
Environmental Register

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G. Tanner Girard, Acting Chairman

Board Members:

Thomas E. Johnson, Nicholas J. Melas, Andrea S. Moore

Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-3620
(312) 814-6032 TDD

Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
(217) 524-8500

Web Site: <http://www.ipcb.state.il.us>

Letter from the Chairman

The Board was active during May in several rulemaking dockets on various topics. The rulemaking proposals and activities are summarized below. As always, information about these proceedings and the Board's other cases is available through Clerk's Office Online (COOL) on our Web site at www.ipcb.state.il.us.

On May 1, 2008, the Board sent to first notice a proposal to amend regulations pertaining to used oil recycling (35 Ill. Adm. Code 808, 809) in the docket entitled In the Matter of: Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 808, 809 (R06-20). The public-interest group, NORA, formally known as the National Oil Recycling Association, filed the proposed rulemaking. The Board proceeded to first notice with NORA's proposal, as amended by the Illinois Environmental Protection Agency (IEPA).

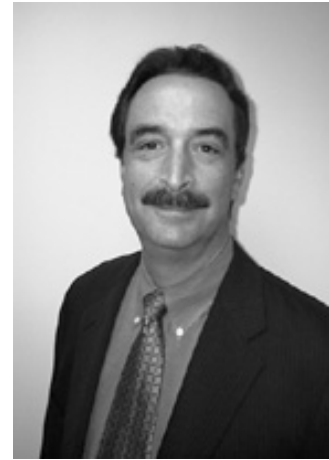
IEPA amendments to the NORA proposal included language to exempt used oil, defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739), from the manifesting requirements of Parts 808 and 809. Part 739 provides standards for the management of used oil. Other IEPA amendments exempt shipments containing no special waste other than used oil, defined by and managed in accordance with Part 739, from the special waste hauling permit requirements of Parts 808 and 809. The Board seeks comment on whether to amend Part 739 to require information in used oil tracking documents allowing those documents to satisfy other informational requirements such as manifests under Parts 808 and 809.

On May 1, 2008, the Board issued a *proposed* second notice in the rulemaking docketed as Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h) (R07-9). The Board proceeded to *proposed* second notice because the Board amended the first-notice rule language and requested comments on the Board's proposed second-notice changes. The Board accepted comments filed by June 2, 2008. The proposed rules update existing general use water quality standards for sulfate and total dissolved solids (TDS) by amending or repealing certain sections and parts of 35 Ill. Adm. Code Parts 302, 309, 405, 406, and 407 of the Board's water and mine-related pollution rules.

On May 1, 2008, the Board adopted final notice rules on procedures for reporting unpermitted releases of radionuclides from nuclear power plants to the IEPA. The rulemaking is docketed as Procedures Required by PA 94-849 For Reporting Releases of Radionuclides at Nuclear Power Plants: New 35 Ill. Adm. Code 1010 (R07-20). On May 25, 2007, the IEPA filed the proposal, pursuant to PA 94-849, which added Section 13.6 to the Environmental Protection Act. The Board held two hearings and accepted comments on this proposal. The Joint Committee on Administrative Rules voted a certificate of no objection on April 15, 2008.

On May 7, 2008, the Board held the second hearing on IEPA's amended proposal to control nitrogen oxide (NO_x) emissions from specified sources. The Board docketed the proposal as In the Matter of: Section 27 Proposed Rules for Nitrogen Oxide (NO_x) Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217 (R07-19). The Board will accept post-hearing comments until Monday, June 9, 2008, and will accept responses to those post-hearing comments until Monday, June 23, 2008.

The Board is grateful to the various participants who have testified and commented in the rulemakings described above. Anyone interested in environmental rulemaking in Illinois can learn more about our rulemaking process by visiting our website at www.ipcb.state.il.us.



Sincerely,

A handwritten signature in black ink that reads "G. Tanner Girard". The signature is written in a cursive, flowing style.

Dr. G. Tanner Girard

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Rule Update

Board Adopts First Notice Opinion and Order in *In the Matter of: Proposed Amendments to the Board's Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 808, 809 (R06-20)*

On May 1, 2008, the Illinois Pollution Control Board adopted a first notice opinion and order based on a proposal to amend the Board's regulations concerning special waste classifications and nonhazardous special waste hauling pertaining to used oil recycling in Illinois (35 Ill. Adm. Code 808, 809). NORA, formally known as the National Oil Recycling Association, filed the proposed rulemaking on December 13, 2005. Following two public hearings, the Board is proceeding to first notice with a proposal based on, but not identical to that submitted by NORA, taking into account amendments suggested by the Illinois Environmental Protection Agency (IEPA).

The Board adopted for first notice publication amendments intended to:

- 1.) exempt from the manifesting requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739); and
- 2.) exempt from the special waste hauling permit requirements of Parts 808 and 809 (35 Ill. Adm. Code 808, 809) shipments that contain no special waste other than used oil that is defined by and managed in accordance with Part 739 (35 Ill. Adm. Code 739).

