
Environmental Register

September 2014 - Number 723

The Environmental Register is a Publication of the Illinois Pollution Control Board

Deanna Glosser, Chairman

Board Members:

Jennifer A. Burke, Jerome D. O'Leary, and Carrie Zalewski

Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-3620
(312) 814-6032 TDD

Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
(217) 524-8500

Web Site: <http://www.ipcb.state.il.us>

Letter from the Chairman

In September, the Board took the next step in proceeding with the rulemaking updating the water quality standards for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR). On September 18, 2014, the Board proposed for first notice water quality standards for CAWS and LDPR that are necessary to meet the aquatic life uses for those waterways. The proposal is docketed as Water Quality Standards and Effluent Limitations for the Chicago Area Waterway system and Lower Des Plaines River; Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D). The Board proceeded with the standards for many constituents as proposed by the Illinois Environmental Protection Agency (IEPA), with two notable exceptions. The Board found that the chloride standards must be adapted for the Chicago Sanitary and Ship Canal (CSSC) from December 1 until April 30. Therefore, the Board proposed for the CSSC a numeric standard different chloride standard from December 1 until April 30. Additionally, the Board found that the water quality standards for temperature proposed by IEPA as well as those suggested by other participants were not appropriate. Therefore, the Board proposed that the General Use temperature standards apply to the waterways. The Board also declined to proceed with mixing zones for chlorides or with site-specific relief for dischargers at this time. The Board seeks additional input from participants during the first-notice period.



In addition to rulemaking, in September the Board began consideration of a permit appeal from the Clinton Landfill. On September 4, 2014, the Board accepted a matter for hearing concerning a DeWitt County facility. The matter is docketed as Clinton Landfill, Inc. v. IEPA, PCB 15-60.

On September 18, 2014, the Board accepted two adjusted standards for hearing, both seeking adjusted standards from the Board's waste regulations. In Petition of Brickyard Disposal & Recycling, Inc. for an Adjusted Standard Pursuant to 35 Ill. Adm. Code 814.402(B)(3) and From 35 Ill. Adm. Code 810.103, 811.318(b)(3), and 811.320(c), AS 14-3, the Board directed the petitioner to file an amended petition. In Petition of Apex Material Technologies, LLC for an Adjusted Standard From Portions of 35 Ill. Adm. Code 807.104 and 810-103 OR in the Alternative, A Finding of Inapplicability, AS 15-2, the Board accepted the petition for hearing.

As always, information about these proceedings is available through the Clerk's Office Online (COOL) at our Web site at www.ipcb.state.il.us.

Sincerely,

A handwritten signature in cursive script that reads "Deanna Glosser".

Deanna Glosser, Ph.D.
Chairman

Inside This Issue:

APPELLATE UPDATE	P. 1
RULEMAKING UPDATE	P. 1
BOARD ACTIONS	P. 2
NEW CASES	P. 6
BOARD CALENDAR	P. 7

Appellate Update

Illinois Supreme Court Denies Two Petitions for Leave to Appeal

On September 24, 2014, the Illinois Supreme Court denied Sierra Club's petition for leave to appeal (PLA) in Sierra Club v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, Illinois Power Holdings, LLC, AmerenEnergy Medina Valley Cogen, LLC, and Ameren Energy Resources, LLC, No. 117528 (Ill. S. Ct.). The PLA denial leaves intact the Fourth District Appellate Court's February 24, 2014 dismissal of Sierra Club's appeal for lack of standing (No. 4-14-0001 (4th Dist.)). Sierra Club sought appellate court review of a Board variance decision even though Sierra Club was not a party to the Board's variance proceeding. The Board granted a variance, subject to conditions, to Illinois Power Holdings, LLC and AmerenEnergy Medina Valley Cogen, LLC (PCB 14-10 (Nov. 21, 2013)). The variance provides relief from sulfur dioxide (SO₂) annual emission rates of the Multi-Pollutant Standard (MPS), which apply to seven coal-fired generating stations. Sierra Club, a participant in the variance proceeding, filed a petition in the Fourth District for review of the Board's decision. The companies, in turn, filed a motion to dismiss the appeal, arguing that Sierra Club lacked standing to seek administrative review. Sierra Club responded that it had standing to appeal under Section 29(a) of the Environmental Protection Act (Act) (415 ILCS 5/29(a) (2012)) because the Board's variance order constituted a "rule or regulation" and Sierra Club was "adversely affected or threatened" by that rule. In a two-sentence order, the appellate court granted the companies' motion to dismiss for want of standing and dismissed the appeal.

