

Annual Report

2013

Illinois Pollution Control Board



Mission Statements

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 (Board) 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 Board 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 that 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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Letter from the Chairman

Honorable Pat Quinn, Governor of Illinois, and Members of the General Assembly:

The Pollution Control Board is proud to present its Annual Report for fiscal year 2013. This report provides detailed information about environmental rulemakings and contested cases brought before the Board between July 1, 2012 and June 30, 2013. During fiscal year 2013, the Board continued to handle a large volume of rulemaking procedures and contested cases while operating within its tight budget.

Under the Environmental Protection Act, the Board is responsible for determining, defining, and implementing environmental control standards for the State of Illinois, and the Board adjudicates complaints that allege non-criminal violations of the Act. The Board also reviews permitting and other determinations made by the Illinois Environmental Protection Agency (IEPA) and pollution control facility siting determinations made by units of local government.

During fiscal year 2013, the composition of the Board changed with the Governor's appointment of Jerome D. O'Leary. Board Members Carrie Zalewski, Jennifer Burke, and Deanna Glosser continue their service, and I remain the Board's Chairman. Also during fiscal year 2013, the Governor named former Board member Thomas E. Johnson as the Board's Executive Director.

Among its accomplishments during fiscal year 2013, the Board completed several significant rulemakings. In Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program (35 Ill. Adm. Code 809), R12-13, the Board adopted rules implementing Public Act 97-220, effective July 28, 2011, which includes provisions removing Illinois from the federal Uniform State Hazardous Materials Transportation Registration and Permit Program. In Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100, R12-9, the Board adopted regulations governing the use of uncontaminated CCDD and uncontaminated soil as fill at quarries, mines, and other excavations. The Board also opened a sub-docket (B) pursuant to JCAR's recommendation that the Board give further consideration to whether groundwater monitoring should be required for these facilities. In Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620, R8-18, the Board adopted rules including groundwater quality standards (GQS) for various chemical constituents detected in Illinois groundwater, a revised Class I GQS for arsenic, and various other updates. In Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 301.106, 302.Subparts B, C, E, F and 303.312, R11-18, the Board adopted amended water pollution regulations. In Gasoline Volatility Standards and Motor Vehicle Refinishing: Proposed Amendments to 35 Ill. Adm. Code Parts 211, 215, 218, and 219, R12-24, the Board adopted amended rules repealing state gasoline volatility standards in ozone attainment areas because they have been replaced, and in non-attainment areas because they have effectively been superseded. The amended rules also allow use of alternative spray coating applications approved by USEPA for motor vehicle refinishing. In Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742, R11-9, the Board adopted amended rules including the new exposure route of indoor inhalation and adding 13 chemicals to the TACO tables, updating physical and chemical parameters, and revising toxicity values. In addition to completing its rulemaking activity in these dockets, the Board made substantial progress in other dockets including R08-9 (C,D), addressing the Chicago Area Waterway System and Lower Des Plaines River; and R12-23, considering revisions to the Board's Concentrated Animal Feeding Operation (CAFO) rules.

The Board's contested case docket in fiscal year 2013 included numerous enforcement cases, permit appeals, adjusted standard petitions, administrative citations, and landfill site appeals.

Additionally, in appeals taken from Board decisions, the Illinois Supreme Court and the Illinois appellate courts issued final decisions during fiscal year 2013. These decisions are summarized in the "Appellate Update" section of this Annual Report.

Finally, the Board during fiscal year 2013 completed a transition to a new information technology network. We have begun to realize the financial benefits of that transition and are confident that it will maintain and improve public access to our work and our staff.

More information about the Board's work is available at the Board's Web site at www.ipcb.state.il.us.

Sincerely,

Thomas Holbrook
Chairman

Board Members

Tom Holbrook was appointed Chairman of the Board in 2011. Prior to joining the Board, Holbrook served as State Representative from the 113th Representative District where he was first elected in 1994. In the Illinois House, Holbrook served on various committees. He was a member of the Environment & Energy Committee for nearly two decades and Chairman for the last decade. Chairman Holbrook helped craft significant environmental legislation including a re-write of the procedural process for addressing leaking underground storage tanks program; revising air, water, and land permitting rules and procedures, and creating programs such as Illinois' first e-waste program. He also served on the Joint Committee on Administrative Rules, which gave him a working knowledge of the State's rulemaking process. Holbrook worked in the private sector for 33 years, installing, maintaining, and calibrating state of the art instrumentation for monitoring emissions and quality control. Holbrook received a Bachelor's Degree in Social Science and Government at Southern Illinois University in Edwardsville.



