

IPCB

Illinois Pollution Control Board



ANNUAL REPORT

Fiscal Year

2023

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ILLINOIS POLLUTION CONTROL BOARD



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MISSION STATEMENT

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

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

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





IPCB

Illinois Pollution Control Board

August 2023

GOVERNOR

JB Pritzker



CHAIR

Barbara Flynn Currie



MEMBERS

Jennifer Van Wie
Michelle Gibson
Michael D. Mankowski



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

The Illinois Pollution Control Board is proud to present its Annual Report for fiscal year 2023. The Board usually has about 150 to 200 proceedings pending before it at any one time. During fiscal year 2023, the Board continued to conduct these proceedings while operating within its budget.

I remind us of the Board's statutory roles and highlight two Illinois Appellate Court decisions issued this past fiscal year that affirmed final Board orders.

Board Roles. Under its founding statute, the Environmental Protection Act (Act) (415 ILCS 5), the Board primarily conducts two types of proceedings: rulemakings and adjudications. Through rulemakings, the Board adopts regulations that establish Illinois' environmental standards and requirements for ensuring clean air, land, and water. Through adjudications, the Board decides contested environmental cases, including complaints that allege violations of the Act and Board regulations; petitions that ask for review of permitting and leaking underground storage tank (UST) determinations made by the Illinois Environmental Protection Agency (IEPA); petitions that ask for review of pollution control facility siting determinations made by local governments; and variance and adjusted standard petitions that seek relief from Board regulations. In addition, the Board conducts a third type of proceeding called a "time-limited water quality standard," which is neither a rulemaking nor an adjudication and may result in temporary regulatory relief.

Appellate Decisions. The Illinois Appellate Court issued decisions affirming the Board in a UST appeal and an



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enforcement action.

The first appeal involved gasoline leaking inside dispenser cabinets at a service station. Because the leaks ultimately entered the subsurface soils through “under-dispenser containment,” which is part of the UST system, they constituted a release from the UST system, making the owner eligible to seek cleanup-cost reimbursement from the UST Fund. *See Office of the State Fire Marshal v. Illinois Pollution Control Board*, 2022 IL App (1st) 210507.

The second appeal involved a demolition subcontractor whose employees dumped a large amount of debris next to and into the Mackinaw River. Even though the subcontractor promptly removed the debris, an \$80,000 civil penalty was upheld for the violations. The Act does not bar imposing a penalty merely because violations have been remedied. And given the subcontractor’s prior open dumping violations, the penalty was warranted as a deterrent. *See People of the State of Illinois v. IronHustler Excavating, Inc.*, 2022 IL App (3d) 210518-U.


More detailed summaries of both these court decisions appear in this Annual Report.

Annual Report. After introducing the Board Members, this FY23 Annual Report covers three areas:

- ❖ Completed rulemakings of the Board, including the adoption of rules implementing amendments to the Drycleaner Environmental Response Trust Fund Act;
- ❖ Illinois Appellate Court decisions issued on review of final Board orders; and
- ❖ Enacted legislation—from the General Assembly’s 2023 Session—amending the Act.

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

Sincerely,


Barbara Flynn Currie
Chair



BOARD MEMBERS



❖ **Chair Barbara Flynn Currie**



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

For her “forceful, creative, consequential, and civil leadership in the Illinois General Assembly,” Barbara was awarded the 2022 Simon-Edgar Statesmanship Award, which goes to an elected government official “who has demonstrated a pattern of public service characterized by vision, courage, compassion, effectiveness, civility, and bipartisanship.” Upon presenting Barbara with the award, former Illinois Governor Jim Edgar remarked, “I have always been impressed with her passion, decency, and toughness.” He added, “Barbara and I did not always agree on policy issues, but I’ve always respected her dedication to public service and her idealism.” The annual Simon-Edgar Statesmanship Award, which Barbara received in its second year, was jointly established by the Edgar Fellows Program at the University of Illinois Institute of Government and Public Affairs and the Paul Simon Public Policy Institute at Southern Illinois University in Carbondale.

