



# ENVIRONMENTAL REGISTER



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## **RULEMAKING UPDATE**

### **Update on R97-29, Amendments to Location Standards for Landscape Waste Compost Facilities, 35 Ill. Adm. Code 830.203(c)**

On May 6, 1997, two citizens filed a proposal with the Board to amend 35 Ill. Adm. Code 830.203(c). Section 830.203(c) contains location standards for certain landscape waste composting areas. Generally, the proponents request in their proposal that the Board amend Section 830.203(c) to prohibit composting areas from being located within one-half mile of the property line of a hospital, school, athletic field, or public park, and to require that existing composting areas located within that setback distance be relocated. The Board accepted this matter for hearing by its order of June 19, 1997. The docket number for this matter is R97-29.

Two hearings were scheduled for R97-29. The first hearing was held on Monday, September 8, 1997, at the James R. Thompson Center, Room 9-040, 100 West Randolph, Chicago, Illinois 60601. The second hearing is scheduled for 10:00 a.m. on Tuesday, October 7, 1997, at the Illinois State Library, 300 South Second Street, Room 403, Springfield, Illinois 62756. (Cont'd on p.2)

## **APPELLATE UPDATE**

### **Bevis, et al. v. Illinois Pollution Control Board, and Wayne County Board, 283 Ill. App. 3d 807; 670 N.E.2d 1157; 219 Ill. Dec 269 (Fifth District September 19, 1996 substituted opinion June 30, 1997).**

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

In April 1993, Daubs Landfill Inc. (Daubs) applied for vertical and horizontal expansion of its landfill in Wayne County Illinois. In May 1993 the Wayne County Board determined that the siting application was incomplete. Daubs filed an amended application on May 24, 1993. The Wayne County

Board then held a hearing on the amended application in August 1993. However, in September, Daubs filed a second amended application. Wayne County held hearings on the second amended application (*Cont'd on p.4*)

## **LATE BREAKING NEWS:**

On September 10, 1997, in an unpublished Rule 23 order, the Illinois Appellate Court, Third District, affirmed the Board's decision in its entirety in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 974; and Citizens for a Better Environment v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, and Caterpillar, Inc.* (No. 3-96-0931). For a complete summary of this Rule 23 order, visit the Board's web site at:

<http://www.ipcb.state.il.us/appeal.htm>

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## RULEMAKING UPDATE

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The purpose of these hearings is to allow the Board to receive testimony from the proponents and other interested persons on the merits and economic impact of this proposal, time permitting. The Board is also accepting written public comment.

The hearing officer in this matter issued an order on September 11, 1997. The order allows, in certain circumstances, the filing of prefiled questions for the second hearing and the filing of requests for a third hearing and. The order also sets deadlines for such filings. Copies of the hearing officer order are available from the Board at 312/814-3620, and on the Board's Web page at <http://www.ipcb.state.il.us/proposal.htm>

Any questions regarding this rulemaking may be directed to the hearing officer, Richard McGill, at 312/ 814-6983; email address: [rmcgill@pcb084r1.state.il.us](mailto:rmcgill@pcb084r1.state.il.us) ♦

### **B**oard Proposes for Public Comment Amendments to the Resource Conservation and Recovery Act Subtitle D Regulations, R97-20

On August 7, 1997, the Board proposed for public comment amendments to the Resource Conservation and Recovery Act (42 U.S.C. §§6944, 6949(a) (1976)) (RCRA) Subtitle D municipal solid waste landfill (MSWLF) regulations. In the Matter of: RCRA Subtitle D Update, USEPA Regulations (July 1, 1996 through December 31, 1996) (August 7, 1997), R97-20. The federal RCRA Subtitle D regulations are found at 40 CFR 258 and reflect those amendments made during the period from July 1, 1996 through December 31, 1996.

Section 22.40(a) of the Illinois Environmental Protection Act (415 ILCS 5/22.40(a) (1996)) provides for quick adoption of regulations that are identical-in-substance to federal RCRA Subtitle D regulations adopted by the United States Environmental Protection Agency (USEPA) to implement Sections 4004 and 4010 of the RCRA. 42 U.S.C. §§6944, 6949(a) (1976). Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, this rulemaking is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules.

The proposed amendments incorporate revisions to the federal financial assurance requirements applicable to local units of government that own or operate MSWLFs. Specifically, the proposed amendments provide that local units of governments that own or operate MSWLFs may apply for a financial test for self-assurance, and that they may guarantee the costs of corrective action, closure, and/or post-closure care on behalf of an owner or operator of a MSWLF. Additionally, the proposal allows the State

to extend the deadline for financial assurance for a facility up to April 9, 1998. The owner or operator must demonstrate that it could not timely comply because it could not obtain financial assurance for the site by the April 9, 1997 compliance deadline and that the lack of financial assurance would not adversely affect human health or the environment. The proposed amendments are found at 35 Ill. Adm. Code 810 and 811.

