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# Environmental Register

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G. Tanner Girard, Acting Chairman

Board Members:

Thomas E. Johnson, Nicholas J. Melas, Andrea S. Moore

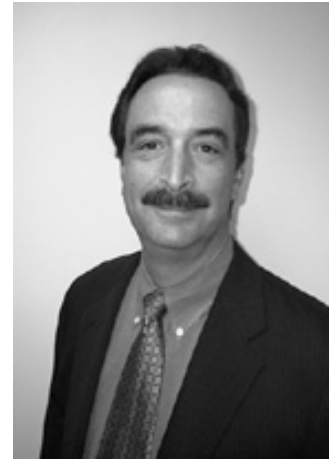
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
(312) 814-3620  
(312) 814-6032 TDD

Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
(217) 524-8500

Web Site: <http://www.ipcb.state.il.us>

## Letter from the Chairman

In October, the Third District Appellate Court bolstered the Board's record concerning cases appealed to the Appellate Court with two published opinions on October 7, 2008. In both cases the Court affirmed the Board's decision: a landfill siting case from central Illinois (Peoria Disposal Company v. IPCB and County of Peoria No. 3-07-0435) (Peoria Disposal) and a case involving a National Pollutant Discharge Elimination System (NPDES) permit (IEPA and Village of New Lenox v. IPCB, No. 3-07-0565) (New Lenox).



In Peoria Disposal, the Court upheld the Board's decision to affirm the Peoria County Board's denial of approval for the proposed expansion of a hazardous waste landfill owned by Peoria Disposal Company (PDC). The Third District Appellate Court agreed with the Board and found that the local siting authority's written decision memorializing that final action must be issued within 180 days and that the County took final action within the 180-day period. In addition, the Court agreed with the Board that the County also met the written decision requirement of Section 39.2(e) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/39.2(e) (2006)).

Regarding the issue of fundamental fairness in Peoria Disposal, the Third District Appellate Court first determined that, as the Board had argued, the "clearly erroneous" standard of review applies, rather than the "*de novo*" standard applied by the Third District in Land & Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48-49, 743 N.E.2d 188, 194 (3rd Dist. 2000). The Court overruled that portion of the Land & Lakes decision regarding the standard of review to be applied to the issue of fundamental fairness. The Court then applied the clearly erroneous standard and found that the Board's decision that the County proceedings were fundamentally fair is not clearly erroneous. As to the siting criteria, the Third District found that the Board's ruling on the criteria was not against the manifest weight of the evidence.

In New Lenox, the Third District Appellate Court upheld the Board's decision invalidating the issuance of a NPDES permit by the IEPA to New Lenox for expansion of a wastewater treatment facility. The Board had found that the IEPA failed to properly consider the effect of the increased discharge from the New Lenox facility on the receiving stream in violation of the Board's rules concerning antidegradation of water quality. The Court's opinion noted that the Board must review the entire record relied upon by the IEPA to determine that the issuance of the permit does not violate the Act or Board regulations.

In this case, the Third District Appellate Court agreed with the Board that the IEPA had failed to require sufficient evidence to assure that the water quality of the receiving stream would not deteriorate as a result of the discharge. Therefore, the Court affirmed the Board's decision as not against the manifest weight of the evidence. The Court also agreed with the Board that New Lenox had not justified additional discovery, because the Board was limited to reviewing the record before the IEPA.

Sincerely,

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

Dr. G. Tanner Girard

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## Rule Update

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### **Board Adopts a First Notice Proposal to Reduce Volatile Organic Material from Various Consumer and Commercial products, and Architectural and Industrial Maintenance Coating Products, (R08-17)**

The Illinois Pollution Control Board, on October 16, 2008, adopted a first notice proposal in the rulemaking docketed as In the Matter of: Proposed New 35 Ill. Adm. Code Part 223 Standards and Limitations for Organic Material Emissions for Area Sources (R08-17). The first notice proposal was published at 32 Ill. Reg. 1703517104 (10/31/08); 45-day first notice public comment period under the Illinois Administrative Procedure Act, 5 ILCS 100 *et. seq.*, accordingly ends December 15, 2008.

The Illinois Environmental Protection Agency (IEPA), on January 2, 2008, filed the proposed new 35 Ill. Adm. Code 223, Standards and Limitations for Organic Material Emissions for Area Sources. The IEPA stated that, as originally proposed, the regulations would reduce emissions of volatile organic material (VOM) from various consumer and commercial products, architectural and industrial maintenance (AIM) coating products, and aerosol coatings. Following United States Environmental Protection Agency promulgation of a federal rule governing aerosol coatings, IEPA withdrew that portion of the proposal.

The Board held hearings on the IEPA proposal in April and June 2008. The Board's proposed first-notice rules include VOM content standards for specified consumer and commercial products and AIM coatings, various exemptions and compliance alternatives, and requirements for labeling, recordkeeping, and reporting.

The Board encourages persons to file public comments on these proposed amendments on or before December 15, 2008; the Board does not presently plan to hold additional hearings. The docket number for this rulemaking, R08-17, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601

In addition, public comments may be filed electronically through COOL at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Copies of Board opinions and orders may be obtained by calling the Clerk's office at 312-814-3620, or by downloading copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information contact Tim Fox at 312-814-6085 or email at [foxt@ipcb.state.il.us](mailto:foxt@ipcb.state.il.us).

## Appellate Update

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### **Third District Affirms Board Affirmance of Local Grant of Siting Approval for Landfill Expansion in Peoria Disposal Company v. Illinois Pollution Control Board and County of Peoria, No. 3-07-0435 (Oct. 7, 2008)** **(affirming Board's order affirming local grant of siting approval in PCB 08-64 (June 21, 2007))**

In an October 7, 2008 27-page, unanimous published opinion, the Third District Appellate Court upheld the Board's decision to affirm the Peoria County Board's denial of siting for a landfill expansion under Section 39.2 of

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the Environmental Protection Act (Act), 415 ILCS 5/39.2. Peoria Disposal Company v. Illinois Pollution Control Board and County of Peoria, No. 3-07-0435 (Oct. 7, 2008) (Peoria Disposal (Third Dist.)). Peoria Disposal Company (PDC) had sought local siting approval for the proposed expansion of its hazardous waste landfill in unincorporated Peoria County (County). In the case before the Board, the Board found that the County timely rendered a decision, that the County's proceedings were fundamentally fair, and that the County's decision to deny siting based on the nine statutory criteria was not against the manifest weight of the evidence. Peoria Disposal Company v. Peoria County Board, PCB 06-184 (June 21, 2007). Oral argument before the Third District took place on September 17, 2008, a mere three weeks before the court's opinion was filed.

Below is a summary of the Third District's decision. As the court recited the facts in detail, and quoted salient portions of the Board's decision, there is no separate discussion of the Board decision below. In its precedential opinion, the Third District reached several legal conclusions that should prove significant for future landfill siting cases, including the court's interpretation of the "final action" and the "written decision" requirements of Section 39.2(e) of the Act, 415 ILCS 5/39.2(e). Additionally, the court also explicitly overruled its ruling in Land & Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48-49, 743 N.E.2d 188, 194 (3rd Dist. 2000) that a "*de novo*" standard of review applies to the Board's findings on fundamental fairness in siting cases, now agreeing with the Board that the more deferential "clearly erroneous" standard of review must be applied.

### The County's Siting Proceedings

The court's opinion relates that PDC owns and operates a 32-acre landfill located in unincorporated Peoria County. The landfill receives industrial waste, including hazardous waste. PDC sought County siting approval to expand the landfill 45 feet vertically and eight acres horizontally, which would allow the landfill to continue operating for an additional 15 years and receive over 2 million tons of additional waste. Peoria Disposal (Third Dist.), slip op. at 1-2.

