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APPELLATE UPDATE

Fourth District Affirms Board Decision in Stroh Oil

Stroh Oil Company v. The Office of the State Fire Marshal and The Illinois Pollution Control Board, Fourth District Slip Opinion May 9, 1996.

On July 20, 1995, the Illinois Pollution Control Board (Board) affirmed the Office of the State Fire Marshal's (OSFM) final eligibility/deductibility determination on Stroh Oil Company's (Stroh) application. The determination found Stroh eligible to access the Underground Storage Tank Fund (Fund) but imposed the $100,000 deductible against Stroh. In the appeal before the Fourth District, Stroh argued that it had registered one of its underground storage tanks (UST) prior to July 28, 1989 and therefore, was subject only to the $15,000 deductible. Additionally, Stroh argued that the OSFM's failure to comply with the Forms Management Act (20 ILCS 435/1 et seq. (1994)) relieved Stroh from having to submit registration forms. Finally, Stroh argued that the Fund's deductible scheme violated the special legislation clause of the Illinois Constitution and the equal (Cont'd on p. 3)

Governor Edgar signs Livestock Facilities Management Act

On May 21, 1996, Governor Edgar signed the Livestock Facilities Management Act (HB 3151) into law as Public Act 89-456. Present at the bill signing ceremony were the bill's lead sponsors, State Senator Laura Kent Donahue and State Representative Rich Myers, as well as Pollution Control Board Chairman Claire Manning, (Cont'd on p. 2)

RULEMAKING UPDATE

Triennial Water Quality Review Amendments Adopted, R94-1(A)

On May 16, 1996, the Board adopted amendments to the Illinois water quality regulations. The amendments are based on a mandatory triennial review of the Illinois stream water quality regulations conducted by the Illinois EPA (Agency), as required under the federal Clean Water Act (33 U.S.C. §§ 1251 et seq.). The larger Agency proposal would amend Parts 302 and 304 of the Water Pollution Control regulations to revise the standards for ammonia nitrogen, mercury, and lead general water quality standards; secondary contact and indigenous aquatic life standards; and other regulations. The segment of the proceeding involved in subdocket R94-1(A) relates to mercury and lead. The segment (Cont'd on p. 4)

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Governor Edgar Signs Livestock Facilities Management Act (Cont'd from p. 1)

Dept. of Agriculture Director Becky Doyle, IEPA Director Mary Gade, and DNR Director Brent Manning. In signing the bill, Governor Edgar noted that the bill goes a long way to assure that large livestock facilities will operate as responsible and friendly neighbors to the public, notably the residents that live nearby such facilities.

HB 3151 was passed to the Governor by the Illinois Senate on Thursday May 2 by a vote of 55-0-0. The bill was previously passed in the Illinois House on Friday, April 19, 1996. Passage of the bill followed a week of negotiations that concluded with a compromise agreement worked out between State Agencies, environmentalists, the livestock industry, and the Governor's Office.

HB 3151 creates the Livestock Management Facilities Act to require owners of large livestock management facilities (feed lots) that build, expand, or modify their waste lagoons to first register their facilities with the Department of Agriculture (Department). The bill sets forth fees to be paid to the Department, plus penalties for failure to register. Further, the bill directs the Department to investigate any complaints stemming from such facilities and, if necessary, turn such complaints over to the Illinois Environmental Protection Agency. Any enforcement action would be handled through the adjudication process before the Pollution Control Board.

HB 3151 expands the current residential set-back requirements for larger feed lots, based upon the number of animals handled at the facility. The bill also requires feed lots with 1,000 or more animals to submit waste management plans to the Department. The bill further requires owners of livestock facilities to purchase insurance or a surety bond whose amount is to be determined by the Department, to cover the cleanup costs of any potential environmental spill or contamination, and requires the Department to conduct investigations of new or expanded facilities during the preconstruction, construction, or post-construction phases. HB 3151 requires such facilities to practice odor control methods as set forth in the Environmental Protection Act and related Board and/or IEPA rules, as well as to comply with all other Board and IEPA rules covering agricultural-related waste. Finally, the bill clarifies that nothing in the bill prohibits the IEPA from investigating or pursuing any enforcement action against any livestock facility suspected to be or found in violation of any provision of the Environmental Protection Act.

Specific to the rulemaking provisions, the bill creates a special Advisory Committee made up of the IEPA, the Department of Natural Resources (DNR), the Department of Public Health (DPH), and the Department of Agriculture (Department) to make recommendations to the Department for the proposed rules. The Department (which would chair the Advisory Committee) would propose the rules to the Pollution Control Board. The Department would have 6 months from the effective date of the bill to propose rules to the Board, after which the Board would have 6 months to hold public hearings and adopt final rules.

The genesis of this bill began with the creation of a task force earlier this year to study and make recommendations to the Department regarding management of very large hog, cattle, turkey, and chicken operations such as those already proposed in Cass County near Beardstown, Pike County near Kinderhook, Champaign County near Mahomet, and others. When the Task Force completed its report earlier this spring, the Department introduced two identical bills, SB 1777 (Donahue) and HB 3151 (Myers). Early on, both bills were amended to clarify that the new Act would not limit or preempt any authority over livestock management facilities provided for in the Illinois Environmental Protection Act, current enforcement authority by the IEPA, Attorney General, and State's Attorneys, and all adjudicatory responsibilities by the Board for any environmental violations and odor complaints will remain as they are.

Pollution Control Board Chairman Claire Manning outlined the rulemaking process the Board will be involved with in implementing P.A. 89-456. The process begins with the Department of Agriculture meeting with the special Advisory Group created by the Act and made up of the IEPA, DNR, and the Dept. of Public Health (DPH) to take their input on what the rules should include. The Dept. of Agriculture may also be involved in a series of public hearings over the summer and the fall to take additional input from the public on the rules. The Dept. of Agriculture then has until November 21, 1996 to propose rules to the Pollution Control Board.

Once the Pollution Control Board receives proposed rules from the Dept. of Agriculture, it will publish them in the Illinois Register. The Board will then hold formal public hearings on the proposed rules, during which the Dept. of Agriculture will offer testimony and evidence as to why the rules should be adopted in their proposed form. Members of the livestock industry, the environmental community, and any other members of the public will be invited to participate and offer additional testimony or evidence as to why the rules should be adopted as proposed, or why the rules should amended. The Board will then take all the testimony, evidence, and public comments into consideration before voting to adopt final rules to implement P.A. 89-456 (most likely in April of 1997). These rules will again be published in the Illinois Register. The rules are then sent to the Joint Committee on Administrative Rules (JCAR) for its final

review. The statutory deadline for final rules to be in place (including final action by JCAR) is May 21, 1997, exactly 1 year from the date the Governor signed the bill. Prior to final rules being adopted, all other provisions of P.A. 89-456 will be in effect.

While the Board will continue to operate in its current role in adjudicating citizens odor complaints as well as any alleged violations of existing environmental laws or regulations by such facilities that may arise, IPCB Chairman Manning stated that the Board's role in the rulemaking is intended to address any and all "gray areas," plus any other concerns that may be raised regarding the construction and operation of livestock management facilities to hopefully put in place a balanced system that works for the interests of all, the livestock industry, the environmental community, and the general public. ♦

APPELLATE UPDATE

(Cont'd from p. 1)

protection clauses of the Illinois and United States Constitutions (Ill. Const. 1970, art. IV, Sec. 13, art. I, Sec. 2; U.S. Const. amend. XIV. The Fourth District affirmed the Board's decision.

The site in question in this case contained three USTs and Stroh operated as a petroleum retailer at the site from 1936 to 1990. In 1988, Stroh decided to replace one of the existing USTs at the site with a larger UST and the OSFM approved the installation plan and issued a permit for the work. Additionally, a OSFM inspector supervised the installation. In 1989, during an inspection by the OSFM the registration status of the USTs at the site was questioned. Stroh believed the tanks had previously been registered, however a check of the records indicated that the USTs were not registered. On or about October 28, 1989, Stroh submitted registration forms to the OSFM.

In May of 1991, Stroh received permission to remove all USTs on the site and in September of 1991, all the tanks were removed. At the time of the removal Stroh realized that a petroleum release had occurred at some point in the past and Stroh notified the Emergency Services and Disaster Agency (ESDA) of the release. In April of 1994, Stroh submitted an eligibility-deductibility application to the OSFM seeking reimbursement for its corrective action costs from the Fund.

The applicable law on April 19, 1994, provided that Fund eligibility and deductibility determinations be made by the OSFM. The Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1994).) set a minimum deductible of $10,000 for all reimbursement cases, and if all USTs at the site were registered with the OSFM by July 28, 1989 the minimum amount was to be applied. If one but not all the USTs at the site were registered by July 28, 1989, the applicable deductible was $15,000. Finally, if no USTs at the site were registered, a deductible of $100,000 was applied. (See, 415 ILCS 5/57.9(b)(1), (b)(2), and (b)(3) (1994).)

Stroh in its application for access to the Fund asserted that the 1988 OSFM supervised installation-replacement of the UST constituted registration of the UST and that therefore, the applicable deductible should be $15,000. The OSFM rejected Stroh's assertion and found that the $100,000 deductible was applicable since none of the tanks was registered by July 28,1989. The Board affirmed the OSFM's ruling and the instant appeal followed.

