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# Environmental Register

August 2004 - Number 602

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J. Philip Novak, Chairman

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# Letter from the Chairman

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During the 2004 legislative session, the Illinois Pollution Control Board monitored a number of bills relating to environmental protection. Governor Rod Blagojevich recently signed two of those bills into law.

Senate Bill 2551 amends the Environmental Protection Act and enacts two prohibitions. First, beginning July 1, 2005, it forbids the purchase or acceptance, for use in a primary or secondary school classroom, of bulk elemental mercury, chemicals containing mercury compounds, or instructional equipment or materials containing mercury added during their manufacture. Second, beginning July 1, 2007, it also forbids the sale, offer to sell, distribution, or offer to distribute a mercury switch or mercury relay individually or as a product component. SB 2551 excludes specified products from these prohibitions. The bill also allows a manufacturer of a mercury switch or mercury relay or certain other products containing mercury to apply to the Illinois Environmental Protection Agency by July 1, 2006 for a five-year exemption from these prohibitions, and it establishes a process for the application for and renewal of the exemption.



The bill also designates mercury switches or mercury relays, and scientific instruments and instructional equipment containing mercury added during their manufacture as “universal waste” subject to the streamlined hazardous waste rules of the Illinois Administrative Code. *See* 35 IAC 733.101 *et seq.* The bill further provides that, within 60 days of the effective date of this Act, the IEPA must propose rules and, within 180 days of receiving this proposal, the Board must adopt rules reflecting this designation. It further provides that, if the United States Environmental Protection Agency adopts streamlined hazardous waste rules pertaining to the management of specified items containing mercury or otherwise exempts those items from regulation as hazardous waste, then the Pollution Control Board must adopt equivalent rules within 180 days.

SB 2551, sponsored by Senator Mattie Hunter of Chicago and Representative Karen May of Highland Park, took effect as Public Act 93-0964 upon becoming law on August 20, 2004.

House Bill 4247 amends the Open Meetings Act (“Act”). The bill requires public bodies to keep written minutes of all meetings whether open or closed, while the Act now only requires written minutes of open meetings. The bill removes the requirement that the Board review verbatim recordings of closed meetings to determine whether the need for non-disclosure continues, but it maintains that requirement for written minutes of closed meetings. The bill also prohibits the inspection of the verbatim record of a closed meeting (including for discovery purposes) in a judicial proceeding, with the exception of a judicial proceeding to determine whether the Act has been violated. HB 4247 requires a court’s examination of verbatim records in a civil proceeding to be conducted in camera. The bill also requires that the initial examination in a criminal proceeding must be in camera.

HB 4247, sponsored by Representative Bill Black of Danville and Senator Dale Righter of Mattoon, will take effect as P.A. 93-0974 on January 1, 2005.

As I mentioned last month, the Board will be a co-sponsor of the Illinois Environmental Conference on October 7-8 in Chicago. This year’s meeting, entitled “Evolutions in Law & Policy,” will include a wide range of speakers. If you have questions about the conference, please contact the Chicago Bar Association’s ticketing department at 312-554-2056 or e-mail their continuing legal education department at [cle@chicagobar.org](mailto:cle@chicagobar.org).

Sincerely,

A handwritten signature in black ink that reads "J. Philip Novak". The signature is written in a cursive, slightly slanted style.

J. Philip Novak  
Chairman

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## Federal Update

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### **Under the Clean Air Act, United States Environmental Protection Agency Stays Effectiveness of Certain National Emission Standards for Hazardous Air Pollutants Requirements for Two Subcategories of Stationary Combustion Turbines**

On August 18, 2004 (69 Fed. Reg. 51184), the United States Environmental Protection Agency (USEPA) adopted amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for stationary combustion turbines.

The USEPA stayed the effectiveness of certain limitations for two subcategories of the NESHAP for stationary combustion turbines: Lean premix gas-fired turbines and diffusion flame gas-fired turbines. Pending the outcome of USEPA's proposal to delete these subcategories from the source category list (68 FR 18338, April 7, 2004), USEPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. USEPA stated that this action was necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

The final rule is effective on August 18, 2004.

For further information contact Ms. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404-01, Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541-2962; fax number: 919-541-0840; e-mail address: [rimer.kelly@epa.gov](mailto:rimer.kelly@epa.gov).

Pursuant to Section 9.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/9.1(b) (2002)), once adopted by the USEPA, NESHAP rules are applicable and enforceable under the Act without further action by the Board.

