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# Environmental Register

February 2011 - Number 680

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G. Tanner Girard, Acting Chairman

Board Members:

Thomas E. Johnson, Andrea S. Moore, Gary Blankenship, and Carrie Zalewski

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

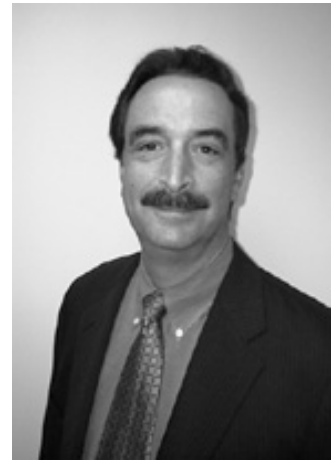
Web Site: <http://www.ipcb.state.il.us>

# Letter from the Chairman

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In February, the Board made progress in several rulemaking dockets despite some minor disruptions from the 2011 Blizzard that closed state government offices. Rulemakings filed and actions taken are summarized below. As always, information about these proceedings is available through the Clerk's Office Online (COOL) on our website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

On February 1, 2011, the hearing officer scheduled hearings in the rulemaking Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators (R11-20). Those hearings will begin on March 22, 2011, in Clinton and on April 20, 2011, in Chicago. This rulemaking proposal by the Illinois Environmental Protection Agency (IEPA) reflects amendments promulgated by the United States Environmental Protection Agency and includes revised emission standards, revised provisions for waste management plans, and removal of an existing startup, shutdown, and malfunction provision.



On February 3, 2011, the Board adopted a first-notice opinion and order updating financial assurance requirements regarding non-hazardous waste. 35 Ill. Reg. 3199, 3252, 3257 (Feb. 25, 2011). The rulemaking is docketed as Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G (R10-9).

The Board conducted two hearings in the rulemaking Revision of Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code Part 240 (R11-19). The first occurred on February 10, 2011, in Chicago and the second on February 23, 2011, in Edwardsville. The IEPA filed this rulemaking proposal on December 8, 2011, under authorities including the Vehicle Emission Inspection Law of 2005. *See* 35 Ill. Reg. 129 (Jan. 3, 2011). The IEPA seeks to amend Illinois' vehicle emission inspection program by repealing various emissions test standards and updating definitions and incorporations.

The Board held a hearing in the rulemaking Proposed Site-Specific NO<sub>x</sub> Rule Amendment Applicable to Saint-Gobain Containers, Inc. at 35 Ill Adm. Code Section 217.152(b) (R11-17) on February 17, 2011, in Chicago. Saint-Gobain Containers has proposed to adjust the date by which a facility must obtain a legally enforceable order incorporating specified emission limitations and monitoring requirements in order to qualify for an alternative compliance deadline. *See* 34 Ill. Adm. Code 19830-39 (Dec. 27, 2010).

On February 17, 2011, the Board conducted the second hearing in the rulemaking entitled Regulatory Proposal for NO<sub>x</sub> Trading Program Sunset Provisions for Non-Electric Generation Units ("Non-EGU"): Amendments to 35 Ill. Adm. Code Part 217. Subpart U (R11-8). The IEPA has proposed to "sunset" the trading provisions of the NO<sub>x</sub> SIP Call Trading Program.

On February 18, 2011, the IEPA filed a rulemaking proposal seeking to update Parts 731 and 734 and repeal Part 732 of the Board's underground storage tank regulations. The rulemaking is docketed as Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734 (R11-22).

Please access the Board's website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) to view additional information about the open rulemaking dockets described above.

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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## Rulemaking Update

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### **Board Adopts First Notice Proposal to Update Financial Assurance Requirements for Illinois' Nonhazardous Solid Waste Landfills R10-09**

The Board, on February 3, 2011, adopted its first notice opinion and order in a proposal to update its financial assurance requirements for non-hazardous waste landfills. The Illinois Environmental Protection Agency (IEPA) initiated this proceeding by filing a rulemaking proposal on July 27, 2009. The proposal is docketed as In the Matter of: Financial Assurance Instruments – Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F and Appendix A, 810.104, 811.Subparts C, G and Appendix A (R10-09).