PDC's siting application was received by the County Clerk's Office on November 9, 2005. Peoria Disposal (Third Dist.), slip op. at 3. Under the Peoria County Code, the County Clerk's Office must confirm that such an application satisfies the County's filing requirements before accepting the application for filing. The County Clerk's Office determined on November 14, 2005, that the application was complete, and pursuant to the County Code, file-stamped the application with that date, November 14, 2005. *Id.* at 3-4.

After the County held six days of public hearing in February 2006, the County's Site Hearing Committee, which consists of all members of the County Board, held meetings in April 2006 to discuss PDC's application. Peoria Disposal (Third Dist.), slip op. at 9. At the Committee's April 3, 2006 meeting, the Special Assistant State's Attorney informed the Committee that it had to base its decision exclusively on the information contained in the public record. *Id.* at 9-10. At the Committee's April 6, 2006 meeting, the Committee voted on proposed findings of fact, recommending that siting criteria (i), (ii), and (iii) had not been satisfied. *Id.* at 10. On criterion (v), the Committee recommended that it had been satisfied only if certain special conditions were added, including one requiring the creation of a perpetual care fund to be funded by PDC (requiring PDC to deposit \$5 per ton of waste into the fund and no less than \$750,000 annually). The Committee's proposed written findings of fact in support of its conclusion were filed with the County Clerk on April 27, 2006. *Id.*

On May 3, 2006, the County Board met to vote on the application. Peoria Disposal (Third Dist.), slip op. at 10. Before that meeting, the County Board members were advised by letter from the State's Attorney that they would be taking two votes. First, they would vote on a motion to approve the application, and if that motion did not pass, an additional vote denying the application would not be necessary. *Id.* at 10-11. Second, the County Board members would take a vote to approve a set of fact findings in support of the decision on the application. *Id.* at 11. At the May 3, 2006 meeting, the State's Attorney, on the record, again advised the County Board as to the appropriate procedure. A motion was made and seconded to approve PDC's siting application, after which a vote was taken on the motion. Twelve members voted against the motion and six members voted for it. *Id.* A second vote was taken on the findings of fact, and by a vote of 12 to six, the County Board approved the previously filed findings of fact, with the understanding that there would be some minor changes. On May 12, 2006, the meeting's unofficial transcript was posted on the County's web site. *Id.* at 11-12. At the County Board's June meeting, the May 3, 2006 transcript was approved and adopted by the County Board. *Id.* at 12

### The Board's Proceedings

In its petition to the Board, PDC alleged for the first time that its application's effective filing date was November 9, 2005, when the County Clerk received the application. Peoria Disposal (Third Dist.), slip op. at 12. PDC argued that the County failed to take final action on the application within 180 days as the Act requires. In addition, PDC

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asserted that the County proceedings were fundamentally unfair and that the County's siting decision was against the manifest weight of the evidence. *Id.*

After considering the County record, as well as additional evidence received by the Board concerning fundamental fairness, the Board affirmed the County. In its June 21, 2007 opinion and order, the Board found that November 14, 2005, was the effective starting date of the 180-day statutory period, noting that November 14 was used as the starting date throughout the County proceedings and PDC never objected to using that date. Peoria Disposal (Third Dist.), slip op. at 12. Nevertheless, the Board concluded that regardless of whether November 9 or November 14 was the starting date, the County took "final action" within the 180-day period when it voted against the motion to approve the application on May 3, 2006. *Id.* at 12-13. The Board also found that the Section 39.2(e) "written decision" requirement was met by the verbatim transcript of the May 3, 2006 meeting and the County's approved findings of fact.

The court stated that, in reaching its conclusion, the Board ruled, although somewhat implicitly, that section 39.2(e) requires only that the local governmental authority take action on the application within 180 days, not that a written decision be issued within 180 days. The Board noted that for purposes of the section 39.2(e) requirements, a distinction exists between the "final action" of the local governmental authority and its formal written "decision" memorializing that final action. Peoria Disposal (Third Dist.), slip op. at 13.

The Board next held that PDC was not prejudiced by any *ex parte* communications and that PDC had forfeited any claims of bias by failing to raise them in the County proceedings. Peoria Disposal (Third Dist.), slip op. at 13. The Board therefore found that the local proceedings were fundamentally fair. Finally, the Board ruled that the County's determination that PDC failed to satisfy siting criteria (i), (ii), (iii), and (v) of Section 39.2(a) was not against the manifest weight of the evidence. *Id.*

### Court's Analysis

Section 39.2(e) 180-Day Final Action/Written Decision. Because the Third District's consideration of this issue "centers around an interpretation of section 39.2(e) of the Act," a question of law, the court applied the *de novo* standard of review to the Board's decision. Peoria Disposal (Third Dist.), slip op. at 15. Under Section 39.2(e), "[d]ecisions of the county board or governing body of the municipality are to be in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section." *Id.* at 16 (quoting the Act). The court referred to this requirement of Section 39.2(e) as "the written decision requirement." *Id.* Section 39.2(e) also provides that "[i]f there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved." *Id.* (quoting the Act). The court referred to this requirement of Section 39.2(e) as "the final action requirement." *Id.*

The court framed the issue as "whether the 180-day time limitation applies to only the final action requirement or to both the final action requirement and the written decision requirement." Peoria Disposal (Third Dist.), slip op. at 17. Taking into account the "organization and plain language" of Section 39.2(e), the court agreed with the Board and found that Section 39.2(e) "requires only that the local siting authority take final action on the application within 180 days; it does not require that the local siting authority's written decision memorializing that final action be issued within 180 days." *Id.* The court noted that in addition to using the distinct terms "action" and "decisions," the legislature placed the 180-day limit in the same sentence as the final action requirement, while the sentence containing the written decision requirement occurs three sentences earlier in the paragraph. *Id.* The court concluded by noting that the Board's procedural rule (35 Ill. Adm. Code 107.204) does not define "action" as used in Section 39.2(e), as "Section 107.204 defines 'action' only as referenced in section 107.204 and only for the purpose of filing for review with the PCB." *Id.* at 18.

Final Action Within 180 Days. The court held that the requirement for final action within 180 days was met here, as "it is clear from the record that the county board denied the company's application at the May 3 county board meeting." Peoria Disposal (Third Dist.), slip op. at 18. The procedure that the County Board was following at the meeting is "clearly set forth in the record" (a vote against the motion to approve the application was enough, without a second vote to deny the application). Moreover, PDC's attorneys were in attendance "when the manner of proceeding was stated for the record and did not object to the form of the vote." *Id.* at 18. The court therefore held that "[r]egardless of whether a November 9, 2005, or a November 14, 2005, starting date is used," the County took final action within the 180-day period. *Id.* at 18-19. The court declined to address "whether it was proper for the county to delay the filing of the application for a short period so that the county clerk could verify that the application was administratively complete." *Id.* at 19.

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Written Decision. The court agreed with the Board that the County also met the written decision requirement of Section 39.2(e). The court first noted that the Act does not “define the form that the local siting authority’s written decision must take” and then refused to “read such a condition into the statute.” Peoria Disposal (Third Dist.), slip op. at 19. The court observed that (1) the County adopted a written set of facts supporting its decision, (2) the County agreed to allow the meeting transcript to serve as a written record of what occurred, and (3) the “unofficial version of that transcript was posted on the county’s web site a short time later.” *Id.* The court concluded: “All of that was sufficient to satisfy the written-decision requirement.” *Id.*

Section 40.1(a) Fundamental Fairness. The court first determined that, as the Board argued, the “clearly erroneous” standard of review should apply to the fundamental fairness question, rather than the “*de novo*” standard applied by the Third District in Land & Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48-49, 743 N.E.2d 188, 194 (3rd Dist. 2000). The court stated:

Having considered this matter again, we conclude that the PCB is correct. Regardless of the reasoning behind our decision in Land & Lakes Co. to apply a *de novo* standard of review to the fundamental fairness determination, we are bound by the supreme court and must follow its rulings. Angelini v. Snow, 58 Ill. App. 3d 116, 119, 374 N.E.2d 215, 217 (1978). This is a mixed question of law and fact (*see Land & Lakes Co.*, 319 Ill. App. 3d at 48-49, 743 N.E.2d at 194), and we are required by supreme court precedent to apply a clearly erroneous standard of review. *See AFM Messenger Service, Inc.*, 198 Ill. 2d at 392, 763 N.E.2d at 280; Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 211-12, 886 N.E.2d 1011, 1018-19 (2008). We must follow and apply the clearly erroneous standard until the supreme court rules otherwise. *See Angelini*, 58 Ill. App. 3d at 119, 374 N.E.2d at 217. Therefore, we overrule that portion of the Land & Lakes decision regarding the standard of review to be applied to the issue of fundamental fairness. Peoria Disposal (Third Dist.), slip op. at 20-21.