The proposed regulations also incorporate a recent federal amendment that essentially allows the State to relax certain requirements for small landfills, *i.e.*, on-site landfills (See *Federal Actions*). These amendments do not apply, however, if the facility is a RCRA Subtitle C hazardous waste disposal facility or a RCRA Subtitle D MSWLF. The proposed amendments are found at 35 Ill. Adm. Code 811.

Finally, the proposed regulations include amendments in response to Pub. Act 89-200 (Pub. Act 89-200, eff. July 21, 1996). These proposed regulations include amendments to the federal deadline for landfill financial assurance and qualifications for an insurer providing financial insurance.

The 45-day public comment period shall commence upon publication of these proposed regulations in the *Illinois Register*. All public comments shall be addressed to Dorothy Gunn, Clerk of the Board, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601.

Any additional questions and comments regarding this rulemaking may be directed to Michael McCambridge at 312/814-6924; e-mail: [mmccambr@pcb084r1.state.il.us](mailto:mmccambr@pcb084r1.state.il.us) ♦

### **B**oard Adopts Amendments to Wastewater Pretreatment Regulations, R97-23

On August 7, 1997, the Board adopted amendments to the wastewater pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/13.3 (1996)). These amendments were proposed for public comment in the Board's proposed opinion and order of May 1, 1997. No public comments were received during the 45-day public comment period. The adopted amendments update the wastewater pretreatment regulations to cover regulations adopted by the United States Environmental Protection Agency (USEPA) from July 1, 1996, through December 31, 1996. The Illinois wastewater pretreatment rules are contained in 35 Ill. Adm. Code 307, 309 and 310.

The wastewater pretreatment rules govern discharges by industrial users to publicly owned treatment works (POTW). The rules are intended to prevent pollutants from industrial discharges from passing through POTWs without adequate treatment to waters of the State, and to prevent industrial discharges from interfering with the operation of the treatment plant. Specifically, the

modifications are applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to POTWs. Additionally, the revisions eliminate the upper (alkaline) pH limits for four subcategories. These sections are incorporated in the pretreatment regulations at 35 Ill. Adm. Code 307.3501, 307.3502, 307.3506, and 307.3508. This modification should allow affected facilities to reduce the use of pretreatment chemicals, resulting in lower operating costs and reducing potential risks for worker safety and health.

The Board also adopted amendments to the pretreatment standards for pesticide formulating, packaging, and repackaging facilities at 35 Ill. Adm. Code 307.6503. Finally, the Board created a new section at 35 Ill. Adm. Code 307.6505 to incorporate pretreatment regulations adopted by USEPA for agricultural refilling establishments.

Questions and comments regarding this rulemaking may be directed to Amy Muran Felton, 312/814-7011; e-mail: amuranfe@pcb084r1.state.il.us ♦

### **Board Dismisses Reserved Dockets, R98-1, R98-4, R98-6, R98-7**

On August 7, 1997, the Board dismissed rulemakings in reserved dockets R98-1 entitled In the Matter of: Definition of Volatile Organic Material Update (January 1, 1997 through June 30, 1997), R98-4 entitled In the Matter of: Resource Conservation and Recovery Act, Subtitle D Update (January 1, 1997 through June 30, 1997), R98-6 entitled In the Matter of: Underground Storage Tank Update (January 1, 1997 through June 30, 1997), and R98-7 entitled In the Matter of: Wastewater Pretreatment Update (January 1, 1997 through June 30, 1997) as the United States Environmental Protection Agency (USEPA) did not amend its rules during the period from January 1, 1997 through June 30, 1997. Section 9.1(e) of the Environmental Protection Act (415 ILCS 5/9.1(e) (1996)) requires the Board to adopt regulations which are identical-in-substance to regulations adopted by the USEPA. The term identical-in-substance has been defined in Section 7.2 of the Act (415 ILCS 5/7.2 (1996)). ♦

### **Board Accepts for Hearing a Proposal for Amendments in the Matter of Livestock Waste Regulations: 35 Ill. Adm. Code 506, R97-15(B)**

On August 21, 1997, the Board accepted for hearing a proposal for amendments to the livestock waste regulations found at 35 Ill. Adm. Code 506 to add rules regarding financial responsibility for closure of livestock waste lagoons. The Board also granted the Department of Agriculture's request for a waiver from 35 Ill. Adm. Code

102.121(h) which requires a proponent of a rule to provide a petition signed by at least 200 persons. The Board also accepted as a public comment a "Proposal of the Illinois Environmental Protection Agency for Procedures and Criteria to Implement the Level of Surety for Closure of Livestock Waste Lagoons." Hearings in this matter are expected to be scheduled in the near future.