### **United States Environmental Protection Agency Adopts Amendments to Uranium Analytical Methods for Determining Compliance With the National Primary Drinking Water Regulations Under the Safe Drinking Water Act**

On August 25, 2004 (69 Fed. Reg. 52176), the United States Environmental Protection Agency (USEPA) adopted amendments to the national primary drinking water regulations by updating the approved analytical methods for uranium.

In the adopted amendments USEPA approved the use of three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an inductively coupled plasma mass spectrometry (ICP-MS) technology that has gained wide acceptance in the analytical community. USEPA stated that it believes that ICP-MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 radionuclides rule (65 FR 76708). The final amendments do not withdraw approval of any previously approved monitoring methods for uranium.

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This rule is effective on August 25, 2004. The incorporation by reference of certain publications listed in this rule is approved by the Director of the *Federal Register* as of August 25, 2004.

For further information contact Lisa Christ, Office of Ground Water and Drinking Water, Mail Code: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8354; e-mail at christ.lisa@epa.gov.

The Board will include any necessary amendments to Board rules resulting from this federal action in a future SDWA identical in substance rulemaking pursuant to Sections 7.2 and 17.5 of the Environmental Protection Act (415 ILCS 5/7.2, 22.4 (2002)).

### **United States Environmental Protection Agency Adopts Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category Under the Clean Water Act**

On August 23, 2004 (69 51891), the United States Environmental Protection Agency (USEPA) adopted effluent limitations guidelines and new source performance standards for the concentrated aquatic animal production point source category.

USEPA estimated that compliance with this regulation will affect 242 facilities that raise aquatic animals in a variety of concentrated aquatic animal production systems. The animals produced in these facilities range from species produced for human consumption as food to species raised to stock streams for fishing. The production of aquatic animals contributes pollutants such as suspended solids, biochemical oxygen demand, and nutrients to the aquatic environment.

The regulation establishes technology-based narrative limitations and standards for wastewater discharges from both new and existing concentrated aquatic animal production facilities that discharge directly to U.S. waters. The rule is projected to reduce the discharge of total suspended solids by about 0.5 million pounds per year and reduce the discharge of biochemical oxygen demand and nutrients by about 0.3 million pounds per year. The estimated annual cost to Federal and State hatcheries is \$1.1 million. USEPA estimated that the annual monetized environmental benefits of the rule will be in the range of \$66,000 to \$99,000.

This regulation is effective September 22, 2004.

For further information contact Marta Jordan at (202) 566-1049.

The Board anticipates that the Illinois Environmental Protection Agency (IEPA) will determine, as part of the triennial review of the State's water rules required by the Clean Water Act, whether any amendments to the State's water rules are necessary as a result of this federal action. If so, the Board would expect to receive a regulatory proposal from the IEPA under Section 27 or 28.2 of the Environmental Protection Act (415 ILCS 5/27, 28.2 (2002)).

## **Appellate Update**

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### **Second District Affirms The Board's Remediation and Penalty Order in *State Oil Co. et al. v. People of the State of Illinois et al.; Abraham et al. v. Pollution Control Board et al.*, Nos.2-03-0463 and 2-03-0493 (cons.) (August 18, 2004) (PCB 97-103)**

On August 18, 2004, the Second District Appellate Court affirmed the Board in the leaking underground storage tank enforcement case *State Oil Co. et al. v. People of the State of Illinois et al.; Abraham et al. v. Pollution Control Board et al.*, Nos.2-03-0463 and 2-03-0493 (cons.) (August 18, 2004) (hereinafter "State Oil (2d Dist.)"). The Board had ordered respondents to remediate the site, to reimburse the State for substantial clean-up costs, to pay civil penalties in its case entitled *People of the State of Illinois v. State Oil Company, William Anest f/d/b/a S & S Petroleum Products, Peter Anest f/d/b/a S & S Petroleum Products, Charles Abraham, Josephine Abraham, and*

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Millstream Service, Inc.; Charles Abraham, Josephine Abraham, and Millstream Service, Inc. v. State Oil Company, William Anest f/d/b/a S & S Petroleum Products, Peter Anest f/d/b/a S & S Petroleum Products., PCB 97-103 (March 20, 2003) (hereinafter “People v. State Oil”).

