

---

# Environmental Register

February 2002 - Number 572

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

---

Claire A. Manning, Chairman

Board Members:

Ronald C. Flemal, G. Tanner Girard, Thomas E. Johnson,  
Samuel T. Lawton Jr., Nicholas J. Melas, Michael E. Tristano

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  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
(217) 524-8500

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

# Letter from the Chairman

---

In February, the Pollution Control Board (Board) adopted new regulations to protect rivers, lakes, and streams in the State of Illinois. The Board also adopted for second notice, rulemakings that address issues involving remediation of contaminated sites.

On February 21, 2002, the Board adopted Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206 and 102.800-102.830, R01-13. The Illinois Environmental Protection Agency (IEPA) initiated this rulemaking with the Board in August 2001 to revise the antidegradation rules. The antidegradation regulations are designed to maintain the quality of existing bodies of water by setting the minimum level of protection for water quality.



This rulemaking created the process for designating “outstanding resource waters” (ORW) for the State of Illinois. Under the ORW process, the Board will use rulemaking procedures to make ORW determinations. The Board must designate a body of water as ORW if it determines that the body of water is of exceptional ecological or recreational significance, and the benefits of the designation outweigh the economic or social opportunities that would be lost because of the designation.

Those seeking the ORW designation must identify and describe the body of water. They must provide an analysis of the health, environmental, recreational, aesthetic and economic impacts of the designation and a statement of impact on social and economic development in the local and regional community. The new regulations also require that the petitioner submit a statement describing the existing and anticipated uses of the water body proposed for ORW status.

Also at the February 21, 2002 meeting, the Board adopted orders sending two rulemakings to second notice. The first rulemaking was Site Remediation Program: Amendments to 35 Ill. Adm. Code 740, R01-27 and Site Remediation Program: Proposed 35 Ill. Adm. Code 740.Subpart H (Public Schools), R01-29. The IEPA initiated R01-27 to correct and clarify language in the regulations where problems had been encountered during implementation of the program. Included in the IEPA’s proposal were new regulations regarding laboratory accreditation, soil management zones, and recognition of the work performed by Licensed Professional Geologists (LPG) in site remediation activities. However, the Board removed all references to LPG’s from its second-notice opinion and order in response to comments submitted by the Illinois Chapter of the American Institute of Professional Geologists during the first notice period.

The addition of Subpart H was a proposal filed by the Citizens for Better Environment (CBE) partially in response to complications of site remediation at Finkl Academy and Zapata Academy in Cook County. Both schools were built on sites undergoing remediation and both schools were opened prior to completion of the remedial work. The initial proposal called for amendments to Site Remediation Program rules relating to schools, public parks, and playgrounds. However, CBE amended its proposal to deal with sites undergoing remediation with a future intended use as a public school only. This proposal adds requirements to ensure completion of all remedial activities and receipt of a No Further Remediation Letter prior to the school being opened.

The second rulemaking adopted for second notice was Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732, R01-26. This IEPA proposal revises the underground storage tank (UST) regulations by clarifying and amending procedures and standards utilized in the leaking UST program and establishes methyl tertiary-butyl ether (MTBE) as a chemical to be tested for in remediation projects. Owners and operators of leaking USTs who take on “Early Action” remedial activities may qualify for reimbursement from the UST fund. At second notice, the Board accepted the IEPA’s suggestion of “plus 7 days” on the start date for the beginning of the 45-day Early Action/reimbursement period to address an issue that has come before the Board in UST reimbursement cases. The Board also removed all references to LPG’s in response to comments from the American Institute of Professional Geologists.

Details on these rulemakings can be found on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us), or by contacting the Board's public information officer, Connie Newman, at 217-782-7630 or [newmanc@ipcb.state.il.us](mailto:newmanc@ipcb.state.il.us).

Sincerely,

A handwritten signature in black ink, reading "Claire A. Manning". The signature is written in a cursive style with a large initial "C" and a long, sweeping tail on the "g".

Claire A. Manning, Chairman

## Inside This Issue:

---

FEDERAL UPDATE	P. 1
RULE UPDATE	P. 4
APPELLATE UPDATE	P.10
BOARD ACTIONS	P.10
NEW CASES	P.19
BOARD CALENDAR	P.20

## Federal Update

---

### **United States Environmental Protection Agency Adopts Interim Standards Under the Clean Air Act for Hazardous Air Pollutants Emitted by Hazardous Waste Combustors**

On February 13, 2002, the United States Environmental Protection Agency (USEPA) adopted interim national emissions standards for hazardous air pollutants (NESHAP) to control emissions of hazardous air pollutants from waste combustors such as incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes.

The interim standards include compliance and implementation amendments. USEPA stated that promulgation of interim standards now avoided severe problems related to its developing the Maximum Achievable Control Technology (MACT) on a source-by-source basis pursuant to section 112(j)(2) of the Clean Air Act, which applies if there are no national standards in place. USEPA believes that adopting this interim NESHAP now best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry and affected state and federal administrative agencies. Final standards in this category are due to be adopted by June 14, 2005.

This final rule was effective on February 13, 2002 with a September 30, 2003 compliance date.

For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). For more information, contact Frank Behan at 703-308-8476, [behan.frank@epa.gov](mailto:behan.frank@epa.gov), or Michael Galbraith at 703-605-0567, [galbraith.michael@epa.gov](mailto:galbraith.michael@epa.gov), or write to them at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2000)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

### **United States Environmental Protection Agency Adopts Standards Under the Clean Air Act for Hazardous Air Pollutants for Hazardous Waste Combustors**

On February 14, 2002, the United States Environmental Protection Agency (USEPA) adopted amendments to the rules implementing the emission standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators. These adopted amendments do not change the numerical emission standards, but rather focus on improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. (A related final rule establishing interim emission standards was published in the Federal Register on February 13, 2002, as described immediately above.)

This rule is effective on February 14, 2002.

For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). For more information, contact Frank Behan at 703-308-8476, [behan.frank@epa.gov](mailto:behan.frank@epa.gov), or Michael Galbraith at 703-

## Environmental Register – February 2002

605-0567, [galbraith.michael@epa.gov](mailto:galbraith.michael@epa.gov), or write to them at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (1998)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

### **United States Environmental Protection Agency Gives Notice Under the Federal Insecticide, Fungicide, and Rodenticide Act of a Request to Cancel Certain Products and Uses of Chromated Copper Arsenate Wood Preservative Products**

On February 22, 2002, under section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the United States Environmental Protection Agency published notice of the receipt of a request from registrants of affected chromated copper arsenate (CCA) products to cancel certain products and to terminate certain uses of other CCA products.

Residential uses of CCA treated products include play-structures, decks, picnic tables, landscaping timbers, residential fencing, patios, and walkways/boardwalks. In the notice, USEPA stated that phasing out the use of CCA treated wood products will assist in minimizing exposure to arsenic in many residential settings. USEPA announced its intentions to grant these requests at the close of the comment period for the announcement (comments must be received on or before March 25, 2002), unless USEPA receives substantive comments that would merit its further review of these requests. If USEPA does grant this request, any sale, distribution, or use of CCA products will only be permitted if such distribution, sale, or use is consistent with the terms established by USEPA.

For further information contact: Bonaventure Akinlosotu, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

### **United States Environmental Protection Agency Adopts Amendments Regulating Fuel, Fuel Additives, and Reformulated Gasoline Transition Under the Clean Air Act**

On February 26, 2002, the United States Environmental Protection Agency (USEPA) adopted amendments to improve flexibility for refiners and terminal operators during their springtime transition to summer grade reformulated gasoline (RFG).