The IEPA's proposal updates specific segments of the Board's non-hazardous solid waste landfill regulations relating to financial assurance. The purpose of financial assurance rules is to assure that the owner and operator have demonstrate that they have sufficient resources to properly close and monitor no-longer-active landfills, so that the State and its taxpayers do not have to shoulder the financial burden of remediating problems caused by such landfills. The rules establish requirements for performance bonds and other securities insuring closure and post-closure care and corrective action at non-hazardous waste landfill sites. The IEPA proposes updates that correspond with certain hazardous waste financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations and the Boards other financial assurance programs.

The rule revisions proposed at first notice include a) addition of "evergreen" renewal language to the bonds and letters of credit that are obtained by waste disposal sites, to provide for an automatic extension of the expiration date for a period of at least one year (unless the issuing institution provides notification that the issuer will not extend the bond or letter of credit beyond the expiration date), b) reduction of the required term of financial instruments from the current minimum of four or five years to at least one year, c) requirements for trust agreements, to update cost estimates for closure and post-closure care (to protect against a funds shortage), and d). requirements that a unit of local government to provide evidence of alternative financial assurance to the IEPA to protect against a shortage of funds for closure and post-closure care.

The Board held two public hearings in this rulemaking.

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. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R10-09, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address: Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

In addition, public comments may be filed electronically through COOL at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6].

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For more information contact Daniel Robertson at 312-814-6931 or email at robertsd@ipcb.state.il.us.

### **Board Dismisses Five Identical In Substance Rulemaking Dockets as Unnecessary for Update Period July 1, 2010 through December 31, 2010**

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 February 17, 2011, the Board dismissed as unnecessary five dockets reserved to consider rules adopted by the USEPA during the period of July 1, 2010 through December 31, 2010. In each of the program areas described below, USEPA adopted no rules during the update period.

**Underground Storage Tank (UST) (R11-10).** Section 22.4(d) of the Environmental Protection Act (415 ILCS 5/22.4(d) (2008)) requires the Board to adopt regulations that are “identical in substance” to regulations of the USEPA. 415 ILCS 5/7.2 (2008). Specifically, Section 22.4(d) relates to UST regulations promulgated by the USEPA pursuant to Section 9003 of federal Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C §§ 6991b (2006)) to implement Subtitle I of RCRA (42 U.S.C. §§ 6991 *et seq.* (2006)), with certain limitations. USEPA has codified its UST regulations at 40 C.F.R. 281 through 283.

**Wastewater Pretreatment (R11-11).** Sections 7.2 and 13.3 of the Environmental Protection Act (415 ILCS 5/7.2 and 13.3 (2008)), require the board to adopt regulations that are “identical in substance” to regulations of the USEPA. 415 ILCS 5/7.2 (2008). Specifically, Section 13.3 relates to wastewater pretreatment regulations that the USEPA adopted to implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2006)). USEPA has codified the federal wastewater pretreatment rules as 40 C.F.R. 400 through 499.

**Definition of Volatile Organic Material (VOM) (R11-12)** Section 9.1(e) of the Environmental Protection Act (415 ILCS 5/9.1(e) (2008)) requires the Board to adopt regulations that are “identical in substance” to regulations of the USEPA. 415 ILCS 5/7.2 (2008). Specifically, Section 9.1(e) of the Act (415 ILCS 5/9.1(e) (2008)) relates to the definition of “volatile organic material” (VOM) and those compounds that USEPA has found to be exempt from regulation under the state implementation plans for ozone due to negligible photochemical reactivity. USEPA has codified these exemptions as part of its definitions of 40 C.F.R. 51.100(s).

