

IPCB

Illinois Pollution Control Board



ANNUAL REPORT

Fiscal Year

2021

TABLE OF CONTENTS



Mission Statement 2



Letter from the Chair 3



Board Members 5



Rulemaking Update 8



Appellate Update 17



Legislative Update 18



ILLINOIS POLLUTION CONTROL BOARD



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MISSION STATEMENT

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

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

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





IPCB

Illinois Pollution Control Board

December 2021

GOVERNOR

JB Pritzker



CHAIR

Barbara Flynn Currie



MEMBERS

Cynthia Santos
Anastasia Palivos
Jennifer Van Wie
Michelle Gibson



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Honorable JB Pritzker, Governor of Illinois, and Members of the General Assembly:

The Illinois Pollution Control Board is proud to present its Annual Report for fiscal year 2021. Below, I describe the Board's statutory roles, highlight some significant Board proceedings from the past year, and preview the balance of this report. But first, I note a special anniversary.

50 Years. The Board kicked off the fiscal year by celebrating its golden anniversary, turning 50 on July 1, 2020. Governor Pritzker marked the date by proclaiming it "Pollution Control Board Day" in the State of Illinois. In his proclamation, the Governor commended the Board "for the important role it has played since 1970 in protecting the environment of Illinois and the health and well-being of its people." On the same day, the Board released its comprehensive 50th anniversary report entitled *At the Half-Century Mark: Illinois' Pollution Control Board and Environmental Protection Act*, which includes articles on the legislative battle to pass the Environmental Protection Act, what made the statute revolutionary, and the Board's early years. The Governor's proclamation and the Board's 50th anniversary report, along with other commemorative materials, may be viewed on the Board's website (<https://pcb.illinois.gov/>).

Board Roles. Under its founding statute, the Environmental Protection Act (Act) (415 ILCS 5), the Board primarily conducts two types of proceedings: rulemakings and adjudications. Through rulemakings, the Board adopts regulations that establish Illinois' environmental standards and requirements for ensuring clean air, land, and water. Through adjudications, the Board decides contested environmental cases, including complaints that allege violations of the Act and Board regulations; petitions that ask for review of permitting and leaking underground storage tank determinations made by the Illinois Environmental Protection Agency (IEPA); petitions that ask for review of pollution control facility siting determinations made by local governments; and variance and adjusted standard petitions that seek



December 2021

Page 2

relief from Board regulations. The Act was amended in 2017 to task the Board with conducting a third type of proceeding, one that is neither a rulemaking nor an adjudication: a time-limited water quality standard (TLWQS) proceeding, which is a form of temporary regulatory relief that the Board may grant for a single discharger, multiple dischargers, a watershed, a water body, or a waterbody segment. Just last month, the Board issued Illinois' first TLWQS ([dockets PCB 16-14 et al. \(consol.\)](#)).

FY21 Proceedings. The Board usually has about 150 to 200 proceedings pending before it at any one time. During fiscal year 2021, the Board continued to conduct these proceedings while operating within its budget. Three rulemakings stand out. First, in August 2020, the Board adopted new and amended rules to establish Illinois' Prevention of Significant Deterioration (PSD) air permitting program ([docket R19-1](#)). With a State PSD program, IEPA assumes responsibility from the United States Environmental Protection Agency (USEPA) for PSD permitting, and the Board assume responsibility from USEPA's Environmental Appeals Board for hearing PSD permit appeals. Second, in January 2021, the Board adopted new air pollution rules that require IEPA to monitor ambient air across Illinois for background levels of ethylene oxide (EtO), a flammable gas with uses that include sterilizing medical equipment ([docket R20-18](#)). And third, in April 2021, the Board adopted Illinois' first Statewide standards for managing coal combustion residuals (CCR) in surface impoundments, also known as "coal ash ponds" ([docket R20-19](#), [R20-19PC](#)). When power plants burn coal to produce electricity, they create CCR, which may contain arsenic, lead, and mercury, among other chemicals. The Board's new rules establish a comprehensive permitting program to govern CCR surface impoundments, including requirements for groundwater monitoring, for prioritizing impoundment closures in environmental justice areas, and for financial assurance to guarantee that impoundment owners or operators pay for cleanups.

Annual Report. This FY21 Annual Report covers two areas:

- ❖ Completed rulemakings of the Board; and
- ❖ Enacted legislation—from the General Assembly's 2021 Session—related to the Board's work.

In a typical fiscal year, the Board's Annual Report would also discuss judicial decisions issued on appeal of Board final orders. During Fiscal Year 2021, however, no such judicial decisions were issued.

If you have any questions about these materials or the Board, please let me know.