Stroh's first argument before the Fourth District was that it had registered one of its USTs prior to July 28, 1989 and therefore, was subject only to the $15,000 deductible. However, the court rejected Stroh's argument that the OSFM's supervision of Stroh's 1988 tank installation constituted registration within the meaning of the Gasoline Storage Act. (Gas Act) (430 ILCS 15/4 (1994).)

In ruling against Stroh, the court stated that the Public Act which first required registration of USTs required registration to be "on the form provided by the [Illinois Environmental Protection Agency] Agency." (See. Pub. Act 84-1072 Sec. 1, eff. July 1, 1986.) Additionally, Public Act 85-861 which transferred the responsibility of maintaining UST records from the Agency to the OSFM required UST owners to register, "on forms provided by the [OSFM]." (See. Pub. Act 85-861 eff. September 24, 1987.) The court was further persuaded by the testimony of Keith Immke, legal counsel for the OSFM, who testified that forms had always been required which asked for basic information about the UST and which required certification that the information which was provided was true and accurate.

The court held that the inspection report filled out by the OSFM inspector during the 1988 installation of the UST was "separate and distinct" from the registration form which was to be filled out and certified to be true and accurate by the UST owner-operator. The Fourth District also agreed with the Board that although much of the information on the inspection report was identical to the information required on a registration form, the OSFM should not be required to "cull" the information from the inspection report when the owner-operator is required by statute to provide it to the OSFM. The Fourth District also rejected Stroh's argument that the newest UST (installed in 1988) was registered because Section 4(b)(6) of the Gas Act requires new tanks to be registered prior to installation. Instead, the court saw

the failure to register the tank as "another example of Stroh's failure to comply with its statutory obligations."

Stroh's next argument centered on the contention that the OSFM failed to comply with the Forms Management Program Act (Forms Act) (20 ILCS 435/1 et seq. (1994)). Stroh contended that the OSFM's failure to comply with the Forms Act relieved Stroh of the obligation to register the USTs and thus, made Stroh eligible for the $10,000 deductible. This issue was one of first impression before both the Board and the Fourth District. The Fourth District agreed with Stroh that the OSFM was in violation of the Forms Act in that the OSFM relied on a federal form for state registration which failed, among other things, to indicate the potential state penalties for failure to complete the form. However, the Fourth District went on to find, that although the Forms Act protects the public from penalties or fines associated with failure to respond to a form which does not comply with the Forms Act, the higher deductible imposed in the instant case did not constitute a penalty within the meaning of the Forms Act.

Stroh's final argument was an attack of the deductible scheme and the Fund. Stroh argued that the deductible scheme and the Fund violate the special legislation prohibition and the equal protection clause of the Illinois Constitution and the equal protection clause of the United States Constitution. The court held that both the issue of violation of the special legislation prohibition and the equal protection clauses turned on one question: were the deductible levels rationally related to a legitimate state interest? In looking for an answer to that question, the court found that Stroh failed to meet its burden in showing that the deductible scheme was irrational or arbitrary. The Fourth District stated that, "the State has a legitimate interest in determining the population of USTs within its borders through the registration process, and establishment of a deductible scheme which encourages registration is certainly a rational approach to this end." In addition, the court rejected Stroh's argument that the July 28, 1989 date for imposition of higher deductibles was arbitrary since no "lead in" period was allowed. In doing this the court stated that Stroh had been in statutory noncompliance for over two years prior to the introduction of the new scheme and that Stroh knew or should have known that it was subject to penalties for failing to register its USTs. ♦

RULEMAKING UPDATE

(Cont'd from p.1)

of the proceeding involved in subdocket R94-1(B) relates to ammonia nitrogen.

The Agency filed the proposal, docketed by the Board as R94-1, on February 24, 1994, and the Board accepted it on March 17, 1994. The Board decided to proceed on the proposal as a Section 28.2 federally required rule on May 5, 1994. The Board proposed amendments based on the R94-1 proposal for First Notice publication in the Illinois Register on September 15, 1994, and Notices of Proposed Amendments appeared in the Register on September 30, 1994. The Board held a pre-hearing conference on the proposal in on November 10 and 22, 1994 and January 26 and November 8, 1995. The Board severed the docket on January 4, 1996, when it proposed the subdocket R94-1(A) amendments for First Notice publication in the Illinois Register. A Notice of Proposed Amendments appeared in the January 26, 1996 Register. The 45-day public comment period ended on March 11, 1996. The Board proposed the amendments for Second Notice review by the Joint Committee on Administrative Rules (JCAR) on March 21, 1996. The Second Notice period ended on March 23, 1996, when JCAR voted no objection to the amendments.

The amendments became effective on May 24, when filed with the Secretary of State. A Notice of Adopted Amendments appeared in the June 7, 1996 issue of the Illinois Register (at 20 Ill. Reg. 7682). Direct questions to Diane F. O'Neill, at 312-814-6062 (Internet address: doneill@pcb016r1.state.il.us). Request copies of Board orders from the Board's Chicago receptionist, at 312-814-3620. Please refer to docket R94-1(A). ♦

PM_{10} Cleanup Amendments Adopted, R96-5

On May 16, 1996, the Board adopted amendments to the Illinois air pollution control rules pertaining to particulate matter having a diameter of less than 10 microns (PM_{10}). The amendments address USEPA concerns over the existing state PM_{10} rules. The amendments make a number of clarifying amendments to the regulations. They also add discrete opacity limits for basic oxygen furnace shop, coke oven combustion stack, and electric arc furnace roof ventilator emissions.

The federal Clean Air Act (CAA), as amended in 1990, requires the submission of a state implementation plan (SIP) for PM_{10} for all areas classified by USEPA as moderate nonattainment for PM_{10}. The Lake Calumet, McCook, and Granite City areas in Illinois are so classified by USEPA. Based on an Agency proposal, the Board adopted the PM_{10} regulations for those areas on April 9, 1992, in docket R91-35. (See issue 450, Apr. 22, 1992.) The Agency submitted the rules to USEPA for SIP review, and USEPA granted its conditional

approval of the SIP on November 18, 1994 (at 59 Fed. Reg. 59653), after receiving a March 2, 1994 commitment letter by the Agency to correct certain deficiencies in the program within one year. USEPA conditioned the approval because it perceived certain deficiencies in the Illinois PM_{10} SIP submittal. These deficiencies were described by USEPA in the Federal Register as summarized below:

1. Illinois had underestimated certain emissions of Granite City Steel, Acme Steel, LTV Steel, CWM Chemical Services, CPC International, and GM Electromotive Division;

2. Illinois' submittal had not adequately addressed maintenance of the national ambient air quality standard (NAAQS) for PM_{10} in the nonattainment areas;

3. Section 212.443(a) of the rules exempted coke ovens from the opacity limitations, which served to delay enforcement of mass loading violations by LTV Steel;

4. The rules that apply to electric arc furnace roof vents of American Steel Foundries were unenforceable because the stacks could not be tested;

5. Section 212.107 of the rules could have been misinterpreted as requiring the use of Method 22 to test opacity limits;

6. The measurement methods set forth in each of Sections 212.107 through 212.110 were not always consistent (and should have been integrated into Section 212.110); and

7. Several exemptions from mass limitations intended for small, well-controlled sources with no visible emissions could have been misinterpreted to exclude other sources (and should be clarified as to what sources and when they apply in the opinion of USEPA).

The Agency proposed and the Board accepted these amendments pursuant to the "fast-track" provisions of Section 28.5 of the Act. Section 28.5 requires the Board to proceed within set time-frames toward the adoption of the proposed amendments. The Board lacks any discretion under the statute to adjust these time-frames under any circumstances. Under Section 28.5(o), the Board must have adopted the proposal for Second Notice within 130 days on receipt of the proposal from the Agency. Section 28.5(p) requires that the Board must adopt and file final rules based on the proposal within 21 days of when it receives a Certificate of No Objection from JCAR.

On November 14, 1995, the Board proposed the amendments to the Illinois PM_{10} regulations for First Notice and scheduled hearings on the proposed rules. A Notice of Proposed Amendments appeared in the December 1, 1995 Illinois Register. The 45-day First Notice public comment period expired on January 15, 1996. A public hearing occurred on January 5, 1996 and two subsequent scheduled hearings were canceled because the level of public interest did not warrant proceeding with them. The record closed on January 31, 1996. The Board proposed the amendments for Second Notice review by the Joint Committee on Administrative Rules (JCAR) on March 7, 1996. JCAR voted no objection to the amendments on April 23, 1996, leaving the Board free to adopt them without substantive revision.

The amendments were effective when filed with the Secretary of State on May 22, 1996. Notices of Adopted Amendments appeared in the June 7, 1996 issue of the Illinois Register (at 20 Ill. Reg. 7590 and 7605, for Parts 211 and 212, respectively. Direct questions to Marie E. Tipsord, at 312-814-4925 or 618-498-9803 (Internet address: mtipsord@pcb016r1.state.il.us). Request copies of Board orders from the Board's Chicago receptionist, at 312-814-3620. Please refer to docket R96-5. ♦

Air Permit Requirements Proposal Filed, Accepted By Board, R96-17

The Illinois EPA (Agency) filed a rulemaking proposal on May 10, 1996 that seeks to amend the Illinois air permit regulations. Specifically, the proposal would amend the list of emission units and activities that are exempt from the permit requirements. It would also amend the rules to enhance consistency between the exemptions and the insignificant activities provision under the federally-mandated Clean Air Act Permit Program (CAAPP). The Board found that the petition fulfilled the applicable procedural requirements and accepted it by an order dated May 16, 1996.

