
Environmental Register

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

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Letter from the Chairman

Governor Pat Quinn recently signed several bills of interest to the Board, regulated entities, and citizens. Five bills of particular interest are summarized below. You can obtain more information about these and other Public Acts through the General Assembly's Web site at www.ilga.gov.

Public Act 96-0908 (Senate Bill 3320), effective June 8, 2010, amends the Act as follows: providing, for the purpose of payment from the Underground Storage Tank Fund (UST Fund), that corrective action activities required to meet minimum requirements include compliance with certain provisions related to the Tiered Approach to Corrective Action Objective rules; authorizing payment from the UST Fund of certain costs incurred after the issuance of a No Further Remediation (NFR) Letter; and providing that, if a change in State or federal law requires additional remedial action in response to releases for which NFR Letters have been issued, then the IEPA shall propose statutory amendments to allow owners and operators to perform the additional remedial action and seek payment from the UST Fund for the remediation.

Public Act 96-0934 (Senate Bill 2812), effective June 21, 2010, amends the Act by providing that, if requested by the applicant, the Board may stay the effectiveness of certain final Agency actions. The Board shall stay the effectiveness of all contested conditions of a Clean Air Act Permit Program (CAAPP) permit, if requested by the applicant. The Board is also authorized to stay the effectiveness of any or all uncontested conditions of a CAAPP permit if the Board determines that the uncontested conditions would be affected by the review of the contested conditions. The Public Act also provides that, if the Board stays any, but not all, conditions of a CAAPP permit, then the applicant for that permit shall continue to operate in accordance with "any" related terms and conditions of any other applicable permits until final Board action in the review process. If the Board stays all conditions, then the applicant shall continue to operate in accordance with "all" related terms and conditions of any other applicable permits until final Board action in the review process.

Public Act 96-1295 (Senate Bill 3346), effective July 26, 2010, creates the Mercury Thermostat Collection Act. The Act requires thermostat manufacturers to establish and maintain a program for collection and proper management of out-of-service mercury thermostats. The Act also authorizes: setting statewide goals for collecting mercury thermostats taken out of service; requiring contractors, thermostat wholesalers, thermostat manufacturers, and thermostat retailers participating in the program to handle and manage out-of-service mercury thermostats consistent with Board rules regarding disposal of universal waste; allowing appeal to the Board of IEPA actions disapproving or modifying collection programs; and repealing the Mercury Thermostat Collection Act on January 1, 2021.

Public Act 96-1366 (Senate Bill 3070), effective July 28, 2010, amends the Act by providing that, if a carcinogenic volatile organic compound is detected in the finished water of a community water system at a certain level, and if the IEPA issues a notice under a separate provision of the Act, then the owner or operator of that system must submit a response plan to the IEPA. Public Act 96-1366 also requires the IEPA, when approving, modifying, or denying a plan, to take into account the technical feasibility and economic reasonableness of the plan and any modification. Finally, Public Act 96-1366 provides that IEPA disapproval or modification of a plan or report may be appealed to the Board.

Public Act 96-1416 (Senate Bill 3721), effective July 30, 2010, amends the Act by providing that "uncontaminated soil" means soil that does not contain contaminants in concentrations that pose a threat to human health, safety, and the environment. The Board is authorized to adopt rules specifying the maximum concentration of contaminants that may be present in uncontaminated soil. Public Act 96-1416 also provides that uncontaminated soil is not waste. The Board is authorized to adopt rules for using uncontaminated soil and clean construction or demolition debris (CCDD) as fill material at CCDD fill operations. Owners and operators of CCDD fill operations and uncontaminated soil fill operations must meet certain requirements. In addition, the IEPA is authorized to collect a fee from the owners and operators of CCDD fill operations for accepted CCDD and uncontaminated soil.

Please visit the Board's website (www.ipcb.state.il.us) for more information on Board activities.

Sincerely,



Dr. G. Tanner Girard

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Rulemaking Update

Board Proposes for First Notice Rules to Establish the Recreational Use Designations for the Chicago Area Waterway System, R08-9(A), and Agreed to Hold Additional Hearings in Subdocket B

The Illinois Pollution Control Board, on August 5, 2010, proposed rules for first-notice that establish recreational use designations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR). The Board also agreed to hold additional hearings concerning effluent disinfection issues.

On October 26, 2007, the Illinois Environmental Protection Agency (IEPA) proposed to update the Board's rules for Secondary Contact and Indigenous Aquatic Life Uses to protect the existing uses of the CAWS and the LDPR. The original proposal was docketed as In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304 (R08-09). The Board held 37 hearings on the IEPA proposal as filed on March 18, 2010. The Board granted a motion to sever the original docket into four subdockets, to allow for orderly hearing and timely decision-making concerning various aspects of the original proposal. Subdocket A concerns recreational uses. Subdocket B concerns effluent disinfection. Subdocket C concerns proposed aquatic life uses. Subdocket D concerns water quality standards and criteria to meet aquatic life uses.

Subdocket A First Notice Proposal. The recreational use designations the Board sent to first notice in Subdocket A on August 5, 2010 are the IEPA-proposed designations. The Board found that the record demonstrates that CAWS and LDPR cannot attain at this time, the federal Clean Water Act recreation use goal of recreating on, and in, the water. However, the record provides clear evidence of existing recreational uses in the CAWS and LDPR that must be protected. Therefore, the Board adopted at first notice a proposal that individual reaches of the CAWS and LDPR will be designated either as "incidental contact recreation," "non-contact recreation," or "non-recreational" waters.

The Subdocket A first notice proposal is scheduled for publication in 35 Ill. Reg. 12521-12533 on August 27, 2010. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period, during which anyone may file a public comment with the Board. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R08-09 (Subdocket A), 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. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Subdocket B Additional Hearings. On August 5, 2010, the Board also granted a motion by the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) to hold additional hearings in Subdocket B. The additional hearings will focus on the final report on the MWRDGC Chicago Health Environmental Exposure and Recreation Study (CHEERS). The IEPA, the People of the State of Illinois and the Environmental Law and Policy Center, Friends of Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands opposed the request for additional hearings. The Board directed the hearing officer to schedule hearings on the CHEERS final report and to schedule final comments in this matter expeditiously, but in no event to conclude later than December 31, 2010.

