

ILLINOIS POLLUTION CONTROL BOARD

WRB REFINING, LLC)
Gasoline SZorb Unit)
)
)
)
PROPERTY IDENTIFICATION NUMBER)
19-1-08-35-00-000-001 or portion thereof)

PCB 12-039
(Tax Certification – Air)

To: IEPA
Robb H. Layman-Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Illinois Department of Revenue
Steve Santarelli
101 West Jefferson
P.O. Box 19033
Springfield, IL 62794

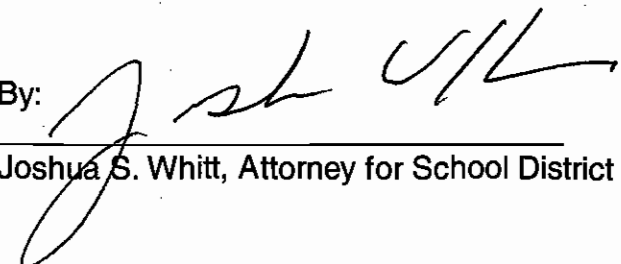
WRB Refining, LLC
Michael Kemp
404 Phillips Building
Bartlesville, OK 74004

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Motion for Reconsideration of Roxanna Community Unit School District No. 1, a copy of which is herewith served upon you.

DATED this 23rd day of November, 2011.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1

By: 

Joshua S. Whitt, Attorney for School District

WHITT LAW LLC
Stuart L. Whitt
Joshua S. Whitt
Brian R. Bare
Brittany F. Theis
70 S. Constitution Drive
Aurora, Illinois 60506
(630) 897-8875

CERTIFICATE OF SERVICE

I, Joshua S. Whitt, the undersigned attorney, hereby certify that I have served the attached Motion for Reconsideration on all parties of record, by certified mail at the following addresses:

IEPA
Robb H. Layman-Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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ILLINOIS POLLUTION CONTROL BOARD

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MOTION FOR RECONSIDERATION

NOW COMES the Board of Education of Roxana Community Unit School District No. 1 (herein “School District”), by its attorneys, WHITT LAW LLC, and, for its Motion for Reconsideration, states as follows:

1. This Board denied as moot the School District’s motions for leave to intervene in two tax certifications.¹ However, the Board’s orders granting the certifications were not final and the petitions were consequently not moot. These two certifications, if granted, would remove over \$300 million worth of real property from the School District’s locally assessed property tax rolls. Thus, the denials of leave to intervene will materially prejudice and adversely affect the School District and should be reconsidered. Furthermore, the School District can present evidence that proves that these properties do not meet the definition of “pollution control facilities” and should not be granted preferential tax treatment.

2. The School District’s requests are timely. They were prepared and mailed a mere fourteen days after the Board received the initial filings from the Illinois EPA.

¹ The pertinent issues are largely the same in both cases, PCB 2012-039 and -040. For convenience, the School District has filed these motions separately under both captions but their text and exhibits are identical.

The only public notice of these pending actions was on a Board meeting agenda posted forty-eight hours before their approval. The School District has fully complied with the Board's regulations in light of the factual circumstances. Denial of leave to intervene will materially prejudice and adversely affect the School District by the potential loss of as much as \$3.8 million in annual property tax revenue.

I. The School District's Petitions for Leave to Intervene Were Not Moot and the Board Must Consider Them On Their Merits.

3. The Board denied the School District's petitions for leave to intervene on the grounds that they were "moot as the Board has already granted the tax certification and the docket is closed." (2012-039 and 2012-040 Order of the Board of October 20, 2011, p. 1 of each.) That is not correct.

4. The Illinois Environmental Protection Agency (herein "Illinois EPA") filed with this Board its appearance and recommendations on August 25, 2011, recommending that the Board issue the requested tax certifications. (2012-039 and 2012-040 Agency's Recommendations, p. 1 of each).

5. The Board adopted orders granting the tax certifications in question on September 8, 2011 – fourteen calendar days and nine working days later. (2012-039 and 2012-040 Orders of the Board of September 8, 2011.) The Board then served copies of these orders on the applicant, WRB Refining, LLC (herein "WRB Refining"), by United States certified mail with return receipt requested.

6. On or about September 2, 2011, the School District first learned of WRB Refining's filings seeking tax certifications through a review of the Board's dockets. The School District promptly prepared petitions for leave to intervene in both cases. These

petitions were mailed on September 8, 2011, via certified mail to the Board and all other parties in accordance with the Board's regulations.

7. The Board received the School District's petitions for leave to intervene on September 13. WRB Refining received the petitions a day earlier than that, on September 12. (See Exhibit 1 attached hereto, School District's Return Receipt Cards with U.S. Postal Service Track and Confirm².)

8. WRB Refining was not served with the Board's orders granting tax certification until September 15, 2011 – three days after it was served with the School District's petitions for leave to intervene and two days after the Board received them. (Exhibit 2, Board's Return Receipt Card with U.S. Postal Service Track and Confirm.) Thus, the Board's rulings that the petitions for leave to intervene were moot because the Board had already granted the tax certifications and because the dockets were closed are incorrect.

9. The Board's regulations state that a "final order" is "an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court." 35 Ill. Admin. Code § 101.202 (2011). The orders of September 8, 2011, are insufficient in both aspects of this definition.

10. For purposes of appeal or a motion for reconsideration, the Board's regulations provide that the date of service of the order in question controls. 35 Ill. Admin. Code § 101.300(d)(2) (2011). The date of the Board meeting where the order

² The stamp used by WRB Refining on the return receipt cards includes the date of delivery but is so faint as to be nearly illegible. This is true for the card returned to the Board as well. However, the U.S. Postal Service website's "Track & Confirm" feature shows the dates of delivery for all three items of certified mail. The School District has included those website printouts for the convenience of all parties.

was adopted is only used for purposes of statutory deadline proceedings. 35 Ill. Admin. Code § 101.300(d)(1) (2011). There is no statutory deadline for tax certifications.

11. The Board's regulations provide that, in the case of service by registered or certified mail, "service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt." 35 Ill. Admin. Code § 101.300(c) (2011).

12. Consequently, the Board's orders of September 8, 2011, granting the tax certifications could not have become final and appealable until, at the earliest, they were actually delivered to WRB Refining on September 15.

13. The applications were outstanding matters at the Board's meeting of September 8, 2011, when they were decided. (See Exhibit 3, Board's Meeting Minutes of September 8, 2011.) After the petitions for leave to intervene were filed and served, the September 8, 2011, orders granting the tax certifications could never become final orders, as that term is defined by the Board's regulations, because they did not "terminate[] the proceeding leaving nothing further to litigate or decide." 35 Ill. Admin. Code § 101.202 (2011). WRB Refining knew of the petitions before it received the September 8 orders and thus was aware they were not final. The Board clearly still had to decide the matter of the School District's petitions for leave to intervene, which it did not do until October 20, 2011. Copies of the minutes for the Board's meetings of September 22, October 6, and October 20 – showing these two cases as outstanding adjudicatory cases – are attached hereto as Exhibits 4, 5, and 6.

14. The Board's statement in its October 20 order that the dockets were closed is entirely incorrect. First, the September 8, 2011, orders do not state anything

about closing the dockets immediately upon their issuance. Second, the dockets clearly remained open because the Clerk of the Board actually filed the petitions in those dockets. Finally, the Board kept the dockets open for at least a month until it ruled on the petitions on October 20, 2011.

15. These motions for reconsideration have been timely filed. A motion for reconsideration may be filed within 35 days after the receipt of the order. 35 Ill. Admin. Code § 101.520(a) (2011). The Board's order of October 20 in Docket No. PCB 2012-039 was not served on the School District until October 24, 2011. (2012-039 Certified Mail Receipt of Board Order of October 20, 2011, mailed to Brittany F. Theis). Presumably, the order in Docket No. PCB 2012-040 was intended to have been included in that mailing, although it was not and that docket number is not shown on the return receipt. Thirty-five days from the service on the School District is thus Monday, November 28, 2011.

16. The petitions were not moot when the Board ruled on them. The September 8 orders were not then and have never become final and appealable. Consequently, the Board must reconsider its orders of October 20, 2011, and consider the merits of the petitions for leave to intervene.

II. The School District Will Be Materially Prejudiced and Adversely Affected by These Tax Certifications and the Board Should Grant Leave to Intervene in These Cases.

17. The two properties at issue in these matters constitute \$300 million in real property from which the School District will derive property tax revenue. They do not, however, meet the statutory definition of pollution control facilities. Removing them from the locally assessed tax rolls and thus giving them preferential tax treatment will

materially prejudice and adversely affect the School District by depriving it of property tax revenue. Its petitions to intervene were timely filed and should be granted.

18. WRB Refining owns and operates the Wood River petroleum refinery in Madison County, Illinois. The Wood River petroleum refinery is within the boundaries of the School District and the School District receives property tax revenues from it.

19. On or about April 4, 2006, WRB Refining completed construction of its Ultralow Sulfur Diesel Hydrotreater Project (herein "the Hydrotreater") at the refinery. (2012-040 Agency's Recommendation, Ex. A, p. 2). WRB Refining has represented that the total installed cost of the Hydrotreater was approximately \$200 million, with a net salvage value just under \$1.8 million and no productive income attributable to it. *Id.*

20. On February 15, 2007, WRB Refining completed construction of its Tier II Gasoline SZorb Unit Project (herein "the SZorb") at the refinery. (2012-039 Agency's Recommendation, Ex. A, p. 2). WRB Refining has represented that the total installed cost of the SZorb was approximately \$100 million, with a net salvage value just under \$600,000 and no productive income attributable to it. *Id.*

21. On or about October 14, 2010, over three and four years after their completion, WRB Refining filed with the Illinois Environmental Protection Agency (herein "the Illinois EPA") applications seeking tax certifications of the SZorb and the Hydrotreater as pollution control facilities for property tax purposes. (2012-039 and 2012-040 Agency's Recommendations, p. 1 of each).

22. Seven months later, on May 13, 2011, an Illinois EPA staff member issued memoranda to Illinois EPA's counsel stating his recommendation that the SZorb and the Hydrotreater be granted tax certifications as pollution control facilities "[b]ased on the

information included in [these] submittal[s].” (2012-039 and 2012-040 Agency’s Recommendations, Ex. B of each).

23. Three months after that, on August 25, 2011, the Illinois EPA filed its appearance and recommendation with this Board recommending that the Board issue the requested tax certifications. (2012-039 and 2012-040 Agency’s Recommendations, p. 1 of each).

24. Under the Property Tax Code, real property in Illinois is generally valued for property tax purposes at one-third of its “fair cash value.” 35 ILCS 200/9-145 (2011). These assessments are performed by local assessment authorities.

25. Property certified as a pollution control facility is entitled to preferential property tax treatment. 35 ILCS 200/11-5 (2011). Pollution control facilities are valued at one-third “of the fair cash value of their economic productivity to their owners.” *Id.* Assessments of pollution control facilities are performed by the Illinois Department of Revenue. 35 ILCS 200/11-20 (2011).

26. The Board’s regulations allow a party to intervene in any adjudicatory proceeding when the party “may be materially prejudiced absent intervention” or “may be adversely affected by a final Board order.” 35 Ill. Admin. Code § 101.402(d) (2011).

27. The Board’s regulations state that it “encourages public participation in all of its proceedings.” 35 Ill. Admin. Code § 101.110(a) (2011).

28. The Board has previously held that third-party intervention is allowed in tax certifications and should be encouraged due to the Board’s limited ability to uncover possible fraud and misrepresentation. *Reed-Custer Community Unit School District No. 255 v. Pollution Control Board*, 232 Ill. App. 3d 571, 576 (1st Dist. 1992).

29. Together, the properties at issue in these two cases have a value of at least \$300 million. In Madison County, they would be treated as real property and subject to taxation at one-third their fair cash value – if they would be treated as personal property, they would not be subject to taxation at all and WRB Refining would have no need to seek their classification as pollution control facilities.

30. Until recently, the Wood River petroleum refinery was the subject of a property tax settlement agreement between then-owner ConocoPhillips and a number of local taxing bodies, attached hereto as Exhibit 7.³ Through the 2010 tax year, the assessed value of the refinery was pre-determined by the agreement of the parties. (Exhibit 7, p. 4.) This effectively excluded the SZorb and the Hydrotreater from taxation. The agreement ended with the 2010 tax year, and it was not until then that WRB Refining filed these applications for pollution control facility tax certifications with the Illinois EPA.

31. If locally assessed, these properties will contribute \$100 million to the School District's property tax base. The School District's total tax rate for its operating funds for the 2010 tax year was 3.81%, and these properties would have resulted in over \$3.8 million in property tax revenue last year if they had not been excluded from taxation under the settlement agreement. Multiplying this amount over the life of these assets gives WRB Refining a tremendous incentive to seek pollution control facility treatment for them and claim that they have no economic productivity value.

³ The School District has been unable to locate a fully executed copy of the Wood River Refinery Intergovernmental Agreement of 2004. The agreement itself is not at issue here. It is only presented for the Board's benefit to understand the timing of WRB Refining's filing for tax certifications in these cases. In January, 2007, the refinery was transferred to WRB Refining.

32. After it has granted certification of a pollution control facility, the Board may revoke a pollution control certificate if “[t]he certificate was obtained by fraud or misrepresentation.” 35 ILCS 200/11-30 (2011); see also 35 Ill. Admin. Code § 101.216(c)(1) (2011). However, the review for fraud or misrepresentation, under current Illinois case law, may not actually include the essential question of whether the property at issue “is in fact a ‘pollution control facility’” as defined by the Property Tax Code. *Reed-Custer*, 232 Ill. App. 3d at 577-78. Consequently, it is in the Board’s best interest to allow the School District to intervene in these matters and provide it with an independent review of the evidence submitted by WRB Refining before granting this preferred status on these properties.

33. Although the Illinois EPA has provided a review of these applications, its review was clearly deficient. In Docket No. PCB 2012-039, the Illinois EPA’s recommendation stops discussing the SZorb after the first sentence in paragraph 4 and begins – with a sentence fragment, no less – discussing the Distilling West H-28 NOx Reduction project that was the subject of another filing, Docket No. PCB 2012-038. (2012-039 Agency’s Recommendation, pp. 2-3, para. 4, 7, 8; also Exhibit 8, Board’s Agenda of September 8, 2011, p. 11 entry for PCB 2012-38). This error was repeated when the Board quoted from that recommendation in its order of September 8. The Illinois EPA’s recommendation on the SZorb does not discuss the SZorb, but rather an entirely different project. This may be the result of the Illinois EPA having filed ten matters *en masse* with the Board on August 25. (Exhibit 8, pp. 10-11 entries for PCB 2012-32 through PCB 2012-41). Regardless of the cause, this flawed analysis is not

sufficient to serve as the basis for pollution control facility certification of the \$100 million SZorb.

34. In addition, the recommendations filed by the Illinois EPA for both projects state that their “underlying purpose” is to reduce pollution. (2012-039 and 2012-040 Agency’s Recommendations, paragraph 7 of each). However, the statutory definition requires that the reduction of pollution must be the “primary purpose” of any property certified as a pollution control facility. 35 ILCS 200/11-10 (2011). These are not synonymous or interchangeable terms. Given the import of these decisions, this Board should provide an opportunity for investigation and hearing on the Illinois EPA’s recommendations.

35. This is especially true because, following intervention, the School District will demonstrate that the SZorb and the Hydrotreater are not pollution control facilities because: (1) their “primary purpose” is the production of a final product for sale and not the elimination, prevention, or reduction of air pollution or water pollution; (2) they do not eliminate, prevent or reduce air or water pollution at the Wood River petroleum refinery; and (3) they actually increase the amount of air pollution at the Wood River petroleum refinery. The fact that the Illinois EPA has taken nearly a year to analyze these facilities, but produced nothing more than two one-page technical memoranda which fail to recognize these facts, illustrates the Board’s need for additional information.

36. WRB Refining essentially admits these points in its filings. Regarding the SZorb, it notes that “the production of low sulfur gasoline allows gasoline engines to be fitted with advanced emission control systems that would otherwise be poisoned by sulfur” and that “[t]hese advanced emission control systems can greatly reduce

emissions of oxides of nitrogen and particulate matter.” (2012-039 Agency Recommendation, Ex. A, Section D).

37. The emission control systems attached to the gasoline engines, commonly known as catalytic converters, are the facilities which reduce pollution. The removal of sulfur from the gasoline simply stops the gasoline from fouling the catalytic converters.

38. The federal Clean Air Act, codified at 42 USC 7401 *et seq.*, and the U.S. Environmental Protection Agency’s corresponding regulations limit the manufacture, introduction into commerce, offering, or sale of any fuel “if emission products of such fuel . . . will impair to a significant degree the performance of any emission control device or system.” 42 USC 7545(c)(1) (2011). The Clean Air Act Amendments of 1990, and particularly the Tier II standards put in place as of 2004, limited the sulfur content in gasoline. There are, however, exceptions for aircraft fuel, fuel for racing vehicles or racing boats, California gasoline, and gasoline that is exported for sale outside the U.S. 40 CFR 80.200 (2011).