❖ **Jennifer Van Wie**



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



Ms. Van Wie has been active in state and local bar associations and was a co-chair of the Environmental Law Committee of the Chicago Bar Association. Ms. Van Wie has focused her legal practice exclusively on environmental law and policy for over 20 years.

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

❖ **Michelle Gibson**



Board Member Gibson was appointed to the Board by Governor JB Pritzker in November 2021. She is a Registered Environmental Health Specialist with over 15 years of experience in environmental consulting, waste diversion, resource management, and environmental public health. Michelle has implemented recycling and waste-reduction programs at hospitals, universities, residential facilities, military bases, manufacturing sites, and large office complexes. She has advised statewide environmental organizations on strategies for waste handling. Michelle also managed a Dekalb County solid waste program through which she worked with landfills and waste haulers to reduce residential waste. In addition, she supervised a team of Boone County environmental health

inspectors to enforce standards for clean drinking water, private on-site wastewater treatment systems, and food safety, as well as sanitary conditions at the height of the COVID-19 pandemic. Michelle received her Bachelor of Science degree in environmental science from Illinois State University.

❖ **Michael D. Mankowski**



Board Member Michael D. Mankowski was appointed to the Board by Governor JB Pritzker in July 2023. Throughout his career, Michael Mankowski has focused on public service and environmental issues. He previously served as the Director of the Office of Oil and Gas Resource Management at the Illinois Department of Natural Resources. As Director, Mr. Mankowski oversaw the regulation of over 1,500 oil and gas operators and 28 underground natural gas storage fields. He assisted in drafting the Illinois Underground Natural Gas Storage Safety Act and drafted amendments which helped to modernize the Department's Oil and Gas Act Regulations.

Prior to IDNR, Mr. Mankowski worked as an Assistant Attorney General in the Illinois Attorney General's Office. While in the AGO's Springfield Civil Environmental Bureau, he represented multiple state agencies in numerous significant cases dealing with air, water, and land pollution as well as natural resource damages and agency permitting matters.



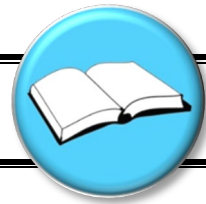
BOARD MEMBERS

Mr. Mankowski has been active in the Illinois State Bar Association serving on the Environmental Law and Mineral Law Section Councils as well as the Strategic Marketing and the Marketing and Communications Committees.

Mr. Mankowski received his Bachelor of Science Degree in Natural Resources from the Ohio State University. He received his Juris Doctorate with a Certificate in Energy and Environmental Law from Chicago-Kent College of Law.



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INTRODUCTION

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

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

The rulemakings completed by the Board in fiscal year 2023 are summarized below, followed by a list of rulemakings pending at the end of that fiscal year.



RULEMAKINGS COMPLETED IN FISCAL YEAR 2023

Board Adopts Drycleaning Facility Rules

On January 5, 2023, the Board issued a final order adopting rules that address licensing drycleaning facilities, overseeing their environmental insurance coverage, and administering State fund reimbursement for the costs of cleaning up drycleaning solvent releases. This rulemaking was initiated by the Illinois Environmental Protection Agency (IEPA) to address amendments to the Drycleaner Environmental Response Trust (DERT) Fund Act. These statutory amendments transferred oversight and implementation of the DERT Fund from the DERT Fund Council to IEPA.

After receiving IEPA's rulemaking proposal, the Board held public hearings, received public comment, and proposed rules for both first and second notice. At its December 13, 2022 meeting, the Joint Committee on Administrative Rules issued a Certification of No Objection on the rules. The Board's new rules appear at 35 Ill. Adm. Code 1501 and became effective on January 17, 2023. The Board also repealed DERT Fund Council rules at both 35 Ill. Adm. Code 1500 and 2 Ill. Adm. Code 3100. All these steps are designed to protect the environment and smoothly transition drycleaners to the new regulatory program.

This rulemaking is captioned Drycleaner Environmental Response Trust Fund Act Proposal to Add 35 Ill. Adm. Code Part 1501, Repeal 35 Ill. Adm. Code Part 1500, and Repeal 2 Ill. Adm. Code Part 3100, docket R21-19. Here is a link to the Board's [final order](#), which includes the text of new Part 1501. The Part 1501 rules were published in the *Illinois Register* on January 27, 2023 (47 Ill. Reg. 1354). And here is a link to the Board's [first-notice order](#), in which the Board opened sub-docket R21-19(A) to consider minimum continuing education and compliance program requirements.

