
Environmental Register

February 2010 - Number 668

The Environmental Register is a Publication of the Illinois Pollution Control Board

G. Tanner Girard, Acting Chairman

Board Members:

Thomas E. Johnson, Andrea S. Moore, Gary Blankenship, and Carrie Zalewski

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

During February, the Board continued to make progress in several rulemaking dockets. Below, I've summarized recent activity. As always, information about these proceedings is available through the Clerk's Office Online (COOL) at our website at www.ipcb.state.il.us.

R10-10 In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emission from Group III Consumer and Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 218 and 219. On October 23, 2009, the Illinois Environmental Protection Agency (IEPA) filed this proposal under provisions including the "fast-track" rulemaking authority of Section 28.5 of the Act. The IEPA's proposal responds to control techniques guidelines (CTGs) issued by the United States Environmental Protection Agency (USEPA) for the following Group III Consumer and Commercial Product Categories: paper, film, and foil coatings; metal furniture coatings; and large appliance coatings. On February 4, 2010, the Board adopted its second-notice opinion and order. The Joint Committee on Administrative Rules (JCAR) is scheduled to review the Board's second notice rule language on March 9, 2010.



R09-21 Ameren Ash Pond Closure Rules (Hutsonville Power Station) Proposed: 35 Ill. Adm. Code 840.101 through 840.144. On May 19, 2009, Ameren Energy Generating Company (Ameren) filed a proposal for site-specific regulation addressing the closure of Ash Pond D at its Hutsonville Power Station. On September 29, 2009, the Board held a hearing on the proposal. On January 7, 2010, after conclusion of the post-hearing comment period, the Board adopted an order directing Ameren to submit additional information. On February 22, 2010, Ameren filed additional information and Ameren also filed a supplemental request on February 26, 2010.

R08-9 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. During the month of February, the Board received a number of filings stemming from a January 7, 2010 motion for a hearing on the impact of U.S. Supreme Court litigation relating to Asian Carp and from a February 3, 2010 motion by environmental groups to sever this rulemaking docket, open a subdocket, and proceed to a decision on issues relating to recreational uses. After response times have run, the Board expects to respond to the motions in March.

R06-20(A) In the Matter of: Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 739, 808, 809. On February 18, 2010, the Board adopted a final order adopting amendments to used oil management standards and special waste regulations. The amendments exempt from the manifesting requirements of Parts 808 and 809 used oil defined by and managed in accordance with Part 739 and specific mixtures of used oil with other materials. Regarding those specific mixtures, the Board amended Part 739 used oil tracking requirements to include information required by a manifest in tracking documents. The R06-20 rulemaking docket remains open because on December 17, 2009, the Board opened subdocket B to add definitions to Sections 739.100, 808.110, and 809.103. The reference to the first notice publication for subdocket B is: Proposed Amendment of the Board's Special Waste Regulations Concerning Used Oil: 35 Ill. Adm. Code 739, 808, 809, R06-20(B) (Dec. 17, 2009); see 35 Ill. Reg. 1257, 1267, 1275 (Jan. 22, 2010).

Thank you for your interest in the Board's rulemaking activities. Please visit our website (www.ipcb.state.il.us) for more information.

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

Inside This Issue:

APPELLATE UPDATE	P. 1
RULEMAKING UPDATE	P. 1
BOARD ACTIONS	P. 3
NEW CASES	P. 6
BOARD CALENDAR	P. 7

Appellate Update

Second District Dismisses Untimely Appeal for Lack of Jurisdiction in *John Tarkowski v. Illinois Pollution Control Board and Illinois Property Tax Appeal Board*, No. 2-09-1186 (2d Dist. Feb. 17, 2010)(Board’s order in PCB 09-62 (final order of May 21, 2009, as reaffirmed on reconsideration July 23, 2009))

On February 17, 2010, in a one paragraph final order standing as the court’s mandate, the Second District Appellate Court dismissed, for lack of jurisdiction, a November 17, 2009 *pro se* appeal of a Board order, among other things. *John Tarkowski v. Illinois Pollution Control Board and Illinois Property Tax Appeal Board*, No. 2-09-1186 (2d Dist. Feb. 17, 2010). In the portion of the appeal involving action by the Board, John Tarkowski appealed the Board’s dismissal of his January 2009 *pro se* petition for review of a July 2006 “seal order” issued by the Illinois Environmental Protection Agency (IEPA). The seal order, issued under Section 34 of the Environmental Protection Act (Act), 415 ILCS 5/34 (2008) concerned certain property owned by Tarkowski in Wauconda, Lake County. *John Tarkowski v. IEPA*, PCB 09-62 May 21, 2009, as reaffirmed on reconsideration July 23, 2009). The Board dismissed the petition for review as a result of Tarkowski’s failure to provide proof of service of the petition on the IEPA, despite multiple orders to do so.