**SDWA Update, USEPA Regulations (R11-13).** Section 17.5 of the Environmental Protection Act (415 ILCS 5/17.5 (2008)) requires that Board to adopt regulations that are “identical in substance,” as defined at Section 7.2 of the Act, to the National Primary Drinking Water Regulations (NPDWRs) adopted by the United States Environmental Protection Agency (USEPA). These regulations implement sections 1412(b), 1414(c), 1417(a), and 1445(a) of the Safe Drinking Water Act (SDWA), 42 U.S.C §§ 300g-1(b), 300g-3(c), 300g-6(a) & 300j-4(a) (2006). USEPA has codified its SDWA regulations at 40 C.F.R. 141 through 143.

**Resource Conservation and Recovery Act (RCRA) Subtitle D (R11-15).** Section 22.40(a) of the Environmental Protection Act (415 ILCS 5/22.40(a) (2008)) requires the Board to adopt regulations that are “identical in substance” to regulations of the USEPA. 415 ILCS 5/7.2 (2008). Specifically, Section 22.40(a) relates to municipal solid waste landfill (MSWLF) regulations that USEPA adopted to implement Subtitle D of the Resource Conservation and Recovery Act of 1976 (42 U.S.C §§ 6941-6949 (2006); RCRA Subtitle D). USEPA had codified the federal MSWLF rules at 40 C.F.R. 258.

## Board Actions

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**February 3, 2011**  
**Chicago, Illinois**

### Rulemakings

**R 10-9**      In the Matter of: Financial Assurance Instruments--Renewal and Terms: Amendments to 35 Ill. Adm. Code 807.Subpart F, 810.104 and 811.Subpart G      5-0  
 Land  
 – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board’s land pollution control regulations.

### Administrative Citations

**AC 11-16**      IEPA v. Phillip Newell – The Board accepted for hearing respondent’s petition for review of this administrative citation involving a Williamson County facility.      5-0

**AC 11-17**      County of Perry v. Joseph Melvin – The Board found that this Perry County respondent violated 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)), and ordered respondent to pay a civil penalty of \$3,000.      5-0

### Adjudicatory Cases

**PCB 08-30**      Caseyville Sport Choice, LLC v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber in her individual capacity, and Fairmount Park, Inc. – The Board denied both respondents’ motions to dismiss. In addition the Board denied the motion for summary judgment filed by Fairmount Park, Inc.      5-0  
 L-E,  
 Citizens

**PCB 08-40**      Illinois State Toll Highway Authority (Belvidere Oasis - South Side) v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.      5-0  
 UST Appeal

**PCB 08-41**      Illinois State Toll Highway Authority (Belvidere Oasis - South Side CACR) v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.      5-0  
 UST Appeal

**PCB 09-24**      People of the State of Illinois v. Dennis Lahood, d/b/a Villeneuve Subdivision – 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 Tazewell County facility, the Board ordered publication of the required newspaper notice. The Board also granted parties’ motion to correct the caption (to read as shown above).      5-0  
 W-E

**PCB 10-34**      Jones Service Station v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.      5-0  
 UST Appeal

**PCB 10-44**      Scates Service Station v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.      5-0  
 UST Appeal

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<b>PCB 10-51</b>	<u>Logan Hollow Phillips 66 v. IEPA</u> – The Board granted petitioner’s motion for voluntary dismissal of this underground storage tank appeal.	5-0 UST Appeal
<b>PCB 10-84</b>	<u>People of the State of Illinois v. Professional Swine Management, LLC, Hilltop View LLC, Wildcat Farms, LLC, High-Power Pork, LLC, Eagle Point, LLC, Lone Hollow, LLC, Timberline, LLC, Prairie State Gilts, Ltd., North Fork Pork, LLC, Little Timber, LLC, and Twin Valley Pumping, Inc.</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, as to North Fork Pork, LLC (North Fork) only, involving a Hancock County facility, the Board ordered publication of the required newspaper notice. The Board also granted North Fork’s motion to withdraw its pending “Motion for Partial Dismissal and/or Strike or Sever Claims.”	5-0 W-E
<b>PCB 11-42</b>	<u>People of the State of Illinois v. Joel A. Moske, d/b/a U. S. Scrap</u> – The Board accepted for hearing this air and land enforcement action involving a site located in Macon County.	5-0 A,L-E