Sincerely,



Barbara Flynn Currie
Chair



BOARD MEMBERS



❖ Chair Barbara Flynn Currie



Barbara Flynn Currie served many terms in the Illinois House of Representatives. In 1997, she became House Majority Leader—the first woman to hold the title—and held the post until she retired from the General Assembly at the beginning of 2019. She sponsored the State’s first Freedom of Information Act and the Illinois Earned Income Tax Credit. She was a champion for clean air and water; she spearheaded reforms in State funding for public education and in the juvenile justice system. She has been honored by many organizations, including the Illinois ACLU, Planned Parenthood, Illinois AFL-CIO, Illinois Environmental Council, Friends of the Parks, the Illinois Council Against Handgun Violence, and the Illinois Campaign for Political Reform. Barbara earned her A.B. and M.A. degrees from the University of Chicago.

❖ Cynthia Santos



Board Member Santos was appointed to the Board by Governor Bruce Rauner in December 2016. Before joining the Board, Ms. Santos served 20 years as an elected Commissioner of the Metropolitan Water Reclamation District of Greater Chicago. During her tenure there, she was instrumental in the development of the District’s Stormwater Management Program. She also served as the District’s representative on the City of Chicago’s Public Building Commission, where she was involved in the construction of numerous schools, libraries, and police and fire stations. Ms. Santos earned a bachelor’s degree in political science, summa cum laude, as well as a master’s degree in political science and public policy from Northeastern Illinois University. Ms. Santos resides in Chicago.

❖ Anastasia Palivos



Board Member Palivos was appointed to the Board by Governor JB Pritzker in April 2019. Anastasia Palivos was Commissioner of the Illinois Commerce Commission from January 2018 to February 2019. An Illinois native, Palivos was the first Greek-American woman appointed to the Commission and, at 28, the youngest-ever appointed Commissioner. At the Commission, Palivos hosted several policy sessions investigating various energy issues, including electric vehicle deployment, transportation electrification, energy storage, wind energy, smart apps for utility operations, and gas pipeline infrastructure and safety. Prior to her appointment as Commissioner, Palivos was a legal and policy advisor to the Commission’s Chair. She previously worked as a business development strategy analyst for a Chicago-based health intelligence firm. She received her Juris Doctor and Bachelor of Arts in political science from DePaul University. Palivos is a founding board member of the Hippocratic Cancer Research Foundation, which provides philanthropic support for cancer research teams at Robert H. Lurie Comprehensive Cancer Center of Northwestern University.



❖ Jennifer Van Wie

Board Member Jennifer Van Wie was appointed to the Board by Governor JB Pritzker in August 2020. She previously worked as an Assistant Attorney General in the Illinois Attorney General's Office. While in the AGO Civil Environmental Bureau, she handled numerous significant cases dealing with air, water, and land pollution and natural resource damages. Ms. Van Wie also has experience in private practice in both Illinois and Wisconsin where she advised clients on state and federal environmental regulations, including matters specific to the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).



Ms. Van Wie has been active in state and local bar associations and was a co-chair of the Environmental Law Committee of the Chicago Bar Association. Additionally, Ms. Van Wie co-authored an early version of Senate Bill 0550 (now Public Act 99-0922) which required that schools test their potable water sources for lead contamination, and for community water supplies to provide lead in drinking water notifications and inventories. Ms. Van Wie has focused her legal practice exclusively on environmental issues for over 18 years.

Ms. Van Wie received her Bachelor of Science degree in Public Policy from Indiana University. She received her Juris Doctorate and Master of Studies in Environmental Law from Vermont Law School.

❖ Michelle Gibson

Board Member Gibson was appointed to the Board by Governor JB Pritzker in November 2021. She is a Registered Environmental Health Specialist with over 15 years of experience in environmental consulting, waste diversion, resource management, and environmental public health. Michelle has implemented recycling and waste-reduction programs at hospitals, universities, residential facilities, military bases, manufacturing sites, and large office complexes. She has advised statewide environmental organizations on strategies for waste handling. Michelle also managed a Dekalb County solid waste program through which she worked with landfills and waste haulers to reduce residential waste. In addition, she supervised a team of Boone County environmental health inspectors to enforce standards for clean drinking water, private on-site wastewater treatment systems, and food safety, as well as sanitary conditions at the height of the COVID-19 pandemic. Michelle received her Bachelor of Science degree in environmental science from Illinois State University.



