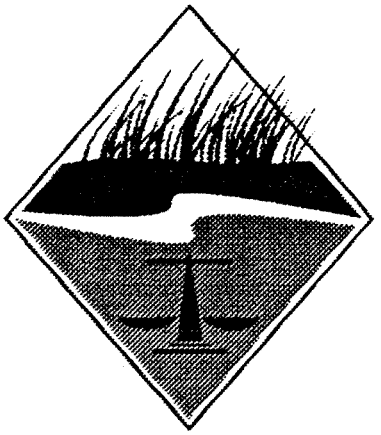
1994

Annual Report



Jim Edgar
Governor

State Of Illinois
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

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Honorable Jim Edgar, Governor of Illinois
Honorable Members of the General Assembly

We are pleased to share with you the Annual Report of the Illinois Pollution Control Board for Fiscal Year 1994.

In Fiscal Year 1994, the Board completed its twenty-fourth year of operation. Over the years the complexity and number of environmental issues has steadily increased. New federal and state laws, which to some extent are interrelated, have greatly increased the volume of regulations that the Board must adopt and also consider when adjudicating cases. This past year was an ambitious year for the Board and to meet the new challenges, we made significant improvement in our effort to move rulemakings and contested cases expeditiously through the decision process.

Our objectives are to provide a sensible approach to environmental regulation in the State of Illinois; to provide a forum in which other agencies, the regulated community, environmentalists and conservationists, all have full access to make various views known; and to provide fair resolutions to disputes. With these objectives in mind, we hope to effectuate a balance between Illinois' environmental interests and Illinois' business interests which acknowledges that both are essential to the quality of life in this great state.

The Illinois Pollution Control Board is committed to continued improvement. This annual report provides information on all aspects of the Board's authority and responsibility for protecting the environment under the Illinois Environmental Protection Act and, specifically, discusses the Board's accomplishments between July 1, 1993 and June 30, 1994.

Sincerely,

Claire A. Manning

Claire A. Manning
Chairman

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Board Member Changes July 1993 - June 1994

On May 1, 1993, Governor Edgar appointed Claire A. Manning to succeed Dr. John C. Marlin as Chairman of the Illinois Pollution Control Board.

Chairman Manning is an attorney specializing in administrative law, and has a J. D. from Loyola University with a BA in English and Speech. Chairman Manning was former Acting Chairman and Member of the Illinois State Labor Relations Board; Visiting Professor, University of Illinois, Institute of Labor and Industrial Relations; President-Elect of the National Association of Labor Relations AGencies; Member, Industrial Relations Research Association and Chief Labor Relations Counsel, State of Illinois, Department of Central Management Services.

Dr. Marlin was appointed to the Hazardous Waste Research and Information Center in Champaign, where he will develop pollution prevention programs. In FY 1994, three veteran Board Members left the Board; Joan G. Anderson, Bill S. Forcade and Michael L. Nardulli. Emmett E. Dunham II was appointed to the seat previously held by Bill Forcade and Marili McFawn was appointed to the seat previously held by Joan Anderson. Three current Board Members were reappointed to their positions: Ronald C. Flemal, G. Tanner Girard and J. Theodore Meyer.

The seat previously occupied by Michael L. Nardulli was still vacant at the end of FY 1994.

Board Member Emmett E. Dunham II was appointed to the Board effective November 16, 1993. Mr Dunham holds a B.S. and M.S. in Biology, and has taken numerous post-graduate courses in Environmental and Chemical Engineering at the Illinois Institute of Technology. He received a J.D. in 1991 from Kent Law School. From 1985 to the present, he served successively as the Environmental Manager of the Enterprise Companies and the Valspar Corporation, and most recently as Regulatory Compliance Engineer for Acme/Borden. From 1973 to 1985 he served as a microbiologist and a Pollution Control Officer with the Chicago Metropolitan Sanitary District.

Board Member Marili McFawn was appointed to the Board effective November 16, 1993.

Ms. McFawn has a J.D. from Loyola University. From 1985-1990, Ms. McFawn held a position with the legal firm, Schiff, Hardin & Waite, and became a partner in 1988. While there, she advised and represented numerous industrial and utility clients in environmental matters. From 1981-1984, she was an attorney assistant serving under former Board Vice-Chairman Irvin Goodman, former Board Chairman Jacob Dumelle and current Member Theodore Meyer. Ms. McFawn was an enforcement attorney with the Illinois Environmental Protection Agency from 1980-1981.

Board Member Ronald C. Flemal was reappointed to the Board on November 16, 1993. Dr. Flemal was first appointed to the Board in 1985. Dr. Flemal has a B.S. in geology from Northwestern University and a Ph.D. in geology from Princeton University. Prior to his Board appointment, Dr. Flemal was professor of geology at Northern Illinois University from 1967 to 1985. He has also held past positions as research affiliate with the Illinois Geological Survey, and as geologist with the U.S. Bureau of Mines.

Board Member G. Tanner Girard was reappointed to the Board on June 29, 1994. Dr. Girard was appointed to the Board in 1992. Dr. Girard has a B.S. in Biology from Principia College, a M.S. in biological science from the University of Central Florida and a Ph.D. in science education from Florida State University. Dr. Girard was professor of biology and environmental sciences at Principia College from 1977 to 1992. He is former Chairperson of the Illinois Nature Preserves Commission, former President of the Illinois Audubon Society and former Vice-President of the Illinois Environmental Council.

Board Member J. Theodore Meyer was reappointed on June 29, 1994. Mr. Meyer was first appointed to the Board in 1983. He has a B.S. in biology and chemistry from John Carroll University and has completed post-graduate science courses at the University of Chicago. He has a J.D. from DePaul University. Mr. Meyer was a Representative in the Illinois General Assembly from 1966-1972 and 1974-1983. Mr. Meyer's numerous honors as a Representative included the Chairmanship of the House Energy and Environment committee.

OPERATIONS OF THE POLLUTION CONTROL BOARD

A. The Structure of the Pollution Control Board

As specified in the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111 1/2, 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, by a group of environmental scientists, and by a group of staff attorneys under the direction of a senior attorney. Beginning in July 1993, the Board added staff hearing officers in addition to its pool of contractual attorneys in private practice to act as hearing officers in contested adjudicatory cases. The staff and contractual hearing officers act under the direction of a chief hearing officer.

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 attendane 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 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 inpection 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 transact its business at regularly scheduled meetings held at least once a month; 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 waste supply, mine-related pollution, livestock-related pollution, hazardous and non-hazardous waste, noise and atomic radiation are codified at 35 Ill. Code Parts 200-1000.

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 re. 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. 111½, 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 interest.

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. Rev. Stat. ch 96½, par. 7401 et seq. Therefore, DENR's regulatory interaction with the Board was largely confined to preparation and presentation of economic information. Where DENR has produced research material other than EcIS on existing or proposed rules for presentation to the Board, it was usually done at the specific mandate of the General Assembly, e.g. Ill. Rev. Stat. ch. 111½, par. 1022.9.

Effective January 1, 1989, SB 1834, P.A. 85-1048 removed the mandatory EcIS requirement from the Act. The Board, rather DENR was empowered to determine whether the EcIS should be conducted. Between January, 1989 and July, 1989, the Board opted to require an EcIS in fewer than ten percent of rulemakings proposed. The EcIS requirement was removed from the Act in its entirely from the Act by P.A. 87-860, effective July 1, 1992. It is too soon to tell whether this amendment will effectively terminate DENR's participation in the regulatory process.

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. 1991 ch. 111½, 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. 111½, pars. 14.4, 1021(m).

The most far-reaching procedural mandates were adopted in the 1977 Illinois Administrative Procedure Act ("IAPA") Ill. Rev. Stat. 1991 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 the 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.

Several 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 first major 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.

With passage into law of SB 1834, effective January 1, 1989, Title VII of the Act provided 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. 111½ 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. 111½ 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. 111½, pars. 1027, 1028, 1987. The only exception was 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)).

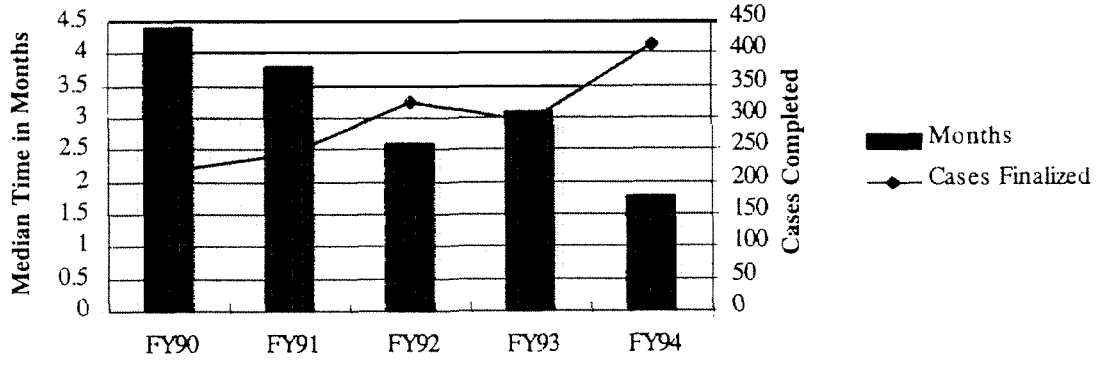
The "identical in substance" and federally required categories were created to expedite processing of certain rules which implement federal programs, and to varying degrees exempt the proceeding from otherwise applicable requirements of the Act; identical in substance rules were also exempted from some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

The second major legislative revision to the Act's rulemaking structure is the recently exacted SB1295, P.A. 87-1213, effective September 26, 1992. This amendment was adopted in response to concern about the state's ability to timely fulfill various requirements for action dictated by the federal Clean Air Act Amendments of 1990 (CAAA). Among other things, SB1295 creates an identical in substance provision in Section 28.4 unique to CAAA rules. The most significant modification to the system, however, is the establishment of the CAAA fast tract rulemaking process. This process is designed to ensure adoption of CAAA rules by the Board no later than 150 days after the Board's receipt of a proposal by the Agency. In order to accomplish this goal, strict limitations and deadlines are imposed on all facets of the proceeding, including the form of the proposal, the number and nature of the hearings to be held, and the timing and scope of actions which may be, taken by the Board.

