STATE OF ILLINOIS
POLLUTION CONTROL BOARD

ANNUAL REPORT
(Fiscal Years 1991 / 1992)

John C. Marlin, *Chairman*

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CHAIRMAN'S OVERVIEW

During the past two fiscal years, the Pollution Control Board has been adapting its operations to meet the challenges of the nineties. This annual report touches upon some highlights of fiscal years 1991 and 1992, from July 1, 1990 to June 30, 1992.

The Board is responsible for promulgating Illinois' environmental regulations and adjudicating disputes in enforcement actions, permit appeals, variances, landfill siting appeals, and similar matters. In most cases hearings are held where parties and participants may testify on the record before a hearing officer. The Board bases its decision on this sworn and transcribed record.

Over the years the complexity of environmental issues has increased. This has brought about a corresponding increase in the amount of Board and staff time required to adequately deal with regulatory proposals. New federal and state laws have greatly increased the volume of regulations that the Board must consider when reaching decisions of all types.

The Board's caseload varies in size and topical areas as new legislative initiatives take effect and programs mature. For example, the 210 administrative citations (AC) filed in FY 90 dropped to 79 in FY 92. This drop in part reflects changes in IEPA enforcement activities which make the overall program more efficient. The drop in AC's is offset by new demands such as underground storage tank (UST) reimbursement appeals and Clean Air Act rulemakings.

The Board, like all state agencies, is engaged in efforts to increase efficiency. To this end, tougher case management techniques are being implemented. Fewer hearings are continued and parties are required to file periodic status reports when cases are not moving forward. This, coupled with a computerized tracking system, is targeting older matters for decision or dismissal and discouraging parties from keeping cases "on the back burner".

The Board initiated legislative changes which eliminate wasteful mandatory hearing requirements in enforcement cases where a settlement is reached. The new law, however, does require a hearing if requested by the public. A similar change applies to variances. Under the new legislation, the Board, attorney general, IEPA and parties save considerable personnel and other resources.

Regulatory hearings are more efficient due to more detailed hearing officer orders and requirements for prefiled testimony and questions. Participants in most rulemakings are now informed of key issues prior to hearings. This reduces the need for additional hearings. The gradual statutory elimination of the Economic Impact Study has also sped up the regulatory process, while still allowing economic data to come into the hearing record.

The Board has vastly upgraded its computer and data processing capability. Fiscal information is computerized and the Clerk's office now uses computers for case docketing and tracking. A limited amount of information (such as agendas and the Board's Environmental Register) is now available on the Board's electronic bulletin board. Beginning with July of 1992, the opinion volumes will be available on computer disk.

As time and staffing permit, the Board will expand the amount of information available in hard copy or disk form. Among the items nearing completion is a document listing the contents of over 11 years of the opinion volumes.

In addition to handling over 600 contested cases, the Board issued over 2,000 orders and considered numerous regulations over the past two years. Some major regulatory program achievements are listed below.

FEDERAL CLEAN AIR ACT. During the last two years, the Board completed eight regulatory proceedings to meet the requirements of the new Clean Air Act Amendments of 1990 (CAAA) and secure federal program approval from USEPA. These eight regulatory proceedings were completed within an average time frame of 7.5 months.

OTHER AIR PROGRAMS. State rulemaking initiatives which were not federally required included adoption of gas volatility rules for the 1991 ozone season, and of Stage II gas vapor recovery systems at gas stations in ozone non-attainment areas.

In 1992, the Board listed 236 chemicals which may pose a significant risk to health, as well as methods for determining if a chemical is toxic or carcinogenic. This listing of toxic air contaminants will be followed by regulations to control toxic air emissions. The federal CAAA also requires control of many of the same chemicals. The Board also updated regulations limiting emissions from diesel engines on over-the-road vehicles.

USED AND WASTE TIRES. In April 1991, the Board adopted a comprehensive regulatory program to eliminate health and adverse environmental effects (in particular the threat of mosquito infestation and tire fires) caused by unmanaged tire storage sites and processing practices. This implements a legislative mandate, the state Used and Waste Tire Act.

GROUNDWATER PROTECTION. In an ongoing series of rulemakings, the Board has adopted water quality standards for groundwater protection rules regulating activities that offer significant potential for producing groundwater contamination. This implements the state Groundwater Protection Act.

POTENTIALLY INFECTIOUS MEDICAL WASTE. In a continuing series of rulemakings, the Board has set up a comprehensive system for identification and transport of medical waste, as well as the design and operation of medical waste treatment, storage and transfer facilities. This implements the state Medical Waste Tracking Act.

SAFE DRINKING WATER, HAZARDOUS WASTE (RCRA, UIC) AND NPDES RULES "IDENTICAL IN SUBSTANCE" TO FEDERAL RULES. The Board twice annually revises and updates state rules in various drinking water, surface water, and hazardous waste program areas to maintain Illinois' federal program authorization and funding.

RECYCLED PAPER. Since January 1, 1992, filings before the Board by attorneys and organized groups are now required to be on recycled paper.

DUMELLE RETIRES, GIRARD APPOINTED

Jacob D. Dumelle retired from the Board in December of 1991, after over 20 years of dedicated service to the environment. The Board presented Mr. Dumelle with a Resolution at the December 19, 1991 Board Meeting commemorating his years of service and achievement.

In July, 1970, Board member Dumelle was appointed by Governor Richard B. Ogilvie to his first three-year term on the newly created Illinois Pollution Control Board. Since that time, Board Member Dumelle was consecutively reappointed for a total of 21 years on the Board. He served as Chairman of the Board for fifteen years (August, 1973 until November, 1988).

During his unprecedented period of service on this Board, Jacob D. Dumelle exhibited an unending enthusiasm for probing environmental initiatives that have established a record of significant and lasting accomplishments for the Board. He also donated his services to civic and professional groups involved in enhancing environmental quality, and received many honors and awards for his devoted service to improving the environment. Board Member Dumelle has been honored by the Illinois Environmental Council (Earth Day, 1980), the Air Pollution Control Association (Honorary Conference Chairman, 1983), and the Chicago Lung Association (Environmental Service, 1990) to name just a few.

G. Tanner Girard of Grafton was appointed to the Board by Governor Jim Edgar on February 13, 1992. His appointment was confirmed by the Senate on May 13, 1992. He holds a M.S. in biological science and received a Ph.D. in science education from Florida State University in 1979. He taught for 15 years at Principia College in Elsah.

Dr. Girard studied environmental policy in Central and South America as well as New Zealand and Australia. He is a former director and officer of the Illinois Environmental Council and Illinois Audubon Society. He serves on the Illinois Nature Preserves Commission and Governor's Science Advisory Committee.

The current Board consists of:

Dr. John C. Marlin,	appointed in 1983; named Chairman in 1988;
Joan G. Anderson,	appointed in 1980;
Dr. G. Tanner Girard,	appointed in 1992;
Dr. Ronald C. Flemal,	appointed in 1985;
Bill S. Forcade,	appointed in 1983;
J. Theodore Meyer,	appointed in 1983;
Michael Nardulli,	appointed in 1987.