The court then applied the standard, finding the Board’s decision that the County proceedings were fundamentally fair is not clearly erroneous. Peoria Disposal (Third Dist.), slip op. at 23. First, the court found that PDC’s claim that County Board members Mayer, Thomas, and Elsasser were biased against the application was “forfeited,” as PDC was aware of the grounds for making the bias claim before the County’s May 3, 2006 vote and yet did not object. PDC “will not be allowed to raise that claim now after an unfavorable ruling has been obtained.” *Id.*, citing E & E Hauling, Inc. v. PCB, 107 Ill. 2d 33, 38-39, 481 N.E.2d 664, 666 (1985). The court further ruled that even if it reached the merits of the bias claim, the court would find that the Board’s ruling is not clearly erroneous, as PDC failed to overcome the presumption that the County Board members at issue acted in a fair and impartial manner. Peoria Disposal (Third Dist.), slip op. at 23-24. For example, two County Board members were essentially inactive members in the national Sierra Club and never attended any of the local Sierra Club meetings. *Id.* at 11. The Heart of Illinois Chapter of the Sierra Club opposed PDC’s application and participated in the County proceeding. *Id.* at 4. At the May 3, 2006 meeting, the State’s Attorney questioned the two County Board members about their membership in the Sierra Club, after which all of the County Board members represented that they could decide on the siting application impartially based solely on the facts presented. *Id.* at 11.

Nor was the court persuaded by PDC’s argument that it was deprived of a fair proceeding because of *ex parte* contacts. Discovery conducted as part of the appeal to the Board revealed that during the local siting proceeding, several County Board members received *ex parte* e-mails, letters, and telephone calls. Peoria Disposal (Third Dist.), slip op. at 12. Some of those communications were made a part of the record, but several were not as the County Board members had disposed of them. The court found that the contacts, though improper, were “little more than an expression of public sentiment and were duplicative of the public comment that was properly made part of the record.” *Id.* at 24. Moreover, the County Board members were informed many times that they had to make their decision based on the evidence and “the record indicates that they did that to the best of their abilities.” *Id.* PDC was given a “full and complete opportunity to present evidence and to support its application.” *Id.* The court ruled that it could not find the Board’s decision on this issue clearly erroneous. *Id.*

The Third District added in conclusion that it would have reached the same decision “even if we had applied a *de novo* standard of review to this issue,” as PDC had requested. Peoria Disposal (Third Dist.), slip op. at 24.

Section 39.2(a) Siting Criteria. The court first rejected PDC’s argument that the Board erred by reviewing the County’s decision under the manifest weight of the evidence standard. PDC argued that the Illinois Supreme Court’s ruling in Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 866 N.E.2d 227 (2007) “changed the standard of review that the PCB is to apply and requires the PCB to conduct a *de novo* review of the county board’s decision while applying its own technical expertise to the evidence gathered in the local proceedings.” Peoria Disposal (Third Dist.), slip op. at 25. In rejecting PDC, the Third District noted that “[t]he established standard is

for the PCB to review the local siting authority's decision on the statutory criteria to determine if that decision is against the manifest weight of the evidence." *Id.*, citing, e.g., Waste Management of Illinois, Inc. v. PCB, 123 Ill. App. 3d 1075, 1083, 463 N.E.2d 969, 976 (2nd Dist. 1984). The court ruled that Town & Country not only "does not change that standard," it "does not even address that issue." Peoria Disposal (Third Dist.), slip op. at 25.

The court then found that the Board's ruling on criteria (i), (ii), (iii), and (v) of Section 39.2 was not against the manifest weight of the evidence. 415 ILCS 5/39.2 (i), (ii), (iii), and (v). The court pointed out the "potential flaws" of PDC's criterion (i) "needs" analysis, which failed to consider declining rates of hazardous waste generation, as revealed through cross-examination at the County's public hearing. Peoria Disposal (Third Dist.), slip op.4-5, 25. Conflicting expert testimony was presented criterion (ii), particularly as the proposed expansion "related to the geology and hydrogeology of the site and the possible effects of the proposed expansion on water quality." *Id.* at 25. Concerning criterion (iii), the court observed that PDC's "compatibility" expert "acknowledged that the vertical expansion would be visible to nearby residences and that it would consist of a dirt project for the 15-year lifespan of the operation." *Id.* at 26.

As to criterion (v), the court reasoned that as "the company itself proposed that a perpetual care fund condition be added to criterion v," PDC "cannot now object to the implementation of that condition." Peoria Disposal (Third Dist.), slip op. at 26, citing McMath v. Katholi, 191 Ill. 2d 251, 255, 730 N.E.2d 1, 3 (2000) (a party cannot complain about an error that it induced the court to make). The Third District distinguished County of Lake v. PCB, 120 Ill. App. 3d 89, 101, 457 N.E.2d 1309, 1317 (2nd Dist. 1983), relied upon by PDC:

Although the court in County of Lake found that section 39.2 of the Act does not grant the local siting authority the power to assess fees against the applicant (County of Lake, 120 Ill. App. 3d at 101, 457 N.E.2d at 1317), that rule does not prevent the local siting authority from doing so in case such as this, where the applicant proposes that a fee be assessed against it as a condition of approval. Peoria Disposal (Third Dist.), slip op.at 26.

The court added that the dollar amount imposed here by the County Board is supported by "ample evidence" in the record. *Id.*

**In a Summary Order in a Case Known As "Town and Country II", Third District Affirms Board Affirmance of Local Grant of Siting Approval for Landfill in County of Kankakee, Illinois, Edward D. Smith, Kankakee County State's Attorney, Byron Sandburg and Waste Management of Illinois, Inc v. Illinois Pollution Control Board, City of Kankakee, Illinois, Kankakee Regional Landfill, LLC and Town & Country Utilities, Inc., Nos. 3-04-02713-04-02853-04-0289 (cons.) (3rd Dist. Oct. 10, 2008) (affirming Board's order affirming grant of siting approval in PCB 04-33, 34, 35 (Mar. 18, 2004))**

On October 10, 2008, the Third District Appellate Court issued a "summary order" (a form of non-precedential order under Supreme Court Rule 23 (166 Ill. 2d R. 23(c)) affirming the Board in County of Kankakee, Illinois, Edward D. Smith, Kankakee County State's Attorney, Byron Sandburg and Waste Management of Illinois, Inc v. Illinois Pollution Control Board, City of Kankakee, Illinois, Kankakee Regional Landfill, LLC and Town & Country Utilities, Inc., No. 3-04-0271 consol. w/ 3-04-0285 & 3-04-0289 (3rd Dist. Oct. 10, 2008) (Town & Country II (Oct. 10, 2008)).

#### Background

This case is better known as "Town & Country II", and involves a 2003 siting application. A 2002 siting application was the subject of a series of decisions known as "Town and Country I." The prior history of the Town & Country cases has been reported in these pages in detail, and will not be repeated here. *See, e.g., Environmental Register* No. 648 at p. (June 2008), No. 646 at pp. 6-9 (April 2008), and No. 633 at pp. 2-9 (Mar. 2007).