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By an August 31, 2010 order, the hearing officer set hearings in Subdocket B as follows:

October 19, 2010
9:00 a.m.
JRTC Auditorium
James R. Thompson Center
100 W. Randolph
Chicago, IL

October 20, 2010
9:00 a.m.
Room C-500
Michael A. Bilandic Building
160 N. LaSalle
Chicago, IL

The order also stated that one Subdocket A issue was being dovetailed into these hearings: to fulfill the statutory obligations under Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b)(2008)). Section 27(b) of the Act requires the Board to request the Department of Commerce and Economic Opportunity to conduct an economic impact study on certain proposed rules prior to adoption of those rules. The Board sent to DCEO the request on August 11, 2010. Any DCEO study, or request not to perform a study, can be addressed at the October hearings. The hearing officer order also addressed other procedural issues, including deadlines for the pre-filing of testimony.

Opinions and orders of the Board and hearing officer, 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

For more information contact Marie Tipsord at (312)-814-4925 or email at tipsorm@ipcb.state.il.us.

Board Proposes for Public Comment Amendments to Illinois Drinking Water Regulations that are “Identical In Substance” to Federal Regulations, R10-1/R10-17/R11-6 (cons.) (Aug. 5 and 19, 2010)

The Illinois Pollution Control Board, on August 5, 2010, proposed amendments to the Illinois regulations that are “identical in substance” to drinking water regulations adopted by the United States Environmental Protection Agency (USEPA) during three six-month update periods that include all of 2009 and the first half of 2010. The rulemaking, which consolidates three dockets, is now captioned as SDWA Update, USEPA Amendments (January 1, 2009 through June 30, 2010) R10-1/R10-17/R11-6 (cons.). In a supplemental opinion and order of August 19, 2010, the Board proposed additional rule text and requested comment thereon.

The amendments involved in this consolidated docket respond to five USEPA actions. The amendments add to the Illinois drinking water regulations (1) USEPA-adopted analytical methods changes and USEPA-approved alternative analytical methods, (2) a limited series of USEPA corrections to USEPA's January 4, 2006 Stage 2 Disinfection and Disinfectant By-Products Rule, and (3) USEPA's new October 19, 2009 Aircraft Drinking Water Rule. (On August 19, 2010, the Board issued a supplemental opinion and order seeking comment on the electronic reporting requirements imposed on air carriers by USEPA's new Aircraft Drinking Water Rule.)

The Board will cause the proposed amendments to be published in the *Illinois Register* and will hold the docket open to receive public comments for 45 days after the date of publication. The Board will then adopt and file the final rules, taking into account any public comments received. By order of June 17, 2010, the Board extended the deadline for the final adoption and filing of these rules until November 15, 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 Michael McCambridge at (312)-814-6924 or email at mcambm@ipcb.state.il.us.

Board Adopts Procedural Rule Authorizing Video-Conference Hearings in Identical In Substance Rulemakings, R10-18

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The Board, on August 5, 2010, adopted an amendment to the Board's procedural rules allowing videoconference hearings in rulemaking proceedings pursuant to Section 7.2 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 (2008)). The rulemaking is docketed as In the Matter of: Proposed Amendment to Procedural Rules on Hearings in Identical in Substances Rulemakings (R10-18).

The Board has the ability to videoconference between the Chicago and Springfield Offices of the Board. The Board determined that holding hearings in identical in substance rulemakings via videoconference will allow more economical participation by the public and government officials without hampering the proceedings. That is because these hearings are typically held only concerning amendments of the definition of volatile organic materials to satisfy federal requirements. The hearings are brief, with little or no testimony placed in the record. On January 21, 2010, the Board proposed the rule amendment for first notice and invited public comment. *See* 34 Ill. Reg. 2422 (Feb. 16, 2010). Only one public comment was filed: the Illinois Environmental Protection Agency wrote in support of the change on February 24, 2010. On July 13, 2010, the Joint Committee on Administrative Rules issued a Certificate of No Objection to the rule.

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For more information contact Marie Tipsord at (312) 814-4925 or email at tipsorm@ipcb.state.il.us.

Board Dismisses Six Reserved Identical in Substance Rulemaking Dockets as Unnecessary: R 11-1, R11-3, R11-4, R11-5, R11-6, and R11-7

Every six months the Board reserves a series of dockets for adoption of Board rules under Section 7.2 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 (2008)) "identical in substance" to any rules adopted by the United States Environmental Protection Agency (USEPA) to implement various programs. On August 5, 2010, the Board dismissed as unnecessary the following dockets reserved to consider rules adopted by the USEPA during the period of January 1, 2010 through June 30, 2010. AS USEPA did not amend its rules during the update period, no amendments are needed to Board rules.

RCRA Subtitle B Update (R11-1) Section 22.40(a) relates to municipal solid waste landfill (MSWLF) regulations that USEPA adopted to implement Subtitle D of the Resource Conservation and Recovery Act of 1976 (42 U.S.C §§ 6941-6949 (2006); RCRA Subtitle D). USEPA has codified the federal MSWLF rules as 40 C.F.R. 258.

UST Update (11-3) Section 22.4(d) relates to underground storage tank (UST) regulations promulgated by the USEPA pursuant to Section 9003 of the federal Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. §§ 6991b (2006)) to implement Subtitle I of RCRA (42 U.S.C. §§ 6991 *et seq.* (2006)), with certain limitations. USEPA has codified its UST regulations at 40 C.F.R. 281 through 283.

Wastewater Pretreatment Update (R11-4) Section 13.3 relates to wastewater pretreatment regulations that the USEPA adopted to implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2006)). USEPA has codified the federal wastewater pretreatment rules as 40 C.F.R. 400 through 499.