Additionally, the Board specifically sought comment on whether to amend Part 739 to require, in used oil tracking documents, information that would allow those documents to satisfy other informational requirements such as manifest requirements under Parts 808 and 809. In the event that a participant wishes to amend Part 739 in this manner, the Board seeks comment in the form of regulatory language that might be proposed to effect such an amendment. Specifically, the Board seeks to determine whether the record in this proceeding may be developed in a way that supports adoption of a proposal similar to that sought by NORA while addressing the concerns of the IEPA.

Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period, during which anyone may file a public comment with the Board.

As the Board held two public hearings on this proposal prior to the Board's first notice adoption. The Board anticipates holding additional hearings only if requested to do so during the first notice period.

Copies of the orders of the Board and hearing officer in R06-20 may be obtained by calling the Clerk's office at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information on R06-20, contact the hearing officer, Tim Fox, at 312-814-6085; e-mail address foxt@ipcb.state.il.us

Board Adopts Proposed Second Notice Opinion and Order For Public Comment in Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h) (R07-9)

On May 1, 2008, the Board adopted, for public comment, a *proposed* second notice opinion and order in Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h) (R07-9). In October 2006, the Illinois Environmental Protection Agency (IEPA) proposed rules to update existing general use water quality standards for sulfate and total dissolved solids (TDS) by amending or repealing certain sections and parts of 35 Ill. Adm. Code Parts 302, 309, 405, 406, and 407 of the Board's water and mine-related pollution rules. On September 20, 2007, after two public hearings, the Board proposed for first notice rules based on the IEPA proposal with certain specific changes. Those changes included the addition of language reflecting current IEPA practice regarding the rules on mixing zones and the amendment of mixing zone regulations to allow mixing in certain small streams when adequate dilution is not available.

The Board adopted a *proposed* second notice order because the Board is considering amending the first notice rule language and is requesting comments on the Board's proposed second notice changes. The Board found that the record supports proceeding to proposed second notice with IEPA's proposal as amended by the Board, and that the record contains sufficient analysis of the economic reasonableness of the proposed sulfate standards on mining operations. The Board proposed to amend the language proposed at first notice regarding:

- 1) proposed water quality standards for sulfate where chloride levels exceed 500 mg/L and hardness levels are 500 mg/L or lower in consideration of IEPA's PC 10, to ensure that chloride levels continue to be regulated according to the federal Clean Water Act; and
- 2) regarding mixing 12 zones in streams where the dilution ratio is less than 3:1 to reflect that IEPA may use more than 50% of stream flow for mixing as long as an adequate zone of passage is provided.

Public comments on the proposed second-notice rules are due by June 2, 2008. The Board will consider any comments received, and adopt a second notice order for submission to the Joint Committee on Administrative Rules.

Copies of the orders of the Board and hearing officer in R07-9 may be obtained by calling the Clerk's Office at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information contact the hearing officer, Marie Tipsord, at 312-814-4925; e-mail address tipsordm@ipcb.state.il.us

Board Timely Adopts Final Rules in In the Matter of: Procedures Required by PA 94-849 For Reporting Releases of Radionuclides at Nuclear Power Plants: New 35 Ill. Adm. Code 1010 (R07-20)

The Illinois Pollution Control Board, on May 1, 2008, adopted final rules to specify when an unpermitted release of radionuclides must be reported to the Illinois Environmental Protection Agency (IEPA). On May 25, 2007, the Illinois Environmental Protection Agency (IEPA) filed Procedures Required by PA 94-849 For Reporting Releases of Radionuclides at Nuclear Power Plants: New 35 Ill. Adm. Code 1010 (R07-20) to implement the mandate of PA 94-849. As required by that mandate, the Board timely adopted the final rules within one year of receipt of the IEPA proposal.

PA 94-849 added Section 13.6 to the Environmental Protection Act. Section 13.6 requires the IEPA to propose rules to the Board "prescribing standards for detecting and reporting unpermitted releases of radionuclides." The IEPA developed the proposal in consultation with the Interagency Coordinating Committee on Groundwater, the Groundwater Advisory Committee, the Illinois Emergency Management Agency (IEMA) and Exelon Corporation.

The Board held two hearings and accepted comments on this proposal. On December 6, 2007, the Board adopted a first notice order containing the rule as proposed by the IEPA, with only minor changes. The Board made no further changes at second notice. The Joint Committee on Administrative Rules voted a certificate of no objection on April 15, 2008, and suggested no changes.

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Under the rules, a radionuclide is deemed to have been detected if an unpermitted release of liquids either: 1) results in tritium concentrations of 200 picocuries per liter (pCi/L) or more outside the licensee controlled area, or 2) contains tritium at quantities of 0.002 Curies (Ci) or more. The adopted rules require that, within 24 hours of any unpermitted release of radionuclides into the groundwater, surface water, or soil, the licensee must evaluate the release to determine whether it needs to be reported and, if reporting is necessary, make a report to the IEPA and IEMA within that same 24 hours. *See* Section 1010.200. The rule gives the proper procedure for reporting the releases, including the appropriate reporting phone numbers for IEPA and IEMA as well as instructions on electronic reporting. *See* Section 1010.202. The rules further require a follow-up written report be sent to the IEPA and IEMA within five days after reporting the release. *See* Section 1010.204. This follow-up report must contain the information required for the initial report as well as supplemental information on the release utilizing the best data available.

