Illinois Pollution Control Board

Annual Report 1997

Mission Statement

The Illinois Environmental Protection Act (Act) was enacted in 1970 for the purpose of establishing a comprehensive State-wide program to restore, protect, and enhance the quality of the environment in our State. To implement this mandate, the Act established the Illinois Pollution Control Board (IPCB) and accorded it the authority to adopt environmental standards and regulations for the State, and to adjudicate contested cases arising from the Act and from the regulations.

With respect for this mandate, and with recognition for the constitutional right of the citizens of Illinois to enjoy a clean environment and to participate in State decision making toward that end, the IPCB dedicates itself to:

- the establishment of coherent, uniform, and workable environmental standards and regulations that restore, protect, and enhance the quality of Illinois' environment;
- impartial decision making which resolves environmental disputes in a manner that brings to bear technical and legal expertise, public participation, and judicial integrity; and
- government leadership and public policy guidance for the protection and preservation of Illinois' environment and natural resources, so that they can be enjoyed by future generations of Illinoisans.

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Message from the Chairman

Honorable Jim Edgar, Governor of Illinois

Honorable Members of the General Assembly:

In fiscal year 1997, the Board adopted regulations which implement a number of new environmental initiatives. In addition to completing rules to implement the new Brownfields redevelopment program, regulate livestock management facilities, and implement a new Clean Air Act market credit trading program, the Board prepared to develop new rules to implement proportionate share liability for environmental cleanups.

While faced with a growing number of large and complex rulemakings, the Board continued to process its caseload for contested cases in a timely manner. The Board has also shown that it can function effectively by doing more with less. We have effectively carried out our responsibilities, while our level of General Revenue Funding has not increased in any one of the last eight fiscal years and still remains below what it was in the early 1980s.

The Board also strived in fiscal year 1997 to make its process more user friendly. As a pioneer among State agencies in developing a world wide web site, the Board has ensured that all of its rules, orders, and opinions may be downloaded free of charge (http://www.ipcb.state.il.us). Additionally, the Board made available to the public a general informational packet for citizens to use in learning how to participate in the Board process. Finally, the Board is currently streamlining and updating its procedural rules. Through its openness and commitment to developing consensus on these issues, the Board has shown that government can play a positive role in assuring that effective rules can be made sensible and reasonable. Rules work best for all when they are easy to understand and when all parties have had a voice in their development.

We are pleased to share with you the Annual Report of the Illinois Pollution Control Board for fiscal year 1997. This report provides information on all aspects of the Board's activities and responsibilities for protecting the environment under the Illinois Environmental Protection Act and, specifically, discusses the Board's accomplishments between July 1, 1996, and June 30, 1997.

Sincerely,

Claire A. Manning
Chairman

Judicial Review of Board Decisions

Introduction

Pursuant to Section 41 of the Environmental Protection Act (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 opinion or order. A qualified petitioner is any person denied a permit or variance, any person denied a hearing after filing a complaint, any party to a Board hearing, or any person who is adversely affected by a final Board order.

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

There were eleven appellate court decisions in fiscal year 1997 involving appeals from Board opinions and orders. The Board's decision was affirmed, in total or in part, in seven of these cases. In two cases, the Board's decision was reversed; in one case, the Board's decision was reversed and remanded; and finally, in one case the court found that it did not have jurisdiction to hear the case and dismissed it. The following, organized by section of the Act, includes summaries of the Board's Appellate cases for fiscal year 1997.

Variances

UNDER SECTION 36 OF THE ACT, variances may be granted to petitioners who seek relief from the Act or regulations, provided the petitioners can show that compliance with the regulation would impose an "arbitrary or unreasonable" hardship and that the request is consistent with federal law. Variances of not more than 90 days during a calendar year, called provisional variances, and longer term variances for up to five years are available to the petitioner.

Community Landfill Corp. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 3-96-0182 (3rd Dist. August 8, 1996)(unpublished rule 23 order).

This case involved an appeal by Community Landfill Corporation (CLC) of a Board order denying CLC a variance from the significant modification permit application (SIGMOD) filing deadline requirement established by the Illinois Environmental Protection Agency (IEPA) under 35 Ill. Adm. Code 814.104(c). The Third District set aside the Board's decision issued in Community Landfill Corp. v. Illinois Environmental Protection Agency (September 21, 1995), PCB 95-137. Board Member Meyer dissented.

The City of Morris (City) owns two adjoining parcels used as landfill sites. The City operated parcel A until 1980. In 1982, the City entered into a lease agreement allowing CLC to operate Parcel B. From 1992 through November 1994, the City and CLC were in negotiations for the closure of the existing landfill and the opening of another site. In November 1994, the Morris City Council passed an ordinance allowing CLC to reopen and expand parcel A and to close parcel B.

The City and CLC were required by 35 Ill. Adm. Code 814.104(c) to file their SIGMOD applications by June 15, 1993 for the two parcels. The June 15, 1993 date was established by the IEPA; the City and CLC were notified twice of the deadline. The SIGMODs were not filed by June 15, 1993. However, after the City passed its ordinance in November 1994, CLC hired an environmental engineering firm to complete and file the SIGMODs.

On February 27, 1995, CLC's engineers met with representatives from the IEPA to discuss technical aspects of the SIGMOD applications. At that time, the IEPA refused to consider the SIGMOD applications until any issues arising from CLC's failure to file by June 15, 1993 were resolved. One member of the IEPA staff suggested that CLC seek a variance from the Board.

CLC filed a petition for variance with the Board on April 26, 1995, and the IEPA recommended that the variance be denied. On September 21, 1995, after hearing, the Board denied the variance, holding that CLC had not shown an arbitrary and unreasonable hardship within the meaning of the Environmental Protection Act (Act) (415 ILCS 5/1 *et. seq*.). More specifically, the Board refused to grant a retroactive variance because it found that CLC's hardship was self-imposed and that the compliance efforts of CLC did not show good faith or due diligence. Board Member Meyer dissented. CLC filed a motion for reconsideration, arguing "new material facts" regarding two prior Board decisions which were cited in the Board's opinion. The Board denied the motion. Board Member Meyer dissented.

The court found that the Board's decision in CLC was a misapplication of prior Board precedent. Additionally, the court held that the extra time, effort, and expense which would have been required by both CLC and the IEPA to prepare and evaluate additional SIGMOD applications if CLC originally filed in June 1992 and then refiled after its negotiations were complete, constituted an arbitrary and unreasonable hardship. The court also noted CLC's continuing compliance with all other applicable State and federal regulations.

Finally, the appellate court explained that it must balance the Board's need to enforce its regulations against the nominal harm to the environment caused by CLC's

non-compliance and the likely loss of substantial revenue to the "innocent people of Morris" if CLC could not operate the landfill. In balancing the equities, the court found CLC should be granted the short prospective variance. However, the court did find that CLC's lack of due diligence and unexplained failure to seek the variance for 22 months after the filing deadline was troubling and therefore, denied CLC a retroactive variance.

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 IEPA 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 IEPA 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 may contest the IEPA decision at a Board hearing pursuant to Section 40 of the Act.

Wilmer Brockman, Jr. and First Midwest Bank/Illinois as Trustee Under Trust No. 757 v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, Nos. 3-94-0175 and 3-95-0207 (3rd Dist. August 23, 1996)(unpublished rule 23 order).

This case involved two appeals by Wilmer Brockman Jr. (Brockman) of IEPA permit denials which were affirmed by the Board in Wilmer Brockman, Jr. and First Midwest Bank/ Illinois v. Illinois Environmental Protection Agency (February 3, 1995), PCB 93-162 and (February 16, 1995) PCB 94-207. The appellate court consolidated the appeals and affirmed the Board.

In 1993, Brockman appealed to the Board an IEPA denial of a permit authorizing the temporary suspension of waste acceptance. The 177-acre parcel of property involved had been granted a landfill development permit in 1975, but had not accepted waste since 1982. In fact, only the 7-acre Carus Disposal Area was ever issued an operating permit. The Carus Area operation was closed in 1982 and the IEPA's records indicated that the entire landfill was closed at that time.

The first temporary suspension permit application filed by Brockman was on June 15, 1993. This application was deemed incomplete, and the IEPA noted on the denial letter that its records showed the facility as being closed. The Board affirmed the IEPA's denial of the permit finding that a temporary suspension permit could not be issued without a closure plan. The appellate court stayed the appeal pending the outcome of Brockman's second application to the IEPA for a permit.

On May 31, 1994, Brockman submitted a second application for a temporary suspension permit. This second application included a closure plan. The IEPA also denied the second application for a temporary suspension permit stating, as it had in the first denial, that a permit for a closed facility was "inappropriate and unnecessary." On appeal, the Board affirmed the IEPA. The Board held that the IEPA properly denied the permit because the site was closed. Brockman appealed the decision to the Third District.

While the second appeal was before the Board, Brockman filed a motion to stay the proceedings until the appellate court ruled upon the initial appeal. Attached to this motion, Brockman filed a waiver of the Board's decision deadline until February 28, 1995. However, the appellate court stayed the proceedings of the first appeal pending the outcome of the second appeal before the Board. Based upon this, the Board denied Brockman's motion to stay the proceedings. Subsequently, Brockman filed a new waiver of the decision deadline, this time until December 16, 1994. The Board made its decision on February 16, 1995.

Brockman argued in the appeal that the Board's decision was untimely and that the permit should be granted by operation of law as provided for in section 40 of the Act (415 ILCS 5/40). Brockman contended that the Board's denial of the motion for stay was also a denial of the attached waiver of the decision deadline. Additionally, Brockman argued that the filing of the second waiver until December 14, 1994, rescinded the prior waiver which extended until February 28, 1995.

The court found that the Board's rules regarding waivers are "clear and unambiguous" and that Brockman neither rescinded nor revoked the original waiver granting the Board until February 28, 1995, to make a decision. Additionally, the court held that neither the Board's denial of the motion to stay, nor Brockman's filing of a second waiver caused the first waiver to be withdrawn or rejected. Thus, the court held that the Board's decision entered on February 16, 1995 was timely and did not violate section 40 of the Act.

Brockman next argued that the Board acted beyond its authority because it relied upon a different rationale than the IEPA when it affirmed the permit denial. The court found that the Board's reasoning was "sufficiently consistent" with that of the IEPA in the first appeal since both the IEPA and the Board found that Brockman failed to provide sufficient information with the first application to allow the IEPA to issue a permit. In the second appeal, the IEPA denied Brockman because it was "inappropriate and unnecessary" to issue a permit for a closed site. The Board affirmed the IEPA on appeal, reasoning that the IEPA had properly denied the application on the basis of the site being closed. Here again, the court found the Board's decision relied on the same fundamental reasoning as the IEPA's decision. The court also stated, "the Board need not parrot the precise wording of the Agency to stay within the bounds of its statutory authority."

Brockman then argued that he did not need a current operating permit because the landfill's development permit allowed him to get a temporary suspension permit without an operating permit being in place. The court found that this argument was not supported by the statute. The court held that Section 39(c) of the Act requires a landfill owner to have a current operating permit prior to the application for, or the issuance of, a temporary suspension permit. Additionally, since

an operating permit is required for the initial acceptance of waste, a facility without an operating permit would have no need for a permit to temporarily suspend waste acceptance since it could not accept waste without the operating permit.

The court found that the operating permit for the Carus Area became invalid when it closed in 1982. The court also held that the landfill would require siting approval from an appropriate governing body prior to the issuance of a new operating permit. Finally, the court found that the public interest would not be served by allowing a landfill which had not operated in a decade to avoid local siting by applying for a temporary suspension permit.

The City of Geneva v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, County of Kane, and Waste Management of Illinois, No. 2-96-0560, (2nd Dist. April 11, 1997) (unpublished Rule 23 order).

This case was before the Illinois Appellate Court, Second District, on an appeal by the City of Geneva from a Board ruling in County of Kane and Waste Management v. Illinois Environmental Protection Agency (February 1, 1996), PCB 96-85 denying the City of Geneva's (Geneva) petition for intervention into the permit appeal filed before the Board by Waste Management and Kane County. The appellate court also denied Geneva's petition for intervention upholding the Board's ruling.

The case involved the Settler's Hill landfill which is located partly in unincorporated Kane County and also within the corporate limits of Geneva. The Settler's Hill facility was approved in 1982 by both Kane County and Geneva. The landfill is owned by Kane County and Waste Management operates the facility. In 1986, Waste Management got approval from Kane County to expand the facility but did not seek or obtain approval from Geneva.

In 1993, Waste Management submitted a siting application to Kane County to expand the landfill. The area of expansion was outside of Geneva's corporate boundaries and Waste Management did not submit a siting application to Geneva. However, the road to the landfill, the entrance gate, and administrative buildings for the landfill were located in Geneva and even under the expansion plan would still be used by Waste Management.

Kane County approved the siting application and Waste Management and Kane County submitted a permit application to the IEPA. The IEPA denied the permit because Waste Management and Kane County had failed to obtain approval from Geneva. Waste Management and Kane County then filed a petition for review with the Board and Geneva filed a motion to intervene in the case before the Board which was denied by the Board's hearing officer. However, Geneva was permitted by the hearing officer to file *amicus curiae* replies to motions for summary judgment, post-hearing motions, and post-hearing briefs. Geneva was permitted to participate at hearing in accordance with the Board's rules for public comment. Geneva was also provided copies of all filings by the parties.