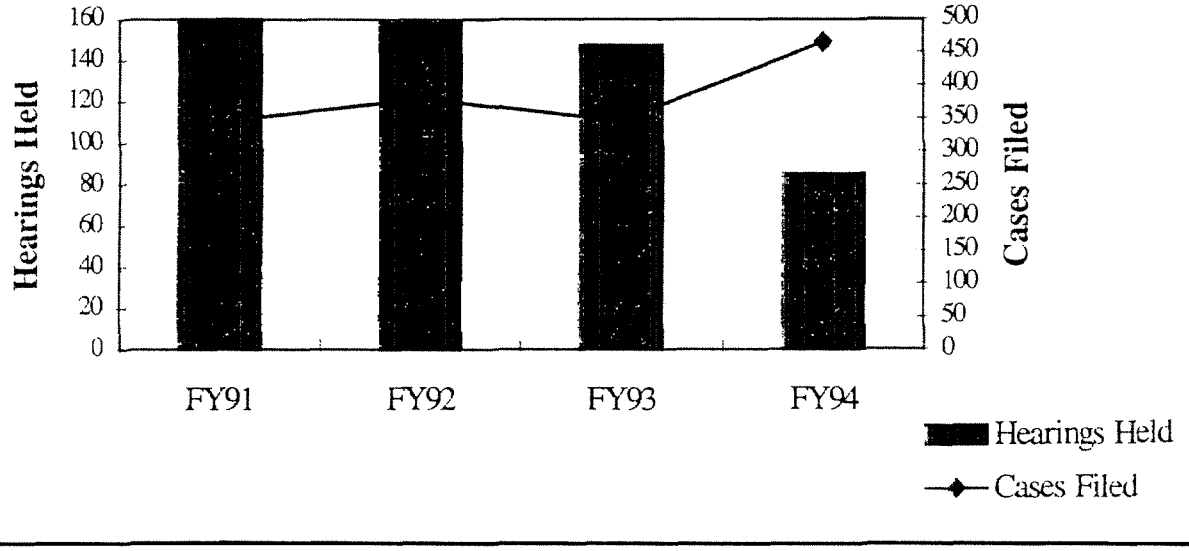
D. Activities of the Board

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.

MEDIAN TIME TO COMPLETE A CONTESTED CASE AND NUMBER OF CASES COMPLETED



HEARINGS HELD AND CASES FILED



1. Rulemaking

a. General Rulemaking

Any persons 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.

Although a formal EcIS is no longer required by statute, economic impact information continues to be important to environmental rulemaking. A rule's proponent is required to describe the universe of affected sources and facilities and the economic impact of the proposed rule. The Board itself continues to be required to conduct at least one economic impact hearing, and to make a written determination as to whether any rule it adopts has any adverse economic impact on the people of the "State of Illinois".

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 notice period has elapsed, if the agency determines to proceed with rulemaking "second notice" of the proposed rules must b submitted to JCAR. The second notice period is also a 45-day period, during 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 give 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 "proposals 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.

The CAAA is identical in substance procedure of Section 28.4 differs from the general one only in that the Agency, rather than the Board itself, is to propose the rules. Although this procedure has not yet been utilized, it is anticipated that the same sort of coordination effort of all affected agencies and entities will be employed to insure timely completion of these rulemakings.

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 ofa 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.

d. CAAA Fast-track Rules

Section 28.5 defines a fasts track rulemaking proceeding as a proceeding to promulgate a rule that the CAAA requires to be adopted before December 31, 1996. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. All fast-track rules must be adopted under procedures set for in this Section.

Section 28.5 establishes content requirements for any CAAA proposal made by the Agency. Once the proposal is filed, the Board is required to take several specified actions, and to enforce deadlines calculated from the date of the receipt of the proposal.

Day 14 Filing of proposal for Illinois Register publication and scheduling of 3 sets of hearings

Day 45 Deadline for filing of testimony to be given at first hearing(s)

Day 55 Conduct first hearing(s) for receipt of Agency testimony concerning the proposal-hearing to be continued from day to day until finished

Day 62 Deadline for any person to request second hearing(s)

Day 92 Conduct second hearing for testimony by affected entities and interested parties (unless hearing cancelled at Agency request)

Day 106 Conduct third hearing for Agency to material presented at second hearing (unless hearing cancelled at Agency request)

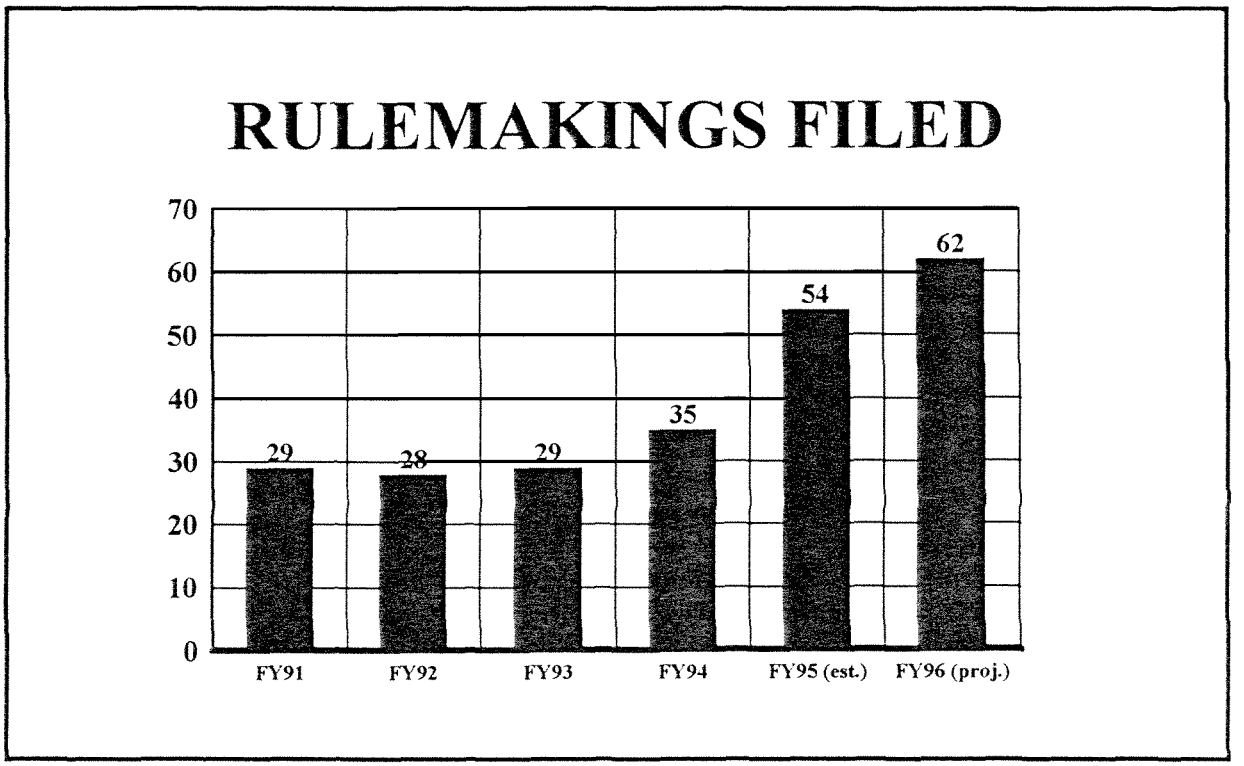
Day 130 Adoption of second notice order JCAR review (date depending on whether third hearing held)

or

Day 150

Day ? Adoption of final rule upon receipt of JCAR certificate of no objection and submission of rule to the Secretary of State within 21 days

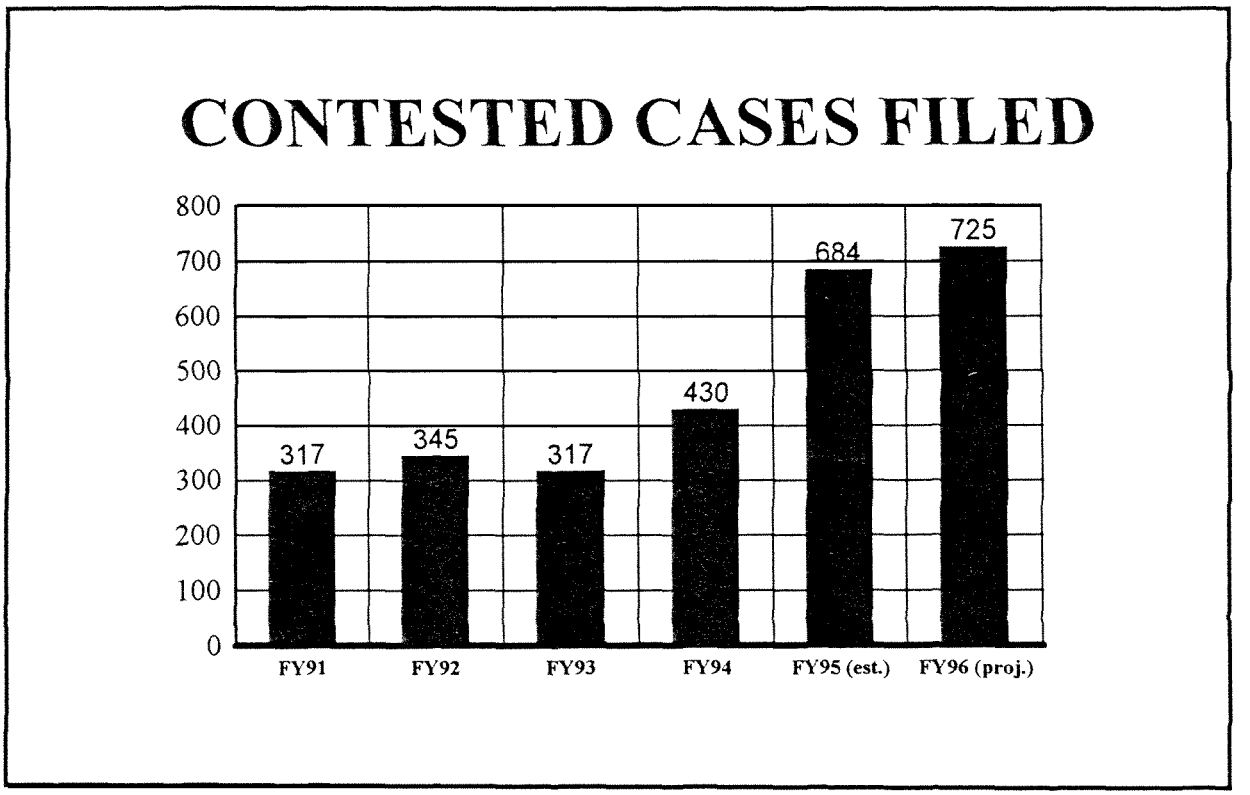
While the statute is very detailed in some of its procedures, Section 28.5 also raises several questions of interpretation as to specific provisions. In order to provide guidance to participants, particularly in the first proceedings, the Board has by resolution address some of these issues. In the Matter of: Clean Air Act Rulemaking Procedures Pursuant to Section 28.5 of the Environmental Protection Act, As Added by P.A. 87-1213, RES 92-2 (October 29, 1992 and December 3, 1992).



