

**STATE OF ILLINOIS
POLLUTION CONTROL BOARD**

**ANNUAL REPORT
FISCAL YEAR 1990**



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I. CHAIRMAN'S OVERVIEW

The Pollution Control Board was formed in 1970, when years of growing environmental concerns culminated in the first Earth Day. Twenty years later, people who were shocked to learn in the 1960s that the Great Lakes and oceans could be polluted are now realizing that even the global atmosphere is not immune to man's influence. Worldwide, people are expressing serious concern over atmospheric degradation, oil spills, toxic and carcinogenic chemicals, problems at nuclear handling facilities and the extinction of species. This renewed public interest will lead to a new round of legislation and regulation by all levels of government. This renewed public interest has fostered new environmental legislation that is increasing regulatory and enforcement activities at the state and federal levels. For example, 467 cases were filed with the Board during fiscal year 1990 (FY90), an increase of 13 percent over the prior year. Regulatory dockets included such diverse topics as livestock waste, ozone control, gasoline volatility, waste tires, and landfills.

The 1990s will be a time of evolution for environmental agencies and related interest groups. The future challenges facing these organizations include separating the actual from the perceived problems, developing and enforcing technically and economically sound laws and regulation, and retaining intact those programs that have served society well in the past.

The Pollution Control Board, along with the Illinois Environmental Protection Agency and the Department of Energy and Natural Resources, is one of three state agencies designated in the Illinois Environmental Protection Act to provide a

"unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment and to assure that adverse effects upon the environment are fully considered and borne by those who cause them."

To this end, the Board promulgates environmental regulations after a hearing and public comment process where other agencies, industry and the general public have full access to make their views known. The Board also makes enforcement decisions when an agency or member of the public alleges a person or industry is violating environmental regulations. The Illinois process may be more procedural than that in some other states but the system is crafted to make sure that everyone in fact can participate on an even footing. In addition, the Illinois system allows the Board to have a broad perspective in environmental regulation, since it deals with the full spectrum of air, land, water, and noise matters.

The Illinois environmental system and the Board in particular were recently complimented in Integrated Pollution Control in Europe and North America, published by The Conservation Foundation and the Institute for European Environmental Policy. The book focuses on the need for integrated programs and policies to address, in a unified manner, a pollutant's potential impact on all media. It points out that regulatory systems tend to focus on air, land or water independently rather than addressing cross-media impacts. In the chapter on "Cross-Media Regulatory Innovation in the American States," the author states:

Integrated pollution control, in contrast to other forms of environmental integration, seeks particularly to link air, water, and waste programs. Its concern is institutional changes that reduce total risk to the environment from pollutants.

* * *

A review of state government capacity to integrate environmental management need not be singularly pessimistic. Certain state reorganizational efforts not only

have been based in part on the desire to integrate environmental management but also give some indication in practice of actually taking cross-media realities into account in making regulatory decisions. Such integrative innovations may serve as models worthy of emulation by other states or the nation.

* * *

The Illinois Environmental Protection Act incorporated separate air and water pollution boards into IPCB, along with various other functions that had been scattered among state agencies. Many of the cases it considers ultimately address pollution problems in only a single medium, and no mechanism automatically triggers a cross-media review. Nonetheless, IPCB hears cases and makes rules in all media, making it the only state board with such broad powers.

* * *

Of the many new environmental management institutions developed at the state level in the early 1970s, IPCB remains exceptional in that it has continued to demonstrate integrative capacity. This is remarkable not only because of the fragmenting tendencies of most other new institutions developed in the same period but also because of the scarce resources the board has been able to command. Indeed, its potential integrative ability has been undermined by the very modest research support available to board members. But, although such a system does not guarantee that an integrative, cross-media-sensitive environmental policy is formed and implemented, the board does provide a setting in which the transfer, transport, and transformation of pollutants across media is more likely to be taken into account than in media-specific boards and agencies. Moreover, the new funding sources may well enable IPCB to increase its integrative effectiveness in future years.

Developments at the Board

From 1970 to 1984, the Board consisted of five board members and a support staff of seventeen. In fiscal year 1984 (FY84), the legislature expanded the Board from five to seven members, and added four more support staff to spread the workload. Board Members serve staggered three year terms. The seven Board Members during FY90 were:

Dr. John C. Marlin, Chairman,	appointed to the Board in 1983, became Chairman in November of 1988;
Joan G. Anderson,	appointed in 1980;
Jacob D. Dumelle,	appointed in 1970, served as Chairman from August of 1973 until November of 1988;
Dr. Ronald G. Flemal,	appointed in 1984;
Bill S. Forcade,	appointed in 1983;
J. Theodore Meyer,	appointed in 1983;
Michael Nardulli,	appointed in 1987.

Since the FY84 expansion of the Board two small sections were added in fiscal years 1985 (FY85) and 1988 (FY88). The General Assembly authorized the establishment of a Scientific/Technical Section (STS) in FY85. This section consists of four persons with advanced

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degrees, a librarian/researcher and a secretary. The STS provides analysis and development of the technical aspects of records, assists in rule formulation and is available to answer staff questions. The STS also contracts for special studies and the retention of expert witnesses to fill data gaps.

Three lawyers and a secretary were added in FY88, primarily to assist in handling the increasing workload resulting from new federal and state programs including a substantial increase in "identical in substance" rulemakings.

Board members and staff toured a number of facilities in FY90. These included a composting operation, grain elevator, agricultural chemical facility, hog farm and a wastewater treatment facility using land treatment. The staff also observed a demonstration of diesel exhaust control.

Board Actions on Regulations

Over the years the complexity of environmental issues has increased. This has brought about a corresponding increase in the length of regulations and amount of staff time required to adequately deal with proposals. For example, the first landfill regulations were contained in a few pages which basically covered such matters as blowing litter, vector control and aesthetics. The proposed (R88-7) landfill regulations are 171 pages long and cover a variety of technical topics including leachate control, gas collection and liner specifications. Additionally new federal and state laws which are interrelated have greatly increased the volume of regulations that the Board must consider when reaching decisions.

Several Board initiatives were acted on during FY90. These ranged from matters dealing with public health to solid waste and air pollution.

The Board took swift action in 1988 to slow the spread of the Asian Tiger Mosquito. This mosquito, which carries numerous diseases in its native Asia, is spread by the shipment of scrap tires. It was found in Chicago and East St. Louis in 1987. After determining that no action would be taken at the federal level, the Board proposed an emergency rule for scrap tire management on April 7, 1988 and took final action two weeks later. This was followed by adoption of a permanent rule in the Spring of 1989. The General Assembly subsequently passed the nation's most comprehensive tire management law. It addresses the public health, solid waste and fire hazard aspects of scrap tire storage and disposal. The Board held hearings on this regulation during FY90 and expects to finalize them pursuant to this law in 1991.

In response to growing concern over ozone levels the Board set its own standard for gasoline volatility. Several other states took similar action when it became known that planned federal standards would be delayed. The Board rule required that gasoline not exceed a Reid vapor pressure (RVP) of 9.5 psi during the summer of 1990 and 9.0 during 1991. Federal standards will control beginning in 1992. This will reduce ozone precursors in the Chicago area alone by about 200 tons per day during the summer months.

Regulations governing landfilling of non-hazardous wastes were sent to first notice in March of 1990 after consideration of the Economic Impact Study and comments received from the public. These regulations will cover landfills which receive municipal and special waste as well as industrial landfills. They were finalized during 1990.

The Board adopted rules covering trihalomethanes in water supplies (R84-12) serving fewer than 10,000 people. The federal rules exempted these smaller supplies.

The Board along with several other states considered requiring that cars meet the strict emission standards in force in California. The new federal Clean Air Act (CAA) subsequently made the California standards mandatory nationwide. The Board is considering whether or not to adopt the newer California rules which are more stringent than the new CAA.

The Board drafts and adopts rules that are "identical in substance" to federal rules in a number of programs including Pretreatment and RCRA. These complex rules are adopted after review by USEPA, IEPA, the Attorney General and other interested parties. They are updated twice a year to keep abreast of federal amendments.

In R88-26 the Board conducted proceedings leading to replacement of the public water supply rules with a new Part 611, which is "identical in substance with" USEPA rules adopted pursuant to the Safe Drinking Water Act, in 40 CFR 141. The new rules track the USEPA requirements more closely, and are in a format which will allow them to be more easily amended to respond to future USEPA amendments.

In R89-4, the Board completed the initial process of adopting rules which are identical in substance to USEPA's underground storage tank (UST) rules, adopted pursuant to the Resource Conservation and Recovery Act, in 40 CFR 280. The rules were updated in R89-10 and R90-3 to correspond with USEPA amendments. In R89-19, the Board added Section 731.200, allowing the UST Fund to function as a "State Fund" pursuant to federal regulations.

In R89-1 and 9, the Board updated the RCRA hazardous waste rules to correspond with USEPA amendments. R89-1 included the "First Third" hazardous waste land disposal bans, and the "Three Tier" permit modification process. During this period, the Board also initiated rulemaking to adopt the "Second Third" land disposal bans, and the "toxicity characteristic leaching procedure" (TCLP) rules (R90-2 and 10).

Regulations for implementation of the Illinois Groundwater Protection Act are covered by two proceedings. The first (R 89-5) promulgated setback zones from wells within regulated recharge areas. The second (R 89-14) will establish groundwater quality standards, among other things. These regulations will be completed during 1991.

Water-toxics rules became effective Feb. 19, 1990. They specify procedures to enhance the protection of the aquatic environment and drinking water sources from the impact of toxic chemicals. These rules have been challenged in court. Additionally, the IEPA filed a proposal with the Board for the control of toxic releases to the air.

Contested Cases

The number and types of cases have shifted over the years in response to shifting public interest and environmental priorities. Through FY89, 17 percent of the Board's contested cases involved solid waste, while 37 percent related to water and 21 percent to air. During FY89, 62 percent involved solid waste, while 13 percent related to water and only 9 percent to air. However, in the regulatory arena 19 percent of the FY89 proposals involved solid waste, 55 percent water and 24 percent air.

The 445 contested case filings before the Board continued the trend of increased caseload. Figure 1 and Appendix C show a steady rise since FY85 when 172 cases were filed. The number of opinions and orders issued per year is shown in Appendix E and Figure 2. They increased from 537 in FY85 to 1,073 in FY90.

The Board expects its workload to increase over the next few years. Regulations required by the new Clean Air Act and other federal laws promise to be numerous and voluminous. Petitions requesting reimbursement determinations in the underground storage tank program are increasing as are administrative citations.

The IEPA filed 210 Administrative Citations (ACs) with the Board in FY90. Under the AC program, IEPA inspectors "ticket" landfill operators for minor observable violations. Other persons may be cited for open dumping. The AC carries a penalty of \$500 per violation and is appealable to the Board if the person believes no violation occurred or that it was due to uncontrollable circumstances. The penalty is automatic if no appeal is filed. This program gives the IEPA the ability to quickly enforce for violations, such as blowing litter, that were often considered too minor if considered singly for regular enforcement proceeding. The Board expects the number of ACs for open dumping to decline as the public becomes aware of the State's ability to quickly enforce open dumping regulations. The AC program is likely to be expanded to other regulatory programs.

II. OPERATIONS OF THE BOARD

A. The Structure of the Pollution Control Board

As specified in the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111½, par. 1005, the Pollution Control Board ("Board") consists of "seven technically qualified members" appointed by the Governor subject to confirmation by the Illinois Senate. The Governor alone appoints one member to serve as Chairman. Members serve staggered, three year terms. During these terms, members serve on a full-time basis and are subject to the same constraints as the judiciary as regards sources of additional income and contacts with parties concerning the substance of pending matters.

The Board and its staff is not organized in divisions on a media-by-media basis. Rather, pursuant to the Act, each Board member employs a secretary and a confidential attorney assistant whose functions include those of a law clerk performing preliminary case analysis and drafting duties as well as a hearing officer in regulatory matters. Each individual has responsibilities in various program areas for various types of regulatory proceedings and types of contested cases.

The needs of the Board as a whole are served by a fiscal services group and the administrative staff, including the Clerk of the Board, under the direction of an administrative manager, by a Scientific/Technical Section ("STS") under the direction of a chief, and by a group of attorneys under the direction of a senior attorney. A pool of contractual attorneys in private practice act as hearing officers in contested adjudicatory cases.