Definition of VOM Update (11-5) Section 9.1(e) of the Act (415 ILCS 5/9.1(e) (2008)) relates to the definition of "volatile organic material" (VOM) and those compounds that USEPA has found to be exempted from regulation under state implementation plans for ozone due to negligible photochemical reactivity. USEPA has codified these exemptions as part of its definitions at 40 C.F.R. 51.100(s).

UIC Update (R11-7) Section 13(c) relates to underground injection control (UIC) regulations that USEPA adopted to implement provisions of the Safe Drinking Water Act (42 U.S.C. §§ 300h *et seq.* (2006)). USEPA has codified its UIC regulations at 40 C.F.R. 144 through 148.

Board Adopts First Notice Opinion and Order to Correct Technical Error in Rules to Control Volatile Organic Material Emissions, R10-8(A)

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On August 19, 2010, the Illinois Pollution Control Board adopted for first-notice a proposal docketed as In the Matter of: Reasonably Available Control Technology (RACT) for volatile Organic Material Emissions From Group II consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219, R10-08(A). The Board took this action without commenting on the merits of the proposal, in response to the Illinois Environmental Protection Agency (IEPA) desire for a speedy correction of a technical error in recently adopted rules.

In adopting regulations in docket R10-8 on June 17, 2010, the Board held subdocket (A) open for 45 days in order to address issues raised in correspondence received by the Board on June 7, 2010 from the Flexible Packaging Association (FPA). FPA did not file a timely rulemaking proposal. On July 29, 2010, the IEPA filed a “Motion for Leave to File in Subdocket A, or Alternatively, Motion to Open Subdocket B” to correct a technical error. The IEPA argues that the error makes compliance with the rules “impossible” and that there is no disagreement that an amendment is necessary. The Board granted the IEPA motion, proposing the correction for first notice in the *Illinois Register*, currently scheduled for 35 Ill. Reg. 13020 (Sept. 10, 2010).

Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period, during which anyone may file a public comment with the Board. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R10-08(A), 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. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629

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

Appellate Update

Third District Affirms Board’s Grant of Hazardous Waste Delisting in *Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency*, No. 3-09-0120, (3rd Dist. July 12, 2010)(Board’s order in AS 08-10 (Jan. 8, 2009)

On July 12, 2010, the Third District Appellate Court issued its decision affirming the Board’s order in the case captioned *Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency*, No. 3-09-0120 (Jul. 12, 2010). The order affirmed was the Board’s grant, by way of an adjusted standard, of a hazardous waste delisting to Peoria Disposal Company (PDC) in the case captioned before the Board as *In the Matter of: RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company*, AS 8-10 (Jan 8, 2009).

In the Third District appellate court’s July 12, 2010 ruling, two justices voted to affirm the Board; one justice voted to reverse the Board. Justice Lytton wrote the court’s 17-page order to affirm the Board, finding that the citizen group appellants had standing to appeal the adjusted standard (PDC and the Board argued against standing), but affirming the Board on the merits. Justice Carter’s 6-page special concurrence agreed with the judgment to affirm, but would have dismissed the appeal solely for lack of standing. In a 17-page opinion, Justice Wright concurred in part (the appellants have standing) and dissented in part (the Board erred on the merits).

The court’s ruling was originally an unpublished order, having no precedential effect, issued under Illinois Supreme Court Rule 23 (166 Ill.2d R.23). But, by order of August 24, 2010, the appellate court granted the appellants’ motion to publish the July 12, 2010 order, which means the order now has full precedential effect.

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Appellants filed a now-pending petition for leave to appeal in the Illinois Supreme Court Sierra Club and Peoria Families Against Toxic Waste v. Illinois Pollution Control Board, Peoria Disposal Company, Illinois Environmental Protection Agency, and United States Environmental Protection Agency, No. 110882. The sole basis of contention is the claim that the Board failed to consider the factors set forth in Section 27(a) of the Environmental Protection Act, 415 ILCS 5/27(a)(2008). PDC has filed a response in opposition to the petition. The parties await the petition's disposition.

The Board's AS 8-10 Decision

The Board's January 8, 2009 decision granting PDC the delisting it requested totals 103 pages, and will not be summarized in detail below. But, some basic information is necessary to understand the summary of the appellate decision.

A delisting is a regulatory proceeding through which a generator of a listed RCRA hazardous waste can demonstrate that the generator's specific waste, after treatment, no longer poses a hazard and therefore can be handled as a non-hazardous waste. By rule, the Board considers requests for delisting through the adjusted standard petition process. The effect of the Board and Court's decisions is to exclude from hazardous waste regulation under the federal Resource Conservation and Recovery Act (RCRA) the residue generated by PDC's treatment of electric arc furnace (EAF) dust (listed as hazardous waste K061 under RCRA) at the company's waste stabilization facility (WSF) in Peoria, Peoria County. The residue will result from PDC's treatment (*i.e.*, stabilization) of EAF dust that PDC receives from its steel mill customers. EAF dust is collected by emission control devices during steel production in electric furnaces.

The Board's 2-paragraph "Summary of Decision" in its January 2009 opinion stated:

Based on a thorough review of this record, the Board finds that PDC has met the legal tests for delisting under Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2006)) and Section 720.122 of the Board's hazardous waste regulations (35 Ill. Adm. Code 720.122). PDC has demonstrated that (1) the treatment residue does not meet any of the criteria under which K061 EAF dust was listed as hazardous waste; (2) there is no reasonable basis to believe that factors other than those for which the K061 waste was listed warrant retaining the treatment residue as a hazardous waste; and (3) the treatment residue exhibits no characteristics of hazardous waste. The scientific evidence presented to the Board shows that the treatment residue meeting the Board's designated delisting levels does not pose a substantial present or potential threat to human health or the environment when considering all of the relevant factors, including use of the conservative risk assumptions required by the United States Environmental Protection Agency (USEPA). The Board's ruling today takes into account the conditions crafted for the delisting adjusted standard's language, some of which are highlighted below.