Jennifer A. Burke was appointed to the Board in 2011. Ms. Burke is a licensed attorney in Illinois since 1995. Prior to joining the Board, Ms. Burke served as Senior Counsel to the City of Chicago in the Department of Law. While at the City of Chicago, Ms. Burke focused on environmental matters including Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act litigation, brownfield redevelopment, and compliance with air, waste, asbestos, and lead regulations. Ms. Burke previously was a partner in the law firm of Jenner & Block in Chicago representing clients in various environmental matters including environmental enforcement, toxic tort litigation, insurance coverage litigation, cost recovery litigation, and environmental due diligence in corporate transactions. Her law degree is from Chicago-Kent College of Law and her undergraduate degree is a Bachelor of Science in Biology from Georgetown University in Washington, D.C.

Deanna Glosser was appointed to the Board in 2011. Dr. Glosser is an environmental planner with a doctoral degree from the Department of Urban & Regional Planning at the University of Illinois at Champaign-Urbana (UIUC). She worked for the Illinois Department of Natural Resources for 13 years and was president of Environmental Planning Solutions, Inc., a small, woman-owned business for eight years. Dr. Glosser has been involved with urban and environmental planning issues for over twenty years. She has been closely involved with the American Planning Association for over ten years where she co-authored three policy guides: wetland protection, endangered species protection, and community and regional food planning. In addition, Dr. Glosser has served as an Adjunct Assistant Professor at UIUC's Department of Urban & Regional Planning and an Adjunct Professor in the Environmental Studies program at the University of Illinois-Springfield.



Jerome D. O'Leary was appointed to the Board in 2012. Prior to joining the Board, Mr. O'Leary was the Director of Energy for the United Association of Plumbers & Pipefitters (2006-2011), and an International Representative for the United Association of Plumbers & Pipefitters (1992-2006). He was also Business Manager of the Plumbers & Pipefitters Local 25. Over the years, Mr. O'Leary was employed by various contractors performing the installation of piping systems on power plants, refineries, boilers, food production plants, chemical plants, manufacturing plants, and water and waste plants. Additionally, Mr. O'Leary has been involved in reviewing many draft air and water permits for proposed facilities which include gas and coal fired power plants, ethanol and petroleum refineries, and coal to synthetic gas plants. Mr. O'Leary is a member of the American Society of Mechanical Engineers.

Carrie Zalewski was appointed to the Board in 2009. Ms. Zalewski is a licensed attorney in Illinois. Prior to joining the Board, Ms. Zalewski served as Assistant Chief Counsel at the Illinois Department of Transportation (IDOT) where she was the lead environmental compliance attorney. While at IDOT, Ms. Zalewski dealt with various environmental issues involving NPDES permits, leaking underground storage tanks, reviewing NEPA documents and other air, land and water issues faced by IDOT. Ms. Zalewski has also worked for the State Appellate Defender's Office and in private practice. She has a Juris Doctor from Chicago-Kent College of Law and a Bachelor of Science in Engineering from the University of Illinois at Urbana (UIUC). While at the UIUC, she studied abroad in Durban, South Africa. Ms. Zalewski was selected as a member of the Illinois Women's Institute for Leadership in 2008. She is on the Board of Directors for the Chicago Youth Centers (Metropolitan), and the LaGrange YMCA.



Illinois Pollution Control Board



L-R Jennifer A. Burke, Deanna Glosser, Chairman Thomas Holbrook, Carrie Zalewski, and Jerome D. O'Leary

Farewell



The Board said good-bye to Chairman Tom Holbrook at the end of Fiscal Year 2013. Holbrook was appointed Chairman of the Board in 2011. Prior to joining the Board, Holbrook served as State Representative from the 113th Representative District where he was first elected in 1994. The Board wishes Holbrook well in his future endeavors.

Executive Director

Thomas E. Johnson was appointed executive director of the Board in June 2013. Executive Director Johnson served as a member of the Pollution Control Board from July 2001 to August 2012. He served as Chairman from January 2003 until December 2003. Prior to joining the Board, Johnson spent more than a decade in private legal practice after graduating from Northern Illinois University School of Law in 1989. He holds a BS in Finance from the University of Illinois at Urbana-Champaign. Johnson has also served the public in many capacities including: Champaign County Board Member, Special Assistant Attorney General, and Special Prosecutor for the Secretary of State.



Rulemaking Update

Introduction

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Board is responsible for adopting the State's environmental regulations by conducting rulemaking proceedings. Rulemaking generally involves the Board holding quasi-legislative hearings and receiving written public comments on regulatory proposals. Such proposals are typically filed by the Illinois Environmental Protection Agency (IEPA), though the Act provides that they may be filed by "[a]ny person." 415 ILCS 5/28(a) (2010). Based upon the record developed during the rulemaking proceeding, the Board issues its opinions and orders, addressing the issues and the Board's reasons for its decisions, in addition to setting forth the new or amended rule language.