B. The Function of the Pollution Control Board

The Board acts in a quasi-legislative capacity when adopting regulations, and in a quasi-judicial one when deciding contested cases. Section 5 of the Act establishes the general powers and duties of the Board:

- b. The Board shall determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of this Act.
- c. The Board shall have authority to act for the State in regard to the adoption of standards for submission to the United States under any federal law respecting environmental protection. Such standards shall be adopted in accordance with Title VII of the Act and upon adoption shall be forwarded to the Environmental Protection Agency for submission to the United States pursuant to subsections (1) and (m) of Section 4 of this Act. Nothing in this paragraph shall limit the discretion of the Governor to delegate authority granted him under any federal law.
- d. The Board shall have authority to conduct hearings upon complaints charging violations of this Act or of regulations thereunder, upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of this Act; upon petition to remove a seal under Section 34 of this Act; upon other petitions for review of final determinations which are made pursuant

to the Act or Board rule and which involve a subject which the Board is authorized to regulate; and such other hearings as may be provided by rule.

- e. In connection with any hearing pursuant to subsection (b) of (d) of this section the Board may subpoena and compel the attendance of witnesses and the production of evidence reasonably necessary to resolution of the matter under consideration. The Board shall issue such subpoenas upon the request of any party to a proceeding under subsection (d) of this section or upon its own motion.
- f. The Board may prescribe reasonable fees for permits required pursuant to this Act. Such fees in the aggregate may not exceed the total cost to the Agency for its inspection and permit systems. The Board may not prescribe any permit fees which are different in amount from those established by this Act.

As a general matter, the Board transacts its business at regularly scheduled meetings held every other week; all formal Board action must be conducted at meetings which are noticed in advance and open to the public. The votes of four Members are required for most final determinations to be made by the Board, and such determinations must be made in writing and supported by findings of fact and conclusions of law. Proceedings are assigned by the Chairman to individual Members for co-ordination, initial analysis, and preparation of draft recommended Opinions and Orders. Matters are typically discussed at one meeting and proposed for a vote at the following one.

The procedures by which the Board conducts itself, as well as hearings required by the Act, are codified at 35 Ill. Adm. Code Parts 100-120. Substantive regulations adopted by the Board in the areas of air, water, land, public water supply, mine-related pollution, livestock-related pollution, hazardous and non-hazardous waste, noise and atomic radiation are codified at 35 Ill. Adm. Code Parts 200-900.

C. The Illinois Environmental System - An Historical Overview

In 1970, the Illinois General Assembly adopted the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111½, par. 1001 et seq., which created, in the main, a three agency system for the administration of Illinois' environmental programs: the Illinois Pollution Control Board ("Board"), the Illinois Environmental Protection Agency ("Agency"), and the Institute for Environmental Quality ("Institute"). (Some programs relating to human health and the environment in the broadest sense were left within the purview of pre-existing agencies. For example, the Illinois Department of Public Health continues to have responsibility for bathing beach conditions, private drinking water well testing, and similar concerns.)

In general, this original statutory scheme allocated to the Board the power and the duty to adopt environmental regulations for the State, and to adjudicate contested cases arising from the Act and Board regulations. Contested cases include those to enforce against violations, requests for variances from generally applicable requirements, and appeals from decisions by the permitting authority, the Agency. In addition to permitting authority, the Act delegated to the Agency authority to enforce compliance with the Act and regulations, to administer grants, and

to represent the state in inter-state matters. The Institute was designated as the research agency intended to propose regulations to the Board and provide the technical justification at the public hearings required by the Act.

The original scheme has subsequently been considerably modified by actions of the courts and the Illinois General Assembly in both the enforcement and regulatory areas. As to the enforcement structure of the Act, Agency staff attorneys originally prosecuted violations of the Act and Board regulations. In 1976 the Illinois Supreme Court determined that Section 4(e) of the Act was "unconstitutional to the extent that it authorizes the institution and prosecution of proceedings before the Board by an officer other than the [Illinois] Attorney General." The court interpreted Article V, Section 15 of the 1970 Illinois Constitution as providing that "the Attorney General is the sole officer authorized to represent the People of [Illinois] in any litigation in which the People ... are the real party in interest. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 359 N.E.2d 149, 156-157 (1976).

Accordingly, absent specific delegation of authority to the Agency, it is within the discretion of the Attorney General whether and when to institute prosecutions of alleged violations of the Act and Board regulations in the name of the Agency or the People of the State of Illinois, and whether to appeal any adverse determination in the courts. Similarly, as the Board too is a state agency, decisions whether to represent the Board in any judicial proceedings are within the discretion of the Attorney General.

The structure for regulatory actions has also undergone changes. The greatest change made by the General Assembly was in the function of the old Institute for Environmental Quality. In the early 1970's, the Institute served as the research division of the environmental system and proponent of many of the earliest adopted regulations. However, a 1975 amendment to the rulemaking requirements of the Act changed the focus of the Institute. That amendment required the Institute to prepare economic impact studies (EcIS) on all substantive Board regulations, both proposed and existing, and required the Board to postpone adoption of new rules until after receipt of an EcIS and presentation of the studies at public hearing. Ill. Rev. Stat. 111 1/2, par. 1027(a). The scope and content of the studies were to be determined by a separate economic and technical advisory committee (ETAC), who were appointed by the governor as representatives of various interests.

In 1978, the functions of the Institute were transferred to a newly created Illinois Institute of Natural Resources, which has since been renamed the Department of Energy and Natural Resources ("DENR"). Ill. Reg. Stat. ch. 96 1/2, par. 7401 et seq. DENR's regulatory interaction with the Board has largely been confined to preparation and presentation of economic information. Where DENR has produced research material other than an EcIS on existing or proposed rules for presentation to the Board, it has usually been done at the specific mandate of the General Assembly, e.g. Ill. Rev. Stat. ch. 111 1/2, par. 1022.9.

While the functions of the Board and the Agency in the regulatory scheme have remained basically the same, their responsibilities and procedures have undergone dramatic changes. The General Assembly has enlarged these agencies responsibilities by increasing the number and scope of both substantive and procedural rulemaking mandates without necessarily providing resources to accomplish the task. Mandates for adoption of substantive rules have included general provisions that all rules be adopted which would be necessary to receive authorization to

administer various programs such as the NPDES program (Ill. Rev. Stat. 1987 ch. 111 1/2, par. 1013), as well as specific provisions, often containing deadlines for rule adoption, mandating state regulation in areas not covered by federal laws or regulations e.g. Ill. Rev. Stat. 1987 ch. 111 1/2, pars. 14.4, 1021(m).

The most far-reaching procedural mandates were adopted in the 1977 Illinois Administrative Procedure Act ("IAPA") Ill. Rev. Stat. 1987 ch. 127, pars. 1001 et seq., and the rules implementing that Act, codified at 1 Ill. Adm. Code Parts 100 et seq. and 200 et seq. As it applies to rulemaking, the purpose of the IAPA is to insure that all state agencies adopt rules which are within their statutory authority and which comply with state style requirements as to form and limitations on content. The IAPA also establishes requirements for public notice and opportunity for written and oral comment as well as requirements for consideration of economic impacts generally, and specifically as they relate to small businesses and small municipalities.

Proposed rules are therefore scrutinized under the IAPA by three entities:

1. The Administrative Code Division ("Code Unit") of the Office of the Secretary of State publishes the Illinois Register in which proposed and adopted rules must be published. The Code Unit reviews rules for compliance with style and formatting requirements.
2. The Joint [Legislative] Committee on Administrative Rules ("JCAR") which is composed of members of both houses of the General Assembly. With staff assistance, JCAR reviews proposed rules for compliance with the Agency's enabling statute and the IAPA. It has the authority to both prevent objectionable regulations from taking effect as well as to recommend appropriate legislative action to the General Assembly.
3. The Small Business Office of the Department of Commerce and Community Affairs, which reviews proposed rules for their impacts on small businesses and reports its conclusions to JCAR.

The latest changes affecting the Board were initiated after USEPA criticisms concerning the working of the Illinois enforcement and regulatory processes (Issues Concerning The State of Illinois' Administration of Federally Mandated Environmental Programs, May 12, 1987 -- known as the "White Paper") prompted Governor James R. Thompson to commission a review of the Illinois system. The resulting study (Report to the Governor of Illinois On Procedures Of The Illinois Regulatory System, Michael Schneiderman, December 9, 1987) caused the Governor to direct immediate implementation of various administrative changes as well as to develop legislation to streamline the system.

The legislative effort involved the collective efforts of staff of the Office of the Governor, the Board, the Agency, DENR, and JCAR, as well as the regulated community and environmental groups. It culminated in the passage in Spring, 1988 of SB 1834, P.A. 85-1048, effective January 1, 1989. Among other things, SB 1834 modified the EcIS process and established revised procedures for the adoption of rules implementing various federal air, land and water programs.

Since passage into law of SB 1834, effective January 1, 1989, Title VII of the Act provides for three types of regulatory proceedings: 1) "identical in substance" rulemakings pursuant to specific authorization of the Act, including but not limited to Section 7.2, 13(c) 13.3, 17.5, 22.4(a), 22.4(d) and 22.7(d) (Ill. Rev. Stat. 1987 ch. 111 1/2 pars. 1007.2, 1013(c), 1013.3, 1017.5, 1022.4(a), (d), and 1022.7(d); 2) federally required rulemakings as defined in Section 28.2 (Ill. Rev. Stat. 1987 ch. 111 1/2 par. 1028.2), and 3) all other proceedings for rules of general or site-specific applicability which are to be conducted pursuant to Section 27 and 28 (Ill. Rev. Stat., ch. 111 1/2, pars. 1027, 1028, 1987. The only exception is for situations involving disaster or severe public health emergencies, where the regulation takes immediate effect and procedural requirements are subsequently fulfilled. (See Section 27 (c)).

The "identical in substance" and federally required categories were created to expedite processing of certain rules which implement federal programs, and to varying degrees exempt the proceeding from otherwise applicable requirements of the Act; identical in substance rules are also exempted from some requirements of the APA.

D. Activities of the Board

A general discussion of the types of causes of action which can be brought before the Board, and general deadlines established by the Act for adjudication is necessary to an understanding of the Board's general operations and state-established priorities.

1. Rulemaking

a. Section 27 - General Rulemaking

Any person may submit a petition for the adoption, amendment or repeal of a substantive regulation of general or site specific applicability. If the proposal meets the statutory requirements of Section 28 of the Act, the Board accepts the proposal and must schedule one public hearing for site specific rules, and two public hearings for rules of general applicability. The Act, as amended by SB 1834, requires the Board (rather than DENR as was previously the case) to make an initial determination as to whether an EcIS should be performed.

If the Board determines that an EcIS is to be prepared, DENR is mandated to conduct such a study in accordance with its enabling statute (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7401 et seq.) There is no statutory deadline for completion of an EcIS in such cases, leaving the EcIS timetable within DENR's discretion consistent with workload and resource allocation demands. Once the EcIS is submitted to the Board, the Board must conduct a public hearing to receive comments on the study prior to adoption of the rules. (There is a limited exception to this requirement which allows adoption of temporary rules of limited (one year) duration where necessary to meet adoption deadlines set in state statutes. Ill. Rev. Stat. 1987 ch. 111½, par. 1027(a)).

Overlain on these requirements are the procedural requirements of the IAPA. The IAPA allows for two types of rulemaking without prior notice and opportunity for comment: 1) emergency rulemaking pursuant to Section 5.02 and 2) peremptory rulemaking pursuant to Section 5.03 (e.g. rules necessary to implement a non-negotiated court order in which no discretion can be exercised as to the rule's content). Ill. Rev Stat. 1987 ch. 127, pars. 1005.02,

1005.03. All other rulemaking is governed by the general rulemaking requirements of Section 5.01 of the IAPA. Ill. Rev. Stat. 1987 ch. 127 par. 1005.01.

In addition to content and formatting requirements, Section 5.01 IAPA requires publication of proposed rules in the Illinois Register and establishes a 45-day "first notice" period during which an agency must accept written public comment. An agency must conduct a public hearing if so requested during this period under certain conditions.

Once the 45-day first notice period has elapsed, if the agency determines to proceed with rulemaking "second notice" of the proposed rules must be submitted to JCAR. The second notice period is also a 45-day period, during which JCAR reviews rules and may suggest changes or lodge an objection. Once second notice begins, no changes can be made except in response to JCAR.

If JCAR makes no objection, the agency may proceed to adopt rules, which must then be filed with the Secretary of State and published in the Illinois Register. If JCAR issues an objection, the agency may publish a refusal to respond to the objection in the Illinois Register and proceed to adopt and file the rule over the objection. JCAR may then itself take action to suspend the rule, and introduce a joint resolution in the General Assembly seeking what amounts to repeal of the rule. Ill. Rev. Stat. 1987 ch. 127, pars. 1007.07, 1007.07(a).

b. Identical in Substance Rulemaking

The identical in substance procedures provide the greatest exemption from general rulemaking requirements. Neither Section 5 of the APA nor the hearing and EcIS requirements of Section 27 of the Act apply to these rules. The Act, as amended by SB 1834, provides that identical in substance procedures may be employed to "adopt regulations identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the USEPA."