Town and Country II has been the subject of three orders by the Third District and a supervisory order by the Illinois Supreme Court. The Third District had issued an April 24, 2008 Rule 23 order affirming the Board's decision. Town & Country II (3rd Dist. Apr. 24, 2008). (The court issued the order on rehearing requested by the parties following issuance of the court's original November 17, 2006 order reversing the Board. Town & Country II (3rd Dist. Nov. 17, 2006).)

The Third District's April 24, 2008 Rule 23 order affirmed the Board's decision on a single ground, finding that the 2003 application was properly considered under Section 39.2(m) of the Act, which provides:

An Applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved pursuant to a finding against the Applicant under any criteria (i) through (ix) of subsection (a) of this Section within the preceding two years.

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The April 24, 2008 order did not address other appeal grounds that were raised by the appellants (*e.g.*, compliance with siting criteria and fundamental fairness). Town & Country II, Order at 12-13 (Apr. 24, 2008).

The Third District's October 10, 2008 summary order follows the Illinois Supreme Court's issuance of a "supervisory order" on June 5, 2008 stating

The appellate court is directed to reconsider the case, and if it finds that the second siting application was disapproved within the meaning of 415 ILCS 5/39.2(m), to determine whether the second application was substantially the same as the first application under the statute, acknowledging that the Pollution Control Board expressly did not reach this issue. If the appellate court then finds that the second siting application was properly filed, the appellate court is directed to address the remaining issues raised by the parties to the appeal. County of Kankakee, Illinois. et al. v. Hon. William E. Holdridge et al., No. 106525 (June 5, 2008), slip op. at 1-2.

The October 10, 2008 summary order may not be the Third District's last order in this case. On October 31, 2008, Waste Management filed a petition for rehearing of the October 10, 2008 order with the Third District, while on October 28, 2008, Byron Sandburg filed a petition for leave to appeal with the Illinois Supreme Court.

### October 10, 2008 Summary Order

The summary order first quotes most of Supreme Court Rule 23(c) to explain why the court issues a "summary order." Town & Country II (Oct. 10, 2008), Order at 1-2

In accordance with Rule 23(c), the court explains that it limited "discussion to specifically answering the questions raised in the supervisory order." Town & Country II (Oct. 10, 2008), Order at 6. Apparently taking literally what appears to have been a typographical error in the Supreme Court's supervisory order, the Third District states:

First, we are asked to determine whether the 2003 application [*i.e.*, the second 2003 application] was disapproved within the meaning of section 5/39.2(m) of the Act. (415 ILCS 5/39.2(m)). It was not disapproved within the meaning of section 5/39.2(m) . . . *Id.*

The Third District states that despite some similarities between the two siting applications, the 2003 application was "profoundly, significantly and fundamentally different in that it included significant additional hydrogeologic investigations and also included several engineering design changes." Town & Country II (Oct. 10, 2008), Order at 4. The court holds that "by *de novo* or any other standard of review," the 2003 application was not substantially the same as the 2002 application and therefore as a matter of law, "it was impossible for the 2003 application to have been 'disapproved' in the previous siting request, as it was not the same application." *Id.* at 7.

The court then turns to the remaining issues on appeal, "which were apparently not sufficiently addressed in our prior order." Town & Country II (Oct. 10, 2008), Order at 7. On the issues of Section 39.2(b) notices, Section 39.2(a) siting criteria, and Section 40.1 fundamental fairness, the court repeatedly states that it must review the Board's decision to determine whether the decision is supported by the manifest weight of the evidence. In each instance, the court summarily states: "We have. It was." *Id.* at 7-8.1

In doing so, the court explicitly refers to only two of the three siting criteria at issue: siting criterion (ii) (protect public health, safety, and welfare) and criterion (viii) (consistency with the County's solid waste management plan), but not criterion (iv)(B) (located outside of the 100-year floodplain). Town & Country II (Oct. 10, 2008), Order at 7-8. Nevertheless, the court states

Finally, we have reviewed the Board's decision, to determine if any part of the Board's decision upholding the decision of the city council was in any way against the manifest weight of the evidence. We have found no such error and have concluded that the decision of the Board is not contrary to the manifest weight of the evidence. *Id.* at 8.

The Third District therefore upheld the Board's decision affirming the City's determination to grant approval of Town & Country's 2003 siting application. Town & Country II (Oct. 10, 2008), Order at 8-9. But, as previously

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1 This panel of the Third District cites the Illinois Supreme Court's decision in Town & Country I (Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 866 N.E.2d 227 (2007)) for the proposition that the "manifest weight" standard applies to the Board's fundamental fairness determination. Three days earlier, on October 7, 2008, a different panel of the Third District, in a published opinion, applied the "clearly erroneous" standard to the Board's fundamental fairness determination in another siting appeal, citing AFM Messenger Service, Inc. v. Department of Employment Security, 198 Ill. 2d 380, 392, 763 N.E.2d 272, 280 (2001). See Peoria Disposal Company v. PCB, No. 3-07-0435 (3rd Dist.).



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reported, a petition for rehearing is pending in the Third District, while a petition for review is pending in the Illinois Supreme Court.

## Board Actions

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**October 16, 2008**

**Via Videoconference**

**Springfield and Chicago, Illinois**

### Rulemakings

<b>R08-17</b>	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources Proposed New 35 Ill. Adm. Code Part 223</u> – The Board adopted a first notice opinion and order in this rulemaking to amend the Board’s air pollution control regulations.	4-0 Air
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### Administrative Citations

<b>AC 08-17</b>	<u>City of Chicago Department of Environment v. Crystal IL</u> – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Cook County facility, the Board found that respondent had violated Sections 21(p)(1) and (p)(4) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(4) (2006)) and ordered respondent to pay a civil penalty of \$3,000. The Board also granted the parties’ joint motion to dismiss respondent’s petition for review and the alleged violation of 415 ILCS 5/21(p)(7) (2006). The Board took no action on the request to order Crystal IL 98, L.L.C. to perform the fence work described in the stipulation, due to lack of jurisdiction.	4-0
<b>AC 09-4</b>	<u>County of Jackson v. Lester Johnson and Arthur Cross</u> – The Board granted complainant’s motion for withdrawal of this administrative citation and closed the docket.	4-0
<b>AC 09-11</b>	<u>IEPA v. Ruby Acklin and Joseph Flick</u> – The Board granted complainant’s motion to dismiss Ruby Acklin from this action. The Board found that the remaining respondent violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1), (7) (2006)), assessing a penalty of \$3,000 in this administrative citation involving a Union County facility.	4-0
<b>AC 09-12</b>	<u>IEPA v. George R. Ford</u> – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Fulton County facility.	4-0
<b>AC 09-13</b>	<u>IEPA v. Billy Hammond, Sr.</u> – The Board found that this Franklin County respondent violated Sections 21(p)(1), (3) and (7) of the Act (415 ILCS 5/21(p)(1), (3) and (7) (2006)) and ordered respondent to pay a penalty of \$4,500.	4-0