The court authorized publication of a portion of its 28-page decision. The portion to be published, which may be cited as precedent, affirms an important Board holding regarding the applicability of proportionate share liability under Title XVII of the Environmental Protection Act (Act), 415 ILCS 5/100 *et seq.*. See State Oil (2d Dist.) (slip op. at 1-7, 28). The balance of the decision (pages 8-27), which affirms the remediation order and penalties assessed against various respondents, is “nonpublishable” under Supreme Court Rule 23 (155 Ill.2d R. 23) and therefore is not precedential. *Id.*, slip op. at 8-27). Below is a summary first of the Board’s decision and then of the Second District’s decision.

The Board’s Decision in People v. State Oil. PCB 97-103 was an enforcement case brought on behalf of the People by the Attorney General’s Office. The case concerned gasoline contamination from leaking underground storage tanks (USTs) at a service station in McHenry County. The People filed the complaint in 1996 against Anest/State Oil (the former service station owner/operator and seller) and Abraham/Millstream Service (the current service station owner/operator and purchaser). Abraham/Millstream Service in turn filed a cross-complaint against Anest/State Oil. In 1983 or 1984, gasoline began leaking from the service station into Boone Creek, which bordered the station. Anest/State Oil reported the release to the State. The service station was sold in 1985 to Abraham/Millstream Service. Gasoline was leaking into the creek in 1986, 1987, and 1989. The Illinois Environmental Protection Agency (IEPA) performed an emergency cleanup in 1989-1991. But, no mitigation or remediation work had been completed at the site since 1996, and no respondent ever received a No Further Remediation letter from the IEPA. People v. State Oil, (March 20, 2003), slip op. at. 5-7.

The Board issued an interim opinion and order on April 4, 2002 ruling on motions for summary judgment in the People’s case, and finding that all respondents had violated Section 12(a) of the Act. The Board then held hearing on the issues of cost recovery and the Abrahams’ cross-complaint against the Anests, issuing a final opinion and order on March 20, 2003 that

a) found the respondents jointly and severally liable to reimburse the State for \$86,652.50 in remediation costs incurred by the Agency. (The Board disallowed some \$12,000 in costs for which the Board found the supporting Agency vouchers unreliable). People v. State Oil, (March 20, 2003), slip op. at. 5-7;

b) assessed a total civil penalty of \$40,000 (\$20,000 against the Abrahams and Millstream Service; \$20,000 against the Anests and State Oil) People v. State Oil, (March 20, 2003), slip op. at. 14-20; and

c) ordered the respondents to perform any additional necessary clean up of the site and to obtain a No Further Remediation Letter from the IEPA. The Board also found the respondents jointly and severally liable for any future remediation. People v. State Oil, (March 20, 2003), slip op. at.20-26.

The Board did not, however, find that the People were entitled to attorney fees and costs concerning their complaint against the Abrahams. The Board concluded that there was insufficient evidence to support a finding that the Abrahams’ violation was “willful, knowing, or repeated” within the meaning of Section 42(f) of the Act. 415 ILCS 5/42(f)(2002). People v. State Oil, (March 20, 2003), slip op. at.20-21.

In its last order in the case, the Board denied respondents’ motion to stay the March 20, 2003 order pending appeal, in the sound exercise of its discretion. The Board also denied the People’s motion to modify the order, finding that the filing of the appeal had ended the Board’s jurisdiction in the case. People v. State Oil, (May 15, 2003), slip op. at.1-2.

Second District’s Decision in State Oil (2d Dist.). As stated earlier, the court affirmed the Board on all points. The portion of the court’s decision to be published is discussed first, and the rest afterwards.

Published Decision on Proportionate Share Liability. In the published portion of the court’s decision, the court agreed with the Board that the respondents were jointly and severally liable and therefore that proportionate share liability did not apply. In certain situations, the proportionate share liability provision of the Act (Section

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58.9(a)(1)) limits a respondent's cleanup liability to what the respondent "proximately caused," *i.e.*, to its "proportionate share." See 415 ILCS 5/58.9 (a)(1) (2002).

Section 58.1(a)(2) of the Act is the applicability provision of the Act's Title XVII "Site Remediation Program". Section 58.1(a)(2) excludes sites subject to the UST laws, like the site at issue. Title XVII includes the proportionate share liability provision of Section 58.9(a)(1). The Board held, and the court agreed, that proportionate share liability did not apply in this case because Section 58.1(a)(2) limits the applicability of all of Title XVII, including the proportionate share liability provision. As the court stated: "Put simply, one must enter through a door before one can throw something out the window. In other words, Millstream is not entitled to invoke the provisions of Title XVII unless Title XVII is applicable to it in the first place." State Oil (2d Dist.), slip op. at 7.