Also on September 24, 2014, the Illinois Supreme Court denied Martin Maggio's PLA in Martin Maggio v. Illinois Pollution Control Board, County of Winnebago, Winnebago County Board, and Winnebago Landfill Company, No. 117633 (Ill. S. Ct.). The PLA denial leaves intact the Second District Appellate Court's March 31, 2014 opinion (2014 IL App (2d) 130260) affirming the Board's decision to affirm Winnebago County's grant of landfill-expansion siting approval to Winnebago Landfill Company (WLC) (PCB 13-10 (Mar. 7, 2013)). Mr. Maggio brought the third-party appeal to the Board, arguing that WLC's pre-application notices were not timely served upon all surrounding landowners and that the County therefore lacked jurisdiction to consider WLC's siting application. On administrative review, the Second District Appellate Court agreed with the Board that the "return receipt requested" service requirement of Section 39.2(b) of the Act (415 ILCS 5/39.2(b) (2012)) does not require *returned receipts* for service to be effective, but rather only that a return receipt be *requested*. The Second District then turned to the timing of WLC's mailing. The Board construed Section 39.2(b) as requiring that notices be mailed *far enough in advance to reasonably expect receipt* at least 14 days before the siting application is filed. The Board found that WLC met this test and the appellate court found that this Board determination was not against the manifest weight of the evidence.

Rulemaking Update

Board Proposes First-Notice Water Quality Standards for Aquatic Life Uses of the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR), R08-9(D)

On September 18, 2014, the Board adopted a first-notice opinion and order in subdocket D, proposing water quality standards that are necessary to meet the aquatic life uses of CAWS and LDPR. The proposal is docketed as In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D).

For many constituents, the Board proceeded with standards proposed by the Illinois Environmental Protection Agency (IEPA), with two notable exceptions. First, the Board found that the 500 milligrams per liter (mg/L) chloride standards must be adapted for the Chicago Sanitary and Ship Canal (CSSC) from December 1 until April

30. Specifically, for chloride in the CSSC during that timeframe, the Board proposed an acute water quality standard of 620 mg/L and a chronic water quality standard of 990 mg/L. Second, for CAWS and LDPR generally, the Board proposed that the General Use temperature standards apply.

The Board also declined to proceed with mixing zones for chlorides or with site-specific relief for dischargers. The Board asked for additional input from participants on these issues.

The Board encourages persons to file public comments on the proposed amendments. The docket number for this rulemaking, **R08-9(D)**, should be indicated on the public comment. Public comments may be filed on or before November 21, 2014. Responsive public comments may be filed on or before December 12, 2014. The “mailbox rule” (35 Ill. Adm. Code 101.300(b)(2)) does not apply to these filings.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address: Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601. In addition, public comments may be filed electronically through the Clerk’s Office On-Line (COOL) at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629.

For more information, please contact Marie Tipsord at 312-814-4925 or marie.tipsord@illinois.gov.

Board Actions

September 4, 2014

Via videoconference

Springfield and Chicago, Illinois

Administrative Citations

AC 14-50 IEPA v. Craig S. Walker and Walker & Sons Enterprises, Ltd. – The Board accepted respondents’ amended petition for review involving a Peoria County facility. 4-0

Adjudicatory Cases

PCB 07-83 People of the State of Illinois v. Edelstein Waterworks Co-Op (Public Water Supply-Enforcement) – The Board granted complainant’s motion to dismiss Counts V, VI and VII of the complaint. Upon receipt of a proposed stipulation and settlement agreement, and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Peoria County facility, the Board also ordered publication of the required newspaper notice. 4-0

PCB 10-86 People of the State of Illinois v. Illinois Fuel Company, LLC (Water-Enforcement, NPDES) – The Board granted complainant’s motion and deemed admitted each matter of fact and the genuineness of each document included in complainant’s June 16, 2014 request. 4-0