JUDICIAL REVIEW OF BOARD DECISIONS

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 eleven Board decisions in fiscal year 1991. Four were permit appeals, five were regional pollution control facility site location suitability cases, one was a variance request, and one concerned interpretation of the Act. The appellate courts also reviewed eleven Board decisions in fiscal year 1992. Two were permit appeals, three were regional pollution control facility site location suitability cases, one concerned reimbursement from the Underground Storage Tank (UST) Fund, two cases concerned rulemakings, one was an appeal from an enforcement action, one concerned a site specific rulemaking and one involved an interpretation of the Act. Additionally, in fiscal year 1992, the Supreme Court reviewed a site location suitability appeal in order to determine if the Board had taken final action within the statutory time period. The cases are discussed below. They are organized by section of the Act.

Permit Appeals

The Board is authorized to require a permit for the construction, installation, and operation of pollution control 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 to those applicants who prove that the permitted activity will not cause a violation of the Act or Board 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 final decision of the board is reviewable by the appellate court.

The Agency is authorized under Section 39(a) to adopt procedures for the application and issuance of permits. The Third District Appellate Court reviewed the Agency's procedures for denying a permit in Reichhold Chemicals Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 204 Ill. App. 3d 674, 561 N.E.2d 1343, 149 Ill. Dec. 647 (3rd Dist. 1990). In Reichhold, the Agency had issued a letter which denied an operating permit to Reichhold for reasons specified therein and offered to reevaluate the application if Reichhold submitted information related to the denial reasons. Reichhold requested reevaluation by the Agency and stated that all relevant information had already been submitted to the Agency. Shortly thereafter Reichhold filed with the Board a petition for review of the denial because the Agency had not responded to its letter requesting reevaluation.

Before the Board, the Agency argued that although no new information was actually submitted with Reichhold's letter, Reichhold's request referred the Agency to new information held in a different section of the Agency. Therefore, under longstanding Agency practice and policy, the letter constituted a reapplication which was pending before the Agency and not final for purposes of a Board review. The Board agreed with the Agency and dismissed the petition for review. Reichhold then appealed the Board's decision to dismiss.

In reaching its decision, the court relied upon several Illinois Supreme Court decisions holding that an administrative agency cannot change or modify its decisions absent specific authorization by statute. Noting the absence of that authority in the present text of the Act, the court concluded that the Agency did not have the authority to reconsider or modify its permit decisions. Therefore, the court stated that the Board's decision was in error. The case was reversed and remanded to the Board for consideration of the petition for review of the Agency's denial.

The next case originated as an administrative citation enforcement matter but the issues before the appellate court concerned Section 39(a) of the Act which states that the Agency must take final action on a permit application within 90 days after the application is filed or the permit is issued by

operation of law. In Pielet Brothers' Trading, Inc. v. Illinois Pollution Control Board and the Illinois Environmental Protection Agency, 217 Ill. App. 3d 125, 576 N.E.2d 914, 159 Ill. Dec. 991 (5th Dist. 1991), Pielet Brothers Trading, Inc. (PBT) had applied for a developmental and operational permit for on-site waste disposal. Just before the 90 day decision due date expired, PBT notified the Agency that it was waiving the 90 day limit for the purpose of submitting more information relevant to the permits. The additional information was submitted 41 days later with a letter indicating that the PBT believed the Agency had all the information necessary for a decision. No action was taken on the application.

Five years later, in April of 1988, the Agency filed an administrative citation before the Board alleging PBT had violated nine provisions of the Act including accepting waste without a permit. The Board found that PBT had violated seven provisions of the Act including accepting waste without a permit. PBT appealed, contending that the permits applied for in 1983 had issued by operation of law.

The court stated that PBT's letter, attached to the additional information, effectively withdrew the indefinite waiver of the Agency's decision and that the five years without Agency action was unreasonable. Therefore, the court found that the permit had been issued by operation of law. In response to the argument that the permit could not have issued by operation of law because Pielet Brothers had treated the permit as pending, the court interpreted 35 Ill. Adm. Code 807.205(g) as not requiring an applicant to "subjectively believe that a permit has been issued." The court affirmed in part and reversed in part.

Two permit cases involved permits issued under the National Pollutant Discharge Elimination System (NPDES). Section 39(b) of the Act authorizes the Agency to deny or issue NPDES permits with conditions or limitations and to adopt procedures for the application and issuance of permits. The sufficiency of the Agency's procedures in issuing these permits was questioned in Village of Sauget v. the Illinois Pollution Control Board and the Illinois Environmental Protection Agency, 207 Ill. App. 3d 974, 566 N.E.2d 724, 152 Ill. Dec. 847 (5th Dist. 1990). The Village of Sauget (Sauget) had requested an NPDES permit for its publicly owned treatment works facility. The Agency issued a revised draft permit and the USEPA requested a 90-day review to issue its final comments. USEPA's final comments stated that it had no objection to the draft permit if certain conditions were imposed. Sauget did not see the conditions in the USEPA's final comments until eleven days before the permit was issued with the USEPA conditions.

Sauget appealed the imposition of the conditions to the Board. After a Board review which was limited to the record before the Agency, the Board upheld in part, denied in part, and

modified in part the conditions imposed by the Agency. On appeal, the court found that because Sauget was denied the right to comment on the USEPA conditions prior to issuance of the permit, Sauget was denied procedural safeguards at the Agency level. The court further found that the proceedings before the Board did not cure the procedural deficiencies. The court reversed the Board's order and remanded the matter for further proceedings.

The Board's procedures for review of NPDES permits were at issue in the next case. Section 105.102(b)(8) of the Board's procedural rules states "if any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board shall conduct a de novo hearing and receive evidence with respect to such issue of fact." In IBP, Inc. v. Illinois Pollution Control Board and the Illinois Environmental Protection Agency, 204 Ill. App. 3d 797, 563 N.E.2d 72, 150 Ill. Dec. 485 (3rd Dist. 1990), the Agency issued an NPDES permit with conditions to IBP. IBP filed a petition for review of the conditions with the Board. At the hearing before the Board, a stipulation discussing facts which occurred after issuance of the contested permit was submitted to the Board. The Board affirmed the Agency's conditions and noted that since the scope of its review was limited to the record before the Agency at the time of the Agency decision, the stipulation had not been considered. On appeal to the court, IBP argued that the Board incorrectly limited its scope of review.

The court stated that while the evidence presented at a permit appeal hearing must be relevant to be admitted, it believed that the stipulation was relevant and should have been taken into consideration. The court found that the Board had not followed statutory requirements and its own procedural regulations governing NPDES permit appeals. The court reversed and remanded the cause for de novo hearings.