Proposed rules are published in the *Illinois Register* at first notice and later reviewed by the Joint Committee on Administrative Rules (JCAR) at second notice. At final notice, the adopted rules are filed by the Board with the Index Department of the Office of the Secretary of State for publication in the *Illinois Register* and codification in the Illinois Administrative Code. Besides providing the Board with general rulemaking authority to adopt Statewide and site-specific rules (415 ILCS 5/27, 28 (2010)), the Act authorizes the Board to conduct expedited and streamlined rulemakings. For example, the Board uses a "fast-track" procedure to adopt rules required by the federal Clean Air Act Amendments (415 ILCS 5/28.5 (2010)). Also, after a public-comment period but without hearing or second-notice review, the Board adopts rules "identical-in-substance" to those of the United States Environmental Protection Agency (USEPA) concerning drinking water, hazardous waste, and other federally-authorized programs (415 ILCS 5/7.2 (2010)).

The most significant rulemakings completed by the Board in fiscal year 2013 are briefly summarized below, followed by a list of some of the important rulemakings pending at the end of the fiscal year.

Rulemakings Completed in Fiscal Year 2013

Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program: (35 Ill. Adm. Code 809), R12-13

On July 12, 2012, the Board amended its solid waste and special waste hauling rules to remove Illinois from the Uniform State Hazardous Material Transportation Registration and Permit Program. The rule changes were required by Public Act 97-220, which amended Sections 21, 22.2(1), and 22.2(1-5) of the Act (415 ILCS 5/21, 22.2(1), 22.2(1-5)).

Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100, R12-9(A)

On August 23, 2012, the Board amended its Clean Construction or Demolition Debris (CCDD) rules to allow the use of CCDD and uncontaminated soil as fill at quarries, mines, and other excavations. Among other things, the adopted rules require pH testing of soils from all source sites and establish soil Maximum Allowable Concentrations (MACs). IEPA filed the rulemaking proposal on July 29, 2011. IEPA proposed requiring groundwater monitoring at receiving sites, but the Board was unconvinced that groundwater monitoring was necessary based upon the record. The Board therefore did not include groundwater monitoring requirements in the rules proposed at first or second notice or at final adoption.

At second notice, JCAR considered the then-proposed rules on July 10, 2012, but asked for and received Board leave to consider them again on August 14, 2012. Public Act 96-1416, codified as Section 22.51 of the Act (415 ILCS 5/22.51 (2010)), required the Board to complete the rulemaking no later than one year after the filing of IEPA's proposal. In the Board's July 26, 2012 order just prior to the one-year deadline, the Board explained that the result of granting JCAR's request for additional time was that the Board could not adopt final rules within the statutory timeframe.

JCAR voted a certification of no objection on August 14, 2012, but also voted a recommendation that the Board further consider whether groundwater monitoring should be required for sites receiving CCDD and uncontaminated soil as fill. In adopting final rules on August 23, 2012, the Board also opened a subdocket B on the issue of groundwater monitoring. An additional hearing was held in subdocket B on May 20, 2013, and the post-hearing comment period was scheduled to close on August 1, 2013. After review of the comments, the Board will determine whether and how to proceed in subdocket B.

Proposed Amendments to Groundwater Quality Standards (35 Ill. Adm. Code 620), R08-18

On October 4, 2012, the Board amended its groundwater quality rules to update them based upon new scientific data, federal rules, and technical references. Among other things, groundwater quality standards (GQS) were added for 39 chemical constituents detected in Illinois groundwater that have toxicity values established by USEPA or that have groundwater remediation objectives under the Tiered Approach to Corrective Action Objectives (TACO). Additionally, the Class I groundwater quality standard for arsenic was revised to reflect the new federal Maximum Contaminant Level (MCL).

On April 18, 2013, the Board opened a subdocket B to propose three technical corrections needed in a list of organic chemicals and corresponding concentrations as published in the *Illinois Register* at 36 Ill. Reg. 15206 (Oct. 19, 2012). First, trichloroethylene and its Class II GQS of 0.025 milligrams per liter (mg/L) were inadvertently deleted and must be restored. Second, the Class II GQS for 1,1,2-trichloroethane of 0.05 mg/L was accidentally changed to 0.025 mg/L. The correct concentration must be restored. Third and finally, an asterisk next to "dibenzo(a,h)anthracene" to denote that the chemical is a carcinogen was inadvertently not added and must be added. The Board expects that the proposed subdocket B corrections will be adopted as final rules in Fall 2013.

Procedural Rules for Authorizations Under P.A. 97-220 for Certain Landscape Waste and Compost Applications and On-Farm Composting Facilities: New 35 Ill. Adm. Code 106, Subpart I, R12-11

On November 1, 2012, the Board adopted new procedural rules for adjusted standards addressing Board authorizations for certain landscape waste and compost applications and on-farm composting. The new procedural rules respond to P.A. 97-220, which amended the Act to specify that the Board rather than IEPA may authorize certain exceptions to Section 21(q) of the Act (415 ILCS 5/21(q) (2010)). One type of Board authorization would allow any person to apply landscape waste and composted landscape waste at a rate greater than "agronomic rates" of not more than 20 tons per acre per year. Under the second type of Board authorization, a farmer could operate a landscape waste composting facility on more than two percent of the property's total acreage. Without the Board authorizations, these activities are prohibited.