Board Adopts Non-Substantive Amendments to Water Pollution Rules

On March 2, 2023, the Board issued a final order adopting non-substantive amendments to its water pollution rules. These amendments affect all 11 Parts of the Board's Subtitle C rules, *i.e.*, Parts 301 through 310 and 312 of Title 35 of the Illinois Administrative Code. These amendments are part of a larger undertaking by the Board to update its rules across multiple media and subjects. The amendments remove unnecessary language, replace outdated text, update statutory references, and reorganize provisions for clarity.

During this rulemaking, the Board held public hearings and received testimony and public comment from the Illinois Environmental Protection Agency. In addition, the Joint Committee on Administrative Rules (JCAR) suggested numerous non-substantive changes to the proposed rules that are reflected in the final rules. At its February 14, 2023 meeting, JCAR issued a Certification of No Objection for all the amendments in the Board's proposal. The amendments took effect on March 23, 2023.

The rulemaking is captioned Amendments to 35 Ill. Adm. Code Subtitle C: Water Pollution, docket R18-23. Here is the link to the Board's [final opinion and order](#), which includes the text of



the adopted amendments. The amendments were published in the *Illinois Register* on April 7, 2023 (47 Ill. Reg. 4415, 4437, 4575, 4601, 4636, 4641, 4662, 5012, 5017, 5083, 5200).

Board Adopts Non-Substantive Amendments to Public Water Supply Rules

On May 4, 2023, the Board adopted non-substantive amendments to its public water supply rules, affecting nine of the ten Parts of the Board's Subtitle F rules, *i.e.*, Parts 601 through 604, Part 611, and Parts 615 through 618 of Title 35 of the Illinois Administrative Code. The rulemaking is part of a larger undertaking by the Board to update its rules across multiple media and subjects. These amendments remove unnecessary language, replace outdated text, update statutory references, and reorganize provisions for clarity.

During this rulemaking, the Board held public hearings and received testimony and public comment from the Illinois Environmental Protection Agency. In addition, the Joint Committee on Administrative Rules (JCAR) suggested numerous non-substantive changes to the proposed rules that are reflected in the final rules. At its April 18, 2023 meeting, JCAR issued a Certification of No Objection to the amendments. The amendments became effective on May 16, 2023.

The rulemaking is captioned [Amendments to 35 Ill. Adm. Code Subtitle F: Public Water Supply](#), docket R18-26. Here are links to the Board's [final opinion and order](#), as well as its [addendum](#), which includes the text of the adopted amendments. On May 18, 2023, the Board issued an [order](#) and [corrected addendum](#) to remedy minor errors and discrepancies in the final rule text. The amendments were published in the *Illinois Register* on June 2, 2023 (47 Ill. Reg. 7424, 7449, 7496, 7503, 7556, 7581, 7631, 7681, 7708).

Board Adopts Non-Substantive Amendments to Atomic Radiation Rules

On May 4, 2023, the Board adopted non-substantive amendments to its atomic radiation rules, affecting both Parts of the Board's Subtitle I rules, *i.e.*, Parts 1000 and 1010 of Title 35 of the Illinois Administrative Code. The rulemaking is part of a larger undertaking by the Board to update its rules across multiple media and subjects. These amendments remove unnecessary language, replace outdated text, update statutory references, and reorganize provisions for clarity.

During this rulemaking, the Board held public hearings and received testimony and public comment from the Illinois Emergency Management Agency and the Illinois Environmental Protection Agency. In addition, the Joint Committee on Administrative Rules (JCAR) suggested numerous non-substantive changes to the proposed rules that are reflected in the final rules. At its April 18, 2023 meeting, JCAR issued a Certification of No Objection to the amendments. The amendments took effect on May 4, 2023.