The Appellate Court affirmed the Board's decision to deny a permit application to construct an industrial waste storage treatment plant in ESG Watts, Inc. v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, and the People of the State of Illinois., 224 Ill. App. 3d 600, 586 N.E.2d 1323, 167 Ill. Dec. 51 (3rd Dist. 1992). Watts filed an application to build an industrial waste storage facility under RCRA Part B. The case involved the Agency's permit denial. The Agency denied the permit because Watts never supplied the Agency with information on how it would dispose of the wastewater at the site. The Agency deemed the application incomplete, but Watts still did not supply the needed information. The Agency then denied the application as provided for by 35 Ill. Adm. Code 705.123. The denial was based on the fact that Watts failed or refused to correct the application

In its petition for appellate review, Watts argued that the Agency failed to deny the permit within the statutory review

period in Section 39(a) of the Act. The court held that the time limitations in Section 39(a) of the Act do not apply to RCRA permits. The court held that requests for a RCRA permit are governed solely by section 39(d) of the Act, which does not place time limits on the applications except to the extent that the procedures and filing requirements are adopted by the Agency.

Watts also argued in its petition for appellate review that the Agency could not properly deny a permit because of an incomplete application. The court explained that the burden of proving that the operation of the facility would not cause a violation of the Act fell on Watts and that the permit could be denied because of an incomplete application or because of a refusal by Watts to correct deficiencies in the application. In reviewing the Board's decision, the court held that Watts failed to demonstrate that a grant of the permit would not violate the Act since the method of discharge of treated water was never submitted to the Agency. Therefore, the court upheld the permit denial.

Finally, Watts argued that the Agency failed to send it a formal letter of deficiency before denying the permit. The court upheld the Board's decision that the letter sent by the Agency to Watts on February 9, 1990, asking Watts to provide information about wastewater disposal was sufficient to inform Watts of the deficiency in its application. The court went on to say that although a formal deficiency letter would have been better, the February 9, 1990, letter provided sufficient notice to allow the Agency to later deny the permit based on the letter.

In ESG Watts, Inc. v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, and the People of the State of Illinois, 224 Ill. App. 3d 592, 586 N.E.2d 1320, 167 Ill. Dec. 48 (3rd Dist. 1992), the court affirmed a decision of the Board which upheld the Agency's denial of a NPDES permit.

The Agency denied the NPDES permit in Watts because no feasible discharge location had been identified. On appeal from the Board's decision affirming the Agency, Watts argued that the Agency failed to make the decision within the statutory period. The appellate court held that Watts had waived this issue by failing to raise it in its appeal before the Board.

Watts also argued that the Agency's decision to deny the permit was based on the idea that at some point in the future Watts would violate the Act by improperly disposing of wastewater. Watts also argued that there was no evidence in the record to support a finding that issuing the permit would cause harm.

The appellate court held that the Board's decision to uphold the Agency's denial of the NPDES permit was not against the manifest weight of the evidence. The court explained that the

burden is on the applicant for a permit to prove that issuance of the permit will not result in violation of the Act. The court held that Watts' failure to specify the method and place of discharge of wastewater allowed were sufficient to allow the Agency to deny the NPDES permit because without specific information, the Agency would have to speculate as to whether or not Watts would be able to comply with the Act.

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, specific criteria, and, other information 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.

Three definitions of a "new regional pollution control facility" are found in Section 3.32(b) of the Act. The definition in Section 3.32(b)(2) states that a new regional pollution control facility is "the area of expansion beyond the boundary of a currently permitted regional pollution control facility." In Bi-State Disposal, Inc. v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, 203 Ill. App. 3d 1023, 561 N.E.2d 423, 149 Ill. Dec. 145 (5th Dist. 1990), the Agency denied an application for a supplemental permit because Bi-State Disposal Company (BDC) did not have site location suitability approval. On appeal, the Board affirmed the Agency, finding that BDC's proposed permit modification to begin use of an area within the boundaries of an already-permitted facility constituted a new regional pollution control facility.

At issue on appeal to the appellate court was the phrase "currently permitted" in the statutory definition. The court affirmed the Board's and the Agency's interpretation of the phrase as meaning "at the present time" and not "as of the effective date" of the existing permit. The court relied upon M.I.G. Investments, Inc. v. Environmental Protection Agency, 122 Ill. 2d 392, 523 N.E.2d 1, 119 Ill. Dec. 533 (1988), in which the supreme court had found that a vertical expansion of a landfill constituted a new regional pollution control facility. The court affirmed the Board's decision.

Section 39.2 provides certain notice and hearing requirements for the local government decision making bodies. The applicant requesting site location suitability approval must also satisfy certain notice requirements which are specified in Section 39.2(b). In Rick Moore and Leonard Morris v. Illinois Pollution Control Board, Wayne County Board, Daubs Landfill, Inc., and Edith Simpson, 203 Ill. App. 3d 855, 561 N.E.2d 170, 148 Ill. Dec. 864 (5th Dist. 1990), the appellants allege that the applicant requesting site location approval failed to satisfy the notice to owners provisions of Section 39.2(b), thereby creating jurisdictional defects in the local board's proceedings. After the Board affirmed the local board's grant of site location suitability approval, the appellants moved to vacate the Board's decision raising for the first time the argument of the notice defects. The Board denied the motion on the basis that the jurisdictional claim could not be raised that late in its proceedings and the appellants appealed.

This appeal was the second for this case. The first time this matter was appealed the court reversed an order of the Board finding that a defect in the newspaper notice required under Section 39.2(b) prevented jurisdiction from vesting in the Wayne County Board (WCB). The court remanded this matter to the Board for consideration of the contested criteria and remaining issues. On remand, the Board affirmed the WCB and this second appeal resulted. The court concluded that the issue of jurisdiction had been raised and decided in the first appeal and therefore the issue was precluded, under the doctrine of res judicata, from being considered in this appeal. The court affirmed the Board's decision on the contested criteria as not being against the manifest weight of the evidence.

Section 39.2(a) provides a list of criteria which the local board must determine will be satisfied before granting site location suitability approval. The next case concerns criteria (i) of Section 39.2(a) which states "the facility is necessary to accommodate the waste needs of the area it is intended to serve." In Metropolitan Waste Systems, Inc., Spicer, Inc., and Spicer Properties, Inc. v. Illinois Pollution Control Board and City of Marseilles, 201 Ill. App. 3d 51, 558 N.E.2d 785, 146 Ill. Dec. 822 (3rd Dist. 1990), Metropolitan Waste Systems (MWS) was denied site location approval by the City of Marseilles (City). The City determined that MWS had not met its burden of proof on criteria (i) and (ii). MWS filed a petition for review with the Board. The Board affirmed the City's decision as to criteria (ii) but could not reach a decision as to criterion (i). The Board was split as to whether or not the City could alter the "intended service area" or if only the applicant could define the intended service area.

The court interpreted the statute as intending that the applicant define the intended service area and that the applicant's definition is not subject to modification by the

local board. The court concluded that MSW had satisfied criterion (i). Even so, because the court found that the Board's decision as to criterion, (ii) was proper, the court affirmed the Board's decision.