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. Generally, 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".

However, a 1991 amendment to the Act allows the parties in certain enforcement cases to request relief from the requirement of a hearing, where the parties have submitted to the Board a stipulation and proposal for settlement. Public Act 87-0134, effective August 13, 1991. The Board may, in its discretion, deny the request and also that any person may, within 21 days of notice from the Board, demand in writing that a hearing be held. In such cases, the Board will be obligated to conduct a hearing despite the parties' request.

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 limits for the NPDES program is $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 requests a hearing 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. 1991 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.

Hearings are held in adjusted standards cases if the petitioner requests a hearing, or if any person objects to the grant of an adjusted standard within 21 days of the filing of a petition.

There are no statutory decision deadlines in adjusted standards cases.

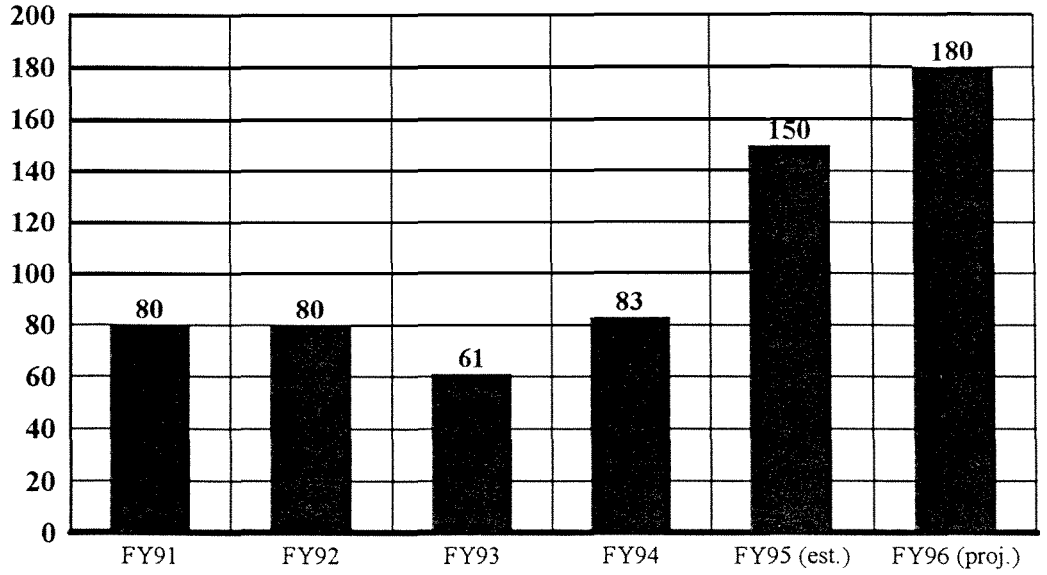
c. *Review of Decisions By the Agency, the Office of the State Fire Marshall, and Local Government*

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. Additionally, Title XVI of the Act, which establishes the Leaking Underground Storage Tank (LUST) Program, provide for Board review of various decisions of the Agency and the Office of the State Fire Marshall (OSFM) implementing the LUST program.

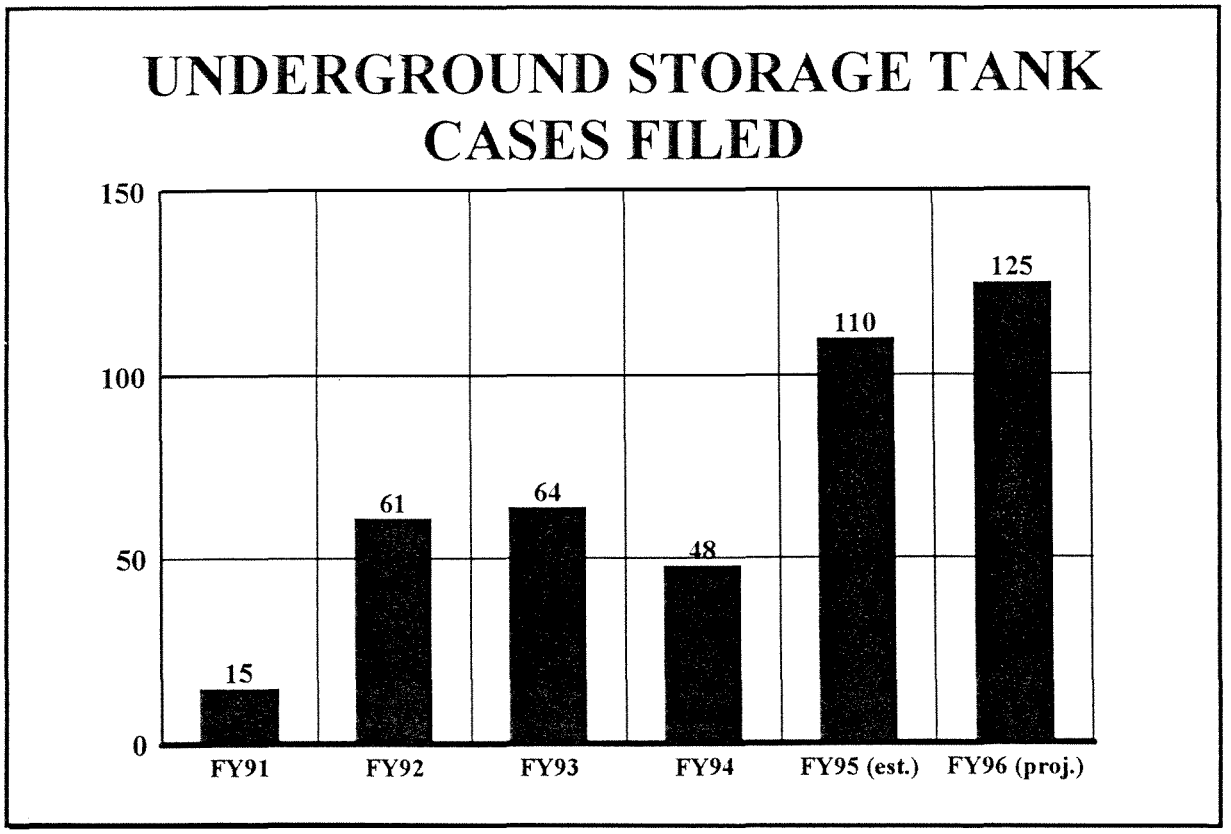
Section 40(a) of the Act authorizes an applicant to appeal the Agency's denial of a permit, as well as the conditions of any permit issued. In addition, Section 40(b) provides for the appeal of RCRA permits granted by the Agency for a hazardous waste disposal site by third parties so located as to be 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 for variances: the Board must make a decision within 120 days of filing 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.

ADMINISTRATIVE CITATION CASES FILED



Illinois has had a program for remediating environmental problems caused by leaking underground storage tanks (UST) and an Underground Storage Tank Fund (UST Fund) since 1986. The UST program was significantly amended in 1993 with the enactment of P.A. 88-496, effective September 13, 1993. P.A. 88-396 adds a new Title XVI to the Act, creates new sections 57 & 59, and repeals the former law's Sections 22.13, 22.18, 22,18b, and 22.18c. Pursuant to the 1993 amendments the Board now hears appeals from OSFM decisions in addition to the appeals from Agency decisions which it began to hear in 1990. These OSFM and Agency decisions include determinations of eligibility to collect from UST Fund, the amount of the deductible as to be applied from Fund reimbursements, the amount of money to be reimbursed for various expenses and other types of decisions enumerated in the statute. These UST appeals are required to be heard by the Board "in the manner provided for the review of permit decisions in Section 40 of the Act" (e.g. 55.8(c)) (which is described immediately above).



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 the 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 SB 172 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 the 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 the 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. 1991 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).

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 judgement 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 decisions 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 6 Board decisions in fiscal year 1994. Additionally, the Supreme Court reviewed one case of appellate court decisions based on appeals from Board decisions. The cases are organized by section of the Act and discussed below.

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 Illinois Environmental Protection 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 the 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 of the Act. The final decision of the Board is reviewable by the appellate court.

In Illinois Environmental Protection Agency v. Illinois Pollution Control Board and ESG Watts, 252, Ill. App. 3d 828, 624 N.E. 2d 402, 191 Ill. Dec. 553 (3rd Dist. 1993) the appellate court affirmed the Board's decision ordering the Agency to issue special waste stream permits to Watts. The Board determined in its opinion that the Agency denied Watts's permit as a substitute for enforcement.

In the appeal of this case. the Agency argued that the Board's findings were against the manifest weight of the evidence. The court disagreed. The court believed that the Board heard evidence that would allow it to reasonably determine that the Agency had denied the permits solely on the basis of the alleged violations of the Act. The Court agreed with the Board that the procedures for permit denial and enforcement are different within the Act. Additionally, the Court agreed with the Board that the analyses of chemical concentrations for the special waste streams was below allowable levels. Therefore, the court held that the Board properly ordered the issuance of the permits since the Agency did not properly deny their issuance.

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. In November of 1993, the Fifth District Appellate Court affirmed the Board's affirmance of a regional pollution control facility approval in Worthen v. Village of Roxana, Laidlaw Waste Systems, Inc., and Illinois Pollution Control Board, 253 Ill. App. 3d 389, 623 N.E. 2d 1058, 191 Ill. Dec. 468 (5th Dist. 1993). The court determined that it had jurisdiction to hear the appeal, that the Board had employed the proper standard of review, that the Board's decision on the merits of the proposed landfill was not against the manifest weight of the evidence, and that the Solid Waste Planning and Recycling Act did not preclude acceptance of wastes from outside the county involved.

