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# Environmental Register

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# Letter from the Chairman

During August, there was significant activity in several Board rulemaking dockets, which I've summarized below. As always, information about these proceedings is available through the Clerk's Office Online (COOL) at our Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

On August 4, 2011, the Board adopted a second-notice opinion and order in NO<sub>x</sub> Trading Program Sunset Provisions for Non-Electric Generating Units: Amendments to 35 Ill. Adm. Code Part 217.Subpart U (R11-08). The amendments would "sunset" the trading provisions of the nitrogen oxides (NO<sub>x</sub>) SIP Call Trading Program for non-electric generating units.

On August 4, 2011, the Board accepted two Illinois Environmental Protection Agency (IEPA) rulemaking proposals for hearing. The first was docketed as Amendments to 35 Ill. Adm. Code 223: Standards and Limitations for Organic Material Emissions for Area Sources, R12-8. This proposal would reduce volatile organic material emissions from various consumer products and aerosol coatings. The first hearing in R12-8 will be in Springfield on October 6, 2011, and the second hearing will be in Chicago on November 17, 2011. The second proposal was docketed as Proposed Amendments to Clean Construction and Demolition Debris Fill Operations (35 Ill. Adm. Code Part 1100) (R12-9). The first hearing in R12-9 will begin September 26, 2011, in Springfield, and the second will begin October 25, 2011, in Chicago.

The Board adopted rules designating recreational uses for the Chicago Area Waterway and Lower Des Plaines River on August 18, 2011, in 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 (R08-9(A)). The adopted rules designate specified segments as Primary Contact Recreation, Incidental Contact Recreation, Non-Contact Recreation, or Non-Recreation Use.

The Board adopted amendments to the NO<sub>x</sub> regulations in the consolidated rulemaking Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217, Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen Oxides Emissions: Amendments to 35 Ill. Adm. Code Part 217, R11-24, 26 (cons.) on August 18, 2011. The adopted amendments extend the compliance date to January 1, 2015 for control of NO<sub>x</sub> emissions from various source categories.

On August 18, 2011, the Board adopted a second-notice opinion and order in Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators (R11-20). Proposed amendments include revised emissions standards, revised waste management plan provisions, and removal of an existing startup, shutdown, and malfunction provision.

On August 18, 2011, the Board accepted for hearing an IEPA proposal to create a program for Registration of Smaller Sources (ROSS), which is docketed as Registration of Smaller Sources (ROSS): New 35 Ill. Adm. Code 201.175 (R12-10). The program would reduce the regulatory burden for the smallest air pollution sources that currently comprise 50% of permitted sources, but collectively emit less than 1% of the air pollution in Illinois. The first hearing on the proposal will be in Springfield on October 5, 2011, and the second hearing will be in Chicago on October 27, 2011.

Please visit our website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) for more information.

Sincerely,



Dr. G. Tanner Girard



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## Appellate Update

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**Third District “Confirms” Rulings and Penalty On Financial Assurance Issues Against Corporate Respondent But “Sets Aside” Rulings Against Municipal Respondent in City of Morris and Community Landfill Co. v. People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, Illinois Pollution Control Board, and the State of Illinois, No. 3-09-0847 and 3-09-0864 (3rd Dist. Aug. 5, 2011) (Board’s order in PCB 03-191(cons.)(June 18, 2009)**

The Third District Appellate Court issued a precedential opinion on August 5, 2011, in City of Morris, an Illinois municipal corporation, and Community Landfill Co., an Illinois corporation v. The People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, the Illinois Pollution Control Board, and the State of Illinois, Nos. 3-09-0847, 3-09-0864 (consol.) (3rd Dist. Aug. 5, 2011). In the opinion, the court “confirmed” the Board’s rulings against Community Landfill Company (CLC) in connection with the Morris Community Landfill, but “set aside” the Board’s rulings against the City of Morris (City). The court remanded the case to the Board. While disappointing in some aspects in its disposition of liability issues, the Third District ruling is the first precedential appellate opinion upholding a Board civil penalty of over \$1 million. It is also the first appellate opinion construing a provision added by P.A. 93-575, effective January 1, 2004, to Section 42(h) of the Environmental Protection Act (Act, 415 ILCS 5/42(h) (2010). The provision effectively establishes a “penalty floor,” in requiring the Board to recoup for the State the proven economic benefit received by a polluter through non-compliance. Finally, the court also affirmed the Board’s broad authority under Section 33 of the Act to order affirmative remedial steps and to fashion a cease and desist order. 415 ILCS 5/33 (2010).

The court affirmed the Board’s rulings that (1) CLC violated the financial assurance obligation of the Environmental Protection Act (Act) and Board regulations; (2) CLC must obtain \$17.4 million in financial assurance for landfill closure/post-closure care costs; (3) CLC must pay a civil penalty of \$1,059,534.70; and (4) CLC must cease and desist from accepting additional waste at the landfill. In reversing the Board’s rulings concerning the City, however, the court found that (1) the City is not subject to the financial assurance requirements because the City did not “conduct any waste disposal operation”; (2) the City is therefore not jointly and severally liable with CLC for providing the financial assurance; and (3) because the City committed no violations, the City is not liable for the \$399,308.98 civil penalty. The court concluded: “[c]onfirmed in part and set aside in part; cause remanded.” Op. at 15.

The court’s 15-page opinion was authored by Justice Lytton, with Justices Schmidt and Wright concurring in the judgment and opinion. Justice Schmidt also served on the panel that heard the “sister appeal” decided last month in a nonprecedential Rule 23 order, as reported in these pages. *See Environmental Register* No. 685, pp. 1-3 (July 2011). In summary, in its July 2011 ruling the court affirmed the Board’s findings regarding other violations at the same landfill, but remanded the consolidated cases for further consideration concerning penalty issues. Community Landfill Co., Edward Pruiam and Robert Pruiam v. Illinois Pollution Control Board, and People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, No. 3-09-1026 (3rd Dist. July 27, 2011) (Board’s order in PCB 97-193/PCB 04-207(cons.)(Aug. 20, 2009)).

In the underlying Board docket, PCB 03-191, the Board made its findings of violation by granting the People’s motion for summary judgment. People of the State of Illinois v. Community Landfill Company, Inc. and City of Morris, PCB 93-191 (Feb. 6, 2006, aff’d. on reconsideration June 1, 2006). After ensuing remedy hearings and

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briefing, the Board imposed the civil penalties and other relief in a final opinion and order in PCB 93-191 (June 18, 2009).