Geneva filed a motion for review of the hearing officer's denial of its motion for intervention. Waste Management and Kane County filed for summary judgment, and the IEPA filed a cross motion for summary judgment. Geneva submitted a *amicus curiae* response to the motions in support of the IEPA. The Board, on February 1, 1996, granted the IEPA's motion for summary judgment finding that the IEPA could not issue a permit for the expansion of the landfill without siting approval being granted by Geneva. The Board did not reach the issue of intervention in its order.

Waste Management and Kane County filed a motion to reconsider or clarify and Geneva and the IEPA filed responses to the motion. On May 2, 1996, the Board denied the motion for reconsideration or clarification. On appeal, Geneva argued that the Board erred in failing to reverse the hearing officer's denial of Geneva's petition to intervene.

Geneva first argued that it met all of the Board's procedural criteria to intervene found at 35 Ill. Adm. Code 103.142(a). The court found that the Board's procedural rule applied only to enforcement proceedings and not to permit appeals. The court stated that based on the plain language of the rule that the Board correctly denied Geneva leave to intervene.

Geneva next argued that it should have been permitted to intervene because it represents the interests of the citizens of Geneva and because it was an original party to the proceeding. The court again disagreed finding that Geneva was not a party to the proceedings in 1993 seeking to expand the landfill and that Geneva was not a State official representing the public interest. Additionally, the court noted that Geneva was allowed to participate as an *amicus curiae* and that Geneva did not suggest any arguments it could have made as a party that it couldn't have made as an *amicus curiae*.

Finally, Geneva contended that its rights would not be protected if the court were to reverse the Board's decision on the permit appeal unless it was permitted to intervene. In response, the court seemed to state that Geneva's rights would be protected because it again could appear as an *amicus curiae* if necessary.

Medical Disposal Services, Inc., and Industrial Fuels and Resources/Illinois, Inc., v. Illinois Environmental Protection Agency and the Pollution Control Board, 286 Ill. App. 3d. 562, 677 N.E.2d. 428 (1st Dist. 1996); *as modified on denial of rehearing*.

This case involved an appeal by Medical Disposal Services (MDS) and Industrial Fuels and Resources/Illinois (Industrial Fuels) of the Board's affirmance in Medical Disposal Services, Inc., v. IEPA (May 4, 1995), PCB 95-75 and 95-76, consolidated, of the IEPA's denial of construction permits for its medical waste treatment facility.

On appeal, the petitioners argued that the Board should not have granted summary judgment in favor of the IEPA because local siting approval of pollution control facilities is transferable to purchasers, that the Board should have applied equitable estoppel or equitable tolling, and that the Board erred in denying Industrial Fuel's motion for intervention. The First District affirmed the Board.

The facts of the case are as follows. Industrial Fuels sought

and eventually gained siting approval from the City of Harvey for a medical waste treatment facility. In 1994, MDS entered into an agreement with Industrial Fuels for an option to purchase the Harvey site. Prior to that, MDS had inquired of the IEPA whether it could rely on Industrial Fuels' siting approval from the City of Harvey. An IEPA assistant responded in a letter to MDS on January 10, 1994, that the IEPA's policy was that siting approval was location-specific so that it remained with the land upon sale. The letter also stated that the siting approval granted to Industrial Fuels was valid for MDS's development of the facility. In May 1994, MDS submitted construction permits to the IEPA. In September 1994, the Illinois Attorney General's office wrote to MDS stating that Harvey had not granted MDS siting approval. In October, the Attorney General's office wrote to the IEPA expressing its view that local siting was not only site-specific but also facility-specific and applicant-specific. On January 13, 1995, the Director of the IEPA wrote to the Attorney General stating that the two agencies had differing interpretations of the law. On January 31, 1995, the IEPA denied MDS's permit application.

MDS then appealed to the Board in March 1995. MDS argued in its appeal before the Board that the permits could be issued because the Act required proof that the municipality had approved siting, not that the municipality approved the transfer of ownership. MDS filed a motion for summary judgment, and the IEPA filed a cross motion for summary judgment. The Board denied MDS's motion and granted the IEPA's motion. The Board in its opinion and order found that local siting approval was applicant-specific and could not be transferred from Industrial Fuels to MDS.

The appellate court affirmed the Board finding that if Sections 39(c) and 39.2(a) of the Act (415 ILCS 5/39(c), 39.2(a)) are read together that Section 39(c) contemplates that the applicant must be the same entity which received local siting approval. Section 39(c) of the Act provides that no permit may be granted unless the applicant submits proof of local siting. Section 39.2(a) of the Act states that the local unit of government may consider ". . . the previous operating experience and past record of convictions or admissions of violations of the applicant (or any subsidiary or parent corporation) in the field of solid waste management. . . " in making its decision on siting. Thus, the court found that even if the MDS facility was going to be substantially similar to the original proposed by Industrial Fuels, the ownership had changed and Section 39.2(a) of the Act recognizes the "significance of the experience of the owner."

The court went on to state that even though local governments do not generally have the power to approve the transfer of ownership after the construction permits have been issued by the IEPA, that does not change the fact that a new applicant for a permit must "re-obtain" siting approval before applying for a permit under Section 39(c) of the Act. The court also found that requiring a new application for local siting approval does not prevent transferability of the owner's property right because siting approval is not a property right. The court explained by saying that local siting only gives the applicant the right to apply for a permit and that although permits in general can be assigned, local siting is only a condition which is required before a permit can be issued.

The next argument made by the petitioner was that the IEPA should have been equitably estopped from denying permits because MDS detrimentally relied on the IEPA's letter stating that the siting granted to Industrial Fuels was valid for MDS. The court used a two-part test to determine if estoppel was appropriate in this case, finding that there must be a misrepresentation and knowledge that the representation was untrue. The court found that no misrepresentation was made since the IEPA letter stated the IEPA's interpretation of the statute and its policy at the time. Additionally, the court held that estoppel was not an appropriate remedy against a governmental agency because it would "defeat the statutory intent to give approval powers to localities in a matter concerning public health and safety."

The petitioners then argued that equitable tolling should be used to toll the two-year expiration period found in Section 39.2(f) of the Act for which local siting approval is valid. Petitioners argued that either the date of the IEPA's letter to MDS or the date of MDS's filing of its permit applications should be used so that MDS could use the additional time to comply with 39(c) of the Act. The court stated that, generally, equitable tolling is used to extend statute of limitations deadlines where an agency acted unfairly. The court declined to make equitable tolling available to MDS even if the principle of equitable tolling could be extended outside the typical situation. The court declined because, although MDS will suffer a delay in setting to obtain its permits because of the change in IEPA policy, MDS was not prevented by the IEPA from seeking local siting. The court found that tolling, in this case, would not prevent the permanent expiration of any right. The IEPA's conduct did not forever cut off MDS's ability to proceed with development of the facility.

Finally, Industrial Fuels argued that the Board erred in denying its petition to intervene, which was filed after summary judgment was entered. Industrial Fuels sited a Board rule which provides for intervention in enforcement cases. The court found that the rule was not applicable to permit appeals and that no other Board rule gave Industrial Fuels a right to intervene. The court additionally found that even if the Board had the authority to allow intervention and even if the Board erred, Industrial Fuels was not harmed because it was allowed to file an *amicus curiae* brief in support of MDS's motion for reconsideration and was able to make its arguments to the Board.

ESG Watts, Inc., v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 286 Ill. App. 3d 325, 676 N.E.2d. 299 (3rd Dist. 1997).

The case involved an appeal of the Board's March 2, 1996 decision in PCB 94-243 affirming the IEPA's denial of seven waste stream permit applications and the IEPA's appeal of a Board sanction in the same case. The sanction required the IEPA to pay Watts' costs ($1,250) for filing a motion and reply brief necessitated by the IEPA's failure to meet the Board's briefing deadline. The Third District Appellate Court affirmed

the Board's decision to uphold the denial of the permits and reversed the Board's sanction of the IEPA.

Watts owns three landfills in Illinois. The appeal in this case pertained only to the Taylor Ridge Landfill site located in Rock Island County. In 1994, Watts began applying for renewal permits for generic waste streams and for two new permits to receive different types of waste at the Taylor Ridge Landfill. The IEPA denied the permits based on Section 39(i)(1) of the Act. Section 39(i)(1) allows the IEPA to consider the permitee's prior experience in waste management, including any repeated violations of the Act or regulations, federal law, or local laws. The IEPA also denied six of the seven permits because of "technical difficulties" with the permit applications.

As evidence of the repeated violations, the IEPA cited a circuit court action and 19 administrative citations against Watts which took place over a seven-year period. The circuit court action concerned violations at Watt's Sangamon Valley Landfill, not the Taylor Ridge site. The circuit court judgment resulted in a $350,000 penalty against Watts and took place six months before the first denial. Only four of the administrative citation violations took place at Taylor Ridge, of which the most recent was issued in 1989.

Watts appealed the IEPA's permit denials to the Board, and the Board upheld the denials. The Board noted that the technical difficulties cited by the IEPA were unsupported by the record. The Board upheld the denial based on Watt's prior history of violations.

On appeal, Watts asserted that the IEPA's review of violations which occurred at other facilities owned by Watts was improper. The court, however, upheld the Board's finding that Section 39(i) of the Act is operator-specific, but not facility-specific, and that it is proper to consider violations at other sites owned by the same operator. Watts also asserted on appeal that the Board applied an improper standard of review when looking at the IEPA's denial. Watts contended that, since Section 39(a) states that the IEPA shall issue a permit upon proof that a facility will not cause a violation of the Act, the Board should have reviewed the IEPA's decision to see whether the IEPA acted in an arbitrary and capricious manner.

The Third District sustained the Board's finding that the arbitrary or capricious standard was overly deferential and inappropriate. The court stated that the Board should review information that the IEPA relied upon to make its decision and that the burden should be on the petitioner to prove that it is entitled to a permit and that the IEPA's reasons for denial were either insufficient or improper.

Watts next argued that the IEPA exercised an improper pre-determination to deny the permits. Watts contended that the IEPA, before it received a response to the letters sent to Watts explaining the potential reasons for denials and requesting an explanation as to why the denials would be improper (the Wells letters), had already decided to deny the permits. Watts argued that the sending of the Wells letters in the instant case was a sham because the IEPA had already decided to deny the applications prior to the responses to the Wells letter being mailed back by Watts. The court found that the Board's decision finding that the permit reviewer reviewed the responses and discussed them with others at the IEPA was not against the manifest weight of the evidence.

Watts argued on appeal that the IEPA could not meet its statutory obligation to investigate the conduct of applicants because it did not have any guidelines for the enforcement of Section 39(i). Watts argued that because the IEPA did not have guidelines, the result was a discretionary application of Section 39(i) in violation of the Equal Protection clause of the United States Constitution. On review, the Third District stressed that the IEPA cannot be expected to adopt procedures for every conceivable circumstance. Additionally, the court found that, although no written procedures existed, the evaluation process used by the IEPA was sufficient. The court also noted that because the decision by the IEPA was reviewed by the Board the "safeguards of due process" were provided. As for the equal protection claim, the Third District found no evidence of intentional and purposeful discrimination by the IEPA.

Although Watts failed to raise it before the Board, the court allowed Watts to raise the issue of improper delegation of authority on appeal. Watts argued that the legislature's delegation of discretionary authority to the IEPA in Section 39(i) was invalid. Watts asserted that the legislature did not provide any intelligible standards for the IEPA to follow when enforcing Section 39(i). The court disagreed, finding instead that the legislature provided appropriate standards to guide the IEPA's use of Section 39(i).

Watts next contended that the IEPA acted improperly when it considered non-adjudicated violations. The court stated that if the IEPA had relied only on the alleged violation to deny the permit, the court would have agreed with Watts, but the record clearly showed that the reasons set out in the denial letters were sufficient to support the IEPA's actions. Therefore, the court found that the permit reviewer's consideration of the non-adjudicated violation was not prejudicial and did not taint the IEPA's decision.

In summary, the Third District found that the Board's decision was not against the manifest weight of the evidence and upheld the Board's decision to uphold the IEPA's denial of the seven permit applications.

Also at issue in this case was the Board's exercise of its sanctioning authority. The IEPA argued before the court that the Board did not have the authority to impose the sanction of attorney fees upon the IEPA. The facts involved were that after the hearing on the permit appeals, Watts filed its post-hearing brief on January 12,1996 pursuant to the briefing schedule set out by the hearing officer. The IEPA, however, failed to filed its response brief on January 26, 1996 as required. The IEPA finally filed the brief with a motion to file instanter on February 7, 1996. Watts moved to strike the brief. The Board found that because this was a case of first impression that having both briefs was desirable so it allowed the IEPA to file the brief but ordered it to pay a sanction of $1,250 to Watts for legal expenses incurred by Watts in its attempt to exclude the IEPA's brief.

The Third District found that the Board did not have any specific statutory authority nor any agreement between the

parties which would allow it to order the IEPA to pay attorney fees to Watts. The court found that Grigoleit Co. v. Illinois Pollution Control Board, 245 Ill. App. 3d 337, 613 N.E.2d 371 (4th Dist. 1993) was not persuasive in this case. In Grigoleit, the court found that attorney fees were appropriate based on the Board's broad discretion to impose sanctions. The Grigoleit decision pointed to the Board's procedural rules as evidence that it had sanctioning power. In the current case, the court found that the Board's procedural rules did not specifically mention attorney fees as available as a sanction. Therefore, the court reversed the Board's decision ordering the IEPA to pay attorney fees to Watts.