The court confronted the issue of whether it had jurisdiction under unique circumstances. The petitioners for appellate review filed the petition within the 35 days required by Section 41(a) of the Act but, named only the respondents before the Board as respondents on appeal. The petitioners promptly moved to amend the caption to name the Board as a respondent, but not within the 35 day limit. The respondents had, however, timely served the Board with the petition. The court stated that although Supreme Court Rule 335 requires the naming of the Board as a respondent in the caption, because the petitioner's made a good faith effort to comply with the rules by timely serving the Board the court would not allow an apparent clerical error of failing to add the Board to the case caption to frustrate the appeal. The court held that the appellate court has jurisdiction to hear the appeal where that respondent was timely served with the petition and the petitioners promptly moved to amend the caption to correct the defect.

The court further determined that the Board had employed the proper standard of review in rendering its decision and that decision was supported by the manifest weight of the evidence. The petitioners has argued that the essential facts were not in dispute, so the Board should have determine the issues as matters of law. In its opinion, the Board had concluded that the issues before it were issues of fact and mixed issues of fact and law, so it employed the manifest weight of the evidence standard of review. The court concluded that the facts were disputed, the Board had applied the appropriate standard of review.

Finally, the court affirmed the Board's decision regarding the merit of the application for approval. In the course of this review, the Fifth District upheld the Board's conclusion that it is for the applicant for siting approval to determine the area planned to be served by the facility, and the court found that the petitioners had no authority for their contention that a regional pollution control facility may accept waste from only that area. The court also held that the unit of local government involved was free to interpret the regional waste plan involved, notwithstanding the testimony of the plan's author as to its terms. The court agreed with the Board that the record included conflicting evidence on the plan's terms because the author was not a person in authority in the county for which he drafted it.

As a final issue, the Fifth District confronted whether the Solid Waste Planning and Recycling Act (415 ILCS 15/1 et seq.) precludes importation of waste from outside a county required to adopt a waste management plan. The petitioners had argued that this was true for new and expanding landfills. The court held that the requirement to plan for locally-generated waste needs did not include such a limitation.

In Citizens Against Regional Landfill v. Illinois Pollution Control Board, Waste Management of Illinois, Inc., and the County Board of Whiteside County, 255 Ill.App. 3d 903, 627 N.E. 2d 682, 194 Ill. Dec. 345 (3rd Dist. 1994), the Third District appellate court upheld the Board's decision in a local siting appeal.

In appealing the Board's decision to the Third District, the challengers raised four primary issues. First, they argued that the county's hearing officer had a conflict of interest when he conducted the county's public hearings. The appellate court reviewed the facts and observed that Whiteside County's hearing officer did not act in the role of a decision maker, and that he in fact did not submit to assembling a record. The court concluded that the challengers did not identify any conduct by the hearing officer which affected the case's outcome. Further, the court found no evidence that the payment to that hearing officer was contingent on the outcome of the County Board

decision. Therefore, the court found no conflict of interest.

Second, the challengers argued that their discovery rights were unduly restricted by the Board. The court observed that the Board allowed the deposition of the county's hearing officer as to purported financial stake in the outcome into the record, but that the Board restricted other matters. The court concluded that the challengers did not indicate anything in the hearing officer's deposition testimony that would indicate prejudicial impact on the outcome of the proceedings, so it held there was no reversible error in this regard. Third, the challengers argued that the Board erred in not considering the whole of the county's hearing officer deposition transcript. The court held that the challengers failed to point out anything in the excluded portions that was relevant to fundamental fairness.

Finally, the challengers argued that the Board erred in imposing attorney's fees as a sanction against its counsel. The court held that it lacked jurisdiction to hear this issue due to the posture of the challengers' appeal. The court observed that the challengers' appeal was from the Board orders of February 25, 1993 and April 22, 1993, and neither of those orders addressed the issue of sanctions. The appeal did not mention the Board order that imposed sanctions and did not make any indication of an intent to appeal the Board's sanction order.

The Fifth District appellate court dismissed an appeal of a Board decision in Environmental Control Systems, Inc. v. The Illinois Pollution Control Board and Madison County, 258 Ill. App. 3d 435, 630 N.E. 2d 554, 196 Ill. Dec. 619 (5th Dist. 1994). The court held that it lacked jurisdiction because the applicant failed the name a necessary party: the Madison County Board (county board), the unit of local government whose decision the Board reviewed.

The Fifth District held that a failure to name a necessary party in an appeal deprives the appellate court of jurisdiction. The court stated that parties appealing a Board decision must show a good faith effort to comply with the rules or their case will be dismissed. The court went on the explain that parties seeking judicial review of a Board decision must file a petition for review within 35 days of that Board decision. Additionally, the court stated that the petition shall specify the parties seeking review and the agency and all other parties of record shall be named as respondents.

The court found that the applicant did not demonstrate a good faith effort to name the county board, since the applicant did not move to name the county board until after the Board filed a motion to dismiss and the court issued a show-cause order. The court held that Supreme Court rule 366, which allows adding new parties was inapplicable to the case because it only applies to a new a party.

Further, the court found nothing in section 3-111 of the rules of civil procedure (administrative review) that would have allowed adding a necessary party. Thus, the Fifth District denied leave to amend the petition and dismissed the appeal for lack of jurisdiction.

Underground Storage Tank Fund Reimbursement

On September 13, 1993, Governor Edgar signed into law P.A. 88-496, "Petroleum Leaking Underground Storage Tanks." P.A. 88-496, also known as H.B. 300, added new Sections 57 through 59 to the Act and repealed Sections 22.13, 22.18 22.18b and 22.18c. The new law does not create new programs, but instead substantially amended the administration of the program and the method by which petroleum leaks are remediated in Illinois. One significant change was the division of program administration between the Agency and the Office of the State Fire Marshall(OSFM). Under the new law, the OSFM is not only responsible as it was in the past for early action activities such as supervising tank pulls but, it is also responsible for determining whether an owner or operator is eligible to seek reimbursement for corrective action from the Illinois Underground Storage Tank Fund (Fund) and for determining the applicable deductible. These decisions are then directly appealable to the Board. Additionally, the new law focuses on risk based cleanup and site assessment. The new law contains several points where an owner or operator can appeal an Agency decision to the Board while going through the remediation process.

Despite P.A. 88-496's passage, all of the appellate cases in this fiscal year were appeals of Board decision based on the old UST law. Under the old law, Sections 22.18, 22.18b and 22.18c of the Act provided for enforcement liability and Fund eligibility for owners and operators of USTs. Section 22.18(b) contains eligibility requirements for accessing the Fund. Owners and operators who were eligible to access the Fund might have been reimbursed for the costs of corrective action or indemnification. Section 22.18b also explained the deductible amounts which had to be subtracted from *the total approved amount for each claim.*

The First District appellate court reversed a Board denial of eligibility for reimbursement from the Underground Storage Tank Fund in Chemrex v. PCB, 628 N.E. 2d 963, 195 Ill. Dec. 499 (1st Dist. 1993). In its decision, the Board affirmed an Agency denial of eligibility for reimbursement for the costs it incurred in undertaking corrective action related to releases from multiple underground tanks.

The tank owner in Chemrex discovered releases from multiple registered tanks in early 1991. The owner promptly reported the releases, complied with all pertinent statutory and other requirements, and undertook corrective action. Later in 1991, the General Assembly amended the reimbursement provisions so that the tanks were no longer eligible for reimbursement based on their prior contents. The Agency denied reimbursement based on the statutory change. The owner appealed to the Board, stating that the law in effect at the time it notified the Agency of the release should have applied to determine eligibility. The Board agreed with the Agency's interpretation *and affirmed the Agency denial.*

The owner appealed to the First District, arguing that the application of the later statutory amendments amounted to a retroactive application of the law that deprived it of a vested right. The Board and the Agency countered that rather than retroactive application of the law, the denial applied the law in effect at the time of the reimbursement request. The appellate court agreed with the tank owner. The court observed that a general rule of statutory construction requires prospective application of Illinois statutes. *The court stated that since the tank owner had complied* with the statute and rules by performing all required tasks, so the Agency should have allowed *reimbursement without regard to the intervening* statutory changes. The court observed, based on the statutory language, that an Agency grant of reimbursement is a discretionary act.

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 regulation 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 violation, to revoke a permit, to impose civil penalties, and to require posting of bonds or other security to assure correction of violations.

In early 1994, the Illinois Supreme Court reversed the appellate court's decision in Envirite and affirmed the Board's dismissal of a citizens's land enforcement complaint. Envirite Corp. v. IEPA 239 Ill. App. 3d 1004, 607 N.E. 2d 302, 180 Ill. Dec. 408 (3rd Dist. 1994), rev'g Envirite Corp. v. Pollution Control Board (3rd Dist. 1993), 239 Ill. App. 3d 1004, 607 N.E. 2d 302. Interpreting Section 39(b) of the Environmental Protection Act as amended while the appeal was pending before the Supreme Court, the *Court held that the last waste treater is the generator* for the purposes of authorization for deposit at a facility. Thus, the Court reversed the appellate court's determination that the General Assembly intended the authorization provision to apply to the initial generator of the waste.

The Supreme Court began its analysis by noting that the General Assembly had amended Section 39(h) subsequent to the Third District's decision and while the appeal was pending before the Supreme Court. The Court noted that where vested rights are not *involved, the reviewing court should follow the law* as its exists at the time of its decision, not the law as it stood earlier. Concluding that there was no vested

right "in the continuance of a law", the Court gave effect to the intervening amendments. The language added by the General Assembly clearly stated that the generator is the person who treats the waste prior to disposal, so PDC would be the generator of the wastes for the purposes of Section 39(h) authorization. The Supreme Court concluded that where a statute is clear, a court should apply its clear and unambiguous language.

In, Park Crematory, Inc., v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 637 N.E. 2d 520, 201 Ill. Dec. 931, the appellate court affirmed the Board's finding that Park violated the Act, but vacated the Board's assessment of a $9,000.00 penalty.

Park's violations in this case arose out of failure to have the necessary operating and construction permits for its crematory facility. Before the enforcement action was brought to the Board, The Agency sent Park warning letters and the necessary permits for its operation. Park then proceeded to attempt to comply with the necessary permit for its operation. Park then proceeded to attempt to comply with the necessary permitting requirements. In October of 1990, the Agency conducted a second routine inspection of Park's facilities. The inspection report notes no smoke or ordors from the stack emissions; however, it does not that one of the incinerator units did not have an operation permit, that the units did not have temperature gauges, and that no maintenance log was made available during the inspection. Following the October inspection, the Agency sent a letter to Park noting the violations and requesting that Park submit in writing within fifteen days the reasons for the apparent violations and the steps which were taken to prevent recurrence of the violations. Park responded to the letter and corrected the apparent violations. However in January, the Agency sent Park an Enforcement Notice Letter setting forth the violations and explaining that the case had been referred to the Illinois Attorney General's Office for enforcement.