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INTRODUCTION

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

The Board’s proposed rules are published in the *Illinois Register* at first notice and later reviewed by the Joint Committee on Administrative Rules (JCAR) at second notice. At final notice, the Board files its adopted rules with the Index Department of the Office of the Secretary of State for both publication in the *Illinois Register* and codification in the Illinois Administrative Code. Besides providing the Board with general rulemaking authority to adopt Statewide and site-specific rules (415 ILCS 5/27, 28), the Act authorizes the Board to conduct expedited and streamlined rulemakings. For example, the Board uses a “fast-track” procedure to adopt rules required by the federal Clean Air Act as amended by the federal Clean Air Act Amendments of 1990 (415 ILCS 5/28.5). Also, after a public comment period but without JCAR’s second-notice review and usually without holding a hearing, the Board adopts rules “identical in substance” to those of the United States Environmental Protection Agency concerning specified subjects, including drinking water, hazardous waste, underground injection control, and wastewater pretreatment (415 ILCS 5/7.2).

The rulemakings completed by the Board in fiscal year 2021 are summarized below, followed by a list of rulemakings pending at the end of that fiscal year.

RULEMAKINGS COMPLETED IN FISCAL YEAR 2021

Board Adopts Amendments to Non-Hazardous Special Waste Manifest Rules

- ❖ On July 16, 2020, the Board issued a final opinion and order amending its manifesting regulations on transporting non-hazardous special waste. The amendments allow transporters of State-regulated non-hazardous special waste to use manifests that are functionally identical to the Uniform Hazardous Waste Manifest of the United States Environmental Protection Agency (USEPA)—but without the financial and regulatory burdens associated with USEPA’s new e-Manifest System. The Joint



Committee on Administrative Rules issued a “Certification of No Objection” to the rules at its June 16, 2020 meeting. The rules became effective on July 20, 2020.

This rulemaking, which began with the Illinois Environmental Protection Agency’s proposal, is captioned Amendments to Manifesting Requirements: Special Waste Hauling 35 Ill. Adm. Code 809, docket R19-18. Here is a link to the Board’s [final opinion and order](#), which includes the text of the adopted rule amendments.

Board Adopts “Identical-in-Substance” Amendments to Ambient Air Quality Standards

- ❖ On August 13, 2020, the Board adopted “identical-in-substance” amendments to the Illinois ambient air quality standards. The rule amendments incorporate changes that the United States Environmental Protection Agency (USEPA) adopted during 2019 and the second half of 2018 concerning the National Ambient Air Quality Standards (NAAQS).

The Board’s rule amendments, which took effect on August 18, 2020, address three main areas. First, the Board incorporated new USEPA-designated reference methods for carbon monoxide and nitrogen dioxide in ambient air and a new USEPA-designated equivalent method for ozone in ambient air. Second, the Board removed the 1997 primary annual average NAAQS for fine particulate matter (PM_{2.5}) in ambient air. USEPA’s designating areas as attainment for the 2006 NAAQS for PM_{2.5} revoked the 1997 NAAQS as to those areas. USEPA made that designation for areas in Illinois effective May 28, 2019. Third, the Board limited applicability of the 2010 NAAQS for sulfur dioxide to Macon County. USEPA’s reconsidering its prior nonattainment area designation for Williamson County and designating Williamson County as attainment for the 2010 NAAQS, effective October 15, 2019, left Macon County the only area in Illinois still subject to that standard.

During its rulemaking, the Board received public comment and held a public hearing. The rulemaking is captioned National Ambient Air Quality Standards, USEPA Amendments (July 1, 2018 through December 31, 2018), National Ambient Air Quality Standards, USEPA Amendments (January 1, 2019 through June 30, 2019), and National Ambient Air Quality Standards, USEPA Amendments (July 1, 2019 through December 31, 2019), dockets R19-14, R20-3, and R20-11 (consol.). Here are links to (1) the Board’s [final opinion and order](#), which includes the text of the adopted rule amendments, and (2) the Board’s [addendum](#), which provides tables of information concerning the rulemaking.

Board Adopts “Identical-in-Substance” Amendments to VOM Definition

- ❖ On August 13, 2020, the Board adopted rule amendments that keep Illinois’ definition of “volatile organic material” (VOM) “identical in substance” to the federal definition of “volatile organic compound.” The amendments, which took effect on August 18, 2020, reflect action taken by the United States Environmental Protection Agency during the second half of 2018.

Specifically, the Board added one hydrofluoroolefin compound to the list of compounds excluded from the VOM definition. That compound—(Z)-1,1,1,4,4,4-hexa-fluorobut-2-ene or HFO-1336mzz-Z—is used as a blowing agent and has potential as a refrigerant. The Board also corrected chemical names in the list of excluded compounds.

During its rulemaking, the Board received public comment and held a public hearing. The rulemaking is captioned Definition of VOM Update, USEPA Regulations (July 1, 2018 through December 31, 2018), docket R19-15. Here are links to (1) the Board’s [final opinion and order](#), which



includes the text of the adopted rule amendments, and (2) the Board's [addendum](#), which provides tables of information concerning the rulemaking.