Copies of the orders of the Board and hearing officer in R07-20 may be obtained by calling the Clerk's Office at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information contact the hearing officer, Marie Tipsord, at 312-814-4925; e-mail address tipsordm@ipcb.state.il.us.

Board Dismisses As Unnecessary In the Matter of: RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2007 through December 31, 2007) (R08-16)

Every six months the Board reserves a series of dockets, for adoption of Board rules, to accommodate any rules adopted by the United States Environmental Protection Agency (USEPA) to implement various programs.

On May 1, 2008, the Board determined no action is necessary in response to the July 18, 2007 USEPA amendments dealing with "chat" in federally funded highway projects. There is no indication that this material is used in Illinois.

Copies of the Board's dismissal order in R08-16 may be obtained by calling the Clerk's office at 312-814-3620, or by downloading copies from the Board's Web site at www.ipcb.state.il.us.

For additional information contact Mike McCambridge at 312/814-6924; e-mail address: mccambm@ipcb.state.il.us.

Appellate Update

First District Affirms Board Ruling and Interpretation of Underground Storage Tank Rules in Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, Nos. 1-07-2265 & 1-07-2439 (cons.)(1st Dist. May 23, 2008)(affirming Board orders in PCB 07-27 (July 12, 2008) and PCB 07-28 (July 26, 2008)

On May 23, 2008, the First District Appellate Court issued a five-page order under Supreme Court Rule 23 (155 Ill.2d R. 23) affirming the Board in an appeal of an underground storage tank (UST) determination. Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, Nos. 1-07-2265 & 1-07-2439 (cons.)(1st Dist. May 23, 2008) In two separate cases involving cross-motions for summary judgment before it, the Board had granted the summary judgment filed to the Illinois Environmental Protection Agency (IEPA) and affirmed the IEPA's determinations concerning reimbursement under the Underground Storage Tank Fund (Fund) program, rejecting an amended remediation budget requested after issuance of a "No Further Remediation" (NFR) letter under the Underground Storage Tank Fund. Village of Wilmette v. Illinois Environmental Protection Agency PCB 07-27 (July 12, 2008) and PCB 07-28 (July 26, 2008).

This is the second time the First District has affirmed the Board's holdings in cases involving the "post-NFR budget amendment" question. Both Wilmette and FedEx involved an analogous regulation under different Parts of the Board's UST rules, Wilmette under 35 Ill. Adm. Code Part 732 (releases reported September 23, 1994 through June 23, 2002) and FedEx under 35 Ill. Adm. Code Part 734 (releases reported on or after June 24, 2002). The Board held in both FedEx and Wilmette that, as argued by the IEPA, the owner or operator of a leaking underground storage tank (UST) could not amend its Fund budget after the IEPA issued an NFR letter for the incident.

The Board first prevailed before the First District in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. Feb. 23, 2008) (affirming Board order in PCB 07-12 (Dec. 21, 2006)).

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After the First District issued the February 22, 2008 Rule 23 order affirming the Board in FedEx, the Board moved the court to publish the order as a precedential opinion. In response, the appellate court issued FedEx as a precedential opinion on May 23, 2008, the same day the Wilmette order issued. The Board had filed a motion in Wilmette to cite FedEx as additional authority, ensuring the court would be aware that it had already ruled on what is essentially the same substantive legal issue. With issuance of the Wilmette Rule 23 order, the court has now twice affirmed the Board based on the statutory purpose of finality behind NFR letters and a plain reading of the Board's regulations, which require that any budget amendment be submitted prior to the NFR letter's issuance.

The Board is considering requesting the court to publish the Wilmette order.

BOARD'S ORDERS IN PCB 07-27 AND PCB 07-48

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the IEPA determines whether to approve proposed cleanup plans and related budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the State's UST Fund, which consists of UST fees and motor fuel taxes. If the IEPA disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2006); 35 Ill. Adm. Code 105.Subpart D.

PCB 07-27 involved the IEPA's September 12, 2006 rejection the High Priority Corrective Action Plan budget amendment request made by the the Village of Wilmette (Village) regarding an underground storage tank site at 720 Ridge Road County. Prior to issuance of the NFR, the Village had an IEPA-approved corrective action plan and budget, and had received reimbursement from the Fund for actions taken. After IEPA issued the requested NFR letter to the Village, the Village sought to amend its budget to add costs. Specifically, the budget amendment was submitted because the amounts within the subcategories varied from the original budget amounts. The IEPA cited as its rejection reason its previous issuance of the NFR letter for the site.