USEPA's adopted rule eliminated the requirements for blendstock tracking and accounting. This change is designed to increase refiners' flexibility to transfer gasoline blendstocks, and help to improve the responsiveness of the gasoline supply system by removing some significant refinery compliance and reporting requirements. This action was intended to help ease the annual spring transition from winter grade RFG to summer grade RFG by promoting improved RFG inventories during this transition period.

USEPA also made technical modifications to existing regulations to update 1) certain ASTM designated analytical test methods for reformulated and conventional gasoline to the most recent ASTM version, and 2) several sampling methods to the most recent ASTM version.

This rule is effective April 29, 2002, except for the amendments to 40 CFR 80.65, 80.92, 80.101, 80.102, 80.104, 80.105, 80.106, and 80.128 (sections dealing with the elimination of blendstock accounting), which are effective February 26, 2002.

For further information about this rule, contact Chris McKenna, Chemical Engineer, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564-9037 or [mckenna.chris@epa.gov](mailto:mckenna.chris@epa.gov).

## Environmental Register – February 2002

### **United States Environmental Protection Agency Adopts National Emission Standards Under the Clean Air Act for Hazardous Air Pollutants for Leather Finishing Operations**

On February 27, 2002, the United States Environmental Protection Agency (USEPA) adopted national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations.

USEPA has identified leather finishing facilities as major sources of emissions of hazardous air pollutants (HAP), such as glycol ethers, toluene, and xylene. These NESHAPs will implement section 112(d) of the Clean Air Act (CAA) by requiring all leather finishing operations that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). USEPA estimated that the final NESHAP would reduce nationwide emissions of HAP from leather finishing operations by 375 tons per year (tpy). In addition, the final NESHAP reduces non-HAP emissions of volatile organic compounds (VOC) by 750 tpy. The emissions reductions achieved by these final NESHAPs, when combined with the emissions reductions achieved by other similar standards, are expected to provide protection to the public and achieve a primary goal of the CAA.

These amendments were effective February 27, 2002.

For information concerning the analyses performed in developing these NESHAP, contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division, (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5032; facsimile number (919) 541-3470; electronic mail address: [schrock.bill@epa.gov](mailto:schrock.bill@epa.gov).

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2000)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

### **United States Environmental Protection Agency Gives Notice of the Development of Ecoregional Nutrient Criteria for Lakes and Reservoirs, and Rivers and Streams Under the Clean Water Act**

On February 28, 2002, the United States Environmental Protection Agency (USEPA), pursuant to Section 304(a) of the Clean Water Act (CWA), announced the publication and availability of nine additional Section 304(a) ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams within specific geographic regions (ecoregions) of the United States. (An ecoregion is a geographic area with assumed relative homogeneity of ecological characteristics.)

These nine documents supplement the 17 ecoregional nutrient criteria documents for lakes and reservoirs, rivers and streams and wetlands announced by EPA on January 9, 2001 (66 FR 1671). These documents give States, Territories, and authorized Tribes information to develop numeric nutrient criteria for lakes and reservoirs, rivers and streams, and wetlands within several different nutrient ecoregions.

While the nine documents contain USEPA's scientific recommendations regarding ecoregional nutrient criteria, the information and recommendations are not regulations and do not impose legally binding requirements on USEPA, States, authorized Tribes, or the public. States and authorized Tribes retain the discretion to adopt water quality criteria that differ from these recommendations based on other scientifically defensible approaches to developing regional or local nutrient criteria.

USEPA is accepting scientific views on these criteria and will review and consider information submitted on significant scientific issues and site-specific data that might not have otherwise been identified by the Agency during development of these criteria.

A summary of the comments received by USEPA on the drafts of the criteria documents is available on the USEPA's Internet website at: <http://www.epa.gov/ost/standards/nutrient.html>.

For more information contact Robert Cantilli, U.S. EPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or call (202) 566-1091; or e-mail [cantilli.robert@epa.gov](mailto:cantilli.robert@epa.gov).

## Rule Update

---

### **Board Adopts Second-notice Opinion and Order in Site Remediation Program: Amendments to 35 Ill. Adm. Code 740; and Site Remediation Program: Proposed 35 Ill. Adm. Code 740, Subpart H (Schools, Public Parks, and Playgrounds), R01-27/R01-29 (Consolidated)**

On February 21, 2002, the Board adopted a second-notice opinion and order in the consolidated dockets Site Remediation Program: Amendments to 35 Ill. Adm. Code 740; and In the Matter of: Site Remediation Program: Proposed 35 Ill. Adm. Code 740, Subpart H (Schools, Public Parks, and Playgrounds), R01-27/R01-29. In response to public comments, the Board amended the rules it proposed at first notice and sent the rulemaking, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2000)), to the Joint Committee on Administrative Rules (JCAR) for review and consideration.

This rulemaking was initiated by a proposal filed on January 12, 2001, by the Illinois Environmental Protection Agency (Agency) to amend 35 Ill. Adm. Code 740 of the Board's land regulations, commonly referred to as the Site Remediation Program (SRP) rules. The Board accepted this matter for hearing on January 18, 2001. *See Site Remediation Program: Amendments to 35 Ill. Adm. Code 740, R01-27 (Jan. 18, 2001)*. On January 26, 2001, the Citizens for a Better Environment (CBE) also filed a proposal to amend the SRP rules. CBE proposed amending the SRP rules by adding a Subpart H relating to schools, public parks, and playgrounds. *See Site Remediation Program: Proposed 35 Ill. Adm. Code 740, Subpart H (Schools, Public Parks, and Playgrounds), R01-29*. The Board accepted CBE's proposal for hearing on February 1, 2001, and consolidated it with the Agency's proposal.

The Board held two hearings on the consolidated proposals on April 4, 2001 and February 28, 2001. The Board adopted its first notice opinion and order on November 1, 2001. The first-notice proposal was published in the *Illinois Register* on November 16, 2001.

The SRP rules establish a voluntary program that participants may use to investigate releases and clean up contaminated sites. The SRP regulations give participants the opportunity to obtain Agency approval of remediation costs before applying for environmental remediation tax credits for the cleanup. The amendments the Board proposed at first notice are based on the experience gained by the Agency in administering the rules for over three years. One amendment that was included in the first-notice proposal was the addition of language adding a definition for "Licensed Professional Geologist" at Section 740.120 and amending Sections 740.405, 740.410, and 740.425 to specifically name LPGs as individuals who may perform certain remedial activities that were previously limited to only a Licensed Professional Engineer (LPE). However, even with the proposed amendment, all plans and reports submitted for review and evaluation by LPGs would still be prepared by, or under the supervision of an LPE.

As suggested by CBE, additional protections were added for public schools. Procedural requirements were added to ensure the receipt of a No Further Remediation (NFR) Letter before schools open, maintenance of institutional controls and engineered barriers, and enhanced public participation at remediation sites that will eventually be used as schools.

During the first-notice public comment period, the Board received a public comment from the Illinois Chapter American Institute of Professional Geologists (AIPG). The AIPG opposed the Board's first-notice proposal because they believe it conflicted with the Professional Geologist Licensing Act (225 ILCS 745). They suggested that the Board entirely delete the proposed amendments to 35 IAC 740.404(b) and allow the matter to be addressed by the General Assembly. PC 7 (R01-27) at 1. The Board did so.