PCB 12-50 Commonwealth Edison Co. v. Frederick K. Slayton, Ann Vole Slayton, and Cioni Excavating, Inc. (Land-Enforcement, Citizen’s) – The Board granted complainant’s motion for voluntary dismissal of this land enforcement action involving a Lake County facility. 3-0
Zalewski abstained

PCB 12-134 Brimfield Auto & Truck v. IEPA (UST-Permit Appeal) – The Board affirmed the Illinois Environmental Protection Agency’s April 30, 2012 determination to modify petitioner’s proposed Stage 1 Site Investigation Plan Budget. 4-0

PCB 14-1	<u>Chatham BP, LLC v. IEPA</u> (UST-Permit Appeal) – The Board reversed the Illinois Environmental Protection Agency’s (IEPA) May 28, 2013 determination to reduce petitioner’s reimbursement of drum disposal costs by \$1,145.92. The Board directed the IEPA to reimburse petitioner \$1,145.92 in drum disposal cost from the UST Fund. The Board also remanded the proposed Stage 2 site investigation budget to the IEPA for its review.	4-0
PCB 14-3	<u>Johns Manville v. Illinois Department of Transportation</u> (Land-Enforcement, Citizen’s) – In this citizen’s land enforcement action concerning a Lake County site, the Board denied respondent’s motion to dismiss the amended complaint, found the amended complaint neither frivolous nor duplicative, and granted respondent until October 6, 2014 to file an answer to the amended complaint.	4-0
PCB 14-13	<u>People of the State of Illinois v. Bingham Commercial Construction, Inc.,</u> (Water-Enforcement) Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving an Ogle County facility, the Board ordered publication of the required newspaper notice.	4-0
PCB 14-110	<u>KCBX Terminals Company v. IEPA</u> (Air, Permit Appeal) – The Board granted petitioner’s motion for leave to file a reply and accepted the reply. The Board denied petitioner’s motion to reconsider the Board’s order of June 19, 2014. On its own motion, the Board modified the June 19, 2014 order to include a deadline of Wednesday, October 22, 2014, for the Illinois Environmental Protection Agency’s determination on remand.	4-0
PCB 14-133	<u>People of the State of Illinois v. Bingham Commercial Construction, Inc.,</u> (Water-Enforcement) – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Lake County facility, the Board ordered publication of the required newspaper notice.	4-0
PCB 15-7	<u>People of the State of Illinois v. Ernest Bennett d/b/a Bennett Excavating</u> (Air-Enforcement) – In this air enforcement action concerning a Shelby County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2012)), accepted a stipulation and settlement agreement, and ordered respondent to pay a total civil penalty of \$2,000.00, and to cease and desist from further violations.	4-0
PCB 15-60	<u>Clinton Landfill, Inc. v. IEPA</u> (Land-Permit Appeal) – The Board accepted for hearing this permit appeal on behalf of this DeWitt County facility. The Board reserved ruling on petitioner’s motion for stay of the challenged modification of the permit, to allow the time for IEPA to file a response to run.	4-0
PCB 15-61	<u>People of the State of Illinois v. Taylor Brothers Welding Service, Inc.</u> (Land-Enforcement) – The Board accepted for hearing this land enforcement action concerning a facility located in Perry County.	4-0

September 18, 2014
Chicago, Illinois

Rulemakings

- R08-9(D)** In The Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304. – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board’s water pollution regulations. 4-0

Adjusted Standards

- AS 14-3** In the Matter of: Petition of Brickyard Disposal & Recycling, Inc. for an Adjusted Standard Pursuant to 35 Ill. Adm. Code 814.402(B)(3) and From 35 Ill. Adm. Code 810.103, 811.318(b)(3), and 811.320(c) (Land) – The Board accepted petitioner’s petition for an adjusted standard involving a Vermilion County facility, but directed petitioner to file an amended petition to cure deficiencies specified in the order. 4-0
- AS 15-2** In the Matter of: Petition of Apex Material Technologies, LLC for an Adjusted Standard From Portions of 35 Ill. Adm. Code 807.104 and 810-103 OR in the Alternative, A Finding of Inapplicability (Land) – The Board accepted petitioner’s petition for an adjusted standard involving a Will County facility. The Board made no determination on the petition’s sufficiency or merits. 4-0