39. WRB Refining states that the SZorb “directly reduces SO_x pollution by removing sulfur from the gasoline product” and “provides the gasoline quality necessary for reduction emissions of oxides of nitrogen and particulate matter through the use of advanced emission control systems in gasoline engines.” (2012-039 Agency Recommendation, Ex. A, Section D).

40. Consequently, WRB Refining’s decision to construct the Tier II Gasoline SZorb Unit Project allowed it to produce low-sulfur gasoline that could be sold more easily and profitably than the limited exceptions allowed under federal law for aircraft

fuel, racing fuel, and gasoline exported for sale outside of the U.S. This is quite clearly a revenue-generating facility, not a pollution control facility.

41. WRB Refining made essentially the same exact statements regarding the Hydrotreater, except for the fact that it operates to remove sulfur from diesel fuel. The scenario is entirely the same. The advanced emission control systems attached to the diesel engines are the true pollution control facilities.

42. Tier II of the Clean Air Act Amendments of 1990 imposes restrictions on the content of sulfur in diesel fuel as well. Again, there is an exception for “fuel that is designated for export outside the United States . . . identified for export by a transfer document . . . and that is exported.” 40 CFR 80.501. All other types of diesel fuel are subject to sulfur restrictions. Tier II restrictions began for motor vehicle diesel on June 1, 2006, and are phased in for nonroad, locomotive, and marine diesel from June 1, 2007, through June 1, 2012. 40 CFR 80.500, 80.510, 80.520, and 80.530.

43. Again, WRB Refining states that the Hydrotreater “directly reduces SOx pollution by removing sulfur from the diesel product” and “provides the diesel quality necessary for reduction emissions of oxides of nitrogen and particulate matter through the use of advanced emission control systems in diesel engines.” (2012-040 Agency Recommendation, Ex. A, Section D). Note that these are identical word-for-word with the statements regarding the SZorb, only substituting “diesel” for “gasoline.”

44. Once more, WRB Refining’s decision to construct the Ultralow Sulfur Diesel Hydrotreater allowed it to produce low-sulfur diesel that could be sold more easily and profitably than the limited exceptions allowed under federal law for nonroad, locomotive, and marine diesel and diesel exported for sale outside of the U.S. Just like

the SZorb, the Hydrotreater is a revenue-generating facility, not a pollution control facility.

45. Furthermore, the School District can show that both projects actually serve to increase the air pollution actually produced by the refinery in its locale. Consequently, certification of them as pollution control facilities would be contrary to this Board's mission and purpose. This Board should allow the School District leave to intervene in both proceedings in order to facilitate a proper evidentiary hearing on these matters.

III. The School District Timely Filed Its Petitions For Leave to Intervene in These Matters.

46. The School District recognizes that the Board must consider the timeliness of its petitions for leave to intervene. 35 Ill. Admin. Code § 101.402(b) (2011).

47. The Board's regulations provide that motions may be filed at any time unless otherwise specifically provided. 35 Ill. Admin. Code § 101.500(c) (2011).

48. Motions that a party desires the Board to rule on before hearing should be filed twenty-one days prior to the regularly scheduled Board meeting that precedes the noticed hearing date, although motions filed after that may be considered if time permits. 35 Ill. Admin. Code § 101.508 (2011). It is interesting that the Board does not apply the same rule to applications for tax certification.

49. In this case, only fourteen days elapsed between the Illinois EPA's filing with the Board and the Board's decision to act on those recommendations. WRB Refining took three to four years before it filed its applications. The Illinois EPA took another ten months to act on them. During that ten month period, there was no notice of the filings or the Illinois EPA's intent to recommend certification – none to the public,

none to the School District, and none to any other unit of local government potentially affected.

50. No information on applications for tax certification is available to the public from the Illinois EPA's website. The Illinois EPA has stated that the only way to obtain such information would be to continually file requests under the Freedom of Information Act. (See Exhibit 9, E-mail from Brad Frost of Oct. 28, 2011.) However, that statutory process, while intended to be expeditious, is not. On November 7, the School District requested all applications filed by WRB Refining seeking pollution control facility certification. To date, that request has not been answered. On November 22, a representative of the School District called to inquire about the status of its request and was told by the Illinois EPA official that the agency was still processing requests from the last week of September and the first week of October, and that the Illinois EPA could provide no timeline for its response. The Affidavit of Whitney A. McKeivitt is attached hereto as Exhibit 10.

51. The first disclosure of these applications was on August 25, 2011, when the Illinois EPA filed its recommendations with the Board. Sometime thereafter, the filings would have been listed on the Board's website. There is only one way to locate these filings: click on "Clerk's Office," then "Clerk's Office On-Line (COOL)," then "View Recent Filings" or "View Case Information and Search IPCB Files" and then manually review all of the Board's case filings in reverse chronological order. That is exactly how the School District learned of the filings at hand.

52. The Board also published the August edition of its monthly newsletter, Environmental Register, which is attached as Exhibit 11. The tax certifications of the SZorb and the Hydrotreater do not appear in its list of new cases. (Exhibit 11, p. 16.)

53. The Board apparently has no records of when the August Environmental Register was published. (See Exhibit 12, E-mail from Marie Tipsord of Nov. 18, 2011.) The August issue does, however, provide a hearing date for another case, PCB 2012-046, with a docket number later than these. (Exhibit 11, p. 18). A copy of the docket sheet for that case is attached hereto as Exhibit 13, and it shows that the initial filing was not received by this Board – and the docket number consequently could not have been assigned – until September 2, 2011. (Exhibit 13, p. 2). Thus, the August Environmental Register was published some time after September 2, 2011, at least eight days after the Board received the initial filings requesting tax certifications for the SZorb and the Hydrotreater, although those filings were not included in the publication.

54. The Board's staff published the only public notice of these filings in the agenda posted approximately forty-eight hours before the Board's meeting of September 8, 2011. (See Exhibit 12, E-mail from Marie Tipsord of Nov. 18, 2011.) That agenda was the first and only public disclosure of these filings and their consideration at the September 8 meeting. It contains no indication that the Board intended to act upon them at that time. (Exhibit 8.) They were among eleven tax certification cases that had been filed by the Illinois EPA after the Board's prior meeting and were publicly listed for action for the first time on that agenda. The Illinois EPA filed nine of those eleven recommendations on August 25 alone. The agenda also lists the twenty new cases that had been filed since the Board's August 18 meeting. (Exhibit 8, p. 14.) No final orders

were entered on September 8 for any of those except the certifications requested by WRB Refining.

55. Upon learning of these filings, the School District acted as quickly as it possibly could. Its petitions for leave to intervene were filed with the Clerk of the Board by U.S. mail in accordance with the Board's regulations. 35 Ill. Admin. Code §§ 101.402(a), 101.302(c) (2011). Furthermore, the Board's own regulations prohibit "[f]iling by electronic transmission or facsimile . . . [without] prior approval of the Clerk of the Board or hearing officer assigned to the proceeding." 35 Ill. Admin. Code § 101.302(d) (2011).

56. This is the notice and filing scheme created by the Board itself. The Property Tax Code provides only that "[a]pplication for a pollution control facility certificate shall be filed with the Pollution Control Board in a manner and form prescribed in regulations issued by that board." 35 ILCS 200/11-25 (2011).

57. Prior to January 1, 2001, the Board had no procedural rules that specifically addressed tax certifications. (See generally the Opinion of the Board issued in R00-20, Dec. 21, 2000.) Before then, applicants applied to the Illinois EPA requesting tax certification and the Illinois EPA issued or denied the certificate.

58. The Board's regulations now provide that the Illinois EPA only file a recommendation on issuance or denial of certification with the Board. 35 Ill. Adm. Code § 125.204(a) (2011). The Illinois EPA is required to serve the applicant with a copy of its recommendation. 35 Ill. Adm. Code § 125.204(c) (2011). If the Illinois EPA recommends denial, its filing must state that the applicant has thirty-five days to contest

its recommendation. 35 Ill. Adm. Code § 125.204(b) (2011). No other notice to the public or any other entity is provided under the Board's regulations.

59. No hearing was held in these cases. No meaningful opportunity was afforded for input from the public or the affected taxing districts. Apparently, the Board will only hold a hearing in a tax certification case if the applicant contests a recommendation of denial from the Illinois EPA or if the Board "in its discretion determines that a hearing would be advisable." 35 Ill. Adm. Code § 125.210(a) (2011). The School District's good-faith review of the Board's tax certification decisions revealed no instances where the Board has ever scheduled a hearing on an application on its own discretion.

60. Interestingly, when a hearing on a tax certification case is held, the Clerk of the Board is required to publish notice of that hearing "in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located." 35 Ill. Adm. Code § 125.212 (2011). Yet there is no requirement for such notice when tax certifications are to be granted without a hearing, as they were here.

61. The School District's intervention requests were timely. The only public notice of these filings was made a mere forty-eight hours before they were approved by this Board. No hearing was held. No other notice was provided.

62. Intervention will not unduly delay or materially prejudice these proceedings. WRB Refining waited three to four years after completion of the projects at issue to apply for pollution control facility certification, just as its property tax

settlement agreement was about to expire. The Illinois EPA then took another ten months to form its own recommendations.

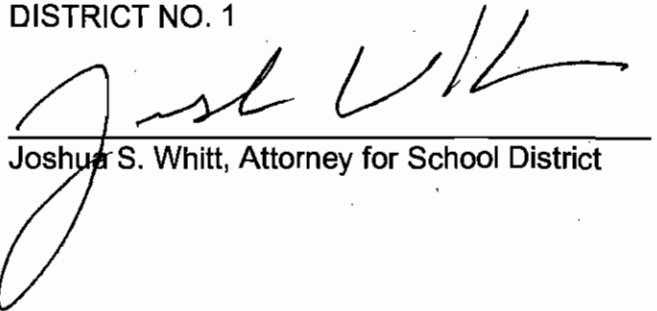
63. Furthermore, the recommendations filed by the Illinois EPA are not sufficient to provide this Board with a meaningful review of the properties at issue. The applicant's own descriptions belie the true nature of the projects. Consequently, intervention by the School District will aid and assist the Board in its determination of these matters, which the School District believes will ultimately be a denial of tax certification on both properties.

64. As stated above, a property tax settlement agreement controlled the local assessment of the Wood River refinery through tax year 2010. Over the past four years, there has been significant capital invested in the real property at the refinery. The School District and other taxing bodies are currently in litigation before the Madison County Board of Review over the fair market value of the refinery. In that litigation, WRB Refining has represented that it has over \$3 billion worth of property in applications for pollution control facility certification pending with the Illinois EPA. It was that representation that prompted the November 7 FOIA request to the Illinois EPA. It is reasonable to anticipate that there will be substantial litigation over the qualification of these improvements as pollution control facilities.

For these reasons, the Board of Education of Roxana Community Unit School District No. 1, respectfully requests that the State of Illinois Pollution Control Board:

- (1) reconsider its orders of October 20, 2011, denying the School District's Petitions for Leave to Intervene;
- (2) grant the School District leave to intervene in the above captioned proceedings;
- (3) vacate its orders of September 8, 2011;
- (4) set a discovery schedule in the above captioned proceedings;
- (5) schedule a hearing on WRB Refining, LLC's application;
- (6) upon conclusion of the hearing, enter orders denying certification of the SZorb and the Hydrotreater as pollution control facilities; and
- (7) grant the Board of Education such other and further relief as the Pollution Control Board deems just and equitable.

ROXANA COMMUNITY UNIT SCHOOL
DISTRICT NO. 1



Joshua S. Whitt, Attorney for School District

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70 S. Constitution Drive
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(630) 897-8875

STATE OF ILLINOIS)
)
COUNTY OF KANE) ss.

AFFIDAVIT


The undersigned affiant, being first duly sworn and under penalty of perjury on oath, states as follows:

1. My name is Brian R. Bare and I am an attorney with Whitt Law LLC.
2. I am familiar with the Exhibits attached to this Motion, specifically:

<u>Exhibit</u>	<u>Description</u>
1	School District's Return Receipt Cards to WRB Refining with Track & Confirm
2	Pollution Control Board's Return Receipt Card to WRB Refining with Track & Confirm
3	Pollution Control Board Minutes – September 8, 2011 Meeting
4	Pollution Control Board Minutes – September 22, 2011 Meeting
5	Pollution Control Board Minutes – October 6, 2011 Meeting
6	Pollution Control Board Minutes – October 20, 2011 Meeting
7	Wood River Refinery Intergovernmental Agreement of 2004
8	Pollution Control Board Agenda – September 8, 2011 Meeting
9	E-mail from Brad Frost of Oct. 28, 2011
10	Affidavit of Whitney A. McKeivitt
11	Environmental Register – August 2011
12	E-mail from Marie Tipsord of Nov. 18, 2011
13	Docket for PCB 2012-046

3. I downloaded Exhibits 2, 3, 4, 5, 6, 11, and 13 from the website of the Illinois Pollution Control Board for the preparation of this Motion. Exhibits 8, 9, and 12 were received in our office directly from Pollution Control Board and Environmental Protection Agency staff members. Exhibits 1 and 7 were maintained in our files in the course of representing Roxana Community Unit School District No. 1. I downloaded the Track & Confirm portions of Exhibits 1 and 2 from the U.S. Postal Service website. I notarized Exhibit 10, the affidavit of Ms. Whitney A. McKeivitt.
4. Said Exhibits are true and correct copies of the original documents.

Dated this 23rd day of November, 2011.

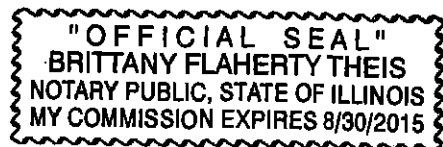


Brian R. Bare

SUBSCRIBED AND SWORN to before me this 23rd day of November, 2011.

Brittany Flaherty Theis

Notary Public



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X	
1. Article Addressed to: WRB REFINING LLC MICHAEL KEMP 404 PHILLIPS BUILDING BARTLESVILLE, OK 74004	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004	Mail Services Bartlesville, OK	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	7010 1670 0002 2945 2907
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
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1. Article Addressed to: WRB REFINING LLC MICHAEL KEMP 404 PHILLIPS BUILDING BARTLESVILLE, OK 74004	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004	Mail Services Bartlesville, OK	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	7010 1670 0002 2945 2914
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540



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<input type="checkbox"/>	YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
<input type="checkbox"/>	70101670000229452907 Restore Archived Details		Delivered	September 12, 2011, 7:06 am	BARTLESVILLE, OK 74004	
<input type="checkbox"/>	70101670000229452914 Restore Archived Details		Delivered	September 12, 2011, 7:06 am	BARTLESVILLE, OK 74004	

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1. Article Addressed to: 9/8/11 B.M. PCB 2012-039 & PCB 2012-040 Michael Kemp WRB Refining, LLC 404 Phillips Building Bartlesville, OK 74004	B. Received by (Printed Name) _____	C. Date of Delivery _____
2. Article Number (Transfer from service label) 7011 0110 0001 8269 9437	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No _____	
PS Form 3811, February 2004	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	Domestic Return Receipt 102595-02-M-1540	

Exhibit 2



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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
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**ILLINOIS POLLUTION CONTROL BOARD
MEETING MINUTES**



September 8, 2011

11:00 a.m.

Chicago

100 W. Randolph Street

Chicago, IL

9-040

ANNOUNCEMENTS

Chairman Girard welcomed members of the public and staff.

ROLL CALL

The Assistant Clerk of the Board called the roll. Five Board Members answered present.

APPROVAL OF MINUTES

The minutes of the August 18, 2011 open meeting were approved by a vote of 5-0. The minutes of the August 25, 2011 closed deliberative session were approved by a vote of 4-0, Member Moore abstained. The minutes of the September 1, 2011 closed deliberative session were approved by a vote of 3-0, Members Moore and Zalewski abstained.

