amendments (July 1, 2015 through December 31, 2015). Here are links to the Board’s [opinion and order](#) and the Board’s [addendum](#).

R16-9 Board Adopts “Identical-in-Substance” Wastewater Pretreatment Amendments, including NPDES Electronic Reporting Rule

- ❖ On January 19, 2017, the Board amended its wastewater pretreatment rules at 35 Ill. Adm. Code 307 and 310. The amendments are “identical in substance” to two actions taken by USEPA under the federal Clean Water Act during the second half of 2015. First, USEPA adopted mandatory digital reporting rules for facilities permitted under the National Pollutant Discharge Elimination System (NPDES) program and indirect dischargers. Second, USEPA revised the discharge guidelines and standards for sources in the Steam Electric Power Generating Point Source Category. The Board’s rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (July 1, 2015 through December 31, 2015). Here are links to the Board’s [opinion and order](#) and the Board’s [addendum](#).

R17-1 Board Adopts “Identical-in-Substance” NAAQS Amendments

- ❖ On January 19, 2017, the Board amended its ambient air quality rules at 35 Ill. Adm. Code 243. The amendments are “identical in substance” to actions taken by USEPA on the National Ambient Air Quality Standards (NAAQS). Specifically, USEPA



designated several new federal reference methods and federal equivalent methods for monitoring priority pollutants (particulate matter, ozone, and sulfur dioxide) in ambient air. The Board's rulemaking is captioned National Ambient Air Quality Standards Update, USEPA Amendments (January 1, 2016 through June 30, 2016 and July 13, 2016). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).

R17-2 Board Adopts “Identical-in-Substance” Amendments to VOM Definition

- ❖ On January 19, 2017, the Board amended its definition of “volatile organic material” (VOM) at 35 Ill. Adm. Code 211.7150. The amendments are “identical in substance” to an action taken by USEPA under the federal Clean Air Act. USEPA expanded an exclusion; specifically, excluding *tertiary*-butyl acetate from all regulation as a precursor of tropospheric ozone (smog). The Board's rulemaking is captioned Definition of VOM Update, USEPA Amendments (January 1, 2016 through June 30, 2016). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).

R17-5 Board Adopts “Identical-in-Substance” MSWLF Amendments, Extending Maximum Term of RD&D Permit

- ❖ On January 19, 2017, the Board amended its landfill rules at 35 Ill. Adm. Code 813. The amendments are “identical in substance” to an action taken by USEPA on the Municipal Solid Waste Landfill (MSWLF) rules under Subtitle D of the federal Resource Conservation and Recovery Act (RCRA). Specifically, USEPA extended the maximum term of a research, development, and demonstration (RD&D) permit from 12 to 21 years. The Board's rulemaking is captioned RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2016 through June 30, 2016). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).

R17-8 Board Adopts “Identical-in-Substance” Wastewater Pretreatment Amendments for UOG Facilities

- ❖ On January 19, 2017, the Board amended its wastewater pretreatment rules at 35 Ill. Adm. Code 310. The amendments are “identical in substance” to rules adopted by USEPA under the federal Clean Water Act. Specifically, USEPA adopted discharge guidelines and standards for unconventional oil and gas extraction (UOG) facilities in the Oil and Gas Extraction Point Source Category, including pretreatment guidelines and standards. The Board's rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (January 1, 2016 through June 30, 2016 and December 7, 2016). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).

R17-9 Board Adopts “Permit-by-Rule” Amendments

- ❖ On March 23, 2017, the Board adopted “permit-by-rule” amendments to its air pollution control regulations. The amendments allow specified small boilers to be constructed under permit terms and conditions contained in the Board's rules, eliminating the need for IEPA to individually process these construction permits. The amendments also include general provisions that anticipate future permits-by-rule for other types of emission units. The rulemaking is captioned Permit by Rule



for Boilers: [Amendments to 35 Ill. Adm. Code Parts 201 and 211](#). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).

R17-18

Board Adopts Amendments to Update and Simplify Its Procedural Rules

- ❖ On June 22, 2017, the Board amended all ten Parts of its procedural rules (35 Ill. Adm. Code 101 through 108, 125, and 130). The amendments continued the Board's initiative to update and simplify all its rules, a process that received additional impetus from Governor Rauner's Executive Order 2016-13 on regulatory reform. Along with removing outdated and redundant rule text, the amendments require all attorneys to accept e-mail service and generally require all filings to be made electronically only. In addition, among other changes, the Board added requirements for preparing electronic records on appeal, keeping pace with new Illinois Supreme Court standards. The Board's rulemaking is captioned [Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 130](#). Here are links to the Board's [opinion and order](#) and the Board's [addendum](#).