The Board and other parties are awaiting either further appellate proceedings or the issuance of the Third District Court's mandate to the Board.

### **SUMMARY OF THIRD DISTRICT MORRIS/CLC OPINION**

This summary of the Third District's opinion begins with background on the Morris Community Landfill and earlier related proceedings before the Board and the Third District. Next, the procedural history and facts of this case are highlighted, followed in turn by the court's rulings on violations, the financial assurance remedy, civil penalties, and the order to cease and desist.

#### **Factual Background Concerning the Morris Community Landfill Generally.**

In the 1970s, the City owned and operated the Morris Community Landfill. In 1982, the City "transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated." Op. at 2. CLC began operating the landfill and paid the City dumping royalties to use it. In 1999, the City and CLC entered into an agreement requiring CLC to give the City landfill leachate, which was then treated without charge at the City's publicly owned treatment works (POTW). The landfill leachate constituted less than 1% of what the POTW treated. Op. at 3.

In 1999, CLC applied to the Illinois Environmental Protection Agency (IEPA) for a significant modification or "SigMod" permit, under new Board regulations requiring the updating of financial assurance for closure/post-closure care using specified financial instruments and methods. CLC, estimating \$17.4 million in landfill closure/post-closure care costs, sought to post a \$7 million bond, while the City would commit to \$10 million worth of leachate treatment. IEPA rejected CLC's application and required CLC to post a bond for the entire \$17.4 million. CLC and the City appealed to the Board, which affirmed IEPA. CLC and the City then appealed to the Third District, which affirmed the Board in a 2001 non-precedential Rule 23 order. Op. at 3.

In 2000, IEPA issued a permit supported by financial assurance of \$17.4 million, which was guaranteed by three Frontier Insurance Company (Frontier) bonds. One of the bonds, with a \$10 million value, listed the City as principal, while the others listed CLC as principal. CLC was responsible for the premiums on all bonds. IEPA later notified CLC and the City that they were in violation because Frontier had been taken off the list of approved sureties. IEPA then denied CLC's supplemental permit application because Board regulations require acceptable sureties to be listed in the U.S. Department of Treasury's Circular 570, and Frontier had been removed from the list. CLC and the City appealed. The Board affirmed IEPA's denial. CLC and the City appealed to the Third District, which confirmed the Board in a precedential opinion (Community Landfill Co. v. Pollution Control Board, 331 Ill. App. 3d 1056 (3rd Dist. 2002)). Op. at 3-4.

#### **Procedural History and Facts Concerning PCB 03-191 Proceeding**

The People filed a complaint against CLC and the City in 2003 "alleging that they were conducting disposal operations at the Morris Community Landfill without adequate financial assurance." Op. at 4. The People filed a motion for summary judgment against CLC and the City. The City cross-motivated for summary judgment, arguing that it had no responsibility for financial assurance. In 2006, the Board granted the People's motion and denied the City's. *Id.*

In September 2007, the Board held a penalty hearing. Evidence established that, from 2001 to 2005, CLC paid the City \$399,208.98 in dumping royalties. CLC's premium payment for the Frontier bonds was \$217,842 in 2001. IEPA made a claim on the Frontier bonds obtained by the City and CLC in 2000. Frontier offered to pay IEPA \$400,000 on the bonds, but at the time of hearing, Frontier had not paid anything. In 2001, CLC stopped making payments on the bonds. Neither CLC nor the City provided any financial assurance to IEPA after 2001. Op. at 4-5.

Though financial assurance amounts may be reduced by obtaining a permit modification, it was not until July 2007 that CLC and the City applied for such a modification. That permit application, which includes a revised cost estimate of \$10 million, was under review by IEPA at the time of hearing in September 2007. Op. at 4-5. In post-hearing briefs, the People argued that the Board should impose a \$1,059,534.70 penalty against CLC, "reflecting the amount it saved on bond premiums by not paying for any bonds after 2001." Op. at 5. The People argued for a

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\$399,308.98 penalty against the City, “the amount of dumping royalties it received from CLC from 2001 to 2005, when no financial assurance was in place for the landfill.” *Id.*

In 2009, the Board issued an order finding CLC and the City jointly and severally liable for posting financial assurance in the amount of \$17.4 million, to be reduced by any amount IEPA receives from Frontier. The Board also ordered both CLC and the City to (1) submit revised cost estimates and update financial assurance in accordance with the revised estimates, and (2) cease and desist from accepting any additional waste at the landfill. Further, the Board imposed penalties of \$399,308.98 against the City and \$1,059,534.70 against CLC. Op. at 6.

### **Violations**

**CLC’s Liability.** The court observed that Section 21 of the Act provides that “[n]o person shall \*\*\* [c]onduct any waste-storage, waste-treatment, or waste-disposal operation \* \* \* in violation of any regulations or standards adopted by the Board under this Act” (415 ILCS 5/21(d)(2)). Op. at 6. Under the Board’s financial assurance regulations at 35 Ill. Adm. Code Part 811, no person shall “conduct any disposal operation” at a municipal solid waste landfill facility (MSWLF) unit unless that person complies with the financial assurance requirements, which include the requirement that the surety issuing the bonds be approved by the U.S. Treasury as an acceptable surety in the Treasury’s Circular 570. *Id.*, citing 35 Ill. Adm. Code 811.700(b), (f), 811.712(b).

On June 1, 2000, Frontier was removed from the Circular 570. CLC never obtained any other financial assurance. “Nevertheless, CLC continued to conduct waste disposal operations at the landfill.” Op. at 7. Though the Frontier bonds were valid and enforceable, they did not satisfy the requirements of the Act or Board regulations because Frontier was removed from the list of approved sureties. “Moreover, CLC stopped paying premiums on the Frontier bonds in 2001.” *Id.* The court ruled that the Board properly granted summary judgment against CLC. *Id.*

**The City’s Liability.** The Board’s Part 807 regulations define “operator” as “a person who conducts a \*\*\* waste disposal operation” (35 Ill. Adm. Code 807.104). Op. at 8. “A court may look beyond permits to determine who is involved in the day-to-day operations of a landfill to determine who is an operator.” *Id.*, citing People v. Bishop, 315 Ill. App. 3d 976 (5th Dist. 2000). Without articulating the manifest weight standard of review, the Third District held:

there was no evidence that the City oversaw, directed or supervised CLC in its waste disposal operations. While the City helped CLC obtain financial assurance, litigated alongside CLC on various issues and treated leachate from the landfill, those activities were separate and distinct from CLC’s “waste disposal operation” at the landfill. Moreover, the leachate the City received from CLC amounted to a very small percentage of the total leachate the City treated at its [POTW]. Thus, the City’s treatment of the leachate did not amount to an ancillary site operation of the landfill. \*\*\*

The Board specifically found that the City was not involved in day-to-day operations of the landfill. \*\*\* That finding is *the test* for determining if an entity is “conducting waste operations,” not litigation activities, financial support or minor amounts of leachate treatment. Op. at 9 (emphasis added).