For additional information contact Bill Murphy at 312/814-6062; e-mail address: [murphym@ipcb.state.il.us](mailto:murphym@ipcb.state.il.us).

## Environmental Register – February 2002

### **Board Adopts Second-notice Opinion and Order in Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732, R01-26**

On February 21, 2002, the Board adopted a second-notice opinion and order in Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732, R01-26. In response to public comments, the Board amended the rules it proposed at first notice, sending the rulemaking to second notice, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2000)), for review and consideration by the Joint Committee on Administrative Rules (JCAR).

This rulemaking proposal was initiated by a proposal filed with the Board on December 6, 2000 by the Illinois Environmental Protection Agency (Agency). The Agency submitted this proposal to the Board in order to clarify and refine Part 732 in accordance with the experience that the Agency gained in administering the regulations since adoption in 1994 and amendments in 1997. See Regulation of Petroleum Leaking Underground Storage Tanks 35 Ill. Adm. Code 732 (Pursuant to P.A. 88-496), R94-2(A) (Sept. 15, 1994) (original UST regulations); Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732), R97-10 (March 6, 1997).

The Board held two hearings on the consolidated proposals on April 3, 2001 and February 27, 2001. The Board adopted its first notice opinion and order on November 1, 2001. The first-notice proposal was published in the *Illinois Register* on November 16, 2001.

The Board's first notice proposal included rules allowing licensed professional geologists (LPGs) to practice pursuant to Part 732; off-site access for underground storage tank (UST) owners and operators including alerting off-site owners about migration of contamination and "best efforts" to obtain off-site access; adding methyl tertiary-butyl ether (MTBE) as an indicator contaminant; a Memorandum of Agreement (MOA) between the Agency and the Illinois Department of Transportation (IDOT) allowing "No Further Remediation" (NFR) Letters to be perfected; and a Land Use Control Memorandum of Agreement (LUC MOA) between the Agency and federal landholding entities to allow the recording and perfection of NFR Letters at federally-owned sites.

During the first-notice public comment period the Board received comments from the Illinois Chapter American Institute of Professional Geologists (AIPG) that opposed the Board's proposed amendments allowing LPGs to work under the supervision of Licensed Professional Engineers (LPEs). AIPG claimed that the Board's proposal was unnecessary because anyone may conduct UST-related activities under the supervision of an LPE. AIPG also claimed that the General Assembly, in authorizing the regulations and licensing of LPGs, did not require LPGs to practice under LPEs. AIPG opposed language that the Board proposed at 35 Ill. Adm. Code 732.307(e) prohibiting LPGs from taking the lead in performing investigations of migration pathways at UST sites. AIPG stated that these matters should be addressed by the General Assembly. PC 12 at 1-2. Accordingly, AIPG requested that the Board remove LPGs from the proposal. The Board did so.

Another issue addressed by the Board at second notice dealt with the issue of Early Action activities in instances where there has been a confirmed release of petroleum from an UST. At first notice, the Board declined to adopt the Agency's proposed change for the trigger date because it was not entirely clear from the Agency's proposal which of several required notifications to Illinois Emergency Management Agency (IEMA) should be the trigger date. In its proposal, the Agency proposed language to change and clarify the trigger for reimbursement of corrective action costs at the start of the 45-day Early Action period. The Agency's proposal would have switched the trigger for reimbursement from confirmation of an UST release to the initial notification to IEMA. The Agency claimed that the initial notification to IEMA is "clearly documented", whereas confirmation of a release was not. Amendments to 35 Ill. Adm. Code 732; Regulation of Petroleum Leaking Underground Storage Tanks, R01-26 (Nov. 1, 2001), slip op. at 13-14.

In its second notice opinion and order, the Board accepted and adopted alternative language the Agency suggested in its first-notice comments. The Agency proposed that, for purposes of reimbursement, authorized activities must be performed within 45 days "plus seven" of the initial notification to IEMA of a release. This incorporates the policy in Office of the State Fire Marshall regulations that requires owners or operators to notify IEMA upon confirmation of a release (41 Ill. Adm. Code 170.600) and allows for seven days to complete steps related to confirmation of a release (41 Ill. Adm. Code 170.580).



## Environmental Register – February 2002

For additional information contact Joel Sternstein at 312/814-3665; email address: [sternsteinj@ipcb.state.il.us](mailto:sternsteinj@ipcb.state.il.us).

### **Board Adopts Final Amendments in Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, 102.800-102.830, R01-13**

On February 21, 2002, the Board adopted final amendments in Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, 102.800-102.830. The amendments were filed with the Secretary of State and became effective February 22, 2002. The adopted amendments were published in the *Illinois Register* on March 8, 2002.

In response to public comments, the Board made changes in the rules as proposed at both first and second notice.

This rulemaking was initiated by a proposal filed on August 30, 2000, by the Illinois Environmental Protection Agency (Agency). The amendments implement the concepts of antidegradation and outstanding resource waters in the State of Illinois as required by the federal Clean Water Act. The adopted rules add new requirements concerning antidegradation of waters in the State to the Board's current rules found at 35 Ill. Adm. Code 302.105. The rules designate the State's water resources to reflect the three tiers of the federal program. Tier 1 sets the minimum level of protection and is intended to be the absolute floor of water quality protection for all waters of the United States. Tier 2 of the federal program addresses waters with quality that exceeds the levels necessary to support the propagation of fish, shellfish, or wildlife and recreation in and on the water. Water quality cannot be lowered below the level necessary to protect the "fishable/swimmable" uses and other existing uses. Tier 3 of the federal regulations requires that high quality water, which constitutes outstanding resource waters, must be maintained and protected. The rules also add procedures for the implementation of the program as a part of the National Pollutant Discharge Elimination System (NPDES) permit process.

Additionally, the amendments at 35 Ill. Adm. Code 303 create the category of waters classified as "outstanding resource waters" or ORWs. Because designating waters as "ORWs" will be handled as rulemakings, the Board added a new Subpart to the Board's procedural rules at 35 Ill. Adm. Code 102 to regulate the process for classification of Outstanding Resource Waters.

On September 7, 2000, the Board accepted the proposal for hearing. The Board held three hearings, and received a total of 47 comments prior to the first notice. On June 21, 2001, after reviewing the comments and testimony and making changes to the proposal based on those comments and testimony, the Board proceeded to first notice with the rules. First notice was published in the *Illinois Register* on July 13, 2001.

The Board held a fourth hearing and with testimony provided by Toby Frevert representing the Agency, Dierdre K. Hirner representing the Illinois Environmental Regulatory Group (IERG), Jack Darin representing Sierra Club, Illinois Chapter, Cynthia L. Skrukrud representing Friends of the Fox River, and Robert J. Moore representing Prairie Rivers Network. All of these groups also filed post-hearing comments.

On December 6, 2002, the Board adopted a second-notice opinion and order that included additional amendments to the proposal suggested during the first-notice period. The Board directed that the proposal be submitted to the legislative Joint Committee on Administrative Rules (JCAR) for second-notice review.

During the pendency of JCAR review, on January 7, 2002, the Board received two motions for reconsideration. Both IERG and the Illinois Association of Wastewater Agencies (IAWA) filed motions asking the Board to reconsider the December 6, 2001 second-notice opinion and order. On January 18, 2002, the Board received two responses to the motion to reconsider filed by the Environmental Groups and the Agency. On January 24, 2002, the Board granted the motions to reconsider in part. The Board amended Section 302.105(b)(3) as suggested by IERG and agreed to by the Environmental Groups. The Board denied the motion filed by IAWA in its entirety. On February 19, 2002, the Board received a certification of no objection from the JCAR.