RULEMAKINGS PENDING AT END OF FISCAL YEAR 2017

R17-14 & 17-15 (Consolidated)

[RCRA Subtitle D \(Municipal Solid Waste Landfill\) Update, USEPA Amendments \(July 1, 2016 through December 31, 2016\) and RCRA Subtitle C \(Hazardous Waste\) Update, USEPA Amendments \(July 1, 2016 through December 31, 2016 and August 29, 2017\)](#)

R17-12 [SDWA Update, USEPA Amendments \(July 1, 2016 through December 31, 2016\)](#)

R17-6 [RCRA Subtitle C \(Hazardous Waste\) Update, USEPA Amendments \(January 1, 2016 through June 30, 2016\)](#)

R14-24 [Proposed Site-Specific Rule for Sanitary District of Decatur from 35 Ill. Adm. Code 302.208\(e\)](#)

R14-10 [Coal Combustion Waste \(CCW\) Ash Ponds and Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841](#)





INTRODUCTION

Under the Environmental Protection Act (Act) (415 ILCS 5), final opinions and orders of the Board, whether adjudicatory or regulatory, are appealable directly to the Illinois appellate court rather than to the circuit courts. In Fiscal Years 2016-2017, the appellate court affirmed the Board six times, reversed it twice, and in one instance, partially affirmed the Board and partially reversed it.

APPELLATE COURT DECISIONS ISSUED IN FISCAL YEARS 2016 & 2017

PCB 13-17 **Fourth District Affirms Board in Third-Party Appeal of NPDES Permit**

Natural Resources Defense Council v. Pollution Control Board, [2015 IL App \(4th\) 140644](#)

- ❖ On July 22, 2015, the Fourth District Appellate Court issued a precedential opinion affirming the Board's decision in a third-party appeal of a National Pollutant Discharge Elimination System (NPDES) permit. IEPA issued the permit to Dynegey Midwest Generation, Inc. (Dynegey) for discharges of wastewater from the company's Havana Power Station. Environmental groups challenged the permit before the Board. On cross-motions for summary judgment, the Board granted in part and denied in part the environmental groups' motion. This partial denial was then appealed by the environmental groups. The appellate court agreed with the Board that because the United States Environmental Protection Agency's 1982 effluent limitations guidelines applied to the waste stream from Dynegey's air pollution control equipment, IEPA was not required to impose—in the NPDES permit—a “case-by-case” technology-based effluent limit for mercury. Further, the court found that the Board did not err in deferring to IEPA's discretion when IEPA's responsiveness summary did not include responses to the environmental groups' public comments on the draft NPDES permit.



PCB 12-21 Third District Affirms Board Rulings on Failure to Timely Respond to Motion for Summary Judgment

Ironhustler Excavating, Inc. v. Pollution Control Board, [2015 IL App \(3d\) 130801-U](#)

- ❖ On July 6, 2015, the Third District Appellate Court issued a non-precedential Rule 23 order affirming the Board’s procedural rulings in an enforcement action brought by the People of the State of Illinois (People). After the People filed a complaint alleging that Ironhustler Excavating, Inc. (Ironhustler) and Ron Bright, doing business as Quarter Construction (Bright), violated the Act, the People—on August 10, 2012—filed a motion for summary judgment. The Board’s hearing officer then extended, on numerous occasions, the deadline for Ironhustler and Bright to respond to the motion. Ultimately, the hearing officer extended the deadline to March 28, 2013, before denying a request for another extension to April 28, 2013. On July 25, 2013, the Board granted the People’s motion for summary judgment, without having received any response by Ironhustler and Bright to the motion. Ironhustler and Bright’s appeal was limited to the Board’s procedural rulings and did not challenge on the merits the Board’s grant of summary judgment to the People. The Third District held that the Board did not violate the Board’s procedural rules or Ironhustler and Bright’s right to due process.

PCB 11-25 Fourth District Reverses Board on Which UST Fund Deductible Applies

Estate of Slightom v. Pollution Control Board, [2015 IL App \(4th\) 140593](#)

- ❖ On July 7, 2015, the Fourth District Appellate Court issued a precedential opinion reversing the Board’s decision about which of two conflicting deductibles applies to a request for cleanup cost reimbursement from the State’s Underground Storage Tank (UST) Fund. The Board affirmed IEPA’s determination applying the higher of two deductibles and, on that basis, denying reimbursement to the Estate of Gerald D. Slightom (Estate). IEPA previously determined—in 1991—that a \$100,000 deductible applied, but the Office of the State Fire Marshal (OSFM) determined in 2008 that a \$10,000 deductible applied. The Fourth District held that the Act, as amended in 1993 by adding Title XVI, authorizes OSFM (not IEPA) to determine deductibles and requires that IEPA apply the OSFM-determined deductibles. IEPA and the Board relied on a Board regulation requiring that if more than one deductible determination is made, the higher deductible must apply. However, the Fourth District found that when a UST owner or operator elects to proceed under Title XVI of the Act, as the Estate did, the regulation is “invalid insofar as it allows [IEPA] to apply a deductible [IEPA] determined to be appropriate as opposed to the deductible [OSFM] determined to be appropriate.” ¶ 27.