The court ruled that the Board “erred in finding that the City was conducting a waste disposal operation and responsible for obtaining financial assurance.” Op. at 9.

### **Financial Assurance Remedy**

**CLC’s Liability.** The court noted that Section 33 of the Act provides that after due consideration of the evidence and arguments, “the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances” (415 ILCS 5/33). Op. at 10. The Frontier bonds purchased in 2000 did not comply with the Act or regulations, and CLC stopped paying premiums in 2001. Therefore, from 2000 to the time of hearing, CLC did not have proper financial assurance. The court determined that the Board properly required CLC to obtain compliant financial assurance. *Id.*

The court further found that the amount of financial assurance ordered was supported by the evidence. In 2000, CLC estimated that closure/postclosure care of the landfill would cost \$17.4 million, and IEPA issued a modification permit to CLC based on that estimate. CLC did not present its revised cost estimate of \$10 million to IEPA until July 2007. At the time of hearing, IEPA had not yet determined if CLC’s modified cost estimate was proper. Because the only cost amount approved by IEPA as of hearing was \$17.4 million, the Board did not err in

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requiring CLC to obtain financial assurance in that amount, less any amount tendered by Frontier to IEPA. Op. at 10-11.

**The City's Liability.** Because the court found that the City is not conducting disposal operations, the City “had no obligation to obtain financial assurance,” and the Board’s order finding the City jointly and severally liable for obtaining financial assurance was improper. Op. at 11.

### **Civil Penalties**

**CLC.** CLC argued that the Board abused its discretion in imposing a penalty of \$1,059,534.70 against the company because CLC “acted reasonably in purchasing the Frontier bonds and did not benefit from noncompliance.” Op. at 11. The court stated, however, that “the Board considered the section 42(h) factors and found only one mitigating factor in CLC’s favor -- no prior adjudicated administrative citation violations.” Op. at 12-13. The Board found the aggravating factors to be “many and severe” and that “the on-going, grave financial assurance violations in this case . . . have persisted since 2000, leaving unresolved problems at the Landfill,” requiring a significant penalty against CLC. Op. at 13 (quoting Board opinion). The Board assessed a penalty against CLC for \$1,059,534.70, “the amount of money CLC saved by not paying premiums for the noncompliant Frontier bonds from 2001 to 2007.” Op. at 13.

The court ruled that:

the Board’s penalty was not arbitrary, capricious or unreasonable. The penalty was supported by section 42(h), including the mandate that penalties be at least as great as the economic benefits accrued by the respondent as a result of the violation. Here, CLC benefitted financially by not paying premiums on bonds for many years. Thus, the penalty imposed, which was equal to the premiums CLC should have paid for the bonds, was appropriate. Op. at 13.

**The City.** The court found that, because the City did not violate the Act or regulations, the Board erred in imposing a penalty against the City. Op. at 13.

### **Cease and Desist Order**

CLC argued that the Board had no authority to order it to cease and desist from accepting any additional waste at the site “because the only issue before the Board was CLC’s compliance with statutory and regulatory financial assurance requirements.” Op. at 13. The court observed that Section 33 of the Act authorizes the Board to issue orders that “may include a direction to cease and desist from violations of this Act [or] any rule or regulation adopted under this Act” (415 ILCS 5/33(b)). *Id.* Section 21 of the Act lists “[p]rohibited acts” and states that “[no] person shall \*\*\* [c]onduct any \*\*\* waste disposal operation \*\*\* in violation of any regulations or standards adopted by the Board under this Act” (415 ILCS 5/21(d)(2)). Op. at 14. The Board’s Part 811 regulations provide that “no person \*\*\* shall conduct any disposal operation at an MSWLF unit \*\*\* unless that person complies with the financial assurance requirements of this Part” (35 Ill. Adm. Code 811.700(f)). *Id.*

The court stated that CLC conducts “disposal operations” by accepting waste at the landfill, and such disposal operations are “authorized by the Act and its regulations only if adequate financial assurance is in place.” Op. at 14. Because accepting waste without proper financial assurance is prohibited by the Act and its regulations, CLC violated those provisions by accepting waste without proper financial assurance. As the Board “had the power to direct CLC to cease and desist from violating the Act and its regulations,” the Board “acted properly when it prohibited CLC from accepting waste.” *Id.*

As previously stated, The Board and other parties are awaiting either further appellate proceedings or the issuance of the Third District Court’s mandate to the Board.

## **Rulemaking Update**

### **Board Progress Continues in Docket R08-9:**

#### **R08-9(A) Final Rules Adopted to Establish the Recreational Use Designations for the Chicago Area Waterway System;**

#### **R08-9 (D) Hearings Temporarily Postponed Pending Issuance of First Notice Proposal in R08-9(C)**

Many of the Board's resources in recent years have been devoted to hearings and decision in a single, multi-faceted docket: the proposal 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, R08-9. After several hearings, and in response to participants' requests, in March 2010, the Board severed the Illinois Environmental Protection Agency's original October 2007 proposal into four subdockets, Recreational Uses (Docket A), Disinfection (Docket B), Proposed Aquatic Life Uses in Docket C and Water Quality Standards and Criteria to Meet Aquatic Life Uses in Docket D.

#### **R08-9(A): Final Recreational Use Designation Rules Adopted**

The Board, on August 18, 2011, adopted final rules establishing recreational use designations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR) in R08-09 (A). The rule created four categories of recreational use designation for the CAWS and the LDPR: Primary Contact Recreation, Incidental Contact Recreation, Non-contact Recreation, and Non Recreation. The rules have been filed with the Secretary of State, and are scheduled for Illinois Register publication at 35 Ill. Reg. 15071(Sept. 9, 2011)

Segments of the CAWS designated as Primary Contact Recreation are: 1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch Chicago River; 2) North Branch Chicago River from its confluence with North Shore Channel to its confluence with South Branch Chicago River and Chicago River; 3) Chicago River; 4) South Branch Chicago River; 5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel; and 6) Calumet-Sag Channel.