For additional information contact Marie Tipsord at 312/814-4925; e-mail address: [tipsordm@ipcb.state.il.us](mailto:tipsordm@ipcb.state.il.us).

## Environmental Register – February 2002

### **Board Adopts Final Amendments in SDWA Update, USEPA Amendments (January 1, 2001 through June 30, 2001; Arsenic Rule) R02-5**

On February 21, 2002, the Board adopted amendments to the Illinois drinking water regulations that are identical in substance to amendments adopted by the United States Environmental Protection Agency (USEPA) to the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300f *et seq.* (1994)) drinking water regulations. The federal amendments included in this docket include those adopted by USEPA during the period between January 1, 2001 and June 30, 2001. The Board's adopted rules were filed with the Secretary of State and became effective February 22, 2002. The adopted amendments were published in the *Illinois Register* on March 8, 2002.

In this action, the Board adopted amendments that track the National Primary Drinking Water Regulations (NPDWRs) applicable to arsenic in drinking water adopted by USEPA. The arsenic amendments lowered the Maximum Contaminant Level for arsenic from the current 0.05 mg/L to 0.01 mg/L, and it revised the analytical methods used to determine compliance, amended the monitoring requirements, and changed the public notification requirements that apply to arsenic. The Board also amended portions of the drinking water standards applicable to the new source compliance demonstration requirements applicable to all inorganic contaminants (IOCs), volatile organic contaminants (VOCs), and synthetic organic contaminants (SOCs). Additionally, the Board amended its interim enhanced surface water regulations and the Stage 1 disinfectant residual and disinfection byproducts (DR/DBP) rule.

The amendments were proposed pursuant to Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2000)), which provides for quick adoption of regulations that are "identical in substance" to drinking water regulations that USEPA adopted to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal SDWA (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (1994)). Section 17.5 also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2000)) do not apply to the Board's adoption of identical-in-substance regulations. The federal SDWA regulations are found at 40 C.F.R. 141 through 143.

The Board adopted a proposal for public comment on October 4, 2001 and published in the *Illinois Register* on October 26, 2001. Under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2000)), the Board is required to complete the rulemaking action on identical-in-substance amendments within one year of the earliest federal amendments involved. USEPA adopted the earliest federal amendments involved in this rulemaking on January 16, 2001. Thus, the nominal deadline for completion of these amendments was January 16, 2002.

However, on December 5, 2001, the Board received a request from USEPA that we extend the public comment period for an additional 30 days. The Board adopted an order on December 20, 2001 that extended the public comment period for the requested 30 days, until January 9, 2002. The Board also set forth reasons for delay in that order, as allowed under Section 7.2(b) of the Act, and the deadline for completion of the rulemaking activities in this matter was extended until February 22, 2002. A Notice of Public Information on Proposed Rules explaining the extension appeared in the January 4, 2002 issue of the *Illinois Register* (at 26 Ill. Reg. 247).

For additional information contact Mike McCambridge at 312/814-6924; e-mail address: [mccambm@ipcb.state.il.us](mailto:mccambm@ipcb.state.il.us).

## Environmental Register – February 2002

### Board Dismisses Proposal in Petition of Amerock Corporation, Rockford Facility, for Site-Specific Rulemaking Petition for Amendment to 35 Ill. Adm. Code 304.403, R01-15

On February 21, 2002, the Board dismissed a deficient site-specific rulemaking proposal. Petition of Amerock Corporation, Rockford Facility, for Site-Specific Rulemaking Petition for Amendment to 35 Ill. Adm. Code 304.403, R01-15.

This rulemaking proposal was filed by the Amerock Corporation (Amerock) on September 14, 2000. On October 5, 2000, the Board found that the petition failed to include the information specified in Part 102 of the Board's procedural rules. In the February 21, 2002 opinion dismissing this docket, the Board noted that Amerock had been granted numerous extensions of time and that Amerock was directed to file amended petitions. However, in the 17 months since Amerock first filed its petition, Amerock did not file an amended petition that the Board found satisfactory. Therefore, the Board dismissed this docket without prejudice.

For additional information contact Joel Sternstein at 312/814-3665; email address: [sternsteinj@ipcb.state.il.us](mailto:sternsteinj@ipcb.state.il.us).

### **Board Dismisses Proposal in Revision of the Waste Disposal Rules: Amendment to 35 Ill. Adm. Code 817.101, R97-27**

On February 7, 2002, the Board dismissed the rulemaking docket Revision of the Waste Disposal Rules: Amendment to 35 Ill. Adm. Code 817.101, R97-27.

This rulemaking proposal was filed with the Board on March 4, 1997 by the Illinois Cast Metals Association (ICMA) to amend the scope and applicability section of 35 Ill. Adm. Code Part 817, Requirements for New Steel and Foundry Industry Wastes Landfills. A hearing was held on June 2, 1997. Additional hearings and the filing of an amended proposal were delayed at petitioner's request, pending the anticipated filing of rulemaking proposals by the Illinois Environmental Protection Agency that could eliminate the need for this rulemaking.

On January 15, 2002, ICMA moved that the Board dismiss the proposal. Receiving no response to ICMA's motion, the Board granted the motion and closed the docket.

For additional information contact Richard McGill at 312/814-6983; email address: [mcgillr@ipcb.state.il.us](mailto:mcgillr@ipcb.state.il.us).

### **Board Dismisses 5 Identical in Substance Rulemaking Dockets As Unnecessary: UST Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-13; Wastewater Pretreatment Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-14; Exemptions from the Definition of VOM Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-15; SDWA Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-16; RCRA Subtitle D Update, USEPA Regulations (July 1, 2001 through December 31, 2001), R02-18**

Every six months, the Board reserves a series of dockets for adoption of Board rules, to any rules adopted by the United States Environmental Protection Agency to implement various programs. On February 22, 2002, the Board dismissed as unnecessary four dockets reserved to consider any rules adopted by United States Environmental Protection Agency (USEPA) during the period July 1, 2001 through December 31, 2001:

UST Program (R02-13). Section 22.4(d) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(d) (2000)) requires the Board to adopt regulations which are "identical in substance," as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2000)), to underground storage tank (UST) regulations promulgated by the USEPA pursuant to Section 9003 of the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. § 6993 (2000), to implement Subtitle I of RCRA (42 U.S.C. §§ 6991 *et seq.* (2000)), with certain limitations. USEPA has codified its UST regulations at 40 C.F.R. 281 through 283. During the period July 1 through December 31, 2001, the only USEPA amendment to the federal UST regulations was an action on November 30, 2001 (at 66 Fed. Reg.

## Environmental Register – February 2002

59713) relating only to the federal authorization of the Minnesota program. Therefore, no action was necessary, and the Board dismissed the docket.

Wastewater Pretreatment Program (R02-14). Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2000)), require the Board to adopt regulations that are “identical in substance,” as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2000)), to wastewater pretreatment regulations that the USEPA adopted to implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (1994)). USEPA has codified the federal wastewater pretreatment rules as 40 C.F.R. 400 through 499.