PCB 14-99 [Second District Affirms Board on Local Siting of Waste Transfer Station in Lake County](#)

[Timber Creek Homes, Inc. v. Pollution Control Board, 2015 IL App \(2d\) 140909-U](#)

- ❖ On September 9, 2015, the Second District Appellate Court issued a non-precedential Rule 23 order affirming the Board in a “pollution control facility” siting appeal. Timber Creek Homes, Inc. (TCH), the owner and operator of a mobile home community, petitioned the Board to review a siting decision made by the Village Board of Round Lake Park (Village Board). The Village Board granted Groot Industries, Inc. (Groot) approval to site a waste transfer station. The Second District held that the Board’s determination—that the Village Board’s siting procedures were fundamentally fair—was not clearly erroneous. Specifically, the court agreed with the Board that TCH failed to produce any evidence of collusion between the Village Board and Groot. The court also held that the Board’s affirmance of the Village Board on each of the contested siting criteria was not against the manifest weight of the evidence.

AC 12-51 [Second District Affirms Board Findings of Open Dumping and Used Tire Violations](#)

[Northern Illinois Service Company v. Illinois Environmental Protection Agency, 2016 IL App \(2d\) 150172](#)

- ❖ On March 21, 2016, the Second District Appellate Court issued a precedential opinion affirming the Board in an administrative citation action brought under the Act. Specifically, the court affirmed the Board’s findings that Northern Illinois Service Company (Northern), a construction and demolition contractor, violated the Act at its Rockford facility by open dumping litter and general construction or demolition debris and by allowing water to accumulate in used tires. The Second District agreed with the Board that Northern “disposed” of the material by leaving it in an uncovered pile outside on the ground, without “a time frame for gathering material and transporting it to a landfill.” ¶ 41. In addition, the court found that tires containing water need not have contained the accumulations for any minimum timeframe to be a violation.

PCB 14-106, PCB 14-107, & PCB 14-108 (consolidated)

[First District Reverses Board Decision to Uphold MWRD’s Discharge Permits](#)

[Prairie Rivers Network v. Illinois Pollution Control Board, 2016 IL App \(1st\) 150971](#)

- ❖ In a February 26, 2016 precedential opinion, the First District Appellate Court raised doubts about whether three permits adequately limit phosphorus concentrations in the effluent that the Metropolitan Water Reclamation District of Greater Chicago (MWRD) discharges to surface waters. IEPA granted the National Pollutant Discharge Elimination System (NPDES) permits for MWRD’s Stickney, Calumet, and O’Brien water reclamation plants. In appeals brought by environmental groups, the Board—on cross-motions for summary judgment—awarded summary judgment



to IEPA and MWRD. In turn, the court reversed the Board, finding that genuine issues of material fact precluded summary judgment. Primarily, the court questioned whether IEPA set the permits' effluent limit for phosphorus—a nutrient—“so high as to have the reasonable potential of causing unnatural plant or algal growth” in the waterways receiving MWRD's discharges. ¶ 35.

PCB 15-65 & PCB 15-69 (consolidated)

[Fifth District Affirms Board on Local Siting of Waste Transfer Station in St. Clair County](#)

Roxana Landfill, Inc. v. Pollution Control Board, [2016 IL App \(5th\) 150096-U](#)

- ❖ In a non-precedential Rule 23 order issued on July 25, 2016, the Fifth District Appellate Court upheld the Board's decision to affirm the Village of Caseyville's grant of siting approval for a municipal solid waste transfer station. The court agreed with the Board that the Village had jurisdiction to consider the siting application hand-delivered by Caseyville Transfer Station, LLC (CTS) to the Village Hall on the date specified in CTS's pre-filing notices; the siting procedures used by the Village were fundamentally fair, including allowing the only witness for CTS to make his hearing statements while not under oath; and the Village correctly found that CTS satisfied each of the six contested siting criteria.