Segments of the CAWS and LDPR designated as Incidental Contact Recreation are: 1) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant; 2) South Fork of the South Branch Chicago River; 3) Chicago Sanitary and Ship Canal from its confluence with South Branch Chicago River to its confluence with Calumet-Sag Channel; 4) Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River; 5) Lake Calumet and Lake Calumet Connecting Channel; 6) Grand Calumet River; and 7) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

The Non-contact Recreation use designation applies to Calumet River from Lake Michigan to Torrence Avenue. The Non-recreation use designation is for: 1) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

#### **R08-9 (D) Hearings Temporarily Postponed Pending**

In response to several participants' motions, on August 4, 2011, the Illinois Pollution Control Board delayed the hearings in Subdocket D, concerning water quality standards and criteria to meet aquatic life uses.

The Board decided to delay the hearings in Subdocket D (Water Quality Standards and Criteria to Meet Aquatic Life Uses) until the Board adopts a first notice order in Subdocket C (Proposed Aquatic Life Uses). Given the decision to delay hearings in Subdocket D, the Board will not create an additional subdocket as requested by Citgo Petroleum and PDV Midwest, LLC.

Finally, the Board noted that it had adopted a first notice opinion and order in Subdocket B (Disinfection). The proposal was published at 35 Ill. Reg. 12634 (July 29, 2011). An additional hearing has been scheduled in Subdocket B for October 27, 2011, at 11:00 am in Room 2-025, James R. Thompson Center, 100 W. Randolph,

Chicago. An August 4, 2011 hearing officer order spells out procedural details concerning the hearing, including deadlines for the pre-filing of testimony.

Opinions and orders of the Board and hearing officers, 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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should be directed to the Clerk of the Board, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

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

**Board Adopts Second-Notice Opinion and Order for Proposed Amendments to Provisions of the NO<sub>x</sub> SIP Call Trading Program, R11-8**

On August 4, 2011, the Board adopted for second-notice review by the Joint Committee on Administrative Rules (JCAR) a proposal amending the Board's air rules. The Illinois Environmental Protection Agency (IEPA), on August 19, 2010, filed the proposal that was docketed as In the Matter of: NO<sub>x</sub> Trading Program Sunset Provisions for Non-Electric Generating Units: Amendments to 35 Ill. Adm. Code Part 217.Subpart U, R11-08. JCAR review of the proposal is scheduled for the September 13, 2011 JCAR meeting.

The IEPA's proposal would sunset the trading provisions of the Nitrogen Oxide SIP Call Trading Program (NO<sub>x</sub> Trading Program) for non-electric generating units (non-EGUs). The sole provisions to be amended involve the holding and trading provisions for NO<sub>x</sub> allowances in Part 217.Subpart U. Due to a federal court ruling concerning the federal CAIR rules in *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008), the court reinstated that CAIR begin implementation with the original 2009 control period. As a result of the court action, IEPA explains that Illinois non-EGUs no longer need to comply with the NO<sub>x</sub> Trading Program requirements for holding and trading NO<sub>x</sub> allowances for any control period after 2008 because USEPA no longer allocates allowances for the NO<sub>x</sub> Trading Program. Therefore, Subpart U is now moot where it requires that non-EGUs hold their allowances for the 2010 season.

Fifty-two existing non-EGU units, four of which are no longer operating, and two new non-EGU units are currently subject to the NO<sub>x</sub> Trading Program. The affected units will not be subject to the holding and trading provisions of the NO<sub>x</sub> Trading Program if the Board sunsets these provisions of Subpart U. However, to ensure that Illinois continues to satisfy its NO<sub>x</sub> budget, non-EGUs must continue monitoring, reporting and recordkeeping under Subpart U.

The Board conducted two hearings in this matter: one in Springfield and one in Chicago.

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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should reference Docket R11-8 and be directed to the Clerk of the Board, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Daniel Robertson at 312-814-6931 or email at robertsd@ipcb.state.il.us.

**Board to Hold Hearings on IEPA Proposal to Reduce Volatile Organic Material Emissions from Various Consumer Products and Aerosol Coatings, R 12-8**

On August 4, 2011, the Illinois Pollution Control Board accepted for hearing a proposal to amend the Board's regulations dealing with volatile organic material (VOM) emissions from various consumer products and aerosol coatings. The Illinois Environmental Protection Agency (IEPA), on July 13, 2011, filed the proposal to amend Part 223 of the Board's air pollution regulations. The rulemaking is docketed as In the Matter of: Amendments to 35 Ill. Adm. Code Part 223: Standards and Limitations for Organic Material Emissions for Area Sources, R12-8.



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The rulemaking's goal is to reduce ozone formation. IEPA states in its proposal that "[o]zone is not emitted directly by most sources." The IEPA further states that precursors such as VOM, nitrogen oxides, and carbon monoxide react in the presence of sunlight and high temperatures to form ozone.

The IEPA seeks to amend Part 223 to "include limits in percent VOM by weight for adhesive removers, contact adhesives, non-aerosol antistatic products, electrical cleaners, engine degreasers, fabric refreshers, footwear or leather care products, graffiti removers, hair styling products, shaving gels, and wood cleaners." The IEPA expects that control of these additional categories will reduce VOM emissions in Illinois by one ton per day. The IEPA argues that "some of these reductions have already taken place due to nationwide compliance by many of the larger manufacturers of these products with the California or the Ozone Transport Commission (OTC) rules. The IEPA also proposes a clarification of the existing Architectural and Industrial maintenance rule in order to clarify and simplify compliance.

Hearings are scheduled for October 6, 2011, at 9:00 AM in the Board Conference Room, First Floor, 1021 N. Grand Ave. East, Springfield, IL AND November 17, 2011, at 1:00 PM in the Board Conference Room 11-512, 100 W. Randolph St., Chicago, IL. An August 4, 2011 hearing officer order spells out procedural details concerning the hearing, including deadlines for the pre-filing of testimony.

Opinions and orders of the Board and hearing officers, 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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should reference Docket R12-8 and be directed to the Clerk of the Board, 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 to Hold Hearing on IEPA Proposed Amendments for Clean Construction or Demolition Debris Fill Operations Rules**

The Illinois Pollution Control Board, on August 4, 2011, accepted for hearing a proposal that would amend the Board's rules for Clean Construction or Demolition Debris Fill Operations to allow for use of uncontaminated clean construction or demolition debris (CCDD) and soil to be used as fill. On July 29, 2011, the Illinois Environmental Protection Agency (IEPA) filed the proposal with the Board. The proposal was docketed as Proposed Amendments To Clean Construction Or Demolition Debris Fill Operations (CCDD): Proposed Amendments To 35 Ill. Adm. Code 1100, R12-9. Under Section 22.51 of the Illinois Environmental Protection Act (Act), the IEPA is required to present a proposal to the Board by July 30, 2011, and the Board must adopt the rule no later than one year after receipt of the IEPA's proposal. The Board meeting immediately preceding the July 29, 2011 decision deadline is scheduled for July 26, 2011.