The Board's conditions for this delisting are extensive. No batch of EAFDSR is allowed to leave PDC's facility for non-hazardous waste disposal without analytical proof that the batch does not contain chemical concentrations in excess of those found to be safe. One of the Board's amendments to the conditions proposed by PDC adds dioxins and furans to the constituents of concern for which PDC will have to test, along with a corresponding delisting level with which PDC must comply for the treatment residue to qualify as non-hazardous waste. The Board also tightens the description of disposal facilities that may receive delisted treatment residue. The Board specifies that any delisted EAFDSR must be disposed of off-site in a RCRA Subtitle D1 landfill that is permitted by IEPA and that has a groundwater monitoring system, in addition to having a liner and leachate collection system. The Board also narrows considerably those instances when PDC can alter its stabilization process without having to first petition the Board to justify an amendment to the delisting.

AS 8-10, slip op. at 2 (Jan 8, 2009).

The Third District Lead Decision

Justice Lytton, authoring the lead decision serving as the court’s order, began by providing an overview of the case, followed by its factual and procedural background. He then addressed the standing of the appellants and the merits of the Board’s decision.

Overview. PDC petitioned the Board to delist, from the list of hazardous wastes, the residue resulting from PDC’s treatment of electric arc furnace dust (EAFD). Order at 1. The Board granted PDC’s petition. Sierra Club and Peoria Families Against Toxic Waste (collectively, “opposition groups”) sought reversal of the Board’s order on four grounds: (1) the Board failed to consider the factors set forth in Section 27(a) of the Environmental Protection Act (Act) (415 ILCS 5/27(a)); (2) the Board did not require PDC to address future permit modifications that may be necessitated by delisting; (3) the Board found that local siting approval was not required to grant the delisting; and (4) the Board did not impose “reopener” language as a condition of the delisting. *Id.* at 1-2. PDC and the Board argued that the opposition groups lacked standing to appeal. The court ruled as follows: “We find that the opposition groups have standing but affirm the Board’s order on the merits of the case.” *Id.* at 2.

Background. In 1989, IEPA issued a permit to PDC to operate a waste stabilization facility (WSF) near Peoria for the storage and treatment of hazardous and nonhazardous waste. Order at 2. On April 25, 2008, PDC filed a delisting adjusted standard petition under Section 28.1 of the Act, 415 ILCS 5/28.1(2008). PDC asked the Board to delist K061 hazardous waste, EAFD, an emission from the production of steel in electric arc furnaces, remaining after PDC treats and stabilizes the EAFD. The residue resulting from PDC’s treatment is referred to as “electric arc furnace dust stabilized residue” (EAFDSR). *Id.* On June 12, 2008, IEPA filed a response generally supporting PDC’s request. *Id.*

On August 18, 2008, the Board held a public hearing on PDC’s petition. Order at 2. PDC presented two witnesses at hearing, both engineers. *Id.* at 2-3. Twenty-seven other individuals provided public comment at hearing. *Id.* at 3. After hearing, the Board accepted written public comments. IEPA ultimately issued a recommendation that the Board grant the delisting. *Id.* On January 8, 2009, the Board issued a 103-page opinion and order granting the delisting petition, subject to conditions. *Id.* The court quotes the Board’s summary of findings, describes some of the conditions imposed upon PDC by the Board, and notes that the Board considered many of the concerns raised in public comment, including concerns over reopener language, the Section 27(a) factors, permit modifications, and local siting approval. *Id.* at 3-6.

Standing. PDC and the Board argued that the opposition groups lacked standing to appeal this grant of an adjusted standard because the groups do not fall within any of the categories of persons identified in Section 41(a) of the Act (415 ILCS 5/41(a)). Order at 6. The opposition groups asserted that they have standing to appeal under Section 29(a) of the Act (415 ILCS 5/29(a)) as persons “adversely affected or threatened” by the delisting. *Id.* at 6-7 (quoting 415 ILCS 5/29(a)).

The court observed that there was no dispute that the opposition groups were not parties to the Board proceeding and did not fit within any of the categories of persons in Section 41(a) of the Act. Order at 8. The court ruled, however, that the delisting is a “rule or regulation specific to PDC,” particularly since the Board used its quasi-legislative power to impose conditions on PDC, and that the opposition groups therefore have standing under Section 29(a) of the Act. *Id.* at 9-10. The court conceded that Section 28.1(a) of the Act (415 ILCS 5/28.1(a)) describes an adjusted standard as an “adjudicatory determination.” *Id.* at 9, quoting 415 ILCS 5/28.1(a). Nevertheless, the court was persuaded by the placement of Section 28.1 in Title VII of the Act (entitled “Regulations”), the fact that Section 27(a) refers to “regulations specific to individual persons or sites,” and the description of adjusted standards in a Board procedural rule. *Id.*, quoting 415 ILCS 5/Title VII & 27(a).

Merits. For the opposition groups’ challenge that the Board failed to fully and properly consider the Section 27(a) factors, the court applied the “manifest weight of the evidence” standard of review, citing the Second District’s 1999 decision in IEPA v. IPCB and the Louis Berkman Co. d/b/a Swenson Spreader Co., 308 Ill. App. 3d 741, 721 N.E.2d 723 (1999) (Swenson Spreader). Order at 10. The Third District turned to the Illinois Supreme Court’s 1993 decision in Granite City Div. of Nat. Steel Co. v. PCB, 155 Ill. 2d 149, 613 N.E.2d 719 (1993) (Granite City). The court observed that the Granite City decision held that Section 27(a) required the Board to “consider” or “weigh carefully” the Section 27(a) factors. *Id.* at 10, quoting Granite City. Section 27(a), continued the Third District, “does not require the Board to make a determination, based on evidence in the record that the delisting complies with the factors.” *Id.* at 11. The court then stated that the Board, “[a]lthough not required to do so,” specifically