Opportunity must be given for public comment on proposed identical in substance rules. The Board may consolidate multiple federal rulemakings into one proceeding, and shall adopt final rules within one year of the adoption of the first federal rule so consolidated.

Identical in Substance update dockets are usually opened twice a year. Timely completion of identical in substance requires coordination of the Board, the Agency, the USEPA, and the Attorney General who must certify the adequacy of and authority for, Board regulations required for program authorization (e.g. RCRA, UIC, SDWA); UST rules also require coordination with the State Fire Marshall's Office. Informal processing agreements have been entered into between these parties for the processing of updates in RCRA, UIC, UST, SDWA and pretreatment program areas. (The Board would anticipate entry into such agreements in other program areas.)

Typically, identical in substance "proposal for public comment" are drafted by Board staff. These proposals are published in the Illinois Register with a notice that public comment will be accepted for a 45 day period. During this period, the Agency, the Attorney General and USEPA prepare and exchange draft comments among themselves, and then file final comments within the 45 day period.

After the close of the comment period, the Board reviews the comments and adopts final rules. Filing of the rules is typically delayed for up to 30 days to allow the Agency, the Attorney General, and USEPA to transmit any additional technical or other corrections to the rules as adopted.

c. Federally-Required Rules

Section 28.2 defines "required rules" as those which are not identical in substance rules but which are needed to meet the requirements of the federal Clean Water Act (CWA), SDWA, Clean Air Act (CAA) (including requiring submission of a SIP) or RCRA. When the Agency submits a proposal which it believes to be federally required, the Agency is to so certify.

These proceedings are subject to the rulemaking requirements of the IAPA, and to the hearing requirements of the Act, but the EcIS procedures are modified. The Board is required to make an initial determination as to whether an EcIS should be performed within 60 days, as in general rulemaking. However, in distinction to Section 27 rulemaking, DENR is given a six-month deadline in which to complete EcIS. If the EcIS is not timely completed, the Board may proceed to adopt final rules meeting federal requirements without waiting for completion of the EcIS.

2. Contested Cases

The Board is authorized to hear a variety of contested case actions. While many implement federal programs, others implement state programs which have no counterparts in federal law. A brief description of all types of action will be given.

a. Enforcement Actions

Title VIII of the Act provides for two types of enforcement actions: the "standard" enforcement action, and the administrative citation. The "standard" action may be brought by the Agency, the Attorney General, State's Attorneys, or any other person to enforce against violations of any portion of the Act or the Board's rules. The administrative citation action may be brought only by the Agency, or by local government pursuant to delegation agreement with the Agency, to enforce a limited statutory list of violations at open dumps and at sanitary landfills.

The "standard" enforcement action pursuant to Section 30 is initiated before the Board by the filing of a formal complaint. However, if the Agency is the complainant it must provide the alleged polluter with written notice of its intent to file a complaint and opportunity to meet and settle the matter prior to a complaint's filing. At least one public hearing must be held, at which the burden is on the complainant to prove that "respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of [the] Act or any rule or regulation of the Board or permit or term or condition thereof".

Section 33 establishes various "facts and circumstances bearing upon the reasonableness" of the alleged violations, and establishes other procedural requirements as well. Board Orders in these cases may include a direction to cease and desist from violations, revocation of a permit,

imposition of civil penalties and/or posting of performance bonds or other security to assure timely correction of violations.

Section 42 of the Act provides that civil penalties shall not exceed \$10,000 per violation plus an additional \$1,000 per day the violation continues, with exception for the state's NPDES, UIC, RCRA and administrative citation programs. (The Board notes that in the spring 1989 session, the legislature in SB633, amended the penalty provisions of Section 42(a) of the Act, increased the daily violating penalty limits from \$1000 to \$10,000 and the violation itself from \$10,000 to \$50,000. On September 8, 1989, the Governor amendatorily vetoed an unrelated portion of SB633; thus, final legislative action will take place during the fall veto session.)

The limits for the NPDES program are \$10,000 per day of violation. The limits for the UIC program are \$10,000 per violation for Class II wells and \$2,500 for all others with an addition \$1,000 per continuing day of violation for all wells. The limits for the RCRA program are \$25,000 per day of violation. The limits for the administrative citation program are \$500 per violation plus any hearing costs.

Administrative citation proceedings are brought pursuant to Sections 31.1 and 21(p) or 21(q) of the Act. The citation served by the Agency or local government on respondent must contain a copy of an inspection report which must contain details including date, time, and weather conditions. The citation must be served within 60 days of the violation. The respondent may file a petition for appeal within 35 days.

If no appeal is filed, the Board enters an order making a finding of violation and imposing the non-discretionary \$500 per violation fee. If an appeal is filed, a hearing must be held at which the burden of proof is on the complainant. If the Board finds that the violation occurred it is required to make such finding and impose the statutory penalty unless it finds that the person appealing has proved that the violation was the result of "uncontrollable circumstances". Where "uncontrollable circumstances" are proven, the Board shall not make a finding of violation or impose a statutory penalty.

b. Regulatory Relief Mechanisms

Title VII of the Act establishes two main types of regulatory relief mechanisms: variances and adjusted standards. Short-term variances for a total of 90 days during any calendar year (called provisional variances) and longer term variances for a period of up to five years are available pursuant to Sections 35-38 of the Act. The variance mechanism contemplates compliance with applicable regulatory standards at the end of the variance period, and is available upon a showing by the petitioner that denial of variance would impose an "arbitrary or unreasonable hardship" and that the requested relief is consistent with federal law.

Hearings must be held on petitions for longer term variance if the petitioner requests hearing, or if any person objects to grant of variance within 21 days of the filing of a petition, no hearings are held on petitions for provisional variance.

Provisional variances must be acted on favorably by the Board within two days of receipt of an Agency recommendation that they be granted. Most longer term variances cases must be

decided by the Board within 120 days of filing of a petition or the petitioner may "deem the request granted...for a period not to exceed one year". Ill. Rev. Stat. 1987 ch. 111½, par. 1038(a). Exception is made to this 120-day default variance provision for requests for variance from rules which implement state RCRA, UIC or NPDES programs; in these cases, Board failure to act entitles the petitioner to bring a mandamus action in the Illinois Appellate Courts.

The Board prioritizes these cases to avoid issuance of variances by default.

The adjusted standard of Section 28.1, as expanded by SB 1834, is a mechanism for the grant of a "permanent variance" from otherwise applicable general standards, in adjusted standards proceedings, an individualized standard is established for a pollution source. The outcome of an adjusted standard proceeding is essentially a "site-specific rule", but the proceeding is an adjudicatory one which is explicitly exempted from the rulemaking requirements of the Act and the IAPA. If the Board has not itself established a specific level of justification (proof) which the petitioner must meet to qualify for an adjusted standard, Section 28.1 requires the petitioner to demonstrate that:

1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
2. the existence of those factors justifies an adjusted standard;
3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
4. the adjusted standard is consistent with any applicable federal law.

There are no statutory decision deadlines in adjusted standards cases.

c. Review of Decisions By the Agency and Local Government

Pursuant to Title X of the Act, the Board acts as a reviewing body for two types of decisions: decisions made by the Agency concerning permits, and decisions by local governments concerning the siting of regional pollution control facilities within their borders. Each of these types of cases have statutory decision deadlines with default provisions, so that their adjudication is prioritized.

Section 40(a) of the Act authorizes an applicant to appeal the Agency's denial of a permit, as well as the conditions of any permit issued. In addition, Section 40(b) provides for the appeal of RCRA permits granted by the Agency for a hazardous waste disposal site by third parties so located as to be affected by the permitted facility.

Hearings must be held in all permit appeal cases. In permit appeals, the sole question before the Board is whether the applicant proves that the application as submitted to the Agency prior to its permitting decision demonstrated that no violation of the Act would have occurred if the

requested permit had been issued. Illinois Environmental Protection Agency v. Pollution Control Board, 118 Ill. App. 3d 772, 445 N.E. 2d 189 (3rd Dist. 1984), aff'd, 115 Ill. 2d, 503 N.E. 2d 343 (1986). The Board decision deadlines for permit appeals are the same as for variances: the Board must make a decision within 120 days of the filing of a petition. If the permit is a RCRA, UIC or NPDES permit, Board failure to timely act entitles the petitioner to bring a mandamus action in the Illinois courts. For all other permits, failure to timely act allows the petitioner to "deem the permit issued under the Act"; Section 39(a) provides no detail concerning the nature or duration of "deemed issued" permits.

Board review of local government decisions is somewhat different. Beginning in 1981, a bill commonly known as SB172, codified in Section 39.2 of the Act gave municipalities and counties authority to grant site location suitability approval for regional pollution control facilities ("RPCF") to be located within their boundaries of the RPCF proposes to receive waste generated outside those boundaries. At a public hearing, the applicant must demonstrate that the proposed site meets nine specific statutory criteria. The elected representatives of the municipality or the county must make a quasi-adjudicatory decision, based solely on the written record, as to whether the applicant has demonstrated compliance; application of local zoning or other land use requirements is specifically prohibited.

Section 40.1(a) allows an applicant to appeal the denial of SB172 or any conditions placed on a granted approval. Section 40.1(b) allows appeal of a granted approval by a third party who is located so as to be affected by the proposed facility and who participated in the municipality or county public hearing. In these appeals, the burden is on the applicant to demonstrate that the local decision was "fundamentally unfair" or against the manifest weight of the evidence. Public hearings must be held in all SB 172 appeal cases. The Board must take final action on the appeal within 120 days of the filing of the petition; if not, "petitioner may deem the site location approved".

The Board notes that adjudication of these appeals is a significant portion of its workload. Transcripts of local hearings are typically voluminous, and currently average about 7,000 pages with 3,000 pages of exhibits; these records have been as long as 20,000 pages. Moreover, recent Illinois appellate court decisions require the Board to address each of the nine statutory criteria, even when the case can be decided on the basis of fewer than all nine criteria.

d. Miscellaneous

The Act establishes various other obligations upon the Board and creates other causes of action which the Board occasionally processes. These include trade secret determinations (Section 7.1), well water setback exceptions (Section 14.2), designation of "regulated [groundwater] recharge areas" (Section 14.4), actions for recovery of costs of removal or remedial action incurred by the State as a result of a release or substantial threat of a release of a hazardous substance or pesticide (Section 22.2(f)), special waste delisting appeals (Section 22.9), and solid waste management fee exemption appeals (Section 22.16(a)). Duties imposed by other Acts include pollution control tax facility certification (Ill. Rev. Stat. 1987 ch. 120 pars. 502a-1 et seq.) and as now amended, appeals of Lake Michigan Discharge permits issued by the Illinois Department of Transportation ("IDOT") and the Agency, (P.A. 86-0245, effective August 15, 1989, amending Ill. Rev. Stat. ch. 19, par. 65 and ch. 111½, par. 1039).

III. JUDICIAL REVIEW OF BOARD DECISIONS

A. Introduction

Pursuant to Title XI, Section 41 of the Act, both the quasi-legislative and the quasi-judicial functions of the Board are subject to review in the appellate courts of Illinois. Any person seeking review must be "qualified" and must file a petition for review within 35 days of the Board's final order or action. A "qualified" petitioner is any person denied a permit or variance, any person denied a hearing after filing a complaint, any party to a Board hearing, or any person who is adversely affected by a final Board order.

Administrative review of the Board's final order or action is limited in scope by the language and intent of Section 41(b). Judicial review is intended to ensure fairness for the parties before the Board but does not allow the courts to substitute their own judgment in place of that of the Board. The standard for review of the Board's quasi-adjudicatory decisions is whether the Board's decision is against the manifest weight of the evidence. The standard for review of the Board's quasi-legislative actions is whether the Board's decision is arbitrary or capricious. Board decisions in rulemaking proceedings and in imposing conditions in variances are quasi-legislative. All other Board decisions are quasi-adjudicatory in nature.

The appellate courts reviewed twenty Board decisions in fiscal year 1990. Seven were permit appeals, five were site location suitability cases, one was a variance request, five were enforcement cases and two were appeals from regulatory proceedings. The cases are discussed below. They are organized by section of the Act to facilitate the reader's comprehension and understanding of the effect and the applicability of the judicial decision on activities governed by that section.