The proposal specifies: 1) the use of CCDD and uncontaminated soil as fill material at CCDD fill operations; 2) the use of uncontaminated soil as fill material at uncontaminated soil fill operations; and 3) the maximum concentrations of contaminants that may be present in the uncontaminated soil component of construction or demolition debris. The proposed rules also include standards and procedures necessary to protect groundwater.

The IEPA's proposal also reflects changes necessitated by P.A. 97-0137 (eff. July 14, 2011). The first change removes benzo(a)pyrene restriction at Section 3.160(c)(1) of the Act (415 ILCS 5/3/160(c)(1)(2010)). This change allows the Board to consider TACO background levels for all carcinogens and not just for the one carcinogen, benzo(a)pyrene. The second amendment allows Professional Geologists, as well as Professional Engineers to provide certifications under the interim soil certification requirements.

Hearing is scheduled for September 26, 2011 through September 27, 2011 (continuing from day to day as necessary), beginning at 11:00 AM in Sangamo Room, IEPA, 1021 N. Grand Avenue East, Springfield, IL, and October 25, 2011 through October 26, 2011 (continuing from day to day as necessary) beginning at 11:00 AM in Room 2-025, 100 W. Randolph, James R. Thompson Center, Chicago. An August 4, 2011 hearing officer order spells out procedural details concerning the hearing, including deadlines for the pre-filing of testimony.

Opinions and orders of the Board and hearing officers, 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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of

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Information Act [5 ILCS 140/6]. Requests should reference Docket R12-9 and be directed to the Clerk of the Board, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

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

### **The Board Adopts Amendments to Update Illinois' Hazardous Waste Regulations, R11-2/R11-6 (cons.)**

On August 18, 2011 the Board adopted amendments to Illinois' Hazardous waste regulations to include amendments adopted by the United States Environmental Protection Agency (USEPA) during the calendar year 2010. The consolidated rulemaking is docketed as In the Matter of: RCRA Subtitle C Update, USEPA Amendments (January 1, 2010 through December 31, 2010), R11-2/R11-16 (cons.).

The amendments change two identical definitions of “substantial business relationship” in the treatment, storage, and disposal (T/S/D) facility financial assurance requirements.

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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should be directed to the Clerk of the Board, 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 mccambm@ipcb.state.il.us.

### **The Board Adopts Second Notice Proposed Rules for Emissions from Hospital/Medical/Infectious Waste Incinerators, R11-20**

The Board, on August 18, 2011, adopted for second-notice review by the Joint Committee on Administrative Rules (JCAR) proposed amendments to the Board's air quality standards rules for “Hospital/Medical/Infectious Waste Incinerators” (HMIWI). The rulemaking is docketed as In the Matter of: Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators (R11-20). The rules are scheduled for review at the September 13, 2011 JCAR meeting.

On December 23, 2010, the IEPA filed the proposal with the Board. This rulemaking reflects the United States Environmental Protection Agency's (USEPA) October 2009 amendments to the federal air quality standards, including new source performance standards (NSPS), and emissions guidelines (EG). Changes include revised emissions standards that are more stringent than existing ones, revised waste management plan provisions for greater flexibility in demonstrating compliance, and removal of an existing startup, shutdown, and malfunction provision.

The compliance date for the new rules is January 1, 2014. The Stericycle, Inc. facility in Clinton, the only existing facility to which the rules apply, has testified that it believes it can comply with the rules as amended.

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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should be directed to the Clerk of the Board, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Kathleen Crowley at 312-814-6929 or email at crowlek@ipcb.state.il.us.

### **Board Adopts Final Rules Extending Compliance Date for Controlling Nitrogen Oxide Emissions from Certain Sources, R 11-24/R11-26 (cons.)**

On August 18, 2011, the Illinois Pollution Control Board adopted final rules extending for three years the date of compliance with the requirements of various Subparts of 35 Ill. Adm. Code Part 217, Nitrogen Oxides (NO<sub>x</sub>) Emissions. The rulemaking is docketed as In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217 and In the Matter of: Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen

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Oxides Emissions: Amendments to 35 Ill. Adm. Code Part 217U (R11-24 and R11-26 consolidated). The rules were filed with the Secretary of State and became effective on August 22, 2011.

The Illinois Environmental Protection Agency (IEPA) originally filed R11-24 on April 4, 2011. On April 22, 2011, IERG filed an emergency rulemaking proposing identical changes to those present in R11-24. On May 19, 2011, the Board denied the motion for emergency rule and on the Board's own motion consolidated R11-26 with R11-24.

Specifically, the proposal extends the compliance date for control of NO<sub>x</sub> emissions from various source categories from January 1, 2012 to January 1, 2015. The new compliance date applies to emissions from source categories such as industrial boilers, process heaters, glass melting furnaces, cement kilns, lime kilns, furnaces used in steel making and aluminum melting, and fossil fuel-fired stations. The IEPA states that the extended compliance date for the requirements under Subparts D, E, F, G, H, I, and M of Part 217 would "satisfy Illinois'" obligation to submit a State Implementation Plan (SIP) to address the requirements under Sections 172 and 182 of the federal Clean Air Act for major sources of NO<sub>x</sub> in areas designated as nonattainment with respect to National Ambient Air Quality Standards (NAAQS).

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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6]. Requests should be directed to the Clerk of the Board, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Daniel Robertson at 312-814-6931 or email at [robertsd@ipcb.state.il.us](mailto:robertsd@ipcb.state.il.us).