Color Communications, Inc. v PCB and IEPA, __Ill. App. 3d__, 680 N.E.2d 465 (4th Dist. 1997).

This case involved an appeal from the Board's July 18, 1996, decision in PCB 96-125, Board Members Meyer and Dunham dissented and Board Member Yi concurred, which upheld the IEPA's denial of separate Clean Air Act Permit Program (CAAPP) permits for Color Communications, Inc.'s (CCI) two Chicago plants. The Illinois Appellate Court, Fourth District, reversed the Board's decision and remanded the case for further proceedings.

CCI manufactures color systems, samples, color boards, and color marketing systems for paint, automotive, and other industries. Two of CCI's facilities are located at 4000 West Fillmore and 4242 West Fillmore in Chicago, Illinois. Each of these plants perform different operations and use different raw material and are classified differently under the Standard Industrial Classification Manual (SIC) and in the past, the IEPA had issued separate air operating permits for each of the plants. These two CCI facilities are the subject of the instant appeal.

In September 1995, CCI filed separate CAAPP applications for its two Fillmore plants. In November 1995, the IEPA issued a notice of incompleteness advising CCI that the plants must be considered as one source for purposes of the CAAPP permit. The IEPA then told CCI that it must resubmit one CAAPP application for both sources. CCI appealed the IEPA decision to the Board. The Board upheld the IEPA's decision on a 5-2 vote. Board Members Dunham and Meyer dissented and Board Member Yi concurred.

On appeal, CCI argued that the Board's decision was in conflict with applicable State and federal law. CCI contended that the plants did not constitute a single source because: (1) they did not belong to the same industrial grouping; (2) they were classified by different SIC codes; and (3) they were neither located on the same property nor on contiguous or adjacent properties.

In analyzing section 39.5(2)(a)(i) of the Act (415 ILCS 5/39.5(2)(a)(i) (1994)) the appellate court found that in order for the two plants to be considered a single source, they must (1) be under common control by the same entity; (2) be on contiguous or adjacent property; and (3) belong to a single major industrial grouping. The court went on to state that for two sources to belong to a single major industrial grouping, the sources must have the same two-digit SIC code.

In its opinion, the Board found that the plant at 4242 Fillmore supports the plant at 4000 Fillmore by providing raw materials. Thus, the Board held, the plants should be treated as a single source despite the fact that the facilities had different SIC codes. The Board's conclusion was based on its belief that federal law incorporates the support-facility concept in its definition of major source and that Illinois law parallels federal law.

The appellate court disagreed with the Board's conclusion that, although the sources had different SIC codes, they should be treated as a single source. The court pointed out that the Board relied upon a federal preamble to a regulation which had never been adopted and the testimony of a United States Environmental Protection Agency (USEPA) permitting expert who testified that USEPA employs the support-facility concept when determining whether two facilities fall under a single major industrial grouping.

The Fourth District found that the plain language of the statute required that CCI's stationary sources have the same two digit SIC code to belong to a single major industrial grouping. Thus, the court rejected the application of the concept of a support-facility in deciding whether the two plants constituted a single source for purposes of the CAAPP. The court reversed that Board's decision and remanded it for further proceedings consistent with its order.

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. The following three cases were appeals to the appellate courts of Board decisions on local siting.

Concerned Adjoining Owners, a Concerned Citizen's Group and Those Opposed to Area Landfills (T.O.T.A.L.), a Concerned Citizen's Group v. The Pollution Control Board, The City of Salem, Roger Kinney, City Manager of the City of Salem, and Roger Friedricks, __Ill. App. 3d. __, 680 N.E.2d. 810 (5th Dist. 1997).

This case involves an appeal from the Board decision in T.O.T.A.L. and Concerned Adjoining Owners v. City of Salem, Roger Kinney, City Manager and Roger Freidricks (March 7, 1996), PCB 96-79 and PCB 96-82 (consolidated) affirming

the decision of the City of Salem which granted siting approval for an extension of an existing landfill and for a new landfill. On appeal, the Concerned Adjoining Owners (CAO) and T.O.T.A.L. each argued that the Board's decision should be reversed because the hearing before the Salem City Council (City Council) was fundamentally unfair, and because the decision was against the manifest weight of the evidence because the applicant did not meet his burden of proof. Additionally, T.O.T.A.L. alone argued that the City Council did not have jurisdiction to rule on the siting application, and CAO argued that the Board improperly refused to consider its position.

In 1994, four days prior to the hearings on the siting application, Salem purchased 40 acres of land outside of the city limits and annexed it into the city. This land was purchased for the new landfill. By annexing the property, Salem became responsible for making the decision on siting under the Act (see 415 ILCS 5/39.2(a).) If the property had not been annexed, the Marion County Board would have been responsible for the hearing and decision on the siting application.

At the hearing before the City Council, objectors argued that the City Council was biased since it had already expended tax money on the property in contemplation of the new regional pollution control facility being sited. The objectors also argued that the hearing was fundamentally unfair since the siting decision was made by the same City Council that had spent $120,000 for the purchase of 40 acres of land for the landfill site. People testified at hearing on behalf of Mr. Kinney (applicant) and the objectors. The objectors tried to call the applicant as a witness at hearing, but since he objected and the hearing officer ruled in his favor, he did not testify. On September 11, 1995, the City Council approved the siting applications for both the expansion of the existing landfill and the new landfill.

The Fifth District began its analysis with consideration of the objectors fundamental fairness argument. The court recognized that in this case, as in E and E Hauling v. Pollution Control Board, 107 Ill. 2d 33 (1985), a governmental body with an interest in the outcome of a siting decision, even an economic one, may lawfully still decide the siting issue. Therefore, the Fifth District affirmed the Board and found that the siting hearing was not fundamentally unfair simply because the city officials had an interest in the outcome of the decision.

The court also rejected the idea that the city officials were biased and had formed an opinion on the siting prior to the siting hearing. The court again turned to E and E Hauling, reiterating that the city officials had not prejudged the siting criteria in the Act, simply by having opinions about the proposed landfill prior to the filing of the siting application. More specifically, the court found that the decisionmakers in this case had not made prejudgments about the siting criteria. The court based this finding on the fact that the city officials had asked relevant questions of the witnesses regarding the criteria and did not demonstrate any bias for or against siting approval.

The Fifth District then found that T.O.T.A.L. had waived seven of its fundamental fairness arguments by failing to support them with any authority. As to the remaining three arguments, the court disagreed with T.O.T.A.L.'s assertions that: 1) the objectors were severely limited in presenting evidence on economics and profitability of the proposed landfill and expansion; 2) T.O.T.A.L. was prejudiced by the applicant's failure to disclose an expert witness who was not named in the siting application; and 3) the City Council did not follow its own rules regarding the conduct of the hearing. The court disagreed.

The court found that T.O.T.A.L. was not prejudiced by Kinney's failure to address economics, since economics is not a specifically listed siting criterion in the Act. Therefore, the court held that consideration of economics is discretionary not mandatory. As for the non-disclosure of the expert witness, the court found the argument without merit. The court stated that no law required that witnesses at siting hearings be disclosed. Additionally, the court pointed out that the witness in question was the first witness in a series of four days of hearings held over a period of 16 days and that the objectors were given the opportunity to cross-examine the witness. The objectors also called three of their own witnesses to contradict his testimony. The court also found that the procedures followed at the siting hearing were fair.

The court elaborated that the objectors were given an opportunity to be heard and to cross-examine witnesses. The court further remarked that the record reflected impartial rulings on evidence. The court also stated that not all people who author reports which are relied upon in a siting application must be called as a witness. Additionally, the court pointed out that the right to cross-examine a witness is not unlimited. The court explained that parties cannot cross-examine people who submit written comments and that all authors of reports need not be present at hearing.

The Fifth District next addressed the arguments on specific siting criteria and found that the city's decisions on criteria (i) and (iii) were not against the manifest weight of the evidence. The court also addressed T.O.T.A.L.'s argument that the City of Salem did not have jurisdiction to rule on the siting application. T.O.T.A.L. argued that, because the City of Salem did not follow the statutory requirements of the Municipal Code (65 ILCS 5/11-76.1-1 and, 11-76.1-3) when annexing the property for the proposed landfill, Salem had no jurisdiction to rule on the siting application.

The court found that the Board properly determined that it did not have authority to decide whether the annexation and purchase of the property was conducted in accordance with the applicable standards. The court stated that the Board's authority is limited to that granted by its enabling statute, which does not extend to the Municipal Code. Additionally, the Fifth District found that the Board was correct in finding that since the Marion County Circuit Court had dismissed the action before it with prejudice dealing with this issue, the Board should proceed with the case as if the City of Salem had jurisdiction to hear the siting application. Finally, the court found that the issue of proper jurisdiction was waived on review since T.O.T.A.L. failed to cite any authority for the idea that if the City of Salem failed to comply with the Municipal Code when purchasing and annexing the property that it would be deprived of jurisdiction at the siting hearing.

Finally, the Fifth District rejected CAO's argument that

the Board failed to consider its position at hearing. Stating that the claim was meritless, the court found that the Board had clearly indicated that it had considered all the evidence presented and the arguments made by both CAO and T.O.T.A.L. The Board's decision was accordingly affirmed in all respects.

Bevis, *et al*. v. Illinois Pollution Control Board and Wayne County Board, 283 Ill. App. 3d 807, 670 N.E.2d 1157 (5th Dist. 1996), *substituted opinion on grant of denial of rehearing,* ___Ill. App. 3d ___, 681 N.E.2d 1096 (5th Dist. 1996).

This case involves a Board dismissal in Bevis, *et al*. v. Wayne County Board (May 18, 1995), PCB 95-128 of the petitioners appeal of Wayne County's grant of siting approval. On September 19, 1996, the Fifth District found that it lacked jurisdiction to hear the case and dismissed the appeal before it in its order. On June 30, 1997, the court, on a petition for rehearing, vacated and held for naught its prior opinion in this case. In the new opinion, the Fifth District affirmed the Board's decision denying the petitioners' request for leave to amend their appeal.

In April 1993, Daubs Landfill Inc. (Daubs) applied for vertical and horizontal expansion of its landfill in Wayne County Illinois. In May 1993, the Wayne County Board determined that the siting application was incomplete. Daubs filed an amended application on May 24, 1993. The Wayne County Board then held a hearing on the amended application in August 1993. However, in September, Daubs filed a second amended application. Wayne County held hearings on the second amended application in November 1993.

On March 10, 1994, the Wayne County Board denied Daubs's second amended application for expansion and Daubs filed a timely appeal with the Board. During the pendancy of the appeal, Daubs proposed a settlement to a Wayne County Board Member. On February 9, 1995, the Wayne County Board adopted the settlement and on March 9, 1995, the Board approved the settlement. Daubs then withdrew its appeal.

Several citizens then appealed the March 9, 1995, expansion decision by the County Board to the Board naming the Wayne County Board as a respondent. On May 19, 1995, the Board dismissed the appeal for failure to name Daubs as a respondent as required by Section 40.1(a) of the Act (415 ILCS 5/40.1(a)) (Act) because since Daubs received local siting, Daubs was the applicant. Additionally, the Board denied the petitioners' request for leave to amend their appeal. The petitioners' filed a motion for reconsideration, which the Board denied on July 7, 1995.

On appeal, the Fifth District first resolved the issue of whether the terms "recipient" and "applicant" are synonymous as terms relating to siting under the Act. The petitioners argued that applicant means one who applies. Additionally, they argued that because by local ordinance the Wayne County Board cannot reconsider a final decision, the settlement proposal could not relate back to the original application and must have therefore been a new application. The petitioners then argued that because Daubs did not comply with hearing and notice requirements, Daubs could not be an applicant under the Act even though ultimately Daubs received siting approval. Simply put, the petitioners argued that one can only be an applicant if he complies perfectly with all application process requirements.

The Fifth District rejected the petitioners' arguments, finding that one can only obtain siting approval by filing an application. Finding that the petitioners did not cite any authority to the contrary, the court held that Daubs was the applicant for siting approval pursuant to the Act and that to find otherwise would require the court to "ignore logic." Citing Section 40.1(b) of the Act as authority, the court next found that, because Daubs was the applicant, the petitioners were required to name Daubs as a respondent in their appeal to the Board. 415 ILCS 5/40.1(b). Thus, failure to name Daubs, who was a necessary party, meant that the Board did not have authority to hear the case.

Petitioners next argued that the Board should have allowed them to amend their petition. The court, however, disagreed, finding that even if Section 40 allowed the petitioners to amend their petition, they had not shown a good-faith effort to comply with the requirement that the applicant be named on appeal.

Based on the reasoning discussed above, the Fifth District affirmed the decision of the Board denying the petitioners request for leave to amend their appeal.

Underground Storage Tank Fund

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 did 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 IEPA and the Office of the State Fire Marshall (OSFM). Under the law, the OSFM continues to be responsible (as it was in the past) for early action activities such as supervising tank pulls; 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 law focuses on risk-based cleanup and site assessment. The law contains several points at which an owner or operator can appeal various IEPA decisions to the Board while going through the remediation process.

Clarendon Hills Bridal Center (Learsi and Company, Inc.) v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 2-96-0083, (2nd Dist. July 31, 1996) (unpublished Rule 23 order).

This case involves an appeal by Clarendon Hills Bridal Center (Learsi and Co., Inc.) (Learsi) from a February 16, 1995,

Board decision in PCB 93-55 which denied Learsi reimbursement for some of the expenses incurred when it removed underground storage tanks (USTs) from its property.