In the enforcement case before the Board, the Attorney General requested maximum penalties for the violations. Specifically, $50,000.00 for each violation and civil penalties of $1,000.00 for each day during which the violation continued before July 1, 1990 and $10,000.00 for each day of violation after July 1, 1990. The Board declined to impose such a "substantial" penalty but instead fined Park $1,000.00 for each year of violation.

The court vacated the Board's assessment of the $9.000.00 penalty because Park was not alleged to be a polluter and did not gain economic advantage from failure to comply with the permit requirements. The court also stated that the evidence revealed that Park was in full compliance at least eleven months before the complaint was filed. The court felt the imposition of a fine would be unjust and purely punitive in this case.

Justice Buckley delivered the opinion, Justice O'-Conner and Justice Manning, concurred.

SUMMARY OF STATE LEGISLATION ENACTED IN FISCAL YEAR 1994

(July 1, 1993 through June 30, 1994)

Overview

Fiscal year 1994 saw the Illinois General Assembly pass a number of major pieces of legislation initiated at the state level, perhaps the largest being a comprehensive overhaul of the State's Leaking Underground (non-petroleum) Storage Tank (LUST) program. Central to the LUST overhaul was the movement toward a risk-based assessment so as to concentrate the program's limited financial resources on those sites which pose the greatest threat. At the date of this writing, the Board is in the middle of the complicated process of adopting final rules to implement the new LUST program.

Another major state initiative passed by the General Assembly this past fiscal year provided a process under which the owner of commercial property on which there may have been a previous hazardous waste release could limit his liability upon conducting an environmental audit showing a threat no longer existed. This initiative, dubbed "the innocent landowner bill," is hoped to allow such property to be returned to the tax roles, once the IEPA verifies that the release no longer poses a threat to the surrounding environment. Additionally, several other laws dealing with environmental enforcement were enacted this past year, including a somewhat controversial law preempting local regulation of pesticides.

The State also took action to bring its land pollution laws into compliance with recently passed federal legislation, the largest initiative being the enactment of the Subtitle D landfill program. Subsequent action by the USEPA allowed the State to twice extend the compliance deadline for certain Illinois landfills to comply with the new, stricter Subtitle D program. Additionally, the State made other changes to its landfill laws not required by the federal government, ranging from limiting the duration of a landfill operating permit to a prohibition on constructing new landfills over or near abandoned mines and geological faults.

Ongoing progress was also made in the area of bringing the State's laws into compliance with the federal Clean Air Amendments of 1990. Numerous fine-tuning or "cleanup" changes were made to the State's Clean Air Act Permit (CAAP) Program for stationary sources of air pollution, enacted 1992. Additionally, the State passed an enhanced Vehicle Emissions Inspection (VEI) Program (also known as "enhanced Inspection and Maintenance program") to strengthen the regulation of ozone-harmful automobile exhaust emissions in the Chicago metropolitan and Bi-State/Metro East regions of the State. The new VEI Program, coupled with the continued implementation of the 1992 CAAP Program, have placed numerous new rulemaking requirements upon the Board.

Not enacted in Fiscal Year 1994 was a controversial ban on the burning of landscape waste (such as leaves, grass, etc.) in the State's 17 most populous counties. The General Assembly passed such a bill in October, 1993, however the Governor vetoed it.

The following summary of laws enacted during Fiscal Year 1994 (from July 1, 1994 through June 30, 1994, regardless of the actual effective date of the law) details not only that legislation that directly impacts the Board, but also those changes made to the State's environmental laws that indirectly impact how the Board adjudicates cases. Not included in this summary is environmental legislation that has virtually no impact on the Board, such as those laws dealing exclusively with recycling, nuclear safety, etc.

SUMMARY OF BILLS PASSED

Air Pollution/Clean Air Act Compliance

Public Act 88-226 (HB 772 from 1993) Effective August 6, 1993

Amends the Public Utilities Act. Requires the Illinois Commerce Commission (ICC) to collect data

relating to the acquisition and sale of Clean Air Act emissions allowances (credits) from affiliated interests of public utilities. *This law is simply extension of Public Act 87-1133 passed the year before.*

Public Act 88-488 (HB 1163 from 1993) Effective September 10, 1993

Amends the Public Utilities Act. Authorizes the Illinois Commerce Commission (ICC) to require the costs or income from the trading of sulfur dioxide (Clean Air Act) emissions allowances to be included in the Fuel Adjustment Clause rates as a cost of fuel.

Public Act 88-464 (SB 952 from 1993) Effective August 20, 1993

Amends the Environmental Protection Act. Makes numerous "clean up" changes to the Clean Air Act Permit (CAAP) Program passed the year before in Public Act 87-1213.

1. Creates a new "minor" permit program for emission sources that emit less than 25 tons per year of regulated toxic pollutants. All sources that emit in excess of 25 tons per year would be subject to the regular CAAP Program.

2. Authorizes emission sources seeking exemption from the CAAP Program through certain conditions contained in their permit that limit their emissions below the applicability threshold, to submit an existing state permit application up to 9 months after the effective date of the CAAP Program (by June 6, 1993).

3. Authorizes an emissions source to include in this CAAP permit application a request to operate during a start-up, malfunction, or breakdown. In such cases, requires the emissions source to notify the IEPA no less than up to 2 working days from the time their emissions limitations are exceeded.

4. Extends the initial permit shield to cover any requirements promulgated by the IEPA at a later date.

5. Requires any application for group processing of minor permit modifications to include completed forms which the IEPA could use to notify the USEPA or any other affected states. Provides that the permit shield does not apply to minor permit modifications. Requires sources that submit applications but do no qualify as minor permit modifications or administrative amendments, to use significant modification procedures.

6. Should the USEPA notify the IEPA that a CAAP permit should be reopened, the current CAAP notice and hearing requirements would apply, and the IEPA would subsequently be required to submit a response to the USEPA's notice.

7. Requires Phase II acid rain permit applications to be submitted to the IEPA by a designated representative of the acid rain emissions source. Phase II acid rain permits have a fixed term of 5 years, and are required to be issued or denied by the IEPA within 18 months of the Agency's receipt of the completed application and compliance plan.

8. Authorizes the State to appropriate up to $25,000 from the CAAP Fund to the IEPA for use by the CAAP Fee Panel.

9. Authorizes the IEPA to require emissions sources to implement maximum available control technology ("MACT") if a major source of hazardous air pollutants is modified, constructed, or reconstructed. Should the IEPA refuse to approve the source's MACT proposal, the source could appeal the Agency's denial to the Pollution Control Board.

10. Authorizes an emissions source to also appeal to the Pollution Control Board any determination by the IEPA that the source's application is incomplete. Establishes procedures for notifying the USEPA of any such appeals of permit issuances or denials, and authorizes the USEPA to intervene in such appeals.

11. Removes, adds, and replaces numerous other definitions to clarify the existing CAAP Program.

12. Provides that no air pollution source may be required to pay a higher fee prior the CAAP Program taking effect, than that fee the source will be required to pay once the CAAP Program goes into effect.

13. Extends from October 1, 1993 to January 1, 1994 the date by which the Pollution Control Board is required to revise its regulations for the State's current air pollution control program in order to incorporate the changes made by this Act.

Public Act 88-436 (HB 300 from 1993) Effective September 13, 1993

Amends the Environmental Protection Act. Establishes transition fees (commonly known as "ramp up" fees) to speed up implementation of (and exemption for numerous smaller businesses after review by the IEPA from) the requirements of the Clean Air Act Permit (CAAP) Program, created by Public Act 87-1213. Retains the $100 per year fee for stationary air pollution sources that emit less than 25 tons of regulated air pollutants per year. Beginning July 1, 1993, imposes the following additional transition fees: $1,000 per year for any source permitted to emit between 25 and 100 tons of regulated air pollutants per year; and $2,500 per year for any source permitted to emit in excess of 100 tons per year.

Public Act 88-533 (HB 1249 from 1994) Effective January 18, 1994

Amends the Vehicle Emissions Inspection Law of Illinois Vehicle Code, the Illinois Administrative Procedure Act, the Motor Fuel Tax Act. Creates a new stricter, "enhanced" Vehicle Emissions Inspection (VEI) Program, also known as Inspection and Maintenance ("enhanced I&M Program") Program, this to replace the current VEI Program, as required by the federal Clean Air Act Amendments of 1990. Requires the new enhanced program be implemented by January 1, 1995.

1. Requires all gasoline-operating (non-diesel) vehicles registered in all of Cook, DuPage, and Lake Counties, as well as in portions of Kane, Kendall, Madison, McHenry, Monroe, St. Clair, and Will Counties (portions enumerated by zip code) to be tested under the program. This represents an expansion of the Chicago Metropolitan/collar county and Bi-State Metro East areas which were previously covered by the VEI Program.

2. Replaces the old "3-2-2-1" testing schedule with a new "3-2-2-2-..." schedule under which a new car would first have to be tested 3 years after the model year of the vehicle, and once every two years thereafter.

3. Requires vehicles be given 5 separate tests during each inspection rather than 2 as under the current program.

4. Provides that any vehicle owner who fails the test and subsequently spends a minimum of $450 on the vehicle in an attempt to bring the vehicle into compliance receive a waiver (pass) even if the vehicle still fails the test. The vehicle would still have to be tested again in 2 years, as would all other vehicles covered by the program.

5. Retains provision allowing "fleet operators" (those companies that own and operate in excess of 15 vehicles) to establish and operate their own testing facilities (rather than having to take each vehicle to the closest testing station one by one).

6. Authorizes the IEPA to grant any vehicle owner a 1-year extension for compliance on the grounds of economic hardship.

7. Authorizes the IEPA to establish a permanent Vehicle Scrappage or "Cash for Clunkers" program to purchase older, more heavily polluting vehicles for the purposes of scrapping them. *The Cash for Clunkers Program was previously administered by the Agency on a pilot program basis only.*

8. Once the Agency's current contract with the firm administering and operating the vehicle testing stations expires, requires the contract to be rewarded based on an open bidding process.