1. Permit Appeals

The Board is authorized to require a permit for the construction, installation, and operation of facilities and equipment. Under Section 39 of the Act, it is the duty of the Agency to issue those permits to applicants. Permits are issued only to those applicants who prove that the permitted activity will not cause a violation of the Act or regulations under the Act. The Agency has the statutory authority to impose conditions on a permit to further ensure compliance with the Act. An applicant who has been denied a permit or who has been granted a permit subject to conditions can contest the Agency decision at a Board hearing pursuant to Section 40. The applicant must prove that the permitted activity will cause no violation of the Act or regulations before the Board can alter the Agency's decision. The final decision of the Board is reviewable by the appellate court.

a. The Supreme Court of Illinois affirmed the 1988 decision of the Second District Appellate Court in Village of Carpentersville v. Pollution Control Board and Cargill, Inc., 134 Ill.2d 463, 142 Ill.Dec. 848, 553 N.E.2d 362 (Ill. 1990). The Agency had issued a construction permit to Cargill, Inc. containing a condition that conflicted with a Village of Carpentersville zoning ordinance. On review, the Board found that the Agency's permit condition preempted the Village's zoning ordinance. The appellate court held that the Board's

decision was contrary to the plain and unambiguous language of Section 39(c), reversed the Board and remanded the case.

Prior Supreme Court decisions in Carlson v. Village of Worth, 62 Ill. 2d 406, 343 N.E.2d 493 (Ill. 1975), and County of Cook v. John Sexton Contractors Co., 75 Ill.2d 494, 27 Ill.Dec. 489, 389 N.E.2d 553 (Ill. 1979) had held that "the Act was intended to preempt non-home-rule regulations." On appeal from the appellate court the Supreme Court stated that the amendment to Section 39(c), made after 1981, "makes clear that the Act no longer preempts local zoning ordinances" and rendered the Court's prior interpretations of section 39(c) inapplicable to the present case. In addition, the Supreme Court stated that the amendment did not distinguish between home rule and non-home rule units of government. The Supreme Court affirmed the Appellate Court's decision reversing the Board.

b. The case of John Sexton Contractors Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 201 Ill.App.,3d 415, 146 Ill.Dec 888, 558 N.E.2d 1222 (Ill.App. 1 Dist. 1990), involved the Agency's approval of a closure/post closure (CPC) care plan after imposition of Special Conditions. Sexton appealed five of the Special Conditions to the Board. The Board affirmed the Agency's decision because, pursuant to Section 21.1 of the Act and Sections 807.502, 807.503 and 807.504 of the Illinois Administrative Code, the submission of a CPC care plan constitutes a permit application to which the Agency can attach conditions. Sexton appealed to the appellate court contesting the Board's interpretation of the statute and the regulations.

The court found that to construe these sections as Sexton argued "the Agency would be limited to either approving or disapproving the proposed CPC care plan [where] an outright denial . . . would require a new plan covering all aspects of closure/post-closure care and would place the facility in immediate violation of section 21.1 of the Act." The court upheld the Board's interpretation of the statute and the regulations.

Sexton also contested the Board's decision affirming four of the Special Conditions imposed by the Agency. The court found that Sexton had established a prima facie case that two of the Special Conditions were unnecessary to prevent a violation of the Act. The court stated that "[o]nce Sexton had established a prima facie case that the conditions were unnecessary, it became incumbent upon the Agency to refute the prima facie case." Because the Agency did not refute Sexton's claims, the court found that the Board's decision on those two Special Conditions was against the manifest weight of the evidence. The court remanded for further proceedings on these Special Conditions. The remaining two special conditions which Sexton contested were affirmed by the court on the basis that the Board's decision was not against the manifest weight of the evidence. The final decision of the Board was affirmed in part, reversed in part and remanded for further proceedings.

c. In Wells Manufacturing v. Illinois Environmental Protection Agency, 142 Ill.Dec. 333, 552 N.E.2d 1074 (Ill.App. 1 Dist. 1990) the court reversed the Board's decision affirming the Agency's denial of a permit and remanded for further proceedings. The Agency had denied Well's application for renewal of an operating permit and then had offered to reconsider that decision if Wells submitted certain additional information. Wells appealed to the

Board, a hearing based on the record before the Agency was held, and the Board affirmed the Agency.

On appeal to the appellate court, the Agency argued that Wells had the burden to prove that it would not pollute the air and that the Board decision was correct. The problem with the Agency's argument, the court stated, was that Wells did not have a chance to present evidence that it was not a polluter before the renewal application was denied because the Agency had "[circumvented] . . . procedures designed to protect an alleged polluter." Since the Board's review is based on the record before the Agency, neither did Wells have the opportunity to submit any evidence before the Board. The court stated that "[i]n effect, [the Agency] denied Wells the right to operate its business because it may be violating the Act, but never gave it an opportunity to submit information which would disprove the allegation ." The court reversed and remanded the case for further proceedings consistent with the court opinion.

d. A motion to dismiss filed by the Board in People of the State of Illinois v. Pollution Control Board, 190 Ill.App.3d 945, 138 Ill.Dec. 480, 547 N.E.2d 647 (Ill.App. 2 Dist. 1989), was granted by the Second District Appellate Court. The Attorney General had filed a petition seeking reversal of a Board order. The Board order had reversed an Agency denial of Riverside Laboratories, Inc., application for permit renewal and remanded the matter to the Agency to reconsider its permit decision. The Agency had denied the renewal on the basis that Riverside was subject to and not in compliance with a paper-coating regulation. The Board found that Riverside was not subject to the paper-coating regulation and reversed that Agency determination. The Board stated that it was not making a finding on whether other regulations applied to Riverside or whether the permit should be issued but remanded the case back to the Agency for a permit decision consistent with the Board's interpretation of the paper-coating regulations. The Board moved to dismiss the Attorney General's petition on the basis that the Board's order remanding the matter was not final and appealable. The court found that since the ultimate issue of whether the Agency had properly denied the application was not decided by the Board, a full adjudication on that issue would be required before the Board's order was appealable. The case was dismissed.

e. The Board's imposition of sanctions on the Modine Manufacturing Company (Modine) was affirmed by the Second District Appellate Court in Modine Manufacturing Company v. Pollution Control Board, 192 Ill.App.3d 511, 139 Ill.Dec. 589, 548 N.E.2d 1145 (Ill.App. 2 Dist. 1989). The Agency had denied an operating permit to Modine on the basis that Modine had not demonstrated compliance with a regulation. Modine petitioned for review stating that it was not subject to that regulation. After the Board accepted the matter for hearing, Modine missed discovery deadlines, disregarded agreements between counsel for the parties, ignored a hearing officer order, and failed to meet the Board-imposed deadline for filing the post-hearing brief. Modine's attempt to file its post-hearing brief was over 25 weeks late. The Board denied Modine's motion for leave to file brief instanter, granted the Agency's motion for sanctions and dismissed the case with prejudice. The Board also denied Modine's motion for reconsideration.

On appeal, the court found that "the repeated nature of Modine's conduct may be taken into account" in determining the sanction. In response to Modine's argument that dismissal was inappropriate because the Agency never claimed it had been prejudiced, the court stated that since the Board had requested the briefs, it was the Board that was prejudiced. The court also found

that the sanction was not punishment but instead a "strong incentive for all litigants to fully and accurately comply with procedural rules." Finally, the court found that the Board did not arbitrarily disregard its prior custom or practice because the Board had never previously dealt with the magnitude of delays found in this case.

f. The last two permit cases summarized here involved permits issued under the National Pollutant Discharge Elimination System (NPDES). The Agency is authorized to deny or issue NPDES permits with conditions or limitations pursuant to Section 39(b) of the Act. The Agency had delivered a draft permit with conditions to the City of East Moline (City). City challenged a limitation in the draft permit by submitting written comments to the Agency. The Agency issued the permit as drafted. The City filed an NPDES permit appeal with the Board challenging the limitation. At the hearing before the Board, the City attempted to present evidence concerning the cost of compliance and a study concerning the environmental impact of the current discharge level. Because that evidence had not been submitted to the Agency during the application process, the hearing officer did not allow the evidence into the record because it was beyond the scope of review. The Board upheld the hearing officer's decision and subsequently affirmed the Agency's decision. The City appealed the Board's decision and presented two issues for the court's review. First, whether the validity of a regulation can be challenged as applied in the context of a permit application and appeal, and second, whether evidence not previously presented to the Agency can be submitted at a hearing before the Board.

In City of East Moline v. Illinois Pollution Control Board, 544 N.E.2d 82, 135 Ill.Dec. 725 (Ill.App. 3 Dist. 1989), the court affirmed the Board's decision. The court found that a regulation may be challenged in the permit process on the grounds of improper promulgation but not on the grounds of invalidity as applied to the applicant because of arbitrary or unreasonable hardship. The court stated that the proper regulatory relief mechanism for a claim of arbitrary or unreasonable hardship would be a variance petition.

The court upheld the Board's decision to exclude the evidence offered at the Board hearing but for different reasons than those relied upon by the Board. The court examined section 105.102(b)(8) of the Board's procedural regulations, sections 40(a)(1) and 32 of the Act and Dean Foods v. Pollution Control Board, 143 Ill.App.3d 322, 492 N.E.2d 1344, 97 Ill.Dec. 471 (Ill. App. 2 Dist. 1986) which held that the plain language of the "de novo regulation" required introduction of the proffered evidence. The court stated that "[w]e have no quarrel with the rationale of Dean Foods, however, we do not believe that Dean Foods creates an open door for a petitioner to present any evidence it so desires." The court found that the only relevant and statutorily mandated issue to be addressed at a permit hearing is whether a permit applicant can prove that the facility will not cause a violation of the Act or of the regulations; an exception existing in those cases which challenge the general validity of a Board regulation. The court found that the evidence tendered by the City did not pertain to the issue of violation of the Act or Board regulations and thereby upheld the Board's decision.

g. In the second case concerning an NPDES permit, Citizens Utilities Company of Illinois (Citizens) had also received a draft permit, submitted written comments objecting to one of the conditions and had also requested public hearings on the draft permit. The Agency denied those requests. After the permit was issued Citizens filed for review with the Board and contested the permit condition in a hearing before the Board. The Board affirmed

the Agency's decision. Citizens then filed a motion for rehearing and requested that part of the record in a rulemaking case pending before the Board be considered as evidence in the permit rehearing. The Board denied Citizen's motion because the information had been submitted after the Agency's permit decision and was therefore beyond the Board's scope of review. Citizens appealed, contending that the Board erred in finding that its review was limited to the record before the Agency during the permit application.

In Citizens Utilities Company of Illinois v. Pollution Control Board, 193 Ill.App.3d 93, 140 Ill.Dec. 269, 549 N.E.2d 920 (Ill.App. 3 Dist. 1990), the court reviewed the Board's procedural rules and examined Dean Foods as it previously had done in East Moline. Noting that Citizens had twice been denied a hearing before the Agency in this case, the court found the rationale in Dean Foods, which held that the plain language of the regulations required introduction of the proffered evidence, to be dispositive. After considering Sections 40(a)(1), 32 and 33(a) of the Act, the court stated, "[t]he Act contemplates that the Board will take more than a "live" review of the record before the Agency."

2. Site Location Suitability Appeals

The Act provides, in Sections 39(c) and 39.2, for local government participation in the siting of new regional pollution control facilities. Section 39(c) requires an applicant requesting a permit for the development or construction of a new regional pollution control facility to provide proof that the local government has approved the location of the proposed facility. Section 39.2 provides for proper notice and filing, public hearings, jurisdiction and time limits and, along with other information, specific criteria that the local governments must use to reach their decision. The decision of the local government may be contested before the Board under Section 40.1 of the Act. The Board reviews the decision to determine if the local government's procedures satisfy the principles of fundamental fairness and whether the decision was against the manifest weight of the evidence. The Board's final decision is then reviewable by the appellate court. The appellate court's review provides a second-layer manifest weight standard of review by determining whether or not the Board's decision was against the manifest weight of the evidence.

a. The Winnebago County Board (WCB) denied site location suitability approval to the City of Rockford (City) for a new landfill. Upon appeal, the Board found that ex parte communications with some of the WCB members might have prejudiced the WCB decision. Therefore, in the interest of fundamental fairness, the Board vacated the WCB's decision, remanded for further hearings, and required that the substance of the ex parte communications be made part of the record at the additional hearings. After the additional hearings, the WCB again denied the site location suitability approval on the basis that the City had failed to meet the burden of proof for five of the criteria in Section 39.2(a). The City appealed to the Board and the Board affirmed the County Board decision. The City then sought review by the appellate court, contending that the Board's final decision was not timely under Section 40.1(a), that the final decision of the WCB was not timely made under Section 39.2(e), that the Board's decision that the hearing was fundamentally fair was against the manifest weight of the evidence and that the ex parte communications rendered the proceedings fundamentally unfair.