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addressed the Section 27(a) factors. The court held that the Board's ruling, that the delisting could be granted consistent with the Section 27(a) factors, was not against the manifest weight of the evidence. *Id.*

Next, for the opposition groups' challenge that the Board erred in failing to require that PDC provide proposed permit modifications, if any, the court applied the "arbitrary and capricious" standard of review, noting that the Board's ruling involved the Board's technical expertise and interpretation of its rules. Order at 12, citing Swenson Spreader. The court observed that the Board's procedural rules do not require adjusted standard petitions to include information on what permit modifications would become necessary if an adjusted standard is granted. *Id.*, citing 35 Ill. Adm. Code 104.406. The court further recognized that permitting is the "province" of IEPA, not the Board, and that "safeguards are in place if future permit modifications become necessary." *Id.*, citing 415 ILCS 5/31 (enforcement). The court held that the Board did not err in finding that PDC's petition was "complete and should be granted." *Id.* at 12-13.

For the opposition groups' challenge that the Board erred in failing to require PDC to obtain local siting approval, the court applied the manifest weight of the evidence standard of review. Order at 13, citing Swenson Spreader. The court ruled that the actions proposed by PDC do not fit within the statutory definition of "new pollution control facility." *Id.* at 13-14, citing 415 ILCS 5/3.330(b). The court noted that PDC is not seeking to expand its WSF or adjoining landfill, nor is PDC asking to handle special or hazardous waste for the first time. *Id.* at 14. The court also found that because PDC is treating waste, not just storing it temporarily or consolidating it for further transfer, PDC is not operating a "transfer station." *Id.* The court held that the Board "properly found that local siting approval was not necessary." *Id.* The Board ruled that local siting approval was not a prerequisite to delisting, but the Board declined to determine whether PDC proposed a "new pollution control facility" or "transfer station." *Id.* The court agreed that these were not relevant issues before the Board in a delisting proceeding and held that the Board correctly found that the petition should be granted. *Id.* at 14-15.

Finally, for the opposition groups' challenge that the Board should have required reopener language as a condition of the adjusted standard, the court applied the arbitrary and capricious standard of review. Order at 15, citing Swenson Spreader. The court noted that USEPA delistings often contain reopener language, allowing the USEPA Regional Administrator to take whatever action is necessary to protect human health and the environment, including revoking the delisting. *Id.* The court then reviewed the broad authorities available to State and local officials in Illinois under the Act to take action to protect human health and the environment. *Id.* at 15-16, citing 415 ILCS 5/4(s), 42(e), 43(a). In light of these authorizations for corrective action and injunction, the court ruled that reopener language is "unnecessary for delisting in this state." *Id.* at 16. The court further noted that Illinois splits, between the Board and IEPA, responsibilities that are USEPA's alone under the federal system. *Id.* at 16. A reopener would "serve no purpose" because once an adjusted standard is granted, the Board "no longer has authority to take any action with respect to the facility," but IEPA does. *Id.* at 17. The court held that the Board did not err in refusing to include reopener language. *Id.*

Based on the above, the court affirmed the Board's order. Order at 17.

Special Concurrence

Justice Carter concluded that the opposition groups do not have standing. He would have dismissed the appeal on that ground, which would have the effect of affirming the Board. Justice Carter therefore wrote to "concur in the resulting judgment of the lead decision to affirm." Carter at 1. Justice Carter reasoned that the standing issue "hinges upon a determination of whether a Board decision to grant an adjusted standard under section 28.1 of the Act is an adjudicatory decision or a rule-making decision." *Id.* at 3. Justice Carter found that Section 28.1 "indicates that this decision is an adjudicatory decision and an appeal of such a decision is governed solely by section 41." *Id.*

Justice Carter observed that Section 28.1(a) of the Act states that the decision to grant an adjusted standard is an "adjudicatory determination" and that the rulemaking provisions of Title VII, in which Section 29 is located, do not apply. Carter at 3-4, citing 415 ILCS 5/28.1(a). Justice Carter further noted that Section 28.1(g) provides that final Board determinations under Section 28.1 "may be appealed pursuant to Section 41 of this Act." *Id.* at 4, quoting 415 ILCS 5/28.1(g). Accordingly, "the statute . . . directs that appeals are governed by section 41, not section 29, of the Act." *Id.*

Justice Carter recognized that Section 41 references Section 29 and "specifically states that the limitations in section 41 as to who may petition for review of an adjudicatory decision shall not apply to petitions for review of rules and regulations as set forth in section 29." Order at 4. For Justice Carter, however, "that leads back to the same question

of whether a decision under section 28.1 of the Act is an adjudicatory decision or a rule-making decision.” *Id.* According to Justice Carter, because Section 28.1 indicates that adjusted standards are adjudicatory decisions and that the rulemaking provisions of Title VII do not apply, Section 29 is inapplicable. *Id.* Justice Carter disagreed with the lead decision’s reasoning that Swenson Spreader supports finding a delisting to be a rulemaking procedure, as that decision merely recognized that adjusted standards involve both quasi-legislative and quasi-adjudicatory functions, warranting multiple standards of review. *Id.* at 5.

Justice Carter next noted that the opposition groups do not fall within any of the Section 41 categories of persons who may appeal this Board decision. Carter at 5. Finally, Justice Carter observed that the opposition groups could have sought leave of the Board to intervene to gain party status, which would have given them appeal rights under Section 41. They did not do so. *Id.* at 6, citing 35 Ill. Adm. Code 101.402.

Concurrence in Part & Dissent in Part

Justice Wright concurred with that part of the court’s order in which the opposition groups were found to have standing to appeal under Section 29 of the Act. In disagreeing with Justice Carter on this point, Justice Wright asserts that because the Board has been “extremely reluctant” to allow intervention in adjusted standard proceedings, the fact that the opposition groups did not initiate an “inevitably futile request for intervention” is insignificant to the matter of standing. Wright at 2, 3. According to Justice Wright, if party status was required to seek judicial review of an adjusted standard grant, then the Board could “successfully truncate judicial” review by “simply developing an unwritten policy to deny all non-petitioners’ requests to intervene.” *Id.* at 3.