Board Updates Title 2 Administrative Rules

- ❖ On August 13, 2020, the Board adopted final amendments to its administrative rules (2 Ill. Adm. Code 2175) under Section 5-15 of the Illinois Administrative Procedure Act (5 ILCS 100/5-15 (2018)). The administrative rules describe the Board's organization, the types of Board proceedings, how to pay filing and copying fees, and how the public may access information from the Board. The amendments primarily address three areas.

First, the amendments reflect statutory changes since the administrative rules were last amended in 2014. For example, the Environmental Protection Act was amended by adding a new type of proceeding for the Board to conduct—time limited water quality standards. In addition, the Open Meetings Act was amended to address holding meetings during public health disasters.

Second, the amendments describe changes to the Board's operations, including organizational relationships and the frequency of *Environmental Register* publication.

Third, the amendments are the product of the Board's on-going regulatory review initiative, which began in 2016. Under that initiative, the Board has been amending its rules to make them clearer and more concise. To that end, these amendments clarify rule language and remove obsolete, repetitive, or otherwise unnecessary provisions.

The amendments became effective on August 21, 2020. The rulemaking is captioned Amendments to the Board's Administrative Rules 2 Ill. Adm. Code 2175, docket R21-17. Here is a link to the Board's [opinion and order](#), which includes the text of the amended rules.

Board Adopts New and Amended Rules to Establish State PSD Permitting Program

- ❖ On August 27, 2020, the Board adopted new and amended rules to establish Illinois' Prevention of Significant Deterioration (PSD) permitting program. The rulemaking began with the Illinois Environmental Protection Agency (IEPA) filing its proposal as required by Section 9.1 of the Environmental Protection Act (415 ILCS 5/9.1(c) (2018); *see* Public Act 99-463, eff. Jan. 1, 2016). Having a State PSD program will effectuate two main changes. First, for PSD permitting, IEPA will assume responsibility from the United States Environmental Protection Agency (USEPA). Second, for hearing PSD permit appeals, the Board will assume responsibility from USEPA's Environmental Appeals Board.

Illinois' new PSD rules appear across five Parts of the Illinois Administrative Code's Title 35. Specifically, the Board adopted a new Part 204 of its air pollution control rules, amended Parts 101 and 105 of its procedural rules to accommodate PSD permit appeals, and amended Parts 203, 211, and 215 of its air pollution control rules to conform to the new Part 204. The rules became effective on September 4, 2020.

During the rulemaking, the Board received public comment, held public hearings, and received Certifications of No Objection from the Joint Committee of Administrative Rules. The rulemaking is captioned Proposed New 35 Ill. Adm. Code 204, Prevention of Significant Deterioration, and Amendments to 35 Ill. Adm. Code 101, 105, 203, 211, and 215, docket R19-1. Here is a link to the Board's [final opinion and order](#), which includes the text of the new and amended rules.



Board Adopts “Identical-in-Substance” Amendments to Hazardous Waste Rules

- ❖ On August 27, 2020, the Board adopted amendments to its hazardous waste rules. The amendments, which took effect on September 3, 2020, are “identical in substance” to federal rule amendments made by the United States Environmental Protection Agency (USEPA) during 2019 under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

In 2019, USEPA adopted the Hazardous Waste Pharmaceuticals Rule, providing less burdensome alternative management standards for hazardous waste pharmaceuticals, removing therapeutic products from the hazardous waste listing for nicotine, and prohibiting sewer disposal of hazardous waste pharmaceuticals. USEPA also adopted the Aerosol Cans Rule, allowing management of hazardous waste aerosol cans under the Universal Waste Rule.

The Board’s amendments also included several corrections to its hazardous waste rules and municipal solid waste landfill rules, some at the request of the Joint Committee on Administrative Rules and the Illinois Environmental Protection Agency.

During its rulemaking, the Board received public comment. The rulemaking is captioned RCRA Subtitle C Update, USEPA Amendments (January 1, 2019 through June 30, 2019) and RCRA Subtitle D Corrections and RCRA Subtitle C Update, USEPA Amendments (July 1, 2019 through December 31, 2019), dockets R20-8 and R20-16 (consol.). Here are links to (1) the Board’s [final opinion and order](#), which includes the text of the adopted rule amendments, and (2) the Board’s [addendum](#), which provides tables of information concerning the rulemaking.