Direct questions to Marie E. Tipsord, at 312-814-4925 or 618-498-9803 (Internet address: mtipsord@pcb016r1.state.il.us). Request copies of Board orders from the Board's Chicago receptionist, at 312-814-3620. Please refer to docket R96-17. ♦

SIGNIFICANT FEDERAL ACTIONS

The Board continues its series of reports on recent federal actions from the Federal Register that are of interest to the Board and the regulated community. Below are highlighted 34 such actions that occurred in May, 1996:

Advance Notice of Proposed HSWA Corrective Action Rules for Releases of Hazardous Waste at Solid Waste Management Facilities

On May 1, 1996 (61 Fed. Reg. 19431), USEPA published an advance notice of proposed rulemaking for corrective actions for releases at hazardous waste management facilities. USEPA stated that it proposed the advance notice to outline its strategy for establishing the regulations, to provide a context for the corrective action program by setting forth the evolution since a 1990 proposal, and to describe program improvements under consideration and highlight areas of flexibility.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) mandates that USEPA require corrective action for releases of hazardous waste and hazardous waste constituents at all solid waste management facilities seeking RCRA permits. Where corrective action cannot be completed prior to permit issuance, HSWA requires USEPA to impose corrective action conditions in issuing the permit. HSWA further requires off-site corrective action unless the permit applicant demonstrates that it was unable to obtain the necessary authorizations for such action. USEPA codified corrective action requirements on July 15, 1985 (50 Fed. Reg. 28702) that reiterated the statutory language and modified those requirements on December 1, 1987 (52 Fed. Reg. 45788). USEPA proposed detailed corrective action requirements on July 27, 1990 (55 Fed. Reg. 30798), which would have set forth the technical and procedural requirements for remedial actions, similar to the National Contingency Plan (NCP) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). USEPA stressed the need for site-specific flexibility in selecting remedial actions. USEPA finalized only limited segments of the 1990 proposal in the corrective action management unit (CAMU) rules adopted on February 16, 1993 (58 Fed. Reg. 8658). (See item in issue 504, May, 1996 re proposal relating to contaminated media.) ♦

Proposed Exclusion of HFC-43-10mee and HCFC-225ca and cb from the CAA Definition of VOM

On May 1, 1996 (61 Fed. Reg. 19231), USEPA proposed the exemption of two additional compounds from the definition of volatile organic compound (VOC, the same as "volatile organic material" or "VOM" in the Illinois regulations). One compound is a hydrofluorocarbon, HFC-43-10mee, whose chemical name is 1,1,1,2,3,4,4,5,5,5-decafluoropentane (CASE number 138495-42-8). The other is two isomers of a hydrochlorofluorocarbon, HCFC-225ca, whose chemical name is 3,3-dichloro-1,1,1,2,2-pentafluoropropane (CASE number 422-56-0), and HCFC-225cb, whose chemical name is 1,3-dichloro-1,1,2,2,3-pentafluoropropane (CASE number 507-55-1). The exclusions would be based on USEPA's determination that these compounds participate negligibly in the formation of tropospheric ozone. The hydroxyl ion formation reaction rate constants for these compounds are one to two orders of magnitude lower than the constant for ethane. USEPA undertook this action in response to petitions from Asahi Glass America, Inc., on behalf of HCFC-225ca and HCFC-225cb, and E.I. DuPont DeNemours & Co., on behalf of HFC-43-10mee. ♦

Notice of FIFRA Voluntary Withdrawal of 10 Pesticide Uses for Propargite

On May 3, 1996 (61 Fed. Reg. 19936), USEPA granted the voluntary withdrawal of 10 registered uses of the pesticide propargite (trade names Omite, Ornamite, and Comite) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). USEPA had expressed concerns over the cancer risks for persons eating treated foods. USEPA classified it as a B_2 human carcinogen. The overall lifetime risk of cancer from consuming propargite-treated commodities was rated by USEPA as 1.6×10^{-5}. Propargite was registered for use in 1969 for the control of mites on agricultural commodities and ornamental plants. Uniroyal Chemical Company, the registrant, petitioned for the deletion of the 10 uses: apples, apricots, cranberries, figs, green beans, lima beans, peaches, pears, plums, and strawberries. ♦

Proposed Amendments to CAA Perchloroethylene Dry Cleaning Facilities NESHAP

On May 3, 1996 (61 Fed. Reg. 19887), USEPA proposed amendments to the 40 CFR 63, subpart M national emission standards for hazardous air pollutants (NESHAP) applicable to perchloroethylene dry cleaning facilities. The proposed amendments would allow the continued use of solvent transfer machines installed between December 9, 1991, when USEPA proposed the NESHAP, and September 22, 1993.

USEPA adopted the NESHAP under the federal Clean Air Act (CAA) on September 22, 1993 (58 Fed. Reg. 49354) and amended it on December 20, 1993 (58 Fed. Reg. 66287). The International Fabricare Institute sued USEPA in the District of Columbia circuit court because the original proposed rule did not prohibit the use of transfer machines for emissions control; the final

rule would have required these facilities to purchase a second system, dry-to-dry machines. USEPA stated that it did not believe that new transfer machines were going into use, so it did not propose to ban them. USEPA entered into a settlement agreement that promised to allow the transfer machines installed during the pendency of the regulation--i.e., between December 9, 1991 and December 20, 1993--to continue to operate. The proposed amendments would allow their continued use on a basis similar to transfer machines in existence prior to December 9, 1991. The proposal would not affect the status of transfer machines installed after adoption of the final rule on December 20, 1993; those are still prohibited from operation.

(Note: Under Section 39.5 of the Act, the Agency may implement federal NESHAP requirements directly through permitting without rulemaking action by the Board. That means that these amendments will become effective in Illinois when adopted by USEPA.) ♦

Approval of Madison County CAA SO_2 SIP Revision

On May 6, 1996 (61 Fed. Reg. 20147), USEPA adopted a direct final rule approving a revision to the Illinois federal Clean Air Act (CAA) sulfur dioxide state implementation plan (SO_2 SIP) for Madison County. The subject matter is SO_2 emissions from three industrial facilities in Granite City: the Nestle Beverage Company, Reilly Industries, and the Granite City Steel Division of the National Steel Corporation. The SIP revision approval is effective on July 5, 1996 unless expressly withdrawn before that time. The accompanying notice of proposed rule appeared in the same issue of the Federal Register (61 Fed. Reg. 20201).

USEPA proposed to designate portions of Madison County as nonattainment for SO_2 on September 22, 1992 (57 Fed. Reg. 43846) based on emissions modeling. USEPA announced its intent to defer air quality designation of the area on December 21, 1993 (58 Fed. Reg. 67336) while the state sought to revise the area SO_2 SIP. The Illinois EPA (Agency) issued federally-enforceable state operating permits (FESOPs) for the three facilities in February and March, 1995. The Agency then submitted a SIP revision to USEPA on March 14, 1995. After review of the SIP submittal, USEPA determined that the FESOPs issued to the facilities rectify the modeled SO_2 ambient air quality violations for the area and approved the SIP revision. ♦

Conditional Approval of Metro East CAA VOM Emissions Regulations

On May 7, 1996 (61 Fed. Reg. 20455), USEPA issued a direct final rule that granted conditional approval of the Illinois federal Clean Air Act (CAA) volatile organic material (VOM, the same as "volatile organic compound" or "VOC" in the federal regulations) emissions regulations for the metropolitan East St. Louis (Metro East) area. The Illinois EPA (Agency) submitted the rules to USEPA for approval on October 21, 1993 and revised the submission on May 26, 1995. The approval is effective July 8, 1996 unless expressly withdrawn before that date. USEPA conditioned the approval. The accompanying notice of proposed rule appeared in the same issue of the Federal Register (61 Fed. Reg. 20504).

The approved regulations are the 35 Ill. Adm. Code 219.Subparts PP, QQ, RR, and TT, as amended by the Board in R93-9, the omnibus RACT cleanup rulemaking, and in R94-21, the Part IV 15% reduction of pollution (ROP) proceeding. They are applicable to major sources having a potential to emit 100 tons per year or more of VOC that are not covered by federal control technology guidelines (non-CTG sources). USEPA faulted the rules because they exempt bakeries and sewage treatment plants. The R94-21 regulations included provisions expressly applicable to bakery ovens, but P.A. 89-79 explicitly preempted those rules effective June 30, 1995. USEPA would require that Illinois establish non-CTG source requirements applicable to these entities. USEPA noted further that the rules allow a facility to use an alternative control strategy by capacity or production limitations. It deemed these provisions approvable because USEPA has the prerogative of deeming a permit "not federally enforceable" in a letter to the Agency, which would remove the protection of the operating permit from the source. ♦

EPCRA Extremely Hazardous Substance and Reportable Quantity Lists Amended

On May 7, 1996 (61 Fed. Reg. 20473), USEPA amended the Emergency Planning and Community-Right-to-Know Act (EPCRA) extremely hazardous substance (EHS) and reportable quantity (RQ) lists. USEPA raised the RQs for 204 EHSs in implementing one of its regulatory reform commitments in its June 1, 1995 Report to the President. Accompanying amendments delete four chemicals from the list in response to a judicial order.