Justice Wright dissented from that part of the court’s order in which the Board’s decision to issue the adjusted standard was affirmed. Justice Wright gave four reasons for dissenting. First, after suggesting that the Board adopted the listing of K061 EAFD as RCRA hazardous waste after considering the Section 27(a) factors and that the Board did not define the level of justification required for an adjusted standard, Justice Wright argued that the Board contradicted Section 104.426 of the Board’s procedural rules (35 Ill. Adm. Code 104.426) when the Board held that there is no threshold of evidence that the adjusted standard petitioner must meet with respect to the Section 27(a) factors. Wright at 4-5. Justice Wright maintained that the procedural rule places the burden of proof “squarely on the shoulders of the petitioner” to “introduce a sufficient threshold of evidence to satisfy the section 27(a) factors.” *Id.* at 5.

Second, Justice Wright asserted that the Board’s order does not contain specific findings or reasoning “concerning the Section 27(a) factors in the context of PDC’s evidence submitted to the Board,” and therefore does not comply with Section 28.1 of the Act. Wright at 9. Justice Wright posits that the Board’s ruling was “purely arbitrary” in the absence of findings that the adjusted standard “would not result in environmental or health effects more adverse than those considered by the Board when originally adopting the general regulation consistent with the 27(a) factors.” *Id.* at 12-13.

Third, Justice Wright argued that the Board failed to specify whether PDC satisfied its burden of proof with respect to subsection (a) of the Section 720.122 waste delisting rule, subsection (b) of that rule, or both subsections. Wright at 14. Fourth, Justice Wright believed that PDC’s “new, first-time operation as an above ground storage yard and transfer station for future off-site disposal falls squarely within the definition of a new pollution control facility.” *Id.* at 16. Therefore, she continues, PDC must obtain local siting approval “regardless of whether the K061 waste is hazardous or delisted as non-hazardous EAFDSR.” *Id.* In conclusion, Justice Wright places extra emphasis on the fact that PDC receives waste from “out-of-state” generators and that the waste will “remain in Illinois for perpetuity.” *Id.*

Justice Wright would reverse the Board’s delisting as arbitrary and capricious or, alternatively, remand to the Board to make “specific findings of fact regarding PDC’s burden to prove the Section 27(a) factors as well as the requirements of Section 720.122(a) and (b).” Wright at 17.

Board Actions

August 5, 2010

Via Videoconference

Springfield and Chicago, Illinois

Rulemakings

R 08-9 (A)	<u>In the Matter of Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304</u> – The Board adopted a first notice opinion and order in this rulemaking to amend the Board’s water pollution regulations.	5-0 Water
R 08-9 (B)	<u>In the Matter of Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304 (Disinfection Necessary to Meet Use Designations ?)</u> – The Board granted the Metropolitan Water Reclamation District of Greater Chicago’s motion to hold additional hearings concerning the final report on the Chicago Health Environmental Exposure and Recreation Study.	5-0 Water
R 10-1	<u>SDWA Update, USEPA Amendments (January 1, 2009 through June 30, 2009)</u>	5-0 PWS
R10-7	<u>SDWA Update, USEPA Amendments (July 1, 2009 through December 31, 2009)</u> – The Board adopted a proposal for public comment in these “identical-in-substance” consolidated rulemakings to amend the Board’s drinking water regulations. The Board on its own motion consolidated R11-6 with the previously consolidated R10-1 and R10-17 rulemaking.	
R 10-18	<u>In the Matter of: Procedural Rules on Hearings in Identical in Substance Rulemakings</u> – The Board adopted a final opinion and order in this rulemaking amending the Board’s procedural rules.	5-0 Proc.
R 11-1	<u>RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its municipal solid waste landfill regulations during the update period of January 1, through June 30, 2010.	5-0 Land
R 11-3	<u>UST Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground storage tank regulations during the update period of July 1, 2009 through December 31, 2009.	5-0 Land

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R 11-4	<u>Wastewater Pretreatment Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its wastewater pretreatment regulations during the update period of July 1, 2009 through December 31, 2009.	5-0 Water
R 11-5	<u>Definition of VOM Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its volatile organic emission regulations during the update period of July 1, 2009 through December 31, 2009.	5-0 Air
R 11-6	<u>SDWA Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board adopted a proposal for public comment in this “identical-in-substance” consolidated rulemaking to amend the Board’s drinking water regulations. The Board on its own motion consolidated R11-6 with the previously consolidated R10-1 and R10-17 rulemaking.	5-0 PWS
R 11-7	<u>UIC Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground injection control regulations during the update period of July 1, 2009 through December 31, 2009.	5-0 Land

Administrative Citations

AC 10-30	<u>County of Jackson v. Frances Klink</u> – The Board directed respondent to file proof of service of the amended petition for review to the Illinois Environmental Protection Agency on or before August 26, 2010.	5-0
AC 11-2	<u>IEPA v. Link Truck Service, Inc.</u> – The Board directed respondent to file an amended petition for review on or before September 6, 2010 to cure deficiencies.	5-0

Adjudicatory Cases

PCB 07-96	<u>Kyle Nash v. Karen Sokolowski</u> – Because Sokolowski has moved away from the site noted in the complaint, the Board is now without authority to grant the requested cease and desist order, finding this matter has become frivolous. The Board dismissed this case on its own motion, denied all pending motions as moot, and closed the docket.	5-0 Citizens N-E
PCB 10-10	<u>People of the State of Illinois v. Thermogas Company, Inc. n/k/a Williams Fertilizer, Inc, formerly d/b/a McLeansboro Thermogas, a foreign corporation</u> – In this water enforcement action concerning a Hamilton 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 \$15,000, and to cease and desist from further violations.	5-0 W-E