Any questions or comments regarding this matter may be directed to Charles King at 312/814-6926; e-mail address: cking@pcb084r1.state.il.us ♦

### **Board Accepts for Hearing a Proposal for Amendments to the Municipal Solid Waste Landfill Rules, Amendments to 35 Ill. Adm. Code 811, 813 and 848, R98-9**

On August 21, 1997, the Board accepted for hearing a joint proposal for amendments to the Board's municipal solid waste landfill rules (35 Ill. Adm. Code 811 and 813) filed by the Illinois Environmental Protection Agency and the National Solid Waste Management Association (collectively, proponents). The proponents' statement of reasons indicates that there are four reasons for the amendments: (1) to ease certain requirements that drive up costs without a commensurate environmental benefit; (2) to modify or eliminate requirements that the proponents believe are no longer technically defensible; (3) to ensure uniformity in the Board's rules; and (4) to remain consistent with the federal Resource Conservation and Recovery Act Subtitle D program. The proposal seeks to amend only two sections of the rules: 35 Ill. Adm. Code 811 and 813. In response to proponents' motion to limit the scope of the rulemaking, the Board agreed to limit the scope of the proceeding in that it will not entertain requests from other parties to expand the list of sections proposed for amendment.

By its own motion, the Board also opened 35 Ill. Adm. Code 848.104 to add three statutory definitions and amend four definitions with the language from P.A. 89-200, eff. January 1, 1996. This change is merely ministerial and is not intended to expand the scope of the rulemaking. Hearings in this matter will be scheduled in the near future.

Any questions or comments regarding this rulemaking may be directed to Marie Tipsord at 312/814-4925; e-mail address: mtipsord@084r1.state.il.us ♦

## APPELLATE UPDATE

(Cont'd from p.1)

in November 1993.

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

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

On appeal the Fifth District first resolved the issue of whether the terms "recipient" and "applicant" are synonymous as terms relating to siting under the Act (415 ILCS 5/ *et. seq.*). The petitioners argued that applicant means one who applies. Additionally, they argued that because by local ordinance the Wayne County Board cannot reconsider a final decision, the settlement proposal could not relate back to the original application and must have therefore been a new application. The petitioners then argued that because Daubs did not comply with hearing and notice requirements, Daubs could not be an applicant under the Act even though ultimately Daubs received siting approval. Simply put, the petitioners argued that one can only be an applicant if he complies perfectly with all application process requirements.

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

Petitioners next argued that the Board should have allowed them to amend their petition. The court, how-

ever, disagreed finding that even if Section 40 allowed the petitioners to amend their petition, they had not shown a good-faith effort to comply with the requirement that the applicant be named on appeal.

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

**County of Kane v. The Illinois Pollution Control Board et al. consolidated with Waste Management of Illinois Inc. v. The Illinois Pollution Control Board et al., Nos. 2-96-0652 and 2-96-0676 slip ops. (2<sup>nd</sup> Dist. September 4, 1997) (unpublished rule 23 order)**

This case was before the appellate court for the Second District on an appeal by Kane County (County) and Waste Management of Illinois Inc. (WMII) from the Board's decision in PCB 96-85 (February 1, 1996), which upheld the Agency's denial of their permit application for the expansion of the Settler's Hill landfill facility. In an earlier case, The City of Geneva v. Illinois Pollution Control Board, Illinois Environmental Protection Agency, County of Kane, and Waste Management of Illinois, No. 2-96-0560, slip op. (Second District April 11, 1997) (unpublished Rule 23 order) the Second District affirmed the Board's denial of the City of Geneva's (Geneva) petition for intervention, upholding a prior Board hearing officer ruling.

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

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

After the County approved the siting application, and WMII and the County submitted a permit application to the Illinois Environmental Protection Agency (IEPA). The IEPA denied the permit on the grounds that WMII and the County had failed to obtain siting approval from Geneva. WMII and the County then filed a petition for review with the Board. Geneva filed a motion to intervene in the case before the Board which was denied by the Board's hearing officer. On February 1, 1996, the Board upheld the IEPA's denial of the permit application. The Board's decision was the subject of the instant appeal.

In the appeal, the County and WMII argued that siting approval by Geneva is not required because the proposed expansion did not include any acreage located within Geneva. They contended that siting approval is required for a "new pollution control facility" and that since in this case the "new facility" was defined as the area of expansion beyond the existing facility, that only the body with siting jurisdiction over the expansion area must grant siting approval. The Board rejected this idea in its opinion stating instead, that the "new pollution control facility" included not only the new area which was to be expanded but also the area where continued use was planned. The Board found that the definition of "facility" encompassed the structures and administrative buildings located within Geneva's corporate limits.

The Second District disagreed with the Board, finding instead that the plain language of Section 3.32(b) of the Act limits new pollution control facilities for which siting approval must be obtained to the area beyond the boundary of the currently permitted facility. The court found that, by including the language "area beyond the boundary" in the statute, the legislature did not intend to include any of the existing facility in the definition of a "new pollution control facility."