During the period between July 1, 2001 and December 31, 2001, USEPA did amend its wastewater pretreatment rules once, on October 3, 2001 (at 66 Fed. Reg. 50339). Those amendments related to a federal grant of relief to a number of publicly owned treatment works, including one in Illinois. On November 15, 2001, in Wastewater Pretreatment Update, USEPA Regulations (October 3, 2001), R02-9, the Board proposed amendments to correspond with the USEPA amendments of October 3, 2001. Once the Board has completed action on the docket R02-9 amendments, no further action will be necessary for the update period July 1, 2001 through December 31, 2001. Therefore, the Board dismissed this docket.

VOM Program (R02-15). Section 9.1(e) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(e) (2000)) requires the Board to adopt regulations that are “identical in substance,” as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2000)), to exemptions from the definition of “volatile organic material” (VOM), those compounds that the USEPA has found to be exempted from regulation under state implementation plans for ozone due to negligible photochemical reactivity. USEPA has codified these exemptions as part of its definitions at 40 C.F.R. 51.100(s). During the period July 1 through December 31, 2001, USEPA did not amend its definition of VOM. Therefore, no action is necessary, and the Board dismissed the docket.

Safe Drinking Water Act Program (R02-16). Section 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/17.5 (1998)) requires the Board to adopt regulations that are “identical in substance,” as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2000)), to the National Primary Drinking Water regulations (NPDWRs) adopted by the USEPA. These regulations implement sections 1412(b), 1414(c), 1417(a), and 1445(a) of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300g-1(b), 300g-3(c), 300g-6(a) & 300j-4(a) (1998). USEPA has codified its SDWA regulations at 40 C.F.R. 141 through 143.

During the period between July 1, 2001 and December 31, 2001, USEPA did amend its SDWA regulations once, on November 4, 2001 (at 66 Fed. Reg. 46221). However, no Board action is required based on that set of federal amendments. The November 4, 2001 amendments related to unregulated contaminant monitoring. USEPA has not required the State to adopt requirements for monitoring unregulated contaminants, since the federal rules are implemented directly by USEPA in this State. Therefore, the Board dismissed this docket.

RCRA, Subtitle D (Non-hazardous Waste Program (R02-18). Section 22.40(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.40(a) (2000)) requires the Board to adopt regulations that are “identical in substance,” as defined at Section 7.2 of the Act (415 ILCS 5/7.2 (2000)), to municipal solid waste landfill (MSWLF) regulations that USEPA adopted to implement Subtitle D of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6941-6949 (2000)). USEPA has codified the federal MSWLF rules as 40 C.F.R. 258. During the period July 1 through December 31, 2001, USEPA did not amend its MSWLF rules. Therefore, no action was necessary, and the Board dismissed the docket.

For additional information contact Mike McCambridge at 312/814-6924; e-mail address: [mccambm@ipcb.state.il.us](mailto:mccambm@ipcb.state.il.us).

## Appellate Update

---

### **Private Cost Recovery Appeal Dismissed in *Dalise Enterprises, Inc. d/b/a Barge-Way Company v. Illinois Pollution Control Board***

On February 14, 2002, an appeal of a Cook County Circuit Court decision holding that the Board had the authority to award cleanup costs to a citizen was dismissed by the First District Appellate Court for want of prosecution. The case involves leaking underground storage tanks at a former gasoline service station in Glendale Heights, DuPage County.

The Cook County Circuit Court decision arose out of a citizen enforcement action still pending before the Board. In the Board proceeding, the current owner of the DuPage County property, Union Oil Company of California d/b/a UNOCAL (UNOCAL), is the complainant. UNOCAL seeks to recover approximately \$600,000 in cleanup costs from several alleged former owners or operators of the service station. These respondents, UNOCAL argues, violated water pollution prohibitions of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d) (2000)). UNOCAL, which acquired the property in 1982, allegedly incurred the costs cleaning up petroleum contamination from leaking underground storage tanks. The Board proceeding, which is in discovery, is docketed as PCB 98-169.

After the Board denied a motion to dismiss UNOCAL's enforcement action, one of the respondents before the Board, Dalise Enterprises, Inc. d/b/a Barge-Way Company (Barge-Way), filed a complaint for declaratory judgment and an emergency motion for temporary restraining order and preliminary injunction in Cook County Circuit Court. With these filings, Barge-Way sought to enjoin the Board from further action in PCB 98-169, alleging that the Board lacked jurisdiction over private cost recovery actions. The Board moved to dismiss with prejudice. The Board noted that Section 31(d) of the Act (415 ILCS 5/31(d) (2000)) allows for "any person" to file a complaint before the Board alleging violations of the Act. And the Illinois General Assembly, in Section 33(a) of the Act (415 ILCS 5/33(a) (2000)), gave the Board broad authority to fashion appropriate remedies in enforcement actions. The Board also noted that the Illinois Supreme Court, in *People v. Fiorini*, 143 Ill. 2d 318, 350, 574 N.E.2d 612, 625 (1991), refused to hold that cleanup costs would not be an available remedy for a violation of the Act under appropriate facts.

Following oral argument, the Cook County Circuit Court, on September 12, 2000, granted the Board's motion to dismiss with prejudice, stating that the Board has jurisdiction over the matters pending before it in PCB 98-169. *See Dalise Enterprises, Inc. d/b/a Barge-Way Company v. Illinois Pollution Control Board*, No. 00 CH 12113 (Cook County Cir. Ct., Sept. 12, 2000). Barge-Way appealed the circuit court's decision to the First District Appellate Court. On February 14, 2002, the appellate court, on its own motion, dismissed the appeal for want of prosecution—Barge-Way failed to file its brief by the due date of November 5, 2001. *See Dalise Enterprises, Inc. d/b/a Barge-Way Company v. Illinois Pollution Control Board*, No. 1-00-3391 (1st Dist., Feb. 14, 2002). Accordingly, the circuit court ruling that the Board can order a violator to reimburse a citizen's cleanup costs stands.

## Board Actions

---

**February 7, 2002**  
**Springfield, Illinois**

### **Rulemakings**

R97-27	<u>In the Matter of: Revision of the Waste Disposal Rules: Amendments to 35 Ill. Adm. Code 817.101</u> – The Board dismissed this petition of the Illinois Cast Metals Association to amend 35 Ill. Adm. Code 817.101.	7-0 R, Land
--------	--	----------------

## Environmental Register – February 2002

### Adjusted Standard

- AS 01-1      In the Matter of: Petition of City of Elgin for an Adjusted Standard from 35 Ill. Adm. Code 304.125 and 35 Ill. Adm. Code 302.204 – The Board granted this Kane County facility’s motion to withdraw its request for an adjusted standard from the pH water quality standard and effluent limitation found at 35 Ill. Adm. Code 304.125 and 302.204.      7-0  
PWS
- AS 01-6      In the Matter of: Petition of Borden Chemicals & Plastics Operating Limited Partnership for an Adjusted Standard from 35 Ill. Adm. Code 304.105 as it Applies to 35 Ill. Adm. Code 302.211(B)-(E) – The Board granted this Sangamon County facility an adjusted standard from the heated effluent discharge requirement pursuant to 35 Ill Adm. Code 302.211(B)-(E), subject to conditions.      7-0  
Water