The rulemaking is captioned [Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation](#), docket R18-28. Here is the link to the Board's [final opinion and order](#). The addendum containing the text of the adopted amendments is available [here](#). The amendments were published in the *Illinois Register* on May 19, 2023 (47 Ill. Reg. 6679, 6713).



RULEMAKINGS PENDING AT END OF FISCAL YEAR 2023

- ❖ Amendments to 35 Ill. Adm. Code Subtitle B: Air Pollution, [docket R18-21](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle E: Agriculture-Related Water Pollution, [docket R18-25](#)
- ❖ Amendments to 35 Ill. Adm. Code Subtitle G: Waste Disposal, [docket R18-27](#)
- ❖ Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, [docket R20-19\(A\)](#)
- ❖ SDWA Update, USEPA Amendments (July 1, 2020 through December 31, 2020) and SDWA Update, USEPA Amendments (January 1, 2021 through June 30, 2021), dockets [R21-10](#) and [R22-2](#) (consol.)
- ❖ RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2020 through December 31, 2020), RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2021 through December 31, 2021), and RCRA Subtitle C (Hazardous Waste) Update and Corrections to RCRA Subtitle C and UIC Permit Rules, dockets [R21-13](#) , [R22-13](#), and [R22-19](#) (consol.)
- ❖ Drycleaner Environmental Response Trust Fund Act Proposal to Add 35 Ill. Adm. Code Part 1501, Repeal 35 Ill. Adm. Code Part 1500, and Repeal 2 Ill. Adm. Code Part 3100, [docket R21-19\(A\)](#)
- ❖ RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2021 through December 31, 2021), [docket R22-12](#)
- ❖ Amendments to 35 Ill. Adm. Code Part 203: Major Stationary Sources Construction and Modification; 35 Ill. Adm. Code Part 204: Prevention of Significant Deterioration; and Part 232: Toxic Air Contaminants, [docket R22-17](#)
- ❖ Proposed Amendments to Groundwater Quality (35 Ill. Adm. Code 620), [docket R22-18](#)
- ❖ SDWA Update, USEPA Amendments (July 1, 2022 through December 31, 2022), [docket R23-9](#)
- ❖ National Ambient Air Quality Standards Update, USEPA Regulations (July 1, 2022 through December 31, 2022), [docket R23-15](#)
- ❖ Proposed 35 Ill. Adm. Code 820 General Construction or Demolition Debris Recovery Facilities, [docket R23-17](#)



RULEMAKING UPDATE

- ❖ Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, [docket R23-18](#)
- ❖ Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, [docket R23-18\(A\)](#)





INTRODUCTION

Under the Environmental Protection Act (415 ILCS 5), final orders of the Board are appealable directly to the Illinois appellate court (rather than to the circuit courts) and from there to the Illinois Supreme Court. In Fiscal Year 2023, two Board decisions were affirmed on appeal.

APPELLATE DECISIONS ISSUED IN FISCAL YEAR 2023

First District Appellate Court Affirms Board in UST Fund Case

- ❖ *Office of the State Fire Marshal v. Illinois Pollution Control Board*, [2022 IL App \(1st\) 210507](#)
Board docket PCB 19-2

A service station in Chicago experienced leaks from two of its gasoline dispensers. The leaks started at aboveground piping within the dispenser cabinets. The leaked gasoline then fell to “under-dispenser containments” or “UDCs,” which are bathtub-like structures located below the ground underneath the dispensers. UDCs are designed to keep such leaks from reaching the environment. The UDCs at this service station, however, were not watertight. The leaked gasoline escaped from the UDCs into the surrounding subsurface soils. The service station owner, Reliable Stores, Inc. (Reliable), reported the release, repaired the equipment, and started environmental cleanup.

Reliable applied with the Office of the State Fire Marshal (OSFM) to determine its eligibility for cleanup-cost reimbursement from the State’s Underground Storage Tank (UST) Fund. OSFM denied eligibility, determining that the leaks were “Non UST related release[s].” Reliable appealed OSFM’s denial to the Board.