Triennial Review of Water Quality Standards for Boron, Fluoride, and Manganese: Amendments to 35 Ill. Adm. Code 302.Subparts B, C, E, F and 303.312, R11-18

On November 15, 2012, the Board adopted final rules to update its water quality standards for boron, fluoride, and manganese. Also included among the final rules were amendments to avoid any unintended change in the current "mixing zone" practice. The rulemaking was initiated by IEPA after concluding its "triennial review" of standards required by the federal Clean Water Act.

On February 7, 2013, the Board opened a subdocket B to propose corrections to scriveners' errors as published in the *Illinois Register* at 36 Ill. Reg. 18863 (Dec. 28, 2012). On May 16, 2013, the Board adopted the technical corrections to 35 Ill. Adm. Code 302.208 as final rules, correcting errors in the reporting requirements for the fluoride and manganese water quality standards and in the formulas for the acute and chronic standards for lead (dissolved).

Proposed Amendments to Special Waste Hauling Permit Regulations to Implement Public Act 97-1081: 35 Ill. Adm. Code 809.204 and 809.212, R13-8

On January 10, 2013, the Board amended its solid waste and special waste hauling regulations to implement Public Act 97-1081. The legislation amended Section 22.2(1) of the Act (415 ILCS 5/22.2(1) (2010)) by extending the duration of special waste hauling permits from one year to three years.

Gasoline Volatility Standards and Motor Vehicle Refinishing, Proposed Amendments to 35 Ill. Adm. Code Parts 211, 215, 218, and 219, R12-24

On January 24, 2013, the Board repealed the gasoline volatility standards in ozone attainment areas and the Chicago and Metro-East ozone non-attainment areas. All of these standards have been superseded by Illinois' participation in the federal reformulated gasoline (RFG) program. Among the amendments, motor vehicle refinishing operations have the opportunity to use a High Volume Low Pressure (HVL) spray gun for spray-coating applications. The rules also repealed a registration program that overlapped with the federal program.

VOM [Volatile Organic Material] Update, USEPA Amendments (January 1, 2012 through June 30, 2012), R13-1

On January 24, 2013, in this identical-in-substance rulemaking, the Board added HFO-1234ze (*trans*-1,3,3,3-tetrafluoropropene) to the list of compounds exempt from the definition of “volatile organic material” (VOM) and therefore from regulation as an ozone precursor. USEPA adopted the exemption for this compound on June 22, 2012.

SDWA [Safe Drinking Water Act] Update, USEPA Amendments (January 1, 2012 through June 30, 2012), R13-2

On January 24, 2013, in this identical-in-substance rulemaking, the Board incorporated analytical methods revised by USEPA and “alternative equivalent” analytical methods added by USEPA.

RCRA [Resource Conservation and Recovery Act] Subtitle C [Hazardous Waste] Update, USEPA Amendments (January 1, 2012 through June 30, 2012), R13-5

On January 24, 2013, in this identical-in-substance rulemaking, the Board incorporated USEPA’s May 18, 2012 revisions to federal Clean Water Act analytical methods, as well as USEPA’s April 13, 2012 rule corrections.

Wastewater Pretreatment Update, USEPA Amendments (January 1, 2012 through June 30, 2012), R13-7

On January 24, 2013, in this identical-in-substance rulemaking, the Board incorporated USEPA’s May 18, 2012 revisions to federal Clean Water Act analytical methods.

Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742, R11-9

On May 16, 2013, the Board amended the TACO rules, adding the indoor inhalation exposure route. To protect building occupants, this exposure route addresses the potential for vapors to migrate into buildings from subsurface volatile chemical contamination, a process commonly known as “vapor intrusion.” Among this rulemaking’s other more substantial amendments is the establishment of Tier 1 soil gas and groundwater remediation objectives (ROs) for the indoor inhalation exposure route. The rules also require that an institutional control be placed on property whenever the indoor inhalation ROs applied at the site rely upon the assumed presence of a building with a full concrete slab-on-grade or a full concrete basement floor and walls (*e.g.*, when Tier 1 or Tier 2 ROs are applied). To ease the transition of adding a new exposure route to TACO, the amendments had a 60-day delayed effective date and therefore did not take effect until July 15, 2013.