In October 1990, Learsi discovered through soil tests that widespread petroleum contamination existed at the site in question and notified the Emergency Services Disaster Agency that a release had occurred at the site. At the end of October 1990, three USTs were found on the site and a fourth UST was discovered later. In order to qualify for reimbursement from the UST Fund, Learsi obtained a corrective action plan from GSC Environmental, the consultants working on the remediation project. The corrective action plan was approved by the IEPA in January 1991.

During the time the plan was awaiting approval by the IEPA, the excavated portion of the site collected 8 to 10 feet of rainwater. The IEPA told Learsi that the water could be pumped into a sewer but that a discharge permit would be needed to do this and that the permit could take up to four months to obtain. Learsi instead pumped the water and disposed of it as a special waste.

Learsi completed the cleanup and the IEPA issued a clean closure letter for the site. Learsi then submitted a reimbursement request for $825,080.31 in corrective action costs to the IEPA on June 29, 1992. On February 18, 1993, the IEPA sent a final determination letter and voucher to Learsi disallowing $45,786.95 in expenses and Learsi appealed to the Board. The February 18, 1993, letter misstated the amount requested by Learsi for reimbursement. A representative for Learsi contacted the IEPA about the mistake and on April 29, 1993, the IEPA issued a clarification of its earlier letter. The second letter denied $414.906.60 of the claimed expenses. After a hearing, the Board affirmed the IEPA's decision to deny reimbursement of $330,434.37 of the $331,404.05 in contested costs.

In the appeal, Learsi argued the Board erred when it denied its reimbursement request because the request was not on IEPA forms. Learsi contended that the IEPA policy requiring time and materials forms or a competitive bid could not be enforced because the policy has not been promulgated as a rule in accordance with the Illinois Administrative Procedure Act (APA) [5 ILCS 100/1-1 et *seq*.].

The Second District Appellate Court observed that the IEPA accountants testified that, although the IEPA preferred the use of its own forms, it was not necessary for the owner to submit the information in a particular manner. However, since the statute requires that the IEPA determine the reasonableness of a cost, the owner had to provide the information in a way that demonstrated the reasonableness of the cost. One way of doing this is through competitive bidding. The IEPA accountant testified that while the IEPA preferred that the process include publication and consideration of at least three bids, there could be times when only two bids were acceptable or where publication was not required.

In reviewing this testimony, the Second District found that the IEPA did not have any requirements other than that the owner must demonstrate the reasonableness of the cost of the corrective action. The court found that the IEPA did not mandate that owners follow a particular method in order for there to be a reasonableness determination in favor of an owner. Instead, the IEPA was simply suggesting ways in which reasonableness could be established. This, the court held, was not an adoption of a rule requiring APA compliance. It was instead an interpretation of statutory language as it applied to particular facts. Thus, the court found that Learsi was not denied reimbursement based upon any improperly promulgated IEPA policy.

Next, Learsi argued that the Board's decision was against the manifest weight of the evidence. More specifically, Learsi contended that the Board erred in not considering evidence admitted at the Board hearing but not submitted to the IEPA. The first piece of evidence was a handwritten note which the Board hearing officer did not admit at hearing. The Board, in its opinion, stated that even if the evidence had been admissible it was insufficient to constitute a competitive bid. On a motion for reconsideration by Learsi, the Board acknowledged that the note was admitted into evidence but stated that the admission did not affect the determination and outcome in the case.

The other piece of evidence the Board allegedly did not consider was testimony about what an invoice from a trucking company was for when the information was not contained on the invoice. The Board, in its opinion, imposed the evidentiary rule applicable in permit appeal cases which disallows information from being part of the record in the Board proceeding which was not available to the IEPA at the time it makes its determination. The Board did this despite the fact that, in previous UST cases, it had allowed new evidence into the record because the IEPA had not promulgated rules identifying the type of information necessary to complete a reimbursement application. The Board reasoned that, in this case, Learsi knew or was obligated to know that it was required to demonstrate that the disputed cost was for corrective action. Although the court disagreed with the Board's reasoning, it agreed that previous Board cases allowing new information to come into evidence were distinguishable and held that no new evidence may come in at the Board hearing. The court emphasized that the question before the Board was whether the application as submitted to the IEPA meets the requirements of the Act.

The final argument made by Learsi was that the evidence offered at hearing showed that the corrective action costs it incurred were reasonable. The Board found that the evidence supported the IEPA's determination that certain costs were not reasonable. The court held that the Board had considered all the relevant evidence and that the Board's decision on the contested items was not against the manifest weight of the evidence.

Lindsay-Klein v. Illinois State Fire Marshall and Illinois Pollution Control Board, No. 3-994-0665 (3rd Dist. October 29, 1996)(unpublished rule 23 order).

This case involved an appeal by Lindsay-Klein of a Board opinion and order in Lindsay-Klein v. Office of the State Fire Marshal (August 11, 1994) PCB 93-255, affirming the Office

of the State Fire Marshal's (OSFM) determination that its underground storage tank (UST) was not properly registered and that therefore, Lindsay-Klein was ineligible for reimbursement from the UST Fund. The Third District found the OSFM's interpretation of the Gasoline Storage Act (430 ILCS 15/4) to be erroneous and reversed and remanded the case.

On June 5, 1996, the Illinois Supreme Court vacated the Third District's judgment in the original Lindsay-Klein appeal and directed the Third District to reconsider its judgment in light of First of America Trust Co. v. Armstead, 171 Ill. 2d 282 664 N.E. 2d 282 (1996), reversing 269 Ill. App. 3d 432, 646 N.E. 2d 302 (Third Dist. 1995). The Third District, in its review of the case, reaffirmed its prior judgment reversing and remanding the case. A petition for leave to appeal this second decision was filed by the OSFM and the Board. The Supreme Court denied the petition for leave to appeal and on October 29, 1996, the mandate issued from the Third District.

The Third District held that the dealership's tank was properly registered and reversed and remanded the proceeding.

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 either by a citizen or by the Attorney General on behalf of the People of the State of Illinois. 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 a 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.

CDT Landfill Corp. v. County of Will, No. 3-96-0043 (3rd Dist. August 12, 1996)(unpublished rule 23 order).

This case involved an appeal by CDT Landfill Corp. (CDT) of the issuance of administrative citations for violations of Section 21(o)(9) of the Act (415 ILCS 5/21(o)(9)). The Board found that CDT had violated the Act in consolidated cases AC 94-98, AC 95-01, and AC 95-02 (October 5, 1995 interim order, December 7, 1995 final order). The Third District affirmed the Board's ruling.

CDT is the operator of a landfill in Will County (County). CDT operates pursuant to a permit issued by the IEPA. The IEPA has delegated to the County the right to issue administrative citations within Will County pursuant to section 4(r) of the Act.

In December 1994 and January 1995, the County issued three citations for violation of Section 21(o)(9) of the Act. The citations were issued based upon on-site inspections for exceedence of height limits depicted in CDT's development plan which was part of CDT's permit. In December 1995, the Board issued an order with one dissent, finding that CDT violated Section 21(o)(9) of the Act for all but one of the citations. CDT appealed to the Third District the remaining two violations.

The Board determined that CDT's height limitations in the development plan applied not only at closure but also during landfill operations. The Board found that structural integrity, proper drainage, stability, and maintenance were all things that would be affected by the height limitations during operation of the landfill. Additionally, the Board found that CDT's permit referred to two dimensional boundaries of trench markings and waste footprints as stated in the development plan. Finally, the Board held that the plan was part of the permit and that the permit did not allow CDT to operate above the height limitations in the plan.

The Third District found that the Board's decision was not against the manifest weight of the evidence. More specifically, the court found that CDT's plan contained height limitations which were intended to be applied during operations.

Finally, CDT argued that the standard of proof in administrative citations should be heightened. They contended that because the violations could subject them to thousands of dollars in fines that the preponderance of the evidence standard was not high enough. The Third District disagreed. The court stated that the test for whether to heighten the standard was a balance between the protection of both public and private interests. In this case, the court found that the protection of the public's health, safety, and welfare outweighed any interest CDT had in not receiving an administrative citation.

The Illinois Pollution Control Board Members

Current Illinois Pollution Control Board Members bring a balance of various qualifications and backgrounds to the environmental cases they process. Comprised of legal, engineering, biological, geological, and environmental science expertise, the Board reviews nearly 500 environmental cases annually and holds public hearings on more than 250.

Chairman Claire Manning was first appointed to the Board and designated Chairman by Governor Jim Edgar in May 1993. She was reappointed in May 1995. Chairman Manning earned a JD from Loyola University School of Law in 1979, and a BA from Bradley University. She was an original member of the Illinois State Labor Relations Board and was instrumental in designing the labor board and the public sector labor relations system in Illinois. She is a frequent speaker on Board related matters before various associations and environmental groups. Prior to her appointment to the Board, Chairman Manning was a visiting Professor at the University of Illinois' Institute of Labor and Industrial Relations; President-Elect of the National Association of Labor Relations Agencies; and Chief Labor Relations Counsel for the State of Illinois. Currently Chairman Manning serves on the Illinois State Bar Association's Administrative Law Section Council and the Special Committee on Women and the Law.

Board Member Ronald C. Flemal earned a BS from Northwestern University, and a Ph.D. in Geology from Princeton University. From 1967 to 1985, he served as a Professor of Geology at Northern Illinois University, during which time he authored over 80 articles dealing principally with environmental and natural science issues. Dr. Flemal also serves as a member of the Illinois State Bar Association Environmental Law Council. Dr. Flemal was appointed by Governor James R. Thompson in May 1985 and was most recently reappointed by Governor Jim Edgar in 1996.

Board Member G. Tanner Girard was first appointed in February 1992 and reappointed in June 1994 by Governor Jim Edgar. Dr. Girard has a Ph.D. in science education from Florida State University. He holds an MS in biological science from the University of Central Florida and a BS in biology from Principia College. He was formerly Associate Professor of Biology and Environmental Sciences at Principia College and Visiting Professor at Universidad del Valle de Guatemala. Other gubernatorial appointments have included services as Chairperson and Commissioner of the Illinois Nature Preserves Commission and membership on the Governor's Science Advisory Committee. He also was President of the Illinois Audubon Society and Vice-President of the Illinois Environmental Council.

Board Member Kathleen M. Hennessey, the newest member of the Illinois Pollution Control Board, was appointed to the Board effective October 16, 1996. Ms. Hennessey earned a JD from the University of Chicago Law School in 1985, and an AB in Economics with honors from the University of Michigan in 1981. Ms. Hennessey has broad experience in environmental law and litigation through her prior work as a Senior Supervising Attorney for the City of Chicago Law Department, a partner in the Environmental Practice Group of Mayer, Brown and Platt and an attorney at Schiff, Hardin and Waite.

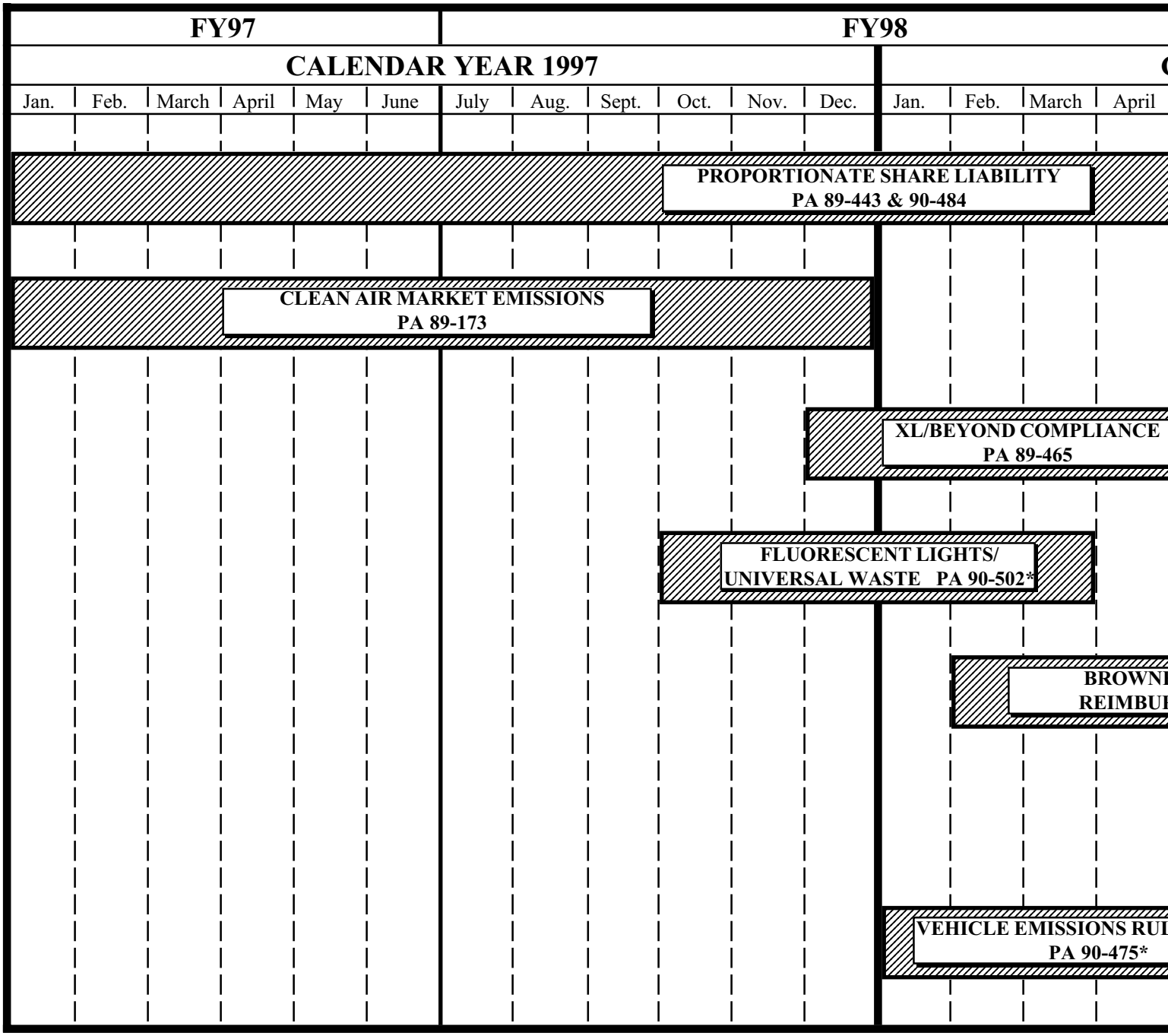
Board Member Marili McFawn brings expertise as a former law partner at Schiff, Hardin and Waite. She also served as Attorney Assistant to former Illinois Pollution Control Board Chairman Jacob Dumelle, former Vice-Chairman Irvin Goodman, and current Board Member J. Theodore Meyer, and as an Enforcement Staff Attorney for the Air and Public Water Divisions at the Illinois Environmental Protection Agency. Ms. McFawn earned a JD from Loyola University in 1979 and a BA in English from Xavier University in 1975. She was first appointed to the Board in November 1993 and reappointed in May 1995 by Governor Jim Edgar.