### February 17, 2011 Chicago, Illinois

#### Rulemakings

<b>R 11-10</b>	<u>UST Update, USEPA Amendments (July 1,2010 through December 31, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its underground storage tank regulations during the update period of July 1, 2010 through December 31, 2010.	5-0 Land
<b>R 11-11</b>	<u>Wastewater Pretreatment Update, USEPA Amendments (July 1,2010 through December 31, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its wastewater pretreatment regulations during the update period of July 1, 2010 through December 31, 2010.	5-0 Water
<b>R 11-12</b>	<u>Definition of VOM Update, USEPA Amendments (July 1,2010 through December 31, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its volatile organic emission regulations during the update period of July 1, 2010 through December 31, 2010.	5-0 Air
<b>R 11-13</b>	<u>SDWA Update, USEPA Amendments (July 1,2010 through December 31, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its drinking water regulations during the update period of July 1, 2010 through December 31, 2010.	5-0 Water

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<b>R 11-15</b>	<u>RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (July 1, 2010 through December 31, 2010)</u> – The Board dismissed this reserved identical-in-substance docket because the United States Environmental Protection Agency did not amend its municipal solid waste landfill regulations during the update period of July 1, 2010 through December 31, 2010.	5-0 Land
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### Administrative Citations

<b>AC 10-6</b>	<u>IEPA v. Larry M. Ison (IEPA No. 282-09-AC)</u> – The Board granted complainant’s motion for withdrawal of this administrative citation and closed the docket.	5-0
<b>AC 10-7</b>	<u>IEPA v. Larry M. Ison (IEPA No. 281-09-AC)</u> – The Board granted complainant’s motion for withdrawal of this administrative citation and closed the docket.	5-0

### Adjudicatory Cases

<b>PCB 05-117</b>	<u>People of the State of Illinois v. City of Cairo</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 an Alexander County facility, the Board ordered publication of the required newspaper notice.	5-0 L-E
<b>PCB 10-21</b>	<u>People of the State of Illinois v. Seating Concepts, Inc.</u> – Upon receipt of a proposed stipulation and settlement agreement and an agreed motion to request relief from the hearing requirement in this air enforcement action involving a Will County facility, the Board ordered publication of the required newspaper notice.	5-0 A-E
<b>PCB 11-43</b>	<u>KCBX Terminals Company v. IEPA</u> – The Board accepted for hearing this permit appeal involving a Cook County facility. No action was taken on petitioner’s motion for stay of specified conditions in the permit.	5-0 P-A, Air
<b>PCB 11-44</b>	<u>Lakeland Food &amp; Gas, Inc. v. IEPA</u> – The Board accepted for hearing this underground storage tank appeal involving a Coles County facility.	5-0 UST Appeal

### New Cases

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#### February 3, 2011 Board Meeting

**11-42** People of the State of Illinois v. Joel A. Moske, d/b/a U. S. Scrap – The Board accepted for hearing this air and land enforcement action involving a site located in Macon County.

**AC 11-18** IEPA v. John and Debra Watson – The Board accepted an administrative citation against these Union County respondents.

**AC 11-19** IEPA v. Timothy Crouch – The Board accepted an administrative citation against this Livingston County respondent.

AS 11-1 In the Matter of: Petition of Greif Packaging, LLC for an Adjusted Standard from 35 Ill. Adm. Code Part 218. Subpart TT – No action taken.