9. Authorizes the IEPA to charge a fee of $20 per vehicle for federally-owned vehicls only. No fee is charged for all other vehicle tests (although, as previously mentioned, an owner would incur any costs up to $450 necessary to bring his vehicle into compliance where the vehicle fails the inspection).

10. Preempts home rule.

Landfill Siting and Regulation

Public Act 88-474 (HB 436 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Provides that the IEPA audit only those landfills that receive Environmental Protection Permit and Inspection Funds (PIF) from the IEPA (as opposed to any state funds)

Replaces the existing requirement that the IEPA's siting of a landfill designed exclusively for the disposal of household hazardous waste (paints, turpentine, detergents, ets.) undergo the local "SB 172" siting process, with the simple requirement that the IEPA must first receive the approval of the local government in whose jurisdiction the landfill is to be sited.

Public Act 88-496 (HB 300 from 1993) Effective September 13, 1993

Commonly known as "the Subtitle D Landfill bill." Amends the Environmental Protection Act. Requires the Pollution Control Board and the IEPA to adopt procedures that will enable the State to obtain federal USEPA approval of the new solid waste management program contained in this bill, pursuant to Subtitle D of the federal Resource Conservation and Recovery Act (RCRA).

1. Requires municipal solid waste landfills (MSWLFs) that receive waste after October 9, 1993 to obtain a new permit from the IEPA for storage, treatment, or disposal of waste generated by activities on the site, and for construction of any land form with clean construction or demolition debris within City of Chicago.

2. Prohibits the operation of any sanitary landfill without submission of a cost estimate for the site or a performance bond or other security for the site.

3. Requires a permit modification from the IEPA to authorize any lateral expansion of a MSWLF on or after October 9, 1993.

4. Prohibits the operation of any MSWLF after April 9, 1994, unless a performance bond or other security insuring closure of the site, post-closure care, and completion of any other necessary corrective action remedy that may be required has been posted with the IEPA.

5. Exempts the Landfill Closure and Post-Closure Fund from the provision of the State Finance Act that automatically terminates any state fund that has been inactive for 18 months or more.

6. Increases from $500,000 to $550,000 the amount that may be appropriated from the Environmental Protection Permit and Inspection Fund (PIF) to the Pollution Control Board for regulatory and adjudicatory proceedings.

7. Requires any MSWLF that accepts household waste after October 9, 1993, to conduct post-closure care at the site for 30 years after the site is completed or closed. Any MSWLF that accepts household waste before October 9, 1991 but stops receiving such waste after October 9, 1993, and installs final cover more than 6 months after receiving the final volume of waste, would be required to conduct post-closure care at the site for 30 years after the site is completed or closed.

8. Requires the Pollution Control Board to adopt rules that are identical in substance to the federal Subtitle D regulations. The Board would be authorized to adopt alternative standards, schedules, or procedures only where permitted to do so by federal regulation. Provides for interim rules while the IEPA awaits final approval by the USEPA of the new solid waste management program contained in this Act.

9. Provides for interim permits for MSWLFs. Such interim permits would expire upon the earlier of: 1) six years from the date of issuance, 2) final action taken by the IEPA on the permit, or 3)

revocation of the permit by the Board as a result of an enforcement action.

10. Beginning January 1, 1994, imposes the following new annual Subtitle D Management Fees on owners or operators of sanitary landfills, estimated to generate the approximately $1.7 million per year the IEPA estimates it will need to administer the new program:

    a. 5.5 cents per cubic yard or 12 cents per ton of waste disposed of at the landfill, if more than 150,000 cubic yards per year of solid waste is accepted at the landfill for disposal;

    b. $3,825, if more than 100,000 but less than 150,000 cubic yards per year of solid waste is accepted for disposal;

    c. $1,700, if more than 50,000 but less than 100,000 cubic yards per year of solid waste is accepted for disposal;

    d. $530, if more than 10,000 but less than 50,000 cubic yards per year of solid waste is accepted for disposal; and

    e. $110, if less than 10,000 cubic yards per year of solid waste is accepted for disposal.

    Exempts from these particular fees all hazardous waste, pollution control waste, waste generated by state-approved recycling facilities, waste generated from reclamation of reuse processes, nonhazardous solid waste that is composed or recycled through a process permitted by the IEPA, waste disposed of at any landfill that is permitted to receive only demolition or construction debris, and landscape waste (leaves, grass clippings, etc.). *A number of these categories of waste are already subject to other existing state disposal fees.*

    Also exempts from these fees waste accepted under any landfill contracts that are in existence upon the effective date of this bill (September 13, 1993), and that extend beyond January 1, 1994 where such contracts prohibit the landfill owner, operator, or transporter of the waste to "pass on" the fee to another party, or do not allow for the voluntary cancellation or renegotiation of the fees or that money paid by a transporter to a landfill owner or operator.

    Further exempts from these new fees waste that meets the following criteria: 1) waste that is nonputrescible, homogeneous, and does not contain free liquids; 2) waste that, when combusted, would not provide any practical energy recovery or practical reduction in the volume of waste; and 3) waste that the landfill owner or operator has demonstrated is not technologically and economically reasonable to recycle or reuse.

    These fees are in addition to any other fees currently imposed by the IEPA. Further, these new fees are non-refundable.

11. Creates the Subtitle D Management Fund in the State Finance Act, into which all of the aforementioned new

Subtitle D fee revenues would be deposited. Provides that the IEPA's use of these fee revenues be limited only to those costs incurred by the Agency to administer the new Subtitle D landfill program.

12. Requires the IEPA to take action on any new Subtitle D permit application within 180 days of receiving it from the landfill owner or operator. Requires the IEPA to publish notice of all final permit determinations for landfill development permits and permit modifications at least once in a newspaper of general circulation within the county in which the landfill is or is to be located.

13. With respect to the four commercial solid waste landfills located within the City of Chicago, delegates all enforcement powers and responsibilities for the new Subtitle D landfill regulation program to the City of Chicago.

    Provides that $150,000 per year in new Subtitle D Management Funds (made up of the new Subtitle D landfill tipping fees contained in this bill) be made available to the City of Chicago for its administrative enforcement costs, subject to appropriation by the General Assembly.

Public Act 88-512 (HB 299 from 1993) Effective November 16, 1993

Amends the Environmental Protection Act. Extends certain deadlines for landfills to comply with the new Subtitle D landfill requirements enacted the summer before in Public Act 88-496 (HB 300). Specifically, extends by 6 months (from October 9, 1993 to April 8, 1994) the deadline for operating requirements for those smaller landfills that accept less than 100 tons of waste per year, as well as for those landfills which the IEPA had determined are necessary to accept flood debris. Also extends by 1 year (from April 8, 1994 to April 8, 1995) the deadline by which landfills must meet the stricter financial responsibility requirements. All deadline extensions contained in this Act are retroactive to October 9, 1993 (the original compliance deadline set forth in Public Act 88-496).

Also authorizes any solid waste disposal districts formed prior to January 1, 1993 to participate in the "SB 172" local landfill siting process where the proposed facility is to be located within the solid waste disposal district. Does NOT grant such districts any actual authority in the "SB 172" siting process; all siting authority would continue to remain with the either the county or the municipality. The January 1, 1993 date effectively confines this provision to 5 such districts in Kane County.

Public Act 88-540 (SB 405 from 1994) Effective April 30, 1994

Amends the Environmental Protection Act. Grants a second extension of the deadline for certain landfills to comply with the new Subtitle D landfill requirements originally enacted the summer before in Public Act 88-496 (HB 300). Specifically, extends by 6 months (from April 8, 1994 to October 9, 1994) the deadline for operating requirements for those smaller landfills that accept less than 100 tons of waste per year, as well as for those landfills which the IEPA continues to determine are necessary to accept flood debris. The first 6-month extension for such landfills was approved the fall before in Public Act 88-512 (HB 299). Unlike the first 6-month extension, however, this extension is not retroactive to the previous April 8, 1994 deadline.

Public Act 88-293 (HB 497 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Prohibits a landfill operator from accepting for disposal any

new waste, if the landfill has not accepted any such waste over the past 5 years. Exempts from this prohibition any landfill that has applied to the Environmental Protection Agency Act IEPA for a temporary suspension of its operating permit. Barring this, the landfill operator would have to go through the "SB 172" local siting process all over again to obtain a new permit. Applies only to those landfills operating on the effective date of this Act (January 1, 1994).

Public Act 88-447 (SB 227 from 1993) Effective August 20, 1993

Amends the Environmental Protection Act. Prohibits the siting of any new or expansion of any existing solid (nonhazardous) waste landfill over any active or inactive shaft or tunneled mine, or within 200 feet of any geological fault, unless engineering measures have been incorporated into the landfill design to ensure that the structural integrity of the landfill will not be disrupted by any geological processes (such as an earthquake). Defines "structural integrity."

Also alters the "SB 172" local landfill siting law to provide that, in counties with a population of under 100,000 people, any municipality with a population of less than 5,000 that lies adjacent to any parcel or portion of any parcel of unincorporated land as of April 1, 1993 on which a solid (nonhazardous) or hazardous waste disposal facility is to be sited, shall have authority to approve or deny the siting or expansion of the facility; not the county. Applies only to such landfills sited in such areas between the effective date of this Act (August 20, 1993) and January 1, 1997. *Intended to limit the proposed expansion of a landfill outside of the City of Minonk in Woodford County.*

Public Act 88-503 (SB 940 from 1993) Effective September 13, 1993

Amends the Revenue Act, the Downstate Forest Preserve District Act, and the Environmental Protection Act. Provides that real property owned by a forest preserve district that has an operating regional pollution control facility shall be exempt from property taxes or certain other taxes, fees, charges, surcharges, or assessments imposed by the Environmental Protection Agency (IEPA) or units of local government. Provides that the provision apply retroactively to the date the issuance of an initial operating permit for such a facility was approved by the Agency. *Intended to clarify that landfills located on public forest preserve district property, notably the Mallard Lake and Green Valley landfills in DuPage County, are exempt from state and local property taxes, landfill tipping fees, etc.*

Leaf-Burning

Public Act 88-488 (HB 1163 from 1993) Effective September 10, 1993

Amends the Environmental Protection Act. Exempts from any state regulation limiting or prohibiting the burning of landscape waste (leaves, grass, twigs, etc.) burning undertaken for: 1) agricultural purposes (including that undertaken by tree nurseries), 2) fire fighter training, and 3) habitat management (including forest and prairie reclamation). *While no such rules existed at the time this bill passed, the General Assembly passed a subsequent bill (SB 240) in October, 1993 requiring the Pollution Control Board to adopt rules prohibiting the burning of landscape waste in portions of the State's 17 most populous counties; that bill (SB 240), however, was vetoed by the Governor and did not, therefore, ever become law.*

Underground Storage Tanks

Public Act 88-436 (HB 300 from 1993) Effective September 13, 1993

Amends the Leaking Underground Storage Tank Law of the Environmental Protection Act, the Gasoline Storage Act, and the Motor Fuel Tax Act. *This represents the comprehensive overhaul of the State's*

Leaking Underground Storage Tank (LUST) Program.