Rulemakings Pending at End of Fiscal Year 2013

Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System [CAWS] and Lower Des Plaines River [LDPR]: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(C) [Proposed Aquatic Life Uses], R08-9(D) [Water Quality Standards and Criteria to Meet Aquatic Life Uses], R08-9(E) [Bubbly Creek]

Technical Corrections to 35 Ill. Adm. Code 620.420, R8-18(B)

Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100, R12-9(B)

Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504, R12-23

National Ambient Air Quality Standards [NAAQS], USEPA Regulations (through December 31, 2012), R13-11

RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15

Vapor Recovery Rules: Amendments to 35 Ill. Adm. Code Parts 201, 218, and 219, R13-18

Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R13-19 (proceeding stayed until July 25, 2014, on motion of Ameren Energy Resources)

Procedural Rules for Alternative Thermal Effluent Limitations Under Section 316(a) of the Clean Water Act: Proposed New 35 Ill. Adm. Code Part 106, Subpart K and Amended Section 304.141(c), R13-20

Appellate Update

Introduction

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), final opinions and orders of the Board, whether adjudicatory or regulatory, are appealable directly to the Illinois appellate courts rather than to the circuit courts. In Fiscal Year 2013, the Illinois appellate courts issued two final decisions involving appeals taken from Board cases – both final decisions were favorable to the Board. One of the final decisions concerned a third-party landfill siting case under the Act, but the other concerned 28 tax certification cases, which are conducted by the Board under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2010)). After being denied intervenor status in each of those 28 tax certification cases, all of which concern the Wood River Petroleum Refinery in Roxana, Madison County, Roxana Community Unit School District No. 1 (Roxana School District) filed 28 petitions seeking appellate court review. In addition, Roxana School District filed two complaints against the Board in Sangamon County Circuit Court, each of which alleged violations of the Open Meetings Act (5 ILCS 120 (2010)) and resulted in final rulings in favor of the Board. These appellate court and circuit court decisions are briefly summarized below.

Fourth District Dismisses School District's Appeals for Lack of Jurisdiction in Tax Certification Cases

Board of Ed. of Roxana Comm. Unit School Dist. No. 1 v. Pollution Control Board, Environmental Protection Agency, and WRB Refining, LLC, 2012 IL App (4th) 120174-U.

On December 10, 2012, the Fourth District Appellate Court issued a non-precedential order under Supreme Court Rule 23, dismissing 28 consolidated appeals for lack of jurisdiction. Roxana School District had sought appellate court review of Board decisions rendered in 28 tax certification cases. In those proceedings (Board dockets PCB 12-39, 12-40, 12-65 through 12-84, 12-86 through 12-91), on January 19, 2012 and February 2, 2012, the Board denied Roxana School District's motions for intervention and, as recommended by the Illinois Environmental Protection Agency (IEPA), granted 28 tax certifications to WRB Refining, LLC (WRB). The Board determined that various equipment and structures at WRB's Wood River Petroleum Refinery constitute "pollution control facilities" under the Property Tax Code. Under the Property Tax Code and Board implementing rules, application for the preferential tax treatment accorded "pollution control facilities" is made to IEPA, which then makes a recommendation to the Board, which in turn grants or denies tax certification in an order forwarded to the Department of Revenue for processing. See 35 ILCS 200/11-5 *et seq.* (2010); 35 Ill. Adm. Code 125.

The Fourth District (2-1) held that it lacked jurisdiction to hear Roxana School District's appeals, agreeing with the Board that pursuant to Section 11-60 of the Property Tax Code (35 ILCS 200/11-60 (2010)), judicial review of Board decisions in tax certification proceedings may only be sought by the tax certification applicant and then, only in circuit court. According to the Fourth District, to accept Roxana School District's argument that adversely affected third-parties can appeal Board tax certification decisions directly to the appellate courts under Section 41 of the Act (415 ILCS 5/41 (2010)) would "effectively render meaningless section 11-60 of the [Property Tax] Code." 2012 IL App (4th) 120174-U, 25. Because the Appellate Court found that it had no jurisdiction, it did not reach the merits of Roxana School District's claims of Board error in denying intervention and interpreting the "primary purpose" language of the Property Tax Code's definition of "pollution control facility" (35 ILCS 200/11-10 (2010)).

The Illinois Supreme Court, on March 27, 2013, granted Roxana School District's petition for leave to appeal the Fourth District's decision, and the case (No. 115473) was pending before the State's highest court as of the end of FY 2013. Six similar appeals of Board decisions in tax certification proceedings concerning WRB's Wood River Petroleum Refinery (Board dockets PCB 12-106 through 12-111) were brought by Roxana School District on February 20, 2013, but this time in the First District Appellate Court (No. 1-13-0516 through 1-13-0521). Those now-consolidated appeals have been stayed by the First District pending the Supreme Court's resolution of the appeal of the Fourth District's decision.

Circuit Court Finds No Open Meetings Act Violations by the Board

Roxana Community Unit School District No. 1, et al. v. Illinois Environmental Protection Agency, Illinois Pollution Control Board, Illinois Department of Revenue, and WRB Refining, LLC, No. 12-MR-224 (Sangamon Co. Cir. Ct. (Aug. 22, 2012)).

In addition to the above-described direct appeals of the Board's 28 decisions granting tax certification for certain pollution control facilities, Roxana School District also sought relief in circuit court. On August 22, 2012, Judge John Schmidt of the Sangamon County Circuit Court issued an order finding that the Board did not violate the Open Meetings Act (5 ILCS 120 (2010)) and that a preliminary injunction previously issued against the Board was vacated. The ruling responded to the complaint for declaratory and injunctive relief filed on March 12, 2012, by Roxana School District and other local taxing districts in connection with WRB's Wood River Petroleum Refinery. The complaint alleged that the Board's scheduling, notice, and conduct of its regular open and closed meetings violated the Open Meetings Act. The plaintiffs sought relief with respect to both concluded and pending Board proceedings addressing numerous "pollution control facility" tax certification applications submitted by WRB under the Property Tax Code.