RULEMAKINGS

R 10-9(A)	<u>In the Matter of: Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s land pollution control regulations.	5-0 Land
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ADJUSTED STANDARDS

NONE

ADMINISTRATIVE CITATIONS

AC 9-35	<u>IEPA v. William and Patricia Hajek</u> – In response to a joint stipulation and settlement agreement in this administrative citation action involving a DeKalb County facility, the Board found that respondents had violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2008)) and ordered respondents to pay a civil penalty of \$1,500. The Board also granted the parties’ joint motion to dismiss respondents’ petition for review. To effectuate the parties’ intent that respondent pay a total civil penalty of \$1,500, the Board on its own motion, dismissed the alleged violations of Section 21(p)(7) of the Act.	5-0
AC 11-14	<u>IEPA v. Jason Johnson Sr.</u> – The Board granted complainant’s motion to voluntarily dismiss the administrative citation.	5-0
AC 11-23	<u>IEPA v. Dennis Weiler</u> – The Board denied respondent’s motion to reconsider.	5-0
AC 11-31	<u>IEPA v. Patrick D. and Monique D. Patterson</u> – The Board found that these Sangamon County respondents violated Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (3), and (7) (2010)), and ordered respondents to pay a civil penalty of \$4,500.	5-0
AC 12-1	<u>IEPA v. Gaylon L. and Lois J. Harrell</u> – The Board accepted respondents’ petition for review for hearing.	5-0

ADJUDICATORY CASES

PCB 99-134	<u>People of the State of Illinois v. Heritage Coal Company, LLC (f/k/a/ Peabody Coal Company, LLC)</u> – No action taken.	W-E
PCB 04-16	<u>People of the State of Illinois v. Packaging Personified, Inc.</u> – In this air enforcement action concerning a DuPage County facility, the Board found that Packaging violated the following: the Environmental Protection Act at 415 ILCS 5/9(a), 9(b), 39.5(5)(a), and 39.5(6)(b) (2010); the Board’s regulations at 35 Ill. Adm. Code 201.142, 201.143, 201.302(a), 203.201, 203.203(a), 203.301, 203.601, 205.300(a), 205.310(a)(1), 218.401(a), and 218.404(c); IEPA’s regulations at 35 Ill. Adm. Code 254.137(a), 254.501, and 270.201(b); and Conditions 5, 15, and 16 of construction permit 03030016 issued on August 13, 2003. The Board ordered the respondent to pay a total civil penalty of \$456,313.57, and to cease and desist from further violations.	5-0 A-E
PCB 04-192	<u>People of the State of Illinois v. Smithfield Properties, L.L.C., Wooton Construction, Ltd., and Chicago Sun-Times, Inc.</u> – No action taken.	L,W-E
PCB 06-63	<u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 06-71	<u>Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 06-72	<u>Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 06-73	<u>Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0

PCB 06-74	<u>Dynegy Midwest Generation, Inc. (Wood River Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 06-194	<u>Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 07-115	<u>Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 07-123	<u>Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 08-30	<u>E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC, an Illinois Limited Liability Company v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc.</u> – No action taken.	L-E, Citizens
PCB 08-66	<u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 09-6	<u>Dynegy Midwest Generation, Inc. (Wood River Power Station) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0
PCB 09-9	<u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u> – The Board granted Dynegy Midwest Generation, Inc. motion to change the petitioner’s name from “Dynegy Midwest Generation, Inc.” to “Dynegy Midwest Generation, LLC”.	P-A, Air 5-0

<p>PCB 10-9</p>	<p><u>People of the State of Illinois v. Waste Hauling Landfill, Inc., Jerry Camfield, A. E. Staley Manufacturing Co., Aramark Uniform Services, Inc., Bell Sports, Inc., Borden Chemical Co., Bridgestone/Firestone, Inc., Climate Control, Inc., Caterpillar, Inc., Combe Laboratories, Inc., General Electric Railcar Services Corporation, P & H Manufacturing, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement as to Combe Laboratories, Inc., and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Macon County facility, the Board ordered publication of the required newspaper notice. In a separate order, the Board dismissed Triple S Refining Corporation as a respondent in this cost recovery action.</p>	<p>L-E 5-0</p>
<p>PCB 10-23</p>	<p><u>United States Steel Corporation v. IEPA, American Bottom Conservancy as Intervenor</u> – No action taken.</p>	<p>P-A, Air</p>
<p>PCB 10-61 PCB 11-2</p>	<p><u>People of the State of Illinois v. Freeman United Coal Mining Company and Springfield Coal Company, LLC; Environmental Law and Policy Center as Intervenor</u> <u>Environmental Law and Policy Center v. Freeman United Coal Mining Company and Springfield Coal Company, LLC</u> – No action taken.</p>	<p>W-E</p>
<p>PCB 10-70</p>	<p><u>Wheeling/GWA Auto Shop v. IEPA</u> – No action taken.</p>	<p>UST Appeal</p>
<p>PCB 10-84</p>	<p><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> – No action taken.</p>	<p>W-E</p>
<p>PCB 10-108</p>	<p><u>People of the State of Illinois v. William Charles Real Estate Investment, L.L.C.</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 \$10,000.00, and to cease and desist from further violations.</p>	<p>5-0 W-E</p>

<p>PCB 11-6</p>	<p><u>People of the State of Illinois v. American Construction, LLC, Inc., and Real Estate Elmhurst, LLC</u> – In this water 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 as to American Construction, LLC only , and ordered respondent to pay a total civil penalty of \$2,500.00, and to cease and desist from further violations.</p>	<p>5-0 W-E</p>
<p>PCB 11-21</p>	<p><u>People of the State of Illinois v. Prairieland Investment Group, LLC, and Kevin S. Cook, d/b/a KC Construction</u> – In this air enforcement action concerning a Hancock 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 as to Prairieland Investment Group, LLC, and ordered the respondent to pay a total civil penalty of \$50,000.00, and to cease and desist from further violations.</p>	<p>5-0 A-E</p>
<p>PCB 11-26</p>	<p><u>People of the State of Illinois v. Lowell Null, d/b/a MAB Pallets</u> – No action taken.</p>	<p>L-E</p>
<p>PCB 11-54</p>	<p><u>People of the State of Illinois v. Stewart Spreading, Inc.,</u> – In this air enforcement action concerning a Kendall 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 \$13,000.00, and to cease and desist from further violations.</p>	<p>5-0 A, W-E</p>
<p>PCB 11-60</p>	<p><u>American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC</u> – No action taken.</p>	<p>L-SA, 3d P</p>
<p>PCB 11-65</p>	<p><u>Chevron Environmental Management Company (10/27/09 to 9/3/10) v. IEPA</u> – No action taken.</p>	<p>UST Appeal</p>
<p>PCB 11-66</p>	<p><u>Chevron Environmental Management Company (8/1/2008 to 9/27/2009) v. IEPA</u> – No action taken.</p>	<p>UST Appeal</p>
<p>PCB 11-68</p>	<p><u>People of the State of Illinois v. Tradition Investments, LLC</u> – No action taken.</p>	<p>W-E</p>

<p>PCB 11-86 PCB 12-46 (cons.)</p>	<p><u>Exxonmobil Oil Corporation v. IEPA</u> –The Board accepted ExxonMobil’s (petitioner) September 2, 2011 filing as a new petition for variance and granted petitioner 's motion for hearing. The Board consolidated PCB 11-86 and PCB 12-46 for hearing and decision.</p>	<p>5-0 A-V</p>
<p>PCB 12-14</p>	<p><u>Center Point Energy, Mississippi River Transmission, LLC v. IEPA</u> – The Board granted petitioner Center Point Energy – Mississippi River Transmission, LLC motion to allow Garry L. Keele and Bryan A. Fuller to appeal <i>pro hac vice</i> on its behalf.</p>	<p>5-0 P-A, Air</p>
<p>PCB 12-15</p>	<p><u>Gary Szczeblewski v. State Fire Marshall, Divison of Petroleum & Chemical Safety</u> – The Board ordered petitioner to file an amended petition curing the noted deficiencies on or before September 30, 2011, or this docket will be dismissed.</p>	<p>5-0 UST Appeal</p>
<p>PCB 12-16</p>	<p><u>Mark Lilly v. City of Rock Falls, IL</u> – No action taken.</p>	<p>A-E, Citizens</p>
<p>PCB 12-23</p>	<p><u>Beneficial Reuse Management, LLC and Southern Illinois Power Cooperative v. IEPA</u> – The Board granted petitioners’ motion for a stay of the permit’s contested conditions.</p>	<p>5-0 P-A, Water</p>
<p>PCB 12-27</p>	<p><u>People of the State of Illinois v. Industrial Enclosure Corporation</u> – The Board accepted for hearing this land enforcement action involving a site located in Kane County.</p>	<p>5-0 L-E</p>
<p>PCB 12-28</p>	<p><u>People of the State of Illinois v. Strout Crossing, LLC, Jerry Webster, and Mark Webster</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 water enforcement action involving a Pike County facility, the Board ordered publication of the required newspaper notice.</p>	<p>5-0 W-E</p>
<p>PCB 12-29</p>	<p><u>Gary Cooper v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Champaign County facility.</p>	<p>5-0 UST Appeal</p>
<p>PCB 12-30</p>	<p><u>Village of Downers Grove 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 DuPage County facility.</p>	<p>5-0 UST Appeal 90- Day Extension</p>

PCB 12-31	<u>Jeff and Mitzi Sharer - Little York (Property ID No. 05-016-007-01) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Jeff and Mitzi Sharer - Little York located in Henderson County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).	5-0 T-C, W
PCB 12-32	<u>Jeff and Mitzi Sharer - Little York (Property ID No. 05-015-004-00) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Jeff and Mitzi Sharer - Little York located in Henderson County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).	5-0 T-C, W
PCB 12-33	<u>Deborah Ann Rousoncles v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Deborah Ann Rousoncles located in Henderson County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).	5-0 T-C, W
PCB 12-34	<u>ExxonMobil Oil Corporation, New Source Review Project v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of ExxonMobil Oil Company Farms located in Will 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, A
PCB 12-35	<u>People of the State of Illinois v. Six M. Corporation, Inc., William Maxwell, and Marilyn Maxwell</u> – The Board accepted for hearing this land enforcement action involving a site located in De Witt County.	5-0 W-E
PCB 12-36	<u>Marathon Petroleum Company, LLC, Reformulated Gasoline Blending System v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Marathon Petroleum Company, LLC located in Crawford 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, A

<p>PCB 12-37</p>	<p><u>WRB Refining, LLC, Boiler No. 17 NOx v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of WRB Refining, LLC located in Madison County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).</p>	<p>5-0 T-C, A</p>
<p>PCB 12-38</p>	<p><u>WRB Refining, LLC, Distilling West H-28 NOx Reduction v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of WRB Refining, LLC located in Madison County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).</p>	<p>5-0 T-C, A</p>
<p>PCB 12-39</p>	<p><u>WRB Refining, LLC, Gasoline SZorb Unit v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of WRB Refining, LLC located in Madison County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).</p>	<p>5-0 T-C, A</p>
<p>PCB 12-40</p>	<p><u>WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of WRB Refining, LLC located in Madison County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).</p>	<p>5-0 T-C, A</p>
<p>PCB 12-41</p>	<p><u>Marathon Petroleum Company, LLC, Carbon Canisters and Degasser for Caustic Storage Tanks v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of Marathon Petroleum Company, LLC located in Crawford County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2010)).</p>	<p>5-0 T-C, A</p>
<p>PCB 12-42</p>	<p><u>Bernie's Wood River Gas v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Madison County facility.</p>	<p>UST Appeal 5-0</p>

PCB 12-43	<u>People of the State of Illinois v. Forbo Adhesives, LLC</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 air enforcement action involving a Grundy County facility, the Board ordered publication of the required newspaper notice.	A-E 5-0
PCB 12-44	<u>Anielle Lipe and Nykole Gillette v. Village of Richton Park</u> – No action taken.	A-E, Citizens
PCB 12-45	<u>JKL Pork, LLC - Minock (Property ID No. 04-01-300-001) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of JKL Pork, LLC - Minock located in Woodford 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

CASES PENDING DECISION

R09-19	<u>In the Matter of Air Quality Standards Clean-up: Amendments to 35 Ill. Adm. Code Part 243</u> – Proposed Rule, Second Notice, Opinion & Order	Moore Air
R11-20	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u> • Scheduled for September 13, 2011 JCAR Review – Adopted Rule, Final Opinion & Order	Zalewski Air
R11-22	<u>In the Matter of: Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734</u> – Proposed Rule, First Notice, Opinion & Order	Moore UST, L
R11-23(A)	<u>In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219</u> – Proposed Rule, Second Notice, Opinion & Order	Moore Air

OTHER ITEMS

	The Chairman on behalf of the Board, thanked departing Member Gary L. Blankenship for his service to the Board and wished him well in his future endeavors.	
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ADJOURNMENT

Moved and seconded, by a vote of 5-0, Chairman Girard adjourned the meeting at 11:36 a.m.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board,
certify that the Board approved the above minutes on September 8, 2011, by a vote of .

John T. Therriault,
Assistant Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

MEETING MINUTES



September 22, 2011

11:00 a.m.

Chicago

100 W. Randolph Street

Chicago, IL

11-512

ANNOUNCEMENTS

Chairman Girard welcomed members of the public and staff. Chairman Girard welcomed Member Jennifer A. Burke to the Board.

ROLL CALL

The Assistant Clerk of the Board called the roll. Five Board Members answered present.

APPROVAL OF MINUTES

The minutes of the September 8, 2011 open meeting were approved by a vote of 4-0. Member Burke abstained. The minutes of the September 15, 2011 closed deliberative session were approved by a vote of 5-0.

RULEMAKINGS

R 09-19	<u>In the Matter of Air Quality Standards Clean-up: Amendments to 35 Ill. Adm. Code Part 243</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
R 11-8	<u>In the Matter of: NOx Trading Program Sunset Provisions for Non-Electric Generation Units ("Non-EGU.")</u> : Amendments to 35 Ill. Adm. Code Part 217. Subpart U – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s air pollution control regulations.	5-0 Air
R 11-20	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s air pollution control regulations.	5-0 Air
R 11-22	<u>In the Matter of: Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734</u> – The Board adopted a first notice opinion and order in this rulemaking to amend the Board’s land pollution control regulations.	5-0 Land
R 11-23(A)	<u>In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219</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

ADJUSTED STANDARDS

AS 12-1	<u>In the Matter of: Petition of Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code Part 738, Subpart B</u> – No action taken.	Land
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ADMINISTRATIVE CITATIONS

AC 11-24	<u>IEPA v. Dennis Heck and Raymond A. and Deanna Harris</u> – No action taken.	
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AC 11-28	<u>IEPA v. Thad and Linda Shafer</u> – The Board granted complainant’s motion to voluntarily dismiss the administrative citation against Linda Shafer.	5-0
AC 11-32	<u>IEPA v. Brandon DeHart and Robert Evans</u> – Since no amended petition on behalf of Brandon DeHart was filed as ordered in the Board’s August 4, 2011 order, the previously filed petition for review was dismissed; Robert Evans filed to file a petition. The Board found that these Pike County respondents violated Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (3), and (7) (2010)), and ordered respondents to pay a civil penalty of \$4,500.	5-0
AC 12-2	<u>IEPA v. David and Vivian Wright</u> – The Board accepted an administrative citation against these Fayette County respondents.	

ADJUDICATORY CASES

PCB 99-134	<u>People of the State of Illinois v. Heritage Coal Company, LLC (f/k/a/ Peabody Coal Company, LLC)</u> – No action taken.	W-E
PCB 01-122	<u>McHenry Storage v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.	5-0 UST Appeal
PCB 04-192	<u>People of the State of Illinois v. Smithfield Properties, L.L.C., Wooton Construction, Ltd., and Chicago Sun-Times, Inc.</u> – No action taken.	L,W-E
PCB 08-30	<u>E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC, an Illinois Limited Liability Company v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc.</u> – No action taken.	L-E, Citizens
PCB 08-89	<u>People of the State of Illinois v. Gelco Management & Developers LLC,</u> – In this air enforcement action concerning a Franklin 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 \$45,000.00, and to cease and desist from further violations.	5-0 A-E

Electronic Filing - Received, Clerk's Office, 11/23/2011

PCB 10-23	<u>United States Steel Corporation v. IEPA, American Bottom Conservancy as Intervenor</u> – No action taken.	P-A, Air
PCB 10-61 PCB 11-2	<u>People of the State of Illinois v. Freeman United Coal Mining Company and Springfield Coal Company, LLC; Environmental Law and Policy Center as Intervenor</u> <u>Environmental Law and Policy Center v. Freeman United Coal Mining Company and Springfield Coal Company, LLC</u> – No action taken.	W-E
PCB 10-70	<u>Wheeling/GWA Auto Shop v. IEPA</u> – In a July 7, 2011 interim opinion and order, the Board granted petitioner’s motion for summary judgment and denied that of the Illinois Environmental Protection Agency’s (Agency). The Board reversed the Agency’s February 2, 2010 reduction of \$78,915.86 in petitioner’s corrective action plan budget and remanded the matter to the Agency to consider the merits of that portion of petitioner’s budget. In its September 22, 2011 final order, the Board directed the Agency to reimburse petitioner from the UST Fund for legal fees and costs in the amount of \$17,030.46.	5-0 UST Appeal
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> – No action taken.	W-E
PCB 11-25	<u>Estate of Gerald D. Slightom v. IEPA</u> – No action taken.	UST Appeal
PCB 11-26	<u>People of the State of Illinois v. Lowell Null, d/b/a MAB Pallets</u> – No action taken.	L-E
PCB 11-60	<u>American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC</u> – No action taken.	L-SA, 3d P
PCB 11-65	<u>Chevron Environmental Management Company (10/27/09 to 9/3/10) v. IEPA</u> – No action taken.	UST Appeal
PCB 11-66	<u>Chevron Environmental Management Company (8/1/2008 to 9/27/2009) v. IEPA</u> – No action taken.	UST Appeal
PCB 11-68	<u>People of the State of Illinois v. Tradition Investments, LLC</u> – No action taken.	W-E

Electronic Filing - Received, Clerk's Office, 11/23/2011

PCB 12-16	<u>Mark Lilly v. City of Rock Falls, IL</u> – No action taken.	A-E, Citizens
PCB 12-24	<u>Chronister Oil Co. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.	5-0 UST Appeal
PCB 12-39	<u>WRB Refining, LLC, Gasoline SZorb Unit v. IEPA</u> – No action taken.	T-C, A
PCB 12-40	<u>WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA</u> – No action taken.	T-C, A
PCB 12-44	<u>Anielle Lipe and Nykole Gillette v. Village of Richton Park</u> – No action taken.	A-E, Citizens
PCB 12-47	<u>JMTR, LLC-Erie v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that specified facilities of JMTR, LLC-Erie 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
PCB 12-48	<u>People of the State of Illinois v. Phoenix Corporation of the Quad Cities</u> – The Board accepted for hearing this water enforcement action involving a site located in Carroll County.	5-0 W-E
PCB 12-49	<u>United States Steel Corporation v. IEPA</u> –The Board accepted this petition for variance, pursuant to Section 38(b) of the Act (415 ILCS 5/38(b) (2010)). The Board also confirmed that U.S. Steel’s filing of the variance petition within 20 days of the effective date of the R11-24 Nox rules stayed operation of the January 1, 2015 deadline for compliance of the contested conditions.	5-0 A-V
PCB 12-50	<u>Commonwealth Edison Co. v. Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc.</u> – No action taken.	L-E, Citizens

CASES PENDING DECISION

R11-14	<u>UIC Update, USEPA Amendments (July 1, 2010 through December 31, 2010)</u> - Proposed Rule, Proposal for Public Comment, Opinion & Order	Land
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OTHER ITEMS

None

ADJOURNMENT

Moved and seconded, by a vote of 5-0, Chairman Girard adjourned the meeting at 11:19 a.m.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board approved the above minutes on October 6, 2011, by a vote of .