In City of Rockford v. County of Winnebago, 134 Ill.Dec. 244, 542 N.E.2d 423 (Ill.App. 2 Dist. 1989), the court stated that the "vacate and remand" order of the Board was a proper and final order pursuant to 103.,244(b)(6) of the Board's procedural rules. Therefore, the court found that that order was a final order within the 120 day final decision deadline as required by 40.1(a). The court also found that when the City continued to participate in WCB proceedings held beyond the 180 day deadline of Section 39.2(e), without objecting to the proceedings on that grounds, the City waived compliance with the Section 39.2(e).

The court found that the Board's decision that the WCB proceedings were fundamentally fair was not against the manifest weight of the evidence. In support of its finding the court stated that, as no statutory requirement that the County Board members review the record exists, the issue of fundamental fairness based on review of the record is not relevant. The court also agreed that placing the ex parte communications on the record and holding additional hearings negated any unfairness caused by the ex parte communications.

b. In the second case decided in fiscal year 1990, the Macon County Landfill, Corporation (MCL) filed an amended application for site location suitability approval to expand an existing landfill and to accept nonhazardous special waste. Roger Tate, Lynette Tate, Barbara Kelley, and Joseph Kelley (the opponents) opposed the granting of site location suitability approval before the Macon County Board (County Board). The County Board granted site location suitability approval. On appeal, the Board affirmed the County Board decision. The opponents appealed to the appellate court contending that 1) the failure to file copies of documents previously filed with the Agency with a site location suitability application is a jurisdictional defect 2) failure to include a precise description of the proposed site is a jurisdictional defect and 3) the Board's decision was against the manifest weight of the evidence.

In Tate v. Illinois Pollution Control Board, 188 Ill.App.3d 994, 136 Ill.Dec. 401, 544 N.E.2d 1176 (Ill.App. 4 Dist. 1989), the court found that, at the time of the filing in this case, the statute did not require documents filed with the Agency for a purpose other than site location approval to be filed with the application to the county board. After the application was filed in Tate, the statute had been amended to require such documents be included with the application. The court found that no prejudice resulted to the opponents in this case and stated that for future cases "the failure to honor a request to produce documents could jeopardize the fundamental fairness of the proceedings."

The court also stated that the statute does not require a notice to be technically detailed to notify interested persons of proposed new activity. The court found that the notice in this case was adequate even though it did not accurately describe the flood plain location, height expansion or special waste activity proposed by MCL. The court also found that the Board's decision on the criteria listed in Section 39.2 was not against the manifest weight of the evidence.

c. In A.R.F. Landfill, Inc. v. Pollution Control Board and Lake County, (No. 2-89-0631, unpublished), the Second District Appellate Court affirmed the decision of the Board. The Board had affirmed the order of the Lake County Board (LCB) denying A.R.F. Landfill's (ARF) application for site location suitability approval of a proposed vertical expansion. ARF appealed to the appellate court contending that the Board did not critically review the LCB decision and that the Board's decision on the statutory criteria was against the manifest weight

of the evidence. The court found that even though the Board used "boiler plate" language in its opinion, "absent specific allegations of bias or prejudice in this case" there was insufficient support for ARF's contention. The court also found that the decision of the Board as to the contested criteria of Section 39.2(a) was not against the manifest weight of the evidence.

d. The Wabash County Board of Commissioners (WCBC) granted site location suitability approval to K/C Reclamation Inc. (K/C) for a new sanitary landfill and recycling facility. The Wabash & Lawrence Counties Taxpayers and Water Drinkers Association (Association) appealed to the Board, which affirmed the WCBC's decision. The Association appealed to the appellate court asserting that the WCBC decision was against the manifest weight of the evidence for three criteria and that there were violations of the statutory notice requirements.

In Wabash & Lawrence Co. Taxpayers v. Pollution Control Board, 555 N.E.2d 1081 (Ill.App. 5 Dist. 1990), the court stated that the notice requirements of Section 39.2(b) do not extend to anyone not appearing on the authentic tax records of the county. The court found that notice was proper in this case. The court also found that, as to the contested criteria (i), (ii), and (v), the evidence supported the Board's decision and, therefore, the Board's decision was not against the manifest weight of the evidence.

e. The Fairview Area Citizens Taskforce (FACT) appealed the decision of the Board affirming the Village of Fairview Village Board (Village Board) grant of site location suitability approval for a new regional pollution control facility. FACT contended that the Village Board's procedures were fundamentally unfair and that the Board's decision was contrary to the manifest weight of the evidence. The court in Fairview Area Citizens Taskforce v. Illinois Pollution Control Board, 555 N.E.2d 1178 (Ill.App. 3 Dist. 1990), stated that FACT had waived the arguments of prejudice and bias by not raising them at the beginning of the hearings. Even so, the court went on to consider those arguments on the merits. The court stated that as long as the criteria in Section 39.2(a) of the Act were satisfied, consideration of economic benefit and other factors did not cause fundamental unfairness or show bias or prejudice. The court also stated that, without a showing of prejudice caused by alleged *ex parte* contacts, no fundamental unfairness existed and the Board decision would not be reversed. On review of the contested criteria, the court stated that the Board's decision was not against the manifest weight of the evidence.

3. Variances

Pursuant to Sections 35-38, the Act provides regulatory relief in the form of variances. A variance can be short term (90 days) or long term (up to five years). Variances contemplate compliance with the applicable regulations at the end of the variance period. A petitioner must show that denial of the variance would impose an "arbitrary or unreasonable hardship" and that the requested variance is consistent with federal law before a variance will be granted.

a. The Board denied the Ekco Glaco Company a variance from VOM emission limitation regulations of 35 Ill. Adm. Code 215.204 and 35 Ill. Adm. Code 215.205. The Board found that immediate compliance would not be an arbitrary and unreasonable hardship because any hardship was self-imposed due to Ekco Glaco's prior business decisions in this matter. In addition, any hardship for Ekco Glaco was outweighed by the environmental impact

of several years of noncompliance. The Board also found that due to delays and a lack of alternative proposals, and a failure to provide a schedule for compliance, Ekco Glaco did not have a firm compliance plan or show commitment to achieving compliance. Ekco Glaco appealed the Board's decision. In Ekco Glaco Corporation v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, 186 Ill.App.3d 141, 134 Ill.Dec. 147, 542 N.E.2d 147 (Ill. App. 1 Dist. 1989), the court did not find the Board's conclusions to be contrary to the weight of the evidence and affirmed.

4. Enforcement

The Act provides for standard enforcement actions in Section 30 and for the more limited administrative citation in Section 31.1. The standard enforcement action is initiated by the filing of a formal complaint with the Board. A public hearing is held where the burden is on the complainant to prove that "respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of [the] Act or any rule or regulations of the Board or permit or term or condition thereof". The Board is authorized by Sections 33 and 42 to direct a party to cease and desist from violations, to revoke a permit, to impose civil penalties, and to require posting of bonds or other security to assure correction of violations.

An administrative citation action can be brought only by the Agency or a delegated local government and enforcement is only for a limited number of violations found at sanitary landfills (21(p)) or at open dumps (21(q)). A non-discretionary penalty of \$500 per violation is imposed in administrative citation cases. In addition, hearing costs may be assessed if the administrative citation is appealed and the appeal is lost.

a. This case was the subject of two separate appeals from a Board final order in an enforcement case involving sections 900.102 and 901.104 of the Board's noise pollution regulations. In Hinsdale Golf Club v. Kochanski, 555 N.E.2d 31 (Ill.App. 2 Dist. 1990), the court considered only the appeal of the Hinsdale Golf Club (Golf Club) since the resolution of that appeal was dispositive for both. The Board found that the skeet shooting activities of the Golf Club were subject to the Board's noise regulations but were not in violation of the regulations. The Golf Club appealed arguing that the Board misinterpreted sections 25 and 3.25 of the Act by finding that skeet shooting activities were not within the category of "organized amateur sporting activity" which were exempt from the noise regulations.

The court held that contrary to the Board's finding, the statutory history of these sections indicated an enlargement of the activities exempt from the Board's noise regulations, not a restriction. The court also stated that "the specific examples of the excluded activities provided in . . . section 3.25 prevail over the more general definition provided in the first sentence." The court found that the Board had no authority to hear the matter, reversed the Board's decision, and dismissed the complaint.

b. In the next case, a citizen's complaint concerning back up and overflow of the City of Freeport's sanitary sewers onto residential property was filed with the Board. The Board found violations of section 306.102(a), 306.303 and 306.304 of the Board regulations in

an Interim Opinion and Order. The Board ordered the City to submit a compliance plan. After the City filed its compliance plan, a final order was entered setting a compliance deadline date and imposing a penalty for the violations found in the Interim Order. The City appealed the imposition of the civil penalty.

In City of Freeport v. Pollution Control Board, 135 Ill.Dec. 644, 544 N.E.2d 1 (Ill.App. 2 Dist. 1989), the court found that sections 33 (b) and 42(a) clearly provide the Board with the authority to impose penalties and fines. The City also argued that the Board could not impose a penalty when the violations were declared in an Interim Order. The court, finding no support for this position from the City or in its own research, concluded otherwise. The City lastly claimed that the Board had abused its discretion by imposing the penalty. The court stated that the Board had considered the factors found in section 33(c) of the Act, as required by the statute, and was within its authority in imposing the penalty. The court affirmed the Board's decision.

c. In Modine Manufacturing Company v. Pollution Control Board, 193 Ill.App.3d 643, 140 Ill.Dec. 507, 549 N.E.2d 1379 (Ill.App. 2 Dist. 1990), the Board's decision on remand from the court was again appealed by Modine Manufacturing Company (Modine). Originally, the Agency had filed a complaint against Modine alleging operation of a facility without a permit and violation of particulate emission limitations. The Board found that both violations occurred and imposed a \$10,000 penalty. On appeal the court determined that where the Agency agreed to accept a compliance plan and refrain from enforcement action for particulate air emission violation, a penalty could not be imposed for the particulate air emission violation. (Modine Manufacturing Co. v. Pollution Control Board, 176 Ill.App.3d 1172, 139 Ill.Dec. 847, 549 N.E.2d 359 (unpublished, Rule 23 order).) The court then remanded to the Board for determination of the appropriate penalty on the remaining violation. On remand, the Board imposed a \$10,000 fine for the permit violation. Modine again appealed contending that the Board's penalty was not necessary to aid in enforcement of the Act and was imposed for punitive reasons.

After consideration of the section 33(b) factors and the facts before the Board, the court stated that the Agency had knowledge of Modine's situation and violations, that the Modine facility had significant social and economic value and that Modine had acted in good faith while working with the Agency. The Court found that in light of these factors, the Board's imposition of the \$10,000 penalty was not supported by the record, since it was "not commensurate with the severity of the violation and would not aid in the enforcement of the Act." The court did not remand the case again but chose to exercise its power to determine an appropriate penalty of \$1,000.

d. In a suit brought by the Agency before the Board, the Board found violations of the Act and regulations and imposed a fine for the illegal discharge of swine waste into a stream and for the resulting fish kill. The owner of the swine farm appealed, arguing that he did not "cause or allow" the unlawful discharge and that the amount of the fine imposed was an abuse of the Board's discretion.

In Russell Perkinson v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 135 Ill.Dec. 333, 543 N.E.2d 901 (Ill.App. 3 Dist. 1989), the court stated that in Illinois, "the owner of the source of the pollution causes or allows the pollution . . . and is responsible for that pollution unless the facts establish the owner either lacked the capability

to control the source . . . or had undertaken extensive precaution to prevent vandalism or other intervening causes." After considering the facts of the case, the court found sufficient support for the Board's finding of violation. The court also found the fine imposed by the Board to be within the Board's statutory authority and affirmed the Board's decision.

e. In a final order issued on September 17, 1987, the Board dismissed an administrative citation filed by the Agency for being improperly issued. The Board reasoned that since the alleged violation was of Section 21(p) of the Act, requiring a permitted sanitary landfill be in violation and that the cited operation of the respondent was not permitted, the operation was not within the authority of section 21(p). The Agency contested the Board's determination and interpretation of the Act in Illinois Environmental Protection Agency v. Illinois Pollution Control Board and James Presnall, 134 Ill.Dec. 634, 542 N.E.2d 1141 (Ill.App. 5 Dist. 1989).

The court upheld the Board's decision and interpretation of the statute. The court found that the language of the statute clearly created a distinction between permitted and unpermitted landfills. The court stated "[i]t would be an act of judicial law making to conclude that the legislature did not mean what it said but intended something far beyond the obvious and literal reach of the statutory words." The court further noted that subsequent to the filing of the appeal, the legislature had amended the Act to expand the applicability of the administrative citation process to unpermitted landfills.