AS 13-2

[Third District Reverses Two of Three Adjusted Standard Conditions Imposed by Board](#)

Emerald Performance Materials, LLC v. Pollution Control Board, [2016 IL App \(3d\) 150526](#)

- ❖ On September 2, 2016, the Third District Appellate Court issued a precedential opinion that reversed two of three contested conditions of an adjusted standard. The Board granted the adjusted standard to Emerald Performance Materials, LLC (Emerald), a chemical manufacturer, for its ammonia nitrogen wastewater discharges to the Illinois River. The adjusted standard provides Emerald with relief from the ammonia nitrogen effluent limit in the Board's regulations. The Third District affirmed the Board's condition setting a five-year termination date or “sunset” on the adjusted standard. However, the court reversed the other two contested conditions for being beyond the Board's authority, and arbitrary and capricious. Specifically, the court reversed the condition precluding Emerald from renewing the adjusted standard unless the company arranged for agricultural “best management practices” within its watershed to offset 45% of the nitrogen in Emerald's discharge. The Third District also reversed the condition requiring ammonia reduction to be part of Emerald's employee bonus plan.



R08-9(D) First District Affirms Board’s Chloride Water Quality Standard for CAWS & LDPR

The Salt Institute v. Pollution Control Board, 2016 IL App (1st) 152003-U

- ❖ On September 30, 2016, the First District Appellate Court issued a non-precedential Rule 23 order that affirmed the Board’s chloride water quality standard for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR). This year-round, in-stream standard does not apply until July 1, 2018. The First District recognized the Board’s findings that aquatic ecosystems are harmed by elevated chloride concentrations and that those concentrations result primarily from storm water runoff after de-icing road salt is applied during the winter. The appellate court found that the Board considered all the statutory factors, like the technical feasibility and economic reasonableness of complying with the standard, and balanced the danger of high chloride levels in the CAWS and LDPR against the hardship of compliance. In finding that the Board’s decision was not clearly arbitrary or capricious, the court observed that the Board’s “broad rulemaking authority is not limited by the extent of hardship that a regulation may cause to dischargers.” ¶ 39.





INTRODUCTION

Summarized below are ten Public Acts that relate to the Board's work. Of these ten Public Acts, three are from the 2016 session of the 99th General Assembly and seven are from the 2017 session of the 100th General Assembly. Among the statutes affected by these Public Acts are the Environmental Protection Act, the Public Water Supply Regulation Act, the Electronic Products Recycling and Reuse Act, and the Consumer Electronics Recycling Act.

PUBLIC ACTS FROM 2016 SESSION OF 99TH GENERAL ASSEMBLY

❖ [Public Act 99-529](#)

Effective July 8, 2016

Amends the Public Water Supply Regulation Act by providing that public water supplies must comply with federal recommendations on optimal fluoridation and the regulations adopted by the Illinois Environmental Protection Agency (IEPA) and the Board.

❖ [Public Act 99-934](#)

Effective January 27, 2017

Amends the Environmental Protection Act by providing for electronic service of Board orders, clarifying appeals of Board orders, and aligning provisions of the Environmental Protection Act with one another and with other statutes.

❖ [Public Act 99-937](#)

Effective February 24, 2017

Amends the Environmental Protection Act by providing that the Board may conduct non-adjudicatory proceedings to adopt time-limited water quality standards for watersheds, water bodies, waterbody segments, and dischargers.



PUBLIC ACTS FROM 2017 SESSION OF 100TH GENERAL ASSEMBLY

❖ **[Public Act 100-94](#)**

Effective August 11, 2017

Amends the Environmental Protection Act by providing that specified facilities used exclusively to transfer commingled landscape waste and food scrap will not be a “pollution control facility” under the Environmental Protection Act.

❖ **[Public Act 100-266](#)**

Effective August 22, 2017

Amends the Environmental Protection Act regarding disposal and recycling of asphalt shingles.

❖ **[Public Act 100-327](#)**

Effective August 24, 2017

Amends the Environmental Protection Act regarding used or waste tires and the Used Tire Management Fund.

❖ **[Public Act 100-433](#)**

Effective August 25, 2017, except for the repeal of the Electronics Recycling Fund, which is effective January 1, 2020.

Creates the Consumer Electronics Recycling Act. Repeals the Electronic Products Recycling and Reuse Act on January 1, 2019.

❖ **[Public Act 100-362](#)**

Effective August 25, 2017

Amends the Consumer Electronics Recycling Act enacted in Public Act 100-433 (above) and postpones the repeal of the Electronic Products Recycling and Reuse Act from January 1, 2019 to January 1, 2020.

❖ **[Public Act 100-382](#)**

Effective August 25, 2017

Amends the Environmental Protection Act by providing that applicants for local siting approval of a pollution control facility must present at least one witness to testify subject to cross-examination at the local government’s public hearing.

❖ **[Public Act 100-436](#)**

Effective August 25, 2017

Amends the Environmental Protection Act by providing that a defined small entity—that voluntarily self-discloses to IEPA non-compliance of which IEPA was unaware—is entitled to a 100% reduction in the portion of the civil penalty not based on the economic benefit of non-compliance.





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