John T. Therriault,
Assistant Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
MEETING MINUTES



October 6, 2011

11:00 a.m.

Videoconference

Chicago

100 W. Randolph Street
Chicago, IL
Room 11-512

And

Springfield

1021 N. Grand Avenue East
Springfield, IL
Conference Room 1244 N, First Floor

ANNOUNCEMENTS

Chairman Girard welcomed members of the public and staff.

ROLL CALL

The Assistant Clerk of the Board called the roll. Five Board Members answered present.

APPROVAL OF MINUTES

The minutes of the September 22, 2011 open meeting and the September 29, 2011 closed deliberative session were approved by a vote of 5-0.

RULEMAKINGS

R 11-14	<u>UIC Update, USEPA Amendments (July 1, 2010 through December 31, 2010)</u> – The Board adopted a proposal for public comment, and extended the deadline for completion of amendments from December 10, 2011 until January 26, 2012 in this “identical-in-substance” rulemakings to amend the Board’s underground injection control regulations.	5-0 Land
R 12-12	<u>In the Matter of: Revision of Enhanced Vehicle Emission Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code Part 240</u> – The Board accepted for expedited hearing petitioner’s October 3, 2011 proposal to amend the Board’s air pollution control regulations for enhanced vehicle inspection and maintenance program for the Chicago and Metro-East St. Louis nonattainment areas. The rulemaking must be completed by January 31, 2012.	5-0 Air

ADJUSTED STANDARDS

AS 12-1	<u>In the Matter of: Petition of Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code Part 738, Subpart B</u> – No action taken.	Land
AS 12-2	<u>Terrona Farms' Request for Adjusted Agronomic Rate of Municipally Collected Leaves for Farmland Application</u> – No action taken.	Land

ADMINISTRATIVE CITATIONS

AC 11-24	<u>IEPA v. Dennis Heck and Raymond A. and Deanna Harris</u> – The Board granted respondent Deanna Harris’ motion for reconsideration of a August 4, 2011 default order, vacated the default, and accepted her June 2, 2011 petition for review. The Board will stay any order regarding a civil penalty until the final disposition of Deanna Harris’ petition for review.	5-0
AC 11-27	<u>IEPA v. James Harris</u> – The Board granted respondent’s motion withdrawal of the petition for review. The Board then found that this Knox County respondent violated Sections 21(p)(1), 21(p)(3), 21(p)(4), 21(p)(5), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 5/21(p)(3), 5/21(p)(4), 5/21(p)(5), 5/21(p)(7), and 55(k)(1) (2010)), and ordered respondents to pay a civil penalty of \$9,000.	5-0

AC 12-3	<u>IEPA v. Ashwin P. and Mia A. Patel</u> – The Board accepted an administrative citation against these Williamson County respondents.	
AC 12-4	<u>IEPA v. Garrison Properties, Inc. & River City Roofing Company, Inc</u> – The Board accepted an administrative citation against these Peoria County respondents.	
AC 12-5	<u>IEPA v. Petro Nation, Inc., d/b/a Golf Mill Shell</u> – The Board accepted an administrative citation against this Cook County respondent.	

ADJUDICATORY CASES

PCB 99-134	<u>People of the State of Illinois v. Heritage Coal Company, LLC (f/k/a/ Peabody Coal Company, LLC)</u> – No action taken.	W-E
PCB 04-192	<u>People of the State of Illinois v. Smithfield Properties, L.L.C., Wooton Construction, Ltd., and Chicago Sun-Times, Inc.</u> – No action taken.	L,W-E
PCB 08-30	<u>E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC, an Illinois Limited Liability Company v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc.</u> – No action taken.	L-E, Citizens
PCB 10-9	<u>People of the State of Illinois v. Waste Hauling Landfill, Inc., Jerry Camfield, A. E. Staley Manufacturing Co., Aramark Uniform Services, Inc., Bell Sports, Inc., Borden Chemical Co., Bridgestone/Firestone, Inc., Climate Control, Inc., Caterpillar, Inc., Combe Laboratories, Inc., General Electric Railcar Services Corporation, P & H Manufacturing, Inc.,</u> – Upon receipt of a proposed stipulation and settlement agreement as to Borg Warner, and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Macon County facility, the Board ordered publication of the required newspaper notice	L-E 5-0

Electronic Filing - Received, Clerk's Office, 11/23/2011

PCB 10-23	<u>United States Steel Corporation v. IEPA, American Bottom Conservancy as Intervenor</u> – No action taken.	P-A, Air
PCB 10-61 PCB 11-2	<u>People of the State of Illinois v. Freeman United Coal Mining Company and Springfield Coal Company, LLC; Environmental Law and Policy Center as Intervenor</u> <u>Environmental Law and Policy Center v. Freeman United Coal Mining Company and Springfield Coal Company, LLC</u> – No action taken.	W-E
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> – No action taken.	W-E
PCB 10-100	<u>Rolf Schilling, Pam Schilling and Suzanne Ventura v. Gary D. Hill, Villa Land Trust, and Prairie Living West, LLC</u> – No action taken.	L-E, Citizens
PCB 11-25	<u>Estate of Gerald D. Slightom v. IEPA</u> – No action taken.	UST Appeal
PCB 11-26	<u>People of the State of Illinois v. Lowell Null, d/b/a MAB Pallets</u> – The Board granted complainant’s motion for summary judgment. The Board found respondent violated Sections 9(a), 9(c), 21(a), 21(e), and 21(p)(3) of the Act (415 ILCS 5/9(a), 9(c), 21(a), 21(e), 21(p)(3) (2010)), and ordered the respondent to pay a total civil penalty of \$8,000.00, and to cease and desist from further violations.	5-0 L-E
PCB 11-60	<u>American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC</u> – No action taken.	L-SA, 3d P
PCB 11-65	<u>Chevron Environmental Management Company (10/27/09 to 9/3/10) v. IEPA</u> – No action taken.	UST Appeal
PCB 11-66	<u>Chevron Environmental Management Company (8/1/2008 to 9/27/2009) v. IEPA</u> – No action taken.	UST Appeal

Electronic Filing - Received, Clerk's Office, 11/23/2011

PCB 11-68	<u>People of the State of Illinois v. Tradition Investments, LLC</u> – The Board granted complainant’s motion to strike the second, third, fourth and fifth affirmative defenses and denied the complainant’s motion to strike the first affirmative defenses of laches. In addition, the Board denied the complainant’s motion to file a reply.	5-0 W-E
PCB 11-79	<u>People of the State of Illinois v. Inverse Investment L.L.C.</u> , – No action taken.	W-E
PCB 11-104	<u>Mac's Convenience Stores, LLC 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 Christian County facility.	5-0 UST Appeal,
PCB 12-16	<u>Mark Lilly v. City of Rock Falls, IL</u> – No action taken.	A-E, Citizens
PCB 12-35	<u>People of the State of Illinois v. Six M. Corporation, Inc., William Maxwell, Marilyn Maxwell, and James McIlvaine, necessary party</u> – The Board granted complainant’s motion to join James McIlvaine as a necessary party to this enforcement action.	5-0 W-E
PCB 12-39	<u>WRB Refining, LLC, Gasoline SZorb Unit v. IEPA</u> – No action taken.	T-C, A
PCB 12-40	<u>WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA</u> – No action taken.	T-C, A
PCB 12-44	<u>Anielle Lipe and Nykole Gillette v. Village of Richton Park</u> – No action taken.	A-E, Citizens
PCB 12-50	<u>Commonwealth Edison Co. v. Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc.</u> – No action taken.	L-E, Citizens
PCB 12-51	<u>Kramer Tree Specialist, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this DuPage County facility.	P-A, Land

PCB 12-52	<p><u>People of the State of Illinois v. Reliable Materials, LLC, GSG Consultants, Inc., O.C.A. Construction, Inc., Speedy Gonzalez Landscaping, Inc., and Public Building Commission of Chicago</u> – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement as to the following only: Speedy Gonzalez Landscaping, Public Building Commission of Chicago, and Chicago Board of Education, and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.</p>	<p>4-0 Burke abstained L-E</p>
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CASES PENDING DECISION

R08-18	<p><u>In the Matter of: Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620</u> – Proposed Rule, First Notice, Opinion & Order</p>	PWS
R10-9(A)	<p><u>In the Matter of: Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G</u> • Scheduled for Review at October 11, 2011 JCAR Meeting – Adopted Rule, Final Notice, Opinion & Order</p>	Land
R12-11	<p><u>In the Matter of: Procedural Rules for Authorization Under P. A. 97-220 for Certain Farm Applications of Landscape Waste and Compost: New 35 Ill. Adm. Code 106.Subpart I</u> – Proposed Rule, First Notice, Opinion & Order</p>	Land

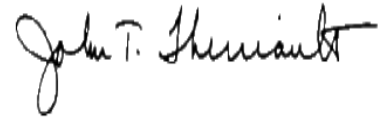
OTHER ITEMS

None

ADJOURNMENT

Moved and seconded, by a vote of 5-0, Chairman Girard adjourned the meeting at 11:26 a.m.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board,
certify that the Board approved the above minutes on October 20, 2011, by a vote of 5-0



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

**ILLINOIS POLLUTION CONTROL BOARD
MEETING MINUTES**



October 20, 2011

11:00 a.m.

Chicago

100 W. Randolph Street

Chicago, IL

Room 9-040

ANNOUNCEMENTS

Chairman Girard welcomed members of the public and staff.

ROLL CALL

The Assistant Clerk of the Board called the roll. Five Board Members answered present.

APPROVAL OF MINUTES

The minutes of the October 6, 2011 open meeting and the October 13, 2011 closed deliberative session were approved by a vote of 5-0.

RULEMAKINGS

R08-18	<u>In the Matter of: Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620</u> – The Board adopted a first notice opinion and order in this rulemaking to amend the Board’s groundwater quality regulations.	5-0 PWS
R 09-19	<u>In the Matter of Air Quality Standards Clean-up: Amendments to 35 Ill. Adm. Code Part 243</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s air pollution control regulations.	5-0 Air
R10-9(A)	<u>In the Matter of: Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s land pollution control regulations.	5-0 Land
R 11-23(A)	<u>In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219</u> – The Board adopted a final opinion and order in this rulemaking proposal which amends the Board’s air pollution control regulations.	5-0 Air
R 12-11	<u>In the Matter of: Procedural Rules for Authorizations Under P. A. 97-220 for Certain Landscape Waste and Compost Applications and On-Farm Composting Facilities: New 35 Ill. Adm. Code 106.Subpart I</u> – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board’s procedural rules.	5-0 Procedura 1

ADJUSTED STANDARDS

AS 12-1	<u>In the Matter of: Petition of Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code Part 738, Subpart B</u> – No action taken.	Land
AS 12-2	<u>Terrona Farms' Request for Adjusted Agronomic Rate of Municipally Collected Leaves for Farmland Application</u> – The Board dismissed this request for an adjusted standard. The Board directed petitioner to file a new adjusted standard petition addressing the jurisdictional, procedural and informational deficiencies noted.	5-0 Land

ADMINISTRATIVE CITATIONS

ADJUDICATORY CASES

PCB 97-193	<u>People of the State of Illinois v. Community Landfill Company, Inc.</u>	5-0 L-E
PCB 04-207 (cons.)	<u>People of the State of Illinois v. Edward Pruiam and Robert Pruiam</u> – On remand from the Third District Appellate Court, the Board directed the parties to file briefs arguing the appropriate apportionment of the penalties.	
PCB 99-134	<u>People of the State of Illinois v. Heritage Coal Company, LLC (f/k/a/ Peabody Coal Company, LLC)</u> – No action taken.	W-E
PCB 04-192	<u>People of the State of Illinois v. Smithfield Properties, L.L.C., Wooton Construction, Ltd., and Chicago Sun-Times, 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 and water enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	4-0 Member Burke abstained L,W-E
PCB 08-30	<u>E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC, an Illinois Limited Liability Company v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc.</u> – No action taken.	L-E, Citizens
PCB 10-9	<u>People of the State of Illinois v. Waste Hauling Landfill, Inc., Jerry Camfield, A. E. Staley Manufacturing Co., Aramark Uniform Services, Inc., Bell Sports, Inc., Borden Chemical Co., Bridgestone/Firestone, Inc., Climate Control, Inc., Caterpillar, Inc., Combe Laboratories, Inc., General Electric Railcar Services Corporation, P & H Manufacturing, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement as to Climate Control, Inc., and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Macon County facility, the Board ordered publication of the required newspaper notice	L-E 5-0
PCB 10-23	<u>United States Steel Corporation v. IEPA, American Bottom Conservancy as Intervenor</u> – No action taken.	P-A, Air

PCB 10-61	<u>People of the State of Illinois v. Freeman United Coal Mining Company and Springfield Coal Company, LLC; Environmental Law and Policy Center as Intervenor</u>	W-E
PCB 11-2	<u>Environmental Law and Policy Center v. Freeman United Coal Mining Company and Springfield Coal Company, LLC</u> – No action taken.	
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> – No action taken.	W-E
PCB 10-100	<u>Rolf Schilling, Pam Schilling and Suzanne Ventura v. Gary D. Hill, Villa Land Trust, and Prairie Living West, LLC</u> – No action taken.	L-E, Citizens
PCB 11-25	<u>Estate of Gerald D. Slightom v. IEPA</u> – No action taken.	UST Appeal
PCB 11-60	<u>American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC</u> – No action taken.	L-SA, 3d P
PCB 11-65	<u>Chevron Environmental Management Company (10/27/09 to 9/3/10) v. IEPA</u> – The Board denied petitioner's motion to reconsider its July 21, 2011 dismissal order.	5-0 UST Appeal
PCB 11-66	<u>Chevron Environmental Management Company (8/1/2008 to 9/27/2009) v. IEPA</u> – The Board denied petitioner's motion to reconsider its July 21, 2011 dismissal order.	5-0 UST Appeal
PCB 11-79	<u>People of the State of Illinois v. Inverse Investment L.L.C.</u> , – No action taken.	W-E
PCB 12-14	<u>Center Point Energy, Mississippi River Transmission, LLC v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Madison County facility. No action was taken on petitioner's motion for stay of specified conditions in the permit.	5-0 P-A, Air

PCB 12-16	<u>Mark Lilly v. City of Rock Falls, IL</u> – The Board granted respondent's motion and found alleged violations of Sections 237.120 and 237.110 of the Board's regulations, 35 ILCS 237.120, 237.110 and Sections 9(a) and (c) of the Environmental Protection Act (Act), 415 ILCS 5/9(a), (c) (2010) were frivolous. The Board directed complainant to file amended complaint with the Board remedying the deficiencies noted on or before November 21, 2011	5-0 A-E, Citizens
PCB 12-39	<u>WRB Refining, LLC, Gasoline SZorb Unit v. IEPA</u> – The Board denied the Roxanna Community Unit School District motion for leave to intervene as moot, having granted the tax certification on September 8, 2011.	5-0 T-C, A
PCB 12-40	<u>WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA</u> – The Board denied the Roxanna Community Unit School District motion for leave to intervene as moot, having granted the tax certification on September 8, 2011.	5-0 T-C, A
PCB 12-44	<u>Anielle Lipe and Nykole Gillette v. Village of Richton Park</u> – No action taken.	A-E, Citizens
PCB 12-50	<u>Commonwealth Edison Co. v. Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc.</u> – No action taken.	L-E, Citizens
PCB 12-53	<u>A & H Implement Company v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving an Effingham County facility.	5-0 UST Appeal
PCB 12-54	<u>United States Steel Corporation v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Madison County facility.	5-0 P-A, Air
PCB 12-55	<u>Congress Development Company v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Cook County facility.	5-0 P-A, Air

CASES PENDING DECISION

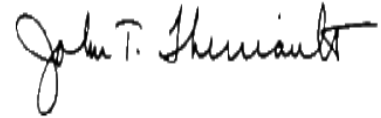
OTHER ITEMS

	The Chairman on behalf of the Board, thanked retiring Member Andrea S. Moore for eight years of service with the Board (2003 – 2011), presented her with a commemorative plaque, and wished her well in her future endeavors.	
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ADJOURNMENT