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**Adjudicatory Cases**

<b>PCB 05-110</b>	<u>People of the State of Illinois v. J. McDaniel</u> – In this water enforcement action concerning two separate sites in McLean and Vermilion Counties, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a civil penalty of \$25,000 for the alleged violations in Vermilion County and a civil penalty of \$35,000 for the alleged violations in McLean County, and to cease and desist from further violations.	4-0 W-E
<b>PCB 05-199</b>	<u>People of the State of Illinois v. Champion Environmental Services, Inc., a Wisconsin corporation</u> – The Board denied respondent’s motion to finalize settlement because no settlement agreement, properly executed, was filed before the Board.	4-0 A-E
<b>PCB 06-192</b>	<u>People of the State of Illinois v. Larry Bielfeldt</u> – Upon receipt of a proposed stipulation and settlement agreement and agreed motion to request relief from the hearing requirement in this water enforcement action involving a McLean County facility, the Board ordered publication of the required newspaper notice.	4-0 W-E
<b>PCB 07-25</b>	<u>People of the State of Illinois v. Isaacson Construction, Inc.</u> – In this land enforcement action concerning a McLean 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$100,000, and to cease and desist from further violations.	4-0 L-E
<b>PCB 07-42</b>	<u>People of the State of Illinois v. Environmental Reclamation Company</u> – In this land enforcement action concerning a Coles 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$8,500, and to cease and desist from further violations.	4-0 L-E
<b>PCB 07-46</b>	<u>People of the State of Illinois v. D &amp; L. Disposal, L.L.C., a Delaware corporation</u> – In this land enforcement action concerning a Bond 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$8,500, and to cease and desist from further violations. Respondent agreed to perform a supplemental environmental project (SEP). The SEP consists of the provision of 1,300 tons of disposal capacity to be used by the complainant at any of three identified landfills. The SEP has a settlement value of \$45,500, which offset penalties that could be sought by complainant.	4-0 L-E
<b>PCB 08-26</b>	<u>People of the State of Illinois v. Gary Cates, d/b/a Cherry Street Automotive, Calvin Booth, d/b/a Auto Salvage Illinois, and S. I. Promotion Flora, Inc.</u> – In this land enforcement action concerning a Winnebago 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondents to pay a total civil penalty of \$8,000, and to cease and desist from further violations.	4-0 L-E

Environmental Register – October 2008

<b>PCB 08-30</b>	<u>Caseyville Sport Choice, LLC, an Illinois Limited Liability Company v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity</u> – The Board denied respondent Fairmont Park’s motion to dismiss and granted complainant’s motion to amend complaint. The Board found complainant’s alleged violations of the Board’s regulation and the Environmental Protection Act neither duplicative nor frivolous and accepted the amended complaint for hearing.	4-0 Citizens L-E
<b>PCB 08-44</b>	<u>People of the State of Illinois v. Prairie Material Sales, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreements and agreed motions to request relief from the hearing requirement in this water enforcement action involving a DuPage County facility, the Board ordered publication of the required newspaper notice.	4-0 W-E
<b>PCB 08-55</b>	<u>People of the State of Illinois v. Village of Merrionette Park</u> – In this public water supply 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$5,000, and to cease and desist from further violations.	4-0 PWS-E
<b>PCB 08-95</b>	<u>United City of Yorkville v. IEPA and Hamman Farms</u> – The Board denied respondent Hamman Farms’ motion for attorney fees and costs.	4-0 P-A, Land Third Party
<b>PCB 08-96</b>	<u>United City of Yorkville v. Hamman Farms</u> – The Board partially granted and partially denied respondent’s motion to strike or dismiss portions of complainant’s enforcement complaint. The Board found that the amended complaint was neither duplicative nor frivolous and accepted the complaint for hearing. The Board directed complainant to file an amended complaint consistent with the order in 60 days.	4-0 Citizens A, L, W-E
<b>PCB 08-99</b>	<u>Knapp Oil Company, Inc. v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no appeal was filed on behalf of this facility located in Perry County.	4-0 UST Appeal
<b>PCB 09-13</b>	<u>People of the State of Illinois v. Behr Iron &amp; Steel, Inc., an Illinois Corporation</u> – In this air enforcement action concerning a Winnebago 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$10,000, and to cease and desist from further violations.	4-0 A-E
<b>PCB 09-14</b>	<u>People of the State of Illinois v. Behr Aluminum, Inc., an Illinois Corporation</u> – In this air enforcement action concerning a Winnebago 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) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$140,000, and to cease and desist from further violations. Respondent also agreed to fund a Supplemental Environmental Project in the amount of \$100,000 to be used for reducing diesel emission pollution in Illinois.	4-0 A-E
<b>PCB 09-20</b>	<u>People of the State of Illinois v. Lewis Development, LLC</u> – The Board accepted for hearing this water enforcement action involving a site located in Peoria County.	4-0 W-E

Environmental Register – October 2008

<b>PCB 09-22</b>	<u>People of the State of Illinois v. William Warren</u> – The Board accepted for hearing this public water supply enforcement action involving a site located in Clinton County.	4-0 PWS
<b>PCB 09-23</b>	<u>People of the State of Illinois v. James R. Cantrell</u> – The Board accepted for hearing this water enforcement action involving a site located in White County.	4-0 W-E

## New Cases

### October 16, 2008 Board Meeting

**09-20** People of the State of Illinois v. Lewis Development, LLC – The Board accepted for hearing this water enforcement action involving a site located in Peoria County.

**09-21** Ameren Energy Generating Company, Amerenenergy Resources Generating Company, and Electric Energy, Inc. v. IEPA – No action taken.

**09-22** People of the State of Illinois v. William Warren – The Board accepted for hearing this public water supply enforcement action involving a site located in Clinton County.

**09-23** People of the State of Illinois v. James R. Cantrell – The Board accepted for hearing this water enforcement action involving a site located in White County.

**AC 09-16** IEPA v. Mid-American Machinery Company – The Board accepted an administrative citation against this Macoupin County respondent.

## Calendar

11/3/08 10:00 AM	R09-8	<u>In the Matter of: Proposed Site Specific Rule for City of Springfield, Illinois, Office of Public Utilities, City Water, Light and Power and Springfield Metyro Sanitary District From 35 Ill. Adm. Code Section 302.208(g)</u>	Pollution Control Board Conference Room, First Floor 1021 N. Grand Avenue East (North Entrance) Springfield
<b>11/5/08 3:00 PM</b>	<b>Illinois Pollution Control Board Meeting</b>		<b>James R. Thompson Center 100 W. Randolph Street Chicago</b>
11/17/08 9:00 AM	R08-9	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. code 301, 302, 303, and 304</u>	Will County Courthouse Court room 308 14 W. Jefferson St. Joliet

Environmental Register – October 2008

<p><b>11/20/08</b> <b>11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>VIDECONFERENCE</b>   <b>James R. Thompson Center</b>  <b>100 W. Randolph Street</b>  <b>Chicago</b>  <b>And</b>  <b>Illinois Pollution Control Board</b>  <b>Hearing Room (1244 N, First</b>  <b>Floor)</b>  <b>1021 N. Grand Avenue East</b>  <b>(North Entrance)</b>  <b>Springfield</b></p>
<p>12/2/08 9:00 AM</p>	<p>PCB 97-193</p>	<p><u>People of the State of Illinois v. Community Landfill Company, Inc.</u>  <u>(Consolidated: PCB 97-193 and PCB 04-207)</u>  <b>(Continues until complete or through December 12, 2008)</b></p>	<p>The Grundy County  Administrative Center Board  Room  1320 Union Street  Morris</p>
<p>12/3/08 9:00 AM</p>	<p>R08-9</p>	<p><u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. code 301, 302, 303, and 304</u></p>	<p>LGI Room, Second Floor  Environmental Protection Agency  Des Plaines Regional Office  9511 West Harrison  Des Plaines</p>
<p>12/4/08 10:00 AM</p>	<p>AC 09-09</p>	<p><u>County of Jackson v. Alvin Valdez</u></p>	<p>Jackson County Health  Department, rear building  conference room,  415 Health Department Road  Murphysboro</p>
<p>12/4/08 10:30 AM</p>	<p>AC 09-8</p>	<p><u>County of Jackson v. Dan Kimmel</u></p>	<p>Jackson County Health  Department, rear building  conference room,  415 Health Department Road  Murphysboro</p>
<p><b>12/4/08</b> <b>11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center</b>  <b>100 W. Randolph Street</b>  <b>Chicago</b></p>
<p>12/5/08 9:00 AM</p>	<p>PCB 97-193</p>	<p><u>People of the State of Illinois v. Community Landfill Company, Inc.</u>  <u>(Consolidated: PCB 97-193 and PCB 04-207)</u></p>	<p>The Grundy County  Administrative Center Board  Room  1320 Union Street  Morris</p>
<p>12/9/08 11:00 AM</p>	<p>R08-19</p>	<p><u>In the Matter of: Nitrogen Oxides Emissions From Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217</u>   <b>(Continues until complete or through December 12, 2008)</b></p>	<p>James R. Thompson Center  Room 9-031  100 W. Randolph  Chicago</p>
<p>12/10/08 9:00 AM</p>	<p>PCB 00-211</p>	<p><u>People of the State of Illinois v. Toyal America, Inc. f/k/a Alcan-Toyo America, Inc.</u></p>	<p>Village of Bolingbrook Board  Room  375 w. Briarcliff Road  Bolingbrook</p>