Before the Appellate Court, the Board successfully argued that Tarkowski’s November 17, 2009 appeal of the Board’s July 23, 2009 was untimely filed. Under Section 41(a) of the Act, 415 ILCS 5/41(a) (2008), any appeal to the appellate court was required to be filed on or before September 2, 2009. As the time for filing is jurisdictional, the Board argued that the appeal should be dismissed because Tarkowski filed his petition for review 76 days late.

Rulemaking Update

Board Timely Adopts Second Notice Fast-Track Rule Proposal *In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emission From Group III Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 281 and 219, R10-10 (Feb. 5, 2010)*

On February 5, 2010, the Illinois Pollution Control Board adopted for second notice review by the Joint Committee on administrative rules amendments in the rulemaking docketed as *In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emission From Group III Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 281 and 219 (R10-10)*. This rulemaking was filed on October 23, 2009 by the Illinois Environmental Protection Agency (IEPA) pursuant to the “fast-track” rulemaking provisions at Section 28.5 of the Environmental Protection Act (Act), which sets a tight timetable for Board hearing and action. The Board’s timely-adopted second notice proposal includes changes requested in the IEPA’s December 28, 2009 motion to amend the proposal.

The proposed volatile organic material (VOM) emission controls are in response to control techniques guidelines (CTG) issued by the United States Environmental Protection Agency (USEPA) for the following Group III consumer and Commercial Product Categories: paper, film, and foil coatings; metal furniture coatings; and large appliance coatings.

On November 5, 2009, the Board adopted its first-notice opinion and order in this proceeding without commenting on the substantive merits of the proposal. The Board held hearings on December 9, 2009 and January 10, 2010.

Environmental Register – February 2010

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained for \$.75 per page from the Clerk's office, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board Adopts Final Rules In the Matter of: Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 739, 808, and 809 R06-20, Docket A (Feb. 18, 2010)

On February 18, 2010, the Illinois Pollution Control Board adopted final rules amending its special waste regulations and corresponding used oil management provisions. Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 808, and 809, (R06-20, Docket A (Feb. 18, 2010)).

The amendments exempt from the manifesting requirements of Parts 808 and 809 both used oil defined by and managed in accordance with Part 739 and specific mixtures of used oil and other materials. 35 Ill. Adm. Code Parts 808, 809, and 739. The Joint Committee on Administrative Rules voted a certificate of no objection to the rules at its February 9, 2010 meeting. The adopted amendments become effective immediately upon their filing by the Board with the Secretary of State, and will soon be published in the *Illinois Register*.

The docket was opened in response to a regulatory proposal filed by NORA, formally known as the National Oil Recycling Association, on December 13, 2005. After three hearings on the NORA proposal, on August 20, 2009, the Board adopted its own second first notice proposal. On December 17, 2009, the Board adopted its second notice opinion and order. Additionally, in response to public comments, the Board opened a subdocket B in order to add definitions to Sections 739.100, 808.110, and 809.103.

In R06-20 Docket A, the Board adopted regulations exempting from the manifesting requirements of Parts 808 and 809 the following: (1) used oil, defined by and managed in accordance with Part 739; (2) mixtures of used oil and hazardous waste, both mixed and generated by a conditionally exempt small quantity generator, provided that mixture contains more than 50 percent used oil by volume or weight; (3) used oil containing characteristic hazardous waste, with a British Thermal Unit (BTU) per pound content greater than 5000 prior to mixture, where the characteristic (*e.g.* ignitability) has been extinguished in the resulting mixture, and both the used oil and the characteristic hazardous waste has been generated and mixed by the same generator, and which contain more than 50 percent of used oil by weight or volume; (4) mixtures of used oil and fuels or other fuel products; and (5) used oil contaminated by or mixed with nonhazardous wastewater, both generated by the same generator and where the mixture results from use or unintentional contamination. In addition, the Board amended the Part 739 tracking requirements to include information required by a manifest in tracking documents.