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PCB 10-18	<u>People of the State of Illinois v. Schauble Development, LLC</u> – In this water enforcement action concerning a Tazewell 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 \$2,752, and to cease and desist from further violations.	5-0 W-E
PCB 10-74	<u>Mill Creek Water Reclamation District v. IEPA and Grand Prairie Sanitary District</u> – The Board granted both the Grand Prairie Water Reclamation’s and the Illinois Environmental Protection Agency’s motions to dismiss.	5-0 P-A, Water
PCB 10-80	<u>Catherine Thomas, d/b/a Thomas 12th Street Disposal v. IEPA</u> – The Board accepted for hearing this appeal of a permit affidavit for certification of completion of post-closure care for the closed landfill located in Vermilion County.	5-0 P-A, Land
PCB 10-83	<u>Village of Morton v. IEPA</u> – The Board accepted petitioner’s amended petition in this request for a community well setback exception involving a site located in Tazewell County.	5-0 WWS
PCB 10-84	<u>People of the State of Illinois v. Professional Swine Management, LLC, Hilltop View LLC, Wildcat Farms, LLC, High-Power Pork, LLC, Eagle Point, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, Ltd., North Fork Pork, LLC, Little Timber, LLC, and Twin Valley Pumping, Inc.</u> – The Board granted the People of the State of Illinois’ motion for leave and accepted the first amended complaint for hearing.	5-0 W-E
PCB 10-93	<u>Elk Grove Village/Former Penske Truck Leasing Facility (Incident-Claim No. 20081536-56785) v. IEPA</u> – The Board dismissed this case and closed the docket for failure to timely file an amended petition.	5-0 UST Appeal
PCB 11-3	<u>People of the State of Illinois v. Alden Management Services, Inc., and Alden Long Grove Rehabilitation and Health Care Center, Inc.</u> – The Board accepted for hearing this water enforcement action involving a site located in Lake County.	5-0 W-E
PCB 11-4	<u>People of the State of Illinois v. Roxana Landfill, Inc.</u> – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Madison County facility, the Board accepted the case and ordered publication of the required newspaper notice.	5-0 L-E
PCB 11-5	<u>Mother Hubbard's Cupboard v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Rock Island County facility.	5-0 UST Appeal

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Rulemakings

R 10-1	<u>SDWA Update, USEPA Amendments (January 1, 2009 through June 30, 2009)</u>	5-0 PWS
R10-7	<u>SDWA Update, USEPA Amendments (July 1, 2009 through December 31, 2009)</u>	
R11-6 (cons.)	<u>SDWA Update, USEPA Amendments (January 1, through June 30, 2010)</u> – The Board adopted a supplemental opinion and order requesting public comment on additional issues in these “identical-in-substance” consolidated rulemakings to amend the Board’s drinking water regulations.	
R 10-8(A)	<u>In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219</u> – The Board adopted a first notice opinion and order authorizing publication of the July 29, 2010 Illinois Environmental Protection Agency proposed corrections in this rulemaking to amend the Board’s air pollution regulations.	5-0 Air

Administrative Citations

AC 10-31	<u>Macon County Environmental Management Department v. Dale Pugsley</u> – The Board granted complainant’s motion for withdrawal of this administrative citation and closed the docket.	5-0
AC 11-1	<u>IEPA v. William A. Cogdill</u> – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Lawrence County facility.	5-0

Adjudicatory Cases

PCB 07-97	<u>Kyle Nash v. Louis Jimenez</u> – The Board granted complainant’s motion to amend the caption as well as respondent’s motion for leave to file a reply <i>instanter</i> , and accepted the accompanying reply for review. The Board denied complainant’s motion for summary judgment and respondent’s motions to dismiss and consolidate.	5-0 Citizens N-E
PCB 09-54	<u>People of the State of Illinois v. Bill Woods, an individual, d/b/a American Asphalt Seal Coating</u> – The Board granted complainant’s motion to dismiss this enforcement action involving a Madison County facility.	5-0 W-E
PCB 09-91	<u>People of the State of Illinois v. Ken Rawson</u> – 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 \$12,000, and to cease and desist from further violations.	5-0 W-E

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PCB 10-8	<u>People of the State of Illinois v. Don Swinson, and Champion Environmental Services, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action, as to Swinson only, involving a Winnebago County facility, the Board ordered publication of the required newspaper notice.	5-0 L-E
PCB 10-71	<u>People of the State of Illinois v. 87th & Greenwood, LLC, Innovative Recycling Technologies, Inc., and Land Reclamation Services, Inc.</u> – The Board granted complainant’s motions to deem facts admitted and for summary judgment against Land Reclamation Services, Inc. (LRS) only. The Board found that LRS had violated Sections 21(a), (d)(1), and (e) of the Environmental Protection Act (415 ILCS 5/1 <i>et seq.</i> (2008)) as alleged in the complaint. The Board ordered LRS to pay a total civil penalty of \$20,000, and to cease and desist from further violations. The case against respondents 87th & Greenwood, LLC. and Innovative Recycling Technologies, Inc. is still pending.	5-0 L-E
PCB 10-77	<u>People of the State of Illinois v. Avante, LLC</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a DuPage County facility, the Board ordered publication of the required newspaper notice.	5-0 L-E
PCB 10-85	<u>Catherine Thomas, d/b/a Thomas 12th Street Disposal v. IEPA</u> – The Board accepted for hearing this appeal of a permit to release financial assurance funds concerning a closed landfill located in Vermilion County.	5-0 P-A, Land
PCB 10-90	<u>American Louver Company v. IEPA</u> – The Board granted this Cook County facility’s motion for voluntary dismissal of this permit appeal.	5-0 P-A, Air
PCB 10-97	<u>Webel Feeds v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Pike County facility.	5-0 UST Appeal
PCB 10-99	<u>American Louver Company v. IEPA</u> – The Board granted this Cook County facility’s motion for voluntary dismissal of this permit appeal.	5-0 P-A, Air
PCB 10-103	<u>Stop The Mega-Dump v. County Board of DeKalb County, Illinois and Waste Management, of Illinois Inc.</u>	5-0 L-S-App
PCB 10-104	<u>Waste Management of Illinois, Inc. v. DeKalb County Board</u> – The Board granted Waste Management of Illinois motion to sever PCB 10-103 from PCB 10-104.	Third Party
PCB 10-106	<u>Dave McGhee v. IEPA</u> – The Board directed complainant to file an amended complaint on or before September 20, 2010 to cure deficiencies.	5-0 A,N-E, Citizens
PCB 11-6	<u>People of the State of Illinois v. American Construction, LLC, Inc., an Illinois limited liability company, and Real Estate Elmhurst, LLC, an Illinois limited liability company</u> – The Board accepted for hearing this water enforcement action involving a site located in DuPage County.	5-0 W-E