5. Appeals from Regulatory Decisions

When the Board promulgates a regulation, judicial review of that Board action is authorized under Sections 29 and 41 of the Act. Section 29 entitles any person who is adversely affected or threatened by a regulation to petition for review. The review is held in the appellate court pursuant to Section 41. Section 29 states that the purpose of the judicial review is for the court to determine the validity or applicability of the regulation.

a. In City of Mendota v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 192 Ill.App.3d 704, 139 Ill.Dec. 703, 549 N.E.2d 26 (Ill.App. 3 Dist. 1990), the City of Mendota (the City) filed a petition for site-specific relief from regulations which prohibit overflows from sanitary sewers (35 Ill. Adm. Code 306.304). The Board denied the petition on the grounds that the City had not established that compliance was technologically infeasible and economically unreasonable and because granting relief would discourage future efforts to improve the environment. The City appealed, arguing that the Board's decision was arbitrary and capricious on both grounds.

The court affirmed the Board's decision, agreeing that sufficient alternatives were not presented by the City to prove technological infeasibility and economic unreasonableness. The court also agreed with the Board's decision that granting relief would not support the purpose of the Act to improve the waters of the State.

b. In Stepan Company v. Pollution Control Board, 140 Ill.Dec. 797, 550 N.E.2d 682 (Ill.App. 3 Dist. 1990), the Stepan Company (Stepan) sought administrative review of a Board amendment to the regulations governing air oxidation processes in the synthetic

organic chemical industry (35 Ill. Adm. Code Parts 211 and 215). Stepan contended that the Board decision was arbitrary, unreasonable and capricious because it failed to consider the *technological feasibility or economic reasonableness of the amendment*. Stepan also contended that the compliance date, the Board's failure to require an economic impact study and the inclusion of Will County under the amendment rendered the Board's decision arbitrary, unreasonable and capricious.

The court, stating that it need only find that the record "reflect that [the statutory] factors were taken into account," found that the Board did consider the technological feasibility and economic reasonableness of the amendment and that the Board's decision was not arbitrary, unreasonable and capricious for those reasons. In response to Stepan's other contentions, the court found that the amendment contained provisions preventing it from being unreasonable with respect to the compliance deadline. The court stated that since both the *Department of Energy and Natural Resources* and the *Economic and Technical Advisory Committee* recommended that no economic impact study was necessary and that the statute did not require one in every instance, that the Board decision to proceed without one was not arbitrary, unreasonable, or capricious. Finally, the court found that it was within the Board's authority to include Will County within the jurisdiction of the amendment.

IV. FIGURES AND APPENDICES

Board activities for fiscal year 1990 and for the previous twenty years has been collected in charts for convenient referencing and comparison. These charts are included in the "Figures and Appendices" to the Annual Report. Appendix A provides a breakdown of Board expenditures from fiscal year 1981 to fiscal year 1990. Appendix B displays the number of rulemakings filed in each of the past twenty years broken down by media. Appendix C lists the number of contested cases filed in each of the past twenty years broken down by type of case. Figure 1 compares the number of contested cases filed per year since fiscal year 1985. Appendix D displays the number of enforcement cases filed in each of the past twenty years, either by a citizen or the Attorney General, and broken down by media. Appendix E provides the number and types of opinions and orders produced by the Board in the past twenty years. Figure 2 compares the number of opinions and orders produced per year since fiscal year 1985.

The remaining appendices contain information regarding only fiscal year 1990. Appendix F lists the final actions taken by the Board during fiscal year 1990 broken down by Board Meeting. Appendix G lists the proposals for rulemakings submitted to the Board during fiscal year 1990. Appendix H lists those rulemakings which the Board took final action on in fiscal year 1990. Both appendices G and H provide the docket number and title of the rulemaking, the relevant dates, and the pertinent Illinois Register Citation. Appendix I contains a breakdown by media of all cases filed in fiscal year 1990. And, finally, Appendix J is a summary of the cases involving the Board decided by the courts this year.

Also available from the Board is a list of all final actions taken during fiscal year 1990. The list is divided into Board meeting dates and contains a short informative paragraph for each final action. Interested persons should write the Board to request this list.

FIGURE 1
Illinois Pollution Control Board
Contested Cases Filed In Fiscal Years 1985 through 1990

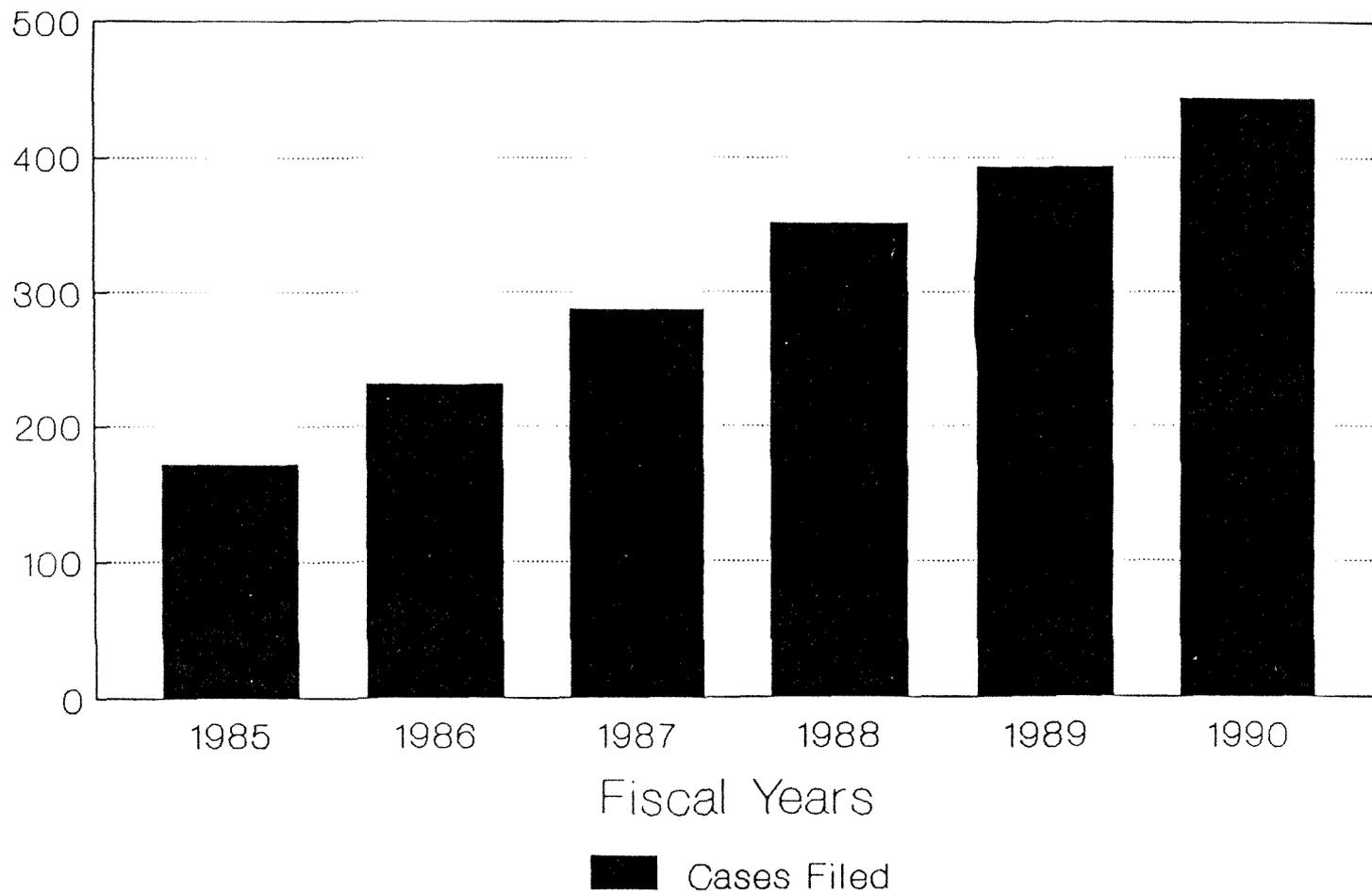
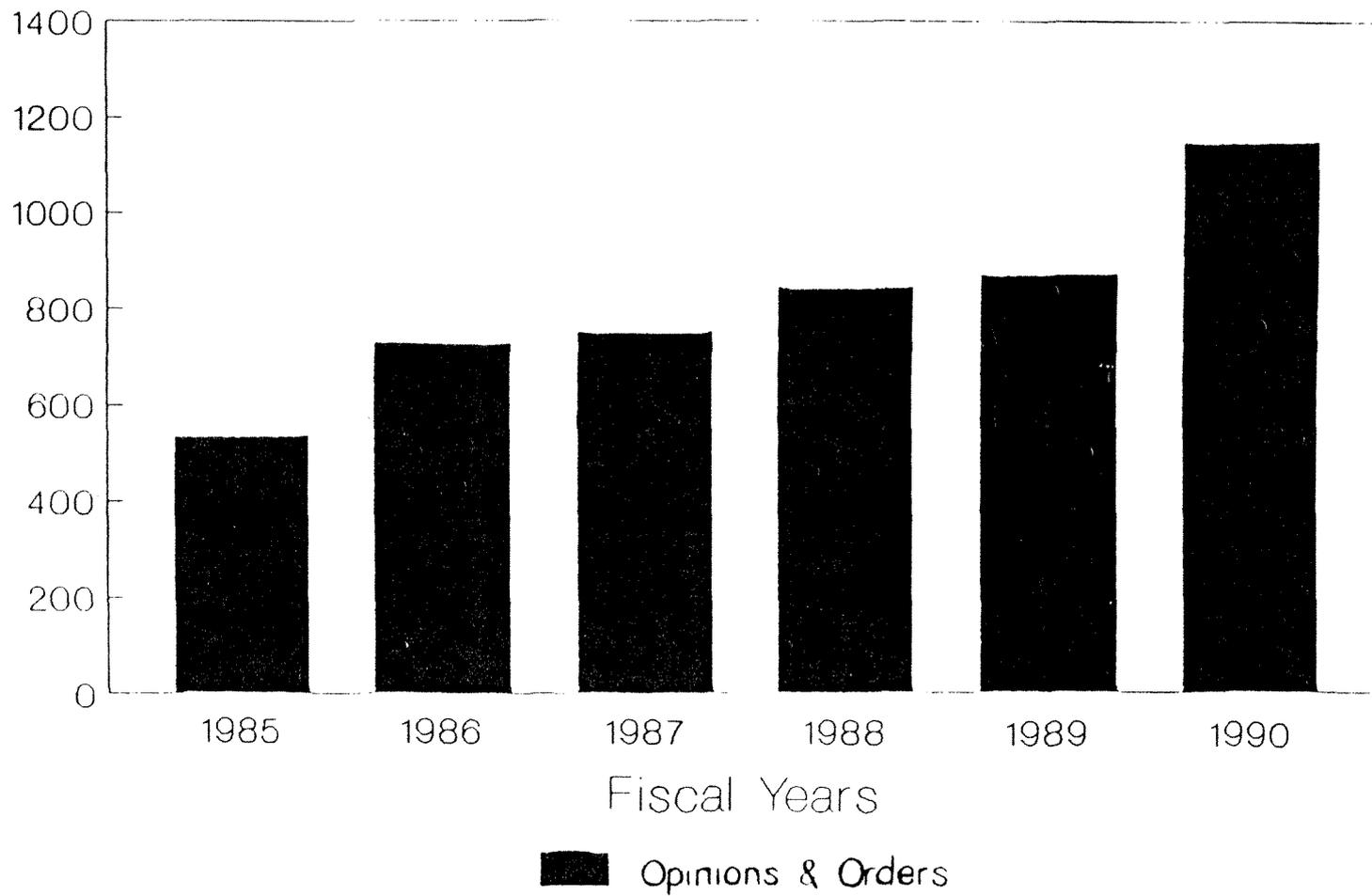


FIGURE 2
Illinois Pollution Control Board
Number of Opinions and Orders in Fiscal Years 1985 through 1990



APPENDIX A
 Illinois Pollution Control Board
 Expenditures by Fiscal Year (000 omitted) *

	FY81 ₁	FY82	FY83	FY84 ₂	FY85 ₃	FY86	FY87	FY88	FY89	FY90
APPROPRIATED: ₄	698.9	666.2	691.1	815.0	1,098.5	1,221.6	1,267.5	1,210.8	1,559.4	1,713.2
EXPENDITURES:	659.6	663.0	676.5	787.9	976.7	1,212.3	1,256.9	1,194.5	1,417.5	1,641.1
Personal Services	317.2	308.4	331.9	387.6	467.1	663.0	684.9	666.3	731.0	763.8
Retirement	23.8	13.8	15.3	22.2	27.3	37.3	38.8	32.3	32.2	34.2
Social Security	20.3	20.4	22.2	26.7	33.2	47.3	48.7	47.6	50.2	57.5
Contractual Services	119.4	147.6	161.1	205.0	208.3	101.1	119.5	110.8	108.3	147.0
Travel	19.9	16.2	17.4	19.8	30.1	29.3	29.8	27.3	33.1	33.3
Commodities	4.0	4.0	5.0	8.2	6.9	7.5	8.2	9.3	10.0	10.0
Printing	40.4	41.8	43.8	32.4	45.8	45.0	49.9	62.6	47.4	82.3
Equipment	0.7	0.1	1.0	2.3	10.8	8.3	4.0	3.5	3.0	5.0
Telecommunications	11.8	12.9	13.6	17.7	21.8	33.8	33.0	33.8	36.4	42.4
Hearing Officers	43.7	44.1	23.5	27.7	26.9	38.2	39.5	28.6	36.4	44.1
Court Reporting	58.4	53.7	41.6	38.3	33.7	87.9	91.0	75.8	72.4	72.3
Expert Testimony Special Studies					25.8	41.7	37.0	9.6	9.6	10.5
Electronic Data Processing					30.0	71.9	72.6	57.0	58.4	81.6
Environmental Trust Fund Grant								30.0	70.2	68.1
U.S. Environmental Protection Fund									118.9	151.8
Used Tire Management Fund										37.2

* Board Member salaries and pension contributions appear in the State Officers budget and are not reflected above.