Although the court conceded that, "the reasoning of the Board in making its findings in this case has a certain logical appeal," it concluded that, since the proposed expansion of the Settler's Hill Landfill included only land within the County, that WMII was required to obtain siting approval only from the County. The decision of the Board was accordingly reversed. ♦

**Concerned Citizens of Williamson County, et al. v. Illinois Pollution Control Board, et al., No. 5-96 - 0194 slip op. (Fifth District July 10, 1997)**  
(unpublished rule 23 order)

This case was heard by the appellate court for the Fifth District on an appeal by the Concerned Citizens of Williamson County *et al.* (Citizens) from the decision of the Board in PCB 96-60 (formerly docketed as PCB 94-262) (February 15, 1996) the Board had affirmed the approval by the Williamson County Board (County) of the siting application of Kibler Development Corporation (Kibler) for a regional pollution control facility. The court affirmed the Board's decision in its unpublished rule 23 order.

In PCB 94-262 the first appeal before the Board involving these parties, the Board found that the proceedings before the County were fundamentally unfair because there had been an *ex parte* contact between the County and Mr. Bill Kibler. This occurred when the witness provided information to the County but was not available for cross-examination by the public. Therefore, the Board

reversed the County's decision granting siting and remanded the case to the County for further proceedings.

More specifically, the Board ordered the County to hold a new public hearing and comment period on the application. The hearing was to include a presentation of the *ex parte* statements and any rebuttal regarding the statements. After the Board decision, both parties filed a motion to reconsider with the Board. In response to the motions, which expressed confusion about how the proceedings should continue after the remand, the Board issued a clarification order. In the clarification order the Board required notice of the new hearing pursuant to Section 39.2 of the Environmental Protection Act (Act) (415 ILCS 5/39.2) and a post hearing comment period. Additionally, the Board directed that the County's decision should be based upon the entire record and be rendered within 120 days beginning 35 days after the entry of the clarification order. The parties appealed the Board's order in PCB 94-252 to the Fifth District and the appeals were dismissed as being premature.

On August 17, 1995, after the new hearing and public comment period, the County met to act on Kibler's pending application. However, the County adjourned without taking any action. On August 18, 1995, the 120 decision period expired without the County taking any action. By statute, failure to act means the application is approved (415 ILCS 5/39.2(e).)

In PCB 96-60, the Citizens again appealed the County's grant of siting approval to the Board. This time, the Board affirmed the County's grant of siting approval. This decision was the basis for the Citizens' appeal.

The Citizens first contended that the County erred by finding the proposed facility was compatible with the surrounding area in accordance with Section 39.2(a)(3) of the Act. In examining this criteria the court found that, "given the timing of the special meeting related to Kibler's application, the PCB could have easily assumed that the County's failure to act was an implicit finding of criteria satisfaction." However, the court went on to point out that even overlooking the "County's tacit approval," the record contained enough evidence to satisfy the criterion.

The Citizens next argued that the County failed to conduct a new public hearing pursuant to Section 39.2 of the Act. More specifically, the Citizens argue that Kibler should have had to start the application process anew, instead of the County's additional public hearing on the original application. The court disagreed finding that the Board order was clear that the County needed to open Mr. Bill Kibler's testimony to the public and that he should be available to the public for questions concerning his prior statements at the new hearing. The court also found that the record did not show that the Citizens were in any way prejudiced by the limited nature of the new hearing. Thus, the court found that the Board's decision that the hearing satisfied its prior order was not erroneous.

The Citizens additionally argued that the Board erred in affirming the County hearing officer's rulings limiting the Citizens' cross-examination of Mr. Bill Kibler. The Citizens' arguments related to three instances. In one of the instances at issue on appeal, the attorney for the Citizens withdrew his question before the hearing officer ruled on the objection. In the other two instances, the Board overruled the County hearing officer and accepted the offer of proof thus allowing the information into evidence. The Fifth District found that there was no evidence that the Citizens were in any way prejudiced by the County hearing officer's cross-examination restrictions and that the restrictions did not result in a fundamentally unfair proceeding. The court also found that on this issue, the Board's affirmance of the County's decision was not against the manifest weight of the evidence.

Citizens also argued on appeal that Mr. Bill Kibler's remarks at the new hearing did not sufficiently address the information which was part of the *ex parte* discussion with the County and that, because of this, the new hearing was fundamentally unfair. The court again disagreed finding

that, even though the testimony was vague and generalized, the Citizens were not substantially prejudiced.

Finally, the Citizens contended that the hearing notice of the new hearing was insufficient and that the Board's affirmance of the notice was against the manifest weight of the evidence. Specifically, the Citizens argued that the notice should have specifically stated that witnesses and parties could present re-creation testimony. The court disagreed, finding that as long as the notice was not confusing, "it need not be completely accurate." Additionally, the court went on to say that the Citizens did not establish that they were prejudiced by the notice's wording. The court noted that the Citizens chose not to call witnesses at the new hearing because they adopted the position that they were not obligated to call witnesses. They did not argue that they were unable to or unprepared to call witnesses. The court found the notice was legally sufficient and resulted in a fundamentally fair hearing. The court also found that the Board's finding that the notice was sufficient was not contrary to the manifest weight of the evidence.