Administrative Citations

- AC 15-1** IEPA v. Dale White and Shawn & Amanda Depew – The Board found that these Jefferson County respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), 21(p)(7) (2012)), and ordered respondents to pay a civil penalty of \$4,500. 4-0
- AC 15-9** IEPA v. Ponderosa Land Trust – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Williamson County facility. 4-0

Adjudicatory Cases

- PCB 13-63** Spectrum Preferred Meats, Inc. v. IEPA (Water, Permit Appeal, NPDES) – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal. 4-0
- PCB 14-25** Will Scarlet Properties, L.L.C. v. IEPA (Water, Permit Appeal, NPDES) – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal. 4-0
- PCB 14-123** Exelon Generation LLC (Quad Cities Nuclear Generating Station) v. IEPA (Thermal Demonstration-Other) – The Board granted, subject to conditions, the requested alternative thermal effluent limitations for petitioner’s electric generating plant located in Rock Island County. 4-0

PCB 14-134	<u>Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and Futuregen Industrial Alliance, Inc.</u> (Air-Enforcement, Citizens) – The Board granted the parties’ joint the motion to stay this proceeding until October 3, 2014.	4-0
PCB 15-10	<u>People of the State of Illinois v. Belleville Shoe Manufacturing Company</u> (Land -Enforcement) – In this land enforcement action concerning a St. Clair County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2012)), accepted a stipulation and settlement agreement, and ordered respondent to pay a total civil penalty of \$20,000.00, and to cease and desist from further violations.	4-0
PCB 15-58	<u>Cedar Concepts Corporation v. IEPA</u> (Air-Permit Appeal, CAAPP) – The Board granted petitioner’s motion for stay of the effectiveness of the denial of its permit application.	4-0
PCB 15-62	<u>People of the State of Illinois v. CNH Industrial America, LLC</u> (Air-Enforcement) Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Woodford County facility, the Board ordered publication of the required newspaper notice.	4-0
PCB 15-64	<u>People of the State of Illinois v. Surdyke Cycle of Illinois, Inc., an Illinois Corporation, d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson</u> (Land-Enforcement) – The Board accepted for hearing this land enforcement action concerning a facility located in Jefferson County.	4-0
PCB 15-65	<u>Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois; Village of Caseyville, Illinois; and Caseyville Transfer Station, L.L.C</u> (Land-Siting Review, Third Party) – The Board accepted for hearing this third party pollution control facility siting appeal involving a St. Clair County facility.	4-0
PCB 15-69	<u>Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees and Caseyville Transfer Station, L.L.C.</u> (Land-Siting Review, Third Party) – The Board accepted for hearing this third party pollution control facility siting appeal involving a St. Clair County facility.	4-0
PCB 15-70	<u>People of the State of Illinois v. Macy's Retail Holdings, Inc.</u> (Air-Enforcement) Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	4-0

PCB 15-71	<u>Hamilton & Grove Properties, Inc. v. IEPA</u> (Land-Permit Appeal, Cost Recovery) – The Board accepted petitioner’s timely filed request as a petition to contest the permit denial, but directed petitioner to file an amended petition to cure noted deficiencies.	4-0
PCB 15-72	<u>People of the State of Illinois v. Starved Rock Adventures, Inc.</u> (Air, Water-Enforcement, (NPDES)) – The Board accepted for hearing this air and water enforcement action concerning a facility located in LaSalle County.	4-0

New Cases

September 4, 2014 Board Meeting

AC 15-8 IEPA v. Karen Youmans – The Board accepted an administrative citation against this Edgar County respondent.

AC 15-9 IEPA v. Ponderosa Land Trust – The Board accepted an administrative citation against this Williamson County respondent.

PCB 15-60 Clinton Landfill, Inc. v. IEPA (Land-Permit Appeal) – The Board accepted for hearing this permit appeal on behalf of this DeWitt County facility. The Board reserved ruling on petitioner’s motion for stay of the challenged modification of the permit, to allow the time for IEPA to file a response to run.

PCB 15-61 People of the State of Illinois v. Taylor Brothers Welding Service, Inc (Land-Enforcement) – The Board accepted for hearing this land enforcement action concerning a facility located in Perry County.