The court in Industrial Fuels and Resources/Illinois, Inc. v. Illinois Pollution Control Board, 227 Ill. App. 3d 533, 592 N.E.2d 148, 169 Ill. Dec. 661 (1st Dist. 1992), reversed the Board's decision affirming the City of Harvey's denial of site location suitability approval for a regional pollution control facility in Harvey. The city of Harvey denied approval because it believed that Industrial had failed to satisfy certain statutory criteria under Section 39.2 of the Act. The Board had affirmed the denial on the basis of four of the disputed criteria and had reversed with respect to one criterion. On appeal the court held that Industrial had sufficiently established that the facility was needed and reversed the Board's ruling.

In reviewing criterion (i), necessity of the facility, the court held that Industrial had established the need for the proposed facility and that a finding to the contrary was against the manifest weight of the evidence. As for criterion (ii), the protection of health, safety and welfare, the court held that the City had failed to rebut Industrial's showing that the facility was safe in light of the public health, safety and welfare. Thus, the court found that Board's conclusion that the City's decision was not against the manifest weight of the evidence was incorrect.

The court also held that the decision of the City, with respect to criterion (v), was against the manifest weight of the evidence. The court held that with respect to criterion (v), minimization of danger to the surrounding area, Industrial met its burden of showing that the danger of operational accidents would be minimized by implementation of its emergency safety standards. The court also held that Industrial's emergency response plan was sufficient to satisfy criterion (vii), which calls for an emergency response plan. The court held that any other decision would be against the manifest weight of the evidence.

The court held that Industrial made a prime facie showing as to each criterion and that the City did not rebut, impeach, or contradict any of the evidence submitted by Industrial. Therefore, the court reversed the Board's affirmance of the City's denial of siting approval.

The Fourth District Appellate Court reviewed the argument that the Board should apply a more critical standard of review than the manifest weight standard to local board decisions in McLean County Disposal, Inc. v. County of McLean and the Illinois Pollution Control Board, 207 Ill. App. 3d 477, 566 N.E.2d 26, 152 Ill. Dec. 498 (4th Dist. 1991). In McLean, the local board

heard conflicting expert testimony at the local hearings. McLean County Disposal (MCD) appealed the local board's denial of site location suitability approval based on MCD's failure to satisfy three of the criteria listed in Section 39.2(a). The Board found that there was a conflict in expert testimony on two of the three criteria. Under the manifest weight standard, the Board cannot reweigh expert testimony for its expertness and believability. Therefore, the Board affirmed that the local board's decision's on those two criteria was not against the manifest weight of the evidence. MCD filed an appeal with the appellate court. Relying upon ample case law, the court found that the Board had correctly refused to reweigh the expert testimony under the manifest weight of the evidence standard of review. The court affirmed the Board decision.

In Laidlaw Waste v. Pollution Control Board, 230 Ill. App. 3d 132, 595 N.E.2d 600, 172 Ill. Dec. 239 (5th Dist. 1992), Laidlaw appealed an order of the Board reversing the Village of Roxana's decision to grant site location suitability approval for a pollution control facility. The Board held that because Laidlaw's application for siting approval had been filed within two years of a previous application, which was substantially the same as the instant one, Roxana did not have jurisdiction to consider the application pursuant to Section 39.2(m) of the Act.

In its order, the Board held that the two year time period begins to run as of the date of disapproval of an application instead of the date of its filing. The Board also held that the second application was substantially similar to the first because it sought expansion of the same facility. The Board also found that it did not matter that the two applications were filed before different local governing bodies. The first application was filed with Madison County, the second with the Village of Roxana.

Laidlaw appealed, arguing that the two year time period prohibiting refiling should begin to run on the date of filing the first application. Laidlaw also argued that the Board had exceeded its authority by deciding whether or not the applications were substantially the same de novo instead of deciding whether the decision of Roxana on this matter was against the manifest weight of the evidence. Laidlaw also argued that the Board erred in finding that the two applications were substantially similar within the meaning of Section 39.2(m) of the Act.

The court held that the Board was correct in interpreting the statute to prohibit refiling of a new application within two years of a disapproval of a previous application. As for the Board exceeding its authority by looking at a factual determination de novo, the court held that the Board did not have a record or finding upon which to base a review of the decision. Thus, the Board did not exceed its authority. However, the court

did hold that the Board erred in ruling that the applications were substantially the same.

The court held that the Board's ruling that when two applications seek approval for expansion of the same facility they are substantially similar was in error. The court stated that although the Board discussed the fact that the applications were filed with two different local governing bodies, the Board did not discuss other aspects of the applications. Therefore, the court reversed the Board's decision and remanded the case for further proceedings. The court did this in order for the Board to review the applications as a whole while considering the criteria in Section 39.2(a) of the Act in order to determine whether or not the applications are substantially the same.

When making its decision, the Board is directed by Section 40.1(a) to take "final action" within 120 days and to send a copy of its "decision" to the local board. In Waste Management of Illinois, Inc. v. Illinois Pollution Control Board and Village of Bensenville, 201 Ill. App. 3d 614, 558 N.E.2d 1295, 146 Ill. Dec. 961 (1st Dist. 1990), Waste Management of Illinois (WMI) appealed to the Board the decision of the Village of Bensenville to deny site location suitability approval. On the request of the Board, WMI twice waived the statutory deadline for decision to July 13, 1989. The Board issued an order on July 13, 1989 which affirmed the denial, stated that a supporting opinion would be issued on August 10, 1989, and stated that the time for calculating the 35-day motion for reconsideration limit would begin on August 10, 1989. On August 10, 1989, the Board issued its opinion containing the reasons for supporting the Village's denial. WMI filed a motion for reconsideration and the Board affirmed its prior decision.

WMI filed an appeal with the appellate court arguing that the Board did not take final action within 120 days as required by statute and that the Board's decision was against the manifest weight of the evidence. The court concluded that Section 33(a) and 40.1(a) of the Act, when read together, necessitated that the Board issue both its final determination and the reasons for that decision within 120 days or within the waiver period. The court ruled that the Board's August opinion and order was the actual final determination of the matter. Since the August date was beyond the waiver deadline, the court reversed the Board's decision and found that the application for site location approval was granted by operation of law.

In Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, 145 Ill. 2d 345, 585 N.E.2d 606, 165 Ill. Dec. 875 (1991), an appeal to the Supreme Court of the above case, the Supreme Court reversed the appellate court and affirmed the Board's decision. The Supreme Court held, that the Board's July 13, 1989 order constituted final action although it did not conclude that the order was necessarily final and appealable for purposes of review.

The case of File et. al. v. D & L Landfill, Inc., Bond County Board of Supervisors, County of Bond, State of Illinois, and the Illinois Pollution Control Board, 219 Ill. App. 3d 897, 579 N.E.2d 1228, 162 Ill. Dec. 414 (5th Dist. 1991) involved an appeal from a sitting of a regional pollution control facility. The Bond County Board of Supervisors (County) approved the site under Section 39(c) of the Act and appellants, a group of concerned citizens (Citizens), filed a petition to contest the decision with the Board under Section 40.1(b) of the Act. On review, the Board found the County did not act contrary to the manifest weight of the evidence and that their decision satisfied the requirements for siting found in Section 39.2 of the Act.