1. FY71 through 80 figures are available in previous Annual Reports.
2. Number of Board Members increased from 5 to 7 with corresponding increase in staff.
3. The Scientific and Technical Section was added.
4. Includes Permit Inspection Fund, Pollution Control Board Fund, General Fund and Trust Fund.

APPENDIX B
 Illinois Pollution Control Board
Rulemakings Filed by Fiscal Year

Type of Filing	FY71- FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	Total
Water ₁	86	9	5	6	3	10	4	6	129
Air	109	20	27	24	39	11	8	4	242
Land ₂	16	10	5	9	5	10	4	12	71
Public Water Supply	4	1	1	0	1	2	1	0	10
Noise	16	9	1	0	0	0	0	0	26
Other (Procedural Rules, etc.)	45	4	1	0	1	1	0	0	52
TOTAL	251	53	40	39	49	34	17	22	530

1. For Fiscal Year 1990 "Water" includes pretreatment and NPDES rulemakings.
2. For Fiscal Year 1990 "Land" includes underground storage tank, underground injection control, special waste hauling and RCRA rulemakings.

APPENDIX C
Illinois Pollution Control Board
Contested Cases Filed by Fiscal Year

Type of Filing	FY71- FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	Total
<u>Variances</u>									
Water	1276	52	41	51	38	41	29	16	1544
Air	1051	38	27	15	11	42	23	15	1222
Land	91	2	0	1	8	13	37	46	198
Public Water Supply	157	4	8	17	27	15	14	15	257
Noise	23	0	0	0	0	1	2	0	26
Special Waste Hauling	16	0	0	0	2	3	0	0	21
TOTAL	2614	96	76	84	86	115	105	92	3268
<u>Enforcement</u>									
Water	452	16	7	8	0	3	7	5	498
Air	454	6	5	16	3	4	11	62	561
Land	370	2	9	7	2	6	2	1	399
Public Water Supply	105	1	1	1	0	0	1	1	110
Noise	58	1	0	0	0	3	6	9	77
Special Waste Hauling	4	0	0	0	0	0	0	2	6
TOTAL	1443	26	22	32	5	16	27	80	1651
<u>Permit Denials</u>	276	39	55	87	97	71	54	49	728
<u>Landfill Siting Reviews</u>	9	6	16	7	13	10	8	5	74
<u>Administrative Citations</u>	0	0	0	0	83	136	197	210	626
<u>Other</u>	111	78	3	22	4	4	3	9	234
GRAND TOTAL	4453	245	172	232	288	352	394	445	6581

APPENDIX D
Illinois Pollution Control Board
Citizen Enforcement Cases Filed by Fiscal Year*

Filed By:	FY71- FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	Total
<u>Citizens</u>									
Water	82	2	1	0	1	1	3	0	90
Air	60	3	7	1	2	1	2	1	77
Land	26	0	0	4	2	2	1	0	35
Public Water Supply	6	0	1	0	1	3	1	0	12
Noise	19	1	4	0	0	0	5	9	38
Special Waste Hauling	1	0	0	1	0	0	0	0	2
TOTAL	194	6	13	6	6	7	12	10	254
<u>Attorney General</u> (People of the State of Illinois)									
Water	25	1	1	0	1	0	4	2	34
Air	48	1	0	0	0	1	9	50	109
Land	16	2	1	0	0	0	1	1	21
Public Water Supply	3	0	2	0	0	0	0	0	5
Noise	3	0	0	0	0	0	1	0	4
Special Waste Hauling	0	0	0	0	0	0	0	1	1
TOTAL	95	4	4	0	1	1	15	54	174
GRAND TOTAL	289	10	17	6	7	8	27	64	364

* List does not include cases brought by Attorney General on behalf of the Illinois Environmental Protection Agency.
1. The Illinois Environmental Protection Agency filed 16 cases in FY90, as reflected in Appendix C.

APPENDIX E
 Illinois Pollution Control Board
Number of Opinions and Orders of the Board by Fiscal Year*

Type of Filing	FY71- FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	Total
<u>Cases</u>									
Opinion & Orders	3,403	147	74	127	110	105	106	95	4,167
Orders	4,644	340	327	403	454	568	609	746	8,091
Dissenting	161	15	19	33	10	24	16	42	320
Concurring	100	22	17	33	15	11	9	18	225
Supplemental Statements	53	2	4	2	4	0	3	3	71
TOTAL	8,361	526	441	598	593	708	743	904	12,874
<u>Regulations</u>									
Opinion & Orders	227	34	30	52	55	70	54	79	601
Orders	492	82	61	63	90	61	72	78	999
Dissenting	24	3	3	12	5	3	1	6	57
Concurring	10	0	1	4	7	4	2	6	34
Supplemental Statements	8	0	1	0	1	0	0	0	10
TOTAL	761	119	96	131	158	138	129	169	1,701
GRAND TOTAL	9,122	645	537	729	751	846	872	1,073	14,575

*Includes Final Decisions.

APPENDIX F
ILLINOIS POLLUTION CONTROL BOARD
Final Actions at Board Meetings during Fiscal Year 1990

Date	AC	AS	Enf.	L-S-R	P-A	P(I)	SO ₂ -A	T-C	Var.	R-P	Other+	TOTAL
7-13-89	26	0	2	0	3	1	0	0	10	1	0	43
7-27-89	14	0	0	0	1	0	0	0	6	1	0	22
8-1-89*	0	0	0	0	0	0	0	0	0	0	0	0
8-10-89	18	0	2	0	3	0	0	0	5	1	0	29
8-31-89	7	0	0	0	11	0	0	0	7	0	0	25
9-13-89	16	0	0	1	2	0	0	0	11	2	0	32
9-28-89	14	0	2	0	6	0	0	0	6	1	0	29
10-2-89*	0	0	0	0	0	0	0	0	0	0	0	0
10-5-89*	0	0	0	0	1	0	0	0	0	0	0	1
10-18-89	17	0	0	1	3	1	1	0	6	3	2	34
10-27-89*	0	0	0	0	0	0	0	0	0	0	0	0
11-2-89	10	0	0	0	3	0	0	0	7	0	0	20
11-8-89*	0	0	0	0	1	0	0	0	0	0	0	1
11-15-89	11	1	1	1	1	0	0	0	5	2	1	23
12-6-89	12	0	1	1	3	0	0	1	0	1	0	19
12-20-89	16	0	0	0	5	0	0	0	6	0	0	27
1-11-90	22	0	0	2	6	0	0	0	4	0	0	34
1-25-90	19	0	1	0	1	0	0	0	3	2	2	28
2-8-90	14	0	2	0	4	0	0	0	2	0	1	23
2-15-90*	0	0	0	0	2	0	0	0	0	1	0	3
2-22-90	17	0	2	0	2	0	0	0	2	1	0	24
3-1-90*	0	0	0	0	0	0	0	0	0	1	0	1
3-8-90	8	0	3	1	4	0	0	0	2	2	0	20
3-16-90*	0	0	0	0	0	0	0	0	0	0	0	0
3-22-90	6	0	1	0	2	0	0	0	4	3	0	16
3-27-90*	0	0	0	0	0	0	0	0	0	0	0	0
4-9-90*	0	0	0	0	0	0	0	0	0	0	0	0
4-12-90	8	1	1	0	2	0	0	0	4	2	0	18
4-26-90	1	0	4	0	6	0	0	0	9	3	0	23
5-2-90*	0	0	0	0	0	0	0	0	1	0	0	1
5-10-90	2	0	2	0	3	0	0	0	2	3	0	12
5-24-90	6	0	2	0	0	0	0	0	5	4	0	17
6-7-90	5	0	4	0	1	0	0	0	0	1	1	12
6-21-90	7	0	6	0	1	0	0	0	4	1	1	20
TOTALS	276	2	36	7	77	2	1	1	111	36	8	557

+ Other Category includes combined sewer overflow, trade secrets, thermal demonstrations, and resolutions.

* Denotes a Special Board Meeting.

A-C	Administrative Citation	P-A	Permit Appeal	SO ₂ -A	SO ₂ Alternative Standards
A-S	Adjusted Standard	P(I)	Permit (IDOT)	T-C	Tax Certifications
ENF	Enforcement	R-P	Regulatory Proceeding	VAR	Variance
L-S-R	Landfill Siting Review			W-W-S	Water-Well Setback Exception

APPENDIX G
 Illinois Pollution Control Board
Rulemakings Initiated in Fiscal Year 1990

Number	Title	Date Initiated	Status	Illinois Register Citation
89-9	RCRA Update, USEPA Regulations (January 1, 1989 through June 30, 1989)	July 25, 1989	Adopted on March 8, 1990	Volume 14, Issue 17 (April 27, 1990) p. 6273, 6278, 6225, 6232
R89-10	UST Financial Assurance Regulations (October 27, 1988 through June 30, 1989)	July 25, 1989	Adopted on March 1, 1990	Volume 14, Issue 16 (April 20, 1990) p. 5797
R89-11	UIC Update, USEPA Regulations (January 1, 1989 through June 30, 1989)	July 25, 1989	Adopted on May 24, 1990	Volume 14, Issue 29 (July 20, 1990) pp. 11959; 11948
R89-12	Pretreatment USEPA Regulations (January 1, 1989 through June 30, 1989)	July 25, 1989	Adopted on April 12, 1990	Volume 14, Issue 20 (May 18, 1990) pp. 7620; 7608
R89-13	In the Matter of: Special Waste Classification (Parts 808, 809 and 811)	August 1, 1989	Adopted on August 9, 1990	Volume 14, Issue 35 (August 31, 1990) pp. 14043; 14076
R89-14	Groundwater Quality Standards (35 Ill. Adm. Code 620)	September 21, 1989	First Notice September 27, 1990	Volume 14, Issue 44 (November 2, 1990) pp. 17862; 17822
R89-15	IDENR Evaluation of Underground Injection	October 4, 1989	None	None
R89-16	RACT Deficiencies, Amendments to 35 Ill. Adm. Code Parts 201, 211, and 215	September 29, 1989	Adopted on May 10, 1990	Volume 14, Issue 23 (June 8, 1990) pp. 9141; 9173
R89-17	In the Matter of: Application of California Motor Vehicle Control Program to Illinois	October 10, 1989	First Notice April 12, 1990) (Dockets A & B)	Volume 14, Issue 19 (May 11, 1990) p. 6977
R89-18	In the Matter of: Calumet Industries, Inc. Air Rule Revision, 35 Ill. Adm. Code 215.620 and 215.621	November 30, 1989	Dismissed May 24, 1990	
R89-19	UST State Fund Regulatory Mandate	January 25, 1990	Adopted on April 26, 1990	Volume 14, Issue 24 (June 15, 1990) p. 9454

APPENDIX G (continued)