PCB 07-48 involved the Village's request for reimbursement from the Fund for the same incident involved in PCB 07-27. The IEPA rejected the Village's reimbursement application, stating that the billings submitted exceeded the approved budget amounts. The Village appealed, alleging that its reimbursement request "was less than the IEPA approved budget amount."

The Village requested consolidation of the two cases, but the Board denied the request at a time when a motion for summary judgment was pending in only one of the two cases. Consequently, the Board first issued its decision in PCB 07-27, followed two weeks later by its decision in PCB 07-48, relying on its reasoning from the earlier decision.

The Board's July 12, 2007 decision in PCB 07-27 Wilmette centered on 35 Ill. Adm. Code 732.405(d), which is the regulation cited in the IEPA denial letter. Section 732.405(d) and the ensuing "Board Note" state:

Notwithstanding subsections (a), (b), (e), and (f) of this Section . . . an owner or operator may proceed to conduct . . . High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required . . . corrective action plan or budget plan. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification . . . prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. *See* Subpart F of this Part.

Subsection (e) of Section 732.405, referenced in subsection (d)'s "notwithstanding clause," requires amendments to plans or budgets in specified circumstances ("If, following approval of any . . . corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended . . . corrective action plan or associated budget plan for review by the Agency.")

In PCB 07-27, the parties filed cross-motions for summary judgment. The Village argued that Section 732.405(d) did not apply, as it concerned only those instances where an UST owner or operator submits no remediation plan or budget prior to conducting remediation. In those instances, according to the Village, the regulation allows the owner or operator to nevertheless proceed with remediation. Alternatively, the Village asserted that its case differed from FedEx Ground Package System, Inc. v. IEPA, PCB 07-12 (Dec. 21, 2006), and Broadus Oil v. IEPA, PCB 04-31, 05-43 (consol.) (Dec. 21 2006), in that the Village's reimbursement request remained less than the approved total budget. Specifically, the budget amendment was submitted because the amounts within the subcategories varied from the original budget amount. The Village maintained that the Board's decisions in Broadus Oil and

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FedEx held that subsection (d) applies to those who go beyond an approved budget and does not apply to reallocations within subcategories of an approved budget.

In its July 12, 2007 order in PCB 07-27, the Board agreed with the parties that there were no genuine issues of material fact and that summary judgment was appropriate. Village of Wilmette v. Illinois Environmental Protection Agency, PCB 07-27, slip op. at 10-11 (July 12, 2008). The Board explained that subsection (d) of Section 732.405 is an exception to the general rule. The general rule is that plans and budgets must be submitted before the associated work is performed. As the Board found, subsection (d) allows “after-the-fact” plans or budgets (*i.e.*, where the work precedes the plan or budget submission), but even so, subsection (d) states that the plan or budget must nevertheless be submitted before the NFR letter issues.

Further, the Board ruled that Section 732.405(d) applies not only to those who proceed with no approved plan or budget at all, but also to those who go beyond the scope of an approved plan or who incur costs that go beyond the approved corrective action budget, necessitating an amendment. Otherwise, it would be illogical for the “notwithstanding clause” in subsection (d) to refer to subsection (e), which deals only with amendments and therefore necessarily involves an existing plan or budget. Additionally, the Board observed that the “Board Note” under subsection (d), which provides that owners or operators proceeding under subsection (d) may not be entitled to full payment from the UST Fund, applies not only to those who proceed with no approved plan or budget, but also to those who go beyond an approved plan or budget.

The Board held that that the Village proceeded under subsection (d) by incurring costs beyond amounts contained in its approved budget without first receiving IEPA approval of an amended budget. The Board emphasized that subsection (d) applies to the extent any corrective action activities are performed or costs are incurred for which there is no IEPA pre-approval, *i.e.* to the extent the activities or costs go beyond the approved corrective action plan or budget. The Board ruled that the changes within the budget amendment subcategories go beyond the previously-approved budget amounts within those subcategories and are therefore costs incurred without IEPA pre-approval. *Id.*, slip op. at 11.

Accordingly, the Board affirmed the denial, holding that under subsection (d), the IEPA correctly refused to review the proposed budget amendment because the amendment was submitted after the NFR letter was issued. The Board therefore granted the IEPA’s motion for summary judgment and denied Wilmette’s cross-motion. *Id.*

Two weeks later in PCB 07-48, the Board found that its findings in PCB 07-27 were dispositive of all issues in PCB 07-48. Therefore, the Board granted summary judgment to the IEPA and denies summary judgment to the Village. Thus, the IEPA’s decision denying the Village’s final request for reimbursement was affirmed because there was no IEPA-approved budget for the additional costs claimed by the Village. Village of Wilmette v. Illinois Environmental Protection Agency, PCB 07-48, slip op. at 2 (July 26, 2008).

FIRST DISTRICT ORDER

The First District Appellate Court first briefly recited the facts it found salient, as follows:

Before beginning remediation, the Village proposed a High Priority Corrective Action Plan, including a proposed budget, to the IEPA. Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, Nos. 1-07-2265 & 1-07-2439 (cons.)(1st Dist. May 23, 2008), order at 1-2. The IEPA approved these with minor modifications. *Id.* at 2. As the cleanup progressed, the Village submitted applications to the IEPA for payment pursuant to the budget, which the IEPA approved.