Among other things, Judge Schmidt ruled that the complaint improperly sought to nullify the 28 tax certifications granted by Board to WRB on January 19 and February 2, 2012 (Board dockets PCB 12-39, 12-40, 12-65 through 12-84, 12-86 through 12-91). Judge Schmidt's preliminary injunction, issued on March 30, 2012, had precluded the Board from considering any pending tax certification applications of WRB.

Judge Schmidt's final order of August 22, 2012, resolved the merits of the complaint, rendering moot an expanded injunction that had been issued by the Fourth District Appellate Court on August 10, 2012, during an interlocutory appeal, 2012 IL App (4th) 120331. The interlocutory appeal was initiated when WRB sought to overturn the Circuit Court's March 30, 2012 preliminary injunction. The Fourth District's August 10, 2012 opinion expanded the Circuit Court's injunction to preclude "all PCB meetings" until the Circuit Court decided the merits of plaintiffs' case. 2012 IL App (4th) 120331, ¶ 30. As Judge Schmidt decided the merits of plaintiffs' case on August 22, 2012, no open Board meeting was affected by the expanded injunction.

Judge Schmidt's final order was appealed by the local taxing districts, and that appeal (No. 4-12-0825) was pending before the Fourth District Appellate Court as of the end of FY 2013. On October 12, 2012, the Fourth District denied the local taxing districts' motion to enjoin the Board from conducting meetings during the pendency of the appeal.

Circuit Court Denies Relief to Plaintiffs for Board's Allegedly Late Posting of Meeting Agenda

Roxana Community Unit School District No. 1, et al. v. Illinois Pollution Control Board, No. 12-MR-732 (Sangamon Co. Cir. Ct. (Jan. 23, 2013)).

On January 23, 2013, Judge Schmidt of the Sangamon County Circuit Court granted the Board's motion for summary judgment concerning yet another complaint for declaratory and injunctive relief filed against the Board by Roxana School District and other local taxing districts. This complaint was filed on August 31, 2012. Judge Schmidt found that the Board's physical posting of the August 23, 2012 meeting agenda at the Board's Chicago office complied with the Open Meetings Act. Judge Schmidt also ruled that the Board's website posting of the agenda 44 hours before the meeting (instead of the required 48 hours) due to staff illness was merely a technical violation, and one not warranting any remedy. No appeal was taken.

Second District Upholds Board's Affirmation of DeKalb County's Siting Approval for Landfill Expansion

Stop the Mega-Dump v. County Board of DeKalb County, Illinois, and Waste Management of Illinois, Inc., and Illinois Pollution Control Board, 2012 IL App (2d) 110579.

On October 29, 2012, the Second District Appellate Court issued a precedential opinion affirming the Board in a landfill siting case. The citizens group Stop the Mega-Dump (STMD) had appealed the Board's decision (docket PCB 10-103) affirming DeKalb County's grant of siting approval. DeKalb County approved the siting application of Waste Management for the vertical and horizontal expansion of the DeKalb County Landfill, subject to conditions, under Section 39.2 of the Act (415 ILCS 5/39.2 (2010)). The Board found that STMD failed to prove that the County's siting procedures were fundamentally unfair, or that the County's determinations on several of the statutory siting criteria were contrary to the manifest weight of the evidence. Before the Second District, STMD challenged only the Board's fundamental fairness rulings.

Applying the "clearly erroneous" standard of review, the Second District affirmed the Board in all respects. The court held that the fundamental fairness requirement of the Act does not give all members of the general public the right to fully participate in a local siting proceeding, such as by presenting evidence and cross-examining witnesses at hearing.

The Second District also agreed with the Board that Waste Management's guided tours of the company's Prairie View Landfill for DeKalb County Board members did not qualify as improper *ex parte* contacts because they occurred *before* Waste Management filed its siting application. The court stated that "[u]ntil Waste Management filed its application, members of the County Board were legislators, rather than adjudicators, and there were no 'parties' to a 'proceeding' entitled to notice and participation." 2012 IL App (2d) 110579, ¶ 55.

Finally, the Second District held that STMD's claims of "prejudgment" were not substantiated by any "specific evidence" showing County Board members were "actually biased." 2012 IL App (2d) 110579, ¶ 56. The court ruled that any County Board member's consideration of the County's financial benefit from the landfill expansion was irrelevant to siting approval – if the local siting authority finds that the statutory siting criteria have been met, the decision-makers may consider such economic benefits. STMD's petition for leave to appeal the Second District's decision was denied by the Illinois Supreme Court on May 29, 2013.