Unpublished Decision on State Cleanup Costs Issue. In the unpublished portion of the decision, the court upheld the Board's decision that the IEPA's vouchers reflecting cleanup costs incurred were relevant and within the business-record exception to the hearsay rule. Next, the court addressed Millstream's challenge to the Board's refusal to give the State the exact amount of reimbursement requested. The court affirmed the Board's decision to award the State approximately \$86,000 of the State's requested \$98,000 in remediation costs, stating that "one of the reasons administrative agencies exist is the special expertise they possess in their given field [and] to the extent Millstream's argument can be read as attacking the Board's use of that expertise, it is ill taken." State Oil (2d Dist.), slip op. at 11. Applying the manifest weight of the evidence standard, the court found that the Board's award of cleanup costs to the State was not contrary to the manifest weight of the evidence: "evidence in the record exists that the State incurred the costs for which it seeks reimbursement. As such, we cannot disturb the Board's judgment on this point." State Oil (2d Dist.), slip op. at 19.

Unpublished Decision on Leaking UST Liability Issue. Also in the unpublished portion of the decision, the court provided two interesting interpretations of an important provision of the Act's Title XVI on USTs.

Section 57.12(a) of the Act provides that

the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank.

Millstream argued that the State introduced no evidence that its cleanup expenses were "reasonable or necessary." Looking at the plain language of Section 57.12(a), the court refused to place the burden of proving reasonableness or necessity of its costs on the State, but cautioned:

This is not to say, however, that the State is free to run up outrageous expenses. While we read section 57.12(a) as excluding reasonableness and necessity from the elements the State must prove, \*\*\* the failure to mitigate damages remains an affirmative defense; however, the burden of proving the failure to mitigate lies with the respondent. State Oil (2d Dist.), slip op. at 12.

Importantly, the court also affirmed the Board's reading of Section 57.12(a) that the provision applied not only to the current UST owner or operator, but also a former owner or operator:

[A] statute must not be construed so that it produces an absurd result . . . .  
Allowing an owner to escape liability by simply selling a property would, in our estimation, be absurd . . . . In short, State Oil was the owner when the problem began. That the problem continued beyond its ownership of the property does not absolve it from responsibility. State Oil (2d Dist.), slip op. at 18.

After reviewing several provisions of the Act, the court broadly concluded that the Act properly applied retroactively, since "it is clear that the legislature intended the Act to address ongoing problems, which, by definition existed at the time that the Act was enacted." State Oil (2d Dist.), slip op. at 19.

Unpublished Decision on Penalty Issue. Finally, in the last unpublished portion of the decision, the court upheld the Board's penalty determinations as neither arbitrary, capricious, nor unreasonable, noting that the amount was "relatively modest" considering the statutory maximum penalties that are allowed. The court focused on the aggravating factors of gasoline actually leaking into the creek for years and the lack of diligence in remediating the problem. State Oil (2d Dist.), slip op. at 14-15, 20, 22, 25-27.

## **Rule Update**

### **Board Adopts Final Amendments in SDWA Update, USEPA Amendments (July 1, 2003 through December 31, 2003) (R04-13)**

On August 19, 2004, the Board adopted a final opinion and order in SDWA Update, USEPA Amendments (July 1, 2003 through December 31, 2003) (R04-13). The Board adopted amendments to the Illinois regulations that are "identical in substance" to drinking water regulations adopted by the United States Environmental Protection Agency (USEPA). The USEPA rules implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (1994)). The Board made only one minor, nonsubstantive change to the proposal it adopted for public comment that was published in the *Illinois Register* on June 18, 2004 at 28 Ill. Reg. 8403. The adopted rulemaking was filed with the Secretary of State's Index department for final publication in the September 3, 2004 *Illinois Register*.