The IEPA then received from the Village a “High Priority Corrective Action Completion Report” and a “Professional Engineer Certification.” *Id.* In response, and as requested by the Village, the IEPA in June 2006 issued an NFR letter. *Id.* As the court stated, the NFR signified that:

- (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with;
- (2) all corrective action concerning the remediation of the occurrence has been completed; and
- (3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety, and the environment. *Id.*

The NFR letter was recorded with the registrar of titles in July 2006. Then on August 4, 2006, the Village submitted to the IEPA a “Billing Package” for the “final reimbursement request,” as well as a “Budget Amendment No. 3.” *Id.* at 2. The IEPA on September 14, 2006, rejected the proposed budget, stating:

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The budget was submitted after the issuance of a No Further Remediation Letter. Pursuant to Section 57.6(a) of the [Environmental Protection Act] and 35 Ill. Adm. Code 73[2].405(d), any corrective action plan or budget must be submitted to the Illinois EPA for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of 35 Ill. Adm. Code 732 prior to the issuance of a No Further Remediation Letter. *Id.* at 2-3.

The Village appealed the determination to the Board and, on cross-motions for summary judgment, the Board held that the IEPA properly rejected the amended budget because the budget was submitted after issuance of the NFR letter. *Id.* at 3.

The First District applied the *de novo* standard of review to the Board's decision, as the relevant facts were undisputed and the court was asked to review the Board's rulings on questions of law. Order at 3. The court noted, however, that it would "afford substantial deference to the agency's determination of a statute which the agency administers and enforces." *Id.*

The Village argued to the court that Section 732.405(d) does not apply to UST owners or operators which, like the Village, received approval of corrective action and budget plans before commencing any corrective action. *Id.* at 3-4. The court disagreed, applying essentially the same reasoning it used in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. Feb. 23, 2008); the court did not explicitly discuss the Village's argument that it was merely reallocating costs among budget subcategories.

The Wilmette court found that Section 732.405(d) applies not only where corrective action precedes submittal of any corrective action plan or budget, but also where a plan or budget has been submitted and corrective action occurs afterwards. Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, Nos. 1-07-2265 & 1-07-2439 (cons.)(1st Dist. May 23, 2008), order at 4. The court recognized that the submittal of a budget or plan is generally required before corrective action is taken. But, the court explained:

Section 732.405(d) states that notwithstanding the requirements for the submission of a corrective action plan or budget, an owner or operator may still conduct corrective action prior to the submission of a budget. The section continues to state that, "[h]owever, any such plan and budget must be submitted to the Agency for review" prior to the issuance of a NFR Letter (35 Ill. Adm. Code §732.405(d)). We believe that the language serves to indicate that the limitation within that section also applies, as opposed to exclusively applies, to cases where corrective action was taken prior to submission of a corrective plan or budget. *Id.* at 4.

The First District found this interpretation supported by the "Board Note" following subsection (d):

The Board note in that subsection advises those proceeding under 732.405(d) that they may not be entitled to full payment from the fund. The logical interpretation of that note is that those who proceed with no budget or plan, or who seek to go beyond the scope of an approved plan or budget as was the case here, may not be entitled to a full reimbursement. *Id.* at 4-5.

The court also commented on the relationship between subsections (d) and (e):

Furthermore, section 732.405(e) allows amendments to plans or budgets when revised procedures or cost estimates are necessary. Because of this, section 732.405(d) is the necessary limitation specifying that any plan or budget changes, or essentially the creation of a new plan or budget, should be submitted prior to the issuance of a NFR letter regardless of whether corrective action was taken prior to or after receiving approval. *Id.* at 5.

In addition to so construing the Board's regulations, the First District looked to the purpose of an NFR letter under the Act: "A NFR letter signifies that no further steps need to be taken to correct the leaking storage tanks, and that the matter is essentially outside the scope of the Act, and therefore the Fund." *Id.* at 5. The court found that the Board's regulations furthered that statutory purpose of finality: "Without such a regulation, budgets and plans for corrective actions taken in excess of the requirements set forth by the Act could be submitted indefinitely for whatever costs incurred, possibly even for measures that may have been taken unnecessarily." *Id.*

First District Grants Motion to Publish Its Order Affirming Board Ruling and Interpretation of Underground Storage Tank Rules in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. May 23, 2008); (affirming Board order in PCB 07-12 (Dec. 21, 2006))

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On May 23, 2008, in response to a Board motion to publish, the First District Appellate Court issued as a precedential opinion its ruling in FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. May 23, 2008) affirming the Board in an appeal of an underground storage tank (UST) determination. The court had previously issued its ruling as seven-page non-precedential order under Supreme Court Rule 23 (155 Ill.2d R. 23), FedEx Ground Package System, Inc. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 1-07-0236 (1st Dist. Feb. 22, 2008)

The First District issued both its published opinion in FedEx and its Rule 23 order in Village of Wilmette v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, Nos. 1-07-2265 & 1-07-2439 (cons.)(1st Dist. May 23, 2008)(affirming Board orders in PCB 07-27 (July 12, 2008) and PCB 07-28 (July 26, 2008). As noted in these pages at the time that the FedEx Rule 23 order was issued: “[p]ublication of [the Rule 23 Order] as an opinion on the post-NFR budget amendment issue would serve as helpful precedent in the [then-pending] Wilmette appeal.” *Environmental Register* No. 644 (February 2008) at pp. 4.