## **FEDERAL ACTIONS**

### **Revisions to Criteria for Municipal Solid Waste Landfills**

The United States Environmental Protection Agency (USEPA) adopted final rules at 40 CFR 258 affecting municipal solid waste landfills (MSWLF). 62 Fed. Reg. 40707 (July 29, 1997). Specifically, the Land Disposal Program Flexibility Act of 1996 directed the Administrator of the USEPA to provide additional flexibility to approved states for any landfill that receives 20 tons or less of municipal solid waste per day. The additional flexibility applies to alternative frequencies of daily cover, frequencies of methane monitoring, infiltration layers for final cover, and a means for demonstrating financial assurance. The additional flexibility will allow the owners and operators of small MSWLFs the opportunity to reduce their costs of MSWLF operation while still protecting human health and the environment. This direct final rule recognizes that these decisions are best made at the state and local level and, therefore, offers this flexibility to approved states. The Board has included this rule in its proposal in the pending identical-in-substance update In the Matter of: RCRA Subtitle D Update, USEPA Regulations (July 1, 1996 through December 31, 1996) (August 7, 1997), R97-20. ♦

### **Revised Requirements for Designation of Reference and Equivalent Methods for Particulate Matter 2.5 and Ambient Air Quality Surveillance for Particulate Matter**

This final rule revises 40 CFR 58 ambient air quality surveillance regulations to include provisions for particulate matter (PM) 2.5 (particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers), as measured by a new reference method being published in 40 CFR 50, Appendix L, elsewhere in the same issue of the *Federal Register*. (62 Fed. Reg. 38763 (July 18, 1997)), or by an equivalent method designed in accordance with requirements being promulgated in 40 CFR 53. In addition, this rule also revises existing ambient air quality monitoring requirements for PM10 (particles with an aerodynamic diameter less than or equal to 10 micrometers). These revisions address network design and siting, quality assurance, quality control, operating schedule, network completion, system modifications, data reporting, and other monitoring subjects. The Board would expect that the Illinois Environmental Protection Agency will propose adding these requirements to State air rules pursuant to the fast track rulemaking procedure of Section 28.5 of the Act. 415 ILCS 5/28.5 (1996). ♦

### **P**roposed Comprehensive Environmental Response, Compensation and Liability Act Prospective Purchaser Agreement for the Rock Island Plating Works Site

In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601), as amended, a proposed prospective purchaser agreement (PPA) for the Rock Island Plating Works Site (site) located in Rock Island, Illinois, has been executed by the City of Rock Island. 62 Fed. Reg. 43100 (August 12, 1997). The proposed PPA has been submitted to the United States Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under Sections 106 and 107 of CERCLA (42 U.S.C. §§ 9606, 9607), against the City of Rock Island. The proposed PPA would require the City of Rock Island to pay the United States \$3,990 to be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the site. The site is not on the National Priority List. The United States Environmental Protection Agency (USEPA) completed the removal action in August 1997. USEPA does not anticipate taking further remedial action at the site after the completion of the removal action. ♦

### **A**pproval and Promulgation of State Implementation Plan for Ozone in Illinois

The United States Environmental Protection Agency (USEPA) is approving the State Implementation Plan (SIP) revision request submitted by the State of Illinois on May 14, 1996, for the purpose of making a change to the regulatory control period established for Illinois' 7.2 pounds per square inch (psi) Reid Vapor Pressure (RVP) regulations currently required for the Metro-East St. Louis moderate ozone nonattainment area which includes Madison, Monroe, and St. Clair Counties. 62 Fed. Reg. 43100 (August 12, 1997). In addition, USEPA is approving a correction to the identification number for the Clark Oil Company listed in Illinois' Marine Vessel Loading rule. The rationale for the approval is set forth in this rule (see 62 Fed. Reg. 43100 (August 12, 1997)); additional information is available by contacting the USEPA, Region V, 77 West Jackson, Chicago, Illinois 60604. ♦

### **N**otice of Consent Decree with Pierce Waste Oil Services Springfield Site Under the Comprehensive Environmental Response, Compensation and Liability Act

On July 25, 1997, three proposed consent decrees in *United States v. Alcan Aluminum, et al.*, No. 97-3094 (C.D. Ill.), were lodged with the United States District Court for the Central District of Illinois. 62 Fed. Reg. 43103 (August 11, 1997). In this action, the United States sought to recover costs incurred in conducting response activities as a result of releases or threatened releases of hazardous substances at the Pierce Waste Oil Services Site (site), located in Springfield, Sangamon County, Illinois. The proposed settlements are set forth in three consent decrees that address the liability of all 26 defendants in this action, each of which has been named as a generator of hazardous substances sent to the site. Together, the settlements will recover \$1,307,280, not including interest.