The substantive amendments in this rulemaking dealt with a notice published by USEPA at 68 Fed. Reg. 74233 (December 23, 2003). The notice interpreted a key provision of the SDWA that determines the applicability of the SDWA regulations. USEPA changed its policy and determined that a property owner that "submeters" water, *i.e.*, that distributes water to a limited number of tenants on its own property, does not "sell" water within the meaning of Section 1411(3) of SDWA (42 U.S.C. 300g(3) 2000). Thus, such a property owner is not a public water supply to which the SDWA requirements apply. USEPA believes that apartment buildings and other property types that share characteristics of an apartment building are subject to the revised policy. While USEPA did not amend its regulations to clarify this issue, the Board determined that its "identical in substance" mandate required that a federal policy change of this magnitude be reflected in the Board's rules. Consequently, the Board reflected the USEPA interpretation of the SDWA applicability by adding a Board note to Section 611.100.

The Board also, at the request of EMD Chemicals Inc., updated the incorporations by reference section of the regulations to reflect that EM Science is now EMD Chemicals Inc. The company produces two methods for microbiological analysis of water that are approved by USEPA and incorporated by reference in Section 611.102. The Board updated the three appearances of "EM Science" to "EMD Chemicals" in that Section.

Copies of the Board's opinion and order in R04-13 may be obtained by calling Dorothy Gunn at 312-814-3620, or by downloading copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

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

## **Board Actions**

**August 5, 2004**

**Via Videoconference**

**Springfield and Chicago, Illinois**

### **Adjusted Standards**

AS 04-4

In the Matter of: Petition of Johns Manville for an Adjusted Standard from 35 Ill. Adm. Code Part 814, Sections 811.310, 811.311, 811.318 – The Board

4-0  
Land

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ordered petitioner to file an amended petition curing deficiencies.

### Administrative Citations

AC 04-18	IEPA v. Luther Coleman – The Board entered a final order requiring respondent to pay the Board hearing costs in the amount of \$323.29 and a civil penalty of \$3,000. This order follows the Board's interim order of June 17, 2004, which found that this respondent had violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2002)) at his Saline County facility.	4-0
AC 04-57	IEPA v. Arlyn Ray d/b/a Arlyn Ray Construction, Tom Romero d/b/a Arlyn Ray Exteriors, Robert J. Adams and Rita M. Adams – The Board granted complainant's motion to dismiss respondent Tom Romero. The Board found that the remaining Woodford County respondents violated Sections 21(p)(1),(3),(4) and (7) of the Illinois Environmental Protection Act (415 ILCS 5/21(p)(1),(3),(4) and (7) (2002)), and ordered respondents to pay a civil penalty of \$6,000.	4-0
AC 04-83	IEPA v. Giuffre II, L.L.C. and Reload, Inc. – The Board found that these Winnebago County respondents violated Section 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2002)), and ordered respondents to pay a civil penalty of \$3,000.	4-0
AC 04-89	IEPA v. Earl and Norma Martin – The Board accepted for hearing this petition for review of an administrative citation against these Knox County respondents.	4-0
AC 04-90	IEPA v. Earl and Norma Martin – The Board accepted for hearing this petition for review of an administrative citation against these Knox County respondents.	4-0
AC 04-91	IEPA v. Earl and Norma Martin – The Board accepted for hearing this petition for review of an administrative citation against these Knox County respondents.	4-0

### Motions and Other Matters

PCB 99-120	<u>People of the State of Illinois v. Wood River Refining Company</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this special waste hauling enforcement action involving a Madison County facility, the Board ordered publication of the required newspaper notice.	4-0 A&L-E
PCB 01-1	<u>People of the State of Illinois v. Metals Technology Corporation</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this special waste hauling enforcement action involving a DuPage County facility, the Board ordered publication of the required newspaper notice.	4-0 A-E
PCB 01-43	<u>People of the State of Illinois v. Michael Stringini</u> – The Board denied complainant's motion for interlocutory appeal of hearing officer's order of June 21, 2004 extending briefing dates and affirmed the hearing officer order of June 21, 2004 granting extension of time to file briefs.	4-0 RCRA-E
PCB 03-24 PCB 03-25 (Cons.)	<u>Hannel Oil Company v. IEPA</u> – The Board granted petitioner's motion for voluntary dismissal of these underground storage tank appeals involving a Scott County facility.	4-0 UST Appeal
PCB 03-214	<u>Illinois Ayers Oil Company v. IEPA</u> – The Board entered a final order granting	4-0