New Cases

August 5, 2010 Board Meeting

11-3 People of the State of Illinois v. Alden Management Services, Inc., and Alden Long Grove Rehabilitation and Health Care Center, Inc. – The Board accepted for hearing this water enforcement action involving a site located in Lake County.

11-4 People of the State of Illinois v. Roxana Landfill, Inc. – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Madison County facility, the Board accepted the case and ordered publication of the required newspaper notice.

11-5 Mother Hubbard's Cupboard v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Rock Island County facility.

AC 11-1 IEPA v. William A. Cogdill – No action taken.

AC 11-2 IEPA v. Link Truck Service, Inc. – The Board directed respondent to file an amended petition for review on or before September 6, 2010 to cure deficiencies.

AC 11-3 IEPA v. Bader Agricultural Service, Inc. – No action taken.

AC 11-4 IEPA v. Karen L. Allen – The Board accepted an administrative citation against this Williamson County respondent.

AC 11-5 IEPA v. Brian Branson – The Board accepted an administrative citation against this Macoupin County respondent.

August 19, 2010 Board Meeting

11-6 People of the State of Illinois v. American Construction, LLC, Inc., an Illinois limited liability company, and Real Estate Elmhurst, LLC, an Illinois limited liability company – The Board accepted for hearing this water enforcement action involving a site located in DuPage County.

AC 11-6 IEPA v. Belleville's Garage, LLC – The Board accepted an administrative citation against this Cass County respondent.

Provisional Variances

IEPA 11-03 Midwest Generation Crawford Generating Station v. Illinois Environmental Protection Agency – The Illinois Environmental Protection Agency (IEPA) granted, subject to conditions, Midwest Generation's request for a 15-day extension of a provisional variance from the effluent limits for total suspended solids, oil, and grease in NPDES permit IL0002186 for Outfall C01 for its Crawford Generating Station. On July 28, 2010, the IEPA granted the Midwest Generation request for a provisional variance so that it can remove water from the basements as the result of a severe storm that occurred on July 23 and July 24 in the Chicago area. The original provisional variance ended on August 10, 2010. On August 3 and 4, 2010, additional heavy rains occurred causing delays in getting the storm water flooding in the turbine basement pumped out by August 10, 2010. The extension to the provisional variance ends no later than August 25, 2010.

IEPA 11-04 Northern Moraine Wastewater Reclamation District v. Illinois Environmental Protection Agency – The Illinois Environmental Protection Agency (IEPA) granted, with conditions, Northern Moraine Wastewater Reclamation District's (District) request for a provisional variance from the ammonia nitrogen limits in NPDES

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permit IL0031933 of 1.5 milligrams per liter (mg/l) monthly average and 2.5 mg/l daily maximum for the months of April through October. During the provisional variance period, the facility is requesting a maximum ammonia limit of 12.0mg/l. The District needs the provisional variance to make necessary repairs, caused by mechanical failure, to its wastewater treatment system. The provisional variance ends no later than September 26, 2010.

Public Act 93-0152 (Senate Bill 222) amended Sections 35-37 of the Illinois Environmental Act (415 ILCS 5/5(b) (2008)) so that provisional variances are issued by the Illinois Environmental Protection Agency (IEPA). If the IEPA grants a provisional variance, then the IEPA must file a copy of its written decision with the Board. The Board must maintain copies of the provisional variances for public inspection. Copies of provisional variances can be obtained by contacting the Clerk's Office at (312) 814-3620, or by visiting the Board's Website at www.ipcb.state.il.us. If the IEPA denies a provisional variance request, then the applicant may initiate a proceeding with the Board for a full variance.

Calendar

9/2/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
9/16/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
10/7/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
10/19/10 9:00 AM	R08-09(A)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Recreational Use Designations)</u>	JRTC Auditorium James R. Thompson Center 100 W. Randolph Chicago
10/19/10 9:00 AM	R08-09(B)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Disinfection Necessary to Meet Use Designations)</u>	JRTC Auditorium James R. Thompson Center 100 W. Randolph Chicago
10/19/10 9:00 AM	R08-09(A)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Recreational Use Designations)</u>	Room C-500 Michael A. Bilandic Building 160 N. LaSalle Chicago

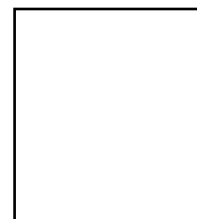
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10/19/10 9:00 AM	R08-09(B)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Disinfection Necessary to Meet Use Designations)</u>	Room C-500 Michael A. Bilandic Building 160 N. LaSalle Chicago
10/21/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
11/4/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
11/8/10 9:00 AM	R08-09(C)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Proposed Aquatic Life Uses)</u> (Continues until complete or through November 10, 2010)	Room N-502 Michael A. Bilandic Building 160 N. LaSalle Chicago
11/8/10 9:00 AM	R08-09(D)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304 (Water Quality Standards and Criteria Necessary to Meet Aquatic Life use Designations)</u> (Continues until complete or through November 10, 2010)	Room N-502 Michael A. Bilandic Building 160 N. LaSalle Chicago
11/18/10 11:00 am	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago

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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