The Department of Justice accepted comments relating to the consent decrees until September 11, 1997. The consent decrees may be examined at the Office of the United States Attorney, Room 312 Federal Building, 600 East Monroe Street, Springfield, Illinois and at the USEPA Region V, 77 West Jackson, Chicago, Illinois 60604. ♦

### **P**roposed Clean Water Amendments to Effluent Limitation Guidelines, New Source Performance Standards, and Pretreatment Standards

On May 2, 1995, the United States Environmental Protection Agency (USEPA) proposed Clean Water Act (CWA) effluent limitation guidelines, new source performance standards, and pretreatment standards for the introduction of pollutants from the pharmaceutical manufacturing industry (60 Fed. Reg. 21592 (May 2, 1995)). A recent publication (62 Fed. Reg. 42720 (August 8, 1997)) describes new information the USEPA has obtained since the May 2, 1995 proposal, provides detailed information concerning regulatory options under the CWA which were identified in the April 2, 1997, (62 Fed. Reg. 15753 (April 2, 1997)) maximum achievable control technology standard Clean Air Act proposal, and presents the results of analyses of old and newly acquired data and suggested modifications to the proposal. USEPA solicits public comments until October 1, 1997, regarding any information presented in this document. ♦

## **A** Amendments to Air Emission Requirements Applicable to New Nonroad Spark Ignition Engines and New Marine Spark Ignition Engines

This final rule amends the regulations to spark-ignition nonroad engines at or below 19 kilowatts and spark-ignition marine engines to address situations that have arisen regarding the implementation of regulations applicable to these nonroad engines. 62 Fed. Reg. 42637 (August 7, 1997). The United States Environmental Protection Agency expects that no significant air quality impact will result from these amendments. Specifically, these amendments will allow engine manufacturers to provide uncertified engines to replace older engines when major engine failures occur and no suitable certified engine is available and will fit in the nonroad equipment or marine outboard or personal watercraft. These amendments will also broaden a provision in the existing regulations which permits the use of two-stroke engines to power lawnmowers, subject to a phase-out schedule described in the regulations. The amendments will extend this provision to other types of non-handheld equipment subject to appropriate constraints. The Board would expect that the Illinois Environmental Protection Agency will propose adding these requirements to State air rules pursuant to the fast track rulemaking procedure of Section 28.5 of the Act. 415 ILCS 5/28.5 (1996). ♦

## **T**ransportation and Conformity Rule Amendments

On August 15, 1997, the United States Environmental Agency (USEPA) promulgated a clarified and more flexible transportation conformity rule (conformity rule). 62 Fed. Reg. 43779 (August 15, 1997). The conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Specifically, the conformity rule gives state and local governments more authority in selecting performance measures used as tests of conformity and more discretion when a transportation plan does not conform to a SIP. For example, the conformity rule allows motor vehicle emissions budgets in a submitted SIP to be used to determine conformity instead of the "build/no-build" test, and rural areas can choose among several conformity tests to address the time period after that covered by the SIP.

The conformity rule results from the experience that USEPA, the Department of Transportation, and state and local air and transportation officials have had with implementation since the rule was first published in November 1993. While these changes clarify the rule and in some cases offer increased flexibility, they will not result in any negative change in health and environmental benefits. ♦

## **F**INAL DECISIONS 8/7/97

**97-64** People of the State of Illinois v. Unique Marble Products, Inc. - The Board dismissed this Emergency Planning Community Right to Know Act enforcement action involving an Effingham County facility for failure to properly serve the respondent. Chairman C.A. Manning dissented.

**97-206** Sky-View Wholesale Nursery Sales Company v. IEPA - Having previously granted a request for a 90-day extension, the Board dismissed the matter because no underground storage tank appeal was timely filed on behalf of this Cook County facility.

**97-209** Land and Lakes Company v. IEPA - The Board denied as unnecessary petitioner's request for a land variance on behalf of this Cook County facility.

**97-221** Debra Conway v. Edward and Winona Johnson, Sr. - The Board dismissed this citizen's air and water enforcement action involving a Cook County facility.

**97-236** People of the State of Illinois v. Village of Bartlett - The Board accepted a stipulation and settlement agreement

in this water enforcement action involving a DuPage County facility, ordered the respondent to pay a civil penalty of \$25,000, and ordered the respondent to cease and desist from further violations. Board Member K.M. Hennessey abstained.

**98-25** City of Fulton v. IEPA - Upon receipt of an Agency recommendation, the Board granted this Whiteside County facility a 45-day provisional variance, subject to conditions, from certain effluent discharge requirements of the water pollution control regulations, as set forth in 35 Ill. Adm. Code 304.120(c) and 304.141(a) of the Board's water regulations and imposed by National Pollutant Discharge Elimination System Permit No. IL0028860. Board Member K.M. Hennessey abstained.

**AC 97-70** IEPA v. Sharon Tondina - The Board entered an order finding that this Iroquois County respondent had violated Sections 21(p)(1), (p)(3), and (p)(4) of the Environmental Protection Act and ordered her to pay a civil penalty of \$1,500.