Whether a UDC leak may be eligible for UST Fund reimbursement presented an issue of first impression for the Board. The parties agreed on the facts of the case but disagreed over how to interpret the controlling statutory language. Section 57.9(a) of the Environmental Protection Act (Act) states that the UST Fund “shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system of a substance listed in this Section.” 415 ILCS 5/57.9(a). OSFM argued that because the leaks *started* at the



dispenser system's aboveground piping, there was no release *from* a UST or related tank system. But the Board found that the UDC, as a type of containment system, is part of the UST system under the regulations and thus the "related tank system" under Section 57.9(a). Further, the gasoline leaking out of the UDC into the environment was a "release from" that "related tank system." Accordingly, on cross-motions for summary judgment, the Board reversed OSFM's eligibility determination. OSFM appealed the Board's decision to the First District Appellate Court.

The First District affirmed the Board. In its unanimous opinion of September 30, 2022, the court framed the issue as a "chicken-and-egg conundrum: is eligibility for the UST Fund determined by the starting point of the leak or the location of where the leak released gasoline into the soil?" Fire Marshal, ¶ 39. The court likened the facts of this case to:

a teacup and a saucer underneath that both had cracks, allowing tea to leak onto the table. The Board states that "one would ordinarily say that the tea leaked 'from' the crack in the cup into the saucer and then 'from' the crack in the saucer onto the table." The Board argues "[t]hat the leak 'originated' in the cup's crack does not change the fact that without the saucer's crack, there would have been no 'release' of tea to the table." We agree with the Board that to limit the meaning of "from" in the statute to the point of origin eludes logic and would lead to an absurd result in conflict with the legislature's intent for the Act. *Id.*, ¶ 43.

And that intent is to "protect human health and the environment by helping eligible owners and operators . . . pay for the cleanup of leaks from underground storage tanks or related tank systems." *Id.*, ¶ 42 (citing 415 ILCS 5/57).

Lastly, in response to OSFM's reliance on a dictionary definition of the word "from," the court quoted Judge Learned Hand: "[I]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Id.*, ¶ 44 (citations omitted).

Third District Appellate Court Affirms Board in Waste Dumping Enforcement Case

- ❖ *People of the State of Illinois v. IronHustler Excavating, Inc.*, [2022 IL App \(3d\) 210518-U](#)
Board docket PCB 20-16

A subcontractor was hired to handle the demolition and disposal work on a high school construction project in Delevan. The subcontractor, IronHustler Excavating, Inc. (IronHustler), transported most of the resulting debris from the high school to a landfill. However, 24 semi-truck loads of the debris were diverted by IronHustler employees to a farm along the Mackinaw River. An inspection of the farm by the Illinois Environmental Protection Agency (IEPA) revealed that debris from the high school had been deposited next to and into the river. After IEPA's inspection, IronHustler removed the debris and disposed of it at the landfill. IronHustler



fired the employees who took the debris to the farm. IronHustler also implemented new policies to prevent similar occurrences.

The Attorney General's Office, on behalf of the People of the State of Illinois (People), filed a complaint with the Board against IronHustler. The complaint alleged violations based on open dumping, disposing of waste at an improper site, and improperly developing and operating a landfill. On cross-motions for summary judgment, the Board found that IronHustler violated the Environmental Protection Act (Act) and Board regulations as the People alleged. The Board imposed an \$80,000 civil penalty on IronHustler as the People requested. IronHustler appealed the Board's decision to the Third District Appellate Court.

The Third District affirmed the Board. In its unanimous order of November 18, 2022, the court first rejected IronHustler's claim that the People failed meet their burden of proving the dumped material was "waste" or "general construction or demolition debris" as defined in the Act. The People provided the IEPA inspector's affidavit detailing the materials observed, supported by photographs. The debris contained "electrical wire, metal radiators, wood, rebar, wire conduit, metal sheeting, metal angle iron, painted brick, plywood, metal studs, metal pipe, painted concrete, slag, and ceramic tile." *IronHustler*, ¶ 15. In agreeing with the Board that there was no genuine issue of material fact, the court found that, "[o]ther than IronHustler's denials, it did not offer any proof to rebut" the People's evidence. *Id.*, ¶ 16.