### **Board Accepts for Expedited Hearing, and Authorizes First Notice Publication of, IEPA Proposal Establishing a Program for Registration of Small Sources of Air Emissions, R12-10**

On August 18, 2011, the Board accepted for hearing an August 15, 2011 proposal by the Illinois Environmental Protection Agency (IEPA) to create a program for Registration of Smaller Sources (ROSS). The Board directed the Clerk to publish the proposal, docketed as In the Matter of: Registration of Smaller Sources (ROSS): New 35 Ill. Adm. Code 201.175, R12-10. Public Act 97-0095, effective July 12, 2011, includes a new Section 9.14 of the Environmental Protection Act providing for adoption of ROSS provisions. The legislation requires expedited Board adoption of the rules within 120 days of receipt of the IEPA proposal, *i.e.* on or before December 13, 2011. The Board accordingly authorized publication of first notice of the proposal, which is scheduled for publication at 35 Ill. Reg. 14616 (September 2, 2011). The goal of new Section 9.14 is to allow eligible entities to register, rather than permit, their small sources of air emissions. To implement Section 9.14, the IEPA proposes adding a new Section 201.175 to the Board's existing air pollution regulations. The IEPA projects that, based on the criteria included in its proposal, "an estimated 3,230 small emission sources, or roughly 50% of the currently permitted emission sources, will no longer have direct permitting obligations to the Illinois EPA."

The first hearing on the IEPA's proposal will take place on Wednesday, October 5, 2011, in Springfield, and the second will take place on Thursday, October 27, 2011, in Chicago. An August 18, 2011 hearing officer order spells out procedural details concerning the hearing, including deadlines for the pre-filing of testimony.

The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R12-10, 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.

Opinions and orders of the Board and hearing officers, 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 from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6].

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

**Board Dismisses Five Reserved Identical in Substance Rulemaking Dockets as Unnecessary: R 12-1, R12-2, R112-3, R12-5, and R12-6**

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 4, 2011, the Board dismissed as unnecessary the following dockets reserved to consider rules adopted by the USEPA during the period of January 1, 2011 through June 30, 2011. As USEPA did not amend its rules during the update period, no amendments are needed to Board rules.

**UST Update (12-1)** 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 (R12-2)** 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.

**VOM Update (12-3)** 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 (R12-5)** 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.

**RCRA Subtitle D Update (12-6)** 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.

## Board Actions

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**August 4, 2011**  
**Chicago, Illinois**

### Rulemakings

<b>R 08-9(C)</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</u> –The Board found that delaying the hearings in Subdocket D until the Board goes to first notice in Subdocket C is appropriate. Also, as the Board will proceed to first notice in Subdocket C before hearings begins in Subdocket D, the Board will not create an additional subdocket. The Board granted Midwest Generation’s motion, denied Corn Products and ExxonMobil’s motions in part, and denied the motion of Citgo Petroleum Corporation and PDV Midwest, LLC.	5-0 Water
<b>R 11-8</b>	<u>In the Matter of: Regulatory Proposal for NOx Trading Program Sunset Provisions for Non-Electric Generation Units ("Non-EGU."): Amendments to 35 Ill. Adm. Code Part 217. Subpart U</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s air pollution control regulations.	5-0 Air
<b>R 12-1</b>	<u>UST Update, USEPA Amendments (January 1, 2011 through June 30, 2011)</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, 2011.	5-0 Land
<b>R 12-2</b>	<u>Wastewater Pretreatment Update, USEPA Amendments (January 1, 2011 through June 30, 2011)</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, 2011.	5-0 Water
<b>R 12-3</b>	<u>Definition of VOM Update, USEPA Amendments (January 1, 2011 through June 30, 2011)</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, 2011.	5-0 Air
<b>R 12-5</b>	<u>UIC Update, USEPA Amendments (January 1, 2011 through June 30, 2011)</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, 2011.	5-0 Land

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<b>R 12-6</b>	<u>RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2011 through June 30, 2011)</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, 2011.	5-0 Land
<b>R 12-8</b>	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources; Amendments to 35 Ill. Adm. Code Part 223</u> – The Board accepted for hearing petitioner’s July 13, 2011 proposal to amend the Board’s air pollution control regulations for certain commercial sources. The Board granted motion petitioner’s waiver of copy submission requirements.	5-0 Air
<b>R 12-9</b>	<u>In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations Under PA 96-1416 &amp; 97-0137: 35 Ill. Adm. Code Part 1100</u> – The Board accepted for hearing petitioner’s July 29, 2011 proposal to amend the Board’s land pollution control regulations. The Board granted the motion to waive the filing requirements.	4-0, Member Zalewski abstained Land

### Administrative Citations

<b>AC 11-24</b>	<u>IEPA v. Dennis Heck and Deanna Harris</u> – Since no amended petition was filed as ordered in the Board’s June 16, 2011 order, the previously filed petitions for review were dismissed. The Board found that these Jefferson County respondents violated Section 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)), and ordered respondents to pay a civil penalty of \$3,000.	5-0
AC 11-32	<u>IEPA v. Brandon DeHart and Robert Evans</u> – The Board accepted Brandon DeHart’s petition for review, but directed respondent to file an amended petition to cure deficiencies.	5-0

### Adjudicatory Cases

PCB 07-97	<u>Kyle Nash v. Luis Jimenez</u> – The Board accepted the parties’ joint stipulation to dismiss and closed the docket.	5-0 N-E, Citizens
PCB 08-89	<u>People of the State of Illinois v. Gelco Management &amp; Developers LLC,</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Franklin County facility, the Board ordered publication of the required newspaper notice.	5-0 A-E
PCB 10-66	<u>GHB 630, LLC v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.	5-0 UST Appeal
PCB 10-100	<u>Rolf Schilling, Pam Schilling and Suzanne Ventura v. Gary D. Hill, Villa Land Trust and Prairie Living West, LLC</u> – The Board granted Horve Contractors, Inc.’s motion to dismiss the third-party complaint, but granted leave to file an amended third-party complaint.	5-0 Citizens, L-E