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	petitioner's motion for of payment by Illinois Environmental Protection Agency of attorney's fees as costs of corrective action. The Board also granted the motions to file a reply and surreply but denied the motion to file an amended response.	UST Appeal
PCB 04-188	<u>Paul Phelan v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Macoupin County facility.	4-0 UST Appeal
PCB 04-189	<u>Wabash Valley Service v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Lawrence County facility.	4-0 UST Appeal
PCB 04-190	<u>Johnson Oil Company, L.L.C. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Champaign County facility.	4-0 UST Appeal
PCB 05-8	<u>People of the State of Illinois v. Village of Capron</u> – The Board accepted for hearing this public water supply enforcement action involving a site located in Boone County.	4-0 PWS-E
PCB 05-9	<u>People of the State of Illinois v. Danny Wiegel d/b/a Wiegel's Tree Service</u> – The Board accepted for hearing this air enforcement action involving a site located in Marion County.	4-0 A-E
PCB 05-10	<u>Dennis Eugene Batty – Davis Junction (Property Identification Number 11-13-400-002) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Dennis Eugene Batty located in Ogle County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).	4-0 T-C
PCB 05-11	<u>UAP Richter – Dixon (Property Identification Number 02-15-07-100-020) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that certain agrichemical secondary containment facilities of UAP Richter located in Shelby County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)). No action was taken on the negative recommendation for the certain portion of the building over the minibulk/package agrichemical secondary containment structure at the site.	4-0 T-C
PCB 05-12	<u>Lake in the Hills Sanitary District v. IEPA</u> – The Board accepted for hearing this permit appeal involving a McHenry County facility.	4-0 P-A, Water
PCB 05-13	<u>People of the State of Illinois v. Paul DiFranco, Sr. and Mark's Construction, Inc.</u> – The Board accepted for hearing this air enforcement action involving a site located in Cook County.	4-0 A-E
PCB 05-14	<u>People of the State of Illinois v. Michael Collins d/b/a C&amp;R Construction</u> – The Board accepted for hearing this air enforcement action involving a site located in St. Clair County.	4-0 A-E
PCB 05-15	<u>Bill Carter d/b/a Carter Convenience Store v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this White County facility.	4-0 UST Appeal

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90-Day Ext.

PCB 05-16      Royer Oil (Sorento Garage) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Bond County facility.

4-0  
UST  
Appeal  
90-Day  
Ext.

**August 19, 2004**  
**Chicago, Illinois**

### Rulemakings

R04-13      In the Matter of: SDWA Update, USEPA Amendments (July 1, 2003 through December 31, 2003) – The Board adopted a final opinion and order in this “identical-in-substance” rulemaking to amend the Board’s public water supply regulations.

4-0  
R, PWS

### Administrative Citations

AC 04-88      City of Chicago Department of Environment v. Gene Evans – The Board found that this Cook County respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)), and ordered respondent to pay a civil penalty of \$1,500.

4-0

AC 05-1      IEPA v. Michael E. Boone – The Board found that this Mason County respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2002)), and ordered respondent to pay a civil penalty of \$1,500.

N4-0

AC 05-2      IEPA v. Lester Smith – The Board accepted for hearing this petition for review of an administrative citation against this Massac County respondent.

4-0

AC 05-4      IEPA v. G.T. & L., Inc. – The Board found the petition for review deficient in this administrative citation involving a Cook County facility. The Board ordered respondent to file an amended petition curing deficiencies and accompanied by an attorney’s appearance, within 30 days, or the petition would be subject to dismissal.

4-0

AC 05-7      IEPA v. Edward and Betty Jo Cain and Edward Cain d/b/a Cain Roofing Company – The Board accepted for hearing this petition for review of an administrative citation against these Champaign County respondents.

4-0

### Decisions

PCB 03-223      People of the State of Illinois v. Elysium Energy – In this water, land and air enforcement action concerning a Lake County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondents to pay a total civil penalty of \$25,000 and to cease and desist from further violations.

4-0  
L-E

PCB 04-98      People of the State of Illinois v. Onyx Environmental Services, L.L.C. and Aura

4-0

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	<u>II Inc.</u> – In this land and air enforcement action concerning a Jasper County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$125,000 and to cease and desist from further violations.	A,L,W-E
PCB 04-218	<u>People of the State of Illinois v. Brickyard Disposal and Recycling, Inc.</u> – In this land enforcement action concerning a DeWitt County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2002)), accepted a stipulation and settlement agreement, and ordered the respondent to engage in a supplemental environmental project (SEP) involving disposal of waste to the value of \$40,000, and to cease and desist from further violations.	4-0 L-E