On appeal, the citizens argued that the Board's order was against the manifest weight of the evidence in that the County failed to show compliance with criteria i, ii, iii, and vi of Section 39.2(a) of the Act. The appellate court affirmed the Board's decision that the decision of the County was not against the manifest weight of the evidence.

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.

In Citizens Utilities Company of Illinois v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 213 Ill. App. 3d 864, 572 N.E.2d 373, 157 Ill. Dec. 304, (3rd Dist. 1991), the Board had originally granted a variance to Citizens Utilities Company (Citizens). Subsequently, Citizens requested an extension of the variance which the Board denied. Citizens appealed and the appellate court reversed and remanded with directions to grant the extension. The Board granted the extension with conditions the Board interpreted as satisfying the court's order. Citizens again appealed. In this latest appeal, the court found that the relief fashioned by the Board was inconsistent with the court's mandate, and again reversed and remanded with directions.

Underground Storage Tank Fund Reimbursement

Sections 22.18, 22.18b, and 22.18c of the Act provide for enforcement liability and Underground Storage Tank Fund (Fund) eligibility for owners and operators of underground storage tanks (USTs). Section 22.18b contains eligibility requirements for accessing the Fund. Owners and operators who are eligible to

access the Fund may be reimbursed for the costs of corrective action or indemnification. Section 22.18b also explains the deductible amounts which must be subtracted from the total approved amount for each claim.

The case of, Rockford Drop Forge Company v. Illinois Pollution Control Board, and the Illinois Environmental Protection Agency, 211 Ill. App. 3d 505, 582 N.E.2d 253, 164 Ill. Dec. 45 (2nd Dist. 1991), involved an appeal from a final Board order denying Rockford reimbursement for certain cleanup costs associated with a UST leak, from the UST Fund of Section 22.13. The issue in this case was which of the conflicting definitions of UST found in 35 Ill. Adm. Code 731.112, 22.18 (e)(1)(A) of the Act, and 41 Ill. Adm. Code 170.400 (jj)(1)(B) of the Office of the State Fire Marshal(OSFM) rules should apply to Rockford. The court affirmed the Board's decision denying Rockford reimbursement.

On February 4, 1986, when Rockford registered its tanks with the OSFM, Rockford was told that its tanks would be covered by the Fund which was to be established. Rockford's tanks held fuel oil. The majority of the oil was used to heat forge furnaces in the forge shop and a small amount of the oil was used to operate a forklift and other equipment. On October 3, 1989, when Rockford was in the process of converting its operations to natural gas, it discovered that one of the tanks had leaked. When Rockford filed an application for clean-up cost reimbursement with the Agency, Rockford was denied based on the fact that the definition of UST does not include any tank used to store heating oil for use on the premises where stored.

At the time when Rockford filed its application for reimbursement, Section 22.18(e)(1)(A) of the Act provided that the definitions of petroleum and UST should be the same as those in RCRA. The RCRA definition of UST excludes tanks used for storing heating oil for consumptive use on the premises where it is stored. Thus, the Board stated that Rockford's claim turned on whether or not the oil stored in its tanks was for consumptive use on the premises where it was stored. The Board held that the heating oil was consumed since it was not sold and that the small amount of fuel used for operating the forklift and other equipment was de minimis.

Next, the Board held that despite the fact that the tanks were located on the west parcel and that the furnaces were across ninth street on the east parcel, the tanks contents were used on the premises where it was stored. The Board went on to state that pieces of property which are contiguous but are divided by a public or private right-of-way are to be considered a single site.

On appeal, Rockford argued that, because the OSFM definition of UST conflicted with the Agency's and because a OSFM

representative told Rockford in 1986 that by registering that they would be covered by the Fund, fundamental fairness requires Rockford to be allowed reimbursement. Although the court sympathized with Rockford, its equitable powers could not override the plain definition of UST in the statute. Thus, the court affirmed the Board's decision to deny funding. The court also noted that, although the recent amendments to the statute would have allowed Rockford to be reimbursed, the legislature chose not to make the amendments retroactive.

Next, Rockford argued that it was a victim of a taking. Rockford argued that it paid Fund registration fees for its tanks and was later denied coverage from the Fund. The court viewed the fees collected from Rockford in order to register its USTs as registration fees not as insurance premiums, and thus found no taking.

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.

The case of Granite City Division of National Steel Company, Laclede Steel and the Illinois Steel Group v. Pollution Control Board, 221 Ill. USS Division of USX Corp. v. Illinois Pollution Control Board, 221 Ill. App. 3d 68, 581 N.E. 2d 703, 163 Ill. Dec. 549 (5th Dist 1991), involved a rulemaking (R88-21) adopting water quality regulations at 35 Ill. Adm. Code 301-309. The appellate court in this case found the challenged amendments to the water quality regulations valid and affirmed the Board.

In Granite City, the petitioner argued that the narrative standards found at 35 Ill. Adm. Code 302.210 and Subpart F are invalid because they delegate to the Agency the responsibility of setting standards. The court held that the standard for water quality was set by 35 Ill. Adm. Code 302.210 and that the agency must simply "derive and apply criteria" in line with the guidelines for water quality set out by the Board. The right of the Agency to derive and apply criteria, the court held, does not constitute an improper delegation of Board authority.

Next, the petitioners argued that the narrative standard should be held void for vagueness. The appellate court held that the rule was not vague despite the fact that some of the elements for compliance were elements where reasonable people might differ and the rule had no predetermined numeric standards. The appellate court also held that the Board sufficiently looked at the technical feasibility and economic reasonableness of the amendments.

Waste Management Inc. v. IPCB, 231 Ill. App. 3d 278, 595 N.E.2d 1171, 172 Ill. Dec. 501 (1st Dist. 1992), involved the Board's regulations for development, operation and reporting requirements for new and existing nonhazardous waste landfills. (35 Ill. Adm. Code 807 and 810-815.) On appeal, Waste Management argued that the Board acted arbitrially and capriciously in adopting regulations which concern the monitoring and processing of landfill gas and in imposing groundwater modeling and monitoring requirements. Waste Magement also contended that the Board exceeded its statutory authority in promulgating regulations. Finally, Waste Management contended that the Board failed to comply with the applicable law and Board resolutions regarding contact with its Scientific/Technical Section staff.

The court held that with respect to five sections of the regulation, the Board did not act arbitrarially or capriciously. Additionally, the court held that with respect to one section, the Board failed to meet the requirements of section 27(b) of the Act. The court also held that two of the sections were rationally related to the goal of ensuring compliance with the act and that one challenged section fullfiled the statutory requirement of examining the technical feasibility of the section. The court also deferred to the expertise of the Board despite technical disagreement on a challenged section. The court upheld the Board's decision to allow the Agency to unilaterally modify a permit. Finally, the court held that the Board exceeded its statutory authority in imposing a regulation which delays finality of an Agency permit decision pending reconsideration.