September 18, 2014

PCB 15-62 People of the State of Illinois v. CNH Industrial America, LLC (Air-Enforcement) Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Woodford County facility, the Board ordered publication of the required newspaper notice.

PCB 15-63 William Spencer v. Clinton Landfill, Inc. and Illinois Environmental Protection Agency (Land-Enforcement, Citizen’s) – No action taken.

PCB 15-64 People of the State of Illinois v. Surdyke Cycle of Illinois, Inc., an Illinois Corporation, d/b/a Dale's Harley-Davidson and Waterkotte Harley-Davidson (Land-Enforcement) – The Board accepted for hearing this land enforcement action concerning a facility located in Jefferson County.

PCB 15-65 Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois; Village of Caseyville, Illinois; and Caseyville Transfer Station, L.L.C (Land-Siting Review, Third Party) – The Board accepted for hearing this third party pollution control facility siting appeal involving a St. Clair County facility.

PCB 15-66 Deuth Farms Finishers v. IEPA (Water-Tax Certification) – No action taken.

PCB 15-67 Deuth Farms Finishers v. IEPA (Water-Tax Certification) – No action taken.

PCB 15-68 John and Ross Sword v. IEPA (Water-Tax Certification) – No action taken.

PCB 15-69 Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees and Caseyville Transfer Station, L.L.C. (Land-Siting Review, Third Party) – The Board accepted for hearing this third party pollution control facility siting appeal involving a St. Clair County facility.

PCB 15-70 People of the State of Illinois v. Macy's Retail Holdings, Inc. (Air-Enforcement) Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.

PCB 15-71 Hamilton & Grove Properties, Inc. v. IEPA (Land-Permit Appeal, Cost Recovery) – The Board accepted petitioner’s timely filed request as a petition to contest the permit denial, but directed petitioner to file an amended petition to cure noted deficiencies.

PCB 15-72 People of the State of Illinois v. Starved Rock Adventures, Inc. (Air, Water-Enforcement, (NPDES)) – The Board accepted for hearing this air and water enforcement action concerning a facility located in LaSalle County.

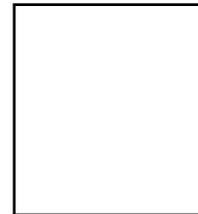
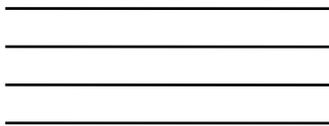
Calendar

10/2/2014 11:00 AM	Illinois Pollution Control Board Meeting		Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago
10/16/2014 11:00 AM	Illinois Pollution Control Board Meeting		Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago
10/16/2014 1:00 PM	R14-23	<u>In the Matter of Standards and Requirements for Potable Water Well Surveys and Community Relations Activities Performed in Conjunction With Agency Notices of Threats From Contamination: Proposed Amendments to 35 Ill. Adm. Code 1600</u>	Illinois Pollution Control Board Conference Room 11-512 James R. Thompson Center 100 W. Randolph Street Chicago
10/28/2014 9:00 AM	PCB 15-65	<u>Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois; Village of Caseyville, Illinois; and Caseyville Transfer Station, L.L.C</u>	Village Hall Meeting Chambers 909 S. Main St. Caseyville
10/28/2014 9:00 AM	PCB 15-69	<u>Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees and Caseyville Transfer Station, L.L.C</u>	Village Hall Meeting Chambers 909 S. Main St. Caseyville
11/6/2014 11:00 AM	Illinois Pollution Control Board Meeting		Chicago James R. Thompson Center 100 W. Randolph Street Chicago
11/20/2014 11:00 AM	Illinois Pollution Control Board Meeting		Chicago James R. Thompson Center 100 W. Randolph Street Chicago

The Illinois Pollution Control Board is an independent five-member board that adopts environmental control standards, rules on enforcement actions, and other environmental disputes for the State of Illinois.

The *Environmental Register* is published monthly by the Board, and contains updates on rulemakings, descriptions of final decisions, the Board's hearing calendar, and other environmental law information.

-----CUT HERE-----



Illinois Pollution Control Board
Environmental Register Coordinator
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274