Still pending before the Board is Waste Management's appeal of a condition of the DeKalb County siting approval requiring the company to make and maintain specified road shoulder improvements near the expansion site. Waste Management of Illinois, Inc. v. DeKalb County Board, PCB 10-104. Waste Management alleges the condition is not supported by the record and is unnecessary to accomplish the purposes of Section 39.2 of the Act. The Board expects to hold a hearing in this case in the Fall of 2013.



Legislative Update

Summarized below are the ten Public Acts enacted during the Spring 2013 session of the 98th General Assembly relating to the Board's work. Most, but not all, of these public acts amend the Environmental Protection Act (415 ILCS 5/1 *et seq.*).

Not summarized here is legislation that impacts only actions over which the Board has no oversight authority, including some activities of the Illinois Environmental Protection Agency (IEPA). But, worth at least mentioning is an enactment to enhance public availability of IEPA permit information. P. A. 98-237 (HB 2036), effective January 1, 2014, adds a new Section 7.6 to the Environmental Protection Act requiring annual posting of specified permit information on the IEPA Web site.

Additionally, the Illinois Hydraulic Fracturing Regulatory Act, Public Act 98-22 (SB 1715), signed and effective June 17, 2013, grants permitting and regulatory authority over "fracking" to the Department of Natural Resources.

Additional information about the recent legislative session is available at the General Assembly Web page at www.ilga.gov.

Public Act 98-072 (Senate Bill 33) **Effective July 15, 2013**

Amends Section 4 of the Environmental Protection Act. Authorizes the IEPA to adopt rules (under the Administrative Procedures Act (5 ILCS 100 *et seq.*) requiring the electronic submission of any information required to be submitted to the IEPA pursuant to any State or federal law or regulation or any court or Board order. Requires those rules to specify, at a minimum, the information to be submitted electronically and the form and format of electronic submission. The primary purpose of this IEPA-sponsored bill was to require electronic reporting of laboratories' analyses required under federal and state law and Board regulations to determine compliance with drinking water and groundwater quality standards.

Public Act 98-109 (Senate Bill 20) **Effective August 16, 2013**

Creates the Economic Development Act of 2013; amending various statutes. As relevant to the Environmental Protection Act, amends Sections 57.7, 57.8, and 57.11. Provides that the cleanup of an underground storage tank (UST) release is considered a public works project and therefore subject to the Project Labor Agreement Act (30 ILCS 571 *et seq.*) if reimbursement for the cost of the cleanup is requested from the Underground Storage Tank Fund (UST Fund).

Requires the IEPA, when reviewing UST cleanup plans where reimbursement for the cost of the cleanup will be requested from the UST Fund, to determine whether the cleanup should include a project labor agreement (PLA). If the IEPA determines a PLA is needed, requires applications for reimbursement from the UST Fund to include a copy of the PLA and a certification from the UST owner or operator that the cleanup was performed under a PLA meeting the requirements of the Project Labor Agreement Act and was implemented consistent with the PLA, the Project Labor Agreement Act, and the Prevailing Wage Act (PWA), 820 ILCS 130 *et seq.*

Also amends the PWA. Provides that the cleanup of an underground storage tank (UST) release is considered a "public works" (and therefore subject to the PWA) if reimbursement for the cost of the cleanup is requested from the UST Fund.

State Sales Tax Payments into UST Fund

Contains a new provision to amend the State's four use and service tax Acts (*i.e.* Use Tax Act (35 ILCS 105 *et seq.*), the Service Use Tax Act (35 ILCS 110 *et seq.*), the Service Occupation Tax Act (35 ILCS 115 *et seq.*), and the Retailers' Occupation Tax Act (35 ILCS 120 *et seq.*). Beginning July 1, 2013, requires the Department of Revenue to pay from the State's general sales tax revenues into the UST Fund an amount equal to the average monthly deficit in the UST Fund during the prior year, as certified annually by the IEPA, not to exceed \$18 million per fiscal year. Specifies that the average monthly deficit in the UST Fund is the difference between the average monthly claims for payment from the UST Fund and the average monthly revenues deposited into the UST Fund. Provides that if the regular revenues in the UST Fund generated by the Office of the State Fire Marshal's UST fees under the Gasoline Storage Act (430 ILCS 15 *et seq.*), and those generated under the Motor Fuel Tax Law (35 ILCS 505 *et seq.*) are adequate to pay claims for payment from the UST Fund (*i.e.*, there is no deficit), then the amount paid into the UST Fund from the State's four use and service tax Acts shall be deposited 75% into the General Revenue and the other 25% into the Common School Fund (*i.e.* just as it otherwise normally would have been).

Public Act 98-146 (Senate Bill 850)
Effective January 1, 2014

Amends Section 3.330 of the Environmental Protection Act. Until July 1, 2017, provides an exemption from the definition of “pollution control facility” (and thereby an exemption from the requirement to obtain local siting approval) for permitted landscape waste transfer stations located in certain areas that seek to modify their permit to allow the transfer of commingled landscape waste and food scrap on a demonstration basis for not more than 18 months. Requires applications for the permit modification to be submitted to the IEPA within six months of the bill taking effect (*i.e.* by July 1, 2014).