Under EPCRA and the implementing 40 CFR 355 regulations, any facility that manages an EHS above its threshold planning quantity (TPQ) must notify certain state and local governmental entities and engage in emergency planning. If a release of a quantity of an EHS above its RQ occurs, EPCRA requires immediate reporting of that fact to federal, state, and local officials. EHSs are acutely toxic substances that cause severe short- and long-term toxic effects after a single,

brief exposure. EPCRA provides that the RQ is one pound for any EHS for which USEPA has not assigned an RQ. USEPA had not yet established RQs for 204 EHSs. On August 30, 1989 (54 Fed. Reg. 35988), USEPA proposed RQs for 232 EHSs. The amendments adopt RQs for the 204 substances at their TPQs.

USEPA initially published the list of EHSs on November 17, 1986 (51 Fed. Reg. 4150). It simultaneously proposed the deletion of 40 substances from the list, but announced on April 22, 1987 (52 Fed. Reg. 13388) that it was deferring further action on the deletions pending further evaluation of their toxic effects. As a result of litigation, in A.L. Laboratories, Inc. v. EPA, 674 F. Supp. 894 (D.D.C. 1987), the court ordered USEPA to remove several chemicals from the EHS list. USEPA proposed the deletions of the four chemicals, phosphorus pentoxide, diethylcarbamazine citrate, fenitrothion, and tellurium, on October 12, 1994 (59 Fed. Reg. 51816). ♦

Meeting on the Development of a Screening Program for Environmental Endocrine Disruptors

On May 8, 1996 (61 Fed. Reg. 20814), USEPA announced a meeting on May 15 and 16, 1996 on developing a program for screening environmental endocrine disruptors. USEPA stated that it has invited 20 members of industry, the environmental community, academia, and government to the meeting. USEPA noted that the Senate had recently passed a bill that would amend the Safe Drinking Water Act to require the establishment of a screening and testing program for environmental estrogens within two years, with discretion to open the program to other environmental endocrine disruptors. S. 1316 specifically targets active and inert ingredients in pesticide products for screening. USEPA stated that it had recently proposed test guidelines for reproductive and developmental toxicity, but called the screening of all the existing 600 pesticide products and 80,000 chemical products "an enormous challenge." ♦

Requirements for State CWA Programs Amended to Require Jurisdiction for Third Party Appeals

On May 8, 1996 (61 Fed. Reg. 20971), USEPA amended the minimum federal requirements for state Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) permit programs. The amendments require a state seeking authorization or continued authorization of its NPDES permit program to provide an opportunity for judicial review on permit decisions, including permit approvals, "that is sufficient to provide for, encourage, and assist public participation in the permitting process."

USEPA stated that it issued the amendments because it was aware of instances where citizens were barred from challenging state-issued permits. USEPA stated that the ability to participate in appeals of permit decisions "will promote effective and meaningful public participation and will minimize the possibility of unfair and inconsistent treatment of similarly situated people potentially affected by State permit decisions." USEPA said that a state must give a right to seek review that is equivalent to the right available in a federal court. This means that a state cannot narrowly restrict the class of persons who may seek review, such as by requiring a demonstrable injury or a particular property interest that the discharge may effect. USEPA noted that the amendments leave the states free to impose reasonable requirements for exhaustion of administrative remedies before a court has jurisdiction to hear an appeal of an NPDES permit decision.

(Note: Legislative action will be required to confer this third-party right of appeal in Illinois. In Citizens Utilities Co. of Illinois v. PCB, 265 Ill. App. 3d 773, 639 N.E.2d 1306 (3d Dist. 1994), the Third District Appellate Court determined that a third party cannot appeal an Illinois EPA (Agency) determination to grant a permit. The court held that the Board lacked subject matter jurisdiction because the Environmental Protection Act does not authorize appeals of an Illinois EPA (Agency) grant of a permit. The court followed the Supreme Court's conclusion to this effect in Landfill, Inc. v. PCB, 74 Ill. 2d 541, 387 N.E.2d 258, (1978) which held that the act confers no authority for the Board to hear a third party appeal of a grant of a land permit. Former Board procedural rule 105.102 provided for third-party appeals of Agency NPDES permit decisions, but the court held that a Board procedural rule was inadequate to confer jurisdiction on the Board in the absence of statutory authorization.) ♦

Amendments to Small Steam Generating Unit NSPS

On May 8, 1996 (61 Fed. Reg. 20734), USEPA amended the standards of performance for new stationary sources (NSPS) for small industrial, commercial, and institutional steam generating units. The amendments exclude certain units from the small steam generating unit category for sulfur dioxide (SO_2) and particulate matter (PM) when used for combustion research. USEPA undertook this action after reexamination after the filing of litigation in Babcock and Wilcox Co. v. EPA, no. 90-1509 (D.C. Cir., in which an exemption was sought for units of 14.6 megawatts (MW; 50 million Btu/hr) capacity or less. USEPA examined the possible exclusion and concluded

that the use of these units for combustion research has a limited environmental effect. ♦

ix-Month Delay Adopted for CAA Title V Permit Applications

On May 10, 1996 (61 Fed. Reg. 21370), USEPA adopted a direct final rule that delays the deadline for submission of Title V permit applications by about six months, until November 15, 1996. USEPA adopted the delay to avoid unnecessary paperwork for owners and operators of major sources and for the state agencies that process the applications. The accompanying notice of proposed rule appeared in the same issue of the Federal Register, at 61 Fed. Reg. 21414. USEPA stated that it would withdraw the rule if it receives significant adverse public comment.

The section 112(j) permit would impose equivalent emissions limitations by permit. Under section 112(e) of the CAA, USEPA was to have established maximum achievable control technology standards for hazardous air pollutants (HAPs) from 40 of certain listed source categories by 1992, for another 25% of the listed categories by 1994, for 50% of the categories by 1997, and for the remaining categories by 2000. These are called 2-year, 4-year, 7-year, and 10-year standards. Under section 112(j) of the federal Clean Air Act (CAA) required owners and operators of major category sources in states with approved CAA Title V permit programs to file an application for a Title V permit within 18 months of the date when USEPA was required to adopt a section 112(d) emission standard for the category of sources but failed to do so. The extension of the application deadline applies to the 4-year sources, for which USEPA stated it intends to complete developing MACT standards within 18 months of the statutory deadline--i.e., by May 15, 1996. USEPA stated that if the sources subject to the original deadline had submitted permit applications, an unnecessary burden would have resulted when it adopts the MACT standard for those sources. ♦

Approval of Illinois Vehicle I/M Program

On May 10, 1996 (61 Fed. Reg. 21405), USEPA proposed approval of portions of the Illinois vehicle inspection and maintenance (VI/M) program. USEPA proposed conditional approval of various other portions of the program based on the commitment of the Illinois EPA (Agency) to provide additional documentation within specified times. The program involved is the enhanced VI/M program for the metropolitan Chicago and East St. Louis areas. The state is required under the federal Clean Air Act (CAA) to implement the program for the Chicago area by 2007; the required implementation date for the Metro East area is 1996. The program is part of the state's ozone implementation plan. USEPA stated that the enhanced VI/M program will reduce volatile organic material (VOM) emissions by 38 tons per day in both areas.

The Board adopted regulations pertaining to the vehicle inspection and maintenance program under the Environmental Protection Act (Act; 415 ILCS 5) and the Vehicle Emissions Inspection Law of 1995 (VEIL; 625 ILCS 5). In docket R94-19, using the "fast-track" procedure of Section 28.5 of the Act and Section 13B-20 of VEIL, the Board adopted vehicle engine exhaust emission standards on December 1, 1994. In docket R94-20, using the "identical-in-substance" procedure of Sections 7.2 and 28.4 of the Act and Section 13B-20(a) of VEIL, the Board adopted fuel system evaporative emissions standards on the same date. The Agency submitted the regulations to USEPA for SIP review, together with other required elements of the Illinois VI/M program, on June 29, 1995. On April 22, 1996, the Agency submitted a letter of commitment to submit the required further documentation within one year of when USEPA grants final conditional approval for the program.