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12/11/08 9:00 AM	PCB 00-211	<u>People of the State of Illinois v. Toyal America, Inc. f/k/a Alcan-Toyo America, Inc.</u>	Village of Bolingbrook Board Room 375 w. Briarcliff Road Bolingbrook
12/16/08 10:00 AM	R09-08	<u>In the Matter of: Proposed Site Specific Rule for city of Springfield, Illinois, Office of Public Utilities, City Water, Light, and Power and Springfield Metro Sanitary district From 35 Ill. Adm. Code Section 302.208(g)</u>	Pollution Control Board Conference Room, First Floor 1021 N. Grand Avenue East (North Entrance) Springfield
12/17/08 9:00 AM	R09-10	<u>In the Matter of: Amendments to 35 Ill. Adm. Code 225: Control of Emissions From Large Combustion Sources (Mercury Monitoring)</u>	IEPA Office Building Training Room, 1214 West 1021 N. Grand Avenue, East (North Entrance) Springfield
12/18/08 11:00 AM	<b>Illinois Pollution Control Board Meeting</b>		<b>VIDOECONFERENCE</b>  <b>James R. Thompson Center</b> <b>100 W. Randolph Street</b> <b>Chicago</b> <b>And</b> <b>Illinois Pollution Control Board</b> <b>Hearing Room (1244 N, First Floor)</b> <b>1021 N. Grand Avenue East</b> <b>(North Entrance)</b> <b>Springfield</b>
1/08/09 11:00 am	<b>Illinois Pollution Control Board Meeting</b>		<b>James R. Thompson Center</b> <b>100 W. Randolph Street</b> <b>Chicago</b>
1/13/09 11:00 AM	R09-10	<u>In the Matter of: Amendments to 35 Ill. Adm. Code 225: Control of Emissions From Large Combustion Sources (Mercury Monitoring)</u>	James R. Thompson Center Illinois Pollution Control Board Room 11-512 100 W. Randolph Street Chicago
1/22/09 11:00 am	<b>Illinois Pollution Control Board Meeting</b>		<b>James R. Thompson Center</b> <b>100 W. Randolph Street</b> <b>Chicago</b>
1/27/09 10:30 AM	R09-09	<u>In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742)</u>  <b>(Continues until complete or through January 28, 2009)</b>	IEPA Office Building (North Entrance) TQM Room 1000 E. Converse Springfield
1/28/09 9:30 am	R09-09	<u>In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742)</u>	IEPA Office Building (North Entrance) TQM Room 1000 E. Converse Springfield

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**Illinois Environmental Protection Agency**  
**Division of Public Water Supplies**  
**Restricted Status List - Public Water Supplies**  
**OCTOBER 2008**

<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
ALTERNATIVE BEHAVIOR TREATMENT CENTER - IL0977189	2	INADEQUATE PRESSURE TANK	50	6/15/1988
ARLINGTON REHABILITATION LIVING CENTER - IL0971110	2	INADEQUATE HYDRO STORAGE	180	12/1/2003
ATHENS – IL1290050	5	INADEQUATE TREATMENT CAPACITY	4350	10/1/2007
AURORA COMMUNITY WATER ASSN - IL0895750	2	INADEQUATE PRESSURE TANK	150	12/16/1988
BAHL WATER CORP - IL0855200	1	INADEQUATE PRESSURE TANK	700	12/15/1993
BALCITIS PUMP CORP - IL2015100	1	INADEQUATE STORAGE	150	1/1/2006
BRADLEY HEIGHTS SUBDIVISION - IL2015050	1	INADEQUATE PRESSURE TANK	192	9/13/1985
BUFFALO HOLLOW FARMS WATER ASSOCIATION – IL1430080	5	INADEQUATE PRESSURE STORAGE	44	6/16S/2008
CARROLL HEIGHTS UTILITIES COMPANY - IL0155200	1	INADEQUATE PRESSURE TANK	96	3/20/1981
CENTURY PINES APARTMENTS - IL0150020	1	INADEQUATE PRESSURE TANK	50	12/14/1990
CHANDLERVILLE - IL0170200	5	INAD & UNAPPROVED STORAGE	704	1/1/2006
CHESTERFIELD – IL1170200	5	TOTAL TRIHALOMETHANE	180	3/15/2007
COOKSVILLE - IL1130400	4	TTHM & HALOACIDIC ACIDS	300	9/15/2005
COYNE CNTR COOP - IL1615150	1	INADEQUATE PRESSURE TANK	150	12/15/1997
CROPSEY COMMUNITY WATER - IL1135150	4	INADEQUATE PRESSURE TANK	31	3/20/1981
CRYSTAL CLEAR WATER COMPANY - IL1115150	2	INADEQUATE PRESSURE TANK	885	9/16/1988
D L WELL OWNERS ASSOCIATION - IL0975380	2	INADEQUATE PRESSURE TANK	141	3/18/1983
DE KALB UNIV DVL CORP - IL0375148	1	INADEQUATE PRESSURE TANK	1050	12/16/1992
DEERING OAKS SUBDIVISION - IL1115200	2	INADEQUATE PRESSURE TANK	60	12/17/1982
DOVER - IL0110350	1	INADEQUATE PRESSURE TANK	169	5/25/1981



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<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
EAST END WATER ASSOCIATION - IL1610140	1	INADEQUATE STORAGE CAPACITY	40	3/15/2002
EAST MORELAND WATER CORPORATION - IL1975640	2	INADEQUATE PRESSURE TANK	135	3/15/1996
EASTMORELAND WTR SERVICE ASSN - IL1975600	2	INADEQUATE PRESSURE TANK	650	3/20/1981
EVERGREEN VILLAGE SUBDIVISION - IL1615310	1	INADEQUATE PRESSURE TANK	130	3/20/1981
FAHNSTOCK COURT SUBDIVISION - IL1435200	5	INADEQUATE PRESSURE TANK	35	5/25/1981
FAIR ACRES SUBDIVISION - IL1975680	2	INADEQUATE PRESSURE TANK	156	10/19/1981
FOREST LAKE ADDITION - IL0975500	2	INADEQUATE PRESSURE TANK	204	12/16/1983
FRWRD-SKYLINE PLANT - IL0895030	2	INADEQUATE PRESSURE TANK	700	9/19/1986
GARDEN STREET IMPROVEMENT ASSOCIATION - IL1975376	2	INADEQUATE PRESSURE TANK	54	9/15/1989
GOOD SHEPHERD MANOR - IL0915189	2	INADEQUATE PRESSURE TANK	25	3/17/1989
GREAT OAKS AND BEACON HILLS APARTMENTS - IL2015488	1	INADEQUATE PRESSURE TANK	2420	12/17/1982
HAWTHORN WOODS - IL0970450	2	INADEQUATE PRESSURE TANK	672	3/15/1995
HEATHERFIELD SUBDIVISION - IL0635150	2	INADEQUATE PRESSURE TANK	75	9/17/1982
HETTICK - IL1170500	5	TRICHALOMETHANE	182	6/15/2002
HIGHLAND SUBDIVISION - IL0895530	2	INADEQUATE PRESSURE TANK	60	9/16/1983
HILLVIEW SUBDIVISION - IL1975800	2	INADEQUATE PRESSURE TANK	100	3/15/1985
HOLY FAMILY VILLA - IL0310280	2	INADEQUATE PRESSURE TANK	200	9/15/1999
INGALLS PARK SUBDIVISION - IL1975880	2	INADEQUATE PRESSURE TANK	745	9/16/1983
LAKE LYNWOOD WATER SYSTEM - IL0735330	1	INADEQUATE PRESSURE TANK	75	8/31/1981
LARCHMONT SUBDIVISION - IL2015290	1	INADEQUATE PRESSURE TANK	64	6/17/1983
LARSON COURT APARTMENTS - IL1615728	1	INADEQUATE PRESSURE TANK	58	1/14/1982
LEGEND LAKES WATER ASSOCIATION - IL2015300	1	INADEQUATE PRESSURE TANK	283	3/14/1991
LIBERTY PARK HOMEOWNERS ASSOCIATION - IL0435600	2	INADEQUATE PRESSURE TANK	837	9/17/1992
LINDENWOOD WATER ASSOCIATION - IL1415300	1	INADEQUATE PRESSURE TANK	50	1/13/1982