Enforcement

The Act provides for standard enforcement actions in Section 30 and for the more limited Administrative Citation (AC) 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 an provision of [the] Act or any rule or regulations of the Baord or permit or term or condition therof." 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 admininstrative citation action can be brought only by the Agency or a delegated local government and enforcement is only for a limited number of violations. A non-discertionary penalty of $500 per violation is imposed in AC cases. In addition, hearing costs may be assessed if the AC is appealed and the appeal is lost.

The case of Environmental Protection Agency v. Vander, 219 Ill. App. 3d 975, 579 N.E.2d 1215, 162 Ill. Dec. 401 (5th Dist. 1991) involved an appeal from the Board's decision in an AC case.

The Board held that John Vander had not violated Section 21 (q)(1)(3) of the Act and the Agency appealed contending that the Board based its opinion on an erroneous interpretation of the definition of "open dumping." The appellate court agreed with the Agency and reversed and remanded the case.

In this case, after demolishing two buildings, John Vander burned the demolition debris. Vander was charged with open dumping resulting in litter and open burning. The question before the appellate court was the definition of open dumping.

The court held that open dumping occurs when, "refuse is consolidated at a disposal site that does not fulfill sanitary landfill requirements." The court went on to state that a site becomes a disposal site when the waste is disposed of in such a way that it enters the environment, is emitted into the air, or is discharged into water. The court in Vander explained that mere consolidation of refuse does not constitute open dumping.

Site Specific Rulemakings

Section 27(a) of the Act provides that the Board may adopt substantive regulations and that the Board may make different provisions as required by circumstances for different sources. This Section also provides that the Board may include regulations specific to individual persons or sites. In adopting site specific rules, the Board must take into account several things including, the existing physical conditions, the character of the areas involved, the character of the surrounding land uses and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

The case of, Citizens Utilities Co. of Ill. v. IPCB, IEPA, and the Village of Bolingbrook, 216 Ill. App. 3d 629, 576 N.E. 2d 415, 159 Ill. Dec. 746 (3rd Dist. 1991), centered on the economic reasonableness of the rulemaking. This case constituted the fourth appeal to the appellate court of this matter.[1] The instant case involved a request by Citizens that the Board adopt

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[1] The third appeal, Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, 213 Ill. App. 3d 664, 572 N.E.2d 373, 157 Ill. Dec. 304 (1991) (Citizens III), is described in the variance section of this document. The purpose of the Citizens III appeal was to extend and modify the variance until completion of the site-specific rulemaking at issue in this appeal.

site-specific water quality and effluent rules for one of Citizen's waste water treatment plants. Citizens argued in this case that the Board had failed to determine the costs and benefits of Citizens' proposal as mandated by prior appeal and remand in this matter. Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, 134 Ill. App. 3d 111, 479 N.E.2d 1213, 89 Ill. Dec. 207 (1985) (Citizens I) and Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, 152 Ill. App. 3d 122, 504 N.E.2d 224, 105 Ill. Dec. 355 (1987) (Citizens II).

The Board argued that the Department of Energy and Natural Resources (DENR) was authorized to do an economic impact study regarding the proposed regulation and that the study did not satisfy the cost/benefit evidence requirement. Additionally, the Board argued that Citizens had the burden of proof to show that the general standards were arbitrary, unreasonable, or capricious.

The appellate court agreed that the DENR study was incomplete. However, it stated that in Citizens I, the court held that the obligation to make any required changes to the economic impact study was with the Board. Additionally, the court stated that if the study was incomplete it was the Board's responsibilty to supplement the record. The court also stated that the Board had not adhered to the mandates of Citizens II. In Citizens II the appellate court held that ecomic impact related to the community and not to Citizens. The court believed that on remand, the Board had focused on the reasonableness of the expenditure for Citizens and not on the economic impact on the ratepayers.

The court stated that the administrative record below was inadequate or incomplete and therefore, the court vacated the Board order and remanded the case for further proçeedings.

Miscellaneous

The Act establishes various other obligations upon the Board and creates other causes of action which the Board occasionally processes. The next case arose out of a permit appeal before the Board but focusses on the definitions and interrelation of "hazardous (infectious) hospital waste", "hazardous waste", and the hazardous waste fee program. The final case involved certification of a cooling plant for property tax purposes.

In National Environmental Services Corporation v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 212 Ill. App. 3d 109, 570 N.E.2d 1245, 156 Ill. Dec. 523 (4th Dist. 1991), the National Environmental Services Corporation (NESC) appealed a decision of the Board which found that hazardous (infectious) hospital waste accepted for incineration by NESC was subject to the hazardous waste fee under Section 22.2

of the Act. The issue before the court was whether or not a "hazardous hospital waste", as defined in Section 3.13, constituted a hazardous waste subject to a fee under Section 22.2. The court concluded that "hazardous hospital waste" and "hazardous (infectious) hospital waste" are interchangeable terms and found that both were included in the definition of hazardous waste in Section 3.15 and subject to a fee pursuant to Section 22.2. The Board's decision was affirmed.

In Reed-Custer Community Unit School District No. 255-U v. Illinois Pollution Control Board, Com. Ed. Co., and Illinois Environmental Protection Agency, 232 Ill. App. 3d 571, 598 N.E.2d 802, 173 Ill. Dec. 828 (1st Dist. 1992), the appellate court affirmed the Board's decision denying Reed-Custer's petition to revoke certification of the Braidwood cooling plant for property tax purposes.

Commonwealth Edison (CWE) first applied to certify its Braidwood cooling pond as a "pollution control facility" in April of 1985. In May of 1985, the Agency denied CWE's application. In November of 1985 CWE asked the Agency to again look at its application in light of the recent Board's recent decision that certification of the Dresden cooling pond at the Dresden Power Station should be reinstated. In April of 1986, the Agency certified the Braidwood cooling pond as a pollution control facility. Once certification was granted the facility was removed from the local tax rolls for real property tax assessments and it was also allowed to be valued at 33 1/3% of the fair cash value of its economic productivity to its owners as provided for in the Revenue Act of 1939. Ill Rev. Stat. 1987, ch. 120 par. 502a-1.

On December 31, 1987, Reed-Custer filed a petition to revoke certification based on Section 21a-6 of the Revenue Act. Section 21a-6 allows the Board to revoke or modify a pollution control certificate if it was obtained by fraud or misrepresentation, if the certificate holder has failed to "substantially" proceed with the construction, reconstruction or acquisition of the pollution control facility, or if the pollution facility in the certificate is not being used for the intended purpose.

In its petition, Reed-Custer argued that CWE in its application fraudulently misrepresented that its facility was primarily a pollution control facility. Reed-Custer argued that the Braidwood pond was used to provide the Braidwood power plant with a supply of cooled water and was not really a pollution control facility.

In denying Reed-Custer's petition for revocation, the Board pointed out that the Revenue Act limits the Board's review to whether CWE knowingly made false statements in its application, not whether or not the certificate was improperly issued in the first place. The Appellate Court agreed with the Board in that

the Revenue Act does not allow the Board to determine whether or not the certificate was improperly issued in the first place. The Court affirmed the Board's decision holding, that the Board's decision was not against the manifest weight of the evidence.