1. Extends by 15 years (from December 31, 1997 to December 31 2013) the duration of the existing 3/10 of 1 cent per gallon motor fuel (gas) tax earmarked for reimbursement to underground storage tank owners for their costs incurred in cleaning up such sites. *This extension was intended to allow the $17 million per year the 3/10 of a cent gas tax currently generates to be used to sell approximately $175 million in general obligation (G.O.) bonds to fund the ongoing cleanup program.*

2. Establishes a variable risk-based system to determine which of three distinct levels of corrective action (high priority, low priority, or "no further action") would be required at the time a confirmed leak of petroleum is detected. Sets forth detailed criteria (such as use of the Berg Circular) in assessing the risk level of any particular site.

3. Realigns the roles of the IEPA and the State Fire Marshall's Office (OSFM) in the administration of the corrective action and reimbursement programs. Also establishes a certification process that would limit IEPA review of such actions.

4. Provides for a release of liability upon certification that the corrective action requirements of the program are completed, provided the IEPA determines no public health or safety risk continues to exist.

5. Requires early response actions and an assessment of the source of contamination (i.e., the leaking underground tank) to be taken in all cases of a confirmed leak and, if necessary, require the tank owner to monitor the surrounding soil and ensure further contamination does not occur.

6. Requires a risk evaluation (assessment) of the contamination site to identify and mitigate any pathways for contamination.

7. Authorizes the IEPA to designate 2 demonstrations LUST cleanup sites for which the owner or operator of the tank would only have to pay a $10,000 deductible (as opposed to $100,000), ever if such tanks were installed long after July 28, 1989 (the current statutory date after which the deductible jumps from $10,000 to $100,000).

8. Allows any tank owner who has had a leak certified prior to the effective date of this Act (September 13, 1993) to participate either under the new LUST program set forth in this Act or the old program in place prior to the effective date of this Act.

Environmental Liability, Enforcement, and Pollution Prevention

Public Act 88-320 (SB 276 from 1993) Effective August 12, 1993

Amends the Environmental Protection Act. Provides that the owner or operator of a hazardous waste disposal site (hazardous waste landfill or incinerator), rather than the generator of the hazardous waste, be required to obtain approval from the IEPA prior to

disposing of the waste. Clarifies that hazardous waste previously permitted and authorized for disposal by the IEPA under this section would not have to be re-authorized. *Intended to overrule a state Appellate Court decision brought on behalf of Envirite Corporation that had effectively reversed the long-standing practice; this bill effectively returned the previous, long-standing policy to law.*

Public Act 88-474 (HB 436 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Provides that the IEPA audit only those landfills that receive Environmental Protection Permit and Inspection Funds (PIF) from the IEPA (as opposed to any state funds). Reduces from 3 to 1 the number of notices the IEPA must publish within 21 days prior to a hearing for granting or denying a variance.

Public Act 88-381 (HB 118 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Prohibits the Pollution Control Board from adopting or enforcing any rule requiring a tarpaulin or other covering on a vehicle that is more strict than the tarpaulin law currently contained in the Illinois Vehicle Code. *The tarp law in the Vehicle Code provides that a law enforcement officer may only issue a citation to a vehicle (truck) operator for failing to have a tarp secured over the back of his truck if, having been cited for spilling material onto the highway once prior, failed to cover the truck with a tarp. The purpose of the tarp law in the Vehicle Code is aimed primarily at traffic safety, unlike the Board's rules which are aimed toward prohibiting the release of particulate matter into the air (air pollution).*

Public Act 88-521 (HB 659 from 1993) Effective November 29, 1993

Creates the Oil Spill Responders Liability Act. Provides that a person is not liable for costs or damages that result from actions taken in the course of rendering care, assistance, or advice in an oil spill response. Clarifies that the responsible party is liable for any damages or removal costs, present or future, arising out of any discharge.

Public Act 88-438 (SB 41 from 1993) Effective August 20, 1993

Commonly known now as "the Innocent Landowner bill." Amends the Environmental Protection Act. Provides that, in the case of residential property, a person shall not be deemed the owner of the property (and therefore not held liable for any hazardous waste release that occurred on it) if: 1) the person owns less than 10 residential dwelling units (such as single-family residences with up to 4 units, or single apartment units) in the State; 2) the person is not a corporation, developer, partnership, trust, or other non-natural person; 3) the person or his agent, representative, contractor, or employee did not cause or contribute to the release.

With respect to non-residential real (commercial) property, provides a process under which the property owner can establish a rebuttable presumption against the State (IEPA), and a conclusive presumption against any other private parties which may try to hold him liable, provided the owner first conducts a Phase I environmental audit or (where the Phase I audit suggests a release may have occurred) a more thorough Phase II environmental audit. Specifies what must be included in a Phase I and Phase II environmental audit. Authorizes the IEPA to levy a fee for providing documents related to property environmental records.

Public Act 88-345 (SB 85 from 1993) Effective August 13, 1993

Amends the Illinois Pesticide Act. Prohibits the regulation of pesticides by any political subdivision (local government) of the State (including home rule

units). Exempts Cook County and all municipalities within Cook County from the Act.

Public Act 88-454 (SB 543 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Exempts vegetable by-products (corn husks, etc.) from the definition of "special waste," and replaces it with its own new definition to ease permit requirements and restrictions on the land application of such material. Also exempts the hauling of vegetable by-products from the requirements that haulers of such materials file manifests (forms detailing what, where, and how much by-products are hauled from point to point).

Public Act 88-106 (SB 610 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Provides that parties that fail to file their required toxic waste reports with the IEPA shall have a 30-day "grace" period (until August 1, as opposed to July 1), during which the IEPA would notify them. If (after being notified) the party fails to file the report with the IEPA by August 1, the party shall be subject to a penalty of up to $100 per day that the report is not filed (as opposed to the current one-time fine of up to $50,000, plus a fine of up to $10,000 per day for every day the report is not filed).

Public Act 88-145 (SB 629 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Prohibits the IEPA from proceeding with notice and complaint procedures when a violation arises from a voluntary pollution prevention activity, unless the violator fails to take corrective give action within a reasonable time period, or where the IEPA believes that the violation poses a substantial and imminent danger to the public health, welfare, or the environment.

Public Act 88-462 (SB 764 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Authorizes (but does not require) the IEPA to issue a "limit of liability covenant for prospective purchases of real property" to a person liable for a hazardous waste release or threatened release, provided the person took a response action to remedy or clean up the release. In the case where a subsequent release is found later, the person would only be required to take those actions required by law at the time the covenant was issued.

Agricultural/Pesticide Regulation

Public Act 88-474 (HB 436 from 1993) Effective January 1, 1994

Amends the Environmental Protection Act. Extends to lawn care wash water contaminant areas the same requirements and permit procedures that passed in Public Act 87-1108 the year before for agrichemical facilities. *Intended to allow lawn care facility operators to take advantage of the same "one-stop shopping" for permits available for agrichemical facilities.*

Public Act 88-257 (HB 1259 from 1993) Effective August 9, 1993

Amends the Illinois Pesticide Act. Extends the termination date for permitting land application of pesticide-contaminated soil and water from July 1, 1993 to July 1, 1995. *The extension of this date is intended to allow the Department of Agriculture and the IEPA time to evaluate current data they have received regarding the program.*

Also authorizes the Director of the Department of Agriculture to issue advisory letters before initiating hearing proceedings in cases where a person's violation points under the Act total 6 or less. Requires the

Director to issue a warning letter when the violation points total 7 to 13 points.

Public Act 88-436 (HB 300 from 1993) Effective September 13, 1993

Amends the Environmental Protection Act. Extends from October 1, 1993 to January 1, 1994 the deadline by which the department of Agriculture must adopt rules for the new, less strict groundwater protection for agricultural-chemical facilities set forth by Public Act 87-1108.