Board Actions

May 1, 2008 Springfield, Illinois

Rulemakings

R06-20	<u>In the Matter of: Proposed Amendments to the Board’s Special Waste Regulations Concerning Used Oil, 35 Ill. Adm. Code 808, 809</u> – The Board adopted a first notice opinion and order in this rulemaking to amend the Board’s regulations concerning special waste classifications and nonhazardous special waste hauling as they pertain to used oil recycling.	4-0 Land
R07-9	<u>In the Matter of: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h)</u> – The Board adopted a second notice opinion and order in this rulemaking to amend the Board’s water and mine-related regulations.	4-0 Land
R07-20	<u>In the Matter of: Procedures Required by PA 94-849 for Reporting Releases of Radionuclides at Nuclear Power Plants: New 35 Ill. Adm. Code Part 1010</u> – The Board adopted a final opinion and order in this rulemaking to set new standards for detecting and reporting unpermitted releases of radionuclides from nuclear power plants.	4-0 Air, Land
R08-16	<u>RCRA Subtitle C (Hazardous Waste) Update, USEPA Amendments (July 1, 2007 through December 31, 2007)</u> – The Board determined that no action was necessary and dismissed this reserved identical-in-substance docket.	4-0 Land

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Administrative Citations

AC 07-62 IEPA v. John A. & Kay E. Oldham – In response to a joint stipulation and settlement agreement in this administrative citation action involving a Clay County facility, the Board found that respondents violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2006)) and ordered them to pay a civil penalty of \$1,500. The Board also granted the parties' joint motion to dismiss respondent's petition for review and the alleged violation of Section (p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)).

4-0

Adjudicatory Cases

PCB 06-130 Arlyn's Service Center v. IEPA – The Board granted this Randolph County facility's motion for voluntary dismissal of this underground storage tank appeal.

4-0

PCB 06-145 Arlyn's Service Center v. IEPA – The Board granted this Randolph County facility's motion for voluntary dismissal of this underground storage tank appeal.

UST
Appeal

PCB 07-134 People of the State of Illinois v. Village of Rockton, an Illinois municipal corporation – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Winnebago County facility, the Board ordered publication of the required newspaper notice.

4-0
W-E

PCB 08-43 Moto, Inc. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving an Effingham County facility.

4-0
UST

PCB 08-43 Moto, Inc. v. IEPA – The Board accepted for hearing this underground storage tank appeal involving an Effingham County facility.

Appeal

PCB 08-77 Special K Hog Farm - Chenoa (Property ID No. 20-24-100-02) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Special K Hog Farm, located in McLean County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

4-0
T-C, W

PCB 08-78 Park Ridge/7-Eleven, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

4-0
90-Day
Ext, UST

PCB 08-78 Park Ridge/7-Eleven, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

Appeal

PCB 08-79 Bible Pork - Louisville v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Bible Pork - Louisville, located in Clay County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

4-0
T-C, W

PCB 08-80 Winters Creek, Inc. v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Winters Creek, Inc., located in Mercer County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

4-0
T-C, W

PCB 08-81 Creasey Family Farms - Macomb v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Creasey Family Farms - Macomb, located in McDonough County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

4-0
T-C, W

PCB 08-82 Lazy B. Farms v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lazy B. Farms, located in Lawrence County, are pollution control facilities for

4-0
T-C, W

Environmental Register – May 2008

the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

May 15, 2008 Via Videoconference Springfield and Chicago, Illinois

Adjusted Standards

- AS 08-8** In the Matter of: Petition of Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. for Adjusted Standard from Ammonia Nitrogen Discharge Levels at 35 Ill. Adm. Code 304.122. – The Board accepted for hearing this petition for an adjusted standard seeking relief from the Board’s ammonia nitrogen discharge standards. The Board also granted the Illinois Environmental Protection Agency’s (IEPA) motion and extended to June 5, 2008, the deadline by which the IEPA is to file its recommendation. 4-0
Water
- AS 08-9** In the Matter of: Petition of Big River Zinc Corporation for an Adjusted Standard Under 35 Ill. Adm. Code 720-131(c) – The Board accepted for hearing this petition for an adjusted standard seeking relief from the Board’s hazardous waste regulations. The Board granted petitioner’s motion to incorporate specified documents from prior proceedings. 4-0
Land