APPENDIX A

Illinois Pollution Control Board

Expenditures by Fiscal Year (000 omitted)*

	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92
APPROPRIATED:	$691.10	$815.00	$1,098.50	$1,221.60	$1,267.50	$1,210.80	$1,559.40	$1,713.20	$1,621.00	$1,579.20
EXPENDITURES:	$676.50	$787.90	$976.70	$1,212.30	$1,256.90	$1,194.50	$1,417.50	$1,641.10	$1,779.80	$1,768.80
Personal Services	$331.90	$387.60	$467.10	$663.00	$684.90	$666.30	$731.00	$763.80	$942.40	$997.90
Retirement	$15.30	$22.20	$27.30	$37.30	$38.80	$32.30	$32.20	$34.20	$40.40	$40.20
Retirement - Supplemental									$0.00	$18.70
Social Security	$22.20	$26.70	$33.20	$48.70	$48.70	$47.60	$50.20	$57.50	$71.00	$75.50
Group Insurance									$3.70	$12.20
Contractual Services	$161.10	$205.00	$208.30	$119.50	$119.50	$110.80	$108.30	$147.00	$140.00	$112.90
Travel	$17.40	$19.80	$30.10	$29.80	$29.80	$27.30	$33.10	$33.30	$30.80	$30.30
Commodities	$5.00	$8.20	$6.90	$8.20	$8.20	$62.60	$10.00	$10.00	$11.40	$10.20
Printing	$43.80	$32.40	$45.80	$19.90	$19.90	$3.50	$47.40	$82.30	$42.90	$22.90
Equipment	$1.00	$2.30	$10.80	$4.00	$4.00	$33.80	$3.00	$5.00	$5.10	$5.20
Electronic Data Processing			$30.00	$72.60	$72.60	$30.00	$58.40	$81.60	$95.80	$84.00
Telecommunications	$13.60	$17.70	$21.80	$33.00	$33.00	$28.60	$36.40	$42.40	$41.10	$27.20
Hearing Officers	$23.50	$27.70	$26.90	$39.50	$39.50	$75.80	$36.40	$44.10	$47.40	$36.20
Court Reporting	$41.60	$38.30	$33.70	$91.00	$91.00	$9.60	$72.40	$72.30	$63.00	$21.90
Expert Tesitmony Special Studies			$25.80	$37.00	$37.00	$57.00	$9.60	$10.50	$0.00	$0.00
Environmental Trust Fund Grant							$70.20	$68.10	$115.30	$239.50
U. S. Environmental Proctection Fund							$118.90	$151.80	$95.50	$0.00
Used Tire Management Fund								$37.20	$34.00	$34.00

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

1. FY71 Through FY82 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-FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	Total
Water[1]	100	6	3	10	4	6	4	4	137
Air	156	24	39	11	8	4	7	16	265
Land[2]	31	9	5	10	4	12	15	11	97
Public Water Supply	6	0	1	2	1	0	0	2	12
Noise	26	0	0	0	0	0	0	1	27
Other (Procedural Rules, etc.)	50	0	1	1	0	0	2	1	55
TOTAL	369	39	49	34	17	22	28	35	593

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-FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	Total
Variances									
Water	1369	51	38	41	29	16	20	31	1595
Air	1116	15	11	42	23	15	11	10	1243
Land	93	1	8	13	37	46	60	43	301
Public Water Supply	169	17	27	15	14	15	23	9	289
Noise	23	0	0	1	2	0	0	0	26
Special Waste Hauling	16	0	2	3	0	0	0	0	21
TOTAL	2786	84	86	115	105	92	114	93	3475
Enforcement									
Water	475	7	4	3	7	5	5	1	507
Air	465	16	10	4	11	62	21	20	609
Land	381	7	4	6	2	1	0	14	415
Public Water Supply	107	1	4	0	1	1	1	1	116
Noise	59	0	0	3	6	9	11	11	99
Special Waste Hauling	4	0	2	0	0	2	0	0	8
TOTAL	1491	31	24	16	27	80	38	47	1754
Permit Appeals	370	90	97	71	66	49	59	45	847
Landfill Siting Reviews	31	7	13	10	8	5	10	5	89
Administrative Citations	0	0	86	136	197	210	80	80	789
UST	0	0	0	0	0	2	15	61	78
Adjusted Standards*	0	0	0	2	3	7	1	14	27
Other	192	1	2	4	2	2	0	0	203
GRAND TOTAL	4870	213	308	354	408	447	317	345	7260

* By statute Adjusted Standards modify rules, but are considered adjudicatory proceedings.

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

Filed By:	FY71-FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	Total
Citizens									
Water	85	0	1	1	3	0	2	1	93
Air	70	1	2	1	2	1	3	3	83
Land	26	4	1	5	1	0	0	5	42
Public Water Supply	7	0	4	0	1	0	1	0	13
Noise	24	0	0	3	5	9	11	11	63
Underground Storage Tank	0	0	0	0	0	0	0	2	2
Special Waste Hauling	1	0	0	0	0	0	0	0	2
TOTAL	213	5	8	10	12	10	17	22	297
Attorney General*									
Water	390	7	3	2	4	5	3	0	51
Air	395	15	8	3	9	61	18	17	180
Land	355	3	3	1	1	1	0	7	35
Public Water Supply	100	1	0	0	0	1	0	1	8
Noise	35	0	0	0	1	0	0	0	4
Special Waste Hauling	3	0	2	0	0	2	0	0	4
TOTAL	1278	26	16	6	15	70	21	25	1457
GRAND TOTAL	1491	31	24	16	27	80	38	47	1754

* The Attorney General files cases on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois.

APPENDIX E

Illinois Pollution Control Board

Number of Opinions and Orders of the Board by Fiscal Year*

Type of Filing	FY71-FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	Total
Cases									
Opinion & Orders	3,624	127	110	105	106	95	143	128	4,438
Orders	5,311	403	454	568	609	746	594	763	9,448
Dissenting	195	33	10	24	16	42	91	26	437
Concurring	139	33	15	11	9	18	32	12	269
Supplemental Statements	59	2	4	0	3	3	3	1	75
TOTAL	9,328	598	593	708	743	904	863	930	14,667
Regulations									
Opinion & Orders	291	52	55	70	54	79	53	59	713
Orders	635	63	90	61	72	78	77	79	1,155
Dissenting	30	12	5	3	1	6	2	4	63
Concurring	11	4	7	4	2	6	6	2	42
Supplemental Statements	9	0	1	0	0	0	0	2	12
TOTAL	976	131	158	138	129	169	138	146	1,985
GRAND TOTAL	10,304	729	751	846	872	1,073	1,001	1,076	16,652

*Includes Final Decisions.