### Administrative Citations

- AC 01-37      IEPA v. Kishwaukee Auto Parts – The Board dismissed this administrative citation against this Winnebago County respondent, finding that the violation resulted from “uncontrollable circumstances” within the meaning of Section 31.1(d)(2) of the Environmental Protection Act. 415 ILCS 5/31.1(d)(2) (2000).      5-2  
Manning and  
Flemal  
dissented
- AC 02-3      IEPA v. Marvin Hammack and Doris Baker – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Schuyler County facility, the Board found respondents violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2000)) and ordered respondents to pay a civil penalty of \$1,500. The Board also granted the parties’ joint motions to dismiss respondents’ petition for review.      7-0
- AC 02-29      IEPA v. Environmental Reclamation Company and Gene Stacey – The Board found that these Coles County respondents’ violated Sections 21(o)(5) and (o)(12) of the Environmental Protection Act (415 ILCS 5/21(o)(5), (o)(12) (2000)), and ordered respondents to pay a civil penalty of \$1,000.      7-0

### Decisions

- PCB 00-122      People of the State of Illinois v. John A. Gordon, P.E., and Gordon & Price, Inc. – In this public water supply enforcement action concerning a Lawrence 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) (2000)), accepted a final stipulation and settlement agreement, ordered the respondents to pay a total civil penalty of \$25,000, and to cease and desist from further violations.      7-0  
PWS-E
- PCB 02-50      Vandalia Community School District #203 v. IEPA – The Board dismissed this matter for failure to file an amended petition as ordered on November 1, 2001.      7-0  
P-A, NPDES

## Environmental Register – February 2002

PCB 02-73	<u>People of the State of Illinois v. Bernie C. Morris</u> – In this water enforcement action concerning an Edgar 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) (2000)), accepted a final stipulation and settlement agreement, ordered the respondents to pay a total civil penalty of \$2,500, and to cease and desist from further violations.	7-0 W-E
PCB 02-82	<u>People of the State of Illinois v. DiPaolo Company</u> – In this water enforcement action concerning a Lake 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) (2000)), accepted a final stipulation and settlement agreement, ordered the respondents to pay a total civil penalty of \$9,000, and to cease and desist from further violations.	7-0 W-E, NPDES

### Motions and Other Matters

PCB 99-134	<u>People of the State of Illinois v. Peabody Coal Company</u> – The Board granted respondent’s attorney’s motion to appear <i>pro hac vice</i> .	7-0 W-E
PCB 00-67	<u>People of the State of Illinois v. American Disposal Company</u> – The Board denied complainant's motion for summary judgment and ordered respondent to have its attorney file an appearance in this matter.	7-0 RCRA-E
PCB 00-70	<u>E.G. Vogt Oil Company, Inc. v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-74	<u>Freeburg Investors Group, Inc. v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-76	<u>East Side Acquisitions, Inc. d/b/a State Street Shell v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-94	<u>Linnemann Oil Company v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-133	<u>John M. Giertych, Geri Giertych, Wally Stoklosa, Earl Daliege, Everett Johnson, Meddard Sowonik, Max Prindle, Chuck Polizzi, Marge Polizzi, George Brassea, Gladys Brassea, Nancy Pitcher, Geraldine Hughes, Bernard Nagel, et al. v. 4T’s Management, L.L.C.</u> – The Board denied respondent’s motion for summary judgment in this citizens’ noise enforcement action involving a Kankakee County facility.	7-0 Citizens N-E

## Environmental Register – February 2002

PCB 00-138	<u>Granite City Sheet Metal v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-139	<u>L. Wolf Company v. IEPA</u> – The Board’s order noted that the Illinois Environmental Protection Agency Record in this matter had not been filed and directed that it be filed.	7-0 UST Fund
PCB 00-141	<u>E.G. Vogt Oil Company, Inc. v. IEPA</u> – The Board granted respondent’s motion for leave to file <i>instanter</i> the Illinois Environmental Protection Agency Record in this matter.	7-0 UST Fund
PCB 00-189	<u>People of the State of Illinois v. Fox River Water Reclamation District</u> – 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 Kane County facility, the Board ordered publication of the required newspaper notice.	7-0 W-E
PCB 01-54	<u>Richard G. Cotterman v. Jackson Farms</u> – The Board granted complainant’s motion to dismiss this citizen’s air and noise enforcement action involving a Macoupin County facility.	7-0 Citizens A&N-E
PCB 01-77	<u>Village of Park Forest v. Sears, Roebuck and Company</u> – The Board granted respondent’s motion to delete the not “subject to disclosure” designation of all past and future filings before the Board and directed the hearing officer to reschedule the February 20, 2002 hearing date.	7-0 Citizens UST-E
PCB 02-52	<u>Vandalia C.U.S.D. v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Fayette County facility.	7-0 UST Appeal
PCB 02-90	<u>Tri County FS, Inc. (Jersey County) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s corrected recommendation, the Board found and certified that specified facilities of Tri County FS, Inc. located in Jersey County are “pollution control facilities” for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)).	7-0 T-C
PCB 02-98	<u>Tri County FS, Inc. (Calhoun County) v. IEPA</u> – The Board found and certified that specified facilities of Tri County FS, Inc. located in Calhoun County are “pollution control facilities” for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)).	7-0 T-C



## Environmental Register – February 2002

PCB 02-100	<u>Principia College v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Jersey County facility.	7-0 P-A 90-Day Ext.
PCB 02-102	<u>E/M Coatings v. IEPA</u> – The Board found and certified that specified facilities of E/M Coating located in DuPage County are “pollution control facilities” for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)).	7-0 T-C
PCB 02-103	<u>Midway Oil Company v. IEPA</u> – The Board granted respondent’s motion to dismiss this request for 90-day extension of appeal period.	7-0 UST Appeal
PCB 02-104	<u>Metropolitan Water Reclamation District of Greater Chicago (Egan Plant, Schaumburg) v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Cook County facility.	7-0 P-A, NPDES
PCB 02-105	<u>Southern Illinois University, Edwardsville v. IEPA</u> – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Madison County facility.	7-0 P-A, NPDES 90-Day Ext.
PCB 02-106	<u>City of Quincy v. IEPA</u> – The Board accepted for hearing this permit appeal involving an Adams County facility.	7-0 P-A, NPDES
PCB 02-107	<u>Midway Oil v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Rock Island County facility.	7-0 UST Appeal, 90-Day Ext.
PCB 02-108	<u>Saline County Landfill, Inc. v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Saline County facility and granted petitioner’s motion for expedited review.	7-0 P-A, Land

**February 21, 2002  
Via Video Conference Between  
Springfield and Chicago, Illinois**

**Rulemaking**

## Environmental Register – February 2002

R01-13	<u>In the Matter of: Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, 102.800-102.830</u> – The Board adopted a final opinion and order in this matter to amend the Board’s antidegradation water regulations.	7-0 R, Water
R01-15	<u>In the Matter of: Petition of Amerock Corporation, Rockford Facility, for a Site-Specific Rulemaking Petition for Amendment to 35 Ill. Adm. Code 304.303</u> – The Board dismissed this petition of the Amerock Corporation to amend 35 Ill. Adm. Code 304.303.	7-0 R, Water Site-Specific
R01-26	<u>In the Matter of: Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s underground storage tank regulations.	7-0 R, Land
R01-27 R01-29	<u>In the Matter of: Site Remediation Program: Amendments to 35 Ill. Adm. Code 740; In the Matter of: Site Remediation Program: Proposed 35 Ill. Adm. Code 740, Subpart H (Schools, Public Parks, and Playgrounds)</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s site remediation program regulations.	7-0 R, Land
R02-5	<u>In the Matter of: SDWA Update, USEPA Amendments (January 1, 2001 through June 30, 2001; Arsenic Rule)</u> – The Board adopted a final opinion and order in this identical-in-substance rulemaking to amend the Board’s public water supply regulations.	7-0 R, PWS
R02-13	<u>In the Matter of: UST Update, USEPA Regulations (July 1, 2001 through December 31, 2001)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground storage tank regulations during the update period.	7-0 R, Land
R02-14	<u>In the Matter of: Wastewater Pretreatment Update, USEPA Amendments (July 1, 2001 through December 31, 2001)</u> – The Board dismissed this reserved identical-in-substance docket because the only United States Environmental Protection Agency amendment to its wastewater pretreatment regulations during the update period is being addressed in <u>Wastewater Pretreatment Update, USEPA Regulations (October 3, 2001), R02-9.</u>	7-0 R, Land
R02-15	<u>In the Matter of: Exemptions from the Definition of VOM Update, USEPA Regulations (July 1, 2001 through December 31, 2001)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its exemptions from the definition of volatile organic material regulations during the update period.	7-0 R, Air