**R97-23** Wastewater Pretreatment Update, USEPA Regulations (July 1, 1996 through December 31, 1996) - The Board adopted identical-in-substance amendments to the water pollution control pretreatment regulations. Board Member K.M. Hennessey abstained. *See Rulemaking Update*



**R98-1** Exemptions from Definitions of VOM, USEPA Amendments (January 1, 1997 through June 30, 1997) - The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its regulations pertaining to exemptions from the definition of volatile organic material during the update period of January 1, 1997 through June 30, 1997. *See Rulemaking Update*

**R98-4** RCRA Subtitle D Update, USEPA Regulations (January 1, 1997 through June 30, 1997) - The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its municipal solid waste landfill regulations during the update period of January 1, 1997 through June 30, 1997. *See Rulemaking Update*

**R98-6** UST Update, USEPA Regulations (January 1, 1997 through June 30, 1997) - 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 of January 1, 1997 through June 30, 1997. *See Rulemaking Update*

**R98-7** Wastewater Pretreatment Update, USEPA (January 1, 1997 through June 30, 1997) - The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its wastewater pretreatment regulations during the update period of January 1, 1997 through June 30, 1997. *See Rulemaking Update*

## **FINAL DECISIONS 8/21/97**

**94-284** Illico Independent Oil Company v. IEPA - The Board granted petitioner's motion for withdrawal of this underground storage tank appeal involving a Will County facility.

**96-57** Laidlaw Waste Systems, Inc. v. IEPA - The Board granted petitioner's motion for withdrawal of this land permit appeal involving a Coles County facility.

**96-192** Laidlaw Waste Systems, Inc. v. IEPA - The Board granted petitioner's motion for withdrawal of this land permit appeal involving a Coles County facility.

**97-88** Laidlaw Waste Systems, Inc. v. IEPA - The Board granted petitioner's motion for withdrawal of this land permit appeal involving a Coles County facility.

**97-144** Laidlaw Waste Systems, Inc. v. IEPA - The Board granted petitioner's motion for withdrawal of this land permit appeal involving a Coles County facility.

**97-175** People of the State of Illinois v. Circuit International, Inc. - The Board granted complainant's motion for summary judgment in this Emergency Planning Community Right to Know Act enforcement action involving a DuPage County facility and ordered the respondent to pay a civil penalty of \$17,400. Board Member M. McFawn concurred.

**97-177** People of the State of Illinois v. ESS L.P., Inc. - The Board granted complainant's motion for summary judgment in this Emergency Planning Community Right to Know Act

enforcement action involving a DuPage County facility and ordered the respondent to pay a civil penalty of \$60,200. Board Member M. McFawn concurred.

**97-224** Emro Marketing Company v. IEPA - Having previously granted a request for a 90-day extension, the Board dismissed the matter because no underground storage tank appeal was timely filed on behalf of this Cook County facility.

**97-227** Dwight Correctional Center v. IEPA - Having previously granted a request for a 90-day extension, the Board dismissed the matter because no underground storage tank appeal was timely filed on behalf of this Livingston County facility.

**97-231** People of the State of Illinois v. Graftek Press, Inc. - The Board accepted a stipulation and settlement agreement in this air enforcement action involving a McHenry County facility, ordered the respondent to pay a civil penalty of \$5,000, and ordered the respondent to cease and desist from further violations.

**97-232** Frank Shirey Cadillac v. IEPA - Having previously granted a request for a 90-day extension, the Board dismissed the matter because no underground storage tank appeal was timely filed on behalf of this Cook County facility.

**98-27** Marathon Oil Company v. IEPA - Upon receipt of an IEPA recommendation, the Board granted a 30-day provisional variance from the 90-day limitation on the accumulation of hazardous wastes at this Crawford County facility.

**98-28** Peoples Gas Light and Coke Company v. IEPA - Upon receipt of an IEPA recommendation, the Board granted a 30-

day provisional variance from the 90-day limitation on the accumulation of hazardous wastes at this Will County facility.

**98-29** Scott Air Force Base v. IEPA - Upon receipt of an IEPA recommendation, the Board granted this St. Clair County facility a 45-day provisional variance, subject to conditions, from certain effluent discharge requirements of the water pollution control regulations, as set forth in 35 Ill. Adm. Code 304.120, 304.141(a), and 302.212 and imposed by National Pollutant Discharge Elimination System Permit No. IL0026859. Board Member K.M. Hennessey abstained.

**98-30** City of Oregon v. IEPA - Upon receipt of an IEPA recommendation, the Board granted this Ogle County facility a 45-day provisional variance, subject to conditions, from

certain effluent discharge requirements of the water pollution control regulations, as set forth in 35 Ill. Adm. Code 304.120 and 304.141(a) and imposed by National Pollutant Discharge Elimination System Permit No. IL0020184. Board Member K.M. Hennessey abstained.

**AC 98-1** County of Will v. Edward Fogarty - The Board entered an order finding that this Will County respondent violated Sections 21(p)(1) and (p)(4) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(4) (1996)) and ordered him to pay a civil penalty of \$1,000.

## **NEW CASES 8/7/97**

**98-21** Rohrman Midwest Motors v. Office of State Fire Marshal - The Board accepted for hearing this appeal of an underground storage tank decision on behalf of a Cook County facility.

**98-22** Village of Matteson v. IEPA - The Board accepted for hearing this appeal of an underground storage tank decision on behalf of a Cook County facility.