(Note: Issue 504, May, 1996 reported in error that the April 9, 1996 (61 Fed. Reg. 15715) direct final rule approving the state implementation plan (SIP) for the Illinois vehicle inspection and maintenance program (VI/M) was related to the R95-19/R95-20 amendments. Reexamination of the April 9 notice indicates that that approval, which became effective on June 10 and was based on a June 26, 1995 submittal by the Agency, related to the VI/M regulations as they stood after the April 7, 1992 amendments in R90-20, the diesel exhaust opacity proceeding; the June 29, 1990 adoption of P.A. 86-1433; and the June 15, 1992 adoption of procedural rules by the Agency (at 16 Ill. Reg. 10230, June 26, 1992). That program was in partial response to a 1989 agreement among USEPA, the State of Illinois, and the State of Wisconsin.) ♦

Board of Scientific Counselors Established to Study USEPA Research Efforts

On May 10, 1996 (61 Fed. Reg. 21463), USEPA announced the formation of a federal advisory committee, the Board of Scientific Counselors (BOSC), to provide USEPA with expert scientific and engineering advice. BOSC will evaluate USEPA's scientific and engineering research programs, laboratories, and research management practices and make specific recommendations to USEPA for improvements. The first meeting of BOSC was to occur in mid-June, 1996. ♦

ederal Grants Available for Lead Abatement Program Development

On May 10, 1996 (61 Fed. Reg. 21463), USEPA announced the availability of grants funds for the development of state accreditation and certification programs for lead-based paint abatement professionals. Approximately $12.5 million is available to states to develop programs for training and certifying persons involved in lead abatement. This is the third year that funds have been made available for this purpose. USEPA stated that there are no matching share requirements to obtain funds. The funds are available pursuant to section 404(g) of the Toxic Substances Control Act (TSCA).

On May 14, 1996 (61 Fed. Reg. 24407), the Department of Housing and Urban Development (HUD) similarly announced the availability of funds for state lead abatement programs: $50 million for abatement in eligible housing units (Category A) and $4 million for abatement in eligible housing units on Superfund sites (Category B). HUD will award 10 to 12 grants under section 1011(a) of the Lead-Based Paint Hazard Reduction Act of 1992 of between $1 and $6 million each for Category A sites and a maximum of 8 grants of a half to $2 million each for Category B sites. The maximum allowable project duration is 36 months. Like the USEPA grant program, the HUD program is intended to help build national lead abatement capacity. HUD stated that this was its fourth round of grants; it also awarded $279 million in 64 lead abatement grants to 56 grantees in fiscal years 1992, 1993, and 1994.♦

Final Draft Permit Improvement Team Recommendations Available

On May 10, 1996 (61 Fed. Reg. 21855), USEPA announced the availability of the final draft recommendations of the Permits Improvement Team (PIT) and published the full text of the "PIT Concept Paper on Environmental Permitting and Task Force Recommendations." USEPA formed PIT in July, 1994 to evaluate its various permitting programs (RCRA, UIC, NPDES, etc.), both those programs its administered directly and those administered through the states. After further review by other federal advisory committees to determine consistency with such organizations as the Common Sense Initiative and the National Environmental Justice Advisory Council and making any changes, the final recommendations will be submitted to USEPA Secretary Browner for consideration. USEPA will implement the recommendations upon her endorsement. ♦

Environmental Impact Statements Available for Federal Projects in Illinois

On May 13, 1996 (61 Fed. Reg. 22057), USEPA announced the availability of a draft economic impact statement relating to the federal aid for the Route 310/U.S. 67 Expressway from Godfrey to Jacksonville (EIS no. 960207). On May 24, 1996 (61 Fed. Reg. 26177), USEPA announced the availability of a final supplement to the economic impact statement relating to the construction of the Sugar Creek municipal water supply reservoir (EIS no. 960230).♦

Drinking Water Information Collection Rule for Monitoring Microorganisms and Disinfection Byproducts Requirements Adopted

On May 14, 1996 (61 Fed. Reg. 24353), USEPA adopted an information collection rule (ICR) under the federal Safe Drinking Water Act (SDWA) relating to monitoring for microorganisms and disinfection byproducts in drinking water. USEPA is requiring the monitoring for, among other things, specific pathogenic microorganisms (cryptosporidium, giardia, and viruses) and disinfections byproducts (DBPs) and submission of data on plant operations. USEPA will use the information together with current research to determine whether amendments are necessary to the existing drinking water filtration and disinfection regulations or whether new rules are necessary. Surface water supply systems that serve 100,000 or more persons and groundwater systems that serve 50,000 or more persons must engage in the monitoring and submit the required information. USEPA will fund surveys of smaller supply systems. The ICR is effective June 18, 1996, and it will expire at the end of 2000.

USEPA estimated that the total cost of the regulation will be $129 million. USEPA broke the estimated costs down into five categories:

Startup cost	$18,000 per system (average) $7.6 million nationally for 422 systems
Microbial monitoring	$39,000 per system (average) $17.2 million for 440 systems
DBP monitoring	$50,000 per groundwater treatment site (average) $69,000 per surface water treatment site (average) $37.5 million for 292 systems that treat water and 24 systems that purchase treated water
Data Reporting	$14,000 per treatment plant (average) $9.4 million

TOC Monitoring and	$150,000 to $750,000 per study
Treatment Studies	$57 million

(Note: The Board will include this action in the list of federal actions covered by the SDWA update docket for the period January 1 through June 30, 1996.) ♦

Listing of FY 96 Candidate Pesticides for FIFRA Reregistration

On May 15, 1996 (61 Fed. Reg. 24490), USEPA published a listing of 50 candidate pesticide reregistration cases, of which USEPA intends to complete reregistration eligibility decisions (REDs) for 40. USEPA sought public comment and data on the cases. It seeks to prioritize its efforts to concentrate first on those that pose the greatest risk or high exposure. The list of 50 cases for FY 1996 included, among others, alachlor, aldicarb, chlorpyriphos, DEET, gibberellic acid, parquat, phorate, and strychnine. The candidate list for FY 1997 included 2,4-D, acrolein, carbofuran, endosulfan, formaldehyde, malathion, methomyl, pentachlorophenol, pine oil, pipronyl butoxide, and pyrethrin. USEPA indicated that it had already begun to assemble scientific assessments on 17 other candidates.

USEPA explained that 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) mandate reregistration of pesticides containing an active ingredient originally registered before November 1, 1984. In 1988 there were about 600 groups of related active pesticide ingredients, or "cases," which represented 1,150 active ingredients and 45,000 formulated products. Since then, over 200 cases representing 20,000 products have been canceled either because the registrants failed to support the registrations or through USEPA actions to cancel them. Of the 382 remaining cases for which there is support, USEPA has rendered eligibility decisions on 129 cases. In FY 1995, USEPA completed 40 REDs, including ones for aliphatic alcohols, benzocaine, diquat, metolachor, and picloram. ♦

FIFRA Experimental Use Permits Affecting Illinois

On May 15, 1996 (61 Fed. Reg. 24495), USEPA announced the issuance of two experimental use permits under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that apply in Illinois. One, granted to AgrEvo USA Company, will allow the use of about 4,000 pounds of an herbicide, monoammonium 2-amino-4-(hydroxyethylphosphinyl)-butanoate on about 5,000 acres of corn and 400 acres of soybeans in 34 states, including Illinois, to evaluate the control of perennial grass and broadleaf weeds. The other, granted to Rhone-Poulenc AG Company, will allow the use of about 1,600 pounds of the insecticide 5-amino-1-2,6-dichloro-4-(trifluoromethyl)phenyl-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1-H-pyrazolecarbonitrile on about 240 acres of field corn in seven states, including Illinois, to evaluate control of corn rootworm. ♦

Lcientific Advisory Board Meetings Scheduled

On May 16, 1996 (61 Fed. Reg. 24791), USEPA announced meetings for two of its Scientific Advisory Board's (SAB). The Human Exposure and Health Subcommittee (HEHS) of the Integrated Risk Project was scheduled to meet in Washington, D.C. on June 13 and 14, 1996 to discuss human exposure to environmental pollutants and the potential for risk reduction. USEPA has charged the SAB with developing a scientifically-based ranking system for environmental problems, for identifying which emerging risks warrant specific attention, for assessing the risk reduction potential of strategies for dealing with environmental problems, and for identifying the uncertainties relating to risk rankings. HEHS is one of several SAB panels working on this project. The Environmental Engineering Committee (EEC) was scheduled to meet June 11 through 13, 1996 in Cincinnati, Ohio to evaluate the technical aspects of the Superfund Innovative Technology Evaluation (SITE) Program. The objective is to review the SITE program, evaluate how well program objectives were achieved, identify the impact of the program, determine how well the program has supported commercialization of technology, and to make specific recommendations to USEPA. ♦

Expanded FIFRA Pesticide Use for Oil of Mustard

On May 17, 1996 (61 Fed. Reg. 24893), USEPA amended its regulations to exempt allyl isothiocyanate, a component of oil of mustard, from the requirement for a tolerance for residues in raw agricultural commodities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The exemption will allow the expanded use of oil of mustard for food and feed uses. USEPA noted that allyl isothiocyanate is on the Food and Drug Administration's (FDA) Generally Recognized as Safe (GRAS) list, and that it is a component of household mustard products in concentrations up to 1.8 percent by weight. USEPA first registered it as a dog and cat repellent in 1962 and for non-food and non-feed uses as an insecticide and repellent in 1991. The exemption will allow the use of allyl isothiocyanate on fruits, vegetables, nuts, berries,

and grains up in concentrations to 0.2 percent by weight. ♦

ield Testing of Genetically-Engineered Microbial Pesticides

In response to a request filed by DuPont Agricultural Products, on May 17, 1996 (61 Fed. Reg. 24934), USEPA sought public comment on small-scale field testing of a genetically-engineered microbial pesticide. DuPont proposed testing the efficacy of a baculovirus, Autographa Californica Multiple Nuclear Polyhedrosis Virus (AcMNPV), that has been engineered to encode the insect-specific toxin from a scorpion, Leiurus quinquestriatus hebraeus. The field testing would occur in seven states, including Illinois, on cotton and cabbage against the cabbage looper, tobacco budworm, cotton bollworm, beet armyworm, and diamondback moth insect pets.