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<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
LISBON NORTH, INC. - IL0631000	2	INADEQUATE PRESSURE TANK	30	9/14/1990
LONDON MILLS - IL0574620	5	INADEQUATE PRESSURE TANK	447	12/14/1984
LYNN CENTER - IL0735100	1	INADEQUATE PRESSURE TANK	100	3/15/1995
LYNNWOOD WATER CORPORATION - IL0995336	1	INADEQUATE PRESSURE TANK	110	3/18/1983
M C L W SYSTEM, INC. - IL1315150	1	INADEQUATE SOURCE	98	3/20/1981
MENARD RURAL WATER CO.(SWEETWATER SYSTEM)- IL1290010	5	INADEQUATE SOURCE CAPACITY	490	10/1/2007
MOUND PWD - IL1635050	6	INADEQUATE PLANT CAPACITY	2200	6/17/1996
NORTHWEST BELMONT IMPRV ASSN - IL0435900	2	INADEQUATE PRESSURE TANK	78	9/29/1981
OAK RIDGE SD - IL2035300	1	INADEQUATE PRESSURE TANK	240	3/20/1981
OPHIEM PWS - IL0735150	1	INADEQUATE PRESSURE TANK	100	6/18/1982
OSCO MUTUAL WATER SUPPLY COMPANY, INC. - IL0735200	1	INADEQUATE PRESSURE TANK	115	12/15/1989
PANAMA - IL0054720	6	TTHM, DBP, INAD STORAGE	380	1/1/2006
PATOKA - IL1210400	6	INADEQUATE PLANT CAPACITY	731	3/15/1997
POLO DR AND SADDLE RD SUBDIVISION - IL0437000	2	INADEQUATE PRESSURE TANK	90	12/17/1982
PORTS SULLIVAN LAKE OWNERS ASSOCIATION - IL0971160	2	INADEQUATE PRESSURE TANK	293	6/15/1999
PRAIRIE RIDGE ASSOCIATION - IL1115730	2	INADEQUATE PRESSURE TANK	130	10/1/2004
RIDGECREST NORTH SUBDIVISION - IL0635250	2	INADEQUATE PRESSURE TANK	60	9/16/1993
RIDGEWOOD LEDGES WATER ASSOCIATION - IL1615670	1	INADEQUATE PRESSURE TANK	370	3/20/1981
RIDGEWOOD SUBDIVISION - IL1977650	2	INADEQUATE PRESSURE TANK	250	6/18/1982
SHAWNITA TRC WATER ASSOCIATION - IL1977690	2	INADEQUATE PRESSURE TANK	125	9/17/1992
SILVIS HEIGHTS WATER CORP - IL1615750	1	INADEQUATE HYDRO STORAGE	1600	12/1/2003
SKYVIEW SBDV - IL0915526	2	INADEQUATE PRESSURE TANK	45	3/16/1990
ST CHARLES COMMSSION WELLFUND 3 - IL0437040	2	INADEQUATE PRESSURE TANK	30	12/15/1989

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<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
STRATFORD WEST APARTMENTS - IL1095200	5	INADEQUATE PRESSURE TANK	39	12/17/1982
SUBURBAN HEIGHTS SUBDIVISION - IL1615800	1	INADEQUATE PRESSURE TANK	82	12/16/1983
SUMMIT HOMEOWNERS ASSOCIATION - IL0975280	2	INADEQUATE PRESSURE TANK	39	3/16/1984
SUNNY HILL ESTATES SUBDIVISION - IL0735300	1	INADEQUATE PRESSURE TANK	525	6/15/2000
SUNNYLAND SUBDIVISION - IL1977730	2	INADEQUATE PRESSURE TANK	350	9/16/1983
SWEDONA WATER ASSOCIATION - IL1315200	1	INADEQUATE PRESSURE TANK	157	6/15/1990
SYLVAN LAKE 1ST SUBDIVISION - IL0977100	2	INADEQUATE PRESSURE TANK	210	6/14/1991
TOWNERS SUBDIVISION - IL0977250	2	INADEQUATE PRESSURE TANK	210	1/14/1982
UTILITIES INC HOLIDAY HILLS - IL1115350	2	INADEQUATE PRESSURE TANK	729	9/16/1983
UTL INC-LAKE HOLIDAY - IL0995200	1	INAD SOURCE & TREATMENT PLT	5460	9/15/1998
UTL INC-NORTHERN HILLS UTILITIES COMPANY - IL1775050	1	INADEQUATE PRESSURE TANK	500	3/15/1996
UTL INC-WALK-UP WOODS WATER COMPANY - IL1115800	2	INADEQUATE PRESSURE TANK	654	12/17/1982
WEST SHORE PARK SUBDIVISION - IL0977370	2	INADEQUATE PRESSURE TANK	528	6/15/2000
WEST SHORELAND SUBDIVISION - IL0977050	2	INADEQUATE PRESSURE TANK	189	6/14/1991
WIENEN ESTATES - IL0850030	1	INADEQUATE PRESSURE TANK	70	12/15/1997
WONDER LAKE WATER COMPANY - IL1115750	2	INADEQUATE PRESSURE TANK	1442	6/16/1994
YORK CENTER COOP - IL0437550	2	INADEQUATE PRESSURE TANK	240	6/15/1988

**WATER SYSTEMS REMOVED FROM PREVIOUS LIST**

**CROPSEY COMMUNITY WATER – IL1135150**

**HETTICK – IL1170500**

**\* DENOTES ADDED WATER SUPPLIES**

Environmental Register – October 2008

**Illinois Environmental Protection Agency**  
**Division of Public Water Supplies**  
**Critical Review List - Public Water Supplies**  
**OCTOBER 2008**