Moved and seconded, by a vote of 5-0, Chairman Girard adjourned the meeting at 11:20 a.m.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board,
certify that the Board approved the above minutes on November 3, 2011, by a vote of 3-0



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

**WOOD RIVER REFINERY
INTERGOVERNMENTAL AGREEMENT OF 2004**

WHEREAS, at various times in the past, the fair cash value ("fair market value"), and hence the assessed value, of parcels of real estate within the Wood River Refinery, currently owned and/or operated by ConocoPhillips Company ("ConocoPhillips"), have been the subject of dispute, assessment appeals and a prior settlement; and,

WHEREAS, at various times in the past, the fair market value, and hence the assessed value, of parcels of real estate within the Hartford Refinery, owned and operated in the past by Clark Refinery and Marketing, Inc., and later by Premcor Refining Group ("Premcor"), have been the subject of dispute, assessment appeals and prior settlement; and,

WHEREAS, Premcor has recently leased certain parcels of its Hartford Refinery to ConocoPhillips, which is now responsible for paying the *ad valorem* real estate taxes on said parcels, which taxes are determined by the assessed value of the parcels as derived from their fair market value; and,

WHEREAS, the purchase of the Wood River Refinery by ConocoPhillips from the predecessor-in-interest, the Equilon Company, and the even more recent leasing of certain parcels from the Premcor Hartford Refinery to ConocoPhillips have threatened renewed dispute and assessment appeals; and,

WHEREAS, many taxing districts ("MCTE," for Madison County Taxing Entities) joined together to form a consortium to explore the possibility of a multi-year resolution of potential disagreements and assessment appeals regarding the proper assessment of the present combined Wood River Refinery and Hartford Refinery parcels for which ConocoPhillips is now responsible for payment of the *ad valorem* real estate taxes ("the WRR"); and,

WHEREAS, ConocoPhillips and the MCTE, found through negotiation a reasonable basis for compromise; and,

WHEREAS, the consortium members determined it to be in the interest of the MCTE and in the public interest to enter into this multi-year intergovernmental tax assessment agreement regarding the WRR (e.g., eliminating litigation expenses, eliminating uncertainty in income, budgeting and the other financial effects of this major real estate tax payor); and,

WHEREAS, ConocoPhillips likewise determined it to be in the company's interest to enter into this multi-year intergovernmental tax assessment agreement ("Agreement") regarding the WRR; and,

WHEREAS, each member of the MCTE executing this Agreement is doing so in reliance upon and in response to the understandings, pledges and undertakings by ConocoPhillips contained in this Agreement and in a companion agreement, entitled School District

Agreement, which forms a part of this settlement transaction, and is executing the agreements for the purpose and benefit of allaying the possibility of further and future dispute and assessment appeals during the term of this Agreement regarding the WRR parcels; and

WHEREAS, ConocoPhillips is executing this Agreement and the companion agreement for the purpose and benefit of allaying the possibility of further and future dispute and assessment appeals during the term of this Agreement regarding the WRR parcels; and,

WHEREAS, this Agreement and the companion agreement arise from a desire to settle the assessment of the WRR parcels in order to forestall disputes and assessment appeals and to gain certainty during the term of this Agreement, ConocoPhillips and the MCTE agree and stipulate that the values and calculations set forth in this Agreement and the companion agreement are the result of compromises and are not admissions by any party regarding the correct value of the WRR for *ad valorem* real estate tax purposes; and

WHEREAS, Article VII, Section 10, of the Illinois Constitution of 1970 authorizes units of local government and school districts to contract and associate among themselves and with individual corporations in any manner not prohibited by law or by ordinance to obtain services, finances and other legitimate governmental objectives;

NOW, THEREFORE, ConocoPhillips and the undersigned MCTE, which are parties to and have executed this Agreement, in consideration of their promises to each other, their undertakings set forth herein and other good and valuable consideration, hereby contract among themselves and with each other and agree to be bound as follows:

1. The parties agree that all the recitals contained in the Preamble of this Agreement are true and correct and that they are hereby incorporated into this Agreement by this reference.

2. This Agreement covers those real estate parcels set out in Exhibit "A" and set out in Exhibit "B," which Exhibits together define the property which is known as the ConocoPhillips Wood River Refinery ("the WRR") within and for the purposes of this Agreement.

3. It is understood and acknowledged by the parties hereto that the equalized fair market value and final assessed value determined under this Agreement are only a compromise solely for settlement purposes and that it covers all of the real estate parcels listed in Exhibit "A" and Exhibit "B" attached, and all real property improvements thereto and thereon. This Agreement is not an admission or concession by any party for any purpose. It does not reflect any party's belief of the value of the WRR for *ad valorem* real estate tax purposes.

4. Unless otherwise specified herein (such as trailing payments to be made in the following year(s)), the term of this Agreement shall be through and including the *ad valorem* real estate tax year 2010.

5. The division and allocation of the assessed value among the parcels that comprise the WRR for *ad valorem* real estate tax purposes shall not be modified or changed during the term of this Agreement. It is acknowledged that the fixed payments by ConocoPhillips for the WRR were established on the 2003 division and allocation among the taxing districts of *ad valorem* real estate tax payments from the WRR, and that the said districts have also relied upon that division and allocation in entering into this Agreement. Because this Agreement is open to all taxing districts affected by the setting of the assessed value of the WRR, it is acknowledged that maintaining the 2003 division and allocation during the term of this Agreement is just.

6. With respect to the parcels set out in Exhibit "A," for the *ad valorem* real estate tax years 2003 and 2004, ConocoPhillips shall make supplemental payments to the MCTE for each of the two respective years as shown on Exhibit "C," totaling in each year One Million Five Hundred Seventy One Thousand Five Hundred and Three Dollars (\$1,571,503). These supplemental payments shall be paid by ConocoPhillips directly to the individual taxing entities in accordance with the schedule set out in Exhibit "C." The supplemental payments due for tax year 2003 shall be paid by ConocoPhillips within thirty (30) days of the execution of this Agreement. The supplemental payments due for tax year 2004 shall be paid in two equal installments, each installment of the supplemental payments shall be paid no later than the due date for the payment of the first and second installments of the 2004 real estate tax bill respectively.

7. For the tax year commencing January 1, 2005, the parties hereto agree, intend and stipulate that the equalized fair market value of the WRR of Two Hundred Sixty Four Million Seven Hundred Seventy Thousand Six Hundred and Ninety One Dollars (\$264,770,691) [consisting of an equalized fair market value of Two Hundred and Twenty Five Million Dollars (\$225,000,000) for the parcels set out in Exhibit "A" and Thirty Nine Million Seven Hundred Seventy Thousand Six Hundred and Ninety One Dollars (\$39,770,691) for the parcels set out in Exhibit "B"]. The equalized fair market value established in this Paragraph is intended and calculated to establish the agreed and stipulated final assessed value of Eighty Eight Million Two Hundred Fifty Six Thousand Eight Hundred and Ninety Seven Dollars (\$88,256,897) for *ad valorem* real estate tax levy, extension and collection purposes except as the same may be increased or decreased as follows: The final assessed value set forth in Paragraph 7 for those parcels of the WRR set out in Exhibit "B" shall be increased or decreased for *ad valorem* real estate tax purposes by $33 \frac{1}{3}$ percent of the increase or decrease that results from adding to or subtracting from the fair market value of those parcels of the WRR set out in Exhibit "B" the product of the Consumer Price Index ("CPI") for the entire year minus one percent (1%) multiplied by Thirty Nine Million Seven Hundred Seventy Thousand Six Hundred and Ninety One Dollars (\$39,770,691). For the purposes of this Paragraph, "Consumer Price Index" shall mean the average for "All Items" shown on the "U.S. City Average for All Urban Consumers." The parties understand and agree that the Assessment Officials shall

independently, and without influence and input from any party, determine the increase or decrease in the fair market value and the final assessed value so calculated. No other adjustment to the assessed value shall be permitted or made. The final assessed value for the tax year commencing January 1, 2005, shall, therefore, be Eighty Eight Million Two Hundred Fifty Six Thousand Eight Hundred and Ninety Seven Dollars (\$88,256,897), plus or minus 33 1/3 percent of the increase or decrease in the said fair market value resulting from application of the CPI for the entire year over one percent (1%) in respect to those parcels of the WRR set out in Exhibit "B".

8. For the tax year commencing January 1, 2006, and subsequent tax years, including the tax year commencing January 1, 2010, the parties hereto agree not to take any action to increase or decrease the final assessed value of the WRR parcels from that established under this Agreement for the preceding year, except in accordance with the following: the final assessed value of all of the WRR parcels set out in both Exhibit "A" and Exhibit "B" (as already previously adjusted) shall increase or decrease for *ad valorem* real estate tax purposes by 33 1/3 percent of the increase or decrease resulting from adding to or subtracting from the fair market value of those parcels of the WRR set out in both Exhibit "A" and Exhibit "B" the product of the Consumer Price Index ("CPI") for the entire year minus one percent (1%) multiplied by the combined fair market value of the parcels on Exhibit "A" and Exhibit "B" as previously adjusted for the immediately preceding year. For purposes of this Paragraph, "Consumer Price Index" shall mean the average for "All Items" shown on the "U.S. City Average for All Urban Consumers." The parties understand and agree that the Assessment Officials shall independently, without influence and input of any party, determine the increase or decrease in the fair market value and the final assessed value so calculated. Each subsequent year's calculation, adding or subtracting the CPI, until December 31, 2010, shall be cumulative, starting with the total fair market value and total final assessed value of the WRR (Exhibit "A" plus Exhibit "B") as it was determined for the preceding year. No other adjustment to the assessed value shall be permitted or made.

9. The term "Assessment Officials" includes the relevant Township Assessor and the Madison County Supervisor of Assessments.

10. The fair market value, and corresponding assessed value, of the WRR as determined under Paragraphs 8 and 9 shall not be increased or decreased due to capital additions or retirements during the term of this Agreement, except that should the Property Tax Extension and Levy Limitation Act ("PTELL"), 35 ILCS 200/18-185, *et seq.*, become applicable to or within the County of Madison, the value of the additions shall not only be immediately entered on the township and county assessment books and records, but also accessed by the extension and levy of *ad valorem* real estate tax, billing and collection in the ordinary course, as if this Agreement did not exist. That difference between the amount of the *ad valorem* real estate tax that would have been collected from ConocoPhillips and received by any MCTE as calculated under this Agreement in the absence of PTELL and that collected as the result of the inclusion of capital additions to the real estate that otherwise would have been excluded shall be credited to or refunded to ConocoPhillips by

the respective member of MCTE receiving the resulting increased *ad valorem* real estate tax collection.

11. If physical destruction to real estate improvements to and on the WRR from an act of God or natural disaster is the proximate cause for the inoperability of essential processing equipment constituting taxable real estate improvements *and* the quantity of total product produced by the WRR for the tax year is thereby reduced 25% or more from that of the previous year as a result, the fair market value for the WRR shall be determined by first, adding to or subtracting from the fair market value of the previous year the Consumer Price Index ("CPI") minus one percent (1%), in the manner of Paragraph 8, *supra*, and then multiplying the previous year's fair market value times that percentage that the total product produced bears to the previous year's total product produced. Should the said physical destruction to real estate improvements to and on the WRR take more than twelve (12) months to repair, the said CPI minus one percent (1%) for each succeeding year shall be similarly applied to that same most recent fair market value of the WRR before the destruction occurred as adjusted *per annum seriatim* for each year during repair or replacement, thereby compounding each application of the CPI to the earlier ones, for each tax year affected.

In order to qualify for the temporarily reduced assessment under the terms of this Paragraph, ConocoPhillips must give notice to the MCTE and the Assessment Officials within sixty (60) days of the destruction, giving the date and cause of the destruction and the exact description of equipment destroyed, the process(es) affected thereby and specifying how the process(es) are affected, what steps have been and are being taken toward repair or replacement, and the anticipated date the repair or replacement will be completed. At the end of the year, ConocoPhillips shall provide the MCTE and the Assessment Officials by January 31, of the calendar year following the date of destruction, and for each year thereafter until repair or replacement is complete, with figures supported by the sworn affidavit of the WRR plant manager setting forth the total production for the WRR for each month of the entire calendar year preceding the destruction and for each month following the date of destruction.

ConocoPhillips warrants that to the extent permitted by the weather, it shall commence and complete the repair or replacement immediately and promptly, and that failure to do so will be treated in the same neutral manner as retirements under Paragraph 12, *infra*, and entitle the MCTE to the full amount of the tax payments that a full and undiminished assessed value would have produced.

12. Assessment Officials shall have the opportunity to review annually the real estate of the WRR including touring the WRR. Major capital additions and retirements to the WRR since the last review shall be disclosed by ConocoPhillips. Although the Assessment Officials may have neutral guidance around physical structures at the site, during the term of this Agreement, no party shall communicate substantively regarding the value of any listed parcel(s) with any Assessment Official, except in the presence of the other parties to this Agreement, or their chosen agent or legal representative.

13. (a) If any taxing entity that has received one or more fixed payments pursuant to this Agreement takes any action, directly or indirectly, that increases the final leviable, extendable and collectable assessed value of the WRR for *ad valorem* real estate tax purposes above the amounts proper or necessary to accomplish the objectives and terms of this Agreement or to comply with the same, ConocoPhillips shall have the legal right to recover from that particular individual or entity, and none other, one hundred percent (100%) of all payments pursuant to Exhibit "C" of this Agreement received by that taxing district under this Agreement from ConocoPhillips.

(b) If ConocoPhillips takes any action, directly or indirectly, to decrease the fair market value of the WRR for *ad valorem* real estate tax assessment purposes or the final leviable, extendable and collectable assessed value of the WRR for *ad valorem* real estate tax assessment purposes below the amounts provided herein, or inspires or participates in any effort by another individual or entity to decrease the final assessed or fair market value of the WRR below the amounts provided herein, the taxing districts that are parties hereto shall be entitled during the remaining term of this Agreement, or if in the last year of this Agreement, for at(2) years thereafter, to receive in a prompt and timely fashion from ConocoPhillips at the time *ad valorem* real estate tax payments are due, a fixed annual payment equivalent to one hundred percent (100%) of the tax revenues not received by the respective taxing districts that are parties hereto as a result of the decrease in the final assessed value.

14. No party hereto shall seek during the term of this Agreement any alternate basis to determine assessed value other than specifically provided herein, or in the absence of any term agreed to herein, the statutory one third (1/3) of fair market value as generally provided by statute for *ad valorem* real estate tax assessment purposes. No property shall be classified or reclassified in any manner during the term of this Agreement to reduce the amount of assessment for real estate tax purposes.

15. The parties hereto shall execute either directly or through legal counsel Exhibit "D" hereto which shall be filed either for all years within the term of this Agreement or for each year within the term of this Agreement individually, as requested by the respective assessing authority, which shall be filed with the Township Assessor of Wood River Township, the Township Assessor of Chouteau Township, the Chief Madison County Assessment Officer, the Madison County Board of Review ("Board of Review") and the Madison County State's Attorney.

16. To the extent that the Board of Review, by any assessment-related calculation applied to the said fair market value and/or said final assessed value provided for herein, alters the final assessed value of the WRR to less than or more than Eighty Eight Million Two Hundred Fifty Six Thousand Eight Hundred and Ninety Seven Dollars (\$88,256,897), as adjusted in accordance with the terms and provisions of this Agreement, ConocoPhillips shall join with the undersigned MCTE in filing and supporting an appeal to the Illinois Property Tax Appeal Board ("PTAB"), the courts or other appropriate administrative or judicial body to have any equalizer, multiplier or other calculation, the application of which has caused the assessed value upon which taxes are actually levied,

extended and collected, to return to the assessed value calculated as agreed, intended and stipulated herein. The Board of Review, to the extent permitted by law, shall also support the said appeal.

17. This Agreement shall be binding not only upon ConocoPhillips and the undersigned MCTE and inure to their respective benefit, but shall also be binding upon and shall inure to the benefit of their agents, employees, representatives, heirs, administrators, successors and assigns. ConocoPhillips additionally shall ensure that as part of any transaction regarding transfer or other disposition of all or part of the WRR, the fixed payments and other terms of this Agreement are known to and become binding upon any transferee, assignee or successor of the WRR as well.

18. ConocoPhillips agrees that the terms of this Agreement with respect to the payments by ConocoPhillips to the taxing districts fixed hereby, except as may occur by a distinction between parcels set out in Exhibit "A" and parcels set out in Exhibit "B", do not discriminate in any manner between similarly situated taxing districts, will treat all school districts in the same manner and proportionally in regard to the calculation of fixed payments under this Agreement, and will treat all non-school district taxing entities in the same manner and proportionally with regard to the calculation of fixed payments under this Agreement, and except as specifically provided otherwise herein, all school districts shall be entitled to be treated as the most favorably treated among their number, and all non-school district taxing entities shall be treated as the most favorably treated among their number, all in terms of rights and duties and formula for, and proportion of, fixed payments, and the number of years of the same. The parties stipulate and agree that Lewis & Clark College District shall be considered to be a non-school district taxing entity for the purposes of this Agreement. It is not intended that this Agreement interfere with any other source of money to which the taxing entities, including the school districts, may be entitled, whether as a result of the final assessed value agreed or calculated under this Agreement or otherwise, and ConocoPhillips shall have no claim or right to a payment or credit, set-off or other benefit therefrom.