Miscellaneous

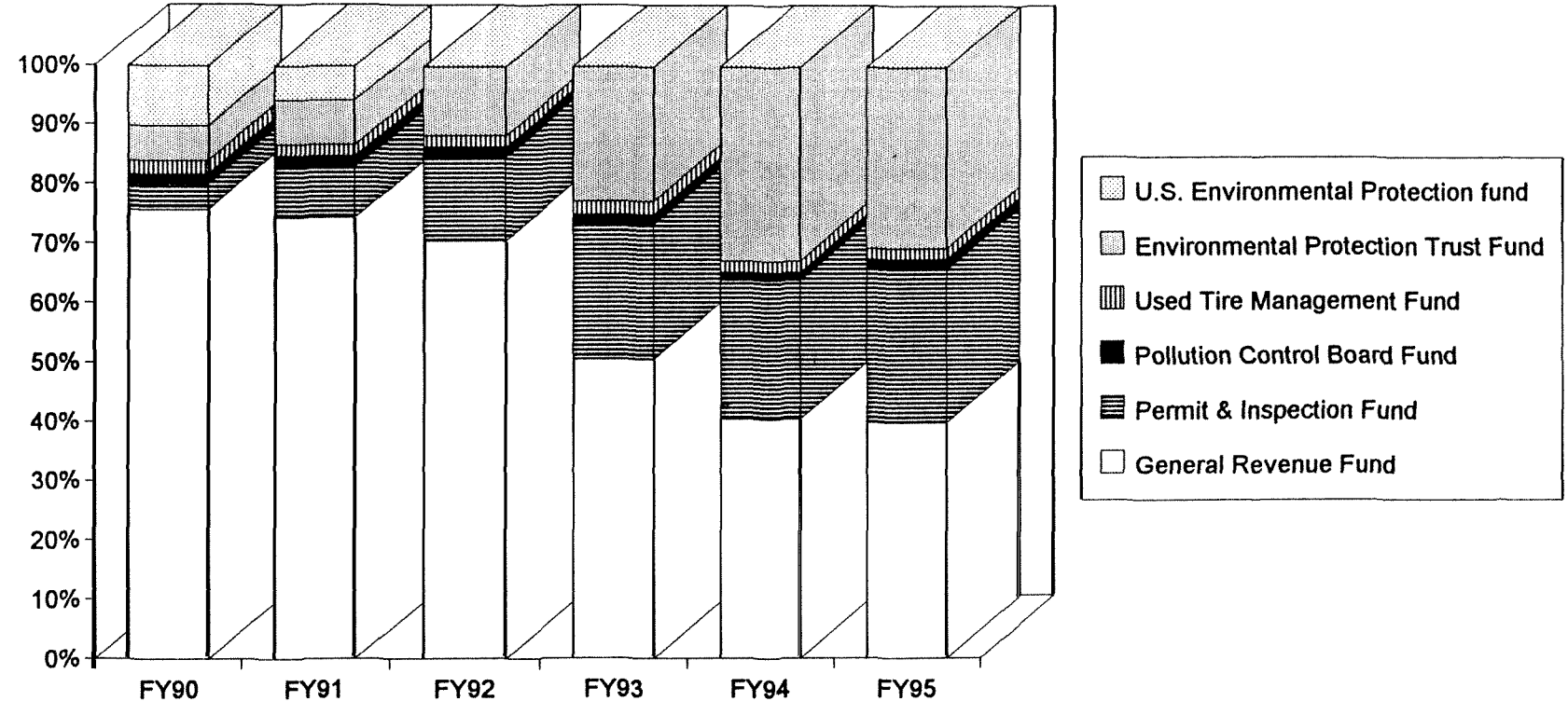
Public Act 88-488 (HB 1163 from 1993) Effective September 10, 1993

Amends the Environmental Protection Act. Replaces the existing fees set by statute and charged by the IEPA to local community water supplies for the costs of testing the supplies' water quality, with a provision that allows the Community Water Supply Testing Council (made up of representatives of community water supplies and the Illinois Municipal League) and the IEPA to annually set the fees charged to local water supplies for testing. Authorizes the IEPA and the Council to establish procedures for resolving disputes in setting the fees. *Passed to resolve a 1-year funding crisis resulting from severe state budget cuts made in the IEPA's water testing program in July 1992.*

Public Act 88-163 (HB 1896 from 1993) Effective July 28, 1993

Amends the Household Hazardous Waste Collection Act of the Environmental Protection Act. Includes petroleum distillate-based solvents, oil-based paint, and paint strippers under the definition of those household hazardous wastes eligible to be collected by the IEPA under this program, but specifically excludes antimicrobial and disinfectant products (smaller detergents).

POLLUTION CONTROL BOARD--APPROPRIATION DISTRIBUTION



POLLUTION CONTROL BOARD

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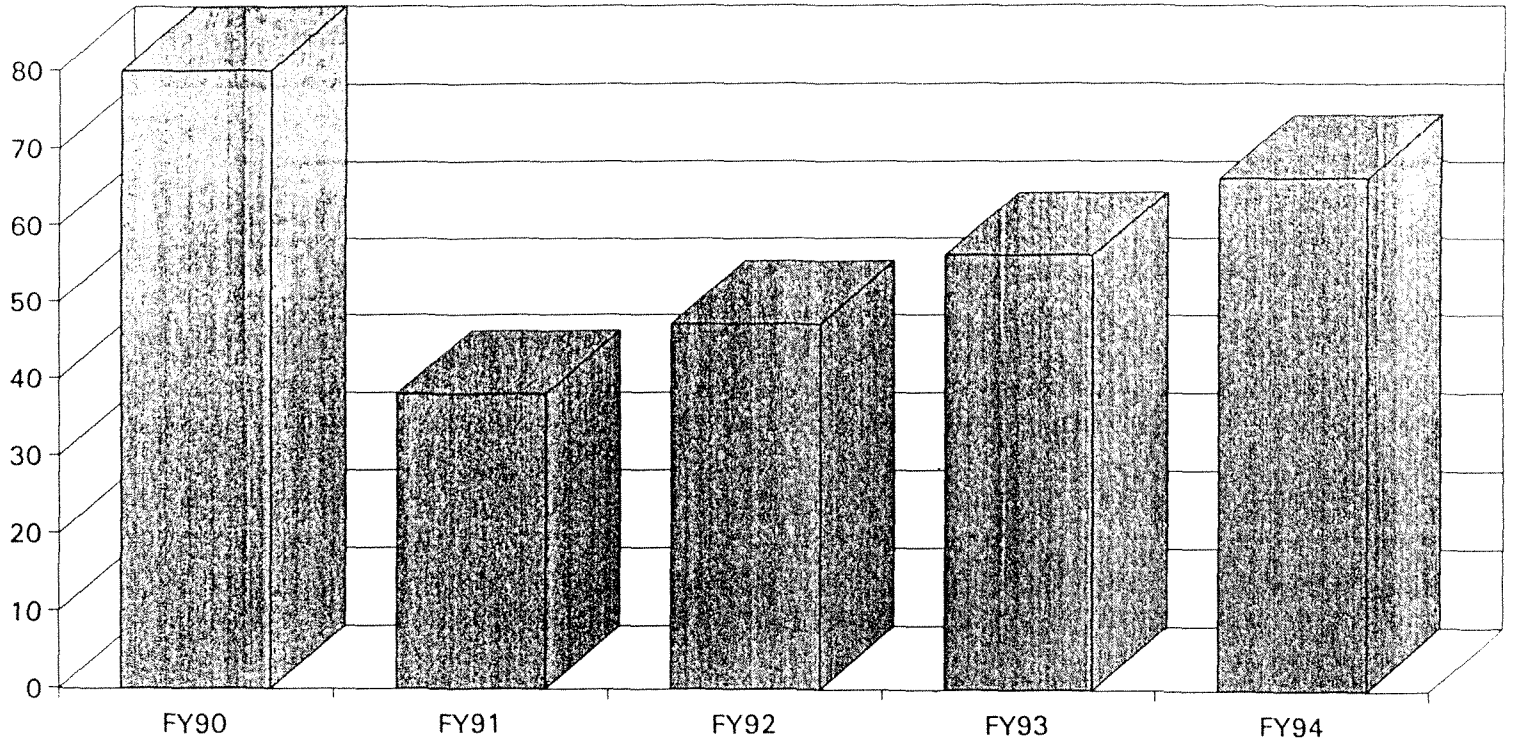
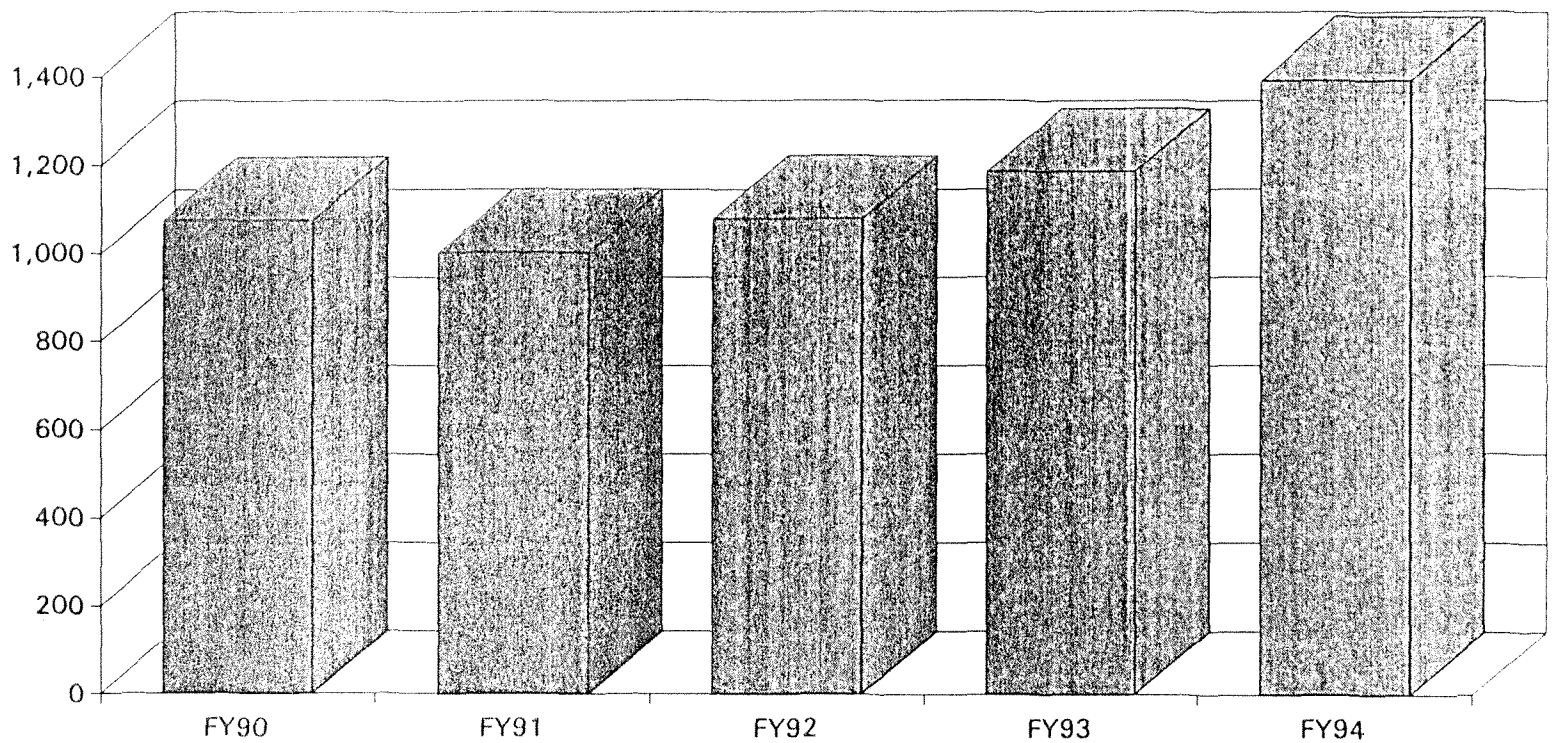


POLLUTION CONTROL BOARD

Opinions and Orders Issued



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