## Environmental Register – February 2002

R02-16	<u>In the Matter of: SDWA Update, USEPA Regulations (July 1, 2001 through December 31, 2001)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its exemptions from the definition of public water supply regulations during the update period.	7-0 R, PWS
R02-18	<u>In the Matter of: RCRA Subtitle D Update, USEPA Regulations (July 1, 2001 through December 31, 2001)</u> – The Board dismissed this reserved identical-in-substance docket because the only United States Environmental Protection Agency amendment to its non-hazardous waste regulations during the update period did not require any Board action.	7-0 R, Land

### Adjusted Standard

AS 02-3	<u>In the Matter of: Petition of Ford Motor Company (Chicago Assembly Plant) for an Adjusted Standard from 35 Ill. Adm. Code 218.986</u> – Upon receipt of the certificate of publication, the Board accepted this Cook County facility’s petition for an adjusted standard from the air pollution control regulations.	7-0 Air
---------	---	------------

### Administrative Citations

AC 02-7	<u>IEPA v. Terry and Letisha Springer</u> – The Board denied these Jersey County respondents’ motion to dismiss the administrative citation and granted their motion for reconsideration but vacated the December 6, 2001 default judgment. The Board set this matter for hearing.	7-0
AC 02-26	<u>IEPA v. Maurice Newcomer</u> – The Board granted complainant’s motion for voluntary dismissal of this administrative citation involving a Carroll County facility.	7-0
AC 02-27	<u>IEPA v. John Firebaugh</u> – The Board granted complainant’s motion for voluntary dismissal of this administrative citation involving a Jefferson County facility.	7-0
AC 02-31	<u>IEPA v. William Plank d/b/a Demolition Plus</u> – The Board found that this Douglas County respondent violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2000)), and ordered respondent to pay a civil penalty of \$3,000.	6-1 Girard dissented

### Decisions

PCB 00-202	<u>People of the State of Illinois v. American Driveway Maintenance, Inc.</u> – In this water enforcement action concerning a Winnebago 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) (2000)), accepted a final stipulation and settlement agreement, ordered this respondent to pay a total civil penalty of \$4,000, and to cease and desist from further violations.	7-0 W-E
------------	---	------------

## Environmental Register – February 2002

### Motions and Other Matters

PCB 97-168	<u>People of the State of Illinois v. Old World Industries, Inc., and Specialty Sealant Tapes, Inc.</u> – 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 Cook County facility, the Board ordered publication of the required newspaper notice.	7-0 L-E
PCB 99-134	<u>People of the State of Illinois v. Peabody Coal Company</u> – The Board granted respondent’s attorney’s motion to appear <i>pro hac vice</i> and denied complainant’s response to respondent’s motion for leave to appear <i>pro hac vice</i> .	7-0 W-E
PCB 00-14	<u>Sequa Corporation, Precoat Metals Division v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this permit appeal involving a Cook County facility.	7-0 P-A, Air
PCB 00-125	<u>People of the State of Illinois v. Nina Enterprises, Inc.</u> – 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.	7-0 A-E
PCB 00-184	<u>People of the State of Illinois v. M&amp;R Wrecking, Ltd. And Roderick Enterprises, Inc.</u> – The Board granted complainant’s motion for leave to file first amended complaint.	7-0 A-E
PCB 00-194	<u>Bulkoa, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Cook County facility.	7-0 UST Appeal
PCB 01-150	<u>People of the State of Illinois v. Marc Development Corporation and Silver Glen Estates Homeowners’ Association</u> – The Board granted complainant’s motion to deem facts admitted and its motion for summary judgment. The Board found that respondent violated Sections 12(a), (b), and (f) of the Environmental Protection Act (415 ILCS 5/12(a), (b), (f) (2000)), and Sections 306.102(a) and 309.102(a) of Board regulations. The Board reserved ruling on the issue of an appropriate penalty pending a hearing.	7-0 W-E
PCB 01-158	<u>Johnson Oil Company, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal involving a Livingston County facility.	7-0 UST Fund
PCB 02-21	<u>People of the State of Illinois v. J&amp;F Hauling, Inc.</u> – The Board granted complainant’s motion to withdraw the motion to deem facts admitted and for summary judgment.	7-0 RCRA-E

## Environmental Register – February 2002

PCB 02-54	<u>City of Springfield v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Sangamon County facility.	7-0 UST Appeal
PCB 02-55	<u>ESG Watts, Inc. v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Rock Island County facility.	7-0 P-A, Land
PCB 02-59	<u>MAC Investments v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Cook County facility.	7-0 UST Fund
PCB 02-60	<u>City of East Moline v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no permit appeal was filed on behalf of this Rock Island County facility.	7-0 P-A
PCB 02-97	<u>Midwest Illinois Auto/Truck Plaza, Inc. v. IEPA</u> –The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Bond County facility.	7-0 UST Appeal 90-Day Ext.
PCB 02-109	<u>Blake Oil Company v. IEPA</u> – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Ogle County facility.	7-0 P-A 90-Day Ext.
PCB 02-110	<u>Duke Energy North America (Lee County) v. IEPA</u> – The Board found and certified that the specified concrete structures and sumps of Duke Energy North America located in Lee County is a pollution control facility for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)). The Board opened a separate docket PCB 02-113 to address the Illinois Environmental Protection Agency’s recommended denial of petitioner’s request for preferential tax certification for its sanitary waste septic tank and associated lift station.	7-0 T-C
PCB 02-113	<u>Duke Energy North America (Lee County) v. IEPA</u> – The Board opened a docket to address recommended denial of petitioner’s request for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)) for its facility located in Lee County. Petitioner must file a petition to contest with the Clerk of the Board within 35 days after the respondent served the recommendation. If petitioner fails to timely file a petition, the Board may deny tax certification for the sanitary waste septic tank and associated lift station based solely on respondent’s recommendation.	7-0 T-C

## New Cases

---

### February 7, 2002 Board Meeting

**02-100** Principia College v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Jersey County facility.

**02-101** E&L Trucking Company v. IEPA – No action taken.

**02-102.** E/M Coatings v. IEPA – The Board found and certified that specified facilities of E/M Coating located in DuPage County are “pollution control facilities” for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)).

**02-103** Midway Oil Company v. IEPA – The Board granted respondent’s motion to dismiss this request for 90-day extension of appeal period.

**02-104** Metropolitan Water Reclamation District of Greater Chicago (Egan Plant, Schaumburg) v. IEPA – The Board accepted for hearing this permit appeal involving a Cook County facility.

**02-105** Southern Illinois University, Edwardsville v. IEPA – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Madison County facility.