Number	Title	Date Initiated	Status	Illinois Register Citation
R89-20	Pretreatment Regulations (Correction)	January 11, 1990	Closed February 22, 1990	
R90-1	Toxic Air Contaminants List (35 Ill. Adm. Code Part 232)	January 2, 1990	First Notice April 26, 1990	Volume 14, Issue 23 (June 8, 1990) p. 8905
R90-2	RCRA Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	April 12, 1990	Adopted on July 3, 1990	Volume 14, Issue 36 (September 7, 1990) pp. 14492; 14401; 15411; 14447; 14533; 14470
R90-3	UST Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	March 8, 1990	Adopted on June 7, 1990	Volume 14, Issue 29 (July 20, 1990) p. 11964
R90-4	SDWA Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	June 21, 1990	Dismissed June 21, 1990	
R90-5	UIC Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	March 22, 1990	Dismissed March 22, 1990	
R90-6	Pretreatment, USEPA Regulations (July 1, 1989 through December 31, 1989)	March 22, 1990	Dismissed March 22, 1990	
R90-7	Amendments to Agriculture Related Pollution: Title 35: Subtitle E, Chapter 1, Part 501	January 29, 1990	First Notice February 7, 1991	Not available at time of printing.
R90-8	Amendments to 35 Ill. Adm. Code 105.102; Repeal of DeNovo Hearing for Appeals of NPDES Permits	February 8, 1990	First Notice February 8, 1990	Volume 14, Issue 8 (February 23, 1990) p. 2784
R90-9	Used and Waste Tire Regulations, Part 848	April 6, 1990	First Notice April 26, 1990	Volume 14, Issue 21 (May 25, 1990) p. 7763
R90-10	RCRA Toxicity Characteristics Leaching Procedures (TCLP)	May 24, 1990	Adopted on August 30, 1990	Volume 14, Issue 40, (October 5, 1990) pp. 16450; 16472; 16653; 16658; 16498; 16508

APPENDIX H
 Illinois Pollution Control Board
Final Dispositions on Rulemakings in Fiscal Year 1990

Number	Title	Final Disposition	Illinois Register Citation
R84-12	Amendments to 35 Ill. Adm. Code 604.203 & 604.104 of Subtitle F: Public Water Supplies (Trihalomethanes)	Adopted on December 6, 1989	Volume 14, Issue 2 (January 12, 1990) pp. 689; 695
R87-2	Marathon Petroleum Company Site-Specific, Part 303	Adopted on September 13, 1989	Volume 13, Issue 40 (October 6, 1989) p. 15649
R87-6	Proposed Amendments Phosphorus Effluent Standard, 35 Ill. Adm. Code 304.123, Phosphorus	Adopted on April 12, 1990	Volume 14, Issue 18 (May 4, 1990) p. 6777
R88-5	In the Matter of: Procedural Rules	Adopted on September 8, 1988	Volume 12, Issue 39, pp. 14822; 14853; 14886; 14918; 14865; 14933
R88-9	Proposed Site-Specific Rule Change for Reilly Tar & Chemical Corporation, Granite City Facility: 35 Ill. Adm. Code 307.1102	Adopted on October 18, 1989	Volume 14, Issue 9 (March 2, 1990) p. 3100
R88-21	Proposed Amendment to Title 35, Subtitle C (Toxics Control)	Adopted on January 25, 1990	Volume 14, Issue 8 (February 23, 1990) pp. 2879; 2899; 2888; 2892
R88-25	City of Havana Site-Specific Rule Change to the Combined Sewer Overflow Regulations	Adopted May 10, 1990	Volume 14, Issue 24 (June 15, 1990) p. 9449
R88-26	Safe Drinking Water Act Rules	Adopted on August 9, 1990	Volume 14, Issue 40 (October 5, 1990) pp. 16435; 16642; 16640; 16512; 16517
R88-30	Limits to Volatility of Gasoline	Adopted on February 15, 1990	Volume 14, Issue 10 (March 9, 1990) pp. 3555
R89-1	RCRA Update, USEPA Regulations (August 1, 1988 through December 31, 1988) (Corrective Order)	Adopted on October 18, 1989	Volume 13, Issue 47 (November 27, 1989) pp. 18452; 18278; 18300; 18523; 18527; 18354; 18606; 18403
R89-2	UIC Update, USEPA Regulations (July 1, 1988 through December 31, 1988)	Adopted on January 25, 1990	Volume 14, Issue 9 (March 2, 1990) pp. 3089; 3116; 3082; 3075; 3130; 3059
R89-3	Pretreatment USEPA Regulations (July 1, 1988 through December 21, 1989)	Adopted on September 28, 1989	Volume 13, Issue 49 (December 8, 1989) pp. 19288; 19243

Number	Title	APPENDIX H (continued)	
		Final Disposition	Illinois Register Citation
R89-4	UST Financial Assurance Regulations	Adopted on July 27, 1989	Volume 13, Issue 38 (September 22, 1989) p. 15010
R89-7	Continuous Monitoring Rules & Repeal of New Source Performance Standards & Hazardous Air Pollutants Regulations, Parts 230 & 231 (Docket A)	Adopted on November 15, 1989	Volume 13, Issue 50 (December 15, 1989) p. 19444
R89-8	Exemptions from the Definitions of VOM	Adopted on October 18, 1989	Volume 13, Issue 45 (November 13, 1989) p. 17457
R89-9	RCRA Update, USEPA Regulations (January 1, 1989 through June 30, 1989)	Adopted on March 8, 1990	Volume 14, Issue 17 (April 27, 1990) pp. 6273; 6278; 6225; 6232
R89-10	RCRA Update, USEPA Regulations (January 1, 1989 through June 30, 1989)	Adopted on March 8, 1990	Volume 14, Issue 17 (April 27, 1990) pp. 6273; 6278; 6225; 6232
R89-11	UIC Update, USEPA Regulations (January 1, 1989 through June 30, 1989)	Adopted on May 24, 1990	Volume 14, Issue 29 (July 20, 1990) pp. 11959; 11948;
R89-12	Pretreatment USEPA Regulations (January 1, 1989 through June 30, 1989)	Adopted on April 12, 1990	Volume 14, Issue 20 (May 18, 1990) pp. 7620; 7608
R89-13	In the Matter of: Special Waste Classification (Parts 808, 809 and 811)	Adopted on August 9, 1990	Volume 14, Issue 35 (August 31, 1990) pp. 14043; 14076
R89-16	RACT Deficiencies, Amendments to 35 Ill. Adm. Code Parts 201, 211, & 215	Adopted on May 10, 1990	Volume 14, Issue 23 (June 8, 1990) pp. 9141; 9173
R89-19	UST State Fund Regulatory Mandate	Adopted on April 26, 1990	Volume 14, Issue 24 (June 15, 1990) p. 9454
R90-2	RCRA Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	Adopted on July 3, 1990	Volume 14, Issue 26 (September 7, 1990) pp. 14492; 14401; 14511; 14447; 14533; 14470
R90-3	UST Update, USEPA Regulations (July 1, 1989 through December 31, 1989)	Adopted on June 7, 1990	Volume 14, Issue 29 (July 20, 1990) p. 11964
R90-10	RCRA Toxicity Characteristics Leaching Procedures (TCLP)	Adopted on August 30, 1990	Volume 14, Issue 40 (October 5, 1990) pp. 16450; 16472; 16653; 16658; 16498; 16508

APPENDIX I
Illinois Pollution Control Board
Cases Filed in Fiscal Year 1990

TYPE OF CASE	AC	AS	ENF	L-S-R	P-A	T-D	T-C	VAR.	W-W-S-E	R-P	C-S-O	T-S	TOTAL
AIR	0	0	62	0	21	0	0	15	0	4	0	0	102
LAND	210	2	1	5	10	0	0	45	0	3	0	0	276
WATER	0	5	5	0	2	0	0	10	1	3	0	0	26
NPDES	0	0	0	0	3	0	0	6	0	0	0	0	9
NOISE	0	0	9	0	0	0	0	0	0	0	0	0	9
PUBLIC WATER SUPPLY	0	0	1	0	0	0	0	15	0	0	0	0	16
SPECIAL WASTE HAULING	0	0	2	0	1	0	0	0	0	0	0	0	3
RCRA	0	0	0	0	10	0	0	1	0	3	0	0	14
UIC	0	0	0	0	0	0	0	0	0	3	0	0	3
PRETREATMENT	0	0	0	0	0	0	0	0	0	3	0	0	3
UST	0	0	0	0	2	0	0	0	0	3	0	0	5
SPECIAL	0	0	0	0	0	0	1	0	0	0	0	0	1
Totals	210	7	80	5	49	0	1	92	1	22	0	0	467

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Activity Measures:

		FY90	
AC	= Administrative Citations	210	VAR = Variance Petitions 92
AS	= Adjusted Standards	7	W-W-S-E = Water Well Setback Exceptions 1
ENF	= Enforcement Cases	80	R-P = Regulations Proposed 22
L-S-R	= Landfill Siting Reviews	5	C-S-O = Combined Sewer Overflow 0
P-A	= Permit Appeals	49	T-S = Trade Secret 0
T-D	= Thermal Demonstration	0	
T-C	= Tax Certification	1	
			Total Number of Cases 466

Note: Five regulatory dockets reserved and not included in FY90 count (R90-11 through R90-15)

APPENDIX J
 Illinois Pollution Control Board
Appellate Court Decisions during Fiscal Year 1990

Case Name	Decision	Case Citation
A.R.F. Landfill, Inc. v. Illinois Pollution Control Board and Lake County	Affirmed	Rule 23 Order
Citizens Utilities Company of Illinois v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Vacated and Remanded	193 Ill.App.3d 93, 140 Ill.Dec 269, 549 N.E.2d 920 (Ill.App. 3 Dist.)
City of East Moline v. Illinois Pollution Control Board	Affirmed	188 Ill.App.3d 349, 135 Ill.Dec 725, 544 N.E.2d 82 (Ill.App. 3 Dist.)
City of Freeport v. Illinois Pollution Control Board	Affirmed	187 Ill.App.3d 745, 135 Ill.Dec 644, 544 N.E.2d 1 (Ill.App. 2 Dist.)
City of Mendota v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Affirmed	192 Ill.App.3d 704, 549 N.E.2d 26 (Ill.App. 3 Dist.)
City of Rockford v. County of Winnebago and Illinois Pollution Control Board	Affirmed	186 Ill.App.3d 303, 134 Ill.Dec 244, 542 N.E.2d 423 (Ill.App. 2 Dist.)
Ekco Glaco Corporation v. Illinois Environmental Protection Agency and Illinois Pollution Control Board	Affirmed	186 Ill.App.3d 141, 134 Ill.Dec 147, 542 N.E.2d 147 (Ill.App. 1 Dist.)
Fairview Area Citizens Taskforce, et al. v. Illinois Pollution Control Board, Village of Fairview and Gallatin National Co.	Affirmed	198 Ill.App.3d 541, 555 N.E.2d 1178 (Ill.App.3 Dist.)

APPENDIX J (continued)

Case Name	Decision	Case Citation
Hinsdale Golf Club v. Anthony Kochanski and Illinois Pollution Control Board	Reversed and Dismissed	197 Ill.App.3d 634, 555 N.E.2d 31 (Ill.App. 3 Dist.)
Illinois Environmental Protection Agency v. Illinois Pollution Control Board and James Presnall	Affirmed	186 Ill.App.3d 995, 134 Ill.Dec 634, 542 N.E.2d 1141 (Ill.App. 5 Dist.)
Modine Manufacturing Company v. Illinois Pollution Control Board (No. 2-89-0350)	Affirmed	192 Ill.App.3d 511, 548 N.E.2d 1145 (Ill.App. 2 Dist.)
Modine Manufacturing Company v. Illinois Pollution Control Board (No. 2-89-0441)	Affirmed as Modified	193 Ill.App.3d 643, 549 N.E.2d 1379 (Ill.App. 2 Dist.)
People of the State of Illinois v. Illinois Pollution Control Board and Riverside Laboratories, Inc.	Dismissed on Board motion	190 Ill.App.3d 945, 547 N.E.2d 647 (Ill.App. 2 Dist.)
Russell Perkinson v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Affirmed	187 Ill.App.3d 689, 135 Ill.Dec 333, 543 N.E.2d 901 (Ill.App. 3 Dist.)
John Sexton Contractors Company v. Illinois Pollution Control Board and the Illinois Environmental Protection Agency	Affirmed in part, reversed in part, and remanded.	201 Ill.App.3d 415, 558 N.E.2d 1222 (Ill.App. 1 Dist.)
Stepan Company v. Illinois Pollution Control Board	Affirmed	193 Ill.App.3d 827, 140 Ill.Dec 797, 550 N.E.2d 682 (Ill.App. 3 Dist.)

Case Name	APPENDIX J (continued)	Case Citation
	Decision	
Roger Tate et al. v. Illinois Pollution Control Board, Macon County Board and Macon County Landfill Corp.	Affirmed	188 Ill.App.3d 994, 544 N.E.2d 1176 (Ill.App. 4 Dist.)
Village of Carpentersville v. Illinois Pollution Control Board et al	Affirmed Appellate Court Reversal of Board	135 Ill.2d 463, 553 N.E.2d 362
Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. Illinois Pollution Control Board, County of Wabash, and K/C Reclamation	Affirmed	198 Ill.App.3d 388, 555 N.E.2d 1081
Wells Manufacturing Company v. Illinois Environmental Protection Agency	Reversed and Remanded	142 Ill.Dec 333, 552 N.E.2d 1074

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