Next, the Appellate Court addressed IronHustler's challenges to the \$80,000 civil penalty. IronHustler claimed that it should not have been penalized at all for "wholly past" violations that it quickly remedied. *Id.*, ¶ 20. The court noted, however, that there is "no bar to the imposition of penalties for past violations of the Act." *Id.*, ¶ 21. And as the cleanup occurred only after IronHustler "got caught dumping illegally," a penalty "serves, in part, to force future compliance." *Id.*, ¶¶ 21, 24. The court also agreed with the Board that the factors of Section 33(c) of the Act (415 ILCS 5/33(c)) supported imposing a penalty. IronHustler argued, for example, that the waste remained at the farm a short time and left behind no contamination. But the court emphasized that the waste was dumped "along the banks of and in a river" and its "mere dumping . . . interfered with or threatened the general welfare and health of the people." *Id.*, ¶ 28. And the fact that the dumping was "orchestrated by rogue employees . . . does not relieve IronHustler of responsibility" as the "standard is whether the violator 'has the capability of control over the pollution.'" *Id.*, ¶ 30 (citation omitted).

IronHustler also asserted that even if a penalty were called for, \$80,000 was too large under the factors of Section 42(h) of the Act (415 ILCS 5/42(h)). But again, the court found no fault with the Board's reasoning. For example, IronHustler had twice previously been adjudicated to have violated the Act by open dumping. "Assessment of a substantial monetary penalty would serve to urge potential violators like IronHustler to comply with the Act initially, rather than after violating it." *Id.*, ¶ 40.





INTRODUCTION

Summarized below are seven Public Acts—from the 2023 session of the 103rd General Assembly—that relate to the Board’s work.

All seven Public Acts amend the Environmental Protection Act.

For more information about these and other matters considered during the 2023 session, please consult the General Assembly’s website (<https://www.ilga.gov/>).

PUBLIC ACTS FROM 2023 SESSION OF 103RD GENERAL ASSEMBLY

❖ [Public Act 103-333](#)

Effective January 1, 2024

Public Act 103-333 amends the Environmental Protection Act by adding definitions and rulemaking provisions concerning limestone residual material generated from treating drinking water. First, Public Act 103-333 amends the definition of “pollution control facility” in Section 3.330 by adding—to the list of sites *not* considered pollution control facilities—the “portion of a mine used for the placement of limestone residual materials generated from the treatment of drinking water by a municipal utility in accordance with rules adopted under Section 22.63.” Second, Public Act 103-333 adds Section 22.63 to the Environmental Protection Act. Under Section 22.63, the Board “shall adopt rules for the placement of limestone residual materials generated from the treatment of drinking water by a municipal utility in an underground limestone mine located in whole or in part within the municipality that operates the municipal utility.” The rules “shall be consistent with the Board’s Underground Injection Control regulations for Class V wells, provided that the rules shall allow for the limestone residual materials to be delivered to and placed in the mine by means other than an injection well.” And for Section 22.63, “limestone residual material” means “limestone residual generated from the treatment of drinking water at a publicly-owned drinking water treatment plant.”



❖ [Public Act 103-93](#)

Effective January 1, 2024

Public Act 103-93 adds Section 13.10 to the Environmental Protection Act. Section 13.10 requires the Illinois Environmental Protection Agency (IEPA), by March 1, 2024, to make publicly available on its website specified information about microplastics. That information must include a description of microplastics and their effects on aquatic life and human health, as well as “any federal and State regulatory actions taken to address microplastics and their effects on aquatic life and human health.” IEPA must update the website as additional information about microplastics in Illinois becomes available. In addition, by October 1, 2024, IEPA must submit a report to the General Assembly and the Governor that provides “an overview of any [IEPA] actions relating to microplastics, a comparative analysis of actions in other states regarding microplastics in the environment, and information on the latest guidance from the United States Environmental Protection Agency.”

❖ [Public Act 103-167](#)

Effective June 30, 2023

Public Act 103-167 amended Section 17.12 of the Environmental Protection Act, within that statute’s Title IV on public water supplies. Under the amendment, beginning in 2023, each municipality with a population over 1,000,000 inhabitants must publicly post on its website data describing its progress toward replacing lead service lines. Beginning in 2024, the municipality must annually update this data on its website and continue doing so until all lead service lines within the municipality have been replaced.