Administrative Citations

- AC 07-71** IEPA v. Steve B. and Beth M. Segner (IEPA File No. 170-07-AC) – The Board granted complainant’s motion for withdrawal of this administrative citation and closed the docket. 4-0
- AC 08-11** IEPA v. Ken and Ella Cook – The Board denied respondents’ motion to reconsider. 4-0
- AC 08-12** IEPA v. Norma Eddington and Cecil Eddington – The Board denied respondents’ motion to reconsider. 4-0
- AC 08-14** County of DuPage v. Nicolas Cruz – The Board dismissed respondent’s petition for review for failure to file an amended petition and found that this DuPage County respondent violated Section (p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)), ordering respondent to pay a civil penalty of \$1,500. 4-0
- AC 08-27** IEPA v. Hiram Vanderheiden, Jr – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Mason County facility. 4-0

Adjudicatory Cases

PCB 06-173	<u>People of the State of Illinois v. First Country Homes, L.L.C.</u> – In this water enforcement action concerning a Will County facility, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2006)), and accepted a stipulation and settlement agreement, ordering the respondent to pay a total civil penalty of \$30,000, and to cease and desist from further violations.	4-0 W-E
PCB 06-174	<u>People of the State of Illinois v. Bob D. Stagner and Linda S. Stagner, d/b/a LB's Camping & Mobile Home Park</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this water enforcement action involving a Franklin County facility, the Board ordered publication of the required newspaper notice.	4-0 W-E
PCB 08-33	<u>Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. v. IEPA</u> – The Board granted these Will County petitioners a five year variance from the Total Dissolved Solids water quality standards of 35 Ill. Adm. Code 302.208(g) and 302.407, subject to conditions.	4-0 V, W
PCB 08-45	<u>People of the State of Illinois v. Distinctive Homes, Ltd., an Illinois limited liability corporation, and Distinctive Companies, Ltd, an Illinois limited liability corporation</u> – The Board granted complainant’s motion to strike affirmative defenses.	4-0 W-E
PCB 08-66	<u>Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. IEPA</u> – The Board granted petitioner’s motion for a partial stay of the construction permit.	4-0 P-A, Air
PCB 08-74	<u>Jeff Hank - Aledo v. IEPA</u> – The Board granted the Illinois Environmental Protection Agency’s (IEPA’s) motion to amend the Board’s final order of April 17, 2008 and issue a new tax certification. This supersedes the tax certification issued on April 17, 2008. Upon receipt of the IEPA’s recommendation, the Board found and certified that specified facilities of Jeff Hank - Aledo, located in Mercer County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).	4-0 T-C, W
PCB 08-83	<u>People of the State of Illinois v. Rupe Contracting, Inc. and John A. Rupe, individually and as owner and operator of Rupe Contracting, Inc.</u> – The Board accepted for hearing this water enforcement action involving a site located in Bureau County.	4-0 T-C, W
PCB 08-84	<u>Prime Pork Holdings, LLC - Kingston v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that petitioner’s specified facilities, located in DeKalb County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).	4-0 T-C, W
PCB 08-85	<u>Keith Morby Finishing Barn - Aledo (Property ID No. 15-15-13-300-001) v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that petitioner’s specified facilities, located in Mercer County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).	4-0 T-C, W

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PCB 08-86	<u>City of Quincy v. IEPA</u> – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Adams County facility.	4-0 90-Day Ext, Permit Appeal
PCB 08-87	<u>People of the State of Illinois v. Steve Soderberg d/b/a Steve's Concrete and Excavating</u> – The Board accepted for hearing this water enforcement action involving a site located in Winnebago County.	4-0 W-E
PCB 08-88	<u>People of the State of Illinois v. Village of Skokie</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.	4-0 PWS-E
PCB 08-89	<u>People of the State of Illinois v. Gelco Management and Developers LLC</u> – The Board accepted for hearing this air enforcement action involving a site located in Franklin County.	4-0 A-E

New Cases

May 1, 2008 Board Meeting

08-76 Anne McDonagh and Davd Fishbaum v. Richard Michelon and Amy Michelon – No action taken.

08-77 Special K Hog Farm - Chenoa (Property ID No. 20-24-100-02) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Special K Hog Farm, located in McLean County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-78 Park Ridge/7-Eleven, Inc. v. IEPA – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this Cook County facility.

08-79 Bible Pork - Louisville v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Bible Pork – Louisville, located in Clay County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-80 Winters Creek, Inc. v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Winters Creek, Inc., located in Mercer County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-81 Creasey Family Farms - Macomb v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Creasey Family Farms - Macomb, located in McDonough County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-82 Lazy B. Farms v. IEPA – Upon receipt of the Illinois Environmental Protection Agency's recommendation, the Board found and certified that specified facilities of Lazy B. Farms, located in Lawrence County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

AS 08-10 In the Matter of: RCRA Delisting Adjusted Standard Petition for Peoria Disposal Company v. IEPA – No action taken.

May 15, 2008 Board Meeting

08-83 People of the State of Illinois v. Rupe Contracting, Inc. and John A. Rupe, individually and as owner and operator of Rupe Contracting, Inc. – The Board accepted for hearing this water enforcement action involving a site located in Bureau County.