Board Member J. Theodore Meyer's long history of distinguished service to the Board began with his first appointment by Governor James R. Thompson in June 1983. He was last reappointed in June 1994 by Governor Jim Edgar. Mr. Meyer was a State Representative, 28th District, in the Illinois General Assembly from 1966-1972 and 1974-1983. Among his many honors, he held the Chairmanship of the House Energy and Environment Committee. Mr. Meyer has a JD from DePaul University and a BS in biology and chemistry from John Carroll University. He is currently listed in the 1996 editions of Who's Who in the World, Who's Who in America, Who's Who in the Midwest, Who's Who in Finance and Industry, Who's Who in American Law and Who's Who in American Politics.

Board Member Joseph C. Yi is a registered Professional Engineer and a licensed Asbestos Abatement Management Planner. He has a BS in Civil Engineering from the Illinois Institute of Technology. Mr. Yi served as the Assistant to the Director of Finance and Administration and also as the Bureau Chief of the Small Business Enterprises (Federal DBE/WBE Program) of the Illinois Department of Transportation. Earlier, he was a partner of the engineering consultant firm Nakawatase, Rutowski, Wyns, & Yi, Inc; Director of Transportation of the midwestern offices of Metcalf & Eddy, Inc.; and the City Engineer of the City of Evanston. He is extensively involved in the social services activities of the Korean American and the Asian American communities. Governor Edgar appointed Mr. Yi to the Board to fill a vacancy in September 1994, and reappointed him in July 1995.

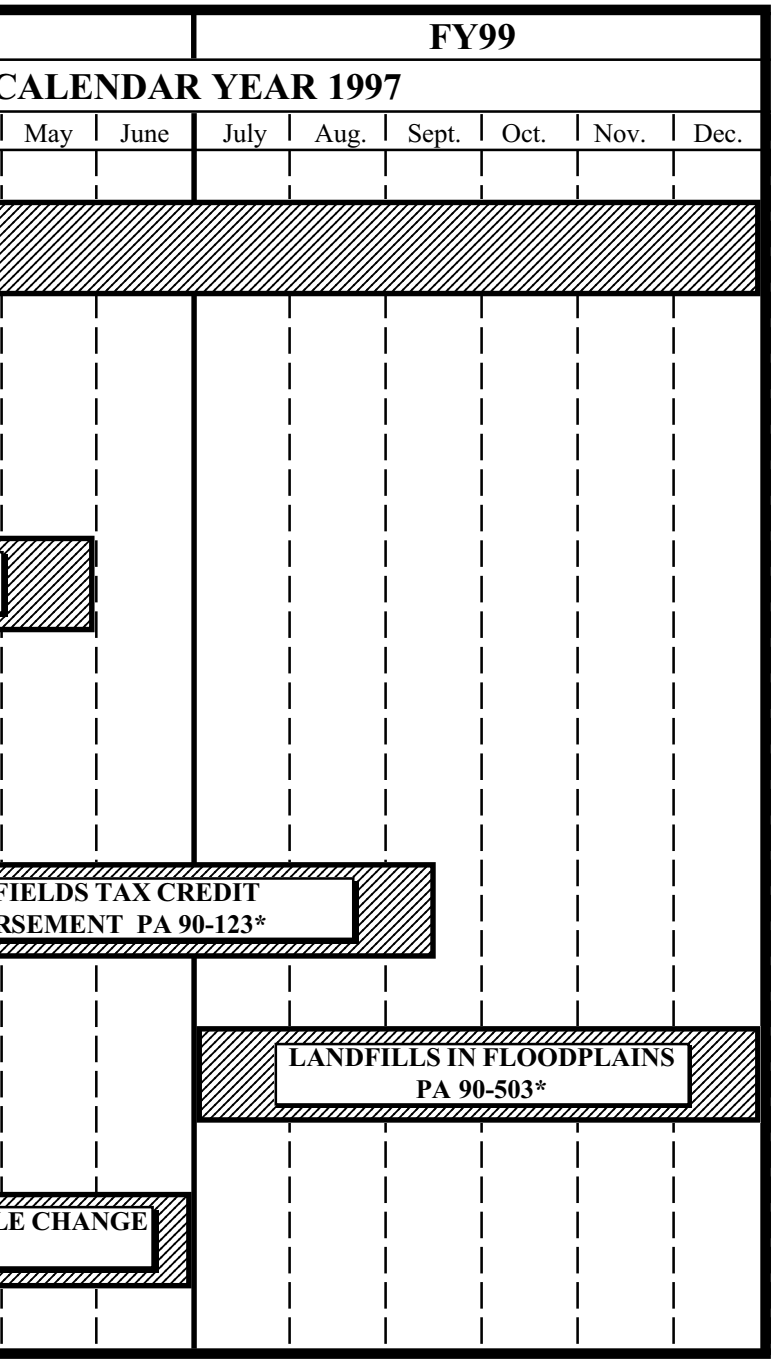
CASE STA

RECENT RULEMAKING RESPONSIBILITIES



TISTICS

Rulemakings per Fiscal Year



Variance Proceedings

Enforcement Cases

Other Proceedings

Regulatory Review

In fiscal year 1997, the Board was presented with the task of promulgating several rulemakings of an unprecedented girth. The Board, while faced with more rulemakings than it has had in recent history, continued to process its caseload in a timely fashion. The following is a summary of the most significant rulemakings completed in fiscal year 1997, and three significant rulemakings that will be completed in fiscal year 1998.

Underground Storage Tank Rules

On March 6, 1997, the Board adopted amendments to the existing underground storage tank (UST) rules as required by P.A. 89-457, which was signed and became effective May 22, 1996. P.A. 89-457 required that the Board complete its rulemaking on or before March 15, 1997. The amendments were proposed on September 16, 1996 by the Illinois Environmental Protection Agency (IEPA). Hearings were held on November 18, 1996 in Chicago, Illinois and on December 9, 1996 in Springfield, Illinois. The Joint Committee on Administrative Rules voted a certification of no objection to the amendments on February 26, 1997.

The reasons for the amendments were threefold: (1) to make the UST program consistent with specified federal requirements; (2) to clarify issues which have arisen since initial implementation; and (3) to address issues unresolved in the predecessor R94-2(B) docket, such as determining risk-based remediation objectives and site classification. Specifically, this amended rule includes general changes throughout Part 732 including adopting references to Part 742 for use in developing remedial objectives. In addition, the Board has added a new definition for "stratigraphic unit" and provisions for testing to be done on a stratigraphic unit, as well as requiring a Licensed Professional Engineer to identify why testing need not be done on a stratigraphic unit. Generally, time frames for submission of reports and appeal periods have been clarified throughout the rule. Alternative methods for soil testing and site classification have been added along with clarifications on hydraulic conductivity and yield. The rule also includes changes in groundwater monitoring requirements including placement of wells and allowing reclassification at any time prior to the submission of a "Low Priority" completion report. The Board has also clarified the standards for when a "No Further Remediation Letter" may be revoked. The rule includes clarification regarding payments and what constitutes reasonable costs and early action. This rule became effective July 1, 1997.

Site Remediation Program (Brownfields)

On June 5, 1997, the Board adopted procedures and standards for the Site Remediation Program (SRP), more commonly know as brownfields (35 Ill. Adm. Code 740). The SRP was timely adopted as required by Title XVII of the Environmental Protection Act (415 ILCS 5/58-58.12, as added by P.A. 89-431, effective December 15, 1995, and amended by P.A. 89-443, effective July 1, 1996) and became effective July 1, 1997. Upon signing this legislation Governor Jim Edgar stated, "[a]s we clean the soil and protect our water resources, we also will be helping Illinois businesses provide goods and services, create jobs, improve property values, and turn blighted areas into renewed economic assets for communities across the State. At the same time, we preserve more undeveloped 'green' areas by directing commercial and industrial development to sites previously used for those kind of activities."

The SRP is a voluntary program in which any person performing site investigation or remediation may elect to proceed. The rules require the Remediation Applicant (RA) to submit an application and enter into a service agreement with the Illinois Environmental Protection Agency (IEPA). If contamination is discovered during a site investigation, the RA must propose remedial objectives to the IEPA. If remediation is necessary to achieve compliance with the objectives, the RA must propose a remedial

action plan. After the plan is approved by the IEPA, the RA must submit a remedial action completion report to show that the objectives have been achieved. The IEPA will issue a No Further Remediation (NFR) Letter upon approval of the remedial completion report. The NFR Letter is considered to be *prima facie* evidence that the site does not constitute a threat to human health and the environment.

The SRP is a new program which establishes procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities. The Board also amended 35 Ill. Adm. Code 620, Groundwater Quality, to provide consistency in cross-referencing between Part 620 and the Part 740. The regulations establish a program which is designed to ensure cleanup of contaminated property in Illinois based on an analysis of risks associated with current and future uses of the site. The SRP provides incentives to clean up abandoned or under-used property within the State of Illinois.

> ". . . we preserve more undeveloped 'green' areas by directing commercial and industrial development to sites previously used for those kind of activities."
>
> *-Governor Jim Edgar*

Tiered Approach to Corrective Action Objectives (T.A.C.O.)

On June 5, 1997, the Board adopted a new Part 742 to the land pollution control regulations. The intent of the proposal is to: (1) establish a risk-based system of remediation based on the protection of human health and the environment relative to present and future uses of the land, and (2) assure that the land use for which remedial action was undertaken will not be modified without consideration of the adequacy of such remedial action for the new land use. The T.A.C.O. procedure consists of a three-tiered approach for establishing remediation objectives. The tiers can operate fully independent of each other; each successive tier allows a person conducting a remedial investigation pursuant to the Environmental Protection Act to rely on more site-specific information, and requires a concomitant increase in the level of site-specific investigation and analysis under Part 742.

The T.A.C.O. methodology is premised upon the statutory mandates in the site remediation legislation, P.A. 89-431, which was signed and became effective December 15, 1995, as amended by P.A. 89-443, effective July 1, 1996.

Prior to finalizing the TACO rules, the Board, on May 1, 1997,had opened Docket B to address the mixture rule as it relates to remediation objectives for similar-acting carcinogenic and noncarcinogenic chemicals in soil and groundwater.
The first notice proposal created a mixture rule in each of the three tiers of the TACO program. The mixture rule under Tier 1 requires that the mixture of similar-acting noncarcinogenic chemicals be evaluated when determining groundwater remediation objectives.

Similar acting carcinogenic chemicals must be evaluated in groundwater when the Tier 1 remediation objectives are exceeded or when similar-acting carcinogenic chemicals have remediation objectives at a risk level higher than 1 in 1 million.

The mixture rule under Tier 2 requires that similar acting noncarcinogenic and carcinogenic chemicals be evaluated when developing groundwater remediation objectives. The mixture rule under Tier 2 also requires that similar acting noncarcinogenic chemicals be evaluated when determining soil remediation objectives. The mixture rule under Tier 3 requires that similar acting noncarcinogenic and carcinogenic chemicals be evaluated for both groundwater and soil remediation objectives.

Livestock Waste Regulations

On May 15, 1997, the Board adopted livestock waste regulations to implement the provisions of the Livestock Management Facilities Act (Live-

stock Act) (510 ILCS 77/1 *et seq.*, adopted as P.A. 89-456, eff. May 21, 1996). The rules set forth administrative requirements such as standards and procedures that the Department of Agriculture must follow in making various administrative determinations under the rules. The rules also contain a section which mandates that records be kept of all determinations, and that such records are subject to public inspection.