(Note: As described in issue 504, May, 1996, USEPA published a similar notice in response to a request filed by American Cyanamid Company, on March 22, 1996 (61 Fed. Reg. 11838). In that notice USEPA sought public comment on small-scale field testing of AcMNPV that has been engineered to encode the insect-specific toxin from a different scorpion: Androctonus australis. That field testing would occur in 12 states, including Illinois, on cotton, tobacco, and leafy vegetables against the cabbage looper and tobacco budworm insect pets.) ♦

Final CAA CTG Released for the Wood Furniture Manufacturing Category

On May 20, 1996 (61 Fed. Reg. 25223), USEPA released a final control technology guideline (CTG) for emissions for volatile organic material (VOM) from wood furniture manufacturing operations located in ozone nonattainment areas. The CTG represents reasonably available control technology (RACT) for control of these emissions from wood furniture finishing, cleaning, and washoff operation sources. USEPA noted that it adopted the wood furniture manufacturing operations national emission standards for hazardous air pollutants (NESHAP) on December 7, 1995 (60 Fed. Reg. 62930). (See issue 501, Feb., 1996.) ♦

CAA NAAQS for Sulfur Dioxide Unchanged

On May 22, 1996 (61 Fed. Reg. 25566), USEPA determined to make no substantive revision in the primary and secondary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). However, USEPA did make "several minor technical changes." Section 109 of the federal Clean Air Act (CAA) requires USEPA to establish primary and secondary national ambient air quality standards for specified contaminants, including SO_2. A primary standard is directed at protection of human health, and a secondary standard is based on effects on the public welfare (including the environment). Section 109 also requires periodic review and possible revision of the established standards.

USEPA stated that it adopted the existing primary and secondary NAAQSs for SO_2 on April 30, 1971 (36 Fed. Reg. 8186). The primary NAAQS for SO_2 is 365 mg/m^3 (0.14 part per million (ppm)) on a 24-hour average basis or 80 mg/m^3 (0.030 parts per million (ppm)) annual arithmetic mean. The secondary NAAQS for SO_2 is 1300 mg/m^3 (0.50 ppm) on a 3-hour average basis, not to be exceeded more than once per year. The national annual average SO_2 levels range from less than 0.004 ppm in remote rural areas to over 0.03 ppm in the most polluted urban areas. Local maximum levels can exceed 0.4 ppm on a 24-hour average basis, 1.4 ppm on a 3-hour basis, and 2.3 ppm on a 1-hour basis.

The technical amendments clarify that the averaging periods are sequential and do not overlap, the standards are now expressed in ppm rather than mg/m^3, and USEPA incorporated express data completeness and rounding conventions into the standards. In determining not to revise the NAAQS for SO_2, USEPA further determined that existing SO_2 emission standards are sufficient so that a program for regulating short-term peak ambient concentrations under section 303 of the CAA is not necessary. Nevertheless, USEPA plans to propose section 303 program standards to help guide the states in dealing with episodic events. It intends to propose a 0.60 ppm 5-minute "concern level" and a 2.0 ppm 5-minute "intervention level" to aid in state remedial responses.

(Note: As stated in issue 498, Nov., 1995, USEPA published a similar determination not to revise the identical primary and secondary NAAQS for nitrogen dioxide (NO_2) on October 11, 1995 (60 Fed. Reg. 52874). The primary and secondary NAAQSs for NO_2 were established on April 30, 1971 (36 Fed. Reg. 8186) and reviewed and reaffirmed by USEPA on June 19, 1985 (50 Fed. Reg. 25532). The present NAAQS for NO_2 is 100 micrograms per cubic meter of air (mg/m^3), or 0.053 parts per million (ppm), annual arithmetic average. Typical peak NO_2 levels across the country range from 0.007 to 0.061 ppm, the highest hourly values range from 0.04 to 0.54 ppm. All areas of the country are currently in compliance with the NAAQS for NO_2. Los Angeles is the only area that has any history of nonattainment with that standard.) ♦

Stratospheric Ozone: Significant New Alternatives Policy (SNAP)

On May 22, 1996 (at 61 Fed. Reg. 25585), USEPA amended the Significant New Alternatives Policy (SNAP) listings in the stratospheric ozone protection rules. The amendments incorporated an updated listing of restrictions and prohibitions for substances used to substitute for ozone-depleting substances. Under the SNAP program, adopted under section 612 of the Clean Air Act, this listing indicates the acceptable and unacceptable substitutes and conditions on substitution for ozone-depleting substances in particular uses. USEPA evaluates risks to human health and the environment in assembling the listings. In the same issue of the Federal Register (61 Fed. Reg. 25604), USEPA proposed additional revisions to the lists.

USEPA established the SNAP policy and issued its first listing of acceptable substitutions on March 18, 1994 (59 Fed. Reg. 13044). It has since amended the listings a handful of times, on June 13, 1995 (at 60 Fed. Reg. 31092), July 28, 1995 (at 60 Fed. Reg. 38729), and February 8, 1996 (61 Fed. Reg. 4736). (See 495, June-July, 1996; 496, Aug.-Sept., 1995; and 502, Mar., 1996.) ♦

Integrated Report on the Urban Soil Lead Abatement Demonstration Project

On May 22, 1996 (61 Fed. Reg. 25669), USEPA announced the availability of a final report, "Integrated Report on the Urban Soil Lead Abatement Demonstration Project." The report is an integrated assessment of the technical data from separate studies that occurred in Boston, Baltimore, and Cincinnati. The Urban Soil Lead Abatement Demonstration Project was authorized in 1986 under section 111(b)(6) of the Superfund Amendments and Reauthorization Act. The results of the three individual studies appeared in 1993 final reports. USEPA assembled the latest release, an integrated assessment, in the belief that interested persons would benefit. USEPA stated that the integrated assessment concludes that abatement of soil lead levels will result in lowered blood lead levels in children when soil is a significant environmental source of lead. The assessment finds four factors are important for reduction in blood lead levels: (1) the child's past history of lead exposure, (2) the magnitude of the reduction in the soil, (3) the magnitude of other sources of lead relative to soil, and (4) a direct exposure pathway between the child and the soil. ♦

Internal Guidance for Deriving Superfund MRLs and Existing MRLs for Hazardous Substances Published

On May 23, 1996 (61 Fed. Reg. 25873), the Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (ATSDR) published its internal guidance for development of minimum risk levels (MRLs) for hazardous substances occurring at Superfund sites (i.e., sites designated by USEPA as on the National Priorities List (NPL) for remedial action). With the guidance, ATSDR published a listing of the several hazardous substances for which MRLs have already been developed.

The Superfund Amendments and Reauthorization Act (SARA) requires that ATSDR and USEPA work jointly with regard to hazardous substances found at Superfund sites. They are to derive a listing of the hazardous substances most commonly found at these sites and prepare toxicological profiles of these substances to determine significant human exposure levels (SHELs). ATSDR developed the MRLs in the course of fulfilling the mandate to develop SHELs. ASTDR stated that it used the "no-adverse-effect-level/uncertainty factor approach" and considered "the people most sensitive to such substance-induced effects" in deriving the MRLs. The MRLs are derived for acute (1-14 days), intermediate (15-364 days), and chronic (365 or more days) exposure durations and the oral and inhalation routes of exposure. ♦

Settlement Proposed in CAA HAPs Guidance Litigation

On May 24, 1996 (61 Fed. Reg. 26176), USEPA announced that a proposed partial consent decree was filed on May 9, 1996 in Sierra Club Legal Defense Fund v. EPA (D.D.C.). The lawsuit challenged USEPA's failure to develop the guidance required within the schedules set forth in the hazardous air pollutant (HAP) provision, section 112(g) of the federal clean Air Act (CAA). The proposed decree would require USEPA to develop the guidance no later than December 15, 1996.