08-84 Prime Pork Holdings, LLC - Kingston v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that petitioner’s specified facilities, located in DeKalb County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-85 Keith Morby Finishing Barn - Aledo (Property ID No. 15-15-13-300-001) v. IEPA – Upon receipt of the Illinois Environmental Protection Agency’s recommendation, the Board found and certified that petitioner’s specified facilities, located in Mercer County, are pollution control facilities for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2006)).

08-86 City of Quincy v. IEPA – The Board granted this request for a 90-day extension of time to file a permit appeal on behalf of this Adams County facility.

08-87 People of the State of Illinois v. Steve Soderberg d/b/a Steve's Concrete and Excavating – The Board accepted for hearing this water enforcement action involving a site located in Winnebago County.

08-88 People of the State of Illinois v. Village of Skokie – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this public water supply enforcement action involving a Cook County facility, the Board ordered publication of the required newspaper notice.

08-89 People of the State of Illinois v. Gelco Management and Developers LLC – The Board accepted for hearing this air enforcement action involving a site located in Franklin County.

AC 08-29 IEPA v. Keister's, Inc. – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Warren County facility.

AC 08-30 IEPA v. Thomas, Wayne, and Valerie Hill – The Board accepted for hearing respondents’ petition for review of this administrative citation involving a Union County facility.

R08-19 In the Matter of: Amendments to 35 Ill. Adm. Code 217, Nitrogen Oxides Emissions, and 35 Ill. Adm. Code 211 – No action taken.

Calendar

6/4/08 9:00 AM	R08-17	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources Proposed New 35 Ill. Adm. Code Part 223</u>	James R. Thompson Center Room 2-025 100 W. Randolph Street Chicago
6/5/08 9:00 AM	R08-17	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources Proposed New 35 Ill. Adm. Code Part 223</u>	James R. Thompson Center Room 9-034 100 W. Randolph Street Chicago

Environmental Register – May 2008

<p>6/05/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>VIDECONFERENCE James R. Thompson Center 100 W. Randolph Street Chicago And Illinois Pollution Control Board Hearing Room (1244 N, First Floor) 1021 N. Grand Avenue East (North Entrance) Springfield</p>
<p>6/16/08 5:30 PM</p>	<p>R08-09</p>	<p><u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304</u></p>	<p>Hearing Room Metropolitan Water Reclamation District of Greater Chicago 100 E. Erie Chicago</p>
<p>6/18/08 10:00 AM</p>	<p>R08-18</p>	<p><u>In the Matter of: Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620</u></p>	<p>Michael A. Bilandic Building 160 N. LaSalle Street, Room C500 Chicago</p>
<p>6/18/08 10:00 AM</p>	<p>AC 08-20</p>	<p><u>County Jackson v. James Moake</u></p>	<p>Jackson County Health Department Rear Building Conference Room 415 Health Department Road Murphysboro</p>
<p>6/18/08 10:30 AM</p>	<p>AC 08-21</p>	<p><u>County of Jackson v. Jack Reeves & Jacqueline Watkins (Site Code 0778125019)</u></p>	<p>Jackson County Health Department Rear Building Conference Room 415 Health Department Road Murphysboro</p>
<p>6/19/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>James R. Thompson Center Room 9-040 100 W. Randolph Street Chicago</p>
<p>7/10/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>VIDECONFERENCE James R. Thompson Center 100 W. Randolph Street Chicago And Illinois Pollution Control Board Hearing Room (1244 N, First Floor) 1021 N. Grand Avenue East (North Entrance) Springfield</p>

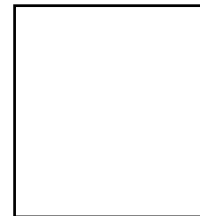
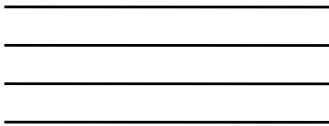
Environmental Register – May 2008

<p>7/16/08 10:00 AM</p>	<p>R08-18</p>	<p><u>In the Matter of: Proposed Amendments to Groundwater Quality Standards, 35 Ill. Adm. Code 620</u></p>	<p>Illinois Environmental Protection Agency TQM Room 1021 North Grand Avenue East, North Entrance Springfield</p>
<p>7/24/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>James R. Thompson Center 100 W. Randolph Street Chicago</p>
<p>8/7/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>VIDECONFERENC James R. Thompson Center 100 W. Randolph Street Chicago And Illinois Pollution Control Board Hearing Room (1244 N, First Floor) 1021 N. Grand Avenue East (North Entrance) Springfield</p>
<p>8/21/08 11:00 AM</p>	<p>Illinois Pollution Control Board Meeting</p>		<p>Illinois Pollution Control Board Hearing Room (1244 N, First Floor) 1021 N. Grand Avenue East (North Entrance) Springfield</p>

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

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

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Illinois Pollution Control Board
Environmental Register Coordinator
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274