**98-23** L. Keller Oil Properties, Inc. and Charles F. Keller (Effingham/Keller Oil) v. IEPA - The Board accepted for hearing this appeal of an underground storage tank decision involving an Effingham County facility.

**98-24** White Cap, Inc. v. IEPA - The Board accepted this request for an air variance on behalf of a Cook County facility.

**98-25** City of Fulton v. IEPA - *See Final Actions*

**AC 98-4** County of Sangamon v. ESG Watts, Inc. - The Board received an administrative citation against this Sangamon County respondent.

**AC 98-5** County of Will v. Edward Fogarty - The Board received an administrative citation against this Will County respondent.

**AC 98-6** IEPA v. R. Frietsch & Company, Inc. - The Board received an administrative citation against this Peoria County respondent.

**AC 98-7** IEPA v. USA Waste Services, Inc. - The Board received an administrative citation against this Woodford County respondent.

## **NEW CASES 8/21/97**

**98-26** Dean Foods Company v. IEPA - The Board accepted this request for a 90-day extension of time to file an air permit appeal on behalf of a Winnebago County facility.

**98-27** Marathon Oil Company v. IEPA - *See Final Actions*

**98-28** Peoples Gas Light and Coke Company v. IEPA - *See Final Actions*

**98-29** Scott Air Force Base v. IEPA - *See Final Actions*

**98-30** City of Oregon v. IEPA - *See Final Actions*

**AC 98-8** County of Will v. William Hunter - The Board received an administrative citation against this Will County respondent.

**AC 98-9** County of Vermilion v. Emery Johnson - The Board received an administrative citation against this Vermilion County respondent.

**AC 98-10** County of Vermilion v. Darrell Grant - The Board received an administrative citation against this Vermilion County respondent.

**R98-09** In the Matter of: Municipal Solid Waste Landfill (MSWLF) Rules; Amendments to 35 Ill. Adm. Code 811.309, 811.310, 811.312, 811.319, 811.321, 813.103, 813.501, 813.502, and 813.503; New Section 813.504 - The Board accepted for hearing the joint proposal of the Illinois Environmental Protection Agency and the National Solid Waste Management Association to amend the Board's solid waste regulations. - *See Rulemaking Update*

CALENDAR OF HEARINGS

Date & Time	Docket Number	Case Name	Location of Hearing
9/17/97 10:00am	PCB 97-156	Village of Fox River Grove v. IEPA	Village Hall Conference Room, 408 Northwest Highway, Fox River Grove, IL, 60021
9/23/97 9:30am	PCB 96-84	Forest Preserve District of DuPage County v. Land Resources Corporation, Southwind Financial, Ltd.	DuPage County Courthouse, Courtroom 2004, 505 North County Farm Road, Wheaton, IL, 60187
9/23/97 1:30pm	PCB 97-174	Bernice Loschen V. Grist Mill Confections, Inc.	Department of Rehabilitation Services, Suite A, 407 North Franklin, Danville, IL, 61832
9/24/97 9:30am	PCB 96-84	Forest Preserve District of DuPage County v. Land Resources Corporation, Southwind Financial, Ltd.	DuPage County Courthouse, Courtroom 2004, 505 North County Farm Road, Wheaton, IL, 60187
9/25/97 9:30am	PCB 96-84	Forest Preserve District of DuPage County v. Land Resources Corporation, Southwind Financial, Ltd.	DuPage County Courthouse, Courtroom 2004, 505 North County Farm Road, Wheaton, IL, 60187
9/30/97 9:30am	PCB 96-68	Donetta Gott, Lyndell Chaplin, Gary Wells, Earnest L. Ellison and Maxine Ellison v. M'Orr Pork, Inc.	Pike County Courthouse, 204 East Adams, Pittsfield, IL 62363
10/1/97 1:30pm	PCB 98-24	White Cap, Inc. v. IEPA	James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, IL 60601
10/7/97 10:00am	R 97-29	In the Matter of: Amendments to Location Standards for Landscape Waste Compost Facilities, 35 Ill. Adm. Code 820.203(c)	Illinois State Library, Room 403, 300 South Second Street, Springfield, IL, 62756
10/17/97 10:00am	R 98-10	In the Matter of: Amendments to Major Stationary Sources Construction and Modification Rules (New Source Review Rules) 35 Ill. Adm. Code 203	James R. Thompson Center, 100 West Randolph Street, Suite 9-040, Chicago, IL 60601
11/24/97 10:00am	R 98-10	In the Matter of: Amendments to Major Stationary Sources Construction and Modification Rules (New Source Review Rules) 35 Ill. Adm. Code 203	James R. Thompson Center, 100 West Randolph Street, Suite 9-040, Chicago, IL 60601
12/9/97 10:00am	R 98-10	In the Matter of: Amendments to Major Stationary Sources Construction and Modification Rules (New Source Review Rules) 35 Ill. Adm. Code 203	James R. Thompson Center, 100 West Randolph Street, Chicago, IL 60601