APPENDIX F
Illinois Pollution Control Board
Appellate Court Decisions During Fiscal Year 91

Case Name	Decision	Case Citation
Pielet Brothers' Trading Inc. v. Illinois Pollution Control Board and the Illinois Environmental Protection Agency	Affirmed and Reversed	217 Ill. App. 3d 125, 576 N.E.2d 914, 159 Ill. Dec. 991, (5th Dist. 1991)
Citizens Utilities Company of Illinois v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Reversed and Remanded	213 Ill. App. 3d 864, 572 N.E.2d 373, 157 Ill. Dec. 304, (3rd Dist. 1991)
National Environmental Services Corporation v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Affirmed	212 Ill. App. 3d 109, 570 N.E.2d 1245, 156 Ill. Dec. 523, (4th Dist. 1991)
McLean County Disposal, Inc. v. County of McLean and the Illinois Pollution Control Board	Affirmed	207 Ill. App. 3d 477, 566 N.E.2d 26, 152 Ill. Dec. 498, (4th Dist. 1991)
The Village of Sauget v. Illinois Pollution Control Board and Illinois Environmental Protection Agency. Monsanto Company v. Illinois Pollution Control Board and Illinois Environmental	Reversed and Remanded	207 Ill. App. 3d 974, 566 N.E.2d 724, 152 Ill. Dec. 847, (5th Dist. 1990)
Reichhold Chemicals, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency	Reversed and Remanded	204 Ill. App. 3d 674, 561 N.E.2d 1343, 149 Ill. Dec. 647, (3rd Dist. 1990)
Bi-State Disposal, Inc. v. Illinois Environmental Protection Agency and Illinois Pollution Control Board	Affirmed	203 Ill. App. 3d 1023, 561 N.E.2d 423, 149 Ill. Dec. 145 (5th Dist. 1990)
IBP, Inc. v. Illinois Pollution Control Board and the Illinois	Reversed and Remanded	204 Ill. App. 3d 797, 563 N.E.2d 72, 150 Ill.

APPENDIX F (continued)

Environmental Protection Agency		Dec. 485 (3rd Dist. 1990)
Rick Moore and Leonard Morris v. Illinois Pollution Control Board, Wayne County Board, Daubs Landfill, Inc., and Edith Simpson	Affirmed	203 Ill. App. 3d 855, 561 N.E.2d 170, 148 Ill. Dec. 864, (5th Dist. 1990)
Metropolitan Waste Systems, Inc., Spicer, Inc., and Spicer Properties, Inc. v. Illinois Pollution Control Board and City of marseilles	Affirmed	201 Ill. App. 3d 51, 558 N.E.2d 785, 146 Ill. Dec. 822, (3rd Dist. 1990)
Waste Management of Illinois, Inc. v. Illinois Pollution Control Board and Village of Bensenville	Reversed	201 Ill. App. 3d 614, 558 N.E.2d 1295, 146 Ill. Dec. 961, (1st Dist. 1990)

APPENDIX F (continued)

Illinois Pollution Control Board
Appellate Court Decisions During Fiscal Year 92

Case Name	Decision	Case Citation
Reed-Custer Community School District No. 53 v. Illinois Pollution Control Board, Commonwealth Edison Co. and the Illinois Environmental Protection Agency	Affirmed	232 Ill. App. 3d 571, 597 N.E.2d 802, 173 Ill. Dec. 828 (1st Dist. 1992)
Laidlaw Waste Systems (Madison), Inc. v. The Pollution Control Board, Village of Roxana, Richard Worthen, Clarence bohm, Harry Parker, George Arnold, Cityof Edwardsville, City of Troy, Village of Maryville, and Village of Glen Carbon	Reverse and Remand	230 Ill. App. 3d 132, 595 N.E.2d 600, 172 Ill. Dec. 501 (5th Dist. 1992)
Waste Management of Illinois, Inc. v. Illinois Pollution Control Board 4th Div., 6/11/92	Affirmed in part Reversed in part	231 Ill. App. 3d 278, 595 N.E.2d 1171, 172 Ill. Dec. 501 (1st Dist. 1992)
Industrial Fuels & Resources/Illinois, Inc. v. Illinois Pollution Control Board and City Council of the City of Harvey	Reversed	227 Ill. App. 3d 533, 592 N.E.2d 148, 169 Ill. Dec. 661 (1st Dist. 1992)
ESG Watts, Inc. v. Illinois Pollution Control Board, Illinois Environmental Protection Agency and The People of the State of Illinois	Affirmed	224 Ill. App. 3d 600, 586 N.E.2d 1323, 167 Ill. Dec. 51 (3rd Dist. 1992)
ESG Watts, Inc. v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, and The People of the State of Illinois	Affirmed	224 Ill. App. 3d 592, 586 N.E.2d 1320, 167 Ill. Dec. 48 (3rd Dist. 1992)

APPENDIX F (continued)

Rockford Drop Forge Company v. The Illinois Pollution Control Board, and the Illinois Environmental Protection Agency	Affirmed	211 Ill. App. 3d 505, 582 N.E.2d 253, 164 Ill. Dec. 45 (2nd Dist. 1991)
Granite City Division of National Steel Company, Laclede Steel and the Illinois Steel Group v. The Pollution Control Board. USS Division of USX Corporation v. The Pollution Control	Affirmed	221 Ill. App. 3d 68, 581 N.E.2d 703, 163 Ill. Dec. 549 (5th Dist. 1991)
Horace File, Erwin Hediger, Arlin Woker, Andy Tift, Layton Peddicord, Burnell Newman, Laverle Eakle, Lynn Schmollinger, Howard Pringle, Reid Bingham, Craig Woker, Mrs. O.J. Dail, Jenete Tift, Arlene Dail, Glen Miles, Juanita Hediger, Leila Miles, Carolyn Spradling, Donna Hampton, Hollie Willman, Charles H. Funk, Leroy Weise, Mike Eaton, Pan Funk, Jim Stoecklin, Mary Bloemker, Donald Spradling, Bob Bowen, Don Martin, Jeanette File, and Bond County Concerned Citizens v. D. & L Landfill, Inc., Bond County Board of Supervisors, County of Bond, State of Illinois and Illinois Pollution Control Board	Affirmed	219 Ill. App. 3d 897, 579 N.E.2d 1228, 162 Ill. Dec. 414 (5th Dist. 1991)
Illinois Environmenal Protection Agency v. The Pollution Control Board and John Vander	Reversed and Remanded	219 Ill. App. 3d 975, 579 N.E.2d 1215, 162 Ill. Dec. 401 (5th Dist. 1991)
Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, Illinois Environmental Protection Agency and Village of Bolingbrook	Reversed and Remanded	216 Ill. App. 3d 629, 576 N.E.2d 415, 159 Ill. Dec. 746 (3rd Dist. 1991)

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Case Name	Decision	Case Citation
Waste Management of Illinois, Inc. v. The Illinois Pollution Control Board, et al.	Affirmed Bd Reversed App Ct for 1st Dist.	145 Ill.2d 345, 585 N.E.2d 606, 165 Ill. Dec. 875

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