## February 17, 2011 Board Meeting

**11-43 KCBX Terminals Company v. IEPA** – The Board accepted for hearing this permit appeal involving a Cook County facility. No action was taken on petitioner’s motion for stay of specified conditions in the permit.

**11-44 Lakeland Food & Gas, Inc. v. IEPA** – The Board accepted for hearing this underground storage tank appeal involving a Coles County facility.

## Provisional Variance

**IEPA 11-07 Exelon Generation Company, LLC Dresden Nuclear Generation Station v. Illinois Environmental Protection Agency**—The Illinois Environmental Protection Agency (IEPA) granted, subject to conditions, the Exelon Generation Company’s request for a provisional variance for its Dresden Nuclear Generation station to operate in partial direct open cycle while it restores one of its lift pumps to service. The repair of this pump is needed to properly control water level in the hot canal. Operating in partial direct open cycle is necessary to prevent flooding of the site and, potentially, the local area. The IEPA granted the provisional variance from Special Condition No. 4D, of Dresden’s NPDES Permit No. IL 0002224 subject to conditions. The provisional variance is effective from February 22, 2011 through February 26, 2011.

*Public Act 93-0152 (Senate Bill 222) amended Sections 35-37 of the Illinois Environmental Act (415 ILCS 5/5(b) (2008)) so that provisional variances are issued by the Illinois Environmental Protection Agency (IEPA). If the IEPA grants a provisional variance, then the IEPA must file a copy of its written decision with the Board. The Board must maintain copies of the provisional variances for public inspection. Copies of provisional variances can be obtained by contacting the Clerk’s Office at (312) 814-3620, or by visiting the Board’s Website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). If the IEPA denies a provisional variance request, then the applicant may initiate a proceeding with the Board for a full variance.*

## Calendar

3/3/11 11:00 am	<b>Illinois Pollution Control Board Meeting</b>		<b>James R. Thompson Center 100 W. Randolph Street Chicago</b>
3/9/11 9:00 AM	R08-09(C)	<u>In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304</u>  <b>(Continues until complete or through March 10, 2011)</b>	James R. Thompson Center Room 2-025 100 W. Randolph Chicago



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<p><b>3/17/11 11:00 am</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago And 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield</b></p>
<p>3/22/11 9:00 AM</p>	<p>R11-20</p>	<p><u>In the Matter of Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u></p>	<p>DeWitt County Building Courtroom B 201 W. Washington Clinton</p>
<p>3/29/11 9:00 AM</p>	<p>R11-09</p>	<p><u>In the Matter of: Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742</u></p>	<p>IEPA Office Building North Entrance Sangamo Room 1000 E. Converse Springfield</p>
<p><b>4/7/11 11:00 AM</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p>4/20/11 11:00 AM</p>	<p>R11-20</p>	<p><u>In the Matter of Amendments to 35 Ill. Adm. Code Part 229: Hospital/Medical/Infectious Waste Incinerators</u></p>	<p>James R. Thompson Center Room 9-039 100 W. Randolph Chicago</p>
<p><b>4/21/11 11:00 am</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p><b>5/5/11 11:00 am</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p><b>5/19/11 11:00 am</b></p>	<p><b>Illinois Pollution Control Board Meeting</b></p>		<p><b>James R. Thompson Center 100 W. Randolph Street Chicago</b></p>
<p>5/24/11 9:00 AM</p>	<p>R11-09</p>	<p><u>In the Matter of: Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742</u></p>	<p>James R. Thompson Center Room 2-025 100 W. Randolph Chicago</p>
<p>5/25/11 9:00 am</p>	<p>R11-09</p>	<p><u>In the Matter of: Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742</u></p>	<p>James R. Thompson Center Room 9-040 100 W. Randolph Chicago</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.

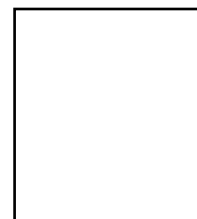
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Illinois Pollution Control Board  
Environmental Register Coordinator  
1021 N. Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274