19. This Agreement shall be considered and construed according to the law of the State of Illinois and applied and given effect as an intergovernmental agreement and it is the intent of all parties to claim all additional benefits and authorities, and to accept all additional responsibilities that flow from an intergovernmental agreement under the provisions of the Illinois Constitution, Article VII, Section 10.

20. No person other than the parties to the Agreement, and those specifically provided for in Paragraph 18 of this Agreement, may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

21. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be illegal; provided, however, that in the event any such illegality

prevents compliance with and fulfillment of Paragraphs 5 and 6 hereof, this Agreement shall be null and void at the option of the party or respective parties whose benefit is thereby adversely affected and all parties shall, at the exercise of this option, be relieved of any further obligations hereunder to that party or those parties exercising this option. In the event any such illegality prevents the determination of the final assessed value for *ad valorem* real estate tax purposes of the WRR set forth in Paragraphs 7 and 8 hereof, this Agreement shall be null and void at the option of the party or parties whose benefit is thereby adversely affected and all parties shall, at the exercise of this option, be relieved of any further obligations hereunder.

22. ConocoPhillips and the undersigned MCTE shall take whatever action is necessary and appropriate, in cooperation with the other(s) to support this Agreement and its legality, and to see that the same is effectuated, whether before the Board of Review, PTAB, the courts, or elsewhere.

23. This Agreement may be signed in one or more counterparts, and each separate signature will be considered as having been signed on one original document.

24. Each person executing this Agreement warrants that he or she has been authorized to sign on behalf of, and to bind, his or her respective entity, and that the formal steps required by law, ordinance, charter, by-laws and the like of his or her respective public or private entity to authorize the execution of this Agreement on behalf of, and to bind, the said entity have been complied with.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this _____ day of _____, 2005.

CONOCOPHILLIPS COMPANY

By: _____
Its: _____

Attest:

Its: _____

VILLAGE OF ROXANA

By: _____
Its: _____

Attest:

Its: _____

ROXANA COMMUNITY UNIT S.D. #1

Attest: By: _____
Its: _____

Its: _____

WOOD RIVER TOWNSHIP HOSPITAL

Attest: By: _____
Its: _____

Its: _____

WOOD RIVER-HARTFORD S.D.#15

Attest: By: _____
Its: _____

Its: _____

EAST ALTON-WOOD RIVER COMMUNITY
HIGH S.D. #14

Attest: By: _____
Its: _____

Its: _____

ROXANA PUBLIC LIBRARY DISTRICT

Attest: By: _____
Its: _____

Its: _____

ROXANA COMMUNITY PARK DISTRICT

Attest:

By: _____
Its: _____

Its: _____

MADISON COUNTY

Attest:

By: _____
Its: _____

Its: _____

WOOD RIVER TOWNSHIP

Attest:

By: _____
Its: _____

Its: _____

WOOD RIVER ROAD AND BRIDGE

Attest:

By: _____
Its: _____

Its: _____

CHOUTEAU TOWNSHIP

Attest:

By: _____
Its: _____

Its: _____

CHOUTEAU ROAD AND BRIDGE

Attest: By: _____
Its: _____

Its: _____

ST. LOUIS REGIONAL AIRPORT

Attest: By: _____
Its: _____

Its: _____

LEWIS & CLARK COLLEGE

Attest: By: _____
Its: _____

Its: _____

SOUTH ROXANA FIRE DEPARTMENT

Attest: By: _____
Its: _____

Its: _____

VILLAGE OF HARTFORD

Attest: By: _____
Its: _____

Its: _____

HARTFORD LIBRARY

Attest: By: _____
Its: _____

Its: _____

VILLAGE OF SOUTH ROXANA

Attest: By: _____
Its: _____

Its: _____

WOOD RIVER LEVEE AND DRAINAGE

Attest: By: _____
Its: _____

Its: _____

REVIEWED AND FOUND TO BE JUST AND AGREED TO:

MADISON COUNTY BOARD OF REVIEW

Attest: By: _____
Its: _____

Its: _____

EXHIBIT "A"

**PROPERTY PARCEL NUMBERS SUBJECT TO THIS AGREEMENT
(COMPRISING SOME OF THE WOOD RIVER REFINERY
PARCELS COVERED BY THIS AGREEMENT)**

18-1-14-02-00-000-001	18-2-14-02-08-201-001
18-1-14-02-00-000-002	18-2-14-02-08-201-013
18-1-14-02-06-101-001	18-2-14-02-08-202-005
18-1-14-03-00-000-002	18-2-14-02-08-204-001
18-1-14-03-00-000-003	18-2-14-02-08-205-001
18-2-14-01-05-101-001	18-2-14-02-08-205-003
18-2-14-01-05-101-007	19-1-08-25-00-000-007
18-2-14-01-05-102-001	19-1-08-25-00-000-007.001
18-2-14-01-05-102-003	19-1-08-25-19-401-012
18-2-14-01-05-102-004	19-1-08-26-00-000-005
18-2-14-01-05-102-005	19-1-08-33-00-000-002
18-2-14-01-05-102-019	19-1-08-33-00-000-008
18-2-14-01-05-106-001	19-1-08-34-00-000-004
18-2-14-02-07-202-001	19-1-08-34-00-000-006
18-2-14-02-07-202-003	19-1-08-34-00-000-006.P00
18-2-14-02-07-202-004	19-1-08-35-00-000-001
18-2-14-02-07-203-004	19-1-08-36-00-000-001
18-2-14-02-07-203-006	19-1-08-36-00-000-002
18-2-14-02-07-203-011	19-1-08-36-12-201-002
18-2-14-02-07-204-007	19-2-08-34-00-000-007

EXHIBIT "B"

**PROPERTY PARCEL NUMBERS SUBJECT TO THIS AGREEMENT
(COMPRISING THE REST OF THE WOOD RIVER REFINERY
PARCELS COVERED BY THIS AGREEMENT)**

19-1-08-34-00-000-008.002

19-2-08-34-00-000-008.003

19-1-08-34-00-000-008.004

EXHIBIT "C"

SUPPLEMENTAL PAYMENTS TO BE PAID AND RECEIVED FOR
TAX YEARS 2003 AND 2004 IN 2005

TAX ENTITY	PAYMENT
Village of Roxana	\$ 176,154
Village of South Roxana	354
Roxana Community Unit School District #1	801,256 x2 ^{\$} 1,602,512
East Alton-Wood River Community High School District #14	10,223
Wood River-Hartford School District #15	13,433
Wood River Township Hospital	113,849
Wood River Levee and Drainage	22,968
Roxana Public Library District	28,630
Roxana Community Park District	70,665
Madison County	131,716
Wood River Township	39,697
Wood River Road & Bridge	43,192
Chouteau Township	1,033
Chouteau Road & Bridge	1,670
St. Louis Regional Airport	20,474
Lewis & Clark College	80,869
South Roxana Fire Department	315
Village of Hartford	12,478
Hartford Library	2,527

1571503

EXHIBIT "D"

Wood River Township Assessor
Chouteau Township Assessor
Madison County Supervisor of Assessments
Madison County Board of Review
Madison County State's Attorney

Re: ConocoPhillips Wood River Refinery Intergovernmental Agreement of 2004

Gentlemen:

In regard to the assessment of certain parcels of real estate listed in Exhibit "A" and Exhibit "B" owned and/or operated by ConocoPhillips Company ("ConocoPhillips"), ConocoPhillips has agreed with taxing entities within Madison County, by a constitutionally permitted intergovernmental agreement, to resolve potential disputes regarding the proper assessment of those listed parcels for the *ad valorem* real estate tax years beginning January 1, 2005, and ending December 31, 2010. A copy of the ConocoPhillips Intergovernmental Agreement of 2004 ("Agreement") accompanies this letter for your reference and application according to its terms.

As suggested by the Madison County Board of Review and the Madison County State's Attorney, we write this letter to provide you with a formula to guide you in the implementation of the Agreement in the ordinary course.

Key of Abbreviations

Fair Market Value = FMV
Consumer Price Index = CPI

2005 Tax Year

FMV of Exhibit "A" parcels (stipulated in the Agreement for 2004, ¶ 7)
+ FMV of Exhibit "B" parcels (stipulated in the Agreement for 2004, ¶ 7)
+ Product of FMV of Exhibit "B" parcels x CPI for 2005 minus first one percent (1%) of CPI
= (Sum of all three figures is the adjusted FMV of all parcels covered by the Agreement for 2005)
÷ 3
= Stipulated assessed value of all parcels covered by the Agreement for 2005

ILLUSTRATION (assuming a hypothetical CPI for 2005 of +2.4%)

FMV of Exhibit "A" parcels	225,000,000
+ FMV of Exhibit "B" parcels	39,770,691
+ FMV of Exhibit "B" parcels adjusted for 2005 by multiplication by the 2005 CPI - 1% (2.4% - 1% = 1.4% x 39,770,691)	556,790

=	Adjusted FMV of all parcels covered by the Agreement for 2005	265,327,481
+	3	
=	Assessed value of all parcels covered by the Agreement for 2005	88,442,494 (rounded)

2006 Tax Year

	FMV of Exhibit "A" parcels (stipulated in the Agreement)	
+	FMV of Exhibit "B" parcels (the starting amount stipulated in the Agreement but as adjusted for 2005 by application of the CPI - 1%)	
=	Total of FMV of parcels listed in both Exhibits A and B as determined for 2005	
x	CPI percentage during 2006 minus first one percent (1%) of CPI	
=	Adjusted FMV of all parcels covered by the Agreement for 2006	
+	3	
=	Assessed value of all parcels covered by the Agreement for 2006	

CONTINUED ILLUSTRATION (assuming a hypothetical CPI for 2006 of + 2.50%)

	FMV as determined for 2005	265,327,481
+	Product of FMV as determined for 2005 x 2.5% - 1% (or 1.5%)	3,979,912
=	FMV adjusted for 2006	269,307,393 (rounded)
+	3	
=	Assessed value of all parcels covered by the Agreement for 2006	89,769,131 (rounded)

The difference between 2005 and 2006 is that only parcels listed on Exhibit "B" were adjusted by the CPI change minus one per cent (1%) for 2005. For 2006, the CPI minus one percent (1%) will be applied to both the parcels listed on Exhibit "A" and to the parcels listed on Exhibit "B." The CPI will be applied to the parcels listed on Exhibit "B" at their value after adjustment by the CPI in 2005.

2007, et. seq., Tax Year

For 2007 and thereafter, the sum of the FMV of all parcels at their adjusted value from the immediately previous year will be adjusted by the CPI minus one percent (1%) of each then current succeeding year in sequence.

Your cooperation and adherence to the agreed methodology and resulting assessed value would be greatly appreciated by both ConocoPhillips and the taxing entities.

Very truly yours,

CONOCOPHILLIPS COMPANY

By: _____
Its: _____

MADISON COUNTY TAXING ENTITIES

By: _____
David Lincoln Ader
Attorney for Taxing Entities

**PROPERTY PARCEL NUMBERS SUBJECT TO THIS AGREEMENT
(COMPRISING SOME OF THE WOOD RIVER REFINERY
PARCELS COVERED BY THIS AGREEMENT)**

18-1-14-02-00-000-001	18-2-14-02-08-201-001
18-1-14-02-00-000-002	18-2-14-02-08-201-013
18-1-14-02-06-101-001	18-2-14-02-08-202-005
18-1-14-03-00-000-002	18-2-14-02-08-204-001
18-1-14-03-00-000-003	18-2-14-02-08-205-001
18-2-14-01-05-101-001	18-2-14-02-08-205-003
18-2-14-01-05-101-007	19-1-08-25-00-000-007
18-2-14-01-05-102-001	19-1-08-25-00-000-007.001
18-2-14-01-05-102-003	19-1-08-25-19-401-012
18-2-14-01-05-102-004	19-1-08-26-00-000-005
18-2-14-01-05-102-005	19-1-08-33-00-000-002
18-2-14-01-05-102-019	19-1-08-33-00-000-008
18-2-14-01-05-106-001	19-1-08-34-00-000-004
18-2-14-02-07-202-001	19-1-08-34-00-000-006
18-2-14-02-07-202-003	19-1-08-34-00-000-006.P00
18-2-14-02-07-202-004	19-1-08-35-00-000-001
18-2-14-02-07-203-004	19-1-08-36-00-000-001
18-2-14-02-07-203-006	19-1-08-36-00-000-002
18-2-14-02-07-203-011	19-1-08-36-12-201-002
18-2-14-02-07-204-007	19-2-08-34-00-000-007

**PROPERTY PARCEL NUMBERS SUBJECT TO THIS AGREEMENT
(COMPRISING THE REST OF THE WOOD RIVER REFINERY
PARCELS COVERED BY THIS AGREEMENT)**

19-1-08-34-00-000-008.002

19-2-08-34-00-000-008.003

19-1-08-34-00-000-008.004

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ILLINOIS POLLUTION CONTROL BOARD



MEETING AGENDA

September 8, 2011

11:00 a.m.

Chicago

100 W. Randolph Street

Chicago, IL

9-040

ANNOUNCEMENTS

The Pollution Control Board welcomes the public to this open meeting. During the meeting itself, only the Board members or staff that are recognized by the Chairman are allowed to speak. If you have any questions about anything that occurred at the meeting, please feel free, after the meeting, to direct your questions to any one of the many staff members in attendance.

Appearance of an item on the agenda does not guarantee that the Board will take action on that item, since the Board may decide to hold the item over for additional review and action at a later meeting. Thank you for your interest.

ROLL CALL

APPROVAL OF MINUTES

August 18, 2011	Open Meeting
August 25, 2011	Closed Deliberative Session
September 1, 2011	Closed Deliberative Session

RULEMAKINGS

R10-9(A)	<u>In the Matter of: Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G</u> <ul style="list-style-type: none"> • Proposed Rule, Second Notice, Opinion & Order 	Blankenship Land
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ADJUSTED STANDARDS

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ADMINISTRATIVE CITATIONS

AC 9-35	<u>IEPA v. William and Patricia Hajek</u> <ul style="list-style-type: none"> • Complainant's Stipulation of Settlement and Dismissal of Respondent's Petition for Review (9/1) 	Blankenship
AC 11-14	<u>IEPA v. Jason Johnson Sr.</u> <ul style="list-style-type: none"> • Complainant's Motion to Withdraw Administrative Citation <ul style="list-style-type: none"> – Dismissal Order 	Girard
AC 11-23	<u>IEPA v. Dennis Weiler</u> <ul style="list-style-type: none"> • Respondent's Motion to Reconsider Opinion and Order Entered July 7, 2011 (8/5) • Complainant's Response to Motion to Reconsider (8/17) <ul style="list-style-type: none"> – Order 	Girard
AC 11-31	<u>IEPA v. Patrick D. and Monique D. Patterson</u> <ul style="list-style-type: none"> • Board Accepts Respondents' Petition, but Directs Respondents to File Amended Petition to Cure Deficiencies by August 22, 2011 (7/21) <ul style="list-style-type: none"> – Default Order 	Girard
AC 12-1	<u>IEPA v. Gaylon L. and Lois J. Harrell</u> <ul style="list-style-type: none"> • Administrative Citation (7/28) • Proof of Service on Respondents on July 27, 2011; Petition for Review due August 31, 2011 (8/1) • Petition for Review (postmarked 8/31/11) (9/2) <ul style="list-style-type: none"> – Order 	Girard

ADJUDICATORY CASES

<p>PCB 99-134</p>	<p><u>People of the State of Illinois v. Heritage Coal Company, LLC (f/k/a/ Peabody Coal Company, LLC)</u></p> <ul style="list-style-type: none"> • Hearing Officer Extends Time for Response to February 10, 2011 and for Reply to February 24, 2011 (11/24) • Respondent Heritage Coal Company LLC's: Motion for Partial Summary Judgment; Opening Brief in Support of Motion for Partial Summary Judgment; Notice of Filing Affidavits in Support of Motion for Partial Summary Judgment; Request for Oral Argument; and Notice of Misnomer (12/27) • Complainant's Response to Motion for Partial Summary Judgment (4/11) • Hearing Officer Allows Reply to be Filed by July 11, 2011 (6/30) • Motion for Leave to File Instantly; Respondent Heritage Coal Company LLC's Brief in Support of its Motion for Partial Summary Judgment (7/12) • Respondent Heritage Coal Company LLC's Motion to Shorten Time for Complainant to Respond to Requests for Admission (7/12) • Respondent Heritage Coal Company LLC's Notice of Filing Deposition Testimony in Support of Its Motion for Partial Summary Judgment; Respondent Heritage Coal Company LLC's Notice of Filing State Interrogatory Answers in Support of Its Motion for Partial Summary Judgment; Respondent Heritage Coal Company LLC's Objections to and Motion to Strike the State's Irrelevant Evidentiary Submissions (7/12) • Complainant's Response to Motion to Strike; Complainant's Response to Motion Regarding Second Set of Requests for Admission (7/25) • Motion for Leave to File Reply; Reply to Complainant's Response to Motion to Strike for Heritage Coal Company, LLC (8/23) • Complainant's Objections to Respondent's Untimely Motion for Leave to File Reply (8/31) 	<p>Zalewski W-E</p>
<p>PCB 04-16</p>	<p><u>People of the State of Illinois v. Packaging Personified, Inc.,</u> – Opinion & Order</p>	<p>Johnson A-E</p>