Board Adopts Rule Extending 2020 Period to Renew Approvals for Cross Connection Control Device Inspectors of Public Water Supplies

- ❖ At a special meeting on August 27, 2020, the Board adopted a new rule to replace an emergency rule that had taken effect on April 17, 2020. The new rule—35 Ill. Adm. Code 604.1520 (“COVID-19 Emergency Provisions”)—extends the period for cross connection control device inspectors (CCCDIs) to renew their 2020 CCCDI approvals. CCCDIs play an important role in protecting public health and welfare by helping to ensure that public water supplies are protected from connections to and contamination by unsafe sources of water.

Generally, a CCCDI must renew his or her CCCDI approval each year between May 1 and June 30. *See* 35 Ill. Adm. Code 604.1510(b)(2). Seeking to extend this renewal period for 2020 because of delays caused by the COVID-19 pandemic, the Illinois Environmental Protection Agency (IEPA) filed an emergency rulemaking proposal with the Board on April 10, 2020. The Illinois Department of Public Health, due to COVID-19, had adopted emergency rules extending the deadline for plumbers’ license renewals, and CCCDIs must be licensed plumbers. Based on Governor JB Pritzker’s proclaimed state of emergency in response to COVID-19, along with related factors, including a potential shortage in approved CCCDIs, the Board found that an emergency existed. The Board therefore adopted an emergency rule changing the 2020 approval renewal period for CCCDIs to between August 31 and October 30, as proposed by IEPA. *See* Emergency Rulemaking for Cross Connection Control Device Inspectors of Public Water Supplies 35 Ill. Adm. Code 604.1520, docket R20-20 (Apr. 16, 2020) (adopting 35 Ill. Adm. Code 604.1520 (“COVID-19 Emergency Provisions”) as emergency rule).

As the Board observed when it adopted the emergency rule, however, the Illinois Administrative Procedure Act does not allow an emergency rule to last longer than 150 days. *See* 5 ILCS 100/5-45(c) (2018). Because this emergency rule became effective on April 17, 2020, it could not last



beyond September 14, 2020, which was about seven weeks before the extended deadline of October 30, 2020, for CCCDI approval renewals. To bridge this gap, the Board opened a separate docket and proposed the text of the emergency rule in a general rulemaking, Rulemaking for Cross Connection Control Device Inspectors of Public Water Supplies 35 Ill. Adm. Code 604.1520, docket R20-21 (May 21, 2020).

During the general rulemaking, the Board received public comment and held two public hearings. The Joint Committee on Administrative Rules issued a Certification of No Objection to the new rule at its August 11, 2020 meeting. The new rule, which took effect on August 27, 2020, extends the 2020 approval renewal period for CCCDIs to between August 31 and October 30.

Here is a link to the Board's [final opinion and order](#), which includes the text of the new rule.

Board Amends PIMW Regulations

- ❖ On December 3, 2020, the Board issued a final opinion and order amending its regulations on handling “potentially infectious medical waste” or “PIMW.” Specifically, the Board amended its definition of “Class 4 etiologic agent,” which bears on the definition of PIMW. The amendments add four viral agents to the “Class 4 etiologic agent” definition: Guanarito virus; Sabia; Ebola virus; and Equine Morbillivirs. The amendments also reflect non-substantive changes suggested by the Joint Committee on Administrative Rules.

The rules took effect on December 3, 2020. The rulemaking is captioned Amendments to the Definition of “Class 4 etiologic agent”, 35 Ill. Adm. Code 1420.102, docket R20-17. Here is a link to the Board's [final opinion and order](#), which includes the text of the adopted amendments.

Board Adopts “Identical-in-Substance” Amendments to Wastewater Pretreatment Rules

- ❖ On December 3, 2020, the Board adopted final amendments to its wastewater pretreatment rules at 35 Ill. Adm. Code 310. The amendments are “identical in substance” to actions taken during the first half of 2020 by the United States Environmental Protection Agency (USEPA). Specifically, on April 15, 2020, USEPA revised its National Pollutant Discharge Elimination System (NPDES) electronic reporting (eReporting) rule for municipal separate storm sewer systems (MS4s). Some accompanying revisions to more general aspects of the NPDES eReporting rule also affected reporting for the wastewater pretreatment program. The Board's amendments incorporated those general reporting revisions into the Illinois rules.

In addition, the Board included an amendment that was not based on a USEPA action during the first half of 2020. Specifically, the Board removed an obsolete rule relating to a project under the Regulatory Reinvention (XL) Community Pilot Program (Project XL) involving the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC). MWRDGC and USEPA agreed to terminate the project in 2004, and USEPA terminated Project XL in 2009.

The rules became effective on December 3, 2020. The rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (January 1, 2020 through June 30, 2020), docket R21-8. Here are links to (1) the Board's [final opinion and order](#), which includes the text of the adopted rule amendments, and (2) the Board's [addendum](#), which provides tables of information concerning the rulemaking.