<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
ANDALUSIA - IL1610050	1	INADEQUATE PRESSURE TANK	1050	12/1/2003
ARENZVILLE - IL0170050	5	INADEQUATE PRESSURE TANK	408	3/14/2001
BEASON CHESTNUT PWD - IL1075150	5	INAD PLANT & SOURCE CAP	600	6/15/2004
BROWNING - IL1690050	5	INADEQUATE SOURCE CAPACITY	175	3/15/1998
CANTON – IL0570250	5	INSUFFICIENT TREATMENT CAPACITY	13932	3/15/2007
CASEYVILLE - IL1630250	6	INADEQUATE STORAGE	9900	10/1/2004
CEDARVILLE - IL1770050	1	EMERGENCY POWER	800	1/1/2006
COLLINSVILLE – IL1194280	6	INADEQUATE STORAGE	29500	1/1/2008
COLUMBIA - IL1330050	6	INADEQUATE PUMPING CAPACITY	8365	3/15/1998
CROPPERS 1ST 4TH AND 5TH ADDITION - IL1615250	1	UNDERSIZED WATERMANS	650	1/1/2006
DE PUE - IL0110300	1	INADEQUATE TREATMENT PLANT	1729	12/15/1993
* EDWARDSVILLE – IL1190250	5	INSUFFICIENT PLANT CAPACITY TO HANDLE PEAK SYSTEM WATER DEMAND	24,900	9/16/2008
EFFINGHAM – IL0490250	4	INADEQUATE DISINFECTION	12384	7/1/2006
ELIZABETH - IL0850150	1	LOW SYSTEM PRESSURE	682	6/15/1999
ELLIS GROVE – IL1570200	6	INSUFFICIENT STORAGE CAPACITY	720	10/1/2007
EXETER-MERRITT WATER COOP - IL1710010	5	INADEQUATE PRESSURE TANK	428	10/1/2004
GALENA - IL0850200	1	LOW SYSTEM PRESSURE	3640	6/15/1999
GRIGGSVILLE – IL1490300	5	INADEQUATE TREATMENT PLANT CAPACITY	1259	10/1/2006
HAMEL - IL1190450	6	INADEQUATE STORAGE CAPACITY	650	1/1/2006

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<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
HOLIDAY SHORES SD - IL1195110	6	INADEQUATE STORAGE CAPACITY	3192	1/1/2006
JOY - IL1310100	1	LOW SYSTEM PRESSURE	373	6/15/1999
LA MOILLE - IL0110500	1	INADEQUATE PLANT CAPACITY	750	6/15/1999
LA SALLE - IL0990300	1	INAD PLANT & SOURCE CAPACITY	9700	11/1/2004
LACON - IL1230100	1	UNDERSIZED WATERMANS	1979	1/1/2006
LEE - IL1034600	1	INADEQUATE PRESSURE TANK	350	10/1/2004
MALDEN - IL0110550	1	UNDERSIZED WATERMANS	370	1/1/2006
MARION - IL1990550	7	INADEQUATE SOURCE CAPACITY	14610	11/1/2001
MARYVILLE – IL1190750	5	INADEQUATE STORAGE	800	3/17/2008
MASON CITY - IL1250350	5	INADEQUATE STORAGE CAPACITY	2558	1/1/2006
MATHERSVILLE - IL1310200	1	INADEQUATE SYSTEM PRESSURE	793	9/13/2000
MC HENRY SHORES WATER COMPANY - IL1115020	2	LOW SYSTEM PRESSURE	1813	9/17/1992
MECHANICSBURG-BUFFALO WTR CMSN - IL1675150	5	INADEQUATE SOURCE CAPACITY	1350	3/15/1998
O'FALLON – IL1631100	2	INADEQUATE STORAGE CAPACITY	43596	10/1/2006
OTTER LAKE WTR CMSN ADGPTV – IL1175200	5	INADEQUATE PLANT CAPACITY	1251	7/1/2006
SCALES MOUND - IL0850400	1	LOW SYSTEM PRESSURE	400	9/15/1997
SENECA - IL0991050	1	INADEQUATE PLANT CAPACITY AND UNDERSIZED WATER MAINS	2053	6/15/1999
SOUTH HIGHWAY PWD - IL0775400	7	LOW SYSTEM PRESSURE & UNDERSIZED WATERMANS	8420	1/1/2006
STOCKTON - IL0850450	1	LOW SYSTEM PRESSURE	1871	6/15/1984
SUMNER - IL1010300	7	LOW SYSTEM PRESSURE	1481	12/13/1985
UTL INC-LAKE MARIAN WATER CORPORATION - IL0895200	2	INAD PRES STORAGE & LOW SYS PRES	924	9/14/1984

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<i>SYSTEM NAME</i>	<i>EPA RGN</i>	<i>NATURE OF PROBLEM</i>	<i>POP SERVED</i>	<i>LISTING DATE</i>
WALNUT HILL - IL1210600	6	LOW SYSTEM PRESSURE	1470	6/14/1985
WATERLOO - IL1330300	6	INADEQUATE STORAGE	7614	10/1/2004
WITT – IL1350850	5	INADEQUATE TREATMENT CAPACITY	991	3/17/2008
WORDEN - IL1191200	6	INADEQUATE STORAGE CAPACITY	906	1/1/2006

**WATER SYSTEMS REMOVED FROM PREVIOUS LIST**

\* DENOTES ADDED WATER SUPPLIES

**Restricted Status/Critical Review**

The Environmental Protection Act prohibits the Agency from issuing a construction permit that will cause or extend a violation. A construction permit to expand the distribution system cannot be granted when a water supply has a maximum contaminant level or treatment technique violation, an inadequate source of raw water supply, inadequate treatment plant capacity, finished water storage or distribution system pressure. A Restricted Status List is published quarterly in the Illinois Pollution Control Board Environmental Register to notify those persons considering expansion of a water supply distribution system of that status before large sums of money have been spent on items such as land acquisition, financing and engineering fees. A companion Critical Review List is published concurrently with the Restricted Status List and has the water supplies that are approaching a point where the supply could be placed on Restricted Status. A permit application from a supply on Critical Review will be examined carefully to ensure that the proposed construction will not cause a violation. Restricted Status and Critical Review are presented as a combined list with the status of the water supply denoted as either RS (Restricted Status) or CR (Critical Review). The current list reflects the status as of October 1, 2008. An asterisk, \*, beside the water supply indicates public water supplies that have been added to the Restricted Status/Critical Review list since the previous publication.

**Restricted Status List**

The Restricted Status List was developed to give additional notification to officials of public water supplies which are in violation of 35 Ill. Adm. Code, Subtitle F: Public Water Supplies, Chapter I or the Illinois Environmental Protection Act.

The Restricted Status List will include all Public Water Supplies for which the Agency has information indicating a violation of any of the following requirements: Finished water quality requirements of 35 Ill. Adm. Code, Part 604, Subparts B and C; maintenance of adequate pressure on all parts of the distribution system under all conditions of demand; meeting raw water quantity requirements of 35 Ill. Adm. Code 604.502; or maintenance of treatment facilities capable of providing water "assuredly adequate in quantity" as required by Section 18 of the Illinois Environmental Protection Act.

A public water supply on the Restricted Status List will not be issued permits for water main extensions, except for certain limited situations, or unless the supply has been granted a variance from the Illinois Pollution Control Board for the violation, or from permit issuance requirements of Section 39 of the Act.

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This list is continually being revised as new information becomes available, and therefore, specific inquiries as to the status of any public water supply should be directed to the Division of Public Water Supplies for final determination.

### **Critical Review List**

The Critical Review List was developed to give additional notification to officials of public water supplies which may be close to being in violation of 35 Ill. Adm. Code, Subtitle F: Public Water Supplies, Chapter I or the Illinois Environmental Protection Act.

A supply will be placed on the Critical Review List when Agency records indicate that it is approaching any of the violations that would place it on the Restricted Status List.

This list is continually being revised as new information becomes available, and therefore, specific inquiries as to the status of any public water supply should be directed to the Division of Public Water Supplies for final determination.

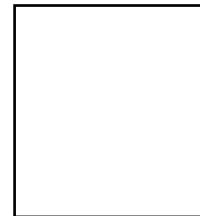
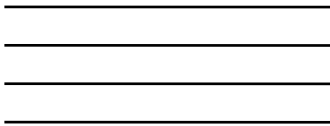




The Illinois Pollution Control Board is an independent five-member board that adopts environmental control standards, rules on enforcement actions, and other environmental disputes for the State of Illinois.

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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Illinois Pollution Control Board  
Environmental Register Coordinator  
1021 N. Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274