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PCB 10-107	<u>People of the State of Illinois v. Rockford Sand and Gravel, Inc., a division of Rockford Blacktop</u> <u>People of the State of Illinois v. Rockford Sand and Gravel, Inc., a division of Rockford Blacktop</u> – In this water 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$8,000.00, and to cease and desist from further violations.	5-0 W-E
PCB 11-7	<u>Van Zelst Landscape Compost Facility v. IEPA</u> – The Board granted petitioner’s motion for summary judgment and denied the Illinois Environmental Protection Agency’s (IEPA) motion for summary judgment. The Board directed the IEPA to grant petitioner a permit to develop and operate a landscape waste compost facility at 39400 North Highway 41, City of Wadsworth, Lake County.	5-0 P-A, Land
PCB 12-17	<u>Shell Oil Products U.S. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Madison County facility.	5-0 UST Appeal 90-Day Extension
PCB 12-18	<u>The Premcor Refinihg Broup, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Macon County facility.	5-0 UST Appeal 90-Day Extension
PCB 12-19	<u>Speedway, LLC v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Lake County facility.	5-0 UST Appeal 90-Day Extension
PCB 12-20	<u>Clean Construction &amp; Recycling, LLC and G &amp; E Eight Series, LLC v. IEPA</u> – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Winnebago County facility.	5-0 P-A, Air, 90-Day Extension
PCB 12-21	<u>People of the State of Illinois v. Altivity Packaging, LLC, Intra-Plant Maintenance Corporation, Ironhustler Excavating, Inc. and Ron Bright, d/b/a Quarter Construction</u> – The Board accepted for hearing this water enforcement action involving a site located in Tazewell County.	5-0 L-E
PCB 12-22	<u>Speedway, LLC v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.	5-0 UST Appeal 90-Day Extension
PCB 12-23	<u>Beneficial Reuse Management, LLC and Southern Illinois Power Cooperative v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Williamson County facility, but reserved ruling on the motion for stay.	5-0 P-A, Water

**August 18, 2011**  
**Chicago, Illinois**

**Rulemakings**

<b>R 08-9(A)</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</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s water pollution control regulations. Specifically the Board adopted four categories of recreational use designation for the CAWS and LDPR: Primary Contact Recreation, Incidental Contact Recreation, Non-contact Recreation, and Non Recreation.	5-0 Water
<b>R 11-2</b>	<u>RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (January 1, 2010 through June 30, 2010)</u>	5-0 Land
<b>R 11-16 (cons.)</b>	<u>RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2010 through December 31, 2010)</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s hazardous waste regulations.	
<b>R 11-20</b>	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u> – The Board adopted a second notice opinion and order in this rulemaking proposal to amend the Board’s air pollution control regulations.	5-0 Air
<b>R 11-24</b>	<u>In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217</u>	5-0 Air
<b>R 11-26 (cons.)</b>	<u>In the Matter of: Illinois Environmental Regulatory Group's Emergency Rulemaking, Nitrogen Oxides Emissions: Amendments to 35 Ill. Adm. Code Part 217</u> – The Board adopted final rules to extend the compliance date for certain Part 217 air requirements. Also the Board granted the Illinois Environmental Protection Agency’s motion to correct the transcript of the Board’s June 28, 2011 hearing.	
<b>R 12-10</b>	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources; Amendments to 35 Ill. Adm. Code Part 223</u> – The Board accepted for hearing petitioner’s August 15, 2011 proposal to amend the Board’s air pollution control regulations for registration of smaller sources.	5-0 Air

**Administrative Citations**

<b>AC 11-26</b>	<u>IEPA v. Estate of Kenneth D. Berhenke, Sr.</u> – The Board granted complainant’s motion to voluntarily dismiss the administrative citation.	5-0
<b>AC 11-28</b>	<u>IEPA v. Thad and Linda Shafer</u> – The Board accepted respondent Thad Shafer’s amended petition for review. The Board directed the Illinois Environmental Protection Agency to file proof of service on Linda Shafer on or before September 8, 2011.	5-0



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### Adjudicatory Cases

<b>PCB 07-13</b>	<u>People of the State of Illinois v. Ray F. Landers, individually, and Equipping the Saints Ministry International, Inc., an Illinois not-for-profit corporation</u> – In this air enforcement action concerning a Sangamon County facility, the Board directed Equipping the Saints Ministry International, Inc. (ESMI) to pay a civil penalty of \$3,000 for violating Section 9.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(d)(1) (2010)) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos (40 C.F.R. Part 61, Subpart M). This follows the November 18, 2010 interim opinion and order which granted complainant’s motion for summary judgment, finding respondent ESMI had violated Section 9.1(d)(1) of the Act and 40 C.F.R. § 61.145(b).	5-0 A-E
<b>PCB 11-55</b>	<u>People of the State of Illinois v. American Excavating &amp; Septic Services, Inc. and CBS Leasing, L.L.C.</u> – In this water and mine enforcement action concerning a Jo Daviess 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondents to pay a total civil penalty of \$8,000.00, and to cease and desist from further violations.	5-0 W, M-E
<b>PCB 11-102</b>	<u>People of the State of Illinois v. Super Mix, Inc.</u> – In this air enforcement action concerning a DuPage 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$60,000.00, and to cease and desist from further violations.	5-0 A-E
<b>PCB 11-103</b>	<u>People of the State of Illinois v. Markham Transfer &amp; Recycling, LLC</u> – In this air enforcement action concerning a Cook County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$25,000.00, and to cease and desist from further violations.	5-0 L-E
<b>PCB 12-24</b>	<u>Chronister Oil Co. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Christian County facility.	5-0 UST Appeal
<b>PCB 12-25</b>	<u>Speedway LLC v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.	5-0 UST Appeal 90- Day Extension
<b>PCB 12-26</b>	<u>Vos Farms - Chadwick v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Vos Farms located in Whiteside County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).	5-0 T-C, W

## **New Cases**

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### **August 4, 2011 Board Meeting**

**12-16** Mark Lilly v. City of Rock Falls, IL – No action taken.

**12-17** Shell Oil Products U.S. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Madison County facility.

**12-18** The Premcor Refining Broup, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Macon County facility.

**12-19** Speedway, LLC v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Lake County facility.

**12-20** Clean Construction & Recycling, LLC and G & E Eight Series, LLC v. IEPA – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Winnebago County facility.

**12-21** People of the State of Illinois v. Altivity Packaging, LLC, Intra-Plant Maintenance Corporation, Ironhustler Excavating, Inc. and Ron Bright, d/b/a Quarter Construction – The Board accepted for hearing this water enforcement action involving a site located in Tazewell County.

**12-22** Speedway, LLC v. IEPA – The Board granted this request for a 90-day extension of time to file a underground storage tank appeal on behalf of this Cook County facility.

**12-23** Beneficial Reuse Management, LLC and Southern Illinois Power Cooperative v. IEPA – The Board accepted for hearing this permit appeal involving a Williamson County facility, but reserved ruling on the motion for stay.

**AC 12-1** IEPA v. Gaylon L. and Lois J. Harrell – The Board accepted an administrative citation against these Logan County respondents.

**R12-9** In the Matter of: Proposed Amendments to Clean Construction or Demolition Debris Fill Operations Under PA 96-1416 & 97-0137: 35 Ill. Adm. Code Part 1100 – The Board accepted for hearing petitioner's July 29, 2011 proposal to amend the Board's land pollution control regulations. The Board granted the motion to waive the filing requirements.