PCB 04-192	<p><u>People of the State of Illinois v. Smithfield Properties, L.L.C., Wooton Construction, Ltd., and Chicago Sun-Times, Inc.</u></p> <ul style="list-style-type: none"> • Respondent Wooten's Motion to Dismiss or for Summary Judgment (2/9) • People's Motion to Strike Respondent Wooton Construction, Ltd.'s; Motion to Dismiss or for Summary Judgment as to Counts I-VI and Count VIII (2/28) 	Johnson L,W-E
PCB 06-63	<p><u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 06-71	<p><u>Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 06-72	<p><u>Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 06-73	<p><u>Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 06-74	<p><u>Dynegy Midwest Generation, Inc. (Wood River Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 06-194	<p><u>Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 07-115	<p><u>Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 07-123	<p><u>Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA

Electronic Filing - Received, Clerk's Office, 11/23/2011

PCB 08-30	<p><u>E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc.</u></p> <ul style="list-style-type: none"> • Petition [of Belshein & Bruckert, LLC] for Adjudication of the Retaining Lien and for Order Quashing Subpoena Duces Tecum (7/5) • Hearing Officer Order Extends Complainant's Time for Response Pending October 4, 2011 Mediation Session (8/25) 	Girard L-E, C
PCB 08-66	<p><u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 09-6	<p><u>Dynegy Midwest Generation, Inc. (Wood River Power Station) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 09-9	<p><u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u></p> <ul style="list-style-type: none"> • Motion to Change Name of Petitioner [to Dynegy Midwest Generation, LLC] (8/26) 	Blankenship A-PA
PCB 10-9	<p><u>People of the State of Illinois v. Waste Hauling Landfill, Inc., Jerry Camfield, A. E. Staley Manufacturing Co., Aramark Uniform Services, Inc., Bell Sports, Inc., Borden Chemical Co., Bridgestone/Firestone, Inc., Climate Control, Inc., Caterpillar, Inc., Combe Laboratories, Inc., General Electric Railcar Services Corporation, P & H Manufacturing, Inc.,</u></p> <ul style="list-style-type: none"> • Stipulation and Proposal for Settlement [as to Combe Laboratories, Inc.]; Motion for Relief from Hearing Requirement (8/17) • People's Motion to Voluntarily Dismiss Triple S Refining, Inc. (8/17) <ul style="list-style-type: none"> – Triple S Dismissal and Publication Order re Combe 	Girard L-E
PCB 10-23	<p><u>United States Steel Corporation v. IEPA, American Bottom Conservancy as Intervenor (open waiver)</u></p> <ul style="list-style-type: none"> • U. S. Steel's Motion to Stay the Proceeding (9/2) 	Johnson A-PA, CAAPP

<p>PCB 10-61</p> <p>PCB 11-2 (cons.)</p>	<p><u>People of the State of Illinois v. Freeman United Coal Mining Company, LLC and Springfield Coal Company, LLC;</u> <u>Environmental Law and Policy Center v. Freeman United Coal Mining Company, LLC and Springfield Coal Company, LLC</u></p> <ul style="list-style-type: none"> • Freeman United Coal Mining Company, LLC's Answer and Affirmative Defenses to People's Complaint in PCB 10-61 (7/23) • Springfield Coal Company, LLC's Answer and Affirmative Defenses to People's Complaint in PCB 10-61 (7/23) • People's Response and Motion to Strike Affirmative Defenses by Freeman United Coal Mining Company, LLC in PCB 10-61; People's Response and Motion to Strike Affirmative Defenses by Springfield Coal, LLC in PCB 10-61 (7/29) • Freeman United Coal Mining Company LLC's Answer and Affirmative Defenses to ELPC's Complaint in PCB 11-2 (8/13) • Springfield Coal Company LLC's Answer and Affirmative Defenses to ELPC's Complaint in PCB 11-2 (8/13) • Hearing Officer Order Notes Settlement Discussions Proceeding (8/24) 	<p>Blankenship W-E</p>
<p>PCB 10-70</p>	<p><u>Wheeling/GWA Auto Shop v. IEPA</u></p> <ul style="list-style-type: none"> • Petitioner's Motion for Authorization of Payment of Attorneys' Fees as Costs of Corrective Action (8/8) 	<p>Johnson UST-PA</p>

<p>PCB 10-84</p>	<p><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></p> <ul style="list-style-type: none"> • Respondents Hilltop View, LLC, Eagle Point Farms, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, LTD, and Little Timber LLC's Motion for Partial Dismissal (9/7) • Professional Swine Management, LLC's Motion to Dismiss and/or Strike (9/10) • Hearing Officer Extends Response Time to September 29, 2010 (9/20) • Complainant's Response to Respondents' Motion for Partial Dismissal; Complainant's Response to Motion to Dismiss and/or Strike (9/29) • Respondents Wildcat Farms, LLC and High-Power Pork, LLC's Motion for Extension of Time to Answer (9/29) • Complainant's Supplemental Filing to Complainant's Response to Motion to Dismiss and/or Strike (10/1) • Hearing Officer Order Extends Various Response Deadlines – Last Pleading Due December 3, 2010 (10/12) • Reply to Complainant's Response to Respondents' Motion for Partial Dismissal (10/21) • Complainant's Combined Sur-Reply (11/5) • Some Respondents' Motion for Leave to Supplement Reply to Complainant's Response to Respondents' Motion for Partial Dismissal (3/18) • Complainant's Response to Respondents' Supplemental Filing; Motion for Leave to File Response Instantly (4/18) 	<p>Blankenship L-E</p>
<p>PCB 10-108</p>	<p><u>People of the State of Illinois v. William Charles Real Estate Investment, L.L.C.,</u></p> <ul style="list-style-type: none"> • Stipulation and Proposal for Settlement; Motion to Request Relief from Hearing Requirement (6/15) • Publication Order (7/7) • Published in the Rockford Register Star on July 14, 2011 – Stipulation Order 	<p>Johnson W-E</p>

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<p>PCB 11-6</p>	<p><u>People of the State of Illinois v. American Construction, LLC, Inc and Real Estate Elmhurst, LLC</u></p> <ul style="list-style-type: none"> • Stipulation and Proposal for Settlement; Motion for Relief from Hearing Requirement (7/8) • Publication Order (7/21) • Published in the Elmhurst Press on July 29, 2011 <ul style="list-style-type: none"> – Stipulation Order 	<p>Blankenship W-E</p>
<p>PCB 11-21</p>	<p><u>People of the State of Illinois v. Prairieland Investment Group, LLC, and Kevin S. Cook, d/b/a KC Construction</u></p> <ul style="list-style-type: none"> • Stipulation and Proposal for Settlement; Motion for Relief from Hearing Requirement (7/12) • Publication Order (7/21) • Published in the Hancock County Journal-Pilot on July 27, 2011 <ul style="list-style-type: none"> – Stipulation Order 	<p>Blankenship A-E</p>
<p>PCB 11-26</p>	<p><u>People of the State of Illinois v. Lowell Null, d/b/a MAB Pallets</u></p> <ul style="list-style-type: none"> • People's Motion for Summary Judgment Against Lowell Null, d/b/a MAB Pallets (8/18) 	<p>Zalewski L-E</p>
<p>PCB 11-54</p>	<p><u>People of the State of Illinois v. Stewart Spreading, Inc.,</u></p> <ul style="list-style-type: none"> • Stipulation and Proposal for Settlement; Motion for Relief from Hearing Requirement (7/7) • Publication Order (7/21) • Published in the Oswego Ledger-Sentinel on July 28, 2011 <ul style="list-style-type: none"> – Stipulation Order 	<p>Zalewski A,W-E</p>
<p>PCB 11-60</p>	<p><u>American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC</u> <i>(Open Waiver)</i></p> <ul style="list-style-type: none"> • American Disposal Services of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc. and TKNTK, LLC (6/2) • Henson Disposal, Inc. and TKNTK, LLC's Response to the Illinois Department of Pollution Control Board June 2, 2011 Order (6/15) • Petitioner's Response to the Board's June 2, 2011 Order (6/23) • Petitioner's Motion for Leave to File Supplemental Response Instantly (8/24) 	<p>Moore S-A</p>

<p>PCB 11-65</p>	<p><u>Chevron Environmental Management Company (10/27/09 to 9/3/10) v. IEPA</u></p> <ul style="list-style-type: none"> • Petitioner's Petition for Review [Construed as a Motion for Reconsideration of July 21, 2011 Dismissal Order] (8/25) 	<p>Girard UST-PA 90-Day Ext.</p>
<p>PCB 11-66</p>	<p><u>Chevron Environmental Management Company (8/1/2008 to 9/27/2009) v. IEPA</u></p> <ul style="list-style-type: none"> • Petitioner's Petition for Review [Construed as a Motion for Reconsideration of July 21, 2011 Dismissal Order] (8/25) 	<p>Girard UST-PA 90-Day Ext.</p>
<p>PCB 11-68</p>	<p><u>People of the State of Illinois v. Tradition Investments, LLC</u></p> <ul style="list-style-type: none"> • Tradition Investments, LLC Answer and Affirmative Defenses (6/15) • People's Motion to Strike Respondent Tradition Investments, LLC's Affirmative Defenses (7/18) • Hearing Officer Extends Response Time to August 19, 2011 (7/21) • Respondent's Response to Motion to Strike Affirmative Defenses (8/19) • Complainant's Motion for Leave to reply to Respondent's Response; Reply to Response to Motion to Strike Affirmative Defenses (8/24) 	<p>Girard W-E</p>
<p>PCB 11-86 PCB 12-46 (cons.)</p>	<p><u>Exxonmobil Oil Corporation v. IEPA;</u></p> <ul style="list-style-type: none"> • ExxonMobil's Amended Petition for Variance, or in the Alternative, New Petition for Variance; Motion to Confirm Five-Day Notice for Hearing Pursuant to Section 38(b) of the Illinois Environmental Protection Act (9/2) • IEPA's Recommendation (8/18) • Exxonmobil Oil Corporation's Response to Illinois EPA's Recommendation (9/1) • ExxonMobil's Amended Petition for Variance, or in the Alternative, New Petition for Variance; Motion to Confirm Five-Day Notice for Hearing Pursuant to Section 38(b) of the Illinois Environmental Protection Act (9/2) <ul style="list-style-type: none"> – Order 	<p>Zalewski A-V</p>
<p>PCB 12-14</p>	<p><u>Center Point Energy, Mississippi River Transmission, LLC v. IEPA</u></p> <ul style="list-style-type: none"> • Motion for Pro Hac Vice Admission for Garry L. Keeler for the Petitioner; Motion for Pro Hac Vice for Bryan A. Fuller for the Petitioner (8/11) <ul style="list-style-type: none"> – Order 	<p>Girard A-PA CAAPP</p>

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PCB 12-15	<u>Gary Szczeblewski v. Office of State Fire Marshall</u> <ul style="list-style-type: none"> • Petition for Review (7/18) • Respondent's Motion to Dismiss (7/29) 	Zalewski UST-PA
PCB 12-16	<u>Mark Lilly v. City of Rock Falls, IL</u> <ul style="list-style-type: none"> • Formal Complaint with Proof of Service on Respondent [on July 19, 2011] (7/19) • Respondent's Motion Requesting That IPCB Not Accept Complaint for Hearing (8/12) • Complainant's Objection to Motion to Dismiss (8/19) <ul style="list-style-type: none"> - Hold for Duplicative/Frivolous Determination 	Girard A-E, C
PCB 12-23	<u>Beneficial Reuse Management, LLC and Southern Illinois Power Cooperative v. IEPA (Due 8/21/12)</u> <ul style="list-style-type: none"> • Request for Stay of Contested Conditions (7/28) <ul style="list-style-type: none"> - Order 	Girard W-PA
PCB 12-27	<u>People of the State of Illinois v. Industrial Enclosure Corporation</u> <ul style="list-style-type: none"> • Complaint (8/16) <ul style="list-style-type: none"> - Accept for Hearing Order 	Girard L-E
PCB 12-28	<u>People of the State of Illinois v. Strout Crossing, LLC, Jerry Webster, and Mark Webster</u> <ul style="list-style-type: none"> • Complaint; Stipulation and Proposal for Settlement; Motion for Relief from Hearing Requirement (8/17) <ul style="list-style-type: none"> - Acceptance and Publication Order 	Girard W-E
PCB 12-29	<u>Gary Cooper v. IEPA (Due 2/15/12)</u> <ul style="list-style-type: none"> • Petition for Review of Agency LUST Decision (8/17) <ul style="list-style-type: none"> - Accept for Hearing Order 	Girard UST-PA
PCB 12-30	<u>Village of Downers Grove v. IEPA</u> <ul style="list-style-type: none"> • Request for Ninety Day Extension of Appeal Period (8/23) <ul style="list-style-type: none"> - Extension Order 	Girard UST-PA
PCB 12-31	<u>Jeff and Mitzi Sharer - Little York (Property ID No. 05-016-007-01) v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/24) <ul style="list-style-type: none"> - Certification Order 	Girard W-TC
PCB 12-32	<u>Jeff and Mitzi Sharer - Little York (Property ID No. 05-015-004-00) v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> - Certification Order 	Girard W-TC

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PCB 12-33	<u>Deborah Ann Rousoncles v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard W-TC
PCB 12-34	<u>ExxonMobil Oil Corporation, New Source Review Project v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-35	<u>People of the State of Illinois v. Six M. Corporation, Inc., William Maxwell, and Marilyn Maxwell</u> <ul style="list-style-type: none"> • Complaint <ul style="list-style-type: none"> – Accept for Hearing Order (8/25) 	Girard W-E
PCB 12-36	<u>Marathon Petroleum Company, LLC, Reformulated Gasoline Blending System v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-37	<u>WRB Refining, LLC, Boiler No. 17 NOx v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-38	<u>WRB Refining, LLC, Distilling West H-28 NOx Reduction v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-39	<u>WRB Refining, LLC, Gasoline SZorb Unit v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-40	<u>WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-41	<u>Marathon Petroleum Company, LLC, Carbon Canisters and Degasser for Caustic Storage Tanks v. IEPA</u> <ul style="list-style-type: none"> • Agency Recommendation for Approval (8/25) <ul style="list-style-type: none"> – Certification Order 	Girard A-TC
PCB 12-42	<u>Bernie's Wood River Gas v. IEPA (Due 12/15/11)</u> <ul style="list-style-type: none"> • Petition for Review of the Agency LUST Decision; (8/31) <ul style="list-style-type: none"> – Accept for Hearing Order 	Girard UST-PA

PCB 12-43	<u>People of the State of Illinois v. Forbo Adhesives, LLC</u> <ul style="list-style-type: none"> Complaint; Stipulation and Proposal for Settlement; Motion for Relief from Hearing Requirement (8/31) <ul style="list-style-type: none"> Publication Order 	Girard L-E, RCRA
PCB 12-44	<u>Anielle Lipe and Nykole Gillette v. Village of Richton Park</u> <ul style="list-style-type: none"> Formal Complaint [awaiting submission of Certified Mail Receipt as Proof of Service] (9/1) Amended Formal Complaint [awaiting submission of Certified Mail Receipt as Proof of Service] (9/1) 	Girard A-E, C
PCB 12-45	<u>JKL Pork, LLC - Minock (Property ID No. 04-01-300-001) v. IEPA</u> <ul style="list-style-type: none"> Agency's Recommendation for Approval (9/1) <ul style="list-style-type: none"> Certification Order 	Girard W-TC

CASES PENDING DECISION

R09-19	<u>In the Matter of Air Quality Standards Clean-up: Amendments to 35 Ill. Adm. Code Part 243</u> <ul style="list-style-type: none"> Proposed Rule, Second Notice, Opinion & Order 	Moore Air
R11-20	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u> <ul style="list-style-type: none"> Scheduled for September 13, 2011 JCAR Review <ul style="list-style-type: none"> Adopted Rule, Final Opinion & Order 	Zalewski Air
R11-22	<u>In the Matter of: Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734</u> <ul style="list-style-type: none"> Proposed Rule, First Notice, Opinion & Order 	Moore UST, L
R11-23(A)	<u>In the Matter of: Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group II and Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219</u> <ul style="list-style-type: none"> Proposed Rule, Second Notice, Opinion & Order 	Moore Air