Final Paper Products Recovered Materials Advisory Notice Available

On May 29, 1996 (61 Fed. Reg. 26985), USEPA announced the availability of a final recovered material advisory notice (RMAN) for paper products. Under section 6002 of the Resource Conservation and Recovery Act, which established a "buy recycled" program for federal agencies, USEPA designates items made from recovered materials and establishes recommendations for government procurement of these items. USEPA explained that the intent is to expand and maintain markets for recycled paper. The new final RMAN amends the 1988 recommendations relating to paper products. The RMAN defines various terms, recommends recovered fiber and postconsumer fiber contents for various paper products, and explains how to determine the contents for the products. ♦

Final CAA NESHAP Adopted for HAP Emissions from the Printing and Publishing Industry

On May 30, 1996, 1996 (61 Fed. Reg. 27131), USEPA adopted final national emission standards for hazardous air pollutants (NESHAP) for sources in the printing and publishing industry. The NESHAP applies the maximum available control technology (MACT) for control of hazardous air pollutant (HAP) emissions from these sources. The final NESHAP includes standards for control of xylene, toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, ethylene glycol, and glycol ether emissions from publication and product and packaging rotogravure and wide-web flexographic printing facilities. USEPA estimated that the NESHAP will nationally reduce baseline HAP emissions by 31 percent, or 6,700 tonnes (7,400 tons) per year. It will apply to "major" sources in the industry--defined as those that have the potential to emit 10 toms per year of any single HAP or 25 tons per year of any combination of HAPs. USEPA further estimated that implementation of the NESHAP will cost printers an aggregated $40 million per year. ♦

Sixth Meeting of Small Town Task Force

On May 31, 1996 (61 Fed. Reg. 27347), USEPA announced the sixth meeting of the Small Town Task Force. USEPA organized the task force to identify environmental regulations that pose significant compliance problems for small towns and means for improving the relationship between USEPA and those towns. The task force was also to identify means of regionalization of environmental compliance treatment systems and infrastructure. The purpose of the June 17, 1996 meeting was to discuss the task force's final recommendations to the Administrator of USEPA. ♦

Soil Screening Guidance Available

On May 31, 1996 (61 Fed. Reg. 27349), USEPA announced the availability of solid screening guidance. The guidance provides a framework for developing soil screening levels (SSLs) to expedite evaluation of contaminated soils at Superfund sites (i.e., sites designated by USEPA as on the National Priorities List (NPL) for remedial action). USEPA explained that the guidance presents three recommended methods for developing risk-based soil screening levels emphasizing a site-specific approach. USEPA stated that the formulae and exposure assumptions underlying the screening levels under the guidance have been widely accepted for years in the area of Superfund program. Areas of the site are evaluated using these levels and those below them are immediately removed from further consideration. Further evaluation would generally result for areas above the screening levels. USEPA stated that the screening levels should not be used as soil remediation objectives. The guidance is available from the National Technical Information Service (NTIS). ♦

FINAL DECISIONS 5/2/96

95-48 Kathe's Auto Service Center v. EPA - The Board granted voluntary withdrawal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

96-22 Mr. Lew D' Souza and Mrs. Patricia D' Souza v. Mr. Richard Marraccini and Mrs. Joanne Marraccini - The Board found that the Cook County respondents had violated Section 24 of the Environmental Protection Act and 35 Ill. Adm. Code 900.102 and ordered them to relocate the offending air conditioning unit to the rear of their house within 60 days cease and to desist from further violation.

96-149 People of the State of Illinois v. Wittridge Builders, inc., an Illinois corporation - The Board accepted a stipulation and settlement agreement in this air enforcement action against a Cook County facility, ordered the respondent to pay a civil penalty of $500.00, and ordered it to cease and desist from further violation.

96-154 Village of Oswego v. EPA - The Board granted this Kendall County facility a variance, subject to conditions, from the standards of issuance and restricted status provisions of the public water supplies regulations, as they would otherwise relate to the radium content of its drinking water.

96-163 Land and Lakes/Wheeling # 5 v. EPA - Having previously granted a request for an extension of time to file, the Board dismissed this reserved docket because no land permit appeal was timely filed on behalf of this Lake County facility.

96-165 Borg-Warner Automotive Automatic Transmission Systems Corporation v. EPA - The Board granted voluntary withdrawal of this underground storage tank fund reimbursement determination appeal involving a Cook County facility.

96-172 Envotech-Illinois, Inc. (Litchfield/Hillsboro Landfill) v. EPA - Having previously granted a request for an extension of time to file, the Board dismissed the

matter because no land permit appeal was filed on behalf of this Montgomery County facility.

96-190 Norfolk Southern Corporation v. EPA - The Board granted voluntary withdrawal of this underground storage tank appeal against a Madison County facility.

AS 94-4 In the Matter of: Joint petition of Chase Products Company and the Illinois Environmental Protection Agency for an Adjusted Standard from 35 Ill. Adm. Code Part 218, Subpart DD - The Board granted this Cook County Facility an adjusted standard, subject to conditions, from certain of the volatile organic material emissions requirements of the air pollution control regulations applicable in the Chicago metropolitan area.

AS 96-1 In the Matter of: Illinois Power Corporation (Baldwin Power Plant) petition for an Adjusted Standard from 35 Ill. Adm. Code Part 208 and 35 Ill. Adm. Code Part 304.105 - The Board granted this Randolph and St. Clair County facility an adjusted, subject to conditions, from certain of the boron effluent requirements of the water pollution control regulations standard for its discharges into the Kaskaskia River.

FINAL DECISIONS 5/16/96

94-27 Marathon Oil Company v. EPA - The Board found that this Crawford County facility had failed to prove that immediate compliance would impose an arbitrary and unreasonable hardship and denied it a variance from certain of the air pollution control regulations pertaining to particulate emissions and opacity. Board member J. T. Meyer dissented.

95-106 People of the State of Illinois. v. Claude F. Perry and Martha Perry - The Board accepted a stipulation and settlement agreement in this land enforcement action against a St. Clair County facility, ordered the respondents to pay a civil penalty of $23,666.41, and ordered them to cease and desist from further violation.

95-150 Marathon Oil Company v. EPA - The Board granted this Crawford County facility a variance from certain carbon monoxide emission requirements of the air pollution control regulations, subject to conditions, denying retroactive applicability and at an emissions level different from that requested. Board members J. T. Meyer and G. Tanner Girard dissented, with Member Meyer concurring in part.

96-183 Recycler, Inc. v. EPA - Having previously granted a request for an extension of time to file, the Board dismissed this reserved docket because no water permit appeal was timely filed on behalf of this Piatt and Macon Counties facility.

96-186 Mr. & Mrs. Don Williams, Mr. & Mrs. Thomas Morris, and Mr. & and Mrs. Peter Bizios v. Schaumburg Park District - The Board found that the complained-of noise source was an "organized amateur or professional sporting activity," which deprived the Board of jurisdiction, and it dismissed this citizen's noise enforcement action against a Cook County facility. Chairman Manning, and Board members M. McFawn and J. T. Meyer concurred.

96-197 Maggio Truck Center, Inc. v. EPA - Having previously granted an extension of time to file, the Board dismissed this reserved docket because no underground storage tank appeal was timely filed on behalf of this Winnebago County facility.

96-211 People of the State of Illinois. v. Classic Mold Company, Inc., an Illinois corporation, and Larry Caldrone - The Board accepted a stipulation and settlement agreement in this air enforcement action against a Cook County facility, ordered the respondents to pay a civil penalty of $10,000.00, and ordered them to cease and desist from further violation.

96-212 People of the State of Illinois. v. Egyptian Community School District Unit #5 - The Board accepted a stipulation and settlement agreement in this Water enforcement action against a Alexander County facility, ordered the respondent to pay a civil penalty of $500.00, and ordered it to cease and desist from further violation.

96-232 Taracorp Industries, Inc. v. EPA - Upon receipt of an Agency recommendation, the Board granted a four (4)-day provisional variance from the 90-day limitation on the accumulation of hazardous waste at this Madison County facility.

96-234 North Shore Sanitary District Waukegan Sewage Treatment Plant v. EPA - Upon receipt of an Agency recommendation, the Board granted this Lake County facility a 45-day provisional variance from certain of the phosphorus effluent limitations and discharge point requirements of the water pollution control regulations.

AC 96-41 EPA v Dwight W. Davis d/b/a D & L Rubber Works - The Board entered a default order, finding that this Perry County respondent had violated Section 21(p)(1) of the Act and ordering them to pay a civil penalty of $500.00.

AC 96-42 EPA v John Sharp d/b/a John's Auto Salvage - The Board entered a default order, finding that this Montgomery County respondent had violated Section 21(p)(1) of the Act and ordering him to pay a civil penalty of $500.00.

AC 96-43 EPA v Envirofil of Illinois, Inc. - The Board entered a default order, finding that this McDonough County respondent had violated Section 21(o)(5) of the Act and ordering it to pay a civil penalty of $500.00.

AS 94-4 In the Matter of: Joint petition of Chase Products Company and the Illinois Environmental Protection Agency for an Adjusted Standard from 35 Ill. Adm. Code Part 218, Subpart DD - The Board granted this Cook County facility an adjusted standard, subject to conditions, from certain of the organic material emission requirements of the air pollution control regulations applicable to aerosol can filling operations operating in the Chicago metropolitan area.

R94-1(A) In the Matter of: Triennial Water Quality Review: Amendments to 35 Ill. Adm. Code 302.208 and 302.407 (Lead and Mercury) ***See Rulemaking Update***

R96-5 In the Matter of: Visible and Particulate Matter Emissions-Conditional Approval and Clean-Up Amendments to 35 Ill. Adm. Code Parts 211 and 212 - ***See Rulemaking Update***

New cases 5/2/96

96-189 Lucent Technologies, Inc., (for and in place of AT & T Corporation) v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a DuPage County facility for hearing.

96-219 People of the State of Illinois. v. McLaughlin Body Company - The Board received this RCRA Subtitle C enforcement action filed against a Rock Island County facility for hearing.

96-220 People of the State of Illinois. v. Allied Signal, Inc. - The Board received this water enforcement action involving a Sangamon County facility for hearing.

96-221 Hydrosol, Inc. v. EPA - The Board accepted this air permit appeal involving a Cook County facility for hearing.