Regarding setbacks, the regulations require that new livestock management and livestock waste handling facilities provide notification to the Department of Agriculture of their intent to build, prior to construction. Further, the Board rules provide a process that is designed to ensure that all statutory setback distances are adhered to and that notice is given to all owners of property located within the setback area. The rules provide that, for measuring setbacks from common places of assembly where the primary activity of the place is outdoors, the setbacks be measured from the nearest corner of the property line of the common place of assembly. The Department of Agriculture is also required to certify that the applicable setback distances have been complied with before construction begins.

The Livestock Act allows for the Department of Agriculture to provide for a decrease of the statutory setbacks if innovative designs are incorporated into the facility. In these cases, the Board rules require that the owner or operator attach to the request for decrease a certification by a Licensed Professional Engineer that the innovative design incorporated into the facility will achieve a greater amount of odor protection than the waived setbacks. The rules also substantially mirror the provisions of the Livestock Act and provide that setbacks may be decreased when waivers are obtained from owners of occupied residences, non-farm businesses, and common places of assembly that are located within the setback area. The request for a setback decrease must be in writing, and the owner or operator seeking the decrease must attach to the request copies of the written and notarized waivers from the owner(s) of the property located within the setback area. The rules further provide that the Department of Agriculture must notify the owner or operator in writing of the setback decrease within 30 days after receipt of the request for decrease.

Regarding design of lagoons, the rules require specific design standards for livestock waste lagoons which are in accord with established engineering practices. Specifically, the rules require that the owner or operator of a new or modified lagoon register that lagoon with the Department of Agriculture and hire a Licensed Professional Engineer or Licensed Professional Geologist to perform a site investigation prior to construction. The site investigation requires soil borings to determine the distance of the lagoon bottom to any aquifer material. Depending on the proximity of aquifer material, liners and/or groundwater monitoring will be required. Construction can only begin after proper licensed professional certification is made to the Department of Agriculture. The regulations also allow the Department of Agriculture to require changes in design that might be necessary to protect the groundwater. Moreover, the rules direct the Department of Agriculture, as a condition of the issuance of a livestock waste lagoon registration, to conduct periodic site inspections to assess the degree of compliance with the requirements of the Livestock Act.

Regarding the management of livestock management facilities, the rules provide that waste management plans be prepared by certain facilities that meet the statutory threshold animal unit requirement. The rules also set forth provisions concerning the application of livestock waste to the land. Moreover, the rules establish that a livestock waste handling facility that serves a certain number of animal units be managed by a certified livestock manager. Regarding penalties, the rules provide that the Department of Agriculture may issue cease and desist orders, and otherwise order necessary penalties for the violation of any of the rules. Regarding financial assurance and requirements for closure, the rules recite the statutory language. Finally, where the Livestock Act allows the Department of Agriculture to grant an alternative, modification, or waiver of the rules, the Board rules set forth a specific process to ensure that any such alternative, modification, or waiver is environmentally protective.

The rules became effective upon filing with the Secretary of State's Office on May 20, 1997, and replace the emergency rules adopted in R97-14 on October 29, 1996, and extended on March 20, 1997.

On March 20, 1997, the Board severed the docket in R97-15 into dockets A and B. Still pending, Docket B contains the specific procedures and criteria necessary to determine the level of financial surety required pursuant to the Livestock Act.

Upon publication of this report the Board was soliciting public comments and/or proposals to assist the Board in identifying and reconciling any inconsistencies between the Board's regulations (35 Ill. Adm. Code 506) adopted pursuant to the Livestock Act and previously existing regulations concerning agricultural-related pollution adopted by the Board (35 Ill. Adm. Code 501 through 504).

Emissions Reduction Market System

On October 7, 1996, the IEPA filed a proposal pursuant to Sections 9.8, 27, and 28 of the Environmental Protection Act (Act) (415 ILCS 5/9.8, 5/27, 5/28 (1996)). The IEPA's rulemaking proposal consists of two components. The first is the addition of 35 Ill. Adm. Code 205 which sets forth regulations creating an emissions reduction market system (ERMS) program for volatile organic material (VOM) for the Chicago nonattainment area. As proposed, the ERMS program is one component of the IEPA's plan designed to achieve a 9% reduction in VOM emissions by 1999 in the Chicago nonattainment area. Section 182(b)(1) of the Clean Air Act (CAA), as amended in 1990 (42 U.S.C. 7511 (b)(1)(A)), requires that by 1996, ozone nonattainment areas reduce emissions of VOM by 15% from 1990 levels. The second component of the proposal amends 35 Ill. Adm. Code 106 of the Board's procedural regulations to provide procedures by which the regulated sources may appeal IEPA's decision pertaining to the ERMS program.

The Board held nine days of hearings in this matter. The hearings took place on January 21 and 22, February 3, 4, 10 and 11, March 10, and April 21 and 22, 1997. The hearings were all held in Chicago, since the proposal affects the Chicago nonattainment area.

The proposed Part 205 is designed to regulate stationary point sources that are located in the Chicago ozone nonattainment area, which are required to obtain a Clean Air Act Permit Program permit and have seasonal emissions of at least 10 tons of VOM. Proposed Part 205 regulates these sources by establishing a historical emissions baseline and then reduces that baseline by 12%, thereby creating an emissions cap that is 12% below the historical VOM emissions. The baseline is established by averaging the two highest seasons of VOM emissions from the source between 1994 and 1996. The sources are then issued allotment trading units (ATUs) in an amount equal to their baseline. The sources are required to hold ATUs in the amount equal to their seasonal emissions of VOM. The proposed Part 205 identifies the seasonal allotment period to be May 1 through September 30. Sources can either reduce their emissions by 12% or purchase ATUs from the market created by the proposed rule to meet their emissions needs for each seasonal period. The ERMS program is designed to be permanent and to be a component of the Rate of Progress plan to achieve a 9% reduction in VOM emissions in the Chicago nonattainment area.

Conforming Amendments for the Great Lakes Initiative

On June 19, 1997, the Board adopted for first notice Conforming Amendments for the Great Lakes Initiative: 35 Ill. Adm. Code 302.101; 302.105; 302.Subpart E; 303.443 and 304.222. The Board proceeded to first notice as a result of the IEPA proposal, filed on March 21, 1997. The proposal amends the water quality standards for the Lake Michigan Basin in conformance with the federal Great Lakes Initiative. The first hearing in this matter was held on May 19, 1997, in Chicago. At that hearing, the IEPA presented testimony to support the proposed rules. A second hearing was held on July 28, 1997, in Waukegan, Illinois, at which time additional testimony by the IEPA and testimony (*Cont'd on p. 28*)

SUMMARY OF ENVIRONMENTAL AND BOARD-RELATED STATE LEGISLATION PASSED IN 1997

Following an overview of legislative action in fiscal year 1997 are summaries of bills signed or vetoed by the Governor. The signed bills are broken into the following categories:

- Air Pollution/Clean Air Act Compliance
- Landfill and Waste Transfer Station Siting and Regulation
- Land Pollution
- Water Pollution
- Environmental Liability, Enforcement, and Pollution Prevention
- Miscellaneous

Overview

The 1997 spring legislative session saw a number of bills advanced to the Governor dealing with the local landfill/incinerator siting process. One measure sought to eliminate the future possibility of any new landfills being built within the 100-year floodplain. Two other bills included measures to improve the siting process. One bill proposed extending the length of time nearby residents must be notified of local landfill siting hearings. Another measure focused on requiring that the terms or conditions of any host agreements entered into between landfill/ incinerator developers and local governments be made public. Yet another bill provided that subsequent owners of landfills or incinerators that were previously granted siting approval would not be required to undergo site approval a second time. A different trend was seen in the siting requirements for certain waste recycling centers as they were relaxed in an effort to encourage the development of such facilities.

Another major land-pollution related initiative that passed this spring created a Brownfields tax credit to encourage the remediation and redevelopment of contaminated properties around the State. The bill set up a grant program to assist municipalities with redevelopment of contaminated sites. Fiscal year 1997 also saw Illinois take action to adopt the federal Uniform Program for the regulation of hazardous waste transportation. Other measures were enacted to make it easier to recycle fluorescent light bulbs and dispose of various industrial process and pollution control waste as special waste. A new Drycleaners Environmental Response program was approved to assist drycleaners with contamination remediation. Additionally, legislation in response to the recent federal Operation Silver Shovel investigation was introduced for the City of Chicago and supported by the Attorney General. The measure, which became law, will make it more difficult to illegally dump construction or demolition debris on abandoned property.

In the area of air pollution, bills were enacted to give greater legislative oversight to the General Assembly in reviewing the Illinois Environmental Protection Agency's (IEPA) ozone State implementation plan, and to extend by 5 years the IEPA's ability to propose air pollution regulations to the Board under the "fast-track" rulemaking process. Additionally, a bill was passed requiring the Board to prohibit leaf-burning in certain areas of the State, however, that bill was vetoed by the Governor. In the area of water pollution regulation, legislation was approved allowing for third party appeals before the Board of National Pollutant Discharge Elimination System (NPDES) permit decisions made by the IEPA. The IEPA also sought and received approval to expand its current wastewater treatment loan program to also provide financial assistance to local governments in their development of public water supplies.

The following summary of laws passed during the spring legislative session (January through May 1997), details not only 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 conservation, nuclear safety, etc. Additionally, any bills vetoed by the Governor for which final action will not take place until the fall veto session (October 28, 29 ,30 and November 12, 13 ,14, 1997) are listed at the end of the summary.

SUMMARY OF BILLS SIGNED BY THE GOVERNOR

Air Pollution/Clean Air Act Compliance

Public Act 90-500 (HB 1230) Effective August 19, 1997
Amends Sections 10, 20, and 25 of the Interstate Ozone Transport Oversight Act to provide for the review by the Illinois General Assembly of the IEPA's State Implementation Plan (SIP) for ozone attainment. Requires legislative hearings on the SIP's prospective economic and environmental impacts. Prohibits the IEPA from submitting a SIP for ozone attainment to the United States Environmental Protection Agency that is any more stringent than necessary to achieve attainment with the national ozone standard, except under certain circumstances.

Public Act 90-265 (HB 1386) Effective July 30, 1997
Amends Section 28.5 of the Environmental Protection Act (Act). Extends by 5 years (from December 31, 1997 until December 31, 2002) the time period during which the IEPA may propose Clean Air Act rules to the Board for adoption under the current "fast-track" Clean Air Act rulemaking process. Provides that all fast-track rules be adopted under the fast-track rulemaking process unless another provision of the Act specifies the method for adopting a specific rule.

Public Act 90-367 (SB 819) Effective August 10, 1997
Amends Sections 9.6, 39, and 39.5 of the Act. Clarifies that the provisions of Title IV of the federal Clean Air Act concerning sources of acid rain deposition are enforceable under the Act. Allows parties required to apply for and obtain a Clean Air Act Permit Program (CAAPP) permit 30 days from the time they receive the permit to pay the IEPA the initial annual permit fee (as opposed to paying the fee prior to receiving the CAAPP permit, as is now the law). Provides that entities that are not subject to the CAAPP and are not required to obtain a federally enforceable State operating permit shall not be required to renew an operating permit except upon the written request of the IEPA. Also delays from fiscal year 1996 to fiscal year 1999 the time by which CAAPP permit holders must be reimbursed by the IEPA in proportion to their original fee payments to the Agency to the extent that the total fee revenues collected and deposited into the CAAPP Fund exceed 115% of the actual expenditures from the Fund. The 115% of expenditure cap on this fund was originally included to ensure that permit holders would not be required to pay unduly high fees when the Fund was not being used for its intended purpose. A delayed start by the IEPA in collecting the fees (first authorized in fiscal year 1993 but not collected until fiscal year 1996) led to slower implementation of the CAAPP and thereby created the necessity for this delay in implementing the 115% of expenditure cap on the CAAPP Fund.

Public Act 90-475 (HB 1887) Effective August 17, 1997*
Amends Sections 13B-15, 13B-25, and 13B-30 of the Vehicle Emissions Inspection (VEI) Law of the Illinois Vehicle Code. Relaxes requirements of the VEI Law to provide that new vehicles registered in those ozone nonattainment areas of the State (the Chicago metropolitan/collar county and Bi-State Metro East areas) must be inspected four years from the model year of the vehicle. (New cars must currently be tested in two years, as opposed to four.) Makes the evaporative system purge test (a test the IEPA conducts to inspect if pollutants are being emitted from loose hoses in the engine) discretionary; the test is currently mandatory. Allows the IEPA to extend by one year more than once during the lifetime of the vehicle a VEI certification for those vehicles which fail the inspection but for which costly or extensive repairs are needed to correct the problem.

**This bill also contained separate provisions dealing with siting of certain recycling centers that handle construction and demolition debris, and the allowable uses of local solid waste tipping fee revenues. See Public Act 90-475/HB 1887 under the Landfill and Waste Transfer Station Siting and Regulation, and Land Pollution sections.*

Landfill and Waste Transfer Station Siting and Regulation

Public Act 90-503 (SB 54) Effective August 19, 1997
Amends Section 39.2 and adds new Sections 22.19a and 22.19b within the Act. Prohibits local governments from siting new or expanded landfills or waste disposal areas anywhere within the 100-year floodplain. (Current law prohibits landfills, incinerators, and waste transfer stations from being sited within the 100-year floodplain unless they are floodproofed; this bill removes the floodproof option.) Exempts from this prohibition expansion of any existing landfill within the 100-year floodplain provided the proposed expansion has already received local siting approval. Also allows construction or expansion of landfills within the 100-year floodplain on property currently owned by a landfill company which have not yet received local siting, but extends the financial assurance requirement from 30 years after closure of the landfill to 100 years after closure for such landfills.