### **August 18, 2011 Board Meeting**

**12-24** Chronister Oil Co. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving a Christian County facility.

**12-25** Speedway LLC v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

**12-26** Vos Farms - Chadwick v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Vos Farms located in Whiteside County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).

**R12-10** In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources; Amendments to 35 Ill. Adm. Code Part 223 – The Board accepted for hearing petitioner's August 15, 2011 proposal to amend the Board's air pollution control regulations for registration of smaller sources.

## **Provisional Variance**

**IEPA 12-01 Ameren Energy—E.D. Edwards v. IEPA**—The Illinois Environmental Protection Agency (IEPA) granted, subject to conditions, the Ameren Energy—E.D. Edwards Power Plant (Ameren Edwards) request for a provisional variance for its Ameren Edwards Power Station in Bartonville, Peoria County. The variance from the thermal limits in Ameren Edwards' NPDES Permit to allow Ameren Edwards to continue operating through this unusually hot and dry period of weather which has resulted in high river temperatures. The IEPA granted the provisional variance from Special Condition No. 3, of Ameren Edwards' NPDES Permit No. IL 0001970 subject to conditions. The provisional variance is effective from July 21, 2011 through August 3, 2011

**IEPA 12-02 Midwest Generation Joliet 9, Joliet 29, and Will County Stations v. IEPA**—The Illinois Environmental Protection Agency (IEPA) granted, subject to conditions, Midwest Generation's request for a provision variance from thermal limits contained NPDES permits for its Joliet Station 9, Joliet Station 29, and Will County station. Midwest Generation requested the provisional variance at the I-55 Bride in these station's MPDES permits because of extremely hot weather conditions and the resulting maximum customer demand for electricity needed for cooling. The IEPA granted the provisional variance from thermal limits contained in conditions 5 and 6 of the Joliet Station 9 NPDES Permit No. IL 0002216, and Joliet Station 29 IL0064254; and special conditions 6 and 7 of Will County Station IL0002208 subject to conditions. The provisional variance is effective from July 20, 2011 through July 25, 2011.

**IEPA 12-03 Ameren Energy—E.D. Edwards v. Illinois Environmental Protection Agency**—The Illinois Environmental Protection Agency (IEPA) granted, subject to conditions, Ameren—E.D. Edwards' (Ameren Edwards) request for an extension to a provisional variance issued by the IEPA on July 22, 2011. The original extension to the variance from the thermal limits in NPDES Permit was requested so that Ameren Edwards could continue operating through this unusually hot and dry period of weather which has resulted in high river temperatures. The IEPA granted the provisional variance extension from special condition 3 of NPDES Permit IL0001970. The provisional variance is effective from August 4, 2011 through August 14, 2011.

**IEPA 13-04 Exelon Generation Company, LLC Dresden Nuclear Generation Station v. Illinois Environmental Protection Agency**—The Illinois Environmental Protection Agency (EPA) granted, subject to conditions, Exelon Generation Company, LLC's (Exelon) request for a provisional variance for its Dresden Nuclear Generation Station (Exelon Dresden). Exelon Dresden requested the provisional variance because intake temperatures at approximately 90 degrees Fahrenheit or above present an undue hardship for Exelon Dresden o meet the effluent thermal limits of 90 degrees Fahrenheit contained in NPDES Permit IL0002224. The IEPA granted a provisional variance from the thermal limits in special condition 4 of NPDES Permit IL0002224. The provisional variance is effective from August 6, 2011 through August 16, 2011.

*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](http://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

9/8/11 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
9/22/11 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
9/19/2011 10:00 AM	PCB 11-86	<u>ExxonMobil Oil Corporation v. IEPA</u>	Village of Bolingbrook Board Room 375 W. Briarcliff Road Bolingbrook
9/19/2011 10:00 AM	PCB 12-46	<u>ExxonMobil Oil Corporation v. IEPA</u>	Village of Bolingbrook Board Room 375 W. Briarcliff Road Bolingbrook
9/22/11 1:00 PM	R11-25	<u>In the Matter of: Setback Rulemaking Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618</u>	Illinois Pollution Control Board Conference Room 11-512 James R. Thompson Center 100 W. Randolph Street Chicago
9/26/2011 11:00 AM	R12-09	<u>In the Matter of Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100</u>  <b>(Continues until complete or through September 27, 2011)</b>	Illinois Environmental Protection Agency Office Building Sangamo Room 1021 North Grand Avenue East (North Entrance) Springfield
10/5/2011 1:00 PM	R12-10	<u>In the Matter of: Registration of Smaller Sources (ROSS): New 35 Ill. Adm. Code 201.175</u>	Illinois Pollution Control Board Conference Room First Floor 1021 N. Grand Avenue East (North Entrance) Springfield
10/6/2011 9:00 AM	R12-08	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources: Amendments to 35 Ill. Adm. Code Part 223</u>	Illinois Pollution Control Board Conference Room First Floor 1021 N. Grand Avenue East (North Entrance) Springfield

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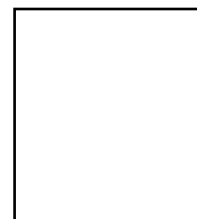
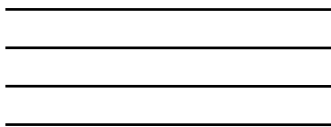
<p><b>10//6/11 11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago And 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield</b></p>
<p><b>10/20/11 11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p>10/25/2011 11:00 AM</p>	<p>R12-09</p>	<p><u>In the Matter of Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100</u>  <b>(Continues until complete or through October 26, 2011)</b></p>	<p>James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago</p>
<p>10/27/2011 11:00 AM</p>	<p>R08-09(B)</p>	<p><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></p>	<p>James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago</p>
<p>10/27/2011 1:00 PM</p>	<p>R12-10</p>	<p><u>In the Matter of: Registration of Smaller Sources (ROSS): New 35 Ill. Adm. Code 201.175</u></p>	<p>Illinois Pollution Control Board Conference Room, 11-512 James R. Thompson Center 100 W. Randolph Street Chicago</p>
<p><b>11/3/11 11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p>11/17/2011 1:00 PM</p>	<p>R12-08</p>	<p><u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources; Amendments to 35 Ill. Adm. Code Part 223</u></p>	<p>Illinois Pollution Control Board Conference Room, 11-512 James R. Thompson 100 W. Randolph Street Chicago</p>
<p><b>11/17/11 11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></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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