96-222 Koppers Industries, Inc. v. EPA - The Board accepted this NPDES permit appeal involving a Knox County facility for hearing.

96-223 People of the State of Illinois v. Tucker Properties, Inc. d/b/a Rollins Crossing Shopping Center - Upon receipt of a proposed stipulation and settlement agreement and an agreed motion for relief from the hearing requirement in this water enforcement action against a Lake County facility, the Board ordered publication of the required newspaper notice.

96-224 D'Arcy Oldsmobile v. EPA - The Board accepted notice of extension of time to file an underground storage tank fund reimbursement determination appeal on behalf of a Will County facility.

96-225 Dalee Oil Company, Inc. v. EPA - The Board accepted this underground storage tank fund reimbursement determination appeal involving a St. Clair County facility for hearing.

AC 96-45 EPA v. James Deisher - The Board received an administrative citation against a Lawrence County respondent.

AC 96-46 Montgomery v. Envotech-Illinois - The Board received an administrative citation against a Montgomery County respondent.

AS 96-9 In the Matter: of: Commonwealth Edison Company petition for an Adjusted Standard from 35 Ill. Adm. Code Part 814 - The Board received a petition filed on behalf of a Will County facility for an adjusted standard from certain of the leachate collection, groundwater monitoring, well location, zone of attenuation, final cover, and other requirements of the land pollution control (nonhazardous solid waste landfill) regulations.

New cases 5/16/96

96-192 Laidlaw Waste Systems, Inc. v. EPA - The Board accepted this land permit appeal involving a Coles County facility for hearing.

96-226 Shell Oil Company v. EPA - The Board accepted this underground storage tank appeal involving a Cook County facility for hearing.

96-227 Raytheon Aircraft Services v. EPA - The Board accepted this request for a 90-day extension of time to file an underground storage tank fund reimbursement determination appeal on behalf of a Will County facility.

96-228 Graham Oldsmobile v. EPA - The Board accepted this request for a 90-day extension of time to file an underground storage tank fund reimbursement determination appeal on behalf of a Will County facility.

96-229 People of the State of Illinois. v. James Tull, individually and as President of Cepco, Inc., and Cepco, Inc., d/b/a Chief

Paving & Excavating Company - The Board accepted this air enforcement action against a Champaign County facility for hearing.

96-230 The Clorox Company v. EPA - The Board received a petition for review of an Agency denial of trade secret status for certain air pollution control information pertaining to a Cook County facility.

96-231 The U.S. Department of Energy and the University of Chicago v. EPA - The Board accepted this request for 90-day extension of time to file an underground storage tank appeal on behalf of a DuPage County facility.

96-232 Taracorp Industries, Inc. v. EPA - ***See Final Actions.***

96-233 People of the State of Illinois v. v. ESG Watts, Inc. - The Board accepted this land and groundwater quality enforcement action against a Mercer County facility for hearing.

96-234 North Shore Sanitary District Waukegan Sewage Treatment Plant v. EPA - ***See Final Actions.***

CALENDAR OF HEARINGS

All hearings held by the Board are open to the public. Times and locations are subject to cancellation and rescheduling without notice. Confirmation of hearing dates and times is available by calling the Clerk of the Board at 312- 814-6931.

24-Jun-96 10:30 A.M.	R96-003 R, Land	In the Matter of: Illinois Cast Metals Association Proposed Amendments to for Existing Landfills Accepting Potentially Usable Steel or Foundry Industry Waste: 35 Ill. Adm. Code 814.902 (Standards for Operation and Closure)--James R. Thompson Center, Room 9-040, 100 West Randolph , Chicago, Illinois
26-Jun-96 10:00 A.M.	R96-003 R, Land	In the Matter of: Illinois Cast Metals Association Proposed Amendments to for Existing Landfills Accepting Potentially Usable Steel or Foundry Industry Waste: 35 Ill. Adm. Code 814.902 (Standards for Operation and Closure)--Madison County Administrative Building, Board Room, 157 North Main Street, Edwardsville, Illinois
27-Jun-96 10:00 A.M.	AC 96-031 AC	IEPA v. Fred Honaker (Lovington/Honaker) IEPA Docket No. 790-95-AC--Moultrie County Courthouse, County Board Room, Sullivan, Illinois
28-Jun-96 11:00 A.M.	PCB 96-147 W, Mine-E	People of the State of Illinois v. Illinois Cement Company--LaSalle County Courthouse, Courtroom 206, 119 West Madison, Ottawa, Illinois
01-Jul-96 10:00 A.M.	PCB 96-053 N-E, Citizens	David and Susi Shelton v. Steven and Nancy Crown--James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois
09-Jul-96 10:00 A.M.	PCB 96-075 A-E	People of the State of Illinois v. Harvey Cash, d/b/a Cash Oil Company--Illinois Pollution Control Board, Suite 402, 600 South Second Street, Springfield, Illinois
16-Jul-96 09:30 A.M.	PCB 96-238 L-S-R, Third Party	Citizens United for a Responsible Environment v. Browning-Ferris Industries of Illinois, Inc. and Village Board of the Village of Davis Junction, Illinois--Davis Junction Village Hall, 106 North Elm, Davis Junction, Illinois
17-Jul-96 10:30 A.M.	PCB 96-191 A-V	White Cap, Inc. v. IEPA--James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois
19-Jul-96 09:30 A.M.	PCB 96-151 L-E, Citizens	Keith F. Boyer v. Felecia Harris, a/k/a Felecia Dawkins, and Chicagoland Mortgage Corporation--James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois
19-Jul-96 10:00 A.M.	PCB 96-110 N-E, Citizens	Sara Scarpino and Margaret Scarpino v. Henry Pratt Company--Old Kane County Courthouse, Courtroom 110, 100 South Third Street, Geneva, Illinois
22-Jul-96 10:00 A.M.	PCB 96-243 L-S-R, Third Party	Residents Against A Polluted Environment and The Edmund B. Thornton Foundation v. County of LaSalle & Landcomp Corporation--LaSalle County Courthouse, Room 300, 119 West Madison Street, Ottawa, Illinois

23-Jul-96 06:00 P.M.	PCB 96-243 L-S-R, Third Party	Residents Against A Polluted Environment and The Edmund B. Thornton Foundation v. County of LaSalle & Landcomp Corporation--Coolies Banquet Hall, 909 West Norris Street, Ottawa, Illinois
23-Jul-96 10:00 A.M.	PCB 96-185 N-E, Citizens	Douglas and Barbara Oltman v. Terry and Kelly Cowan--Rock Island County Building, County Board Room, 1504 Third Avenue, Rock Island, Illinois
23-Jul-96 10:00 A.M.	R96-017 R, Air	In the Matter of: Exemptions from State Permit Requirements, Amendments to 35 Ill. Adm. Code 201 and 211--Regional Headguarters Complex, 1102 E Port Plaza Drive, Classroom, Collinsville, Illinois
26-Jul-96 02:00 P.M.	PCB 93-250 A-E	People of the State of Illinois v. Clark Oil & Refining Corporation--James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois
26-Jul-96 10:30 A.M.	PCB 96-198 L-V	Land and Lakes Company (River Bend Prairie Facility) v. IEPA--James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois
29-Jul-96 10:00 A.M.	PCB 93-015 N-E, Citizens	Dorothy Furlan and Michael Furlan v. University of Illinois School of Medicine--Administration Bldg., Room 501, 504 Elm Street, Rantoul, Illinois
31-Jul-96 10:00 A.M.	PCB 95-158 L-E	People of the State of Illinois v. City of Herrin--Herrin City Hall, City Council Chambers, 300 North Park Street, Herrin, Illinois
16-Aug-96 10:00 A.M.	R96-017 R, Air	In the Matter of: Exemptions from State Permit Requirements, Amendments to 35 Ill. Adm. Code 201 and 211--James R. Thompson Center, 100 West Randolph, Room 9-040, Chicago, Illinois

Calendar Code

3d P	Third Party Action	A-C	Administrative Citation
A-E	Air Enforcement	A-S	Adjusted Standard
A-V	Air Variance	CSO	Combined Sewer Overflow Exception
GW	Groundwater	HW Delist	RCRA Hazardous Waste Delisting
L-E	Land Enforcement	L-S-R	Landfill Siting Review
L-V	Land Variance	MW	Medical Waste (Biological Materials)
N-E	Noise Enforcement	N-V	Noise Variance
P-A	Permit Appeal	PWS-E	Public Water Supply Enforcement
PWS-V	Public Water Supply Variance	R	Regulatory Proceeding
RCRA	Resource Conservation and Recovery Act proceeding (hazardous waste only)	$S0_2$	$S0_2$ Alternative Standards (35 ILL. ADM. CODE 302.211(f))
SWH-E	Special Waste Hauling Enforcement	SWH-V	Special Waste Hauling Variance
T	Thermal Demonstration Rule	T-C	Tax Certifications
T-S	Trade Secrets	UST-Appeal	Underground Storage Tank Corrective Action Appeal
UST-E	Underground Storage Tank Enforcement	UST-FRD	Underground Storage Tank Fund Reimbursement Determination
W-E	Water Enforcement	W-V	Water Variance
WWS	Water-Well Setback Exception		