Still-pending R06-20 Docket (B) is not addressed in the February 18, 2010 final opinion and order in R06-20 Docket A. First notice of the R06-20 Docket (B) proposed rules was published at 34 Ill. Reg. 1257 (Jan. 22, 2010). Accordingly, the Board is accepting public comments on the proposed rules through March 8, 2010, when the Administrative Procedure Act's 45-day first notice public comment period closes. The Board will then take additional appropriate action in R06-20 Docket B.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained for \$.75 per page from the Clerk's office, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board Actions

February 4, 2010
Chicago, Illinois

Rulemakings

R 10-10 In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions From Group III Consumer & Commercial Products: Proposed Amendments to 35 Il. Adm. Code 218 and 219 – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s air pollution control regulations. Air 5-0

Administrative Citations

AC 09-43 IEPA v. The Blickhan Family Corporation, Inc. & Blick's Construction Co. Inc – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Adams County facility, the Board found that respondents had violated Section 21(p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(3) (2006)) and ordered respondent to pay a civil penalty of \$1,500. The Board also granted the parties’ joint motion to dismiss respondents’ petition for review. To effectuate the parties’ intent that respondents pay a total civil penalty of \$1,500, the Board on its own motion, dismissed the alleged violation of Section 21(p)(1) and (p)(7) of the Act. 5-0

Adjudicatory Cases

PCB 05-193 Vernon and Elaine Zohfeld v. Bob Drake, Wabash Valley Service Company, Michael J. Pfister, Noah D. Horton, and Steve Kinder – The Board granted complainants’ motion for voluntary dismissal of this enforcement action concerning a Hamilton County site. 5-0
A-E,
Citizens

PCB 09-31 People of the State of IL v. James Buysee, d/b/a J & B Landscaping – In this water enforcement action concerning a Rock Island 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) (2008)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$14,300.00, and to cease and desist from further violations. 5-0
W-E

PCB 09-87 Dickerson Petroleum, Inc. v. IEPA 5-0
PCB 10-5 Dickerson Petroleum, Inc. v. IEPA – The Board remanded these consolidated underground storage tank appeals involving a St. Clair County facility, to the Illinois Environmental Protection Agency (IEPA) and directed the IEPA to issue determinations consistent with this order with applicable statutory and regulatory requirements within 30 days. The Board declined to exercise its discretion to direct the IEPA to reimburse petitioner’s attorney fees from the UST Fund. UST Appeal
(cons.)

PCB 10-22 People of the State of Illinois v. Western Sand & Gravel Company, LLC – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement 5-0
L -E

Environmental Register – February 2010

action involving a LaSalle County facility, the Board ordered publication of the required newspaper notice.

PCB 10-26	<u>ConocoPhillips Company/ Warrenville-Phillips v. IEPA</u> – The Board dismissed this petition for review because of petitioner’s failure to file an amended petition for review as directed by the Board’s order dated November 5, 2009.	5-0 UST Appeal
PCB 10-53	<u>Dynergy Midwest Generation, Inc. (Wood River Power Station) v. IEPA</u> – The Board granted petitioner’s motion for a stay of the permit’s contested conditions.	5-0 P-A, Water
PCB 10-54	<u>Zervos Three, Inc. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Cook County facility.	5-0 UST Appeal
PCB 10-55	<u>The Premcor Refining Group, Inc. v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Madison County facility. No action was taken on petitioner’s motion for stay of specified conditions in the permit.	5-0 P-A, Air
PCB 10-56	<u>Gervase Buehne - St. Rose v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s (IEPA) recommendation, the Board found and certified that specified facilities of Gervase Buehne located in Clinton County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)). No action was taken on the IEPA’s recommendation to deny certification of the walls and roof of the freestall barns and the solid concrete floors in the freestall barns as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2008)) until the appeal time has expired.	5-0 T-C, W
PCB 10-57	<u>Mark Dunn - Aledo v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Mark Dunn located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).	5-0 T-C, W
PCB 10-58	<u>George Harrell - Stronghurst v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of George Harrell located in Henderson County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).	5-0 T-C, W
PCB 10-59	<u>Pitch Co III, Inc. - Montrose v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Pitch Co III, Inc. located in Jasper County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).	5-0 T-C, W
PCB 10-60	<u>JD Pork, LLC - LaHarpe v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of JD Pork, LLC located in Hancock County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).	5-0 T-C, W

**February 18, 2010
Chicago, Illinois**

Rulemakings

R 06-20(A) In the Matter of: Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 739.808.809 – The Board adopted a final opinion and order in this rulemaking to amend the Board's regulations concerning special waste manifests and tracking requirements as they pertain to used oil recycling. 4-0
Land

Adjusted Standards

AS 09-4 In the Matter of: Petition of Royal Fiberglass Pools, Inc. for an Adjusted Standard from 35 IAC 215.301 – The Board granted an adjusted standard from volatile organic material limitations to Royal Fiberglass Pools for its swimming pool manufacturing facility located in Jefferson County, subject to conditions. 4-0
Air

Administrative Citations

AC 10-5 County of Jackson v. Gary Clover – The Board dismissed respondent's petition for review for failure to file an amended petition. The Board found that this Jackson County respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21 (p)(1), (p)(3), and (p)(7) (2008)). Because there were three violations of Section 21(p), and the record indicates that two of them are second or subsequent adjudicated violations (*see* County of Jackson v. Gary Clover, AC 04-37 (Mar. 18, 2004)), the Board ordered respondent to pay a civil penalty of \$7,500. 4-0