Board Adopts “Identical-in-Substance” Amendments to Ambient Air Quality Standards

- ❖ On December 17, 2020, the Board adopted rule amendments to Illinois’ ambient air quality standards. The amendments keep these standards “identical in substance” to the National Ambient Air Quality Standards (NAAQS).

During the first half of 2020, the United States Environmental Protection Agency (USEPA) designated a new federal reference method for monitoring sulfur dioxide and a new federal equivalent method for monitoring nitrogen dioxide in ambient air. The Board incorporated the newly designated methods into the Illinois rules. USEPA also redesignated the Lemont and Pekin areas from “nonattainment” to “attainment” for the 2010 sulfur dioxide NAAQS, but this redesignation changes no NAAQS applicability in Illinois and requires no Board action.

The Board also adopted a limited number of corrective amendments that are not based on USEPA action taken during the first half of 2020. Significant among the corrections is the deletion of incorporations by reference of two appendices to 40 C.F.R. 50. The appendices support a NAAQS that has been both revoked by USEPA as to Illinois and removed by the Board.

On November 19, 2020, the Board held a public hearing concerning the proposed rules. The rules took effect on December 17, 2020. The rulemaking is captioned National Ambient Air Quality Standards, USEPA Amendments (January 1, 2020 through June 30, 2020), docket R21-1. Here are links to (1) the Board’s [final opinion and order](#), which includes the text of the adopted amendments, and (2) the Board’s [addendum](#), which provides tables of information concerning the rulemaking.

Board Adopts Final EtO Air Monitoring Rules

- ❖ On January 21, 2021, the Board issued a final opinion and order adopting new Part 249 of its air pollution regulations. Part 249 requires the Illinois Environmental Protection Agency (IEPA) to monitor ambient air across Illinois for background levels of ethylene oxide (EtO). EtO is a flammable gas that has many uses, including sterilizing medical equipment. Under the adopted rules, IEPA must monitor for EtO in or around the locations of Northbrook, Schiller Park, Nilwood, Alton, and Bondville—where IEPA has monitoring stations. IEPA must monitor for six consecutive calendar months and place the air monitoring results on its website.

IEPA initiated this rulemaking by submitting a proposal to the Board on December 17, 2019. IEPA’s monitoring for ambient EtO levels and the proposed rules for carrying out that monitoring are required by Section 9.16(n) of the Environmental Protection Act (415 ILCS 5/9.16(n), added by P.A. 101-22 (eff. June 21, 2019)). For first notice, the proposed rules were published in the *Illinois Register* on January 31, 2020 (44 Ill. Reg. 2216). After holding two public hearings and receiving public comment, the Board issued a second-notice opinion and order on November 19, 2020, sending the proposed rules to the Joint Committee on Administrative Rules (JCAR) for review. At its January 12, 2021 meeting, JCAR issued a certification of no objection to the proposed rules. The rules became effective on January 25, 2021.

This rulemaking is captioned Proposed New 35 Ill. Adm. Code 249, Ethylene Oxide Ambient Air Monitoring, docket R20-18. Here is a link to the Board’s [final opinion and order](#), which includes the text of the adopted rules.



Board Adopts Rules Limiting VOM Emissions from Metro East Aerospace Operations

- ❖ On March 4, 2021, the Board adopted amendments to Parts 211 and 219 of its air pollution regulations. The amended rules address volatile organic material (VOM) emissions from aerospace manufacturing and rework operations in the Metro East counties of Madison, Monroe, and St. Clair.

An emission source in the Metro East area intends to expand its aerospace facility. The expansion would subject the facility to general VOM emission limits for miscellaneous metal parts and products coating. Guidance from the United States Environmental Protection Agency, however, recognizes that general emission limits are not appropriate for aerospace applications. Therefore, on October 5, 2020, the Illinois Environmental Protection Agency proposed amendments to the Board that would ensure emission limits specific to aerospace operations apply to the expanded facility.

The Board's first-notice proposal was published in the *Illinois Register* on October 30, 2020 (44 Ill. Reg. 17146, 17190). After holding two public hearings and receiving public comment, the Board issued its second-notice opinion and order, sending the proposed amendments to the Joint Committee on Administrative Rules (JCAR) for review. At its meeting on February 17, 2021, JCAR issued a Certification of No Objection to the amended rules, subject only to a small number of revisions, which the Board included in the adopted amendments. The amended rules took effect on March 4, 2021.

The rulemaking is captioned Amendments to 35 Ill. Adm. Code 219, Organic Material Emission Standards for the Metro East Area, and 35 Ill. Adm. Code 211, Definitions and General Provisions, docket R21-18. Here is a link to the Board's [final opinion and order](#), which includes the text of the adopted amendments.