Public Act 98-239 (House Bill 2235)
Effective August 9, 2013

Amends the Environmental Protection Act by adding new Section 3.202 and amending Sections 3.330, 21 22.33 and 22.34. Specifies that the one-eighth mile setback that certain composting facilities must comply with to be excluded from the definition of the term “pollution control facility” applies only in counties with less than 3,000,000 inhabitants (*i.e.* the Cook County only). Defines “garden compost operation,” and provides that a solid waste permit is not required for such facilities. Provides that a solid-waste permit is not required for a landscape waste composting facility at a site having 10 or more occupied non-farm residences within 1/2 mile of its boundaries if (i) the facility constitutes no more than 2% of the site’s total acreage, (ii) no tipping fee is imposed at the facility, (iii) the finished compost is applied at agronomic rates on-site and is not offered for sale or sold, (iv) the owner or operator of the facility completes any training that the IEPA may require, and (v) the owner or operator registers the site with the IEPA. Specifies that certain performance standards for composting facilities do not apply to garden compost operations. The Board’s operating and permitting requirements are codified at 35 Ill. Adm. Code 830-832.

Public Act 98-284 (Senate Bill 1715)
Effective August 9, 2013

Amends the Environmental Protection Act by deleting subsection (f) from Section 9.1 and adding new subsection (x) to Section 39. Deletes Section 39(f) providing that if a complete application for a permit renewal is submitted to the Environmental Protection Agency at least 90 days prior to expiration of the permit, then all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application. Adds Section 39(x) providing that, if, before the expiration of a State operating permit that contains federally enforceable conditions limiting the potential to emit by the source to a level below the major source threshold for that source so as to exclude the source from the Clean Air Act Permit Program, the IEPA receives a complete application for the renewal of that permit, then all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application for the renewal of the permit.

Public Act 98-296 (Senate Bill 1925)
Effective January 1, 2014

Amends Section 22.54 of the Environmental Protection Act by adding new subsection (j). Provides that the IEPA may deny a beneficial use determination (BUD) for asphalt shingles based on violations of federal, state, or local law only if those violations are related to the operation of an asphalt shingle recycling operation facility or site. IEPA BUD determinations are appealable to the Board under Section 40 of the Environmental Protection Act.

Public Act 98-366 (House Bill 702)
Effective January 1, 2014

Amends Section 3.360 of the Environmental Protection Act by adding new subsection 3.360(b)(4). Provides that sharps (*e.g.* needles, syringes, scalpels) do not qualify as potentially infectious medical waste if they have had their infectious potential eliminated through treatment and are packaged in accordance with Board regulations at 35 Ill. Adm. Code 1420-1422. Prior to this amendment, sharps were excluded from the definition of the term “potentially infectious medical waste” if their infectious potential was eliminated through treatment and they were rendered unrecognizable by treatment.

Public Act 98-483 (House Bill 3243)
Effective January 1, 2014

Amends the Litter Control Act, 415 ILCS 105/3. Changes the definition of “litter” to include cigarettes. The Board has relied upon the definitions of the Litter Control Act in its handling of the administrative citation program under Sections 21 (o) and (p), 31.1, and 42 (b)(4) and (b)(5) of the Environmental Protection Act.

Public Act 98-484 (House Bill 3319)
Effective August 16, 2013

Amends Section 21(q) of the Environmental Protection Act. Allows unpermitted on-farm landscape waste composting operations to accept from other agricultural operations uncontaminated, source separated crop residue and other agricultural plant residue, and plant-derived animal bedding. Additionally, allows compost additives to be accepted and used, not to exceed 10% of the total composting material at the facility at any one time, as necessary to provide the proper conditions for composting. Provides that if a municipality or county in which a composting facility is located has by ordinance approved a setback distance of less than 1/4 mile, then the composting facility located in the boundaries of that unit of government may maintain its on-farm exemption from waste permitting even though it violates the otherwise applicable 1/4 mile setback requirement.

Public Act 98-542 (Senate Bill 2226)
Effective January 1, 2014

Amends the Environmental Protection Act by adding new Section 22.54a. Until February 1, 2018, prohibits landfills within a 25-mile radius of a site that has a beneficial use determination (BUD) from the IEPA for asphalt shingle recycling from accepting loads of asphalt shingles for disposal. Requires the IEPA to post on its web site the names and addresses of asphalt shingle recyclers that have received a beneficial use determination for asphalt shingle recycling. Additionally, requires each asphalt shingle recycling facility that has received a BUD to submit an annual report identifying the quantity and use of the asphalt shingles received and recycled the previous year. IEPA BUD determinations are appealable to the Board under Section 40 of the Environmental Protection Act.

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