AC 10-12 IEPA v. Landers' Children Family, LLC – The Board accepted for hearing respondent's petition for review of this administrative citation involving a Sangamon County facility. 4-0

AC 10-14 Macon County Solid Waste Management Dept. v. Veolia ES Valley View Landfill (File No. 2010-002-AC) – The Board granted complainant's motion for withdrawal of this administrative citation and closed the docket. 4-0

AC 10-15 IEPA v. David Antrim – The Board accepted for hearing respondent's petition for review of this administrative citation involving an Effingham County facility. 4-0

Adjudicatory Cases

PCB 07-133 People of the State of Illinois v. Thomas P. Mathews – In this water enforcement action concerning a McHenry 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) (2008)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of 4-0
W -E

Environmental Register – February 2010

\$5,000.00 and to cease and desist from further violations.

PCB 10-11	<u>Wisconsin Electric Power Company d/b/a We Energies v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal.	4-0 P-A, Land
PCB 10-19	<u>People of the State of Illinois v. Marathon Tire Service of Olney, Inc.</u> – In this land enforcement action concerning a Richland 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) (2008)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$7,000.00 and to cease and desist from further violations.	4-0 L-E
PCB 10-61	<u>People of the State of Illinois v. Freeman United Coal Mining Company, LLC, and Springfield Coal Company, LLC</u> – The Board accepted for hearing this water enforcement action involving a site located near Industry in McDonough and Schuyler Counties.	4-0 W-E

New Cases

February 4, 2010 Board Meeting

10-54 Zervos Three, Inc. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Cook County facility.

10-55 The Premcor Refining Group, Inc. v. IEPA – The Board accepted for hearing this permit appeal involving a Madison County facility. No action was taken on petitioner’s motion for stay of specified conditions in the permit.

10-56 Gervase Buehne - St. Rose v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s (IEPA) recommendation, the Board found and certified that specified facilities of Gervase Buehne located in Clinton County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)). No action was taken on the IEPA’s recommendation to deny certification of the walls and roof of the freestall barns and the solid concrete floors in the freestall barns as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2008)) until the appeal time has expired.

10-57 Mark Dunn - Aledo v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Mark Dunn located in Mercer County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).

10-58 George Harrell - Stronghurst v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of George Harrell located in Henderson County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).

10-59 Pitch Co III, Inc. - Montrose v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Pitch Co III, Inc. located in Jasper County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).

10-60 JD Pork, LLC - LaHarpe v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of JD Pork, LLC located in Hancock County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)).

Environmental Register – February 2010

AC 10-14 Macon County Solid Waste Management Dept. v. Veolia ES Valley View Landfill (File No. 2010-002-AC) – The Board accepted an administrative citation against this Macon County respondent.

AC 10-15 IEPA v. David Antrim – The Board accepted an administrative citation against this Effingham County respondent.

AC 10-16 County of Ogle v. Richard Haan, Jr. – The Board accepted an administrative citation against this Ogle County respondent.

February 18, 2010 Board Meeting

10-61 People of the State of Illinois v. Freeman United Coal Mining Company, LLC, and Springfield Coal Company, LLC – The Board accepted for hearing this water enforcement action involving a site located near Industry in McDonough and Schuyler Counties.

Calendar

3/4/10 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
3/18/10 11:00 AM	Illinois Pollution Control Board Meeting		VIDEOCONFERENCE James R. Thompson Center 100 W. Randolph Street Chicago And 1021 N. Grand Avenue East Pollution Control Board Hearing Room 1244 N Springfield
4/1/10 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
4/15/10 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
4/22/10 9:00 AM	PCB 10-33	<u>Cancer Treatment Centers of America, Inc. v. IEPA</u>	Village Hall 2nd Floor Board Room 118 West Cook Libertyville
5/5/10 10:00 AM	AC 09-55	<u>IEPA v. Jason D. & Angela R. Marrs d/b/a Marrs Hauling Landscaping & More (IEPA File No. 130-09-AC)</u>	Urbana City Building Council Chambers 400 S. Vine St. Urbana
5/6/10 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago

Environmental Register – February 2010

<p>5/11/10 10:00 AM</p>	<p>PCB 07-45</p>	<p><u>People of the State of Illinois v. General Waste Services, Inc., an Illinois Corporation</u></p>	<p>Illinois Pollution Control Board Hearing room 1021 North Grand Avenue East, North Entrance Springfield</p>
<p>5/20/10 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>James R. Thompson Center 100 W. Randolph Street Chicago</p>

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

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

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