Board Adopts Final Rules on CCR Surface Impoundments

- ❖ On April 15, 2021, the Board adopted a new Part 845 of its waste disposal regulations (35 Ill. Adm. Code 845), creating Illinois' first Statewide standards for the disposal of coal combustion residuals (CCR) in surface impoundments. CCR, commonly called "coal ash," is generated when coal is burned at power plants to produce electricity. By adopting Part 845, the Board fulfilled one of the primary objectives of the Coal Ash Pollution Prevention Act, which the General Assembly passed and Governor JB Pritzker signed into law as Public Act 101-171 (eff. July 30, 2019). The legislation recognized that CCR has caused groundwater contamination and other forms of pollution at active and inactive power plants throughout Illinois and that our environmental laws should be bolstered to ensure surface impoundments are consistently and responsibly regulated.

Part 845 provides for the protection of public health and the environment by establishing a comprehensive State permitting program to govern all aspects of CCR surface impoundments. The rules impose requirements for impoundment location, design, construction, operation, retrofitting, closure, and post-closure care; for the remediation of impoundment releases; for financial assurance to ensure impoundment owners or operators pay for closure, post-closure care, and remediation; for meaningful public participation opportunities in the permitting application process; and for prioritizing impoundment closures in areas of environmental justice concern. The Board's adoption of Part 845 also allows the Illinois Environmental Protection Agency (IEPA) to pursue United States Environmental Protection Agency (USEPA) approval of these rules to operate in Illinois in lieu of the federal CCR surface impoundment rules (40 CFR 257, Subpart D). The Board's rules are as stringent as—and, where warranted, more stringent than—USEPA's rules.



The Board's rulemaking began with IEPA's filing of its proposal on March 30, 2020. First notice of the proposed rules was published in the *Illinois Register* on May 1, 2020 (44 Ill. Reg. 6696). The Board held six days of public hearings at which 21 witnesses testified and 58 exhibits were admitted. The Board also held four sessions at which 120 members of the public provided oral comments. In addition, the Board received 138 written public comments. By order of February 4, 2021, the Board submitted the proposed rules to second-notice review by the Joint Committee on Administrative Rules (JCAR). At its March 16, 2021 meeting, JCAR requested, and the Board agreed to, an extension of the second-notice period. During the original and extended second notice, the Board docketed another ten public comments, each of which had been submitted directly to JCAR. As adopted, new Part 845 reflects changes that the Board agreed to with JCAR, which issued a Certification of No Objection to Part 845 at its April 13, 2021 meeting. Part 845 took effect on April 21, 2021.

The rulemaking is captioned Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, docket R20-19. Here are links to the Board's [final opinion and order](#) and the [adopted rules](#).

Board Adopts "Identical-in-Substance" Amendments to Wastewater Pretreatment Rules

- ❖ On June 17, 2021, the Board adopted amendments to Illinois' wastewater pretreatment rules. The amendments, which became effective on June 21, 2021, keep these rules "identical in substance" to those of the United States Environmental Protection Agency (USEPA). The Board's rulemaking responded to amendments adopted by USEPA during the second half of 2020, as detailed below. In addition, the Board included a few non-substantive corrections to base text that were not derived from USEPA actions.

During the second half of 2020, USEPA adopted the Steam Electric Reconsideration Rule, which revised the standards applicable to discharges of flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. The Reconsideration Rule relaxed the former zero-discharge rule for BA transport water, extended compliance dates by two years, and created subcategories of dischargers for both waste streams.

Also during the second half of 2020, USEPA extended the compliance date for Phase 2 of its National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. The deadline for Phase 1 (basic facility and permit information) was December 21, 2016. For Phase 2 (all other reporting), it was December 21, 2020. USEPA extended the Phase 2 deadline to December 21, 2025.

The Board's rulemaking is captioned Wastewater Pretreatment Update, USEPA Amendments (July 1, 2020 through December 31, 2020), docket R21-15. Here are links to (1) the Board's [opinion and order](#), which includes the text of the adopted amendments, and (2) the Board's [addendum](#), which provides tables of information concerning the rulemaking.