### **Motions and Other Matters**

PCB 01-147	<u>North Safety Products, Inc. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this appeal involving a DuPage County facility.	4-0 P-A, Air
PCB 03-51	<u>People of the State of Illinois v. Draw Drape Cleaners, Inc., American Drapery Cleaners &amp; Flameproofers, Inc. and Richard Zell</u> – The Board granted complainant’s motion for partial summary judgment. The Board directed this matter to hearing as expeditiously as practicable on the remainder of the contested counts of the complaint, appropriate penalty amount, and remedy.	4-0 A-E
PCB 03-98	<u>Nielsen &amp; Bainbridge, L.L.C. v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this appeal involving a Cook County facility.	4-0 P-A, Air
PCB 03-185	<u>Swif-T Food Mart v. IEPA</u> – The Board granted petitioner’s motion for authorization of payment of attorney fees as costs of corrective action and directed that \$11,291.37 in legal fees be reimbursed. The Board remanded the case to the Illinois Environmental Protection Agency to issue the requested reimbursement.	4-0 UST Appeal
PCB 04-67	<u>People of the State of Illinois v. Royal Trucking Company</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	4-0 W-E
PCB 04-186	<u>Waste Management of Illinois, Inc. v. County Board of Kankakee</u> – The Board denied Keith Runyon’s motion to intervene.	4-0 P-C-F-S-R
PCB 04-191	<u>Clark Oil Station #848 v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Marion County facility.	4-0 UST Appeal
PCB 04-195	<u>Andover/Casey’s General Stores v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Henry County facility.	4-0 UST Appeal
PCB 04-196	<u>Robert Mezo v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Franklin County facility.	4-0 UST Appeal

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PCB 04-197	<u>Brock Oil Company (Letter dated March 31, 2004) v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this McLean County facility.	4-0 UST Appeal
PCB 04-199	<u>Hicks Bulk Distribution v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Jackson County facility.	4-0 UST Appeal
PCB 04-200	<u>Clark Oil Station #271 v. IEPA</u> – Having previously granted a request for a 90-day extension, the Board dismissed this matter because no underground storage tank appeal was filed on behalf of this Madison County facility.	4-0 UST Appeal
PCB 05-17	<u>Union County Oil Company v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Union County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-18	<u>Ted Harrison Oil Company v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cass County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-19	<u>Hall's Automotive (SICR) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-20	<u>Hall's Automotive (SIPB) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-21	<u>Randy's Shell v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Piatt County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-22	<u>L. Keller Oil Properties (Downtown Shell) v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Effingham County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-23	<u>Keller Oil v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Effingham County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-24	<u>Premcor Refining Group, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this LaSalle County facility.	4-0 UST Appeal 90-Day Ext.
PCB 05-25	<u>Premcor Refining Group, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Tazewell County facility.	4-0 UST Appeal 90-Day

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		Ext.
PCB 05-26	<u>People of the State of Illinois v. CFM U.S. Corporation f/k/a The Vermont Casting Majestic Products Company, a Delaware corporation</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	4-0 Air-E
PCB 05-28	<u>People of the State of Illinois v. Color Communication, Inc., an Illinois corporation</u> – The Board accepted for hearing this air enforcement action involving a two sites located in Cook County.	4-0 Air-E

## New Cases

### **August 5, 2004 Board Meeting**

**05-008** People of the State of Illinois v. Village of Capron – The Board accepted for hearing this public water supply enforcement action involving a site located in Boone County.

**05-009** People of the State of Illinois v. Danny Wiegel d/b/a Wiegel's Tree Service – The Board accepted for hearing this air enforcement action involving a site located in Marion County.

**05-010** Dennis Eugene Batty – Davis Junction (Property Identification Number 11-13-400-002) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Dennis Eugene Batty located in Ogle County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)).

**05-011** UAP Richter – Dixon (Property Identification Number 02-15-07-100-020) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that certain agrichemical secondary containment facilities of UAP Richter located in Shelby County are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2002)). No action was taken on the negative recommendation for the certain portion of the building over the minibulk/package agrichemical secondary containment structure at the site.

**05-012** Lake in the Hills Sanitary District v. IEPA – The Board accepted for hearing this permit appeal involving a McHenry County facility.

**05-013** People of the State of Illinois v. Paul DiFranco, Sr. and Mark's Construction, Inc. – The Board accepted for hearing this air enforcement action involving a site located in Cook County.