Public Act 90-409 (SB 475) Effective August 15, 1997
Amends Section 39.2 of the Act. Requires any host agreements (oral or written) negotiated or entered into between counties and/or municipalities with a developer of a pollution control facility (landfill, incinerator, or waste transfer station) be made public prior to the county or municipality voting on whether to site the proposed facility.

Public Act 90-217 (SB 140) Effective January 1, 1998
Amends Section 39.2 of the Act. Effective January 1, 1998, requires the developer/applicant of any new or expanded pollution control facility (landfill, incinerator, or waste transfer station) to notify every contiguous community as well as the county board of the county in which the facility is located of the local siting hearing at least 14 days prior to the local hearing. (Notice is already required under current law, however, no time frame is specified.) Specifically allows the county and any contiguous communities to participate in the local siting hearing.

Public Act 90-475 (HB 1887) Effective August 17, 1997*
Amends Sections 3.32, 3.78, and 21, and adds new Sections 3.78(a) and 22.38 within the Act. Exempts recycling centers that handle only clean construction or demolition debris in Cook and DuPage Counties only from local siting but requires the facilities to comply with all local zoning or, in the absence of local zoning requirements, are located no closer than 1,320 feet from the nearest property zoned for primarily residential use. Expands the definition of a "recycling center" to include certain sites and facilities accepting only general construction or demolition debris for the removal of recyclable materials. Exempts such recycling from certain IEPA permit requirements. Specifies the duties of owners or operators of such recycling centers. Sets additional requirements for the operation and handling of clean construction or demolition debris at such facilities.

**This bill also contained separate provisions dealing with changes to the State's Vehicle Emissions Inspection (VEI) Law, and the allowable uses of local solid waste tipping fee revenues. See Public Act 90-475/HB 1887 under the Air Pollution/ Clean Air Act Compliance, and Land Pollution sections.*

Land Pollution

Public Act 90-123 (SB 939) Effective July 21, 1997
Amends Section 201 of the Illinois Income Tax Act; amends Sections 58 and 58.3 and adds new Sections 58.13 and 58.14 within the Act; adds a new Section 5.449 to the State Finance Act; and amends Section 5 of the Response Action Contractor Indemnification Act. Establishes an environmental remediation state income tax credit available for certain costs incurred by a person between January 1, 1998, and January 1, 2002 in performing remediation activities in accordance with the Site Remediation Program (Brownfields) under Title XVII of the Act. Provides for a 5-year carry-over of the tax credit. Sets forth the IEPA's procedures for determining whether the remediation sites may be used toward the environmental remediation tax credit. These procedures include, among other things: the party seeking the tax credit could not have caused or materially contributed to the contamination, the party must have completed the remediation and received his No Further Remediation letter (clean letter), and the party must have spent at least $100,000 on remediation costs to qualify for the tax credit up to a maximum of 25% up to $700,000 (meaning the tax credit for any one site is limited to a maximum of $150,000).

Requires the IEPA to propose rules to the Board within 6 months after the immediate effective date of this bill setting forth what specific remediation costs are eligible for reimbursement through the tax credit. Requires the Board to adopt on second notice, rules within 6 months of receiving the proposed rules from the IEPA (meaning the final rules would be adopted no longer than 45 days after the Board's 6-month second notice deadline to allow for the Joint Committee on Administrative Rules review period). Provides that all Brownfields remediation tax credit reimbursement determinations made by the IEPA are appealable to the Board.

Also creates the Brownfields Redevelopment Grant Program to be administered by the IEPA to provide municipalities with funding for Brownfields redevelopment efforts. Sets parameters for awarding grants under the Grant Program (such as a lower minimum cost threshold for municipalities located in enterprise zones). Allows for grants to municipalities of up to 70% of the remediation costs, subject to the availability of funds. Creates the Brownfields Redevelopment Fund, to be made up of funds transferred out of the Response Action Contractor Indemnification Fund.

Public Act 90-344 (HB 1736) Effective January 1, 1998
Amends Sections 21 and 44 of the Act. Prohibits any person from generating, transporting, transferring, or operating any facility for the receipt, transfer, recycling, or other management of construction debris without maintenance of load tickets and other manifests reflecting receipt of the debris from the hauler and generator of the debris. Exempts public utilities. Authorizes violations to be punishable by the imposition of between 100 and 300 hours of community service.

Public Act 90-475 (HB 1887) Effective August 17, 1997*
Amends Section 22.15 of the Act. Expands the purposes for which local governments (either counties or municipalities) may utilize their local solid waste "tipping fee" revenues to include any environment-related purpose, including but not limited to environment-related public works projects. Prohibits such revenues from being used for the construction of any new pollution control facility (landfill, incinerator, or waste transfer station) other than a household hazardous waste facility.

**This bill also contained separate provisions dealing with changes to the State's Vehicle Emissions Inspection (VEI) Law and siting of certain recycling centers that handle construction and demolition debris. See Public Act 90-475/HB 1887 under the Air Pollution/Clean Air Act Compliance, and Landfill and Waste Transfer Station Siting and Regulation sections.*

Public Act 90-502 (HB 2164) Effective August 19, 1997*
Amends Section 22.23(a) of the Act. Reclassifies hazardous fluorescent and high intensity discharge lamps (currently classified as hazardous waste) as a category of universal waste. Within 2 months of the immediate effective date of this bill, requires the IEPA to propose to the Board rules to reflect this reclassification. Requires the Board to adopt final rules within 6 months of receiving the proposed rules from the IEPA. Should the United States Environmental Protection Agency (USEPA) adopt streamlined hazardous waste regulations for fluorescent or high intensity discharge lamps or otherwise exempt such lamps from the current hazardous waste regulations, requires the Pollution Control Board to adopt equivalent rules within 6 months of the USEPA's action as an alternative to adopting rules proposed to the Board by the IEPA.

Amends Sections 3.45 and 22.48 of the Act. Redefines "special waste." Provides that certain industrial process waste and pollution control waste shall be managed as special waste unless the generator provides a specified certification. Sets forth penalties for falsely certifying that such waste is not special waste.

Creates the Drycleaner Environmental Response Trust Fund Act (Drycleaner Act) to support remediation of drycleaning solvent releases at drycleaning facilities through a reimbursement program for remediation of existing releases and an insurance program for prospective releases. Creates the Drycleaner Environmental Response Trust Fund Council to administer the Drycleaner Act. Sets forth a continuing appropriation of moneys in the Fund to the Council to make disbursements required under the Drycleaner Act. Authorizes the imposition of civil and criminal penalties for violations. Establishes a quantity-based drycleaning solvent fee to be imposed on any person selling and transferring drycleaning solvent to a person operating a drycleaning facility for use at the facility. Imposes a one-time drycleaning solvent floor stock fee to be assessed on January 1, 1998. Requires owners or operators of drycleaning facilities to obtain a license under the Drycleaner Act in order to be eligible for reimbursement and insurance benefits under the Drycleaner Act. Repeals the license, sale, and transfer fee provisions on July 1, 2007. Provides for a transfer of $375,000 in State General Revenue Funds (GRF) to the Drycleaner Environmental Response Trust Fund, which, after 6 months, shall be transferred back into GRF. Amends the State Finance Act by adding a new Section 5.449 to create the Drycleaner Environmental Response Trust Fund as a new fund within the State Treasury. Amends Section 2.5 of the Insurance Code to exempt the Drycleaner Environmental Response Trust Fund from the provisions of the Code.

**This bill also contained a separate provision creating the offense of criminal disposal of waste. See Public Act 90-502/HB 2164 under the Environmental Liability, Enforcement, and Pollution Prevention Section.*

Public Act 90-266 (HB 1411) Effective July 30, 1997
Amends Section 22.22 of the Act. Authorizes the owner or operator of any landfill to accept source separated and processed (composted) landscape waste for final disposal, provided the owner or operator has received a permit from the IEPA to use the landscape waste as alternative daily cover at the landfill.

Public Act 90-490 (SB 795) Effective August 17, 1997
Amends Sections 2 and 10 of the Oil and Gas Wells on Public Lands Act. Prohibits oil and gas extraction activities and the use of production equipment on land owned by the Department of Natural Resources (DNR) and on other State-protected lands. Provides for the allocation of moneys received from oil and gas permitting and licensing relating to DNR lands that

have not been purchased with moneys from the Wildlife and Fish Fund and moneys received from the integration of those lands. Also amends Section 22.2 of the Illinois Oil and Gas Act to prohibit integration of interests in an established drilling unit if one owner is DNR, unless DNR determines, following a comprehensive environmental impact review, that no substantial or irreversible detrimental harm will occur on DNR lands as a result of any proposed activities relating to mineral extraction.

Public Act 90-260 (HB 771) Effective July 30, 1997
Amends Section 19.6 of the Illinois Oil and Gas Act to authorize the Department of Natural Resources (DNR) to administer the Landowner Grant Program. Also authorizes DNR to expend funds in the Plugging and Restoration Fund for the removal of well site equipment, for reimbursement to landowners for plugging wells and restoring sites, and for disposing of associated tank battery production facility equipment, and any hydrocarbons from the well.

Public Act 90-467 (HB 1174) Effective August 17, 1997
Amends Sections 2 and 5 of the Hazardous Material Emergency Response Reimbursement Act. Provides that it is the intent of the General Assembly to alleviate the financial hardship imposed on *ALL* (instead of "small") communities that respond to emergency incidents involving hazardous materials. Increases the allowable level of reimbursement from the Hazardous Material Emergency Reimbursement Fund to local emergency response agencies by decreasing from 5% to 2% of the local agency's annual budget the amount of money that the local response agency must first have had to spend on emergency response supplies prior to receiving reimbursement from the Hazardous Material Emergency Reimbursement Fund.

Water Pollution

Public Act 90-274 (SB 814) Effective July 30, 1997
Amends Section 40 of the Act. Authorizes third party appeals, by petition for hearing before the Board, of National Pollutant Discharge Elimination System (NPDES) permit decisions by the IEPA. Authorizes the Board to dismiss such appeals where the Board determines that: 1) the appeal is duplicitous or frivolous, or 2) the petitioner is so located as to not be affected by the permitted facility. Limits such appeals to persons who have standing.

Public Act 90-121 (SB 815) Effective July 17, 1997
Amends Sections 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, and 19.8 of the Act. Creates the Public Water Supply Loan Program to be administered by the IEPA to provide financial assistance to local governments in their development of public water supplies. Provides that this new program and the Loan Support Program comprise the Water Revolving Fund (formerly, the Water Pollution Control Revolving Fund). Expands the uses of the Loan Support Program to include, among other things, financing costs incurred by the IEPA to provide technical and administrative assistance relating to public water systems. Authorizes the IEPA to set by rule special loan terms for disadvantaged communities and maximum limits on annual distributions of funds to loan applicants.

Environmental Liability, Enforcement, and Pollution Prevention

Public Act 90-502 (HB 2164) Effective August 19, 1997*
Amends Section 44 of the Act. Creates the offense of criminal disposal of waste, punishable as a Class 4 felony and a fine of up to $25,000 for the first offense, and a Class 3 felony and fine of up to $50,000 for a second or subsequent offense. Also makes it unlawful for any person to knowingly violate provisions of the Procedures for Asbestos Emission Control of the Code of Federal Regulations (40 CFR 61.145(c)).

**This bill also contained three other provisions dealing with reclassificaiton of fluorescent light bulbs, special waste, and the creation of a Drycleaner Environmental Response Trust Fund. See Public Act 90-502/HB 2164 under the Land Pollution section.*

Public Act 90-442 (SB 347) Effective August 16, 1997
Amends Sections 3 and 4 of the Illinois Chemical Safety Act. Revises the definition of "chemical substance" and sets forth exclusions from the term. Allows a business to establish eligibility for exemption from the Chemical Safety Contingency Plan requirements through written certification that is verified by the IEPA. Deletes the 2-year limit on exemptions to those requirements.

Public Act 90-484 (SB 348) Effective August 17, 1997
Amends Section 58.9 of the Act. Extends by 1 year (from the current December 31, 1997 until January 1, 1999) the deadline by which the Board must adopt final rules to implement proportionate share liability for environmental contamination and remediation costs.

Public Act 90-489 (SB 778) Effective January 1, 1998
Amends Section 27 of the Act. Requires the Board to request the Department of Commerce and Community Affairs (DCCA) conduct an economic impact study (EcIS) on any proposed Board rules prior to the adoption of the rules. Allows (but does not require) DCCA to conduct the EcIS. Where DCCA chooses to conduct the EcIS, requires the DCCA to do so within 30 to 45 days of notification from the Board. Requires public notice of any EcIS conducted for the Board by DCCA. Requires the Board to consider the EcIS during its hearing process on the proposed rule. Exempts rules relating to the Board's or the IEPA's administrative procedures. Specifies that, at a minimum, the EcIS must address the economic, environmental, and public health benefits that may be achieved through compliance with the proposed rule, and the effects of the proposed rule on employment levels, commercial productivity, the cost of living, the economic growth of small businesses with 100 or less employees, and the State's overall economy.