RULEMAKINGS PENDING AT END OF FISCAL YEAR 2021

- ❖ Amendments to 35 Ill. Adm. Code Subtitle B: Air Pollution, [docket R18-21](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle C: Water Pollution, [docket R18-23](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle E: Agriculture-Related Water Pollution, [docket R18-](#)



RULEMAKING UPDATE

- ❖ Amendments to 35 Ill. Adm. Code Subtitle F: Public Water Supplies, [docket R18-26](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle G: Waste Disposal, [docket R18-27](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, [docket R18-28](#)
- ❖ Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, [docket R20-19\(A\)](#)
- ❖ SDWA Update, USEPA Amendments (July 1, 2020 through December 31, 2020) and SDWA Update, USEPA Amendments (January 1, 2021 through June 30, 2021), dockets [R21-10](#) and [R22-2](#) (consol.)
- ❖ RCRA Subtitle C Update, USEPA Amendments (July 1, 2020 through December 31, 2020), [docket R21-13](#)
- ❖ National Ambient Air Quality Standards, USEPA Regulations (July 1, 2020 through December 31, 2020), [docket R21-16](#)
- ❖ Drycleaner Environmental Response Trust Fund Act Proposal to Add 35 Ill. Adm. Code Part 1501, Repeal 35 Ill. Adm. Code Part 1500, and Repeal 2 Ill. Adm. Code Part 3100, [docket R21-19](#)



APPELLATE UPDATE



INTRODUCTION

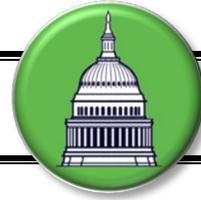
Under the Environmental Protection Act (415 ILCS 5), final orders of the Board are appealable directly to the Illinois appellate court (rather than to the circuit courts) and from there to the Illinois Supreme Court.

During fiscal year 2021, no judicial decisions were issued on review of Board final orders. At the end of the fiscal year, the following appeals were pending in the appellate court:

- ❖ Office of the State Fire Marshal v. Illinois Pollution Control Board and Reliable Stores, Inc., No. 1-21-0507 (1st Dist.)
- ❖ Midwest Generation, LLC v. Illinois Pollution Control Board, No. 4-21-0304 (4th Dist.); Dynegy Midwest Generation, LLC, Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Electric Energy, Inc., and Kincaid Generation, LLC v. Illinois Pollution Control Board, No. 4-21-0309, (4th Dist.); and AmerenEnergy Medina Valley Cogen, LLC, and Union Electric Company, d/b/a Ameren Missouri v. Illinois Pollution Control Board, No. 4-21-0310 (4th Dist.) (consolidated)



LEGISLATIVE UPDATE



INTRODUCTION

Summarized below are five Public Acts—from the 2021 session of the 102nd General Assembly—that relate to the Board’s work.

All five Public Acts amended the Environmental Protection Act.

For more information about these and other matters considered during the 2021 session, please consult the General Assembly’s website (<https://www.ilga.gov/>).

PUBLIC ACTS FROM 2021 SESSION OF 102ND GENERAL ASSEMBLY

- ❖ [Public Act 102-137](#)
Effective July 23, 2021

Public Act 102-137 amended Section 22.59 of the Environmental Protection Act so that all contractors, subcontractors, and installers “utilized to construct, install, modify, or close” a coal combustion residual (CCR) surface impoundment must participate in specified training programs. The programs must include instruction in erosion control, environmental remediation, heavy-equipment operation, and excavation.

- ❖ [Public Act 102-243](#)
Effective August 3, 2021

Among its provisions, Public Act 102-243 amended Section 56.2 of the Environmental Protection Act, which concerns potentially infectious medical waste. Before the amendment, if the Centers for Disease Control (CDC) amended its listing of etiologic agents identified as “Class 4 agents” in a specified publication, Section 56.2(e) required the Board to adopt rules “identical in substance” to the amended list within six months after the CDC’s amendment. The Public Act replaced that requirement. Now, Section 56.2(e) provides that anyone may file a rulemaking proposal with the Board under Section 28 of the Environmental Protection Act to amend the Board’s listing of etiologic agents identified as Class 4 agents. And the Board must act on the proposal within six months after receiving it.

- ❖ [Public Act 102-309](#)
Effective August 6, 2021

Public Act 102-309 amended Section 22.59 of the Environmental Protection Act, which concerns CCR surface impoundments. The Public Act removed language that deemed a permit issued by the United



LEGISLATIVE UPDATE

States Environmental Protection Agency under specified provisions of the federal Resource Conservation and Recovery Act to be a permit under specified provisions of the Environmental Protection Act.

- ❖ [Public Act 102-310](#)
Effective August 6, 2021

Among its numerous provisions, Public Act 102-310 amended the Environmental Protection Act by defining “general construction or demolition debris recovery facility” and requiring rules for permitting those facilities. The Illinois Environmental Protection Agency (IEPA) must propose the rules to the Board by August 6, 2022, and the Board must adopt the rules within one year after receiving the proposal.

- ❖ [Public Act 102-613](#)
Effective January 1, 2022

Among its numerous provisions, Public Act 102-613 added to the Environmental Protection Act a new Section 17.12 concerning lead service line replacement and notification. Section 17.12(mm) authorizes IEPA to propose, and the Board to adopt, any rules necessary to implement and administer the new section.





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