**05-014** People of the State of Illinois v. Michael Collins d/b/a C&R Construction – The Board accepted for hearing this air enforcement action involving a site located in St. Clair County.

**05-015** Bill Carter d/b/a Carter Convenience Store v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this White County facility.

**05-016** Royer Oil (Sorento Garage) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Bond County facility.

**AC 05-009** IEPA v. Bill Collins – The Board accepted an administrative citation against this Franklin County respondent.

**AC 05-010** IEPA v. Lawrence P. and Jacqueline L. Koch – The Board accepted an administrative citation against these Bond County respondents.

**AC 05-011** IEPA v. Environmental Reclamation Company and Gene Stacey – The Board accepted an administrative citation against these Coles County respondents.

**AC 05-012** County of Sangamon v. James Withers – The Board accepted an administrative citation against this Sangamon County respondent.

## August 19, 2004 Board Meeting

**05-017** Union County Oil Company v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Union County facility.

**05-018** Ted Harrison Oil Company v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cass County facility

**05-019** Hall’s Automotive (SICR) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility.

**05-020** Hall’s Automotive (SICR) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Hardin County facility.

**05-021** Randy’s Shell v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Piatt County facility.

**05-022** L. Keller Oil Properties (Downtown Shell) v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Effingham County facility.

**05-023** Keller Oil v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Effingham County facility.

**05-024** Premcor Refining Group, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this LaSalle County facility.

**05-025** Premcor Refining Group, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Tazewell County facility.

**05-026** People of the State of Illinois v. CFM U.S. Corporation f/k/a The Vermont Casting Majestic Products Company, a Delaware corporation – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.

**05-027** Hertiage FS, Inc. (Property Identification Numbers 06-10-06-400-005) v. IEPA – No action taken.

**05-028** People of the State of Illinois v. Color Communication, Inc., an Illinois corporation – The Board accepted for hearing this air enforcement action involving a two sites located in Cook County.

## Calendar

<p>9/2/04 11:00 AM</p>	<p><b><u>Illinois Pollution Control Board Meeting</u></b></p>		<p><b>Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago and 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield</b></p>
<p>9/8/04 10:00AM</p>	<p>AC 04-41</p>	<p><u>IEPA v Cheryl Clayton</u></p>	<p>Caucus Room Quincy City Hall 730 Main Street Quincy</p>
<p>9/15/04 11:00 am</p>	<p>AC 04-46</p>	<p><u>IEPA v. Christopher Coleman</u></p>	<p>“Old 911 Office” Union County Courthouse 309 West Market Jonesboro</p>

Environmental Register – August 2004

9/16/04 11:00 am		<b><u>Illinois Pollution Control Board Meeting</u></b>	<b>Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 9-040 Chicago</b>
10/6/04 9:30 am	AC 04-46	Bonita Saxbury and Richard Saxbury v. Archer Daniels Midland (Hull, Illinois Division)	City Hall Council Chambers 215 N. Monroe Street Pittsfield
10/7/04 10:00 am		<b><u>Illinois Pollution Control Board Meeting</u></b>	<b>Union League Club 65 W. Jackson Boulevard Chicago</b>
10/21/04 11:00 am		<b><u>Illinois Pollution Control Board Meeting</u></b>	<b>Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 2-025 Chicago</b>
11/1/04 11:00am	AC 04-63	<u>County of Jackson v. Egon Kamarasy (Site Code: 0778095036)</u>	Jackson County Health Department (front Building) 415 Health Department Road Murphysboro
11/1/04 11:00am	AC 04-64	<u>County of Jackson v. Egon Kamarasy (Site Code: 0778125013)</u>	Jackson County Health Department (front Building) 415 Health Department Road Murphysboro
11/4/04 11:00 AM	Illinois Pollution Control Board Meeting		Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago and 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield
1/18/04 11:00 AM	Illinois Pollution Control Board Meeting		Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street Room 9-040 Chicago

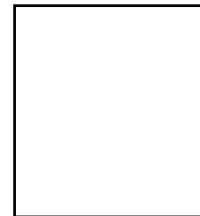
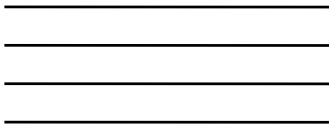




The Illinois Pollution Control Board is an independent five-member board that adopts environmental control standards, rules on enforcement actions, and other environmental disputes for the State of Illinois.

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

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