Public Act 90-219 (SB 378) Effective July 25, 1997
Amends Sections 21, 22.2, and 44 of the Act. Requires the IEPA to implement the federal Uniform State Hazardous Materials Transportation Registration and Permit Program (Uniform Program) by July 1, 1998. Requires persons engaged in the transportation of hazardous waste to register and obtain a permit under the Uniform Program before transporting such waste. Requires the IEPA to collect an application fee of no more than $250 and an apportioned, annual $20 registration fee from transporters under the Uniform Program. Provides that credits be awarded to hazardous waste transporters to the extent the fees they pay ever exceed 115% of the annual appropriation to the Hazardous Waste Transporter Account. Makes it a Class A misdemeanor for any hazardous waste transporter to knowingly transport hazardous waste without having his credentials issued under the Uniform Program in his vehicle. Allows the IEPA to enter into reciprocal agreements with federal agencies, national repositories, or other states to implement the Uniform Program.

Public Act 90-263 (HB 1239) Effective July 30, 1997
Amends Section 3 of the Illinois Hazardous Materials Transportation Act to define "knowingly" as meaning that a person had actual knowledge of the facts giving rise to the violation or that a reasonable person acting under the same circumstances and exercising due care would have such knowledge.

Public Act 90-516 (SB 574) Effective January 1, 1998
Amends the Illinois Municipal Code to add a new Division 2.1 to Article 1. Authorizes municipalities to set up systems of administrative adjudication of violations of certain municipal ordinances. Applies only to home rule municipalities. Provides that administrative adjudication is not the exclusive method available to enforce municipal ordinances. Sets the powers and qualifications for municipal hearing officers. Provides for notice and opportunity for hearing at administrative proceedings. Provides that the strict rules of evidence do not apply at such administrative proceedings. Provides for judicial review of administrative decisions. Provides that existing systems of administrative adjudication shall not be affected by this bill.

Public Act 90-517 (SB 596) Effective August 22, 1997
Amends the Counties Code to add a new Division 5-41 to Article 5. Authorizes counties with a population of under 3,000,000 (all counties except Cook County) to set up, by ordinance, systems of administrative adjudication of violations of certain county code violations, including but not limited to provisions dealing with animal control; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; and the construction and maintenance of buildings and structures. Provides that administrative adjudication is not the exclusive method available to enforce county code ordinances. Sets powers for county hearing officers. Provides for notice and opportunity for hearing at administrative proceedings. Provides that the strict rules of evidence do not apply at such administrative proceedings. Provides for administrative review of administrative decisions. Provides that existing systems of administrative adjudication shall not be affected by this bill.

Public Act 90-151 (HB 552) Effective July 23, 1997
Amends the Private Sewage Disposal Licensing Act by adding a new Section 10.5. Requires any ordinances local governments may adopt for regulation of private sewage disposal contractors to include, at a minimum, the standards promulgated by the Department of Public Health (DPH). Allows for a local government's ordinance to deviate from the State standards, but only upon the request to and approval by DPH following a public hearing, provided the local government can demon-

strate to DPH that its own ordinance is more protective of public health than the State standard. Also creates an Advisory Council on Private Sewage Disposal to advise the Director of DPH on any proposed changes to the State standards.

Public Act 90-449 (SB 689) Effective August 16, 1997
Amends Sections 3, 4, 5, 5.07, 5.09, 6, 8, 8.02, and 8.03 of the Hazardous Materials Emergency Act (HMEAct). Authorizes units of local government to adopt ordinances or regulations requiring a hazard signage system applicable to equipment, facilities, structures, or locations involved in the use, storage, or manufacture of hazardous materials. Prohibits regulation by home rule units of local government that is inconsistent with the requirements of the HMEAct or with federal law. Provides that it is the responsibility of any person who leases, operates, or controls any facilities, equipment, structures, or locations for the use, storage, or manufacture (instead of transportation) of hazardous materials to display hazard signage. Further provides that the purpose of the HMEAct is to recommend that units of local government adopt regulations for hazard signage of hazardous materials (rather than to require the Illinois Emergency Management Agency to adopt such regulations), and provides for the adoption of such regulations by units of local government. Changes the composition of the Hazardous Materials Advisory Board to increase the number of members from 20 to 21. Authorizes the Attorney General or any State's Attorney to institute an action for penalties or other remedies to restrain or remedy violations of the HMEAct. (Current law provides that it is the State's Attorney's duty to institute appropriate proceedings to enforce the HMEAct.) Makes other various changes to the HMEAct.

Public Act 90-393 (HB 1735) Effective January 1, 1998
Amends Section 11-31-1 of the Illinois Municipal Code to apply the provisions of demolition, repair, or enclosure of abandoned or unsafe buildings by municipalities to the cleanup, inspection, testing, and remediation of hazardous substances in those buildings or on abandoned or unsafe property.

Miscellaneous

Public Act 90-155 (HB 1492) Effective July 23, 1997
Amends Sections 5-15 and 5-75 of the Administrative Procedure Act. Provides that requests for copies of State agency rules and materials incorporated by reference in those rules shall not be deemed Freedom of Information Act (FOIA) requests unless specified as a FOIA request by the person seeking the rules or materials.

Public Act 90-203 (SB 1097) Effective July 24, 1997
Amends Section 103.10 of the General Not For Profit Corporation Act to provide that a not for profit corporation has standing to sue when one or more of its members would otherwise have standing, provided the interests the corporation seeks to protect are germane to the corporation's purposes, and neither the claim asserted nor the relief requested requires the participation of any of the corporation's individual members in the lawsuit.

Public Act 90-144 (HB 274) Effective July 23, 1997
Amends Sections 2 and 6 of the Freedom of Information Act (FOIA). Also amends Section 2-123 of the Illinois Vehicle Code and adds a new Section 1-148.5. Defines "news media" and sets forth circumstances under which the news media may qualify for a reduced fee or waiver of a fee for a document request. Also amends the Open Meetings Act and the Emergency Medical Services Systems Act to make changes regarding deliberations for disciplinary review decisions, as well as circumstances under which municipalities may hold closed meetings for the purposes of considering the purchase, sale, or delivery of municipal electricity or natural gas. Amends the various licensing Acts to require each application for an original, renewal, or restored license to include the applicant's social security number. Amends Section 25 of the Vital Records Act to include the social security number among the information that may appear in a death certificate furnished by the State Registrar of Vital Records.

Public Act 90-206 (HB 800) Effective July 25, 1997
Amends Section 3 of the Freedom of Information Act (FOIA) and Section 13 of the Clerks of Courts Act. Prohibits any public body from delegating or contracting exclusively with another person or entity for the storage, copying, reproduction, inspection, or dissemination of public records (specifically including court records).

Public Act 90-294 (HB 889) Effective August 1, 1997
Amends Sections 1 and 2 of the Oaths and Affirmations Act. Authorizes persons certified under the Illinois Certified Shorthand Reporters Act of 1984 to administer oaths and affirmations and to take affidavits and depositions in accordance with the Act.

Public Act 90-295 (HB 891) Effective August 1, 1997
Amends the Illinois Certified Shorthand Reporters Act of 1984 by adding a new Section 28. Authorizes any person certified under the Illinois Certified Shorthand Reporters Act of 1984 to hold any attorney, firm, or any other entity personally responsible for payment of shorthand reporting services rendered at the request of the attorney, firm, or entity.

Public Act 90-49 (HB 895) Effective July 3, 1997
Amends Section 5 of the Illinois Certified Shorthand Reporters Act of 1984. Bars the use of the title "Court Reporter" by any person, either directly or indirectly in connection with his or her business, without a license issued under the Act.

BILLS VETOED BY THE GOVERNOR

Amendatory Vetoes

The following bill was amendatorily vetoed by the Governor and must, therefore, await final action by the General Assembly until the fall veto session (October 28, 29, 30 and November 12, 13, 14, 1997). In order for the bill to become law, both the House and the Senate must take the identical action on the bill during the fall veto session or the entire bill will die; both houses must either vote to accept the Governor's changes made in the amendatory veto (simple majority needed - 30 votes in the Senate and 60 in the House) or both must vote to override the amendatory veto (3/5 majority required - 36 votes in the Senate and 71 in the House).

HB 767
Amends Sections 39 and 39.2 of the Act. Authorizes the transfer of local siting approval for a new pollution control facility (landfill, incinerator, or waste transfer station) from a previous owner/developer to a subsequent owner/developer. (Effectively exempts the subsequent owner/developer from having to go back through the local siting process, provided the proposed facility has already been granted local siting approval prior to the transfer of ownership to the subsequent owner/developer.) In such a situation, requires the IEPA to conduct an evaluation of the subsequent owner's prior experience in waste management operations. Requires the subsequent owner/developer to give public notice at the time he applies to the IEPA for a construction or development permit. Additionally, requires the subsequent owner/developer to comply with all conditions imposed upon the previous owner/developer by the county or municipality (*i.e.*, host agreements), but allows any such conditions to be modified by agreement between the subsequent owner/developer and the local government. *The Governor amendatorily vetoed this bill to restore the IEPA's authority to deny a permit to a waste transfer station transferred to another owner based upon the new owner's prior conduct. This provision was inadvertently deleted in the underlying bill.*

Total Vetoes

The following bills were vetoed in their entirety by the Governor and must, therefore, await final action by the General Assembly until the fall veto session. In order for a vetoed bill to become law, both the House and the Senate must vote to override the Governor's total veto (3/5 majority required - 36 votes in the Senate and 71 in the House) during the fall veto session or the bill will die.

SB 304
Amends Sections 2 and 10 of the Oil and Gas Wells on Public Lands Act. Prohibits oil and gas extraction activities and the use of production equipment on land owned by DNR and on other State-protected lands. Provides for the allocation of moneys received from oil and gas permitting and licensing relating to DNR lands that have not been purchased with moneys from the Wildlife and Fish Fund and moneys received from the integration of those lands. Also amends Section 22.2 of the Illinois Oil and Gas Act to prohibit integration of interests in an established drilling unit if one owner is DNR, unless DNR determines, following a comprehensive environmental impact review, that no substantial or irreversible detrimental harm will occur on DNR lands as a result of any proposed activities relating to mineral extraction. *The Governor vetoed this bill because he had already signed identical legislation into law this summer in the form of Public Act 90-490/SB 795.*

SB 1103
Amends Sections 9, 10, and 42 of the Act. Requires the Board to adopt rules to ban the burning of landscape waste (leaves, grass, branches, etc.) in the 10 incorporated municipalities of the State with a population of 75,000 or more (Arlington Heights, Aurora, Chicago, Decatur, Elgin, Joliet, Naperville, Peoria, Rockford, and Springfield). Allows the burning of

landscape waste for agricultural, habitat management, and firefighting training purposes. Exempts those local governments that can demonstrate to the Board that prohibiting the burning of landscape waste will cause severe economic hardship. Further allows (but does not require) the Board to restrict or prohibit the burning of landscape waste in any other portions of the State where the Board determines it to be harmful to human, animal, or plant life or health. Preempts home rule to prohibit a local government from regulating the burning of landscape waste in any manner less restrictive than the State. Provides that a first violation is punishable by a fine of $50; a second violation, $100; and a third or subsequent violation, $500. Allows alleged violations to be brought either before the Pollution Control Board or in circuit court. *The Governor vetoed this bill because it effectively impacts only one city in the entire State (Decatur), this due to the fact that the other nine cities with a population of over 75,000 already ban leaf-burning on their own.*

HB 282

Amends the Civil Administrative Code by adding a new Section 40.3. Also amends Sections 211 and 212 of the Illinois Income Tax Act. Creates an income tax credit for corporations in an amount equal to 5% of the amounts spent by the corporation during the taxable year on biodegradable or biocomposite materials made of corn or soybean products. Allows the credit to be carried forward for 5 years. Prohibits the credit from reducing the corporation's tax liability to below zero. Applies to tax years beginning on or after January 1, 1997, but sunsets after 5 years. Requires the Department of Agriculture, in cooperation with the Department of Revenue, to study the effect of the tax credit on the corn-based and soybean-based biodegradable materials markets at the end of the 5-year period. Also creates an income tax credit for companies that manufacture air pollution control equipment or continuous monitoring systems of 5% of the companies' income derived from the manufacture or production of such equipment if the company locates or is located in a county that has an active, operating coal mine that is financially distressed or has had an active mine close within the last 10 years. *The Governor vetoed this bill because of the cost in lost revenue to the State from the newly-created income tax credits, because the biodegradable/ biocomposite tax credit was limited only to corporations and was potentially unconstitutional, and because the air pollution equipment tax credit targeted manufacturers of such equipment without requiring the manufacturers to demonstrate a need for special State assistance (which they must currently demonstrate to qualify for existing state support from DCCA).*

Regulatory Review

(*Continued from p.19*)

from other interested persons was heard.

The proposed rules affect the Illinois portion of Lake Michigan and its drainage basin which includes about 18 dischargers to the Lake Michigan Basin (Basin). The Basin does not include the North Shore Channel, the Calumet River, or the Chicago River due to diversions away from Lake Michigan for water supply and navigation. The proposed rules address the water quality criteria and methodology and antidegradation procedures which are required by the Great Lakes Initiative.

Board Procedural Rules

The Board proposed amendments to its procedural rules for public comment on October 3, 1996. The proposal represents considerable effort on the part of the Board to update and streamline its procedural rules. The intent is to reflect changes that have occurred in practice before the Board and to bring Board procedures into line with the practices of sister agencies of the State. Included are newly-codified procedures for administrative citation and local siting review cases. In addition to several amendments to the general provisions and the additional procedures, the rules have been substantially reworked and renumbered.

The Board received, and is currently reviewing, many public comments on the proposed amendments, and plans to go to first notice in the Fall of 1997.

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