❖ [Public Act 103-168](#)

Effective June 30, 2023

Public Act 103-168 amended Section 31 of the Environmental Protection Act. Section 31 concerns enforcement. The amendments allow IEPA and the person complained against to agree to an extended time period for (i) submitting a written response to the alleged violations and (ii) holding a requested meeting without a representative of the Office of the Attorney General or the State’s Attorney of the county in which the alleged violation occurred. The amendments also provide that IEPA and the person complained against may agree to a later time period, not to exceed an additional 30 days, within which the person complained against must either agree to IEPA’s proposed Compliance Commitment Agreement or reject it.

❖ [Public Act 103-172](#)

Effective January 1, 2024

Public Act 103-172 amends Sections 58.2 and 58.7 of the Environmental Protection Act, within that statute’s Title XVII on the Site Remediation Program. First, the legislation changes to \$2,500 the advance partial payment IEPA may require for its review, rather than “an amount acceptable to [IEPA], but not to exceed \$5,000 or one-half of the total anticipated costs of [IEPA], whichever sum is less.” Second, Public Act 103-172 changes the timeframe for review by IEPA or a “RELPEG” (a Licensed Professional Engineer or a Licensed Professional



Geologist) retained by (REPLEG) contracted by the remediation applicant. The existing timeframe is 60-days. The legislation maintains that timeframe but only for reviewing a single plan or report, while extending it to 90-days for multiple plans or reports submitted concurrently. Third, the legislation provides that IEPA may decline to act on a remediation applicant's submittal if the applicant has failed to pay required fees. And until all required fees are paid, any deadline for IEPA action on that submittal is tolled.

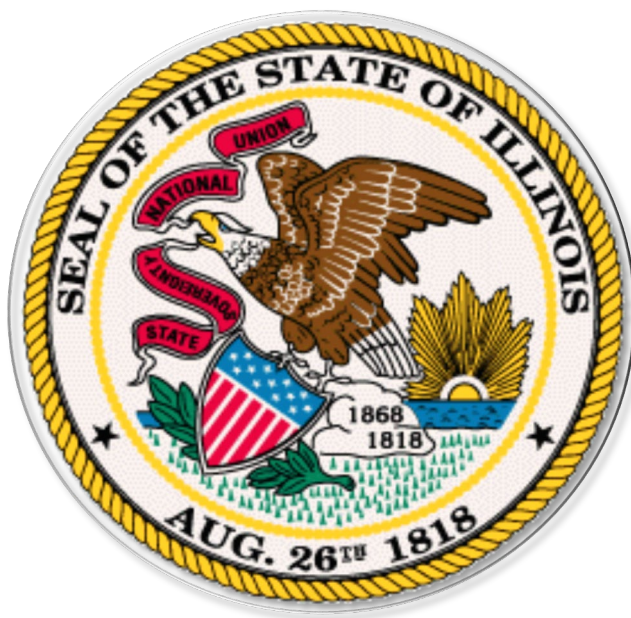
❖ **Public Act 103-230**
Effective June 30, 2023

Public Act 103-230 amended the Environmental Protection Act by adding Section 9.19. The addition allows a refrigerant designated as approved under Section 612 of the Clean Air Act (42 U.S.C. 7671k) to be used in any equipment that is "listed and installed in accordance with safety standards and use conditions imposed pursuant to such designation." In addition, the amendment expressly does not restrict any unit of local government or municipality from "authorizing or prohibiting alternative refrigerants otherwise authorized for use in the State."

❖ **Public Act 103-342**
Effective January 1, 2024

Public Act 103-342 amends Section 21(q) of the Environmental Protection Act, which prohibits conducting a landscape waste composting operation without an IEPA permit. Section 21(q) also allows specified activities without a permit if listed criteria are met. Public Act 103-342 amends some of those criteria to account for the "incidental sale of finished compost," generally by excepting it from being considered compost generated by the composting facility. The amendments define "incidental sale of finished compost" as "the sale of finished compost that meets general use compost standards and is no more than 20% or 300 cubic yards, whichever is less, of the total compost created annually by a private landowner for the landowner's own use."





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