OTHER ITEMS

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ADJOURNMENT

ILLINOIS POLLUTION CONTROL BOARD
NEW CASE LISTING

New Cases Filed Since the August 18, 2011 Board Meeting

PCB 12-27	People of the State of Illinois v. Industrial Enclosure Corporation
PCB 12-28	People of the State of Illinois v. Strout Crossing, LLC, Jerry Webster, and Mark Webster
PCB 12-29	Gary Cooper v. IEPA
PCB 12-30	Village of Downers Grove v. IEPA
PCB 12-31	Jeff and Mitzi Sharer - Little York (Property ID No. 05-016-007-01) v. IEPA
PCB 12-32	Jeff and Mitzi Sharer - Little York (Property ID No. 05-015-004-00) v. IEPA
PCB 12-33	Deborah Ann Rousoncles v. IEPA
PCB 12-34	ExxonMobil Oil Corporation, New Source Review Project v. IEPA
PCB 12-35	People of the State of Illinois v. Six M. Corporation, Inc., William Maxwell, and Marilyn Maxwell
PCB 12-36	Marathon Petroleum Company, LLC, Reformulated Gasoline Blending System v. IEPA
PCB 12-37	WRB Refining, LLC, Boiler No. 17 NO _x v. IEPA
PCB 12-38	WRB Refining, LLC, Distilling West H-28 NO _x Reduction v. IEPA
PCB 12-39	WRB Refining, LLC, Gasoline SZorb Unit v. IEPA
PCB 12-40	WRB Refining, LLC, Ultralow Sulfur Diesel v. IEPA
PCB 12-41	Marathon Petroleum Company, LLC, Carbon Canisters and Degasser for Caustic Storage Tanks v. IEPA
PCB 12-42	Bernie's Wood River Gas v. IEPA
PCB 12-43	People of the State of Illinois v. Forbo Adhesives, LLC
PCB 12-44	Anielle Lipe and Nykole Gillette v. Village of Richton Park
PCB 12-45	JKL Pork, LLC - Minock v. IEPA
PCB 12-46	Exxonmobil Oil Corporation v. IEPA

Case Type Codes:

AC	Administrative Citation	TC	Tax Certifications
AS	Adjusted Standard	TD	Thermal Demonstration
E	Enforcement	TS	Trade Secrets
App	Appeal	V	Variance
R	Rulemaking	Other	Any case type code not listed here

Case Type Code Modifiers:

A	Air	PWS	Public Water System
AW	Agricultural Waste	RCRA	Resource Conservation and Recovery Act
C	Citizen's	S	Siting
CAAPP	Clean Air Act Permit Program	S02	S02 Alternative Standards (35 Ill. Adm. Code 302.211(f))
CSO	Combined Sewer Overflow Exception	SRP	Site Remediation Program
EPCRA	Emergency Planning and Community Right-to-Know Act	SS	Site Specific
GW	Groundwater	SW	Special Waste
HW Delist	RCRA Hazardous Waste Delisting	SWH	Special Waste Hauling
L	Land	UST	Underground Storage Tank
Mine	Mine Waste/Mining	W	Water
MW	Medical Waste (Biological Materials)	WWS	Water-Well Setback Exception
NPDES	National Pollution Discharge Elimination System	3d P	Third Party Action
P	Permit	90-Day Ext.	90-Day Extension
Proc	Procedural		

**BOARD MEETINGS
SCHEDULED FOR CALENDAR YEAR 2011**
(unless otherwise noted, meetings begin at 11:00 am)

January 6	July 7
January 20	July 21 *
February 3	August 4
February 17	August 18
March 3	September (4)8
March 17 *	September (15) 22
April 7	October 6 *
April 21	October 20
May 5	November 3
May 19	November 17
June 2	December 1
June 16	December 15

Unless otherwise noted below, Board meetings will be at the James R. Thompson Center, 100 W. Randolph Street, Chicago, IL

* These Board meetings will be via videoconference between Chicago, 100 W. Randolph Street, Videoconference Room 11-512, and Springfield, 1021 N. Grand Avenue East, Conference Room 1244 N, First Floor

** These Board meetings will be in the Board's Springfield Office, 1021 N. Grand Avenue East, Conference Room 1244 N, First Floor

**CLOSED DELIBERATIVE SESSIONS
SCHEDULED FOR CALENDAR YEAR 2011**
(unless otherwise noted, meetings begin at 10:00 am)

January 13	July 14
January 27	July 28
February 10	August 11
February 24	August 25
March 10	September (8) 1
March 24	September (22) 15
March 31	September 29
April 14	October 13
April 28	October 27
May 12	November 10
May 26	November 23 (Wed. before Thanksgiving)
June 9	December 8
June 23	December 22
June 30	December 29

Unless otherwise noted, Closed Deliberative Sessions will be at the James R. Thompson Center, 100 W. Randolph Street, Room 11-512, Chicago, IL

**BOARD MEETINGS
SCHEDULED FOR CALENDAR YEAR 2012**
(unless otherwise noted, meetings begin at 11:00 am)

January 5	July 12
January 19	July 26
February 2	August 9
February 16	August 23
March 1	September 6
March 15	September 20
April 5	October 4
April 19	October 18
May 3	November 1
May 17	November 15
June 7	December 6
June 21	December 20

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**CLOSED DELIBERATIVE SESSIONS
SCHEDULED FOR CALENDAR YEAR 2012**
(unless otherwise noted, meetings begin at 10:00 am)

January 12	July 5
January 26	July 19
February 9	August 2
February 23	August 16
March 8	August 30
March 22	September 13
March 29	September 27
April 12	October 11
April 26	October 25
May 10	November 8
May 24	November 22
May 31	November 29
June 14	December 13
June 28	December 27

Unless otherwise noted, Closed Deliberative Sessions will be at the James R. Thompson Center, 100 W. Randolph Street, Room 11-512, Chicago, IL

*Electronic Filing - Received, Clerk's Office, 11/23/2011***Brittany Theis**

From: Frost, Brad [Brad.Frost@Illinois.gov]

Sent: Friday, October 28, 2011 7:58 AM

To: Brittany Theis

Cc: Biggs, Kim

Subject: RE:

Ms. Theis,

The Illinois EPA website does not list the information that you are looking for. If you have specific facilities that you are looking for, you can contact me and I can tell you whether the company has submitted an application. If you are looking for a specific source category, such as landfills, you should submit a Freedom of Information request to obtain a list of such facilities that have open construction applications. If you have any questions, my contact information is listed below.

Brad Frost
Office of Community Relations
Illinois EPA
1021 North Grand Avenue, East
PO Box 19506
Springfield, IL 62794-9506
217/782-7027
217/524-5023 fax
brad.frost@illinois.gov

From: Brittany Theis [mailto:BTheis@Whittlaw.com]

Sent: Wednesday, October 26, 2011 11:46 AM

To: Biggs, Kim

Subject:

Hello,

I am interested in tracking particular applications for Pollution Control Facility certifications. Are applications or notice of applications published anywhere, such as the IEPA website? Is there a way to receive notice of applications after they are submitted, but prior to the recommendation being made to the Pollution Control Board?

Thank you,

Brittany Flaherty Theis

Exhibit 9

11/22/2011

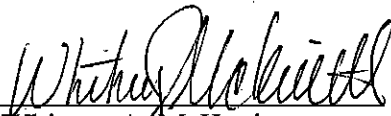
STATE OF ILLINOIS)
)
COUNTY OF KANE) ss.

AFFIDAVIT

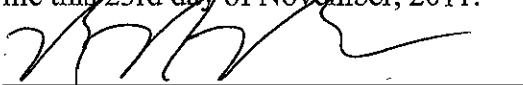
The undersigned affiant, being first duly sworn and under penalty of perjury on oath, states as follows:

1. My name is Whitney A. McKevitt and I am a legal assistant with Whitt Law LLC.
2. I telephoned the Illinois Environmental Protection Agency on Tuesday, November 22, 2011 regarding a FOIA request submitted by our office on November 7, 2011. I spoke to an IEPA official about the status of the FOIA request and whether it had been reviewed and responded to. I was told by the IEPA official that they were currently reviewing all requests submitted during the last week of September 2011 through the first week of October 2011. Upon hearing that, I asked whether they had a timeline for reviewing and responding to the FOIA request submitted by Whitt Law LLC. The official said they did not.
3. On Wednesday, November 23, 2011 I informed the Attorney General's Public Access Counselor of the facts set forth above.

Dated this 23rd day of November, 2011.


Whitney A. McKevitt

SUBSCRIBED AND SWORN to before me this 23rd day of November, 2011.



Notary Public



Environmental Register

August 2011 - Number 686

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

G. Tanner Girard, Acting Chairman

Board Members:

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

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

Electronic Filing - Received, Clerk's Office, 11/23/2011
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.

On August 4, 2011, the Board adopted a second-notice opinion and order in NO_x 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_x) 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_x 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_x 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) for more information.



Sincerely,

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

Dr. G. Tanner Girard

Inside This Issue:

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Appellate Update

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 Pruiem and Robert Pruiem 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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Environmental Register – August 2011

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

\$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

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_x 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_x 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_x Trading Program) for non-electric generating units (non-EGUs). The sole provisions to be amended involve the holding and trading provisions for NO_x 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_x Trading Program requirements for holding and trading NO_x allowances for any control period after 2008 because USEPA no longer allocates allowances for the NO_x 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_x Trading Program. The affected units will not be subject to the holding and trading provisions of the NO_x Trading Program if the Board sunsets these provisions of Subpart U. However, to ensure that Illinois continues to satisfy its NO_x 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.

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_x) 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

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_x 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_x 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.

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. 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.

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

August 4, 2011
Chicago, Illinois

Rulemakings

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| R 08-9(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</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 |
| R 11-8 | <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 |
| R 12-1 | <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 |
| R 12-2 | <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 |
| R 12-3 | <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 |
| R 12-5 | <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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R 12-6	<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
R 12-8	<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
R 12-9	<u>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</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

AC 11-24	<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 & 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 & Recycling, LLC and G & 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

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 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
R 11-2	<u>RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (January 1, 2010 through June 30, 2010)</u>	5-0 Land
R 11-16 (cons.)	<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.	
R 11-20	<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
R 11-24	<u>In the Matter of: Nitrogen Oxides Emissions, Amendments to 35 Ill. Adm. Code 217</u>	5-0 Air
R 11-26 (cons.)	<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.	
R 12-10	<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

AC 11-26	<u>IEPA v. Estate of Kenneth D. Berhenke, Sr.</u> – The Board granted complainant’s motion to voluntarily dismiss the administrative citation.	5-0
AC 11-28	<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

Electronic Filing - Received, Clerk's Office, 11/23/2011
 Environmental Register – August 2011

Adjudicatory Cases

PCB 07-13	<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
PCB 11-55	<u>People of the State of Illinois v. American Excavating & 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
PCB 11-102	<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
PCB 11-103	<u>People of the State of Illinois v. Markham Transfer & 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
PCB 12-24	<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
PCB 12-25	<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 12-26	<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

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 Group, 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. 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> (Continues until complete or through September 27, 2011)	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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Environmental Register – August 2011

10//6/11 11:00 AM	Illinois Pollution Control Board Meeting		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
10/20/11 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
10/25/2011 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> (Continues until complete or through October 26, 2011)	James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago
10/27/2011 11:00 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 Plains River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304</u>	James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago
10/27/2011 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, 11-512 James R. Thompson Center 100 W. Randolph Street Chicago
11/3/11 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago
11/17/2011 1:00 PM	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, 11-512 James R. Thompson 100 W. Randolph Street Chicago
11/17/11 11:00 AM	Illinois Pollution Control Board Meeting		James R. Thompson Center 100 W. Randolph Street Chicago

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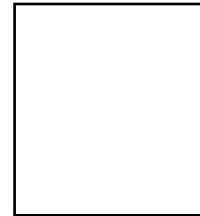
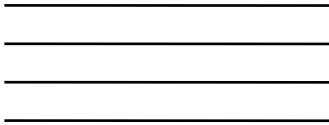
Environmental Register Comment Card

Multiple horizontal lines for writing comments.

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

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

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

Electronic Filing - Received, Clerk's Office, 11/23/2011

From: [Marie Tipsord](#)
To: "Brian Bare" <BBare@Whittlaw.com>
Cc: TIPSORM@ipcb.state.il.us
Subject: FOIA request
Date: Friday, November 18, 2011 12:07:12 PM

Mr. Bare,

On November 16, 2011 we received a FOIA request from you asking for certain records. You first asked for: "any records which show the date or time that the agenda for the Illinois Pollution Control Board's meeting held on September 8, 2011, was published, posted to the Board's public website or other public location, or sent to any media representative."

The Board has no records which show the date or time that the Agenda was posted. The Board's clerk's office prepares the agenda and then physically carries the agenda to the Office of the Building in the James R. Thompson Center for posting 48 hours prior to a meeting. The clerk's office posts the agenda to the web page; however, there are no records retained which show when those posting occur. The agenda is available online and at the Board's Chicago Office in the James R. Thompson Center. The agenda is not sent to any media representative, unless a request is made to the clerk's office.

Next you asked for: "any records which show the date or time that the Illinois Pollution Control Board's August 2011 edition of *Environmental Register* was published, posted to the Board's public website, or sent to any media representative. " The Board has no records which show the date or time that the *Environmental Register* is posted. The *Environmental Register* is self-published by the Board and mailed using the U.S. Post Office regular mail to a list of subscribers. Thus, the Board does not maintain records on when the *Environmental Register* is mailed. The *Environmental Register* is posted on the web page; however, there are no record which show when that posting occurs.

If we can be of further assistance, please contact either myself or the Board's clerk's office. The clerk's office is available to answer any questions regarding the availability of items on the Board's website.

Marie Tipsord
FOIA officer



Docket Sheet

Case No: PCB 2012-046

Case Name: ExxonMobil Oil Corporation v. IEPA (Consolidated: PCB 11-86 and PCB 12-46)

Case Type: Variance

Board Member: Zalewski, C. K.

Media Type: Air

Hearing Officer: Halloran, B.

County: Will

Status: Board Order

Case Activity

<u>Date</u>	<u>Activity Type</u>	<u>Activity Notes</u>
10/24/2011	120583	Petitioner's Motion for Leave to File Instanter; Response to Public Comment (electronic filing)
10/12/2011	120462	Agency's Certificate of Publication (electronic filing)
10/11/2011	120454	Comments of the Environmental Integrity Project (PC# 3) (electronic filing)
10/11/2011	120450	Comments of the Illinois Environmental Regulatory Group (PC# 2) (electronic filing)
10/6/2011	120404	Petitioner's Post Hering Brief (electronic filing)
10/4/2011	120380	Certificate of Publication: published in the Joliet Herald on September 12, 2011
9/29/2011	120346	*Hearing Report: Hearing held September 19, 2011 in Village Offices of Bolingbrook Board Room; Petitioner's motion to incorporate hearing transcripts from R11-24 is granted; petitioner's 8 exhibits were the only ones offered; post-hearing briefing schedule agreed to: petitioner's opening brief due October 7, 2011, respondent's responsive brief due October 17, 2011, petitioner's reply due October 24, 2011, public comments due October 11, 2011, record closes on October 24, 2011, MAILBOX RULE DOES NOT APPLY TO ANY POST-HEARING DEADLINE
9/28/2011	120309	Transcript of September 19, 2011 hearing
9/21/2011	120195	Petitioner's Motion to Incorporate Hearing Transcripts from R11-24 rulemaking (electronic filing)
9/20/2011	120165	*Comments of Citizens Against Ruining the Environment - C.A.R.E. (PC# 1)
9/12/2011	120084	*Hearing Officer Order: Telephonic Status Conference September 12, 2011; parties ready for hearing scheduled for September 19, 2011; statutory decision deadline for PCB 11-86 is 12/1/11 and requires a decision by the Board at its 12/1/11 meeting, not its November 17, 2011 meeting as stated in Board order of September 8, 2011
9/8/2011	120048	Order of the Board by C. K. Zalewski: Board accepts September 2, 2011 ExxonMobil filing as new petition for variance; ExxonMobil's motion for hearing on September 19, 2011 in PCB 11-86 and 12-46 granted; Board consolidates PCB 11-86 and PCB 12-46 for hearing and decision
9/8/2011	120022	Hearing scheduled for September 19, 2011, at 10:00 am at Village of Bolingbrook Board Room, 375 W. Briarcliff Road, Bolingbrook, IL 60440

Docket Sheet

9/7/2011	119991	Amended Recommendation, or in the Alternative. Recommendation and Response ExxonMobil Oil Corporation's Motion To Confirm Five-Day Notice For Hearing Pursuant To Section 38(b) Of The Illinois Environmental Protection Act
9/2/2011	119973	XxxonMobil's Amended Petition for Variance, or in the Alternative, New Petition for Variance; Motion to Confirm Five-Day Notice for Hearing Pursuant to Section 38(b) of the Illinois Environmental Protection Act; \$75 Filing Fee (electronic filing)

Service List

<u>Party Name</u>	<u>Address</u>	<u>City/State/Zip</u>	<u>Phone/Fax</u>	<u>Name</u>
Citizens Against Ruining the Environmental Interested Party	P.O. Box 536	Lockport IL 60441		Ellen Rundulich

Total Number of Participants: 1

Notice List

<u>Party Name</u>	<u>Address</u>	<u>City/State/Zip</u>	<u>Phone/Fax</u>	<u>Name</u>
Hodge Dwyer & Driver	3150 Roland Avenue Post Office Box 5776	Springfield IL 62705-5776	217/523-4900 217/523-4948	Monica T. Rios
IEPA	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782-5544 217/782-9807	Gina Roccaforte

Total Number of Participants: 2

Scheduled Hearings

<u>Hearing Date/Time</u>	<u>Location</u>	<u>City & State</u>
9/19/2011 12:00:00 AM	9/12/2011 10:00:00 AM Village of Bolingbrook Board Room	Bolongbrook, IL 60440

Appeals on File

<u>Court Docket</u>	<u>Court Name</u>	<u>Court Type</u>	<u>Date Of Appeal</u>	<u>Court Decision</u>
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