**02-106** City of Quincy v. IEPA – The Board accepted for hearing this permit appeal involving an Adams County facility.

**02-107** Midway Oil v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Rock Island County facility.

**02-108** Saline County Landfill, Inc. v. IEPA – The Board accepted for hearing this permit appeal involving a Saline County facility and granted petitioner’s motion for expedited review.

**AC 02-34** IEPA v. Manzell Lawson, Sr. – The Board accepted an administrative citation against this Peoria County respondent.

**AC 02-35** IEPA v. E. Lewis Look – The Board accepted an administrative citation against this Peoria County respondent.

**AC 02-36** IEPA v. Trevor Pearce – The Board accepted an administrative citation against this Clay County respondent.

**AC 02-37** City of Chicago Department of Environment v. Edward F. Glascott – The Board accepted an administrative citation against this Cook County respondent.

**AC 02-38** Ogle County Solid Waste Management Department v. Lawrence and Eleanora Sandahl – The Board accepted an administrative citation against these Ogle County respondents.

**AS 02-2** In the Matter of: Petition of World Recycling, Inc. d/b/a Planet Earth Antifreeze for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c) – Pending receipt of the certificate of publication, the Board held this Winnebago County facility’s petition for a waste delisting under the hazardous waste regulations.

**AS 02-3** In the Matter of: Petition of Ford Motor Company (Chicago Assembly Plant) for an Adjusted Standard from 35 Ill. Adm. Code 218.986 – Pending receipt of the certificate of publication, the Board held this Cook County facility’s petition for an adjusted standard from the air pollution control regulations.

### February 21, 2002 Board Meeting

**02-109** Blake Oil Company v. IEPA – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Ogle County facility.

**02-110** Duke Energy North America (Lee County) v. IEPA – The Board found and certified that the specified concrete structures and sumps of Duke Energy North America located in Lee County is a pollution control facility

## Environmental Register – February 2002

for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)). The Board opened a separate docket PCB 02-113 to address the Illinois Environmental Protection Agency's recommended denial of petitioner's request for preferential tax certification for its sanitary waste septic tank and associated lift station.

**02-111.** J&L Oil, Inc. (Lake Villa) v. IEPA – No action taken.

**02-112** J&L Oil, Inc. (Fox Lake) v. IEPA – No action taken.

**02-113** Duke Energy North America (Lee County) v. IEPA – The Board opened a docket to address recommended denial of petitioner's request for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2000)) for its facility located in Lee County. Petitioner must file a petition to contest with the Clerk of the Board within 35 days after the respondent served the recommendation. If petitioner fails to timely file a petition, the Board may deny tax certification for the sanitary waste septic tank and associated lift station based solely on respondent's recommendation.

**AC 02-39** IEPA v. Jerel Childers – The Board accepted an administrative citation against this Massac County respondent.

**AC 02-40** IEPA v. Robert and John Gray – The Board accepted an administrative citation against these Iroquois County respondents.

## Calendar

3/6/2002 10:00 am	R02-11	Water Quality Triennial Review: Amendments to 35 Ill. Adm. Code 302.208(e)-(g), 302.504(a), 302.575(d), 303.444, 309.141(h); and proposed 35 Ill. Adm. Code 301.267, 301.313, 301.413, 304.120 and 309.157	Illinois Pollution Control Board Hearing Room 403 600 South Second Street Springfield
3/7/2002 11:00 am		Illinois Pollution Control Board Meeting	Chicago/Springfield Videoconference Illinois Pollution Control Board James R. Thompson Center Conference Room 11-512 100 West Randolph Street Chicago and Hearing Room 403 600 South Second Street Springfield
3/19/2002 9:00 am	AC 01-42	IEPA v. Alan Smith (Urbana/Alagna, Natalie) IEPA Docket No. 171-01-AC	City Council Chambers Room EOC1 102 North Neil Street Champaign
3/20/02 10:30 am	R02-10	Amendments to General Permitting Provisions for Portable Emission Units: Amendments to 35 Ill. Adm. Code 201	Illinois Pollution Control Board Hearing Room 403 600 South Second Street Springfield

## Environmental Register – February 2002

3/21/2002 11:00 am		Illinois Pollution Control Board Meeting	Illinois Pollution Control Board James R. Thompson Center Conference Room 11-512 100 West Randolph Street Chicago
3/25/2002 10:30 am	R02-19	Proposed Amendments to Ammonia Nitrogen Standards 35 Ill. Adm. Code 302.212, 302.213 and 304.122	James R. Thompson Center Conference Room 9-040 100 West Randolph Street Chicago
3/27/2002 10:00 am	AC 02-17	IEPA v. Charles Goodwin (Hull/Goodwin) IEPA Docket No. 424-01-AC	Pike County Courthouse 100 East Washington Pittsfield
4/4/2002 11:00 am		Illinois Pollution Control Board Meeting	Illinois Pollution Control Board Hearing Room 403 600 South Second Street Springfield
4/9/2002 10:00 am	AC 01-39	IEPA v. Ivan R. Smith and Lois Smith (Bainbridge Twp./Smith) IEPA Docket No. 175-01-AC	Schuyler County Courthouse Jury Room 1 102 South Congress Rushville
4/9/02 10:30 am	R02-10	Amendments to General Permitting Provisions for Portable Emission Units: Amendments to 35 Ill. Adm. Code 201	James R. Thompson Center Conference Room 11-500 100 West Randolph Street Chicago
4/11/02 10:00 a.m	PCB 96-256	People of the State of Illinois v. Crier Development Company, and Bradley S. Cowell	City Council Chambers 404 North Wood Dale Road Wood Dale
4/18/2002 11:00 am		Illinois Pollution Control Board Meeting	Illinois Pollution Control Board James R. Thompson Center Conference Room 11-512 100 West Randolph Street Chicago and Hearing Room 403 600 South Second Street Springfield
4/23/2002 10:30 am	R02-19	Proposed Amendments to Ammonia Nitrogen Standards 35 Ill. Adm. Code 302.212, 302.213 and 304.122	Illinois Pollution Control Board Hearing Room 403 600 South Second Street Springfield
5/2/2002 11:00 am		Illinois Pollution Control Board Meeting	Chicago/Springfield Videoconference Illinois Pollution Control Board James R. Thompson Center Conference Room 11-512 100 West Randolph Street Chicago



Environmental Register – February 2002

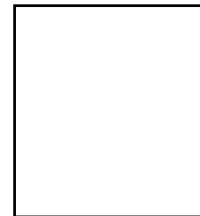
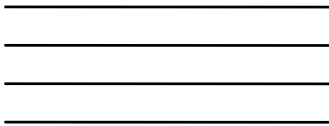
			and Hearing Room 403 600 South Second Street Springfield
5/16/2002 11:00 am		Illinois Pollution Control Board Meeting	Chicago/Springfield Videoconference Illinois Pollution Control Board James R. Thompson Center Conference Room 11-512 100 West Randolph Street Chicago and Hearing Room 403 600 South Second Street Springfield
6/6/2002 11:00 am		Illinois Pollution Control Board Meeting	Illinois Pollution Control Board Conference Room 403 600 South Second Street Springfield
6/20/2002 11:00 am		Illinois Pollution Control Board Meeting	James R. Thompson Center Conference Room 9-040 100 West Randolph Street Chicago



The Illinois Pollution Control Board is an independent seven-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  
600 South Second Street, Suite 402  
Springfield, Illinois 62704